



BK 1370 PG 671-674



MISC 2001 02816

Nebr Doc
Stamp Tax

Date

\$

By

LANDMARK WEB
REGISTER OF DEEDS
PLAS COUNTY, NE

01 MAR -1 AM 9:21

RECEIVED

FEE 31.00 FB see attached
 BKP C/O COMM BLW
 DEL SCAN ALFV

Assignment of Leases and Rents

(Nebraska)



This Assignment is made this 01/19/01
Crosstown LLC
 (the "Assignor"), a(n) Wells Fargo Bank Nebraska

Recording Requested by &
 When Recorded Return To:
US Recordings, Inc. and
2925 Country Drive Ste 201
St. Paul, MN 55117

(the "Assignee"), a national banking association.

- ☒ The Assignor has executed and delivered to the Assignee its promissory note dated 01/19/01 in the original principal amount of \$ 67,500.00 and any extensions, renewals or modifications thereof (the "Note").
- ☐ The Assignor has executed and delivered to the Assignee its guaranty dated _____ in favor of the Assignee for the benefit of _____

(the "Borrower") in the amount of \$ _____ and any replacements or substitutions thereof (the "Guaranty").

To secure payment of the obligation described above (the "Obligation"), the Assignor has executed and delivered to the Assignee a deed of trust ("Deed of Trust") dated 01/19/01, covering certain property ("Trust Property") including, among other things, the real estate described in the attached Exhibit A and the buildings, improvements, fixtures and personal property now or in the future located thereon.

The Assignee has required the execution of this Assignment as a condition to making or accepting the Obligation.

ACCORDINGLY, in consideration of the premises and other good and valuable consideration, the Assignor does hereby grant, transfer and assign to the Assignee all of the Assignor's right, title and interest in and to (i) any and all present or future leases or tenancies, whether written or oral, covering or affecting any or all of the Trust Property, together with any and all extensions, modifications and renewals thereof (each, a "Lease" and collectively, the "Leases"), and (ii) all rents, profits and other income or payments of any kind due or payable or to become due or payable to the Assignor as the result of any use, possession or occupancy of all or any portion of the Trust Property or as the result of the use of or lease of any personal property constituting a part of the Trust Property, whether accruing before or after foreclosure of the Deed of Trust or during the period of redemption thereof ("Rents"), all for the purpose of securing (a) payment of all indebtedness evidenced by the Obligation and all other sums secured by the Deed of Trust; and (b) performance and discharge of each and every obligation, covenant and agreement of the Assignor contained herein and in the Deed of Trust.

The Assignor warrants and covenants that Assignor is and will remain the absolute owner of the Rents and Leases free and clear of all liens and encumbrances other than the lien granted herein, that Assignor has not previously assigned or otherwise encumbered the Assignor's interest in any of the Rents or Leases to any other person; that Assignor has the right under applicable law, under the Leases and otherwise to execute and deliver this Assignment and to keep and perform all obligations hereunder; and that Assignor will warrant and defend the Leases and Rents against all adverse claims, whether now existing or later arising.

The Assignor further covenants and agrees as follows:

