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BK 7109 PG 1277

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
9/28/2018 2:26:00 PM  
FEE \$34.00 Pgs: 10  
DEP eCASH REC'D FOR FIRST AMERICAN TITLE-N  
Loan No. 41-0946377

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**OTG WOODS CROSSING, LLC**, as assignor

to

**WELLS FARGO BANK, NATIONAL ASSOCIATION**, as assignee

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**ASSIGNMENT OF LEASES AND RENTS**

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Dated: As of September 28, 2018

PREPARED FOR OR BY AND  
UPON RECORDATION RETURN TO:

Katten Muchin Rosenman LLP  
550 South Tryon Street, Suite 2900  
Charlotte, North Carolina 28202  
Attention: Virginia Bailey Rolfes, Esq.

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Tax Parcels: 06-384-0011; 06-384-0012; 06-384-0013; 06-384-0014;  
06-384-0015; 06-384-0017; 06-390-0001

FIRST AMERICAN TITLE  
# NCS921791

**THIS ASSIGNMENT OF LEASES AND RENTS** (this “**Assignment**”) is made as of September 28, 2018, by **OTG WOODS CROSSING, LLC**, a Utah limited liability company, having its principal place of business at 1165 E. Wilmington Avenue, Suite 275, Salt Lake City, Utah 84106 (together with its permitted successors and assigns, “**Assignor**”), to **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, having an address at c/o Wells Fargo Commercial Mortgage Servicing, 401 South Tryon Street, 8th Floor, Charlotte, North Carolina 28202 (together with its successors and assigns, “**Assignee**”).

**RECITALS:**

A. Assignor has become indebted to Assignee with respect to a loan in the principal sum of \$8,000,000.00 (the “**Loan**”) pursuant to that certain Loan Agreement, dated as of the date hereof, by and between Assignor and Assignee (as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, the “**Loan Agreement**”). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.

B. Assignor intends by the execution and delivery of this Assignment to further secure the payment, fulfillment, and performance of the obligations due under the Loan Agreement and under the other Loan Documents, including, without limitation, the Note.

**AGREEMENT:**

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:

1. Certain Defined Terms. For all purposes of this Assignment, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

(a) “**Leases**” shall mean all leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Assignor of any petition for relief under any Creditors Rights Laws.

(b) “**Rents**” shall mean, with respect to the Property, all right, title and interest of Assignor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or

paid to or for the account of or benefit of Assignor or its agents or employees from any and all sources arising from or attributable to the Property, including, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Assignor or Manager and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Assignor of any petition for relief under any Creditors Rights Laws.

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

3. Remedies. At any time after the occurrence and during the continuance of an Event of Default, Assignee, without waiving such Event of Default, at its option, upon notice and without regard to the adequacy of the security for the Debt, 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 Assignee may deem proper. Assignee shall immediately be entitled to possession of all security deposits held with respect to the Property, whether or not Assignee enters upon or takes control of the Property and regardless of where any such security deposits

are deposited or located. Assignee, 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 Assignee may elect in its sole and absolute discretion: (a) all costs and expenses incurred, and advances made, by Assignee 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 Assignee 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 Assignee's rights and remedies hereunder; and (b) the Debt, together with all costs, expenses and attorneys' fees in connection with any of the foregoing. Neither Assignee's exercise of the option granted to Assignee in this Section 3 nor the collection or application of Rents as herein provided shall be considered a waiver of any Event of Default. Assignor agrees that the exercise by Assignee of one or more of its rights and remedies under this Assignment shall in no way be deemed or construed to make Assignee a mortgagee-in-possession.

4. No Oral Change. This Assignment, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

5. Notices. All notices or other written communications hereunder shall be delivered in accordance with the applicable terms and conditions of the Loan Agreement.

6. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns forever.

7. Assignor's Obligations Absolute. Except as set forth to the contrary herein or in the other Loan Documents, all sums payable by Assignor 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, Assignor 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 Assignor.

