

*This document prepared by;  
After recording return to:*

Brian D. Cunningham, Esq.  
**SNELL & WILMER L.L.P.**  
Gateway Tower West  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

**Tax Parcel I.D. No.** – 21-12-327-035

### **SUBORDINATION, NON-DISTURBANCE, AND ATTORNMEN AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE, AND ATTORNMEN AGREEMENT (“Agreement”) is made as of June 18, 2019 (“Effective Date”), by and among **KEYBANK NATIONAL ASSOCIATION**, a national banking association, its successors, participants, and assigns in its capacity as agent (“Agent”) for itself and for each of the lending institutions that executed the Loan Agreement (as defined in the Security Instrument), and their permitted successors, participants, and assigns (each a “Lender” and collectively the “Lenders”), having an address at 36 South State Street, 25<sup>th</sup> Floor, Salt Lake City, Utah 84111 (Mail Code: UT-51-TW-2500), **5300 DEVELOPMENT LLC**, a Utah limited liability company, having an address at 5300 South 360 West, Suite 360, Murray, Utah 84123, Attention: Jeffrey Stephens (“Landlord”), and **THE CODE CORPORATION**, a Delaware corporation, having an address of 434 Ascension Way, Suite 300, Murray, UT 84123, Attn: Dean Wagner (“Tenant”).

#### **RECITALS:**

Landlord is the owner of the real property legally described in Exhibit A attached hereto and made a part hereof and the building and other improvements located on such real property (such real property, buildings, and improvements being referred to herein as the “Property”).

Lenders have made a loan (the “Loan”) to Landlord in connection with Landlord’s financing of the Property.

Tenant is the tenant under that certain Office Lease, dated June 17, 2019 (as hereafter modified, amended, or supplemented from time-to-time, the “Lease”) relating to a portion of the Property (“Premises”), being more particularly described in the Lease, which consists of approximately 19,867 rentable square feet.

The Loan has been evidenced by one or more promissory notes (collectively, the “Note”) that are secured by, among other things, a first priority lien Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing dated as of August 17, 2016, granted by Landlord in favor of Agent as beneficiary, and recorded on August 18, 2016 in the real property records of Salt Lake County, Utah as Instrument No. 12346062, in Book 10465, Pages 8483-8523, encumbering the Property (such instrument, as amended, increased,

renewed, modified, consolidated, replaced, combined, substituted, severed, split, spread, or extended from time-to-time, being referred to as the "Security Instrument").

The Lease has been assigned by Landlord to Agent as further security for the Note.

Landlord and Tenant's agreement that the Security Instrument shall unconditionally be and remain at all times a lien or charge upon the Premises prior and superior to the Lease is a condition of Lenders' agreement to make the Loan and Agent's agreement to enter into this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and understanding that each Lender, Agent, and Landlord will rely on Tenant's covenants and certifications, as set forth herein, in entering into this Agreement, Agent, Landlord, and Tenant, as applicable, agree and certify as follows:

1. Landlord, and Tenant acknowledge and agree that the Recitals set forth in this Agreement are true, accurate, and correct and are hereby made a part of this Agreement and are incorporated herein by this reference.

2. Landlord and Tenant represent and warrant to Agent and Lenders that: (a) the Lease has been duly authorized, executed, and delivered by Landlord and Tenant, (b) the Lease is in full force and effect, (c) the Lease has not been modified or amended in any way, and (d) no party to the Lease is in default with respect to such party's obligations under the Lease as of the date of this Agreement.

3. Agent, Landlord, and Tenant acknowledge and agree that the Security Instrument and any and all terms, conditions, and provisions thereof, all advances made or to be made thereunder, and any other amendments, modifications, renewals, extensions, alterations, or replacements thereof, are and shall unconditionally be and remain at all times a lien or charge upon the Property and the Premises senior, prior, and superior to the Lease, the leasehold estate created thereby, and all rights and privileges of Tenant or any other lessee thereunder in or to the Premises or in or to the Property. Tenant further acknowledges and agrees that the Lease, the leasehold estate created thereby, and all rights and privileges of Tenant or any other lessee thereunder in or to the Premises or in or to the Property are hereby unconditionally subjected and made subordinate to, and Tenant hereby subordinates the leasehold estate created by the Lease, and all of Tenant's right, title, and interest under the Lease and in and to the Premises and in or to the Property to, the lien or charge of the Security Instrument and to all the terms, conditions, and provisions thereof, to all advances made or to be made thereunder, and to any amendments, modifications, renewals, extensions, alterations, or replacements thereof.

