

2019-002323

Klamath County, Oregon

03/13/2019 03:20:04 PM

Fee: \$127.00



UPON RECORDING RETURN TO:

U.S. Bank N.A.
9918 Hibert Street, Second Floor
San Diego, CA 92131-1018

ASSIGNMENT OF LEASES AND RENTS

This Assignment is made this **11th day of March, 2019**, between **FREMONT MILLWORK CO.**, an Oregon corporation (herein called "Assignor"), and **U.S. Bank N.A.** (herein called "Assignee").

RECITALS

Assignor has executed and delivered to Assignee its promissory note of even date herewith in the principal amount of **\$3,800,000.00** or a guaranty thereof (herein called the "Note").

To secure payment of the Note or a guaranty of payment of the Note, Assignor has executed and delivered to Assignee a Mortgage/Deed of Trust of even date herewith (herein, together with all future amendments and supplements thereto, called the "Mortgage"), covering certain property (herein called the "Mortgaged Property") which, among other things, includes the real estate described in Exhibit "A" attached hereto and the buildings, improvements, and fixtures now or hereafter located thereon.

Assignee, as a condition to making the loan evidenced by the Note, has required the execution of this Assignment.

ACCORDINGLY, in consideration of the premises and in further consideration of the sum of One Dollar paid by Assignee to Assignor, the receipt of which is hereby acknowledged, Assignor does hereby grant, transfer and assign to Assignee all of the right, title and interest of Assignor in and to (i) any and all present or future leases or tenancies, whether written or oral, covering or affecting any or all of the Mortgaged Property ("Lease" or "Leases"), and (ii) all rents, profits and other income or payments of any kind due or payable or to become due or payable to Assignor as the result of any use, possession or occupancy of all or any portion of the Mortgaged Property (all of which are hereinafter collectively referred to as "Rents"), whether the

Rents accrue before or after foreclosure of the Mortgage or during the periods of redemption thereof, all for the purpose of securing:

- (a) Payment of all indebtedness evidenced by the Note and all other sums secured by the Mortgage or this Assignment; and
- (b) Performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein and in the Mortgage.

ASSIGNOR WARRANTS AND COVENANTS that it is and will remain the absolute owner of the Rents and Leases free and clear of all liens and encumbrances other than the lien granted herein; that it has not heretofore assigned or otherwise encumbered its interest in any of the Rents or Leases to any person; that it has the right under applicable law, under the Leases, under its Articles of Incorporation and By-Laws, Articles of Organization, or partnership formation documents and/or partnership agreement, and otherwise to execute and deliver this Assignment and keep and perform all of its obligations hereunder; that it will warrant and defend the Leases and Rents against all adverse claims, whether now existing or hereafter arising.

Assignor further covenants and agrees with Assignee as follows:

1. Performance of Leases. Assignor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which it is now or hereafter becomes liable to observe or perform under any present or future Lease, and, at its sole cost and expense, enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the tenant under each and every Lease. Assignor will observe and comply with all provisions of law applicable to the operation and ownership of the Mortgaged Property. Assignor will give prompt written notice to Assignee of any notice of default on the part of Assignor with respect to any Lease received from the tenant thereunder, and will also at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Assignor or any tenant thereunder. Assignor will not lease or otherwise permit the use of all or any portion of the Mortgaged Property for rent that is below the fair market rent for such property.

2. Collection of Rents. Assignor will not collect or accept any Rents for the use or occupancy of the Mortgaged Property for more than one month in advance. Security deposits shall not be deemed Rents for purposes of this paragraph.

3. Protecting the Security of This Assignment. Should Assignor fail to perform or observe any covenant or agreement contained in this Assignment, then Assignee, but without obligation to do so and without releasing the Assignor from any obligation hereunder, may make or do the same in such manner and to such extent as Assignee may deem appropriate to protect the security hereof, including, specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor contained in the Leases and in exercising any such powers

to pay necessary costs and expenses, employ counsel and pay reasonable attorneys' fees. Assignor will pay immediately upon demand all sums expended by Assignee under the authority of this Agreement, together with interest thereon at the rate stated in the Note, and the same shall be added to said indebtedness and shall be secured hereby and by the Mortgage.

