



MISC 2007000815



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Des Moines, IA 50309

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
1/3/2007 10:18:34.43



2007000815

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made as of the 22nd day of December, 2006, by Pharmacy Properties, LLC a limited liability company organized under the laws of the State of Nebraska with an office located at 605 East Francis Street, North Platte, Nebraska (the "Assignor") in favor of **WELLS FARGO FINANCIAL LEASING, INC.**, a corporation organized under the laws of the State of Iowa with an office located at 800 Walnut St., Des Moines, IA 50309 ("Assignee").

WITNESSETH:

FOR VALUE RECEIVED, Assignor does hereby grant, sell, transfer, set over, deliver, and assign unto Assignee all leases, written or oral, and all agreements for use or occupancy of any portion of that certain real property situated in the City of Omaha, County of Douglas and State of Nebraska, more particularly described on Exhibit A attached hereto and made a part hereof, together with the buildings and improvements now or hereafter located thereon (all of the foregoing hereinafter collectively referred to as the "Premises"),

TOGETHER with any and all extensions and renewals thereof and any and all further leases, subleases, lettings or agreements (including subleases thereof and tenancies following attornment) upon or covering use or occupancy of all or any part of the Premises (all such leases, agreements, subleases and tenancies heretofore mentioned are hereinafter collectively referred to as the "Leases"),

TOGETHER with any and all guarantees of the lessee's performance under any of the Leases,

TOGETHER with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which Assignor may now or shall hereafter (including the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Premises or any part thereof, including but not by way of limitation: security deposits, minimum rents, additional rents, parking rents, deficiency rents and liquidated damages following default, the premium payable by any lessee upon the exercise of a cancellation privilege originally provided in any Lease, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises together with any and all rights and claims of any kind which Assignor may have

Return TO:
Wells Fargo Financial Leasing, Inc
ATTN: Stephanie R. Goods
800 Walnut Street
Des Moines, Iowa 50309

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against any lessee under the Leases or any subtenants or occupants of the Premises, and any award hereafter granted Assignor in any court proceeding involving any of the lessees in any bankruptcy, insolvency, or reorganization proceedings in any state or federal court, and any and all payments made by lessees in lieu of rent (all such moneys, rights and claims in this paragraph described being hereinafter called "Rents"),

TOGETHER with all the right, power, and privilege of Assignor to cancel, terminate, or accept the surrender of any Lease, to accept prepayment of more than one monthly installment of Rent thereunder, and to amend, modify, or abridge any of the terms, covenants, or conditions of any of the Leases,

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING the payment of the indebtedness evidenced by a certain Commercial Building Lease dated of the even date herewith in the amount of Eight Hundred Seventy Thousand Four Hundred Twelve and 51/100 Dollars. (\$870,412.51 Obligation") made by Assignor and payable to the order of Assignee, including any extensions and renewals thereof, any amendments or modifications thereof, and any note and/or lease supplemental thereto, as well as the payment, observance, performance and discharge of all obligations, covenants, conditions, and warranties contained in that certain mortgage and security agreement (the "Mortgage"), dated the even date herewith, granted by Assignor to Assignee, and filed for record in the Office of the Recorder of Douglas County, State of Nebraska and encumbering the Premises, and in any extensions, supplements, modifications, amendments, and consolidations thereof, constituting a lien on the Premises. The Obligation, the Mortgage, this Assignment and any other related documents are hereinafter collectively referred to as the "Documents."

TO PROTECT the security of this Assignment, it is covenanted and agreed as follows, and this Assignment is delivered and accepted upon the following terms and conditions:

1. **Warranties of Assignor.** Assignor represents and warrants that Assignor is the owner in fee simple of the Premises, and that Assignor has good title to the Leases and Rents hereby assigned and good right to assign the same, and that no other person, firm or corporation has any right, title or interest in the Leases and Rents; that Assignor has duly and punctually performed in all material respects all and singular the terms, covenants, conditions and warranties of the existing Leases, if any, on Assignor's part to be kept, observed and performed; that Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Rents, from the Premises, whether now due or hereafter to become due; and that any of the Rents due and issuing from the Premises or from any part thereof for any period subsequent to one month from the date hereof have not been collected and that payment of any of the same has not otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised.

