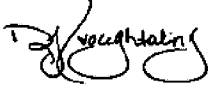



COUNTER LM _____
VERIFY LM _____
FEES \$ 52.00 _____
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SUBMITTED TITLECORE NATIONAL, LLC _____

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2019-17247
2019 Aug 02 01:55:40 PM

County Clerk/Register of Deeds
Deb Houghtaling


When Recorded Return To:

Mutual of Omaha Bank
4001 W 114th Street, Suite 110
Leawood, Kansas 66211
Attn.: Brian Hoban, Kansas City Market President

ASSIGNMENT OF LEASES, RENTS AND PROFITS

DATE: July 31, 2019

PARTIES:

Borrower: M-H Real Estate, LLC, a Kansas limited liability company

Borrower's Address: 11120 Tomahawk Creek Parkway
Leawood, Kansas 66211
Attention: Timothy R. Murphy

Lender: Mutual of Omaha Bank, a federal savings bank

Lender's Address: 4001 W 114th Street, Suite 110
Leawood, Kansas 66211
Attention: Brian Hoban, Kansas City Market President

ASSIGNMENT OF LEASES, RENTS AND PROFITS

THIS ASSIGNMENT OF LEASES, RENTS AND PROFITS ("**Assignment**") dated effective as of July 31, 2019, is executed by **M-H Real Estate, LLC**, a Kansas limited liability company, having an address of 11120 Tomahawk Creek Parkway, Leawood, Kansas 66211 ("**Borrower**"), in favor of **Mutual of Omaha Bank**, a federal savings bank, 4001 W. 114th Street, Suite 110, Leawood, Kansas 66211 (together with its successors and assigns, "**Lender**").

RECITALS:

A. Borrower is the owner of the real property and any improvements situated thereon located in Papillion, Sarpy County, Nebraska, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (the "**Premises**"); provided that Borrower is not the owner of certain furniture, fixtures and equipment installed or furnished by Permitted Tenant (as defined below) in or on the Premises at the sole cost and expense of Permitted Tenant and without any proceeds of the "Loan", as defined below.

B. Borrower has asked Lender to extend credit to Borrower in the maximum amount of Fourteen Million Seven Hundred Thousand Dollars (\$14,700,000.00) pursuant to the terms of the Note and other Loan Documents (both as defined below).

C. As a condition for the acceptance of the Note, Lender has required Borrower to execute and deliver this Assignment.

NOW THEREFORE, to induce Lender to make the loan evidenced by the Note (the "**Loan**"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby agrees as follows:

1. DEFINITIONS.

As used herein the following terms shall mean:

1.1. DEBT

"**Debt**" means all: **a)** obligations owed by Borrower to Lender under the Loan Documents and/or applicable law; and **b)** interest and costs, including but not limited to reasonable attorneys' fees and expenses, incurred by Lender in collecting, enforcing, or compromising any of the foregoing.

1.2. DEED OF TRUST

"**DEED OF TRUST**" means that certain Deed of Trust and Fixture Filing executed by Borrower of even date herewith which encumbers the Premises and secures repayment of the Note.

1.3. LEASE GUARANTOR

"**Lease Guarantor**" means Murphy-Hoffman Company, a Missouri corporation.

1.4. LEASE GUARANTY

"**Lease Guaranty**" means an instrument executed by Guarantor that guarantees payment, collection, and performance by Tenant of the Leases and Rents, and any amendments or modifications of such instrument.

1.5. LEASES

"**Leases**" means Borrower's entire interest in and to any and all existing or future leases, sub-leases, licenses, and other agreements, whether written or oral, granting to any person the right to occupy or use any portion of the Premises, including but not limited to any lease agreement between Borrower, as landlord, and Permitted Tenant, as tenant, and any amendments or modifications of such instrument ("**Permitted Lease**").

1.6. LOAN AGREEMENT

"**Loan Agreement**" means that certain Loan and Security Agreement executed by Borrower and Lender of even date herewith.

