

RECORD AND RETURN TO:
Scott M. Gerard, Esq.
Shipman & Goodwin LLP
300 Atlantic Street, 3rd Floor
Stamford, CT 06901

ABSOLUTE ASSIGNMENT OF NOTE AND DEED OF TRUST

Dated August 24, 2018

Assignor: Prophet Capital REIT Inc., a Delaware corporation

Assignee: Patriot Bank, N.A., a national banking association

ADDITIONAL STATUTORY NOTICES:

- (a) The address of the entity holding a lien or other interest created by this instrument is:

Patriot Bank, N.A.
900 Bedford Street
Stamford, Connecticut 06901
- (b) The tax account numbers for the property subject to the lien or in which the interest is created are:
Account No. R535184 Map No. R-3909-00700-01800-000
- (c) Type of transaction: Assignment of promissory note and deed of trust lien and security interests encumbering the property or properties described herein.

ABSOLUTE ASSIGNMENT OF NOTE AND DEED OF TRUST

This **ABSOLUTE ASSIGNMENT OF NOTE AND MORTGAGE** (this "Assignment") made this 24th day of August 2018, by **PROPHET CAPITAL REIT INC.**, a Delaware corporation, with an address at 5000 Plaza On the Lake, Austin, Texas 78746 ("Assignor") in favor of **PATRIOT BANK, N.A.**, a national banking association, having an office at 900 Bedford Street, Stamford, Connecticut 06901 ("Assignee"). All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to said term as set forth in the Loan Agreement (as defined below).

WITNESSETH:

WHEREAS, Assignor is the holder of that certain promissory note and mortgage, which note and mortgage are set forth on Exhibit "A" attached hereto (referred to herein as the "Warranted Note" and the "Warranted Mortgage" and sometimes collectively the "Obligations") as well as all other Loan Documents; and

WHEREAS, Assignee has loaned Assignor and Prophet Real Estate Opportunities LP (collectively, "Borrowers") the sum of up to U.S. \$10,000,000.00 (the "Loan") pursuant to that certain Commercial Revolving Line of Credit Loan and Security Agreement dated July 27, 2018 between Borrowers and Assignee (as amended, restated, extended, replaced, supplemented and/or otherwise modified from time to time, the "Loan Agreement") and evidenced by that certain Commercial Revolving Line of Credit Promissory Note dated July 27, 2018 (as the same may be amended, restated, extended, supplemented or reconstituted from time to time, together with any note or notes given in substitution or replacement thereof the "Note"), to be secured, in part, by an absolute assignment of the Obligations to Assignee pursuant to this Assignment; and

WHEREAS, Assignee, as a condition to granting the aforesaid Loan, has required the execution of certain loan documents for this transaction, including, but not limited to, execution of this Assignment prior to any Advance in accordance with the terms of the Loan Agreement, that is used to fund the Warranted Note, which in turn will be funded to the respective Warranted Loan Obligor.

NOW, THEREFORE, in order to further secure the payment of the indebtedness of Borrowers to Assignee, and in consideration of the making of the Loan, and in further consideration of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Assignment:**

- A. Assignor hereby absolutely and unconditionally assigns to Assignee the immediate and continuing right to collect and receive, without limitation, all payments now due or which may become due, or to which Assignor may now or shall hereafter become entitled or may demand or claim, arising or issuing from or out of the Warranted Note, Warranted Mortgage and all other Loan Documents, now existing or hereafter made, or any part thereof, as said Warranted Note may have been or may from time to time be hereafter, modified, extended, and renewed, with all payments due therefrom.
- B. It is expressly understood and agreed by the parties hereto that so long as there shall exist no Default or Event of Default by Borrowers in the payment of any indebtedness and obligations or in the observance and performance of any other obligation, covenant, or warranty set forth herein or in any of the Loan Documents, or any other instrument executed by Borrowers in connection with the foregoing, Assignee hereby grants to Assignor a license (but limited as provided in the following paragraph) to collect, receive,

