

197-5257-I (Gay)

C  
 COMPUTER   
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 FILED No. 5249  
 BOOK 199 PAGE 445  
 98 JUN 12 PM 2: 52  
 REC \$ 75  
 AUD \$ \_\_\_\_\_  
 R.M.F. \$ 1.00  
 MICHELLE UTSLER  
 RECORDER  
 MADISON COUNTY, IOWA

COMPUTER   
 RECORDED   
 COMPARED   
 REC \$ 25.00  
 AUD \$ \_\_\_\_\_  
 R.M.F. \$ 1.00

FILED NO. 2465  
 BOOK 195 PAGE 62  
 98 JAN -2 PM 3: 25  
 MICHELLE UTSLER  
 RECORDER  
 MADISON COUNTY, IOWA

NOTE: This Mortgage is being re-recorded only to amend Page 3 to reflect the term of the Master Lease and to insert the Mortgage Amount.

After recording, return to  
 MetLife Capital, Limited Partnership  
 10900 N E 4th Street, Suite 500  
 Bellevue, Washington 98004  
 Lease Number 1014697

**COMMERCIAL MORTGAGE,  
SECURITY AGREEMENT, AND  
ASSIGNMENT OF LEASES AND RENTS**

THIS MORTGAGE (herein "Instrument") is made as of 12-26, 1997, among the Grantor, **ALAN V. ANTHONY AND NANCY J. ANTHONY**, Husband and wife, whose address is 2721 Deer Run Avenue, Macksburg, IA 50155 (herein "Lessee"), in favor of **METLIFE CAPITAL, LIMITED PARTNERSHIP**, a Delaware limited partnership, whose address is 10900 N E 4th Street, Suite 500, Bellevue, Washington, 98004 (herein "METLIFE")

Lessee, in consideration of the indebtedness herein recited, irrevocably mortgages, grants, conveys and assigns to METLIFE all of Lessee's estate, right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in the real property located in the County of Madison, State of Iowa, described on Exhibit A attached hereto and incorporated herein including all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property (collectively "Premises"),

TOGETHER with all of Lessee's estate, right, title and interest, now owned or hereafter acquired, in

(a) all buildings, structures, improvements, parking areas, landscaping, equipment, fixtures and articles of property now or hereafter erected on, attached to, or used or adapted for use in the operation of the Premises, including, but without being limited to, all heating, air conditioning and incinerating apparatus and equipment, all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, water heaters, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, freezers, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, floor coverings, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, draperies, screens, storm sash, awnings, signs, furnishings of public spaces, halls and lobbies, and shrubbery and plants, and including also all interest of any owner of the Premises in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which, property mentioned in this clause (a) shall be deemed part of the realty covered by this Instrument and not severable wholly or in part without material injury to the freehold of the Premises (all of the foregoing together with replacements and additions thereto, are referred to herein as "Improvements", and

(b) all compensation, awards, damages, rights of action and proceeds, including interest thereon and/or the proceeds of any policies of insurance therefor, arising out of or relating to a (i) taking or damaging of the Premises or Improvements thereon by reason of any public or private improvement, condemnation proceeding (including change of grade), sale or transfer in lieu of condemnation, or fire, earthquake or other casualty, or (ii) any injury to or decrease in the value of the Premises or the Improvements for any reason whatsoever;

(c) return premiums or other payments upon any insurance any time provided for the benefit of or naming METLIFE, and refunds or rebates of taxes or assessments on the Premises,

(d) all the right, title and interest of Lessee in, to and under all written and oral leases and rental agreements (including extensions, renewals and subleases, all of the foregoing shall be referred to collectively herein as the "Leases") now or hereafter affecting the Premises including, without limitation, all rents, issues, profits and other revenues and income therefrom and from the renting, leasing or bailment of Improvements and equipment, all guaranties of tenants' performance under the Leases, and all rights and claims of any kind that Lessee may have against any tenant under the Leases or in connection with the termination or rejection of the Leases in a bankruptcy or insolvency proceeding; and the leasehold estate in the event this Instrument is on a leasehold),

