

ENT 62161:2015 PG 1 of 10
Jeffery Smith
Utah County Recorder
2015 Jul 13 03:56 PM FEE 32.00 BY EO
RECORDED FOR First American Title Insurance
ELECTRONICALLY RECORDED

After Recording Return To:

Pacific Western Bank
Los Angeles Real Estate Industries Group
1880 Century Park East, Suite 800
Los Angeles, California 90067

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Tenant:

Tuesday Morning, Inc.
Attn: Real Estate Department
6250 LBJ Freeway
Dallas, Texas 75240

Landlord:

Family Center Orem Shopping Center, LLC
c/o CCA Acquisition Company, LLC
Attn: Steven Usdan
5670 Wilshire Blvd., Suite 1250
Los Angeles, California 90036

Lender:

Pacific Western Bank
Los Angeles Real Estate Industries Group
1880 Century Park East, Suite 800
Los Angeles, California 90067

Dated: June 29, 2015

Utah County Tax Parcel Numbers:

57-012-0002; 57-012-0004; 57-012-0005; 57-014-0001

FIRST AMERICAN TITLE
FD643 SF

Loan No. 406195964

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this “**Agreement**”), made to be effective on the 29 day of June, 2015, by, between and among FAMILY CENTER OREM SHOPPING CENTER, LLC, a Delaware limited liability company (“**Landlord**”), TUESDAY MORNING, INC., a Texas corporation (“**Tenant**”), and PACIFIC WESTERN BANK, a California state-chartered bank (“**Lender**”).

WHEREAS, Landlord and Tenant have entered into that certain Lease Agreement, dated May 6, 2015 (as amended, the “**Lease**”), whereby Tenant agreed to lease from Landlord a portion of certain property owned by Landlord, which portion is more particularly described in the Lease (the “**Leased Premises**”), located in the Family Center of Orem Shopping Center situated on a parcel of land in Orem, Utah County, Utah, which parcel of land is more fully described on Exhibit A attached hereto and incorporated herein by reference (the “**Property**”); and

WHEREAS, Lender has granted a loan to Landlord (the “**Loan**”) which Loan is to be secured by a deed of trust or mortgage on the Property, including the Leased Premises (the “**Mortgage**”), and by an assignment of Landlord’s interest in all leases, rents, profits and contracts for the Property (the “**Assignment of Leases**”); and

WHEREAS, Tenant has requested that Lender agree not to disturb Tenant’s exclusive possessory rights in the Leased Premises if Lender should foreclose its Mortgage provided that Tenant is not in default under the Lease and further provided that Tenant attorns to Lender or the purchaser at any foreclosure sale or to any party who takes a deed in lieu of foreclosure; and

WHEREAS, Lender is willing so to agree on the terms and conditions hereafter provided.

NOW THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord, Tenant and Lender covenant and agree as follows:

1. Subject to the terms of this Agreement, the Lease and Tenant’s leasehold estate created thereby, including all rights under the Lease, shall be and are subject and subordinate to the lien of the Mortgage and to all the terms, conditions and provisions thereof, to all advances made to or to be made thereunder, to any renewals, extensions, modifications or replacements thereof and to any subsequent mortgage with which the Mortgage may be spread and/or consolidated.
2. So long as the conditions and agreements of non-disturbance and other agreements set forth herein are met and provided that Lender or any successor owner of the Leased Premises performs all obligations of Landlord under the Lease, upon receipt of written notice from Lender that Lender has succeeded to the interest of Landlord under the Lease, Tenant

agrees that it will attorn to and recognize any purchaser at a foreclosure sale under the Mortgage, any person or entity who acquires the real property of which the Leased Premises form a part by deed in lieu of foreclosure, and the successors and assigns of such purchaser, as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the same terms and conditions set forth in the Lease.

