

4493100

2021-010405

Klamath County, Oregon

07/02/2021 02:07:01 PM

Fee: \$142.00

RECORDING REQUESTED BY:

AND WHEN RECORDED RETURN TO:

Ally Bank
5851 Legacy Circle, Suite 200
Plano, Texas 75024

Attention: Taylor Jordan

TITLE OF DOCUMENT:

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND
FIXTURE FILING

GRANTOR:

KLAMATH FALLS PROPERTY HOLDINGS LLC, an Oregon limited liability company, Grantor and
Borrower

BENEFICIARY:

ALLY BANK (Ally Capital in Hawaii, Mississippi, Montana and New Jersey), a Utah state-chartered
bank, Beneficiary and Bank

TRUSTEE:

AMERITITLE, LLC, Trustee

BRIEF DESCRIPTION OF REAL PROPERTY:

2810 & 2800 Washburn Way, & East Side of Washburn Way, North of Hilyard Ave, Klamath Falls,
Klamath County, Oregon 97603

Tax Id Number(s): R531491, R531455, R531516, R899893, R890199 & R527353

LEGAL DESCRIPTIONS OF REAL PROPERTY:

See Schedule "A" attached hereto.

**NOTICE TO RECORDER AND OTHERS: THIS DOCUMENT IS ALSO A FIXTURE FILING
ACCORDING TO THE APPROPRIATE SECTION OF THE UNIFORM COMMERCIAL
CODE IN THE STATE IN WHICH THE PROPERTY IS LOCATED**

LINE OF CREDIT INSTRUMENT

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FIXTURE FILING**

- A. This Deed of Trust is made this 30th day of June, 2021, by KLAMATH FALLS PROPERTY HOLDINGS LLC, an Oregon limited liability company, with a mailing address of 2880 Washburn Way, Klamath Falls, Oregon 97603 ("Grantor" or Borrower"), to AMERITITLE, LLC ("Trustee"), in favor of ALLY BANK (Ally Capital in Hawaii, Mississippi, Montana and New Jersey), a Utah state-chartered bank, with a local business office currently located at 535 Anton Blvd, Suite 300, Costa Mesa, CA 92626 ("Beneficiary" or "Bank").
- B. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor irrevocably grants, conveys, bargains, sells and warrants to Trustee, in trust, with power of sale and right of entry and possession:
1. All of Grantor's fee simple right, title, and interest in the property more particularly described in attached Schedule A, including, without limitation, any and all appurtenances thereto, and any and all buildings, structures, fixtures, and improvements thereon, whether now or later existing (the foregoing collectively, "Property").
 2. Any and all existing and future leases, subleases, and other agreements affecting the use, enjoyment, or occupancy of the Property, including all extensions, renewals, and/or replacements thereof (collectively, "Leases");
 3. All rents, revenues, profits, and other benefits arising under Leases or relating to the Leases and/or Property ("Rents");
 4. All of Borrower's rights under or relating to the Leases, including, without limitation, the rights to:
 - a. Claim, receive, collect, and pay all Rents payable or receivable under the Leases;
 - b. Apply such Rents to Borrower's Obligations; and
 5. All of Grantor's other personal property assets (collectively, the "Personal Property"), accounts; instruments; equipment; general intangibles; chattel paper; cash and cash equivalents; documents; deposit and other accounts with banks and other financial institutions; fixtures; books and records, whether written, electronic, or other media ("Books and Records"); any and all agreements, certificates, instruments, permits, licenses, plans, specifications, and other documents now existing or later arising, and Grantor's rights therein, related to the use, occupation, enjoyment, construction, management, or operation of the Property; and all proceeds of the foregoing.
- C. This Deed of Trust shall be a security agreement between Grantor, as the debtor, and Beneficiary, as the secured party, covering the portion of the Collateral constituting Personal Property or fixtures governed by the Oregon Uniform Commercial Code (hereinafter called the "Code"), and for the purpose of further securing payment and performance of the Obligations, Grantor grants to Beneficiary a security interest and lien in all rights, titles and interests now owned or hereafter acquired by Grantor in the portion of the Collateral constituting personal property or fixtures governed by the Code (the "Article 9 Collateral"). In addition to Beneficiary's other rights

hereunder, Beneficiary shall have all rights of a secured party under the Code. Grantor shall execute and deliver to Beneficiary all financing statements that may be required by Beneficiary to establish and maintain the validity and priority of Beneficiary's security interest in the Article 9 Collateral, and Grantor shall bear all costs thereof, including all Code searches reasonably required by Beneficiary.

