

AmeriTitle
MTC 152586AM

2018-006698

Klamath County, Oregon

06/01/2018 12:05:01 PM

Fee: \$82.00

WHEN RECORDED RETURN TO:

Nancy Shirar
Chicago Title Of Texas
3100 Monticello Ave, Ste 800
Dallas, TX 75205

[SPACE ABOVE LINE FOR RECORDER'S USE ONLY]

ASSIGNMENT OF LEASES AND RENTS

CD DG KLAMATH FALLS SOUTH, LLC,
as assignor

and

PSL AUSTIN LENDING LLC,
as assignee

May 24, 2018

82 ALT

ASSIGNMENT OF LEASES AND RENTS

This ASSIGNMENT OF LEASES AND RENTS (this "*Assignment*") dated and effective as of May 24, 2018, is made by **CD DG KLAMATH FALLS SOUTH, LLC**, a Texas limited liability company, having an address at 4336 Marsh Ridge Road, Carrollton, TX 75010, as assignor ("*Borrower*"), to **PSL AUSTIN LENDING LLC**, a Texas limited liability company, having an address at 100 Congress Avenue, Suite 1550, Austin, Texas 78701, as assignee (together with its successors and assigns, "*Lender*").

RECITALS:

WHEREAS, Borrower is the owner of fee simple title to that certain parcel of real property (the "*Premises*") described in Exhibit "A" attached hereto, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and other improvements now or hereafter located thereon (collectively, the "*Property*"); and

WHEREAS, Borrower and Lender have entered into a certain Construction Loan Agreement, dated as of the date hereof (as amended, modified, restated, consolidated or supplemented from time to time, the "*Loan Agreement*"), pursuant to which Lender has agreed to make a secured Loan (as defined in the Loan Agreement) to Borrower in the Loan Amount (as defined in the Loan Agreement); and

WHEREAS, Borrower has executed that certain Promissory Note in such principal amount, dated as of the date hereof (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "*Note*"), which is secured by, *inter alia*, that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (as amended from time to time, the "*Security Instrument*") on the Property; and

WHEREAS, it is a condition to the obligation of Lender to make the Loan to Borrower pursuant to the Loan Agreement that Borrower execute and deliver this Assignment; and

WHEREAS, this Assignment is being given as additional security for the Loan; and

WHEREAS, capitalized terms used in this Assignment without definition have the respective meanings assigned to such terms in the Loan Agreement or the Security Instrument, as the case may be, the terms of each of which are specifically incorporated by reference herein.

NOW, THEREFORE, for good and valuable consideration, receipt of which by the parties hereto is hereby acknowledged, and additionally for the purpose of additionally securing the Loan, Borrower hereby assigns, transfers, conveys and sets over unto Lender, all right, title and interest of Borrower in and to all Leases and all Rents;

TO HAVE AND TO HOLD the same unto Lender, and its successors and assigns forever, upon the terms and conditions and for the uses hereinafter set forth.

And Borrower hereby further agrees as follows:

1. Warranties Concerning Leases and Rents. Borrower represents and warrants that:

(a) Borrower has good title to the Leases and Rents and authority to assign them, and no other person or entity has any right, title or interest therein;

(b) All existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists thereunder;

(c) Unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged;

(d) No Rents have been or will be anticipated, waived, released, discounted, set off or compromised;

(e) Except as indicated in the Leases, Grantor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; and

(f) All Leases shall specify U.S. addresses for notice to Lessees, and prohibit prepayment of Rent more than one month in advance and contain waivers.

2. Borrower's Covenants of Performance. Borrower covenants to:

(a) Perform all of its obligations under the Leases and give prompt notice to Lender of any failure to do so;

(b) Give immediate notice to Lender of any notice Borrower receives from any Lessee or subtenant under any Leases, specifying any claimed default by any party under any Leases;

(c) Enforce the Lessees' obligations under the Leases;

(d) Defend, at Borrower's expense, any proceeding pertaining to the Leases, including, if Lender so requests, any such proceeding to which Lender is a party;

(e) Neither create nor permit any encumbrance upon its interest as lessor under the Leases, except this Assignment and any other encumbrances permitted by this Assignment; and

(f) [Intentionally Omitted].

