



2019-002320
Klamath County, Oregon
03/13/2019 03:20:04 PM
Fee: \$142.00

After Recording return to:

US Bank
9918 Hilbert St. 2nd Floor
San Diego CA 92131-1018

U.S. Bank N.A.

HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY AGREEMENT

FREMONT MILLWORK CO., Wayne W. Alexander, Travis J. Landrum and Necia L. Porto (collectively, for purposes of this agreement, the "Indemnitor") has applied to U.S. Bank N.A. ("Lender"), for a loan in the principal amount of **\$3,800,000.00** (the "Loan"), to be secured by a Deed of Trust (the "Trust Deed") covering Indemnitor's leasehold interest in certain real property legally described on Exhibit "A" (the "Property"). Lender is unwilling to make the Loan unless Indemnitor makes certain warranties regarding the Property and agrees to indemnify Lender from any loss or liability which might result from certain conditions on the Property.

NOW, THEREFORE, to induce Lender to make the Loan, Indemnitor hereby warrants, covenants and agrees as follows:

1. DEFINITIONS.

1.1 The term "Environmental Laws" shall mean any and all federal, state and local statutes, regulations and ordinances currently in effect or subsequently enacted pertaining to the protection of human health and/or the environment.

1.2 The term "Hazardous Substances" shall mean any and all hazardous, toxic, infectious or radioactive substances, wastes or materials listed or defined by any Environmental Laws and specifically shall include petroleum oil and its fractions.

1.3 The term "Asbestos-Containing Material" shall mean any material containing more than 1 percent by weight of asbestos, including all varieties and forms of materials defined as asbestos under any Environmental Laws.

142.

2. REPRESENTATIONS AND WARRANTIES.

Indemnitor represents and warrants the following, on the basis of its diligent examination and inquiry:

2.1 Indemnitor has no knowledge or reason to believe that any Hazardous Substances are or have been used, treated, stored, generated, manufactured, transported or otherwise handled on the Property, except as disclosed on the attached Exhibit "B".

2.2 Indemnitor has no knowledge or reason to believe that any Hazardous Substances have been disposed of, spilled or otherwise released on or under the Property, and, to best knowledge of Indemnitor, the Property is not otherwise contaminated by any Hazardous Substances.

2.3 To the best knowledge of Indemnitor, no Hazardous Substances have been disposed of, spilled or otherwise released on or under any property adjacent to the Property.

2.4 To the best knowledge of Indemnitor, the Property and all operations conducted on the Property are in compliance with all Environmental Laws.

2.5 To the best knowledge of Indemnitor, no outstanding liens or restrictions on use or development have been placed on the Property under any Environmental Laws.

2.6 Indemnitor has not received any notice, and is not aware, of any administrative or judicial investigations, proceedings or actions with respect to violations, alleged or proven, of Environmental Laws by Indemnitor or any tenants of Indemnitor, or otherwise involving the Property or the operations conducted on the Property.

2.7 To the best knowledge of Indemnitor, no Asbestos-Containing Material is present in any of the improvements on the Property or is otherwise located on the Property, and the Property and all operations conducted on the Property are in compliance with all Environmental Laws relating to asbestos.

2.8 The attached Exhibit "C" describes all underground storage tanks on or under the Property to the best knowledge of Indemnitor, and, to the best knowledge of Indemnitor, whether such tanks are in use, out of service or decommissioned and whether or not regulated.

3. RESTRICTED ACTIVITIES.

3.1 Without the prior written consent of Lender, Indemnitor shall not engage in, or permit any tenant or other person to engage in, any activity or conduct on the Property that

would, or could reasonably be expected to, cause any of the representations set forth in Article 2 above to cease to be true, correct and complete for any time before the Loan is paid in full. Such consent by Lender shall be within Lender's sole discretion and may be conditioned upon the receipt by Lender of such assurances as Lender may deem necessary or desirable to ensure that the value of its security interest in the Property will not in any way become impaired because of contamination resulting from any such activities.

3.2 Indemnitor shall cause the Property and all operations conducted on the Property to comply with all Environmental Laws and shall obtain, keep in effect and comply with all governmental permits and authorizations required by Environmental Laws with respect to the Property or the operations conducted on the Property. Indemnitor shall furnish Lender with copies of all such permits and authorizations and any amendments or renewals thereof.

