

ASSIGNMENT OF RENTSVol 1499 Page 16618

This Assignment of Rents is made, executed, and delivered on this 31ST day of March, 1999 by Rodney R. Lyon and Marie M. Lyon of 20302 Paygr Road, Malin, Oregon (said individuals are collectively referred to herein as "Assignor") to and for the benefit of Diversified Financial Services, Inc., a Nebraska corporation, whose mailing address is 14010 First National Bank Parkway, Suite 205 Omaha, Nebraska 68154 ("Assignee"),

## WITNESSETH:

For value received, Assignor hereby grants, transfers, and assigns to Assignee the immediate and continuing right to receive and collect the rents, income, and profits (collectively "Rents") arising out of or payable in connection with that certain Lease Agreement wherein Assignor is the lessor and McVay Farms, Inc. of 21592 Drazil Road, Malin, Oregon is the lessee ("Lessee"), a true and correct copy of which Lease Agreement is attached hereto, marked Exhibit "A" and by this reference made a part hereof ("Lease") (the real property which is the subject of said Lease is referred to herein as "Premises"), and further including, but not limited to, claims for recovery of damages to the Premises, claims for damages resulting from default under said Lease, and lump sum payments for cancellation of said Lease or the waiver of any obligation or term thereof, and any payments attributable to insurance, real estate tax or other charges payable by reason of such use and occupancy, and any modifications, renewals and extensions of said Lease, all for the purpose of securing all obligations undertaken by the Assignor by virtue of a certain Retail Installment Contract executed by Assignor for the benefit of Assignee, which Retail Installment Contract is identified as Contract No. 5850501 ("Contract"), a true and correct copy of which Contract is attached hereto, marked Exhibit "B", and by this reference made a part hereof (the obligations imposed herein and by said Contract, including payment of all indebtedness described in said Contract, are collectively referred to herein as "Obligations").

To protect the security of this Assignment, Assignor agrees as follows:

1. Present Assignment. This assignment shall constitute a perfected, absolute and present assignment to be applied in partial satisfaction of the Obligations due and owing by Assignor to Assignee.

It is understood by and between the parties that the aggregate amount of the rental installments ("Rental Installments") payable to Assignor by Lessee by virtue of the terms and provisions of said Lease is the approximate sum of \$47,000, which Rental Installments are payable approximately January 1 and February 1 of each year. As set forth in the Contract, Assignor is also required to pay installments ("Installments") to Assignee during the month of February of each calendar year for a term of seven (7) years, commencing in the calendar year 2000. During each year of the term of the Contract, Assignor hereby authorizes Lessee to pay to Assignee from the Rental Installments which Lessee is required to pay to Assignor an amount equal to the Annual Installment payable by Assignor to Assignee unless Assignor has, prior to the dates on which said Rental Installments are payable by Lessee to Assignor, paid to Assignee

16619

the Installment which will accrue pursuant to the Contract on or about February \_\_\_\_ of each year. In the event that Assignor has delivered such Installment to Assignee, Assignee agrees that it will provide written notice to Lessee advising that Lessee shall not be required to deliver to Assignee the Rental Installment which would otherwise be due and payable by Lessee to Assignor, which Rental Installment which would otherwise be due and payable to Lessee to Assignor, which Rental Installment accrues immediately following the accrual of an Installment payable by Assignor to Assignee. Any such notice by Assignee to Lessee shall not release Lessee from its responsibility and duty to deliver to Assignee subsequent Rental Installments which accrue pursuant to said Lease.

In the event that the aggregate amount of the Rental Installments which are payable by Lessee to Assignor exceed the amount of the Installments which are payable to Assignee, as determined on an annual basis, Assignee shall direct Lessee to deliver such excess to Assignor. In the event that the aggregate amount of the Rental Installments due and owing by Lessee to Assignor is less than the aggregate amount of the Installments due and owing by Assignor to Assignee pursuant to said Contract, Assignor shall deliver to Assignee an amount equal to the difference between the Rental Installments which are paid by Lessee to Assignee and the amount of the Installments required to be paid by Assignor to Assignee pursuant to said Contract, as the same accrue. Any such payment differential shall be paid prior to the date on which such amount is required to be paid pursuant to the Contract.

No provision contained herein shall relieve Assignor of its duty to perform any and all Obligations imposed upon Assignor by the terms and provisions of said Contract, including, but not limited to, payment of Installments which accrue pursuant to said Contract on or before the date on which the same become delinquent.

Assignor represents and warrants to Assignee that said Lease is a bonafide lease transaction, that said Lease is in full force and effect, that Assignor has not received any communication, oral or written, from Lessee advising that Assignor has defaulted under the terms and provisions of said Lease, and that Assignor has not borrowed against, pledged, assigned or otherwise encumbered or hypothecated any Rents which will become due and owing pursuant to said Lease. Assignor agrees that it will not terminate said Lease or any renewal or extension thereof prior to the stated date of expiration unless Lessee has defaulted under the terms of such Lease. Assignor agrees that Lessee shall be granted a period of fifteen (15) days in which to cure any default under said Lease. Assignor will provide written notice to Assignee of any default by Lessee under the terms and provisions of said Lease.

