

2023-006201

Klamath County, Oregon

07/25/2023 02:06:02 PM

Fee: \$142.00

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

First Republic Bank
111 Pine Street
San Francisco, CA 94111
Attn: Loan Review

CONVEYANCE TO SECURE A DEBT.

INSTRUCTIONS TO RECORDER:

Index this document as an assignment of leases.



FIRST REPUBLIC BANK

It's a privilege to serve you®

Amerititle 595708AM

(Space above this line for Recorder's use)

ASSIGNMENT OF LEASES

This Assignment of Leases (the "Assignment") is executed by **Washburn Way Industrial Park LLC, an Oregon limited liability company**, (the "Grantor"), in favor of **First Republic Bank** (the "Lender"), with reference to the following facts:

A. **K&B Real Estate Holdings, LLC, an Oregon limited liability company** (the "Borrower") has obtained or is about to obtain a loan from the Lender in the principal amount of **Two Million One Hundred Six Thousand and 00/100 Dollars (\$2,106,000.00)** (the "Loan") evidenced by Borrower's promissory note dated **November 14, 2017** (the "Note") in favor of the Lender. The Note and Borrower's other obligations to the Lender in connection with the Loan are secured by a deed of trust, fixture filing, assignment of rents, and security agreement (the "Deed of Trust") encumbering the real property described in Exhibit "A" attached hereto (the "Real Property") and all buildings, structures and improvements now existing or hereafter constructed on the Real Property (the "Improvements"). The Real Property and Improvements are referred to collectively as the "Property."

B. The Note, Deed of Trust, and all other documents executed by Borrower or Grantor and delivered to the Lender at the Lender's request in connection with the Loan are referred to collectively as the "Loan Documents."

C. Grantor desires to assign its interest in all leases now or hereafter affecting the Property to the Lender on the terms and conditions of this Assignment.

THEREFORE, for valuable consideration, Grantor agrees as follows:

1. **Assignment.** Grantor absolutely and unconditionally grants, transfers and assigns to the Lender all of Grantor's right, title, and interest in and to the following (collectively, the "Leases"): (a) all existing and future leases, licenses, occupancy and rental agreements affecting all or part of the Property,

2628

including the leases, if any, identified in Exhibit "B" attached to this Assignment; (b) all extensions, renewals, modifications and amendments to such leases, licenses, occupancy and rental agreements; and (c) all guaranties of and security for the tenants' obligations under such leases, licenses, occupancy and rental agreements. All terms with an initial capital letter which are used but not defined in this Assignment shall have the respective meanings given to such terms in the Deed of Trust.

2. **License.** Prior to the occurrence of an Event of Default under the Loan Documents, Grantor shall have a license to exercise all of the lessor's rights under the Leases and to collect all rent and other amounts payable by tenants under the Leases, including all claims by Grantor for damages resulting from or arising out of any breach by any tenant under any of the Leases (collectively, the "Rent") as the same becomes due and payable. Upon the occurrence of an Event of Default under the Loan Documents, Grantor's license to enforce the Leases and collect the Rent shall automatically be revoked without notice to Grantor. Following such revocation, the Lender shall be entitled to enforce all of the lessor's rights under the Leases and collect and retain all Rent. The Lender shall have the right to apply all Rent collected by or on behalf of the Lender to the obligations secured by the Deed of Trust in such order and amounts as the Lender may determine in its sole and absolute discretion. No action taken by the Lender to collect Rent or enforce the Leases shall be deemed to make the Lender a mortgagee-in-possession of the Property. Notwithstanding anything to the contrary contained in this Assignment or in the other Loan Documents, Grantor's assignment of the Leases to the Lender is an absolute assignment and not an assignment as security.

3. **Notice to Tenants.** Upon revocation of the license described in Section 2 above, Grantor irrevocably authorizes all tenants under the Leases (referred to collectively as the "Tenants" and individually as a "Tenant") to comply with any notice or demand by the Lender for payment to the Lender of any Rent or for the performance of any of the Tenants' other obligations under the Leases, and no Tenant shall have any duty to inquire as to whether any default by Borrower or Grantor has occurred under the Loan Documents.

