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2009091005

ASSIGNMENT OF LEASES AND RENTS

Loan No. 2299565680

**THIS ASSIGNMENT OF LEASES AND RENTS** is made as of August 18, 2009, by **California Red, LLC**, a Nebraska limited liability company ("Borrower") to **Pinnacle Bank** ("Lender").

PINNACLE BANK OF PAPPILLION  
 P.O. BOX 461209  
 PAPPILLION, NE 68046-1209

PAR

1. **ASSIGNMENT.**  
 In consideration of Lender's agreement to issue the Loan, as described below, and for other valuable consideration, receipt and adequacy of which is acknowledged by Borrower, Borrower grants and assigns to Lender:

- (a) all of Borrower's right, title and interest in, to and under and with respect to any and all existing leases, licenses and other agreements of any kind (collectively "Existing Leases") relating to the use or occupancy of any of the property described in Exhibit A (the "Property"); and
- (b) all of Borrower's right, title and interest in, to and under and with respect to any and all leases, licenses and other agreements of any kind relating to any use or occupancy of all or any portion of the Property entered into after the date of this Assignment (collectively "Future Leases"); and
- (c) all rents (or payments in lieu of rents), payments and liabilities at any time payable under any and all of the Existing Leases or Future Leases, any and all security deposits received or to be received by Borrower pursuant to any and all Existing Leases or Future Leases and all rights and benefits accrued or to accrue to Borrower under any and all of the Existing Leases or Future Leases (the "Collateral"). The Existing Leases, Future Leases and Collateral are collectively referred to as the "Leases", and a reference to Existing Leases, Future Leases, Collateral or Leases shall be a reference to the same as amended, extended, renewed or modified from time to time.

2. **OBLIGATION SECURED.**  
 Borrower makes the foregoing grant and assignment to Lender for the purpose of securing:

- (a) payment to Lender of all indebtedness evidenced by and arising under the Note Secured by Deed of Trust (the "Note") executed by Borrower in the principal amount of **FIFTEEN MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$15,750,000.00)**, payable to Lender or its order, and dated as of the date of this Assignment as the same may be amended, extended, renewed, refinanced or modified from time to time and any promissory notes issued in substitution therefor; and

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- (b) the payment of all indebtedness and the performance of all obligations of Borrower to Lender now existing or arising after the date of this Assignment in connection with the loan evidenced by the Note (the "Loan"), including without limitation, all indebtedness and obligations secured by or arising under the Deed of Trust with Assignment of Rents and Security Agreement (the "Deed of Trust") on the Property dated as of the date hereof and securing the Note, and all of the other documents evidencing or securing the Loan (collectively the "Loan Documents"), as all of the same may be amended, extended, renewed, refinanced or modified from time to time and all substitutions therefor; and
- (c) the payment of all indebtedness and the performance of all obligations, which recite that they are secured by this Assignment, of Borrower to Lender now existing or arising after the date of this Assignment under this Assignment, as the same may be amended, extended, renewed, refinanced or modified from time to time and all substitutions therefor.

3. **INTERPRETATION.**

It is the intention of Borrower that this Assignment shall constitute a present and absolute Assignment to Lender. However, so long as there shall exist no default by Borrower in the payment of any sum due to Lender under the Loan Documents, or in the performance of any obligation, covenant or agreement contained in this Assignment, the Loan Documents or the Leases, as the same are to be performed by Borrower, Borrower shall have the right to collect at the time of, but not more than thirty (30) days prior to, the date provided for payment, all rents, income and profits arising under the Leases and to retain and use the same.

4. **COVENANTS.**

Borrower covenants and agrees as follows:

- (a) to perform all of the covenants, representations and agreements of the lessor, and not to violate any of the warranties of the lessor, under the Leases; not to suffer or permit any release, abatement or reduction of liability of any of the lessees; not to create any right or excuse for any of the lessees to withhold payment of rent or fail to comply with any other liability under any of the Leases or to otherwise cease performance of any of lessee's obligations under the Leases; and
- (b) to give prompt notice to Lender of any notice of default with respect to any of the Leases, whether the default be of the lessees or Borrower, and to furnish Lender with complete copies of said notices; and
- (c) not to terminate, modify or amend any of the terms of the Leases or grant any concession or waive, excuse or condone any failure of lessees under the Leases, or in any manner release or discharge the lessees from any obligations, covenants, conditions or agreements to be performed by the lessees under the Leases, including without limitation, the obligation to pay rent, or give any consent or exercise any option required or permitted by the terms of any of the Leases, either orally or in writing, without the prior written consent of Lender, which may be withheld in Lender's sole discretion, or to accept the surrender of any of the Leases without the prior written consent of Lender, which may be withheld in Lender's sole discretion, and that any attempted termination, modification, or amendment of any of the Leases, or any other action which requires Lender's consent, without such consent, shall be null and void; and
- (d) not to collect any of the rent, income or other liabilities arising or accruing under the Leases more than one (1) month in advance of the time when the same become due; and

