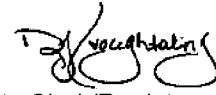


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FILED SARPY CO. NE.
INSTRUMENT NUMBER

2019-24739

2019 Oct 10 02:34:28 PM



County Clerk/Register of Deeds
Deb Houghtaling



WHEN RECORDED, PLEASE RETURN TO:

First National Bank of Omaha
11404 West Dodge Road, SC 4250
Omaha, Nebraska 68197

**ASSIGNMENT OF RENTS AND LEASES
(HIGHWAY 370 HQ)**

THIS ASSIGNMENT OF LEASES AND RENTS is made to be effective as of OCTOBER 12 9, 2019, by HIGHWAY 370 HQ, LLC, a Nebraska limited liability company ("Borrower") to and for the benefit of FIRST NATIONAL BANK OF OMAHA, a national banking association ("Lender").

1. **Assignment.** In consideration of Lender's agreement to issue the Loan, as described below, and for other valuable consideration, the receipt and adequacy of which is acknowledged by Borrower, Borrower grants and assigns to Lender:
 - (a) all of Borrower's right, title and interest in, to and under and with respect to any and all existing leases, licenses and other agreements of any kind relating to the use or occupancy of any of the property described in Exhibit A (the "Property"), as such documents are described in Exhibit B (collectively, "Existing Leases"); and
 - (b) all of Borrower's right, title and interest in, to and under and with respect to any and all leases, licenses and other agreements of any kind relating to any use or occupancy of all or any portion of the Property entered into after the date of this Assignment (collectively, "Future Leases"); and
 - (c) all rents (or payments in lieu of rents), payments and liabilities at any time payable under any and all of the Existing Leases or Future Leases, any and all security deposits received or to be received by Borrower pursuant to any and all Existing Leases or Future Leases and all rights and benefits accrued to or to accrue to Borrower under any and all of the Existing Leases or Future leases (the

“Collateral”). The Existing Leases, Future Leases and Collateral are collectively referred to as the “Leases,” and a reference to Existing Leases, Future Leases, Collateral or Leases shall be a reference to the same as amended, extended, renewed or modified from time to time.

2. **Obligation Secured.** Borrower makes the foregoing grant and assignment to Lender for the purpose of securing:

- (a) payment to Lender of all indebtedness evidenced by and arising under the Promissory Note (the “Note”) executed by Borrower in the principal amount of Seven Million and No/100 Dollars (\$7,000,000.00), payable to Lender or its order, and dated as of the date of this Assignment as the same may be amended, extended, renewed or modified from time to time; and
- (b) the payment of all indebtedness and the performance of all obligations of Borrower to Lender now existing or arising after the date of this Assignment in connection with the loan evidenced by the Note (the “Loan”), including without limitation, all indebtedness and obligations secured by or arising under the Deed of Trust, Security Agreement and Assignment of Rents (hereinafter “Security Instrument”) on the Property dated as of the date hereof and securing the Note, and all of the other documents evidencing or securing the Loan (collectively, the “Loan Documents”), as all of the same may be amended, extended, renewed or modified from time to time; and
- (c) the payment of all indebtedness and the performance of all obligations, which recite that they are secured by this Assignment, of Borrower to Lender now existing or arising after the date of this Assignment under this Assignment, as the same may be amended, extended, renewed or modified from time to time.

3. **Interpretation.** It is the intention of the Borrower that this Assignment shall constitute a present and absolute Assignment to Lender. However, so long as there shall exist no Default by Borrower in the payment of any sum due to Lender under the Loan Documents, or in the performance of any obligation, covenant or agreement contained in this Assignment, the Loan Documents or the Leases, as the same are to be performed by Borrower, Borrower shall have the right to collect at the time of, but not more than one (1) month prior to, the date provided for payment, all rents, income and profits arising under the Leases and to retain and use the same.

