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Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2011-00086884  
BK 13866 Pg 455-462

### ASSIGNMENT OF LEASES AND RENTS

Preparer Information:

Robert J. Douglas, Jr., Davis Law Firm, 4201 Westown Parkway, Suite 300, West Des Moines,  
Iowa 50266 (515)-288-2500

Return Document to:

RETURN TO:

Robert C. Thomson, Grefe & Sidney, P.L.C., 500 East Court Avenue, Suite 200, Des Moines, IA  
50309 (515)-245-4300)

Name of Assignor: 3801 LLC

Name of Assignee: U.S. Bank National Association

Legal Description: See page 7

**ASSIGNMENT OF LEASES AND RENTS**  
(Commercial Real Estate)

THIS ASSIGNMENT, made this 16<sup>th</sup> day of June, 2011, is by and between 3801 LLC, an Iowa limited liability company, whose mailing address is P.O. Box 906, Des Moines, Iowa 50315 (hereinafter called "**Borrower**") and U.S. BANK NATIONAL ASSOCIATION, a national banking association under the laws of the United States of America, whose mailing address is c/o Commercial Real Estate Department, 520 Walnut Street, Des Moines, Iowa 50309 (hereinafter called "**Lender**").

1.1 Borrower, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby bargain, sell, transfer, assign, convey, set over and deliver unto Lender all right, title and interest of the Borrower in, to and under any existing leases, together with any and all future leases hereinafter entered into by any lessor or lessee affecting the real estate described in Exhibit "A" attached hereto and made a part hereof (the "**Property**"), and all guarantees, amendments, extensions, modifications and renewals of such leases and any of them, all of which are hereinafter called the "**Leases**", and all rents, receipts, revenues, awards, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, on account of the use of the Property or otherwise arising out of or pertaining to the Property.

2.1 This Assignment is made for the purposes of securing:

2.1(a) The payment of the indebtedness (including any amendments, extensions, modifications or renewals thereof) evidenced by (i) a certain Construction Note of Borrower dated on even date herewith in the principal sum of Two Million Three Hundred Thousand Dollars (\$2,300,000) (the "**Note**") and secured by a certain Mortgage, Security Agreement and Fixture Financing Statement (the "**Mortgage**") encumbering the Property of even date herewith, as hereafter may be amended, extended, modified or renewed and other Loan Documents having the meaning of Loan Documents or Mortgage as set forth in the Construction Loan Agreement;

2.1(b) The payment of all other sums, with interest thereon, becoming due and payable to Lender under the provisions of the Mortgage and any other instrument constituting security for the Note including without limitation, the other Loan Documents; and

2.1(c) The performance and discharge of each and every term, covenant and condition of Borrower contained in the Notes, Mortgage and any other instrument constituting security for the Note, including without limitation, the other Loan Documents.

3.1 Borrower and Guarantor covenant and agree with Lender as follows:

3.1(a) The sole ownership of the entire lessor's interest in the Leases is vested in Borrower, and that Borrower has not, and will not, perform any acts or execute any other instruments which might prevent Lender from fully exercising its rights under any of the terms, covenants and conditions of this Assignment. The ownership of the fee simple title to the Property is vested in Borrower.

3.1(b) No Leases (including any guaranties of such Leases) shall be entered into or materially altered, modified, amended, terminated, cancelled or surrendered nor any material terms or conditions thereof be waived except in the ordinary course of business.

3.1(c) There are no defaults now existing under any Leases and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases.

3.1(d) Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of lessor and any lessee under any of the Leases.

3.1(e) Borrower has not accepted and will not either accept any rents under any Leases for more than thirty (30) days in advance of their due dates.

3.1(f) Borrower upon request, from time to time, shall furnish to Lender a rent roll and lease abstract in such reasonable detail as Lender may request, certified by Borrower, of all Leases relating to the Property, and on demand, Borrower shall furnish to Lender executed copies of any and all such Leases.

4.1 The parties further agree as follows:

4.1(a) This Assignment is absolute and is effective immediately. Notwithstanding the foregoing, until a default has occurred, and has not been cured, under the terms and conditions of the Notes or the Mortgage or any other instrument constituting additional security for the Notes (collectively called the "**Loan Documents**") Borrower may receive, collect and enjoy the rents, income and profits accruing from the Property.

4.1(b) In the event of any default at any time in the Loan Documents, Lender may, at its option, without notice to Borrower, receive and collect all such rents, income and profits as they become due, from the Property and the leasehold interest therein and under any and all Leases of all or any part of the Property. Lender shall thereafter continue to receive and collect all such rents, income and profits, as long as such default or defaults shall exist, and during the pendency of any foreclosure proceedings, and if there is a deficiency, during any redemption period.

4.1(c) Borrower hereby irrevocably appoints Lender its true and lawful attorney with full power of substitution and with full power for Lender in its own name and capacity or in the name and capacity of Borrower, from and after any default until such default is cured, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property or the leasehold interest therein, and at Lender's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in its own name or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits. In the event of default of Borrower, Lessees of the Property shall be expressly authorized and directed to pay any and all amounts due Borrower pursuant to the Leases directly to Lender or such nominee as Lender may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made.