3. In the event that it should become necessary to foreclose the Mortgage, Lender will not disturb Tenant's quiet enjoyment and exclusive possession and occupancy under the Lease so long as Tenant is not in default under any of the terms, covenants, or conditions of the Lease beyond any applicable notice or cure period.
4. In the event that Lender or any other party shall succeed to the interest of Landlord under the Lease, or otherwise becomes entitled to and takes possession of the Property, Lender, or any such other party or subsequent owner, shall not be:
 - A. Liable for any act or omission of any prior landlord (including Landlord), other than unremedied defaults or breaches of any prior landlord (including Landlord) which continue after Lender succeeds to the interest of Landlord under the Lease; or
 - B. Liable for the return of any security deposit unless such security deposit has physically been received by Lender; or
 - C. Subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord) except as it relates to Tenant's continued right of offset for any default or breach by any prior landlord (including Landlord) which remains uncured and/or except to the extent such offset or defenses are provided for under the Lease and/or under applicable law; or
 - D. Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord) except to the extent paid pursuant to the express terms of the Lease.
5. Tenant shall not pay an installment of rent or any part thereof more than thirty (30) days prior to the due date of such installment, unless paid pursuant to the express terms of the Lease.
6. Tenant agrees to give Lender in writing a copy of any notice of default served upon the Landlord, provided that prior to such notice Tenant has been notified in writing of the address of such Lender. This Agreement shall constitute notice to Tenant of Lender's address as set forth below. Tenant further agrees that Lender shall have the same cure period provided to Landlord in the Lease, plus an additional ten (10) days after the expiration of the time provided in the Lease to Landlord to cure such default, if it elects to cure such default, within which to cure such default.
7. After written notice is received by Tenant from Lender, pursuant to the Assignment of Leases, that the rentals under the Lease should be paid to Lender, Tenant shall (without any obligation by Tenant to inquire into the factual basis of such notice) pay to Lender, or in

accordance with the directions of Lender, all rentals and other monies due and to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant of and from any liability to Landlord on account of any such payments. Lender and Landlord agree that any payments made to Lender shall be credited to Tenant under the Lease as if Tenant had made such payments directly to Landlord regardless of whether Lender had the right to make such demand and regardless of any contrary demands which may hereafter be made by Landlord.

8. Nothing in this Agreement shall be construed to be an agreement by Lender to perform any covenant of the Landlord under the Lease unless and until it obtains title to the Property by power of sale, judicial foreclosure, or deed in lieu of foreclosure, or obtains possession of the Property under the terms of the Mortgage.
9. This Agreement may not be modified orally; it may be modified only by an agreement in writing signed by the parties or their successors in interest. Once fully executed by Tenant, Landlord and Lender, this Agreement shall inure to the benefit of and shall be binding upon Tenant, Landlord and Lender, and their respective heirs, personal representatives, successors and assigns. This Agreement shall be governed by and construed according to the laws of the State of Utah.
10. Where under this Agreement rights and obligations are created between Tenant and Lender, at or subsequent to foreclosure proceedings, "Lender" shall be deemed to include any purchaser at a foreclosure sale or trustee's sale and any purchaser acquiring title through mortgage foreclosure proceedings.
11. Neither this Agreement nor the Loan, Mortgage, or Assignment of Leases (nor any other document associated therewith) shall apply to any furniture, equipment, or personal property owned or leased by Tenant which is now or hereafter placed or installed on the Leased Premises or on the Property, and Tenant shall have the full right to remove said items at any time during or at the expiration of the lease term in accordance with the terms of the Lease.
12. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. However, this Agreement shall not be effective unless and until it is fully executed by all of Landlord, Tenant, and Lender.
13. All notices required by this Agreement shall be given in writing and shall be deemed to have been duly given for all purposes when deposited in the United States mail (by registered or certified mail, return receipt requested, postage prepaid) or deposited with a nationally recognized overnight delivery service such as Federal Express or Airborne. Each notice must be directed to the party to receive it at its address stated below or at such other address as may be substituted by notice given as provided in this Section.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and effective on the day and year first above written.

Landlord:

FAMILY CENTER OREM SHOPPING
CENTER, LLC,
a Delaware limited liability company

By: CCA Acquisition Company, LLC,
Its Managing Member

By: *[Signature]*

Name: Steven Usdan
Managing Member of
CCA Acquisition Company, LLC,
Its: a California limited liability company
the managing member

Landlord's Address:

Family Center Orem Shopping Center, LLC,
c/o CCA Acquisition Company, LLC
5670 Wilshire Blvd.
Suite 1250
Los Angeles, CA 90036
Fax: (323) 965-1520

STATE OF _____)
) ss
COUNTY OF _____)

*See Attached
CA Certificate*

On the _____ day of _____, 2015, before me, a notary public in and for the State and County aforesaid, personally appeared _____, who acknowledged himself/herself to be the _____ of CCA Acquisition Company, LLC, the Managing Member of FAMILY CENTER OREM SHOPPING CENTER, LLC, a Delaware limited liability company, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of such limited liability companies.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

