

2020-002316

Klamath County, Oregon

02/26/2020 01:04:34 PM

Fee: \$157.00

Record and Return to:

Cassin & Cassin LLP
2900 Westchester Avenue, Suite 402
Purchase, New York 10577
Attn: Recording Department

ABSOLUTE ASSIGNMENT OF LEASES AND RENTS

from

DKM2, LLC, L-39 LLC, KFALLS CENTER, LLC and RED KNIGHT, LLC, collectively as
assignor,

to

MORGAN STANLEY PRIVATE BANK, NATIONAL ASSOCIATION, as assignee,
a national banking association

Dated: February 26, 2020

LOCATION OF PREMISES:

Property Location:	2740 South 6 th Street
City of:	Klamath Falls
County of:	Klamath
State of:	Oregon
Tax Lot No.:	R-3909-003BC-00900-000

NC S-992147-OR 1

THIS ABSOLUTE ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of February 26, 2020, by **DKM2, LLC**, an Oregon limited liability company, having an address at P.O. Box 1800, Corvallis, Oregon 97339 ("**DKM2 Borrower**"), **L-39, LLC**, an Oregon limited liability company, having an address at P.O. Box 1800, Corvallis, Oregon 97339 ("**L-39 Borrower**"), **KFALLS CENTER, LLC**, an Oregon limited liability company, having an address at 1100 East 8th Street, Austin, Texas 78702 ("**KFALLS Borrower**"), and **RED KNIGHT, LLC**, an Oregon limited liability company, having an address at 7250 NE Avalon Drive, Corvallis, Oregon 97330, ("**RED KNIGHT Borrower**") together with DKM2 Borrower, L-39 Borrower and KFALLS Borrower are as applicable, individually and collectively, "**Borrower**", as tenants in common, to **MORGAN STANLEY PRIVATE BANK, NATIONAL ASSOCIATION**, a national banking association, having an address at 2000 Westchester Avenue, Floor 2NE, Purchase, New York 10577 ("**Lender**").

WITNESSETH:

WHEREAS, this Assignment is given in connection with a loan in the principal sum of up to **FIVE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$5,800,000.00)** (the "**Loan**") made by Lender to Borrower, as evidenced by that certain Note, dated the date hereof, made by Borrower, in favor of Lender, in the original principal amount of the Loan (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Note**");

WHEREAS, the Note is secured by that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated the date hereof (as the same may be amended, increased, restated, replaced, supplemented or otherwise modified from time to time, the "**Deed of Trust**") made by Borrower for the benefit of Lender;

WHEREAS, to further induce Lender to accept the Note and Deed of Trust and make the Loan, this Assignment is being entered into; and

WHEREAS, all capitalized terms used in this Assignment, but not defined herein, shall have the respective meanings accorded to such terms in the Deed of Trust or the Loan Agreement, as applicable.

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Assignment, the parties hereto hereby agree as follows:

ARTICLE 1 - ASSIGNMENT

Section 1.1 **PROPERTY ASSIGNED**. Borrower hereby absolutely, irrevocably and unconditionally transfers, assigns, sets over and grants to Lender the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower:

(a) **Leases**. All existing and future "**leases**" and "**lease provisions**" (as described in **Exhibit B** annexed hereto and made a part hereof) affecting the use, enjoyment, or occupancy of all or any part of that certain lot or piece of land, more particularly described in **Exhibit A** annexed hereto and made a part hereof, or all or any part of the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "**Property**") and the right, title and interest of Borrower, its successors and assigns, therein and thereunder.

(b) Other Leases and Agreements. All other leases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, whether made before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**"), together with any extension, renewal or replacement of the same, this Assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment. The "**leases**" and the "**lease provisions**" described in Subsection 1.1(a) and the leases and other agreements described in this Subsection 1.1(b) are collectively referred to as the "**Leases.**"

(c) Rents. All "rents" (as described in Exhibit B annexed hereto and made a part hereof) whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**").

(d) Bankruptcy Claims. All of Borrower's claims and rights (the "**Bankruptcy Claims**") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code.

(e) Lease Guaranties. All of Borrower's right, title and interest in and claims under any and all lease guaranties, letters of credit and any other credit support (individually, a "**Lease Guaranty**," and collectively, the "**Lease Guaranties**") given by any guarantor in connection with any of the Leases or leasing commissions (individually, a "**Lease Guarantor**," and collectively, the "**Lease Guarantors**") to Borrower.

