

2015-013635**Klamath County, Oregon****12/21/2015 11:19:14 AM****Fee: \$77.00**

AmeriTitle
WTO 53630 AM

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) Pam Bathgate, Paralegal (713) 650-2436
B. E-MAIL CONTACT AT FILER (optional) pbathgate@winstead.com
C. SEND ACKNOWLEDGMENT TO: (Name and Address) Winstead PC 1100 JPMorgan Chase Tower 600 Travis Street Houston, TX 77002

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME CD DG MERRILL, LLC				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS 5317 INVERRARY DRIVE		CITY PLANO	STATE TX	POSTAL CODE 75093
				COUNTRY USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME SB FINCO I, L.P.				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 301 COMMERCE STREET, SUITE 3200		CITY FORT WORTH	STATE TX	POSTAL CODE 76102
				COUNTRY USA

4. COLLATERAL: This financing statement covers the following collateral:

See SCHEDULE I attached hereto and incorporated herein by reference for a description of the collateral.

See EXHIBIT A attached hereto and incorporated herein by reference for a description of the property.

See EXHIBIT B attached hereto and incorporated herein by reference for a description of the permitted exceptions.

Proceeds of the collateral are also covered.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility ☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

Klamath County, OR

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

CD DG MERRILL, LLC

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

11c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☒ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

☐ covers timber to be cut

☐ covers as-extracted collateral

☒ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

See Exhibit A.

17. MISCELLANEOUS:

SCHEDULE I
SCHEDULE OF COLLATERAL

UCC FINANCING STATEMENT
(Presented for filing pursuant to the Uniform Commercial Code)

Debtor: CD DG MERRILL, LLC,
a Texas limited liability company

Secured Party: SB FINCO I, L.P., a Texas limited partnership

This Financing Statement covers the following types of collateral and proceeds thereof ("Mortgaged Property"), subject only to the Permitted Exceptions, described in this Schedule I, Schedule of Collateral, as the same relate to the land (the "Land") described in Exhibit A attached hereto and incorporated herein by reference for all purposes, and the improvements thereon or thereto, to include the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases, Plans, if any, and any interest of Debtor now owned or hereafter acquired therein, together with an interest in the Rents, and all other security and collateral of any nature now or hereafter given for the performance and discharge of the Obligations together with the Collateral, which includes all Contracts, Leases, Plans, if any, insurance claims relating to the Mortgaged Property. The defined terms, set forth above, have the following meanings:

"**Code**" means the Uniform Commercial Code as enacted and in force in the State of Oregon.

"**Contracts**" means all of the right, title, and interest of Debtor, including equitable rights, in, to, and under all: (a) contracts for the purchase or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including without limitation, all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments, supplements, and restatements thereof, and together with all payments, earnings, income, profits, and all other sums due or to become due arising from the sale of any portion of the Mortgaged Property or from the contracts, and together with any and all earnest money, security, letters of credit, or other deposits under any of the contracts; (b) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to the development, ownership, maintenance, or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or hereafter existing, including without limitation, all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each Governmental Authority required (i) to evidence compliance by Debtor and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property, and (ii) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (c) financing arrangements relating to the financing or purchase of any portion of the Mortgaged Property by future purchasers; (d) contracts for construction or supplying of Improvements to

the Mortgaged Property; and (e) other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management, or ownership of the Mortgaged Property (save and except the Leases), including without limitation maintenance and service contracts and management agreements.

"Fixtures" means all materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Debtor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, including without limitation, all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, call and sprinkler systems, alarm and security systems, intercom systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation systems (of people or things, including without limitation stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances, and equipment, disposals, dishwashers, refrigerators, ranges, recreational equipment and facilities of all kinds, lighting, traffic control, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

"Guarantor" means (individually and/or collectively, as the context may require) those persons, firms, or entities, if any, designated as Guarantor in the Guaranty.

"Guaranty" means (individually and/or collectively, as the context may require) that instrument or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor to Secured Party guaranteeing the repayment of all or any part of the Indebtedness or the satisfaction of, or continued compliance with, the Obligations, or both, as it or they may from time to time be amended, supplemented, or restated.

