

2020-016501

Klamath County, Oregon

12/18/2020 08:14:03 AM

Fee: \$167.00

EXECUTION VERSION

This instrument was prepared by
and once recorded return to:

Philip M. J. Edison, Esq.
Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603
(312)-845-3905

Tax Account Numbers: 3809-032AC-10500-000; 3809-032AC-10500-000

ASSIGNMENT OF LEASES AND RENTS

KLAMATH FALLS HOLDINGS, LLC,

(Assignor)

to

UMB BANK, N.A., as Collateral Trustee

(Assignee)

EFFECTIVE: As of December 10, 2020

LOCATION: 355 Timbermill Drive
Klamath Falls, Oregon

COUNTY: Klamath

This ASSIGNMENT OF LEASES AND RENTS ("*Assignment*") effective as of December 10, 2020, is made by KLAMATH FALLS HOLDINGS, LLC, a limited liability company organized and existing under the laws of the State of Oregon, having an address at 2870 Nansen Drive, Medford, Oregon 97504, as assignor ("*Assignor*"), to UMB BANK, N.A., as collateral trustee pursuant to that certain Trust Indenture and Security Agreement, dated as of even date herewith, and having an address at 6440 S. Millrock Drive, Suite 400, Salt Lake City, Utah, 84121, Attention: Corporate Trust and Escrow Services, as assignee ("*Assignee*") for the benefit of the purchasers of the below defined Notes (the "*Purchasers*").

WITNESSETH:

WHEREAS, Assignor shall sell its Notes (as defined in the Deed of Trust) to finance the construction of the Improvements and to pay costs of issuance. The Notes evidence indebtedness in the aggregate principal sum of \$38,064,000 which includes \$1,509,396.20 of construction period interest that will be paid on the 25th day of each month from and after the date hereof through March 25, 2022. The maximum purchase price of the Notes to be paid by the Purchasers shall not exceed \$38,064,000.

WHEREAS, the Notes are secured by, among other things, a (i) Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of the date hereof (the "*Deed of Trust*") from the Assignor to the Assignee, creating a valid and perfected first mortgage lien on the Property located in Klamath County, Oregon (more particularly described on *Exhibit A* attached hereto) and (ii) a Trust Indenture and Security Agreement dated as of the date hereof (the "*Trust Indenture*"), among Assignor, the Assignee and the Purchasers, pursuant to which rents shall be paid by the State of Oregon, by and through its Department of Human Services (the "*Tenant*") under that certain State of Oregon Lease, dated as of March 27, 2018, between Assignor and Tenant (such lease as it may heretofore or hereafter be assigned, amended, supplemented or modified and any replacement thereof is herein referred to as the "*Lease*") to the Assignee for the benefit of the Purchasers.

WHEREAS, Assignor has also delivered that certain Indemnity and Guaranty Agreement (the "*Indemnity and Guaranty Agreement*"), dated as of the date hereof, executed by RUBICON INVESTMENTS CORPORATION, an Oregon corporation and DANIEL BUNN and GEORGIA BUNN, each an individual (collectively, jointly and severally, the "*Guarantors*"), delivered to the Assignee for the benefit of the Purchasers.

WHEREAS, Assignor desires to secure the payment of the principal sum, interest, make whole amount or other premium and all other sums due and payable under the Notes, the Deed of Trust, this Assignment and the other Operative Agreements and the performance of all of its obligations under the Notes and the Secured Indebtedness as defined in the Deed of Trust.

WHEREAS, capitalized terms not otherwise defined in this Assignment shall have the meaning ascribed to such terms in the Deed of Trust.

ARTICLE 1
ASSIGNMENT

Section 1.1. Assignment. In addition to, and not in contravention of, Section 1.3 or Article III of the Deed of Trust, Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to further secure the payment and performance by Assignor of all Secured Indebtedness hereby absolutely and unconditionally assigns, transfers and grants to Assignee the following property, rights, interests and estates, now owned, or hereafter acquired, by Assignor:

(a) *Lease.* To the extent permitted by applicable law, the Lease and all right, title and interest of Assignor, its successors and assigns, therein and thereunder.

