

FILED SARPY CO. NE.
INSTRUMENT NUMBER

2018-07874

2018 Apr 16 02:34:43 PM

Sheryl J. Dowling

REGISTER OF DEEDS



COUNTER	JB
VERIFY	JB
FEES \$	94.00
CHG	SFILE
SUBMITTED	AMBASSADOR TITLE SERVICES

Space Above Reserved for Recording Information

WHEN RECORDED MAIL TO:

Jude J. Beller, Esq.
Fullenkamp Jobeun Johnson & Beller, LLP
11440 West Center Road, Suite C
Omaha, Nebraska 68144

DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING STATEMENT

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING STATEMENT ("Deed of Trust") is made and executed effective the 16th day of April, 2018, by and among **192&370 LLC**, a Nebraska limited liability company ("**Trustor**"), **JUDE J. BELLER**, a member of the Nebraska bar, with an address at 11440 W. Center Road, Omaha, NE 68144 ("**Trustee**"), and **NewStreet Properties, L.L.C.**, a Nebraska limited liability company ("**Beneficiary**").

Section 1. GRANT.

1.1. For the purpose of securing the following obligations in such order of priority as Beneficiary may elect:

(a) payment of the Promissory Note of even date herewith by Trustor to Beneficiary (as Holder) in the principal amount of THREE MILLION FIVE HUNDRED SIXTY THOUSAND AND 00/100 Dollars (\$3,560,000.00) executed concurrent herewith by Trustor (the "**Note**", as may be amended, restated, extended, supplemented or otherwise modified in writing from time to time), together with interest thereon, late charges, premiums, or fees, default fees, any future advances, and any and all other liabilities, obligations and debts of Trustor to Beneficiary, now existing or hereinafter incurred or created;

(b) payment of all other sums, fees or charges, together with interest thereon, advanced to protect the security of this Deed of Trust or the property secured hereby and the performance of the covenants and agreements of Trustor, whether or not set forth herein;

(c) performance, discharge of and compliance with every term, covenant, obligation and agreement of Trustor contained herein or incorporated by reference or any other Loan Document (as hereinafter defined), security instrument, document or agreement at any time given to secure the Note; and

(e) repayment of all other sums or future advances, with interest thereon, which may heretofore have been or hereafter be advanced by Beneficiary to Trustor or Trustor's successor-in-interest or title;

(f) payment and performance of all modifications, amendments, extensions, and renewals of any of the matters described in subparagraphs (a)-(e) above

all of which is hereinafter collectively called the "**Indebtedness**," Trustor irrevocably grants, transfers and conveys to Trustee, in trust, WITH POWER OF SALE, the real estate described on Exhibit A (the "**Subject Property**") attached hereto and incorporated by this reference, which real estate is generally located in Sarpy County, Nebraska, together with (i) all existing buildings, structures and improvements located thereon; (ii) all existing fixtures (including, without limitation, all lighting, heating, ventilating, cooling, air conditioning, plumbing fixtures, water and power systems, engines, transformers and electrical equipment) attached to, or built in, any building or improvement located thereon; (iii) any equipment located at the Subject Property, including any replacements thereof; (iv) all easements and rights of way appurtenant thereof; (v) all agreements for use and occupancy of any part of the Subject Property, now existing or hereafter entered into, including any and all extensions or modifications thereto, and all rents, issues, profits, income and proceeds from the sale, lease or other disposition of the Subject Property, or any portion thereof; (vi) all of Trustor's interest in all existing and future accounts, contract rights, general intangibles, files, books of account, agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, development, design, construction, operation or management of the Subject Property, and (vii) all proceeds of conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims (including, without limitation, proceeds of insurance and condemnation awards), all of which is hereinafter collectively called the "**Trust Property**."

1.2. Security Agreement and Fixture Filing. This Deed of Trust shall constitute a security agreement and, after recording, shall be effective as a financing statement filed as a fixture filing under the Nebraska Uniform Commercial Code with respect to all goods constituting a part of the Trust Property which are fixtures related to the real estate described herein. For this purpose, the following information is provided:

(a) Name and address of Debtor:

192&370 LLC
11550 I Street
Omaha, NE 68137

(b) Name and address of Secured Party:

NewStreet Properties, L.L.C.,
11165 Mill Valley Road
Omaha, Nebraska 68154

- (c) Description of the property covered by this financing statement:

See page 1

- (d) Description of the real estate to which the property is attached or located upon:

See Exhibit A

1.3. Loan Documents. The term "**Loan Documents**" consist of the following:

- (a) the Promissory Note;
- (b) this Deed of Trust; and
- (c) any other instrument executed by Trustor for the purpose of further securing the Indebtedness and all other obligations of Trustor as evidenced by the Promissory Note;
- (d) and any and all extensions, renewals, or modifications and successive extensions, renewals, or modifications of the Promissory Note or any of the other Loan Documents or any other instrument now or hereafter evidencing the indebtedness secured hereby.

