



MISC 2007039478



APR 09 2007 14:23 P 8

11402 EVANS OMAHA LLC,

as Borrower

to

DEUTSCHE BANK BERKSHIRE MORTGAGE, INC.

as Lender

ASSIGNMENT OF LEASES AND RENTS

Date: April 3, 2007

PREPARED BY AND UPON RECORDATION RETURN TO:

Cadwalader, Wickersham & Taft LLP
227 West Trade Street, Suite 2400
Charlotte, North Carolina 28202
Attention: Jeffrey J. Lee, Esq.

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE

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This **ASSIGNMENT OF LEASES AND RENTS** ("Assignment") made as of April 3, 2007 by 11402 EVANS OMAHA LLC, an Iowa limited liability company, with an office located at c/o BH Equities, L.L.C., 400 Locust Street, Suite 790, Des Moines, Iowa 50309 ("Borrower"), in favor of DEUTSCHE BANK BERKSHIRE MORTGAGE, INC., a Delaware corporation, whose address is One Beacon Street, 14th Floor, Boston, Massachusetts, 02108 ("Lender").

Borrower owns the real property and the improvements described on **Exhibit A** ("Property") and has delivered to Lender a Multifamily Promissory Note in the amount of \$12,465,000.00 ("Note") and a Multifamily Deed of Trust and Security Agreement ("Mortgage"). The Note, the Mortgage and all other instruments evidencing, securing or relating thereto, hereinafter referred to collectively as the "Loan Documents".

1. To further secure Borrower's obligations under the Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Borrower does irrevocably, absolutely and unconditionally transfer, assign and pledge to Lender all of Borrower's right, title and interest in and to:

(a) any and all leases and occupancy agreements now or hereafter affecting all or part of the Property and all guarantees, extensions, renewals and replacements thereof (collectively, "Leases");

(b) all deposits (whether for security or otherwise), rents, income, proceeds, revenue and profits of every nature of and from the Property, including, without limitation, any other payment Borrower may become entitled to receive with respect to any of the Leases pursuant to any bankruptcy, insolvency or reorganization or similar proceedings (collectively, "Rents"), together with the immediate right to collect and retain the Rents now or hereafter becoming due, and together with all rights that Borrower may have against any tenant, lessee or licensee under the Leases or against any other occupant of the Property (such tenants, lessees, licensees or other occupants, "Tenants"); and

(c) any right of Borrower to receive monies under the Leases on the Property in connection with a termination of such Leases by the applicable Tenant ("Early Termination Fees").

2. While this instrument is a present and absolute assignment of the Rents, the Leases and the powers granted to Lender, Borrower is granted a revocable license ("License") to retain possession of the Leases and to collect and retain the Rents (other than Early Termination Fees) until an occurrence of an Event of Default (as defined in the Mortgage). Upon an Event of Default, the License shall automatically terminate without notice to Borrower, and Lender may, with or without taking possession of the Property, take possession of the Leases and collect the Rents. After such termination, Borrower shall be Lender's agent regarding the Rents, and any Rents collected by Borrower (including but not limited to any subsidy payments under any housing assistance payment contracts) shall be held in trust by Borrower for the exclusive benefit of Lender, and Borrower shall, within one (1) business day after receipt of any Rents, pay them to Lender, and furthermore, Lender shall have the authority, without notice to

Borrower or regard to the adequacy of the security therefor, to (a) manage and operate the Property (such as rental and repairs), with full power to employ agents to conduct the same, and (b) demand, collect, receive and sue for the Rents, including those past due and unpaid as Lender in its sole discretion shall determine.

3. Without limiting the rights granted above, if Borrower shall fail to make any payment or to perform any act required hereunder (beyond any applicable grace or cure period), then Lender may, but shall not be obligated to, without prior notice to or demand on Borrower, and without releasing Borrower from any obligation hereof, make or perform the same in such manner and to such extent as Lender may deem necessary to protect the security hereof, including, without limitation, appearing in and defending any proceeding purporting to affect the security hereof or the rights of Lender, discharging any obligation of Borrower under any Lease, and paying all related costs and employing counsel.

4. This Assignment does not make Lender responsible for (a) managing or repairing the Property, (b) performing the terms of the Leases, or (c) any loss sustained by Borrower resulting from any act or omission of Lender in managing the Property, or make Lender a mortgagee in possession.

5. Borrower shall indemnify and hold Lender harmless from and against any and all liability, loss, claim, or damage ("Loss") which Lender may incur under the Leases and/or by reason of this Assignment, including, without limitation, any asserted by Tenants under the Leases. If Lender incurs any Loss, including sums advanced pursuant to Paragraph 2 above or in defense of any claim, the amount thereof, including costs and attorneys' fees, together with interest at the Default Rate (as defined in the Note) from the date incurred by Lender until repaid by Borrower, shall be immediately due and payable to Lender by Borrower upon demand and shall be secured by the Loan Documents.