3. Prior Approval for Actions Affecting Leases. Borrower shall not, without the written consent of Lender:

(a) Receive or collect Rents more than one month in advance;

(b) Encumber or assign future Rents;

(c) Waive or release any material obligation of any Lessee under any Leases;

(d) Cancel, terminate or modify any of the Leases (or any portion thereof); cause or permit any cancellation, termination or surrender of any Lease; or commence any proceedings for dispossession of any Lessee under any Lease, except upon default by the Lessee thereunder;

(e) Renew or extend any Lease, except pursuant to terms in existing Leases;

(f) Permit any assignment of any Lease; or

(g) Enter into any Lease after the date hereof.

4. Assignment; Deferred Exercise of Rights.

(a) As part of the consideration for the Loan, Borrower does hereby absolutely and unconditionally assign to Lender all right, title and interest of Borrower in and to all present and future Leases and Rents, and this Assignment constitutes a present and absolute assignment and is intended to be unconditional and not as an assignment for additional security only. It is further intended that it not be necessary for Lender to institute legal proceedings, absent any requirements of law or regulation to the contrary, to enforce the provisions of this Assignment. Borrower hereby authorizes Lender or its agents to collect the Rents; provided, however, that prior to an Event of Default, Borrower shall have a revocable license, but limited as provided in this Assignment and in any of the other Loan Documents, to otherwise deal with, and enjoy the rights of the lessor under, the Leases.

(b) Upon the occurrence and during the continuance of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by court-appointed receiver, the license referred to in Subsection (a) above shall immediately be revoked and Lender shall have the right at its option, to exercise all rights and remedies contained in the Loan Documents, or otherwise available at law or in equity.

5. Rents Held in Trust by Borrower. Rents held or received by Borrower shall be held or received by Borrower as trustee for the benefit of Lender only and shall be immediately deposited directly to the applicable account in accordance with the terms of Section 9.1 of the Loan Agreement.

6. Effect on Rights Under Other Documents. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Lender of its rights and remedies under any of 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 of Lender under the other Loan Documents may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents or grant of a security interest contained in any of the other Loan Documents.

7. Event of Default. Upon or at any time after the occurrence and during the continuance of an Event of Default (including any breach of this Agreement), then in addition to and without limiting any of Lender's rights and remedies hereunder and under the other Loan Documents and as otherwise available at law or in equity:

(a) Lender may, at its option, without waiving such Event of Default and without regard to the adequacy of the security for the Loan, either in person or by agent, without bringing any action or proceeding, or by a receiver appointed by a court, without taking possession of the Property in its own name, demand, sue for, direct tenants under Leases to pay Rents directly to Lender or otherwise collect and receive all Rents, including those past-due and unpaid, for application to the payment of the Loan in accordance with the terms of the Loan Documents, and Lender may enter into, and to the extent that Borrower would have the right to do so, cancel, enforce or modify any Lease. The exercise by Lender of the option granted it in this Section 7(a) and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any Event of Default.

(b) Borrower hereby acknowledges and agrees that payment of any item of Rent by a Person to Lender as hereinabove provided shall constitute payment in full of such item of Rent by such Person, as fully and with the same effect as if it had been paid to Borrower.

(c) Lender in respect of the Leases and Rents shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the State in which such rights and remedies are asserted as described in Section 14(b) hereof to the extent of such rights thereunder and additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted.

8. Application of Rents and Proceeds. After the occurrence and during the continuance of an Event of Default, Rents received or held by Borrower or Lender shall be applied in accordance with the terms of the Deed of Trust.

9. Attorney-in-Fact. Upon the occurrence and during the continuance of any Event of Default, Borrower hereby appoints Lender the attorney-in-fact of Borrower to take any action and execute any instruments that Borrower is obligated, or has covenanted and agreed under the Loan Agreement or the other Loan Documents to take or execute, which appointment as attorney-in-fact is irrevocable and coupled with an interest. Without limiting the generality of the foregoing provisions of this Section 9, upon the occurrence and during the continuance of an Event of Default, Borrower does hereby irrevocably appoint Lender as its attorney-in-fact with full power, in the name and stead of Borrower to demand, collect, receive and give complete acquittance for any and all of the Rents now due or that may hereafter become due, and at Lender's discretion, to file any claim, to take any other action, to institute any proceeding or to make any settlement of any claim, either in its own name or in the name of Borrower or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of Rents.