2. **Priority of Mortgage.** All Leases now existing or hereafter entered into for any portion or portions of the Premises shall be subordinate to the lien of the Mortgage.

3. **Performance of Obligations.** Assignor covenants and agrees to observe, perform and discharge, duly and punctually, all and singular the obligations, terms, covenants, conditions and warranties of the Obligation and Mortgage, of the existing Leases and of all future Leases affecting the Premises, on the part of Assignor to be kept, observed and performed; to use all reasonable efforts to enforce or secure the performance of each and every obligation, term, covenant, condition and agreement in the Leases by any lessee to be performed; and to appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of Assignor and any lessee thereunder.

4. **Prohibitions.** Assignor covenants and agrees that without the prior written consent of assignee, (a) Assignor will not receive or collect Rents from any present or future lessee of the Premises or any part thereof for a period of more than one month in advance, (b) the Assignor will not pledge, transfer, mortgage or otherwise encumber or assign future payments of Rents, (c) Assignor will not waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any lessee under any Leases of and from any obligations, covenants, conditions and agreements by said lessee to be kept, observed and performed, including the obligation to pay the Rents thereunder, in the manner and at the place and time specified therein, (d) Assignor will not cancel, terminate or consent to any surrender of any Lease, or modify, or in any way alter the terms thereof, and (e) Assignor will not enter into any new Leases except on a form previously approved by Assignee.

5. **License to Collect Rents.** For so long as there shall exist no Event of Default (as defined in the Obligation) by Assignor in the payment of any indebtedness secured hereby or in the observance and performance of any other obligation, term, covenant or condition or warranty herein or in the Obligation and Mortgage or in the Leases contained, Assignor shall have the right under a license granted hereby (but limited as provided in the following paragraph) to collect upon, but not prior to accrual as aforesaid, all of the Rents, arising from or out of the Leases or any renewals or extensions thereof, or from or out of the Premises or any part thereof, and Assignor shall receive such Rents, and shall hold same, as well as the right and license to receive same, on behalf of the Assignee to be applied, and Assignor hereby covenants to so apply same, as they become due and payable first to the payment of taxes and assessments upon the Premises before penalty or interest is due thereon, secondly to the cost of such insurance and of such maintenance and repairs as are required by the terms of the Mortgage, and then to the payment of interest, additional interest, and principal then due and payable on the Obligation and Mortgage, before using any part of the same for any other purposes.

6. **Collection of Rents and Management of Premises in Event of Default.** (a) Upon or at any time after (i) the occurrence of an Event of Default, as defined in the Obligation or the Mortgage of even date herewith by and between Assignor and Assignee, (ii) default in the observance or performance of any obligation, term, covenant, condition or warranty of Assignor as landlord in the Leases contained which default Assignor as landlord has not cured within 30 days after written notice from Assignee to Assignor of such default, or (iii) default by Assignor in the observance or performance of any obligation, term, covenant, condition, or warranty herein contained (each of such events being an Event of Default hereunder), Assignee, at its option, shall have the complete right, power and authority hereunder then or thereafter to

exercise and enforce any or all of the following rights and remedies: (A) to terminate the license granted to Assignor to collect the Rents, and then and thereafter, without taking possession, in Assignee's own name, to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and proper costs and expenses of collection, as determined by Assignee, including reasonable attorneys' fees, to apply the net proceeds thereof, together with any funds of Assignor deposited with Assignee, upon any indebtedness secured hereby and in such order as Assignee may determine; (B) to declare all sums secured hereby immediately due and payable and, at its option, exercise all of the rights and remedies contained in the Obligation and Mortgage; and (C) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court and irrespective of the Assignor's possession, then or thereafter, to enter upon, take possession of, manage and operate the Premises or any part thereof, make, modify, enforce, cancel or accept surrender of any Lease now in effect or hereafter in effect on the Premises or any part thereof; remove and evict any lessee; increase or reduce Rents; decorate, clean and make repairs; and otherwise do any act or incur any costs or expense as Assignee shall deem proper to protect the security hereof, as fully and to the same extent as Assignor could do if in possession, and in such event to apply the Rents so collected to the operation and management of the Premises, but in such order as Assignee shall deem proper, and including payment of reasonable management, brokerage and attorneys' fees, payment of the indebtedness under the Obligation and Mortgage, and maintenance, without interest thereon, of a reserve for replacement;

