

When recorded, mail to:

Arnold & Porter Kaye Scholer LLP  
250 West 55th Street  
New York, New York 10019-9710  
Attention: Stephen Gliatta, Esq.

APN: 21-26-276-011

CT-91419 PM

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6/2/2017 4:57:00 PM \$30.00

Book - 10564 Pg - 3023-3033

Gary W. Ott

Recorder, Salt Lake County, UT

COTTONWOOD TITLE

BY: eCASH, DEPUTY - EF 11 P.

## 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 ~~May 2, 2017~~ <sup>May 2, 2017</sup> by and among **ARBOR GARDNER BINGHAM JUNCTION OFFICE 5, L.C.** (as successor-in-interest to Arbor Gardner Bingham Junction Office 3, L.C.), a Utah limited liability company ("*Landlord*"), **REDEVELOPMENT AGENCY OF MIDVALE CITY**, a public entity ("*Tenant*"), and **JEFFERIES LOANCORE LLC**, a Delaware limited liability company (together with any other holder of the Loan (defined below) and their respective successors and assigns, the "*Lender*").

### RECITALS:

A. Lender extended a loan to Landlord in the original principal amount of FIFTY SEVEN MILLION AND NO/100 DOLLARS (\$57,000,000.00) (the "*Loan*").

B. The Loan is evidenced by a Promissory Note made payable to Lender in the original principal amount of FIFTY SEVEN MILLION AND NO/100 DOLLARS (\$57,000,000.00) (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, Landlord executed and delivered to Lender that certain Fee and Leasehold Deed of Trust, Assignment of Rents and Security Agreement 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 was recorded in the official records of Salt Lake County, Utah, encumbering the property described on Exhibit A attached hereto and made a part hereof and all improvements thereon (the "*Real Estate*").

C. Pursuant to that certain Ground Lease Agreement dated as of April 20, 2016 (the "*Lease*"), Landlord has leased a portion of the Real Estate to Tenant on the terms and conditions set forth in the Lease.

D. 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. For the avoidance of any doubt, the parties acknowledge and agree that: (i) under the Ground Lease, (A) Landlord, in its capacity as Subtenant under the Sublease, is obligated, at its expense, for all insurance, taxes, utilities, repairs, maintenance, and all other services and costs relating to the Property, and (B) in the event of a termination of the Sublease, Landlord, in its capacity as Landlord under this Lease, shall be directly obligated for such matters, and that (ii) accordingly, under the first sentence of this subsection (a), Tenant shall not be "in default under the Lease beyond any applicable cure period" in the event that Landlord, either in its capacity as Subtenant under the Sublease or in its capacity as Landlord under the Lease, has failed to satisfy any such obligation.

(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, subject in all cases to the last sentence of Section 3(a) above.

(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) bound by any obligation to purchase the Improvements (as defined in the Lease), except for the purchase obligations set forth in Sections 27.2 and 27.3 of the Lease; or

(f) 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

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

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

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

(j) 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. Termination of Sublease Upon Attornment. Upon the occurrence of any Foreclosure Event, Tenant hereby agrees that it shall immediately terminate that certain Sublease Agreement (the "Sublease") between Tenant, as Sublandlord, and Landlord, as Subtenant, pursuant to the terms of Section 16 of the Sublease, and Tenant shall enter into a new sublease of the Real Estate with the Successor Landlord following the Foreclosure Event, on substantially the same terms as the existing Sublease.

7. 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.

8. 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.

9. 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.

10. 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, by a reliable overnight courier service, 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, if by overnight courier service, shall be deemed given on the next succeeding business day after it is so deposited, and if delivered by hand, shall be deemed given when delivered.

In the case of Landlord, to: Arbor Gardner Bingham Junction Office 5, L.C.  
201 South Main Street, Suite 2000  
Salt Lake City, Utah 84111  
Attention: Christian K. Gardner

With a copy to: Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111  
Attention: Lamont R. Richardson, Esq.