- (e) not to discount any future accruing rents or other liabilities in connection with any of the Leases; and
- (f) not to execute any other assignment of any of the Leases, any interest in any of the Leases or any of the rents or payments due or to become due in connection with the Leases; and
- (g) to enforce, or secure the performance by the lessees of, the covenants, representations, warranties and agreements contained in the Leases, and to enforce and secure all remedies available to Borrower against the lessees, in case of default under any of the Leases by the lessees; and
- (h) not to alter, modify or change the terms of any guaranty of any of the Leases or cancel or terminate any such guaranty without the prior written consent of Lender, which may be withheld in Lender's sole discretion, and that any such action without such consent shall be null and void; and
- (i) not to consent to any termination or assignment by any lessee without the prior written consent of Lender; provided that the foregoing shall not be construed to place Borrower in default under this Assignment in the case of any termination or assignment, which, under the terms of a particular Lease, does not require the consent of the lessor; and provided further, that where the terms of the Lease require the lessor not to unreasonably withhold its consent to any such termination or assignment, Lender agrees not to unreasonably withhold Lender's consent notwithstanding anything to the contrary set forth herein; and provided further, that any such termination or assignment without Lender's consent shall be null and void; and
- (j) not to subordinate, or agree or consent to subordinate, any of the Leases to any deed of trust or other encumbrance without Lender's prior written consent, which may be withheld in Lender's sole discretion; and provided further, that any such subordination or agreement or consent to subordinate without such consent shall be null and void; and to deliver to Lender, from time to time, upon Lender's request, an executed counterpart of each and every Lease; and to execute and record such additional assignments, in form and substance acceptable to Lender, as Lender may request, covering any and all of the Leases, and to pay all costs incurred in connection with the preparation, execution and recording of all such assignments; and
- (k) not to exercise any right of election, whether specifically set forth in any of the Leases or otherwise, which would in any way diminish any obligation or liability of any of the lessees or which would have the effect of shortening the stated term of any of the Leases; and at Borrower's sole cost, to prosecute and defend any legal action, arbitration or other controversy relating to any of the Leases or to Borrower's interest in any of the Leases and to pay all costs and expenses (including without limitation, attorneys' fees and court costs) actually incurred by Lender in connection with any such action, arbitration or controversy; and
- (l) not to enter into any Leases after the date of this Assignment unless such Leases are in form and content satisfactory to Lender.

5. **REPRESENTATIONS AND WARRANTIES.**

In order to induce Lender to make the Loan to Borrower, Borrower represents and warrants to Lender that:

- (a) the Existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and that no breach or default, or event which would constitute such a breach or default after notice or the passage of time, or both, of any of the terms, covenants or conditions exists with respect to any of the Existing Leases; and
- (b) no rent payment or other payment under any of the Existing Leases has been paid by any lessee for more than one (1) month in advance; and
- (c) the Existing Leases constitute all the Leases existing with respect to the Property as of the date of this Assignment; and
- (d) each of the Existing Leases constitutes the entire agreement between the respective lessees and Borrower, and there are no other agreements, undertakings or representations, either written or oral, with respect to the Property; and
- (e) none of the lessor's interest under any of the Leases has been transferred or assigned to any person or entity other than Lender.

6. **DEFAULTS AND REMEDIES.**

(a) **DEFINITION.**

"Default" shall mean a default in payment of any of the indebtedness secured by this Assignment or the Loan Documents, after giving effect to any express curative provisions set forth herein or therein or a default in the performance of any obligation, covenant or agreement of Borrower contained in this Assignment or any of the Loan Documents or any of the Leases after giving effect to any express curative provisions set forth herein or therein.

(b) **LOAN DOCUMENTS.**

A Default under this Assignment shall be a default under each and every one of the Loan Documents.