"Improvements" means any and all buildings, covered garages, air conditioning towers, open parking areas, structures, and other improvements of any kind or nature, and any and all additions, alterations, betterments, or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

"Land" means all of that certain real property or interest therein situated in Klamath County, Oregon, more particularly described in Exhibit A, together with all right, title, interest, and privilege of Debtor in and to: (a) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights, and public places, existing or proposed, abutting, adjacent, used in connection with, or pertaining to such real property or the improvements thereon; (b) any strips or gores of real property between such real property and abutting or adjacent properties; (c) all air rights, all water and water rights, sands, gravel, rocks and soil, timber and crops pertaining to such real property; and (d) all other appurtenances, reversions, and remainders in or to such real property.

"Leases" means all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral or now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security deposits and other deposits or payments made in connection therewith.

"Loan Documents" means the Loan Agreement, the Note, the Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, the Environmental Indemnity Agreement, the Guaranty (all dated at or near the date of the filing of this UCC Financing Statement), if any, and all other documents now or hereafter executed by Debtor, Guarantor, or any other person or party in connection with the loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations, as they may from time to time be amended, supplemented, or restated.

"Minerals" means all substances in, on, under, or above the Land which are now, or may become in the future, intrinsically valuable (that is, valuable in themselves) and which now or may be in the future enjoyed through extraction or removal from the property, including without limitation oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide, and all other non-hydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron, and all other metallic substances or ores.

"Obligations" means any and all of the covenants, conditions, warranties, representations, and other obligations (other than including the obligation to repay the Indebtedness) made or undertaken by Debtor, Guarantor (as defined above), or any other person or party to the Loan Documents to Secured Party, AMERITITLE, as Trustee, or others as set forth in the Loan Documents, the Leases, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Debtor is granted a possessory interest in the Mortgaged Property.

"Permitted Exceptions" means the liens, easements, restrictions, security interests, and other matters (if any) described on Exhibit B and the liens and security interests created by the Loan Documents.

"Personalty" means all of the right, title, and interest of Debtor in and to: (a) furniture, furnishings, equipment, machinery, and goods (including, without limitation, crops, farm products, timber and timber to be cut, and as-extracted collateral); (b) general intangibles, money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, chattel paper, instruments, investment property, letter of credit rights, and inventory; (c) all cash funds, fees (whether refundable, returnable, or reimbursable), deposit accounts, or other funds or evidences of cash, credit, or indebtedness deposited by or on behalf of Debtor with any governmental agencies, boards, corporations, providers of utility services, public or private, including, without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees, development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or other personalty, including, but not limited to, those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (d) the Plans, and (e) all other personal property of any kind or character as defined in and subject to the provisions of the Code; any and all of which are now owned or hereafter acquired by Debtor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

"Plans" means any plans and specifications for the development of the Land and construction of the Improvements, and all amendments and modifications thereof, and all other design, engineering, or architectural work, test reports, surveys, shop drawings, and related items.

"Rents" means all rents, revenues, royalties, income, issues, proceeds, bonus monies, profits (including all oil and gas or other mineral royalties and bonuses), accounts, security deposits and other types of deposits (after Debtor acquires title thereto), and other benefits paid or payable by parties (other than Debtor) to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying the Mortgaged Property.

As to all of the above Collateral which is or which hereafter becomes a "fixture" under applicable law, this Financing Statement constitutes a fixture filing under the Code.

EXHIBIT A

LAND

Parcels 1 and 2 of Land Partition 19-15, a replat of Tracts 19 and 20 of Merrill Tract situated in the S1/2 of Section 2, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, recorded December 8, 2015 in Volume 2015-013240, Microfilm Records of Klamath County, Oregon.

EXHIBIT B

PERMITTED EXCEPTIONS

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2015-2016.
2. The provisions contained in Deed recorded July 29, 1914, as Instrument No. 43, Page 239.
3. The provisions contained in Deed recorded October 24, 1922, as Instrument No. 59, Page 258.
4. An easement, including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein, as set forth in instrument granted to Pacific Fiber Link, LLC, a Washington limited liability company, recorded August 19, 1999, Instrument No. M99, Page 33462.
5. Restrictions as shown on the official plat of said Land Partition 19-15.