

COUNTER ah C.E. ah
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 FEES \$ 70.00
 CHECK# 1791
 CHG _____ CASH _____
 REFUND _____ CREDIT _____
 SHORT _____ WCR _____

FILED SARPY COUNTY NEBRASKA
 INSTRUMENT NUMBER

2013-10961

04/08/2013 2:26:28 PM

Clay J. Dowling

REGISTER OF DEEDS



(SPACE ABOVE RESERVED FOR RECORDER'S USE)

ASSIGNMENT OF LEASES AND RENTS

Loan No. _____

This Assignment of Leases and Rents ("Assignment") is made as of the 6th day of April, 2013, by DOWD GRAIN COMPANY, INC., a Nebraska corporation, and DUANE J. DOWD and FRANCES DEE DOWD, husband and wife (individually and collectively, jointly and severally "Borrower"), in favor of FOUNDATION FIRST BANK, its successors and assigns ("Lender").

RECITALS

A. Borrower has made, executed and delivered to Lender that certain Promissory Note of even date herewith in the maximum principal amount of Two Million Two Hundred Thousand Dollars (\$2,200,000.00), payable to the order of Lender ("Note"), which Note is secured by a Deed of Trust, Assignment of Rents and Security Agreement of even date herewith ("Deed of Trust") encumbering certain real property owned in whole or in part by Borrower and described in Exhibit "A" attached hereto ("Property"). The Note, the Deed of Trust, this Assignment, and all other documents executed or delivered by Borrower in connection with the loan evidenced by the Note ("Loan") are hereinafter collectively referred to as the "Loan Documents"; and

B. To further secure the payment of the Note according to its terms and the performance of each and every matter to be performed by Borrower pursuant to the Loan Documents, Borrower has agreed to assign to Lender all of Borrower's right, title and interest in all leases, revenue and rents of the Property, as provided herein.

NOW, THEREFORE, to induce Lender to make the Loan, as additional security for the payment and performance of all obligations of Borrower to Lender evidenced by or referred to in the Loan Documents, Borrower hereby agrees as follows:

1. Definitions. Capitalized terms used herein shall have the respective meanings given them in the Note or in the Deed of Trust, unless otherwise defined herein.

NOTE ON - 017107

2. Assignment; Certain Rights of Borrower. To further secure the prompt payment and performance of each obligation secured by the Deed of Trust, Borrower hereby assigns, transfers, conveys and sets over to Lender all of Borrower's estate, right, title and interest in, to and under all oral and written leases and occupancy agreements, whether existing on the date hereof or hereafter entered into (including any extensions, modifications or amendments thereto) relating to the Property (collectively referred to as "Leases"), together with all rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases regarding the current tenants and occupiers and any future tenants and occupiers, and all the rents, security deposits, revenues, profits and income from the Property, including those now due, past due or to become due. Borrower irrevocably appoints Lender its true and lawful attorney-in-fact, at the option of Lender at any time and from time to time, to take possession and control of the Property, pursuant to Borrower's rights as lessor under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Borrower or Lender, for all of the rents, security deposits, revenues, profits and income thereof. It is intended by Borrower and Lender that this Assignment constitutes an absolute assignment and not merely an assignment for additional security. The consideration received by Borrower to execute and deliver this Assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Borrower. Notwithstanding the foregoing, however, so long as no Event of Default (as defined herein and in the Note) has occurred, Borrower shall have a revocable license to possess and control the Property and collect and receive all rents, security deposits, revenues, profits and income. Upon the occurrence of an Event of Default, such license shall be automatically revoked by Lender.

Upon the occurrence of any Event of Default, Lender may, at any time without notice, either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take possession and control of the Property, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Property including, but not limited to, execute, cancel or modify the Leases, make repairs to the Property, and execute or terminate contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Assignment, and in Lender's or Borrower's name, sue for or otherwise collect such rents, security deposits, revenues, profits and income from the Property as specified in this Assignment as the same become due and payable, including, but not limited to, rents, security deposits and revenues then due and unpaid.

Borrower agrees that commencing upon the occurrence of such Event of Default, Borrower agrees that each tenant of the Property shall make its rent and revenue payable to and pay such rent and revenue to Lender (or Lender's agents) on Lender's written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to the Property, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Borrower.

In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Assignment or any other

Loan Documents, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents, security deposits, revenues, profits and income collected subsequent to the occurrence of any Event of Default shall be applied at the discretion of, and in such order as determined by, Lender to the costs, if any, of taking possession and control of and managing the Property and collecting such amounts including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and to the sums secured by this Assignment (except that any security deposits actually received by Lender shall be held and disbursed by Lender in accordance with applicable law). Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents, security deposits, revenues, profits and income actually received. Except in the event of Lender's willful misconduct or gross negligence, Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender hereunder.