(b) *Other Leases and Agreements.* All other leases, subleases and other agreements, if any, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, together with any extension, renewal or replacement of the same and for which Assignor is entitled to receive payment of the rent thereunder other than the lease for the Commercial Office Suite (collectively, the "*Other Leases*"), this assignment of the Other Leases being effective without further or supplemental assignment.

(c) *Rents.* All Rents.

(d) *Bankruptcy Claims.* All of Assignor's claims and rights (the "*Bankruptcy Claims*") to the payment of damages arising from any rejection by the Tenant of the Lease or any other tenant under the Other Leases under the Bankruptcy Code, 11 U.S.C. §101 *et seq.*, as the same may be amended (the "*Bankruptcy Code*") or under similar bankruptcy or receivership laws.

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

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

(g) *Other.* All rights, powers, privileges, options and other benefits of Assignor as lessor under the Lease and the Other Leases and beneficiary under the Lease Guaranties, including without limitation, (A) the immediate and continuing right to make claims for, receive, collect and receipt for, all Rents payable or receivable under the Lease and the Other Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Secured Indebtedness) and to do all other things which Assignor or any lessor is or may become entitled to do under the Lease, the Other Leases or the Lease Guaranties; (B) jointly with Assignor, but subject to the terms of the Operative

Agreements, the right to pursue and collect any claim in bankruptcy or receivership proceedings of the Tenant, any other tenant under the Other Leases or any Lease Guarantor; (C) jointly with Assignor, but subject to the terms of the Operative Agreements, the right to accept or reject any offer made by the Tenant, any other tenant under the Other Leases or any Lease Guarantor to purchase the Property or any part thereof and any other property subject to the Lease, the Other Leases or any Lease Guaranty and to perform all other necessary or appropriate acts with respect to such purchases; (D) the right to make all waivers and agreements, to give and receive all notices, consents and releases, and to take such action upon the happening of a default beyond applicable cure periods, if any, and the continuation thereof under the Lease, the Other Leases or any Lease Guaranty as Assignor shall have the right under the Lease, the Other Leases or any Lease Guaranty or at law to take, including the right to commence, conduct and consummate eviction proceedings; (E) the right, at Assignee's option, upon reasonable advance notice and subject to the rights of Tenant under the Lease to enter upon the Property or any portion thereof in person, by agent or by court-appointed receiver; and (F) during the existence of an Event of Default, Assignor's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in the Deed of Trust in accordance with the terms thereof, and any or all other actions designated by Assignee for the proper management and preservation of the Property.

Section 1.2. Consideration. This Assignment is made in consideration of that certain extension of credit made by Assignee to Assignor evidenced by the Notes and secured by the Deed of Trust given by Assignor to or for the benefit of Assignee, dated the date hereof, covering the Property and intended to be duly recorded.

Section 1.3. Perfection. The Assignment by Assignor of the property described in Section 1.1 is intended to be perfected upon the recording of this Assignment as provided in ORS 93.806.

ARTICLE 2 COVENANTS

Section 2.1. Obligations and Terms Respecting the Lease, the Other Leases and the Lease Guaranties.

(a) *Obligations and Terms Respecting the Lease, the Other Leases, and the Lease Guaranties.*