4. **Covenants.** Borrower covenants and agrees as follows:

- (a) If any of the Leases provide for a security deposit paid by the tenant thereunder to Borrower, this Assignment shall transfer to the Lender all of Borrower’s right, title and interest in and to such security deposits; provided that, Borrower shall have the right to retain such security deposits so long as no Event of Default shall have occurred; and provided further that Lender shall have no obligation to any such tenant with respect to such security deposits unless and until Lender comes

into actual possession and accepts control of such security deposits by notice to such tenant;

- (b) Borrower shall not collect any rent more than thirty (30) days in advance of the date on which it becomes due under the terms of each Lease;
- (c) Borrower shall not discount any future accruing rent and, after the occurrence of an Event of Default, Borrower waives any right of setoff against any tenant under the Leases;
- (d) Borrower shall not execute any further assignment of any rent or any interest therein or suffer or permit any such assignment to occur by operation of law;
- (e) Except with the prior written consent of Lender, Borrower shall not request, consent to, agree to or accept a subordination of any Lease to any mortgage, deed of trust or other encumbrance, or any other lease, now or hereafter affecting the Property or any part thereof, or suffer or permit conversion of any Lease to a sublease;
- (f) Borrower shall faithfully perform and discharge all obligations of the lessor or landlord under the Leases, and shall give prompt written notice to Lender of any notice of Borrower's default received from the tenant or any other person and shall furnish Lender with a complete copy of said notice. Borrower shall appear in and defend, at no cost to Lender, any action or proceeding arising under or in any manner connected with the Leases. If requested by Lender, Borrower shall enforce any lease and all remedies available to Borrower against the tenant in the case of default under such Lease by the tenant thereunder;
- (g) Borrower shall not to terminate, modify or amend any of the terms of the Leases in any material manner or grant any concession or waive, excuse or condone any failure of lessees under the Leases, or in any manner release or discharge the lessees from any obligations, covenants, conditions or agreements to be performed by the lessees under the Leases, including, without limitation, the obligation to pay rent, either orally or in writing, without the prior written consent of Lender, which may be withheld in Lender's reasonable discretion, or to accept the surrender of any of the Leases without the prior written consent of Lender, which may be withheld in Lender's reasonable discretion, and that any attempted termination, modification or amendment of any of the Leases, or any other action which requires Lender's consent, without such consent, shall be null and void; and
- (h) Upon the request of Lender, Borrower shall promptly provide to Lender a true and correct copy of all existing Leases or other occupancy agreements with respect to the Property. All Leases or other occupancy agreements with respect to the Property in effect from time to time shall be deemed included in this Assignment as though originally listed herein, and the respective terms "Lease" and "Leases"

as used herein shall include such leases or occupancy agreements and term "lessee" used herein shall include the lessees or tenants thereunder; and

- (i) Nothing herein shall be construed to constitute Lender as a "mortgagee in possession" in the absence of its taking of actual possession of the Property pursuant to the powers granted herein, or to impose any liability or obligation on Lender under or with respect to the Leases. Borrower shall indemnify and hold Lender harmless from and against any and all liabilities, losses and damages that Lender may incur under the Leases or by reason of this Assignment, and of and from any and all claims and demands whatsoever that may be asserted against Lender by reason of any alleged obligations to be performed or discharged by Lender under the Leases or this Assignment provided, however, in no event shall Borrower indemnify Lender from or against any willful or negligent act of Lender. Should Lender incur any liability, loss or damage under the Leases or under or by reason of this Assignment, Borrower shall immediately upon demand reimburse Lender for the reasonable amount thereof together with all reasonable costs and expenses and reasonable attorneys' fees incurred by Lender. All of the foregoing sums shall bear interest until paid at the Default Rate provided by the Note. Any rent collected by Lender may be applied by Lender in its discretion in satisfaction of any such liability, loss, damage, claim, demand, costs, expense or fees.

5. **Representations and Warranties.** In order to induce Lender to make the Loan to Borrower, Borrower represents and warrants to Lender that:

- (a) the Existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and that to Borrower's knowledge, no breach or default, or event which would constitute such a breach or default after notice or the passage of time, or both, of any of the terms, covenants or conditions exists with respect to any of the Existing Leases; and
- (b) no rent payment or other payment under any of the Existing Leases has been paid by any lessee for more than one (1) month in advance; and
- (c) the Existing Leases constitute all the Leases existing with respect to the Property as of the date of this Assignment; and
- (d) each of the Existing Leases constitutes the entire agreement between the respective lessees and Borrower, and there are no other agreements, undertakings or representations, either written or oral, with respect to the Property; and
- (e) none of the lessor's interest under any of the Leases has been transferred or assigned to any person or entity other than Lender.

