



BK 0872 PG 728



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ASSIGNMENT OF LEASE

THIS ASSIGNMENT, made this 29th day of December, 1988 by 24TH & DODGE LIMITED PARTNERSHIP, a Nebraska limited partnership ("Assignor"), whose post office address is Twin Tower Office Centre, 3001 Douglas Avenue, Omaha, NE 68131 to NORTHWESTERN NATIONAL LIFE INSURANCE COMPANY, a Minnesota corporation ("Assignee"), whose post office address is 20 Washington Avenue South, Minneapolis, Minnesota 55401.

PRELIMINARY STATEMENT OF FACTS:

A. The Assignee is loaning to the Assignor a loan in the amount of Twelve Million Five Hundred Thousand and no/100 (\$12,500,000.00) Dollars (herein the "Loan").

B. To evidence the Loan the Assignor is executing and delivering to the Assignee its Promissory Note of even date herewith in the amount of the Loan (herein the "Note").

C. As security for the repayment of the Note, the Assignor is executing and delivering to the Assignee its Deed of Trust and Security Agreement and Fixture Filing of even date herewith (herein the "Deed of Trust") mortgaging that certain real property more fully described in Exhibit "A" attached hereto (herein the "Premises").

D. As further security for the repayment of the Note, the Assignor is executing and delivering to the Assignee this Assignment.

NOW THEREFORE FOR VALUE RECEIVED, Assignor hereby grants, transfers and assigns to Assignee all of the right, title and interest of Assignor in and to that certain lease dated August 12, 1988, between Enron Corp., as landlord, and Northern National Gas Company, as tenant ("Tenant"), the landlord's interest assigned to Assignor (said lease hereinafter being referred to as the "Lease"), which Lease demises the Premises, together with any and all extensions and renewals thereof, together with the following:

- i) the immediate and continuing right to receive and collect the rents, income, profits and issues arising out of, payable from or collected from the Premises including all monies owed the Assignor as landlord under a Lease for services, materials, leasehold improvements or otherwise furnished or installed pursuant to any Lease (collectively the "Rental Income");
- ii) all leases and agreements for the leasing, use or occupancy of the Premises now, heretofore or hereafter entered into, and all renewals and extensions thereof ("Lease" or "Leases" as the case may be);
- iii) all guarantees of the obligations of any tenant under a Lease ("Guarantees");
- iv) all payments derived therefrom including but not limited to claims for the recovery of damages done to the Premises or for the abatement of any nuisance existing thereon, claims for damages resulting from default under said Lease whether resulting from acts of insolvency or acts of bankruptcy or otherwise, and lump sum payments for the cancellation of said Lease or the waiver of any obligation or term thereof prior to the expiration date ("Payments");
- v) all rights and remedies the Assignor may have against a tenant under a Lease ("Remedies");

Northwestern Bell Telephone Company d/b/a U S West Communications

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 GEORGE J. GULLI, JR.  
 REGISTER OF DEEDS  
 DOUGLAS COUNTY, NEBRASKA

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- vi) all proceeds payable by reason of the exercise by a tenant of any option to purchase the Premises or any first refusal rights of a tenant contained in a Lease ("Option Proceeds");
- vii) all rights in and to any proceeds of insurance payable to Assignor and damages or awards resulting from an authority exercising the rights of eminent domain with respect to the Premises ("Awards");
- viii) any award or damages payable to the Assignor pursuant to any bankruptcy, insolvency or reorganization proceeding affecting any tenant ("Bankruptcy Payments");
- ix) any payments made to Assignor in lieu of rent ("Payments in Lieu"); and
- x) all security deposits paid by any tenant under a Lease ("Security Deposits");

all the foregoing being collectively referred to herein as the "Rents".

