

2400220M6

Tax Serial Number:
65-607-0001

ENT 62423:2024 PG 1 of 6
ANDREA ALLEN
UTAH COUNTY RECORDER
2024 Sep 12 12:16 PM FEE 40.00 BY AC
RECORDED FOR Old Republic Title (Pleasan
ELECTRONICALLY RECORDED

RECORDATION REQUESTED BY:

Altabank, Division of Glacier Bank
Lehi Branch
712 E MAIN ST
LEHI, UT 84043

WHEN RECORDED MAIL TO:

Altabank, Division of Glacier Bank
Lehi Branch
712 E MAIN ST
LEHI, UT 84043

SEND TAX NOTICES TO:

NICHOLS ENTERPRISES, L.L.C.
1568 PALMYRA DR
SPANISH FORK, UT 84660-5124
FOR RECORDER'S USE ONLY

FOR RECORDER'S USE ONLY

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE COLLATERAL BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ESTOPPEL CERTIFICATE

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT is dated and is made effective as of Sep. 11, 2024 ("Agreement"), is made and executed among NICHOLS ENTERPRISES, L.L.C., whose address is 1568 PALMYRA DR, SPANISH FORK, UT 84660-5124 ("Landlord"); QUALITY COLLISION MOUNTAIN WEST, LLC, whose address is 401 CITY AVENUE, BALA CYNWYD, PA 19004 ("Tenant"); and Altabank, Division of Glacier Bank, Lehi Branch, 712 E MAIN ST, LEHI, UT 84043 ("Lender").

SUBORDINATED LEASE. Tenant and Landlord have executed a Lease Agreement dated November 1, 2023, of the property described herein, as may be amended (the "Lease").

REAL PROPERTY DESCRIPTION. The Lease covers a portion of the following described real property (the "Real Property") located in UTAH County, State of Utah:

Lot 1, Plat "A", Cascade Collision Subdivision, Orem, Utah, according to the official plat thereof, on file and of record in the office of the Utah County Recorder, State of Utah.

The Real Property or its address is commonly known as 1005 NORTH STATE STREET, OREM, UTAH 84057. The Real Property tax identification number is 65-607-0001.

SUPERIOR INDEBTEDNESS. Lender has extended or has agreed to extend the following described financial accommodations to Landlord, secured by the Real Property (the "Superior Indebtedness"): Business Loan Agreement dated Sep. 11, 2024 and executed by Lender and Landlord and other documents executed in connection therewith with respect to a loan in the stated principal amount of \$2,500,000.

LENDER'S LIEN. The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, deed of trust, or other lien instrument, dated Sep. 11, 2024, from Landlord to Lender (the lien granted within such instrument being the "Lender's Lien"). As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Lease and all of Tenant's rights in the Real Property ("Lease Rights").

REQUESTED FINANCIAL ACCOMMODATIONS. Landlord and Tenant each want Lender to provide financial accommodations to Landlord in the form of the Superior Indebtedness. Landlord and Tenant each represent and acknowledge to Lender that Landlord and Tenant will benefit as a result of these financial accommodations from Lender to Landlord, and Landlord and Tenant acknowledge receipt of valuable consideration for entering into this Agreement.

IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, LENDER, LANDLORD, AND TENANT HEREBY AGREE AS FOLLOWS:

SUBORDINATION. Notwithstanding anything in the Lease to the contrary, the parties acknowledge and agree that the Lease and Lease Rights are and shall be subject and subordinate in right, interest and lien, and for all purposes, to Lender's Lien, and to all renewals, modifications, consolidations, replacements, and extensions thereof, and to any subsequent lien of the Lender with which Lender's Lien may be spread or consolidated, to the full extent of the principal sum and all other amounts secured thereby and interest thereon. Tenant will not cause the Lease to be subordinated to any interests superior to those held by or made for the benefit of Lender, and its successors and assigns, without the prior written consent of Lender. Notwithstanding the foregoing, as between Landlord and Tenant, nothing contained in this Agreement shall be deemed to: (a) excuse or reduce any obligation owed by Landlord to Tenant under the Lease; or (b) waive, in whole or part, any of Landlord's or Tenant's rights or remedies against Landlord under the Lease.

NON-DISTURBANCE.