4. **Warranties and Representations by Grantor.** Grantor warrants and represents to the Lender that, except as specifically set forth in a written rent statement certified by Grantor or other writing furnished by Grantor to the Lender prior to the date of this Assignment, (a) there are no leases or rental agreements affecting all or part of the Property other than the leases identified in Exhibit "B" attached to this Assignment (collectively, the "Existing Leases"), and as of the date the Deed of Trust is recorded in the official records of the county in which the Property is located, no leases or rental agreement will affect the Property other than the Existing Leases; (b) Grantor is the sole owner of the entire landlord's interest in the Existing Leases; (c) Grantor has delivered to the Lender complete and accurate copies of the Existing Leases (including all amendments, modifications, and supplements thereto); (d) no rent concessions have been given to any Tenant under any of the Existing Leases; (e) no rent has been prepaid in advance for more than one (1) month by any Tenant under any of the Existing Leases (except that a bona fide security deposit shall not be deemed to constitute rent collected in advance); (f) no Tenant under any of the Existing Leases has any defenses to the enforcement of its Existing Lease, and no Tenant under any of the Existing Leases has any offsets or deductions to rent; (g) if this Assignment is executed in connection with existing Improvements on the Real Property, each of the Tenants under the Existing Leases has accepted and now occupies its premises on a rent-paying basis, all work required to be performed by Grantor under the Existing Leases has been completed in accordance with the terms of the Existing Leases; (h) no Tenant under the Existing Leases has an option or right of first refusal to expand its premises or to purchase all or part of the Property or any similar option or right; (i) each of the Existing Leases is valid, enforceable and in full force and effect, and neither Grantor nor any Tenant is in default under any of the Existing Leases; (j) each of the Existing Leases constitutes the entire agreement with the Tenant thereunder, and none of the Existing Leases has been modified, amended, or supplemented in any respect; (k) none of the Existing Leases, and no Rents and Profits payable under any of the Existing Leases, has been assigned or otherwise pledged or hypothecated to any Person other than to the Lender; (l) Grantor has received no notice from any Tenant under any of the Existing Leases challenging the validity or enforceability of any of the Existing Leases; (m) no Person has any possessory interest in, or right to occupy, all or part of the Property except under and pursuant to one of the Existing

Leases; (n) each of the Existing Leases is, or at the option of the Lender may be made to be, subordinate to the Deed of Trust, either pursuant to its terms or pursuant to a separate subordination agreement; (o) no brokerage commissions or finder's fees are due and payable regarding any of the Existing Leases; (p) all of the Existing Leases are arm's-length agreements with bona fide, independent third Persons; (q) no Existing Lease has the benefit of a non-disturbance agreement that would be considered unacceptable to prudent institutional lenders; and (r) all security deposits relating to the Existing Leases as shown on the written rent statement certified by Grantor and delivered to the Lender have been collected by Grantor.

5. **Economic Benefit to Grantor.** Grantor acknowledges that it has a direct or indirect interest in Borrower and will receive substantial economic and other benefits from Lender making the Loan to Borrower.

6. **Compliance with Leases.** Grantor shall perform and discharge all obligations of the lessor under the Leases in accordance with the terms thereof and shall diligently enforce all remedies available to Grantor in a commercially reasonable manner in the event of a default by the Tenant under any Lease.

7. **Lease Documentation.** If, under the terms of the Loan Documents, the Lender's prior written consent is required in connection with Grantor's execution of any Lease, at the time the Lender's consent is requested by Grantor, Grantor shall submit to the Lender (a) a complete and accurate copy of the Lease with respect to which the Lender's consent is requested; (b) the rental application (if any) of the Tenant under the Lease; (c) if specifically requested by the Lender, a complete and accurate copy of a current financial statement for the Tenant under the Lease, certified by the Tenant as being true and correct, together with a credit report for the Tenant; and (d) such other information regarding the Tenant under the Lease and the proposed use of the space which is the subject of the Lease as the Lender may reasonably require. The Lender's approval of a Lease may be conditioned on, among other things, the Lender's receipt of (i) an estoppel certificate satisfactory to the Lender in form and substance executed by the Tenant under the Lease; and (ii) a subordination, non-disturbance, and attornment agreement satisfactory to the Lender in form and substance executed by the Tenant under the Lease. Upon the Lender's request from time to time, Grantor shall provide the Lender with the information and documents specified in clauses (a) through (d) of this Section with respect to any or all existing Tenants leasing space in the Improvements, provided that such information and documents are in Grantor's possession or control. Upon the Lender's request from time to time, Grantor shall use its commercially reasonable efforts to obtain and deliver to the Lender the documents described in clauses (i) and (ii) of this Section with respect to new Tenants who lease space in the Improvements after recordation of the Deed of Trust.