(f) Proceeds. All proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(g) Other. All rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under the Lease Guaranties, including, without limitation, the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment and performance of the Obligations), and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

(h) Entry. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by Lender, by an agent of the Lender or by a court-appointed receiver, to collect the Rents.

(i) Power of Attorney. Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in Section 3.1 of this Assignment and any or all other actions designated by Lender for the proper management and preservation of the Property.

(j) Other Rights and Agreements. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (i) above, and all amendments, modifications, replacements, renewals and substitutions thereof.

ARTICLE 2 - TERMS OF ASSIGNMENT

Section 2.1 Present Assignment and License Back. Borrower intends that this Assignment constitute a present, absolute assignment of the Leases, Rents, Lease Guaranties and Bankruptcy Claims, and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 2.1 and Section 3.1 hereof, Lender grants to Borrower a revocable license, to collect and

receive the Rents, as well as other sums due under the Lease Guaranties. Borrower shall hold the Rents, as well as all sums received pursuant to any Lease Guaranty, or a portion thereof sufficient to discharge all current sums due on under the Loan Documents, in trust for the benefit of Lender for use in the payment of such sums.

Section 2.2 Notice to Lessees. Borrower hereby authorizes and directs the lessees named in the Leases or any other future lessees or occupants of the Property and all Lease Guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any Lease Guaranties upon receipt from Lender of written notice to the effect that Lender is then the holder of this Assignment and that an Event of Default (as defined in the Deed of Trust) exists, and to continue so to do until otherwise notified by Lender.

Section 2.3 Incorporation by Reference. All representations, warranties, covenants, conditions and agreements contained in the Deed of Trust and the other Loan Documents (as defined in the Deed of Trust) as the same may be modified, renewed, substituted or extended are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

ARTICLE 3 - REMEDIES

Section 3.1 Remedies of Lender. Upon the occurrence of an Event of Default, the license granted to Borrower in Section 2.1 of this Assignment shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents and sums due under any Lease Guaranties, whether or not Lender enters upon or takes control of the Property. In addition, Lender may, at its option, without waiving such Event of Default, without regard to the adequacy of the security for the payment and performance of the Obligations, either in person or by Lender's nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, (i) dispossess Borrower and its agents and servants from the Property, without liability for trespass, damages or otherwise, and exclude Borrower and its agents or servants wholly therefrom, (ii) take possession of the Property and all books, records and accounts relating thereto, (iii) hold, manage, lease and operate the Property on such terms and for such period of time as Lender in its sole discretion may deem proper, (iv) either with or without taking possession of the Property, in its own name, demand, sue for or otherwise collect and receive all Rents and sums due under all Lease Guaranties, including those past due and unpaid, and (v) make from time to time all such alterations, renovations, repairs or replacements to the Property as Lender in its sole discretion may deem proper. Lender may apply the Rents collected and sums received under any Lease Guaranties pursuant hereto to the payment of the following in such order and proportion as Lender in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may reasonably deem necessary or desirable and all reasonable costs and expenses of operating and maintaining the Property, including, without limitation, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Lender may reasonably deem necessary or desirable, and the reasonable cost of all alterations, renovations, repairs or replacements, and all expenses incidental to taking and retaining possession of the Property; and (b) any remaining amounts due under the Loan Documents, together with all costs and reasonable attorneys' fees. In addition, upon the occurrence of an Event of Default, Lender, at its option, may (1) complete any construction on the Property in such manner and form as Lender deems advisable, (2) exercise all rights and powers of Borrower, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties, (3) either require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Borrower or (4) require Borrower to vacate and surrender possession

of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

Section 3.2 Other Remedies. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Deed of Trust, the Note, or the other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect amounts due under the Loan Documents and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Borrower under this Assignment, the Deed of Trust, the Note, the other Loan Documents or otherwise with respect to the Loan in any action or proceeding brought by Lender to collect the same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Deed of Trust, the Note, or any of the other Loan Documents (provided, however, that the foregoing shall not be deemed a waiver of Borrower's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

Section 3.3 Other Security. Lender may take or release other security for the payment and performance of the Obligations, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Obligations without prejudice to any of its rights under this Assignment.