(i) At all times the Property shall be leased to the Tenant under the Lease, *provided that*, (x) the Commercial Office Suite may be leased to the commercial use Tenant and (y) to the extent permitted thereby and by the SNDA Agreement (as defined in the Deed of Trust), the Lease may be assigned or the Property sublet by the Tenant upon the terms and conditions set forth in the Lease and in the SNDA Agreement. The Assignor will punctually perform all obligations, covenants and agreements by it to be performed under the Lease, the Other Leases and the Lease Guaranties strictly in accordance with the terms thereof, and will at all times do all things reasonably necessary (up to and including litigation) to compel performance by the Tenant any other tenant under the Other Leases

and the Lease Guarantors of all covenants and agreements by them to be performed under the Lease, the Other Leases or the Lease Guaranties, as applicable. The Assignor will take no action and permit no action to be taken by other Persons which will release the Tenant, any other tenant under the Other Leases or any Lease Guarantor from their obligations and liabilities under the Lease, the Other Leases or the Lease Guaranties, as applicable, or result in the termination, amendment or modification (except with respect to an amendment or modification, to the extent specifically set forth in Section 2.2 hereof or otherwise permitted under the Operative Agreements), or impair the validity of, the Lease, the Other Leases or the Lease Guaranties, as applicable. The Assignor will give to the Assignee notice of all defaults by the Tenant, any other tenant under the Other Leases or any Lease Guarantor, as applicable, under the Lease, the Other Leases or the Lease Guaranties, promptly after they have become known to the Assignor. Neither this Assignment nor any action or inaction on the part of the Assignee shall constitute an assumption on the part of the Assignee of any obligation to the Tenant, any other tenant under the Other Leases or any Lease Guarantor or any other Person under the Lease, the Other Leases or the Lease Guaranties. No action or inaction on the part of the Assignor shall adversely affect or limit in any way the rights of the Assignee under this Assignment, or, through this Assignment, under the Lease, the Other Leases or the Lease Guaranties.

(ii) The Assignor will not, except with the prior written consent of the Assignee, take or suffer to be taken any action or consent to or permit any prepayment or discount of Rents or payment of Rents more than one month in advance, under the Lease, the Other Leases or the Lease Guaranties; provided that, notwithstanding the foregoing, Assignee hereby acknowledges and agrees that, pursuant to Section 5.4 of the Lease, Assignor may provide for three (3) months of free Monthly Base Rent (as defined in the Lease) in months 1, 2 and 3 of the Lease, as well as a Moving Allowance (as defined in the Lease) of \$184,000 applied as a credit against Monthly Base Rent in month 4 of the Lease.

(iii) The Assignor will not, without the prior written consent of the Assignee (to the extent the action of the Assignor is required for any of the following actions):

(A) declare a default or exercise the remedies of the landlord under, or terminate, modify (except with respect to a modification specifically set forth in Section 2.2 hereof or otherwise permitted under the Operative Agreements) or accept a surrender of, or exercise any recapture rights, or offer or permit any termination, modification or surrender of, the Lease, the Other Leases or the Lease Guaranties, or any reciprocal easement or restrictive covenant agreement or similar agreement running with the land or create or consent to the creation or existence of any Deed of Trust or other lien to secure the payment of indebtedness upon the landlord's interest under the Lease or the leasehold estate created thereby, the Other Leases or the Lease Guaranties or any part thereof, subject, however, to the Tenant's rights to assign its interest in the Lease in accordance with the terms thereof; or

(B) assign, transfer or hypothecate any Rents or other payment due or to become due under the Lease, the Other Leases or the Lease Guaranties or anticipate any Rents or other payment thereunder, except in connection with the Operative Agreements.

(iv) The Assignor acknowledges that the Assignee has directed the Tenant in that certain Letter of Direction dated the date hereof to deliver or remit directly to the Escrow Agent, all Rents (including, without limitation, all fixed rent, basic rent, percentage rent and all additional rent), income, revenues, issues, profits, insurance proceeds, condemnation awards, liquidated damages, purchase price proceeds and other payments, tenders and security now or hereafter due and payable to or receivable by the Assignor under the Lease, such amounts to be paid directly to the Escrow Agent in the manner provided therein or in such other manner as the Assignee may from time to time designate. All amounts received by the Escrow Agent shall be applied in the manner provided herein and in the Escrow and Servicing Agreement. The Assignor hereby agrees to send to the Assignee, in accordance with Section 6.13 of the Deed of Trust, copies of all notices and all other instruments or communications required or permitted to be given by the Assignor under the Lease, the Other Leases and the Lease Guaranties pursuant thereto.