If the rents, revenues, profits and income from the Property are not sufficient to meet the costs, if any, of taking possession and control of and managing the Property and collecting the same, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Assignment. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the default rate provided in the Note. Any entering upon and taking possession and control of the Property by Lender or the receiver and any application of rents, security deposits, revenues, profits and income as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided therein.

Borrower hereby represents and agrees that it is and will remain at all times the sole owner and holder in all existing Leases as to the portion of the Property owned in whole or in part by him, her or it, that Borrower has not executed any prior assignment of said Leases or rents, security deposits, revenues, profits and income, that Borrower has not performed, and will not perform, any acts, or has not executed, and will not execute, any instrument that would prevent Lender from exercising its rights under this Assignment, and that at the time of execution of this Assignment there has been no anticipation or prepayment of any of the rents, revenues, profits or income of the Property prior to the required due date or dates.

3. Certain Agreements of Borrower. Borrower hereby agrees as follows:

(a) If any of the Leases provide for a security deposit paid by a tenant thereunder to Borrower, this Assignment shall transfer to Lender all of Borrower's right, title and interest in and to all of such security deposits; provided that, Borrower shall have the right to retain such security deposits so long as no Event of Default shall have occurred; and provided further that Lender shall have no obligation to any such tenant with respect to such security deposits unless

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and until Lender comes into actual possession and accepts control of such security deposits by notice to such tenant;

(b) Borrower shall not terminate any Lease (except pursuant to the terms of such Lease upon a default by the tenant thereunder), or, except as permitted in the Deed of Trust, grant concessions or modify or amend any such Lease in any manner whatsoever, without the prior written consent of Lender;

(c) Borrower shall not discount any future accruing rent, revenues, profits or income and, after the occurrence of an Event of Default, Borrower waives any right of setoff against any tenant under the Leases;

(d) Borrower shall not execute any further assignment of any rents, security deposits, revenues, profits or income or any interest therein or suffer or permit any such assignment to occur by operation of law;

(e) Except with the prior written consent of Lender, which may be given or withheld in Lender's sole discretion, Borrower shall not request, consent to, agree to or accept a subordination of any Lease to any mortgage, deed of trust or other encumbrance, or any other lease, now or hereafter affecting the Property or any part thereof, or suffer or permit conversion of any Lease to a sublease;

(f) Borrower shall faithfully perform and discharge all obligations of lessor or landlord under the Leases, and shall give prompt written notice to Lender of any notice of Borrower's default received from any tenant or any other person, and shall furnish Lender with a complete copy of said notice. Borrower shall appear in and defend, at no cost to Lender, any action or proceeding arising under or in any manner connected with the Leases. If requested by Lender, Borrower shall enforce any Lease and all remedies available to Borrower against the tenant in the case of default under such Lease by the tenant thereunder;

(g) Upon the request of Lender, Borrower shall promptly provide to Lender a true and correct copy of all existing Leases or other occupancy agreements with respect to the Property. All Leases or other occupancy agreements with respect to the Property in effect from time to time shall be deemed included in this Assignment, and the respective terms "Lease" and "Leases" as used herein shall include such leases or occupancy agreements, and the term "tenant" used herein shall include the lessees or tenants thereunder; and

(h) Nothing herein shall be construed to constitute Lender as a "mortgagee in possession" in the absence of its taking of actual possession of the Property pursuant to the powers granted herein, or to impose any liability or obligation on Lender under or with respect to the Leases. Borrower shall indemnify and hold Lender harmless from and against any and all liabilities, losses and damages that Lender may incur under the Leases or by reason of this Assignment, and of and from any and all claims and demands whatsoever that may be asserted against Lender by reason of any alleged obligations to be performed or discharged by Lender under the Leases or this Assignment provided, however, such claims or demands arise from

obligations under the Leases that arose and accrued prior to Lender taking actual possession of the Property. Should Lender incur any liability, loss or damage under the Leases or under or by reason of this Assignment, Borrower shall immediately upon demand reimburse Lender for the amount thereof together with all costs and expenses and reasonable attorneys' fees incurred by Lender. All of the foregoing sums shall bear interest until paid at the default rate provided by the Note. Any rent, revenue, profits or income collected by Lender may be applied by Lender in its discretion in satisfaction of any such liability, loss, damage, claim, demand, costs, expense or fees.

