
 BK 1352 PG 274-280  
 MISC 2000 12688  
**Nebr Doc Stamp Tax**  
 Date \_\_\_\_\_  
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 By \_\_\_\_\_

RICHARD N TAKECHI  
 REGISTER OF DEEDS  
 DOUGLAS COUNTY, NE  
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**RECEIVED**

**ASSIGNMENT OF AND SECURITY INTEREST IN LEASES AND RENTS**

THIS ASSIGNMENT OF AND SECURITY INTEREST IN LEASES AND RENTS ("Assignment") is made as of the 24th day of August, 2000 by and between the Assignor, Forselles II Partners, (herein "Borrower"), whose mailing address is: 1560 Daily Court, San Leandro, CA 94577; and the Assignee, Gateway Savings Bank, (herein "Lender"), whose mailing address is 911 N Ankeny Blvd., Ankeny, IA 50021-1039. In consideration of the advancing of credit by Lender to or for the benefit of Borrower, evidenced by a Promissory Note in the amount of \$1,190,000.00 plus interest (said Promissory Note and any and all renewals, amendments, modifications, future advances, increases and extensions thereof hereafter collectively called the "Note"), and for other good and valuable consideration, Borrower agrees as follows:

1. With respect to that certain real property legally described as follows (the "Real Property"):

**Lot 1 and the South 200 feet of the West 255.73 feet of Lot 2, Pioneer Hills, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.**

of which Borrower is the owner, Borrower does hereby absolutely and irrevocably bargain, sell, transfer, assign, convey, set over and deliver unto Lender, its successors and assigns:

- (a) the right of the immediate use and possession of said Real Property and all fixtures, equipment appliances and other items of personal property owned by Borrower now or thereafter located on said Real Property (collectively the "Personal Property") to the exclusion of Borrower and its successors, assigns and agents;
- (b) all of the present, future, and after-arising rents, income, receipts, revenue, royalties, deposits, issues, profits or any other payment or benefit derived under the Leases or any extensions, renewals or substitutions thereof, as well as all monies due or to become due Borrower under the Leases for services, materials, or installations supplied, whether or not the same were supplied under the terms of the Leases (such income, receipts, revenues, deposits, issues, profits and other monies assigned hereby being hereafter called the "Rents"), together with any and all rights and remedies which Borrower may have against any tenant under any of the leases or others in possession of the Real Property or any part thereof for the collection or recovery of the Rents or money so assigned;
- (c) all of the right, title and interest of Assignor in and to all leases, licenses, and occupancy agreements, whether oral or written, now or hereafter executed, affecting said Real Property, together with any and all extensions, renewals and/or additions, amendments or substitutions, and modifications thereof (hereafter collectively called the "Leases");
- (d) all guaranty agreements now or hereafter executed, pertaining to (b) or (c) above;
- (e) all of Borrower's right, title and interest in and to all claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Leases by any lessee thereunder or trustee of any such lessee under Section 365 of the Bankruptcy Code, including, without limitation, all rights to recover damages arising out of such breach or rejection, all rights to charges payable by such lessee or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of such lessee and all rentals and other charges outstanding under the lease as of the date of entry of such order for relief;
- (f) any award payable by reason of condemnation actions under the right of eminent domain;

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 FEE 20 FB \_\_\_\_\_  
 BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP \_\_\_\_\_  
 DEL \_\_\_\_\_ SCAN OK FV \_\_\_\_\_

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(g) any purchase proceeds receivable by reason of any tenant's exercise and any first refusal option or any option to purchase any portion of the Real Property as may be provided in the above-referenced Leases;

(h) any award made hereafter to Lender in any court proceedings involving any tenant under any of the Leases of any court, and any and all payments made by said tenant in lieu of Rents; and Borrower hereby appoints Lender -as Borrower's irrevocable attorney-in-fact to appear in any action and/or to collect any such award or payment.