Section 2. COVENANTS OF TRUSTOR. To protect the security of this Deed of Trust, Trustor covenants, warrants, and agrees as follows:

2.1. Title. Trustor covenants, warrants and agrees with Beneficiary, its successors and assigns, that Trustor owns good and marketable title to an indefeasible estate in fee simple in the Trust Property free from any prior lien or encumbrance except for those exceptions shown in the title insurance policy in favor of Lender insuring the lien of this Deed of Trust, that this Deed of Trust is and will remain a valid and enforceable first lien on the Trust Property (except for the lien of real estate taxes not yet delinquent), that Trustor, at its expense, will preserve such title and will maintain this Deed of Trust as a first and paramount lien upon the Trust Property and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Trustor, at its expense, and pursuant to the direction of Beneficiary, will cause this Deed of Trust, and each amendment or supplement hereto, to be filed and recorded as a mortgage of the Trust Property in such manner and in such place and will take such action as in the opinion of Trustee may be required by any present or future law in order to perfect, maintain and protect the lien of this Deed of Trust, as the same may be amended or supplemented from time to time. Trustor will make such further assurance or assurances to perfect its title to the Trust Property as may be reasonably required by Beneficiary.

2.2. Payment of Indebtedness. Trustor shall punctually pay the principal of and interest on the Indebtedness secured hereby.

2.3. Funds for Payment of Charges. Trustor shall pay in full, the yearly taxes and assessments which may attain priority over this Deed of Trust, plus the yearly premium installments for hazard insurance, on or prior to the date the same shall periodically be due. Following an uncured Event of Default hereunder by Trustor, Trustor, upon the written request

of Beneficiary, shall pay to Beneficiary on the fifteenth day of each month, until the Indebtedness is paid in full, a sum (hereinafter called the "**Funds**") equal to one-twelfth (1/12th) of the yearly taxes and assessments which may attain priority over this Deed of Trust, plus one-twelfth (1/12th) of the yearly premium installments for hazard insurance, all as reasonably estimated initially and from time to time by Beneficiary on the basis of assessments and bills and reasonable estimates thereof, and shall be applied to pay said taxes, assessments and insurance premiums. Beneficiary shall not be required to pay Trustor any interest or earnings on the Funds.

2.4. Application of Payments. All payments received by Beneficiary as to any debt, liability or obligation owed to Beneficiary by Trustor may be applied by Beneficiary to the payment of the Indebtedness or to any such other debt, liability or obligation of Trustor in connection with the transaction contemplated herein, in any order or manner of application which Beneficiary, in its absolute discretion, deems appropriate.

2.5. Charges; Liens. Trustor will keep the Trust Property free from all charges, liens and encumbrances, whether consensual, statutory, voluntary or involuntary (other than the lien created by this Deed of Trust or any other instrument, document or agreement given to Beneficiary contemporaneously herewith as security for the Indebtedness), and whether superior or inferior to this Deed of Trust, excluding however, any lien for delinquent real estate taxes or delinquent special assessments; provided however, Trustor shall immediately pay all amounts due and cause the removal of the lien with respect to any Trust Property for which any proceedings in the nature of foreclosure proceedings (due to delinquent real estate taxes or special assessments) are commenced.

2.6 Insurance. Trustor shall keep or cause to be kept insurance on the Trust Property of the following character:

(a) Bodily injury, personal injury and property damage liability insurance against claims for bodily injury, death, personal injury or property damage occurring on, in or about the Trust Property, and the adjoining property, streets, sidewalks and passageways or by reason of the existence, ownership, use, occupancy or maintenance thereof, in limits acceptable to Beneficiary.

(b) Such other insurance from time to time as Beneficiary may require to protect the Trust Property in amounts and against other insurable hazards then commonly obtained in the case of property similar to the Trust Property.

Such insurance shall be written by insurers which are reasonably acceptable to Beneficiary. Such insurance shall be in form acceptable to Beneficiary, shall include Beneficiary as an additional insured party on any liability policy, loss payee and mortgagee on any property casualty policy, as its interests may appear, shall be primary and without any right of contribution as to any other insurance carried by Beneficiary and shall be endorsed to provide that all terms and conditions, except for limit of liability, shall operate in the same manner as if there were a separate policy covering each insured. Upon request, Trustor shall provide to Beneficiary Certificates of Insurance evidencing the foregoing policies.