(c) **REMEDIES.**

In addition to any and all remedies contained in the other Loan Documents, in the event of a Default, Lender shall, and without regard to the adequacy of the security for the indebtedness and obligations secured by this Assignment and by the Loan Documents, either in person or by its agent, and with or without bringing any action or proceeding or obtaining a receiver appointed by a court, and without notice to or demand on Borrower, and without releasing Borrower from any obligations under this Assignment, have the following rights and remedies, each of which shall be exercisable in Lender's sole discretion:

- (i) to receive directly from the lessees under the Leases all rents, income, liabilities and other amounts arising or accruing under the Leases or from the Property and to so continue until Borrower is otherwise notified by Lender; and
- (ii) to collect, sue for, settle, compromise and give acquittances for all of the rents and other payments that may become due under the Leases and avail Lender of and pursue all remedies for the enforcement of the Leases and Borrower's rights in and under the Leases as Borrower might have pursued but for this Assignment, all at Borrower's sole cost and expense; and
- (iii) to take possession of the Property, and to have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem proper and, either with or without taking possession of the Property in its own name, make, from

time to time, all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender.

Lender may have a receiver appointed to enter into possession of the Property, collect the rents and apply the same as the court may direct. Lender shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of Borrower or any other person who may be legally or equitably liable to pay or perform any of the indebtedness, and Borrower and each such person shall be deemed to have waived such proof and to have consented to the appointment of such receiver. Should Lender or any receiver collect rents, the moneys so collected shall not be substituted for payment of the indebtedness nor can they be used to cure the event of a Default, without the prior written consent of Lender. Borrower hereby expressly consents to the appointment of a receiver for the Property upon the occurrence of any event of a Default, and waives any requirement for the posting of any bond or other security in connection with such appointment and such receiver, and for any hearing in connection with such appointment.

Nothing set forth in this section shall be deemed to limit or otherwise alter the rights of Lender at law or in equity in the event of a Default, nor shall Lender be obligated to exercise any of its rights in this section.

(d) **NOTICE TO LESSEES.**

Lessees under the Leases are hereby irrevocably authorized and notified by Borrower to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by Lender for the payment to Lender of any rental or other sums which may be, or hereafter become, due under the Leases, or for the performance of any of such lessees' undertakings under the Leases, and such lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing.

(e) **PROCEEDS.**

Lender shall have the right to apply all such rents, income and profits received from the lessees under the Leases to the payment of any of the following in such amounts and in such order as Lender shall deem appropriate in Lender's sole discretion:

- (i) the indebtedness secured by this Assignment and by the Loan Documents, together with all costs and attorneys' fees of Lender incurred in attempting to enforce Lender's rights hereunder or thereunder, in such order or priority as Lender, in Lender's sole discretion, may determine, any statute, law, custom or use to the contrary notwithstanding;
- (ii) all expenses of managing the Property, including without limitation, the salaries, fees and wages of a managing agent and such other employees or independent contractors as Lender may deem necessary or desirable, and all expenses of operating and maintaining the Property, including without limitation, all taxes, charges, claims, assessments, water rents, sewer rents, any other liens, premiums for all insurance which Lender may deem necessary or desirable, the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property.

(f) **RELATIONSHIP.**

Nothing contained in this Assignment shall be construed as constituting Lender as trustee or "mortgagee in possession".

7. **EXCULPATION.**

Lender shall not directly or indirectly be liable to Borrower or any other person as a consequence of the exercise of the powers granted to Lender in this Assignment, or as a result of Lender's exercise of Lender's rights in the event of a Default, and no such liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower, and Borrower indemnifies Lender and holds Lender harmless from and against all such liability.

Lender shall not be obligated to perform or discharge any obligation, duty, or liability of Borrower under the Leases, or by reason of this Assignment. Borrower hereby indemnifies and holds Lender harmless from and against any and all liability, loss, damage, cost or expense (including attorneys' fees) which Lender might incur or suffer under the Leases or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on Lender's part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases.

Lender shall not be liable for any loss sustained by Borrower or any third party resulting from Lender's failure to lease the Property after a Default or from any other act or omission of Lender in managing the Property after Default. Should Lender incur or suffer any liability, loss, damage, cost or expense (including attorneys' fees) under the Leases or by reason of this Assignment, or in the defense of any such claims or demands, the amount of such liability, loss, damage, cost, expense, and attorneys' fees, shall be secured by this Assignment and the Loan Documents, and Borrower shall pay the same to Lender upon demand by Lender. Upon failure of Borrower to so pay Lender, Lender may, at Lender's option, declare all sums secured by this Assignment and the Loan Documents immediately due and payable and exercise any other remedy available at law or in equity.

It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the lessees or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death of any lessee, licensee, employee, invitee or other person.

