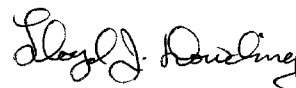


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INSTRUMENT NUMBER

2018-26887

2018 Nov 13 03:54:23 PM



REGISTER OF DEEDS



THIS INSTRUMENT PREPARED BY, AND AFTER RECORDING RETURN TO:

Jon E. Blumenthal
c/o Baird Holm LLP
1700 Farnam Street, Suite 1500
Omaha, Nebraska 68102

**SUBSTITUTION OF TRUSTEE AND SPREADING AGREEMENT
AND MODIFICATION OF DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND FIXTURE FILING**

THE DEED OF TRUST, AS AMENDED BELOW, IS A CONSTRUCTION SECURITY AGREEMENT THAT SECURES AN OBLIGATION THAT TRUSTOR HAS INCURRED FOR THE PURPOSE OF MAKING IMPROVEMENTS TO THE HEREIN DESCRIBED TRUST PROPERTY AND IS A CONSTRUCTION SECURITY INTEREST IN SAID TRUST PROPERTY.

THIS SUBSTITUTION OF TRUSTEE AND SPREADING AGREEMENT AND MODIFICATION OF DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (this "Amendment") is made effective as of the 13th day of November, 2018, by and between 192&370, LLC, a Nebraska limited liability company ("Trustor") and NEWSTREET PROPERTIES, LLC, a Nebraska limited liability company ("Beneficiary"), as Beneficiary of the below-described Deed of Trust.

WHEREAS, Trustor entered into that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing dated April 16, 2018, to and in favor of Jude J. Beller, as "Trustee," for the benefit of Beneficiary, securing the real property described on the attached Exhibit "A", incorporated herein by this reference (the "**Trust Property**"), which Deed of Trust was recorded April 16, 2018 in the office of the Register of Deeds of Sarpy County, Nebraska as instrument no. 2018-07874 (the "**Deed of Trust**"); and

WHEREAS, in consideration of the Amended and Restated Promissory Note and Loan Agreement described below, the parties desire to amend the terms and conditions of the Deed of Trust to reflect the terms and conditions of the Amended and Restated Promissory Note and Loan Agreement described below, and to spread the lien of the Deed of Trust to encumber the real property (together with all improvements thereon) described on Exhibit "B", attached hereto and incorporated herein by this reference (the "**Northwest Property**"), which is otherwise encumbered by that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing dated March 15, 2018, to and in favor of Beneficiary, as "Trustee," for the benefit of Beneficiary, securing the Northwest Property, which Deed of Trust was recorded March 15, 2018 in the office of the Register of Deeds of Sarpy County, Nebraska as instrument no. 2018-05407 (the "**Other Deed of Trust**"); and

WHEREAS, it is the intent of the parties that after the recording of this Amendment in the real estate records of Sarpy County, Nebraska, Beneficiary shall release and reconvey the lien of the Other Deed of Trust, but only because the Northwest Property is being added to the lien of this Deed of Trust,

and the intent of the parties is for the Northwest Property to remain secured by the lien of this Deed of Trust even after the release and reconveyance of the Other Deed of Trust.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor and Beneficiary hereby agree as follows:

1. Incorporation of Recitals. The aforesaid recitals are hereby incorporated into this Amendment as if fully set forth in this Section 1.

2. Substitution of Trustee. Beneficiary hereby appoints Jon E. Blumenthal, a member in good standing of the Nebraska Bar, with an address of 1700 Farnam Street, Suite 1500, c/o Baird Holm LLP, Omaha, Nebraska 68102, as Trustee of the Deed of Trust and the Other Deed of Trust.

3. Spreading Agreement. Trustor hereby irrevocably grants, bargains, mortgages, warrants and assigns to Beneficiary, as Trustee in trust pursuant to the Deed of Trust, WITH POWER OF SALE, the Northwest Property, and the buildings, structures, additions, enlargements, extensions, modifications, repairs and improvements now or hereafter located thereon. The lien of the Deed of Trust is hereby spread to encumber the Northwest Property, and all provisions of the Deed of Trust shall be applicable to the Northwest Property, with the same force and effect as if the Northwest Property had originally been described in the Deed of Trust.