(b) provided, however, that the acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Premises by Assignee, be deemed or construed to constitute Assignee a mortgagee in possession nor thereafter or at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases or to the Premises, or to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any lessee thereunder and not assigned and delivered to Assignee, nor shall Assignee be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Premises; and

(c) provided further that the collection of Rents and application as aforesaid and/or the entry upon and taking possession of the Premises shall not cure or waive any default or waive, modify or affect any notice of default under the Obligation and Mortgage to invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect, notwithstanding that the collection and application aforesaid of such Rents may have cured for the time the original default. If Assignee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

7. **Indemnification.** Assignor hereby agrees and promises to indemnify, defend and hold Assignee harmless of and from any and all liability, loss, damage or expense which it may or might incur under or by reason of this Assignment, or for any lawful action taken by Assignee hereunder, or by reason or in defense of any and all claims and demands whatsoever which may be asserted against Assignee arising out of the Leases, including, but without limitation thereto, any claim by any lessee of credit for Rent paid to and received by Assignor, but not delivered to Assignee, for any period under any Lease other than on account of the gross negligence or willful misconduct of Assignee; and should Assignee incur any such liability, loss, damage or expense, the amount thereof (including reasonable attorneys' fees) with interest thereon at the Default Rate of Interest set forth in the Obligation shall be payable by Assignor immediately without demand, and shall be secured hereby and by the Mortgage.

8. **No Waiver.** Assignee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by it to the satisfaction of such indebtedness without prejudice to any of its rights hereunder. It is further agreed that nothing herein contained and no act done or omitted by Assignee pursuant to the powers and rights granted it herein shall be deemed to be a waiver by Assignee of its rights and remedies under any of the Documents, but this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect said indebtedness and to enforce any other security therefor owned by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

9. **Captions.** Any paragraph titles or captions contained in this Assignment are for convenience only and shall not be deemed to define, limit or otherwise modify the scope or intent of this Assignment.

10. **Variation in Pronouns.** All the terms and words used in this Assignment, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Agreement or any paragraph or clause herein may require, the same as if such words had been fully and properly written in the number and gender.

11. **Termination of Assignment.** Upon payment in full of all of the indebtedness secured hereby and of all sums payable hereunder, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer of Assignee showing any part of said indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person, firm or corporation, may and is hereby authorized to rely thereon. A demand on any lessee made by Assignee for payment of Rents by reason of any default claimed by Assignee shall be sufficient warrant to said lessee to make future payments of Rents to Assignee without the necessity for further consent by Assignor.

12. **Notices.** Any notice or demand which is made hereunder or under the Obligation or any other document, shall be delivered by certified mail, return receipt requested, or hand-delivered, at the address set forth below or such other address which either party may give by notice in writing which is actually received by the other notice in the manner provided in this section and such delivery shall be deemed complete upon the second business day after mailing, if mailed, and upon delivery, if hand-delivered:

Assignor: Pharmacy Properties, LLC
605 East Francis Street
North Platte, NE 69101

Assignee: Wells Fargo Financial Leasing, Inc.
800 Walnut St.
Des Moines, IA 50309
Attention: Stephanie R. Goods

Any notice or demand delivered to the person or entity named above to accept notices and demands for Assignor shall constitute a notice or demand duly delivered to Assignor.

13. **Successors and Assigns.** This Assignment and all provisions hereof, shall be binding upon Assignor and all persons claiming under or through Assignor, and shall inure to the benefit of Assignee, its successors and assigns.

14. **Partial Invalidity.** Assignor and Assignee intend and believe that each provision in this Assignment comports with all applicable local, state, and federal ordinances, statutes, laws, administrative and judicial decisions, and public policies. However, if any portion, provision or provisions of this Assignment are found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision or public policy, and if such court should declare such portion, provision or provisions of this Assignment to be illegal, invalid, unlawful, void or unenforceable as written, then, it is the intent both of Assignor and Assignee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein or therein, and that the rights, duties, privileges, obligations and interests of Assignor and Assignee under the remainder of this Assignment shall continue in full force and effect.