4. Present Assignment. This Assignment shall constitute a perfected, absolute and present assignment, provided that Assignor shall have the right to collect, but not prior to accrual (except as permitted by paragraph 2 above), all of the Rents, and to retain, use and enjoy the same unless and until an Event of Default shall occur under the Mortgage or Assignor shall have breached any warranty or covenant in this Assignment. Any Rents which accrue prior to an Event of Default under the Mortgage but are paid thereafter shall be paid to Assignee.

5. Survival of Obligation to Comply with Mortgage and This Assignment. This Assignment is given as security in addition to the Mortgage. Assignor covenants and agrees to observe and comply with all terms and conditions contained in the Mortgage and in this Assignment and to preclude any Event of Default from occurring under the Mortgage. All of Assignor's obligations under the Mortgage and this Assignment shall survive foreclosure of the Mortgage and Assignor covenants and agrees to observe and comply with all terms and conditions of the Mortgage and this Assignment and to preclude any Event of Default from occurring under the Mortgage throughout any period of redemption after foreclosure of the Mortgage.

6. Default; Remedies. Upon the occurrence of any Event of Default specified in the Mortgage or upon the breach of any warranty or covenant in this Assignment, Assignee may, at its option, at any time:

(a) in the name, place and stead of Assignor and without becoming a mortgagee in possession (i) enter upon, manage and operate the Mortgaged Property or retain the services of one or more independent contractors to manage and operate all or any part of the Mortgaged Property; (ii) make, enforce, modify and accept surrender of the Leases; (iii) obtain or evict tenants, collect, sue for, fix or modify the Rents and enforce all rights of Assignor under the Leases; and (iv) perform any and all other acts that may be necessary or proper to protect the security of this Assignment.

(b) with or without exercising the rights set forth in subparagraph (a) above, give or require Assignor to give, notice to any or all tenants to pay all Rents under the Leases directly to the Assignee.

(c) without regard to waste, adequacy of the security or solvency of Assignor, apply for, and Assignor hereby consents to, the appointment of a receiver of the Mortgaged Property, whether or not foreclosure proceedings have been commenced under the Mortgage, and if such proceedings have been commenced, whether or not a foreclosure sale has occurred.

The exercise of any of the foregoing rights or remedies and the application of the rents, profits and income pursuant to paragraph 7, shall not cure or waive any Event of Default (or notice of default) under the Mortgage or invalidate any act done pursuant to such notice.

7. Application of Rents, Profits and Income. All Rents collected by Assignee or the receiver each month shall be applied as follows:

- (a) to payment of all reasonable fees of the receiver approved by the court;
- (b) to payment of all tenant security deposits then owing to tenants under any of the Leases pursuant to applicable law;
- (c) to payment of all prior or current real estate taxes and special assessments with respect to the Mortgaged Property, or if the Mortgage requires periodic escrow payments for such taxes and assessments, to the escrow payments then due;
- (d) to payment of all premiums then due for the insurance required by the provisions of the Mortgage, or if the Mortgage requires periodic escrow payments for such premiums, to the escrow payments then due;
- (e) to payment of expenses incurred for normal maintenance of the Mortgaged Property;
- (f) if received prior to any foreclosure sale of the Mortgaged Property, to Assignee for payment of the indebtedness secured by the Mortgage or this Assignment, but no such payment made after acceleration of the indebtedness shall affect such acceleration;
- (g) if received during or with respect to the period of redemption after a foreclosure sale of the Mortgaged Property:
 - (1) if the purchaser at the foreclosure sale is not the Assignee, first to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Mortgage or this Assignment, second to the purchaser as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to the purchaser of the Mortgaged Property;
 - (2) if the purchaser at the foreclosure sale is the Assignee, to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Mortgage or this Assignment and the balance to be retained by Assignee as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to Assignee, whether or not any such deficiency exists.