4. Event of Default. The following shall constitute an Event of Default hereunder:

(a) the occurrence of an Event of Default under the Note, the Deed of Trust or any other Loan Documents;

(b) any representation or warranty made herein or in any of the Loan Documents, or otherwise in connection with the application for or making of the Loan, proves to be materially untrue when made or Borrower has omitted or failed to disclose a material fact to Lender at any time prior to the date of this Assignment which if disclosed would have had a material impact (in Lender's sole discretion) on Lender's decision whether to approve the Loan; and

(c) the breach of any agreement by Borrower under this Assignment.

5. Additional Rights and Remedies of Lender. If an Event of Default occurs, Lender shall have the following rights and remedies, all of which are cumulative, in addition to all other rights and remedies provided in this Assignment and under the Loan Documents, or any other agreement between Borrower and Lender, or otherwise available at law or in equity or by statute:

(a) Lender shall be deemed to be the creditor of each tenant in respect of any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting a tenant (without obligation on the part of Lender, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein); and

(b) Lender shall have the right to assign Borrower's right, title and interest under this Assignment in any of the Leases to any subsequent holder of the Note or any participating interest therein or to any person acquiring title to the Property or any part thereof through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to Lender.

6. Additional Security. Lender may take or release other security for the payment of the indebtedness secured hereby, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such indebtedness, without prejudice to any of its rights under this Assignment.

7. Updated List of Leases. Borrower agrees to deliver to Lender, within ten (10) days after Lender's request, a complete list of the Leases, the amount of security and other deposits held in connection with each Lease certified by Borrower identifying the demised premises, the names of the tenants, the rent and other sums payable under the Leases, the date to which such rents and other sums have been paid, the terms of the Leases, the dates of occupancy, the dates of expiration, any rent concessions and any work obligations or other inducements granted to tenants. Borrower shall also deliver on demand a copy of any Lease not previously delivered to Lender.

8. Absolute Assignment: Release. The Assignment made hereby is an absolute and unconditional assignment of rights only, and not a delegation of duties. The execution and delivery hereof shall not in any way impair or diminish the obligations of Borrower under the provisions of each and every Lease nor shall any of the obligations contained in the Leases be imposed upon Lender. The assignment contained herein and all rights herein assigned to Lender shall cease and terminate as to all Leases:

(a) upon the payment and full satisfaction of the Note and all other obligations of the Loan Documents; or

(b) upon the full release of the Property subject to such Lease from the lien of the Deed of Trust covering such Property pursuant to the provisions of such Deed of Trust.

It is expressly understood that no judgment or decree that may be entered on any debt secured or intended to be secured by this Assignment shall operate to abrogate or lessen the effect of this Assignment, but that the same shall continue in full force and effect as herein provided. The provisions of this Assignment shall also remain in full force and effect during the pendency of any proceedings for the foreclosure and/or sale of the Property, or any part thereof, both before and after sale, until the issuance of a deed pursuant to a decree of foreclosure and/or sale, unless all indebtedness and obligations evidenced and secured hereby are fully satisfied pursuant to paragraph (a) of this Section.

9. Effect on Rights Under Other Documents. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms of the Loan Documents. The right of Lender to collect the indebtedness secured hereby and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Deed of Trust or in any other Loan Document.

10. Further Assurances. Borrower hereby agrees that Borrower shall, whenever and as often as shall be requested to do so by Lender, execute, acknowledge and deliver, or cause to be executed, acknowledged, and delivered, any and all such further conveyances, approvals,

consents, memoranda of the subject matter hereof, duplicate originals hereof, and any and all other documents and to do any and all other acts as may be necessary or appropriate to carry out the terms of this Assignment. This Assignment or a memorandum hereof may be recorded by Lender at any time.

11. No Waiver. A waiver by Lender of any of its rights hereunder or under the Leases or of a breach of any of the covenants and agreements contained herein to be performed by Borrower shall not be construed as a waiver of such rights in any succeeding instance or of any succeeding breach of the same or other covenants, agreements, restrictions or conditions.

12. Marshalling. Notwithstanding the existence of any other security interest in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any of the Property or any part thereof shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower and any party who now or hereafter acquires an interest in any of the Property and who has actual or constructive notice hereof hereby waives, to the extent permitted by law, any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

13. Notices. All notices, demands, requests, consents, approvals or communications required under this Assignment shall be in writing and shall be deemed to have been properly given if sent in accordance with the terms of the Deed of Trust to the parties at the addresses appearing above, or to such other address as Borrower or Lender shall hereafter specify by not less than ten (10) days prior written notice as provided herein.

14. Governing Laws: Severability. This Assignment shall be governed by and construed under the laws of the State of Nebraska. In case any of the provisions of this Assignment shall at any time be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Assignment, and this Assignment shall be construed and enforced as if all such illegal, invalid or unenforceable provisions had never been inserted herein.