In the case of Tenant, to: Redevelopment Agency of Midvale City  
7505 Holden Street  
Midvale, Utah 84047  
Attention: Executive Director

With a Copy to: Jones Waldo Holbrook & McDonough  
170 South Main Street, Suite 1500  
Salt Lake City, Utah 84101  
Attention: Tom Bergren

In the case of Lender, to: Jefferies LoanCore LLC  
c/o LoanCore Capital  
55 Railroad Avenue, Suite 100  
Greenwich, Connecticut 06830  
Attention: Notices  
E-mail: [notices@loancorecapital.com](mailto:notices@loancorecapital.com)

With a copy to: Arnold & Porter Kaye Scholer LLP  
250 West 55th Street  
New York, New York 10019-9710  
Attention: Stephen Gliatta, Esq.  
Facsimile No.: (212) 836-8689  
Email: [steve.gliatta@apks.com](mailto:steve.gliatta@apks.com)

11. 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.

12. Landlord's Purchase Right. Tenant acknowledges that, pursuant to the Loan Agreement to be entered into between Lender and Landlord, Lender's consent is required in order for Tenant to send any Purchase Notice (as defined in the Lease) pursuant to Section 27.1 of the Lease exercising Landlord's right to purchase Tenant's interest in the Improvements (as defined in the Lease) and the Lease.

**NOTICE: THIS AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR LEASE TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR PURPOSES OTHER THAN IMPROVEMENT OF THE PROPERTY.**

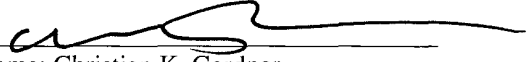
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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**ARBOR GARDNER BINGHAM JUNCTION OFFICE  
5, L.C.**, a Utah limited liability company, by its Manager:

By: **BINGHAM JUNCTION OFFICE 5  
MANAGER, INC.**, a Utah corporation

By:

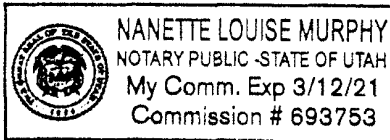
  
Name: Christian K. Gardner  
Title: Vice President

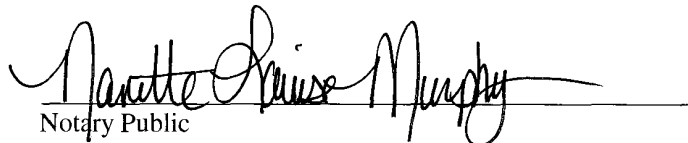
“Landlord”

**ACKNOWLEDGMENT**

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

On this 25<sup>th</sup> day of May, 2017, personally appeared before me Christian K. Gardner, a Vice President of Bingham Junction Office 5 Manager, Inc., a Utah corporation, the manager of Arbor Gardner Bingham Junction Office 5, L.C., a Utah limited liability company, and acknowledged to me that he executed the within instrument on behalf of said limited liability company.



  
Notary Public

REDEVELOPMENT AGENCY OF MIDVALE CITY,  
a public entity

By: JoAnn B. Seghini  
Name: JoAnn B. Seghini  
Title: Chief Administrative  
Officer

"Tenant"

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

The foregoing instrument was acknowledged before me this 19th day of May, 2017,  
by Juanne Seghini, the ~~Chief Administrative Officer~~ of the **REDEVELOPMENT AGENCY OF  
MIDVALE CITY**, a public entity, for and on behalf of said entity.

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

Angelica Sulman  
NOTAR ~~Y~~ PUBLIC

[Seal]





**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

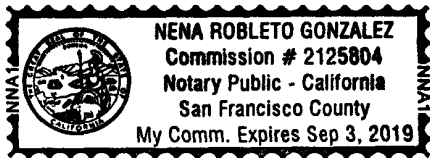
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Francisco )  
On May 19, 2017 before me, Nena Robleto Gonzalez, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Jean M. Baker  
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: \_\_\_\_\_ Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  Partner —  Limited  General  
 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

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

Lots 2 of the "View 72 Retail Subdivision 3<sup>rd</sup> Amended" recorded with the County Recorder for Salt Lake County, Utah on July 27, 2015 as Entry No. 12099886 in Book 2015P at Page 165.

Tax Parcel ID No. Lot 2: 21-26-276-011