8. **FORECLOSURE.**

Upon issuance of a deed or deeds pursuant to any judicial foreclosure or nonjudicial foreclosure of the Deed of Trust, all right, title and interest of Borrower in and to the Leases shall, by virtue of this Assignment, vest in and become the absolute property of the grantee or grantees of such deed or deeds without any further act or assignment by Borrower. Borrower hereby irrevocably appoints Lender, and its successors and assigns, as its attorney in fact, to execute all instruments of assignment or further assurance in favor of such grantee or grantees of such deed or deeds, as may be necessary or desirable for such purpose.

Nothing contained in this Assignment shall prevent Lender from terminating any subordinate Lease through such foreclosure, subject to any written agreement now or hereafter made by Lender in Lender's discretion to recognize the rights of any lessee if such lessee is not in default under its Lease.

9. **LOAN DOCUMENTS.**

This Assignment is supplementary to, and not in substitution or derogation of, any of the provisions of the other Loan Documents. To the extent that this Assignment is inconsistent with the provisions of the other Loan Documents, such other Loan Documents shall control; and in particular, to the extent that this Assignment is inconsistent with the terms of the Deed of Trust, the Deed of Trust shall control. Lender may enforce any of the provisions of this Assignment prior to, simultaneously with, or subsequent to any of the rights or remedies under the other Loan Documents.

**10. NOTICES.**

- All notices, demands, requests or other communications (notices) required under this Assignment shall be in writing and shall be deemed given when personally delivered or mailed by first class U.S. mail, postage prepaid, addressed as follows:

To the Lender:                   Pinnacle Bank  
   Attn: Brad Eckhoff  
   1200 Golden Gate Drive  
   Papillion, NE 68046

To the Borrower:               California Red, LLC  
   Attn: Mike Leatherman  
   13616 California Street, Suite 100  
   Omaha, NE 68154

Either party may, in substitution of the foregoing, designate a different address or addresses within the continental United States for the purposes of this section by written notice delivered to the other party in the manner prescribed above at least ten (10) days in advance of the date on which such change of address is to be effective.

In the event any applicable statute shall provide a mandatory method for the delivery of notice then the statutory method shall be followed.

**11. ATTORNEYS' FEES.**

If any legal action or proceeding is brought by either Borrower or Lender in order to enforce or construe a provision of this Assignment, the unsuccessful party in such action or proceeding, whether such action or proceeding is settled or prosecuted to final judgment, shall pay all of the attorneys' fees and costs incurred by the prevailing party. If Borrower shall become subject to any case or proceeding under the Bankruptcy Reform Act, as amended or recodified from time to time, Borrower shall pay to Lender on demand all attorneys' fees, costs and expenses which Lender may incur in order to obtain relief from any provision of the Act which delays or otherwise impairs Lender's exercise of any right or remedy under this Assignment or any of the Loan Documents, or in order to obtain adequate protection for any of Lender's rights or collateral.

**12. HEIRS, SUCCESSORS AND ASSIGNS.**

Subject to the limitations elsewhere contained in this Assignment, the terms of this Assignment shall be binding upon and inure to the benefit of the heirs, successors and assigns of Borrower and Lender, including without limitation, any subsequent owner of the Property. There shall be no third party beneficiaries of this Assignment.

**13. TIME.**

Time is of the essence of each term of this Assignment.

**14. HEADINGS.**

All headings appearing in this Assignment are for convenience only and shall be disregarded in construing the substantive provisions of this Assignment.

**15. LAW.**

This Assignment shall be governed by and construed in accordance with the Laws of the State in which the Property is located, except to the extent that Federal laws, rules or regulations preempt the laws of the State in which the Property is located, in which case Lender shall be entitled to such Federal rights and remedies without regard to conflicting limitation imposed by State law.

**16. SEVERABILITY.**

In the event any one of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect under applicable law, such invalidity, illegality or unenforceability, at the option of Lender, shall not effect any other provision of this Assignment, but this Assignment shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein.