This Assignment is given for the purpose of securing the following (herein collectively referred to as the "Indebtedness Secured Hereby"):

ONE. Payment of the indebtedness evidenced by and performance of the terms and conditions of the Note;

TWO. Payment of all other sums with interest thereon becoming due and payable to the Assignee herein and in said Note and Deed of Trust contained;

THREE. Performance and discharge of each and every obligation, covenant and agreement herein and in said Deed of Trust contained.

**AND IN FURTHERANCE OF THIS ASSIGNMENT ASSIGNOR  
REPRESENTS, WARRANTS, COVENANTS AND AGREES:**

**ARTICLE I  
PERFORMANCE OF LEASES**

**1.1 PERFORMANCE OF LEASES.** The Assignor shall:

- a. Faithfully abide by, perform and discharge each and every obligation, covenant and agreement under the Lease to be performed by the landlord thereunder;
- b. Enforce or secure the performance of each and every material obligation, covenant, condition and agreement of the Lease by the Tenant thereunder to be performed;
- c. Not borrow against, pledge or further assign any rentals due under the Lease;
- d. Not permit the prepayment of any Rents for more than thirty (30) days in advance nor for more than the next accruing installment of Rents, nor anticipate, discount, compromise, forgive or waive any Rents;
- e. Not waive, excuse, condone or in any manner release or discharge the Tenant of or from the obligations, covenants, conditions and agreements by said Tenant to be performed under the Lease;
- f. Not permit the Tenant to assign or sublet its interest in the Lease;

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- g. Not terminate the Lease or accept a surrender thereof or a discharge of the Tenant unless required to do so by the terms of its Lease or unless the Assignor and Tenant shall have executed a new lease effective upon such termination for the same term of years at a rental not less than as provided in the terminated Lease and on terms no less favorable to the landlord than as in the terminated Lease;
- h. Not consent to a subordination of the interest of the Tenant to any party other than Assignee and then only if specifically consented to by the Assignee; and
- i. Not amend or modify the Lease or alter the obligations of the parties thereunder, excepting in the ordinary and prudent course of business with due regard for the security afforded the Assignee by the Lease and which does not in any way reduce the rent or diminish the term thereof or the obligations of the Tenant thereunder or increase the term of the tenancy or impose additional obligations or burdens on the landlord.

ARTICLE II  
PROTECTION OF SECURITY

2.1 PROTECTION OF SECURITY. The Assignee shall have the right at Assignor's sole cost and expense to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the landlord thereunder, and Assignor agrees to pay all costs and expenses of Assignee, including attorney's fees in a reasonable sum, in any such action or proceeding in which the Assignee in its sole discretion may appear.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES

- 3.1 REPRESENTATIONS AND WARRANTIES. Assignor represents and warrants:
- a. that it is now the absolute owner of the Lease and Rents with full right and title to assign the same;
  - b. that there are no outstanding assignments or pledges of the Lease or Rents;
  - c. that there are no existing defaults under the provisions of the Lease on the part of any party to the Lease;
  - d. that all obligations on the part of the landlord under the Lease have been fully complied with;
  - e. that no Rents have been collected for more than thirty (30) days in advance of their due date or waived, anticipated, discounted, compromised or released, except as disclosed to Assignee;
  - f. that to Assignor's knowledge no tenant has any defenses, setoffs, or counterclaims against Assignor;
  - g. Assignor has not executed any instrument that would prevent Assignee from enjoying the benefits of this Assignment; and
  - h. that no part of the Premises is used as a homestead or agricultural property.

ARTICLE IV  
PRESENT ASSIGNMENT

4.1 PRESENT ASSIGNMENT. This Assignment shall constitute a perfected, absolute and present assignment, provided the Assignor shall have the right to collect, but not prior to accrual, all of the Rents, and to retain, use and enjoy the same unless and until an Event of Default shall occur hereunder. The right of Assignor to collect the Rents shall constitute a

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revocable license in favor of Assignor revocable by Assignee in accordance with this Agreement.

