

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL, LA VISTA, NEBRASKA, TO ESTABLISH A LOAN FUND UNDER THE CITY OF LA VISTA ECONOMIC DEVELOPMENT PROGRAM; TO MAKE CERTAIN FINDINGS OF FACT AND PROVIDE FOR FUNDING AND DISBURSEMENT WITH RESPECT TO THE LOAN FUND; AND TO PROVIDE FOR SEVERABILITY AND THE EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Findings of Fact. The Mayor and City Council find, determine, ratify, affirm and approve the following:

1. The Nebraska Legislature made the following findings in Neb. Rev. Stat. Section 18-2702:
 - a. There is a high degree of competition among states and municipalities in our nation in their effort to provide incentives for businesses to expand or to locate in their respective jurisdictions;
 - b. Municipalities in Nebraska are hampered in their efforts to effectively compete because of their inability under Nebraska law to respond quickly to opportunities or to raise sufficient capital from local sources to provide incentives for the provision of new services or business location or expansion decisions which are tailored to meet the needs of the community;
 - c. The ability of a municipality to encourage the provision of new services or business location and expansion has a direct impact not only upon the economic well-being of the community and its residents but upon the whole state as well; and
 - d. There is a need to provide Nebraska municipalities with the opportunity of providing assistance to business enterprises in their communities, whether for expansion of existing operations, the creation of new businesses, or the provision of new services, by the use of funds raised by local taxation when the voters in the municipality determine that it is in the best interest of their community to do so.
2. Based on these findings, the Legislature enacted the Local Option Municipal Economic Development Act ("Act"), Neb. Rev. Stat. Sections 18-2701 to 18-2738 in 1991, allowing municipalities including cities of the first class in Nebraska to establish economic development programs and use local sources of revenue for financial assistance to qualifying businesses upon voter approval.
3. In 2003, the Mayor and City Council proposed establishing an economic development program and use of local sources of revenue for financial assistance to qualifying businesses. The voters of La Vista approved the proposed economic development program by a majority affirmative vote of registered voters voting at a special election held September 30, 2003.
4. In accordance with said voter approval, the Mayor and City Council subsequently established the economic development program as codified in La Vista Municipal Code Sections 117.01 et seq. ("La Vista Economic Development Program"). In establishing the La Vista Economic Development Program, the Mayor and City Council stated the purpose of the Economic Development Program as giving the City flexibility to quickly respond to desirable opportunities for community or economic development using funds raised from local sources of revenue to provide incentives or investment in the La Vista community or its infrastructure for the location or expansion of services or businesses or rehabilitation of residential neighborhoods in or near the City.
5. Neb. Rev. Stat. Section 18-2738 provides that the powers conferred by the Act shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provisions of the law of Nebraska.

6. Neb. Rev. Stat. Section 18-2738 further provides that the Act and all grants of power, authority, rights, or discretion to the City under the Act shall be liberally construed, and all incidental powers necessary to carry the Act into effect are expressly granted to and conferred upon the City.
7. Section 117.14 of the La Vista Economic Development Program provides broad authority for the City to provide financial assistance to qualifying businesses, including direct loans to qualifying businesses, loans for fixed assets, working capital or both, loan guarantees for qualifying businesses, loans for job training, and loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income.
8. Pursuant to Section 117.14(A)(3) of the La Vista Municipal Code, the Mayor and City Council desire to establish a loan fund under the La Vista Economic Development Program for such loans as the Mayor and City Council may from time to time approve.
9. The Application Review Committee of the La Vista Economic Development Program on November 28, 2006 referred draft loan fund terms and conditions entitled "City of La Vista Economic Development Program Loan Fund" to the Mayor and City Council for consideration. Said terms and conditions, as modified, are presented at this meeting and the Mayor and City Council find and determine that they are in accordance with and satisfy all requirements of applicable law, including Neb. Rev. Stat. Sections 18-2711(2) and 18-2720, and La Vista Municipal Code Section 117.14(A)(3) ("Loan Fund Terms and Conditions").

SECTION 2. Establishment of Loan Fund. The Mayor and City Council hereby establish the Loan Fund of the La Vista Economic Development Program ("Loan Fund") for such loans and similar forms of financings to qualifying businesses under the La Vista Economic Development Program as the Mayor and City Council may from time to time authorize or approve.

SECTION 3. Adoption of Loan Fund Terms and Conditions. The Loan Fund Terms and Conditions are hereby adopted and approved; and the Loan Fund and all loans and similar forms of financings thereunder shall be subject to, and governed, operated and administered by and in accordance with, said Loan Fund Terms and Conditions, as amended by the Mayor and City Council from time to time.

SECTION 4. Funding and Disbursement of Loan Fund. Funding and disbursement of the Loan Fund shall be carried out in such manner and amounts and at such times as the Mayor and City Council may from time to time authorize or approve.

SECTION 5. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this ordinance and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 6. Effective Date. This ordinance shall be in full force and effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS _____ DAY OF _____ 2007.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**CITY OF LA VISTA ECONOMIC DEVELOPMENT PROGRAM
LOAN FUND**

RECITALS

- A. As approved by voters, the Mayor and City Council of the City of La Vista established an Economic Development Program ("Program") under the Local Option Municipal Economic Development Act, Neb. Rev. Stat. §18-2701 et seq. ("Act"), which Program is codified in La Vista Municipal Code§117.01 et seq.*
- B. In the Act, the Nebraska Legislature found as follows, and the Mayor and City Council concur in said findings:*
 - (i) There is a high degree of competition among states and municipalities in our nation in their efforts to provide incentives for businesses to expand or to locate in their respective jurisdictions;*
 - (ii) Municipalities in Nebraska were hampered [before the Act] in their efforts to effectively compete because of their inability under Nebraska law to respond quickly to opportunities or to raise sufficient capital from local sources to provide incentives for the provision of new services or business location or expansion decisions which are tailored to meet the needs of the local community;*
 - (iii) The ability of a municipality to encourage the provision of new services or business location and expansion has a direct impact not only upon the economic well-being of the community and its residents but upon the whole state as well; and*
 - (iv) There is a need to provide Nebraska municipalities with the opportunity of providing assistance to business enterprises in their communities, whether for expansion of existing operations, the creation of new businesses, or the provision of new services, by the use of funds raised by local taxation when the voters in the municipality determine that it is in the best interest of their community to do so.¹*
- C. The purpose of the Program is to give the City the flexibility to quickly respond to desirable opportunities for community or economic development using funds raised from local sources of revenue to provide incentives or investment in the La Vista community or its infrastructure for the location or expansion of services or businesses or rehabilitation of residential neighborhoods in or near the City.²*

¹ Neb. Rev. Stat. § 18-2702.

² La Vista Municipal Code Section 117-03.

D. *The intent and goals of the City in establishing the Program are to generate employment opportunities within the La Vista area, attract new investment capital to the community, develop tourism opportunities, broaden the tax base, support or capitalize on La Vista's existing or future commercial developments, rehabilitate residential neighborhoods, expand industrial development and /or increase economic diversification, stability and vitality for the City and surrounding area.³*

E. *The City of La Vista is authorized under the Program to establish a loan fund and provide direct loans to qualifying businesses, including loans for fixed assets or working capital or both, in addition to providing grants and other assistance under the Program. The Loan Fund shall be organized and operated as determined by the City.*

F. *The powers conferred on the City of La Vista by the Act shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provisions of the law of Nebraska.⁴*

G. *The Act and all grants of power, authority, rights, or discretion to the City of La Vista under the Act shall be liberally construed, and all incidental powers necessary to carry the Act into effect are expressly granted to and conferred upon the City.⁵*

ESTABLISHMENT OF LOAN FUND

NOW THEREFORE, in consideration of the foregoing recitals and exercise of the broad powers, authority, rights and discretion conferred upon the City by the Act and Program, which are made a part hereof, the Mayor and City Council of the City of La Vista, Nebraska establish a Loan Fund under the Program, to be organized and operated as set forth below.

1. Qualifying Business. The definition of a qualifying business for purposes of the Loan Fund will be the same as the definition under the Program. Generally, a qualifying business means any corporation, partnership, limited liability company or sole proprietorship which derives its principal source of income from any of the following: the manufacture of articles of commerce; the conduct of research and development; the processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce; the sale of services in interstate commerce; headquarters facilities related to activities listed in this paragraph; telecommunications activities, including services providing advanced telecommunications capability; tourism-related activities; or construction or rehabilitation of housing; and any other business deemed as a qualifying business through future action of the Nebraska Legislature. A qualifying business need not be located within the territorial boundaries of the City.

³ *Id.*

⁴ Neb. Rev. Stat. § 18-2738.

⁵ *Id.*

2. Loans to Qualifying Businesses. Financial assistance in the form of loans or similar forms of financing is available to qualifying businesses from the City's Loan Fund and may be used by the businesses for any legitimate business purposes specified by the City in accordance with the Program, subject to such conditions, criteria or other requirements set forth in loan documents and instruments substantially in form and content attached hereto and incorporated herein by this reference, subject to such revisions as the Mayor and City Council in their sole discretion from time to time determine necessary or appropriate with respect to a particular application or loan ("Loan Documents").

Financing provided under the Loan Fund may bear interest at or below market rates, or bear no interest at all, depending on interest rate and market conditions and the particular facts and circumstances of the business and its application. This and other terms, conditions and requirements of the loan (such as appropriate loan maturity, payment deferrals, collateral requirements, and personal guarantees of the loan by principals of the business) may vary from project to project as determined in the sole discretion of the Mayor and City Council.

Any financing provided under the Loan Fund will be subject to the terms and conditions of the Program, the provisions hereof, and completion, execution and delivery of Loan Documents and such applications, agreements, promissory notes, deeds of trust, mortgages, financing statement and other documents, instruments and information as the City may require from time to time.

3. Loan Parameters. Terms and conditions of loans under the Loan Fund shall be established for each particular loan in the sole discretion of the Mayor and City Council in accordance with the loan parameters below (which the Mayor and City Council hereby find and determine are in accordance with La Vista Municipal Code section 117-14) and set forth in Loan Documents and such other documents and instruments approved by the Mayor and City Council in their sole discretion.

<u>Loan Parameters</u>	<i>(Loan Classification)</i>		
	<u>A</u>	<u>AA</u>	<u>AAA</u>
Maximum loan amount	\$400,000	\$5,000,000	\$20,000,000
Maximum percentage of project ⁶ funding provided by City loan	50%	40%	30%

⁶ Taking into account entire project and funding of every kind whatsoever provided by owner or affiliated or unaffiliated sources.

Maximum maturity (in years) ⁷ of loans for:	15	20	20
Real estate	15	20	20
Machinery/equipment	7	10	20
Working capital	5	7	10
Minimum loan amortization ⁸	Monthly	Quarterly	Semi-annually
Maximum deferral of 1 st loan payment from inception of note	12 months	12 months	18 months

a. Loan Classification. The City Administrator, Treasurer, or his or her designee, in reliance on loan applications, assistance of professional advisors and other documentation, resources, reports and information provided or obtained, shall classify each application under the Loan Fund based on the perceived risk of nonpayment and the return in terms of direct and indirect benefit to the City and its residents under the Program, subject to review and approval of the Mayor and City Council in their sole discretion. The following table may be used to aid in the loan classification process.

High Risk	(1)	(1)	A
Moderate Risk	(1)	AA	AA
Low Risk	(1)	AAA	AAA

Low
Return Moderate
Return High
Return

(1) *Loans with these risk and return characteristics ordinarily would not be considered under the Loan Fund.*

⁷ In all events, maturities of loans under the Loan Fund shall not exceed the remaining duration of the Economic Development Program at the time the loans are made.

⁸ Payments must be made monthly, quarterly or semi-annually, as indicated. Depending on the perceived risk of nonpayment and the return to the City and its residents, the Mayor and City Council, in their sole discretion, may agree to payments of principal and interest, interest-only payments for some period of time followed by payment of principal in one or more payments, or any other combination of principal and interest payments.

b. Risk: For purposes of assessing risk of nonpayment, relevant factors that may be taken into account include, but are not limited to:

Track record: Years in existence and record of success of business, owner or business plan or model; sufficiency and management of cash flows; and history of satisfying financial obligations on a timely basis.

Projections: Assessment of business plan, cash flow projections for project, pro forma financial statements for business, current personal financial statements of anyone providing guaranty or other security, succession plan for closely held business and industry projections.

Leveraging: Degree of direct or indirect equity in project of owner or affiliate.

Security: Sufficiency of security provided compared with loan value and perceived ease of reaching and obtaining such value to satisfy the loan in the event of default. Amount of unencumbered assets of owner or affiliate at risk on the project under a personal guaranty or otherwise.

4. Loan Fund Objectives. In addition to expanding or diversifying the City's tax base or achieving any other intent or goal of the Program, the projects for which the loans are disbursed also should meet one of the following objectives:

- Benefiting low-to-moderate income (LMI) persons⁹;
- Aiding in the prevention or elimination of slums or blight; or
- Meeting other community development needs having particular urgency because existing conditions pose a serious and immediate threat to health or welfare of the community and other financial sources are not available to meet such needs.

Regarding LMI benefit, this objective is demonstrated in nearly all projects through job creation, job retention, or both job creation and job retention, by a benefited business. Such job creation or job retention is evidenced by the employment of persons, the majority (51% or more) of whom are LMI persons. Benefiting LMI persons is normally achieved by creating jobs where more than half of such jobs (actually 51% or more) are held by LMI persons.¹⁰

⁹ LMI persons are defined as members of a family (single-person family or multi-person family) where the family has an income equal to or less than the most recent HUD-established income limits for the family residence location. Currently the relevant income limits are as follows: \$37,250 for one person; \$42,550 for two persons; \$47,900 for three persons; \$53,200 for four persons; \$57,450 for five persons; \$61,700 for six persons; \$65,950 for seven persons; \$70,200 for eight persons. Source: <http://www.huduser.org/datasets/il.html>

¹⁰ Occasionally, in limited circumstances, rather than the job being held by an LMI person, a lesser standard of compliance, called making the job available to LMI persons, may be substituted. Specifics about how an employment position is considered to be "held by" or "made available to" an LMI person, and other related definitional matters, may be found in the HUD CDBG regulations in 24 C.F.R. Part 570.

5. Basic “Underwriting” Guidelines. Basic “underwriting” guidelines such as those listed below shall be applied to assess an application under the Loan Fund:

- a. Reasonable Project Costs. Project costs must be reasonable, not excessive, and must be supported by cost analyses. Transactions must be carried out through arms-length transactions, not insider arrangements.¹¹
- b. Committed Financing. All proposed sources of financing necessary to carry out the project must be committed. This ensures that time and effort is not wasted on assessing proposals, or awarding of loans to projects, that are not in a position to proceed to project completion within a reasonable time. To fulfill this requirement, the City requires written verification affirming the various funding parties’ intentions to make funds available, and, depending on the nature of the funding party, a showing of their capacity to actually provide such funds.
- c. Financial Feasibility. The public benefits of a project will not materialize if the project is not financially feasible.
- d. Avoidance of Unreasonable Return on Investment to the Owner of the Project. The availability of non-interest bearing loans to for-profit businesses presents a potential for this to occur which must be addressed in analyzing and judging the merits of each project.
- e. Pro Rata Disbursement. To the extent practicable, the loan should be disbursed on a pro rata basis with other project funding sources. Loan money should not be the first money into a project, but rather should flow into a project in proportion to other project funding sources.

6. Application Review. Applications, and decisions on applications, under the Loan Fund must be reviewed and approved in conjunction with a qualifying businesses’ application under the Program.

7. Administration of the Loan Fund. The Loan Fund shall be administered in accordance with applicable law, including Nebraska Revised Statutes §18-2720. The Finance Director shall administer the Loan Fund, including loan servicing, under the supervision of the City Administrator as Program Administrator; provided, however, that the Mayor and City Council may from time to time designate a bank or other financial institution or third party designee to administer any or all aspects of the Loan Fund or any particular loan hereunder.

The person responsible for loan servicing shall:

¹¹ This is generally assumed by the City to be true and demonstrable (by the applicant, if so requested by the City). Some showing of cost estimates should obviously be made in the application. Detailed cost justification and detailed cost documentation are generally not required until the time when funds are actually disbursed by the City.

- Establish a separate account in a financial institution for each loan made from the Loan Fund;
- Provide the Mayor and City Council with an account of the status of each loan outstanding, program income, and current investments of unexpended funds on a monthly basis. For purposes of the monthly report, “program income” shall mean payments of principal and interest on loans made from the loan fund and the interest earned on these funds; and
- Monitor the status of each loan and, with the cooperation of the Mayor and City Council and primary lender or lenders, take appropriate action when a loan becomes delinquent.

The aforementioned accounts and reports of the Loan Fund shall include, but not be limited to, the borrower’s name and purpose, date, amount and basic terms of the loan (including interest rate, maturity date and frequency of payments), payments made to date and current balance due.

8. Investment Strategies of Loan Fund. Investment strategies that the City will pursue to promote the growth of the Loan Fund while assuring its security and liquidity will be in accordance with applicable law.

9. Audit and Amendment of Loan Fund. This Loan Fund shall be audited annually in conjunction with the audit of the Economic Development Program pursuant to Nebraska Revised Statutes §18-2721. This Loan Fund document may be amended from time to time by the Mayor and City Council.

10. Standards for Delinquency and Default. Standards for determination of loan delinquency, when a loan shall be declared to be in default, and what action shall be taken to deal with the default to protect the interests of the qualifying business, third parties and the City shall be as specified from time to time in the Loan Documents. Generally, any missed payment or other failure by a qualifying business receiving financing under this Loan Fund to perform any term, condition or requirement of this Loan Fund, the Program Loan Documents, or any development or loan agreement, promissory note, deed of trust, mortgage or other document or instrument arising out of or resulting from the Loan Fund or Program shall constitute a default and breach, the occurrence of which shall accelerate and render the note under the Loan Fund fully due and payable, in addition to any other rights, remedies or relief set forth therein or available under applicable law or in equity. The City shall engage in such consultations, agreements and joint actions with the primary lender or lenders, in pursuing appropriate remedies following the default of a qualifying business in order to collect amounts owed under the loan, as the City Administrator or her designee determines necessary or appropriate, subject to review and approval of the Mayor and City Council in their sole discretion.

11. The Application: At the time a qualifying business applies to the City to participate in the Loan Fund, the business shall provide (or, subject to approval of the

Program Administrator, make available to) the City with an application under the Program and such other information as required by the City, including the following:

- Copies of all applications and current loan commitments (must have been issued within last 30 days) of all lenders providing financing for the project. Applicant must update information provided in loan applications with lenders to the extent necessary to reflect any material changes that have occurred since the information was provided or applications prepared and certify to the City that said loan applications, and all information contained therein as updated, are current, accurate and complete. The City may in its discretion rely on any such applications and loan commitments, and the information contained therein, for purposes of considering an application of a qualifying business under this Loan Fund;
- Information that reveals and explains the project's impact on the City's economy and ability to meet one of the objectives listed in Paragraph 4 above;
- A discussion of the reasonableness of project costs, including where appropriate for the particular project, cost estimates, appraisals, and engineering estimates;
- A map of the location of the proposed project which shows the site in appropriate context for the community involved.
- Financial statements of personal guarantors of the loan to the business for three years prior to application year;
- Copies of guarantors' federal income tax returns for three years prior to the application year; and
- Any additional information which in the judgment of the applicant or City would be appropriate to fully support the application.

An applicant's application under the Loan Fund shall be deemed to include all information received by the City with respect to the applicant's application under the Program, as well. An applicant or recipient of lending or other financing from the Loan Fund is required to provide at its cost such financial statements, audits and access to books, records, statements and other information as the City from time to time requests or requires. The Program Administrator may waive the furnishing of all or any portion of the above items or any other requirement where the Program Administrator is able to obtain the information contained therein, or reasonable assurances as to said information or the stability of the qualifying business, from other reliable sources or information, including audited financial statements and filings with regulatory agencies (i.e. SEC filings). Information submitted by an applicant or recipient of a loan or other financing under the Loan Fund shall not be disclosed by the City to the extent nondisclosure is permitted by the Program or otherwise by the La Vista Municipal Code or applicable law.

CONSTRUCTION LOAN AGREEMENT

Loan No. _____

THIS CONSTRUCTION LOAN AGREEMENT ("Agreement") is entered into as of this day of _____, 20_____, and evidences the terms and conditions under which CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska, whose address is 8116 Park View Boulevard, La Vista, Nebraska 68128-2198 ("Lender"), will provide a construction loan to _____, a(n) _____, whose address is _____ ("Borrower").

RECITALS:

A. Borrower is the owner of certain real property described as on Exhibit "A" attached hereto ("Property") and has asked Bank to provide a construction loan of up to _____ Dollars (\$_____) to be secured by a first lien on the Property and the improvements located thereon or to be constructed thereon. The total loan proceeds will be made available under the terms of this Agreement for the construction of certain improvements at the Property, more fully described in the Development Agreement referred to in Recitals Paragraph B ("Project").