2. The term "Event of Default" as used herein shall mean the occurrence of any one of the following events or conditions:

- A. Borrower shall fail to comply with any of the covenants, duties, or obligations of Borrower set forth herein; or
- B. A default shall occur under the Note, the Trust Deed, Security Agreement, or any other documents or instruments now or hereafter evidencing, securing, or relating to the Note; or
- C. Any representation, warranty, or statement of Borrower contained herein or otherwise made or furnished to by or on behalf of Borrower proves to have been false in any material respect when made or furnished.

3. Until an Event of Default shall occur, Borrower shall receive, collect, and enjoy the Rents accruing under the Leases and shall apply the same first to the payment of all sums due under the Note or any instrument securing the same, second to the payment of all taxes and assessments affecting Real or Personal Property, third to the cost of insuring, maintaining, repairing, and preserving the Real Property, and fourth to the satisfaction of all obligations of Borrower under the Leases.

4. Upon the occurrence of any Event of Default, all Rents assigned hereunder shall be paid directly to Lender and Lender may notify the tenants under the Leases or any other parties in possession of the Real or Personal Property to pay all the Rents directly to Lender at the mailing address specified for Lender above, for which this Assignment shall be sufficient notice and authority. Borrower irrevocably consents and hereby specifically authorizes and instructs that each and every one of the tenants under the Leases, upon demand and notice from Lender of Lender's default herein, shall pay the Rents to Lender without liability to any tenant for the determination of the action existence of any default claimed by Lender. If a tenant requests proof an assignment has been made to Lender, producing a copy of this Assignment for the tenant shall constitute reasonable proof of the assignment and Borrower authorizes Lender to disclose this Assignment to tenants upon request.

5. Upon the occurrence of any Event of Default, Lender may, in its own name, or at Lender's option, as attorney in fact for Borrower and in Borrower's name and stead with full power of substitution and with the right to exercise the rights and powers herein contained without prior judicial hearing or notice to Borrower, both of which are hereby specifically waived:

- (a) collect any and all of the rents, issues, profits and avails of said Real Property and Personal Property and all other moneys and rights to receive money assigned hereby, using such measures as Lender may deem necessary or appropriate in the circumstances;
- (b) enter into and hold, occupy, possess and enjoy said Real Property and Personal Property;
- (c) eject tenants, fill vacancies, make, cancel, modify and enforce leases of said Real Property and Personal Property or any part thereof upon such terms as Lender may deem appropriate;

(d) obtain, cancel and modify any policy of insurance covering all or any part of said Real Property or Personal Property, adjust any loss or damage thereunder and enforce any rights of Borrower thereunder;

(e) bring suit for, compromise and settle for, taking of all or any portion of said Real Property for public purposes or any claim for damages thereto;

(f) contest, compromise and settle any tax assessment or other charge levied or assessed upon all or any part of said Real Property or Personal Property; and

(g) execute and deliver any and all instruments deemed by Lender to be necessary or appropriate in connection with the exercise of any right, power or authority granted hereby.

6. Lender may use and apply any moneys received by it as a result of this Assignment, in such order as Lender may elect, for any one or more of the following purposes:

(a) payment of any taxes, assessments and charges of any nature whatsoever that may be levied or assessed in connection with said Real Property or Personal Property;

(b) payment of any lien or encumbrance affecting all or any part of said Real Property or Personal Property;

(c) payment of premiums on such policies of insurance on all or any part of said Real Property or Personal Property as may be deemed advisable by Lender;

(d) payment of all expenses and liabilities incurred in the care and management of said Real Property and Personal Property, including any compensation paid to Lender's agents and the expense of such repairs, alterations, additions and improvements to said Real Property and Personal Property as may be deemed necessary or advisable by Lender;

(e) payment of reasonable attorneys' fees, court costs and expenses incurred by Lender in connection with the exercise of its rights, powers and authority hereunder; and

(f) payment of any indebtedness or liability of Borrower to Lender or its assigns, whether absolute or contingent, and no matter when it shall arise.