Every such policy shall contain an agreement by the insurer that it will not cancel such policy except after thirty (30) days' prior written notice to Beneficiary and that any loss otherwise payable thereunder shall be payable notwithstanding (a) any act or negligence of Trustor or Beneficiary which might, absent such agreement, result in a forfeiture of all or a part of such

insurance payment and (b) the occupation or use of the Trust Property for purposes more hazardous than permitted by the terms of such policy. All insurance shall be written in amounts sufficient to prevent Trustor from becoming a co-insurer.

Should Trustor fail to effect, maintain or renew any insurance provided for in this Section 2.6, or to pay the premium therefor, or to deliver to Beneficiary proper evidence thereof, Beneficiary, at its option, but without obligation to do so, may upon ten (10) days prior notice to Trustor procure such insurance, and any sums expended by it to procure any such insurance shall be repaid by Trustor together with interest at the rate provided in the Note within ten (10) days after receipt of bills therefor from Beneficiary.

Trustor and Beneficiary each agree to cooperate with the other, to such extent as such other party reasonably may require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of, any insurance moneys that may be due in the event of any loss or damage, and to execute and deliver to such other party such instruments as may be required to facilitate the recovery of any insurance moneys, but the costs and expenses of all such actions and proceedings shall be paid by Trustor.

Trustor agrees to pay, and to indemnify, defend and hold harmless Beneficiary from and against, any and all liabilities, losses, damages, costs, expenses (including all attorneys' fees and court costs), claims and demands of any nature whatsoever arising from (a) any injury to, or the death of, any person or any damage to property on the Trust Property or elsewhere or in any manner growing out of or connected with the use, non-use, condition, maintenance or occupancy of the Trust Property or any part hereof or of adjoining property, streets, sidewalks or passageways, (b) and of any contracts, agreements, restrictions, statutes, laws, ordinances or regulations affecting the Trust Property or any part thereof or the ownership, occupancy or use thereof, or (c) any act or omission on the part of Trustor or any of its agents, employees, contractors, lessees, sublessees, licensees or invites. In case any action, suit or proceeding is brought against Trustor or Beneficiary by reason of any occurrence herein described, Trustor will defend or cause to be defended such action, suit or proceeding with counsel reasonably satisfactory to Beneficiary at Trustor's expense.

Trustor shall give Beneficiary prompt written notice of any casualty resulting in damage or destruction to the Trust Property. In the event of any damage or destruction to the Trust Property, Trustor shall promptly make proof of loss to the insurers and Beneficiary. Trustor shall not adjust or compromise any claim under such insurance without the prior written approval of Beneficiary. All proceeds of such insurance shall be paid directly to Beneficiary, and each insurer is hereby authorized and directed to make such payment directly to Beneficiary. Any proceeds shall be applied first to the payment of all costs and expenses incurred by Beneficiary in obtaining such proceeds. The balance of the proceeds, if any, may be applied at the option of the Beneficiary (i) against the Indebtedness or (ii) to the restoration or the repair of the Trust Property, in such order as Beneficiary may so elect, in its sole discretion.

2.7. Preservation and Maintenance of Trust Property. Trustor will not commit or permit waste, and will not do any act or thing which would unduly impair or depreciate the value of the Trust Property and will not abandon the Trust Property. Without limiting the foregoing, Trustor shall not, without the express prior written consent of Beneficiary, determined in Beneficiary's sole discretion (i) permit nor undertake any demolition or other modifications to the improvements or other collateral hereunder, or any portion thereof, at the Trust Property, or (ii) lease, sell, assign, transfer, pledge, encumber, hypothecate, mortgage or otherwise alienate or otherwise dispose of any portion of the Trust Property. Any violation of the foregoing shall be

an Event of Default hereunder and Beneficiary, at its option, may declare the indebtedness evidenced by the Promissory Note and all other Indebtedness to be immediately due and payable, and Beneficiary may invoke any remedies following such acceleration as are permitted by this Deed of Trust and other Loan Documents or at law or in equity. Any (a) change in the legal or equitable title of the Trust Property, or in the beneficial ownership of the Trust Property, whether or not of record, and whether or not for consideration; (b) sale or transfer of control or a majority of the outstanding member interests in Trustor; (c) pledge, assignment or encumbrance of any member's interest in Trustor; or (d) sale or transfer of a majority of the outstanding beneficial ownership interests in the then current owner of the Trust Property, shall be deemed a transfer of an interest in the Trust Property for the purposes of this paragraph. Trustor shall assure that the Trust Property is properly and timely mowed, and will be responsible for snow removal from sidewalks on the Trust Property. Trustor will not remove any improvements or fixtures constituting any part of the Trust Property unless the same are immediately replaced with like property of at least equal value and utility. Trustor will comply with all present and future ordinances, regulations and requirements of any governmental body and all existing covenants, conditions and restrictions now of record which are applicable to the Trust Property and to the occupancy and use thereof.