and retain, but not prior to accrual, all of the payments arising from or out of the Warranted Note assigned hereunder; provided, however, that even while such license remains in effect, no payments for any period more than one (1) month in advance of the time of payment may be collected or accepted by Assignor unless Assignor makes a prepayment of the Loan within two (2) Business Days in the same amount as the prepayment of the Warranted Note. Notwithstanding anything herein to the contrary, Assignor hereby absolutely assigns to Assignee any award made hereafter to it in any bankruptcy, insolvency, or reorganization proceedings in any state or federal court; and any and all payments made by Assignor under the Warranted Note assigned hereby. Assignor hereby appoint Assignee as its irrevocable attorney-in-fact to appear in any action and/or to collect any such award or payment.

- C. Upon the occurrence and during the continuance of an Event of Default, Assignee, at its option, shall have the right, power, and authority to exercise any and all of the following rights, including, without limitation: (a) to terminate the license hereby granted to Assignor to collect all sums due under the Warranted Note absolutely assigned hereby; or (b) to declare all sums secured hereby immediately due and payable without notice and without presentment, demand or protest, all of which are hereby waived and, at Assignee's option, to exercise all of the rights and remedies provided for in the Loan Documents and this Assignment. Notwithstanding anything to the contrary contained herein, upon the occurrence of an Event of Default under Section 4.7 of the Loan Agreement the license hereby granted to Assignor shall immediately and automatically terminate and all sums secured hereby shall immediately and automatically be due and payable without notice and without presentment, demand or protest, all of which are hereby waived.

Assignor covenants, agrees, represents and warrants to Assignee as follows:

2. **General Representations, Warranties and Covenants:**

Assignor represents, warrants and covenants that:

- A. To the best of Assignor's knowledge, the Obligations are valid and enforceable by it and by Assignee and have not been altered, modified or amended in any manner whatsoever;
- B. To the best of Assignor's knowledge, neither Assignor nor the respective makers of any of the Obligations is in default under any of the terms, covenants or conditions of the Obligations;
- C. Assignor will observe and perform all of the obligations imposed upon Assignor hereunder and do nothing to impair the value of the Obligations;
- D. Assignor will not alter, modify or change the terms of the Obligations in any manner without the prior written consent of Assignee in Assignee's sole discretion;
- E. Assignor will not cancel or terminate the Obligations without the prior written consent of Assignee in Assignee's sole discretion;
- F. Assignor will not grant a waiver or give any consent with respect to any default or material variation in the performance by any maker of any of the Obligations without the prior written consent of Assignee in Assignee's sole discretion, and it will at all times

take proper steps to enforce, and will itself observe, all of the provisions and conditions of the Obligations provided, however, if Assignor desires to waive or consent to a Maker Default (defined below), Assignor shall have the right, within thirty (30) days of the earlier of a Maker Default; or after Assignor delivers notice pursuant to Section 2(G) with respect to such Maker Default to: (i) obtain Assignee's approval to waive or consent to such Maker Default through bilateral discussion with Assignee; or (ii) repay the sum of all Advances made by Assignee for the Warranted Note, and promptly thereafter, Assignee will release the Obligations pursuant to Section 16(A) of the Loan Agreement and the Warranted Note will be removed from the Collateral. Assignor will observe all of the provisions and conditions of the Obligations in its commercially reasonably prudent judgment;

- G. Assignor will promptly notify Assignee in writing of any default under any of the Obligations by the respective maker of the Obligations (a "**Maker Default**").
- H. To the best of Assignor's knowledge, the makers under the Obligations have no counterclaims, defenses or offsets against Assignor or any other party as of the date hereof; and
- I. Assignor will execute and deliver, at the request of Assignee, any and all such further assurances and assignments concerning any rights which Assignor has or may have under the Obligations as Assignee shall from time to time require within two (2) days of Assignee's request.