ARTICLE V  
EVENTS OF DEFAULT

5.1 EVENT OF DEFAULT. It shall be an Event of Default under this Assignment upon the happening of any of the following:

- a. failure to comply with any of the provisions of the Note including without limitation the failure to make any payment on the Note whether principal, interest, premium or late charge, when and as the same becomes due (whether at the stated maturity or at a date fixed for any installment payment or any accelerated payment date or otherwise); or
- b. failure to pay, perform or comply with when due any other Indebtedness Secured Hereby; or
- c. failure to comply with or perform any of the terms, conditions or covenants of this Assignment and such failure shall continue for a period of thirty (30) days after notice thereof to Assignor; or
- d. the Assignor or any general partner of Assignor shall fail to pay its debts as they become due, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, or shall become "insolvent" as that term is generally defined under the Federal Bankruptcy Code, or shall in any involuntary bankruptcy case commenced against it file an answer admitting insolvency or inability to pay its debts as they become due, or shall fail to obtain a dismissal of such case within sixty (60) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or shall have a custodian, trustee or receiver appointed for, or have any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution or liquidation, and such custodian, trustee or receiver shall not be discharged, or such jurisdiction shall not be relinquished, vacated or stayed within sixty (60) days of the appointment; or
- e. an event of default shall occur under the Deed of Trust or any other instrument securing the Note and shall not have been cured within the time permitted therein to cure; or
- f. a judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien or be issued or levied against the Premises and shall not be released or fully bonded within forty-five (45) days after its entry, issue or levy; or
- g. any material representation or warranty made by Assignor herein, in the Note or in any other instrument given as security for the Note shall be false, breached or dishonored; or

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- h. the Assignor shall be dissolved, liquidated or wound up or shall fail to maintain its existence as a going concern in good standing.

ARTICLE VI  
REMEDIES

**6.1 REMEDIES.** Upon an Event of Default the Assignee may declare all Indebtedness Secured Hereby immediately due and payable, may revoke the privilege granted Assignor hereunder to collect the Rents, and may, at its option, without notice, either in person or by agent, with or without taking possession of or entering the Premises, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, collect all of the Rents payable under the Leases, enforce the payment thereof and exercise all of the rights of the Assignor under any Leases and all of the rights of the Assignee hereunder, and may enter upon, take possession of, manage and operate said Premises, or any part thereof; may cancel, enforce or modify the Leases, and fix or modify Rents, and do any acts which the Assignee deems proper to protect the security hereof with or without taking possession of said Premises, and may apply the same to the costs and expenses of operation, management and collection, including reasonable attorney's fees, to the payment of the fees and expenses of any agent, or receiver so acting, to the payment of taxes, assessments, insurance premiums and expenditures for the management and upkeep of the Premises, to the performance of the landlord's obligation under the Leases and to any Indebtedness Secured Hereby all in such order as the Assignee may determine. The entering upon and taking possession of said Premises, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any default or waive, modify or affect notice of default under said Deed of Trust or invalidate any act done pursuant to such notice nor in any way operate to prevent the Assignee from pursuing any remedy which it now or hereafter may have under the terms or conditions of said Deed of Trust or the Note secured thereby or any other instrument securing the same.

ARTICLE VII  
GENERAL COVENANTS

**7.1 NO LIABILITY IMPOSED ON ASSIGNEE.** The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligation, duty or liability under the Leases nor shall this Assignment operate to place responsibility for the control, care, management or repair of the Premises upon the Assignee nor for the carrying out of any of the terms and conditions of said Leases; nor shall it operate to make the Assignee responsible or liable for any waste committed on the Premises, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of said Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger nor liable for laches or failure to collect any Rents.

**7.2 INDEMNIFICATION.** The Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases excepting the gross negligence or intentional wrongful acts of Assignee. Should the Assignee incur any such liability, or in the defense of any such claims or demands or a judgment be entered against Assignee, the amount thereof, including costs, expenses, and reasonable attorney's fees, shall bear interest thereon at the rate then in effect on the Note, shall be secured hereby, shall be added to the Indebtedness Secured Hereby and Assignor shall reimburse the Assignee for the same immediately upon demand, and upon the

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failure of Assignor so to do the Assignee may declare all Indebtedness Secured Hereby immediately due and payable.