2.8. Inspection. Beneficiary or its agent may, at any time and from time to time, enter upon the Trust Property for the purpose of inspection. Beneficiary shall have no duty to make such inspection and shall not be liable to Trustor or to any person in possession if it makes or fails to make any such inspection.

2.9. Protection of Security. If Trustor fails to perform any of the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which does or may adversely affect the Trust Property or the interest of Trustor or Beneficiary therein or the title of Trustor thereto, then Beneficiary, at its option and following the prior written notice to Trustor, may perform such covenants and agreements, make such appearances, defend against and investigate such action or proceeding and take such other action as Beneficiary deems necessary to protect its interest including, but not limited to, disbursement of reasonable attorney fees and entry upon the Trust Property to make repairs. Any amounts disbursed by Beneficiary pursuant to this Section 2.9, with interest thereon, shall constitute Indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon demand from Beneficiary to Trustor, and shall bear interest from the date of disbursement at the default rate, if any, set forth in the Note, or otherwise at the highest rate permitted by law. Nothing contained in this paragraph shall require Beneficiary to incur any expense or take any action hereunder. Trustor irrevocably authorizes and empowers Beneficiary to enter upon the Trust Property as Trustor's agent and, in Trustor's name or otherwise, to perform any and all covenants and agreements to be performed by Trustor as herein provided. Beneficiary shall, at its option be subrogated to any encumbrance, lien, claim or demand and to all rights and securities for the payment thereof paid or discharged by Beneficiary under the provisions hereof and any such subrogation rights shall be additional and cumulative security for this Deed of Trust.

2.10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Trust Property, or any part thereof, or for conveyance in lieu of or in anticipation of condemnation, are hereby assigned to and shall be paid to Beneficiary. Beneficiary shall not be entitled to condemnation proceeds payable to tenants for damages to their personal property which is not part of the Trust Property. Trustor will file and prosecute, in good faith and with due diligence, its claim for any such award or payment, and will cause the same to be collected and paid to Beneficiary, and,

should it fail to do so, Trustor irrevocably authorizes and empowers Beneficiary, in the name of Trustor or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for and retain the proceeds. If the Trust Property is abandoned by Trustor, or if, after notice by Beneficiary to Trustor that the condemner offers to make an award or settle a claim for damages, Trustor fails to respond to Beneficiary within sixty (60) days after the date such notice is mailed, Beneficiary is authorized to collect and apply the proceeds in the manner indicated herein. The proceeds of any award or claim may, after deducting all reasonable costs and expenses, including attorney fees, which may have been incurred by Beneficiary in the collection thereof, at the sole and absolute discretion of Beneficiary, be released to Trustor, applied to restoration of the Trust Property, or applied to the payment of the Indebtedness. Unless Beneficiary and Trustor otherwise agree in writing, any such application of proceeds to Indebtedness shall not exceed or postpone the due date of the Note or the payment of any installments called for thereunder.

2.11. Trustor Not Released. Extension of the time for payment or modification of any amortization of the Indebtedness granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of Trustor or Trustor's successors in interest. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the Indebtedness by reason of any demand made by Trustor or Trustor's successors in interest.

2.12. Waiver of Statute of Limitations. Time is of the essence in all of Trustor's obligations and duties hereunder; and to the extent permitted by law, Trustor waives all present or future statutes of limitations with respect to any debt, demand or obligation secured hereby and any action or proceeding for the purpose of enforcing this Deed of Trust or any rights or remedies contained herein.

2.13. Forbearance by Beneficiary Not a Waiver. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law shall not be a waiver of or preclude the exercise of any such right or remedy.

2.14. Remedies Cumulative. All remedies provided in this Deed of Trust and the other Loan Documents are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

2.15. Subject Property. Trustor represents and warrants to Beneficiary and Trustee, which representation shall survive the disbursement of the proceeds of the Note, any payment of the Indebtedness, any reconveyance of the Trust Property by Trustee or release of this Deed of Trust, and/or any foreclosure (whether judicially or pursuant to the power of sale granted herein) or deed in lieu of foreclosure of the Trust Property, that Trustor acquired the Subject Property for fair value.

2.16 Hazardous Substances. Trustor shall not generate, store, use or dispose, or permit the generation, storage, use or disposal of, any "Hazardous Substance" on or about the Trust Property, unless: (i) the Hazardous Substance is used in minor amounts in the ordinary course of business of Trustor or tenants; (ii) the Hazardous Substance is used or stored in full compliance with all applicable "Environmental Requirements"; and (iii) the proposed presence and use of such Hazardous Substance is specifically disclosed to Lender and has been approved in writing, in advance by Lender. Trustor shall promptly notify Lender of any violation or suspected or alleged violation of any Environmental Requirements on or about the Trust

Property of which Trustor becomes aware. "Hazardous Substance" shall mean any pollutant, contaminant, solid waste or hazardous or toxic waste, substance or material defined as such pursuant to the Resource Conservation and Recovery Act (42 U.S.C. § 6901, *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601, *et seq.*), or any other federal, state or local environmental law, statute, code, rule, regulation, order, decree or ordinance (collectively referred to as "Environmental Requirements").

