

This instrument was prepared by,  
and after recordation should be returned to:

Greer, Herz & Adams, LLP  
Attn: Darryl H. Levy  
2525 South Shore Blvd., Suite 203  
League City, Texas 77573

Assessor's Parcel No. 47-344-0002  
CTC 121654-JHP 47-340-0001

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of May 26, 2020, between the undersigned **HALL PROPERTY HOLDINGS, LLC**, a Utah limited liability company (such party together with its successors and assigns, all of the preceding being collectively herein referred to as "Tenant") and **AMERICAN NATIONAL INSURANCE COMPANY**, a Texas insurance company (such party together with its successors and assigns including, without limitation, any purchaser at any foreclosure sale of the Mortgage, defined below, being herein collectively referred to as "Lender"), whose address is: Attn: Mortgage and Real Estate Investment Department, 2525 South Shore Blvd., Suite 207, League City, Texas 77573.

RECITALS

A. Tenant is the lessee under the lease which, together with any and all modifications and amendments thereto, is completely described on **SCHEDULE "1"** attached hereto and incorporated herein (collectively the "Lease").

B. **Diamond Hall Development Partners, LLC**, a Utah limited liability company, (together with its successors and assigns including, without limitation, with respect to any individual, such individual's heirs, administrators, legal representatives and executors being herein collectively referred to as "Borrower"), the lessor or successor to the lessor under the Lease, has requested Lender to make to Borrower a mortgage loan secured or to be secured by a mortgage or deed of trust from Borrower to Lender (such mortgage or deed of trust collectively together with all renewals, increases, replacements, consolidations, modifications and extensions thereof, the "Mortgage"), covering the property (the "Property") described on **EXHIBIT "A"** attached hereto and incorporated

herein wherein the premises covered by the Lease are located.

C. Lender is willing to make the requested mortgage loan, provided Tenant executes this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Lender to make the requested mortgage loan, Tenant and Lender hereby agree and covenant as follows:

1. The Lease and the lien thereof are and shall at all times continue to be subject and subordinate in all respects to the lien of the Mortgage and all rights, privileges and provisions in favor of Lender thereunder. Tenant further waives all rights and claims to assert that the Lease or any provision thereof is superior to the lien or to any other provision of the Mortgage.

2. So long as Tenant is not in breach or default (beyond any period in the Lease given to Tenant to cure such breach or default) in the payment of rent or additional sums or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession under the Lease and Tenant's rights and privileges thereunder, or under any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease, shall not be diminished or interfered with by Lender acting pursuant to the Mortgage, and Tenant's occupancy shall not be disturbed by Lender during the term of the Lease or any such extensions or renewals thereof in accordance with any extension or renewal options contained in the Lease.

3. If the interests of Borrower in the Property or the Lease shall be acquired by Lender by foreclosure, by deed in lieu of foreclosure or by any other method, and Lender succeeds to the interests of Borrower under the Lease, then provided that and so long as Tenant is not in default in the payment of any sums due from Tenant under the Lease or in the performance of any other obligation of Tenant under the Lease, the Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated, diminished, interfered with or disturbed except in accordance with the terms of the Lease, and except that Tenant shall be bound to Lender under all of 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 therefor contained in the Lease, with the same force and effect as if Lender were the original lessor under the Lease, and Tenant does hereby attorn to Lender as its lessor, said attornment to be effective and self-operative without the execution of any other instruments on the part of either party hereto immediately upon Lender's succeeding to the interest of Borrower under the Lease; provided, however, that unless otherwise required by applicable law, Tenant shall be under no obligation to pay rent to Lender by virtue of this Agreement until Tenant receives written notice from Lender that Lender has succeeded to the interests of Borrower under the Lease or exercised its assignment of

rents. It is the intention of the parties hereto for this purpose to incorporate the Lease into this Agreement by reference for all purposes with the same force and effect as if set forth at length herein.