6. **Defaults and Remedies.**

- (a) **Definition.** "Default" shall mean a default in payment of any of the indebtedness secured by this Assignment or the Loan Documents, after giving effect to any express curative provisions set forth herein or therein or a default in the performance of any obligation, covenant or agreement of Borrower contained in this Assignment or any of the Loan Documents or any of the Leases after giving effect to any express curative provisions set forth herein or therein.
- (b) **Remedies.** In addition to any and all remedies contained in the other Loan Documents, in the event of a Default, Lender shall, and without regard to the adequacy of the security for the indebtedness and obligations secured by this Assignment and by the Loan Documents, either in person or by its agent, and with or without bringing any action or proceeding or obtaining a receiver appointed by a court, and without notice to or demand on Borrower, and without releasing Borrower from any obligations under this Assignment, have the following rights and remedies, each of which shall be exercisable in Lender's sole discretion:
- (i) to receive directly from the lessees under the Leases all rents, income, liabilities and other amounts arising or accruing under the Leases or from the Property and to so continue until Borrower is otherwise notified by Lender; and
 - (ii) to collect, sue for, settle, compromise and give acquittances for all of the rents and other payments that may become due under the Leases and avail Lender of and pursue all remedies for the enforcement of the Leases as Borrower's rights in and under the Leases as Borrower might have pursued but for this Assignment, all at Borrower's sole cost and expense; and
 - (iii) to take possession of the Property, and to have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem proper and, either with or without taking possession of the Property in its own name, make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender.

Nothing set forth in this Section shall be deemed to limit or otherwise alter the rights of Lender at law or in equity in the event of a Default, nor shall Lender be obligated to exercise any of its rights in this Section.

- (c) **Notice.** Lessees under the Leases are hereby irrevocably authorized and notified by Borrower to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by Lender for the payment to Lender of any rental or other sums which may be, or hereafter become, due under the Leases, or for the performance of any of such lessees' undertakings under the Leases, and such lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing.
- (d) **Proceeds.** Lender shall have the right to apply all such rents, income and profits received from the lessees under the Leases to the payment of any of the following

in such amounts and in such order as Lender shall deem appropriate in Lender's sole discretion;

- (i) the indebtedness secured by this Assignment and by the Loan Documents, together with all costs and attorneys' fees of Lender incurred in attempting to enforce Lender's rights hereunder or thereunder, in such order or priority as Lender, in Lender's sole discretion, may determine; any statute, law, or custom to the contrary notwithstanding;
- (ii) all reasonable expenses of managing the Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees or independent contractors as Lender may deem reasonably necessary, and all reasonable expenses of operating and maintaining the Property, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents, any other liens, premiums for all insurance which Lender may deem reasonably necessary, the cost of all alterations, renovations, repairs or replacements, and all reasonable expenses incident to taking and retaining possession of the Property.

(e) **Relationship.** Nothing contained in this Assignment shall be construed as constituting Lender as trustee or "mortgagee in possession."

7. **Exculpation.** Except with respect to Lender's negligence or intentional misconduct, Lender shall not directly or indirectly be liable to Borrower or any other person as a consequence of the exercise of the powers granted to Lender in this Assignment, or as a result of Lender's exercise of Lender's rights in the event of a Default, and no such liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower, and Borrower indemnifies Lender and holds Lender harmless from and against all such liability.

Lender shall not be obligated to perform or discharge any obligation, duty, or liability of Borrower under the Leases, or by reason of this Assignment. Except with respect to Lender's negligence or intentional misconduct, Borrower hereby indemnifies and holds Lender harmless from and against any and all liability, loss, damage, cost or expense (including attorneys' fees) which Lender might incur or suffer under the Leases or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on Lender's part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases.

Lender shall not be liable for any loss sustained by Borrower or any third party resulting from Lenders' failure to lease the Property after a Default or from any other act or omission of Lender in managing the Property after Default. Should Lender incur or suffer any liability, loss, damage, cost or expense (including attorneys' fees) under the Leases or by reason of this Assignment, or in the defense of any such claims or demands, the amount of such liability, loss, damage, cost, expense, and attorneys' fees, shall be secured by this Assignment and the Loan Documents, and Borrower shall pay the same to

Lender upon demand by Lender. Upon failure of Borrower to so pay Lender, Lender may, at Lender's option, declare all sums secured by this Assignment and the Loan Documents immediately due and payable and exercise any other remedy available at law or in equity.

