

When recorded, mail to:

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

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9/21/2018 3:30:00 PM \$33.00  
Book - 10714 Pg - 8508-8518  
ADAM GARDINER  
Recorder, Salt Lake County, UT  
NORTH AMERICAN TITLE LLC  
BY: eCASH, DEPUTY - EF 11 P.

APN: 21251530020000

40408-18-00507

## SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT

**NOTICE:** THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT (this "Agreement") is made as of September 21, 2018 by and among 700 W 9<sup>TH</sup> AVE, LLC, a Utah limited liability company ("Landlord"), QUALITY ELECTRICAL SYSTEMS, INC., a Utah corporation ("Tenant"), and WASHINGTON FEDERAL, NATIONAL ASSOCIATION ("Lender").

### RECITALS:

A. Lender has or will extend a loan to Landlord (the "Loan"), which Loan is evidenced by a Secured Promissory Note dated on or about the date of this Agreement (as it may be amended, modified, extended, and renewed from time to time, the "Note"). As security for repayment of the Loan and Note and performance of Landlord's obligations to Lender, Lender has required that Landlord execute and deliver to Lender that certain Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of approximately even date herewith for the benefit of Lender (as it may be amended, modified, extended, and renewed from time to time, the "Deed of Trust"), which will be recorded in the official records of Salt Lake County, Utah, encumbering the Landlord's interest in the property described on Exhibit A attached hereto and made a part hereof and all improvements thereon (the "Real Estate").

B. Pursuant to that certain Commercial and Office Lease dated as of April 3, 2018 (the "Lease"), Landlord has leased a portion of the Real Estate to Tenant on the terms and conditions set forth in the Lease.

C. The parties desire to agree upon the relative priorities of their interests in the Real Estate and their rights and obligations if certain events occur.

### AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, the parties do hereby covenant and agree as follows:

1. Definitions. The following terms shall have the following meanings for purposes of this Agreement:

(a) "Foreclosure Event" means (i) judicial or non-judicial foreclosure under the Deed of Trust; (ii) any other exercise by Lender of rights and remedies (whether under the Deed of Trust or under applicable law, including bankruptcy law) as holder of the Note and/or the Deed of Trust, as a result of which Successor Landlord becomes owner of the Real Estate; or (iii) delivery by trustee under the Deed of Trust ("Trustee") to Lender (or its designee or nominee) of a deed or other conveyance of Trustee's interest in the Real Estate in lieu of any of the foregoing.

(b) "Successor Landlord" means any party that becomes owner of the Real Estate as the result of a Foreclosure Event, including, but not limited to, Lender.

2. Subordination of Lease. The parties acknowledge and agree that the Lease is and shall be subject and subordinate, in right, interest, and lien, and for all purposes, to the Deed of Trust, and to all renewals, modifications, consolidations, replacements, and extensions thereof, and to any subsequent deed of trust with which the Deed of Trust may be spread or consolidated, to the full extent of the principal sum and all other amounts secured thereby and interest thereon.

3. Nondisturbance and Attornment.

(a) No Exercise of Deed of Trust Remedies against Tenant. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Deed of Trust unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

(b) Nondisturbance and Attornment. If the Lease has not been terminated, then, when Successor Landlord takes title to the Real Estate: (i) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (ii) Successor Landlord shall be bound to Tenant under all terms and conditions of the Lease (except as provided in this Agreement); (iii) Tenant shall recognize and attorn to Successor Landlord as Landlord under the Lease as affected by this Agreement as provided in **Section 4** herein; and (iv) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

(c) Further Documentation. The provisions of this Agreement shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Agreement in writing upon request by either of them.

4. Attornment. If Successor Landlord shall succeed to the interest of the Landlord under the Lease, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to Successor Landlord, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated or such Foreclosure Event had not occurred. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Successor Landlord, any instrument or

certificate which, in the sole judgment of Successor Landlord, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

5. Rights and Obligations of Successor Landlord under Lease. Successor Landlord in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of any rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Successor Landlord for the breach of any agreement contained in the Lease that Tenant might have had against Landlord if Successor Landlord had not succeeded to the interest of Landlord; provided, however, that Successor Landlord shall not be:

(a) liable for any act or omission of or any claims against any prior landlord (including Landlord); or

(b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or

(c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or

(d) bound by any amendment or modification of the Lease, or waiver of any of its terms, made without its consent; or

(e) liable for any sum that any prior landlord (including Landlord) owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Successor Landlord; or

(f) bound by any surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant; or

(g) liable for any construction obligation of any prior landlord (including Landlord); or

(h) liable for any breach of representation or warranty of any prior landlord (including Landlord); or

(i) liable for any damages or other relief attributable to any latent or patent defects in construction with respect to any portion of the Real Estate.

6. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in the Real Estate from time to time, including insurance and condemnation proceeds and Successor Landlord's interest in the Lease (collectively, "*Successor Landlord's Interest*"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as amended or affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not

collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

7. Lender's Right to Cure.

(a) Notice to Lender. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any remedies under the Lease, Tenant shall provide Lender with notice of the breach or default by Landlord giving rise to same (a "Default Notice") and, or thereafter, the opportunity to cure such breach or default as provided for below.

(b) Lender's Cure Period. After Lender receives a Default Notice, Lender shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Lender agrees or undertakes otherwise in writing.

(c) Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires Lender to possess and control the Real Estate, provided only that Lender undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure such breach or default within the period permitted by this paragraph, Lender's cure period shall continue for such additional time (the "Extended Cure Period") as Lender may reasonably require to obtain possession and control of the Real Estate and thereafter to cure the breach or default with reasonable diligence and continuity. So long as any receiver of the Real Estate has been appointed and is continuing to serve, Lender shall be deemed to have possession and control of the Real Estate.

8. Confirmation of Facts. Tenant represents to Lender and to any Successor Landlord, in each case as of the date hereof:

(a) Effectiveness of Lease. The Lease is in full force and effect, has not been modified, and constitutes the entire agreement between Landlord and Tenant with respect to the Real Estate. Without limiting the foregoing, there are no oral or written agreements between Landlord and Tenant that would create any additional obligations of Landlord with respect to the Lease or the Real Estate, or that would reduce or limit any obligations of Tenant under the Lease. Tenant has no interest in the Real Estate, including any right or option to purchase any portion of the Real Estate, except as is expressly set forth in the Lease. No unfulfilled conditions exist to Tenant's obligations under the Lease.

(b) No Default. Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease and, to the best of Tenant's knowledge, no breach or default by Landlord exists and no event has occurred that, with the giving of notice, the passage of time or both, would constitute such a breach or default.

(c) No Transfer. Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein.

(d) Due Authorization. Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

9. Notices. All notices, requests, demands and consents to be made hereunder to the parties hereto shall, unless otherwise expressly provided, be in writing and be delivered by hand or sent by registered mail or certified mail, postage prepaid, return receipt requested (except for any notice address which is a post office box, in which case notice may be given by first class mail), through the United

States Postal Service to the addresses shown below, or such other address which the parties may provide to one another in accordance herewith. Such notices, requests, demands and consents, if sent by mail, shall be deemed given two (2) business days after deposit in the United States mail, and if delivered by hand, shall be deemed given when delivered.

In the case of Landlord, to: 700 W 9<sup>th</sup> Ave, LLC  
6961 Villageriver Lane #D6  
Midvale, Utah 84047  
Attention: James Johansen

In the case of Tenant, to: Quality Electrical Systems, Inc.  
646 West 9<sup>th</sup> Ave  
Midvale, Utah 84047  
Attention: Steven Seare

In the case of Lender, to: Washington Federal, National Association  
1207 East Draper Parkway  
Draper, UT 84020  
Attention: James Endrizzi

With a copy to: Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101  
Attention: Brian D. Cunningham, Esq.

10. Miscellaneous.

(a) Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Lender assigns the Deed of Trust, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

(b) Entire Agreement. This Agreement constitutes the entire agreement among Landlord, Tenant and Lender regarding the rights and obligations of Landlord, Tenant and Lender as to the subject matter of this Agreement.

(c) Interaction with Lease and with Deed of Trust. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for delivery of nondisturbance agreements by the holder of the Deed of Trust.

(d) Lender's Rights and Obligations. Except as expressly provided for in this Agreement, Lender shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Lender under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement, or the amendments to the Lease set forth herein.

(e) Interpretation: Governing Law. The interpretation, validity, and enforcement of this Agreement shall be governed by and construed under the internal laws of State of Utah, excluding such state's principles of conflicts of law.

(f) Amendments. This Agreement may be amended, discharged, or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

(g) Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) Lender's Representation. Lender represents that Lender has full authority to enter into this Agreement, and Lender's entry into this Agreement has been duly authorized by all necessary actions.

