



MISC 2017009123



FEB 03 2017 10:45 P 6

ME

Misc.

6 FEE 40.00 FB 11-16580

16 BKP EXAMSP

IND SCAN PRF



Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
2/3/2017 10:45:04.45



2017009123

THIS PAGE INCLUDED FOR INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT

RETURN TO:

See 2<sup>nd</sup> page

CHECK NUMBER

014176

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

Luther C. Curtis, Esq.  
 Miller & Martin PLLC  
 1180 West Peachtree Street NW  
 Suite 2100  
 Atlanta, Georgia 30309

**COLLATERAL ASSIGNMENT OF LOAN AND LOAN DOCUMENTS**

THIS COLLATERAL ASSIGNMENT OF LOAN AND LOAN DOCUMENTS (this "Assignment") is made and executed as of December 21, 2016, by **APF-CS, LLC**, a Delaware limited liability company ("Assignor"), in favor of **PACIFIC WESTERN BANK** (successor-by-merger to CapitalSource Bank), a California state-chartered bank ("Assignee," sometimes referred to as "Agent").

**WITNESSETH:**

WHEREAS, Assignor and Agent have entered into that certain Amended and Restated Loan and Security Agreement, dated as of July 17, 2014 (as may be further amended, restated, supplemented, or otherwise modified from time to time, the "Loan Agreement"; capitalized terms used herein and not otherwise defined herein shall have the meaning provided to such term therein), pursuant to which certain financial institutions party to the Loan Agreement as lenders (each a "Lender" and collectively, the "Lenders"), in their sole discretion, have agreed to make certain financial accommodations to Borrower, upon the terms and conditions set forth in the Loan Agreement, an amount equal to up to the Maximum Loan Amount (as defined in the Loan Agreement) secured by a security interest granted by Borrower to Agent, for the benefit of the Lenders, on certain Underlying Loans, and the Underlying Loan Documents, including with limitation the Underlying Note and Mortgage related thereto as well as other collateral of Borrower.

NOW, THEREFORE, to secure the payment and performance of the Obligations (as such term is defined in the Loan Agreement) and Loan Documents (as such term is defined in the Loan Agreement) and in consideration of the extension of the Advances (as such term is defined in the Loan Agreement), in the Lenders' sole discretion, and for other good and valuable consideration the receipt of which is hereby acknowledged, Assignor hereby collaterally conveys, assigns, transfers and sets over unto Agent, for the benefit of the Lenders, as collateral security for the Advances from time to time made by the Lenders, all of Assignor's right, title and interest in and to (i) that certain Promissory Note, dated November 8, 2016 by and among LUCKY OMAHA HOSPITALITY LLC, a Nebraska limited liability company (the "Underlying Obligor"), as borrower, and ACCESS POINT FINANCIAL, INC., a Delaware corporation (as predecessor-in-interest to Assignor), as lender, as modified from time to time; (ii) that certain Nebraska Deed of Trust and Security Agreement dated November 8, 2016, executed by the Underlying Obligor in favor of ACCESS POINT FINANCIAL, INC., a Delaware corporation (as predecessor-in-interest to Assignor), encumbering the property described in Exhibit A attached hereto and made a part hereof by this reference, recorded on November 16, 2016, in the real property records of Douglas County, Nebraska as Instrument #2016095911; and (iii) all other Collateral (as such term is defined in the Loan Agreement) connected therewith collaterally assigned to Agent, for the benefit of the Lenders, pursuant to the terms of the Loan

12393495v1 25019-0084

Agreement, together with all proceeds derived therefrom and other Collateral delivered in substitution or replacement thereof (collectively, the "Assigned Collateral").

Assignor hereby warrants and represents to Agent that the above referenced Assigned Collateral collaterally assigned hereby have not previously been collaterally assigned or otherwise transferred by Assignor and are held free and clear of all prior liens, security interests, charges and encumbrances whatsoever except for matters appearing of record. Assignor further covenants and agrees with Agent to maintain such Assigned Collateral in good standing at all times in accordance with the terms thereof and not to take any action with respect to said Assigned Collateral which may be prejudicial to the rights of Agent hereunder.

The execution and delivery of this Assignment shall not subject Agent to, or transfer or pass to Agent, or in any way affect or modify, the liability of Assignor under the Assigned Collateral hereby assigned, it being understood and agreed that notwithstanding this Assignment or any subsequent collateral assignment, all of the obligations of the Assignor to the Underlying Obligor (as such term is defined in the Loan Agreement) under such Assigned Collateral shall be and remain enforceable by such Underlying Obligor, its successors and assigns, only against Assignor and its successors and assigns, and that Agent has not assumed any of the obligations or duties of Assignor under or with respect to such Assigned Collateral.

Assignor hereby agrees and acknowledges that neither the acceptance of this Assignment by Agent nor the exercise of, or failure to exercise, any right, power or remedy in this instrument conferred upon Agent shall be deemed or construed to obligate Agent, or its successors or assigns, to pay any sum of money, take any action or incur any liability in connection with the Assigned Collateral hereby assigned to Agent. It is further agreed and understood by Assignor that neither Agent nor its successors or assigns shall be liable in any way for any costs, expenses or liabilities connected with, or any charges or liabilities resulting from, such Assigned Collateral.

If any provision of this Assignment is held to be illegal, invalid or unenforceable under present or future laws effective during the term thereof, such provision shall be fully severable, this Assignment shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof or thereof, and the remaining provisions hereof or thereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision.