4. If Lender shall succeed to the interests of Borrower under the Lease, Lender shall be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interests of Borrower under the Lease, have the same remedies against Lender for the breach or default by Lender of any agreement contained in the Lease that Tenant might have had under the Lease against Borrower for Borrower's breach or default; provided, however, that Lender shall not be:

- (a) liable for any act or omission of any prior or succeeding landlord (including Borrower); or
- (b) liable for the return of any security deposit unless actually received by Lender;
- (c) subject to any offsets or defenses which Tenant might have against any prior or succeeding landlord (including Borrower);
- (d) bound by any rent or additional sums which Tenant might have paid for more than one month in advance to any prior or succeeding landlord (including Borrower);
- (e) bound by any agreement, amendment or modification of the Lease or any cancellation or termination of the Lease by any prior landlord (including Borrower), made without Lender's prior written consent;
- (f) bound by any provision of the Lease restricting the use of other properties owned by Lender, as landlord.

5. Tenant from and after the date hereof shall send a copy of any notice or statement of a breach or default (including matters which, but for the passage of time, the giving of notice, or both, would be a breach or default) under the Lease or any notices or statement of any intention to cancel or terminate the Lease by certified mail, return receipt requested to Lender at the address shown above at the same time such notice or statement is sent to Borrower. Tenant further agrees that, in the event of any act or omission by Borrower or other occurrence which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction (either actual or constructive), or in the event of any other breach or default by Borrower under the terms of the Lease, promptly thereupon, Tenant shall so notify Lender by certified mail, return receipt requested, at the address above.

6. Lender shall have the option, within a reasonable time, but not less than sixty (60) days following receipt by Lender of notice as provided in paragraph 5 above, to cure any such act, omission, breach, or default of Borrower described in such paragraph 5, including if necessary, the commencement and prosecution of foreclosure proceedings, and Tenant agrees to accept the

performance of Lender in lieu of the performance of Borrower and that the Lease shall thereby remain in full force and effect. Tenant shall not exercise any such right to terminate or claim eviction or any other rights or remedies available at law or in equity for default or breach of the Lease or act or omission by Borrower in connection with the Lease, unless and until Tenant has notified Lender as provided in paragraph 5 hereof and until the time for Lender to commence and complete such cure has elapsed.

7. Tenant hereby agrees that for so long as the Mortgage encumbers or is a lien on the Property, or any portion thereof, and thereafter, should Lender acquire the Property, or any portion thereof, no covenant, agreement or other obligation of the Borrower which is to be performed or complied with beyond the boundaries of the Property and no act or omission or occurrence which occurs beyond the boundaries of the Property (including, without limitation, any restrictions prohibiting Borrower's or its affiliates or other related persons or entities from competing, operating or leasing in competition with Tenant or to cause or restrict certain actions or activities on other property not encumbered by the Mortgage) shall be a breach or default under the Lease nor permit Tenant to cancel or terminate the Lease or abate or reduce any rent or other sums. Nothing in this Section 7 shall prevent Tenant from seeking or obtaining a restraining order or injunction against such breach, default, act, omission or occurrence or from obtaining a monetary judgment against Borrower or any successor landlord other than Lender for any such breach, default, act, omission or occurrence.

8. In the event the Tenant becomes the owner of the Property or any portion thereof, there shall be no merger of the leasehold interest and the fee interest and the Lease shall remain in existence and, without limiting the foregoing, Lender shall be permitted to collect rent thereunder if a breach or default occurs under the Mortgage or any indebtedness secured thereby or any assignment of leases and/or rents by and/or executed in connection with any of the preceding. Nothing in this Agreement shall be construed to permit a transfer of Tenant's interest not expressly permitted by the Lease.

9. This Agreement may not be amended or modified orally or in any other 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 respective successors and assigns including, any applicable, heirs, administrators, legal representatives and executors.

10. Tenant agrees that it will not, without the written consent of Lender, pay rent or any other sums becoming due under the Lease more than one (1) month in advance.

11. Tenant agrees that the Mortgage and the indebtedness secured thereby may be increased, rearranged, renewed, extended, consolidated and modified from time to time by agreement between Borrower and Lender, and Lender may exercise any one or more of its rights under the Mortgage from time to time at Lender's discretion, all without notice to or consent of

Tenant, and this Agreement shall continue in full force and effect as to all such renewals, extensions, increases, rearrangements, consolidations and modifications and all such exercises of rights.

