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JUL 11 2016 14:33 P 11

Fee amount: 70.00  
FB: 61-28706  
COMP: BW

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
07/11/2016 14:33:08.00



2016054388

**ASSIGNMENT OF LEASES AND RENTS**

RETURN TO:  
DRI Title & Escrow, 13057 W Center Road, Ste #1, Omaha, NE 68144

**\*\*\*Do not detach\*\*\*  
For Recording Purposes Only**

**1534725-1161292 71**

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made and entered into effective as of this 27<sup>th</sup> day of July 2016, by and between **121 COURT, LLC**, a Nebraska limited liability company, together with its permitted successors and assigns ("Borrower") and **GREAT WESTERN BANK**, a South Dakota banking corporation (together with its successors and assigns, "Lender"). Borrower and Lender may be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Borrower is indebted to Lender in the aggregate original principal amount of Fifteen Million Two Hundred Fifty Thousand and 00/100 Dollars (\$15,250,000.00) as evidenced by those certain Promissory Notes of even date herewith (together with all extensions, renewals, modifications, substitutions and amendments thereof, the "Note"), with interest from the date thereof at the rates set forth in the Note.

WHEREAS, Borrower desires to secure the payment and performance of all of their obligations under the Note and the Obligations as defined in that certain Loan Agreement of even date herewith (the "Loan Agreement").

### I. ASSIGNMENT

1.1 *Property Assigned.* For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby absolutely and unconditionally assigns and grants to Lender and grants a security interest in favor of Lender the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower: (a) all leases affecting the use, enjoyment, or occupancy of all or any part of those certain lots or pieces of land, more particularly described in **Exhibit "A"** annexed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon and the right, title and interest of Borrower, its successors and assigns, therein and thereunder (the "Property"); (b) all leases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, whether made before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code"), together with any extension, renewal or replacement of the same. The leases described in this Subsection and the leases and other agreements described in this subsection together with all other present and future leases and present and future agreements and any extension or renewal of the same are collectively referred to as the "Leases" and individually referred to as a "Lease"; (c) all rents, income, issues, revenues and profits arising from the Leases and renewals thereof and together with all rents, income, issues and profits from the use, enjoyment and occupancy of the Property (including, but not limited to, minimum rents, additional rents, percentage rents, deficiency rents, security deposits and liquidated damages following default under any Leases, all proceeds payable under any policy of insurance covering loss of rents resulting from un-tenantability caused by damage to any part of the Property, all of Borrower's rights to recover monetary amounts from any lessee in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejection of a Lease, together with any sums of money that may now or at any time hereafter be or become due and

payable to Borrower by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas and mining Leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Borrower under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Property) (all of the rights described in this subsection are hereinafter collectively referred to as the "Rents"); (d) all of Borrower's claims and rights to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code (the "Bankruptcy Claims"); (e) all of Borrower's right, title and interest in and claims under any and all lease guaranties, letters of credit and any other credit support given by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor," collectively, the "Lease Guarantors") to Borrower (individually, a "Lease Guaranty," collectively, the "Lease Guaranties"); (f) all proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims; (g) all rights, powers, privileges, options and other benefits of Borrower as lessor(s) under the Leases and beneficiary(ies) under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto, and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties; (h) the right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents; and (i) Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Article V of this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

1.2 **Consideration.** This Assignment is made in consideration of that certain loan made by Lender to Borrower evidenced by the Note and secured by that certain Security Agreement, Deed of Trust and Assignment of Rents given by Borrower to or for the benefit of Lender, of even date herewith, covering the Property and intended to be duly recorded (the "Security Instrument"). All initially capitalized terms that are not defined in this Assignment shall have the meanings given such terms in the Security Instrument.

## II. REPRESENTATIONS AND COVENANTS

2.1 **Borrower's Representations.** Borrower represents and warrants to Lender that (a) it is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid, enforceable and in full force and effect and have not been altered, modified or amended in any manner whatsoever except as disclosed to Lender; (c) neither the Leases nor the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated; (d) none of the Rents have been collected for more than one (1) month in advance; (e) each has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting it or the Property; (f) the premises demised under the Leases have been completed and lessees under the Leases have accepted the same and have taken possession of the same on a rent-paying basis except as explicitly identified on the certified rent roll dated as of the end of the month preceding the month hereof, delivered by them to Lender; and (g) there exist no offsets or defenses to the payment of any portion of the Rents.

### III. COVENANTS

3.1 **Administration.** Borrower hereby covenants and agrees with Lender that it shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Obligations; (b) shall promptly send to Lender copies of all notices of default which they receive under the Leases; (c) shall not collect any Rents more than one (1) month in advance; and (d) shall not execute any other assignment of lessor's interest in the Leases or the Rents.