2.17 Trustor shall indemnify, defend and save and hold harmless Beneficiary from and against any and all losses, liabilities, damages, costs and expenses (including costs of remediation or cleanup, loss of property value or defects in title to the Trust Property, and the reasonable fees and disbursements of Beneficiary's counsel) asserted against or suffered or incurred by Beneficiary and in any way relating to or arising out of the generation, storage, manufacturing, refining, releasing, transportation, treatment, disposal or other presence of any Hazardous Substance on or about or removed from the Trust Property, which indemnity shall survive: (i) the foreclosure of this Deed of Trust; (ii) any conveyance of the Trust Property in lieu of such foreclosure; (iii) the payment and performance of the Indebtedness, (iv) the release of the lien of this Deed of Trust; and (v) any other transfer of Trustor's title to or interest in the Trust Property.

Section 3. EVENTS OF DEFAULT; REMEDIES.

3.1 Default. Each of the following occurrences shall constitute an event of default hereunder (hereinafter called an "**Event of Default**"):

(a) Trustor shall fail to pay when due any principal, interest, or principal and interest on the Indebtedness, or any part thereof;

(b) Trustor shall fail to observe or perform any of the covenants, agreements or conditions in this Deed of Trust other than those described in Section 3.1(a) above; provided however, Trustee shall furnish to Trustor written notice of such performance default, and Trustor shall have a period of twenty (20) days in which to cure;

(c) Trustor shall fail to perform or observe any of the covenants, conditions or agreements contained in, or binding upon Trustor under, or any event of default shall occur under (and as defined in) any Loan Document;

(d) A trustee, receiver or liquidator of the Trust Property or of Trustor, or of any guarantor of Trustor, shall be appointed, or any of the creditors of Trustor or any guarantor of Trustor shall file a petition in bankruptcy against Trustor or any guarantor of Trustor pursuant to the United States Bankruptcy Code, or any similar law, whether federal or state, and if such order or petition shall not be discharged or dismissed within thirty (30) days after the date on which such order or petition was filed;

(e) Trustor or any guarantor of Trustor shall file a petition pursuant to the United States Bankruptcy Code or any similar law, federal or state, or if Trustor or any guarantor of Trustor shall be adjudged bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall consent to the appointment of a receiver of all or any part of the Trust Property; or

(f) Trustor shall convey, alienate, transfer, mortgage, encumber, lease or assign ownership or control of all or any part of the Trust Property or any interest therein, whether legal or equitable, or in Trustor, in violation of the Loan Documents, or Trustor, without the prior written consent of Beneficiary, shall be divested of any right, title, and interest therein, whether voluntarily or involuntarily.

3.2. Acceleration of Debt; Foreclosure. Upon the occurrence of any Event of Default, or any time thereafter, Beneficiary may, at its option, declare all the Indebtedness secured hereby immediately due and payable and the same shall thereupon bear interest at the default rate set forth in the Note and, irrespective of whether Beneficiary exercises said option, it may, at its option and in its sole discretion, without any further notice or demand to or upon Trustor, do one or more of the following:

(a) Beneficiary may enter upon, take possession of, manage and operate the Trust Property or any part thereof; make repairs and alterations and do any acts which Beneficiary deems proper to protect the security thereof, and either with or without taking possession, in its own name, sue for or otherwise collect and receive rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees and Beneficiary's costs, upon the Indebtedness secured hereby and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and shall make available to Beneficiary any of the Trust Property which has been removed. The entering upon and taking possession of the Trust Property, the collection of any rents, issues and profits, and the application thereof as aforesaid, shall not cure or waive any default theretofore or thereafter occurring, or affect any notice of default or notice of sale hereunder or invalidate any act done pursuant to any such notice. Notwithstanding Beneficiary's continuance in possession or receipt and application of rents, issues, profits or proceeds, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon or after the occurrence of an Event of Default, including the right to exercise the power of sale. Any of the actions referred to in this paragraph may be taken by Beneficiary at such time as Beneficiary may determine without regard to the adequacy of any security for the Indebtedness secured hereby.

