

DOCUMENT PREPARED BY: ~~Harbor Freight Tools  
Legal Department  
26541 Agoura Road  
Calabasas, California 91302  
Attention: Senior Real Estate Paralegal~~      **Return to: ND7P  
Republic Title of Texas, Inc.  
2626 Howell Street, 10th Floor  
Dallas, TX 75204**  
1002-89228-ND75

(Space above for Recorder's Use)

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

THIS AGREEMENT made this 17 day of April, 2020, between **RGA REINSURANCE COMPANY**, a Missouri corporation (hereinafter called "Mortgagee"), **HARBOR FREIGHT TOOLS USA, INC.**, a Delaware corporation (hereinafter called "Tenant") and **CCA-TOOELE TOWNE CENTER, LLC**, a Delaware limited liability company ("Landlord" or "Borrower").

WITNESSETH:

**Recitals**

A. Tenant is the tenant under a lease dated April 17, 2020 (the "Lease"), by and between Tenant and Landlord (said Landlord and its successors and assigns occupying the position of landlord under the Lease hereinafter called "Landlord"), covering a portion of the Mortgaged Property (hereinafter called the "Demised Premises"). wherein Landlord leased to Tenant certain premises known as the "Demised Premises" located on the property legally described on Exhibit "A" (the "Mortgaged Property").

B. Mortgagee has made loan (the "Loan") to Borrower, which evidenced by a Promissory Note in the amount of \$11,000,000.00 (the "Note") from Borrower to Mortgagee and Tootle, UT - SNDA

secured in part by a first deed of trust, mortgage, or deed to secure debt (which is herein called the "Mortgage"), such Mortgage being recorded February 22, 2019 under Entry No. 481522, Official Records of Toole County, Utah. The Mortgage, the Note and all other documents and instruments evidencing and/or securing the Note or now or hereafter executed by Borrower or others in connection with or related to the Loan including any assignments of leases and rents, other assignments, security agreements, financing statements, guaranties, indemnity agreements (including environmental indemnity agreements), letters of credit, or escrow/holdback arrangements, together with all amendments, modifications, substitutions or replacements thereof, are sometimes herein collectively referred to as the "Loan Documents".

C. Tenant has been requested to, and is willing to, enter into this agreement as part of the transaction for the Loan from Lender to Borrower.

### Agreements

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Mortgagee and Tenant hereby agree and covenant as follows:

1. The Lease now is, and shall at all times continue to be, subordinate in each and every respect, to the lien of the Mortgage and to any and all liens, interests and rights created thereby and to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage, provided that any and all such increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations shall nevertheless be subject to the terms of this Agreement.

2. So long as Tenant is not in default (beyond any notice and cure period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any term, covenant or condition of the Lease on Tenant's part to be performed, (a) Tenant's possession of the Demised Premises and Tenant's rights and privileges under the Lease, shall not be disturbed or interfered with by Mortgagee in the exercise of its rights under the Mortgage to foreclose said Mortgage and/or to have the Mortgaged Property sold at trustee's sale, or otherwise conveyed in lieu of foreclosure and/or such trustee's sale and (b) Mortgagee will not join Tenant as a party defendant in any action or proceeding for the purposes of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage, however Mortgagee may join Tenant as a party defendant in any action or proceeding to enforce the Mortgage or any other instrument given as security for the loan to Landlord, if such is done only for purposes of procedure and required completeness and not for the purposes of canceling the Lease or Tenant's rights under such Lease. The term "Mortgagee" shall include all persons deriving title to the Mortgaged Property by, through or under Mortgagee.

3. In the event any proceedings are brought for the foreclosure of the Mortgage, or if the Mortgaged Property be sold pursuant to a trustee's sale under the Mortgage or if the Mortgagee becomes owner of the Mortgaged Property by acceptance of a deed or assignment in lieu of

foreclosure or otherwise, Tenant shall attorn to the purchaser or Mortgagee, as the case may be, upon any such foreclosure sale or trustee's sale or acceptance by Mortgagee of a deed or assignment in lieu of foreclosure and Tenant shall recognize such purchaser or Mortgagee, as the case may be, as the Landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto. Upon the request of Landlord or any holders of any of the indebtedness or other obligations secured by the Mortgage or any such purchase, Tenant shall execute and deliver within 15 days of such request any instrument or certificate, which, in the reasonable judgment of Landlord or of such holder(s) or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment, but in no event shall Tenant be obligated to execute any instrument or certificate which would impair any of Tenant's rights hereunder and/or under the Lease.

