

MC 100526

2014-005477

Klamath County, Oregon

05/21/2014 02:28:23 PM

Fee: \$97.00

When recorded return to

Vedder Price P.C.
222 North LaSalle Street
Chicago, Illinois 60601
Attn: Thomas E. Schnur (CWM)

ASSIGNMENT OF RENTS AND LEASES

Assignor/Grantor: QUAIL PARK OF KLAMATH FALLS, LLC, a Washington
limited liability company

Beneficiary: MIDCAP FUNDING VI, LLC, a Delaware limited liability
company

Legal (Abbreviated): Legal description is on Exhibit A attached.

Tax Parcel No: 3809-02000-00500-000;
3809-02000-00503-000

\$92.00

CHICAGO/#2563411.4

A

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (the "**Assignment**") dated as of May 21, 2014 is made by **QUAIL PARK OF KLAMATH FALLS, LLC**, a Washington limited liability company ("**Grantor**"), whose address is 146 North Canal Street, #220, Seattle Washington 98103, Attention: Denis R. Bryant ("**Assignor**"), in favor of **MIDCAP FUNDING VI, LLC**, a Delaware limited liability company, with an office located at 7255 Woodmont Ave., Suite 200, Bethesda, Maryland 20814 (together with its successors and assigns, "**Agent**"), as agent for itself and certain other financial institutions from time to time party to the Credit Agreement referred to below (collectively, "**Lenders**" and each a "**Lender**"). Capitalized terms used herein and not specifically defined herein shall have the respective meanings ascribed to such terms in the Credit Agreement.

WITNESSETH

A. Agent and Lenders have agreed to make a term loan to Assignor in the original principal amount of FOURTEEN MILLION FOUR HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$14,450,000.00) (the "**Loan**"), which Loan is evidenced by that certain Credit and Security Agreement, of even date herewith, by and among Agent, Lenders and Assignor (as amended, substituted, restated or modified from time to time, "**Credit Agreement**") and that certain Term Loan Note, dated as of the date hereof, made by **QUAIL PARK OF KLAMATH FALLS PHASE II, LLC**, a Washington limited liability company, Assignor in favor of Lender (such Term Loan Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter referred as the "**Note**"), and which Loan is secured by, among other things, that certain Trust Deed, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, encumbering, among other things, the property commonly known as Quail Park at Crystal Terrace located at 1000 Town Center Drive, Klamath Falls, Klamath County, Oregon, which is more particularly described on Exhibit A attached hereto and incorporated herein (as amended, substituted, restated or modified from time to time, the "**Trust Deed**").

B. As a condition precedent to the Agent and Lenders extending any financial accommodation to Assignor pursuant to the Notes or otherwise, Agent and Lenders have requested that Assignor execute and deliver this Assignment to Agent for its benefit and the benefit of Lenders, and that any loan or other financial accommodation made by Agent and Lenders to Assignor, as the case may be, under the Credit Agreement or otherwise shall be in reliance upon this Assignment.

GRANTING CLAUSE

In consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Assignor does hereby assign, transfer and set over unto Agent, for its benefit and the benefit of the Lenders, all right, title and interest of the Assignor in, under or pursuant to any and all present or future leases or subleases, whether written or oral, or any lettings of possession of, or any agreements for the use or occupancy of, the whole or any part of the real estate and premises hereinafter described which the Assignor may have heretofore made or agreed to or may hereafter make or agree to, or which may be made or agreed to by the Agent under the powers

hereinafter granted, including all amendments and supplements to and renewals thereof at any time made (collectively, the “**Leases**” and each is individually a “**Lease**”), relating to that certain real estate described in Exhibit A attached hereto and made a part hereof along with the improvements now or hereafter erected thereon (“**Premises**”), including, without limiting the generality of the foregoing, all right, title, and interest of Assignor in and to all the rents (whether fixed or contingent), earnings, renewal rents, and all other sums due or which may hereafter become due under or by virtue of the Leases and all rights under or against guarantors of the obligations of lessees and obligors under the Leases.

THIS ASSIGNMENT OF LEASES AND RENTS IS GIVEN TO SECURE:

(i) The payment in full of all principal of and interest on the Loan, (ii) the performance of all obligations, covenants, promises, and agreements contained herein and in the Trust Deed, the Credit Agreement, and the other Financing Documents, including the Obligations, (iii) the performance of all obligations, covenants, promises, and agreements of the Assignor contained in any loan or other agreements setting forth terms and conditions applicable to the Loan evidenced by the Credit Agreement or providing collateral security therefor, (iv) the payment of all expenses and charges, legal or otherwise, paid or incurred by Agent in realizing upon or protecting the indebtedness referred to in the foregoing clauses (i), (ii) and (iii) or any security therefor, including this Assignment (the Credit Agreement, the Trust Deed, the other Financing Documents and the other indebtedness, obligations, and liabilities referred to in clauses (i), (ii), (iii), and (iv) above being hereinafter collectively referred to as the “**Indebtedness**”).

