



MISC 2007067236

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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
6/14/2007 12:50:42.22



2007067236

ASSIGNMENT OF LEASES & RENTS

Engler Properties, L.L.C. ("ASSIGNOR"), for valuable consideration, receipt and sufficiency of which are hereby acknowledged, as security for the prompt payment of any obligations which may, from time to time be due to First National Bank of Omaha ("ASSIGNEE"), including without limitation that certain promissory note in the original principal amount of \$2,167,500 dated June 12, 2007, (which together with its renewals, modifications, substitutions and extensions is herein called the "NOTE") does hereby assign and pledge unto ASSIGNEE, a national banking association established at One First National Center, Stop Code 1030, 1620 Dodge Street, Omaha, NE 68197, all of ASSIGNOR's right, title and interest in and to the following:

1. All structures and improvements located upon the real property located at:

A TRACT OF LAND LOCATED IN BLOCK 1, OMAHA INDUSTRIAL FOUNDATION DISTRICT NO. 3, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, THE BOUNDARIES OF WHICH ARE DESCRIBED AS FOLLOWS:

COMMENCING WITH THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF "L" STREET WITH THE WESTERLY RIGHT-OF-WAY LINE OF 136TH STREET; THENCE N 1 DEGREE 03' 58" E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 350.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE N 1 DEGREE 03; 58: E FOR A DISTANCE OF 170.54 FEET TO A POINT OF CURVATURE; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE 351.18 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE LEFT WHICH IS TANGENT TO THE LAST DESCRIBED COURSE AND WHICH HAS A RADIUS OF 447.46 FEET AND A CHORD THE LENGTH AND BEARING OF WHICH ARE 342.24 FEET AND N 21 DEGREE 24' 51" W RESPECTIVELY, TO A POINT OF TANGENCY; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE N 43 DEGREES 53' 40" W, ON A LINE TANGENT TO THE LAST DESCRIBED CURVE, 175.68 FEET TO A POINT; THENCE S 46 DEGREES 06' 20" W FOR A DISTANCE OF 584.45 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE S 40 DEGREES 50' 02" E, ALONG SAID RAILROAD RIGHT-OF-WAY, 466.45 FEET TO A POINT; THENCE N 49 DEGREES 09' 58" E FOR A DISTANCE OF 223.24 FEET TO A POINT; THENCE S 88 DEGREES 56' 02" E FOR A DISTANCE OF 190.89 FEET TO THE POINT OF BEGINNING

The aforementioned property shall be referenced as the REAL PROPERTY through the remainder of the document.

2. All rights of ASSIGNOR as lessor under leases ("LEASES") of the REAL PROPERTY.

It is the intention of ASSIGNOR that ASSIGNEE hold a security interest in the structures and improvements located upon the REAL PROPERTY and enjoy all of the rights of the lessor under any LEASE as the result of this Assignment. As part of the

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consideration for the indebtedness evidenced by the NOTE, ASSIGNOR hereby absolutely and unconditionally assigns and transfers to ASSIGNEE all the rents and revenues of the REAL 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 REAL PROPERTY, regardless of to whom the rents and revenues of the REAL PROPERTY are payable. ASSIGNOR hereby authorizes ASSIGNEE or ASSIGNEE's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the REAL PROPERTY to pay such rents to ASSIGNEE or ASSIGNEE's agents; provided, however, that prior to written notice ("NOTICE") given by ASSIGNEE to ASSIGNOR of the breach by ASSIGNOR of any obligation due to ASSIGNEE, the default of any requirement contained in the NOTE, or the failure of the owner of the REAL PROPERTY to promptly pay or perform any obligation such owner has owing to ASSIGNOR, ASSIGNOR shall collect and receive all rents and revenues of the REAL PROPERTY as trustee for the benefit of ASSIGNOR and ASSIGNEE, to apply the rents and revenues so collected to the sums secured by this instrument with the balance, so long as no NOTICE has been delivered, to the account of ASSIGNOR, it being intended by ASSIGNOR and ASSIGNEE that this assignment of rents constitutes an absolute assignment and not merely an assignment for security. Upon delivery of the NOTICE, and without the necessity of ASSIGNEE entering upon and taking and maintaining full control of the REAL PROPERTY in person, by agent or by a court-appointed receiver, ASSIGNEE shall immediately be entitled to possession of all rents and revenues of the REAL PROPERTY as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by ASSIGNOR as trustee for the benefit of ASSIGNEE.

ASSIGNOR hereby covenants that ASSIGNOR has not executed any prior assignment of said rents, that ASSIGNOR has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent ASSIGNEE from exercising its rights under this instrument, and that at the time of execution of this instrument there has been no anticipation or prepayment of any of the rents of the REAL PROPERTY for more than two months prior to the due dates of such rents. ASSIGNOR covenants that ASSIGNOR will not hereafter collect or accept payment of any rents of the REAL PROPERTY more than two months prior to the due dates of such rents. ASSIGNOR further covenants that ASSIGNOR will execute and deliver to ASSIGNEE such further assignments of rents and revenues of the REAL PROPERTY as ASSIGNEE may from time to time request.

Upon ASSIGNOR's breach of any covenant contained in this instrument or upon any default of the NOTE, or upon any breach of any obligation of ASSIGNOR due to ASSIGNEE, ASSIGNEE may in person, by agent or by a court-appointed receiver, regardless of the adequacy of ASSIGNEE's security, enter upon and take and maintain full control of the REAL PROPERTY in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the REAL PROPERTY, the making of repairs to the REAL PROPERTY and the execution or termination of contracts providing for the management or maintenance of the REAL PROPERTY, all on such terms as are deemed best to protect the security of this instrument. In the event ASSIGNEE elects to seek the appointment of a receiver for the REAL PROPERTY upon breach of this instrument, or upon default of the NOTE, ASSIGNOR hereby expressly consents to the appointment of such receiver. ASSIGNEE or the receiver shall be entitled to receive a reasonable fee for so managing the REAL PROPERTY.

All rents and revenues collected subsequent to delivery to ASSIGNOR of the NOTICE shall be applied first to costs, if any, of taking control of and managing the REAL PROPERTY and collecting the rents, including, but not limited to attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the REAL PROPERTY, premiums on insurance policies, taxes, assessments and other charges on the REAL PROPERTY, and the costs of discharging any obligation or liability of ASSIGNOR as lessor or landlord of the REAL PROPERTY, and then to the sums due on the NOTE. ASSIGNEE or the receiver shall have access to the books and records used in the operation and maintenance of the REAL PROPERTY and shall be liable to account only for those rents