It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the 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 resulting in loss or injury or death of any lessee, licensee, employee, invitee or other person.

8. **Foreclosure.** Upon issuance of a deed or deeds pursuant to any judicial or non-judicial foreclosure of the Security Instrument, all right, title and interest of Borrower in and to the Leases shall, by virtue of this Assignment, vest in and become the absolute property of the grantee or grantees of such deed or deeds without any further act or assignment by Borrower. Borrower hereby irrevocably appoints Lender, and its successors and assigns, as its attorney in fact, to execute all instruments of assignment or further assurance in favor of such grantee or grantees of such deed or deeds, as may be necessary or desirable for such purpose. Nothing contained in this Assignment shall prevent Lender from terminating any subordinate Lease through such foreclosure, subject to any written agreement now or hereafter made by Lender in Lender's discretion to recognize the rights of any lessee if such lessee is not in default under its Lease.
9. **Loan Documents.** This Assignment is supplementary to, and not in substitution or derogation of, any of the provisions of the other Loan Documents. To the extent that this Assignment is inconsistent with the provisions of the other Loan Documents, such other Loan Documents shall control; and in particular, to the extent that this Assignment is inconsistent with the terms of the Security Instrument, the Security Instrument shall control. Lender may enforce any of the provisions of this Assignment prior to, simultaneously with, or subsequent to any of the rights or remedies under the other Loan Documents.
10. **Notices.** All notices, demands, requests, consents, approvals or communications required under this Assignment shall be in writing and shall be deemed to have been properly given if sent by hand delivery, overnight courier or certified mail, postage prepaid, addressed to the parties at the following addresses:

If to Borrower: HIGHWAY 370 HQ, LLC
 Attn: Sam Garden
 11213 Davenport St. #300
 Omaha, NE 68154

With a copy to: Koley Jessen P.C., L.L.O.
Attn: Daniel Murow
1125 S. 103rd St. #800
Omaha, NE 68124

If to Lender: First National Bank of Omaha
11404 West Dodge Road, SC 4250
Omaha, Nebraska 68197
ATTN: Senior Officer, Commercial Real Estate Department

With a copy to: James D. Buser, Esquire
Pansing Hogan Ernst & Bachman, LLP
10250 Regency Circle, Suite 300
Omaha, Nebraska 68114

or to such other addresses as are designated by notice pursuant to this Section.

11. **Attorneys' Fees.** If any legal action or proceeding is brought by either Borrower or Lender in order to enforce or construe a provision of this Assignment, the unsuccessful party in such action or proceeding, whether such action or proceeding is settled or prosecuted to final judgment, shall pay all of the attorneys' fees and costs incurred by the prevailing party. If Borrower shall become subject to any case or proceeding under the Bankruptcy Reform Act, as amended or recodified from time to time, Borrower shall pay to Lender on demand all attorneys' fees, costs and expenses which Lender may incur in order to obtain relief from any provision of the Act which delays or otherwise impairs Lender's exercise of any right or remedy under this Assignment or any of the Loan Documents, or in order to obtain adequate protection for any of Lender's rights or collateral.
12. **Heirs, Successors and Assigns.** Subject to the limitations elsewhere contained in this Assignment, the terms of this Assignment shall be binding upon and inure to the benefit of the heirs, successors and assigns of Borrower and Lender, including, without limitation, any subsequent owner of the Property. There shall be no third party beneficiaries of this Assignment.
13. **Time.** Time is of the essence of each term of this Assignment.
14. **Headings.** All headings appearing in this Assignment are for convenience only and shall be disregarded in construing the substantive provisions of this Assignment.
15. **Law.** This Assignment shall be governed by and construed in accordance with the Laws of the State in which Property is located, except to the extent that Federal laws or the rules and regulations of the Office of Thrift Supervision, or its successor, preempt the laws of the State in which Property is located, in which case, Lender shall be entitled to such Federal rights and remedies without regard to conflicting limitation imposed by State law.