Section 3.4 Non-Waiver. The exercise by Lender of the option granted to it in Section 3.1 of this Assignment and the collection of the Rents and sums due under the Lease Guaranties and the application thereof as herein provided shall not be considered a waiver of any default by Borrower under the Note, the Deed of Trust, the Leases, this Assignment or any other Loan Document. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Deed of Trust, the Note or any other Loan Document, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Deed of Trust, the Note, or any other Loan Document. Lender may resort for the payment and performance of the Obligations to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take any action to recover amounts due under the Loan Documents, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

Section 3.5 Bankruptcy. (a) Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior written notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE 4 - NO LIABILITY, FURTHER ASSURANCES

Section 4.1 No Liability of Lender. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default unless such loss is caused by the willful misconduct or bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment, and Borrower shall defend and indemnify Lender for, and hold Lender harmless from, any and all liability, loss or damage that may or might be incurred under the Leases, any Lease Guaranties or under or by reason of this Assignment and from any and all claims and demands whatsoever, including, without limitation, the defense of any such claims or demands that may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any Lease Guaranties. Should Lender incur any such liability, the amount thereof, including, without limitation, costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment and by the Deed of Trust and the other Loan Documents and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower to do so, Lender may, at its option, declare all sums secured by this Assignment and by the Deed of Trust and the other Loan Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property including, without limitation, the presence of any Hazardous Substances (as defined in the ADA and Environmental Indemnity Agreement dated as of the date hereof by Borrower and the Individual Guarantors in favor of Lender), or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

Section 4.2 No Mortgagee or Trustee in Possession. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in or "trustee in possession" the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted to Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

Section 4.3 Further Assurances. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time,

reasonably require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Leases.

ARTICLE 5 - MISCELLANEOUS PROVISIONS

Section 5.1 Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Deed of Trust, the terms of the Deed of Trust shall prevail.

Section 5.2 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 Borrower or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 5.3 General Definitions. All capitalized terms not defined herein shall have the respective meanings set forth in the Deed of Trust. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Lender" shall mean "each Lender and any subsequent holder of the Note or any part thereof, the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Deed of Trust," the word "Property" shall include any portion of the Property and any interest therein, the phrases "attorneys' fees," "legal fees" and "counsel fees" shall include any and all attorney, paralegal and law clerk fees and disbursements, including, without limitation, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 5.4 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.

Section 5.5 Governing Law.

(A) THIS ASSIGNMENT WAS NEGOTIATED IN THE STATE OF NEW YORK (THE "STATE"), AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE, AND THE PROCEEDS OF THE NOTE WERE DISBURSED FROM THE STATE, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS ASSIGNMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO

PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF THE STATE, THE LAW OF THE STATE SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS ASSIGNMENT OR THE NOTE.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS ASSIGNMENT MAY, AT LENDER'S OPTION, BE INSTITUTED IN THE STATE IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, AND BORROWER WAIVES ANY OBJECTIONS THAT IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

Section 5.6 Notices. All notices or other written communications hereunder shall be delivered in accordance with the terms of the Deed of Trust.

Section 5.7 Waiver of Trial by Jury. BORROWER AND LENDER, EACH HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THIS ASSIGNMENT, THE NOTE, OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Section 5.8 Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 5.9 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.

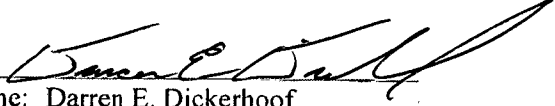
Section 5.10 Additional Borrower Covenants. Borrower hereby covenants and agrees that Borrower shall not, without the consent of Lender, (i) amend, modify or waive the provisions of any Lease or terminate, reduce rents under or shorten the term of any Lease, except pursuant to and in accordance with the provisions of the Note, this Assignment, the Deed of Trust and the other Loan Documents, or (ii) collect any Rents (exclusive of security deposits) more than thirty (30) days in advance of the time when the same shall become due. Borrower shall (unless such notice is contained in a Lease) deliver written notice of this Assignment in form and substance acceptable to Lender, to all present and future holders of any interest in any Lease, by assignment or otherwise. Borrower shall request the recipient of any such notice to acknowledge the receipt thereof.

Section 5.11 Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, Borrower has executed this Assignment the day and year first above written.