(b) Beneficiary shall, without regard to the adequacy of any security for the Indebtedness secured hereby, be entitled to the appointment of a receiver by any court having jurisdiction, to take possession of, protect and manage the Trust Property and operate the same and collect the rents, issues and profits therefrom, either with or without appointment of a receiver. Trustor waives all rights, legal and equitable, it may now or hereafter have to require marshalling of assets or to require upon foreclosure sales of assets in a particular order. Each successor and assign of Trustor, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself. Trustor hereby consents to the Trustee's or Beneficiary's application for, and the appointment of, a receiver, trustee, liquidator or conservator of the Trust Property, without notice to Trustor and without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of Trustor.

(c) Beneficiary may bring any action in any court of competent jurisdiction to foreclose this Deed of Trust or enforce any of the covenants hereof.

(d) Beneficiary may elect to cause the Trust Property or any part thereof to be sold under the power of sale, and in such event, Beneficiary or Trustee shall give notice of default and notice of sale as may be then required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Trust Property, or any part thereof specified by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States of America. Upon receipt of payment of the price bid, Trustee shall apply the proceeds in the following order: (i) to the costs and expenses of exercising the power of sale and of the sale, including but not limited to, trustee's fees and reasonable attorney fees, (ii) to the Indebtedness, and (iii) the excess, if any, to the person or persons legally entitled thereto.

All costs and expenses incurred by Beneficiary in enforcing any right under this Deed of Trust, including without limitation, abstract or title fees, appraisal fees, premiums for title insurance, attorney fees and court costs (to the extent allowed by law) shall be and constitute Indebtedness secured hereby, and shall bear interest at the Default Rate. All such sums and interest thereon shall be secured hereby, whether or not action or foreclosure proceedings are commenced or continued to judgment.

Section 4. TRUSTEE PROVISIONS.

4.1. Duties of Trustee. Trustor agrees that the duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee. No provisions of this Deed of Trust shall require Trustee to expend or risk its own funds or incur any financial obligation. Trustee may consult with counsel of its own choosing and the advice of such counsel shall be full and complete authorization and protection in the respect of any action taken or suffered by it hereunder in good faith and reliance thereon. Moreover, Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within its discretion or rights or powers conferred upon it by this Deed of Trust. When requested to do so by Beneficiary in writing, Trustee may perform any of the following acts without incurring any liability or giving notice to any person: (i) consent to the making of any plat or map of the Trust Property or any part of it; (ii) join in granting any easement or creating any restriction affecting the Trust Property; or (iii) join in any subordination or other agreement affecting this Deed of Trust or the lien of it.

4.2. Reconveyance. Upon payment of all Indebtedness secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Trust Property and shall surrender this Deed of Trust and the Note evidencing Indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Trust Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

4.3. Substitute Trustee. Trustee may resign upon thirty (30) days' prior written notice to Beneficiary. Beneficiary, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Trust Property, the successor trustee shall succeed to all title, power and duties conferred upon Trustee herein and by applicable law.

Section 5. MISCELLANEOUS.

5.1. Late Charge. Trustor acknowledges that if any payment secured hereby is not made within five (5) days after the due date thereof, time being of the essence, Beneficiary shall incur extra time and expense in the handling thereof. It is specifically agreed that a charge in the amount of five percent (5%) of the delinquent amount is reasonable compensation to the Beneficiary. Accordingly, if any payment is not received within five (5) calendar days after the due date, Trustor shall pay to Beneficiary an additional amount equal to five percent (5%) of the delinquent amount. It is specifically agreed that the delinquent payment shall not be considered satisfied or fully performed until such time as the entire payment, plus late charge (and any other amounts due hereunder) shall have been paid.

5.2. Request for Notice. Trustor and Beneficiary hereby request that copies of any notice of default and notice of sale made or executed by Trustee pursuant to the provisions hereof be sent to Trustor and Beneficiary at their mailing addresses set forth above by certified mail, return receipt requested.

5.3. Nonwaiver. The granting of any consent or approval by Beneficiary to any act, event or transaction hereunder shall not be deemed a waiver of the right to require such consent to future or successive actions, events, or transactions.

5.4. Assurances. Trustor will, at any time upon request of Beneficiary or Trustee, promptly correct any defect, error, or omission which may be discovered in the contents of this Deed of Trust, the Note, or any other Loan Document, and will execute, acknowledge, and deliver such further instruments, documents, and agreements, and do such further actions as may be necessary or as may be reasonably requested by Beneficiary or Trustee to effectuate the general purposes of this Deed of Trust and any document, instrument, or agreement relating to the aforementioned loan.

5.5. Governing Law. This Deed of Trust shall be given by and construed under the laws of the state of Nebraska.

5.6. Successors and Assigns. Except as otherwise provided herein, all of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the land and shall apply to, bind, and inure to the benefit of the heirs, personal representatives, successors, and assigns of Trustor and the successors in trust of Trustee, and the heirs, personal representatives, endorsees, transferees, successors, and assigns of Beneficiary. The term "Beneficiary" shall mean the owner and holder (including a pledgee) of the Promissory Note, whether or not named as Beneficiary herein.