4.1(d) From and after any default that has not been cured, Lender is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of Lender or its designee to enter upon the Property, or any part thereof, with or without force and with process of law, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Borrower relating thereto, and may exclude the Borrower, its agents and servants, wholly therefrom. Borrower hereby grants full power and authority to Lender to exercise all rights, power and authority herein granted at any and all times after any default that has not been cured, without further notice to Borrower, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Property and the leasehold interest therein and of any indebtedness or liability of Borrower to Lender, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the cost of maintaining, repairing, rebuilding and restoring the improvements on the Property or of making the same rentable, attorneys' fees incurred in connection with the enforcement of this Assignment, and of principal and interest payments due from Borrower to Lender on the Notes and the Mortgage and the other Loan Documents, all in such order as Lender may determine according to provisions of the Note and Mortgage and the other Loan Documents executed herewith. Lender shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or growing out of the covenants and agreements of Borrower in the Leases. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property or leasehold interest therein, or parts thereof, upon Lender, nor shall it operate to make Lender liable for the performance of any waste of the Property by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger, or for any environmental hazard on the Property.

4.1(e) Waiver of or acquiescence by Lender in any default by the Borrower, or failure of the Lender to insist upon strict performance by the Borrower of any covenants, conditions or agreements in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

5.1 The rights and remedies of Lender under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Lender shall have under the Loan Documents, or at law or in equity.

6.1 If any term of this Assignment, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

7.1 All notices to be given pursuant to this Assignment shall be sufficient and shall be deemed served if mailed postage prepaid, certified or registered mail, return receipt requested, to the above described addresses of the parties hereto, or to such other address as a party may request in writing.

8.1 The terms "**Borrower**" and "**Lender**" shall be construed to include the successors and assigns thereof.

9.1 This Assignment may not be amended, modified or changed nor shall any waiver of any provision hereof be effective as against Lender, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

10.1 Upon cancellation of record of the Mortgage, this Assignment of Leases and Rents shall automatically and without further documentation or action on the part of the parties hereto, also be cancelled, terminated and be of no further or future force and effect.

11.1 This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the state where the property is located (without giving effect to principles of conflicts of law).

**12.1 WAIVER OF JURY TRIAL: BORROWER AND LENDER HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS INSTRUMENT AND TO ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS HEREUNDER OR THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. BORROWER AND LENDER EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY,**

WILLINGLY AND VOLUNTARILY GIVEN.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

IN WITNESS WHEREOF, Borrower has executed this Assignment on the day and year first above stated.

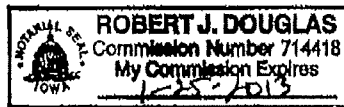
3801 LLC

By:

*Rich Eychaner, Manager*  
Rich Eychaner, Manager

STATE OF IOWA )  
                          ) ss.  
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this 14 day of June, 2011, by Rich Eychaner as manager of 3801 LLC.



*Robert J. Douglas*  
Notary Public

Exhibit A  
Legal Description

Lots 53 and 54 and the West 50 feet of Lots 34 and 35 in Block "P", AVIATION PARK, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa AND

Lots 51 and 52 (except the West 7 feet) in Block "P" in Aviation Park, an Official Plat, now included in and forming a part of the City of Des Moines, Iowa AND

The North 55 feet of the West 134.87 feet of Lots 46, 47, 48, 49 and 50, Block P, Aviation Park, Des Moines, Polk County, Iowa, except the North 20 feet thereof and except the West 7 feet thereof, and the South 105 feet of the West 134.87 feet of Lots 46, 47, 48, 49 and 50, Block P, Aviation Park, Des Moines, Polk County, Iowa, except the West 95.4 feet thereof and except the South 5.5 feet thereof AND

The North 20 feet of Lots 50 (except the West 7 feet), 49, 48, 47, 46 and the East 4 feet of Lot 46 (except the North 20 feet) and all of Lots 45, 44, 43 in Block "P", Aviation Park, an Official Plat, in the City of Des Moines, Polk County, Iowa; EXCEPT that part of said Lots 46, 45, 44 and 43 within the parcel of Douglas Avenue R.O.W. described as follows: Commencing at the SW corner of Section 19-79-24; thence North 89°42' East, 128.4 feet to the point of beginning; thence North 0°18' West, 38.0 feet; thence South 87°33' East, 41.65 feet; thence South 0°18' East, 0.5 feet; thence North 89°42' East, 30.4 feet along a line 35.5 feet from centerline, thence South 87°44'30" East, 56.1 feet; thence South 0°18' East, 33 feet to centerline; thence South 89°42' West, 128.0 feet to the point of beginning. All in Block "P", Aviation Park, an Official Plat, in the City of Des Moines, Polk County, Iowa; AND EXCEPT all that part of Lots 43 through 46 inclusive and the East 16 feet of Lot 47, Block "P", Aviation Park, an Official Plat, in the City of Des Moines, Polk County, Iowa, that lies within the following described line: Beginning at a point on the East line of said Lot 43, said point being 3 feet north of the Southeast corner thereof; thence North 87°44'30" West, a distance of 56.1 feet to a point on the West line of said Lot 44, said point being 5.50 feet North of the Southwest corner of said Lot 44; thence South 89°42' West a distance of 30.4 feet to a point that is 6.0 feet North of and normally distant from the South line of said Lot 46; thence North

0°18' West, a distance of 0.50 feet; thence North 87°33' West, a distance of 41.65 feet, to a point on the West line of the East 16 feet of said Lot 47; thence North along the West line of the East 16 feet of said Lot 47, a distance of 13.85 feet; thence Easterly, along a straight line, to a point on the East line of said Lot 43, said point being 13.25 feet North of the Southeast corner of said Lot 43; thence South along the East line of said Lot 43 to the point of beginning AND

The South 105 feet of the West 95.4 feet of Lots 47 to 50 inclusive, Block P, Aviation Park, Des Moines, Polk County, Iowa, except streets.