B. Lender and Borrower have executed a Development Agreement dated _____, 20_____, ("Development Agreement") which contemplates, among other things, the making of a loan ("Construction Loan") by Lender to Borrower for the construction of the Project subject to the terms, conditions and provisions of such Commitment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Borrower agree as follows:

1. Loan Advances and Disbursements. Subject to the provisions of this Agreement, disbursements under the Construction Loan shall be made as follows:

a. Disbursements of loan proceeds shall be made in an aggregate total amount not to exceed _____ Dollars (\$______). Prior to any disbursements being made by Lender, Borrower shall deposit in an interest-bearing account with Lender, to be used for Project and/or loan purposes, as determined by Lender, a sum currently deemed necessary by Lender to fund any difference between the construction related expenses and the Construction Loan proceeds, which is currently estimated to be _____ Dollars (\$_____), which funds will be used for the Project prior to Lender disbursing any funds from the Construction Loan. This deposit, together with Construction Loan advances, shall be utilized for the purposes and in the approximate amounts as shown on Exhibit "B" attached hereto.

b. All disbursements and advances shall be requested by Borrower. Said requests shall be made by issuance of a Draw Request Letter from Borrower to Lender. Each Request shall be accompanied by Standard American Institute of Architects Forms (Application and Certificate for Payment) as to description of and percentage of work completed as well as certification that the completed work has been done per the plans and specifications, in a good and workmanlike manner, and in compliance with the cost estimates previously furnished by Borrower to Lender. Lender may further require lien waivers from all contractors, subcontractors and material and labor suppliers, together with certifications from Borrower and the general contractor that all claims for labor and materials furnished prior to all other Draw Request Letters have been paid and discharged in full. In addition, Borrower shall comply with all other terms and requirements under this Agreement. Disbursements and advances will be made by Lender only after Lender has approved (in its sole discretion) a Draw Request Letter and any progress and inspection reports from an independent architect and/or engineer hired by Lender at Lender's option, and at Borrower's expense. Actual disbursements shall, at Lender's option, be ten percent (10.00%) less than the amount requested, which retention shall be held by Lender and disbursed in accordance with subparagraph (j) below. Whether or not an architect/engineer has been hired, Lender shall be entitled to rely on its own inspection reports prior to making any loan disbursement or advance, and Borrower shall pay the cost of Lender obtaining such reports. Draw Request Letters shall be submitted not less than ten (10) days prior to a monthly disbursement date. Disbursements and advances may be made by Lender to Borrower or for the benefit of Borrower and shall be made not more than once each month. Lender may require endorsements to the title policy, updating coverage to at least the total amount disbursed. Lender may at its option hire an escrow agent at Borrower's expense, who shall make disbursements and advances to Borrower and/or third parties pursuant to a written escrow agreement with Lender.

c. At the sole option of Lender, Borrower shall pay for the services of an independent architect/engineer to be chosen by and acceptable to Lender. Borrower will provide such architect/engineer access to the Project and will also provide all items which may reasonably be required for analysis of the construction, compliance with construction requirements, laws, regulations, compliance with plans, specifications, cost breakdowns, contracts, and necessary items for approval of draw requests. Any change orders or requested changes in plans and specifications of a material nature shall also be provided to the architect/engineer concurrent with or prior to a request for Lender's approval. A full set of plans, specifications and contract items shall be provided to the architect/engineer prior to the first draw request.

d. Borrower shall provide to a title insurance company approved by Lender ("Title Company") all items which might be required by Title Company to insure against liens and update coverage, including lien waivers, draw requests, lien affidavits, invoices, and all other matters as Title Company may require, and copies of such shall be provided to Lender with each draw request.

e. Advances for materials shall be made only when they are in place on site per the plans and specifications, or properly stored on site and secured against theft or vandalism to Lender's reasonable discretion.

f. The Construction Loan shall at all times be in balance as evidenced by AIA Forms G-702 and G-703. If any draw request indicates that the Construction Loan is not in balance, Lender shall respond to Borrower within ten (10) days from receipt of the draw request. The Construction Loan shall be deemed to be in balance only when the undistributed proceeds of the Construction Loan at any time, plus the funds deposited by Borrower with Lender, after provisions for all holdbacks and retainages as required by Lender, is sufficient, in Lender's opinion, to pay for any and all work done or to be done for the total completion of the Project.

Lender may at any time stop disbursements if, for any reason in its sole discretion it determines that the amount of such undistributed loan proceeds are insufficient for such total completion of the Project. Borrower will immediately deposit with Lender the amount of any completion deficiency required by Lender, which deposit shall be held by Lender and used to bring the Construction Loan back into balance. Failure of Borrower to comply with such deposit requirement shall constitute an event of default and the entire outstanding disbursed principal balance of the Construction Loan at that time shall become immediately due and payable and Lender shall have no further obligations to make any advances or disbursements.

g. Upon any breach or default by Borrower under this Agreement, or any other documents executed in connection with the Construction Loan, or at any time Lender determines in its reasonable discretion that the Project is not being constructed and developed substantially in accordance with the approved plans and specifications, or that requisite and acceptable standards of workmanship are not being met, Lender shall have the right, in addition to declaring the Construction Loan to be in default, to take over and complete in whole or in part such of the construction and development of the Project as Lender may in its sole and absolute discretion deem advisable, and may do the same by and through any agent, contractor, or subcontractor of Lender's choice, and may disburse any part or all of the undisbursed loan proceeds and any other sums deposited, held, pledged or escrowed with or for the benefit of Lender, to be used and disbursed by Lender in payment of the costs, expenses, attorneys' fees, and other costs and fees incurred in, or in connection with, the taking over and full or partial completion, including, but not limited to, reasonable supervision and management fees to Lender. Lender shall further have the rights as specified in other provisions of this Agreement.

h. Although Lender shall have no obligation to advance and disburse loan proceeds unless and until all terms and conditions of the loan Commitment and this Agreement have been kept, fulfilled and performed, Lender may, in its sole discretion, make advances and disbursements prior to the fulfillment of such terms and conditions, and such advancements and disbursements shall not constitute a waiver of any of Lender's rights hereunder and all such conditions and other requirements shall

nevertheless continue in all other circumstances to be strictly and punctually complied with, fulfilled and performed by Borrower.

i. Upon completion of the footings for the foundation of the Project, and prior to any disbursement of loan proceeds for such work and materials, or for any subsequent work or materials, Borrower shall furnish to Lender an updated survey of the Project, acceptable to Lender, showing the location of the footings, showing that the same are located within the boundaries of the real property, and showing that the same do not encroach onto or overlap any boundaries, right-of-way lines, set back lines, easements or other similar restrictions.

j. Prior to the making of the final disbursement and advance from the Construction Loan (i.e., disbursement of the retention referenced in subparagraph (b) above) and prior to payment of any final retention under the construction documents, Borrower and the general contractor shall certify to Lender that all work contemplated by the construction documents and plans and specifications has been completed in accordance with such plans and specifications. Such work shall include all grading, parking lots, improvements, landscaping and all other on-site and off-site improvements, all of which shall be made and completed with first-class materials and in a good, substantial and workman-like manner and shall be equipped with first class equipment. Any work or materials not directly noted in the approved plans and specifications, but necessary for the proper carrying out of the intention hereof, are to be implied and are to be provided for as if specifically described. Incorporation into the improvements of any work, materials or equipment which do not conform to the above-described standards at any time during the course of the work shall be deemed an immediate default. In addition to the other requirements stated herein, Borrower shall furnish to Lender and Title Company final, full and complete labor and material lien waivers from all contractors, subcontractors, and material and labor suppliers representing the aggregate of the entire cost of the Project. In addition, Borrower shall furnish to Lender any and all other documents, certifications, and statements as Lender shall reasonably require in connection with the final advance and disbursement under the Construction Loan. Furthermore, at least ten (10) days prior to the Conversion Date, Lender shall be furnished an "as built" survey delineating location and size of all improvements and disclosing no encroachments, deficiencies or other objectionable matters. Borrower shall also verify to Lender that all improvements and their use comply fully with all applicable zoning, building and other government laws and requirements, and the Project must have all certificates of occupancy that are necessary for full use of the entire Project in the manner contemplated by Borrower and Lender. Finally, the terms and conditions of Paragraphs 21(A) and (C) of the Commitment must continue to be met in all respects.

k. Borrower shall not execute or accept any change order nor amend or cancel the general or any subcontract (other than for normal and routine change orders that do not materially affect costs or the scope of work and which involve less than _____ Dollars (\$ _____) in costs or in the aggregate do not exceed _____ Dollars (\$ _____) in costs), nor make any material change in the quality, quantity, or scope of the work, without the prior written approval of Lender,

which approval will not be unreasonably withheld. Lender may, in its reasonable discretion, reduce the maximum amount which it will advance and disburse under the Construction Loan based upon its review of any of the foregoing, and may require contribution of additional funds by Borrower to defray costs of the Project.

2. Conditions Precedent to Construction Loan. As conditions precedent and material to any obligation of Lender to make advances under the Construction Loan, Borrower, at its sole expense, shall deliver to Lender the following items, each of which shall be subject to Lender's review and approval:

a. Mortgagee Title Insurance. A current commitment for an ALTA Form mortgagee policy of title insurance to be issued in favor of Lender, with endorsements thereto which Lender, in its sole discretion, may require, including but not limited to a Comprehensive Endorsement or its equivalent, insuring Lender's interest in the Property for the full potential amount of the Construction Loan and the priority of the Deed of Trust securing the Note, together with legible copies of the exceptions to title reflected therein. The policy shall be in a form satisfactory to Lender and shall be issued by an insurer approved by Lender prior to the closing of the Construction Loan. The policy shall delete by endorsement the standard exceptions with respect to mechanics' liens; rights of parties in possession; easements not shown by public records; and discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and visual inspection of the Property would disclose. The policy shall show that merchantable record fee simple title to the Property is vested solely in Borrower, subject only to current taxes not yet due and payable and such other matters approved or waived in writing by Lender. The premium for such policy and any endorsements thereto which Lender may require shall be paid by Borrower. The policy shall be delivered to Lender within thirty (30) days following the closing of the Construction Loan.

b. Survey. Three (3) copies of a survey of the Property prepared not more than three (3) months prior to the first disbursement under the Construction Loan and prepared by a surveyor licensed in the State of Nebraska and approved by Lender and showing thereon all boundaries; natural and artificial monuments and corners; courses and distances and angles of all boundary lines; the location, course, and size and dimensions of all easements, rights-of-way, roads, streets, parking areas, means of ingress and egress, set back requirements, ditches, water courses, flood plains, and similar conditions of record or visible from a physical inspection of the Property; and all encroachments, buildings, fences, walls, foundations, or other improvements, all or any part of which are located on the Property. Such survey shall include the surveyor's certificate to Lender and the Title Company setting forth and verifying the accuracy of the legal description, shall certify that all of the foregoing requirements are truly and accurately shown on the plat of such survey, and shall certify as to the total number of acres contained in the Property and the number of acres exclusive of any land lying within the bed of any streets, roads, rights-of-way, easements, or flood plains. Both the surveyor and the survey must be sufficient to enable the Title Company to delete the survey exception from the title policy contemplated above.

c. Zoning and Use. Evidence that the Project and the proposed use of the Property fully comply with applicable zoning, use, subdivision, building, environmental, and other governmental laws, regulations, and requirements and any covenants and restrictions of record.

d. Utilities. If requested by Lender, evidence from the appropriate governmental authorities or local utility companies that the utilities necessary to service the Project are available, including, but not limited to, water, sewer, gas, electric, and telephone.

e. Insurance. Original policies of insurance, with premiums prepaid for at least one (1) year from the date of the closing of the Construction Loan, with insurance companies satisfactory to Lender, in its sole discretion, in such amounts and against such risks as shall be required by Lender from time to time.

All such insurance policies shall contain an endorsement naming Lender as a mortgagee and an additional insured, the form and substance of which shall be satisfactory to Lender, and shall provide that such policies cannot be modified or canceled unless and until the insurer gives Lender at least thirty (30) days prior written notice thereof.

If any insurance policy, or part thereof, shall expire or be withdrawn, or become void or subject to cancellation by reason of the breach of any condition thereof, or become void by reason of the failure or impairment of the capital of any company in which the insurance shall be carried, or if for any reason whatsoever the insurance shall be unsatisfactory to Lender, Lender may procure such insurance as it deems necessary to protect its sole interest. Borrower will promptly, upon demand, pay direct or reimburse Lender for all premiums and other costs incurred in procuring such insurance.

f. Governmental Requirements. Obtain and at all times keep in full force and effect such governmental and municipal approvals as may be necessary to comply with all environmental, ecological, and other governmental requirements relating to the Property, the Project, or the occupancy thereof, as such requirements may exist from time to time, and Borrower shall submit to Lender proof reasonably satisfactory to Lender that Borrower has obtained all such approvals and that all applicable appeal periods have passed.

g. Plans and Specifications. Detailed construction plans and specifications for the Project, signed and/or approved by Borrower, the Architect, and the general contractor, which shall be subject to Lender's approval. The final plans and specifications submitted in accordance with the Commitment shall indicate the approval of all appropriate governmental agencies and any other entities having approval authority of the final plans and specifications. Any architect or engineer reviewing the plans and specifications (on behalf of Lender) will cooperate with Borrower during the required

governmental or other entity approval process. The plans and specifications as approved shall not be revised without prior written approval of Lender.

h. Cost Estimate. A current cost estimate and breakdown prepared by the architect for the Project, and certified by Borrower and the general contractor, which indicates the Project can be built according to the plans and specifications referred to above for a total cost not to exceed an amount acceptable to Lender, consisting of actual third party verifiable hard construction costs. Such estimate shall include the names and addresses of all substantial subcontractors and suppliers and shall designate which portions of the estimates relate to which subcontractors and suppliers.

i. Soil Tests. Soil tests as deemed necessary by Lender, performed by an engineer acceptable to Lender, which shall not disclose any condition deemed unacceptable to Lender.

j. Building Permit. A building permit issued by the appropriate governmental authority authorizing the construction of the Project.

k. Construction Contracts-Completion Schedule. Fully executed contracts between Borrower and the general contractor approved by Lender and between the general contractor and each major subcontractor (as determined by Lender), which contracts shall be acceptable to Lender and providing for the construction of the Project. Any change in the general contractor shall be subject to Lender's approval. A satisfactory completion schedule ("Completion Schedule") will be delivered to Lender providing that construction shall be completed in accordance with this Agreement within _____ () months after the date of this Agreement.

l. Bonds. The general contractor, at the option of Lender, shall provide dual labor and material payment bonds and performance bonds with Borrower and Lender as obligees, utilizing AIA Form A311 or other appropriate forms approved by Lender, along with corporate sureties approved by Lender.

m. Hazardous Waste. Phase I, II, or other inspection reports, or any one or more of the same, all as determined by Lender in its sole discretion, from a licensed engineer in a form and content satisfactory to Lender indicating that there are not present on the Project or the Property or the real property on which the Project will be located any hazardous substances, wastes or materials, any pollutants or contaminates (including, without limitation, asbestos and raw materials which include hazardous constituents), or other similar substances or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean up, including, without limitation, "CERCLA," "RCRA," or state super lien or environmental statutes, or any PCBs or any friable asbestos or substances containing asbestos in a quantity which Lender deems in its sole discretion to be unsafe.

The above reports will be reviewed by Lender but will not be deemed to be conclusive. Lender in the exercise of its sole discretion shall advise the Borrower of any conditions Lender may impose if a clean up or removal is necessary, or whether Lender will terminate the Commitment causing the Commitment to be null and void. If Borrower is advised that it can remove the reported substance, but declines to do so, Borrower or Lender may cancel the Commitment.

n. Taxes. All general real estate taxes and special assessments shall have been paid and discharged and evidence furnished to Lender of such payment, except for general real estate taxes not yet due.

o. Costs of Loan. Evidence of payment of all costs, title insurance premiums, charges, survey costs, recording fees and taxes, appraisal fees, architect and engineering fees (for the architect and engineer hired by Lender and the architect and engineer hired by Borrower), counsel fees and any other fees, costs and expenses incurred by Lender or Borrower in connection with the Loan, the Property and the Project.

p. Loan Documents. Execution and delivery to Lender of a Promissory Note and all other documents and agreements required by Lender to evidence or secure the Loan including due on sale or encumbrance provisions ("Loan Documents"), in form and content acceptable to Lender and its legal counsel.

q. Commencement of Construction. If Borrower has commenced construction prior to the date of this Agreement, evidence must be furnished of payment in full by Borrower for all labor and materials supplied to date, together with lien waivers executed by all contractors, subcontractors, and labor and material suppliers, all as reasonably acceptable to Lender and as required by Title Company in order to insure against mechanics liens.

r. Deposit of Funds. Deposit by Borrower of unrestricted funds over and above the Construction Loan sufficient, with the Loan disbursements, to fully complete the Project in accordance with the approved plans and specifications. The funds deposited by Borrower under Paragraph 1(a) above shall be advanced by Lender and utilized in construction of the Project before Lender's initial disbursement.

3. Completion of Project. Borrower agrees to construct and develop the Project in accordance with the plans and specifications and with all applicable laws and regulations, conditions, covenants and restrictions running with the land, zoning laws and ordinances, building, health and safety codes, and all other requirements of regulatory authorities having jurisdiction. Borrower agrees that no personal property of Borrower shall be purchased or installed under any security agreement, lease or other arrangement whereby a security interest, lien, or right is reserved or accrued to any third person or entity to remove or repossess any such items or to claim or assert a lien upon any such property, and Borrower shall, on demand by Lender, procure and deliver to Lender evidence in form satisfactory to Lender that no supplier, vendor or creditor has any such security interest, lien or right.

4. Borrower's Responsibility for Work. Borrower has chosen the general contractor, subcontractors and its architect, and it is Borrower's responsibility to insure that the construction, development, and improvements shall be completed substantially in accordance with the plans and specifications. Lender, by inspecting the Project and approving advances and making payments under this Agreement, assumes no responsibility to Borrower for defective materials or workmanship in the Project nor for any breach of contract by the general contractor or any subcontractor. If any dispute arises between Borrower and the general contractor or any subcontractor, Lender may, at its option, withhold an advance or disbursement covering such dispute.

5. Signs. Lender may announce publicly and advertise its financing pursuant hereto including the right to erect and maintain signs on the site during the construction period.

6. Borrower's Covenants. Borrower hereby covenants and agrees with Lender that, so long as the Construction Loan remains unsatisfied, Borrower will comply with the following covenants:

a. Borrower will use the proceeds of the Loan only for the purposes hereinabove specified and will furnish the Lender such evidence as it may reasonably require with respect to such use;

b. Borrower will pay or cause to be paid when due, all taxes, assessments, and charges or levies imposed upon it or any of its property or which it is required to withhold and pay over, except where contested in good faith by appropriate proceedings with adequate reserves therefor having been set aside on appropriate books of account;

c. Borrower will not sell, transfer, lease, or otherwise dispose of all or (except in the ordinary course of business) any material part of its assets;

d. Borrower will not mortgage, pledge, grant, or permit to exist any security interest in or lien on the Project other than liens in favor of Lender; and

e. Borrower will not furnish Lender any certificate, statement, report, or other document that contains any untrue statement of material fact or that omits to state a material fact necessary to make it not misleading in light of the circumstances under which it is furnished.

7. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default hereunder (subject to any grace periods and notice requirements of the Note):

a. Borrower shall fail to pay the Note as and when due;

b. Borrower shall fail to observe, perform, or comply with any other obligation, covenant, or agreement to be observed, performed, or complied with by it hereunder or under any of the Loan Documents, or other agreements related to the Loan, including the Development Agreement, and such failure shall continue beyond the stated cure period, if any;

c. Any financial statement, representation, warranty, or certificate made or furnished by Borrower to Lender in connection with, this Agreement, or as inducement to Lender to enter into this Agreement, or in any separate statement, certificate, report, or document to be delivered to Lender at anytime, shall be materially false, incorrect, or incomplete when made;

d. Borrower shall become insolvent, shall admit an inability to pay debts as they mature, or shall make an assignment for the benefit of creditors;

e. Proceedings in bankruptcy, or for reorganization, or for the readjustment of debts, under the Bankruptcy Act, as amended, or any part thereof, or under any other laws, whether state or federal, for the relief of debtors, now or hereafter existing, shall be commenced by Borrower, or if commenced against Borrower, shall not be dismissed within thirty (30) days of its filing;

f. A receiver or trustee shall be appointed for Borrower or for any substantial part of Borrower's assets, or any proceeding shall be instituted for the dissolution or the full or partial liquidation of Borrower, and such receiver or trustee shall not be discharged within thirty (30) days of his appointment, or such proceeding shall not be dismissed within thirty (30) days of its commencement, or Borrower shall discontinue business or materially change the nature of its business;

g. Borrower shall suffer a final judgment or judgments for payment of money aggregating in excess of _____ Dollars (\$_____) and shall not discharge the same within a period of thirty (30) days unless, pending further proceedings, execution has been effectively stayed;

h. A judgment creditor of Borrower shall obtain possession of any of the Project by any means, including, but without limitation, levy, execution, distress, replevin, or self-help, or any lessor shall initiate proceedings to terminate any lease or evict Borrower from any leased premises;

i. Construction of the Project shall be abandoned, or shall be unreasonably delayed or discontinued for a period of thirty (30) days (for reasons other than those beyond the control of Borrower) or construction shall be delayed for any reason whatsoever to the extent that completion of the Project cannot, in the reasonable judgment of Lender, be accomplished prior to the Construction Term Due Date, as defined in the Note;

j. Construction of the Project is not in strict compliance with plans and specifications as approved or if, in the reasonable opinion of Lender, such construction, or materials used therein, are such as to preclude completion of the Project in a good and workmanlike manner for the intended Project use, or such as to adversely affect Lender's security during the Permanent Term, as defined in the Note; or

k. Any assignment by Borrower, without Lender's prior written consent, which may be withheld in Lender's sole discretion, of this Agreement or any advance or disbursement hereunder.