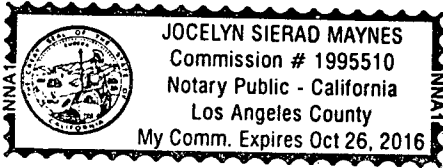
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)
On June 30, 2015 before me, Jocelyn Maynes, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Steven Usdan
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ she/they executed the same in ~~his~~ her/their authorized capacity(ies), and that by ~~his~~ her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Partner — Limited General
- Individual Attorney in Fact
- Trustee Guardian or Conservator
- Other: _____

Signer Is Representing: _____

Tenant:

TUESDAY MORNING, INC.,
a Texas corporation

By: *Cory D. Bird*
Cory D. Bird

Its: Vice President-Real Estate

Tenant's Address:

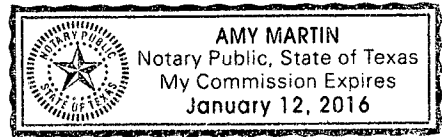
Tuesday Morning, Inc.
6250 LBJ Freeway
Dallas, Texas 75240
Attn: Real Estate Dept.

STATE OF TEXAS)
) ss
COUNTY OF DALLAS)

On the *29th* day of June, 2015, before me, a notary public in and for the State and County aforesaid, personally appeared Cory D. Bird, who acknowledged himself to be the Vice President-Real Estate of TUESDAY MORNING, INC., a Texas corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Amy Martin
Notary Public
My Commission Expires: *Jan 12 2016*



Lender:

PACIFIC WESTERN BANK,
a California state-chartered bank

By: *Lisa B Kaskel*

Name: Lisa B Kaskel

Its: Sr. Vice President

Lender's Address:

Pacific Western Bank
Los Angeles Real Estate Industries Group
1880 Century Park East
Suite 800
Los Angeles, California 90067
Fax: (310) 788-0669

STATE OF _____)
) ss
COUNTY OF _____)

See Attached

On the _____ day of _____, 2015, before me, a notary public in and for the State and County aforesaid, personally appeared _____, who acknowledged himself/herself to be the _____ of PACIFIC WESTERN BANK, a California state-chartered bank, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of such state-chartered bank.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)

) ss

COUNTY OF LOS ANGELES)

On July 2, 2015 before me, Marisela Cornejo, a notary public, personally appeared Lisa B. Kaskel, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Handwritten signature of Marisela Cornejo)

(Seal)

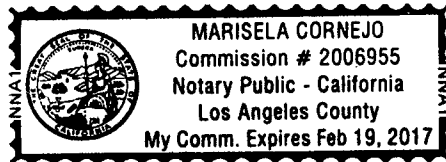


EXHIBIT A

LEGAL DESCRIPTION

The land located in Utah County, Utah, and described as:

PARCEL 1:

LOTS 2, 4, AND 5, UNIVERSITY SQUARE PLAT "A", ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER

ALSO

LOT 1, UNIVERSITY SQUARE PLAT "C", ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER

PARCEL 2:

A NON-EXCLUSIVE EASEMENT ARISING FROM THAT CERTAIN RECIPROCAL EASEMENT AND OPERATION AGREEMENT AND THE TERMS, CONDITIONS, LIMITATIONS, AND OBLIGATIONSIMPOSED THEREBY, RECORDED APRIL 30, 1991 AS ENTRY NO. 15743 IN BOOK 2785 AT PAGE 702; FIRST AMENDMENT TO RECIPROCAL EASEMENT AND OPERATION AGREEMENT RECORDED AUGUST 7, 1992 AS ENTRY NO. 39973 IN BOOK 2978 AT PAGE 920 AND FIRST AMENDMENT TO RECIPROCAL EASEMENT AND OPERATION AGREEMENT RECORDED AUGUST 21, 1992 AS ENTRY NO. 42918 IN BOOK 2986 AT PAGE 801 OVER THE FOLLOWING DESCRIBED PROPERTY:

LOTS 1 AND 3, UNIVERSITY SQUARE PLAT "A", ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

Said property is also known by the street address of:

- Lot 2 : 64 East 1300 South, Orem, UT 84058**
- Lot 4 : 106 East 1300 South, Orem, UT 84058**
- Lot 5 : 122 East 1300 South, Orem, UT 84058**
- Lot 1 : 130 East 1300 South, Orem, UT 84058**