

Inst # 2014019448 Mon Jun 02 13:49:38 CDT 2014
Filing Fee: \$46.00 cpodal
Lancaster County, NE Assessor/Register of Deeds Office ASLERE
Pages: 7

Return to:

Michael F. Kivett
Valentine, O'Toole, McQuillan & Gordon, L.L.P.
11240 Davenport Street
Omaha, NE 68154

RETURN TO:
DRI Title & Escrow
13057 W. Center Rd., Ste #1
Omaha, NE 68144

(SPACE ABOVE RESERVED FOR RECORDER'S USE)

ASSIGNMENT OF LEASES AND RENTS

FOR VALUE RECEIVED, **STAR CITY/FEDERAL, LLC**, a Nebraska limited liability company, whose address is 11222 Davenport Street, Omaha NE 68154, ("Assignor"), hereby grants, transfers, and assigns to **UNION BANK AND TRUST COMPANY**, whose address is 2720 South 177th Street, Omaha NE 68130 ("Assignee"), the entire interest of Assignor as Lessor in and to all leases, subleases, licenses, concessions, or other agreements now existing and hereafter entered into (collectively, the "Leases") for all or any part of the real property located in Lancaster County, Nebraska, more particularly described as on Exhibit "A" attached hereto (the "Property"), including rights in any security deposits and advance rentals held for the benefit of Assignee, and including the right to exercise any landlord's liens and any other rights and remedies to which Assignor would be entitled under any Lease or by law, together with all rents, income, revenues, issues, and profits arising therefrom or from the operation of any business on the Property, and any renewals and modifications thereof, and together with all rents, income, revenues, issues, and profits arising from the use and occupation of the Property and from any property covered by the Leases, whether real, personal, mixed or intangible.

This Assignment is intended to be, and shall be construed as, creating an absolute assignment unto Assignee, and not as an assignment as security, and to such extent shall be unconditional and irrevocable except as hereinafter provided to the contrary. In connection with and as a part of this Assignment, Assignor hereby warrants, represents, and agrees to and with Assignee as follows:

1. Assignee Rights. Pursuant to that certain Construction Loan Agreement executed by Assignor and Assignee, effective May 30, 2014 ("Loan Agreement"), Assignor has contemporaneously herewith executed and delivered to Assignee a certain Promissory Note in the principal amount of Twelve Million Five Hundred Thousand and No/100 Dollars (\$12,500,000.00) of even date herewith ("Note"). In order to secure payment of the Note, Assignor, as Trustor, has contemporaneously herewith executed a certain Construction Security Agreement, Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement to Union Bank and Trust Company, as Trustee, in favor of Assignee as Beneficiary ("Deed of Trust"). Unless and until there shall have occurred an event of default in the performance by Assignor of any of its duties or obligations, including, but without limitation, the payment of money, arising under the Note, Deed of Trust or Loan Agreement, Assignor is hereby granted a revocable license and may collect at the time of, but in no event more than one (1) month before, the date provided for payment, all rents, income, issues, and profits arising under the Leases and retain the use of and enjoy the same subject to the provisions contained in the Deed of Trust. Upon or at any time after the occurrence of any such event of default which is not cured within any applicable cure period, Assignee may, at its option, by giving written notice thereof to Assignor and without regard to the adequacy of any security for the payment or performance of any duties and obligations arising under the Note, Deed of Trust and Loan Agreement, either in person or by agent, with or without bringing any action or proceeding, or by receiver appointed by a court, revoke the foregoing license, take possession of the rents, income, revenues, issues, and profits and/or the Property and hold, manage, let, and operate the same on such terms and for such period of time as Assignee may deem proper in its discretion and, with or without taking possession of the Property, demand, sue for, or otherwise collect all rents, income, revenues, and profits of the Leases and the Property, including those past due and unpaid, with full power to modify, extend or terminate existing Leases, to execute new Leases, and to make from time to time such alterations, renovations, repairs, and replacements as may seem proper to Assignee, and apply such rents, income, revenues, issues and profits to the payment of all expenses of managing, operating, and maintaining the Leases and the Property, all expenses incident to taking and retaining possession of the Property, and the principal, interest, and other indebtedness evidenced and/or secured by the Note, Deed of Trust and Loan Agreement together with all costs and attorneys' fees incurred by Assignee in connection with any of the foregoing matters, in the order of priority set forth in the Deed of Trust, any statute, law, custom, or use to the contrary notwithstanding. Exercise or nonexercise by Assignee of the options granted in this paragraph, or collection and application of rents, income, revenues, issues and profits by Assignee or its agent shall not be considered a waiver of any default by Assignor under this Assignment, the Note, the Deed of Trust or the Loan Agreement.