Upon the occurrence of an Event of Default, Lender may exercise any and all remedies available to it under the Loan Documents and agreements, applicable law and this Agreement. Furthermore, Lender may terminate its obligation to make advances under this Agreement, and may declare the entire unpaid principal balance of the Note to be immediately due and payable, together with accrued and unpaid interest on such balance, without further notice to or demand on the Borrower. Then, in any such event, all obligations on the part of Lender to make any further disbursements hereunder shall cease, and if Lender so elects, the unpaid principal balance of the Note shall become due and payable at the option of Lender, anything herein or in the Note or Loan Documents to the contrary notwithstanding. Lender may at its option advance the proceeds of the Loan or any part thereof to the general contractor, any subcontractor, or any person furnishing labor or material in the construction of the Project for the account of the Borrower, and the sums so paid or advanced shall for the purpose of this Agreement be deemed to have been advanced to Borrower pursuant to the provisions hereof.

8. Additional Rights of Lender Following Default. In the event of the occurrence of an Event of Default stated above, which would give Lender the right to refrain from making any further disbursement hereunder, Lender at its option, and whether or not it exercises any rights under the immediately preceding paragraph, may at any time take possession of the Project, together with all materials, equipment and improvements thereon, whether affixed to the Property or not and perform or cause to be performed such work as Lender deems in its sole discretion to be necessary or advisable with respect to the Project, and may employ watchmen to protect the Project from vandalism or injury. Lender may assume or reject any contracts entered into by Borrower in connection with the Project, and may enter into additional or different contracts for services, labor and for materials in the sole judgment of Lender, and may pay, compromise and settle claims in connection with the Project. If Borrower should fail to pay any taxes, assessments, or water or sewer rents, or if mechanics' or other liens should be filed against the Project, Lender may, at its option, pay the same, it being agreed that any sums so paid or expended in accordance with any of the provisions of this paragraph shall be added to and become a part of the indebtedness of Borrower and may at Lender's option be deducted from any advance then or thereafter becoming due or become an additional advance and be added to the principal balance of the Note. To implement the rights of Lender under this paragraph, Borrower hereby constitutes Lender its true and lawful attorney-in-fact with full power of substitution to perform work on the Project in the name of Borrower and pay all bills and expenses incurred thereby, and hereby empowers Lender as attorney for Borrower as follows: To use any funds of the Borrower, including any balance which may not have been advanced for the purposes of performing work on the Project; to make such improvements as Lender deems in its sole

discretion to be appropriate; to employ such contractors, agents, architects and inspectors as shall be required; to pay, settle or compromise all existing bills and claims which may be or become liens against the Project, or as may be necessary or desirable with respect to the Project, or for the clearance of title; to execute all applications, certificates or instruments in the name of Borrower which may be required by any governmental authority or contract; and do any and every act which Borrower might do in its own behalf. It is further understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Lender, as attorney-in-fact of Borrower, shall also have power to prosecute and defend all action and proceedings in connection with the construction of the Project and to take such action and require such performance under any surety bond or other obligations or to execute in the name of the Borrower such further bonds or obligations as may be reasonably required in connection with the Project. Upon the occurrence of an Event of Default, and Lender entering upon the Project, all materials purchased by Borrower for use in construction shall be and become the property of Lender and shall be deemed to have been delivered to Lender accordingly and upon demand Borrower shall deliver to Lender bills of sale as further evidence thereof. In addition, Borrower agrees at the request of Lender to assign, transfer and set over to Lender by appropriate instrument, in writing, all of Borrower's right, title and interest in and to any contracts, bonds, or other agreements relating to the construction and operation of the Project. Lender may in its discretion, at any time, abandon work on the Project after having commenced such work, and may recommence such work at any time, it being understood that nothing in this paragraph shall impose any obligation on Lender to either complete or not to complete the Project.

9. Cost Less Than Estimate. If any cost category specified in the estimate provided by Borrower to Lender under Paragraph 2(h) above is completed for less than the estimate, or can be completed for less in Lender's reasonable opinion, then any excess shall be classified under a cost category designated "contingencies." The amounts in the contingencies category may be utilized for unestimated or unexpected items (but only on Lender's prior approval), or for overruns on other cost categories (provided that the loan remains "in balance"). If the total cost of constructing the Project is less than the total estimate, then Lender shall not be obligated under the Construction Loan to disburse the amount by which total costs are less than the total estimate.

10. Construction. The provisions of this Agreement shall be in addition to those of any Loan Document, guaranty, pledge, assignment, security agreement, or other document or instrument, all of which shall be construed as complementary to each other. In the event of any irreconcilable inconsistency, this Agreement shall control over all others except instruments evidencing the Construction Loan. However, nothing herein contained shall prevent Lender from enforcing any or all guaranties, pledges, security agreements, or other instruments in accordance with their respective terms.

11. Further Assurances. From time to time, Borrower agrees to execute and deliver to Lender such additional documents and to provide such additional information as Lender may reasonably require to carry out the terms of this Agreement, and to keep itself informed of the Borrower's status and affairs.

12. Notices. Any notices, requests, demands, or other communications required or permitted by this Agreement shall be in writing and shall be delivered in the manner required in the Deed of Trust.

13. Waiver and Release. To the maximum extent permitted by applicable law, Borrower hereby waives the right to assert any setoff or counterclaim or cross-claim in any litigation between it and Lender (without prejudice to any right to assert any such claim in a separate action); and further waives and acknowledges that Lender shall not be liable for any claim or liability for special or consequential damages of any nature whatsoever arising, directly or indirectly, from a breach of this Agreement by Lender.

14. Applicable Law. This Agreement is made pursuant to and shall be construed and governed by the laws of the State of Nebraska, and the rules and regulations promulgated thereunder.

15. Binding Effect, Assignment, and Entire Agreement. This Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and permitted assigns of the parties hereto. Borrower has no right to assign any of the rights or obligations hereunder without the prior written consent of Lender. This Agreement and documents executed and delivered pursuant thereto, constitute the entire agreement between the parties, and may be amended only by a writing signed on behalf of each party.

16. Severability. If any provision of this Agreement shall be held invalid under any applicable laws, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision, and, to this end, the provisions hereof are severable.

17. Lender's Inspections and No Responsibility. Any inspections, reports, certifications or approvals received by Lender from any independent architect or engineer or conducted by Lender or any of its officers, agents, employees or independent contractors are made or obtained solely for the benefit of Lender, its successors and assigns, and not in any way for the benefit or protection of Borrower. Borrower shall have no right to rely on any of the same unless specifically authorized to do so in writing from Lender clearly specifying the inspection, report, approval, or certification upon which Borrower may rely. Borrower shall have full responsibility for the final completion of the Project and, except as specifically provided in this Agreement, Lender assumes no responsibility whatsoever for such completion or the obligation of any other party with respect to such completion. Nothing herein shall be construed as establishing a relationship between Lender and any other party except a borrower-lender relationship between Borrower and Lender. This Agreement is made for the sole benefit of Borrower and Lender, their respective successors and assigns, and no other person or persons shall have any right, remedies or benefits under or by reason of this Agreement, nor shall Lender have a duty to any person to construct the Project, to apply any undisbursed portion of the Loan to claims arising out of construction of the Project, or to exercise any right that Lender has under this Agreement or the Loan Documents. No party or person shall be deemed to be a third party beneficiary to this Agreement. Notwithstanding any approval or review of the plans and specifications or progress of construction by Lender, Lender is not, and shall not be construed to be, liable to any party or person for any damage that may result from any defects in the design or

construction of the Project. Borrower hereby agrees to indemnify and save Lender harmless from any and all such liability or claims for such liability and any costs and expenses relating thereto, including reasonable attorneys' fees that Lender may incur in defending itself against such claims.

NOTICE TO BORROWER: Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which it is based that is in any way related to the credit agreement. To protect you (Borrower(s)) and us (Lender) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing (and the Note, Deed of Trust and other Loan Documents executed contemporaneously herewith) which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement this _____ day of _____, 20___.

CITY OF LA VISTA, a Nebraska municipal corporation, Lender

By: _____
Name: _____
Title: _____

_____, Borrower

By: _____
Name: _____
Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "B"

CONSTRUCTION RELATED EXPENSES

The foregoing cost estimates are exclusive of the imputed value of the underlying real property upon which the Project is constructed, which must be owned solely by Borrower, free and clear of all liens except liens in favor of Lender.

CONSTRUCTION/PERMANENT TERM PROMISSORY NOTE

\$ _____

Loan No. _____

1. Borrower's Promise to Pay Principal and Interest. For value received, the undersigned Maker, _____ ("Borrower"), promises to pay to the order of CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska ("Lender"), at 8116 Park View Boulevard, La Vista, Nebraska 68128-2198, or at such other place as Lender may from time to time designate, the principal sum of _____ Dollars (\$ _____), or so much thereof as is advanced and unpaid during the term of this Note, with interest from the date hereof on the unpaid principal balance at the initial interest rate of _____ percent (____%) per annum, interest only payable during the Construction Term in monthly installments based upon interest accrued for each preceding calendar month, with payments beginning on _____ 1, 20____, and continuing on the first (1st) day of each and every month thereafter ("Construction Term") to and including _____ 1, 20____ ("Construction Term Due Date"). During the Construction Term, the interest rate will be adjusted effective each time there is a change in the Prime Rate, to be equal to the greater of _____ percent (____%) or the sum of (i) _____ percentage point (____%) (or _____ basis points), plus (ii) the Prime Rate of interest as published in the Money Rates Section of *The Wall Street Journal*. On the Construction Term Due Date, any unpaid principal, interest and all other sums due under this Note shall be paid in full, unless the term of this Note is extended under the terms hereof effective as of the "Conversion Date" (as defined below) to the first (1st) day of the _____ (____) month after the Conversion Date ("Permanent Term Due Date") on which date any unpaid principal, interest and all other sums due under this Note shall be paid in full. During this term ("Permanent Term"), and commencing on the first (1st) day of the second (2nd) month following the Conversion Date ("Amortization Commencement Date"), and on the first (1st) day of each month thereafter to the Permanent Term Due Date, Borrower shall make monthly payments of principal and interest to Lender, with interest from and after the Conversion Date at the initial rate computed as of the Conversion Date to be the sum of (i) _____ percentage points (____%) (or _____ basis points), plus (ii) the most recent week ending average of the _____ Year Interest Rate Swaps Rate ("SWAP"), as published in the *Federal Reserve Statistical Release*, H.15(519) on the last business day immediately preceding the Conversion Date, and with principal amortized over an amortization term of _____ (____) months. Notwithstanding the foregoing interest rate computation formula, the initial interest rate for the Permanent Term shall not be lower than _____ percent (____%) per annum.

2. Permanent Term Interest Rate Adjustment. Effective on the first (1st) day of the _____ (____) month after the Conversion Date, the interest rate on this Note shall be adjusted to be equal to the sum of (i) _____ percentage points (____%) (or _____ basis points), plus (ii) the most recent week ending average of the _____ Year Interest Rate Swaps Rate, as published in the *Federal Reserve Statistical Release*, H.15(519) on the last business day immediately preceding the effective date of the adjustment. Notwithstanding the foregoing calculation, the adjusted interest rate shall not be lower than _____ percent (____%) per annum. Effective on the first (1st) day of the _____ (____) month after the Conversion Date, and continuing on the first (1st) day of each month thereafter, Borrower shall make monthly

payments of principal and interest, with interest at the adjusted rate and principal amortized over the remaining portion of the original _____ (____) month amortization period. If for any reason the _____ Year SWAP rate is no longer computed or available, Lender may select an alternative published index over which Lender has no control, in which case the alternative index will be utilized in the above formula.

3. Conversion Date. The term of this Note shall be converted to and extended beyond the Construction Term Due Date and for the Permanent Term to the Permanent Term Due Date (subject to the Default provisions of this Note) if Lender in its reasonable discretion deems that each of the following conditions have been met and satisfied as of the Construction Term Due Date, or such earlier date as may be applicable:

a. Borrower has fully complied with all terms and conditions of the Construction Loan Agreement, all other Loan Documents, and all other terms and conditions of agreements affecting the Property; and

b. Borrower has paid to Lender all interest that has accrued or will accrue on the unpaid principal balance of this Note through the first (1st) day of the month following the Conversion Date; and

c. Final Certificates of Occupancy and other evidence required by Lender have been furnished to Lender verifying that the improvements and their use comply fully with all applicable zoning, building and other relevant government laws and requirements for occupancy and use; and

d. _____ is in occupancy of the Property and is paying rent as the sole tenant under a written lease with a minimum term of _____ (____) years, that produces a debt service coverage ratio of _____ to 1.00 or better, and that is fully guaranteed by _____. The lease and guaranty must be acceptable to Lender in its reasonable discretion.

If the Conversion Date does not occur as of the Construction Term Due Date, then the term of this Note will mature on the Construction Term Due Date, whereupon all unpaid principal, accrued interest, and other unpaid charges shall be fully due and payable. In addition, Lender shall be entitled to retain all fees paid to Lender by Borrower in connection with the transaction evidenced by this Note. If the Conversion Date occurs before the Construction Term Due Date, then the Permanent Term, the Amortization Commencement Date, and the Permanent Term Due Date will be adjusted accordingly.

4. Security. This Note is and will be secured by a Construction Loan Agreement, a Deed of Trust, one or more Financing Statements, and other instruments, agreements and documents which grant and/or will grant Lender security interests in, among other things, a(n) _____ to be built and located in Sarpy County, Nebraska (the foregoing are collectively referred to as "Loan Documents" and the collateral encumbered by the Loan Documents is referred to as the "Property"). The obligations, covenants and agreements of each and every of the Loan Documents are hereby made a part of this Note to the same extent

and with the same effect as if they were fully set forth herein, and Borrower does hereby agree to perform and keep each and every obligation, covenant and agreement set forth in this Note and in the other Loan Documents. This Note shall evidence, and the Loan Documents shall secure, the indebtedness described herein, any future loans or advances that may be made to or on behalf of Borrower by Lender at any time or times hereafter under the Loan Documents, and any other amounts required to be paid by Borrower under the Loan Documents, and any such loans, advances or amounts shall be added to the indebtedness evidenced by this Note, and shall bear interest at the interest rate then effective, unless a greater rate is expressly provided for in this Note or the other Loan Documents.

5. Notice. Except as may be otherwise specified in this Note, any notices required to be given hereunder shall be given in the manner specified in the Deed of Trust, Assignment of Rents and Security Agreement ("Deed of Trust") made on an even date herewith.

6. Crediting of Payments. Each installment payment in any amount received by Lender shall be credited as of its date of receipt by Lender, first to interest then due and the remainder to principal, and interest shall cease upon the principal so credited as of the date that such credit is made.

7. Default by Borrower. An Event of Default shall be deemed to exist hereunder and under the Loan Documents if:

a. Any payment or sum required by this Note or the Loan Documents is not received by Lender within twenty (20) days from when due; or

b. Borrower fails to perform any other obligation required under this Note or the Loan Documents, or does any act or allows any condition to occur or exist which is prohibited under this Note or the Loan Documents, which is not cured within twenty (20) days after written notice of default by Lender; or

c. Borrower fails to comply with any other agreement in any of the documents and agreements forming a part of the transaction of which this Note is a part, including the Loan Documents, which is not cured within twenty (20) days after written notice of default by Lender; or

d. Any representation or warranty made herein or in any of the Loan Documents, or otherwise in connection with the application for or making of this loan, proves to be untrue or Borrower has omitted or failed to disclose a material fact to Lender at any time prior to the date of this Note which if disclosed would have had a significant impact on Lender's decision whether to approve the loan evidenced by this Note and the Loan Documents; or

e. The commencement by or against Borrower of any proceedings under any bankruptcy or similar law for the relief of debtors of the United States or any state or the appointment of any receiver, trustee, assignee for the benefit of creditors, conservators or similar parties for the Borrower or any of its property, which in the case of involuntary

proceedings brought against Borrower, are not dismissed within sixty (60) days from the commencement; or

f. Borrower shall fail at any time after the Conversion Date to manage the Property itself in compliance with all material laws, regulations and ordinances regarding the employment and payment of persons engaged in the operation of the Property; or

g. An assignment, transfer, conveyance, or relinquishment by Borrower of any of the rights or obligations under this Note;

h. The Property is impaired, pledged, or transferred in whole or in part such that the first lien security of Lender is diminished, altered, impaired or encumbered, such as by failure of Borrower to pay real property taxes prior to delinquency;

i. A default occurs that is not cured within any applicable notice and/or cure period under the Development Agreement dated _____, 20____ between Lender, Borrower and _____, as Developer, or under any other note, loan agreement, or obligation of Borrower to Lender, whether now existing or hereafter created, or to any of its or Borrower's affiliates, whether such loan is now existing or hereafter created; or

j. The death of _____, provided that Lender will not exercise its right to declare this loan to be in default due to such death provided that (a) at date of death, Borrower is not in default of any of its payment and performance obligations of this Note, (b) Borrower does not cause any Event of Default specified in (a) through (i) inclusive above to occur, which is not cured within any applicable cure period, (c) within ninety (90) days following such death, Borrower provides to Lender a detailed plan for business succession and loan repayment, and (d) such plan is determined by Lender in its sole discretion to be acceptable. If any of the foregoing conditions is not satisfied, then the unpaid principal and all accrued interest and other charges under this Note will automatically be fully due and payable, without written notice or demand required of and by Lender.

8. Default Rate. Upon the occurrence of any Event of Default hereunder which is not cured within any applicable grace period, interest shall accrue, from the date such grace period expires, at the rate of five percentage points (5.00%) above the applicable interest rate, as adjusted.

9. Acceleration. The entire outstanding balance of principal, interest and any other amounts owed shall become immediately due and payable upon any uncured Event of Default, no further notice or demand of Lender being required.

10. Late Charge. Borrower agrees: (a) to pay immediately to Lender without demand in the event any installment or other payment or sum is not actually received by Lender within twenty (20) days after its due date, and without regard to the date as of which such payment is credited, an amount equal to the equivalent of five percent (5.00%) of the installment or other

payment or sum due; (b) that it would be impractical or extremely difficult to fix Lender's actual damages in the event that any installment, payment or sum shall not be paid when due; and (c) that such amount shall be presumed to be the amount of damages for such late payment. This paragraph and the amount which it provides shall not limit Lender's right under this Note, the Deed of Trust securing it, or otherwise, to compel prompt performance hereunder and thereunder.

11. Prepayment Privilege.

(ALTERNATE 1)

The unpaid principal amount of this Note may be prepaid in whole or in part at any time without prepayment penalty, provide that all accrued interest, late charges, and other sums are paid in full contemporaneously therewith.

(ALTERNATE 2)

If the unpaid principal amount due on this Note is paid in whole or in part before the Due Date (other than normal principal amounts paid as a part of a monthly payment under Paragraph 1), Borrower shall pay contemporaneously with such prepayment a prepayment penalty to Lender of _____ percent (____%) of the outstanding principal balance prepaid.