4. If Mortgagee shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Demised Premises upon any foreclosure of the Mortgage or any trustee's sale under the Mortgage, Mortgagee or such purchaser, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of 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 Landlord had or would have had if Mortgagee or such purchaser had not succeeded to the interest of Landlord. From and after any such attornment, Mortgagee or such purchaser shall be bound to Tenant under all the terms, covenants, and conditions of the Lease, and Tenant shall, from and after the succession to the interest of Landlord under the Lease by Mortgagee or such purchaser, have the same remedies against Mortgagee or such purchaser for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Mortgagee or such purchaser had not succeeded to the interest of Landlord; provided, however, the Mortgagee or such purchaser shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord) except that Mortgagee agrees to cure any default of Landlord that is continuing as of the date Mortgagee forecloses the Property within thirty (30) days from the date Tenant delivers written notice to Mortgagee of such continuing default, unless such default is of such a nature to reasonably require more than thirty (30) days to cure and then Mortgagee shall be permitted such additional time as is reasonably necessary to effect such cure, provided Mortgagee diligently and continuously proceeds to cure such default, provided, however, Tenant's sole remedy as against Lender in connection with uncured monetary defaults shall be limited to setting off the amounts of such monetary default against the Rent due under the Lease; or

(b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord) unless Tenant shall have delivered to Mortgagee written notice of the default which gave rise to such offset or defense and permitted Mortgagee the same right to cure such default as permitted Landlord under the Lease; 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), except to the extent such payment is expressly required by the Lease; or

(d) bound by any material amendment or material modification of the Lease made without Mortgagee's consent, such consent to not be unreasonably withheld, conditioned or delayed.

(e) liable for any security deposit, rental deposit or similar deposit given by Tenant to a prior landlord (including Landlord) unless such deposit was actually paid over to Mortgagee or such purchaser by the prior landlord; or

(f) liable for any moving, relocation or refurbishment allowance or any construction of or payment of allowance for tenant improvements to the Demised Premises or the Mortgaged Property or any part thereof for the benefit of Tenant; provided, however, that Tenant may exercise against Lender, Tenant's remedies as set forth in Paragraphs 3.1 and 4.2 of the Lease; or

(g) subject to, and except as may otherwise be provided in, subparagraphs 4 (a) and (b) above, liable for any repairs or replacements to the Mortgaged Property or the Demised Premises arising prior to the date Mortgagee takes possession of the Mortgaged Property.

5. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Landlord under the Lease in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed.

6. This Agreement and the Lease may not be amended or modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, and any purchaser or purchasers at foreclosure of the Mortgaged Property, and their respective heirs, personal representatives, successors and assigns.

7. Tenant represents that it has no right or option of any nature to purchase the Mortgaged Property or any portion of the Mortgaged Property or any interest in the Borrower. To the extent Tenant has or acquires any such right or option, these rights or options are acknowledged to be subordinate to the lien of the Mortgage and are waived and released as to Mortgagee and any purchaser of the Mortgaged Property under and/or following a trustee's sale.

