



MISC 2007012389



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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
2/1/2007 10:51:41.36



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ASSIGNMENT OF RENTS AND LEASES

31st THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") is dated as of the day of January, 2007, by 1308 JACKSON DEV, LLC, a Nebraska limited liability company (collectively, the "Borrower"), to GATEWAY COMMUNITY BANK, a division of Northwest Federal Savings Bank, and its successors and assigns ("Lender").

PRELIMINARY STATEMENT

Borrower has, concurrently with the execution hereof, secured a loan from Lender in the amount of \$11,000,000.00, 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 a Deed of Trust, Security Agreement and Assignment of Rents dated of even date herewith (the "Deed of Trust") between Borrower and Lender encumbering the real property described as

See attached Exhibit A.

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 Deed of Trust, unless otherwise defined herein.
2. **Assignment; Certain Rights of Borrower.** To further secure the prompt payment and performance of each obligation secured by the Assignment (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 Deed of Trust), 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

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consents, memoranda of the subject matter hereof, duplicate originals hereof, and any and all other documents and to do any and all other acts as may be necessary or appropriate to carry 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. **Marshaling.** 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 marshaling 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: 1308 JACKSON DEV, LLC
6032 Walnut Street
Omaha, Nebraska 68106

With a copy to: Jerry Slusky
Slusky Law, L.L.C.
17445 Arbor Street, Suite 300
Omaha, Nebraska 68130-4611

If to Lender: Gateway Community Bank
14320 Arbor Street
Omaha, Nebraska 68144

With a copy to: Janice M. Woolley
Marks Clare & Richards, L.L.C.
11605 Miracle Hills Drive, #300
P.O. Box 542005
Omaha, Nebraska 68154-4487

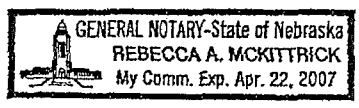
or to such other addresses as are designated by notice pursuant to this Section.

1308 JACKSON DEV, LLC,
a Nebraska limited liability company

By: Michael D. Brannan
Michael D. Brannan, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, this 31st day of January, 2007, by Michael D. Brannan, Manager of 1308 Jackson DEV, LLC, a Nebraska limited liability company, on behalf of said company.



Rebecca A. McKittrick
Notary Public

EXHIBIT "A"

Legal Description

Lots Five (5), Six (6) and Seven (7), Block one hundred sixty-seven (167), in the Original City of Omaha, as surveyed and lithographed, in Douglas County, Nebraska