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Fee amount: 46.00
FB: 68-40328
COMP: MS

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
12/01/2014 15:47:19.00



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Space Above This Line for Recorder's Use

Loan No. 10299

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Kelley Drye & Warren LLP
200 Kimball Drive
Parsippany, New Jersey 07054
Attention: Paul A. Keenan, Esq.

ASSIGNMENT OF LEASES AND RENTS
from

168TH AND DODGE L.P.,
a Nebraska limited partnership

(as assignor)

to

ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA,
a Minnesota corporation

(as assignee)

Dated: As of December 1, 2014

Location: Village Pointe Shopping Center
168th Street & West Dodge Road
Omaha, Nebraska 68118

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ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (as amended, modified and in effect from time to time, this "Assignment") is made as of December 1, 2014, by **168TH AND DODGE L.P.**, a Nebraska limited partnership ("Borrower"), as assignor, in favor of **ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA**, a Minnesota corporation (together with its successors and assigns, "Lender"), as assignee.

RECITALS

A. Pursuant to that certain Loan Agreement dated as of the date hereof by and between Borrower and Lender (as amended, modified and supplemented and in effect from time to time, the "Loan Agreement"), Lender is making the Loan to Borrower which is evidenced by the Note and secured by, among other things, the Mortgage on Borrower's interest in the real property described on Exhibit A attached hereto and the Property.

B. Borrower intends by the execution and delivery of this Assignment to further secure the payment and performance of the Loan Obligations (as such term is defined in the Mortgage).

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

Section 1. Certain Defined Terms. For all purposes of this Assignment, all capitalized terms shall have the meaning ascribed thereto in the Loan Agreement unless defined herein, and:

"Leases" means all leases and other agreements or arrangements affecting the use or occupancy of all or any portion of the Property now in effect or hereafter entered into (including, without limitation, all lettings, subleases, licenses, concessions, tenancies and other occupancy agreements covering or encumbering all or any portion of the Property), together with any guarantees, supplements, amendments, modifications, extensions and renewals of the same, and all additional remainders, reversions, and other rights and estates appurtenant thereto.

"Rents" means, with respect to the Property, all rents (whether denoted as advance rent, minimum rent, percentage rent, additional rent or otherwise), receipts, issues, income, royalties, profits, revenues, proceeds, bonuses, deposits (whether denoted as security deposits or otherwise), lease termination fees or payments, rejection damages, buy-out fees and any other fees made or to be made in lieu of rent, any award made hereafter to Borrower in any court proceeding involving any tenant, lessee, licensee or concessionaire under any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and all other payments, rights and benefits of whatever nature from time to time due under any of the Leases.

Section 2. Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in all current and future Leases and Rents, it being intended that this Assignment constitute a present, absolute

assignment and not an assignment for additional security only. This Section 2 presently gives Lender the right to collect Rents and to apply Rents in partial payment of the Loan Obligations in accordance with the Loan Agreement. Borrower intends that the Rents and Leases be absolutely assigned and no longer be, during the term of this Assignment, property of Borrower or Borrower's estate, as defined by 11 U.S.C. §541. If any law exists requiring Lender to take actual possession of the Property (or some action equivalent to taking possession of the Property, such as securing the appointment of a receiver) for Lender to "perfect" or "activate" the rights and remedies of Lender as provided in this Section 2, Borrower waives the benefit of such law. Such assignment to Lender shall not be construed to bind Lender to perform any covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Lender, and notwithstanding this Assignment, Borrower shall remain liable for any obligations undertaken by Borrower pursuant to any Lease. Subject to the terms of this Section 2 and the Loan Agreement, Lender grants to Borrower a license, revocable as hereinafter provided, to operate and manage the Property and to collect and use the Rents. If an Event of Default occurs (except for any Event of Default described in Section 8.1(h) of the Loan Agreement, for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license granted to Borrower herein may, at Lender's election, be revoked by Lender, and Lender shall immediately be entitled to possession of all Rents collected thereafter (including Rents past due and unpaid) whether or not Lender enters upon or takes control of the Property. Any Rents collected by Borrower from and after the date on which an Event of Default occurred and is continuing shall be held by Borrower in trust for Lender. Borrower hereby grants and assigns to Lender the right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court appointed receiver to collect Rents with or without taking actual possession of the Property or any equivalent action. Lender may apply any Rents collected after the license granted herein is revoked in Lender's sole and absolute discretion to pay the Loan Obligations in such order and in such manner as Lender shall elect in Lender's discretion.