1.7. LOAN DOCUMENTS

"**Loan Documents**" means the Note and all other documents which evidence or secure the Debt, and all modifications thereof.

1.8. NOTE

"**Note**" means that certain Promissory Note executed by Borrower of even date herewith in the maximum principal amount of Fourteen Million Seven Hundred Thousand Dollars (\$14,700,000.00), payable to the order of Lender.

1.9. RENTS.

"**Rents**" means all past due, present and future consideration and payments made or to be made by any person or entity pursuant to the Permitted Lease and all other Leases and payments of any kind generated by the operation of the Premises, whether the same accrue before or after foreclosure of the Deed of Trust, during any applicable redemption period, or after the filing of any bankruptcy proceeding. The term shall also include any payments made pursuant to the Lease Guaranty.

1.10. TENANTS.

"**Tenants**" means those parties who occupy any part of the Premises under a Lease, including but not limited to Iowa Kenworth, Inc., d/b/a MHC Kenworth - Omaha, a Kansas corporation, its successors and assigns ("**Permitted Tenant**").

2. GRANT OF ASSIGNMENT.

2.1. CONVEYANCE OF LEASES AND RENTS.

For good and valuable consideration, receipt of which is hereby acknowledged, Borrower hereby absolutely and unconditionally **GRANTS, TRANSFERS, SETS OVER, AND ASSIGNS** to Lender, and grants to Lender a lien on and security interest in, all of Borrower's right, title, and interest in and to the Leases, Rents, and Lease Guaranty, and all products and proceeds thereof. Lender shall be entitled to receive all Borrower's benefits thereunder and exercise all of Borrower's rights arising therefrom, subject to the provisions of Section 2.3 hereof.

2.2. STATUS OF RENTS.

During the term of this Assignment, Borrower agrees that: **a)** Lender shall have a perfected, absolute, and present assignment of the Rents; **b)** the Rents are no longer Borrower's property or the property of Borrower's estate, as defined in Title 11, United States Code; and **c)** the Rents will not constitute collateral, cash or otherwise. Upon the occurrence of an Event of Default (as defined below), if Lender is required to take actual possession of the Premises (or some action equivalent thereto, such as securing the appointment of a receiver) in order to "perfect" or "activate" Lender's rights hereunder, Borrower waives the benefits of such law and agrees that such law shall be satisfied solely by: **i)** Lender giving written notice to Borrower that Lender intends to enforce its rights in and to the Premises and the Rents; and **ii)** Lender giving written notice to the Tenants that they should commence making payments under the Leases directly to Lender or Lender's designee.

2.3. LICENSE.

Until the occurrence of an Event of Default, Borrower shall have a revocable license to collect the Rents when due and apply them for the benefit of Borrower or the Premises, as Borrower shall reasonably determine.

3. WARRANTIES.

Borrower represents and warrants that: a) Borrower is the sole owner of the lessor's interest in the Permitted Lease and all other Leases, Rents, and Lease Guaranty, free and clear of all other liens and encumbrances; b) the Permitted Lease and Lease Guaranty: i) are valid and enforceable; ii) are not in default; and iii) have not been altered or modified; and c) Borrower has the authority to execute and deliver this Assignment and to perform Borrower's obligations hereunder without creating any default under the Permitted Lease or Lease Guaranty.

4. EVENTS OF DEFAULT.

The following shall be "Events of Default" under this Assignment:

4.1. LOAN DOCUMENT DEFAULT.

An Event of Default occurs under any Loan Document.

4.2. REPRESENTATIONS, WARRANTIES, COVENANTS, OBLIGATIONS.

Any of the representations and warranties contained herein shall be untrue, inaccurate, or misleading in any material respect at any time during the term of this Assignment, or Borrower shall fail to timely perform or fulfill any covenant or other obligation hereunder.