15. Modification. This Assignment may not be modified without the prior written consent of both Borrower and Lender.

IN WITNESS WHEREOF, Borrower has executed this Assignment as of the day and year first above written.

DOWD GRAIN COMPANY, INC., a Nebraska corporation, DUANE J. DOWD and FRANCES DEE DOWD, husband and wife, Borrower

By: DOWD GRAIN COMPANY, INC., a Nebraska corporation

By: [Signature]
Duane J. Dowd, President

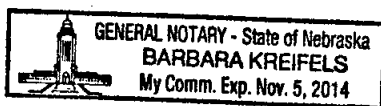
By: [Signature]
Lawrence W. Dowd,
Secretary/Treasurer

By: [Signature]
Duane J. Dowd, Individually

By: [Signature]
Frances Dee Dowd, Individually

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

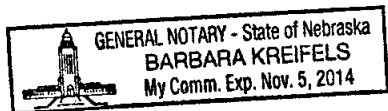
The foregoing Instrument was executed and acknowledged before me this 5th day of April, 2013 by Duane J. Dowd, the President of Dowd Grain Company, Inc., who acknowledged that he was the duly appointed and acting President of the Company and executed the foregoing Instrument in that capacity and for and on behalf of the Company as Borrower.



[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing Instrument was executed and acknowledged before me this 5th day of April, 2013 by Lawrence W. Dowd, the Secretary and Treasurer of Dowd Grain Company, Inc., who acknowledged that he was the duly appointed and acting Secretary and Treasurer of the Company and executed the foregoing Instrument in that capacity and for and on behalf of the Company as Borrower.

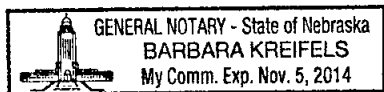


Barbara Kreifels

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing Instrument was executed and acknowledged before me this 5th day of April, 2013 by Duane J. Dowd and Francis Dee Dowd, husband and wife, as Borrower.



Barbara Kreifels

Notary Public

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EXHIBIT "A"
LEGAL DESCRIPTION

Parcel A:

That part of the South 1/2 of the Southwest 1/4 of Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska, lying South and East of I-80; except road right of way; and except that part conveyed to the State of Nebraska, Department of Roads by Warranty Deed filed August 9, 2002 at Instrument No. 2002-30491.

Parcel B:

The North 1/2 of the Southeast 1/4 of Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska, lying South and East of I-80; also described as Tax Lot 8 in Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska; subject to road right of way; and except that part conveyed to the State of Nebraska, Department of Roads by Warranty Deed filed August 9, 2002 at Instrument No. 2002-30491;

And

The South 1/2 of the Southeast 1/4 of Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska; subject to road right of way; and except that part described as follows: Beginning at a point 818.4 feet West of the Southeast corner of Section 34; thence North 917.4 feet; thence West 475.2 feet; thence South 917.4 feet; thence East 475.2 feet to the point of beginning.

Parcel C:

A parcel of land located in the South 1/2 of the Southeast 1/4 of Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska, more particularly described as follows: Beginning at a point 818.4 feet West of the Southeast corner of Section 34; thence North 917.4 feet; thence West 475.2 feet; thence South 917.4 feet; thence East 475.2 feet to the point of beginning; subject to road right of way.

Parcel D:

That part of the Northeast 1/4 of Section 34, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska, lying South and East of Interstate 80 and Nebraska Highway 370; subject to road right of way; and except that part conveyed to the State of Nebraska, Department of Roads by Quitclaim Deed filed June 6, 2002 at Instrument No. 2002-21117; and except a tract of land located in the Northeast 1/4 of Section 34, Township 14, North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, described as follows: Referring to the Northeast corner of said 1/4 Section; thence Southerly a distance of 617.26 feet along the East line of said 1/4 Section to the point of beginning; thence Southerly deflecting 000°00'00" a distance of 586.01 feet along said line; thence Southwesterly deflecting 034°35'18" right, a distance of 58.13 feet to a point of the Westerly 156th Street right of way line; thence Northerly deflecting 145°24'42" right, a distance of 95.70 feet

along said right of way line; thence Northerly deflecting $009^{\circ}02'32''$ left, a distance of 401.50 feet along said right of way line; thence Northwesterly deflecting $049^{\circ}09'24''$ left, a distance of 123.55 feet along said right of way line to a point on the Southerly Interstate right of way line; thence Northeasterly deflecting $127^{\circ}21'40''$ right, a distance of 215.18 feet to the point of beginning.

Parcel E:

Tax Lot 7 in Section 35, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska, as conveyed by Quitclaim Deed from the State of Nebraska dated March 26, 2002 and filed on June 7, 2002 at Instrument No. 2002-21276.