(ALTERNATE 3)

On and after, but not prior to _____, ____, Borrower may make optional and partial prepayments of principal, exclusive of the portion of principal paid with each monthly loan payment, without additional prepayment charge provided that the Borrower gives Lender at least thirty (30) days prior written notice of the intended partial prepayment and that the aggregate of such optional and partial prepayments does not exceed, in any one loan prepayment year, _____ Dollars (\$_____) (the "allowable prepayment"). This privilege is non-cumulative from one loan prepayment year to another. For purposes of this paragraph, "loan prepayment year" means each twelve (12) month period beginning with the first day of the month following the date of execution of this Note and each annual anniversary of such day. Notwithstanding the foregoing, prepayments of principal which in any loan prepayment year exceed the allowable prepayment ("excess prepayments"), whether partial prepayments or prepayment in full, may be made provided that Borrower gives Lender written notice of all principal to be prepaid at least thirty (30) days prior to such prepayment and provided further that Borrower pays to Lender together with each such prepayment (including prepayments occurring as a result of the acceleration by Lender of the unpaid principal amount due to an uncured default by Borrower under this Note, but excluding the principal portion of scheduled amortized monthly loan payments, prepayments occurring because of the application by Lender of insurance or condemnation awards or proceeds pursuant to the Loan Instruments) a prepayment premium as follows:

a. _____ percent (____%) of the excess prepayments during the first (1st) loan prepayment year;

b. _____ percent (____%) of the excess prepayments during the second (2nd) loan prepayment year;

c. _____ percent (____%) of the excess prepayments during the third (3rd) loan prepayment year;

d. _____ percent (____%) of the excess prepayments during the fourth (4th) loan prepayment year;

e. Thereafter and for all subsequent loan prepayment years until three (3) months prior to the Due Date, _____ percent (____%) of the excess prepayments; and

f. During the three (3) month period prior to the Due Date, there shall be no prepayment premium.

On a full prepayment, the prepayment premium will be calculated after taking into account any remaining unused portion of the allowable prepayment for that year. Prepayments shall be applied against the outstanding principal balance of the Note and shall not extend or postpone the Due Date of any subsequent monthly installments or change the amount of such installments, unless Lender shall agree otherwise in writing.

(ALTERNATE 4)

For purposes of this paragraph, "loan prepayment year" means each twelve (12) month period beginning with the first day of the month following the date of execution of this Note and each annual anniversary of such day. Prepayments of principal, whether partial prepayments or prepayments in full, may be made provided that Borrower gives Lender written notice of all principal to be prepaid at least thirty (30) days prior to such prepayment and provided further that Borrower pays to Lender together with each such prepayment (including prepayments occurring as a result of the acceleration by Lender of the unpaid principal amount due to an uncured default by Borrower under this Note, but excluding the principal portion of scheduled amortized monthly payments and prepayments occurring because of the application by Lender of insurance or condemnation awards or proceeds pursuant to the Loan Documents), a prepayment premium as follows:

<u>Loan Prepayment Year</u>	<u>Prepayment Premium</u>
1	3% of the prepaid principal amount
2	2% of the prepaid principal amount
3	1% of the prepaid principal amount
4-Due Date	0%

Prepayments shall be applied against the outstanding principal balance of the Note and shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless Lender shall agree otherwise in writing.

(ALTERNATE 5)

See Yield Maintenance Samples at Doc. # 186417.

12. Note Payable in U.S. Dollars. Principal, interest and all charges are payable in lawful money of the United States.

13. Assumability of This Note. If this Note, any Loan Documents or any Property encumbered by such Loan Documents is assumed, assigned or conveyed by Borrower in whole or in part, or upon a sale, assignment or conveyance (whether voluntary or involuntary) of all or a portion of the Property described in the Loan Documents or of any ownership interest in Borrower, or upon the occurrence of any other transaction or event referenced in the Deed of Trust, or if any plan or attempt is made to do or perform any of the foregoing, this Note shall automatically and without notice from Lender at Lender's option be deemed to be in default, and Lender may declare all unpaid principal, interest and other sums under this Note to be immediately due and payable in full. The foregoing acceleration shall not be applicable in the case of:

(i) The grant of an occupancy leasehold interest in a part of the Property made in accordance with the Loan Documents and not containing an option to purchase; and

(ii) Sales or transfers for fair market consideration of fixtures or any routine personal property used in the operation of the Property, provided that such sales or transfers are incidental to the replacement of like fixtures and personal property of newer and better quality and condition or such fixtures or personal property are removed in connection with the making of tenant improvements; and

(iii) Transfer or assignment of beneficial interests in Borrower by devise or descent or by operation of law upon the death of Borrower.

If Lender consents (which consent may be withheld in Lender's sole discretion) to an assignment, conveyance or assumption of this Note, or to a sale or conveyance of all or a portion of the Property, or to an assignment or conveyance of any ownership interest in Borrower, except as expressly permitted above (as to which consent shall not be required), said consent may be upon the following terms (and others as determined by Lender in its sole discretion): (a) buyer or assignee submits a credit and management application which is approved by Lender under its applicable underwriting guidelines and policies; (b) buyer or assignee executes a written assumption agreement in form and content as prepared by Lender including all obligations of Borrower in connection with all the Loan Documents; (c) buyer pays Lender an assumption fee equal to one percent (1.00%) of the unpaid principal balance as of the date of the transfer or assumption; (d) Borrower, buyer or assignee pays to Lender on demand all costs and expenses including, but not limited to, credit report fees, title insurance premiums, recording fees and attorneys' fees incurred by Lender in connection with the transaction; and (e) Lender may modify the interest rate and loan terms as conditions of such consent.

14. Maximum Interest. In no event whatsoever shall the amount paid, or agreed to be paid, to Lender for the use, forbearance or retention of the money to be loaned hereunder ("Interest") exceed the maximum amount permissible under applicable law. If the performance or fulfillment of any provision hereof or of the Deed of Trust or any other Loan Documents or

other agreement between Lender and Borrower shall result in Interest exceeding the limit for interest prescribed by law, then the amount of such Interest shall be reduced to the maximum rate which may lawfully be charged or collected by Lender. If, from any circumstances whatsoever, Lender should receive as Interest an amount which would exceed the highest lawful rate, the amount which would be excessive Interest shall be applied to the reduction of the principal balance owing hereunder (or, at the option of Lender, be paid over to Borrower) and not to the payment of Interest.

15. Costs of Collection and/or Enforcement. Borrower, together with all sureties, endorsers, and guarantors of this Note, if any, jointly and severally promise to pay: (a) all reasonable costs and expenses of enforcement and/or collection, including without limitation, reasonable attorneys' fees, in the event this Note or any portion of this Note after default is placed in the hands of attorneys for enforcement and/or collection and such is effected with or without suit; (b) reasonable attorneys' fees, as determined by the judge of the court if such determination is required by law, and all other reasonable costs, expenses and fees incurred by Lender in the event suit is instituted to collect or enforce this Note or any portion of this Note; (c) all reasonable costs and expenses provided for in the Deed of Trust, in the Loan Documents, or in any other instrument given as security for this Note and/or incurred by or on behalf of Lender in connection with collecting or otherwise enforcing any right of Lender under this Note, the Deed of Trust, the Loan Documents, or any other instrument given as security for this Note; and (d) all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees incurred by Lender in connection with any bankruptcy, insolvency or reorganization proceeding or receivership in which Borrower is involved, including, without limitation, reasonable attorneys' fees incurred in making any appearances in any such proceeding or in seeking relief from any stay or injunction issued in or arising out of any such proceeding.

16. Certain Waivers. Borrower waives diligence, demand, presentment for payment, exhibition of this Note, protest, notice of protest, notice of dishonor, and any and all exemption rights against the indebtedness evidenced by this Note, and agrees to any and all extensions or renewals from time to time without notice and to any partial payments of this Note made before or after maturity and that no such extension, renewal or partial payment shall release Borrower from the obligation of payment of this Note or any installment of this Note, and consents to offsets of any sums owed to Borrower by Lender at any time.

17. Exercise of Rights. No single or partial exercise by Lender, or delay or omission in the exercise by Lender, of any right or remedy under this Note, the Deed of Trust, or Loan Documents or authorized by law shall preclude, waive or limit the exercise thereof, any other or further exercise thereof, or the exercise of any right or remedy. Lender shall at all times have the right to proceed against Borrower and/or any portion of, or interest in, the Property secured by the Deed of Trust and Loan Documents securing the Note in such manner as Lender may deem fit, without waiving any other rights or remedies with respect to the Property, any portion thereof, or interest therein.

18. No Modifications. This Note may not be changed, amended or modified, except in a writing expressly intended for such purpose and executed by Borrower and Lender.

19. Governing Law. This Note is to be construed and enforced in all respects in accordance with the laws of the State of Nebraska, and the rules and regulations promulgated thereunder.

20. Construction. The words "Borrower" and "Lender" shall be deemed to include the respective successors and assigns of each, and shall denote the singular and/or plural, and the masculine and/or feminine, and natural and/or artificial persons, whenever and wherever the context so requires. The captions herein are inserted only for convenience of reference and in no way define, limit or describe the scope or intent of this Note or any particular paragraph or section hereof, or the proper construction thereof.

21. Time of the Essence. Time shall be of the essence in this Note with respect to all of Borrower's obligations hereunder.

22. Insolvency or Bankruptcy. Borrower hereby agrees that in the event on or before the date all sums under this Note are paid in full to Lender, Borrower (by Borrower's own action or the action of any members, managers or creditors), (i) files with any bankruptcy court of competent jurisdiction or is the subject of any petition for relief under Title 11 of the U.S. Code, as amended, (ii) is the subject of any order for relief issued under such Title 11 of the U.S. Code, as amended, (iii) files or is the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (iv) seeks, consents to, or acquiesces in the appointment of any trustee, receiver, conservator, or liquidator, or (v) is the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, then all sums under this Note shall thereupon be deemed to be immediately due and payable in full. The foregoing acceleration shall occur as a consequence of involuntary proceedings brought against Borrower only if the same are not dismissed within sixty (60) days after the original filing against Borrower.

23. Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Note, except that if such provision relates to the payment of any monetary sum, then Lender may, at its option, declare the indebtedness evidenced hereby immediately due and payable.

EXECUTED this _____ day of _____, 20____.

_____, Borrower

By: _____
_____, its _____

Borrower's Address:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was executed and acknowledged before me this _____ day of
_____, 20_____, by _____, the _____ of
_____, Borrower, for and on behalf of Borrower.

Notary Public

(SPACE ABOVE RESERVED FOR RECORDER'S USE)

DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

**[OPTIONAL] THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT
THAT SECURES AN OBLIGATION THAT BORROWER/TRUSTOR HAS INCURRED
FOR THE PURPOSE OF MAKING AN IMPROVEMENT TO THE HEREIN DESCRIBED
PROPERTY AND IS A CONSTRUCTION SECURITY INTEREST IN SAID PROPERTY.**

Loan No. _____

THIS DEED OF TRUST ("Deed of Trust" or "Instrument") is made this _____ day of _____, 20____, by _____ ("Borrower"), whose address is _____ to THOMAS R. OSTDIEK, Attorney at law ("Trustee"), whose address is 13220 California Street, # 400, Omaha, Nebraska 68154, for the benefit of the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska, as beneficiary ("Lender"), whose address is 8116 Park View Boulevard, La Vista, Nebraska 68128-2198

WITNESSETH:

Borrower, as trustor, irrevocably grants, conveys, transfers, and assigns to Trustee, in trust, with power of sale, that real property in Sarpy County, Nebraska, described on Exhibit "A" attached hereto and incorporated herein by reference.

TOGETHER with all interest which Borrower now has or may hereafter acquire in or to said property and in and to: (a) all easements and rights of way appurtenant thereto, and all heretofore or hereafter vacated alleys and streets abutting said property; and (b) all buildings, structures, tenements, improvements, fixtures, and appurtenances now or hereafter placed thereon and owned by Borrower, including, but not limited to, all fixtures, apparatus, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with said property, including, but not limited to, those for the purposes of supplying or distributing air cooling, air conditioning, gas, electricity, water, air, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal and other services; and all related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, water heaters, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, cabinets, paneling, attached floor coverings, furniture, and pictures, it being intended and agreed that such items, including replacements and additions thereto, be conclusively deemed to be affixed to and be part of the real property that is conveyed hereby; and (c) all cabinets, shelving, furniture, displays, lights, machinery and other trade fixtures attached or otherwise installed on said property used for a trade or business, it being intended and agreed that such items, including replacements and additions thereto, be conclusively deemed to be affixed to and be part of the real property that is conveyed hereby; and (d) all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) owned by Borrower and shares of stock pertaining to such water or water rights, ownership of which affects said property; and (e) the rents, income, issues, and profits of all properties covered by this Instrument; SUBJECT, HOWEVER, to the terms and conditions herein set forth. Borrower agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender

to evidence or confirm the lien of this Instrument on any such properties. The properties conveyed to Trustee hereunder are hereinafter referred to as the "Property." [OPTIONAL]It is understood by Borrower/Trustor that this Deed of Trust secures a loan to be used for the construction of improvements and this Deed of Trust expressly covers all buildings and improvements, now existing or hereafter to be erected or located on the Property, and this Deed of Trust shall remain a first lien against the Property and any improvements erected thereon to secure payment of the Note (as herein defined) for the term thereof.

FOR THE PURPOSE OF SECURING:

(1) Payment of the sum of _____ Dollars (\$_____) with interest thereon, according to the terms of a Promissory Note of even date herewith and having a final maturity date of _____, made by Borrower payable to Lender or to order, and all modifications, extensions or renewals thereof, together with any future advances made by Lender ("Note").

(2) Payment of such additional sums with interest thereon (a) as may be hereafter advanced by Lender pursuant to this Instrument (herein "Future Advances"); and (b) as may be incurred, paid out, or advanced by Lender, or may otherwise be due to Trustee or Lender under any provision of this Instrument.

(3) Performance of each agreement of Borrower contained herein or incorporated herein by reference or contained in any other agreements or covenants executed by Borrower relating to the loan secured hereby (together with the Note and this Instrument are referred to as the "Loan Documents").

(4) Performance of each agreement of Borrower contained in a Development Agreement dated _____, 20____, between Borrower, Lender and _____, as Developer.

(5) At Lender's option, payment with interest thereon, of any other present or future indebtedness or obligation of Borrower (or of any successor in interest of Borrower to such Property) owing to Lender, whether created directly or acquired by absolute or contingent assignment, whether due or not, whether otherwise secured or not, or whether existing at the time of the execution of this Instrument or arising thereafter, the exercise of such option to be evidenced by a notice in writing to Borrower or any successor in interest to Borrower.

(6) Performance of all agreements of Borrower to pay fees and charges to the Lender relating to the Loan secured hereby.

(7) If this Deed of Trust arises from a construction loan, performance by Borrower of the covenants and agreements contained in a Construction Loan Agreement of even date herewith.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant, convey, transfer and assign the Property to the Trustee and that Borrower will warrant and defend generally the title to the Property against all claims and demands, except for liens, easements and restrictions which are shown as prior to the lien created by this Instrument in a schedule of exceptions to coverage in any title policy insuring Lender's lien on the Property created by this Instrument.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, BORROWER COVENANTS AND AGREES AS FOLLOWS:

1. Payment of Principal and Interest. Borrower shall pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other sums secured by this Instrument.

2. Application of Payments. Unless applicable law requires otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the order of priority as determined by Lender in its discretion.

3. Charges: Liens. Borrower shall pay all taxes, assessments, premiums, and Other Impositions attributable to the Property by Borrower making payment, when due, directly to the appropriate payee thereof, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph and, in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written consent, which may be withheld in Lender's sole and absolute discretion (unless specifically provided to the contrary in this Instrument), Borrower will not permit or allow any lien inferior to this Instrument to be perfected against the Property.

4. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage," rent loss for not less than one year's gross income from the Property, and such other hazards, casualties, liabilities and contingencies as Lender shall require, including, among other things, flood, tornado or similar environmental damage, and in such amounts and for such periods as Lender shall require, but in any event not less than an amount which will comply with any coinsurance clause and not less than the greater of (i) the principal balance of the Note, or (ii) one hundred percent (100%) of the actual cash replacement value of the improvements (both fixtures and personality). All premiums on insurance policies shall be paid by Borrower making payment when due directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgagee loss payable clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender.

During the course of any construction or restoration of the improvements the following coverages shall also be required: comprehensive public liability insurance in at least the amount required by Lender (including coverage for elevators and escalators, if any) on an "occurrence basis" against claims for personal injury including, without limitation, bodily injury, death, or property damage occurring on, in, or about the Property and the adjoining streets, sidewalks, and passageways, such insurance to afford immediate minimum protection to a limit satisfactory to Lender with respect to personal injury or death to any one or more persons or damage to property; worker's compensation insurance (including employer's liability insurance, if requested by Lender) for all employees of Borrower engaged on or with respect to the Property in such amount as is satisfactory to Lender, or, if such amounts are established by law, in such amounts; builder's completed value risk insurance against "all risks of physical loss," including collapse and transit coverage, during construction of the improvements, in non-reporting form, covering the total value of work performed and equipment, supplies, and materials furnished; and such other coverages that Lender may require.

In the event of any loss covered by any insurance policies, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and empowers Lender (at Lender's option) as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this paragraph shall require Lender to incur any expense or take any action hereunder. All insurance proceeds shall be paid by the insurance company to Lender to be held and disbursed in accordance with this Paragraph 5. Borrower further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property, or (b) if the proceeds are insufficient to repair or reconstruct the improvements in the manner required in the next subparagraph, and if Borrower is unable or unwilling to personally fund the shortfall, to apply the balance of such proceeds to the payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Paragraph 2 hereof, or (c) if a default exists under this Instrument or any of the Loan Documents, Lender shall be entitled to retain the proceeds and apply the same in the order as provided in Paragraph 2.

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificate, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in Paragraph 1 hereof, but Lender shall redetermine the amounts of such installments. If the Property is sold pursuant to the terms of this Instrument or if Lender acquires title to the Property, Lender thereupon shall also be deemed to have acquired exclusively all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to any insurance proceeds resulting from or which may be payable as a consequence of any damage to the Property prior to such sale or acquisition.

5. Preservation and Maintenance of Property. Borrower (a) shall not commit waste or permit any physical deterioration of the Property; (b) shall not abandon the Property; (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances therein, in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair; (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property; (f) at Lender's option shall provide for professional management of the Property by a rental property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing; (g) shall generally operate and maintain the Property in a manner to maximize rentals and income; and (h) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

6. Use of Property. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent. Borrower shall not violate nor shall Borrower permit or authorize the breach or violation of the terms of any easements, covenants, or restrictions of record upon or affecting the Property. Borrower will not conduct, permit, or authorize the generation, storage, treatment, or disposal of any friable asbestos, hazardous waste, or toxic substance on or in a location that will adversely affect the Property and shall promptly provide Lender written notice of (a) its obtaining knowledge of any release of any hazardous or toxic material or oil at or from the Property or any other site owned, occupied, or operated by Borrower or by any person for whose conduct Borrower is responsible or whose liability may result in a lien on the Property; (b) Borrower's receipt of any notice to such effect from any federal, state, or other governmental authority; and (c) loss by such governmental authority in connection with the assessment, containment, or removal of any hazardous or toxic material or oil for which expense or loss Borrower may be liable or for which expense a lien may be imposed on the Property. "Borrower," as that term is used herein, includes Borrower's successors, assigns, agents, servants, employees, and owners.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, building code enforcement, or arrangements or proceedings involving a bankruptcy or decedent, then Lender, at Lender's option, may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (a) disbursement of attorneys' fees, (b) entry upon the Property to make repairs or otherwise to protect the same as security for the indebtedness secured by this Instrument, and (c) procurement of satisfactory insurance as provided in this Instrument.

Any amounts disbursed by Lender pursuant to this paragraph shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the default rate as provided in the Note, unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by any advances made by Lender hereunder. Nothing contained in this paragraph shall require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property at any time at Lender's option. Lender may at its option at any time, require Borrower, or Lender may arrange, all at the sole cost and expense of Borrower, to employ or for the employment of an independent and qualified environmental engineer and inspector, acceptable to Lender, to determine if there is any asbestos, petroleum, radon or hazardous material or substance above, in, on, under or from the Property. Such cost and expense shall, if not paid by Borrower, become additional indebtedness secured by this Instrument. The failure of Borrower to promptly pay the cost and expense of the same or to cooperate with and permit such inspection shall constitute a default under this Instrument and the other Loan Documents.

9. Books and Records. Borrower shall keep and maintain at all times at Borrower's address stated herein, or such other place as Lender may approve in writing, complete and accurate books of account and records, in accordance with generally accepted accounting principles, consistently applied, adequate to reflect correctly the results of the operation of the Property, and copies of all written contracts, budgets, change orders, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Within fifteen (15) days after Lender's request, Borrower shall furnish to Lender a balance sheet, a statement of income and expenses of the Property and a statement of changes in financial position, each in reasonable detail and certified by Borrower and, if Lender shall require (but not more than once each calendar year), by an independent certified public accountant. Borrower shall furnish, within three (3) days from Lender's request, a rent schedule for the Property, certified by Borrower, showing the name of each tenant and, for each tenant, the space occupied, the lease expiration date, the rent payable and the rent paid. In addition to the foregoing, Borrower shall furnish to Lender automatically and without the need for request, within one hundred twenty (120) days following the close of Borrower's fiscal year, a statement of income and expenses with respect to the Property for the prior fiscal year, a current rent roll, current financial statements of Borrower and each guarantor. Within thirty (30) days after filing thereof, Borrower shall deliver to Lender Borrower's and each guarantor's most recent federal tax return, all certified as true and correct. All financial statements and other documents or records pursuant to this paragraph shall be provided at Borrower's sole expense.