8. **No Liability by Lender.** Nothing contained in this Assignment or any of the other Loan Documents shall be deemed to render the Lender directly or indirectly liable or responsible for (a) the control, care, operation, management or repair of all or part of the Property; or (b) the performance or observance of any or all of Grantor's duties, obligations, representations, or warranties as lessor under any of the Leases. The Lender shall have no responsibility or liability of any kind to Grantor for any failure or delay by the Lender in enforcing any of the terms or conditions of any of the Leases.

9. **Indemnification.** Grantor shall indemnify and hold the Lender harmless from and against any and all claims, demands, damages, liabilities, actions, causes of action, suits, costs, and expenses, including attorneys' fees and costs, arising out of or relating to (a) any duty or obligation to be performed by Grantor or any representation or warranty made by Grantor as lessor under any of the Leases; or (b) the Lender's exercise of any or all of the Lender's rights and remedies under this Assignment.

10. **No Prior Assignments.** Grantor warrants and represents to the Lender that (a) Grantor holds or, as of the date of recordation of the Deed of Trust will have acquired, all of the lessor's rights under the Existing Leases; (b) Grantor has not assigned the Leases to any other Person; and (c) Grantor

shall not assign the Leases to any other Person as long as Grantor remains indebted to the Lender in connection with the Loan.

11. **Attorneys' Fees.** Grantor shall pay to the Lender upon the Lender's demand all costs and expenses, including attorneys' fees and costs, incurred by the Lender in enforcing any of the terms of this Assignment or the Lender's rights under this Assignment, whether or not a lawsuit is filed, and including those incurred at trial, on appeal and in any bankruptcy or arbitration proceeding.

12. **Modifications; Waiver.** This Assignment may be modified only by a written agreement signed by Grantor and the Lender. No waiver of any of the terms of this Assignment shall be binding on the Lender unless such waiver is in writing and signed by the Lender.

13. **Oregon Law.** This Assignment shall be governed by and interpreted under the laws of the State of Oregon.

14. **Remedies.** The Lender shall be entitled to exercise its rights and remedies under this Assignment (a) without initiating any action or proceeding of any kind against Borrower or Grantor or taking possession of the Property; (b) without regard to the adequacy of any security for Borrower's or Grantor's obligations to the Lender in connection with the Loan; and (c) without having recorded a notice of default and election to sell under the Deed of Trust. The Lender's rights and remedies under this Assignment are cumulative with and in addition to all other rights and remedies which the Lender may have in connection with the Loan.

15. **Assignment; Term.** The Lender's rights under this Assignment may be separately assigned by the Lender by written instrument. Upon Borrower's payment and performance of all obligations secured by the Deed of Trust, the Lender shall execute and record a reassignment to Grantor of all rights acquired by the Lender under this Assignment.

16. **Descriptive Headings; Counterparts.** The headings to sections of this Assignment are for convenient reference only, and they do not in any way limit or amplify the terms of this Assignment and shall not be used in interpreting this Assignment. For purposes of this Agreement, the term "including" shall be deemed to mean "including without limitation." This Assignment may be signed in counterparts, each of which shall constitute an original, and all of which together shall constitute one agreement.

17. **Successors.** This Assignment shall be binding upon and inure to the benefit of Grantor and the Lender and their respective successors and assigns.

SEE THE FOLLOWING RIDER(S) ATTACHED HERETO AND MADE A PART HEREOF.

1. Rider to Assignment of Leases (JPMorgan Chase Rider)

Dated: July 7, 2023

GRANTOR:

Washburn Way Industrial Park LLC
an Oregon limited liability company

By: 
Kelly C. Bruun, its Sole Member

NOTE: ALL SIGNATURES ON THIS ASSIGNMENT MUST BE NOTARIZED.

ACKNOWLEDGMENT

State of Oregon

County of

Multnomah

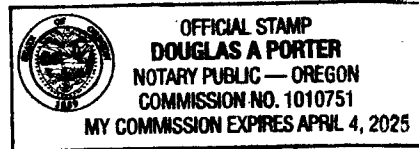
This instrument was acknowledged before me on July 20th, 2023, by Kelly C. Bruun, Sole Member of Washburn Way Industrial Park LLC, an Oregon limited liability company.



Notary Public - State of Oregon

My Commission Expires:

04/04/2025



ASSIGNMENT OF LEASES

EXHIBIT "A"

LEGAL DESCRIPTION

**THE REAL PROPERTY REFERRED TO HEREIN IS ALL THAT CERTAIN REAL PROPERTY
LOCATED IN THE COUNTY OF KLAMATH, STATE OF OREGON, DESCRIBED AS
FOLLOWS:**

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1

The N1/2 of the following described parcel of land:

All that portion of the E1/2 of the NE1/4 of the SE1/4 of Section 9, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, which lies Southerly of line drawn parallel to and distant 330 feet Northerly of the Southerly boundary of the said East half of the NE1/4 of the SE1/4, situated in the County of Klamath, State of Oregon.