3. **Assignee Exculpation and Indemnification:**

- A. Upon the occurrence and during the continuance of an Event of Default, Assignee may pursue any rights assigned to it hereunder and shall not be liable for any loss sustained by any Borrower as the sole result of any action taken by Assignee unless such loss is caused by the willful misconduct or intentional act with bad faith of Assignee.
- B. Assignee shall not be obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability of Assignor under the Obligations, if any.
- C. Borrowers shall, jointly and severally, indemnify Assignee for and hold Assignee harmless from any and all liability, loss or damage which is, may or might be incurred by it under the Obligations, or under or by reason of this Assignment, or from any and all claims and demands whatsoever which may be asserted against Assignee, except from any claims or demands solely resulting from the willful misconduct, gross negligence, fraud or intentional act with bad faith of Assignee. Should Assignee incur any liability under the Obligations, or under or by reason of this Assignment, or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and by the other Loan Documents, unless such liability arises solely from the willful misconduct, gross negligence, fraud or intentional act with bad faith of Assignee. Borrowers shall reimburse Assignee therefor within five (5) Business Days of demand therefor.

4. **Further Assignee Rights:**

- A. The affidavit, certificate, letter or statement of any officer, agent or attorney of Assignee stating that any part of the Loan remains outstanding or that such license to Assignor under this Assignment has been terminated, shall constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and Assignor's and Assignee's relative rights hereunder. Any person may, and is hereby authorized, to rely thereon.
- B. Assignee may take or release other security (granted under the Loan Documents) for the payment of the Loan, may release any party primarily or secondarily liable therefor and may apply any of the security held by it to the satisfaction of Assignee without prejudice to any of its rights under this Assignment.
- C. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers or rights granted it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Documents. The right of Assignee to collect the Loan or to satisfy the same out of any other security held by it, may be exercised by Assignee either prior to, simultaneously with or subsequent to any action taken by it hereunder.
- D. This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Loan and shall be binding upon Borrowers and its successors and assigns.

5. **Covenants and Agreements of the Assignor with Respect to Any Foreclosure of the Mortgage:**

- A. Borrowers covenant and agree that (i) upon payment of any principal sum from, or on behalf of, the such Warranted Loan Obligor under the Warranted Note, Assignor shall promptly after such payment to, or for the benefit of, Assignor pay to Assignee all amounts received by Assignor under the Warranted Note and the other loan documents associated with the transaction executed with the Warranted Note and the Warranted Mortgage, as well as any payment to, or for the benefit of Assignor, made in connection with Assignor's acquisition of title to and possession of the property or properties encumbered by the Warranted Mortgage (the "**Warranted Mortgaged Property**") through a foreclosure or deed in lieu of foreclosure, (ii) they will not permit a foreclosure (judicial, sale or otherwise) to be completed or accept a deed in lieu of foreclosure unless simultaneously with the acquisition of title to the Warranted Mortgaged Property (A) Assignor shall grant, upon Assignor taking title to the Warranted Mortgaged Property, to Assignee (1) a first priority mortgage encumbered by the Mortgaged Property in substantially the form of Assignee's then current form of mortgage used for similar financings by Assignee and otherwise acceptable to Assignee in its reasonable discretion and in compliance with such state/commonwealth laws, rules and regulations in which the Mortgaged Property is situated (the "**Assignee Mortgage**"), and (2) a first priority assignment of leases and rents encumbering the Mortgaged Property in substantially the form of Assignee's current form used for similar financings by Assignee and otherwise acceptable to Assignee in its reasonable discretion and in compliance with such state/commonwealth laws, rules and regulations in which the Warranted Mortgaged Property is situated (the "**Assignee Assignment of Leases**"); (B) Borrowers execute and deliver to Assignee (1) an Environmental Indemnity Agreement with respect to the