(e) plans, specifications, contracts and agreements relating to the design or construction of the Improvements, Lessee's rights under any payment, performance, or other bond in connection with the design or construction of the Improvements; all landscaping and construction materials, supplies, and equipment used or to be used or consumed in connection with construction of the Improvements, whether stored on the Premises or at some other location, and contracts, agreements, and purchase orders with contractors, subcontractors, suppliers, and materialmen incidental to the design or construction of the Improvements,

(f) all contracts, accounts, rights, claims or causes of action pertaining to or affecting the Premises or the Improvements, including, without limitation, all options or contracts to acquire other property for use in connection with operation or development of the Premises or Improvements, management contracts, service or supply contracts, deposits, bank accounts, general intangibles (including without limitation trademarks, trade names and symbols), permits, licenses, franchises and certificates, and all commitments or agreements, now or hereafter in existence, intended by the obligor thereof to provide Lessee with proceeds to satisfy the loan evidenced hereby or improve the Premises or Improvements, and the right to receive all proceeds due under such commitments or agreements including refundable deposits and fees,

(g) all books, records, surveys, reports and other documents related to the Premises, the Improvements, the Leases, or other items of collateral described herein, and

(h) all additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein.

All of the foregoing described collateral is exclusive of any furniture, furnishings or trade fixtures owned and supplied by tenants of the Premises. The Premises, the Improvements, the Leases and all of the rest of the foregoing property are herein referred to as the "Property "

TO SECURE TO METLIFE (a) the payment and performance by Lessee of all of Lessee's obligations to METLIFE under that certain Master Equipment Lease Agreement dated of even date herewith, as the same may be amended from time to time (the "Master Lease"), by and between METLIFE and Lessee, (b) all other obligations of Lessee to METLIFE in any other documents executed by Lessee in connection with the Lease (the Master Lease and such other documents are collectively called the "Lease Documents"), and (c) any future advances of funds hereafter made by METLIFE to Lessee, whether pursuant to this Instrument or otherwise. Such obligations of Lessee to METLIFE are hereinafter called the "Indebtedness" \*\*See Below

Lessee represents and warrants that Lessee has good, marketable and insurable title to, and has the right to grant, convey and assign an indefeasible fee simple estate in, the Premises, Improvements, rents and leases (or, if this Instrument is on a leasehold, good, marketable and insurable title to, and the right to convey the leasehold estate and that the ground lease is in full force and effect without modification except as noted above and without default on the part of either lessor or lessee thereunder), and the right to convey the other Property, that the Property is unencumbered except as disclosed in writing to and approved by METLIFE prior to the date hereof, and that Lessee will warrant and forever defend unto Trustee the title to the Property against all claims and demands, subject only to the permitted exceptions set forth in Exhibit B attached hereto

The term of the Master Lease expires on 12/31/2008

Lessee represents, warrants, covenants and agrees for the benefit of METLIFE as follows:

1 PAYMENT AND PERFORMANCE OF LEASE Lessee shall promptly pay and perform all of its obligations under the Master Lease in accordance with the terms of the Master Lease.

2 CHARGES, LIENS Lessee shall pay all taxes, assessments and other charges (collectively, the "impositions") attributable to the Property when due, directly to the payee thereof, or in such other manner as METLIFE may designate in writing. If requested by METLIFE, Lessee shall promptly furnish to METLIFE all notices of impositions which become due, and in the event Lessee shall make payment directly, Lessee shall promptly furnish to METLIFE receipts evidencing such payments. Lessee shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Lessee shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without METLIFE's prior written permission, Lessee shall not allow any lien inferior to this Instrument to be perfected against the Property. If any lien inferior to this Instrument is filed against the Property without METLIFE's prior written permission and without the consent of Lessee, Lessee shall, within thirty (30) days after receiving notice of the filing of such lien, cause such lien to be released of record and to deliver evidence of such release to METLIFE.

