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ABSOLUTE ASSIGNMENT OF LEASES AND RENTS

FROM

RIMINI PROPERTIES, LLC

TO AND FOR THE BENEFIT OF

LIFE INSURANCE COMPANY OF THE SOUTHWEST

FEBRUARY 17, 2021

*Prepared and recording requested by and  
after recording please return to:*

Jean O'Neil, Esq.  
Law Offices of F. J. von Turkovich, P.C.  
One National Life Drive, M-230  
Montpelier, VT 05604

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## ABSOLUTE ASSIGNMENT OF LEASES AND RENTS

LSW LOAN NO. 210879

This ABSOLUTE ASSIGNMENT OF LEASES AND RENTS ("**Assignment of Rents**" or "**Agreement**") is made February 17, 2021, by RIMINI PROPERTIES, LLC, a Utah limited liability company, with offices at and mailing address of c/o Tom Stuart Construction, 259 South River Bend Way, Suite 102, North Salt Lake, UT 84054 ("**Borrower**");

to and for the benefit of

LIFE INSURANCE COMPANY OF THE SOUTHWEST, a Texas corporation, with offices at and mailing address of One National Life Drive, Montpelier, VT 05604 ("**Lender**").

### RECITALS

A. Borrower has applied to Lender for a loan in the principal amount of EIGHT MILLION FIVE HUNDRED THOUSAND DOLLARS (\$8,500,000) ("**Loan**") and Lender has agreed to make the Loan to Borrower upon certain terms and conditions.

B. The Loan is evidenced by, *inter alia*, a certain Promissory Note from Borrower to Lender ("**Note**") of near or even date herewith, and secured by, *inter alia*, a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of near or even date herewith ("**Mortgage**") encumbering that certain Land described in **Exhibit A** attached hereto as well as other property of the Borrower as set forth in the Mortgage (collectively, the "**Property**").

C. Lender and Borrower have entered into a certain Loan Agreement of near or even date herewith in connection with the Loan ("**Loan Agreement**").

D. The Note, Mortgage, Loan Agreement, this Assignment of Rents and all other documents or agreements now or hereafter evidencing, securing or otherwise relating to the Loan are hereby referred to as the "**Loan Documents**."

E. Lender is not willing to make the Loan to Borrower unless Borrower assigns all right, title and interest of Borrower in and to all leases and occupancy agreements affecting the Property and the rents and profits generated by the Property to Lender in consideration for the making of the Loan.

NOW, THEREFORE, to induce Lender to make the Loan, Borrower agrees as follows:

**ARTICLE 1.  
DEFINITIONS AND RULES OF CONSTRUCTION**

1.1 Definitions

Terms with initial capital letters used in this instrument, but not defined herein shall have the meanings ascribed to such terms in the Glossary contained in the Loan Agreement or other Loan Documents.

1.2 Construction and Interpretation

The provisions of the Loan Agreement with respect to construction and interpretation of the Loan Documents are incorporated herein by reference.

**ARTICLE 2.  
ASSIGNMENT OF LEASES AND RENTS**

2.1 Absolute Assignment of Leases and Rents

In consideration of the Loan and the parties' undertakings under the Loan Documents, and in order to secure the payment of the Indebtedness evidenced by the Note and Loan Documents and any and all extensions and renewals thereof, Borrower hereby absolutely and presently assigns and transfers to Lender, and its successors and assigns, all of Borrower's right, title, interest and privilege in and to:

2.1.1 All leases, licenses, contracts and occupancy agreements, now existing or hereafter created affecting the Property, including all deposits, guarantees, letters of credit or other agreements or instruments serving as security for the tenant's obligations under such agreements ("**Leases**").

2.1.2 All rents and income, including expense reimbursements, common area fees and overrides (intending to include all amounts payable to landlord under any of the Leases) derived from the Leases, including proceeds from all guarantees, letters of credit or other agreements or instruments serving as security for the tenant's obligations under such agreements, and including any and all amounts paid or payable by any tenant in connection with the modification or termination of its Lease at the Property ("**Rents**"), it being the intention of Borrower and Lender that this Assignment of Rents constitutes a present and absolute assignment of the Leases and the Rents and not an assignment for additional security.