3.2 **Enforcement and Modifications.** Borrower further covenants with Lender that, except to the extent that it is acting in the ordinary course of business as a prudent operator of property similar to the Property (a) shall enforce all of the terms, conditions and covenants contained in reciprocal easement agreements upon the part of lessees or Borrower thereunder to be performed, short of termination thereof, (b) shall not alter, modify or change the terms of the Leases without the prior written consent of Lender, or cancel or terminate the Leases or accept a surrender thereof or take any other action which would effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; provided, however, that any Lease may be canceled if at the time of cancellation thereof a new Lease is entered into on substantially the same terms or more favorable terms as the canceled Lease; (c) shall not alter, modify or change the terms of any guaranty of any of the Leases or cancel or terminate any such guaranty without the prior written consent of Lender; (d) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Lender; and (e) shall not waive, release, reduce, discount or otherwise discharge or compromise the payment of any of the Rents to accrue under the Leases.

3.3 **Lease Terms.** Borrower further covenants with Lender that (a) from and after the date of this Assignment, all Leases shall be written substantially in the standard form of that certain Lease Agreement between the Borrower and Quad Packaging, Inc., dated August 25, 2015, which Lease has been approved by Lender; (b) no material changes may be made to the Lender-approved standard lease without the prior written consent of Lender; (c) all renewals of Leases and all proposed Leases shall provide for rental rates comparable to existing local market rates and shall be arm's-length transactions with bona fide, independent third-party tenants; and (d) all Leases executed after the date of this Assignment shall provide that (i) they are subordinate to the Security Instrument and any other indebtedness now or hereafter secured by the Property, (ii) each lessee agrees to attorn to Lender (such attornment to be automatically effective upon Lender's acquisition of title to the Property), (iii) each lessee agrees to execute such further evidences of attornment as Lender may from time to time request, (iv) the attornment of each lessee shall not be terminated by foreclosure, and (v) the term of such Lease (including any renewal or extension thereof) shall be no less than six (6) months. Provided that a new Lease meets the requirements of this Section, then Borrower shall have no obligation to obtain Lender's approval thereof.

3.4 **Modification and Termination of Leases.** Notwithstanding anything to the contrary contained in this Assignment, and provided that no Event of Default (as defined in the Security Instrument) shall exist and be continuing, the following terms and provisions shall apply:

a. Lender's consent shall not be required for modifications, extensions or renewals of Leases that meet all of the requirements for new Leases contained in Section 3.3 above; and

b. Lender's consent shall not be required for termination of a Lease if (i) the lessee under such Lease is in default beyond all applicable notice and grace periods, and (ii) such termination will not adversely affect the Property, the Lender, or Borrower's ability to fulfill its obligations under the Loan Documents (other than to a de minimis extent).

3.5 **Rental Offsets.** If Borrower becomes aware that any Lessee proposes to do, or is doing, any act or thing which may give rise to any right of set-off against Rent, Borrower shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against Rent, (b) notify Lender thereof and of the amount of said set-offs, and (c) within ten (10) days after such accrual for a valid set-off, reimburse Lessee who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall effectively assure that Rents thereafter due shall continue to be payable without set-off or deduction.

#### IV. TERMS OF ASSIGNMENT

4.1 **Present Assignment and License Back.** Borrower intends that this Assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions, or provisions contained in any of the Leases or otherwise to impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereinafter be requested by Lender to further evidence and confirm said assignment. Lender is hereby granted and assigned by Borrower the right to enter the Property for the purpose of enforcing its interest in the Leases and the Rents. Nevertheless, subject to the terms of this Section, Lender grants to Borrower a revocable license to operate and manage the Property and to collect the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Obligations for use in the payment of such sums. Upon a Default (as hereinafter defined), the license granted to Borrower herein shall automatically be revoked and Lender shall immediately be entitled to possess and apply all Rents, whether or not Lender enters upon and takes control of the Property. Borrower hereby grants and assigns to Lender the right, at its option, upon the revocation of the license granted herein to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license herein granted may be applied toward payment of the Obligations in such priority and proportion as Lender, in its discretion, shall deem proper.

#### V. REMEDIES

5.1 **Remedies of Lender.** Upon or at any time after the occurrence of a default under this Assignment or an Event of Default, as defined herein or in the Loan Agreement (a "Default"), the license granted to Borrower in this Assignment shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents and sums due under any Lease Guaranties, whether or not Lender enters upon or takes control of the Property. Upon the

occurrence of a Default, Lender, at its option, may (a) exercise all rights and powers of Borrower, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties, (b) either require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Borrower, or (c) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

5.2 **Other Remedies.** Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Note, the Security Instrument, or any documents referenced therein and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof.

5.3 **Notice to Lessee.** Borrower hereby agrees to authorize and direct the lessees named in the Leases or any other or future lessees or occupants of the Property and all Lease Guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any Lease Guaranties upon receipt from Lender of written notice to the effect that Lender is then the holder of the Security Instrument and that a Default exists, and to continue so to do until otherwise notified by Lender.

5.4 **Non-Waiver.** The exercise by Lender of the option granted it in this Assignment and the collection of the Rents and sums due under the Lease Guaranties and the application thereof as herein provided shall not be considered a waiver of any default by Borrower under the Note, the Security Instrument, the Leases, this Assignment or any document referenced in any of the foregoing.