Grantor shall give advance notice in writing to Beneficiary of any proposed change in Grantor's name, identity, or structure and shall execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the Collateral described or referred to herein.

- D. Grantor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Beneficiary all of Grantor's right, title and interest, now existing or hereafter arising, in and to the Leases and Rents. Notwithstanding that this assignment is effective immediately, so long as no default exists, Grantor shall have the privilege under a revocable license granted hereby to operate and manage the Property and to collect, as they become due, but not more than one (1) month prior to accrual, the Rents. Grantor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Property, including, without limitation, the payment of taxes and insurance, and the payment of interest, principal and other sums becoming due under the Obligations, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Grantor shall automatically, without notice or any other action by Beneficiary, terminate upon the occurrence of a default, and all Rents subsequently collected or received by Grantor shall be held in trust by Grantor for the sole and exclusive benefit of Beneficiary. Nothing contained in this Section D, and no collection by Beneficiary of Rents, shall be construed as imposing on Beneficiary any of the obligations of the lessor under the Leases.

In no event shall this reference diminish, alter, impair, or affect any other rights and remedies of Beneficiary, including but not limited to, the appointment of a receiver, nor shall any provision in this Section diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth herein. In addition, this assignment shall be fully operative without regard to value of the Property or without regard to the adequacy of the Property to serve as security for the obligations owed by Grantor to Beneficiary. Upon the occurrence of a default, Beneficiary may, without entering into possession or pursuing any other remedy as provided in this section or at law or in equity, or in conjunction with such possession or pursuit of other remedy, give notice, to any or all lessees authorizing and directing said lessees to pay Rents directly to Beneficiary.

Grantor shall timely perform all of its obligations under the Leases. Grantor represents and warrants that: (i) Grantor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; and (ii) no other assignment of any interest in any of the Leases or Rents has been made.

Notwithstanding anything to the contrary contained in this Deed of Trust, this Section D is intended to create an assignment of rents under Oregon Revised Statutes ("ORS"). During the existence of a default, Beneficiary may exercise its rights relating to the Leases and Rents in its sole discretion and without prejudice to any particular remedy, as provided herein or as otherwise allowed by applicable law, and any replacement statute relating to the assignment of rents.

Notwithstanding anything herein to the contrary, Beneficiary is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

E. This Deed of Trust secures payment and performance of any and all present and future debts, advances, obligations, and duties that Borrower owes to Bank however arising under, and/or relating to, the following loan and financing accommodations extended by Bank to Borrower (collectively, "Obligations"), and includes:

1. Real estate loan in the amount of \$4,160,000.00, plus interest and all of Bank's costs and expenses incurred in connection with this loan (collectively "Loan") evidenced by that certain Commercial Real Estate Loan and Security Agreement and Promissory Note (as the same may be amended, restated, replaced, increased, renewed, extended or otherwise modified from time to time, the "Loan Agreement"), dated as of even date herewith, the terms of which are hereby incorporated by reference into this Deed of Trust. All initially capitalized terms used herein without definition are as defined in the Loan Agreement;
2. All obligations of Borrower under that certain Cross Collateral, Cross Default, and Guaranty Agreement dated on or about the date hereof by and among Bank and Borrower and the other parties thereto (as the same may be amended, restated, replaced, increased, supplemented, extended or otherwise modified from time to time, the "Cross Agreement"). This Deed of Trust, the Loan Agreement, the Cross Agreement, and any other documents, agreements or other instruments given to evidence or further secure the payment and performance of any or all of the Loan, as each of the foregoing may be amended, modified, extended, or renewed from time to time (collectively, the "Loan Documents");
3. All modifications, extensions and renewals of any of the Obligations secured hereby in accordance with the Loan Documents, however evidenced, including without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional note; and
4. Borrower and Bank expressly intend that this Deed of Trust secure any and all future optional and obligatory advances that Bank may make to Borrower from time to time, but any and all future advances are discretionary and are subject to such terms and conditions as Bank may require in its sole, absolute discretion. Notice of the continuing grant of this Deed of Trust shall not be required to be stated on the face of any document evidencing any of the Obligations, nor shall such documents be required to otherwise specify that they are secured hereby.