2.2 Absolute Assignment; License to Collect Rents

This Assignment of Rents presently gives Lender the right to collect the Rents and apply the same in payment of the Obligations contained in the Loan Documents. Borrower intends that the Leases and Rents be absolutely, irrevocably and unconditionally assigned and that they no

longer be, during the term of this Assignment of Rents, property of Borrower or property of the estate of Borrower, as defined in 11 U.S.C. §541. If any Law exists requiring Lender to take actual possession of the Property (or some action equivalent to taking possession of the Property, such as securing the appointment of a receiver) in order for Lender to "perfect" or "activate" the rights and remedies of Lender as provided in this Agreement, Borrower waives the benefit of such Law. Subject to the terms of this Assignment of Rents and the other Loan Documents, Lender grants to Borrower a license, revocable, as hereinafter provided, to collect and use the Rents subject to the requirements of this Assignment of Rents and the other Loan Documents. Upon the occurrence of any Event of Default, the license granted to Borrower herein will, at Lender's election, be revoked by Lender, and Lender shall immediately be entitled to possession of all Rents collected thereafter (including Rents past due and unpaid) whether or not Lender enters upon or takes control of the Property. Any Rents collected by Borrower from and after the date on which an Event of Default occurred will be held by Borrower in trust for Lender. Lender is hereby granted and assigned by Borrower the right, at its option, upon revocation of the license granted herein, to enter, if deemed necessary by Lender, upon the Property in person, by agent or by court appointed receiver to collect the Rents.

### **ARTICLE 3. BORROWER OBLIGATIONS**

#### **3.1 Borrower's Continuing Liability**

Notwithstanding this Assignment of Rents, Borrower will faithfully observe, discharge and perform all of its obligations and agreements under the Leases and will remain liable for any obligations undertaken by it (or any former landlord) pursuant to any Lease. Lender may elect, in its sole discretion, to perform any and all such obligations of Borrower under any Lease by notice to the tenant under such Lease with a copy to Borrower; provided, however, that Borrower will remain liable for such obligations notwithstanding such election by Lender.

#### **3.2 Indemnity**

Borrower hereby agrees to defend, indemnify, reimburse and hold Lender and all Lender Parties harmless of and from any and all Losses that they might incur by reason of or arising from any claims by any tenant under any Lease, except for actions arising solely by reason of Lender's willful misconduct.

#### **3.3 Reports: Copies of Leases**

Borrower will, upon request of Lender, furnish Lender with a complete list, as of the date of such request, of all Leases and provide such further information concerning same as Lender may require. Further, upon request, Borrower will deliver executed or certified copies of all Leases, correspondence and records relating thereto to Lender.

**ARTICLE 4.  
REPRESENTATIONS AND WARRANTIES**

4.1 Representations and Warranties of Borrower

Borrower represents and warrants as follows:

- 4.1.1 Borrower holds all right, title and interest of the Landlord in the Leases.
- 4.1.2 That Borrower has full right and title to assign the Leases and the Rents and that no other presently existing assignment of any interest in any of the Leases or Rents has been made by Borrower or any of its predecessors in title or interest.
- 4.1.3 That all Leases executed on or before the date hereof are in full force and effect, and are not subject to any appeal, claim, litigation, defense, setoff or counterclaim whatsoever except as set forth in writing on an exhibit signed and acknowledged by Lender attached hereto.
- 4.1.4 That there exists no event, condition or occurrence that constitutes, or that with notice or the passage of time would constitute, a breach or default by Borrower or any tenant under any term or condition of the Leases.

**ARTICLE 5.  
DEFAULT; REMEDIES**

5.1 Events of Default

An Event of Default by Borrower under any Loan Document or Borrower's failure to perform or observe any term, covenant, agreement or obligation under this Agreement, which failure continues beyond any applicable cure period contained herein, will constitute an Event of Default hereunder.