5.5 **Bankruptcy.**

a. Upon or at any time after the occurrence of a Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

b. If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall

not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

## **VI. NO LIABILITY**

6.1 ***No Liability of Lender.*** This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after a Default or from any other act or omission of Lender in managing the Property after a Default unless such loss is caused by the willful misconduct and bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, including without limitation the presence of any Hazardous Substances (as defined in the Security Instrument), or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

6.2 ***No Mortgagee in Possession.*** Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

## **VII. DEPOSITS, RELOCATIONS**

7.1 ***Security Deposits.*** All security deposits of Lessees, whether held in cash or any other form, shall be treated by Borrower as trust funds, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower in one or more segregated accounts with Lender. Any bond or other instrument which Borrower are permitted to hold in lieu of cash security deposits under applicable legal requirements (a) shall be maintained in full force and effect unless replaced by cash deposits as hereinabove described, (b) shall be issued by an entity reasonably satisfactory to Lender, (c) shall, if permitted pursuant to legal requirements, name Lender as payee or beneficiary thereunder (or at Lender's option, subject to applicable Borrower requirements, be fully assignable to Lender), and (d) shall, in all respects, comply with applicable legal requirements and otherwise be reasonably satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence reasonably satisfactory to Lender of Borrower's compliance with the foregoing. Following the occurrence and during the continuance of any Default, Borrower shall, upon Lender's request, if permitted by applicable legal requirements, turn over to Lender the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Property, to be held by Lender subject to the terms of the Leases.

7.2 **Relocations.** In no event shall Borrower exercise any right to relocate any lessee outside the Property pursuant to any right set forth in a Lease without the prior written consent of Lender.

### VIII. MISCELLANEOUS PROVISIONS

8.1 **Conflict of Terms.** In case of any conflict between the terms of this Assignment and the terms of the Security Instrument, the terms of the Security Instrument shall prevail.

8.2 **Termination of Assignment.** Upon payment in full of the Obligations and the delivery and recording of a satisfaction or discharge of Security Instrument duly executed by Lender, this Assignment shall terminate.

8.3 **Notices.** All notices or other written communications hereunder shall be given in the manner set forth in the Security Instrument.

8.4 **Liability.** If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

[SEPARATE SIGNATURE PAGE(S) TO FOLLOW]



IN WITNESS WHEREOF, the parties have executed this Assignment of Leases and Rents as of the day and year first above written.

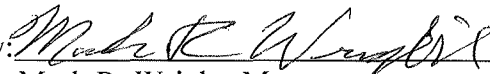
**LENDER:**

**BORROWER:**

**GREAT WESTERN BANK**

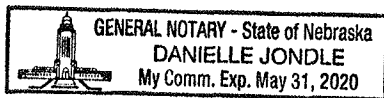
**121 COURT, LLC**

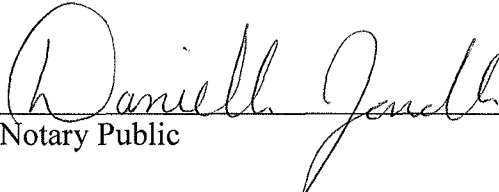
By:   
\_\_\_\_\_  
Brian J. Swan, Vice President

By:   
\_\_\_\_\_  
Mark R. Wright, Manager

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

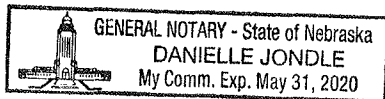
The above and foregoing Assignment of Leases and Rents was acknowledged before me this 8<sup>th</sup> day of July 2016 by Brian J. Swan, Vice President, Great Western Bank, on behalf of said bank.

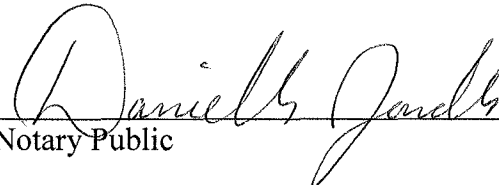


  
\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The above and foregoing Assignment of Leases and Rents was acknowledged before me this 8<sup>th</sup> day of July 2016 by Mark R. Wright, Manager of 121 Court, LLC, on behalf of said company.



  
\_\_\_\_\_  
Notary Public

## Exhibit A

Tract A: Lot 3, Omaha Works Industrial Park Replat 4, an Addition to the City of Omaha, Douglas County, Nebraska.

Tract B: Easement for permanent ingress and egress as set forth in the Reciprocal Easement and Operating Agreement filed May 16, 2003 in Book 1518, Page 217, as amended by the First Amendment to the Reciprocal Easement and Operating Agreement filed December 13, 2008, as Instrument No. 2008120320, as amended by the Second Amendment to the Reciprocal Easement and Operating Agreement filed December 23, 2008 as Instrument No. 2008120321, all in Douglas County, Nebraska.

Tract C: Easement for permanent ingress and egress as set forth in the Declaration of Access Easement filed October 3, 2006 as Instrument No. 2006113611, as amended by the First Amendment to the Declaration of Access Easement filed June 30, 2009, as Instrument No. 2009069261, all in Douglas County, Nebraska.

Tract D: Easement for permanent ingress and egress as set forth in the Declaration of Access Easements filed September 6, 2007 as Instrument No. 2007102309, all in Douglas County, Nebraska.