The rights and powers of Assignee under this Assignment and the application of Rents under this paragraph 7 shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

8. No Liability for Assignee. Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of Assignor under the Leases. This Assignment shall not operate to place upon Assignee responsibility for the control, care, management or repair of the Mortgaged Property or for carrying out of any of the terms and conditions of the Leases. Assignee shall not be responsible or liable for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, for any negligence in the management, upkeep, repair or control of said Mortgaged Property or for failure to collect the Rents.

9. Assignor's Indemnification. Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all claims, demands, liability, loss or damage (including all costs, expenses, and reasonable attorney's fees in the defense thereof) asserted against, imposed on or incurred by Assignee in connection with or as a result of this Assignment or the exercise of any rights or remedies under this Assignment or under the Leases or by reason of any alleged obligations or undertakings of Assignee to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability, the amount thereof, together with interest thereon at the rate stated in the Note, shall be secured hereby and by the Mortgage and Assignor shall reimburse the Assignee therefor immediately upon demand.

10. Authorization to Tenant. Upon notice from Assignee that it is exercising the remedy set forth in paragraph 6(b) of this Assignment, the tenants under the Leases are hereby irrevocably authorized and directed to pay to Assignee all sums due under the Leases, and Assignor hereby consents and directs that said sums shall be paid to Assignee without the necessity for a judicial determination that a default has occurred hereunder or under the Mortgage or that Assignee is entitled to exercise its right hereunder, and to the extent such sums are paid to Assignee, Assignor agrees that the tenant shall have no further liability to Assignor for the same. The signature of Assignee alone shall be sufficient for the exercise of any rights under this Assignment and the receipt of Assignee alone for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Mortgaged Property. Checks for all or any part of the Rents collected under this Assignment shall upon notice from Assignee be drawn to the executive order of Assignee.

11. Satisfaction. Upon the payment in full of all indebtedness secured hereby as evidenced by a recorded satisfaction of the Mortgage executed by Assignee, this Assignment shall, without the need for any further satisfaction or release, become null and void and be of no further effect.

12. Assignee an Attorney-In-Fact. Assignor hereby irrevocably appoints Assignee, and its successors and assigns, as its agent and attorney-in-fact, which appointment is coupled with an interest, with the right but not the duty to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as Assignee may deem appropriate to make this Assignment and any further assignment effective, including

without limiting the generality of the foregoing, the right to endorse on behalf and in the name of Assignor all checks from tenants in payment of Rents that are made payable to Assignor.

13. Assignee Not a Mortgagee in Possession. Nothing herein contained and no actions taken pursuant to this Assignment shall be construed as constituting Assignee a mortgagee in possession.

14. Specific Assignment of Leases. Assignor will transfer and assign to Assignee, upon written notice by Assignee, any and all specific Leases that Assignee requests. Such transfer or assignment by Assignor shall be upon the same or substantially the same terms and conditions as are herein contained, and Assignor will properly file or record such assignments, at Assignor's expense, if requested by Assignee.

15. Warranties and Representations Regarding any Current Lease. Assignor warrants that it is Lessor pursuant to any current lease; that any current lease has not been modified and is in full force and effect; not to modify without Lender's written consent or in any way alter any of the terms of any current lease, nor to terminate any current lease or accept a surrender of the current lease; that it will not waive or in any way release or allow substitution of performance under the terms of any current lease by tenant thereof; that any current lease is free and clear of any and all liens and encumbrances; that any current lease has not been previously pledged or assigned to any other party; that it is not in default of any of the terms of any current lease and has no notice of any default by Lessee.

16. Unenforceable Provisions Severable. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof shall in no way be affected thereby. It is the intention of the parties hereto, however, that this Assignment shall confer upon Assignee the fullest rights, remedies and benefits available pursuant to applicable law.

17. Successors and Assigns. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of Assignor and Assignee, including any purchaser at a foreclosure sale.

