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Mary Ann Trussell, Summit County Utah Recorder

06/13/2018 04:41:26 PM Fee \$34.00

By First American Title-NCS-SLC1

Electronically Recorded

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Wells Fargo Bank, National Association
Commercial Real Estate Group (AU #1074)
P.O. Box 45490
Salt Lake City, UT 84145-0490
Attn: Jessica Martinez
Loan No. WB11355

APN: NPRK-T-1-Am; NPRK-Q-Am

(Space Above For Recorder's Use)

**SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,
ATTORNMEN AND NON-DISTURBANCE AGREEMENT
(Lease to Security Instrument)**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN
THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE
LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,
ATTORNMEN AND NON-DISTURBANCE AGREEMENT ("**Agreement**") is made **February 1st, 2018** by
and between **COTTONWOOD NEWPARK ONE, L.C.**, a Utah limited liability company, owner(s) of the
real property hereinafter described ("**Landlord**"), **VERSA VENTURES, LLC**, a Utah limited liability
company ("**Tenant**") and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking
association (collectively with its successors or assigns, "**Lender**").

RECITALS

- A. Pursuant to the terms and provisions of a lease dated January, 17th 2018 ("**Lease**"), Landlord granted to Tenant a leasehold estate in and to the property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on the property, is defined as the "**Property**").
- B. **[IF LEASE CONTAINS OPTION TO PURCHASE]** Said Lease contains provisions and terms granting Tenant an option to purchase the Property (the "**Option to Purchase**"). **N/A**

- C. Landlord has executed, or proposes to execute, that certain Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture filing (as amended, "**Security Instrument**") recorded May 21, 2008, instrument number 00845058, in Book 1931, beginning on Page 0293 of the official records of ~~Utah County~~, State of Utah securing, among other things, that certain Amended and Restated Promissory Note dated June 11, 2013 but effective as of May 21, 2013 (as amended, the "**Note**") in the principal sum of TEN MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$10,100,000.00), in favor of Lender ("**Loan**").
* Summit County
- D. Lender requires that the Security Instrument be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Tenant under the Lease and that the Tenant specifically and unconditionally subordinate the Lease to the lien of the Security Instrument.
- E. Landlord and Tenant have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Landlord and Tenant hereby agree for the benefit of Lender as follows:

- 1. **SUBORDINATION.** Landlord and Tenant hereby agree that:
 - 1.1 **Prior Lien.** The Security Instrument securing the Note in favor of Lender, and any modifications, renewals or extensions thereof (including, without limitation, any modifications, renewals or extensions with respect to any additional advances made subject to the Security Instrument), shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease
 - 1.2 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the lien of the Security Instrument and 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 of the Lease to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Tenant individually declares, agrees and acknowledges for the benefit of Lender, that:

- 1.3 **Use of Proceeds.** Lender, in making disbursements pursuant to the Note, the Security Instrument or any loan agreements with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part; and
- 1.4 **Waiver, Relinquishment and Subordination.** Tenant intentionally and unconditionally waives, relinquishes and subordinates all of Tenant's right, title and interest in and to the Property to the lien of the Security Instrument and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

2. **ASSIGNMENT.** Tenant acknowledges and consents to the assignment of the Lease by Landlord in favor of Lender.

3. **ESTOPPEL.** Tenant acknowledges and represents that:

3.1 **Entire Agreement.** The Lease constitutes the entire agreement between Landlord and Tenant with respect to the Property and Tenant claims no rights with respect to the Property other than as set forth in the Lease;

3.2 **No Prepaid Rent.** No deposits or prepayments of rent have been made in connection with the Lease, except as follows (if none, state "None"): Per Lease Agreement, Tenant is required to deposit with Landlord a Security Deposit (\$10,500.00) and First Months Rent (\$10,500.00.) As of date of SNDA, Tenant has not deposited funds to Landlord.;

3.3 **No Default.** To the best of Tenant's knowledge, as of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the Lease;

3.4 **Lease Effective.** The Lease has been duly executed and delivered by Tenant and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Tenant thereunder are valid and binding and there have been no further amendments, modifications or additions to the Lease, written or oral; and

3.5 **No Broker Liens.** Neither Tenant nor Landlord has incurred any fee or commission with any real estate broker which would give rise to any lien right under state or local law, except as follows (if none, state "None"): None.