(v) Notwithstanding anything to the contrary set forth in the SNDA Agreement or any other document, the Assignor agrees that it will not enter into any agreement subordinating, amending, supplementing (except with respect to an amendment or supplement specifically set forth in Section 2.2 hereof or permitted under the Operative Agreements), hypothecating, waiving, discharging or terminating the Lease, the Other Leases or any Lease Guaranty or this Assignment without the Assignee's prior written consent thereto, and that any attempted subordination, amendment, supplement, hypothecation, waiver, discharge or termination without such consent shall be void. The Assignor will not terminate the Lease, the Other Leases or any Lease Guaranty in the event of default without the express prior written consent of the Assignee. In the event that the Lease, the Other Leases or any Lease Guaranty shall be amended or supplemented as herein permitted, the Lease, the Other Leases and the Lease Guaranties as so amended or supplemented shall continue to be subject to the provisions of this Assignment without the necessity of any further act by any of the parties hereto.

(vi) The Lease Assignment set forth in this Section 2.1 shall run with the land and be good and valid against the Assignor or those claiming by, under or through the Assignor, from the date hereof and such assignment shall continue to be operative during the foreclosure or any other proceeding taken to enforce this Assignment. In the event of a sale or foreclosure which shall result in a deficiency, such assignment shall stand as security during the redemption period for the payment of such deficiency. The Assignee shall be permitted, at its sole option, to exercise remedies under such assignment separately from remedies exercised against other portions of the Property.

Section 2.2. Excepted Rights. Notwithstanding anything to the contrary contained in this Assignment, this Assignment is in all respects subject to Assignor's right prior to the occurrence of a Default (provided that Assignor shall be entitled to exercise the rights set forth in this Section

2.2 (i) if a non-monetary Default has occurred but Assignor is actively in the process of curing same, or (ii) after any Default hereunder has been cured) or an Event of Default, but not to Assignee's exclusion (a) to receive from the Tenant certificates and other documents and information that the Tenant is required to give or furnish to Assignor in accordance with the Lease, (b) to inspect the Property and all records relating thereto, (c) to demand performance or observance by the Tenant under the Lease of the applicable terms, conditions and agreements of the Lease as allowed by law, equity, or the Lease, and (d) subject to the terms and restrictions placed upon the Assignor in the Operative Agreements, perform the duties and responsibilities of a "landlord" of real property; *provided, however*, Assignor may not (1) accelerate payment of Rent, or (2) give any notice, sue or pursue any remedy or take any action under the Lease that might have the effect of (A) terminating the Lease, (B) dispossessing the Tenant, (C) declaring the Lease forfeited or terminated, (D) reducing any of the obligations of the Tenant under the Lease, or (E) adversely affecting the rights of Assignor as landlord under the Lease, the value of the Property or the rights or interests of Assignee under the Operative Agreements, without in each instance Assignee's prior written consent which Assignee may grant or withhold in its sole discretion.