3 PRESERVATION AND MAINTENANCE OF PROPERTY, LEASEHOLDS Lessee (a) shall not commit waste or permit impairment or 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 METLIFE may approve in writing, in the event of any damage, injury or  
\*\*The total amount payable to MetLife over the term of the Master Lease is Four Hundred Seventy-Four Thousand Six Hundred Ninety-Eight Dollars and 95/100 (\$474,698.95) 3

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 all improvements, fixtures, equipment, machinery and appliances thereon, 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, and (f) shall give notice in writing to METLIFE of and, unless otherwise directed in writing by METLIFE, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of METLIFE hereunder. Neither Lessee nor any tenant or other person, without the written approval of METLIFE, 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.

**4** USE OF PROPERTY Unless required by applicable law or unless METLIFE has otherwise agreed in writing, Lessee 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. Lessee shall not, without METLIFE's prior written consent, (i) initiate or acquiesce in a change in the zoning classification (including any variance under any existing zoning ordinance applicable to the Property), (ii) permit the use of the Property to become a non-conforming use under applicable zoning ordinances, (iii) file any subdivision or parcel map affecting the Property, or (iv) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Property.

**5** PROTECTION OF METLIFE'S SECURITY If Lessee fails to perform any of 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 METLIFE therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then METLIFE at METLIFE's option may make such appearances, disburse such sums and take such action as METLIFE deems necessary, in its sole discretion, to protect METLIFE's interest, including, but not limited to, (i) disbursement of attorneys' fees, and (ii) entry upon the Property to make repairs.

Any amounts disbursed by METLIFE pursuant to this Section 5, with interest thereon, shall become additional indebtedness of Lessee secured by this Instrument. Unless Lessee and METLIFE 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 rate of eighteen percent (18%) per annum or the highest lawful rate, whichever is less. Lessee hereby covenants and agrees that METLIFE shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness. Nothing contained in this Section 5 shall require METLIFE to incur any expense or take any action hereunder.

**6** INSPECTION METLIFE may make or cause to be made reasonable entries upon the Property to inspect the interior and exterior thereof.

**7** CONDEMNATION If the Property, or any part thereof, shall be condemned for any reason, including without limitation fire or earthquake damage, or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking of, or injury to, the Property shall be

paid to METLIFE who shall have the right, in its sole and absolute discretion, to apply the amounts so received against (a) the costs and expenses of METLIFE, including reasonable attorneys' fees incurred in connection with collection of such amounts, and (b) the balance against the indebtedness, provided, however, that if (i) no Event of Default shall have occurred and be continuing hereunder, (ii) Lessee provides evidence satisfactory to METLIFE of its ability to pay all amounts becoming due under the Master Lease during the pendency of any restoration or repairs to or replacement of the Property, and (iii) METLIFE determines, in its sole discretion, that the proceeds of such award are sufficient to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such taking, (or, if the proceeds of such award are insufficient for such purpose, if Lessee provides additional sums to METLIFE's satisfaction so that the aggregate of such sums and the proceeds of such award will be sufficient for such purpose), the proceeds of such award, together with additional sums provided by Lessee, shall be placed in a separate account for the benefit of METLIFE and Lessee to be used to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such taking. All work to be performed in connection therewith shall be pursuant to a written contract therefor, which contract shall be subject to the prior approval of METLIFE. To the extent that any funds remain after the Property has been so restored and repaired, the same shall be applied against the indebtedness in such order as METLIFE may elect. To enforce its rights hereunder, METLIFE shall be entitled to participate in and control any condemnation proceedings and to be represented therein by counsel of its own choice, and Lessee will deliver, or cause to be delivered to METLIFE such instruments as may be requested by it from time to time to permit such participation. In the event METLIFE, as a result of any such judgment, decree or award, believes that the payment or performance of any of the indebtedness is impaired, METLIFE may declare all of the indebtedness immediately due and payable.