15. **Exculpation of Assignee.** Nothing contained herein shall be construed as constituting the Assignee a "mortgagee-in-possession" in the absence of the taking of actual possession of the Premises by Assignee pursuant to the terms hereof. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor, except liability arising from Assignee's gross negligence or willful misconduct.

16. **Applicable Law.** This Assignment shall be construed, interpreted and governed by the laws of the State of Nebraska without giving effect to any conflict of laws principles.

17. **Amendments.** This instrument cannot be amended, waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Assignor and Assignee. Any agreement hereafter made by Assignor and Assignee relating to this Assignment shall be superior to the rights of the holder of any intervening lien or encumbrance.

18. **Debtor-Creditor Relationship.** Nothing contained herein shall be deemed to create or construe to create a partnership, joint venture or any relationship other than that of debtor-creditor. Assignor and Assignee expressly disclaim any intent to create a partnership or joint venture pursuant to this Assignment or any other document related hereto or thereto.

19. **Statute of Limitations.** The pleading of any statute of limitations as a defense to any obligation evidenced or secured by this Assignment is hereby waived to the full extent permitted by law.

20. **Integration.** This Assignment, together with the other Documents constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

21. **Limitation of Liability.** No claim may be made by the Assignor against the Assignee or the affiliates, directors, officers, employees, attorneys or agent of Assignee for any consequential or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Assignment or by the other Documents, or any act, omission or event occurring in connection therewith, and the Assignor hereby waives, releases and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

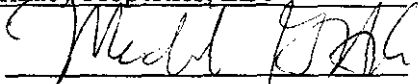
22. **WAIVER OF JURY TRIAL. ASSIGNOR AND ASSIGNEE, TO THE EXTENT PERMITTED BY LAW, WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF, IN CONNECTION WITH, RELATED TO, INCIDENTAL TO, OR IN CONNECTION WITH THIS INSTRUMENT OR ANY OBLIGATION OR OTHER AGREEMENT, INSTRUMENT OR DOCUMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH OR THE TRANSACTIONS RELATED THERETO. THIS WAIVER SHALL NOT IN ANY WAY AFFECT, WAIVE, LIMIT, AMEND OR MODIFY ASSIGNEE'S ABILITY TO PURSUE REMEDIES PURSUANT TO ANY CONFESSION OF JUDGMENT OR COGNOVIT PROVISIONS CONTAINED IN THIS INSTRUMENT, ANY LEASE, ANY NOTE OR ANY OTHER GUARANTY OF PAYMENT, AGREEMENT, INSTRUMENT OR DOCUMENT RELATED THERETO. THE ASSIGNOR AND ASSIGNEE EACH ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.**

23. **Construction.** Assignor and Assignee acknowledge that they have reviewed this Assignment, and that they have had an opportunity to have this Assignment reviewed by their legal counsel, and that any rule of construction or interpretation to the effect that any ambiguities or questions of intent are to be resolved against the drafting party shall not be employed in the construction or interpretation of this Assignment or any exhibits or amendments hereto, and that no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any of the provisions of this Assignment..

IN WITNESS WHEREOF, the Assignor has executed this instrument on the day and year first above written.

ASSIGNOR:

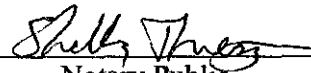
Pharmacy Properties, LLC

By: 
(Authorized Signature)

As: Michael G. Hamik, Lessee

STATE OF NEBRASKA
COUNTY OF HALL, ss:

On DEC 22, 2006, before me personally came MICHAEL HAMIK, to me known to be the individual who executed the foregoing Assignment of Leases and Rents, and who, being by me duly sworn, did depose and say that he/she is a MEMBER of PHARMACY PROPERTIES LLC, that he/she has authority to sign the same; and he/she acknowledged to me that he/she executed the same as the act and deed of said CORPORATION.


Notary Public

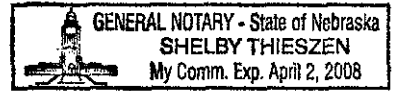


EXHIBIT A

Legal Description of Premises

Parcel 1:

The South 130.00 feet of the North 180.00 feet of the West 237.51 feet of Lot 8, in Mockingbird Hills West, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Parcel 2:

The East 100.00 feet of the West 337.51 feet of the North 180.00 feet AND the North 50.00 feet of the West 237.51 feet, all in Lot 8, Mockingbird Hills West, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.