ARTICLE 3 TERMS OF ASSIGNMENT

Section 3.1. Present Assignment. Assignor hereby absolutely and unconditionally assigns to Assignee all of Assignor's right, title and interest in and to the Lease all current and future Other Leases and Rents; it being intended by Assignor that this assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Assignor hereby presently, unconditionally and irrevocably designates Assignee to receive, and directs the Tenant to pay to Assignee or its designated servicer, all payments, payable or receivable under the Lease (including, without limitation, all Rents and other sums payable to the landlord under the Lease). Any Rents collected by Assignor shall be held in trust by Assignor for the sole and exclusive benefit of Assignee, and Assignor shall, within three (3) business days after receipt of any Rents, deliver the same to Assignee subject to and in accordance with the terms of the Operative Agreements. All payments received by Assignee shall be applied as set forth in the Deed of Trust and the Escrow and Servicing Agreement. Assignor agrees to execute and deliver to Assignee such additional instruments, in form and substance reasonably satisfactory to Assignee, as may hereinafter be requested by Assignee to further evidence and confirm said assignment, *provided* that no such documents shall increase Assignor's obligations or liabilities or decrease Assignor's rights. Assignee is hereby granted and assigned by Assignor the right to enter the Property subject to the terms of the Lease for the purposes of enforcing its interest in the Lease and the Other Leases and the Rents, which right Assignee shall not exercise in the absence of an Event of Default. Upon the occurrence of an Event of Default, Assignee shall immediately be entitled to possess the Lease and the Other Leases and exercise all rights of landlord under the Lease and the Other Leases, whether or not Assignee enters upon and takes control of the Property. Assignor hereby grants and assigns to Assignee the right, at its option, upon the occurrence of an Event of Default to enter upon the Property in person, by agent or by court-appointed receiver.

ARTICLE 4 REMEDIES

Section 4.1. Remedies of Assignee. Upon or at any time after the occurrence of a default under this Assignment, or an Event of Default occurs under the Deed of Trust (a "Default"), Assignee personally or by agents or attorneys may, subject always to the then existing rights, if any, of the Tenant or any permitted subtenant or assignee under the Lease or Other Lease and to the extent permitted by law (i) enter into and take possession of all or any part of the Property, and may forthwith use, operate, manage, insure, repair and improve the Property and take any other action which, in Assignee's judgment, is necessary or proper to conserve the value of the Property, (ii) collect and receive all earnings, revenues, rents, issues, profits and income from the Property or any part thereof (and for such purpose Assignor does hereby irrevocably constitute and appoint Assignee its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, Assignor irrevocably acknowledging that any payment made to Assignee hereunder shall be a good receipt and acquittance against Assignor to the extent so made), (iii) pay all principal charges including taxes and assessments levied thereon and operating and maintenance expenses and all disbursements and liabilities of Assignor hereunder and (iv) apply the net proceeds arising from any such operation of the Property as provided in Section 5.2 of the Deed of Trust in respect of the proceeds of a sale of the Property. The right to enter and take possession of the Property and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Assignee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby and which Assignor promises to pay within ten (10) days after demand (such demand to include invoices or statements relating to the expenses incurred) together with interest at the Default Rate if such are not paid by Assignor within such ten (10) day period. The Assignee shall not be liable to account to Assignor for any action taken pursuant hereto other than to account for any rents actually received by Assignee. Without taking possession of the Property, Assignee may, in the event the Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute additional Secured Indebtedness payable within ten (10) days after demand (such demand to include invoices or statements relating to the expenses incurred) with interest thereon at the Default Rate if such are not paid by Assignor within such ten (10) day period.

Section 4.2. Other Remedies. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Notes, the Deed of Trust, or the other Operative Agreements and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Secured Indebtedness and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignor 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 Assignor under this Assignment, the Notes, the Deed of Trust, the other

Operative Agreements or otherwise with respect to the Notes secured hereby (other than payment or performance thereof) in any action or proceeding brought by Assignee to collect the same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Notes, the Deed of Trust, or any of the other Operative Agreements (*provided, however, that the foregoing shall not be deemed a waiver of Assignor'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 Assignor's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Assignee in any separate action or proceeding*).

Section 4.3. Other Security. Assignee may take or release other security for the payment of the Secured Indebtedness, 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 Secured Indebtedness without prejudice to any of its rights under this Assignment.

Section 4.4. Non-Waiver. The collection of the Rents and sums due under the Lease and Lease Guaranties and the application thereof as herein provided by Assignee shall not be considered a waiver of any default by Assignor under the Notes, the Deed of Trust, the Lease, this Assignment or the other Operative Agreements. The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (a) the failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Deed of Trust, the Notes or the other Operative Agreements, (b) the release, regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Notes, the Deed of Trust or the other Operative Agreements. Assignee may resort for the payment of the Secured Indebtedness to any other security held by Assignee in such order and manner as Assignee, in its discretion, may elect. Assignee may take any action to recover the Secured Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

Section 4.5. Bankruptcy. Assignee shall have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of the Lease or any Other Lease, including, without limitation, the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the Tenant or any other tenant under the Lease or any Other Leases under the Bankruptcy Code or any applicable bankruptcy or receivership laws.