3.3 (a) Indemnitor shall exercise extreme care, and shall cause its tenants to exercise extreme care, in connection with the handling of Hazardous Substances on the Property so as to protect Lender's security interest in the Property against being impaired by contamination of the property by Hazardous Substances.

(b) In the event the Property becomes contaminated by Hazardous Substances or is alleged to be so contaminated by any governmental authority or other third person, irrespective of the cause or the party responsible, Indemnitor shall promptly undertake and diligently prosecute to completion all investigation, removal, remedial or other response action (collectively, "Response Action") necessary or desirable to identify and minimize the contamination and to restore the Property to the condition, value and marketability enjoyed by the Property prior to such contamination. All Response Action shall be conducted by qualified and reputable contractors under the supervision of a qualified and reputable environmental engineer in accordance with all environmental laws and governmental authority. Indemnitor shall keep Lender fully informed of all Response Action as it is being taken. Lender's costs of reviewing and monitoring Response Action, including without limitation, attorneys' and consultants' fees, shall be indemnifiable costs under Article 6 of this agreement. Indemnitor understands and acknowledges that its obligations to protect, maintain and restore the value of Lender's security in the Property are not readily susceptible of quantification or compensation in damages other than payment in full of the Loan; and, therefore, such obligations are absolute, unconditional, not relievable through any excuse or defense, subject to a decree for specific performance, and binding upon any person (such as a creditor, receiver or trustee in bankruptcy) who may come into possession of the Property so long as the Loan or any part thereof remains unpaid.

(c) In the event Indemnitor fails to perform any of its obligations under this Section 3.3, Lender may (but shall not be required to) perform such obligations at Indemnitor's expense. All costs and expenses incurred by Lender, if it should elect to perform any such obligations, shall (at Lender's option) be either added to the principal balance of the Loan or reimbursed to Lender upon demand with interest at the default rate under the Mortgage/Trust

Deed. In performing any such obligations of Indemnitor, Lender shall at all times be deemed to be the agent of Indemnitor and shall not by reason of such performance be deemed to be assuming any responsibility of Indemnitor under any Environmental Law or to any third party. Indemnitor hereby irrevocably appoints Lender its attorney-in-fact with full power to perform such of Indemnitor's obligations under this Section 3.3 as Lender deems necessary and appropriate.

4. NOTICE

Indemnitor shall immediately notify Lender upon becoming aware of any of the following:

4.1 Any spill, disposal or other release of a Hazardous Substance on or under the Property or property adjacent to the Property.

4.2 Any notice or communication from a governmental agency or any other person directed to Indemnitor or any tenant of the Property or any other person relating to Hazardous Substances on, under or adjacent to the Property or any violation of any Environmental Laws involving Indemnitor or the Property.

4.3 Any fact or change in circumstances that would or reasonably could be expected to cause any of the representations and warranties set forth in Article 2 above to cease to be true for any time before the Loan is paid in full.

4.4 Any matter relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent lender reason to be concerned that the value of such lender's security interest in the Property may be reduced or threatened.

5. INSPECTIONS.

Lender reserves the right to inspect and investigate the Property and Indemnitor's management of Hazardous Substances on the Property at any time and from time to time, and Indemnitor shall cooperate, and cause its tenants to cooperate, fully with Lender in such inspections and investigations. If Lender at any time has reason to believe that Indemnitor is not complying with all Environmental Laws or this agreement or that a spill, disposal or other release of a Hazardous Substance has occurred on or under the Property, Lender may require Indemnitor to furnish to Lender an environmental audit or an environmental assessment with respect to the matters of concern to Lender. Such audit or assessment shall be performed at Indemnitor's expense by a qualified environmental engineer approved by Lender.

