

Document 2005 4299

Book 2005 Page 4299 Type 05 005 Pages 6  
Date 9/06/2005 Time 3:32 PM  
Rec Amt \$32.00

MICHELLE UTSLER, COUNTY RECORDER  
MADISON IOWA

COMPUTER	✓
RECORDED	✓
COMPARED	✓

**ASSIGNMENT AND ASSUMPTION OF LESSOR'S INTEREST IN LEASE**

**PREPARER INFORMATION:**

Sue Fitzgerald, GE Capital Franchise Finance Corporation  
17207 N. Perimeter Drive, Scottsdale, AZ 85255  
1-480-585-4500

**RETURN DOCUMENT TO:**

Zonia N. Veal First National Financial Title Services, Inc.  
3237 Satellite Blvd, Bldg. 300, Ste 450, Duluth, GA 30096  
(678) 475-2746

**ASSIGNOR/GRANTOR:**

GE Capital Franchise Finance Corporation, a Delaware Corporation, successor by merger with Franchise Corporation of America, a Maryland corporation, sole shareholder and successor by dissolution of FFCA Acquisition Corporation, a Delaware corporation

**ASSIGNEE/GRANTEE:**

Red Dog Properties, LLC, an Iowa limited liability company

**LEGAL DESCRIPTION:**

As shown on attached Exhibit A.

Please Return To

*e* Zonia N. Veal  
First National Financial Title Services, Inc.  
3237 Satellite Blvd., Bldg. 300, Ste. 450  
Duluth, GA 30096 H2551-14

When recorded, return to:

Mr Joe Comes  
Mr. Jon Comes  
RED DOG PROPERTIES, LLC  
5094 NW 111<sup>th</sup> Drive, Sute A  
Grimes, Iowa 50111

**ASSIGNMENT AND ASSUMPTION OF  
LESSOR'S INTEREST IN LEASE**

THIS ASSIGNMENT AND ASSUMPTION OF LESSOR'S INTEREST IN LEASE (this "Assignment") is made and entered into as of August 31, 2005 (the "Effective Date"), by and between GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation, successor by merger with Franchise Finance Corporation of America, a Maryland corporation, sole shareholder and successor by dissolution of FFCA Acquisition Corporation, a Delaware corporation ("Assignor"), RED DOG PROPERTIES, LLC an Iowa limited liability company (collectively the "Assignee").

**WITNESSETH:**

WHEREAS, Assignor is the owner of that certain parcel or parcels of real estate legally described in Exhibit A attached hereto, together with all buildings, structures, fixtures and improvements now located thereon (collectively, the "Premises");

WHEREAS, Assignor, as lessor, and COMES INVESTMENTS, INC., an Iowa corporation, as lessee ("Lessee"), are parties to that certain Lease dated October 26, 1994 as assigned pursuant to that certain Assignment and Assumption of Lease Agreement dated June 24, 1988 (as assigned the "Lease") with respect to the Premises;

WHEREAS Assignor and Assignee entered into that certain Agreement of Sale dated August 4, 2005 whereby Assignor agreed to sell to Assignee and Assignee agreed to purchase from Assignor the Premises; and

WHEREAS Assignor desires to assign to Assignee and Assignee desires to acquire Assignor's interest as lessor in, to and under the Lease and the Premises.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, it is hereby agreed as follows:

1. Assignment. Subject to Section 3 below, Assignor hereby grants, conveys, and assigns unto Assignee all of Assignor's right, title, and interest in, to and under the Lease from and after the Effective Date, subject however, to the provisions of the Lease.

2. Assumption. Assignee hereby assumes, all of Assignor's responsibilities, liabilities and obligations set forth in the Lease from and after the Effective Date, and agrees to perform and observe all of Assignor's covenants, responsibilities, and conditions contained in the Lease. Assignee further covenants and agrees to indemnify, defend and hold Assignor harmless for, from, and against any and all actions, suits, proceedings and claims, and all costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees), arising

out of or relating to the Lease, which occur or are alleged to have occurred on or after the Effective Date.