2. Non-Liability and Indemnification of Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property or any part thereof or from any other act or omission of Assignee in managing the Property, unless such loss is caused by the gross negligence, willful misconduct, or bad faith of Assignee. Assignee shall not be obligated to perform or discharge, nor does Assignee undertake to perform or discharge, any obligation, duty, or liability under the Leases or under or by reason of this Assignment and Assignor agrees to indemnify Assignee, and to hold Assignee

harmless for, from and against, any liability, loss, or damage which may be incurred under the Leases or under or by reason of this Assignment and from any claims and demands which may be asserted against Assignee by reason of any alleged obligations or undertakings to perform or discharge any of the terms, covenants, or agreements contained in the Leases or in operation of the Property, unless such liability, loss, or damage is caused by the gross negligence, willful misconduct, or bad faith of Assignee. Should Assignee incur any such liability under the Leases or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall be reimbursed by Assignor to Assignee immediately upon demand, and upon failure of Assignor to make such reimbursement on the date of such demand, the unpaid portion thereof, while still immediately due and payable, shall be secured by the Deed of Trust and this Assignment, shall bear interest at the Default Rate (as defined in the Note) until paid, and the Note shall be deemed to be in default due to such nonpayment. This Assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Property upon Assignee, nor shall it operate to make Assignee a mortgagee in possession or responsible or liable for any waste committed on the Property by any lessees or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property.

3. Termination/Lessee Directives. Upon payment in full of the principal, interest and all other indebtedness evidenced by the Note, Deed of Trust and Loan Agreement, this Assignment shall cease, terminate, and be of no further effect and shall be deemed cancelled as a matter of record when the Deed of Trust is so cancelled. Assignor authorizes each and every lessee named in a Lease or any other or future lessee or occupant of the Property or any part thereof ("Lessee"), upon receipt of written notice from Assignee, to pay to Assignee all rents, income, revenues, issues, and profits accruing under the Leases or from the Property, and to continue to do so until otherwise notified in writing by Assignee. Assignor hereby relieves each and every Lessee from any liability as a result of Lessee's compliance with the instruction in the foregoing sentence. Assignee's receipt and application of any rents pursuant to this Assignment shall not cure any event of default or affect any foreclosure proceeding unless Assignor's obligations under the Note, Deed of Trust and Loan Agreement have been fully satisfied.

4. Absolute Assignment. Subject only to the provisions of Paragraph 3 of this Assignment, no action undertaken by Assignee with respect to any of the obligations of Assignor evidenced by the Note, Deed of Trust and Loan Agreement, or to any security or guarantee given for the payment or performance thereof, or to any other document or instrument evidencing or relating to said obligations, shall in any manner affect, impair, or prejudice any of Assignee's rights and privileges under this Assignment or discharge, release, or modify any of Assignor's duties or obligations hereunder. This Assignment is intended by Assignor and Assignee to create, and shall be construed as creating, an absolute assignment unto Assignee, subject only to the license, terms, and provisions hereof, and not as an assignment as security.

5. Warranties of Assignor. Assignor warrants to Assignee, each of which warranties shall remain in full force and effect until all obligations of Assignor to Assignee under the Note, Deed of Trust and Loan Agreement have been fulfilled, that:

a. Assignor is the record owner and holder of legal title to the Property and to the improvements located on the Property.

b. Assignor has good and clear title to the Leases, rents, income, revenues, issues, and profits hereby assigned and good right to assign same, and no other person, firm, or entity has any right, title, or interest therein.

c. There has been no prior assignment of the Leases, rents, income, revenues, issues, or profits which is now in effect.

d. To the best of Assignor's knowledge, the Leases are in full force and effect in accordance with their terms, and constitute the only outstanding Leases affecting the Property.

e. (intentionally deleted)

f. To the best of Assignor's knowledge, Assignor is not in default or in breach of any of the Leases, and has not performed any act or failed to perform any act which over the passage of time would result in a default or breach of any of the Leases.

g. Assignor has no knowledge of any claims, offsets, or defenses by any Lessees under the Leases or any basis for asserting the same.

h. To the best of Assignor's knowledge, the Lessees are not in default of any of the terms of the Leases.