ARTICLE 5
NO LIABILITY, FURTHER ASSURANCES

Section 5.1. No Liability of Assignee. This Assignment shall not be construed to bind Assignee to the performance of any of the covenants, conditions or provisions contained in the Lease or Lease Guaranty or otherwise impose any obligation upon Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property after a Default or from any other act or omission of Assignee in managing the Property after a Default. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Lease, the Other Leases or any Lease Guaranties or by reason of this Assignment. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Lease, the Other Leases or any Lease Guaranties; nor shall it operate to make Assignee 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 Material (as defined in the applicable Operative Agreements), 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 unless resulting from the gross negligence, intentional misconduct or bad faith of Assignee.

Section 5.2. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee.

Section 5.3. Further Assurances. Assignor will, at the cost of Assignor, and without expense to Assignee, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Assignee shall, from time to time, reasonably require for the better assuring, conveying, assigning, transferring and confirming unto Assignee the property and rights hereby assigned, or which Assignor may be or may hereafter become bound to convey or assign to Assignee, 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, reasonably promptly after demand, will execute and deliver and hereby authorizes Assignee, in the event that Assignor does not reasonably promptly so execute, to execute in the name of Assignor to the extent Assignee may lawfully do so, one or more financing statements, chattel mortgages or comparable mortgages, to evidence more effectively the lien and security interest hereof in and upon the Lease or the Other Leases, *provided* that no such documents shall increase Assignor's obligations or liabilities or decrease Assignor's rights.

Section 5.4. Limitations of Liability. Notwithstanding anything to the contrary contained in the Operative Agreements, except as set forth in the Indemnity and Guaranty Agreement and the Environmental Indemnity, no Person who directly or indirectly owns any membership or other equity interest in the Assignor (each, a "*Non-Recourse Person*") shall have any personal liability for (i) the payment of any sum of money which is or may be payable under the Notes or any other Operative Agreement, including, but not limited to, the repayment of the Secured Indebtedness or (ii) the performance or discharge of any covenants, obligations, indemnities, warranties, representations, agreements or undertakings of the Assignor, whether monetary or non-monetary,

under any Operative Agreement, and no monetary or deficiency judgment shall be sought or enforced against any Non-Recourse Person with respect thereto. Nothing in this Section 5.4 is intended to or shall in any way affect or invalidate any lien or security interest created by the Deed of Trust or this Assignment. This Section 5.4 shall not be construed to prohibit the joining of the Assignor in any foreclosure procedure involving the Property. This Section 5.4 shall not in any way affect the obligations of the Tenant under the Lease, any other tenant under the Other Leases or any Lease Guarantor.

ARTICLE 6 DEPOSITS, RELOCATIONS

Section 6.1. Security Deposits. All security deposits of lessees, if any, whether held in cash or any other form, shall be deposited in escrow with Assignee and held in accordance with the terms of the Escrow and Servicing Agreement.

ARTICLE 7 MISCELLANEOUS PROVISIONS

Section 7.1. 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 7.2. 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 Assignor or Assignee, 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 7.3. Certain Definitions. 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 "Assignor" shall mean "each Assignor and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Assignee" shall mean "Assignee and any subsequent holder of the Notes," the word "Notes" shall mean "the Notes and any other evidence of indebtedness secured by the Deed of Trust," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, the phrases "attorneys' fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Assignee in protecting its interest in the Property, the Lease, the Other Leases and the Rents and enforcing its rights hereunder, and the word "Secured Indebtedness" shall mean the principal balance of the Notes with interest thereon as provided in the Notes and the Deed of Trust and all other sums due pursuant to the Notes, the Deed of Trust, this Assignment and the other Operative Agreements.