10. Condemnation. Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect or whether by eminent domain or otherwise, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute in Lender's or Borrower's name, any action or proceeding relating to any such condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any such condemnation or other taking of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender.

Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Paragraph 2 hereof, with the balance, if any, to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in Paragraph 1 hereof but shall only change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

11. Borrower and Lien Not Released. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release any other persons secondarily or otherwise liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, or agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this paragraph shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien, or priority of lien, hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and reasonable attorneys' fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

12. Forbearance by Lender Not a Waiver. No waiver by Lender of any right under this Instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Instrument or of any provision of this Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date or by making any payment or performing any act on behalf of Borrower that Borrower was obligated hereunder but failed to make or perform, or by adding any payment so made by Lender to the indebtedness secured hereby, Lender does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay.

13. Estoppel Certificate. Borrower shall, within ten (10) days following a written request from Lender, furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of setoff, counterclaim or other defense which Borrower believes exists against such sums or the obligations of this Instrument.

14. Uniform Commercial Code Security Agreement. This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the appropriate records or index for Uniform Commercial Code filings as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided elsewhere in this Instrument.

15. Leases of the Property. Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof. Borrower, at Lender's request, shall furnish Lender with executed copies of all leases now existing or hereafter made of all or any part of the Property, and all leases

now or hereafter entered into will be in form and substance subject to the terms as specified in an Assignment of Leases and Rents executed by Borrower on an even date herewith. Unless otherwise waived by Lender, all future leases of the Property shall specifically provide that such leases: (a) are subordinate to this Instrument; (b) that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; (c) that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; and (d) that the attornment of the tenant shall not be terminated by foreclosure. Borrower shall not modify, either orally or in writing, any lease now existing or hereafter made of all or any part of the Property, permit an assignment or sublease of such a lease without Lender's written consent, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Instrument except as permitted in the Assignment of Leases and Rents. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of setoff against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a setoff against rent, (ii) notify Lender thereof and of the amount of said setoff, and (iii) within ten (10) days after such accrual, reimburse the tenant who shall have acquired such right to setoff or take such other steps as shall effectively discharge such setoff and as shall assure that rents thereafter due shall continue to be payable without setoff or deduction.

16. Construction Loan Provisions. Borrower agrees to comply with the covenants and conditions of the Construction Loan Agreement, if any, which is hereby incorporated by reference in and made a part of this Instrument. All advances made by Lender pursuant to the Construction Loan Agreement shall be indebtedness of Borrower secured by this Instrument, and such advances may be obligatory as provided in the Construction Loan Agreement. All sums disbursed by Lender prior to completion of the improvements to protect the security of this Instrument up to the principal amount of the Note shall be treated as disbursements pursuant to the Construction Loan Agreement. All such sums shall bear interest in accordance with the provisions of the Note and the Construction Loan Agreement.

From time to time, as Lender deems necessary to protect Lender's interest, Borrower shall, upon request of Lender, execute and deliver to Lender, in such form as Lender shall direct, assignments of any and all rights or claims which relate to the construction of the Property and which Borrower may have against any party supplying or who has supplied labor, materials, or services in connection with construction of the Property. In case of breach by Borrower of the covenants and conditions of the Construction Loan Agreement, Lender, at Lender's option, with or without entry upon the Property, (a) may invoke any of the rights or remedies provided in the Construction Loan Agreement; (b) may accelerate the sums secured by this Instrument and invoke those remedies provided herein; or (c) may do both. If, after the commencement of amortization of the Note, the Note and this Instrument are sold by Lender, from and after such sale the Construction Loan Agreement shall cease to be a part of this Instrument and Borrower shall not assert any right of setoff, counterclaim, or other claim or defense arising out of or in connection with the Construction Loan Agreement against the obligations of the Note and this Instrument.

17. Assignment of Rents and Revenues; Appointment of Receiver; Lender in Possession. As part of the consideration for the loan evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, as provided in a separate Assignment of Leases and Rents executed by Borrower on an even date herewith; provided, however, that prior to written notice given by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, which default is not cured within any applicable cure period, Borrower shall have a revocable license to collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this Instrument in the order provided in Paragraph 3 hereof, with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents and revenues constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this paragraph as the same become due and payable, including but not limited to rents and revenues then due and unpaid, and all such rents and revenues shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such rents and revenues. Borrower

agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant or user of the Property shall make such rents and revenues payable to and pay such rents and revenues to Lender or Lender's agents on Lender's written demand therefore, without any liability on the part of said tenant or user to inquire further as to the existence of a default by Borrower.

Borrower hereby covenants that Borrower has not executed any prior assignment of said rents or revenues, that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this paragraph, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents or revenues of the Property for more than one month prior to the due dates of the same. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents or revenues of the Property more than one month prior to the due date of the same. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, which is not cured within any applicable cure period, Lender may, in person, by agent or by a court appointed receiver, regardless of the adequacy of Lender's security, enter upon and take possession and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and the conducting thereon of any business or businesses then being conducted by Borrower including, but not limited to, the execution or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property or the conducting of such businesses thereon, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, which is not cured within any applicable cure period, such shall be appointed as provided in Paragraph 20 below. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument shall be applied first to the cost, if any, of taking control of and managing the Property and collecting the rents and revenues, including, but not limited to, attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property, and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents and revenues actually received.

If the rents and revenues of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the same, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to the terms hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be immediately due and payable by Borrower and shall bear interest from the date of disbursement at the default rate stated under the terms of the Note.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents and revenues as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents and revenues of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

18. Acceleration in Case of Borrower's Insolvency. If Borrower shall voluntarily file a petition under the United States Bankruptcy Code, as such Code may from time to time be amended, or under any similar successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower within sixty (60) days from the commencement of such proceedings, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment,

execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten (10) days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by this Instrument. Furthermore, Lender shall be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the U.S. Code, as amended, on or against the exercise of the rights and remedies otherwise available to Lender, and Borrower hereby waives the benefits of such automatic stay and consents and agrees to raise no objection to such relief. Any attorneys' fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to the terms hereof.

19. Transfers of the Property or Beneficial Interests in Borrower. If Borrower sells, exchanges, conveys, alienates, assigns, disposes of, encumbers, pledges, or transfers all or any portion of the Property (except as hereinafter provided), or if Borrower executes any agreement or contract creating any right to or any equitable interest in the title to the Property or any part thereof, or executes any agreement or contract granting a possessory right in the Property or any part thereof (including, without limiting the generality of the foregoing, outright conveyance, conveyance or alienation by land installment contract or contract for deed, alienation by lease or rental agreement with an option to purchase, and the granting of deeds of trust, mortgages, liens, and security interests subordinate to this Instrument, but excluding leases made in accordance with the Loan Documents) or if all or any part of any ownership interest in Borrower of any nature whatsoever is sold, exchanged, conveyed, alienated, assigned, disposed of, encumbered, pledged, or transferred, then at Lender's option the unpaid remainder of the Note and all of the sums secured by this Instrument shall be immediately and automatically due and payable in full, and Lender may invoke any remedies permitted by law and/or this Instrument. The conveyance or transfer of Borrower's interest in the Property or any interest in Borrower as a result of foreclosure of a subordinate lien or a security interest or a transfer by operation of law (except as otherwise provided below) shall constitute a sale or transfer subject to this paragraph. The foregoing acceleration shall not apply in case of:

- i. Transfers by devise or descent or by operation of law upon the death of an individual owning a beneficial interest in Borrower;
- ii. The grant of a leasehold interest in a part of the Property made in accordance with the Loan Documents and not containing an option to purchase; and
- iii. Sales or transfers for fair market consideration of fixtures or any routine personal property used in the operation of the Property, provided that such sales or transfers are incidental to the replacement of like fixtures and personal property of newer and better quality and condition, or such fixtures or personal property are removed in connection with the making of tenant improvements.

Should Borrower request that Lender not exercise the right to accelerate the Note and the other indebtedness secured hereby, Lender may withhold consent in its sole discretion and, if approved, may impose certain conditions as consideration for such agreement not to accelerate, including, without limiting the generality of the foregoing, any or all of the terms as set forth in the Note and Loan Documents. Inasmuch as the loan evidenced by the Note was based in part on the financial and management responsibility and experience of Borrower, it is specifically understood and agreed that Lender's consent may be given or withheld by Lender in the exercise of its sole discretion, and failure to receive such consent prior to any such transfer or conveyance or attempt thereafter shall be deemed a breach hereof and of the Note. Should Lender forbear from accelerating the payment of the Note and the other indebtedness secured hereby by reason of any of the foregoing, the assignee of Borrower shall be deemed to have assumed and agreed to pay the Note and the other indebtedness secured hereby owing Lender and be bound by the terms hereof, whether or not the instrument evidencing such sale or transfer expressly so provides, and this covenant shall run with the Property and remain in full force and effect until the entire Note and the other indebtedness secured hereby is paid or discharged in full. Upon the occurrence of any of the foregoing events and consent thereto having not been given by Lender, the mere fact of a lapse of time or the acceptance of payments subsequent to any of such events shall not be deemed a waiver of Lender's right to make such election, nor shall Lender be estopped therefrom by virtue thereof. Borrower shall be required to notify Lender upon the occurrence of any of the events affecting title as above-described, and failure to do so shall constitute a default hereunder and under the Note. No sale of the Property, assumption or other event specified above and approved by Lender shall

operate to release or affect the original liability of Borrower, either in whole or in part, unless Borrower is expressly released in writing by Lender.

20. Acceleration; Remedies.

a. Acceleration and Power of Sale. Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, which breach is not cured within any applicable cure period, including, but not limited to, the covenants to pay when due any sums secured by this Instrument, Lender, at Lender's option, may declare all of the sums secured by this Instrument to be immediately due and payable without further demand, and may invoke the power of sale and other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, reasonable attorneys' fees and costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender and Trustee shall execute or cause to be executed a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold or shall comply with such requirements and procedures as required by the law of the State in which this instrument is recorded for foreclosure under a power of sale. Trustee shall sell the Property according to applicable law. Trustee may sell the Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale and in accordance with applicable law. Lender or Lender's designee may purchase the property at any sale.

The Trustee shall deliver to the purchaser a Trustee's Deed upon sale conveying the Property so sold without any covenant or warranty, expressed or implied, except as required by applicable law. The recitals in the Trustee's Deed shall be *prima facie* evidence of the truth of the statements made therein. Except as otherwise required by applicable law, Trustee shall apply the proceeds of the sale in the following order: (i) to all costs and expenses of the sale, including, but not limited to, Trustee's and attorneys' fees actually incurred and costs of title evidence, with Trustee's fees not to exceed five percent (5%) of the original balance of the Note secured by this Instrument; (ii) to all sums secured by this Instrument in such order as Lender, in Lender's sole discretion, directs; (iii) to the payment of junior trust deeds, mortgages, or other lienholders; and (iv) the excess, if any, to the person or persons legally entitled thereto.

b. Foreclosure as Mortgage. This Instrument shall be effective as a mortgage as well as a deed of trust and may be foreclosed as a deed of trust or a mortgage as to any of the Property in any manner permitted by the laws of the State in which this Instrument is recorded.

c. Receiver. In addition to all other remedies herein provided, Lender shall, as a matter of right, be entitled to an *ex parte* appointment of a receiver or receivers without notice, notice being hereby expressly waived, for all or any part of the Property without regard to the value of the Property or the solvency of any person or persons liable for the payment of the Note and Borrower does hereby consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment, and agrees not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege it may now have under law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee, or other appointee by virtue of any court order, statute, or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the rents and income. Any money advanced by Lender in connection with any such receivership shall be a part of the indebtedness secured hereby and shall be payable by Borrower to Lender as provided in this Instrument. The receiver or its agents shall be entitled to enter upon and take possession of any and all of the Property. The receiver, personally or through its agents or attorneys, may exclude Borrower and its agents, servants, and employees wholly from the Property, and have, hold, use, operate, manage, and control the same and each and every part thereof, and keep insured the properties, equipment, and apparatus provided or required for use in connection with the business or businesses operated on the Property, and make all such useful alterations, additions, betterments, and improvements as the receiver may deem

judicious. Such receivership shall, at the option of Lender, continue until full payment of all sums hereby secured, or until title to the Property shall have passed by foreclosure sale under this Instrument and the period of redemption, if any, shall have expired.

d. Waivers. Except as may be prohibited by applicable law, Borrower hereby expressly waives and releases any and all rights or redemption or periods of redemption in the event of foreclosure of this Instrument. Borrower further expressly waives and releases all rights of exemption of some of the Property or proceeds thereof from attachment, levy or sale on execution, all rights or appraisement or valuation, and all benefits of any homestead exemption.

21. Environmental Matters.

a. Defined Terms. As used in this paragraph, the following terms shall have the following meanings:

(1) "Contaminant" means any pollutants, hazardous or toxic substances or wastes or contaminated materials including but not limited to oil and oil products, asbestos, asbestos containing materials, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, flammables, explosives, radioactive materials, laboratory wastes, chemicals, elements, compounds or any other materials and substances (including materials, substances or things which are composed of or which have as constituents any of the foregoing substances), which are or may be subject to regulation under, or the Release of which or exposure to which is prohibited, limited or regulated under any Environmental Law.

(2) "Enforcement Action" means any action, proceeding or investigation (administrative or judicial, civil or criminal) instituted or threatened by U.S. Environmental Protection Agency, or any other federal, state or local governmental agency (collectively "Governmental Authority") related to any alleged or actual violation of any Environmental Law with respect to the Property and/or any business conducted thereon, and/or the Borrower, including, but not limited to, actions seeking Remediation, the imposition or enforcement of liability pursuant to any Environmental Law and compliance with any Environmental Law. Enforcement Action shall also include any similar actual or threatened action by any private party pursuant to any Environmental Law.

(3) "Environmental Laws" means any and all present and future federal, state, and local laws, statutes, ordinances, rules, and regulations, relating to protection of human health and the environment from Contaminants including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (CERCLA), 42 USC § 9601 *et seq.*; the Resource Conservation and Recovery Act, as amended, (RCRA), 42 USC § 6901 *et seq.* the Clean Air Act, as amended, 42 USC § 7401 *et seq.*; the Federal Water Pollution Control Act, as amended (including but not limited to as amended by the Clean Water Act), 33 USC § 1251 *et seq.*; the Toxic Substances Control Act, as amended (TSCA), 15 USC § 2601 *et seq.*; the Emergency Planning and Community Right-to-Know Act (also known as SARA Title III), as amended, (EPCRA), 42 USC § 11001 *et seq.*; the Safe Drinking Water Act, as amended, 42 USC § 300(f) *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, as amended (FIFRA), 7 USC § 136 *et seq.*; the Occupational Safety and Health Act, as amended, (OSHA), 29 USC § 651 *et seq.*; the Endangered Species Act, as amended, 16 USC § 1531 *et seq.*; the National Environmental Policy Act, as amended, (NEPA), 42 USC § 4321 *et seq.*; the Rivers and Harbors Act of 1899, 33 USC § 401 *et seq.*; state and local laws, rules and regulations similar to or addressing similar matters as the foregoing federal laws; laws, rules and regulations governing underground or above-ground storage tanks; laws, rules and regulations imposing liens for response costs or costs of other Remediation, whether or not those liens have a higher priority than existing liens; laws, rules and regulations conditioning transfer of property upon a form of negative declaration or other approval of a Governmental Authority of the environmental condition of a property; laws, rules and regulations requiring the disclosure of conditions relating

to Contaminants in connection with transfer of title to or interest in property law; laws, rules and regulations requiring notifying of any governmental entity with regard to a Release of any Contaminant; conditions or requirements imposed in connection with any permits; government orders and demands and judicial orders pursuant to any of the foregoing; laws, rules and regulations relating to the Release, use, treatment, storage, disposal, transportation, transfer, generation, processing, production, refining, control, management, or handling of Contaminants; any and all other laws, rules, regulations, guidance, guidelines and common law of any governmental entity relating to the protection of human health or the environment from Contaminants.

(4) "Release" means any spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Contaminant.

(5) "Remediation" means any response, remedial or removal action pursuant to CERCLA; any corrective action pursuant to RCRA; any other actions required, authorized or ordered under any Environmental Law with regard to cleanup, removal, response, detoxification or other remediation of any Contaminant; any actions to prevent, cure or mitigate a Release or threatened Release of any Contaminant; any action necessary or appropriate to comply with any Environmental Law; any action necessary or appropriate to obtain or comply with permits needed for operations in connection with the Property; including but not limited to: any investigation, monitoring, assessment, testing, sampling, laboratory or other analysis, or evaluation, relating to any such response, remedial, removal, corrective or other cleanup action or relating to any Release or threatened Release of any Contaminant; other actions ordered or otherwise required pursuant to any other provision of any other Environmental Law; any other response, remedial or removal action liability for which may be imposed pursuant to CERCLA § 107(a) (42 USC § 9607(a)) whether such liability is to a Governmental Authority or a private party.

b. Environmental Indemnity. Borrower agrees to defend, indemnify, protect, release and hold harmless Lender (whether as Beneficiary, Mortgagee in Possession, as a successor in interest to Borrower by virtue of foreclosure of this Instrument or otherwise, as owner or operator of the Property or in any other capacity), its affiliates, subsidiaries, parties to whom Lender sells loan participations (if applicable), the successors and assigns of each and its and their directors, officers, employees, and agents (collectively, the "Lender Parties" or singularly a "Lender Party") from and against any and all claims, suits, liabilities, actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, liabilities (including strict liabilities), fines, penalties, charges, fees, attorneys' fees and costs, engineers' fees, environmental consultants' fees and investigation costs, costs of Remediation (whether or not performed voluntarily), and any other expenses (including expenses incurred in enforcing this indemnity), judgments, awards, amounts paid in settlement, punitive damages, and foreseeable and unforeseeable consequential damages (collectively, "Losses") incurred by or threatened against Lender or a Lender Party arising directly or indirectly out of, or any way related to:

(1) The past, present or future violations of any Environmental Law in connection with the Property or operations thereon, including but not limited to any failure by Borrower or any tenant or other users of the Property to comply with any Enforcement Action or any Environmental Law;

(2) Any actions necessary or appropriate to comply with any Environmental Law in any way connected with the Property;

(3) The presence of any Contaminant in, on or under the Property including, but not limited to the use, treatment, storage, disposal, transportation, transfer, generation, processing, production, refining, control, management or handling of Contaminants in any way connected with the Property;

(4) The past, present or threatened Release of any Contaminants in, on, under or from the Property, or migrating to the Property, including but not limited to costs of Remediation of Contamination on properties to which such Contaminants may have migrated;

(5) Any Remediation or Enforcement Action in any way connected with the Property;

(6) Any breach of the Borrower's covenants or any breach or misrepresentation of Borrower's representations and warranties in this Instrument or other Loan Documents;

(7) Any loss of priority of Lender's title (or lien on) the Property directly or indirectly arising out of or in any way relating to any of the foregoing or any imposition of any lien or other encumbrance on title to the Property or indirectly arising out of or in any way relating to any of the foregoing;

(8) Any personal injury, wrongful death, or property damage arising under any statutory or common law tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance on or for the conducting an abnormally dangerous activity on the Property.

(9) Any other matter relating to any environmental condition of the Property, to Contaminants in connection with the Property or migrating to or from the Property, or to any Environmental Laws.

Borrower understands, acknowledges and agrees that its liabilities to Lender pursuant to this indemnity shall be binding upon Borrower regardless of whether conditions described in this paragraph resulted from acts or omissions of Borrower, its predecessors in interest, or any other person or from circumstances (whether or not on the Property) which occurred or existed prior to the date hereof. Borrower's liability hereunder shall not be limited in any respect by the terms of any paragraph of the Note limiting Borrower's personal liability, and shall survive and continue beyond foreclosure of this Instrument, deed in lieu of foreclosure and payoff or discharge of the Note and release of this Instrument and the other Loan Documents for environmental conditions that existed or occurred prior to completion of foreclosure, deed in lieu of foreclosure or release of this Instrument.

c. Covenants, Representations and Warranties. Borrower covenants, represents and warrants to Lender that:

(1) To the best of Borrower's knowledge and belief, after due inquiry and investigation, the Property is free of any Contaminants and neither Borrower nor any other person (including but not limited to prior owners, occupiers and tenants) has ever caused or permitted any Contaminant to be manufactured, placed, generated, stored, held, transferred, processed, produced, transported or disposed on, at, through or under the Property nor any property adjacent thereto has even been used (whether by Borrower or, to the best knowledge of Borrower, by any other person) as a location for the manufacture, placement, storage, location or disposal of any Contaminants, other than ordinary cleaning solvents and lawn chemicals stored or used in ordinary quantities for routine management of the Property.