- 1. PERFORMANCE OF LEASES.** The Assignor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which it now is or hereafter becomes liable to observe or perform under any present or future Lease, and, at the Assignor's sole cost and expense, will enforce or secure the performance of each and every obligation, under each and every Lease. The Assignor will observe and comply with all provisions of law applicable to the operation and ownership of the Trust Property. The Assignor will give prompt written notice to the Assignee of any notice of default on the part of the Assignor with respect to the Lease received from the tenant thereunder, and will also at Assignor's sole cost and expense, appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of the Assignor or any tenant thereunder. The Assignor will not lease or otherwise permit the use of all or any portion of the Trust Property for rent that is below the fair market rent for such property.
- 2. COLLECTION OF RENTS IN ADVANCE.** The Assignor will not collect or accept any Rents for the use or occupancy of the Trust Property for more than one month in advance. Security deposits shall not be deemed Rents for purposes of this paragraph.
- 3. PROTECTING THE SECURITY OF THIS ASSIGNMENT.** Should the Assignor fail to perform or observe any covenant or agreement contained in this Assignment, then the Assignee may (but shall have no obligation to) make or do the same in such manner and to such extent as the Assignee may deem appropriate to protect the security hereof. The rights of the Assignee hereunder shall include but not be limited to (i) the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Assignee, (ii) the right to perform and discharge each and every obligation, covenant and agreement of the Assignor contained in the Lease, and (iii) the right, in exercising any of the other rights granted hereunder, to pay necessary costs and expenses, employ counsel and pay reasonable attorneys' fees. The Assignor shall pay on demand all sums expended by the Assignee pursuant to this paragraph, together with interest thereon at the rate stated by the Note or the rate stated in the most recent obligation covered by the Guaranty, and the same shall be added to the Obligation secured hereby and by the Deed of Trust.
- 4. PRESENT ASSIGNMENT.** This Assignment shall constitute a perfected, absolute and present assignment; provided that the Assignor shall have the right to collect all of the Rents (subject to the Section entitled "Collection of Rents in Advance") and to retain, use and enjoy the same until an Event of Default occurs under the Deed of Trust or the Assignor breaches any warranty or covenant contained in this Assignment. Any Rents accruing prior to an Event of Default under the Deed of Trust but paid thereafter shall be paid to the Assignee.
- 5. SURVIVAL OF OBLIGATION.** This Assignment is given as security in addition to the Deed of Trust. All of the Assignor's obligations under the Deed of Trust and this Assignment shall survive foreclosure of the Deed of Trust. The Assignor shall observe and comply with all terms and conditions contained in the Deed of Trust and in this Assignment and shall preclude any Event of Default from occurring under the Deed of Trust during the period of redemption following foreclosure of the Deed of Trust.

6. **DEFAULT; REMEDIES.** Upon the occurrence of any Event of Default specified in the Deed of Trust or upon the breach of any warranty or covenant contained in this Assignment, the Assignee may, at its option:
- (a) in the name, place and stead of the Assignor and as the Assignee in its sole discretion deems appropriate (i) enter upon, manage and operate the Trust Property or retain the services of one or more independent contractors to manage and operate all or any part of the Trust Property; (ii) make, enforce, modify and accept surrender of the Leases; (iii) obtain or evict tenants, collect, receive, sue for, fix, modify, adjust or compromise the Rents, and enforce all rights of the Assignor under the Leases; and (iv) perform any and all other acts that may be necessary or proper to protect the security of this Assignment.
 - b) with or without exercising the rights set forth in subparagraph (a) above, give or require the Assignor to give notice to any or all tenants under the Leases authorizing and directing them to pay all Rents under the Leases directly to the Assignee; and
 - c) without regard to any waste, adequacy of the security or solvency of the Assignor, apply for the appointment of a receiver of the Trust Property, to which appointment the Assignor hereby consents, whether or not foreclosure proceedings have been commenced under the Deed of Trust and whether or not a foreclosure sale has occurred.

The exercise of any of the foregoing rights or remedies and the application of the rents, profits and income pursuant to the Section entitled "Application of Rents, Profits and Income" shall not cure or waive any Event of Default (or notice of default) under the Deed of Trust or invalidate any act done pursuant to such notice.

