

Recording Requested By,  
And After Recording, Return To:

Caryn S. Englander  
DLA Piper LLP (US)  
444 West Lake Street, Suite 900  
Chicago, Illinois 60606

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SUBORDINATION, NON-DISTURBANCE,  
AND ATTORNMENT AGREEMENT  
(SECURITY INSTRUMENT)

THIS SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of January 22, 2019, by and between **IMO US UTAH, LLC**, a Delaware limited liability company (the "Tenant"), and **FIRST INTERNET BANK OF INDIANA**, an Indiana state chartered banking association (the "Lender").

RECITALS

A. The Lender has extended credit or may hereafter extend credit to **612 NORTH STATE STREET LLC**, a Utah limited liability company (the "Borrower"), secured, in whole or in part, by a mortgage or deed of trust (the "Security Instrument") covering that certain real property located at 612 State Street, Lindon, Utah County, Utah and described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Property").

B. The Tenant leases all or a portion of the Property pursuant to a lease agreement entered into between the Borrower and the Tenant dated as of even date herewith (the "Lease"), which Lease has not been recorded. It is a condition of the Lender's agreement to extend or continue credit to the Borrower secured by the Property that the security of the Security Instrument be and at all times remain a lien or charge on the Property prior and superior to the Lease.

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NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. SUBORDINATION.

(a) Subordination of Lease. The Security Instrument and any and all extensions, renewals, modifications or replacements thereof shall be and at all times remain a lien or charge on the Property prior and superior to the Lease. The Tenant intentionally and unconditionally

waives, relinquishes and subordinates the priority and superiority of the Lease and the Tenant's right and interest to the Property thereunder to the lien or charge of the Security Instrument, and any and all extensions, renewals, modifications or replacements thereof.

(b) Reliance. The Tenant acknowledges that the Lender, in extending credit or continuing to extend credit to the Borrower secured by the Property is doing so in material reliance on this Agreement.

(c) Acknowledgments of Tenant. The Tenant acknowledges that it has such information with respect to any credit extended by the Lender to the Borrower, and all loan documents executed in connection therewith, as the Tenant deems necessary in order to provide this subordination. The Tenant further agrees that the Lender is under no obligation or duty to, nor has the Lender represented that it has or will, see to the application of the proceeds of any such credit by any person or entity, and any application or use of any such proceeds for purposes other than those for which they were intended shall not defeat this subordination.

(d) Entire Subordination Agreement. This Agreement constitutes the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Security Instrument; there are no agreements (written or oral) outside or separate from this Agreement with respect to the subject matter hereof; and all prior negotiations with respect thereto, if any, are merged into this Agreement. This Agreement shall supersede and cancel, but only insofar as would affect the priority between the Security Instrument and the Lease, any prior agreements as to such subordination, including without limitation those provisions, if any, contained in the Lease which provide for the subordination thereof to the lien of a deed of trust or mortgage affecting all or any portion of the Property.

2. LEASE. The Tenant hereby covenants and agrees that, so long as the Security Instrument remains in force and effect:

(a) No Modification, Termination or Cancellation. Lender will not be bound by any modification, termination or cancellation of the Lease without the Lender's prior written consent, other than a termination of the Lease as a result of casualty, condemnation or a default by the Borrower not cured by Borrower or Lender in accordance with the Lease or this Agreement.

(b) Notice of Default. The Tenant shall notify the Lender in writing concurrently with any notice given to the Borrower of any breach of or default by the Borrower under the Lease. The Tenant agrees that the Lender shall have the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below, and the Tenant shall not terminate the Lease as a result of a default of the Lease, as to the Lender, if the Lender cures such breach or default within thirty (30) days after the expiration of the time period provided in the Lease for the cure thereof by the Borrower; provided however, that if such breach or default cannot with diligence be cured by the Lender within such thirty (30) day period, the commencement of

action by the Lender within such thirty (30) day period to remedy the same shall be deemed sufficient so long as the Lender pursues such cure with diligence.

(c) No Advance Rents. The Tenant shall not make any payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease.

(d) Assignment of Rents. Upon receipt by the Tenant of written notice from the Lender that the Lender has elected to terminate the license granted to the Borrower to collect rents, as provided in the Security Instrument, and directing the Tenant to make payment thereof to the Lender, the Tenant shall comply with such direction to pay and shall not be required to determine whether the Borrower is in default under any obligations to the Lender. By its countersignature hereto, Borrower acknowledges and agrees to the terms of this Section 2(d).