2. **Performance of Lease.** Assignor shall faithfully abide by, perform and discharge each and every obligation, covenant and agreement imposed by said Lease, enforce and secure the performance of each and every obligation, covenant, condition and agreement imposed by said Lease upon the Lessee, refrain from borrowing against, pledging or assigning any Rents or other sums due pursuant to said Lease or reducing the amount of Rents or any other payments due to Assignor pursuant to said Lease, refrain from waiving, excusing, condoning, or in any manner releasing or discharging Lessee from the obligations, covenants, conditions, and agreements required to be performed pursuant to said Lease, and refrain from terminating said

16620

Lease or accepting a surrender thereof.

In the event that Lessee defaults under the terms and provisions of said Lease, Assignor hereby authorizes Assignee to exercise any and all rights and remedies granted to Assignor by the terms and provisions of said Lease, at law, in equity, or otherwise. Reasonable costs incurred by Assignee in connection with such enforcement shall be borne by Assignor. Assignor authorizes Assignee to pursue and enforce such remedies either in the name of Assignor or in Assignee's name, as the assignee of Assignor.

3. **Protect Security.** Assignee shall have the right, but not the obligation, to appear in and defend any action or proceeding arising out of or in any manner relating to said Lease. In the event that such actions or proceedings are instituted as the result of a breach of the obligations, duties, or liabilities imposed upon Assignor by said Lease, Assignor agrees to pay any and all costs and expenses incurred by Assignee, including reasonable attorney fees, in any action or proceeding in which Assignee may elect to appear.

4. **Remedies.** In the event that Assignor defaults in the performance of any Obligation imposed upon Assignor by the terms and provisions of the above-described Contract or in the performance of any obligation, covenant, or agreement contained herein, Assignee may exercise any and all remedies available to it at law or in equity to enforce the right granted herein to collect all of the Rents payable pursuant to said Lease, including enforcement of payment thereof, and the exercise of all rights and remedies granted to Assignor pursuant to said Lease. The exercise of any right or remedy pursuant to this Assignment of Rents shall not constitute an election of remedies by Assignee, and Assignee shall, in any and all events, retain any and all rights and remedies afforded to it by the terms and provisions of said Obligations, at law, in equity, or otherwise.

5. **No Liability of Assignee.** Assignee shall not be obligated to perform or discharge, nor does Assignee undertake to perform or discharge, any obligation, duty or liability imposed upon Assignor by said Lease, and this Assignment shall not be construed to impose any duty upon Assignee to perform any obligation imposed by said Lease.

6. **Authorization to Lessee.** Assignor hereby irrevocably authorizes and directs Lessee to recognize the claims of Assignee as described herein, and Assignor hereby irrevocably directs and authorizes said Lessee and any other or subsequent occupant, tenant or lessee of said Premises to pay to Assignee all sums due to Assignor pursuant to said Lease, without the necessity of any judicial intervention or determination.

7. **Assignee as Attorney in Fact.** Assignor hereby appoints Assignee and its successors and assigns as its agent and attorney-in-fact, which appointment is coupled with an interest, to exercise any rights or remedies hereunder and to execute and deliver during the term of this assignment such instruments as Assignee may deem necessary for the purpose of effectuating the intent and purpose hereof.

16621

8. Termination of Assignment. As soon as Assignor has paid and performed all Obligations imposed by said Contract, this Assignment shall be null and void and of no force and effect, otherwise to remain in full force and effect.

9. Recordation: Notice. Assignor and Assignee agree that this Assignment or a memorandum of this Assignment may be recorded by either party without the consent of the other party.

Assignor and Assignee agree that notice of this Assignment shall be provided to Lessee, and that the content of such notice shall be substantially similar to Exhibit "C" attached hereto and by this reference made a part hereof

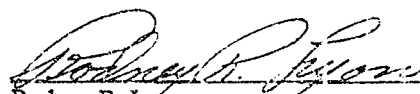
10. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, successors, personal representatives, and assigns.


11. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Nebraska.

In witness whereof, Assignor have caused this Assignment to be executed as of the day and year first above written.


[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

16622

  
Rodney R. Lyon

  
Marie M. Lyon

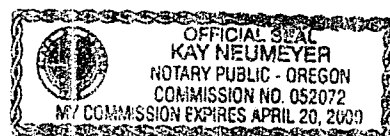
DIVERSIFIED FINANCIAL SERVICES, INC.,  
a corporation,

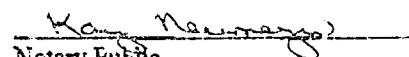
By   
Roger A. Fleury, President

ACKNOWLEDGMENT

STATE OF OREGON )  
 ) ss.  
COUNTY OF Klamath )

The above and foregoing Assignment of Rents was acknowledged before me, a notary public, on this 31<sup>st</sup> day of March, 1999 by Rodney R. Lyon and Marie M. Lyon.



  
Notary Public

my Commission Expires April 20, 2000

State of Oregon, County of Klamath  
Recorded May 3, 1999, at 2:55 PM  
at the referenced page, Vol. M99.  
Linda Smith, County Clerk  
Fee \$ 30<sup>00</sup>