4. **ADDITIONAL AGREEMENTS.** Tenant covenants and agrees that, during all such times as Lender is the Beneficiary under the Security Instrument:

4.1 **Modification, Termination and Cancellation.** Tenant will not consent to any modification, amendment, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent and will not make any payment to Landlord in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent;

4.2 **Notice of Default.** Tenant will notify Lender in writing concurrently with any notice given to Landlord of any default by Landlord under the Lease, and Tenant agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Tenant will not declare a default of the Lease, as to Lender, if Lender cures such default within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Landlord ; provided, however, that if such default cannot with diligence be cured by Lender within such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence;

4.3 **No Advance Rents.** Tenant will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease;

4.4 **Assignment of Rents.** Upon receipt by Tenant of written notice from Lender that Lender has elected to terminate the license granted to Landlord to collect rents, as provided in the Security Instrument, and directing the payment of rents by Tenant to Lender, and so

long as Lender has fully complied with the Utah Uniform Assignment of Rents Act (*Utah Code Ann. Sections 57-26-101 thru 119*, as may be amended) and any other notice requirements under this Agreement, the Security Instrument, and all other documents related to the Loan, or as may otherwise be required under applicable law, in such a manner that Tenant shall not be subjected to conflicting demands, instructions, or duplicate payment of rents under the Lease. Tenant agrees to comply with such direction from Lender to pay and, and in doing so, shall not be required to determine or investigate whether Landlord is in default under the Loan and/or the Security Instrument.

- 4.5 **Insurance and Condemnation Proceeds.** In the event there is any conflict between the terms in the Security Instrument and the Lease regarding the use of insurance proceeds or condemnation proceeds with respect to the Property, the provisions of the Security Instrument shall control.
5. **ATTORNMEN**. In the event of a foreclosure under the Security Instrument, Tenant agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Landlord's title in and to the Property by Lender's exercise of the remedy of sale by foreclosure under the Security Instrument) as follows:
- 5.1 **Payment of Rent.** Tenant shall pay to Lender all rental payments required to be made by Tenant pursuant to the terms of the Lease for the duration of the term of the Lease;
- 5.2 **Continuation of Performance.** Tenant shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Tenant hereby attorns to Lender as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Landlord's interest in the Lease and giving written notice thereof to Tenant;
- 5.3 **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Tenant may have by reason of any act or omission of Landlord under the Lease, nor for the return of any sums which Tenant may have paid to Landlord under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Landlord to Lender; and
- 5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Landlord under the Lease, should become obligated to perform the covenants of Landlord thereunder, then, upon any further transfer of Landlord's interest by Lender, all of such obligations shall terminate as to Lender.
- 5.5 **Limitation on Lender's Liability.** Tenant agrees to look solely to Lender's interest in the Property and the rent, income or proceeds derived therefrom for the recovery of any judgment against Lender, and in no event shall Lender or any of its affiliates, officers, directors, shareholders, partners, agents, representatives or employees ever be personally liable for any such obligation, liability or judgment.
- 5.6 **No Representation, Warranties or Indemnities.** Lender shall not be liable with respect to any representations, warranties or indemnities from Landlord, whether pursuant to the Lease or otherwise, including, but not limited to, any representation, warranty or indemnity related to the use of the Property, compliance with zoning, landlord's title, landlord's authority, habitability or fitness for purposes or commercial suitability, or hazardous wastes, hazardous substances, toxic materials or similar phraseology relating to the environmental condition of the Property or any portion thereof.
6. **NON-DISTURBANCE.** In the event of a foreclosure under the Security Instrument, so long as there shall then exist no breach, default, or event of default on the part of Tenant under the

Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Tenant under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Tenant as tenant under the Lease subject to the terms and provisions of the Lease except as modified by this Agreement; provided, however, that Tenant and Lender agree that the following provisions of the Lease (if any) shall not be binding on Lender nor its successors and assigns: any option to purchase with respect to the Property; any right of first refusal with respect to the Property; any right of first refusal with respect to the Property; any provision regarding the use of insurance proceeds or condemnation proceeds with respect to the Property which is inconsistent with the terms of the Security Instrument; and any obligation to construct any improvements on the Property, or any obligation to pay or reimburse Tenant for any improvements Tenant constructs on the Property.

7. **MISCELLANEOUS.**

7.1 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Landlord under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Landlord or others.

7.2 **NOTICES.** All notices, demands, or other communications under this Agreement and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) Business Days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Landlord:	Cottonwood Newpark One, L.C. 2750 E. Cottonwood Parkway, Suite 560 Cottonwood Heights, Utah 84121 Attention: John L. West
Tenant:	<u>Versa Ventures, LLC</u> <u>1389 Center Drive, Suite 200</u> <u>Park City, Utah 84098</u> Attention: Jim Hall and Adrian Hummel

<p>Lender:</p>	<p>Wells Fargo Bank, National Association Real Estate Banking Group (AU #1074) 299 South Main Street, 6th Floor Salt Lake City, UT 84111 Attention: Daniel R. Stanworth Loan No.: WB11355</p> <p>And to:</p> <p>Wells Fargo Bank, National Association Commercial Real Estate Banking Group P.O. Box 45490 MAC U1228-063 Salt Lake City, UT 84145-0490 Attention: Daniel R. Stanworth Loan No.: WB11355</p>
<p>With a copy to:</p>	<p>Wells Fargo Bank, National Association Minneapolis Loan Center 600 South 4th Street, 9th Floor MAC: N9300-091 Minneapolis, Minnesota 55402 Attention: Kyle Schwanke Loan No. WB11355</p> <p>And to:</p> <p>Snell and Wilmer L.L.P. 15 West South Temple, Suite 1200 Salt Lake City, UT 84101 Attention: Brian D. Cunningham</p>

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

- 7.3 **Heirs, Successors and Assigns.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Agreement shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto.
- 7.4 **Headings.** All article, section or other headings appearing in this Agreement are for convenience of reference only and shall be disregarded in construing this Agreement.
- 7.5 **Counterparts.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

- 7.6 **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Utah.
- 7.7 **Exhibits, Schedules and Riders.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Agreement by such attachment for all purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

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

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

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

"LANDLORD"

NOTTONWOOD NEWPARK ONE, L.C.
Utah limited liability company

By: **DAKOTA PACIFIC REAL ESTATE PARTNERS, LP**
a Delaware limited partnership
its Sole Member

By: **DAKOTA PACIFIC RE GP, LLC**
a Delaware limited liability company
its General Partner

By: **DAKOTA PACIFIC RE MANAGEMENT, LLC**
a Utah limited liability company
its Manager

By: **JR MILLER CAPITAL II LC**
a Utah limited liability company
its Manager

By: **LANE CRITCHFIELD INVESTMENTS, LLC**
a Utah limited liability company
its Manager

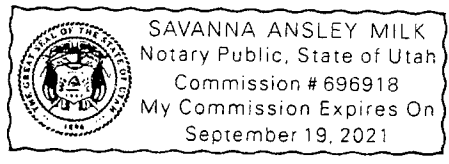
By: 
Name: Lane Critchfield
Title: Manager

STATE OF UTAH)
COUNTY OF Utah) SS.