7.3 TENANT TO RECOGNIZE ASSIGNEE. Each tenant under any Lease is hereby irrevocably authorized and directed to recognize the claims of Assignee or any receiver appointed without investigating the reason for any action taken or the validity or the amount of indebtedness owing to the Assignee, or the existence of any default in the Note, Deed of Trust, or Event of Default hereunder, or the application to be made by the Assignee or such receiver. Assignor hereby irrevocably directs and authorizes the tenants to pay to Assignee or such receiver all sums due under the Leases and consents and directs that said sums shall be paid to any such receiver in accordance with terms of its receivership or to Assignee without the necessity for a judicial determination that a default has occurred hereunder or under the Deed of Trust or that Assignee is entitled to exercise its rights hereunder, and to the extent such sums are paid to Assignee or such receiver, the Assignor agrees that the tenant shall have no further liability to Assignor for the same. The sole signature of the Assignee or such receiver shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of the Assignee or such receiver for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Premises. Checks for all or any part of the rentals collected under this Assignment shall upon notice from the Assignee be drawn to the exclusive order of the Assignee or such receiver.

7.4 SECURITY DEPOSITS. Upon an Event of Default Assignor shall on demand transfer to the Assignee any security deposits held by Assignor under the terms of the Lease to be held by Assignee and applied in accordance with the provisions of the Lease. Until Assignee makes such demand and the deposits are paid over to Assignee the Assignee assumes no responsibility for any such security deposit. The Assignor shall deposit the same in an account, separated from its general funds, and if such deposits are required by law to be refunded to the respective tenants with interest thereon, such account shall be an interest bearing account.

7.5 ATTORNEY IN FACT. Assignor hereby irrevocably appoints Assignee and its successors and assigns as its agent and attorney in fact, irrevocable, which appointment is coupled with an interest, to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as Assignee may deem necessary to make this Assignment and any further assignment effective.

7.6 ASSIGNMENT OF FUTURE LEASES. That until the Indebtedness Secured Hereby shall have been paid in full, Assignor will on demand of the Assignee deliver to the Assignee executed copies of any and all other and future Leases upon all or any part of the said Premises and agrees to make, execute and deliver unto Assignee upon demand and at any time or times, any and all assignments and other instruments sufficient to assign such Leases and Rents thereunder to Assignee or that the Assignee may deem to be advisable for carrying out the true purposes and intent of this Assignment. From time to time on request of the Assignee the Assignor agrees to furnish Assignee with a rent roll of the Premises disclosing current tenancies, rents payable, and such other matters as Assignee may reasonably request.

7.7 NO MORTGAGEE IN POSSESSION. Nothing herein contained and no actions taken pursuant to this Assignment shall be construed as constituting the Assignee a "Mortgagee in Possession".

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**7.8 ASSIGNEE CREDITOR OF TENANT.** Assignor agrees that Assignee, and not Assignor, shall be and be deemed to be the creditor of the Tenant in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such Tenant, (without obligation on the part of Assignee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein) with an option to Assignee to apply any money received by Assignee as such creditor in reduction of the Indebtedness Secured Hereby.

**7.9 CONTINUING RIGHTS.** The rights and powers of Assignee or any receiver hereunder shall continue and remain in full force and effect until all Indebtedness Secured Hereby, including any deficiency remaining from a trustee sale or foreclosure sale, are paid in full, and shall continue after commencement of a trustee sale, foreclosure action and after sale and until expiration of any period of redemption.