7. **APPLICATION OF RENTS, PROFITS AND INCOME.** All Rents collected by the Assignee or its agent or receiver each month shall be applied as follows:
- a) if a receiver has been appointed, to payment of all reasonable fees of the receiver;
 - b) to payment of all tenant security deposits then owing to tenants under any of the Leases;
 - c) to payment, when due, of prior or current real estate taxes and special assessments with respect to the Trust Property, or if the Deed of Trust requires periodic escrow payments for such taxes and assessments, to the escrow payments then due;
 - d) to payment of all premiums then due for insurance required by the provisions of the Deed of Trust, or if the Deed of Trust requires periodic escrow payments for such premiums, to the escrow payments then due;
 - e) to payment of expenses incurred for normal maintenance of the Trust Property;
 - f) if received prior to any foreclosure sale of the Trust Property, to the Assignee for payment of the Obligation, but no such payment made after acceleration of the Obligation shall affect such acceleration;
 - g) if received during or with respect to the period of redemption following a foreclosure sale of the Trust Property:
 - (i) If the purchaser at the foreclosure sale is not the Assignee, first to the Assignee to the extent of any deficiency of the sale proceeds to repay the Obligation, second to the purchaser to be retained as a credit to the redemption price, but if the Trust Property is not redeemed, then to the purchaser of the Trust Property;
 - (ii) If the purchaser at the foreclosure sale is the Assignee, to the Assignee to the extent of any deficiency of the sale proceeds to repay the Obligation and the balance to be retained by the Assignee as a credit to the redemption price, but if the Trust Property is not redeemed, then to the Assignee, whether or not any such deficiency exists.

The rights and powers of the Assignee under this Assignment and the application of Rents under this Section shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after the foreclosure sale.

8. **NO LIABILITY FOR ASSIGNEE.** The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of the Assignor under the Leases. This Assignment shall not operate to place upon the Assignee responsibility for the control, care, management or repair of the Trust Property or for the carrying out of any of the terms and conditions of the Leases. The Assignee shall not be responsible or liable for any waste committed on the Trust Property, for any dangerous or defective condition of the Trust Property, for any negligence in the management, upkeep, repair or control of said Trust Property or for failure to collect the Rents.
9. **ASSIGNOR'S INDEMNIFICATION.** The Assignor shall indemnify and hold the Assignee harmless against any and all claims, demands, liability, loss or damage (including all costs, expenses and reasonable attorneys' fees in the defense thereof) asserted against, imposed on or incurred by the Assignee in connection with or as a result of this Assignment or the exercise of any rights or remedies under this Assignment or under the Leases or by reason of any alleged obligations or undertakings of the Assignee to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should the Assignee incur any such liability, the amount thereof, together with interest thereon at the rate stated in the Note or the rate stated in the most recent obligation covered by the Guaranty, shall be secured hereby and by the Deed of Trust, and the Assignor shall reimburse the Assignee therefor upon demand.
10. **AUTHORIZATION TO TENANTS.** Upon notice from the Assignee that it is exercising the remedy set forth in the Section entitled "Default; Remedies" of this Assignment, the tenants under the Leases are hereby irrevocably authorized and directed to pay to the Assignee all sums due under the Leases, and the Assignor hereby consents and directs that said sums shall be paid to the Assignee without the necessity for a judicial determination that a default has occurred hereunder or under the Deed of Trust or that the Assignee is entitled to exercise its rights hereunder, and to the extent such sums are paid to the Assignee, the Assignor agrees that the tenant shall have no further liability to the Assignor for the same. The signature of the Assignee alone shall be sufficient for the exercise of any rights under this Assignment and the receipt of the Assignee alone for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Trust Property. Checks for all or any part of the Rents collected under this Assignment shall upon notice from the Assignee be drawn to the exclusive order of the Assignee.
11. **SATISFACTION.** Upon the payment in full of the Obligation secured hereby as evidenced by a recorded deed of reconveyance, this Assignment shall, without the need for any further satisfaction or release, become null and void and be of no further effect.
12. **ASSIGNEE AS ATTORNEY-IN-FACT.** The Assignor hereby irrevocably appoints the Assignee and its successors and assigns as the Assignor's agent and attorney-in-fact, which appointment is coupled with an interest, with the right but not the duty to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as the Assignee may deem appropriate to make this Assignment and any further assignment effective, including but not limited to the right to endorse on behalf and in the name of the Assignor all checks from tenants in payment of Rents that are made payable to the Assignor.
13. **SPECIFIC ASSIGNMENT OF LEASES.** The Assignor shall transfer and assign to the Assignee upon written notice by the Assignee, any and all specific Leases that the Assignee requests. Such transfer or assignment by the Assignor shall be upon the same or substantially the same terms and conditions as are herein contained, and the Assignor shall properly file or record such assignments, at the Assignor's expense, if requested by the Assignee.
14. **UNENFORCEABLE PROVISIONS SEVERABLE.** All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any terms of this Assignment shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof shall in no way be affected thereby.
15. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the Assignor and the heirs, legal representatives and assigns of the Assignor, and shall inure to the benefit of the Assignee and its successors and assigns.
16. **AMENDMENT; NOTICE.** This Assignment can be amended only in a writing signed by the Assignor and the Assignee. Any notice under this Assignment shall be deemed to have been given when given in accordance with the requirements for notice under the Deed of Trust.
17. **COUNTERPARTS.** This Assignment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one instrument.
18. **THIRD PARTY.** If the Assignor is an individual, nothing contained herein shall in any way obligate the spouse, if any, of the Assignor to pay the Obligation unless such spouse also signed the Note or the Guaranty that is evidence of the Obligation.