10. Termination. Lender, by the acceptance of this Assignment, agrees that when all of the Loan shall have been paid in full, this Assignment shall terminate, and Lender shall execute and deliver to Borrower, upon such termination such instruments of termination or re-assignment

and Uniform Commercial Code termination statements, all without recourse and without any representation or warranty whatsoever, as shall be reasonably requested by Borrower.

11. Expenses. Borrower agrees to pay to Lender all out-of-pocket expenses (including reasonable expenses for attorneys' fees and costs of every kind) of, or incident to, the enforcement of any of the provisions of this Assignment or performance by Lender of any obligation of Borrower hereunder which Borrower has failed or refused to perform.

12. Further Assurances. Borrower agrees that, from time to time upon the written request of Lender, it will give, execute, deliver, file and/or record any financing statements, notice, instrument, document, agreement or other papers and do such other acts and things that may be necessary and desirable to create, preserve, perfect or validate this Assignment, to enable Lender to exercise and enforce its rights hereunder with respect to this Assignment or to otherwise carry out the purposes and intent of this Assignment.

13. No Obligation by Lender. By virtue of this Assignment, Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Leases. This Assignment shall not operate to constitute Lender as a lender in possession of the Property or to place responsibility for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by any tenant or other party in possession or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control thereof.

14. Miscellaneous.

(a) No failure on the part of Lender or any of its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by Lender or any of its agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

(b) THIS ASSIGNMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF OREGON (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF). ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS.

(c) All rights and remedies set forth in this Assignment are cumulative, and Lender may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby; and no such right or remedy set forth in this Assignment shall be deemed exclusive of any of the remedies or rights granted to Lender in any of the Loan Documents. Nothing contained in this Assignment shall be deemed to limit or restrict the rights and remedies of Lender under the Loan Agreement or any of the other Loan Documents.

(d) Until the indebtedness and all other obligations secured by the Loan Documents is paid in full, Borrower will, upon request, deliver from time to time to Lender executed originals to the extent available, otherwise photocopies certified by Borrower as true, correct and complete, of executed originals, of any and all existing Leases to which Borrower is a party, and executed originals, or photocopies of executed originals, so certified by Borrower, if an executed original is not available, of all other and future Leases to which Borrower is a party, and upon request of Lender, will specifically transfer and assign to Lender such other and future Leases upon the same terms and conditions as herein contained.

(e) Borrower represents that it: (i) has been advised that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its affiliates; (ii) is represented by competent counsel and has consulted counsel before executing this Assignment; and (iii) has relied solely on its own judgment and on its counsel and advisors in entering into the transaction(s) contemplated hereby without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or affiliate of Lender.

15. No Oral Change. This Assignment may not be amended except by an instrument in writing signed by Borrower and Lender.

16. Successors and Assigns. Borrower may not assign its rights under this Assignment except as permitted under the Loan Agreement. Subject to the foregoing, this Assignment shall be binding upon, and shall inure to the benefit of, Borrower and Lender and their respective successors and assigns.

17. Notices. All notices, demands, requests and other communications provided for herein shall be given or made in writing in the manner specified in the Loan Agreement.

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IN WITNESS WHEREOF, this Assignment has been duly executed by Borrower as of the day and year first above written.

BORROWER:

CD DG KLAMATH FALLS SOUTH, LLC,
a Texas limited liability company

By: _____

Steve Rumsey, President

STATE OF TEXAS

COUNTY OF Denton

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The foregoing instrument was ACKNOWLEDGED before me this 19th day of March, 2018, by Steve Rumsey, the President of CD DG KLAMATH FALLS SOUTH, LLC, a Texas limited liability company, on behalf of said limited liability company.

[S E A L]

Brenda S. Ellis
Notary Public, State of Texas

My Commission Expires:

3/31/2018

Brenda S. Ellis
Printed Name of Notary Public

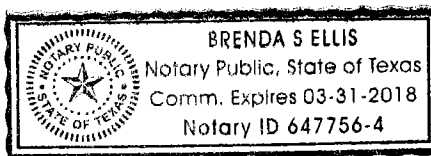


Exhibit "A"

[LEGAL DESCRIPTION]

Parcel 1 of Land Partition 35-17, being a partition of the lands shown on Survey No. 1939 and as described in Bargain and Sale Deed M05-6717 Recorded in the Klamath County Clerk's Office situated in the Southeast Quarter of Section 7, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon and Recorded April 19, 2018 as document No. 2018-004755, official Records of Klamath County, Oregon.