5.2 Remedies

At any time after an Event of Default, Lender may, in its discretion and sole option, in addition to any other right or remedy accorded to it under the Loan Documents, avail itself of the following Remedies:

- 5.2.1 With or without entering and taking possession of the Property, collect, in its own name or in the name of Borrower, the Rents then due but unpaid and, also, the Rents that thereafter become due and payable. Borrower hereby irrevocably authorizes and directs the tenants under the Leases, upon receipt of notice from Lender, to pay to Lender any and all Rents due thereunder without the necessity of inquiry as to any actual default by Borrower and notwithstanding any claim by Borrower to the contrary. Borrower further agrees that it will facilitate Lender's collection of the

Rents and will, immediately upon request of Lender, execute and deliver a written notice to each tenant under the Leases directing such tenant to pay the Rent due thereunder to Lender. Borrower will have no right or claim against any parties to any Lease who make payment to Lender after receipt of notice from Lender demanding same.

- 5.2.2 Take over and assume the management, operation and maintenance of the Property and perform in its own name or in the name of Borrower, all acts necessary and proper, and expend such sums out of the income from the Property as Lender deems necessary and proper in connection therewith, including the right to enter into new Leases, to terminate existing Leases, to alter or amend the terms of existing Leases, to renew existing Leases or to make concessions to the parties thereto.
- 5.2.3 Endorse as Borrower's attorney-in-fact, Borrower's name on all checks, drafts and similar forms of payment received in payment of the Rents. The aforesaid power of attorney, being granted in consideration of the Loan, will be deemed coupled with an interest and irrevocable.
- 5.2.4 After payment of all proper charges and expenses, including reasonable compensation to such managing agent as Lender may select or employ, and after the accumulation of a reserve to pay taxes, assessments, water rents, fire and liability insurance in requisite amounts, Lender will credit the net proceeds received by it from the Property by virtue of this Assignment of Rents to any amounts due and owing to Lender by Borrower under the terms of the Loan Documents, provided that the manner of application of such proceeds and the items to be credited will be determined in the sole discretion of Lender. Lender will not be accountable for more monies than it actually receives from the Property, nor will it be liable for failure to collect any Rent or Proceeds.

## ARTICLE 6. APPOINTMENT OF RECEIVER

### 6.1 Appointment and Powers of a Receiver

Regardless of whether Lender has brought any action to foreclose the Mortgage, Lender may make application to a court of competent jurisdiction and obtain the immediate appointment of a **Receiver** who shall be authorized to enter upon and take possession and control of the Property and the Rents together with those rights and powers more particularly set forth herein and as may be further specified by the court.

Lender may revoke the Borrower's license to collect Rents and enforce this Agreement using any method sufficient to enforce the assignment under law of the State. Both Lender and Receiver shall be entitled to revoke the Borrower's license to collect Rents and thereafter collect all Rents that have accrued but remain unpaid as of the date of Default as well as those Rents that accrue thereafter, as they become due from tenants.

6.2 Grounds for Appointment of Receiver

Lender is entitled to the appointment of a Receiver for the Property:

- 6.2.1 In a foreclosure of the Mortgage.
- 6.2.2 If Borrower is in Default and has failed to turn over to Lender Rents or Proceeds that Lender is entitled to possess.
- 6.2.3 If a subordinate assignee of Rents obtains the appointment of a receiver for the Property.
- 6.2.4 Under any other circumstances that would justify the appointment of a receiver under law of the State.
- 6.2.5 For specific performance of the Mortgage, this Assignment of Rents or any of the other Loan Documents.
- 6.2.6 To prevent further waste or prevent threatened waste of the Property.
- 6.2.7 To enforce any Borrower Party's Obligations or Lender's remedies arising out of the Loan Documents.

6.3 Priority among Receivers

A receivership requested by Lender is entitled to priority in Rents over a receivership requested by a subordinate assignee, even if a court has previously appointed a receiver for the subordinate assignee.