8 LEASES OF THE PROPERTY Lessee shall comply with and observe Lessee's obligations as landlord under all Leases of the Property or any part thereof. All Leases now or hereafter entered into will be in form and substance subject to the approval of METLIFE. Lessee shall not enter into any Lease without METLIFE's prior written consent. Lessee represents and warrants to METLIFE that no Leases are in effect with respect to the Property as of the date of this Instrument.

9 REMEDIES CUMULATIVE Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

10 TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN LESSEE: ASSUMPTION METLIFE may, at its option, declare all sums secured by this Instrument to be immediately due and payable, and METLIFE may invoke any remedies permitted by Section 19 of this Instrument, if title to the Property is changed without the prior written consent of METLIFE, which consent shall be at METLIFE's sole discretion. Any transfer of any interest in the Property or in the income therefrom, by sale, lease, contract, mortgage, deed of trust, further encumbrance or otherwise (including any such transfers as security for additional financing of the Property), and any change in the ownership interests in Lessee (including any change in the ownership interests of any legal entities which comprise or control Lessee) shall be considered a change of title. METLIFE shall have the right to condition its consent to any proposed sale or transfer described in this Section 10 upon, among other things, METLIFE's

approval of the transferee's creditworthiness and management ability, and the transferee's execution, prior to the sale or transfer, of a written assumption agreement containing such terms as METLIFE may require, including, if required by METLIFE, the imposition of an assumption fee of one percent (1%) of the then outstanding balance of the Indebtedness. Consent by METLIFE to one transfer of the Property shall not constitute consent to subsequent transfers or waiver of the provisions of this Section 10. No transfer by Lessee shall relieve Lessee of liability for payment of the Indebtedness.

11 **NOTICE** Except for any notice required under applicable law to be given in another manner, any and all notices, elections, demands, or requests permitted or required to be made under this Instrument shall be given in accordance with the terms of the Master Lease.

12 **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, successors and assigns of METLIFE and Lessee, subject to the provisions of Section 10 hereof. If Lessee is comprised of more than one person or entity, whether as individuals, partners, partnerships or corporations, each such person or entity shall be jointly and severally liable for Lessee's obligations hereunder. In exercising any rights hereunder or taking any actions provided for herein, METLIFE may act through its employees, agents or independent contractors as authorized by METLIFE. The captions and headings of the sections of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

13 **WAIVER OF STATUTE OF LIMITATIONS** Lessee hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Master Lease or any other obligation secured by this Instrument.

14 **WAIVER OF MARSHALLING** Notwithstanding the existence of any other security interests in the Property held by METLIFE or by any other party, METLIFE shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. METLIFE 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. Lessee, 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.

15 **HAZARDOUS WASTE** Lessee has received no notification of any kind suggesting that the Property or any adjacent property is or may be contaminated with any hazardous waste or materials or is or may be required to be cleaned up in accordance with any applicable law or regulation, and Lessee further represents and warrants that, except as previously disclosed to METLIFE in writing, to the best of its knowledge as of the date hereof after due and diligent inquiry, there are no hazardous waste or materials located in, on or under the Property or any adjacent property, or incorporated in any Improvements, nor has the Property or any adjacent property ever been used as a landfill or a waste disposal site, or a manufacturing, handling, storage, distribution or disposal facility for hazardous waste or materials. As used herein, the term "hazardous waste or materials" includes any substance or material defined in or

designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any federal, state or local statute, regulation or ordinance now or hereafter in effect. Lessee shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of hazardous waste or materials in, on or under the Property or any adjacent property, or incorporated in any Improvements, at Lessee's expense. In the event that METLIFE at any time has a reasonable belief that the Property is not free of all hazardous waste or materials or that Lessee has violated any applicable environmental law with respect to the Property, then immediately, upon request by METLIFE, Lessee shall obtain and furnish to METLIFE, at Lessee's sole cost and expense, an environmental audit and inspection of the Property from an expert satisfactory to METLIFE. In the event that Lessee fails to immediately obtain such audit or inspection, METLIFE or its agents may perform or obtain such audit or inspection at Lessee's sole cost and expense, METLIFE may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in the Property, and whether or not Lessee has actual knowledge of the existence of hazardous waste or materials on the Property or any adjacent property as of the date hereof, Lessee shall reimburse METLIFE as provided in Section 16 below for the full amount of all costs and expenses incurred by METLIFE prior to METLIFE acquiring title to the Property through foreclosure or acceptance of a deed in lieu of foreclosure, in connection with such compliance activities. Neither this provision nor any of the other Lease Documents shall operate to put METLIFE in the position of an owner of the Property prior to any acquisition of the Property by METLIFE. The rights granted to METLIFE herein and in the other Lease Documents are granted solely for the protection of METLIFE's lien and security interest covering the Property, and do not grant to METLIFE the right to control Lessee's actions, decisions or policies regarding hazardous waste or materials.

16                    ADVANCES, COSTS AND EXPENSES    Lessee shall pay within ten (10) days after written demand from METLIFE all sums advanced by METLIFE and all costs and expenses incurred by METLIFE in taking any actions pursuant to the Lease Documents including attorneys' fees and disbursements, accountants' fees, appraisal and inspection fees and the costs for title reports and guaranties, together with interest thereon at the rate applicable under the Master Lease after an Event of Default from the date such costs were advanced or incurred. All such costs and expenses incurred by METLIFE, and advances made, shall constitute advances under this Instrument to protect the Property and shall be secured by and have the same priority as the lien of this Instrument. If Lessee fails to pay any such advances, costs and expenses and interest thereon, METLIFE may apply any undisbursed loan proceeds to pay the same, and, without foreclosing the lien of this Instrument, may at its option commence an independent action against Lessee for the recovery of the costs, expenses and/or advances, with interest, together with costs of suit, costs of title reports and guaranty of title, disbursements of counsel and reasonable attorneys' fees incurred therein or in any appeal therefrom.

17                    ASSIGNMENT OF LEASES AND RENTS    Lessee, for good and valuable consideration, the receipt of which is hereby acknowledged, to secure the indebtedness, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto METLIFE all right, title and interest of Lessee in, to and under the Leases of the Property, whether now in existence or hereafter entered into, and all guaranties, amendments, extensions and renewals of said Leases and any of them, and all rents, income and profits which

may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Property

18            **DEFAULT**    The following shall each constitute an event of default ("Event of Default")

(a)            Failure of or refusal by Lessee to pay any portion of the sums secured by this Instrument when due, and such failure or refusal shall continue for a period of ten (10) days after written notice is given to Lessee by METLIFE specifying such failure, or

(b)            Failure of Lessee within the time required by this Instrument to make any payment of the Impositions, and such failure shall continue for a period of ten (10) days after written notice is given to Lessee by METLIFE specifying such failure; or

(c)            Failure by Lessee to observe or perform any of its obligations under the Master Lease, or

(d)            The Property is transferred or any agreement to transfer any part or interest in the Property in any manner whatsoever is made or entered into without the prior written consent of METLIFE; or

(e)            If any lien or encumbrance is filed against the Property, without METLIFE's prior written consent, or

(f)            If any lease agreement covering any portion of the Property is executed by Lessee without MetLife's prior written consent, or

(g)            Filing by Lessee of a voluntary petition in bankruptcy or filing by Lessee of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the seeking, consenting to, or acquiescing by Lessee in the appointment of any trustee, receiver, custodian, conservator or liquidator for Lessee, any part of the Property, or any of the income or rents of the Property, or the making by Lessee of any general assignment for the benefit of creditors, or the inability of or failure by Lessee to pay its debts generally as they become due, or the insolvency on a balance sheet basis or business failure of Lessee, or the making or suffering of a preference within the meaning of federal bankruptcy law or the making of a fraudulent transfer under applicable federal or state law, or concealment by Lessee of any of its property in fraud of creditors, or the imposition of a lien upon any of the property of Lessee which is not discharged in the manner required by Section 2 of this Instrument, or the giving of notice by Lessee to any governmental body of insolvency or suspension of operations; or