6. Borrower irrevocably appoints Lender as its attorney-in-fact, which power of attorney is coupled with an interest, from and after an Event of Default to perform any act which Lender may perform by virtue of this Assignment. Except as otherwise provided in the Mortgage, Borrower shall not, without the prior written consent of Lender, further pledge or otherwise encumber or assign the Leases or Rents.

7. At any time, Lender may, at its option, notify any Tenants of the existence of this Assignment. Borrower specifically authorizes and directs all Tenants to pay all Rents to Lender upon receipt of demand from Lender and agrees that each such present and future Tenant may rely upon written demand from Lender to so pay said Rents without further inquiry. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

8. (a) Lender's acceptance of this Assignment is without prejudice to Lender. Lender's exercise of or failure to exercise the rights granted it herein, and collecting and applying Rents as herein provided, is without prejudice and not a waiver by Lender of any Event of Default and does not prevent foreclosure of any liens on the Property or make Lender liable under any of the Leases, Lender expressly reserving all of its rights and privileges under the Loan Documents as though this Assignment had not been entered into. In addition to any other rights hereunder, Lender may institute suit and obtain a mandatory injunction against Borrower to prevent a breach or Event of Default.

(b) All rights and obligations of the parties hereunder shall inure to the benefit of and be binding upon each party's successors and assigns. Borrower will not assert any claim against Lender as a defense, counterclaim or set-off to any action brought by Lender for any amounts due hereunder or for possession of or the exercise of rights with respect to the Leases or the Rents.

(c) If any provision of this Assignment shall be invalid, such invalidity shall not affect the validity and enforceability of the remaining provisions. This Assignment may not be amended except by a written instrument duly executed by Borrower and Lender and shall be in full force and effect continuously from the date hereof to and until the Mortgage shall be released.

(d) All notices or other communications to be sent by one party to the other shall be given and effective as provided in the Mortgage. This Assignment shall be governed by and construed in accordance with the laws of the state in which the Property is situated without regard to its conflicts of law rules.

[NO FURTHER TEXT ON THIS PAGE]


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

BORROWER:

11402 EVANS OMAHA LLC, an Iowa limited liability company

By: 11402 EVANS OMAHA MANAGER, INC., an Iowa corporation, its managing member

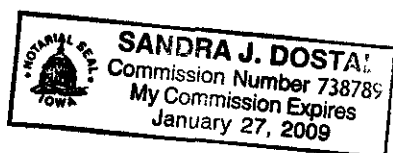
By:


Name: Nicholas H. Roby
Title: Vice President

ACKNOWLEDGMENT

STATE OF Iowa)
)
COUNTY OF Polk)

The foregoing instrument was acknowledged before me on March 26, 2007, by Nicholas H. Roby, the Vice President, of 11402 EVANS OMAHA MANAGER, INC., an Iowa corporation, the Managing Member of 11402 EVANS OMAHA LLC, an Iowa limited liability company on behalf of the limited liability company.



Sandra J. Dostal
Notary Public, State of Iowa
My Commission Expires: 1/27/09

EXHIBIT A
Legal Description

Exhibit "A"

Parcel I:

Lots 1, 2, 3, and 10, in Lake Forest Estates Replat, an Addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska, in Book 1362, page 201, except that portion of said Lot 3, more particularly described as follows: *63-21480*

Beginning at the Northwest corner of said Lot 3; thence East along the Northerly property line of Lot 3, a distance of 20 feet; thence Southeasterly, along a line parallel to the Westerly property line of Lot 3, a distance of 20 feet; thence Southwesterly, along a line parallel to the Northerly property line of Lot 3, a distance of 20 feet, more or less, to a point on the Westerly property line of Lot 3; thence Northwesterly, along the westerly property line of Lot 3, to the point of beginning;

And, except that part of Lot 3 more particularly described as follows:

Beginning at the Northeast corner of said Lot 3; thence South along the easterly property line of Lot 3 a distance of 20 feet; thence West, along a line parallel to the Northerly property line of Lot 3, a distance of 20 feet; thence Northerly, along a line parallel to the Easterly property line of Lot 3, a distance of 20 feet, more or less, to a point on the Northerly property line of Lot 3; thence Easterly, along the Northerly line of Lot 3; to the point of beginning

Parcel II:

Lot 1, Lake Forest Estates, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, in Book 1329, page 479. *63-21460*

Parcel III:

Lots 15-25, Lake Forest Estates Replat, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, in Book 1362, page 201. *63-21480*