4. Agent acknowledges and agrees that as long as Tenant is in compliance with the terms of this Agreement and is not in default in the performance of its obligations under the Lease, which default has continued beyond any applicable notice and cure periods provided in the Lease, Tenant shall not be named as a party defendant in any action for foreclosure, trustee's sale, or other enforcement of the Security Instrument (unless required by law), nor shall the

Lease be terminated in connection with, or by reason of, foreclosure, trustee's sale, or other proceedings for the enforcement of the Security Instrument, or by reason of a transfer of the landlord's interest under the Lease pursuant to the taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure, nor shall Tenant's use or possession of the Premises be unreasonably interfered with, and the rights of Tenant under the Lease shall remain in full force and effect, except that the person or entity acquiring or succeeding to the interests of Landlord as the result of any such action or proceeding and such person or entities' successors and assigns (any of the foregoing being hereinafter referred to as "Successor") shall not be:

(a) bound by any prepayment of rent paid more than thirty (30) days in advance of the due date or for any security deposit unless actually received by Successor and then limited to the amount of such security deposit actually received, subject to all rights, privileges, and benefits of Landlord as set forth in the Lease with respect thereto;

(b) liable for any act or omission of any prior landlord (including, without limitation, Landlord) or for any claim for damages against any such prior landlord (including, without limitation, Landlord);

(c) subject to any offsets, defenses, or counterclaims which Tenant may have against any prior landlord (including, without limitation, Landlord), whether any such offsets, defenses, or counterclaims are set forth in the Lease or otherwise provided at law or in equity;

(d) bound by any amendment, modification, or termination of the Lease made without the prior written consent of Agent;

(e) bound by, and shall have no obligation to recognize, any option or right in favor of Tenant to purchase the Premises, the Property, or any portions thereof (each, a "Purchase Option"), with such Purchase Option being of no force or effect from and after Successor's acquisition of title. Tenant acknowledges and agrees that: (i) Tenant shall have no right to exercise any Purchase Option in connection with a foreclosure, trustee's sale, or deed in lieu thereof, (ii) any Purchase Option in favor of Tenant shall have no force or effect from and after Successor's acquisition of title to the Premises or the Property, (iii) Tenant has no right to enforce the Purchase Option against Agent, Successor, or any of their respective successors or assigns, and (iv) Agent has not (and each Lender has not), and shall not be deemed to have, consented to any transfer of title to the Premises, the Property, or any portions thereof to Tenant pursuant to the Lease, whether or not in connection with Tenant's exercise of any Purchase Option;

(f) bound by any representations or warranties, or indemnity or defense obligations, of any prior landlord (including, without limitation, Landlord); or

(g) responsible for any tenant improvement construction obligations or for any tenant allowance obligations arising under the Lease.

5. If the interest of Landlord under the Lease shall be transferred by reason of any foreclosure, trustee's sale, or other proceedings for enforcement of the Security Instrument or the obligations which it secures or pursuant to a taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure thereof, then Tenant shall be bound to Successor and, so

long as Tenant is not in default under the Lease, Successor shall be bound to Tenant under all of the terms, covenants, and conditions of the Lease for the unexpired balance of the term thereof remaining (and any extensions, if exercised), with the same force and effect as if Successor were Landlord, and Tenant does hereby (a) agree to attorn to Successor, including Agent or any Lender if it be Successor, as its landlord, (b) affirm its obligations under the Lease, and (c) agree to make payments of all sums due under the Lease to Successor, said attornment, affirmation, and agreement to be effective and self-operative, without the execution of any further instruments, upon Successor succeeding to the interest of Landlord under the Lease. To the extent permitted by applicable law, Tenant waives the provisions of any statute or rule of law now or hereafter in effect that may give or purport to give it any right or obligation to terminate or otherwise adversely affect the Lease or the obligations of Tenant thereunder by reason of any foreclosure, trustee's sale, or other proceedings for enforcement of the Security Instrument or the taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure. Tenant agrees to provide Successor a written confirmation of its attornment to Successor within ten (10) calendar days after receipt of a written request therefor from Successor, but failure to receive such written confirmation from Tenant shall not derogate from Tenant's obligations to Successor hereunder.