Section 3. Remedies. At any time after the occurrence and during the continuance of an Event of Default, Lender, without waiving such Event of Default, at its option, upon notice and without regard to the adequacy of the security for the Loan Obligations, either in person or by agent, upon bringing any action or proceeding, by a receiver appointed by a court, or otherwise, may take possession of the Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem proper. Lender shall immediately be entitled to possession of all security deposits held with respect to the Property, whether or not Lender enters upon or takes control of the Property and regardless of where any such security deposits are deposited or located. Lender, either with or without taking possession of the Property in its own name, may demand, sue for or otherwise collect and receive all Rents, including Rents past due and unpaid, and apply such Rents to pay any one or more of the following in such order and amounts as Lender may elect in its sole and absolute discretion: (a) all costs and expenses incurred, and advances made, by Lender or any trustee, as the case may be, to enforce this Assignment or the other Loan Documents, protect the Lien and security afforded thereby, or preserve the Property, including, without limitation, all expenses of managing the Property, including, without limitation, the salaries, fees and wages of any managing agent and such other employees as Lender may deem necessary and all expenses of operating and maintaining the Property, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for insurance and the

cost of alterations, renovations, repairs or replacements, and all costs and expenses incident to taking and retaining possession of the Property or enforcing any of Lender's rights and remedies hereunder; and (b) the Loan Obligations, together with all costs, expenses and attorneys' fees in connection with any of the foregoing. Neither Lender's exercise of the option granted to Lender in this Section 3 nor the collection or application of Rents as herein provided shall be considered a waiver of any Event of Default. Borrower agrees that the exercise by Lender of one or more of its rights and remedies under this Assignment shall in no way be deemed or construed to make Lender a mortgagee-in-possession.

Section 4. Notices. All notices, demands, consents, requests or other communications that are permitted or required to be given by Borrower or Lender to the other shall be in writing and given in the manner specified in the Loan Agreement.

Section 5. Binding Obligations. The provisions and covenants of this Assignment shall run with the Property, shall be binding upon Borrower, its successors and assigns, and shall inure to the benefit of Lender, its successors and assigns.

Section 6. Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties hereto and are not a part of this Assignment.

Section 7. Severability. If any term or provision of this Assignment or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforceable to the maximum extent permitted by law.

Section 8. Borrower's Obligations Absolute. Except as set forth to the contrary herein or in any of the other Loan Documents, all sums payable by Borrower hereunder shall be paid without notice, demand, counterclaim (other than mandatory counterclaims), setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower.

Section 9. Amendments. This Assignment cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in form for recording, executed by Borrower and Lender.

Section 10. Exhibits. The information set forth on the cover, heading and recitals hereof, and the Exhibit attached hereto, are hereby incorporated herein as a part of this Assignment with the same effect as if set forth in the body hereof.

Section 11. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Assignment.

Section 12. Termination. When the Mortgage has been fully reconveyed or released by Lender, that reconveyance or release shall operate as a release and discharge of this

Assignment and as a reassignment of all future Leases and all Rents with respect to the Property to the Person or Persons legally entitled thereto, unless such reconveyance or release expressly provides to the contrary.

Section 13. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the state in which the Property is located.

Section 14. Exculpation. This Assignment is and shall be subject to the exculpation provisions of Section 17 of the Note.

Section 15. Further Assurances. Borrower agrees that to further evidence and reflect the assignment granted herein, Borrower shall execute, acknowledge and deliver to Lender such additional documents, instruments and agreements, in form and substance satisfactory to Lender, as may hereafter be reasonably requested by Lender, and Borrower shall record such thereof, all at Borrower's expense.

[Signature on the following page]

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

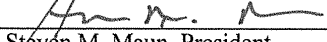
BORROWER:

168TH AND DODGE L.P., a Nebraska limited partnership

By: RED Development of West Dodge, LLC, a Missouri limited liability company, its sole General Partner and Manager

By: RED Village Pointe, LLC, a Missouri limited liability company, its Manager

By: RED Consolidated Holdings, LLC, a Delaware limited liability company, its Managing Member

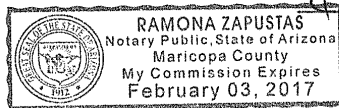
By: 
Steven M. Maun, President

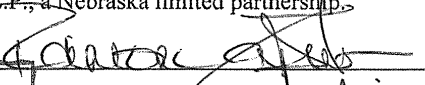
ACKNOWLEDGEMENT

STATE OF Arizona

COUNTY OF Maricopa

The foregoing instrument was acknowledged before me on this 24 day of November 2014, by Steven M. Maun, as President of RED Consolidated Holdings, LLC, acting as the Managing Member of RED Village Pointe, LLC, which in turn is acting as the Manager of RED Development of West Dodge, LLC, which in turn is acting as the sole General Partner and Manager of 168TH AND DODGE L.P., a Nebraska limited partnership.




Notary Public, State of Arizona

My Commission Expires: 2.3.17

[Signature page and Acknowledgment to Assignment of Leases and Rents]

EXHIBIT A

Description of the Property

- 68-40328 Lots 2, 4, 5 and 8, and Outlots A and B, in VILLAGE POINTE, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska, EXCEPT that part of Lot 2, Village Pointe, as described in the Plat and Dedication for Street Purposes recorded September 12, 2008, as Instrument No. 2008090053 of the Records of Douglas County, Nebraska;
AND
- 68-40329 Lots 1, 2 and 3, in VILLAGE POINTE REPLAT ONE, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska;
AND
- 68-40344 Lot 3, in VILLAGE POINTE REPLAT TWO, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.