EXCEPTING THEREFROM that portion conveyed to Klamath County by Warranty Deed recorded February 2, 1988 in Volume M88, page 1442, Microfilm Records of Klamath County, Oregon.

PARCEL 2

The S1/2 of that part of the E1/2 of the NE1/4 of the SE1/4 of Section 9, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, lying South of a line drawn parallel to a 330 feet Northerly of the Southerly line of said E1/2 of the NE1/4 of the SE1/4, the S1/2 of the Southerly 330 feet measured parallel with the Southerly line of the E1/2 of the NE1/4 of the SE1/4 of Section 9, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

EXCEPTING THEREFROM the East 20 feet deeded to Klamath County for road in Volume 336, page 306, Deed Records of Klamath County, Oregon.

ALSO EXCEPTING THEREFROM that portion conveyed to Klamath County by instrument recorded February 2, 1988 in Volume M88, page 1442 and 1451, Microfilm Records of Klamath County, Oregon.

ASSIGNMENT OF LEASES

EXHIBIT "B"

DESCRIPTION OF EXISTING LEASES

All existing leases shown and identified in the most current Rent Statement for the Property certified by Grantor and delivered by Grantor to the Lender prior to the recordation of this Assignment in the real property records of the county in which the Property is located.

**RIDER TO THAT CERTAIN ASSIGNMENT OF LEASES MADE BY Washburn Way Industrial Park LLC, an
Oregon limited liability company, AS ASSIGNOR DATED July 7, 2023**

Parties

- (A) **"Assignor"** is the Assignor or Grantor under the Assignment of Leases.
- (B) **"Lender"** is JPMorgan Chase Bank, N.A., and all references in the Security Instrument to First Republic Bank shall be deemed to refer instead to JPMorgan Chase Bank, N.A.

Documents

- (C) **"Note"** means the "Note" (as defined in the Assignment of Leases). Notwithstanding that the Note refers to First Republic Bank as payee, Assignor agrees that the payee is JPMorgan Chase Bank, N.A. (which is the entity that is funding the loan secured by the Security Instrument).
- (D) **"Security Instrument"** means the Deed of Trust, Fixture Filing, Assignment of Rents, and Security Agreement.
- (E) **"Assignment of Leases"** means the Assignment of Leases to which this Rider is affixed.


All references in the Assignment of Leases, the Security Instrument, the Note, and all other loan documents to First Republic Bank shall be deemed to refer instead to JPMorgan Chase Bank, N.A.

BY SIGNING BELOW, Assignor acknowledges that JPMorgan Chase Bank, N.A., and not First Republic Bank, is funding the loan secured by the Security Instrument and agrees that the Assignment of Leases creates a valid and subsisting assignment of Assignor's interest in all leases now or hereafter affecting the Property (as defined in the Assignment of Leases) and inures to the benefit of JPMorgan Chase Bank, N.A.

Dated: July 7, 2023

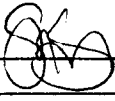
ASSIGNOR:

**Washburn Way Industrial Park LLC
an Oregon limited liability company**

By: 
Kelly C. Bruun, its Sole Member

LENDER:

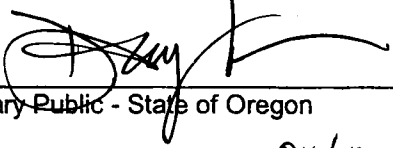
JPMorgan Chase Bank, N.A., successor-in-interest by purchase of the loan, from the Federal Deposit Insurance Corporation as Receiver for First Republic Bank, San Francisco, CA

By:  _____
Name: _____ Jodi L. Gee
Its: Authorized Signer Authorized Signer

ACKNOWLEDGMENT

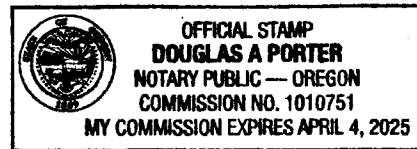
State of Oregon
County of Multnomah

This instrument was acknowledged before me on July 20th, 2023, by Kelly C. Bruun, Sole Member of Washburn Way Industrial Park LLC, an Oregon limited liability company.



Notary Public - State of Oregon

My Commission Expires: 04/04/2025



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco

On July 19, 2023 before me, Rachel Johnston Notary Public
(insert name and title of the officer)

personally appeared JODI L. GEE,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature Rachel Johnston (Seal)