6. Notwithstanding anything to the contrary in the Lease, Tenant agrees and acknowledges that it shall not terminate or cancel the Lease or the term thereof by reason of a default or breach by Landlord thereunder and Tenant shall not commence any action against Landlord or otherwise pursue any right or remedy against Landlord in consequence of a default by Landlord under the terms and provisions of the Lease, unless prior written notice by Tenant specifying in sufficient detail the basis for the default has been mailed to Agent at its address set forth above. Tenant further agrees and acknowledges that Agent shall have the right, but shall not be obligated, to cure such default on behalf of Landlord or to protect Agent's interests within thirty (30) days after receipt of such notice from Tenant, or if such default cannot reasonably be cured in the aforementioned 30-day period, Agent shall have the right to commence the cure of such default in the aforementioned 30-day period and thereafter diligently pursue such cure until completed. Tenant further agrees and acknowledges that Tenant will not invoke any of its self-help or other similar remedies, either express or implied, under the Lease (except in the case of emergency repairs) unless such default by Landlord has remained uncured at the expiration of the aforementioned 30-day period after receipt of such notice of default, or if such default cannot reasonably be cured by Landlord or Agent in the aforementioned 30-day period, unless the cure of such default has not been commenced within the aforementioned 30-day period and thereafter is not diligently prosecuted to completion.

7. Tenant agrees and acknowledges that, prior to Agent's succession to Landlord's interest in the Premises, through any foreclosure, trustee sale, deed or assignment in lieu of foreclosure, or a possessory action, neither this Agreement nor the Security Instrument shall: (i) operate to place responsibility for the control, care, management, or repair of the Premises or the Property upon Agent or any Lender, (ii) impose responsibility for the carrying out of the terms and conditions of the Lease upon Agent or any Lender, (iii) impose any liability or responsibility on Agent or any Lender for any waste committed on the Premises by any party whatsoever or for any dangerous or defective condition of the Premises, or (iv) impose any liability or responsibility on Agent or any Lender for any negligence in the management, upkeep, repair, or

control of the Premises resulting in any damage to personal property or in any loss or injury or death to any person.

8. In the event that Agent notifies Tenant of any default under the Security Instrument and demands that Tenant pay rent and all other sums due under the Lease to Agent, Tenant (waiving any proof of the occurrence of such event of default other than receipt of Agent's notice) shall pay rent and all other sums due under the Lease directly to Agent. Any payments made to Agent by Tenant shall not affect or impair the other rights and remedies of Agent under the Security Instrument or otherwise against Landlord. Any and all payments made to Agent by Tenant pursuant to the foregoing shall be credited against Tenant's rental obligations under the Lease regardless of whether Agent had the right to make such demand and regardless of any contrary demands which may hereafter be made by Landlord.

9. This Agreement shall be the whole and only agreement between Agent, Landlord, and Tenant with regard to the subordination of the Lease to the lien or charge of the Security Instrument in favor of Agent, and shall supersede and cancel, but only insofar as would affect the priority of the Lease as to such subjection or subordination, all other subjection or subordination agreements, including, but not limited to, those provisions, if any, contained in the Lease which provide for the subjection or subordination of said Lease to a deed of trust or to a mortgage or mortgages.

10. This Agreement may not be modified, except by an agreement in writing signed by Agent, Landlord, and Tenant. All references to Agent in this Agreement shall be deemed to refer to Agent, its participants, and their respective successors and assigns. This Agreement shall inure to the benefit of and be binding upon Agent, Landlord, and Tenant and their respective successors and assigns.

11. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Security Instrument, except as specifically set forth herein. Successor's liability under the Lease shall be limited to Successor's interest in and to the Premises and the Property.

12. Tenant agrees and acknowledges that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement with respect to the Security Instrument. In the event there is any inconsistency between the terms and provisions of this Agreement and the terms and provisions of the Lease dealing with non-disturbance, the terms and provisions hereof shall be controlling.

13. All notices, demands, or requests made pursuant to, under, or by virtue of this Agreement shall be in writing and delivered by hand, sent by an overnight courier service providing dated evidence of delivery, or mailed by certified or registered mail, return receipt requested, to the person to whom the notice, demand, or request is being made at its address set forth herein. Such notices shall be deemed to have been promptly given and received for all purposes (a) if hand delivered, effective upon delivery; (b) if mailed, by United States registered or certified mail, postage prepaid, return receipt requested, effective on the date shown on the return receipt; or (c) if sent by Federal Express or other reliable express courier, effective on the next business day after delivery to such express courier service. Any party may change the place that notices and demands are to be sent by written notice delivered in accordance with this

Agreement. "Business day" shall mean any day, except Saturday, Sunday and any day which, in the State in which the Property is located, is a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close.