Mortgaged Property in substantially the form of Assignee's current form of environmental indemnity used for similar financings by Assignee and otherwise acceptable to Assignee in its sole discretion and in compliance with such state/commonwealth laws, rules and regulations in which the Warranted Mortgaged Property is situated (the "**Assignee Environmental Indemnity**") and (2) any other documents or agreements reasonably required by Assignee (together with the Warranted Note, this Assignment, Assignee Mortgage, Assignee Assignment of Leases and Assignee Environmental Indemnity, each as amended, restated, extended, replaced, supplemented and/or otherwise modified from time to time, herein collectively the "**Assignee Loan Documents**"); and (C) Borrowers cause Stewart Title Insurance Company or other reputable national title insurance company acceptable to Assignee (the "**Title Company**") to issue a loan title insurance policy to Assignee insuring that the Assignee Mortgage constitutes a first priority mortgage in favor of Assignee on the fee simple interest in the Warranted Mortgaged Property and otherwise in form and substance reasonably acceptable to Assignee (the "**Assignee Loan Title Policy**"); and (iii) they will not permit a foreclosure sale to be completed unless Assignor's credit bid at the foreclosure sale is in the amount necessary to be the successful bidder at such foreclosure sale in the aggregate amount of at least up to the full amount of the outstanding indebtedness secured by the Warranted Mortgage(s) but not greater than such outstanding indebtedness and if Assignor is the successful bidder, simultaneously with the transfer of title to the Mortgaged Property to Assignor, Borrowers shall satisfy clauses (A), (B) and (C) of this **Section 5.A.(ii)**; or if Assignor's credit bid as provided above is not the successful bidder at the foreclosure sale, simultaneously with its receipt of the proceeds from the foreclosure sale, Assignor pays to Assignee all amounts advanced and owed to Assignee under the Note with respect to the Warranted Note.

- B. Assignor will keep Assignee informed regarding the progress of the foreclosure action and will promptly notify Assignee of any and all filings, motions, notices and reports. Assignee shall have the right to appear and intervene in any foreclosure action on the Warranted Mortgage initiated by Assignor or to commence its own foreclosure action on the Warranted Mortgage in its discretion upon a default under the Warranted Note or Warranted Mortgage.
- C. No release or discharge of the Warranted Mortgage, or release of all or a portion of the Warranted Mortgage Property from the lien thereof, and no foreclosure deed, deed in lieu or similar instrument of transfer with respect to the Warranted Mortgage shall be effective unless either (i) granted or consented to, of record, by Assignee, or (ii) Assignee shall have previously or at such time released this Assignment of record.
- D. In order to more easily effectuate its obligations under **Section 5.A.** above, including, without limitation, to deliver the Assignee Loan Documents and the Assignee Loan Title Policy, as required hereby, Borrowers shall upon the request of Assignee, after the commencement of any foreclosure by Assignor, execute and deliver to Assignee's counsel in escrow (the "**Escrow Agent**") the Assignee Loan Documents and the Assignee Loan Title Policy (in the form of a pro forma subject to an escrow agreement in form and substance acceptable to Assignee in its sole discretion), each undated and to be held in escrow pending Assignor's acquisition of title to the Warranted Mortgaged Property through foreclosure, deed in lieu of foreclosure, or otherwise, and Borrowers hereby agree that immediately upon Assignor's acquisition of title to the Warranted Mortgaged Property, the Escrow Agent shall be entitled, without the need for any other action by any Borrower to date the Assignee Loan Documents the same date as such acquisition of title

to the Warranted Mortgaged Property by Assignor, release the same to Assignee, have the Assignee Mortgage and the Assignee Assignment of Leases recorded in land/county records in which the Warranted Mortgaged Property is situated, and record or file in any appropriate jurisdiction UCC Financing Statements with respect to the collateral in which Assignee is granted a security interest pursuant to the Assignee Mortgage.