Notwithstanding the above or anything in this Deed of Trust to the contrary, this Deed of Trust shall not secure Grantor's Obligations under the Environmental Warranty and Indemnification Agreement as of even date herewith by Grantor and the other parties thereto, and any other loan document that specifically states that it is not secured by this Deed of Trust.

F. Upon default under any Obligation and upon Bank's request:

1. To the extent permitted by state law, Trustee will sell the Property, in whole or in part(s) as Bank and Trustee deem appropriate, in accordance with the applicable foreclosure procedures prescribed by state law.

2. If state law prohibits private foreclosure sales, Bank will institute court proceedings for foreclosure upon and sale of the Property, in whole or in part(s) as Bank deems appropriate, in accordance with state law.
- G. This Deed of Trust remains in effect until the Trustee conveys the Property upon Bank's request, to Borrower, to a purchaser at a foreclosure sale, or to some other individual or entity legally entitled thereto.
1. Upon full and final payment and performance of all of Borrower's Obligations, Bank will request that Trustee convey the Property to Borrower or the individual or entity entitled thereto.
 2. Upon such reconveyance, this Deed of Trust will be void.
- H. Trustee accepts this Deed of Trust upon recording in the public records of the county in which the Property is located as provided by law.
1. Trustee will hold all funds in connection with this Deed of Trust in trust for the benefit of Bank for the purpose(s) for which the funds were received;
 2. Bank may unilaterally replace Trustee at any time and for any reason by:
 - a. Notifying Trustee of such replacement;
 - b. Executing a document appointing a successor trustee and recording it in the appropriate recording office of the state where the Property is located;
 3. Trustee may resign by giving ninety days written notice of resignation to Bank in a form suitable in substance for public recording;
 4. Any successor trustee will be vested with all the rights, duties, and powers of the original named Trustee as if the successor had been the originally named Trustee without any further act or conveyance and Trustee will:
 - a. Upon Bank's request, execute and deliver any and all documents in recordable form transferring Trustee's rights, duties, and powers to the successor trustee;
 - b. Duly assign, transfer, and deliver any property and/or funds held by Trustee for the benefit of Bank to the successor trustee to hold for the benefit of Bank.
- I. This Deed of Trust is a fixture filing as provided in ORS 79.0502. The names and addresses of the "debtor" and the "secured party" are the names and addresses of Borrower and Bank contained in paragraph A of this Deed of Trust.
- J. The maximum principal amount to be advanced pursuant to the credit agreement secured by this line of credit instrument is \$4,160,000.00.
- K. This Deed of Trust is a commercial trust deed and not a residential trust deed as defined in ORS 86.705.
- L. This Deed of Trust is governed by the laws of the State of Oregon.

[signature appears on the following page]

Unofficial
Copy

GRANTOR:

KLAMATH FALLS PROPERTY HOLDINGS LLC.
an Oregon limited liability company

Signature: _____

By (print): Daniel Crainic

Title: Member

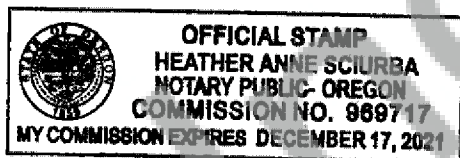
NOTARY ACKNOWLEDGMENT

STATE OF OREGON)

COUNTY OF Klamath)

SS.

This instrument was acknowledged before me on June 30, 2021, by Daniel Crainic, as member of KLAMATH FALLS PROPERTY HOLDINGS LLC, an Oregon limited liability company, on behalf of the company.



Notary Public in and for the State of Oregon

My commission expires: Dec 17 2021

Schedule A

Real Property Legal Descriptions

[TO BE INSERTED]

Unofficial
Copy

EXHIBIT "A"

Property One:

Parcels 1, 2 and 3, Land Partition No. 16-17 a replat of a Portion of Lots 4 and 5, Block 6 of "Tract 1080 - Washburn Park" in the SE1/4 SE1/4 of Section 4, Township 39 South, Range 9 East of the Willamette Meridian, City of Klamath Falls, Klamath County, Oregon. Recorded November 13, 2017 in 2017-013013, Records of Klamath County, Oregon.

Property Two:

Parcels 2 and 3 of Land Partition 42-03 replat of Land Partition 39-92 in SW1/4 Section 3, Township 39 South, Range 9 East, Willamette Meridian, Klamath County, Oregon

Property Three:

The Southerly 220 feet of Lot 3 in Block 6 of TRACT 1080, WASHBURN PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.