(h)            Filing of a petition against Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debts, or the appointment of any trustee, receiver, custodian, conservator or liquidator of Lessee, of any part of the Property or of any of the income or rents of the Property, unless such petition shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition, or



(i) The institution of any proceeding for the dissolution or termination of Lessee voluntarily, involuntarily, or by operation of law, or

(j) Any warranty, representation or statement furnished to METLIFE by or on behalf of Lessee under the Master Lease, this Instrument, any of the other Lease Documents or the Certificate and Indemnity Agreement Regarding Hazardous Substances, shall prove to have been false or misleading in any material respect, or

(k) Failure of Lessee to observe or perform any other obligation under this Instrument, any other Lease Document or the Certificate and Indemnity Regarding Hazardous Substances when such observance or performance is due, and such failure shall continue beyond the applicable cure period set forth in such Lease Document, or if the default cannot be cured within such applicable cure period, Lessee fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions. No notice of default and no opportunity to cure shall be required if during the prior twelve (12) months METLIFE has already sent a notice to Lessee concerning default in performance of the same obligation, or

(l) The occurrence of any default under any of the documents evidencing or securing any other indebtedness of Lessee or any of the guarantors of the Indebtedness which is now or hereafter owed to METLIFE

19 RIGHTS AND REMEDIES ON DEFAULT

Upon the occurrence of any Event of Default and at any time thereafter, METLIFE may exercise any one or more of the following rights and remedies

(a) METLIFE may declare the entire Indebtedness, including the then unpaid principal balance under the Master Lease, the accrued but unpaid interest thereon, court costs and reasonable attorney's fees hereunder immediately due and payable, without notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Lessee), whereupon the same shall become immediately due and payable. Additionally, METLIFE shall not be required to make any further advances under the Master Lease or other Lease Documents upon the occurrence of an Event of Default or an event which, with the giving of notice or passing of time, would constitute an Event of Default

(b) METLIFE may enter upon the Property and take exclusive possession thereof and of all books, records and accounts relating thereto without notice and without being guilty of trespass, and hold, lease, manage, operate or otherwise use or permit the use of the Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as METLIFE may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as METLIFE shall deem necessary or desirable), and apply all rents and other amounts collected by METLIFE in connection therewith in accordance with the provisions of subsection (h) of this Section 26. Lessee hereby irrevocably appoints METLIFE as the agent and attorney-in-fact of Lessee, with full power of substitution, and in the name of Lessee, if METLIFE elects to do so, to (i) endorse the

name of Lessee on any checks or drafts representing proceeds of the insurance policies, or other checks or instruments payable to Lessee with respect to the Property, (ii) prosecute or defend any action or proceeding incident to the Property, and (iii) take any action with respect to the Property that METLIFE may at any time and from time to time deem necessary or appropriate. METLIFE shall have no obligation to undertake any of the foregoing actions, and if METLIFE should do so, it shall have no liability to Lessee for the sufficiency or adequacy of any such actions taken by METLIFE.

(c) METLIFE, with or without entry, personally or by its agents or attorneys, insofar as applicable, may: (i) sell the Property and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, to the extent permitted by and pursuant to the procedures provided by law, at one or more sales, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law, (ii) institute proceedings for the complete or partial foreclosure of this Instrument, or (iii) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Master Lease or in this Instrument, (without being required to foreclose this Instrument) or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as METLIFE shall elect.

(d) METLIFE may institute any one or more actions of mortgage foreclosure against all or any part of the Property, or take such other action at law or in equity for the enforcement of this Instrument and realization on the security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the principal debt, with interest at the rate defined in the Master Lease to the date of default, and thereafter at the post-maturity rate described in the Master Lease, together with all other sums due by Lessee in accordance with the provisions of the Loan Documents and this Instrument, all costs of suit, together with interest at the post-maturity rate described in the Master Lease on any judgment obtained by METLIFE from and after the date of any sheriff or other judicial sale until actual payment is made of the full amount due METLIFE, and reasonable attorneys' fees.