16. **Severability.** In the event any one of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect under applicable law, such invalidity, illegality or unenforceability, at the option of Lender, shall not effect any other provision of this Assignment, but this Assignment shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein.
17. **Waiver.** Nothing contained in this Assignment, and no act done or omitted by Lender pursuant to the powers and rights granted Lender, shall be deemed to be a waiver by Lender of its rights and remedies under the other Loan Documents; and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms of the other Loan Documents. The rights and remedies of Lender under this Assignment are cumulative, and no exercise of any right or remedy shall preclude the exercise of any other right or remedy or the later exercise of the same right or remedy. Waivers and approvals under this Assignment must be in writing to be effective; and, unless expressly stated, waivers and approvals shall apply only to the specific circumstances addressed. No waiver under this Assignment shall operate under any of the other Loan Documents.
18. **Satisfaction.** Upon payment in full of all indebtedness secured by this Assignment, this Assignment shall terminate and be of no further effect.
19. **Interest.** In the event Lender expends funds on behalf of Borrower in exercising any of Lender's rights or remedies under this Assignment, such sums, including attorneys' fees, shall be secured by this Assignment and the other Loan Documents, and any such sums shall bear interest at the default rate specified in the Note until reimbursed by Borrower to Lender.
20. **Other Security.** Lender may take or release other security for the payment of the indebtedness secured by this Assignment, and Lender may release any party primarily or secondarily liable for the payment of any such indebtedness and may apply any other security held by Lender to the satisfaction of such indebtedness without prejudice to any of Lender's rights under this Assignment.
21. **Definition.** The terms "lessor" and "lessors" as used in this Assignment shall include all landlords, licensors and other parties in a similar position with respect to the Leases. The term "lessee" and "lessees" shall include any tenants and licensees and any other parties in a similar position, and shall also include any guarantors or other obligors of the Leases.
22. **Estoppel Certificate.** Within thirty (30) days after request by Lender, Borrower shall use commercially reasonable efforts to deliver, in recordable form, to Lender and to any party designated by Lender, estoppel certificates executed by Borrower (estoppel certificate form to be provided to Borrower by Lender). Borrower shall use commercially reasonable efforts to obtain execution by each of the lessees of such a certificate. Borrower's or any lessee's failure to deliver any such certificate in time shall

be conclusive upon Borrower that: (i) this Assignment and such lessee's Lease are in full force and effect, without modification; (ii) there are no uncured defaults in Borrower's performance under this Assignment or in Borrower's and such lessee's performance under such lessee's lease; (iii) neither Borrower nor such lessee have any right of offset, counterclaim or deduction under this Assignment or such lessee's lease; and (iv) no more than one (1) months' rent has been paid in advance under such lessee's Lease.

23. **Plural Borrowers, Other Obligors.** All persons and entities identified by the designation "Borrower," including, without limitation, all general partners or joint ventures (if any) of Borrower, are jointly and individually bound to perform each and every obligation of Borrower under this Assignment and are jointly and individually liable to Lender for such performance.
24. **Incorporation.** Exhibit A and Exhibit B, as attached to this Assignment, are incorporated into and made a part of this Agreement.

**[Space Below Intentionally Left Blank –
Signature Page to Follow]**

RENTS
SIGNATURE PAGE – ASSIGNMENT OF PLANS

IN WITNESS WHEREOF, the ^{Borrower} Debtor has caused this Assignment to be executed as of the date first above written.

HIGHWAY 370 HQ, LLC, a Nebraska limited liability company

By: [Signature]
Title: Manager

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 8th day of October, 2019, by BENNETT GINSBERG, MANAGER of HIGHWAY 370 HQ, LLC, a Nebraska limited liability company, on behalf of the company.

[Signature]
Notary Public

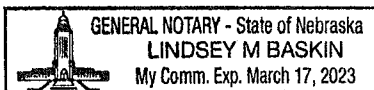


EXHIBIT A

Legal Description

Parcel 1:

Lot 2, 370 North Replat One, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

Parcel 2:

A non-exclusive storm water drainage easement as described in Storm Water Drainage Easement recorded June 21, 2017 as Instrument Number 2017-14414 of the Records of Sarpy County, Nebraska.

EXHIBIT B
Existing Leases

1. Lease Agreement dated April 30, 2019, by and between Highway 370 HQ, LLC and OELS, LLC