**ARTICLE VIII  
MISCELLANEOUS**

**8.1 SUCCESSORS AND ASSIGNS.** This Assignment and each and every covenant, agreement and provision hereof shall be binding upon the Assignor and its successors and assigns including without limitation each and every from time to time record owner of the Premises or any other person having an interest therein and shall inure to the benefit of the Assignee and its successors and assigns. As used herein the words "successors and assigns" shall also be deemed to mean the heirs, executors, representatives and administrators of any natural person who is a party to this Assignment.

**8.2 GOVERNING LAW.** In all respects, including, without limitation, matters of construction and performance of this Assignment and the obligations arising hereunder, this Assignment shall be governed by, and construed in accordance with, the internal laws of the State of Nebraska applicable to contracts made and performed in such state and any applicable laws of the United States of America.

**8.3 SEVERABILITY.** It is the intent of this Assignment to confer to Assignee the rights and benefits hereunder to the full extent allowable by law. The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid. Any provisions found to be unenforceable shall be severable from this Assignment.

**8.4 NOTICES.** Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and the mailing thereof by certified mail, or equivalent, to the respective party's address as set forth hereinabove or to such other place such party may subsequently by notice in writing designate as its address shall constitute service of notice hereunder.

**8.5 CAPTIONS AND HEADINGS.** The captions and headings of the various sections of this Assignment are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

**8.6 EXCULPATION.** The Assignor and its partners shall not be personally liable for the payment of the Note provided this limitation of liability shall not prejudice the right of the Beneficiary to enforce or foreclose the Deed of Trust or Other Security Instruments given for



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the payment of the Note or to exercise any of its remedies at law including affecting the sale of the Premises in accordance with the Deed of Trust or foreclosing of the Deed of Trust and in furtherance thereof naming the Assignor and its partners as a party defendant in any action or proceeding to enforce the same other than the entry of a money judgment personally enforceable against the Assignor. Notwithstanding the foregoing, the Assignor and its partners shall not be exonerated or exculpated for any loss or deficiency suffered or sustained by the Beneficiary as a result of:

- a) any fraud or false representations in connection with the submission of the loan evidenced by the Note;
- b) misapplication of any insurance or condemnation proceeds payable with respect to the Premises;
- c) collection of rents for more than one month in advance;
- d) misapplication or failure to deliver security deposits of tenants;
- e) permitting or suffering to occur any intentional or negligent waste of all or any portion of the Premises;
- f) the application or enforcement of any law, governmental standard or regulation applicable to the Assignor and/or the Premises with respect to hazardous waste or environmental impairment ("Environmental Laws") the Assignor with respect to the same.

**IN WITNESS WHEREOF**, this Assignment is executed as of the date first above written.

24TH & DODGE LIMITED PARTNERSHIP,  
a Nebraska limited partnership

By H. Michael Cutler  
H. Michael Cutler  
Managing General Partner

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STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 29th day of December, 1988, by H. Michael Cutler, the Managing General Partner of 24th & Dodge Limited Partnership, a Nebraska limited partnership, on behalf of the partnership.



*Jeanmarie Fox*  
Notary Public

THIS DOCUMENT WAS DRAFTED BY:

OPPENHEIMER WOLFF & DONNELLY  
Plaza VII, Suite 3400  
45 South Seventh Street  
Minneapolis, MN 55402

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## EXHIBIT "A"

Legal Description

Lots 4 and 5, in House's Subdivision, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska; and, the South 26 feet of the North 146 feet of Sublot 6 of Lot 2; the South 26 feet of the North 146 feet of Sublot 7 of Lots 2 and 3; the West 52.67 feet of the South 152 feet of Sublot 7 of Lots 2 and 3; Sublot 8 of Lot 2; the North 146 feet of Sublot 1 of Lot 3, EXCEPT the North 120 feet of the East 37 feet thereof; the North 152 feet of the South 168 feet of Sublot 1 of Lot 3; the North 146 feet and the South 152 feet of Sublot 4 of Lot 3; and, all of Sublots 2, 3, 5, 6, 7, 8, 9 and 10 of Lot 3, all in CAPITOL ADDITION, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.