3. ATTORNMENT. If the Lender or any other transferee acquires the Borrower's right, title and interest in and to the Property pursuant to a foreclosure of the Security Instrument or a transfer of the Property in lieu thereof or in any other manner whereby the Lender or such transferee succeeds to the interest of the Borrower under the Lease, the Tenant agrees as follows for the benefit of the Lender or such transferee:

(a) Payment of Rent. Subject to the terms of the Lease, the Tenant shall pay to the Lender or such transferee all rental payments required to be made by the Tenant pursuant to the terms of the Lease for the remaining term thereof.

(b) Continuation of Performance. The Tenant shall be bound to the Lender or such transferee in accordance with all of the terms of the Lease for the remaining term thereof, and the Tenant hereby attorns to the Lender or such transferee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon the Lender or such transferee succeeding to the Borrower's interest in the Lease and giving written notice thereof to the Tenant.

(c) No Offset. Neither the Lender nor such transferee shall be liable for, or subject to, any offsets or defenses which the Tenant may have by reason of any act or omission of the Borrower as the prior lessor under the Lease, except to the extent the same is an act or omission of a continuing nature, nor for the return of any sums which the Tenant may have paid to the Borrower as the prior lessor under the Lease as security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by the Borrower to the Lender or such transferee.

(d) Subsequent Transfer. If the Lender or such transferee, by succeeding to the Borrower's interest under the Lease, becomes obligated to perform the covenants of a lessor thereunder, then, upon any further transfer by the Lender or such transferee of its interest as a lessor under the Lease, all of such obligations shall terminate as to the Lender or such transferee.

4. NON-DISTURBANCE. In the event of a foreclosure of the Security Instrument, so long as there shall then exist no breach, default or event of default by the Tenant under the Lease beyond any applicable cure periods, (a) the leasehold interest of the Tenant shall not be extinguished or terminated by reason of such foreclosure, (b) the Lease shall continue in full force and effect, and (c) the Lender and its successors-in-interest shall recognize and accept the Tenant as the tenant under the Lease, subject to the terms and conditions of the Lease as modified by this Agreement and Lender or its successor will be bound thereby. Tenant hereby acknowledges and agrees that any option to purchase, right for first refusal or right of first offer to purchase the Property (or any portion thereof) in the Lease, shall, notwithstanding anything to the contrary set forth in the Lease, not be exercisable in connection with any exercise of remedies pursuant to the Security Instrument including (i) a purchase of the Property at a foreclosure sale, (ii) a transfer of the Property to Lender or its designee pursuant to a deed-in-lieu of foreclosure, or (iii) as subsequent sale of the Property by Lender or its designee after such foreclosure or deed-in-lieu of foreclosure. For the avoidance of doubt, Tenant's purchase rights under the Lease shall remain exercisable in accordance with the Lease so long as Lender has not previously exercised its remedies pursuant to the Security Instrument.

5. LEASEHOLD MORTGAGEE RIGHTS. Lender acknowledges the rights granted under the Lease to the holder of a deed of trust or mortgage lien encumbering the leasehold interest of Tenant (the "Mortgagee"). Lender, its successors and assigns, in the event it, or they, succeed to the rights of Borrower under the Lease as provided in Section 3 hereof, shall honor all such rights granted to the Mortgagee under the Lease, accept any cure by the Mortgagee of any breach, default or event of default by the Tenant under the Lease in accordance with the terms thereof, and provide to Mortgagee a copy of any notice delivered to Tenant under this Agreement or pursuant to the Lease.

6. MISCELLANEOUS.

(a) Remedies Cumulative. All remedies provided herein are cumulative, not exclusive, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between the Lender and the Borrower or any other person or entity.

(b) Costs, Expenses and Attorneys' Fees. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by the Lender or any other person) relating to the Borrower, the Tenant or any other person or entity.

(c) Notices. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered

to each party at the address set forth below its signature, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by overnight courier or hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (iii) if sent by telecopy, upon receipt.

(d) Further Assurances. At the request of any party hereto, each other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

(e) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State in which the Property is located.