Section 7.4. Authority. Assignor represents and warrants that it has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Property.

Section 7.5. 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 7.6. Duplicate Originals; Counterparts. This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 7.7. Choice of Law; Jurisdiction. **ASSIGNOR AND ASSIGNEE AGREE THAT THE STATE OF NEW YORK HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY AND BY THE OTHER OPERATIVE AGREEMENTS, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS ASSIGNMENT, THE NOTES AND THE OTHER OPERATIVE AGREEMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER OPERATIVE AGREEMENTS (OTHER THAN WITH RESPECT TO LIENS AND SECURITY INTERESTS IN PROPERTY WHOSE PERFECTION AND PRIORITY IS COVERED BY ARTICLE 9 OF THE UCC (INCLUDING, WITHOUT LIMITATION, THE ACCOUNTS) WHICH SHALL BE GOVERNED BY THE LAW OF THE JURISDICTION APPLICABLE THERETO IN ACCORDANCE WITH SECTIONS 9-301 THROUGH 9-307 OF THE UCC AS IN EFFECT IN THE STATE OF NEW YORK) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL OPERATIVE AGREEMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, ASSIGNOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS ASSIGNMENT, THE NOTES AND THE**

OTHER OPERATIVE AGREEMENTS, AND THIS ASSIGNMENT, THE NOTES AND THE OTHER OPERATIVE AGREEMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW EXCEPT AS SPECIFICALLY SET FORTH ABOVE.

Assignor, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, (1) submits to personal jurisdiction for purposes of this Assignment in the state where the Property is located over any suit, action or proceeding by any person arising from or relating to this Assignment, (2) agrees that any such action, suit or proceeding may be brought, for purposes of this Assignment in any state or federal court of competent jurisdiction sitting in the state where the Property is located, (3) submits to the jurisdiction of such courts, and, (4) to the fullest extent permitted by law, agrees that it will not bring any action, suit or proceeding in any other forum except as permitted by any other Operative Agreement. Assignor further consents and agrees to service of any summons, complaint or other legal process in any such suit, action or proceeding by registered or certified U.S. mail, postage prepaid, to Assignor at the address set forth herein, and consents and agrees that such service shall constitute in every respect valid and effective service (but nothing herein shall affect the validity or effectiveness of process served in any other manner permitted by law).

Section 7.8. Termination of Assignment. Upon payment in full of the Secured Indebtedness, this Assignment shall be void and of no effect, as evidenced by the cancellation of record and/or such other reasonable and customary documents as are necessary to release the liens created hereunder.

Section 7.9. Notices. All communications, notices, demands and requests provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when received (or refused) delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, or by prepaid overnight air courier, addressed as follows:

If to Assignor:

Klamath Falls Holdings, LLC
2870 Nansen Drive
Medford, Oregon 97504
Attention: Daniel Bunn

with a copy to:

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101
Attention: Chian Wu

If to Assignee:

UMB Bank, N.A., as Collateral Trustee
6440 S. Millrock Drive, Suite 400
Salt Lake City, Utah 84121

Attention: Corporate Trust and Escrow Services

with a copy to:

Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603
Attention: Philip M. J. Edison, Esq.

and with a copy to:

Elyssa K. McMullen
Senior Vice President | Lease Finance Group
Prudential Private Capital
655 Broad Street, 16th Floor
Newark, New Jersey 07102
elyssa.mcmullen@prudential.com

or as to either party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

Section 7.10. Waiver of Trial by Jury. Assignor and Assignee hereby waive, 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 Notes, the application for the extension of credit evidenced by the Notes, this Assignment, the Deed of Trust or the other Operative Agreements or any acts or omissions of Assignee, its officers, employees, directors or agents in connection therewith.