AND ASSIGNOR HEREBY COVENANTS, AGREES, REPRESENTS AND WARRANTS AS FOLLOWS:

1. Upon the occurrence of any Event of Default, the Assignor does hereby irrevocably constitute and appoint Agent the true and lawful attorney of the Assignor with full power of substitution for Assignor and in Assignor’s name, place and stead to ask, demand, collect, receive, receipt for, sue for, compound, and give acquittance for any and all sums due or to become due under any Lease, with full power to settle, adjust, or compromise any claim thereunder as fully as the Assignor could do, and to endorse the name of the Assignor on all commercial paper given in payment or in part payment thereof, and in Agent’s discretion to file any claim or take any other action or proceeding, either in Agent’s name or in the name of the Assignor or otherwise, which Agent may deem necessary or appropriate to protect and preserve the right, title, and interest of Agent in and to such sums and the security intended to be afforded hereby.

2. The Assignor warrants to Agent and the Lenders that the Assignor has good right to make this Assignment and that the rights, rents, and other sums due or which may hereafter become due and which are intended to be assigned hereunder are not presently alienated, assigned, or pledged to any other person or entity.

3. This Assignment includes and establishes a present, absolute and primary transfer and assignment of all rents, earnings, income, issues and profits from the Leases, but so long as no Event of Default has occurred under the terms as set forth in the Trust Deed, the Credit Agreement, or any other Financing Documents, the Assignor shall have the right and license to collect, use and enjoy all rents and other sums due or to become due by virtue of any Lease as they respectively become due, but not more than thirty (30) days in advance.

4. The Assignor hereby irrevocably consents to and authorizes and directs that the tenant or other obligor under any Lease upon demand and notice from Agent of Agent's right to receive rents and other sums hereunder, shall pay such rents and other sums to Agent after an Event of Default without any obligation on the part of such tenant or other obligor to determine the actual existence of any default or event claimed by Agent as the basis for Agent's right to receive such rents or other sums and notwithstanding any notice from or claim of the Assignor to the contrary. The Assignor hereby waives any right or claim against any tenant or other obligor for any such rents and other sums paid by tenant or other obligor to Agent.

5. Without limiting any legal rights of Agent as the absolute assignee of the rents, issues and profits of the Leases and in furtherance thereof, Assignor agrees that after an Event of Default, whether before or after the Loan is declared due in accordance with its terms, the Agent may, at its option: (i) take actual possession of the Premises hereinabove described, or of any part thereof, personally or by agent or attorney, as for condition broken, and without force and with process of law, enter upon, take, and maintain possession of all or any part of said Premises, together with all documents, books, records, papers, and accounts relating thereto, and exclude the Assignor, its agents, or servants, therefrom and hold, operate, manage and control the Premises, and at the expense of the Assignor, from time to time, cause to be made all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments, and improvements to the Premises as may seem judicious, and pay taxes, assessments, and prior or proper charges on the Premises, or any part thereof, and insure and reinsure the same, and lease the Premises in such parcels and for such times and on such terms as Agent may deem fit, including leases for terms expiring beyond the maturity of the indebtedness evidenced by said Credit Agreement, and cancel any lease or sublease for any cause or on any ground which would entitle the Assignor to cancel the same and in every such case have the right to manage and operate the said Premises and to carry on the business thereof as Agent shall deem proper; or (ii) with or without taking possession of the Premises, Agent may proceed to enforce the Leases and collect all sums due or to become due thereunder and by so doing, Agent shall not be deemed a mortgagee in possession nor to have assumed or become responsible or liable for any obligations of Assignor arising thereunder or in respect thereof.

6. Any sums received by Agent under or by virtue of this Assignment shall be applied to the payment of or on account of the following in such order and manner as Agent may elect:

(a) to the payment of all proper charges and expenses, including the just and reasonable compensation for the services of Agent, its attorneys, agents, clerks, servants, and others employed in connection with the operation, management, and control of the Premises and the conduct of the business thereof;

(b) to the payment of any sum secured by a Lien or encumbrance upon the Premises;

(c) to the cost of completing any improvements being constructed on or about the Premises at the time of taking over the Leases; and

(d) to the reduction of the Indebtedness hereby secured, whether or not the same may then be due or be otherwise adequately secured.