BORROWER:

DKM2, LLC, an
Oregon limited liability company

By: 
Name: Darren E. Dickerhoof
Title: Manager

ACKNOWLEDGEMENT

STATE OF OREGON)
) ss.
COUNTY OF BENTON)

I, DARIN F. COLE, a Notary Public in and for the said County in the State aforesaid, do hereby certify that **DARREN E. DICKERHOOF**, known to me to be the same person whose name is subscribed to the foregoing instrument as the manager of **DKM2, LLC**, an Oregon limited liability company, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said limited liability company, on behalf of the limited liability company, and as his own free and voluntary act, for the uses and purposes therein set forth.

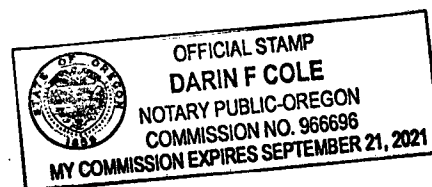
GIVEN under my hand and notarial seal this 3 day of February, 2020.


NOTARY PUBLIC, STATE OF OREGON

(Name of Notary Public, Print, Stamp or
Type as Commissioned)

☒ Personally known to me, or
☐ Produced Identification

(Type of Identification Produced)




[SIGNATURE APPEARS ON FOLLOWING PAGE]

BORROWER:

KFALLS CENTER, LLC, an
Oregon limited liability company

By: **BEN WAHLSTROM REVOCABLE TRUST**, its
Sole Member

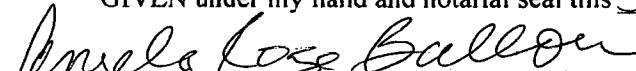
By: 

Name: Ben Wahlstrom
Title: Trustee

STATE OF Oregon)
COUNTY OF Deschutes) ss.

I, Angela Rose Ballou, a Notary Public in and for the said County in the State aforesaid, do hereby certify that **BEN WAHLSTROM**, known to me to be the same person whose name is subscribed to the foregoing instrument as the trustee of the **BEN WAHLSTROM REVOCABLE TRUST** the sole member of **KFALLS CENTER, LLC**, an Oregon limited liability company, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said limited liability company, on behalf of the limited liability company, and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3rd day of February, 2020.

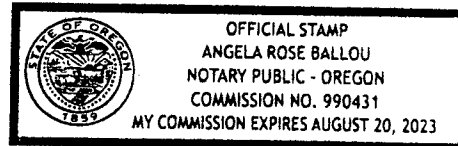

NOTARY PUBLIC, STATE OF Oregon

(Name of Notary Public, Print, Stamp or
Type as Commissioned)

☐ Personally known to me, or

☒ Produced Identification

Driver License
(Type of Identification Produced)



[SIGNATURE APPEARS ON FOLLOWING PAGE]

BORROWER:

L-39, LLC, an
Oregon limited liability company

By: Matthew G. Dickerhoof
Name: Matthew G. Dickerhoof
Title: Sole Member

ACKNOWLEDGEMENT

STATE OF)
) ss.
COUNTY OF)

I, Kristin Whisman, Notary Public in and for the said County in the State aforesaid, do hereby certify that **MATTHEW G. DICKERHOOF**, known to me to be the same person whose name is subscribed to the foregoing instrument as the manager of **L-39, LLC**, an Oregon limited liability company, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said limited liability company, on behalf of the limited liability company, and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4 day of February, 2020.

Kristin Whisman
NOTARY PUBLIC, STATE OF Oregon
(Name of Notary Public, Print, Stamp or
Type as Commissioned)

☐ Personally known to me, or

☒ Produced Identification

Drivers License
(Type of Identification Produced)



BORROWER:

RED KNIGHT, LLC, an
Oregon limited liability company

By: Richard A Carone
Name: Richard A. Carone
Title: Member

STATE OF OREGON)
) ss.
COUNTY OF BENTON)

I, DARIN F. COLE, a Notary Public in and for the said County in the State aforesaid, do hereby certify that **RICHARD A. CARONE**, known to me to be the same person whose name is subscribed to the foregoing instrument as the member of **RED KNIGHT, LLC**, an Oregon limited liability company, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said limited liability company, on behalf of the limited liability company, and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3 day of February, 2020.

