

37782AM
RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

2017-005808
Klamath County, Oregon
05/30/2017 11:32:00 AM
Fee: \$72.00

COMPASS BANK
Attn: Amanda Draughon
Manager LD&FC CRE
Credit Risk Operations
Global Risk Management
8333 Douglas Ave., 2nd Floor
Dallas, Texas 75225

Recorder's Use

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES is made as of May 17, 2017, but effective May 26, 2017, by DG-CHILOQUIN, OR-1-UT, LLC, a Utah limited liability company, authorized to do business in Oregon ("Assignor"), to COMPASS BANK, an Alabama banking corporation ("Assignee"), as follows:

WITNESSETH:

THAT Assignor, in consideration of the sum of Ten Dollars (\$10.00) cash and other good and valuable consideration paid by Assignee, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, TRANSFER, ASSIGN, and SET OVER unto Assignee, its successors and assigns, the following:

All rents, rentals and other sum of money, including all penalties, all bonuses, and all amounts to be paid upon exercise of any option to purchase (collectively hereinafter called the "Rents"), that may now or hereafter be due and payable to Assignor under the terms of all existing lease agreements and all lease agreements hereafter made, executed or delivered, whether written or verbal, covering all or any portion of the real property described on Exhibit "A" attached hereto and made a part hereof, and the improvements now or hereafter erected or constructed thereon (said real property and improvements being hereinafter referred to as the "Property"), together with all Rents that may now or hereafter be due and payable to Assignor under the terms of all renewals, extensions, amendments, supplements, modifications, and short or memorandum forms, of such lease agreements (such lease agreements, and renewals, extensions, amendments, supplements, modifications, and short or memorandum forms, thereof being hereinafter called the "Leases").

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

1. Limited License. Provided that there exists no default hereunder or under that certain promissory note ("Note") in the original principal amount of \$1,416,555.00, executed by Assignor, payable to the order of Assignee of even date herewith or the deed of trust ("Deed of Trust") securing payment of the Note or any other document securing the payment of the Note (the Note, Deed of Trust and other documents securing the payment of the Note being sometimes hereinafter collectively referred to as the "Loan Documents"), Assignor shall have the right under a limited license granted hereby, and Assignee hereby grants to Assignor a limited license (the "License") to collect (but not more than one month in advance) all of the Rents arising from or out of the Leases, or from or out of the Property or any part thereof. Assignor shall receive such Rents and hold them as a trust fund to be applied, and Assignor hereby covenants to apply the Rent so collected, to the following:

(A) Payment of principal, interest and all other sums payable under the Note, and any other indebtedness secured by the Deed of Trust (said principal, interest and other indebtedness being sometimes hereinafter collectively referred to as the "Indebtedness");

(B) Satisfaction and discharge of any and all of the covenants, warranties, representations and other obligations (other than the obligation to repay the Indebtedness) (collectively hereinafter sometimes referred to as the "Obligations") made or undertaken by Assignor to Assignee or others set forth in the Loan Documents, or any lease, sublease or other agreement pursuant to which Assignor is granted a possessory interest in the Property;

(C) Payment of all real estate and personal property taxes; water, gas, sewer, electricity and other utility charges; charges for any easement, license or agreement maintained for the benefit of the Property; and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Property or the Rents or the ownership, use, occupancy or enjoyment thereof;

(D) Satisfaction and discharge of all obligations under the Leases; and

(E) Satisfaction of any liability incurred by Assignee under the Leases or by reason of this Assignment or in defense of any claims or demands which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases.

Thereafter, so long as there exists no default hereunder or under any of the Loan Documents, Assignor may use the Rents in any manner not inconsistent with the Loan Documents. The License shall be revoked automatically upon the occurrence of a default hereunder or under any of the Loan Documents.