8. Headings, etc. The headings and captions of various sections of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

9. Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

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

11. Termination. When the Security Instrument has been fully reconveyed or released by Assignee, that reconveyance or release shall operate as a release and discharge of this Assignment and as a reassignment of all future Leases and Rents with respect to the Property to the Person or Persons legally entitled thereto, unless such reconveyance or release expressly provides to the contrary.

12. Governing Law. This Assignment shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located and Applicable Laws of the United States of America.

13. Further Assurances. Assignee shall comply with all covenants set forth in the Loan Agreement relating to acts or other further assurances to be made on the part of Assignee in order to protect and perfect the lien or security interest hereof upon, and in the interest of Assignor in, the Property.

**[NO FURTHER TEXT ON THIS PAGE]**

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

**ASSIGNOR:**

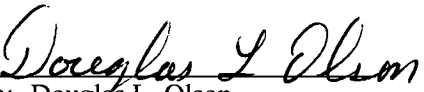
[signature page sent separately]

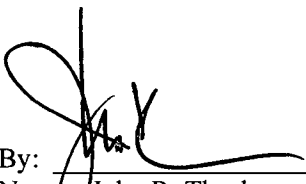
[ADD STATE SPECIFIC NOTARY ACKNOWLEDGMENT]

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

**ASSIGNOR:**

**OTG WOODS CROSSING, LLC,**  
a Utah limited liability company

By:   
Name: Douglas L. Olson  
Title: Manager

By:   
Name: John R. Thackeray  
Title: Manager

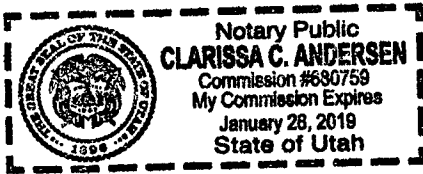
ACKNOWLEDGMENT

STATE OF UTAH )  
 )  
COUNTY OF Salt Lake )

On this 25<sup>th</sup> day of September, 2018, before me, Clarissa C. Andersen, a Notary Public in and for said State, personally appeared Douglas L. Olson, known or identified to me to be the Manager of OTG Woods Crossing, LLC, a Utah limited liability company and the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL]



Clarissa Andersen  
Notary Public

My commission expires:

Jan. 28, 2019



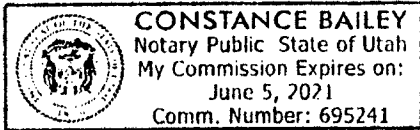
ACKNOWLEDGMENT

STATE OF Utah )  
COUNTY OF Salt Lake )

On this 20 day of September, 2018, before me, Constance Bailey, a Notary Public in and for said State, personally appeared John R. Thackeray, known or identified to me to be the Manager of OTG Woods Crossing, LLC, a Utah limited liability company and the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL]



Constance Bailey  
Notary Public  
Constance Bailey

My commission expires: 6/5/21  
#695241

**EXHIBIT A**

**LEGAL DESCRIPTION**

Real property in the City of Woods Cross, County of Davis, State of Utah, described as follows:

PARCEL 1:

LOTS 11, 12, 13, 14, PARCEL A AND PARCEL C, WOODS CROSSING COMMERCIAL SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT, RECORDED APRIL 12, 2016 AS ENTRY NO. 2931694 IN THE DAVIS COUNTY RECORDERS OFFICE.

PARCEL 1A:

NON-EXCLUSIVE EASEMENTS AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR WOODS CROSSING SHOPPING CENTER RECORDED APRIL 12, 2016 AS ENTRY NO. 2931695 IN BOOK 6493 AT PAGE 108 OF THE OFFICIAL RECORDS

PARCEL 2:

LOT 5A, WOODS CROSSING COMMERCIAL SUBDIVISION LOT 5 AMENDED, ACCORDING TO THE OFFICIAL PLAT, RECORDED NOVEMBER 1, 2017 AS ENTRY NO. 3055472 IN THE DAVIS COUNTY RECORDERS OFFICE.

(For informational purposes only: Tax Parcel No(s): 06-384-0011, 06-384-0012, 06-384-0013, 06-384-0014, 06-384-0015, 06-384-0017 and 06-390-0001.)