5. REMEDIES.

At any time that an Event of Default has occurred, Borrower's license to collect the Rents shall terminate upon Lender's written notice to Borrower, and Lender may, at its option, with or without notice, exercise any remedy under the Loan Documents, applicable law, and/or principles of equity, including but not limited to the following:

5.1. ACCELERATE INDEBTEDNESS.

Declare the Debt immediately due and payable.

5.2. MODIFY LEASES.

Modify the Leases, obtain or evict Tenants, and do any acts which Lender deems proper to protect its security interest.

5.3. NOTICE OF DEFAULT TO TENANTS.

Send written demand to all Tenants for payment of all Rents directly to Lender, and file with the Recorder of Deeds in the County where the Premises are situated a notice of default with instructions for the payment of Rents.

5.4. COLLECTION OF RENTS.

Collect Rents directly from all Tenants and Lease Guarantor with or without taking possession of the Premises.

5.5. APPLICATION OF RENTS TO PAYMENTS.

Apply Rents to the payment of: a) all costs of collecting the Rents, including reasonable attorneys' fees; b) all costs of managing, improving, operating, repairing, and maintaining the Premises; and c) all Debt.

5.6. NO WAIVER BY LENDER.

Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the powers and rights granted hereunder shall be deemed to be a waiver by Lender of its remedies under the Loan Documents. This Assignment is made and accepted without prejudice to any of the remedies available to Lender under the Loan Documents.

5.7. SURVIVAL.

This Assignment shall survive any merger of the interests of the parties to the Leases, and the Leases shall remain in full force and effect.

6. ATTORNMENT AUTHORIZATION.

This Assignment directs and authorizes Permitted Tenant, all other Tenants, and Lease Guarantor to pay Rents to Lender without requiring proof of default. Borrower presently and irrevocably authorizes all Tenants and Lease Guarantor to rely upon and comply with any notice from Lender for the payment of Rents. Borrower shall have no claim against any Tenant or Lease Guarantor for Rents paid to Lender.

7. NO LIABILITY.

Lender shall not be liable for any loss sustained by Borrower or any other person resulting from: a) Lender's failure to lease the Premises, b) any act or omission by Lender in managing the Premises other than the gross negligence or willful misconduct of Lender, or c) Lender's exercise of any rights granted hereunder or under the Loan Documents. Borrower agrees that this Assignment does not: i) obligate Lender to improve, operate, repair, or maintain the Premises; ii) make Lender responsible for any waste committed on the Premises by the Tenants or any other person; iii) make Lender responsible for any dangerous or defective condition of the Premises; or iv) make Lender responsible for any negligence in the operation, management, improvement, repair, or maintenance of the Premises resulting in loss, injury, or death to any person.

8. ATTORNEY IN FACT.

Borrower hereby makes, constitutes, and appoints Lender as its attorney in fact, which appointment shall be coupled with an interest and shall be irrevocable until the Debt is satisfied, to do the following upon the occurrence of an Event of Default: a) execute, acknowledge, endorse, obtain, and deliver any and all instruments, documents, or other items which may be necessary to receive and enforce performance of the Leases by the Tenants or the Lease Guaranty by Lease Guarantor; b) give any notice to the Tenants or Lease Guarantor deemed appropriate by Lender; c) enforce, compromise, settle, or discharge any of Borrower's claims arising from the Leases or the Lease Guaranty; and d) file any claim or take any action, either in its name or in Borrower's name, to enforce or preserve Lender's rights under the Leases or the Lease Guaranty.

9. NOTICES.

All communications required hereunder or in the Loan Documents shall be given to Borrower and Lender at their respective addresses set forth in the Loan Agreement, or at such other addresses as either party may designate by notice given in accordance with the terms of this section.