(2) Neither Borrower nor, to the best of Borrower's knowledge and belief, any other person (including but not limited to prior owners, occupiers and tenants) has ever caused or permitted any Contaminant to be manufactured, placed, stored, located or disposed of on, under or at any other real property owned, occupied (under leases or licenses or otherwise) or operated by Borrower, except in compliance with applicable Environmental Laws.

(3) No lien has or is currently attached to any revenues or any real or personal property owned by Borrower (including but not limited to the Property) as a result of any

Governmental Authority expending monies as a result of any alleged Release or the existence of any Contaminant on or about the Property or a breach of an Environmental Law.

(4) Neither Borrower nor, to the best of Borrower's knowledge and belief, any other person (including but not limited to prior owners, occupants and tenants) has received any notice or advice of any Enforcement Action.

(5) Borrower will keep the Property and any other real property owned, occupied or operated by Borrower free of any Contaminants and in compliance with applicable Environmental Laws.

(6) Borrower will not use the Property or any other real property owned, operated or occupied by Borrower for the manufacture, placement, generation, storage, location or disposal of any Contaminants nor permit the Property or any other property owned, occupied or operated by it to be used in such a manner, except in compliance with applicable Environmental Laws.

(7) Borrower shall not cause or permit to exist as a result of any intentional or unintentional action or omission on its part or for which it is responsible under applicable Environmental Laws a Release of any Contaminant unless and to the extent such Release is made pursuant to and in compliance with the conditions of a permit issued by all appropriate federal and/or state governmental authorities.

(8) In the event of any Release of a Contaminant onto the Property or onto any other property owned, occupied or leased by Borrower or for which Borrower is otherwise responsible under applicable Environmental Laws, it shall promptly notify Lender and remediate such Release in accordance with all Environmental Laws of appropriate governmental entities and authorities having jurisdiction.

22. Remedies Cumulative. Each remedy herein provided shall not be exclusive of any other remedy herein or now or hereafter existing by law, and may be exercised concurrently, independently or successively in any order whatsoever. Every power or remedy hereby given to Borrower or to Lender, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue inconsistent remedies. If Lender holds any additional security for any obligation secured hereby, Lender may enforce the sale thereof, at Lender's option, either before, contemporaneously with, or after the sale is made hereunder, and on any uncured default of Borrower, Lender may, at its option, offset against any indebtedness owed hereunder to it by Borrower the whole or any part of any indebtedness owing by it to Borrower, and the Lender is hereby authorized and empowered at its option, without any further obligation to do, and without affecting the obligations hereof, to apply towards the payment of any indebtedness secured hereby of the Borrower to the Lender, any and all sums of money belonging to Borrower which the Lender may have in its possession or under its control, including, without limiting the generality of the foregoing, any unapplied Funds held by Lender. No offset by Lender hereunder shall relieve Borrower from paying installments on the obligation secured hereby as they become due.

23. Notice. Except for any notice required under applicable law to be given in another manner, all notices and other communications required or permitted under this Instrument shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, or sent by overnight courier service, and, if mailed, shall be deemed received on the earlier of the day on which such notice is actually received by the party to whom it is addressed or the third business day after deposit in the mail in the continental United States, postage prepaid, addressed to the party to receive such notice at the address set forth below, and if sent by overnight courier shall be deemed received on the day on which such notice is actually received by the party to whom it is addressed or the date delivery is refused, either as indicated in the records of such courier service. Notice of change of address shall be given by written notice in the manner set forth in this paragraph.

Notice to Borrower shall be addressed to:

Notice to Lender shall be addressed to:

City of La Vista
Attention: City Clerk
8116 Park View Boulevard
La Vista, Nebraska 68128-2198

24. Successors and Assigns Bound; Agents. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of this Instrument. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender.

25. Governing Law. The loan contract between the parties, including this Instrument, the Note and any other obligation which this Instrument secures, is made pursuant to and shall be construed and governed by the laws of the State of Nebraska and the rules and regulations promulgated thereunder.

26. Reconveyance or Release. The Trustee named in this Instrument securing the Note, or any successor Trustee thereunder, may charge such fees for each full or partial reconveyance or release of this Instrument as Trustees then customarily charge for such services, and as are authorized or not prohibited by applicable law.

27. Substitution of Trustee. Lender may, from time to time, by instrument in writing substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument executed and acknowledged by Lender and recorded in the office of the recorder of the county or counties where such Property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee's predecessor, succeed to all the title, estate, rights, powers and duties as Trustee. Such instrument shall contain the name and address of the Successor Trustee. The procedure herein provided for substitution of Trustee shall not be exclusive of other provisions for substitution provided by law.

28. Trustee. Except as required by law, Trustee is not obligated to notify any party hereto of pending sale under any other instrument or of any action or proceeding in which Borrower, Lender or Trustee shall be a party.

29. Time of the Essence. Time is of the essence for all of Borrower's obligations hereunder and the Loan Documents.

30. Waiver of Statute of Limitations. To the extent permitted by law, Borrower waives all present or future statutes of limitation with respect to any debt, demand or obligation secured hereunder in any action or proceeding for the purpose of enforcing this Instrument or any rights or remedies hereunder.

31. Injury to Property. All causes of action of Borrower, whether accrued before or after the date of this Instrument for damages or injury to the Property or any part thereof, or in connection with or affecting the Property or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, are, at Lender's option, assigned to Lender, and the proceeds thereof shall be paid to Lender who, after deducting therefrom all of its expenses, including reasonable attorneys' fees, may apply such proceeds to the sums secured by this Instrument or to any deficiency under this Instrument or may release any monies so received by it or any part thereof as Lender may elect. Lender may, at its option, appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Borrower agrees to execute any further assignments and other instruments as from time to time may be necessary to effectuate the foregoing provisions and as Lender shall request.

32. Offsets. No indebtedness secured by this Instrument shall be deemed to have been offset or compensated by all or part of any claim, cause of action, counterclaim or part of any claim, cause of action, counterclaim or crossclaim, whether liquidated or unliquidated, which Borrower now or hereafter may have or may claim to have against Lender.

33. Misrepresentation or Nondisclosure. Borrower has made certain written representations and disclosures in order to induce Lender to make the loan evidenced by the Note which this Instrument secures and, in the event that Borrower has made any material misrepresentations or failed to disclose any material fact, Lender, at its option and without prior notice, shall have the right to declare the indebtedness secured by this Instrument, irrespective of the maturity date specified in the Note, immediately due and payable. The Trustee, upon presentation to it of an affidavit signed by Lender setting forth facts showing a default by Borrower under this paragraph (if such affidavit is required by applicable law), is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

34. Waiver of Marshalling. Notwithstanding the existence of any other security interests in the Property held by Lender, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof, hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

35. Request for Notices. Borrower requests that copies of any notice of default and notice of sale hereunder be sent to Borrower at Borrower's address stated above.

36. General Provisions.

a. This Instrument applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns.

b. The term "Lender" shall mean the owner and holder (including a pledgee) of the Note secured hereby, whether or not named as Lender herein.

c. Wherever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural, and vice versa.

d. Captions and paragraphs headings used herein are for convenience only, are not part of this Instrument, and shall not be used in construing it.

37. Adjustable Rate Provisions. [IF APPLICABLE] The Note contains provisions which permit: (a) increases and decreases to the rate of interest provided in the Note; and (b) increases and decreases to the payment of principal and interest. Reference is made to the Note for a complete description of the adjustable rate terms of the indebtedness secured by this Instrument.

38. Future Advances. Upon request of Borrower, Lender, at Lender's option, so long as this Instrument secures indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that such notes are secured hereby.

39. Correction of Defects. Borrower, upon request of Lender, shall promptly correct any defect, error or omission that may be discovered by Lender in the content of this Instrument or in the execution or acknowledgment hereof. In addition, Borrower shall do such further acts as may be deemed necessary by Lender or that Lender may reasonably request to carry out more effectively the purposes of this Instrument, to subject any property intended to be encumbered hereby to the lien and security interest hereof, and to perfect and maintain the first lien and security interest hereof.

40. Invalid Provisions. Should any term, provision, covenant or condition of this Instrument be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Instrument, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein. In addition, should this Instrument be or become ineffective as a deed of trust, then these presents

shall be construed and enforced as a realty mortgage with the borrower being the Mortgagor and Lender being the Mortgagee.

41. No Homestead. The Property encumbered by this Instrument and by the Loan Documents is not occupied by Borrower or Borrower's family as a home and, accordingly is not subject to the homestead exemption of § 38-41-201 *et seq.*, C.R.S. Borrower hereby waives all right of homestead and any other exemption in the Property under state or federal law presently existing or hereinafter enacted.

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its representatives thereunto duly authorized.

a(n) _____,
Borrower and Trustor

By: _____, its _____

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was executed and acknowledged before me this _____ day of _____,
20____, by _____, a _____ of _____,
Borrower and Trustor, for and on behalf of Borrower and Trustor.

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

(SPACE ABOVE RESERVED FOR RECORDER'S USE)

NOTICE OF COMMENCEMENT
BY THE CONTRACTING OWNER

1. This is a notice of commencement.

a. The real estate being or intended to be improved or directly benefited is:

[INSERT LEGAL DESCRIPTION]

b. The name and address of the contracting owner are _____, and its interest in the real estate is fee simple.

c. If, after this Notice of Commencement is recorded, and during the duration hereof, a lien is recorded as to an improvement covered by this Notice of Commencement, the lien has priority from the time this Notice of Commencement is recorded.

2. The duration of this Notice of Commencement is _____ (____) months.

DATED this _____ day of _____, 20____.

_____, Owner

By: _____
Name: _____
Title: _____

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was executed and acknowledged before me this _____ day _____, 20____, by _____, the _____ of _____, Owner, for and on behalf of Owner.

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

PROMISSORY NOTE (CONSTRUCTION)

\$ _____

1. Borrower's Promise to Pay Principal and Interest. For value received, the undersigned Maker, _____, whose address is _____ ("Borrower"), promises to pay to the order of the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska ("Lender"), at 8116 Park View Boulevard, La Vista, Nebraska 68128-2198, or at such other place as Lender of this Note may from time to time designate, the principal sum of _____ Dollars (\$_____) or so much thereof as is advanced and unpaid during the term of this Note of even date herewith, with interest from the date hereof on the unpaid principal balance at the initial interest rate of _____ percent (____%) per annum interest only payable in monthly installments based upon interest accrued for each preceding calendar month, with payments beginning on _____, 20____, and continuing on the first day of each and every month thereafter to and including _____, 20____ ("Due Date"). During the term of this Note, the interest rate will be adjusted effective each time there is a change in the Index (as described below), to be equal to the sum of (i) _____ percentage points (____%) (or ____ basis points), plus (ii) the Prime Rate of interest as published in the Money Rates Section of *The Wall Street Journal* ("Index"); provided, however, that the interest rate shall not at any time be lower than _____ percent (____%) per annum. Changes in the interest rate shall become effective on the date of any change in the Index, each of which dates is called an "Interest Rate Adjustment Date." Adjustments to the interest rate are required under the terms of this Note and any adjustment made after an Interest Rate Adjustment Date shall be effective retroactively to the Interest Rate Adjustment Date and Borrower agrees to reimburse Lender on demand for any interest due as the result of such retroactive adjustment. If at any time the Index is no longer available or is otherwise unpublished, Lender may select as the Index an alternative index over which Lender has no control. The alternative index selected by Lender shall be reasonably comparable to the former Index with respect to rate levels and frequency of fluctuation. On the Due Date, any unpaid principal, interest, and all other sums due under this Note shall be paid in full.

2. Security. This Note is and will be secured by a Construction Loan Agreement, a Deed of Trust, one or more financing statements, and other instruments, agreements, and documents which govern the disbursement of funds and grant and/or will grant Lender security interests in, among other things, _____ to be built thereon and located in Sarpy County, Nebraska (the foregoing are collectively referred to as "Loan Documents" and the collateral encumbered by the Loan Documents is referred to as the "Property"). The obligations, covenants, and agreements of each and every of the Loan Documents are hereby made a part of this Note to the same extent and with the same effect as if they were fully set forth herein, and Borrower does hereby agree to perform and keep each and every obligation, covenant, and agreement set forth in this Note and in the other Loan Documents. This Note shall evidence, and the Loan Documents shall secure, the indebtedness described herein, any future loans or advances that may be made to or on behalf of Borrower by Lender at any time or times hereafter under the Loan Documents, and any other amounts

required to be paid by Borrower under the Loan Documents, and any such loans, advances, or amounts shall be added to the indebtedness evidenced by this Note, and shall bear interest at the interest rate then effective, unless a greater rate is expressly provided for in this Note or the other Loan Documents.

3. Notice. Except as may be otherwise specified in this Note, any notices required to be given hereunder shall be given in the manner specified in the Deed of Trust, Assignment of Rents and Security Agreement ("Deed of Trust") made on an even date herewith.

4. Crediting of Payments. Each payment in any amount received by Lender shall be credited as of its date of receipt by Lender, first to interest and late charges then due and the remainder, if any, to principal, and interest shall cease upon the principal so credited as of the date that such credit is made.

5. Default by Borrower. An Event of Default shall be deemed to exist hereunder and under the Loan Documents if:

a. Any payment or sum required by this Note or the Loan Documents is not received by Lender within twenty (20) days from when due; or

b. Borrower fails to perform any other obligation required under this Note or the Loan Documents, or does any act or allows any condition to occur or exist which is prohibited under this Note or the Loan Documents, which is not cured within thirty (30) days after written notice of default by Lender; or

c. Borrower fails to comply with any other agreement in any of the documents and agreements forming a part of the transaction of which this Note is a part, including the Loan Documents which is not cured within thirty (30) days after written notice of default by Lender; or

d. Any representation or warranty made herein or in any of the Loan Documents, or otherwise in connection with the application for or making of this loan, proves to be untrue or Borrower has omitted or failed to disclose a material fact to Lender at any time prior to the date of this Note which if disclosed would have had a significant impact on Lender's decision whether to approve the loan evidenced by this Note and the Loan Documents; or

e. The commencement by or against Borrower of any proceedings under any bankruptcy or similar law for the relief of debtors of the United States or any state or the appointment of any receiver, trustee, assignee for the benefit of creditors, conservators, or similar parties for the Borrower or any of its property; or

f. Borrower shall fail at any time to provide for professional management of the Property (as hereafter defined) by a management company acceptable to Lender and under a written agreement acceptable to Lender, or Borrower shall fail to effectively manage the Property itself, or if there occurs a failure to comply with any laws,

regulations, or ordinances regarding the employment and payment of persons engaged in the operation of the Property; or

g. An assignment, transfer, conveyance, or relinquishment by Borrower of any of the rights or obligations under this Note; or

h. The Property is impaired, pledged, or transferred in whole or in part (except as expressly authorized by Lender or by the Loan Documents) such that the first lien security of Lender is diminished, altered, impaired, or encumbered, such as by failure of Borrower to pay real property taxes prior to delinquency; or

i. A default occurs that is not cured within any applicable notice and/or cure period under the Development Agreement dated _____, 20____ between Lender, Borrower and _____, as Developer, or under any other note, loan agreement, or obligation of Borrower to Lender, whether now existing or hereafter created, or to any of its or Borrower's affiliates, whether such loan is now existing or hereafter created; or

j. The death of _____, provided that Lender will not exercise its right to declare this loan to be in default due to such death provided that (a) at date of death, Borrower is not in default of any of its payment and performance obligations of this Note, (b) Borrower does not cause any Event of Default specified in (a) through (i) inclusive above to occur, which is not cured within any applicable cure period, (c) within ninety (90) days following such death, Borrower provides to Lender a detailed plan for business succession and loan repayment, and (d) such plan is determined by Lender in its sole discretion to be acceptable. If any of the foregoing conditions is not satisfied, then the unpaid principal and all accrued interest and other charges under this Note will automatically be fully due and payable, without written notice or demand required of and by Lender.

6. Default Rate. Upon the occurrence of any Event of Default hereunder which is not cured within any applicable grace period, interest shall accrue, from the date such grace period expires, at the rate of five percentage points (5.00%) above the applicable interest rate, as adjusted.

7. Acceleration. The entire outstanding balance of principal, interest, and any other amounts owed shall become immediately due and payable upon any uncured Event of Default, no further notice or demand of Lender being required.

8. Late Charge. Borrower agrees: (a) to pay immediately to Lender without demand in the event any installment or other payment or sum is not actually received by Lender within twenty (20) days after its due date, and without regard to the date as of which such payment is credited, an amount equal to five percent (5.00%) of the installment or other payment or sum due; (b) that it would be impractical or extremely difficult to fix Lender's actual damages in the event that any installment, payment, or sum shall not be paid when due; and (c) that such amount shall be presumed to be the amount of damages for such late payment. This paragraph and the

amount which it provides shall not limit Lender's right under this Note, the Deed of Trust securing it, or otherwise, to compel prompt performance hereunder and thereunder.

9. Prepayment Privilege. Borrower may prepay this Note prior to the Due Date without penalty. Prepayments shall be applied against the outstanding principal balance of the Note and shall not extend or postpone the Due Date of any subsequent monthly installments or change the amount of such installments, unless Lender shall agree otherwise in writing.

10. Note Payable in U.S. Dollars. Principal, interest, and all charges are payable in lawful money of the United States.

11. Assumability of This Note. If this Note, any Loan Documents, or any Property encumbered by such Loan Documents is assumed, assigned, or conveyed by Borrower in whole or in part, or upon a sale, assignment, or conveyance (whether voluntary or involuntary) of all or a portion of the Property described in the Loan Documents or of any ownership interest in Borrower, or upon the occurrence of any other transaction or event prohibited by the Deed of Trust, or if any plan or attempt is made to do or perform any of the foregoing, this Note shall automatically and without notice from Lender at Lender's sole option be deemed to be in default, and Lender may declare all unpaid principal, interest, and other sums under this Note to be immediately due and payable in full. The foregoing acceleration shall not be applicable in the case of:

a. The grant of an occupancy leasehold interest in a part of the Property made in accordance with the Loan Documents and not containing an option to purchase; and

b. Sales or transfers for fair market consideration of fixtures or any routine personal property used in the operation of the Property, provided that such sales or transfers are incidental to the replacement of like fixtures and personal property of newer and better quality and condition or such fixtures or personal property are removed in connection with the making of tenant improvements; and

c. Transfer or assignment of beneficial interests in Borrower by devise or descent or by operation of law upon the death of a member of Borrower.

If Lender consents (which consent may be withheld in Lender's sole discretion) to an assignment, conveyance, or assumption of this Note, or to a sale or conveyance of all or a portion of the Property, or to an assignment or conveyance of any ownership interest in Borrower, except as expressly permitted above (as to which consent shall not be required), said consent may be upon the following terms (and others as determined by Lender in its sole discretion): (a) buyer or assignee submits a credit and management application which is approved by Lender under its applicable underwriting guidelines and policies; (b) buyer or assignee executes a written assumption agreement in form and content as prepared by Lender including all obligations of Borrower in connection with all the Loan Documents; (c) buyer pays Lender an assumption fee equal to one percent (1.00%) of the unpaid principal balance as of the date of the transfer or assumption; (d) Borrower, buyer, or assignee pays to Lender on demand

all costs and expenses including, but not limited to, credit report fees, title insurance premiums, recording fees, and attorneys' fees incurred by Lender in connection with the transaction; and (e) Lender may modify the interest rate and loan terms as conditions of such consent.

12. Maximum Interest. In no event whatsoever shall the amount paid, or agreed to be paid, to Lender for the use, forbearance, or retention of the money to be loaned hereunder ("Interest") exceed the maximum amount permissible under applicable law. If the performance or fulfillment of any provision hereof or of the Deed of Trust or any other Loan Documents or other agreement between Lender and Borrower shall result in Interest exceeding the limit for interest prescribed by law, then the amount of such Interest shall be reduced to the maximum rate which may lawfully be charged or collected by Lender. If, from any circumstances whatsoever, Lender should receive as Interest an amount which would exceed the highest lawful rate, the amount which would be excessive Interest shall be applied to the reduction of the principal balance owing hereunder (or, at the option of Lender, be paid over to Borrower) and not to the payment of Interest.

13. Costs of Collection and/or Enforcement. Borrower, together with all sureties, endorsers, and guarantors of this Note, if any, jointly and severally promise to pay: (a) all reasonable costs and expenses of enforcement and/or collection, including without limitation, reasonable attorneys' fees, in the event this Note or any portion of this Note after default is placed in the hands of attorneys for enforcement and/or collection and such is effected with or without suit; (b) reasonable attorneys' fees, as determined by the judge of the court if such determination is required by law, and all other reasonable costs, expenses, and fees incurred by Lender in the event suit is instituted to collect or enforce this Note or any portion of this Note; (c) all reasonable costs and expenses provided for in the Deed of Trust, in the Loan Documents, or in any other instrument given as security for this Note and/or incurred by or on behalf of Lender in connection with collecting or otherwise enforcing any right of Lender under this Note, the Deed of Trust, the Loan Documents, or any other instrument given as security for this Note; and (d) all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees incurred by Lender in connection with any bankruptcy, insolvency, or reorganization proceeding or receivership in which Borrower is involved, including, without limitation, reasonable attorneys' fees incurred in making any appearances in any such proceeding or in seeking relief from any stay or injunction issued in or arising out of any such proceeding.