(e) (i) Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, METLIFE may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Lessee, or regard to the adequacy of the Property for the repayment of the indebtedness, for appointment of a receiver of the Property, and Lessee does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of subsection (h) of this Section 26.

(ii) METLIFE may exercise any and all other rights, remedies and recourses granted under the Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

(f) METLIFE shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including specifically those granted by the Iowa Uniform Commercial Code in effect and applicable to the Property or any portion thereof) and the

same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively or concurrently against Lessee, any guarantor of the Indebtedness or others obligated under the Master Lease, or against the Property, or against any one or more of them at the sole discretion of METLIFE, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Lessee that the exercise or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and (iv) are intended to be, and shall be, nonexclusive

(g) To the fullest extent permitted by law, Lessee hereby irrevocably and unconditionally waives and releases (i) all benefits that might accrue to Lessee by any present or future laws exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption (except as specifically provided in Section 27 hereof) or extension of time for payment, (ii) all notices of any Event of Default (except as may be specifically provided for under the terms hereof), presentment, demand, notice of intent to accelerate, notice of acceleration and any other notice of METLIFE's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, (iii) any right to appraisal or marshalling of assets or a sale in inverse order of alienation, (iv) the exemption of homestead, and (v) the administration of estates of decedents, or other matter to defeat, reduce or affect the right of METLIFE under the terms of this Instrument to sell the Property for the collection of the Indebtedness secured hereby (without any prior or different resort for collection) or the right of METLIFE, under the terms of this Instrument, to receive the payment of the Indebtedness out of the proceeds of sale of the Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted)

(h) The proceeds of any sale of, and the rents, profits and other income generated by the holding, leasing, operating or other use of the Property, shall be applied by METLIFE (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following orders of priority (i) first, to the payment of the costs and expenses of taking possession of the Property and of holding, using, leasing, maintaining, repairing, improving and selling the same, including, without limitation, (A) receiver's fees, (B) costs of advertisement, (C) reasonable attorneys' and accountants' fees, and (D) court costs, if any, (ii) second, to the payment of all amounts, other than the principal amount and accrued but unpaid interest under the Master Lease which may be due to METLIFE under the Loan Documents, including all Indebtedness, together with interest thereon as provided therein, in such order and manner as METLIFE may determine, (iii) third, to the payment of the principal amount outstanding under the Master Lease in such order and manner as METLIFE may determine and all other Indebtedness, (iv) fourth, to the payment of all accrued but unpaid interest due under the Master Lease in such order and manner as METLIFE may determine, and (v) fifth, to Lessee. Lessee, any guarantor of the Indebtedness and any other party liable on the Indebtedness shall be liable for any deficiency remaining in the Indebtedness subsequent to any sale referenced in this subsection (h), subject to the provisions of the Master Lease which limit METLIFE's recourse against Lessee

(i) METLIFE shall have the right to become the purchaser at any sale of the Property hereunder and shall have the right to be credited on the amount of its bid therefor all of the Indebtedness due and owing as of the date of such sale

(j) If METLIFE shall accelerate the Indebtedness following the occurrence of an Event of Default, any payments received by METLIFE following such acceleration, whether as

the result of voluntary payments made by Lessee or as a result of the sale of the Property at or after the foreclosure, shall be deemed voluntary prepayments under the Master Lease, and accordingly, the prepayment fee required under the Master Lease shall also be payable, subject to the terms of the Master Lease

(k) To the extent provided by applicable law, the purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made in violation of any provisions of this Instrument and may take immediate possession of the Property free from, and despite the terms of, any such grant of easement, rental, lease or other contract

20 **RELEASE** Upon payment of all sums secured by this Instrument, METLIFE shall, upon the request of Lessee, release this Instrument at Lessee's sole cost.