This Assignment may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Any counterpart delivered by facsimile, portable document format (.pdf) or other electronic means shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Assignment (it being understood that, for the purpose of recording this Assignment, original counterparts are required).

This Assignment shall be binding upon Assignor and its successors and assigns, and shall inure to the benefit of Agent and its successors and assigns.]

12393495v1 25019-0084

IN WITNESS WHEREOF, this instrument has been executed under seal by the undersigned to be effective as of the date first above written.

**"ASSIGNEE:"**

APF-CS, LLC, a Delaware limited liability company

By: John Patton (SEAL)  
 Name: John Patton  
 Title: CFO

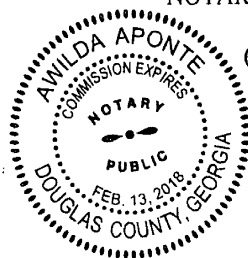
STATE OF Georgia  
 COUNTY OF DeKalb

On Dec. 21, 2016, before me, the undersigned, a Notary Public, duly commissioned and qualified in said County, personally came John Patton, the CFO of APF-CS, LLC, a Delaware limited liability company known to be the identical person whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and seal the day and year last above written.

Awilda Aponte  
 NOTARY PUBLIC

My Commission Expires:  
2-13-2018



**EXHIBIT "A"****[Land]**

All of Lots Ten (10), Eleven (11), Twelve (12) and Thirteen (13), in Block Eight (8), in Hillside Addition No. 1, an addition to the City of Omaha, in Douglas County, Nebraska, together with part of Lots Three (3) and Four (4), and the North Half (N½) of the vacated alley adjacent thereto on the South, together with all of Lots Five (5), Six (6) and Seven (7), and the North Half (N½) of the vacated alley adjacent thereto on the South, and all of Lots Fourteen (14) and Fifteen (15), and the South Half (S½) of the vacated alley adjacent thereto on the North, in Block Seven (7), in said Hillside Addition No. 1, together with parts of Lots Eight (8), Ten (10), Eleven (11), Twelve (12) and Thirteen (13), and part of the vacated alley adjacent thereto on the North, in Block Seven (7), in said Hillside Addition No. 1, together with vacated Chicago Street, all more particularly described as follows:

Commencing at the Northwest corner of Lot Three (3), said Block Seven (7); thence Southerly, on the West line of said Lot Three (3), 40.00 feet, to the point of beginning; thence Southerly, on the West line of said Lot Three (3) and its Southerly extension, 86.00 feet, to the centerline of said vacated alley; thence Westerly, on the centerline of said vacated alley, 54.00 feet, to the Northerly extension of the West line of Lot Fifteen (15), said Block Seven (7); thence Southerly, on the West line of said Lot Fifteen (15) and its Northerly extension, 126.00 feet, to the Southwest corner of said Lot Fifteen (15); thence Easterly, on the South line of Lots Fourteen (14) and Fifteen (15), said Block Seven (7), 104.00 feet, to the Southeast corner of said Lot Fourteen (14); thence Northerly, on the East line of said Lot Fourteen (14), 16.00 feet; thence Northeasterly, 219.02 feet, more or less, to a point on the West line of Lot Nine (9), said Block Seven (7), said point being 14.73 feet South of the Northwest corner of said Lot Nine (9); thence Northerly, on the West line of said Lot Nine (9) and on its Northerly extension, 20.73 feet, more or less, to a point on the centerline of said vacated alley; thence Easterly, on the centerline of said vacated alley, 27.68 feet; thence Northwesterly, 126.18 feet, to a point on the North line of Lot Eight (8), said Block Seven (7), said point being 21.00 feet East of the Northwest corner of said Lot Eight (8); thence Northwesterly, 63.57 feet, to the Southeast corner of Lot Ten (10), said Block Eight (8); thence Northerly, on the East line of said Lot Ten (10), 120.00 feet, to the Northeast corner of said Lot Ten (10); thence Westerly, on the Northerly line of Lots Ten (10), Eleven (11), Twelve (12) and Thirteen (13), said Block Eight (8), 200.00 feet, to the Northwest corner of said Lot Thirteen (13); thence Southerly, on the West line of said Lot Thirteen (13), 120.00 feet, to the Southwest corner of said Lot Thirteen (13); thence Southeasterly, on a 50.00 foot radius curve to the right (said curve being tangent to the North line of Chicago Street), an arc distance of 157.08 feet, to a point 100.00 feet South of the North right-of-way line of Chicago Street; thence Westerly, on a line 100.00 feet South of the North line of Chicago Street, 50.00 feet, to the point of beginning.

**EXCEPT**

A tract of land located in Lot Eight (8) and part of vacated alley adjoining, and vacated Chicago Street, Block Seven (7), Hillside Addition No.1 to the City of Omaha, Douglas County, Nebraska, described as follows:

Referring to the Southeast corner of Lot Ten (10), Block Eight (8), Hillside Addition No.1 to the City of Omaha; thence Southerly a distance of 53.37 feet along the Westerly existing 30th Street right of way line to the point of beginning; thence Southerly deflecting 000 degrees 00 minutes 00 seconds a distance of 10.30 feet along the Westerly existing 30<sup>th</sup> Street right of way line; thence Southerly deflecting 016 degrees 13 minutes 30 seconds right, a distance of 126.21 feet along the Westerly existing 30th Street right of way line; thence Westerly deflecting 093 degrees 19 minutes 07 seconds right, a distance of 10.48 feet along said line; thence Northerly deflecting 089 degrees 53 minutes 04 seconds right, a distance of 135.71 feet to a point on the Westerly existing 30th Street right of way line to the point of beginning.