

**COMPARED**

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Pottawattamie County, IA 2007-007485  
Recorder John Sciortino  
Book-Page: 2007-007485  
File Time: 05/10/2007 @ 02:32:23 PM

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A Fee       

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Recorder's Cover Sheet

Prepared By: Jeffrey J. Zissa, Esq.  
Company: Akin Gump Strauss Hauer & Feld LLP  
Address: 1700 Pacific Avenue  
Dallas, TX 75201  
Phone: (214) 969-2800

Taxpayer Information: Tierney Properties, LLC  
Address: 1325 North 129th Circle  
Omaha, NE 68154

X Return Document To: Spence Title Services  
Address: 1905 Harney Street Ste 210  
Omaha, NE 68102  
Telephone Number: (402)345-8844

Legal Description: See attached Exhibit A

TA-53595

# COMPARED

**Countrywide®**

**COMMERCIAL REAL ESTATE FINANCE**

A Countrywide Capital Markets Company

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Akin Gump Strauss Hauer & Feld LLP  
1700 Pacific Avenue  
Suite 4100  
Dallas, Texas 75201-4675  
ATTN: Jeffrey J. Zissa, Esq.

Space above this line for recorder's use only

CW Loan No. 06-4727/Note ID 9641  
SHADOW PARK APARTMENTS

\$1,227,500.00	5/10/2007	6/8/2017	06-4727
Loan Amount	Closing Date	Maturity Date	Loan No.
<b>ASSIGNMENT OF LEASES AND RENTS</b>			

THIS ASSIGNMENT OF LEASES AND RENTS (as amended, modified and in effect from time to time, this "Assignment") is made as of the Closing Date set forth above, by TIERNEY PROPERTIES, L.L.C., a Nebraska limited liability company ("Assignor"), having an address of 1325 North 129th Circle, Omaha, Nebraska 68154, Facsimile No.: (402) 493-4613, in favor of COUNTRYWIDE COMMERCIAL REAL ESTATE FINANCE, INC., a California corporation (together with its successors and assigns, "Assignee"), having an address of 2701 N. Dallas Parkway, Suite 200, Plano, Texas 75093, Attention: CRF Asset Management, Facsimile No.: (972) 312-9576.

## RECITALS

A. Pursuant to that certain Promissory Note dated as of the date hereof by Assignor to Assignee (the "Note"), Assignee is making the Loan to Assignor which is secured by, among other things, the Mortgage on the land described in Exhibit A attached hereto. Capitalized terms used herein but not defined shall have the meanings set forth in Note or Mortgage, as applicable.

B. Assignor intends by the execution and delivery of this Assignment to further secure the payment and performance of the Loan Obligations.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Assignment of Leases and Rents. Assignor hereby absolutely and unconditionally assigns to Assignee all of Assignor's right, title and interest in all current and future Leases and Rents, it being intended that this Assignment constitute a present, absolute assignment and not an assignment for additional security only. This Section 1 presently gives Assignee the right to collect Rents and to apply Rents in partial payment of the Loan Obligations in accordance with the Loan Documents. Assignor intends that the Rents and Leases be absolutely assigned and no longer be, during the term of this Assignment, property of Assignor or Assignor's estate, as defined by 11 U.S.C. §541. If any law exists requiring Assignee to take actual possession of the Property (or some action equivalent to taking possession of the Property, such as securing the appointment of a receiver) for Assignee to "perfect" or "activate" the rights and remedies of Assignee as provided in this Section 1, Assignor waives the benefit of such law. Such assignment to Assignee shall not be construed to bind Assignee to perform of any covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Assignee, and notwithstanding this Assignment, Assignor shall remain liable for any obligations undertaken by Assignor pursuant to any Lease. Subject to the terms of this Section 1, Assignee grants to Assignor a license, revocable as hereinafter provided, to operate and manage the Property and to collect

and use the Rents. If an Event of Default occurs, the license granted to Assignor herein may, at Assignee's election, be revoked by Assignee (except for any Event of Default described in Section 6.1(f) of the Mortgage, for which the revocation shall be automatic and simultaneous with the occurrence thereof), and Assignee shall immediately be entitled to possession of all Rents collected thereafter (including Rents past due and unpaid) whether or not Assignee enters upon or takes control of the Property. Any Rents collected by Assignor from and after the date on which an Event of Default occurred and is continuing shall be held by Assignor in trust for Assignee. Assignor hereby grants and assigns to Assignee the right, at Assignee'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 Rents with or without taking the actual possession of the Property or any equivalent action. Assignee may apply any Rents collected after the license granted herein is revoked in Assignee's sole and absolute discretion to pay the Loan Obligations in such order and in such manner as Assignee shall elect in Assignee's discretion.