- A. If the interest of Landlord in the Premises shall be acquired by Lender by reason of foreclosure of the Superior Indebtedness or other proceedings brought to enforce the rights of Lender, by deed in lieu of foreclosure or by any other method, or acquired by any other Successor (defined herein) pursuant to a foreclosure sale, the Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed except in accordance with the terms of the Lease. Tenant shall be bound to Successor and Successor shall be bound to Tenant under all the terms, covenants, and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option therefore contained in the Lease with the same force and effect as if Successor were the Landlord under the Lease; and
- B. 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 other than de minimis, non-monetary or non-financial defaults that will not adversely affect the Real Property or Lender's Lien, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default of the Loan under the Note and/or under Lender's Lien 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.

ATTORNMEN T. If any successor including Lender and its designees, successors, and assigns (collectively, "Successor") 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, Tenant shall, from and after such event, attorn to Successor as the landlord under the Lease, Tenant shall be bound to Successor and Successor shall be bound to Tenant with respect to all respective rights, options, and obligations of each under the Lease as though the Lease were a direct Lease between Successor and Tenant upon all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining. 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 from time to time, upon the reasonable advance written request of Successor submitted in accordance with the terms and conditions of the Lease, any instrument or certificate which, in the reasonable judgment of Successor, is necessary in any such foreclosure proceeding.

NO LIABILITY FOR SUCCESSOR. Successor 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 annual base 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 for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Successor had not succeeded to the interest of Landlord; provided, however, that Successor shall not be:

- (A) Liable for any act or omission of or any claims against any prior landlord, including Landlord, except for a default of a continuing nature (each a "Continuing Default") that continues to accrue after Successor obtains title to or control of the Real Property. Without limiting the foregoing, Tenant reserves all of its rights and remedies under the Lease with respect to a Continuing Default by Landlord, whether occurring or accruing prior to or after the date Lender takes title to or control of the Real Property (with Tenant hereby acknowledging for the benefit of Lender that Tenant has no knowledge of any Continuing Default as of the date of this Agreement or circumstance that renders the Lease unenforceable in any material respect as of the date of this Agreement); or
- (B) Subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord, for which Tenant has not provided written notice to Successor of the default promptly following Tenant's knowledge of the circumstances which gave rise to such offset or defense and permitted Lender or other Successor a reasonable opportunity (but in no event more than thirty (30) days from the date of such notice) to cure such default; or
- (C) Bound by any rent or additional rent which Tenant might have paid more than one (1) month in advance of its due date under the Lease to any prior landlord, including Landlord, except for: (i) prepayments of additional rent made on account of operating expenses;

- (ii) real estate taxes in accordance with the terms of the Lease; (iii) or any other amounts actually received from Tenant by Lender or other Successor; or
- (D) Bound by any amendment or modification of the Lease, or waiver of any of its terms, made without its consent, unless such amendment or modification was effected by Tenant pursuant to the express terms of the Lease. Notwithstanding the foregoing, Landlord and Tenant may enter into lease amendments and/or modifications without Lender's prior consent and without regard to whether such amendment or modification was effected by Tenant pursuant to the express terms of the Lease, and Successor shall be bound to such amendment to the same extent Landlord would be bound by it, provided any such amendment or modification does not in any material respect: (A) change the economic terms of the Lease; (B) increase the obligations of Landlord under the Lease; (C) reduce the rights and remedies of Landlord under the Lease; (D) reduce the obligations of Tenant under the Lease; (E) grant offset rights to Tenant under the Lease; (F) grant to Tenant any options or rights of first refusal in the Premises or the Property; or (G) amend the term of the Lease. If Successor shall fail to respond to a written request to approve a lease amendment, modification, cancellation, or surrender within thirty (30) days, Successor shall be deemed to have granted its consent; or
- (E) 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 Lender or Successor; or
- (F) Bound by any surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant unless such surrender, cancellation or termination was effected by Tenant pursuant to the express terms of the Lease; or
- (G) Liable for any breach of representation or warranty of any prior landlord, including Landlord, except to the extent any such breach results in a Continuing Default.

ACKNOWLEDGMENT AND AGREEMENT BY LANDLORD. Landlord, as landlord under the Lease, acknowledges and agrees for itself and its heirs, successors and assigns to each of the following:

- (A) This Agreement does not in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Lease, Note, Lender's Lien or any other documents executed in connection with the Loan.
- (B) In the event of an uncured default under the Note, or any of the other documents executed in connection with the Loan, Landlord hereby expressly and irrevocably consents to Tenant's attornment to Lender and, upon such event, directs Tenant to pay all rent and all other sums due under the Lease to Successor as provided in the Lease. Landlord hereby acknowledges and agrees that all payments made by Tenant in accordance herewith shall constitute payments under the terms of the Lease. Landlord hereby waives all claims against Tenant and agrees to indemnify Tenant against all costs and liability for following any payment instructions given by Successor pursuant to this Agreement, even if those instructions prove to be improper or are disallowed by a court of competent jurisdiction. Without limiting the foregoing, Tenant shall not be required to make any inquiry or conduct any investigation into the validity or appropriateness of Successor's written demand for payment of rent pursuant hereto. In the event Tenant receives conflicting instructions from either Successor or Landlord, Tenant may but is not obligated to request clarification or further assurances from either or both of Successor and Landlord.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. If either Lender, Landlord, or Tenant institutes any suit or action to interpret or enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees, expert witness fees, paralegal fees, deposition transcription fees, and other costs incurred, through any final appeal of such dispute. All reasonable expenses Lender incurs that are necessary for the protection of Lender's interest in the Real Property in any bankruptcy proceeding involving Landlord (including efforts to modify or vacate any automatic stay or injunction), court costs, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law, shall become part of the Indebtedness payable by Landlord on demand, and bearing interest at the Note rate from the date of expenditure until repaid.

Authority. Any person who signs this Agreement on behalf of Lender, Landlord and Tenant represents and warrants that he or she has authority to execute this Agreement on behalf of such party.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Counterparts. This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Utah without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Utah.

Choice of Venue. If there is a lawsuit, Landlord agrees upon Lender's request to submit to the jurisdiction of the courts of Utah County, State of Utah.

Notices. Any notice required to be given under this Agreement shall be given in writing, and, shall be effective when actually delivered, when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. Except as otherwise provided herein, no delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing among Lender, Landlord, and Tenant shall constitute a waiver of any of Lender's rights or of any of Landlord's and/or Tenant's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors. This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement.

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS. THIS AGREEMENT IS MADE EFFECTIVE AS OF THE DATE STATED ABOVE.

[SIGNATURE PAGES FOLLOW]

LANDLORD:

NICHOLS ENTERPRISES, L.L.C.

By: [Signature]
RUSSELL L NICHOLS, Manager of NICHOLS ENTERPRISES, L.L.C.

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

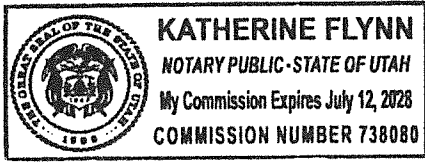
STATE OF Utah
COUNTY OF Utah

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) SS
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On this 12 day of September, 2024, before me, the undersigned Notary Public, personally appeared **RUSSELL L NICHOLS, Manager of NICHOLS ENTERPRISES, L.L.C.**, known to me to be members or designated agents of the limited liability company that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By: [Signature]
Notary Public in and for the State of Utah

Residing at Lehi, UT
My commission expires 7/12/2028



LENDER:

ALTABANK, DIVISION OF GLACIER BANK

X [Signature]
Greg Brandt, RELATIONSHIP MANAGER I

LENDER ACKNOWLEDGMENT

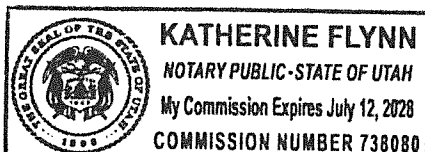
STATE OF Utah
COUNTY OF Utah

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On this 12 day of September, 2024, before me, the undersigned Notary Public, personally appeared **Greg Brandt** and known to me to be the **RELATIONSHIP MANAGER I**, authorized agent for **Altabank, Division of Glacier Bank** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **Altabank, Division of Glacier Bank**, duly authorized by **Altabank, Division of Glacier Bank** through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of **Altabank, Division of Glacier Bank**.

By: [Signature]
Notary Public in and for the State of Utah

Residing at Lehi, UT
My commission expires 7/12/2028



TENANT:

QUALITY COLLISION MOUNTAIN WEST, LLC

By: _____

Name: Phillip Southard

Title: Vice President and Treasurer

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF New Jersey

)
) ss
)

COUNTY OF Bergen

On this 19th day of JULY, 2024, before me, the undersigned Notary Public, personally appeared **Phillip Southard, Vice President and Treasurer of QUALITY COLLISION MOUNTAIN WEST, LLC**; known to me to be the Vice President and Treasurer of the limited liability company that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on-oath stated that they are authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By: _____
Notary Public in and for the State of New Jersey

Residing at 110 Chestnut Ridge Rd. Montvale, NJ 07648
My commission expires 02/18/2025

JESSICA JIMENEZ
Notary Public, State of New Jersey
Comm. # 50122943
My Commission Expires 02/18/2025