3. Retention of Assignor's Rights Against Lessee. Notwithstanding any other provision of this Assignment, this Assignment shall not be interpreted or construed as modifying, amending, terminating, limiting or affecting in any manner: (i) Lessee's obligations and liabilities to Assignor which have accrued or arisen under the Lease prior to the Effective Date, including, without limitation, Lessee's agreement to pay all costs, rents, expenses, and obligations of every kind and nature relating to the Lease and/or the Premises; (ii) Lessee's indemnification and hold harmless obligations to Assignor set forth in the Lease, and (iii) any provisions of the Lease benefiting Assignor which such Lease provides shall survive the assignment, expiration or termination of such Lease (collectively, the "Lessee's Obligations"). Assignee acknowledges that this Assignment does not transfer, modify or affect any of the Lessee's Obligations in any way, all of which remain the obligations and liabilities of Lessee to Assignor.

4. As-Is, Where-Is. Assignee acknowledges that the Lease is being assigned in an "AS-IS and "WHERE IS" condition, and not in reliance on any agreement, understanding, condition, warranty or representation made by Assignor or any agent or employee of Assignor as to the condition, enforceability or quality thereof, as to the rent or other amounts payable thereunder, or as to any other matter in connection therewith, and Assignee further acknowledges that neither Assignor nor any party acting on behalf of Assignor has made or shall be deemed to have made any such agreement, condition, representation or warranty.

5. Binding Effect. This Assignment shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns.

6. Choice of Law. This Assignment shall be construed in accordance with the laws of the State of Arizona.

7. Attorneys' Fees. Should either party institute any legal action or proceeding to enforce the provisions of this Assignment, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with the exercise of its rights and remedies hereunder as well as court costs and expert witness fees as the court shall determine.

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have entered into this Assignment as of the Effective Date.

**ASSIGNOR:**

GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation

By [Signature]  
Printed Name **DAVID STANSBERY**  
Its **VICE PRESIDENT**

**ASSIGNEE:**

RED DOG PROPERTIES, an Iowa limited liability company

By [Signature]  
Printed Name Joe Cones  
Its Member

By [Signature]  
Printed Name Joe Cones  
Its Member

STATE OF ARIZONA     ]  
  ] SS.  
COUNTY OF MARICOPA ]

On this 30<sup>th</sup> day of August, 2005, before me, the undersigned, a Notary Public in and for said County and said State, personally appeared David Stansbery, the Vice President of GE Capital Franchise Finance Corporation, a Delaware corporation, known to me to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed on behalf of the corporation.

My Commission Expires:  
7-31-07

Susan M. Fitzgerald  
Printed Name: Susan M. Fitzgerald  
Notary Public

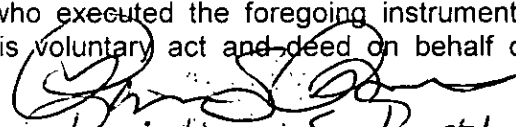


STATE OF Iowa ]  
COUNTY OF Polk ] SS.

On this 29 day of August, 2005, before me, the undersigned, a Notary Public in and for said County and said State, personally appeared Jon C. Cores, the Member of RED DOG PROPERTIES, an Iowa limited liability company, known to me to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed on behalf of the company.

My Commission Expires:

2-4-06

  
Printed Name: Patricia S Butler  
Notary Public 188600

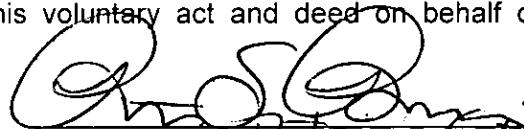


STATE OF Iowa ]  
COUNTY OF Polk ] SS.

On this 29 day of August, 2005, before me, the undersigned, a Notary Public in and for said County and said State, personally appeared Joseph W Cores, the Member of RED DOG PROPERTIES, an Iowa limited liability company, known to me to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed on behalf of the company.

My Commission Expires:

2-4-06

  
Printed Name: Patricia S Butler  
Notary Public 188600



**EXHIBIT A**

Lot Seven (7) of Helen McCall Huntoon Addition, Plat No. 1, to the City  
of Winterset, Madison County, Iowa.