

2016-007701

Klamath County, Oregon

07/21/2016 08:45:33 AM

Fee: \$77.00

After Recording Return To:

BOKF, N.A.
P.O. BOX 22117
TULSA, OK 74121

COLLATERAL ASSIGNMENT OF NOTE, LOAN DOCUMENTS, AND LIENS

THIS COLLATERAL ASSIGNMENT OF NOTE, LOAN DOCUMENTS, AND LIENS (this "Assignment") is made as of **JANUARY 29, 2016**, by **SB FINCO I, L.P.**, a Texas limited partnership ("Assignor"), in favor of **BOKF, NA dba BANK OF OKLAHOMA**, a national banking association (together with its successors and assigns, "Assignee").

RECITALS

- A. Assignor is the owner and holder of the Collateral Note described on Exhibit A.
- B. The Collateral Note is secured by the Collateral Documents described on Exhibit A, certain of which encumber the real property described in Exhibit B attached hereto (the "Property").
- C. Assignor and Assignee have entered into that certain **LOAN AND SECURITY AGREEMENT** dated as of even date herewith (as the same may be amended, supplemented, renewed or extended from time to time, the "Loan Agreement"), pursuant to which Assignor has assigned and pledged to Assignee all of its right, title and interest in the Collateral Note and the Collateral Documents (including all liens and security interests granted thereunder) and the other loan documents and guaranties delivered in connection therewith (the "Collateral Loan Documents"), and in connection with its execution and delivery of the Loan Agreement and assignment and pledge of the Collateral Note, Assignor has agreed to execute, deliver and record a collateral assignment of the Collateral Loan Documents to Assignee.
- D. Capitalized terms used in this Assignment and not otherwise defined herein have the respective meanings assigned to them in the Loan Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Assignment. Effective as of the date hereof, Assignor hereby assigns to Assignee, as security for the Indebtedness of Assignor under the Loan Agreement, all of

Assignor's right, title and interest in, to and under the Collateral Note and the Collateral Loan Documents (including all liens and security interests granted thereunder), to have and to hold the same unto Assignee from and after the date hereof. Absent the occurrence of any Event of Default, Assignee shall hold and have the full control of the Collateral Note until the Indebtedness is fully paid, including, without limitation, the right to foreclose under the Collateral Loan Documents, without the necessity of consent by Assignor (and without the necessity of the prior foreclosure of the Collateral Note), but shall not have the right to release liens under the Collateral Loan Documents except upon the release of this Assignment by Assignee to be given upon the full and final payment of the Indebtedness.

2. **Subject to Loan Agreement.** Notwithstanding anything to the contrary herein, this Assignment is made pursuant to and in accordance with the terms of the Loan Agreement and is subject to all of the limitations set forth therein. The terms, conditions and provisions of the Loan Agreement are incorporated herein by reference, the same as if stated verbatim herein.

3. **Generally.** Assignor represents and warrants to Assignee that (a) Assignor is the sole legal and equitable owner and holder of the Collateral Note, the Collateral Loan Documents and the obligations evidenced thereby, (b) Assignor has not assigned, mortgaged or hypothecated the Collateral Note, the Collateral Loan Documents, or any obligations evidenced thereby, to any party other than Assignee, (c) the Collateral Note is in all respects current and in good standing and is not overdue or subject to any credits or offsets, (d) neither the maker of the Collateral Note nor any surety or guarantor of the Collateral Note has raised any counterclaim, defense, allowance, adjustment, dispute, obligation or complaint regarding their respective liability on either of the Collateral Note or under any Collateral Loan Documents, (e) neither the Collateral Note, the Construction Loan Agreement or the Deed of Trust has been amended, altered or modified since the date of the execution thereof, except as reflected in Exhibit A, (f) no default, or event which with notice, lapse of time, or both would constitute a default, under the Collateral Note or Collateral Loan Documents has occurred, and (g) Assignor has the full right and authority to sell, assign, pledge and grant a security interest in and to each of the Collateral Loan Documents, and the liens and security interests securing same.

4. **No Modifications.** Until the payment in full of the Indebtedness, Assignor shall not enter into or permit any amendment, alteration or modification of the Collateral Note or any of the Collateral Loan Documents without the prior written consent of Assignee (such consent not to be unreasonably withheld by Lender).

5. **Sale or Foreclosure.** Upon the occurrence of an Event of Default, Assignee shall, in addition to the rights and remedies provided for in the Loan Agreement and the other Loan Documents, have the right to sell, foreclose or otherwise realize upon the Collateral Note in any manner authorized by Article 9 of the Uniform Commercial Code ("UCC") or other applicable law and to exercise any and all rights afforded to Assignor under the Collateral Loan Documents, including the right to foreclose the Collateral Loan Documents and to sell the Property in any manner afforded to Assignee under the laws of the State of Oregon. Assignee shall also have all the rights and remedies of a secured party under the UCC, and Assignee shall be entitled to avail itself of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the Indebtedness. The foreclosure of the Collateral Loan Documents and the

resort to any remedy provided hereunder or provided by the UCC or any Oregon law shall not prevent the concurrent employment of any other appropriate remedy or remedies. The requirement of notice to Assignor of the time and place of any public sale of the Collateral Note or the Collateral Loan Documents shall be given in accordance with the Loan Agreement and the UCC. Assignor hereby irrevocably constitutes and appoints Assignee, with full power of substitution, as its full and lawful attorney-in-fact, with full power and authority and authority, in the name and stead of Assignor and in the name of Assignor, to exercise any and all rights and remedies of Assignor with respect to the Collateral Note and the Collateral Loan Documents and to take any and all appropriate action which may be necessary or desirable to collect the Collateral Note and enforce the provisions of the Collateral Loan Documents.

