
Space above for Recorder's Use

ASSIGNMENT OF LEASES AND RENTS

This ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), is made as of October 24, 2018 by **OVATION HEARTWOOD, LLC**, a Nebraska limited liability ("Assignor") to **GREAT WESTERN BANK** ("Bank").

WHEREAS, **RSF AV OMAHA VII, L.P.**, a Texas limited partnership ("RSF Omaha") is the fee simple owner of the real estate legally described on Exhibit "A" attached hereto together with the improvements now or hereafter located thereon (collectively, the "Real Property"); and

WHEREAS, RSF Omaha leases the Real Property to Assignor pursuant to that certain Master Lease Agreement dated as of October 24, 2018 (as the same may be amended, the "Master Lease"); and

WHEREAS, Assignor will operate a senior living facility on the Real Property and in connection therewith will enter in to leases, resident agreements, or other occupancy agreements with individuals who will occupy the residential units in the Real Property; and

WHEREAS, Bank has agreed to make certain Loans to Assignor and RSF Omaha (individually and collectively, "Borrower"), pursuant to the terms of that certain Loan Agreement dated as of the date hereof between Borrower and Bank (as the same may be amended, restated, supplemented, extended, or otherwise modified in writing from time to time, the "Loan Agreement"); and

WHEREAS, to secure the Secured Obligations (defined below), including all of Borrower's Obligations under the Loan Agreement, (a) RSF Omaha has granted to Bank a lien on the Real Property pursuant to that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of the date hereof (as the same may be amended, the "Deed of Trust") and (b) Assignor has agreed assign to Bank the rents, leases, and profits from Assignor's leasing or subleasing of the Real Property to individuals who will occupy the residential units in the Real Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees as follows:

ARTICLE I
ASSIGNMENT OF ASSIGNOR'S INTEREST IN LEASES AND RENTS

Section 1.01. **Absolute Assignment.** Assignor hereby irrevocably, absolutely, presently and unconditionally assigns to Bank (as an absolute assignment and not as an assignment for security only) and grants to Bank a security interest, as additional security for the Secured Obligations (as defined below):

(a) All of Assignor's right, title and interest in, to and under any and all leases, resident agreements, occupancy agreements, licenses and other agreements of any kind relating to the use or occupancy of all or any portion of the Real Property, whether now in effect or entered into in the future (collectively, the "Leases"), including (i) all guarantees of and security for lessees' performance under any and all Leases and (ii) all amendments, extensions, renewals or modifications to any Leases; and

(b) All rents (and payments in lieu of rents), income, profit, payments and revenue at any time payable under any and all Leases, any and all security deposits received or to be received by Assignor pursuant to any and all Leases, and all rights and benefits accrued or to accrue to Assignor under any and all Leases (collectively "Rents").

Section 1.02. **Grant of License.** Bank hereby grants to Assignor a license (the "License") to collect and retain the Rents as they become due and payable and said license shall continue so long as no Event of Default, as defined in Section 3.01, shall exist and be continuing. If an Event of Default has occurred and is continuing, Bank shall have the right, in its sole discretion, to terminate the License without notice to or demand upon Assignor, and without regard to the adequacy of Bank's security under this Assignment or the other Collateral Documents.

Section 1.03. **Collection and Application of Rents.** Subject to the License granted to Assignor under Section 1.02, Bank has the right, power and authority to collect any and all Rents. Subject to the License granted to Assignor under Section 1.02 and effective only upon the occurrence and continuance of an Event of Default beyond the applicable cure period, Assignor hereby appoints Bank its attorney-in-fact to perform any and all of the following acts, if and at the times when Bank in its sole discretion may so choose: (a) demand, receive and enforce payment of any and all Rents; (b) give receipts, releases and satisfactions for any and all Rents; or (c) sue either in the name of Assignor or in the name of Bank for any and all Rents.

Bank's right to the Rents is subject to the License granted to Assignor under Section 1.02 but does not depend on whether or not Bank takes possession of the Real Property as permitted under the Deed of Trust. In Bank's sole discretion, it may choose to collect Rents either with or without taking possession of the Real Property. If an Event of Default occurs while Bank is in possession of all or part of the Real Property and is collecting and applying Rents as permitted under this Assignment, Bank and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Assignment and at law or in equity.

Section 1.04. **Notice.** All lessees under any and all Leases are hereby irrevocably authorized and notified by Assignor to rely upon and to comply with (and are fully protected in so doing) any notice or demand by Bank for the payment to Bank of any rental or other sums which may at any time become due under the Leases, or for the performance of any of lessees'

undertakings under the Leases, and lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder.