6. INDEMNIFICATION.

To the fullest extent allowed by law, Indemnitor shall indemnify, defend and hold harmless Lender, its officers, directors, employees and agents, and any successors to Lender's interest in the Property, their directors, officers, employees and agents (collectively, "Indemnitees") against any and all claims, demands, fines, losses, liabilities, costs and expenses (including attorneys' fees during any response action required, at trial, and on any appeal or petition for review) (collectively, "Claims") arising out of, in connection with in any way relating to (a) the breach of any of the representations, warranties or covenants contained in this agreement, (b) any facts or circumstances that cause any of the representations or warranties set forth in Article 2 to cease to be true for any periods before the Loan is paid in full, (c) the use, treatment, storage, generation, manufacture, transport, release, spill, disposal or other handling of Hazardous Substances on the Property before the Loan is paid in full, or (d) any other presence or alleged presence of Hazardous Substances on the Property before the Loan is paid in full. Claims shall include without limitation (a) the cost of all investigatory, removal, remedial and other response action required by any Environmental Law, by judicial order or by order of or agreement with any governmental authority having jurisdiction under any Environmental Law, (b) claims for injury or death of any person, including an Indemnatee, and (c) claims for damages to property of an Indemnatee or any other person, including claims for diminution in value or loss of use. Any Indemnatee may waive its right to defense under this section without prejudice to any other right or remedy it may have under this section or otherwise.

7. SURVIVAL.

The representations, warranties and covenants contained in this agreement shall survive the delivery of a deed in lieu of foreclosure to Lender or any successor of Lender and shall survive any foreclosure, whether judicial or nonjudicial, of the Property by Lender or any successor of Lender, and shall be for the benefit of Lender and any successor to Lender as holder of any security interest in the Property or as owner of the Property following foreclosure or the delivery of a deed in lieu of a foreclosure.

8. BREACH/REMEDIES.

Any breach of this agreement shall constitute a default under the Mortgage/Trust Deed and all other Loan documents securing Loan. Lender shall have all rights and remedies available hereunder or in law or equity in addition to and not limited by any other rights or remedies Lender may have under the Mortgage/Trust Deed or other Loan documents. Notwithstanding the foregoing, neither this agreement nor any obligation hereunder shall be deemed to be secured by the Mortgage/Trust Deed or other Loan documents, except to the extent amounts payable under this agreement are added by Lender to the Loan pursuant to the terms of the Mortgage/Trust Deed or other Loan documents.

9. GENERAL.

9.1 Costs and Attorneys' Fees. Indemnitor agrees to pay all costs and expenses, including reasonable attorneys' fees (both in-house counsel and outside counsel), incurred by Lender in enforcing this Agreement against Indemnitor, whether incurred at the trial or appellate level, in an arbitration proceeding, in bankruptcy (including, without limitation, any adversary proceeding, contested matter or motion) or otherwise.

9.2 Notices. Any notices required or permitted to be given under this agreement shall be in writing and shall be given in the manner set forth for giving notices under the Mortgage/Trust Deed.

9.3 Waiver. Any waiver with respect to the provisions of this agreement shall not be effective unless in writing and signed by the party against whom it is asserted. No such waiver shall constitute a waiver of any subsequent breach or default.

9.4 Severability. If in any judicial proceeding a court shall refuse to enforce all the provisions of this agreement, any unenforceable provisions shall be deemed eliminated from this agreement for the purpose of that proceeding as is necessary to permit the remainder of the agreement to be enforced in that proceeding.

10. STATE-SPECIFIC PROVISIONS.

10.1 Controlling Language. In the event of any inconsistencies between the terms and conditions of this Section 10, and the other terms and conditions of this Agreement, the terms of this Section 10 will control and be binding.

10.2 Obligations Not Secured by Security Instrument. Indemnitor's obligations under the Agreement are not secured by that certain Deed of Trust against the Property and are not subject to any nonrecourse or other limitation of liability provision in the documents evidencing the Loan.

[Signatures Begin on Next Page]

DATED this 11th day of March, 2019.

INDEMNITOR:

FREMONT MILLWORK CO.

By: Wayne W. Alexander
Wayne W. Alexander, President

By: Necia L. Porto
Necia L. Porto, Secretary

ACKNOWLEDGMENT

STATE OF OREGON)
COUNTY OF Klamath) ss.

On this 11 day of March, 2019, before me personally appeared **Wayne W. Alexander and Necia L. Porto**, to me known to be the **President and Secretary, respectively**, of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the seal of said limited liability company.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Heather Anne Scurba

(Signature of Notary)

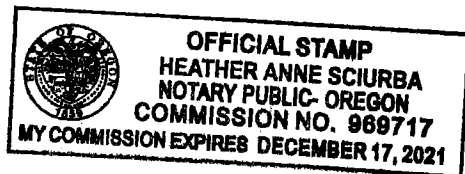
Heather Scurba

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Oregon

residing at: Klamath Falls, OR

My appointment expires: Dec 17 2021



Wayne W. Alexander
Wayne W. Alexander, Individually

ACKNOWLEDGMENT

STATE OF OREGON)
COUNTY OF Klamath) ss.