8. To the extent that the Lease shall entitle the Tenant to notice of any mortgage, and/or the address of the Mortgagee, this Agreement shall constitute such notice to the Tenant with respect to the Mortgage and to the address of the Mortgagee. So long as the Mortgage on the

premises remains outstanding, Tenant will deliver to Mortgagee a copy of all notices of default by Landlord permitted or required to be given to Landlord by Tenant pursuant to which Tenant proposes to abate or reduce the rental payable under the Lease or to terminate or cancel the Lease, and that no such notices to Landlord shall be effective, unless a copy of such notice is also delivered to Mortgagee. At any time before the rights of Landlord shall have been forfeited or adversely affected because of any default or failure of performance under the Lease as therein provided, Mortgagee shall have the right (but not the obligation) to cure such default or failure of performance within (a) in the case of monetary defaults, within ten (10) days from Mortgagee's receipt of such written notice from Tenant stating the nature of such default or failure of performance, and/or (b) in the case of non-monetary defaults, within thirty (30) days from Mortgagee's receipt of such written notice from Tenant stating the nature of such default or failure of performance, or such longer time as may be reasonably required, provided that Mortgagee commences to cure within such thirty (30) day period and diligently pursues such cure to completion.

9. Tenant agrees to pay all rents directly to Mortgagee immediately upon notice that Mortgagee is exercising its rights to such rents under the Mortgage or any other loan document executed in connection with the Mortgage, including but not limited to, any assignment of leases and rents, following a default by Landlord or other applicable party beyond any applicable cure period, and by its execution hereof, Landlord agrees that Tenant shall be credited under the Lease for such payments made.

10. All notices to be sent hereunder shall be sent by certified mail, return receipt requested, by a nationally recognized overnight courier, or shall be personally delivered to the respective parties at the following addresses:

If to Mortgagee: RGA Reinsurance Company  
16600 Swingley Ridge Road  
Chesterfield, Missouri 63017  
Attn: Mortgage Loan and Real Estate Department

If to Tenant: Harbor Freight Tools USA, Inc.  
Attn: Senior Vice President, Real Estate  
26541 Agoura Road  
Calabasas, CA 91302

With a copy to: Attn: General Counsel  
26541 Agoura Road  
Calabasas, CA 91302

or to such other address as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice shall be deemed to have been given and received either at

the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

11. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Utah.

12. This Agreement may be executed in multiple counterparts, and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be one and the same instrument with the same signature as if all parties to this Agreement had signed the same signature page.

13. In the event the Property or any part thereof shall be taken for public purposes by condemnation or transfer in lieu thereof or the same are damaged or destroyed, the rights of Landlord and Tenant to any condemnation award or insurance proceeds that Landlord is entitled to pursuant to the Loan Documents shall be determined and controlled by the applicable provisions of the Lease.

14. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.

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

MORTGAGEE:

RGA REINSURANCE COMPANY,  
a Missouri corporation

By: Christopher Dolan  
Name: Christopher Dolan  
Title: VP PM RE

*SIGNATURES CONTINUE ON FOLLOWING PAGE*

*SIGNATURES CONTINUED FROM PREVIOUS PAGE*

TENANT:

HARBOR FREIGHT TOOLS USA, INC.,  
a Delaware corporation

By:  \_\_\_\_\_

Name: William Feiler

Title: Senior Vice President, Real Estate


*SIGNATURES CONTINUE ON FOLLOWING PAGE*

*SIGNATURES CONTINUED FROM PREVIOUS PAGE*

LANDLORD:

CCA-TOOELE TOWNE CENTER, LLC

By: CCA Acquisition Company, LLC,  
a California limited liability company,  
its Managing Member

By: 

Name: Steven Usdan

Title: Managing Member



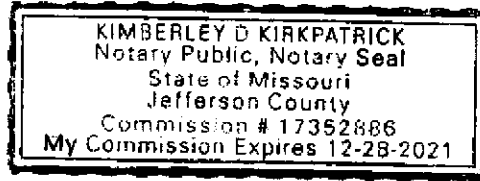
MORTGAGEE ACKNOWLEDGEMENT

STATE OF MISSOURI )  
 ) ss  
COUNTY OF Jefferson )

On this 5th day of May, in the year 2020, before me Kimberley D. Kirkpatrick, a Notary Public in and for said state, personally appeared Christopher Dolan of RGA Reinsurance Company known to me to be the person who executed the within Vice President in behalf of said limited liability company and acknowledged to me that he or she executed the same for the purposes therein stated.