Section 1.05. **Proceeds.** Bank has the right to apply all amounts received by it pursuant to this assignment to pay any of the following in such amounts and in such order as Bank deems appropriate: (a) any and all Secured Obligations, together with all costs and attorneys' fees; (b) all expenses of leasing, operating, maintaining and managing the Real Property, including without limitation, the reasonable salaries, fees, commissions and wages of a managing agent and such other employees, agents or independent contractors as Bank deems necessary or desirable; (c) all taxes, charges, claims, assessments, any other liens, and premiums for all insurance Bank deems necessary or desirable; (d) the cost of all reasonably necessary alterations, renovations, repairs or replacements, and (e) all other reasonably necessary expenses incident to taking and retaining possession of the Real Property.

Section 1.06. **Bank Not Responsible.** Regardless of whether or not Bank, in person or by agent, takes actual possession of the Real Property, Bank is not and will not be deemed to be (a) a "mortgagee in possession" for any purpose; or (b) responsible for performing any of the obligations of Assignor under any Lease; or (c) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Real Property, or any negligence in the management, upkeep, repair or control of the Real Property; or (d) liable in any manner for the Real Property or the use, occupancy, enjoyment or operation of all or any part of it.

ARTICLE II SECURED OBLIGATIONS

This Assignment is given for the purpose of securing the following obligations (collectively, the "Secured Obligations"):

(i) Payment and performance of all Obligations of Borrower described in the Loan Agreement, including, without limitation, the promissory note dated as of the date hereof from Borrower to Bank in the principal amount of \$27,592,550, the promissory note dated as of the date hereof from Borrower to Bank in the principal amount of \$27,592,550, the promissory note dated as of the date hereof from Borrower to Bank in the principal amount of \$2,217,450, the promissory note dated as of the date hereof from Borrower to Bank in the principal amount of \$2,217,450, and all other indebtedness, liabilities and obligations of Borrower under the other Loan Documents; and

(ii) Payment and performance of all obligations of Assignor under this Assignment; and

(iii) Payment and performance of all future advances and other obligations of Borrower to Bank, whether now existing or hereafter incurred or created, whether voluntary or involuntary, whether due or not due, whether absolute or contingent, or whether incurred directly or acquired by Bank by assignment or otherwise; and

(iv) Payment and performance of all Swap Obligations; and

(v) Payment and performance of all modifications, amendments, restatements, extensions, and renewals of any of the matters described in subparagraphs (i), (ii), (iii), or (iv) above.

ARTICLE III
EVENTS OF DEFAULT

Section 3.01. **Events of Default.** The occurrence of any one or more of the following events is an "Event of Default" under this Assignment:

(a) An Event of Default under the Loan Agreement or any other Loan Document; or

(b) Assignor fails to perform any obligation, term or provision arising under this Assignment, and does not cure that failure within thirty (30) days after written notice from Bank, or, if the Default cannot be cured in thirty (30) days, within a reasonable time after such written notice, unless such cure is or cannot be completed within 90 days after the original written notice was given.

Section 3.02. **Remedies.** Upon the occurrence of an Event of Default, interest may accrue on the Secured Obligations at the Default Rate in accordance with Section 2.13 of the Loan Agreement; the entire Secured Obligations shall become immediately due and payable at the option of Bank, without further notice or demand; and, in addition, irrespective of whether Bank exercises said option, it may exercise any and all rights and remedies available to a mortgagee, beneficiary, or secured party at law or in equity, including but not limited to the following: Bank may sue for or otherwise collect and receive Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees and Bank's costs, upon the Secured Obligations and in such order as Bank may determine. The collection of any Rents, and the application thereof as aforesaid shall not cure or waive any default theretofore or thereafter occurring or affect any notice of default hereunder or invalidate any act done pursuant to any such notice. Notwithstanding Bank's continuance in possession or receipt and application of Rents, Bank may exercise every right provided for in this Assignment or any other Loan Document or by law upon or after the occurrence of an Event of Default. Any of the actions referred to in this paragraph may be taken by Bank at such time as Bank is so entitled without regard to the adequacy of any security for the Secured Obligations.