2. Affirmative Covenants. Assignor shall (i) duly and punctually observe, perform and discharge, all and singular the obligations, terms, covenants, conditions and warranties of the

Leases, (ii) give prompt notice to Assignee of any failure on the part of Assignor to observe, perform and discharge the same or of any claim made by any lessee of any such failure by Assignor, (iii) notify and direct, in writing, each and every present and future lessee or occupant of the Property or of any part thereof that any security deposit or other deposits heretofore delivered to Assignor have been retained by Assignor or assigned and delivered to Assignee, as the case may be, (iv) enforce or secure in the name of Assignee the performance of each and every obligation, term, covenant, condition and agreement in the Leases to be performed by any lessee or any guarantor, (v) appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with the Leases or the obligations, duties, or liabilities of Assignor and any lessee thereunder, doing so in the name and on behalf of Assignee upon request by Assignee, but at the expense of Assignor, and pay all costs and expenses of Assignee, including reasonable attorney's fees and disbursements, in any action or proceeding in which Assignee may appear, (vi) use best efforts to keep the Property leased at a good and sufficient rental and on other terms and conditions reasonably acceptable to Assignee, (vii) deliver to Assignee executed copies of all Leases having a term, including renewal options, of more than six (6) months, and (viii) make, execute and deliver to Assignee upon demand and at any time or times, any and all assignments and other documents and other instruments which Assignee may deem advisable to carry out the true purposes and intent of this Assignment. Violation by Assignor of any of the covenants, representations or provisions of this Assignment shall constitute an event of default under the Note and the Deed of Trust.

3. Negative Covenants. Assignor shall not, without the prior written consent of Assignee, (i) cancel, terminate or consent to any surrender of any Lease, except in the ordinary and usual course of Assignor's business, (ii) commence any action of ejectment or any summary proceedings for dispossession of any lessee under any Lease or exercise any right of recapture provided in any Lease, except in the ordinary and usual course of Assignor's business, (iii) materially modify the term of any Lease, (iv) waive or release any lessee or any guarantors from any obligations or conditions to be performed by any lessee or any guarantor, (v) lease any part of the Property or renew or extend the term of any Lease unless an option therefor was originally so reserved by the lessee and for a fixed and definite rental, except in the ordinary and usual course of Assignor's business, (vi) consent to any modification of the express purposes for which the Property or any portion thereof has been leased, (vii) consent to any subletting of the Property or any part thereof, to any assignment of any Lease by any lessee thereunder, or to any assignment or further subletting of any sublease, (viii) receive or collect any Rents from any lessee for a period of more than one month in advance (whether in cash or by evidence of indebtedness), (ix) pledge, transfer, mortgage or otherwise encumber or assign future payments of Rents, or (x) waive, excuse, condone, discount, set off, compromise or in any manner release or discharge any lessee under any Lease from any obligations, covenants, conditions, and agreements to be kept, observed and performed by such Lessee including the obligation to pay Rents thereunder in any manner and at any time and place specified therein.

4. Appointment of Attorney-in-Fact. Subject to the License as described and limited in Paragraph 1 above, Assignor hereby constitutes and appoints Assignee the true and lawful attorney-in-fact, coupled with an interest, of Assignor, empowered and authorized in the name, place and stead of Assignor to demand, sue for, attach, levy, recover and receive the Rents, or any premium or penalty payable upon the exercise by any lessee under any Lease of a privilege