6. **PREJUDGMENT REMEDY WAIVER.** BORROWERS ACKNOWLEDGE THAT THE TRANSACTION OF WHICH THIS ASSIGNMENT IS A PART IS A COMMERCIAL TRANSACTION AS DEFINED IN CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, AS AMENDED, AND WAIVE ITS RIGHTS TO NOTICE AND HEARING UNDER SAID CHAPTER 903a, OR AS OTHERWISE REQUIRED BY ANY STATE OR FEDERAL LAW, WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH ASSIGNEE MAY SEEK AND WAIVE ITS RIGHTS TO REQUEST THAT ASSIGNEE POST A BOND IN CONNECTION WITH ANY SUCH PREJUDGMENT REMEDY.
7. **JURY TRIAL WAIVER.** BORROWERS WAIVE ALL RIGHTS TO A TRIAL BY JURY IN ANY PROCEEDINGS HEREAFTER INSTITUTED BY OR AGAINST ANY BORROWER, ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT, OR THE ENFORCEMENT OF ASSIGNEE'S RIGHTS AND REMEDIES THEREUNDER. BORROWERS ACKNOWLEDGE THAT ASSIGNEE HAS NOT AGREED WITH OR REPRESENTED TO BORROWERS THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT, IN ALL INSTANCES, BE FULLY ENFORCED.
8. **Conditional Assignment; Termination.** Upon the indefeasible payment in full of the amounts all amounts Advanced to Assignor by Assignee under the Note with respect to the Warranted Note and all other amounts due and payable in connection with such Advances pursuant to the Loan Documents, this Assignment shall become, and be, void and of no effect.
9. **Statute of Frauds.** UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY US (BENEFICIARY) 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.

DOCUMENT PREPARED BY:

Shipman & Goodwin LLP
300 Atlantic Street, 3rd Floor
Stamford, CT 06901
Attn: Scott M. Gerard, Esq.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Assignor has caused to be set its hands and seal as of the date first above written.

WITNESSES:

Michael Murphy
Printed Name:

James McMurray
Printed Name:

ASSIGNOR:

PROPHET CAPITAL REIT INC.,
a Delaware corporation

By: 
Name: Kurt Rechner
Title: Authorized Signatory
Duly Authorized

Acknowledged and agreed to by:

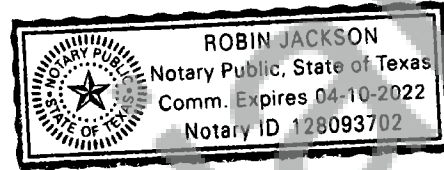
PROPHET REAL ESTATE OPPORTUNITIES LP,
a Delaware limited partnership

By: 
Name: Kurt Rechner
Title: Authorized Signatory
Duly Authorized

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 24 day of August, 2018, by Kurt Rechner, Authorized Signatory of Prophet Capital REIT Inc., a Delaware corporation, on behalf of said corporation.

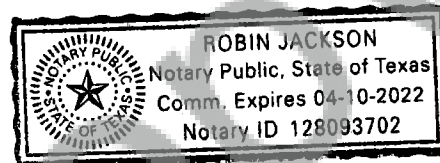
Robin Jackson
Notary Public - State of Texas
My Commission Expires: 4.10.22



STATE OF TEXAS §
 §
COUNTY OF TRAVIS §


This instrument was acknowledged before me on the 24 day of August, 2018, by Kurt Rechner, Authorized Signatory of Prophet Real Estate Opportunities LP, a Delaware limited partnership, on behalf of said limited partnership.

Robin Jackson
Notary Public - State of Texas
My Commission Expires: 4.10.22



ACCEPTED BY ASSIGNEE:

PATRIOT BANK, N.A.

By: 
Name: Adam P. Ercoli
Title: Senior Vice President
Duly Authorized

Unofficial
Copy

Exhibit "A"

(List of Note/Mortgage)

1. Promissory Note dated May 24, 2018 made by CD DG Klamath Falls South, LLC to PSL Austin Lending LLC in the original principal amount of \$1,792,000.00.
2. Note Allonge dated June 14, 2018, to Promissory Note dated May 24, 2018, made by PSL Austin Lending LLC to Prophet Capital REIT Inc.
3. Line of Credit Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing dated May 24, 2018 made by CD DG Klamath Falls South, LLC in favor of Ticor Title Company of Oregon, Trustee, for the benefit of PSL Austin Lending LLC and recorded on June 1, 2018 in Klamath County, Oregon as document number 2018-006697.
4. Assignment of Note, Note Documents, Liens and Security Instruments dated June 14, 2018 made by PSL Austin Lending LLC to Prophet Capital REIT Inc. and recorded on June 25, 2018 in Klamath County, Oregon as document number 2018-007634.

Unofficial Copy