7. The collection of Rents or exercise of any of the foregoing rights shall not be deemed or construed to constitute Lender as a mortgagee in possession of the Real Property or to obligate Lender to take any action hereunder, to incur expenses or to perform or discharge any obligation, duty, or liability hereunder or under the Leases. Until the loan as evidenced by the Note and all indebtedness secured hereby shall have been paid in full, Borrower will from time to time execute and deliver unto Lender upon demand any and all writings or documents that Lender may reasonably deem necessary or desirable to carry out the purpose and intent hereof, which will enable Lender to enforce any right or rights hereunder.

8. Borrower agrees to indemnify and hold Lender harmless of and from any and all liability, or damage which Lender may incur under the Leases or by reason of this Assignment; and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under the Leases or this Assignment. Nothing contained in the Trust Deed, the Note, the Security Agreement, or in this Assignment shall be construed to bind Lender to the performance of any of the terms and provisions contained in the Leases, or otherwise to impose any obligation on Lender, including, without limitation, any liability under the covenant of quiet enjoyment contained in the Leases in the event that any tenant shall have been joined as a party defendant in any action to foreclose the Trust Deed and shall have been barred and foreclosed thereby of all right, title, and interest and equity of redemption in the Real Property. Prior to actual entry and taking possession of the Real Property by

Lender, this Assignment shall not operate to place responsibility for control, care, management, or repair of the Real Property or Personal Property upon Lender, nor for the carrying out of any of the terms and provisions of said Leases. Should Lender incur any liability mentioned in this paragraph, or loss or damage under the Leases or under or by reason of this Assignment, or in defense of any such claims or demands, the Borrower shall immediately upon demand reimburse Lender for the amount thereof, including costs and expenses and reasonable attorney's fees, and Lender may retain possession and collect the Rents and, from time to time, apply them in or toward satisfaction of or reimbursement for said loss or damage.

9. Borrower hereby covenants, represents, warrants, and agrees that:

- A. Borrower has the right, power, and capacity to make this Assignment and no person, firm, or corporation other than Borrower has or will have any right, title, or interest in or to the Leases or the Rents.
- B. Borrower will, at Borrower's sole cost and expense, perform and discharge all of the obligations and undertakings of the landlord under the Leases. Borrower will use all reasonable efforts to enforce or secure the performance of each and every obligation and undertaking of the tenants under the Leases and will appear in and prosecute or defend any action or proceeding arising under, or in any manner connected with, the Leases or the obligations and undertakings of the tenants thereunder. Lender may (but shall not be obligated to) take any action Lender deems necessary or desirable to prevent or cure any default by Borrower in the performance of or compliance with any of the Borrower's covenants or obligations under any of the Leases. Lender may rely upon any notice of default received from any tenant and may act thereon as herein provided even though the existence of such default or the nature thereof may be questioned or denied by Borrower, and such notice of default shall be conclusive evidence that a default exists for the purpose of this paragraph. Lender may enter upon the Real Property as often as Lender deems necessary or desirable in order to prevent or cure any default by Borrower. Lender may expend such sums as Lender deems necessary or desirable for any such purpose and Borrower hereby agrees to pay to Lender upon demand all sums so expended by Lender, together with interest from the date of such expenditure at the Default Rate of interest set forth in the Note. All sums so expended by Lender, and interest thereon, shall be added to and secured by the lien of this instrument.
- C. Borrower will not cancel any of the Leases or accept a surrender thereof.
- D. Borrower will not modify or otherwise amend any of the Leases, either orally or in writing. Leases or this Assignment. Nothing contained in the Trust Deed, the Note, the Security Agreement, or in this Assignment shall be construed to bind Lender to the performance of any of the terms and provisions contained in the Leases, or otherwise to impose any obligation on Lender, including, without limitation, any liability under the covenant of quiet enjoyment contained in the Leases in the event that any tenant shall have been joined as a party defendant in any action to foreclose the Trust Deed and shall have been barred and foreclosed thereby of all right, title, and interest and equity of redemption in the Real Property. Prior to actual entry and taking possession of the Real Property by Lender, this Assignment shall not operate to place responsibility for control, care, management, or repair of the Real Property or Personal Property upon Lender, nor for the carrying out of any of the terms and provisions of said Leases. Should Lender incur any liability mentioned in this in defense of any such claims or demands, the Borrower shall immediately upon demand reimburse Lender for the amount thereof, including costs and expenses and reasonable attorney's fees, and Lender may retain possession and collect the Rents and, from time to time, apply them in or toward satisfaction of or reimbursement for said loss or damage.