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

Signatures

Assignor's Name

Crosstown LLC.

Signature

X

Name and Title (if applicable)

Timothy Odorisio, Member

Signature

X

Name and Title (if applicable)

Gary Mandolfo, Member

Signature

X

Name and Title (if applicable)

Signature

X

Name and Title (if applicable)

Individual

STATE OF NEBRASKA

)

) SS

COUNTY OF _____

)

The foregoing instrument was acknowledged before me this _____ by _____ and _____.

Witness my hand and official seal.

Signature of Person Taking Acknowledgment

Title or Rank

Serial Number (if any)

My commission expires: _____

[Notarial Seal]

Organization

STATE OF NEBRASKA

)

) SS

COUNTY OF Douglas

)

The foregoing instrument was acknowledged before me this 01/19/01 by Timothy Odorisio, Member and Gary Mandolfo, Member on behalf of the Crosstown LLC.

Witness my hand and official seal.

Signature of Person Taking Acknowledgment

Title or Rank

Serial Number (if any)

My commission expires: 1-08-04

[Notarial Seal]



U06678371-01
ASSIGNMENT OF RE
REF# 1117PAULAHOPPE
US Recordings

EXHIBIT A

PARCEL A: Lots Four (4), Five (5), and Six (6), in Block Two (2), in SCHAEFER PLACE, an Addition to the City of Omaha, in Douglas County, Nebraska, together with the West ½ of vacated alley adjoining on the East 06-34680

PARCEL B: Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), and Eleven (11), in BLUFF VIEW, an Addition to the City of Omaha, in Douglas County, Nebraska, AND Lots One (1), Two (2), Three (3), Four (4), Five (5), and Six (6), in Block One (1), and Lots One (1), Two (2), and Three (3), in Block Two (2), all in SCHAEFER PLACE, an Addition to the City of Omaha, in Douglas County, Nebraska, together with and including vacated alley between Evans Street and Pratt Street from 14th Avenue to the West line of Lot Three (3), Block Two (2), in Schaefer Place, and the west line of Lot Seven (7), in BLUFF VIEW ADDITION, the vacated portion of 15th Street from the north line of the alley between Evans Street to Pratt Street to the south line of Pratt Street, the West ½ of vacated portion of 14th Avenue from Evans Street to Pratt Street, and the East ½ of the vacated North and South alley East of 16th Street from Evans Street to Pratt Street, and the West ½ of the vacated North and South alley East of 16th Street adjoining Lots Eight (8), Nine (9) and Ten (10), in Bluff View Addition and all of the interest of the fee title holder in the East ½ of the vacated portion of 14th Avenue from Evans Street to Pratt Street, all in the City of Omaha, in Douglas County, Nebraska 06-03920
- 06-34680
- 06-34680



U06678371-01

ASSIGNMENT OF RE
REF# 1117PAULAHOPPE
US Recordings