This record was acknowledged before me on Nov. 11, 2019.

Name of Individual: Wayne W. Alexander, President of Fremont Millwork Co. 4/5

Heather Scurba

(Signature of Notary)

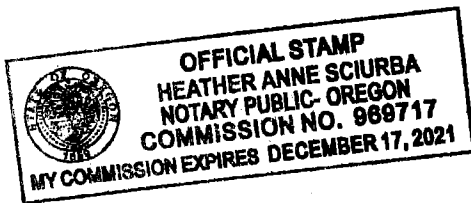
Heather Scurba

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Oregon

Oregon, residing at: Klamath Falls OR

My appointment expires: Dec 17 2021



[Signature]

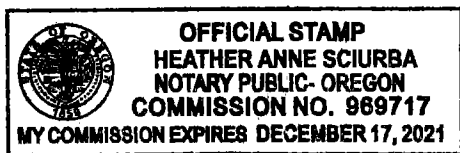
Travis J. Landrum, Individually

ACKNOWLEDGMENT

STATE OF OREGON)
COUNTY OF Klamath)ss.

This record was acknowledged before me on Mar. 11, 2019.

Name of Individual: **Travis J. Landrum**



[Signature]

(Signature of Notary)

Heather Sciurba

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Oregon
Oregon, residing at: Klamath Falls
My appointment expires: Dec. 17, 2021

Necia L. Porto
Necia L. Porto, Individually

ACKNOWLEDGMENT

STATE OF OREGON)
COUNTY OF Klamath)ss.

This record was acknowledged before me on Mar. 11, 2019. 4/8

Name of Individual: Necia L. Porto, individually
~~Secretary of Fremont Millwork Co.~~

Heather Anne Sciurba

(Signature of Notary)

Heather Sciurba

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Oregon
Oregon, residing at: Klamath Falls, OR
My appointment expires: Dec. 17, 2021

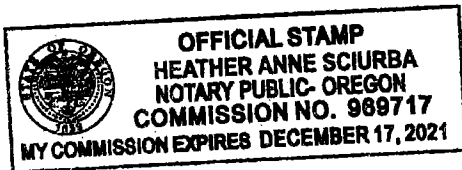


EXHIBIT "A"

LEGAL DESCRIPTION

A parcel of land lying in the SW1/4 of the NW1/4 of Section 10, Township 39 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at a casing nail set in a crosstie of the Westerly Great Northern Railway Company tracks, said nail having been set in August, 1955, by Frank Z. Howard to mark the Southeast corner of the NW1/4 of the NW1/4 of said Section 10; thence North 89°15'30" West 30 feet and South 0°10' East 30 feet to an iron pin on the East line of Lot 1, Block 4, THIRD ADDITION TO ALTAMONT ACRES, and the true point of beginning of this description; thence North 89°35'30" West along the South line of Onyx Street a distance of 300.0 feet to an iron pin; thence South 0°07' East along the East line of Lot 7, Block 2 of Fremont Park, Tract 1183, a distance of 174.93 feet to the Southeast corner thereof; thence South 89°30' East a distance of 300.0 feet to an iron pin on the East line of Lot 2, Block 4, Third Addition to Altamont Acres; thence North 0°07' West along the East lines of Lot 2 and Lot 1, Block 4 of said subdivision a distance of 175.4 feet to the point of beginning. Said description encompasses Lot 1 and the North 40 feet of Lot 2, Block 4, Third Addition to Altamont Acres, LESS the North 10 feet of said Lot 1 lying within the right of way of Onyx Street.

EXHIBIT "B"

Those items identified in the Phase I Environmental Site Assessment commissioned by Lender for this loan.

EXHIBIT "C"

UNDERGROUND STORAGE TANKS

The following is a description of each underground storage tank and associated piping located on or under the Property, including a description for each tank of its location, age, status (in use, out of service or decommissioned), contents (if out of use, the most recent contents), capacity, type of construction, corrosion protection, leak detection system, overfill protection and results of tank testing (including date and method of testing):

None