18. Captions; Amendments; Notices. The captions and headings of the paragraphs of this Assignment are for convenience only and shall not be used to interpret or define the provisions of this Assignment. This Assignment can be amended only in writing signed by Assignor and Assignee. Any notice from Assignee to Assignor under this Assignment shall be deemed to have been given when given by Assignee in accordance with the requirements for notice by the Mortgagee under the Mortgage.

IN WITNESS WHEREOF Assignor has executed this Assignment as of the day and year first-above written.

Assignor:

FREMONT MILLWORK CO.

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

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

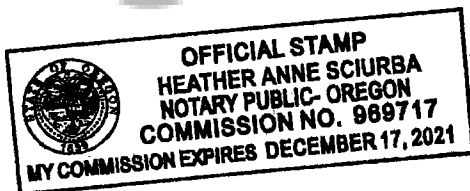
ACKNOWLEDGMENT

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 Sciurba

(Signature of Notary)

Heather Sciurba

(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

Exhibit A

LEGAL DESCRIPTION

Parcel 1:

A parcel of land lying in the NW1/4 of the NW1/4, Section 10 Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon:

Starting at an iron bolt set in a pavement vault which bolt marks the Northwest corner of Section 10; thence South 0°07'30" East 1342.84 feet to the Southwest corner of the NW1/4 of the NW1/4 of Section 10; thence South 0°07'30" East 2.10 feet to the center line of Onyx Avenue; thence South 89°35'30" East 62.05 feet along the centerline of Onyx Avenue; thence North 0°02'15" West 30 feet to an iron pin which lies at the intersection of the Easterly right of way line of Washburn Way with the Northerly right of way line of Onyx Avenue; thence South 89°35'30" East 1004.91 feet along the Northerly right of way line of Onyx Avenue to an iron pin, said iron pin marking the true point of beginning of this description; thence North 0°05'36" West 170.40 feet to an iron pin; thence North 89°30' West 150 feet to an iron pin; thence South 0°05'33" East 170.64 feet more or less to an iron pin lying on the Northerly right of way line of Onyx Avenue; thence South 89°35'30" East 150 feet along the Northerly right of way line of Onyx Avenue to the true point of beginning.

Parcel 2:

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

Beginning at an iron pin in a pavement vault which marks the North-west corner of Section 10; thence South 0°07'30" East along the Westerly line of Section 10, 1342.84 feet to a nail and brass disc set in pavement, said disc marked RE 3641, and said nail and disc marking the Southwest corner of the NW1/4 of the NW1/4 of Section 10; thence South 89°30' East 1317.01 feet along the South line of the NW1/4 of the NW1/4 of Section 10 to a nail set in a railroad tie, said nail set by F.Z. Howard, County Surveyor, in September 1955, to mark the Southeast corner of the NW1/4 NW1/4 of Section 10, thence North 89°35'30" West 50 feet along the center line of Onyx Street, as constructed; thence North 0°05'40" West along the Westerly line of the Great Northern Railway (now Burlington Northern Railway) right of way line, as protracted, 30 feet to an iron pin and brass disc, said disc marked RE 3641, said pin and disc marking the true point of beginning of this description, thence North 89°35'30" West and parallel to the center line of Onyx Street, as constructed, 200 feet; thence North 0°05'40" West 170.39 feet; thence South 89°30' East 200 feet to an iron pin lying on the Westerly right of way line of aforementioned railway, said iron pin having been set by F.Z. Howard, in September 1955, to mark the Northeast corner of Fremont Glass and Millwork Company property; thence South 0°05'40" East along said railway right of way line 170.08 feet to the true point of beginning.

SAVING AND EXCEPTING THEREFROM any portion of the above mentioned property lying within the limits of Onyx Street or the Great Northern Railway.

ALSO EXCEPTING THEREFROM all that portion conveyed to Klamath County, Oregon by Bargain and Sale Deed recorded May 25, 1970, Instrument No. M70, page 4150 Klamath County Records.

Unofficial
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