- E. Borrower will not consent to an assignment or sublease of any tenant's interest in the leases which will relieve the tenant of liability for the payment of rent and/or the performance of the terms and conditions of the Leases, and/or will violate any of the exclusive or restrictive covenants contained in any other lease assigned to Lender as additional security for the Note.
- F. Borrower will not remit the payment of Rents in any means other than lawful money of the United States; permit the payment of Rents more than thirty (30) days in advance of the due date thereof or, discount, compromise, forgive, encumber, or assign the Rents or any part thereof or any of the Leases or any interest therein.
- G. Borrower covenants and warrants to Lender that it has not executed any prior assignment of the Leases or Rents nor has the Borrower performed any acts or executed any other instrument which might prevent Lender from operating under any of the terms and conditions of this Assignment or which would limit Lender in such operation; and Borrower further covenants and warrants to Lender that it has not executed or granted any modification whatsoever of any of the Leases, whether orally or in writing except as specifically disclosed to Lender in writing prior to this Assignment, and that said Leases are in full force and effect according to their original terms, and that there are no defaults now existing under said Leases nor is there any state of facts which, with the giving of notice or the passage of time, would constitute a default under any of the Leases.
- H. The undersigned waives any right of set-off against any person in possession. The undersigned agrees that it will not assign any of the rents or profits, without the Lender's written consent.
- I. Borrower warrants and will warrant as to each Lease now or hereafter covering all or any part of the Property: (a) that each Lease is in full force and effect; (b) that no default exists on the part of the lessee thereunder or Borrower; (c) that no Lease or any interest therein has been previously assigned or pledged; (d) that no lessee under any lease has any defense, set-off or counterclaim against Borrower; (e) that all Rent due to date under each Lease has been collected and no concession has been granted to any lessee in the form of a waiver, release, reduction, discount or other alteration of Rent due or to become due, unless Lender has consented to the same in writing; and (f) that the interest of the lessee under each Lease is as a lessee only, with no options to purchase or rights of first refusal. All the foregoing obligations under this Assignment.

10. Lender shall not incur any liability for failing to exercise any right, power or authority granted hereby, nor for any action taken in the good faith exercise of what Lender considers to be its reasonable business judgment pursuant to any such right, power or authority. Lender shall have the full right, power, and authority to enforce this Assignment, or any of the terms, covenants, or conditions hereof, at any time that Lender shall deem proper. The provisions set forth in this Assignment shall not be deemed exclusive of any of the remedies granted in the Real Estate Deed of Trust, or any of the other documents or instruments now or hereafter evidencing, securing, or relating to the Note, but shall be deemed an additional remedy and shall be cumulative with the remedies therein granted.

11. All notices required or permitted to be given hereunder shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepaid, certified with return receipt requested, and addressed, if to Borrower, at the mailing address set forth above for Borrower and, if to Lender, at the mailing address set forth above for Lender, or by delivering such in person to the intended addressee. Notice so mailed shall be effective upon deposit in the United States Post Office or other depository under the care of custody of the United States Postal Service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addressee of the parties shall be as set forth above; provided, however, that any party shall have the right to change such party's address for notice

hereunder to any other location with the continental United States by giving of thirty (30) days' notice to all other parties in the manner set forth herein above.