(f) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

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

**TENANT:**

**IMO US UTAH, LLC**, a Delaware limited liability company

By: Jean Jacquemetton  
Name: Jean Jacquemetton  
Title: Vice President & Secretary

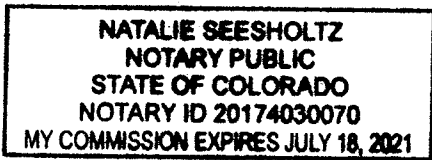
STATE OF Colorado  
COUNTY OF Arapahoe

The foregoing instrument was acknowledged before me this 8 day of January, 2019, by Jean Jacquemetton as Vice President & Secretary of IMO US UTAH, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: July 18, 2021

Natalie Seesholtz  
Notary Public



**LENDER:**

**FIRST INTERNET BANK OF INDIANA,**  
an Indiana state chartered banking association

By: Denise R Clevenger  
Name: Denise R Clevenger  
Title: VP - CRE Closing Mgr

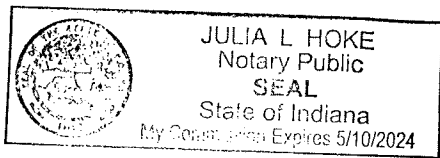
STATE OF Indiana  
COUNTY OF Hamilton

The foregoing instrument was acknowledged before me this 22nd day of January, 2019, by Denise R. Clevenger as VP-CRE Closing Mgr of FIRST INTERNET BANK OF INDIANA, an Indiana state chartered banking association.

Witness my hand and official seal.

My commission expires: 5/10/24  
My county of residence: Marion

Julia L. Hoke  
Notary Public



ACKNOWLEDGMENT

The undersigned Borrower hereby acknowledges and consents to the provisions of the Subordination, Non-Disturbance, and Attornment Agreement to which this Acknowledgement is attached, including, without limitation, Section 2(d) thereof.

**BORROWER:**

**612 NORTH STATE STREET LLC**, a  
Utah limited liability company

By: [Signature]  
Name: Michael Aviles  
Its: Sole member

STATE OF NEW YORK  
COUNTY OF NEW YORK

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of January, 2019,  
by Michael Aviles as Sole Member of 612  
NORTH STATE STREET LLC, a Utah limited liability company.

Witness my hand and official seal.

My commission expires: 1-1-2021

Alina Amador  
Notary Public

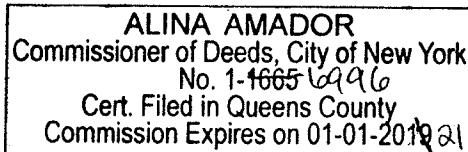




EXHIBIT A TO  
SUBORDINATION, NON-DISTURBANCE, AND  
ATTORNNMENT AGREEMENT  
(SECURITY INSTRUMENT)

Legal Description of Property:

PARCEL 1: (14-046-0055)

BEGINNING NORTH 550.72 FEET AND WEST 919.70 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 88°18'00" WEST 151.84 FEET TO THE EAST LINE OF STATE ROAD; THENCE NORTH 42°11'00" WEST 137.60 FEET ALONG SAID STREET LINE; THENCE NORTH 60°19'00" EAST 74.00 FEET ALONG FENCE LINE; THENCE NORTH 00°22'20" WEST 247.38 FEET ALONG THE CENTERLINE OF CANAL; THENCE NORTH 87°49'50" EAST 123.81 FEET; THENCE SOUTH 08°30'30" EAST 390.46 FEET TO THE POINT OF BEGINNING. LESS AND EXCEPTING ANY PORTION LYING WITHIN THE 600 NORTH STREET RIGHT OF WAY.

PARCEL 2: (49-091-0031)

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF 600 NORTH STREET, SAID POINT BEING LOCATED NORTH 574.34 FEET AND WEST 923.23 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 28, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 175.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 35°08'10" AN ARC LENGTH OF 107.32' FEET (THE CHORD OF WHICH BEARS SOUTH 69°04'05" WEST, 105.64 FEET); TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 30.00 FEET; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 86°13'55" AN ARC LENGTH OF 45.15 FEET (THE CHORD OF WHICH BEARS NORTH 85°23'03" WEST, 41.01 FEET) TO THE EAST LINE OF STATE ROAD; THENCE NORTH 42°16'06" WEST ALONG SAID EASTERLY LINE, 39.96 FEET; THENCE NORTH 88°19'19" EAST, 166.49 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.