4. Amended Note. The promissory note referenced in the Deed of Trust shall mean and be a reference to that certain Amended and Restated Promissory Note from Trustor in favor of Beneficiary in the amount of \$9,000,000.00, dated on or about the date hereof, as the same may be amended or modified from time to time.

5. Loan Documents. Section 1.03 of the Deed of Trust is hereby amended and restated in its entirety as follows:

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

(a) the Note;

(b) this Deed of Trust;

(c) that certain Loan Agreement by and between Trustor and Beneficiary dated on or about the date hereof (the "**Loan Agreement**");

(d) 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, including, without limitation, all such documents identified in the Loan Agreement; and

(e) 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."

6. Modification of Insurance Provision. Section 2.6 of the Deed of Trust is hereby amended and restated in its entirety as follows:

"2.6 Insurance. Trustor shall obtain and maintain, or cause to be maintained, insurance for Trustor and the Trustor Property providing at least the following coverages:

(i) Property Insurance. Insurance with respect to all improvements and personal property insuring against any peril now or hereafter included within the classification

"Cause of Loss – Special Form" (sometimes referred to as "All Risk of Physical Loss"), in amounts at all times sufficient to prevent Beneficiary from becoming a co-insurer within the terms of the policies and under applicable law, but in any event such insurance shall be maintained in an amount which, after application of deductible, shall be equal to the full insurable value of all improvements and personal property, the term "full insurable value" to mean the actual replacement cost of the improvements and personal property (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by, at the option of Trustor, an insurer, a recognized independent insurance broker or an independent appraiser selected and paid by Trustor;

(ii) Liability Insurance. Commercial general liability insurance on the so-called "occurrence" form, including bodily injury, death and property damage liability, insurance against any and all claims, including all legal liability to the extent insurable and imposed upon Beneficiary and all court costs and legal fees, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Trust Property in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Trust Property but in any event in an amount not less than two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage liability, and not less than five million (\$5,000,000) in the aggregate. This requirement may be satisfied by a layering of commercial general liability, umbrella and excess liability policies;

(iii) Workers' Compensation Insurance. Statutory workers' compensation insurance with respect to any work on or about the Trust Property;

(iv) Other Insurance. Such other insurance with respect to the Trust Property or the operation of the Project (as defined in the Loan Agreement) or on any replacements or substitutions or additions or increased coverage limits as may from time to time be reasonably required by Beneficiary against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated due regard being given to the height and type of buildings, their construction, location, use and occupancy, including, without limitation, automobile liability insurance and errors and omissions coverage as Beneficiary may reasonably require.

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 exceeding ten thousand dollars (\$10,000.00). 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."

7. Deletion of Cross-Collateralization Provision. In consideration for the Spreading Agreement set forth in Section 3, above, Section 5.11 of the Deed of Trust is deleted in its entirety.

8. Ratification. In all respects not inconsistent herewith, the Deed of Trust shall otherwise remain unaffected, unchanged and unimpaired and Trustor hereby ratifies and affirms the Deed of Trust and each of the terms, conditions, representations, and warranties thereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered effective as of the date first indicated above.

TRUSTOR:

192&370, LLC, a Nebraska limited liability company

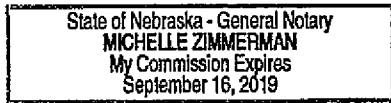
By: MDC Gretna, LLC, a Nebraska limited liability company, its manager and Sole Member

By: [Signature]
John Hughes, Jr., its Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

BEFORE ME, the undersigned authority, on this 12 day of November, 2018, personally appeared John Hughes, Jr., 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.



[Signature]
Notary Public

BENEFICIARY:

NEWSTREET PROPERTIES, LLC, a Nebraska limited liability company

By: [Signature]
Brian Diedrichsen, its Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

BEFORE ME, the undersigned authority, on this 9th day of November, 2018, personally appeared Brian Diedrichsen, who acknowledged to be the Vice President of NewStreet Properties, 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.



[Signature]
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

The West One-Half (W1/2) of the Southwest Quarter (SW1/4) in Section 32, Township 14 North, Range 11, East of the 6th P.M., Sarpy County, Nebraska.

EXHIBIT B

NORTHWEST PROPERTY

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;

Exhibit B

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.