The foregoing instrument was acknowledged before me this 8th day of February, 2018, by Lane Critchfield, a Manager of Lane Critchfield Investments, LLC, a Utah limited liability company, a Manager of JR Miller Capital II LC, a Utah limited liability company, the Manager of Dakota Pacific RE Management, LLC, a Utah limited liability company, the Manager of Dakota Pacific RE GP, LLC, a Delaware limited liability company, the General Partner of Dakota Pacific Real Estate Partners, LP, a Delaware limited partnership, the Sole Member of **COTTONWOOD NEWPARK ONE, L.C.**, a Utah limited liability company, on behalf of such limited liability company.

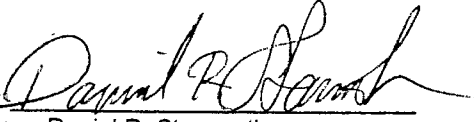
Savanna Milk
NOTARY PUBLIC

[SEAL]



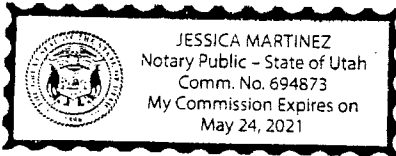
"LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION
a national banking association

By: 
Name: Daniel R. Stanworth
Title: Vice President

STATE OF UTAH)
 ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 12th day of FEBRUARY, 2018, by DANIEL r. STANWORTH, a Vice President of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, for and on behalf of said national banking association.



[SEAL]



NOTARY PUBLIC

EXHIBIT A - DESCRIPTION OF PROPERTY

All that certain real property located in Summit County, Utah, described as follows.

Parcel 1

All of Lot T-1, Amended Plat Newport Parcel T Subdivision, according to the official plat thereof, recorded December 23, 2004, as Entry No. 720980 of the official records in the office of the Summit County Recorder.

Parcel 2

All of Newport Parcel Q, Amended Plat Newport Parcel Q Subdivision, according to the official plat thereof, recorded December 23, 2004, as Entry No. 720979 of the official records in the office of the Summit County Recorder.

LEASE GUARANTOR'S CONSENT

The undersigned ("Lease Guarantor") consents to the foregoing Subordination Agreement; Acknowledgment of Lease Assignment, Estoppel, Attornment & Non-Disturbance Agreement and the transactions contemplated thereby and reaffirms its obligations under the lease guaranty ("Lease Guaranty") dated January 17th, 2018. Lease Guarantor further reaffirms that its obligations under the Lease Guaranty are separate and distinct from Tenant's obligations.

AGREED:

Dated as of: 5th FEBRUARY, 2018

an Individual.

By: [Signature]
Name: JAMES LARRY HALL II
Title: Individual

of 15-20 Snowberry, Park City
UTAH 84098, identified to me by
US Passport N° 488104733, duly
signs this GUARANTOR'S CONSENT as
an individual guarantor.

[Signature]

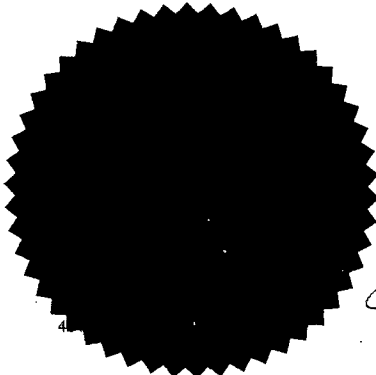
STATE OF OXFORD)
ss.

COUNTY OF OXFORDSHIRE)

The foregoing instrument was acknowledged before me this 5th day of FEBRUARY, 2018, by JAMES LARRY HALL II, an INDIVIDUAL of _____ of _____, a GUARANTOR, for and on behalf of said VERVA VENTURES LLC.

[Signature]
NOTARY PUBLIC

[SEAL] Esmond Jenkins Notary Public
Clanfield House, Market Square
Bampton, Oxfordshire OX18 2JJ
Tel: 01993 852222



At Oxford
5th February 2018.

[Signature]