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Nov 5 10 30 AM '97

RICHARD H. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE



**WHEN RECORDED, PLEASE RETURN TO:**

Mortgage Loan Department  
First National Bank of Omaha  
Third Floor, First National Plaza  
11404 West Dodge Road  
Omaha, Nebraska 68154

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BKP 2-15-11 C/O \_\_\_\_\_ COMP.   
DEL. \_\_\_\_\_ SCAN de FY \_\_\_\_\_

**ASSIGNMENT OF RENTS AND LEASES**

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") is dated as of the 3rd day of November, 1997, by Maple 144 LLC, a Nebraska limited liability company ("Borrower"), to First National Bank of Omaha, a national banking association, Omaha, Nebraska, and its successors and assigns ("Lender").

**PRELIMINARY STATEMENT**

Borrower has, concurrently with the execution hereof, secured a loan from Lender in the amount of \$4,500,000.00, evidenced by that certain Promissory Note dated of even date herewith (the "Promissory Note") executed by Borrower in favor of Lender and bearing interest and being payable as provided therein. The payment and performance of Borrower's obligations under the Promissory Note will be secured, in part, by that certain Deed of Trust, Security Agreement and Assignment of Rents dated of even date herewith (the "Mortgage") between Borrower and Lender encumbering the real property described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Real Property").

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

- 1. Definitions.** Capitalized terms used herein shall have the respective meanings given them in the Mortgage, unless otherwise defined herein.
- 2. Assignment: Certain Rights of Borrower.** To further secure the prompt payment and performance of each obligation secured by the Mortgage (the "Secured Obligations"), Borrower hereby assigns, transfers, conveys and sets over to Lender all of Borrower's estate, right, title and interest in, to and under all leases, whether existing on the date hereof or hereafter entered into (including any extensions, modifications or amendments thereto) relating to the Real Property (the "Leases"), together with all rights, powers, privileges, options and other benefits of Borrower as the lessor under the Leases regarding the current tenants and any future tenants, and all the rents, revenues, profits and income from the Mortgaged Property (as defined in the Mortgage), 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 Mortgaged 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, revenues, profits and income thereof. It is intended by Borrower and Lender that this Assignment constitutes an absolute assignment and not

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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.

(a) Notwithstanding the foregoing, however, so long as no Event of Default (as defined in Paragraph 4 below) has occurred, Borrower shall have a revocable license to possess and control the Mortgaged Property and collect and receive all rents, revenues, profits and income. Upon the occurrence of an Event of Default, such license shall be deemed automatically revoked.

(b) Upon the occurrence of any Event of Default, Lender may, at any time upon such notice as is required by law, by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take possession and control of the Mortgaged Property, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Mortgaged Property, including, but not limited to, execute, cancel or modify the Leases, make repairs to the Mortgaged Property, execute or terminate contracts providing for the management or maintenance of the Mortgaged 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, revenues, profits and income from the Mortgaged Property as specified in this Assignment as the same become due and payable, including, but not limited to, rents then due and unpaid.

(c) All rents, revenues, profits and income collected shall immediately be held by Borrower as trustee for the benefit of Lender, only; provided, however, until an Event of Default has occurred, Borrower may use such funds for limited liability company purposes. Borrower agrees that commencing upon the occurrence of such Event of Default, each tenant of the Mortgaged Property shall make its rent payable to and pay such rent 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 each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Borrower.

(d) In the event Lender elects to seek the appointment of a receiver for the Mortgaged Property upon Borrower's breach of any covenant or agreement of Borrower in this Assignment, 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 Mortgaged Property.

(e) All rents, 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 Mortgaged 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 Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Mortgaged Property and to the sums secured by this Assignment. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those rents actually received.

(f) If the rents, revenues, profits and income from the Mortgaged Property are not sufficient to meet the costs, if any, of taking possession and control of and managing the Mortgaged 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 by the Promissory Note.

(g) Any entering upon and taking possession and control of the Mortgaged Property by Lender or the receiver and any application of rents, 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.

(h) Borrower hereby represents and agrees that it is and will be the sole owner of the entire landlord's interest (or tenant's interest in the case of Leases with respect to which Borrower is the tenant) in all existing Leases, subject to Permitted Encumbrances (as defined in the Mortgage), that Borrower has not executed any prior assignment of said Leases or rents, revenues, profits and income except those being subordinated hereto, 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 of the Mortgaged Property for more than one (1) month prior to the due dates of such rents.