21 **USE OF PROPERTY** Lessee warrants that this Instrument is and will at all times constitute a commercial deed of trust, as defined under appropriate state law Lessee represents and warrants to METLIFE that the Property is not Lessee's homestead and that there are no applicable laws which exempt the Property from sale pursuant to the terms of this Instrument

22 **GOVERNING LAW, SEVERABILITY** This Instrument shall be governed by the law of the State of Iowa In the event that any provision or clause of this Instrument or the Master Lease conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Master Lease which can be given effect without the conflicting provision, and to this end the provisions of this Instrument and the Master Lease are declared to be severable

**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

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

**LESSEE:**

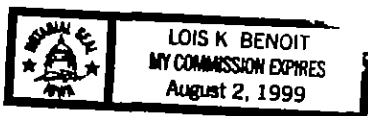
**WITNESSES**

By \_\_\_\_\_  
Print Name  
By \_\_\_\_\_  
Print Name

By Alan V. Anthony  
Alan V Anthony  
By Nancy J. Anthony  
Nancy J. Anthony

THE STATE OF Iowa §  
COUNTY OF Union §

On this 26 day of December, 1997, before me, a Notary Public in the State of Iowa, personally appeared Alan Anthony of Dancy Anthony to me personally known, ~~who being by one duly sworn or affirmed did say that person is~~ of said corporation, that no seal has been procured by said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and the said INDIVIDUALS acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily ~~executed~~.



Notary Public in the State of Iowa

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EXHIBIT A

## Description of Property

Parcel "A" in the SE Corner of the NE1/4 of Section 33, T75N, R29W of 5<sup>th</sup> P M , Madison County, Iowa, and more particularly described as follows

Beginning at the E1/4 Corner of said Section 33, Thence S 89° 47' 58" W 660 00' along the South line of said NE1/4, Thence North 660 00', Thence N 89° 47' 58" E 660 00' to the East line of said NE1/4, thence South 660 00' to the Point of Beginning

This Exhibit "B" is attached to that certain Commercial Mortgage, Security Agreement, and assignment of Leases and Rents between Alan V Anthony and Nancy J Anthony, Lessee and MetLife Capital, Limited Partnership, MetLife

**EXHIBIT "B" – PERMITTED EXCEPTIONS**

- 1 Taxes and assessments not yet due or payable and special assessments not yet certified to the County Treasurer's Office
- 2 EASEMENT (for road purposes) from Phillip G Corkrean and Barbara V Corkrean to Madison County, Iowa, dated July 24, 1985 and filed December 16, 1985 in Deed Record Book 119 at Page 548 in the records of Madison County, Iowa
- 3 EASEMENT (for road purposes) from Phillip Corkrean and Barbara V Corkrean to Madison County, Iowa, dated June 20, 1986 and filed July 3, 1986 in Deed Record Book 119 at Page 710 in the records of Madison County, Iowa
- 4 NOTICE, filed April 21, 1981 in Miscellaneous Record Book 33 at Page 488 in the records of Madison County, Iowa, giving notice that certain real estate in Madison County may be subject to the provisions of Chapter 467 A7(16), 1981 Code  
  
NOTICE, filed August 14, 1981 in Miscellaneous Record Book 33 at Page 665 in the records of Madison County, Iowa, stating that the Madison County Soil Conservation District does now require all past and future agreements covenanted under said Chapter to be recorded in the recorder's office  
  
NOTICE, filed August 5, 1992 in Miscellaneous Record book 41 at Page 68 in the records of Madison County, Iowa, stating that the Madison Soil and Water Conservation District has adopted a soil and water resource conservation plan which was approved by the State Soil Conservation Committee
- 5 Easement from Alan V Anthony and Nancy J Anthony, husband and wife to Home Federal Savings Bank, dated August 20, 1997 and filed August 25, 1997 in Deed Record Book 137 at Page 853 in the records of Madison County, Iowa