2. **Remedies.** At any time after the occurrence and during the continuance of an Event of Default, Assignee, without waiving such Event of Default, at its option, upon notice and without regard to the adequacy of the security for the Loan Obligations, either in person or by agent, upon bringing any action or proceeding, by a receiver appointed by a court, or otherwise, may take possession of the Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem proper. Assignee shall immediately be entitled to possession of all security deposits held with respect to the Property, whether or not Assignee enters upon or takes control of the Property and regardless of where any such security deposits are deposited or located. Assignee, either with or without taking possession of the Property in its own name, may demand, sue for or otherwise collect and receive all Rents, including Rents past due and unpaid, and apply such Rents to pay any one or more of the following in such order and amounts as Assignee may elect in its sole and absolute discretion: (a) all costs and expenses incurred, and advances made, by Assignee or Deed of Trust Trustee, as the case may be, to enforce this Assignment or the other Loan Documents, protect the lien and security afforded thereby, or preserve the Property, including, without limitation, all expenses of managing the Property, including, without limitation, the salaries, fees and wages of any managing agent and such other employees as Assignee may deem necessary and all expenses of operating and maintaining the Property, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for insurance and the cost of alterations, renovations, repairs or replacements, and all costs and expenses incident to taking and retaining possession of the Property or enforcing any of Assignee's rights and remedies hereunder; and (b) the Loan Obligations, together with all costs, expenses and attorneys' fees in connection with any of the foregoing. Neither Assignee's exercise of the option granted to Assignee in this Section 2 nor the collection or application of Rents as herein provided shall be considered a waiver of any Event of Default. Assignor agrees that the exercise by Assignee of one or more of its rights and remedies under this Assignment shall in no way be deemed or construed to make Assignee a mortgagee-in-possession.

3. **Representations.** (a) Assignor is the sole owner of the entire lessor's interest in the Leases, and neither the Leases nor any Rents have been Transferred by Assignor except to Assignee pursuant to the Loan Documents; (b) there are no Leases now in effect except those set forth on the certified rent roll delivered to Assignee in connection with the Loan and Assignor has delivered to Assignee true, correct and complete copies of all Leases (together with all modifications thereto) for any commercial space in the Property; (c) except as disclosed to Assignee in any tenant estoppel certificates delivered to Assignee in connection with the Loan: (i) none of the Rents have been collected for more than one (1) month in advance; (ii) the premises demised under the Leases have been completed and the tenants under the Leases have accepted and taken possession of the same on a rent-paying basis; (iii) to Assignor's knowledge, there exists no offset or defense to the payment of any portion of the Rents; (iv) no Lease contains an option to purchase, right of first refusal to purchase, expansion right, or any other similar provision; (v) to Assignor's knowledge, there are no defaults or events of default (and to Assignor's knowledge, no events or circumstances exist which with or without the giving of notice, the passage of time or both may constitute a default or event of default) under any of the Leases which have a Material Adverse Effect; and (vi) no residential Lease is for a term of less than six (6) months or more than twelve

(12) months; and (d) no Person has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease.

4. **Covenants.**

(a) Assignor shall (i) observe and perform all of the material obligations imposed upon the lessor under the Leases; (ii) promptly send copies to Assignee of all notices of default that Assignor shall send or receive under any Material Lease; (iii) promptly notify Assignee of any tenant under a Material Lease at the Property which has vacated, or has given Assignor written notice of its intention to vacate, the premises (or any portion thereof) leased to such tenant pursuant to the applicable Material Lease; (iv) enforce the terms, covenants and conditions in the Leases to be observed by tenants in accordance with commercially reasonable practices for properties similar to the Property; (v) not collect any Rents more than one (1) month in advance (not including security deposits); and (vi) not enter into, amend in any material respect or terminate any Material Lease (provided, however, that Assignor may terminate any such Material Lease if the lessee thereunder is in material monetary default of such Material Lease) without the prior written approval of Assignee, which approval shall not be unreasonably withheld, conditioned or delayed. "Material Lease" means any Lease of the Property (or material amendment thereto, assignment thereof, or subletting thereunder) where Rent payable thereunder exceeds ten percent (10%) of Rent payable under all Leases on the Property. Assignee's failure to respond to a request for approval of a Material Lease (or amendment, assignment, or subletting with respect thereto) within fifteen (15) Business Days of the latter of (i) such receipt of such request and (ii) receipt of all information reasonably requested by Assignee shall be deemed Assignee's approval, provided that Assignor delivers to Assignee a writing marked in bold lettering with the following: **"LENDER'S RESPONSE IS REQUIRED WITHIN 15 BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A MORTGAGE BETWEEN THE UNDERSIGNED AND LENDER"** and the envelope containing the writing must be marked "PRIORITY" in bold letters.