of cancellation originally provided in any such Lease, and to give proper receipts, releases, and acquittances therefor and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion of the Indebtedness or the Obligations selected by Assignee, notwithstanding the fact that such portion of the Indebtedness or the Obligations may not then be due and payable or that such portion of the Indebtedness or the Obligations is adequately secured. Assignor does hereby authorize and direct any such lessee to deliver such payment to Assignee, in accordance with this Assignment and Assignor hereby ratifies and confirms all that its said attorney shall do or cause to be done in good faith by virtue of the powers granted hereby. The foregoing appointment is irrevocable and continuing and such rights, powers and privileges shall be exclusive in Assignee, its successors and assigns, so long as any part of the Indebtedness or the Obligations remain unpaid and undischarged. A lessee need not inquire into the authority of Assignee to collect any Rents, and its obligations to Assignor shall be absolutely discharged to the extent of any payment to Assignee. Subject to the License, Assignor hereby constitutes and appoints Assignee the true and lawful attorney-in-fact, coupled with an interest, of Assignor, empowered and authorized in the name, place and stead of Assignor to subject and subordinate at any time any Lease or any part thereof to the lien and security interest of the Deed of Trust or any other mortgage, deed of trust or security agreement on, or to any ground lease of, the Property, or to request or require such subordination, where such reservation, option or authority was reserved to the Assignor under any such Lease or in any case where the Assignor otherwise would have the right, power or privilege so to do. The foregoing appointment is irrevocable and continuing and such rights, powers and privileges shall be exclusive in Assignee, its successors and assigns, so long as any part of the Indebtedness or the Obligations remains unpaid and undischarged, and Assignor hereby warrants that Assignor has not at any time prior to the date hereof exercised any such right, and Assignor hereby covenants not to exercise any such right to subordinate any such Lease to the lien of the Deed of Trust or to any other mortgage, deed of trust or security agreement or to any ground lease.

5. No Obligation of Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property after default or from any other act or omission of Assignee taken in good faith in dealing with the Property after default. Assignee shall not be obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability under any of the Leases or under or by reason of this Assignment and Assignor shall, and does hereby agree, to indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred under said Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon Assignee, nor for the carrying out of any of the terms and conditions of said Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by the tenants 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 to any tenant, licensee, employee or stranger.

6. No Waiver of Rights or Remedies. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Loan Documents. The right of Assignee to collect the Indebtedness and to enforce any security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. The receipt by Assignee of any Rents, issues or profits pursuant to this Assignment after the institution of foreclosure proceedings under the Deed of Trust by reason of Assignor's default shall not cure such default nor affect such foreclosure proceedings or any sale pursuant thereto.

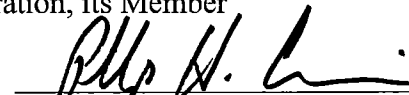
7. Governing Law. This Assignment shall be governed by the applicable laws of the State of Texas and the United States of America.

This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Note and the Deed of Trust and shall be binding upon Assignor, its successors, heirs and assigns.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

DG-CHILOQUIN, OR-1-UT, LLC, a Utah limited liability company, authorized to do business in Oregon

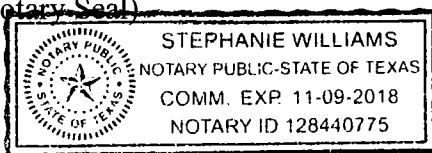
By: EMBREE ASSET GROUP, INC., a Texas corporation, its Member

By: 
PHILIP H. ANNIS, President

THE STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on May 17th, 2017, by PHILIP H. ANNIS, President of EMBREE ASSET GROUP, INC., a Texas corporation, Member of DG-CHILOQUIN, OR-1-UT, LLC, a Utah limited liability company, authorized to do business in Oregon, on behalf of said corporation and limited liability company.

(Notary Seal)



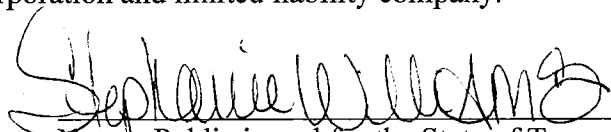

Notary Public in and for the State of Texas

EXHIBIT "A" LEGAL DESCRIPTION

Parcel 2 of Partition Plat LP 11-16, a replat of a portion of the Government Lots 1, 7 and 8 in the NE1/4 of Section 4, Township 35 South, Range 7 East, of the Willamette Meridian Klamath County, Oregon, recorded April 7, 2017 in Instrument 2017-003674.