12. It is expressly understood that no judgment or decree which may be entered on any debt secured or intended to be secured by the Real Estate Deed of Trust or any of the other documents or instruments now or hereafter evidencing, securing, or relating to the Note shall operate to abrogate or lessen the effect of this instrument. Upon payment in full of the entire indebtedness secured hereby, as evidenced by a recorded reconveyance of the Real Estate Deed of Trust, this Assignment shall then be considered void and of no further effect as said recorded reconveyance shall automatically operate to release this Assignment of record.

13. Lender shall have no liability to Borrower, or to any other person, for any damage suffered by said Real Property or Personal Property unless directly caused by the willful act or gross negligence of Lender. Lender shall have no responsibility for the actions of any tenant or occupant of said Real Property, whether such tenant or occupant shall be obtained by Borrower, Lender or Lender's agent.

14. The collection and application of the Rents, issues, profits and avails of said Real Property or Personal Property, or the exercise of any other right, power or authority hereunder by Lender shall not, of itself, cure or waive any default or declaration or notice of default under said instrument of security or note or affect any foreclosure proceeding predicated thereon.

15. Any breach of or default in any of Borrower's obligations, covenants, representations or warranties herein shall also constitute a default under any and all Notes, mortgages, deeds of trust, security agreements and any other documents and instruments executed by Borrower in favor or for the benefit of Lender.

16. Any provisions in any other agreement creating rights in Lender other than those created herein shall be deemed incorporated herein by reference and made a part hereof for all purposes. In case of a conflict between any provision of this Agreement, and any other security documents securing the indebtedness owed to Lender, the provision selected by Lender in its sole subjective discretion shall prevail and be controlling for all purposes.

17. If any provision under this Assignment shall be invalid, illegal, or unenforceable, it shall not affect or impair the validity, legality, and enforceability of any other provision of this Assignment.

18. This Assignment may not be amended, modified, or otherwise changed except by a written instrument duly executed by Borrower and Lender.

19. This Assignment shall be governed by and construed in accordance with the laws of the State of Nebraska and the laws of the United States of America applicable to transactions in the State of Nebraska.

20. As used herein, Rents shall also include all proceeds, products, offspring, rents, issues, profits, accounts, general intangibles, revenues or accounts receivables arising from the use, occupancy or operation of the premises including, but not limited to, any fees, charges, or sales for usage or occupancy of all or any part of the premises.

21. The provisions of this Assignment shall be in addition to and supplement Article 17, Security Interest and Rents, as set forth in S52-1701 et. seq., Neb. Rev. Stat. 1943 as amended. If in conflict with said statute, the statute controls.

22. (Intentionally omitted)

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed as of the date first above written.

BORROWER: Forselles II Partners

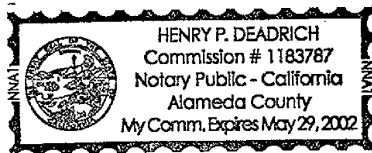
By: [Signature]  
Dale D. Reed, Partner

By: [Signature]  
Donna B. Reed, Partner

STATE OF CALIFORNIA }  
  } SS.  
COUNTY OF ALAMEDA }

On this 23<sup>RD</sup> day of AUGUST, 2000, before me a notary public in and for the state and county above named, personally appeared Dale D. Reed and Donna B. Reed, to me personally known, who being by me duly sworn did say that they are partners of said partnership executing the within and foregoing instrument, that no seal has been procured by the said partnership; and that the said instrument was signed on behalf of said partnership by authority of all partners; and that the said Dale D. Reed and Donna B. Reed as such partners acknowledged the execution of said instrument to be the voluntary act and deed of said partnership, by it and by them voluntarily executed.

WITNESS my hand and notarial seal this 23<sup>RD</sup> day of AUGUST, 2000.



[Signature]  
Notary Public