The manner of application of such sums and the items which shall be credited or paid out of same shall be within the sole discretion of Agent and nothing contained herein shall obligate Agent to use any such sums for a purpose other than reducing the Indebtedness hereby secured unless it shall elect to do so. Agent shall be subrogated to any lien discharged out of the rents, income and profits of the Premises.

7. Assignor hereby further covenants that the Assignor will, upon request of Agent, execute and deliver such further instruments and do and perform such other acts and things as Agent may reasonably deem necessary or appropriate to more effectively vest in and secure to Agent the rights and rents which are intended to be assigned to Agent hereunder. Assignor irrevocably waives any right it now or hereafter may have to offset any claim or liability owing from it to any obligor on a Lease against sums due or to become due from such obligor under a Lease.

8. Except as provided for in the Credit Agreement, Assignor covenants and agrees to observe and perform all of the obligations imposed on it under the Leases and not to do or permit to be done anything to impair the security thereof, not to execute any Lease without the written consent of Agent, not to further assign or encumber its rights under the Leases or its rights to the rents or other sums due or to become due thereunder and not suffer or permit any of the Leases to be subordinated to any other liens or encumbrances whatsoever, any such subordination to be null and void unless done with the written consent of Agent. Except as provided for in the Credit Agreement, Assignor further covenants and agrees not to amend, modify or terminate any of the Leases without the prior written consent of Agent.

9. The acceptance by Agent of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of actual physical possession of the Premises by Agent, be deemed or construed to constitute Agent a mortgagee in possession nor impose any obligation whatsoever upon Agent, it being understood and agreed that Agent does not hereby undertake to perform or discharge any obligation or liability of the landlord under any Leases or under or by reason of this Assignment. Agent shall have no liability to Assignor or anyone for any action taken or omitted to be taken by it hereunder, except for its willful misconduct. Subject to the limitation imposed by the preceding sentence, should Agent incur any liability, loss, or damage under or by reason of this Assignment or for any action taken by Agent hereunder, or in defense against any claim or demand whatsoever which may be asserted against Agent arising out of any Lease, the amount thereof, including costs, expenses, and reasonable attorneys' fees, together with interest thereon at the rate applicable to the Loan at the time of incurrence (or if the Loan has been paid in full at the time of incurrence, then at the rate applicable to the Loan at the time of such payment in full), shall be secured by this Assignment and by the Trust Deed, and the Assignor shall reimburse the Assignee therefore immediately upon demand. Assignor's obligation to so pay shall survive payment of the indebtedness hereby secured and the release of this Assignment.

10. The rights and remedies of Agent hereunder are cumulative and are not secondary to or in lieu of, but are in addition to any rights or remedies which Agent shall have under the Credit Agreement, the Trust Deed or any other instrument or document or under applicable law and the exercise by Agent of any rights and remedies herein contained shall not be deemed a waiver of any other rights or remedies of Agent, whether arising under the Trust Deed or otherwise, each and all of which may be exercised whenever Agent deems it in its interest to do so. The rights and remedies of Agent may be exercised from time to time and as often as such

exercise is deemed expedient and the failure of Agent to enforce any of the terms, provisions and conditions of this Assignment for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

11. The right of Agent to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to Agent shall, to the extent not prohibited by law, extend also to the period from and after the filing of any suit to foreclose the lien of the Trust Deed, including any period allowed by law for the redemption of the Premises after any exercise by Agent of its power of sale.

12. This Assignment shall be assignable by Agent and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective legal representatives, successors, and assigns of each of the parties hereto. All provisions hereof are severable and if any provisions hereof shall be invalid or unenforceable, the validity and enforceability of the remaining provisions hereof shall in no way be affected thereby.

13. Except with respect to creation, perfection, priority, and enforcement of the lien and security interest created hereunder, all of which shall be construed, interpreted, enforced, and governed by the laws of the State of Oregon, the validity and interpretation of this Assignment shall be governed by and in accordance with the internal laws of the State of Maryland.