14. This Agreement shall be governed by the laws of the State in which the Property is located. If any of the terms of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of any such terms to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs, and expenses incurred by the prevailing party.

16. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same agreement.

17. Landlord and Tenant understand, acknowledge, and agree that Agent in entering into this Agreement and third-parties who are interested in the matters covered by this Agreement are relying on the representations, warranties, and covenant contained herein, including, without limitation, purchasers, transferees, assignees, servicers, participants, investors, and their respective successors and assigns, and credit rating agencies in connection with the Loan.

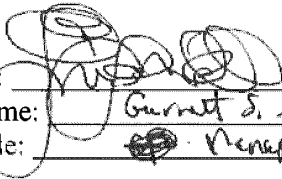
[Remainder of page intentionally left blank;  
signatures appear on the following pages]

**LANDLORD SIGNATURE PAGE**

IN WITNESS WHEREOF, Landlord has caused this Agreement to be duly executed as of the Effective Date.

**LANDLORD:**

**5300 DEVELOPMENT LLC**  
a Utah limited liability company

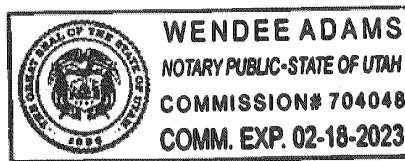
By:   
Name: Garrett S. Sill  
Title: Manager

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of June, 2019, by Garrett S. Sill, a Manager of **5300 DEVELOPMENT LLC**, a Utah limited liability company, for and on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

  
NOTARY PUBLIC

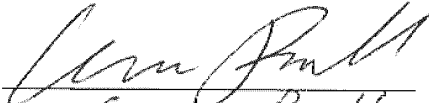


**TENANT SIGNATURE PAGE**

IN WITNESS WHEREOF, Tenant has caused this Agreement to be duly executed as of the Effective Date.

**TENANT:**

**THE CODE CORPORATION,**  
a Delaware corporation

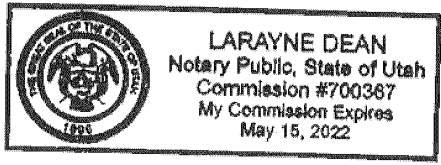
By:   
Name: George Powell  
Title: CEO

STATE OF UTAH )  
                                  : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 18TH day of JUNE, 2019, by GEORGE POWELL, the CEO of **THE CODE CORPORATION**, a Delaware corporation, for and on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

  
NOTARY PUBLIC






**AGENT SIGNATURE PAGE**

IN WITNESS WHEREOF, Agent has caused this Agreement to be duly executed as of the Effective Date.

**AGENT:**

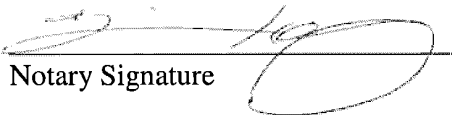
**KEYBANK NATIONAL ASSOCIATION**  
a national banking association,

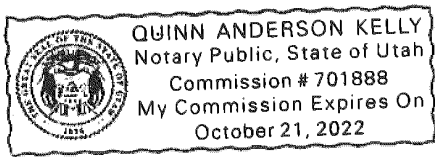
By:   
Name: Mike Muelleck  
Title: Senior Vice President

STATE OF UTAH                    )  
                                          : ss.  
COUNTY OF Salt Lake        )

On this 1 day of July, in the year 2019, before me Quinn Kelly, a notary public, personally appeared \_\_\_\_\_, a SVP of **KEYBANK NATIONAL ASSOCIATION**, a national banking association on behalf of said association, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

  
Notary Signature



## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

The real property referenced in the foregoing Subordination, Non-Disturbance, and Attornment Agreement as the "Property" is located in the County of Salt Lake, State of Utah and is more particularly described as follows:

LOT 2, ASCENSION AT 53RD SUBDIVISION PLAT, PREPARED BY STANTEC CONSULTING SERVICES INC.; ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE, AND OF RECORD IN THE OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER'S OFFICE, STATE OF UTAH, AS RECORDED ON MAY 3, 2016, AS DOCUMENT NO. 12272158, IN BOOK 2016P OF PLATS, AT PAGE 102.

#### **For Information Purposes Only:**

Property Information: The Property consists of approximately 4.09 gross acres.

Tax Parcel I.D. No. – The Property has been assigned the Tax Parcel I.D. No. 21-12-327-035.