(b) Assignor may enter into any Lease, other than a Material Lease, after the date hereof, without the prior written consent of Assignee provided that such Lease (i) is documented using, and does not materially deviate from, the standard lease form approved by Assignee in its reasonable discretion; (ii) provides for rental rates and terms comparable to existing local market rates and terms (taking into account the type and quality of the tenant) as of the date such Lease is executed (unless in the case of a renewal or extension, the rent payable during such renewal term, or a formula or other method to compute such rent, has been specified in the original Lease); (iii) is an arms-length transaction with a tenant that is not an Affiliate of Assignor, (iv) is subordinate to the Mortgage and the tenant thereunder agrees to attorn to Assignee; and (v) if for residential space is for a term of not less than six (6) months or more than twelve (12) months. All proposed Leases that do not satisfy the requirements set forth in this Section 4 require Assignee's prior written approval at Assignor's expense (including reasonable legal fees and expenses). Assignor shall promptly deliver to Assignee a copy of each Lease (other than a residential lease) entered into after the Closing Date, together with written certification from Assignor confirming that (y) the copy delivered is a true, complete and correct copy of such Lease and (z) Assignor has satisfied all conditions of this Section 4.

5. **Notices.** All notices, demands, consents, requests or other communications that are permitted or required to be given by Assignor or Assignee to the other shall be in writing and given in the manner specified in the Mortgage.

6. **Binding Obligations.** The provisions and covenants of this Assignment shall run with the Property, shall be binding upon Assignor, its successors and assigns, and shall inure to the benefit of Assignee, its successors and assigns.

7. **Obligations Absolute.** Except as set forth to the contrary herein or in the other Loan Documents, all sums payable by Assignor hereunder shall be paid without notice, demand, counterclaim (other than mandatory counterclaims), setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Except as expressly provided herein, Assignor waives all rights now or hereafter

conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Assignor.

8. Termination. When the Mortgage has been fully reconveyed or released by Assignee, that reconveyance or release shall operate as a release and discharge of this Assignment and as a reassignment of all future Leases and all Rents with respect to the Property to the Person or Persons legally entitled thereto, unless such reconveyance or release expressly provides to the contrary.

9. Exculpation. This Assignment is and shall be subject to the exculpation provisions of Section 10 of the Note.

10. Miscellaneous. The provisions of Article 9 of the Mortgage are incorporated herein by this reference (with all references to Mortgagee deemed to mean and refer to Assignee, and all references to Mortgagor deemed to mean and refer to Assignor).

11. Local Law Provisions. The provisions of Schedule 1 attached hereto are incorporated herein by this reference.

[Signature on the following page]

IN WITNESS WHEREOF, this Assignment of Leases and Rents has been duly executed by Assignor as of the day and year first above written.

**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 ASSIGNMENT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

**Assignor acknowledges receipt of a copy of this Assignment, the Note, the Mortgage and all other Loan Documents.**

**ASSIGNOR:**

**TIERNEY PROPERTIES, L.L.C.,**  
a Nebraska limited liability company

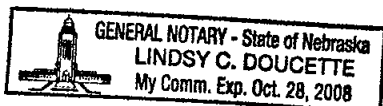
By: Dennis P. Tierney  
Name: Dennis P. Tierney  
Title: Manager

STATE OF NEBRASKA  
COUNTY OF DOUGLAS

§  
§  
§

This instrument was ACKNOWLEDGED before me on May 4, 2007, by Dennis P. Tierney, as Manager of TIERNEY PROPERTIES, L.L.C., a Nebraska limited liability company, on behalf of said limited liability company.

[S E A L]



My Commission Expires:

10/28/08

Lindsay C. Doucette  
Notary Public, State of Nebraska  
Lindsay C. Doucette  
Printed Name of Notary Public

Exhibit A

DESCRIPTION OF PROPERTY

(See attached)

## **EXHIBIT "A"**

Lots 1, 2 and 3, Block 9, and Lots 1 to 5, Block 18, all in BROWN'S SUBDIVISION, Council Bluffs, Pottawattamie County, Iowa, and all of Railroad Street adjoining subject property that was vacated by City Ordinance No. 4954; including the area within the intersection of Railroad Street with South 34<sup>th</sup> Street and is all in Brown's Subdivision, City of Council Bluffs, Pottawattamie County, Iowa; also all of South 34<sup>th</sup> Street adjoining subject property, that was vacated by Ordinance No. 4954 all in Brown's Subdivision, City of Council Bluffs, Pottawattamie County, Iowa.



Schedule 1

Local Law Provisions

**NONE**