14. ASSIGNOR, ON BEHALF OF ITSELF AND ANY GUARANTORS OF ANY OF THE OBLIGATIONS, WAIVES EVERY PRESENT AND FUTURE DEFENSE, CAUSE OF ACTION, COUNTERCLAIM OR SETOFF WHICH ASSIGNOR MAY NOW HAVE OR HEREAFTER MAY HAVE TO ANY ACTION BY AGENT IN ENFORCING THIS ASSIGNMENT. ASSIGNOR WAIVES ANY IMPLIED COVENANT OF GOOD FAITH AND RATIFIES AND CONFIRMS WHATEVER AGENT MAY DO PURSUANT TO THE TERMS OF THIS ASSIGNMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR AGENT AND LENDERS GRANTING ANY FINANCIAL ACCOMMODATION TO ASSIGNOR. AGENT AND ASSIGNOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES IRREVOCABLY, THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS ASSIGNMENT, THE NOTES OR ANY OF THE OTHER OBLIGATIONS, THE COLLATERAL, OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS ASSIGNMENT, OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH AGENT AND ASSIGNOR ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR AGENT AND LENDERS GRANTING ANY FINANCIAL ACCOMMODATION TO ASSIGNOR. TO INDUCE AGENT AND LENDERS TO MAKE THE LOANS, ASSIGNOR IRREVOCABLY AGREES THAT ALL ACTIONS ARISING, DIRECTLY OR INDIRECTLY, AS A RESULT OR CONSEQUENCE OF THIS ASSIGNMENT, THE COLLATERAL OR THE NOTES OR ANY OTHER AGREEMENT WITH AGENT AND LENDERS, SHALL BE INSTITUTED AND LITIGATED ONLY IN COURTS HAVING THEIR SITUS IN THE CITY OF BETHESDA STATE OF MARYLAND, EXCEPT TO THE EXTENT NECESSARY TO FORECLOSE OR ENFORCE THE PROVISIONS OF THIS ASSIGNMENT. ASSIGNOR HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT HAVING ITS SITUS IN SAID CITY, AND WAIVES ANY OBJECTION BASED ON

FORUM NON CONVENIENS. ASSIGNOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO ASSIGNOR AS SET FORTH HEREIN IN THE MANNER PROVIDED BY APPLICABLE STATUTE, LAW, RULE OF COURT OR OTHERWISE.

15. State Specific Law.

(a) **UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY US CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE GRANTOR'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY US TO BE ENFORCEABLE.**

(b) This Assignment of Leases and Rents is intended to have the benefit of, and be perfected upon recording as provided in, ORS 93.806.

[NO FURTHER TEXT ON THIS PAGE]

Signature Page to Assignment of Rents and Leases (Phase I)

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their duly authorized officials the day and year first above written.

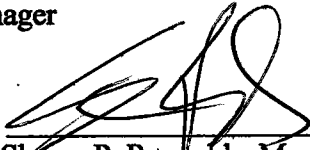
ASSIGNOR:

QUAIL PARK OF KLAMATH FALLS, LLC,
a Washington limited liability company

By: 

Denis R. Bryant, Co-Manager

By: Northwestern Senior Development, LLC, a
Washington limited liability company, Co-
Manager

By: 

Shawn P. Reynolds, Manager

Notary Page to Assignment of Rents and Leases (Phase I)

STATE OF Washington

COUNTY OF King

SS:

This instrument was acknowledged before me on May 9, 2014 by Denis R. Bryant as the Co-Manager of **QUAIL PARK OF KLAMATH FALLS, LLC**, a Washington limited liability company.

GIVEN under my hand and Notarial Seal this 9th day of May, 2014.

Mark R. Patterson

Notary Public

My Commission Expires:

4-26-2018



Notary Page to Assignment of Rents and Leases (Phase I)

STATE OF Washington

COUNTY OF King

SS:

This instrument was acknowledged before me on May 9, 2014 by Shawn P. Reynolds, the Manager of Northwestern Senior Development, LLC, a Washington limited liability company as the Co-Manager of **QUAIL PARK OF KLAMATH FALLS, LLC**, a Washington limited liability company.

GIVEN under my hand and Notarial Seal this 9th day of May, 2014.

Mark R Patterson

Notary Public

My Commission Expires:

4-26-2018

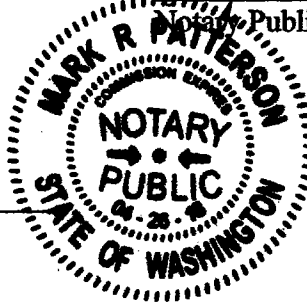


EXHIBIT A

LEGAL DESCRIPTION

PARCEL A:

Parcels 1 and 2 of Land Partition 20-13, replat of Parcel 1 of Land Partition 62-00 and portion of Parcel 2 of Land Partition 62-00 conveyed in Property Line Adjustment 13-11 in SE1/4 NE1/4, Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon recorded May 7, 2014 in Volume 2014-004618

PARCEL B:

Easement as disclosed in Agreement for Reciprocal Access Easement recorded June 8, 2001 in Volume M01, page 27242, Microfilm Records of Klamath County, Oregon.

PARCEL C:

Easement as disclosed in Perpetual Easement for Utilities and Access recorded October 7, 2011 as Instrument No. 2011-11193, Klamath County Records, Oregon.

PARCEL D:

Easement as disclosed in Declaration of Covenants, Conditions and Restrictions and Grant of Easements recorded May 7, 2014 as Instrument No. 2014-004617, Klamath County Records, Oregon.