14. Certain Waivers. Borrower waives diligence, demand, presentment for payment, exhibition of this Note, protest, notice of protest, notice of dishonor, and any and all exemption rights against the indebtedness evidenced by this Note, and agrees to any and all extensions or renewals from time to time without notice and to any partial payments of this Note made before or after maturity and that no such extension, renewal, or partial payment shall release Borrower from the obligation of payment of this Note or any installment of this Note, and consents to offsets of any sums owed to Borrower by Lender at any time.

15. Exercise of Rights. No single or partial exercise by Lender, or delay or omission in the exercise by Lender, of any right or remedy under this Note, the Deed of Trust, or Loan Documents or authorized by law shall preclude, waive, or limit the exercise thereof, any other or further exercise thereof, or the exercise of any right or remedy. Lender shall at all times have the

right to proceed against Borrower and/or any portion of, or interest in, the Property secured by the Deed of Trust and Loan Documents securing the Note in such manner as Lender may deem fit, without waiving any other rights or remedies with respect to the Property, any portion thereof, or interest therein.

16. No Modifications. This Note may not be changed, amended, or modified, except in a writing expressly intended for such purpose and executed by Borrower and Lender.

17. Governing Law. This Note is to be construed and enforced in all respects by the laws of the State of Nebraska, and the rules and regulations promulgated thereunder.

18. Construction. The words "Borrower" and "Lender" shall be deemed to include the respective successors and assigns of each, and shall denote the singular and/or plural, and the masculine and/or feminine, and natural and/or artificial persons, whenever and wherever the context so requires. The captions herein are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Note or any particular paragraph or section hereof, or the proper construction thereof.

19. Time of the Essence. Time shall be of the essence in this Note with respect to all of Borrower's obligations hereunder.

20. Insolvency or Bankruptcy. Borrower hereby agrees that in the event on or before the date all sums under this Note are paid in full to Lender, Borrower (by Borrower's own action or the action of any members, manager or creditors), (i) files with any bankruptcy court of competent jurisdiction or is the subject of any petition for relief under Title 11 of the U.S. Code, as amended, (ii) is the subject of any order for relief issued under such Title 11 of the U.S. Code, as amended, (iii) files or is the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (iv) seeks, consents to, or acquiesces in the appointment of any trustee, receiver, conservator, or liquidator, or (v) is the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, then all sums under this Note shall thereupon be deemed to be immediately due and payable in full.

21. Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Note, except that if such provision relates to the payment of any monetary sum, then Lender may, at its option, declare the indebtedness evidenced hereby immediately due and payable.

EXECUTED this _____ day of _____, 20__.

_____,
a _____, Borrower

By: _____
_____, its _____

Borrower's Address:

Tax I.D. No.: _____

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing was executed and acknowledged to before me this _____ day of
_____, 20__, by _____, a _____ of
_____, a _____, Borrower,
for and on behalf of Borrower.

Notary Public

SECURITY AGREEMENT

For value received, _____, whose address is _____ (Debtor"), hereby grants to the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska, whose address is 8116 Park View Boulevard, La Vista, Nebraska 68128-2198 ("Secured Party"), a security interest in that property described in Exhibit "B" attached hereto and incorporated herein by this reference, together with all additions, accessions, and substitutions thereto or therefor and all similar property hereafter acquired by Debtor ("Collateral"). Proceeds of the Collateral are also covered, but this shall not be construed to mean that Secured Party consents to any sale of such Collateral.

This security interest is given to secure: (1) payment of that certain Promissory Note of even date herewith executed by Debtor in favor of Secured Party in the principal sum of _____ Dollars (\$ _____) with principal and interest thereon payable as provided therein ("Note"); (2) all expenditures by Secured Party for taxes, insurance, repairs to, and maintenance of the Collateral; (3) all costs and expenses incurred by Secured Party in the collection and enforcement of this Security Agreement, the Note, and any other indebtedness or obligations owed by Debtor to Secured Party; and (4) the performance of all obligations of Debtor under any other agreement, document, or instrument evidencing, securing, or relating to the Note.

A. Warranty. Debtor expressly warrants and covenants to secured party that:

1. Ownership Free of Encumbrances. Debtor now owns the Collateral free from any prior lien, security interest, or encumbrance, and Debtor will defend the Collateral against all claims and demands of all other persons at any time claiming the same or any interest therein.

2. Financing Statements. Except as identified in paragraph 1, no financing statement covering the Collateral or any proceeds thereof is on file in any public office or has heretofore been executed by Debtor. Debtor will join with Secured Party in executing one or more financing statements in a form satisfactory to Secured Party. Alternatively, Secured Party may file Financing Statements without Debtor's signature.

3. Insurance. Debtor will insure the Collateral with companies acceptable to Secured Party against such casualties and in such amounts as Secured Party shall require from time to time. All insurance policies shall be written for the benefit of Debtor and Secured Party as their interests may appear, and such policies or certificates evidencing the same shall be furnished to Secured Party. All policies of insurance shall provide at least thirty (30) days prior written notice of cancellation to Secured Party.

4. Maintenance. Debtor will keep the Collateral in good condition and free from other liens and security interests, will pay promptly all taxes and assessments with respect thereto, and will not use the Collateral illegally to jeopardize or encumber the

same. Secured Party may examine and inspect the Collateral at any time, wherever located.

5. Reimbursement for Expenses. At its option, Secured Party may discharge taxes, liens, security interests, or other encumbrances of any nature whatsoever on the Collateral and may pay for the repair of any damage to the Collateral, the maintenance and preservation thereof, and for insurance thereon. Debtor agrees to reimburse Secured Party on demand for any payments so made and, until such reimbursement, the amount of any payment, with interest thereon at the default rate specified in the Note or the highest applicable legal rate, whichever is lesser, from the date of payment until reimbursement, shall be added to the indebtedness owed by Debtor under the Note and shall be secured by this Security Agreement and all other agreements, documents, and instruments securing the Note. Failure of Debtor to pay such sums shall constitute a default by Debtor under this Security Agreement.

6. Change of Place of Business or Location of Collateral. Debtor will immediately notify Secured Party in writing of any change in Debtor's place of business, and Debtor will not permit any of the Collateral to be removed from the real property described in Exhibit "A" attached hereto without the prior written consent of Secured Party.

7. Debtor's Office. The office where the records concerning all of the rights herein assigned are kept is at Debtor's address shown hereinabove, and Debtor will immediately notify Secured Party in writing of any discontinuance or any change of location in the place of business where the records concerning said rights are kept.

8. Audit. Debtor will, at all times, maintain accurate books and records covering the Collateral. Secured Party is hereby given the right and privilege of auditing the books and records of Debtor relating to said Collateral at any time and from time to time as Secured Party deems proper.

9. Collection of Contracts. Upon default under the Note or any other agreement, document, or instrument securing the Note, Secured Party shall have the right to notify the account and contract debtors obligated on any or all of the Collateral to make payment thereof directly to Secured Party and Secured Party may take control of all proceeds of any such Collateral, which rights Secured Party may exercise at any time or from time to time whether or not Debtor is then in default. Until such time as Secured Party elects to exercise such rights, Debtor is authorized, as agent of Secured Party, to collect and enforce all such contracts and accounts receivable. The cost of such collection and enforcement, including attorneys' fees and expenses, shall be borne solely by Debtor, whether the same is incurred by Secured Party or Debtor.

10. Expenses. Debtor shall be liable for and agrees to pay to Secured Party any and all expenses incurred or paid by Secured Party in protecting or enforcing its rights under this Security Agreement including, without limiting the generality of the

foregoing, attorneys' fees and legal expenses and all expenses of retaking, holding, preparing for sale, advertising, and selling the Collateral.

B. Events of Default. Debtor shall be in default under this Security Agreement upon the happening of any of the following events or conditions:

1. Performance. Default in the payment or performance of any obligation, covenant, or liability contained or referred to herein or in the Note or in any other agreement, document, or instrument evidencing, securing or relating to the Note if not cured within any applicable cure period.

2. Representations. If any warranty, representation, or statement made or furnished to Secured Party by or on behalf of Debtor proves to have been false in any material respect when made or furnished.

3. Default in the Obligations. Any event which results in the acceleration of the maturity of any indebtedness of Debtor under any indenture, agreement, or undertaking secured by the Property.

4. Damage to Collateral. Loss, theft, substantial damage, or destruction to, or of, any of the Collateral for which insurance can be obtained and which is not covered by insurance in amounts satisfactory to Secured Party.

5. Sale or Encumbrance of Collateral. Unauthorized sale or encumbrance of any of the Collateral or the making of any levy, seizure, or attachment of, or on, any of the Collateral.

6. Bankruptcy. Failure of Debtor to generally pay its debts as they become due, or if Debtor shall file in any court pursuant to any statute, either of the United States or of any state, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or a substantial portion of Debtor's property, or if Debtor makes any assignment for or petitions for or enters into an arrangement for the benefit of creditors, or if a petition in bankruptcy is filed against Debtor which is not discharged within sixty (60) days thereafter.

C. Remedies. Upon such default and at any time thereafter Secured Party may declare all obligations secured hereby immediately due and payable and may proceed to enforce payment of the same and exercise any and all of the rights and remedies provided by the Uniform Commercial Code as enacted in the state in which the Collateral is located, as well as all other rights and remedies possessed by Secured Party under any other agreement, document, or instrument with Debtor, or in law or equity. Secured Party may require Debtor to assemble the Collateral, including, without limitation, all books and records involving contract rights or accounts receivable, and make it available to Secured Party at any place to be designated by Secured Party which is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of the type customarily sold on a recognized market, Secured Party will give Debtor a reasonable notice of the time and place of any public

sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Debtor shown at the beginning of this Security Agreement at least ten (10) days before the time of sale or disposition.

D. Remedies Cumulative. Secured Party's remedies herein provided for are cumulative and not exclusive of any remedies that may otherwise be provided in equity or law.

E. Enforcement of Remedies. This Security Agreement and all of Secured Party's rights and remedies herein provided shall survive and shall in no way be affected or invalidated by any foreclosure proceeding or other actions commenced by Secured Party to enforce any of Secured Party's rights under any other agreement, document, or instrument evidencing, securing, or relating to the Note or this Security Agreement, whether such proceedings or actions result in foreclosure against any of Debtor's real property, acceptance of a deed in lieu of foreclosure, transfer of title to any of the Collateral, or any other realization by Secured Party against any of Debtor's property or the Collateral.

F. Secured Interests. Debtor hereby collaterally assigns, transfers, and grants to Secured Party all of Debtor's right, title, and interest in and to all of the Collateral, whether Debtor acquired or acquires such right, title, or interest before or after the date of this Security Agreement, and whether Debtor acquired or acquires such right, title, or interest before or after the occurrence of any event of default by Debtor hereunder.

G. Waiver. No delay or omission on the part of Secured Party in exercising any right or remedy hereunder shall operate as a waiver of such right or remedy or of any other right or remedy under this Security Agreement. A waiver on one occasion shall not be construed as a bar to or waiver of any such right and/or remedy on any future occasion.

H. Limitation of Liability and Indemnification. Secured Party shall not be liable for the failure to enforce any contract right or for any act or omission on the part of Secured Party, nor shall Secured Party be liable for any damage, loss, or expense resulting from or in any way connected with any default by Debtor in the performance of Debtor's duties or obligations under any of the Collateral, except for gross negligence or intentional misconduct. Debtor shall indemnify and hold Secured Party, its directors, officers, agents, and employees harmless from any and all loss or damage Secured Party, its directors, officers, agents, or employees may suffer as a result of claims, demands, costs, or judgments against any or all of the aforementioned parties, including, without limiting the generality of the foregoing, attorneys' fees, arising from Debtor's default under this Security Agreement. Further, Debtor shall defend against any claims brought or actions filed against Secured Party, its directors, officers, agents, or employees in connection with this Security Agreement or with respect to the subject of the indemnity set forth in this Paragraph H, and shall reimburse Secured Party, its directors, officers, agents, and employees for any expenses, attorneys' fees, or costs incurred in the enforcement of any part of this Security Agreement.

I. Severability. Invalidation of any provision or of any paragraph, sentence, clause, phrase, or word herein for any reason or to any extent by a court of competent jurisdiction shall

not affect the validity of the remainder of this Security Agreement. Further, the parties mutually agree that this Security Agreement is not intended to and shall in no manner change, alter, or affect the terms, covenants, or conditions of the Note or any other agreement, document, or instrument executed by Debtor in connection with the Note, this Security Agreement being intended to supplement and further enlarge (and not to diminish, restrict, or impair) the rights of Secured Party under and by virtue of any of the above-mentioned agreements, documents, and instruments.

J. Binding Effect. The terms of this Security Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

K. Governing Law. The loan contract between the parties, including this Security Agreement, the Note and any other obligation which this Security Agreement secures, is made pursuant to and shall be construed and governed by the laws of the State of Nebraska, and the rules and regulations promulgated thereunder

EXECUTED and delivered this _____ day of _____, 20____.

_____, Debtor

By: _____
Name: _____
Title: _____

CITY OF LA VISTA, a Nebraska municipal corporation, Secured Party

By: _____
Name: _____
Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "B"

DESCRIPTION OF COLLATERAL

Debtor hereby grants to Secured Party a security interest in the Collateral referred to in this Security Agreement, which consists of the following described property, together with all other personal property and equipment, of whatever nature or kind, now owned or subsequently acquired by Debtor, including all substitutions, accessions, repairs, replacements, and additions thereto (including the proceeds of sales thereof), and all products thereof, whether installed, affixed, attached, kept, or situated on, to or at the Real Property ("Property") described in this Security Agreement and used, acquired, or produced in connection with the operation of the improvements, and such Collateral includes, but is not limited to:

1. All buildings, structures, tenements, improvements, fixtures, and appurtenances now or hereafter placed thereon, including, but not limited to, all fixtures, apparatus, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with said Property, including, but not limited to, those for the purposes of supplying or distributing air cooling, air conditioning, gas, electricity, water, air, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal and other services; and all related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bathtubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, and pool equipment.
2. All cabinets, shelving, furniture, displays, lights, machinery, and other trade fixtures attached or otherwise installed on said Property used for a trade or business.
3. All royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) owned by Debtor and shares of stock pertaining to such water or water rights, ownership of which affects said Property.
4. Any and all awards, including interest, previously and hereafter made to Debtor for taking by condemnation or eminent domain of the whole or any part of the Property or any easements therein.
5. All of Debtor's interest in the following as owned by Debtor and used in connection with the Property:
 - a. All existing and future leases, rents, issues and profits and all security deposits from tenants, lessees, or other space-occupiers;
 - b. All policies of insurance and all proceeds, loss payable clauses, and premium refunds, and all claims relating thereto;
 - c. All operating or management or supervision agreements; and
 - d. All income, rents, issues, profits, and proceeds from the Property, subject, however, to the right, power, and authority conferred upon Debtor and/or Secured Party to collect and apply such income, rents, issues, profits and proceeds as set forth in the Deed of Trust between Debtor and Secured Party of even date therewith.

(SPACE ABOVE RESERVED FOR RECORDER'S USE)

ASSIGNMENT OF LEASES AND RENTS

FOR VALUE RECEIVED, _____, whose address is _____ (Assignor"), hereby grants, transfers, and assigns to the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska, whose address is 8116 Park View Boulevard, La Vista, Nebraska 68128-2198 ("Assignee"), the entire interest of Assignor as Lessor in and to all leases, subleases, licenses, concessions, or other agreements now existing and hereafter entered into (collectively "Leases") for all or any part of the real property located in Sarpy County, Nebraska, more particularly described as on Exhibit "A" attached hereto ("Property"), together with all rents, income, issues, and profits arising therefrom, and any renewals and modifications thereof, and together with all rents, income, issues, and profits arising from the use and occupation of the Property and from any property covered by the Leases, whether real, personal, mixed or intangible.

This Assignment is intended to be, and shall be construed as, creating an absolute assignment unto Assignee, and not as an assignment as security, and to such extent shall be unconditional and irrevocable except as hereinafter provided to the contrary. In connection with and as a part of this Assignment, Assignor hereby warrants, represents, and agrees to and with Assignee as follows:

1. Assignee Rights. Assignor has contemporaneously herewith executed and delivered to Assignee a certain Promissory Note in the principal amount of _____ Dollars (\$_____) ("Note"). In order to secure payment of the Note, Assignor, as trustor, has contemporaneously herewith executed a certain Deed of Trust, Assignment of Rents and Security Agreement to Thomas R. Ostdiek, Attorney-at-Law, as Trustee, in favor of Assignee as Beneficiary ("Deed of Trust"). Unless and until there shall have occurred an event of default in the performance by Assignor of any of its duties or obligations, including, but without limitation, the payment of money, arising under the Note or the Deed of Trust, Assignor is hereby granted a revocable license and may collect at the time of, but in no event more than one (1) month before, the date provided for payment, all rents, income, issues, and profits arising under the Leases and retain the use of and enjoy the same subject to the provisions contained in the Deed of Trust. Upon or at any time after the occurrence of any such event of default which is not cured within any applicable cure period, Assignee may, at its option, by giving written notice thereof to Assignor and without regard to the adequacy of any security for the payment or performance of any duties and obligations arising under the Note and the Deed of Trust, either in person or by agent, with or without

bringing any action or proceeding, or by receiver appointed by a court, revoke the foregoing license, take possession of the rents, income, issues, and profits and/or the Property and hold, manage, let, and operate the same on such terms and for such period of time as Assignee may deem proper in its discretion and, with or without taking possession of the Property, demand, sue for, or otherwise collect all rents, income, and profits of the Leases and the Property, including those past due and unpaid, with full power to modify, extend or terminate existing Leases, to execute new Leases, and to make from time to time such alterations, renovations, repairs, and replacements as may seem proper to Assignee, and apply such rents, income, and profits to the payment of all expenses of managing, operating, and maintaining the Leases and the Property, all expenses incident to taking and retaining possession of the Property, and the principal, interest, and other indebtedness evidenced and/or secured by the Note and the Deed of Trust together with all costs and attorneys' fees incurred by Assignee in connection with any of the foregoing matters, in the order of priority set forth in the Deed of Trust, any statute, law, custom, or use to the contrary notwithstanding. Exercise or nonexercise by Assignee of the options granted in this paragraph, or collection and application of rents, income, and profits by Assignee or its agent shall not be considered a waiver of any default by Assignor under this Assignment, the Note or the Deed of Trust.

2. Non-Liability and Indemnification of Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property or any part thereof or from any other act or omission of Assignee in managing the Property, unless such loss is caused by the gross negligence, willful misconduct, or bad faith of Assignee. Assignee shall not be obligated to perform or discharge nor does Assignee undertake to perform or discharge any obligation, duty, or liability under the Leases or under or by reason of this Assignment and Assignor agrees to indemnify Assignee for, and to hold Assignee harmless from, any liability, loss, or damage which may be incurred under the Leases or under or by reason of this Assignment and from any claims and demands which may be asserted against Assignee by reason of any alleged obligations or undertakings to perform or discharge any of the terms, covenants, or agreements contained in the Leases or in operation of the Property, unless such liability, loss, or damage is caused by the gross negligence, willful misconduct, or bad faith of Assignee. Should Assignee incur any such liability under the Leases or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall be reimbursed by Assignor to Assignee immediately upon demand, and upon failure of Assignor to make such reimbursement on the date of such demand, the unpaid portion thereof, while still immediately due and payable, shall bear interest at the default rate of interest provided in the Note until paid, and the Note shall be deemed to be in default due to such nonpayment. This Assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Property upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by any 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.

3. Termination/Lessee Directives. Upon payment in full of the principal, interest and all other indebtedness evidenced by the Note and the Deed of Trust, this Assignment shall cease, terminate, and be of no further effect. Assignor authorizes each and every lessee named in a Lease or any other or future lessee or occupant of the Property or any part thereof, upon receipt

of written notice from Assignee, to pay to Assignee all rents, income, issues, and profits accruing under the Leases or from the Property, and to continue to do so until otherwise notified in writing by Assignee.

4. Absolute Assignment. Subject only to the provisions of Paragraph 3 of this Assignment, no action undertaken by Assignee with respect to any of the obligations of Assignor evidenced by the Note and the Deed of Trust, to any security or guarantee given for the payment or performance thereof, or to any other document or instrument evidencing or relating to said obligations shall in any manner affect, impair, or prejudice any of Assignee's rights and privileges under this Assignment or discharge, release, or modify any of Assignor's duties or obligations hereunder. This Assignment is intended by Assignor and Assignee to create, and shall be construed as creating, an absolute assignment unto Assignee, subject only to the license, terms, and provisions hereof, and not as an assignment as security for the performance of the obligations evidenced by the Note and the Deed of Trust or any other indebtedness of Assignor.