Darin F. Cole
NOTARY PUBLIC, STATE OF OREGON
(Name of Notary Public, Print, Stamp or
Type as Commissioned)

☒ Personally known to me, or
☐ Produced Identification

(Type of Identification Produced)

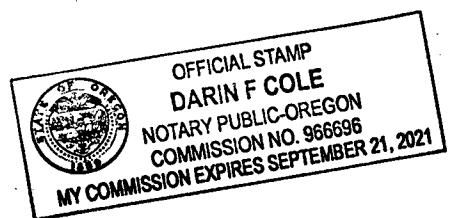


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the County of Klamath, State of Oregon, described as follows:

PARCEL 1 OF LAND PARTITION NO. 48-05, A REPLAT OF A PORTION OF LOTS 35 AND 44 OF ENTERPRISE TRACTS LOCATED IN THE WEST 1/2 OF THE NW1/4 OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON.

LESS AND EXCEPT THAT PORTION DEEDED TO THE CITY OF KLAMATH FALLS AND ITS SUCCESSORS AND ASSIGNS ON JULY 15, 2008 IN 2008-10156, RECORDS OF KLAMATH COUNTY, OREGON.

(EASEMENT PARCEL)

TOGETHER WITH RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT AS DISCLOSED BY DOCUMENT RECORDED DECEMBER 8, 1995 IN VOLUME M95 PAGE 33582, RECORDS OF KLAMATH COUNTY, OREGON.

ALSO TOGETHER WITH NONEXCLUSIVE EASEMENTS FOR COMMON PARKING AND REASONABLE PEDESTRIAN AND VEHICULAR ACCESS, INGRESS AND EGRESS OVER ALL PAVED DRIVEWAYS, ROADWAYS AND WALKWAYS AS PRESENTLY OR HEREAFTER CONSTRUCTED AND CONSTITUTING A PART OF THE COMMON AREA, AND FOR MAINTENANCE AS GRANTED IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED DECEMBER 21, 2005 AS DOCUMENT M05 71541, RECORDS OF KLAMATH COUNTY, OREGON.

EXHIBIT B

DESCRIPTION OF LEASES AND RENTS

As used in Subsection 1.1(a), the term “**leases**” shall mean all leases, subleases, licenses, franchises, concessions or grants of other possessory interests, tenancies, and any other agreements affecting the use, possession or occupancy of the Property or any part thereof (including, without limitation, guest rooms, restaurants, bars, conference and meeting rooms, and banquet halls and other public facilities), whether now or hereafter existing or entered into (including, without limitation, any use or occupancy arrangements created pursuant to Section 365(d) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Property) and all amendments, modifications, supplements, extensions or renewals thereof, whether now or hereafter existing and all amendments, modifications, supplements, extensions or renewals thereof. As used in Subsection 1.1(a) the term “**lease provisions**” shall mean the right to enforce, whether at law or in equity or by any other means, all terms, covenants and provisions of the Leases.

As used in Subsection 1.1(c), the term “**Rents**” shall mean all rents, issues, profits, royalties (including, without limitation, all oil and gas or other hydrocarbon substances), earnings, receipts, revenues, accounts, accounts receivable, security deposits and other deposits (subject to the prior right of the tenants making such deposits) and income, including, without limitation, fixed, additional and percentage rents, and all operating expense reimbursements, reimbursements for increases in taxes, sums paid by tenants to Borrower to reimburse Borrower for amounts originally paid or to be paid by Borrower or any of Borrower’s affiliates for which such tenants were liable, as, or example, tenant improvements costs in excess of any work letter, lease takeover costs, moving expenses and tax and operating expense pass-throughs for which a tenant is solely liable, parking, maintenance, common area, tax, insurance, utility and service charges and contributions, proceeds of sale of electricity, gas, heating, air-conditioning and other utilities and services, deficiency rents and liquidated damages, and other benefits now or hereafter derived from any portion of the Property or otherwise due and payable or to become due and payable as a result of any ownership, use, possession, occupancy or operation thereof and/or services rendered, goods provided and business conducted in connection therewith (including, without limitation, any payments received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or other occupants of any portion of the Property and all claims as a creditor in connection with any of the foregoing) and all cash or security deposits, advance rentals, and all deposits or payments of a similar nature relating thereto, now or hereafter, including during any period of redemption, derived from the Property or any portion thereof and all proceeds from the cancellation, surrender, sale or other disposition of the Leases.