[Remainder of Page Intentionally Left Blank]

**QUALITY ELECTRICAL SYSTEMS, INC.**  
a Utah corporation

By: [Signature]  
Name: STEVEN SEARE  
Title: ASST MANAGER

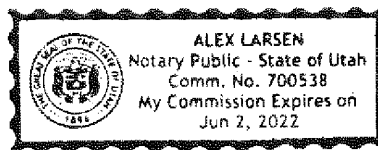
"Tenant"

State of Utah )  
County of SALT LAKE ) ss.

On this 18<sup>TH</sup> day of SEPTEMBER, in the year 2018, before me ALEX LARSEN, a notary public, personally appeared STEVEN SEARE, an individual, the ASST MANAGER of **QUALITY ELECTRICAL SYSTEMS, INC.**, a Utah corporation, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)


[Signature]  
Notary Signature

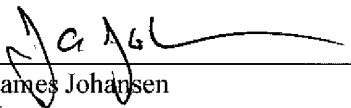


[Signatures Continue on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**700 W 9<sup>TH</sup> AVE, LLC**  
a Utah limited liability company

By:   
Name: Scott Babcock  
Title: Manager

By:   
Name: James Johansen  
Title: Manager

*"Landlord"*







**EXHIBIT A  
LEGAL DESCRIPTION**

That certain real property located in Salt Lake County, Utah, more particularly described as follows:

BEGINNING ON THE EAST LINE OF 700 WEST STREET, SAID POINT BEING NORTH ALONG THE SECTION LINE 203.40 FEET AND EAST 53.00 FEET FROM THE WEST QUARTER CORNER OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 273.63 FEET TO THE SOUTH LINE OF THE STATE ROAD COMMISSION OF UTAH PROPERTY; THENCE FOLLOWING SAID SOUTH LINE EAST 268.00 FEET, AND NORTH 2.13 FEET AND EAST 99.00 FEET, AND NORTHEASTERLY ALONG A 190.00 FOOT RADIUS CURVE TO THE LEFT 149.22 FEET, AND NORTH 44°58'50" EAST 76.16 FEET, AND EAST 40.20 FEET, MORE OR LESS, TO THE WEST LINE OF THE O.S.L.R.R.; THENCE SOUTHWESTERLY ALONG SAID WEST LINE ALONG THE ARC OF A 10° RAILROAD CURVE 439.54 FEET, AND SOUTH 67°15'00" WEST 203.23 FEET; THENCE WEST 110.02 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM, THE LAND CONVEYED TO UTAH TRANSIT AUTHORITY, BY THAT CERTAIN WARRANTY DEED RECORDED SEPTEMBER 17, 2008 AS ENTRY NO. 10522654 IN BOOK 9643 AT PAGE 5928 OF OFFICIAL RECORDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND IN FEE FOR THE "MID-JORDAN LRT", A UTAH TRANSIT AUTHORITY PROJECT, BEING PART OF THE GRANTOR'S PROPERTY DEFINED IN THAT CERTAIN WARRANTY DEED, RECORDED MARCH 16, 2001, AS ENTRY 7845921, BOOK 8435 AT PAGE 2139, SITUATE IN THE NORTHWEST ¼ OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EXISTING NORTHERLY RIGHT OF WAY LINE OF UTAH TRANSIT AUTHORITY AND THE EAST RIGHT OF WAY LINE OF 700 WEST STREET, SAID POINT BEING THE SOUTHWEST CORNER OF SAID GRANTOR'S PROPERTY, SAID POINT ALSO BEING N00°14'25"E 208.35 FEET ALONG THE SECTION LINE AND S89°45'35"E 53.00 FEET FROM THE WEST QUARTER CORNER OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE N0°14'25"E 19.79 FEET ALONG SAID EAST RIGHT OF WAY LINE OF 700 WEST STREET AND THE WEST PROPERTY LINE OF SAID GRANTOR'S PROPERTY; THENCE S89°44'03"E 159.57 FEET TO A POINT ON SAID EXISTING NORTHERLY RIGHT OF WAY LINE OF UTAH TRANSIT AUTHORITY AND EASTERLY PROPERTY LINE OF SAID GRANTOR'S PROPERTY; THENCE S67°30'57"W 51.18 FEET ALONG SAID EXISTING NORTHERLY RIGHT OF WAY LINE AND SAID EASTERLY PROPERTY LINE OF SAID GRANTOR'S PROPERTY; THENCE N89°44'03"W 112.37 FEET ALONG SAID EXISTING NORTHERLY RIGHT OF WAY LINE AND THE SOUTH PROPERTY LINE OF SAID GRANTOR'S PROPERTY TO THE POINT OF BEGINNING.