Kimberley D. Kirkpatrick  
Notary Public

My term expires:  
12/28/2021



**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 )

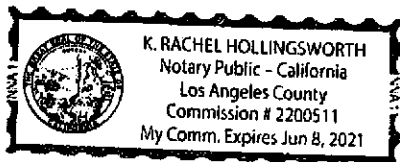
On APRIL 20, 2020 before me, K. RACHEL HOLLINGSWORTH, NOTARY PUBLIC,  
*Date Here Insert Name and Title of the Officer*

personally appeared STEVEN USDAN  
*Name of Signer*

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 he executed the same in his authorized capacity, and that by his 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.



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: \_\_\_\_\_

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 Corporate Officer -- Title(s): \_\_\_\_\_  
 Partner --  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

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.

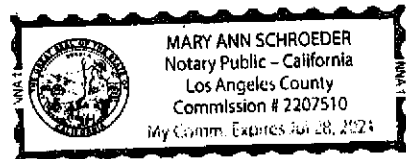
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES)

On April 17, 2020, before me, Mary Ann Schroeder, a Notary Public, personally appeared **William Feiler**, 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 he executed the same in his authorized capacity, and that by his 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.

Mary Ann Schroeder  
Signature of Notary Public



**EXHIBIT A  
LEGAL DESCRIPTION**

APN's:

Parcel 1: 15-038-0-0001  
Parcel 3: 13-073-0-0004  
Parcel 4: 13-098-0-0002  
Parcel 5: 13-073-0-0007  
Parcel 6: 16-033-0-0001  
Parcel 7: 15-038-0-0004

That certain real property located in Tooele County, Utah, and more particularly described as follows:

**PARCEL 1**

All of Lot 1, TOOELE TOWN CENTER NO. 3, according to the official plat thereof, filed in the office of the Tooele County Recorder on March 21, 2005 in Plat Book 15 at Page 38 and as Entry No. 237631 in Book 1010 at Page 54.

**PARCEL 2:**

All of Lot 4, TOOELE TOWN CENTER, according to the official plat thereof, filed in the office of the Tooele County Recorder on August 14, 2000 in Plat Book 13 at Page 73 and as Entry No. 151216 in Book 634 at Page 449.

**PARCEL 3:**

All of Lot 2, TOOELE TOWN CENTER NO. 2, according to the official plat thereof, filed in the office of the Tooele County Recorder on March 22, 2001 in Plat Book 13 at Page 98 and as Entry No. 160861 in Book 668 at Page 692.

**PARCEL 4:**

All of Lot 7, TOOELE TOWN CENTER, according to the official plat thereof, filed in the office of the Tooele County Recorder on August 14, 2000 in Plat Book 13 at Page 73 and as Entry No. 151216 in Book 634 at Page 449.

**PARCEL 5:**

All of Lot 1, TOOELE TOWN CENTER NO. 4, according to the official plat thereof, filed in the office of the Tooele County Recorder on February 9, 2007 in Plat Book 16 at Page 33 and as Entry No. 277812.

**PARCEL 6:**

All of Lot 4, TOOELE TOWN CENTER NO. 3, according to the official plat thereof, filed in the office of the Tooele County Recorder on March 21, 2005 in Plat Book 15 at Page 38 and as Entry No. 237631 in Book 1010 at Page 54.

**PARCEL 7:**

The common easements as shown in that Grant of Easements, Declaration of Restrictions and Common Facilities Maintenance Agreement recorded December 16, 1999 as Entry No. 141401 in Book 602 at Page 330 and as amended by that certain First Amendment to Grant of Easements, Declaration of Restrictions and Common Facilities Maintenance Agreement recorded April 9, 2003 as Entry No. 199553 in Book 638 at Page 871 and Second Amendment to Grant of Easements, Declaration of Restrictions and Common Facilities Maintenance Agreement recorded May 17, 2004 as Entry No. 223299 in Book 945 at Page 261 of official records.

**“This document filed for record by  
Republic Title of Texas, Inc. as an  
accommodation only. It has not been  
examined as to its execution or as to  
its effect upon the title. No liability  
is assumed hereby.”**