**ARTICLE 7.  
PROTECTION OF LENDER**

7.1 No Assumption of Responsibility by Lender

Notwithstanding any legal presumption to the contrary, Lender will not be obligated by reason of this Assignment of Rents to perform any obligation of Borrower under the Leases. This Agreement will not place responsibility for the control, care, management, upkeep, operation or repair of all or any part of the Property upon Lender, or make Lender liable or responsible for any negligence in the control, care, management, upkeep, operation or repair of all or any part of the Property resulting in loss or injury or death to any tenant, visitor, invitee licensee, employee or any other Person for loss of or damage to the persons or property of any of the same.



7.2 Borrower Cooperation

Borrower will not interfere with or object to Lender's exercise of its rights under this Agreement, and Borrower will use its best efforts in causing the tenants of the Property to comply with all the terms and conditions of the Leases.

7.3 Protection of Agreement

Borrower hereby covenants and agrees not to do any act that could destroy or impair the security to the Lender under this Assignment of Rents.

7.4 No Waiver; Mortgagee-in-Possession

Nothing in this Agreement will be construed as (i) making Lender a "mortgagee-in-possession," or (ii) constituting a waiver or suspension by Lender of its right to enforce payment of the Indebtedness under the terms of the Note and the other Loan Documents.

7.5 Advances by Lender

Lender need not expend its own funds in the exercise of the powers granted herein, but if it does so, such amounts, together with reasonable attorneys' fees, disbursements and all other costs, will be considered Advances for and on behalf of Borrower, secured by this Assignment of Rents, the Mortgage and the other Loan Documents. Any such Advances shall bear interest at the Default Rate set forth in the Note from the respective dates of any such Advances to the date of repayment in full.

7.6 Release of Lender

To the extent permitted by law, Borrower hereby releases any and all claims that it has against Lender arising out of actions by Lender under this Agreement, unless such claims arise from Lender's fraud or willful misconduct.

**ARTICLE 8.  
GENERAL PROVISIONS**

8.1 Governing Law

This Agreement will be governed by and construed and enforced in accordance with the Laws of the state where the Property is located without regard to the state's conflicts of laws principles. Borrower unconditionally and irrevocably waives any right to assert that the law of any other jurisdiction governs this Agreement.

8.2 Termination of Assignment

When the Indebtedness under the Loan has been fully satisfied, and the Mortgage discharged of record, such discharge will automatically release and discharge this Assignment of Rents and effect a reassignment of all Rents to the Person or Persons legally entitled thereto.

8.3 Notices

All Notices permitted or required to be given by any party to the other hereunder will be given in writing and delivered in the manner specified in the Loan Agreement.

8.4 Modification

No modification, extension, discharge, termination or waiver of any provision of this Agreement will be effective unless it is given in writing and signed by the party against whom enforcement is sought. Any such modifications, extension, discharge, termination or waiver will be effective only in the specific instance for which it is given.

8.5 Binding Effect

This Agreement will be binding upon and inure to the benefit of Borrower and Lender and their respective permitted successors and assigns.

8.6 Assignment by Lender

Borrower acknowledges and agrees that Lender may assign all or any portion of its rights and obligations under this Agreement in connection with a Covered Transaction.

8.7 No Third-Party Beneficiaries

This Agreement is for the sole benefit of Borrower and Lender, and their permitted successors and assigns, and shall create no rights whatsoever in favor of any other Person and no other such Person will have any rights to rely hereon.

8.8 Effective Date

In the event that this instrument is executed and delivered by the parties without entering an effective date, the effective date, unless otherwise provided for herein, will be deemed to be the date on which the Loan proceeds were disbursed to the Borrower.

(Execution pages follow)



**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

**PARCEL 1:**

Lots 1 and 2, PARRISH CREEK SUBDIVISION, according to the official plat thereof, on file and of record in the office of the Davis County Recorder, recorded December 29, 2017 as Entry No. 3067633 in Book 6921 at Page 119.

**PARCEL 1A:**

Appurtenant easements as contained in the Declaration of Covenants, Conditions, Restrictions and Easements for Parrish Creek, recorded October 31, 2017 as Entry No. 3055345 in Book 6882 at Page 1640.