Section 3.03. **Remedies Not Exclusive.** Bank shall be entitled to enforce payment and performance of any Secured Obligations and to exercise all rights and powers under this Assignment, under the Loan Agreement, under any of the Loan Documents, or under any other agreement or any laws now or hereafter in force; notwithstanding some or all of such Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Assignment nor its enforcement shall prejudice or in any manner affect Bank's right to realize upon or enforce any other security now or hereafter held by Bank in such order and manner as it may in its absolute discretion determine. No remedy conferred upon or reserved to Bank is intended to be exclusive of any other remedy in this Assignment or the other Loan Documents or by law provided or permitted, but each (a) shall be cumulative and shall be in addition to every other remedy given in this Assignment or the other Loan Documents or now or hereafter existing at law or in equity or by statute and (b) may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Bank, and Bank may pursue inconsistent remedies.

ARTICLE IV MISCELLANEOUS

Section 4.01. **Defined Terms.** Capitalized terms used in this Assignment without definition have the meanings given them in the Loan Agreement. The Loan Agreement and the other Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Assignment. The Loan Documents also grant further rights to Bank and contain further agreements and affirmative and negative covenants by Assignor that apply to this Assignment and to the Real Property.

Section 4.02. **Interpretation.** Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Assignment are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Assignment.

Section 4.03. **Severability.** If any provision of this Assignment should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Assignment except that if such provision relates to the payment of any monetary sum, then Bank may, at its option, declare all Secured Obligations immediately due and payable.

Section 4.04. **Successors in Interest.** The terms, covenants and conditions of this Assignment are binding upon and inure to the benefit of the heirs, successors and assigns of the parties.

Section 4.05. **Joint and Several Liability.** If Assignor consists of more than one person, each is jointly and severally liable for the faithful performance of all of Assignor's obligations under this Assignment.

Section 4.06. **Applicable Law; Counterparts.** This Assignment is governed by Nebraska law. This Assignment may be executed in one or more counterparts, each of which is, for all purposes deemed an original and all such counterparts taken together, constitute one and the same instrument.

Section 4.07. **No Waiver or Cure.** Each waiver by Assignor or Bank must be in writing, and no waiver is to be construed as a continuing waiver. No waiver is to be implied from any delay or failure by Assignor or Bank to take action on account of any default of another party. Consent by Assignor or Bank to any act or omission by another party must not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Assignor's or Bank's consent (as and if applicable) to be obtained in any future or other instance.

Section 5.08. **Merger.** No merger occurs as a result of Bank's acquiring any other estate in or any other lien on the Real Property unless Bank consents to a merger in writing.

Section 5.09. **Notices.** Unless otherwise expressly provided herein, all notices, certificates, requests, demands and other communications provided for hereunder shall be in writing and shall be mailed or delivered to the address set forth in this Section 5.09. All such

notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the intended recipient and (ii) (A) if delivered by hand or by nationally recognized overnight courier, upon delivery or (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid.

Address Where Notices to Assignor

Are to be Sent:

Ovation Heartwood, LLC
Lawrence Lopardo, General Counsel
25117 SW Parkway
Wilsonville, OR 97070

Address Where Notices to Bank

Are to be Sent:

Great Western Bank
Attn: Roger Porter
9290 W. Dodge Rd., Suite 401
Omaha, NE 68114

-No further text on this page-

[SIGNATURE PAGE TO ASSIGNMENT OF LEASES AND RENTS]

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date first above written.

ASSIGNOR:

Ovation Heartwood, LLC, a Nebraska limited liability company

By: 

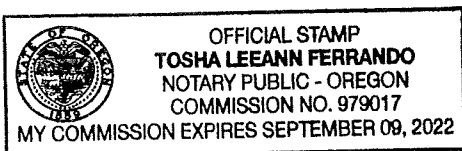
Name: Lawrence Lopardo

Its: EVP/GC

STATE OF OREGON)
) ss.
COUNTY OF Washington)

The foregoing instrument was acknowledged before me this 15th day of October, 2018, by Lawrence Lopardo, the EVP/GC of Ovation Heartwood, LLC, a Nebraska limited liability company, on behalf of the company.

In witness whereof I hereunto set my hand and official seal.



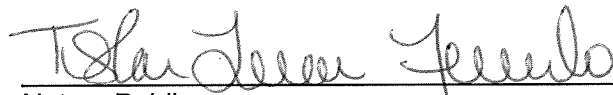

Notary Public

EXHIBIT A

Legal Description of the Land

Lot 2, West Farm Replat 1, an administrative subdivision, surveyed, platted and recorded in Douglas County, Nebraska

DOCS/2143702.1