6. Negative Covenants of Assignor. Assignor agrees that, so long as any obligation to Assignee remains unfulfilled under the Note, Deed of Trust or Loan Agreement, Assignor will not without the express prior written consent of Assignee, which consent may be granted or withheld in Assignee's sole discretion:

a. Enter into any Leases which are not upon terms and rental rates which are in all respects substantially consistent with general market terms and rates for similar types of properties in Lancaster County, Nebraska, or which provide for usage that is not consistent with the current usage of the Property or which contain terms not substantially consistent with existing Leases of the Property. If this Assignment is given in connection with a construction loan, then for purposes of this Paragraph 6, "current usage" of the Property shall mean planned usage at the time construction is completed as contemplated by Assignor and Assignee at the time of execution of the

Note, Deed of Trust and the Loan Agreement, and "existing Leases" shall mean the lease form reviewed and approved by Assignee.

b. Except in the exercise of sound business judgment, modify, either orally or in writing, any Lease now or hereafter existing so as to render the same not in compliance with (a) above, or allow any Lessee to surrender or terminate its Lease, or permit an assignment or sublease under any Lease, or request or consent to the subordination of any Lease to any lien that is subordinate to this Assignment.

c. Collect any rents, income, revenues, issues, or profits accruing under the Leases or from the Property more than one (1) month in advance of the time when they shall become due.

d. Execute any other assignment of Assignor's interest in the Leases or assignment of rents accruing under the Leases or from the Property.

e. Breach or default the terms of a material number of the Leases or create or produce grounds for termination thereof by a material number of Lessees.

7. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be given in the manner specified in the Loan Agreement.

8. Successors and Assigns. This Assignment, together with the agreements and warranties herein contained, shall inure to the benefit of Assignee and its successors and assigns and shall be binding upon Assignor and Assignor's successors and assigns as to all or any part of the Property.

9. Governing Law; Severability. This Assignment has been negotiated, executed and delivered in the State of Nebraska and shall be governed by and interpreted in accordance with the internal laws of the State of Nebraska (regardless of conflict of laws principles or the place of business, residence, location or domicile of the Assignor or any constituent principal thereof), except to the extent superseded by Federal law.

10. Severability. If any paragraph, clause, or provision of this Assignment is construed or interpreted by a court of competent jurisdiction to be void, invalid, or unenforceable, such decision shall affect only that paragraph, clause, or provision so construed or interpreted and shall not affect the remaining paragraphs, clauses, and provisions of this Assignment.

11. Joint and Several Liability. If there is more than one Assignor, the liability and obligations of the Assignors hereunder shall be joint and several, and the reference to "Assignor" shall be deemed to refer to all Assignors.

IN WITNESS WHEREOF, this Assignment has been entered into effective this 30th day of May, 2014.

ASSIGNOR:

STAR CITY/FEDERAL, LLC, a Nebraska limited liability company

By: Marathon Properties, Inc.,
a Nebraska corporation, Manager

By: *Carol J. Gendler*
Carol J. Gendler, President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30th day of May, 2014, by Carol J. Gendler, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument and entity upon behalf of which she acted, executed the instrument. She is the President of Marathon Properties, Inc., a Nebraska corporation, Manager of Star City/Federal, LLC, for and on behalf of said Star City/Federal, LLC, and she acknowledged, signed and delivered the instrument as her free and voluntary act, for the uses and purposes therein set forth.

Rebecca Schure
Notary Public

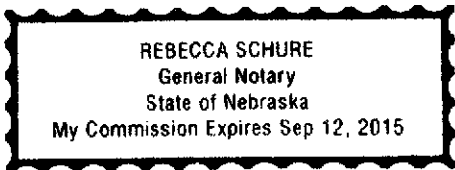


EXHIBIT "A"

Lot 1, Cornhusker Shadows 1st Addition, Lincoln, Lancaster County, Nebraska.

NO
COSH1