Section 7.11. Liability. If Assignor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

Section 7.12. Headings, Etc. The headings and captions of various paragraphs 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 7.13. Number and Gender. 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 7.14. Sole Discretion of Assignee. Wherever pursuant to this Assignment (a) Assignee exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Assignee, or (c) any other decision or determination is to be made by Assignee, the decision of Assignee to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by

Assignee, shall be in the sole discretion of Assignee, except as may be otherwise expressly and specifically provided herein.

Section 7.15. Successors and Assigns. This Assignment, together with the covenants and warranties therein contained, shall inure to the benefit of Assignee and Assignor and their successors and assigns, including, with respect to Assignee any subsequent holder of the Deed of Trust, and shall be binding upon Assignee and Assignor, and their respective heirs, executors, administrators, successors and assigns and, with respect to Assignor any subsequent owner of the Property.

Section 7.16. Recitals. The recitals are a substantive portion of this Assignment and are incorporated by reference as though set forth herein in full.

Section 7.17. Concerning the Assignee. It is expressly understood and agreed by the parties hereto that, except as set forth in Section 5.1(c) of the Trust Indenture (a) this Assignment is executed and delivered to UMB Bank, N.A. not in its individual or personal capacity but solely in its capacity as Collateral Trustee under the Trust Indenture on behalf of the holders of the Notes, in the exercise of the powers and authority conferred and vested in it as Collateral Trustee under the Trust Indenture, subject to the rights, protections, indemnities and limitations from liability afforded to the Collateral Trustee thereunder; (b) in no event shall UMB Bank, N.A., in its individual capacity have any liability for the representations, warranties, covenants, agreements or other obligations of the holders of the Notes hereunder, as to all of which recourse shall be had solely to the Granted Collateral (as defined in the Trust Indenture); (c) nothing contained herein shall be construed as creating any liability on UMB Bank, N.A., individually or personally, to perform any expressed or implied covenant, duty or obligation of any kind whatsoever contained herein; and (d) under no circumstances shall UMB Bank, N.A., be personally liable for the payment of any fees, costs, indebtedness or expenses of any kind whatsoever or be personally liable for the breach or failure of any obligation, representation, agreement, warranty or covenant whatsoever made or undertaken by the Collateral Trustee hereunder, except to the extent of Collateral Trustee's willful misconduct, bad faith or gross negligence (or ordinary negligence in connection with the handling of funds).

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY LENDER CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY LENDER TO BE ENFORCEABLE.

[signature page follows]

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

ASSIGNOR:

KLAMATH FALLS HOLDINGS, LLC, an Oregon
limited liability company

By: Rubicon Investments Corporation
Its: Manager

By: 

Name: Daniel L. Bunn

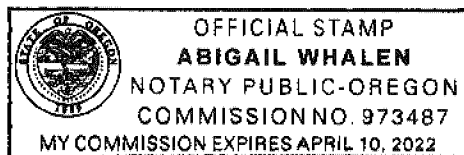
Title: President and Chief Executive Officer

STATE OF OREGON;

COUNTY OF Jackson;

On this the 3rd day of December, 2020, before me, Abigail Whalen, the undersigned officer, personally appeared Daniel L. Bunn, who acknowledged himself to be the President and Chief Executive Officer of Rubicon Investments Corporation, the Manager of Klamath Falls Holdings, LLC, an Oregon limited liability company, and acknowledged the foregoing instrument as his free act and deed in said capacity and the free act and deed of Assignor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



My Commission Expires:

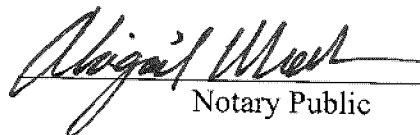

Notary Public

EXHIBIT A
LEGAL DESCRIPTION

Lot 10, Tract 1430, Timbermill Shores, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.

EXCEPTING THEREFROM the Southeasterly 16 feet thereof.

AND

Lots 12 and 13, Tract 1430, Timbermill Shores, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.