17. **WAIVER.**  
Nothing contained in this Assignment, and no act done or omitted by Lender pursuant to the powers and rights granted Lender, shall be deemed to be a waiver by Lender of its rights and remedies under the other Loan Documents; and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms of the other Loan Documents. The rights and remedies of Lender under this Assignment are cumulative, and no exercise of any right or remedy shall preclude the exercise of any other right or remedy or the later exercise of the same right or remedy. Waivers and approvals under this Assignment must be in writing to be effective; and, unless expressly stated, waivers and approvals shall apply only to the specific circumstances addressed. No waiver under this Assignment shall operate under any of the other Loan Documents.
18. **SATISFACTION.**  
Upon payment in full of all indebtedness secured by this Assignment, this Assignment shall terminate and be of no further effect; but the affidavit of any officer of Lender showing that any part of said indebtedness remains unpaid shall be conclusive evidence of the validity, effectiveness and continuing force of this Assignment; and any person may, and is hereby authorized to rely upon any such affidavit.
19. **INTEREST.**  
In the event Lender expends funds on behalf of Borrower in exercising any of Lender's rights or remedies under this Assignment, such sums, including attorneys' fees, shall be secured by this Assignment and the other Loan Documents, and any such sums shall bear interest at a rate equal to the Note rate in effect prior to default, plus four percent (4%) per annum, until reimbursed by Borrower to Lender.
20. **OTHER SECURITY.**  
Lender may take or release other security for the payment of the indebtedness secured by this Assignment, and Lender may release any party primarily or secondarily liable for the payment of any such indebtedness and may apply any other security held by Lender to the satisfaction of such indebtedness without prejudice to any of Lender's rights under this Assignment.
21. **DEFINITION.**  
The terms "lessor" and "lessors" as used in this Assignment shall include all landlords, licensors and other parties in a similar position with respect to the Leases. The term "lessee" and "lessees" shall include any tenants and licensees and any other parties in a similar position, and shall also include any guarantors or other obligors of the Leases.
22. **ESTOPPEL CERTIFICATE.**  
Within thirty (30) days after request by Lender, Borrower shall deliver, in recordable form, to Lender and to any party designated by Lender, estoppel certificates executed by Borrower (estoppel certificate form to be provided to Borrower by Lender). Borrower shall obtain execution by each of the lessees of such a certificate.  
  
Borrower's or any lessee's failure to deliver any such certificate in time shall be conclusive upon Borrower that: (i) this Assignment and such lessee's Lease are in full force and effect, without modification, (ii) there are no uncured defaults in Borrower's performance under this Assignment or in Borrower's and such lessee's performance under such lessee's Lease, (iii) neither Borrower nor such lessee have any right of offset, counterclaim or deduction under this Assignment or such lessee's Lease, and (iv) no more than one (1) month's rent has been paid in advance under such lessee's Lease.
23. **PLURAL BORROWER'S, OTHER OBLIGORS.**  
All persons and entities identified by the designation "Borrower", including without limitation, all general partners or joint venturers (if any) of Borrower, are jointly and individually bound to perform each and every obligation of Borrower under this Assignment and are jointly and individually liable to Lender for such performance.
24. **INCORPORATION.**  
Exhibit A, as attached to this Assignment, is incorporated into and made a part of this Agreement.



25. **ACKNOWLEDGMENT OF RECEIPT OF COPY OF ASSIGNMENT.**

By signing below, the Assignor hereby acknowledges receipt of a copy of this Assignment together with a copy of each promissory note secured hereby.

**BORROWER:**

**California Red, LLC,**  
a Nebraska limited liability company

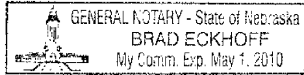
By: *H. Randal Woodward*  
H. Randal Woodward, M.D., Manager

By: *Michael C. Longley*  
Michael C. Longley, M.D., Manager

By: *Jonathan E. Fuller*  
Jonathan E. Fuller, M.D., Manager

STATE OF NEBRASKA     )  
                                  ) ss  
COUNTY OF DOUGLAS    )

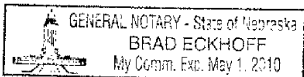
On this 18<sup>th</sup> day of August, 2009, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared H. Randal Woodward, M.D., Manager of California Red, LLC, a Nebraska limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as Manager on behalf of the company.



*Brad Eckhoff*  
Notary Public

STATE OF NEBRASKA     )  
                                  ) ss  
COUNTY OF DOUGLAS    )

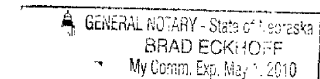
On this 18<sup>th</sup> day of August, 2009, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Michael C. Longley, M.D., Manager of California Red, LLC, a Nebraska limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as Manager on behalf of the company.



*Brad Eckhoff*  
Notary Public

STATE OF NEBRASKA     )  
                                  ) ss  
COUNTY OF DOUGLAS    )

On this 18<sup>th</sup> day of August, 2009, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Jonathan E. Fuller, M.D., Manager of California Red, LLC, a Nebraska limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as Manager on behalf of the company.



*Brad Eckhoff*  
Notary Public

**EXHIBIT "A"**

**Parcel One:**

Lot 1, Commercial Federal Business Park Replat 9, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

**Parcel Two:**

Grant of Drainage and Storm Sewer Easement as set forth in Declaration of Easement and Covenants filed January 30, 2006 as Instrument No. 2006010271, Register of Deeds, Douglas County, Nebraska.