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

(a) If any of the Leases provide for a security deposit paid by the tenant thereunder to Borrower, this Assignment shall transfer to the Lender all of Borrower's right, title and interest in and to 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 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 grant concessions or modify or amend any of the economic provisions of any such Lease in any manner whatsoever, without the prior written consent of Lender;

(c) Borrower shall not collect any rent more than one (1) month in advance of the date on which it becomes due under the terms of each Lease;

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

(e) Borrower shall not execute any further assignment of any rent or any interest therein or suffer or permit any such assignment to occur by operation of law;

(f) Except with the prior written consent of Lender, 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 Mortgaged Property or any part thereof, or suffer or permit conversion of any Lease to a sublease;

(g) Borrower shall faithfully perform and discharge all obligations of the lessor or landlord under the Leases, and shall give prompt written notice to Lender of any notice of Borrower's default received from the tenant or any other person and shall furnish Lender with a complete copy of said notice. Borrower shall appear in and





out the terms of this Assignment. This Assignment or a memorandum hereof may be recorded by Lender at any time.

10. **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.

11. **Marshalling.** Notwithstanding the existence of any other security interest in the Mortgaged Property held by Lender or by any other party, except as otherwise limited by applicable law, Lender shall have the right to determine the order in which any of the Mortgaged 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 Mortgaged 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.

12. **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 by hand delivery, overnight courier, or certified mail, postage prepaid, delivered to the parties at the following addresses:

If to Borrower:	Jay R. Lerner - Manager Maple 144 LLC 10855 West Dodge Road, Suite 270 Omaha, Nebraska 68154
If to Lender:	First National Bank of Omaha 1620 Dodge Street Omaha, Nebraska 68102 Attn: Senior Officer, Mortgage Loan Department
With a copy to:	Joseph Polack, Esq. Polack, Woolley & Troia, P.C. 420 First National Plaza 11404 West Dodge Road Omaha, Nebraska 68154

or to such other addresses as are designated by notice pursuant to this Section.

13. **Enforcement; Expense of Litigation.** When an Event of Default shall occur under the Secured Obligations, or any part thereof, whether by acceleration or otherwise, Lender shall have the right to enforce the lien hereof for such Secured Obligations, or part thereof. In any suit to enforce any remedy of Lender under this Assignment, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) or procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders



**EXHIBIT A****LEGAL DESCRIPTION**

That part of the East 1/2 of the SE 1/4 of Section 2, T15N, R11E of the 6th P.M., Douglas County, Nebraska, described as follows:

Commencing at the SE corner of said East 1/2;

*SESE*  
thence N00°38'05"E (assuming the South line of said East 1/2 to bear East - West) 361.14 feet on the East line of said East 1/2 to the Point of Beginning, said point being on the Northerly line of West Maple Road and the SE corner of a tract of land described on a "Warranty Deed" recorded in Book 1941 at Page 76 of the Douglas County records and hereinafter called Tract "A;"

thence S25°29'06"W 143.00 feet on the Northerly line of West Maple Road and on the Southerly line of said Tract "A;"

thence S04°45'43"W 120.42 feet on the Northerly line of West Maple Road and on the Southerly line of said Tract "A;"

thence N81°48'15"W 567.07 feet on the Northerly line of West Maple Road and on the Southerly line of said Tract "A" to the SW corner thereof;

thence N81°35'46"W 342.39 feet on the Northerly line of West Maple Road and on the Southerly line of a tract of land described on a "Survivorship Warranty Deed" recorded in Book 1858 at Page 531 of the Douglas County records and hereinafter called Tract "B" to the SW corner thereof;

thence N00°19'56"E 1077.94 feet on the West line of said Tract "B" to the NW corner thereof;

thence East 321.00 feet on the North line of said Tract "B;"

thence S00°19'56"W 56.60 feet on a line 18.00 feet West of and parallel with the East line of said Tract "B;"

thence Southeasterly on a non-tangent 330.00 foot radius curve to the right, chord bearing S54°01'19"E, chord distance 22.15 feet, an arc distance of 22.15 feet to the East line of said Tract "B;"

thence S00°19'56"W 74.31 feet on the East line of said Tract "B;"

thence Southeasterly on a non-tangent 330.00 foot radius curve to the left, chord bearing S61°14'06"E, chord bearing 46.37 feet, an arc distance of 46.41 feet to the North line of said Tract "A;"

thence S89°52'54"E 589.28 feet on the North line of said tract "A" to the NE corner thereof;

thence S00°38'05"W 791.45 feet on the East line of said Tract "A" and on the East line of said East 1/2 to the Point of Beginning.