5. Warranties of Assignor. Assignor warrants to Assignee, each of which warranties shall remain in full force and effect until all obligations of Assignor to Assignee under the Note and Deed of Trust have been fulfilled, that:

- a. Assignor is the record owner and holder of legal title to the Property and to the improvements located on the Property.
- b. Assignor has good and clear title to the Leases, rents, income, issues, and profits hereby assigned and good right to assign same, and no other person, firm, or entity has any right, title, or interest therein.
- c. There has been no prior assignment of the Leases, rents, income, issues, or profits which is now in effect.
- d. The Leases are in full force and effect in accordance with their terms, and constitute the only outstanding Leases affecting the Property.
- e. The Leases are unmodified except as specifically revealed to Assignee in writing.
- f. Assignor is not in default or in breach of any of the Leases, and has not performed any act or failed to perform any act which over the passage of time would result in a default or breach of any of the Leases.
- g. Assignor has no knowledge of any claims, offsets, or defenses by any Lessees under the Leases or any basis for asserting the same.
- h. To the best of Assignor's knowledge, the Lessees are not in default of any of the terms of the Leases.

6. Negative Covenants of Assignor. Assignor agrees that, so long as any obligation to Assignee remains unfulfilled under the Note or Deed of Trust, Assignor will not without the express prior written consent of Assignee, which consent may be granted or withheld in Assignee's sole discretion:

a. Enter into any Leases which are not upon terms and rental rates which are in all respects substantially consistent with general market terms and rates for similar types of properties in Sarpy County, Nebraska, or which provide for usage that is not consistent with the current usage of the Property, or which contain terms not substantially consistent with existing Leases of the Property.

b. Except in the exercise of sound business judgment, modify, either orally or in writing, any Lease now or hereafter existing so as to render the same not in compliance with (a) above, or allow any lessee to surrender or terminate its Lease, or permit an assignment or sublease under any Lease, or request or consent to the subordination of any Lease to any lien subordinate to this Agreement.

c. Collect any rents, income, issues, or profits accruing under the Leases or from the Property more than one (1) month in advance of the time when they shall become due.

d. Execute any other assignment of lessor's interest in the Leases or assignment of rents accruing under the Leases or from the Property.

e. Do or permit anything to be done, the doing of which, or omit or refrain from doing anything, the omission of which will or could be a breach or default in the terms of any of the Leases or create or produce grounds for termination thereof by any lessee.

7. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be given in the manner specified in the Deed of Trust.

8. Successors and Assigns. This Assignment, together with the agreements and warranties herein contained, shall inure to the benefit of Assignee and its successors and assigns and shall be binding upon Assignor and Assignor's successors and assigns as to all or any part of the Property.

9. Governing Law; Severability. The loan contract between the parties, including this Assignment, the Note, and any other obligation which this Instrument secures, is made pursuant to and shall be construed and governed by the laws of the state of Nebraska and the rules and regulations promulgated thereunder. If any paragraph, clause, or provision of this Assignment, the Note, or any other notes or obligations secured by this Assignment is construed or interpreted by a court of competent jurisdiction to be void, invalid, or unenforceable, such decision shall affect only that paragraph, clause, or provision so construed or interpreted and shall not affect the remaining paragraphs, clauses, and provisions of this Assignment or the Note or other notes or obligations secured by this Assignment.

IN WITNESS WHEREOF, this Assignment has been executed this _____ day of
_____, 20_____.
_____, Assignor

By: _____
Name: _____
Title: _____

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was executed and acknowledged before me this _____ day of
_____, 20_____, by _____, the _____
of _____, Assignor, for and on behalf of Assignor.

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

**BORROWER'S CERTIFICATE,
ACCEPTANCE AND ESTOPPEL AFFIDAVIT**

THIS BORROWER'S CERTIFICATE ("Certificate") is delivered to the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska ("Lender"), by _____, ("Borrower"), in connection with a loan ("Loan") made by Lender to Borrower on an even date herewith. Borrower represents and warrants to Lender as follows:

1. Borrower is a _____, duly formed and in good standing under the laws of such state. The _____(s) of Borrower (is)are _____ (and _____), who has(have) the authority to sign this Certificate and all other loan documents on behalf of and thereby bind Borrower.

2. The business of Borrower includes the development, ownership, leasing, and management of real property, including the real property described in Exhibit "A" attached hereto ("Real Property") and the improvements thereon ("Improvements"). Fee simple title to the Real Property and the Improvements is owned by Borrower, free and clear of all liens, claims, encumbrances, security interests, and claims of others, excepting only those revealed in writing to Lender and as set forth in Lender's title insurance policy.

3. The principal place of business of Borrower is whose address _____, and Borrower's federal tax identification number is _____.

4. Borrower is not a "foreign person," "affiliate" of a "foreign person," or a "United States intermediary" of a "foreign person" within the meaning of I.R.C. §§ 897 and 1445, the Foreign Investment and Real Property Tax Act, the International Investment Survey Act of 1976, the Agricultural Foreign Investment Disclosure Act of 1978, the regulations promulgated pursuant to such Acts, or any amendments to such Acts.

5. Borrower is the sole owner in fee simple of the Real Property described in the Deed of Trust and in the Assignment of Leases and Rents.

6. The principal amount now unpaid on the Note of even date herewith made by Borrower and payable to Lender ("Note") is _____ Dollars (\$_____) which has been or will be disbursed for the benefit of Borrower.

7. The Promissory Note, the Deed of Trust, and the Assignment of Leases and Rents of even date herewith made by Borrower and all other instruments evidencing, securing, or supporting the Loan have been duly and validly authorized, executed, and delivered and, where applicable, have been or will be duly recorded or filed, and are the legal, valid, and binding obligations of the parties thereto, enforceable strictly in accordance with their respective terms,

and no default has occurred in the performance of any obligation under any of the foregoing, and Borrower has no defense, offsets, or counterclaims to the indebtedness or obligations evidenced by the documents listed herein.

8. Borrower is not insolvent or bankrupt and there has been no (a) assignment made for the benefit of the creditors of Borrower; (b) appointment of a receiver of Borrower or for the properties of Borrower; or (c) any bankruptcy, reorganization, or liquidation proceeding instituted by or against Borrower.

9. There has been no material adverse change in the representations made or information heretofore supplied by or on behalf of Borrower as to the composition, structure, business operations, credit, or financial condition of Borrower, except as has been furnished in writing to Lender.

10. No part of the Real Property or Improvements has been taken by the exercise of the power of eminent domain or condemnation and there is no proceeding for such a taking pending or threatened.

11. Borrower warrants and represents to Lender that to the best of its knowledge upon reasonable investigation the Real Property and Improvements and the present use thereof comply, in all respects, with all (a) applicable legal and contractual requirements (including, without limitation, any leases) with regard to the use, occupancy, and construction thereof, including, without limitation, any zoning, building, fire safety, air quality, and subdivision laws and ordinances, environmental protection laws and regulations, and rules, regulations, and orders of any governmental agency; (b) building, occupancy, and other permits, licenses, and other approvals; and (c) declarations, conditions, easements, rights-of-way, covenants, and restrictions of record, and there are no violations or alleged or asserted violations of law, municipal ordinances, public or private contracts, declarations, covenants, conditions, or restrictions of record, or other requirements with respect to the Real Property or Improvements, or any part thereof.

12. Except as previously disclosed to Lender in writing, to the best of Borrower's knowledge there is no litigation, arbitration, or other proceeding or governmental investigation pending or threatened against or relating to Borrower or its property, assets, or business, including, without limitation, the Real Property, the Improvements, or any interest in Borrower.

13. Each and every document and instrument required to be executed by Borrower to evidence the loan, including this Borrower's Certificate, has been duly and validly authorized, executed, and delivered by Borrower and is in full force and effect and binding upon and enforceable against Borrower in accordance with its respective terms. Attached hereto as Exhibit "B" is a resolution of Borrower authorizing the loan and granting the authority of those individuals executing all documents respecting the loan to do so and thereby bind Borrower. Attached hereto as Exhibit "C" is a current Certificate of Good Standing of Borrower. Attached hereto as Exhibit "D" are true and complete copies of the organizational documents of Borrower and all amendments thereto.

14. The Loan constitutes a business loan and not a consumer or personal loan.

15. All representations and warranties contained herein shall survive the disbursement and closing of the Loan without limit.

DATED this _____ day of _____, 20____.

_____, Borrower

By: _____

Name: _____

Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "B"

AUTHORIZATION DOCUMENT

EXHIBIT "C"

CERTIFICATE OF GOOD STANDING

EXHIBIT "D"

ORGANIZATIONAL DOCUMENTS OF BORROWER

UNCONDITIONAL GUARANTY OF PAYMENT

THIS UNCONDITIONAL GUARANTY OF PAYMENT ("Guaranty") is executed this _____ day of _____, 20____, by _____, whose address is _____ ("Guarantor"), in favor of the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska ("Lender").

RECITALS:

A. On or within ten (10) days of this date Lender has loaned or will loan to _____ (hereinafter referred to as "Borrower"), the sum of _____ Dollars (\$_____) pursuant to a Promissory Note ("Note") executed on or about this date by Borrower and secured by, among other documents, a Deed of Trust, Assignment of Rents and Security Agreement ("Deed of Trust") in favor of Lender; and

B. Under the terms of the Note, interest may accrue and be added to principal of the Note; and

C. Guarantor is financially and personally interested in the success of Borrower, and by reason thereof and to induce Lender to make such loan, and in consideration of Lender actually making such loan to Borrower, is willing to guarantee payment of the Note under the terms hereof.

NOW, THEREFORE, for value received, Guarantor agrees as follows:

1. Guarantor hereby absolutely and unconditionally guarantees to Lender, its successors and assigns, prompt payment as and when due of the Note, including all principal, interest (both contract rate and default rate) and additional charges thereunder.

2. Guarantor expressly waives all notices to which Guarantor might otherwise be entitled in connection with this Guaranty, including notice of acceptance of this Guaranty, notice of any extension of time for payment of the debt guaranteed or any part thereof, notice of demand for payment, notice of default, notice of nonpayment, and notice of protest. Guarantor further waives any rights of presentment and of protest.

3. Guarantor further waives any defense to enforcement of this Guaranty based upon any legal disability of Borrower to incur the debt, or based upon the genuineness, validity, regularity or enforceability of the Note or the Deed of Trust or any other documents securing or evidencing the loan, or any other circumstances which might otherwise constitute a legal or equitable defense or that would otherwise discharge a surety or guarantor, including any defenses related to impairment of collateral.

4. Guarantor agrees that the liability of Guarantor shall not be released, diminished, impaired, reduced or affected by:

a. The taking or accepting of any other security or guaranty for the Note;

b. Any full or partial release, withdrawal, waiver, surrender, exchange, substitution, subordination, loss or other modification of any other security or guaranty at any time existing in connection with the Note; any full or partial release of the liability of any guarantor under any other instrument had or to be had in connection with or as security for the Note; or the death, insolvency, bankruptcy, disability, or lack of legal authority of Borrower, any guarantor, or any party at any time liable for the payment of any part or all of the Note, whether now existing or hereafter occurring;

c. Any renewal, extension, modification or consolidation of the payment of any part or all of the Note or the performance of any covenant contained in any instrument had or to be had in connection with or as security for the Note, either with or without notice to or consent of Guarantor or any adjustment, indulgence, forbearance or compromise that may be granted or given by Lender to any guarantor or Borrower;

d. Any neglect, delay, omission, failure, or refusal of Lender to take or prosecute any action for the collection of the Note or to foreclose or take or prosecute any action in connection with any lien, right, or security existing or to exist in connection with or as security for the Note; or

e. Any dissolution, merger, or change of form of ownership of Borrower or the sale or other transfer by Borrower of all or any part of the security for the Note.

5. Upon the occurrence of any default under the Note or any other document evidencing or securing the Note, which is not cured within any applicable cure period or in the event any proceedings are commenced by or against Borrower or against its successors, assigns or grantees of the property secured by the Deed of Trust for any relief of debtors, readjustments of debt, reorganization, arrangements, compositions or extensions, Lender may immediately enforce this Guaranty against Guarantor, without the necessity of pursuing any right or remedy against Borrower or under the Deed of Trust or any other instrument now or hereafter securing the Note.

6. Guarantor expressly waives any right at law or in equity which might require Lender to foreclose upon or exercise its rights under the Deed of Trust prior to the enforcement of this Guaranty. Guarantor agrees to pay all reasonable expenses incurred in enforcing the terms of this Guaranty, including reasonable attorneys' fees, and in the event any action is brought to enforce this Guaranty, such reasonable expenses shall be included in any judgment rendered.

7. The liability of Guarantor shall co-exist with any present or future guarantor and such liability will be joint and several. Lender may pursue its rights against any one or more guarantor, either individually or collectively. Guarantor has unconditionally delivered this Guaranty to Lender, and the failure at any time by any other person to sign a guaranty required by Lender shall not discharge the liability of Guarantor.

8. Any indebtedness or obligation of Borrower now or hereafter held by Guarantor is hereby subordinated to the indebtedness and obligations of Borrower under the Note and Deed of Trust to Lender.

9. This Guaranty shall inure to the benefit of Lender and its successors and assigns.

10. This Guaranty is performable in Sarpy County, Nebraska, and shall be governed by the laws of the State of Nebraska. Guarantor consents to personal jurisdiction and venue in Sarpy County, Nebraska, and waives the right to require suit to be brought in any other jurisdiction.

11. This Guaranty is intended by the parties as a final expression of this Guaranty Agreement and is intended as a complete and exclusive statement of the terms thereof. No course of prior dealing between the parties, no usage of trade, and no parol or extrinsic evidence of any nature shall be used to supplement or modify any terms. Furthermore, there are no conditions whatsoever to the full effectiveness of this Guaranty.

12. Guarantor warrants to Lender that Guarantor has adequate means to obtain from Borrower, on a continuing basis, information concerning the financial condition of Borrower, and that Guarantor is not relying on Lender to provide such information, now or in the future.

13. Guarantor agrees that, if at any time all or any part of any payment previously applied by Lender to the Note is or must be rescinded or returned by Lender for any reason (including, without limit, the bankruptcy of Borrower), the guaranteed debt will be deemed to have continued in existence as though the prior application had not been made.

14. **Guarantor acknowledges that Guarantor has read each and every term of this Guaranty prior to execution of the same by Guarantor, that Guarantor fully understands each and every term thereof and that Guarantor understands that Guarantor may become obligated to pay money under this Guaranty.**

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed this _____ day of _____, 20____.

_____, Guarantor
STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was executed and acknowledged before me this _____ day of September, 2006, by _____, the _____ of _____, Guarantor, for and on behalf of Guarantor.

Notary Public

(Name) _____
(Address) _____
(City, State, Zip) _____

In re: _____,
a(n) _____
Principal Amount: \$ _____

NOTICE PURSUANT TO NEB. REV. STAT. § 45-1,113

A credit agreement must be in writing to be enforceable under Nebraska law. To protect you and us from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forbear repayment of money or to make any other financial accommodation in connection with this loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit, must be in writing to be effective.

DATED this _____ day of _____, 20 ____.

_____, Borrower
(Tax I.D. No. _____)

By: _____
Name: _____
Title: _____

**BORROWER'S CERTIFICATE,
ACCEPTANCE AND ESTOPPEL AFFIDAVIT**

THIS BORROWER'S CERTIFICATE ("Certificate") is delivered to the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska ("Lender"), by _____, ("Borrower"), in connection with a loan ("Loan") made by Lender to Borrower on an even date herewith. Borrower represents and warrants to Lender as follows:

1. Borrower is a _____, duly formed and in good standing under the laws of such state. The _____(s) of Borrower (is)are _____ (and _____), who has(have) the authority to sign this Certificate and all other loan documents on behalf of and thereby bind Borrower.

2. The business of Borrower includes the development, ownership, leasing, and management of real property, including the real property described in Exhibit "A" attached hereto ("Real Property") and the improvements thereon ("Improvements"). Fee simple title to the Real Property and the Improvements is owned by Borrower, free and clear of all liens, claims, encumbrances, security interests, and claims of others, excepting only those revealed in writing to Lender and as set forth in Lender's title insurance policy.

3. The principal place of business of Borrower is whose address _____, and Borrower's federal tax identification number is _____.

4. Borrower is not a "foreign person," "affiliate" of a "foreign person," or a "United States intermediary" of a "foreign person" within the meaning of I.R.C. §§ 897 and 1445, the Foreign Investment and Real Property Tax Act, the International Investment Survey Act of 1976, the Agricultural Foreign Investment Disclosure Act of 1978, the regulations promulgated pursuant to such Acts, or any amendments to such Acts.

5. Borrower is the sole owner in fee simple of the Real Property described in the Deed of Trust and in the Assignment of Leases and Rents.

6. The principal amount now unpaid on the Note of even date herewith made by Borrower and payable to Lender ("Note") is _____ Dollars (\$_____) which has been or will be disbursed for the benefit of Borrower.

7. The Promissory Note, the Deed of Trust, and the Assignment of Leases and Rents of even date herewith made by Borrower and all other instruments evidencing, securing, or supporting the Loan have been duly and validly authorized, executed, and delivered and, where applicable, have been or will be duly recorded or filed, and are the legal, valid, and binding obligations of the parties thereto, enforceable strictly in accordance with their respective terms,

and no default has occurred in the performance of any obligation under any of the foregoing, and Borrower has no defense, offsets, or counterclaims to the indebtedness or obligations evidenced by the documents listed herein.

8. Borrower is not insolvent or bankrupt and there has been no (a) assignment made for the benefit of the creditors of Borrower; (b) appointment of a receiver of Borrower or for the properties of Borrower; or (c) any bankruptcy, reorganization, or liquidation proceeding instituted by or against Borrower.

9. There has been no material adverse change in the representations made or information heretofore supplied by or on behalf of Borrower as to the composition, structure, business operations, credit, or financial condition of Borrower, except as has been furnished in writing to Lender.

10. No part of the Real Property or Improvements has been taken by the exercise of the power of eminent domain or condemnation and there is no proceeding for such a taking pending or threatened.

11. Borrower warrants and represents to Lender that to the best of its knowledge upon reasonable investigation the Real Property and Improvements and the present use thereof comply, in all respects, with all (a) applicable legal and contractual requirements (including, without limitation, any leases) with regard to the use, occupancy, and construction thereof, including, without limitation, any zoning, building, fire safety, air quality, and subdivision laws and ordinances, environmental protection laws and regulations, and rules, regulations, and orders of any governmental agency; (b) building, occupancy, and other permits, licenses, and other approvals; and (c) declarations, conditions, easements, rights-of-way, covenants, and restrictions of record, and there are no violations or alleged or asserted violations of law, municipal ordinances, public or private contracts, declarations, covenants, conditions, or restrictions of record, or other requirements with respect to the Real Property or Improvements, or any part thereof.

12. Except as previously disclosed to Lender in writing, to the best of Borrower's knowledge there is no litigation, arbitration, or other proceeding or governmental investigation pending or threatened against or relating to Borrower or its property, assets, or business, including, without limitation, the Real Property, the Improvements, or any interest in Borrower.

13. Each and every document and instrument required to be executed by Borrower to evidence the loan, including this Borrower's Certificate, has been duly and validly authorized, executed, and delivered by Borrower and is in full force and effect and binding upon and enforceable against Borrower in accordance with its respective terms. Attached hereto as Exhibit "B" is a resolution of Borrower authorizing the loan and granting the authority of those individuals executing all documents respecting the loan to do so and thereby bind Borrower. Attached hereto as Exhibit "C" is a current Certificate of Good Standing of Borrower. Attached hereto as Exhibit "D" are true and complete copies of the organizational documents of Borrower and all amendments thereto.

14. The Loan constitutes a business loan and not a consumer or personal loan.

15. All representations and warranties contained herein shall survive the disbursement and closing of the Loan without limit.

DATED this _____ day of _____, 20____.

_____, Borrower

By: _____

Name: _____

Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT “B”

AUTHORIZATION DOCUMENT

EXHIBIT "C"

CERTIFICATE OF GOOD STANDING

EXHIBIT "D"

ORGANIZATIONAL DOCUMENTS OF BORROWER

(Name) _____
(Address) _____
(City, State, Zip) _____

In re: _____,
a(n) _____
Principal Amount: \$ _____

NOTICE PURSUANT TO NEB. REV. STAT. § 45-1,113

A credit agreement must be in writing to be enforceable under Nebraska law. To protect you and us from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forbear repayment of money or to make any other financial accommodation in connection with this loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit, must be in writing to be effective.

DATED this _____ day of _____, 20 ____.

_____, Borrower
(Tax I.D. No. _____)

By: _____
Name: _____
Title: _____