6. **Remedies Cumulative.** The security interest and collateral assignment created herein and in the Loan Agreement shall not be affected by or affect any other security taken for repayment of the Indebtedness, and any extensions may be made for the payment of the Indebtedness, without affecting the priority of the security interest or the validity thereof with reference to any third party, and the holder or holders of the Note shall not be limited by election of remedies if the holder or holders choose to foreclose the security interest in the Collateral Loan Documents by suit. The right to sell the Collateral Loan Documents under the terms hereof shall also exist cumulative with such suit, and one method of foreclosure shall not bar the other, but both may be exercised at the same or different times, nor shall one be a defense to the other. This Assignment shall in no manner impair or affect any of the other liens granted by Assignor to Assignee, and no security interest hereafter taken therefore shall in any manner impair or affect the security hereby given, it being agreed that all such present and future security shall be cumulative security and that Assignee may foreclose under any of such security, as Assignee may elect, without waiving the other.

7. **Notice to Maker.** Assignor authorizes Assignee, at the option of Assignee, to give notice to the maker of the Collateral Note of the existence of this Assignment and to instruct such maker, upon the occurrence of an Event of Default which is not cured within any applicable grace period set forth in the Loan Agreement, to direct all payments due and payable under the Collateral Note to Assignee.

8. **Collection of Collateral Note.** Assignor authorizes Assignee, at the option of Assignee, and only upon the occurrence of an Event of Default, which is not cured within any applicable grace period set forth in the Loan Agreement, to collect and receive any and all sums becoming due upon the Collateral Note, such sums to be held by Assignee without liability for interest thereon and applied towards the payment of the Indebtedness. Notwithstanding the foregoing, Assignee is under no obligation to make or enforce the collection of the Collateral Note, and the failure of Assignee from any cause to make or enforce the collection thereof shall not in any way prejudice the right of Assignee to thereafter make or enforce collection thereof or in any way affect the Collateral Note. Assignee shall, once the Indebtedness has been paid in full to Assignee, remit to Assignor all proceeds, if any, received by it under the Collateral Note, if any, that remain after the Indebtedness has been paid in full to Assignor.

9. **Rights of Assignee.** In addition to the other rights of Assignee hereunder, Assignee may, but shall not be obligated to, renew, extend or rearrange the time and manner of

payment of the Collateral Note, in its own name or in the name of Assignor with or without the joinder or consent of Assignor, without incurring responsibility or liability to Assignor or discharging, impairing or otherwise affecting any liability or obligation of Assignor, including, without limitation, Assignor's liability for payment of the Indebtedness.

10. **Additional Property**. If Assignor hereafter becomes the owner of any of the property covered by the Collateral Loan Documents prior to the date that Assignee executes a written release of this Assignment, Assignee shall automatically have a lien and security interest in and against such property to secure the payment of the Indebtedness, and Assignor does hereby grant Assignee a lien and security interest in and against such property, and Assignor shall immediately, at Assignor's sole cost and expense, execute and deliver, and file in the appropriate public records with all filing fees paid, appropriate documents, in form and substance satisfactory to Assignee, further evidencing the granting of such lien and security interest. The foregoing provisions shall not be deemed to constitute consent or authorization by Assignee to the transfer, sale or other disposition of any of the property covered by the Collateral Loan Documents to or by Assignor.

11. **Expenses**. Assignor shall pay to Assignee all expenditures and expenses, including, without limitation, reasonable attorneys' fees, incurred by Assignee in exercising, protecting or enforcing Assignee's interests, rights and remedies under this Assignment, plus interest thereon at the maximum rate permitted by applicable law. Assignor shall further do, make, procure, execute and deliver all acts, things, writings and assurances as Assignee may at any time reasonably request to protect, assure or enforce Assignee's interests, rights and remedies under this Assignment.

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SIGNATURES APPEAR ON FOLLOWING PAGE.**

STATE OF TEXAS

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COUNTY OF FORT WORTH

THIS INSTRUMENT was acknowledged before me on January 27, 2016, by Noel Nesser, Authorized Signatory of Arthur Holdings, LLC, a Texas limited liability company, Manager of PINPOINT FINCO I, L.L.C., a Texas limited liability company, General Partner of SB FINCO I, L.P., a Texas limited partnership, on behalf of said entity.

Laura D Mitchell
NOTARY PUBLIC, STATE OF TEXAS

Printed Name: Laura D Mitchell



Unofficial Copy

**EXHIBIT A
TO
COLLATERAL ASSIGNMENT OF NOTE, LOAN DOCUMENTS, AND LIENS**

Collateral Loan Documents

Collateral Note:

PROMISSORY NOTE dated as of December 18, 2015, executed by CD DG Merrill, LLC, a Texas limited liability company ("Collateral Debtor"), payable to the order of Assignor in the principal amount of \$1,471,285.48.

Collateral Loan Documents:

CONSTRUCTION LOAN AGREEMENT dated as of December 18, 2015, between Collateral Debtor and Assignor.

DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING, dated as of December 18, 2015 (the "Deed of Trust"), executed by Collateral Debtor in favor of AmeriTitle, as trustee for the benefit of Assignor, filed on December 21, 2015, in Volume 2015-013633 of the real estate records of Klamath County, Oregon.

Each other Loan Document and Guaranty (each as defined in the Deed of Trust) delivered in connection with any of the foregoing.

**EXHIBIT B
TO
COLLATERAL ASSIGNMENT OF NOTE, LOAN DOCUMENTS, AND LIENS**

Property Description

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.

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