10. MISCELLANEOUS.

a) This Assignment shall be binding on Borrower and Borrower's successors and assigns and shall inure to the benefit of Lender and Lender's successors and assigns.

b) Headings are inserted into this Assignment for convenience only and shall not be considered in construing any provision.

c) This Assignment may not be modified, nor any of its provisions waived, without Lender's prior written consent.

d) Time shall be of the essence of this Assignment, but no delay or deferral in exercising any remedies after an Event of Default shall be deemed a waiver of such remedies.

e) The provisions of this Assignment are separable. If any judgment is hereafter entered holding that any provision of this Assignment to be invalid or unenforceable, then the remainder of this Assignment shall not be affected by such judgment, and the remaining terms of this Assignment shall be carried out as nearly as possible according to its original terms.

f) The term "person" includes, but is not limited to natural persons, corporations, partnerships, trusts, trustees, limited liability companies, joint ventures, and/or other legal entities.

g) Borrower agrees that Lender shall not be a mortgagee in possession if Lender takes any action pursuant to this Assignment.

h) The recitals listed above form an integral part of this Assignment.

i) Any exhibits to this Assignment are incorporated into this Assignment by reference as if fully set forth herein.

j) The term "modify" and its derivatives means amend, restate, change, extend, renew, alter, terminate, or cancel.

k) This Assignment may be executed in counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument.

11. NO ORAL AGREEMENTS.

This Assignment and all the Loan Documents collectively constitute the written credit agreement which is the final expression of the credit agreement between Borrower and Lender.

This Assignment and all the Loan Documents may not be contradicted by evidence of any prior oral credit agreement or of a contemporaneous oral credit agreement between Borrower and Lender.

The following space (which Borrower and Lender agree is sufficient space) is provided for the placement of nonstandard terms, if any:

[NONE]

Borrower and Lender affirm that there is no unwritten oral credit agreement between Borrower and Lender with respect to the subject matter of this Assignment and the other Loan Documents.

12. CHOICE OF LAW; VENUE.

This Assignment shall be deemed to have been executed and shall be performed in the State of Kansas and shall be governed by its laws. Borrower irrevocably agrees that subject to Lender's sole and absolute election, Lender may bring suit, action, or other legal proceedings arising out of the Loan Documents in courts located in Johnson County, Kansas or Sarpy County, Nebraska, whether local, state, or federal. Borrower hereby submits to the jurisdiction of such court(s) and waives any right Borrower may have to request a change of venue or a removal to another court.

13. WAIVER OF JURY TRIAL.

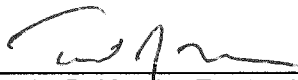
Borrower hereby irrevocably and severally: a) waives the right to a trial by jury in any action or proceeding brought by any party in connection with this Assignment. By accepting this Assignment, Lender waives the right to a trial by jury in any action or proceeding brought by any party in connection with this Assignment.

[The remainder of this page intentionally left blank.]

In Witness Whereof, Borrower has signed and delivered this Assignment on the day and year first above written.

BORROWER:

M-H Real Estate, LLC,
a Kansas limited liability company


By: 
Timothy R. Murphy, Trustee Under Trust Agreement
dated April 21, 1995, as amended,
its Authorized Member

ACKNOWLEDGEMENT

STATE OF KANSAS)
COUNTY OF JOHNSON) ss.

On this 31st day of July, 2019, before me personally appeared Timothy R. Murphy, Trustee Under Trust Agreement dated April 21, 1995, as amended, the Authorized Member of **M-H Real Estate, LLC**, a Kansas limited liability company, and executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company, and that said individual as Trustee is authorized to execute said instrument on behalf of said limited liability company.

In witness whereof, I hereunto set my hand and official seal.


Notary Public for the State of KANSAS
My Commission Expires: 3-22-21

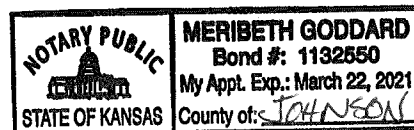


Exhibit A

Premises

Lot 2, Steel Ridge South, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.