5.7. Severability. In the event any one or more of the provisions contained in this Deed of Trust or in the Note (or any other Loan Document) shall be held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Deed of Trust or the Note, and this Deed of Trust and the Note shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein.

5.8. Notice Periods. Any notice or cure periods to which the Trustor may be entitled upon breach of any term or provision hereof or in any other Loan Document shall run concurrent with (and not consecutive to) any notice or cure periods to which Trustor may be entitled under applicable law.

5.9 Section 9.05. Notices.

(a) All notices, demands, requests, and other communications desired or required to be given hereunder ("Notices"), shall be in writing and shall be given by: (i) hand delivery to the address for Notices; (ii) delivery by overnight courier service to the address for Notices; or (iii) sending the same by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the address for Notices.

(b) All Notices shall be deemed given and effective upon the earlier to occur of: (i) the hand delivery of such Notices to the address for Notices; (ii) one business day after the deposit of such Notice with an overnight courier service by the time deadline for next day delivery addressed to the address for Notices; or (iii) three business days after depositing the Notice in the United States mail as set forth in (a)(iii) above. All Notices shall be addressed to the following addresses:

Borrower: 192&370, LLC, 11550 I Street, Omaha, NE 68137

Lender: NewStreet Properties, L.L.C., 11165 Mill Valley Road
Omaha, Nebraska 68154

or to such other persons or at such other place as any party hereto may by Notice designate as a place for service of Notice. Provided, that the "copy to" Notice to be given as set forth above is a courtesy copy only; and a Notice given to such person is not sufficient to effect giving a Notice to the principal party, nor does a failure to give such a courtesy copy of a Notice constitute a failure to give Notice to the principal party.

5.10. Notice. A credit agreement must be in writing to be enforceable under Nebraska law. To protect you and us from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with this loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit, must be in writing to be effective.

5.11 Cross Default and Collateralization. This Deed of Trust is also granted to secure the Trustor's indebtedness and obligations to Beneficiary secured by that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing Statement dated March 15, 2018 and recorded in the Office of the Recorded of Deeds of Sarpy County, Nebraska as Instrument #2018-05407 (as may be amended from time to time, the "Additional Deed of Trust"). Any default arising under such Additional Deed of Trust or any other loan document referred to in such Additional Deed of Trust, shall also be deemed a default hereunder.

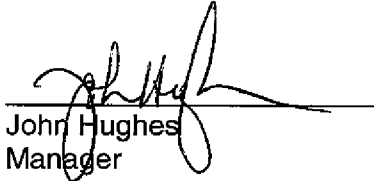
[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Trustor has executed this Deed of Trust on the date and year set forth above.

TRUSTOR:

192&370 LLC, a Nebraska limited liability company

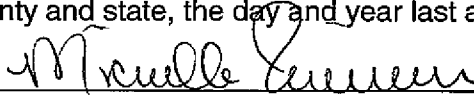
By: MDC Gretna, LLC, a Nebraska limited liability company, its Manager and Sole Member

By: 
Name: John Hughes
Title: Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

BEFORE ME, the undersigned authority, on this day personally appeared John Hughes, who acknowledged to be the Authorized Signatory of MDC Gretna, LLC, a Nebraska limited liability company, the manager and sole Member of 192&370 LLC, a Nebraska limited liability company, and that as such person, being authorized to do so, acknowledged to me that he executed the same for purposes and consideration therein expressed and in the capacity therein stated.

Witness my hand and notarial seal in said county and state, the day and year last above written.



Notary Public

State of Nebraska - General Notary MICHELLE ZIMMERMAN My Commission Expires September 16, 2019
--

EXHIBIT A

LEGAL DESCRIPTION

A part of the Northwest Quarter of Section 32, Township 14 North, Range 11 East of the 6th P.M. in Sarpy County, Nebraska described as follows:

Beginning at a 1 1/4" open top pipe located at the Southwest corner of the Northwest Quarter of said Section 32; thence North 00°15'46" West for 1270.18 feet on the West line of the Northwest Quarter of said Section 32 to a point on the centerline of North Wehrspann Creek; thence along the centerline of said creek for the following eighty (80) courses:

1. Thence North 62°27'48" East for 84.67 feet;
2. Thence North 22°06'32" East for 33.47 feet;
3. Thence North 00°32'19" East for 22.97 feet;
4. Thence North 33°14'29" East for 51.80 feet;
5. Thence North 23°58'51" East for 37.64 feet;
6. Thence North 33°16'25" East for 38.27 feet;
7. Thence North 15°30'05" East for 11.13 feet;
8. Thence North 25°06'53" East for 41.68 feet;
9. Thence North 36°22'35" East for 24.97 feet;
10. Thence North 33°46'26" East for 15.41 feet;
11. Thence North 56°20'09" East for 25.08 feet;
12. Thence North 34°53'22" East for 34.51 feet;
13. Thence North 11°21'14" East for 32.80 feet;
14. Thence North 26°56'15" East for 54.08 feet;
15. Thence North 51°06'24" East for 71.73 feet;
16. Thence North 67°53'49" East for 50.40 feet;
17. Thence North 63°28' 55" East for 87.10 feet;
18. Thence North 12°12'43" East for 42.50 feet;
19. Thence North 39°38'36" East for 32.51 feet;
20. Thence North 77°32'05" East for 18.72 feet;
21. Thence North 54°11'38" East for 9.28 feet;
22. Thence South 32°01'09" East for 29.64 feet;
23. Thence South 34°36'14" East for 39.49 feet;
24. Thence South 54°38'46" East for 30.87 feet;
25. Thence South 89°53'51" East for 28.77 feet;
26. Thence North 86°48'26" East for 21.03 feet;
27. Thence South 32°44'14" East for 29.84 feet;
28. Thence South 08°40'07" East for 26.83 feet;
29. Thence South 14°14'13" East for 36.28 feet;
30. Thence South 46°43'04" East for 54.12 feet;
31. Thence North 88°09'43" East for 45.36 feet;
32. Thence South 78°06'17" East for 39.32 feet;
33. Thence South 18°43'33" East for 64.09 feet;
34. Thence South 41°46'13" East for 31.16 feet;
35. Thence South 73°51'32" East for 61.46 feet;
36. Thence South 41°05'06" East for 60.75 feet;
37. Thence South 79°08'29" East for 59.85 feet;
38. Thence South 69°21'31" East for 24.86 feet;
39. Thence South 50°06'45" East for 60.15 feet;
40. Thence South 64°07'08" East for 49.75 feet;
41. Thence South 45°02'13" East for 66.53 feet;
42. Thence South 71°46' 50" East for 40.52 feet;
43. Thence South 61°01'01" East for 52.84 feet;

44. Thence South 20°51'25" East for 37.39 feet;
45. Thence South 52°37'49" East for 18.24 feet;
46. Thence North 79°19'54" East for 67.55 feet;
47. Thence South 83°28'26" East for 46.30 feet;
48. Thence South 70°57'04" East for 47.93 feet;
49. Thence South 54°56'47" East for 66.95 feet;
50. Thence South 55°55'36" East for 27.94 feet;
51. Thence South 72°28'32" East for 34.90 feet;
52. Thence South 85°33'45" East for 62.04 feet;
53. Thence South 41°49'32" East for 20.76 feet;
54. Thence South 08°26'33" West for 37.19 feet;
55. Thence South 22°23'26" West for 20.29 feet;
56. Thence South 60°02'41" West for 20.58 feet;
57. Thence South 07°12'26" East for 41.35 feet;
58. Thence South 49°56'54" East for 80.71 feet;
59. Thence South 22°03'19" East for 33.20 feet;
60. Thence South 41°11' 30" East for 86.46 feet;
61. Thence South 27°37'33" East for 48.62 feet;
62. Thence South 46°47'47" East for 22.97 feet;
63. Thence South 58°58'17" East for 48.44 feet;
64. Thence South 07°28'28" West for 16.34 feet;
65. Thence South 41°51'39" East for 26.57 feet;
66. Thence South 67°29'31" East for 53.57 feet;
67. Thence South 89°34'46" East for 68.53 feet;
68. Thence South 63°22'58" East for 56.50 feet;
69. Thence North 83°13'58" East for 94.05 feet;
70. Thence North 72°05'12" East for 37.88 feet;
71. Thence South 54°36'12" East for 65.99 feet;
72. Thence South 68°38'47" East for 33.52 feet;
73. Thence South 41°27'49" East for 34.40 feet;
74. Thence South 70°47'39" East for 82.89 feet;
75. Thence South 12°22'11" East for 87.85 feet;
76. Thence South 77°01'04" East for 24.51 feet;
77. Thence South 50°23'49" East for 78.69 feet;
78. Thence South 54°52'01" East for 69.87 feet;
79. Thence South 78°13'47" East for 171.79 feet;
80. Thence South 74°45'47" East for 41.40 feet to the East line of the Northwest Quarter of said Section 32;

Thence South 00°16'08" East for 469.20 feet on said East line to a 1/2" rebar located at the Southeast corner of said Northwest Quarter of Section 32;

Thence South 89°58'43" West for 2637.81 feet to the Point of Beginning.