12. In no event shall Lender be personally liable as landlord under the Lease either by virtue of any assignment of the Lease, the exercise of any right thereunder or hereunder, the foreclosure of its lien on the Property, the acquisition of the Property or the collection of any rent or other sums under the Lease as owner or mortgagee and Tenant shall look solely to the real estate that is the subject of the Lease and to no other assets of Lender for satisfaction of any liability in respect of the Lease; but Tenant shall have reserved to it all other remedies available to it at law or in equity.

13. Except as otherwise described on Schedule "1", the Lease has not been amended or modified and is in full force and effect as originally executed, and there are no side letters or other arrangements, whether or not constituting amendments to the Lease, for tenant inducements or otherwise.

14. Neither Borrower nor Tenant is in breach or default under any provision of the Lease nor is Tenant aware of any act, omission or occurrence which, but for the passage of time, the giving of notice, or both, which would constitute a breach or default or would permit the Tenant to terminate the Lease or reduce or abate any rent thereunder. Borrower has complied fully and completely with all of Borrower's covenants, warranties and other obligations under the Lease to the date hereof. Tenant is fully obligated to pay, and is paying, the rent and other sums due from Tenant under the Lease, and is fully obligated to perform and is performing all of the obligations of Tenant under the Lease, without right of counterclaim, offset or other defense.

15. Where appropriate, all references to the singular shall include the plural and vice versa and all references to any gender shall include the others.

16. This Agreement may not be waived, amended or modified except by subsequent written agreement signed by the party to be bound.

17. The words "breach" and "default" are used interchangeably in this Agreement for convenience of drafting and there is no distinction between the meanings of either word.

18. This Agreement shall be interpreted under the internal laws of the State of Utah, without regard for conflict of law provisions.

19. This Agreement satisfies Borrower's obligation, if any, to provide a subordination, non-disturbance and attornment agreement, or similar document, pursuant to the Lease.

20. This Agreement may be executed in multiple counterparts, each of which shall be an original instrument and which, taken together, constitutes one and the same agreement.

[Remainder of Page Intentionally Reserved]

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

HALL PROPERTY HOLDINGS, LLC,  
a Utah limited liability company

By: [Signature]  
Name: Matt Van Dyke  
Title: CFO

STATE OF UTAH §  
COUNTY OF UTAH §

Before me, the undersigned authority, a Notary Public, on this day personally appeared Matt Van Dyke, as CFO of HALL PROPERTY HOLDINGS, LLC, a Utah limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said limited liability company.

Given under my hand and notarial seal this 26<sup>th</sup> day of May, 2020.



[Signature]  
Notary Public, State of UTAH  
Commission #: 701810  
Commission Exp.: 08-21-2022

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

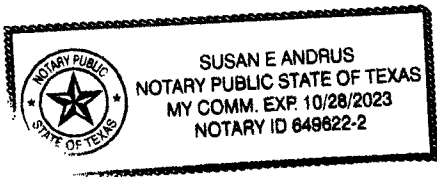
AMERICAN NATIONAL INSURANCE COMPANY,  
a Texas insurance company

*DKR*  
*Jep*  
By: [Signature]  
Name: Scott F. Brast  
Title: SVP & Chief ML&RE  
Investment Officer

STATE OF TEXAS                   §  
  §  
COUNTY OF GALVESTON       §

Before me, the undersigned authority, a Notary Public, on this day personally appeared Scott F. Brast, SVP & Chief ML&RE Investment Officer of AMERICAN NATIONAL INSURANCE COMPANY, a Texas insurance company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said company.

Given under my hand and notarial seal this 20<sup>th</sup> day of May, 2020.



Susan E Andrus  
Notary Public, State of Texas

**SCHEDULE "1"**

TO

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

Dated: May ~~30~~ 2020

The Lease referred to in the foregoing Agreement is that certain Commercial and Industrial Lease (Triple Net) made and entered into as of January 17, 2020, by and between Diamond Hall Development Partners, LLC, as landlord, and Hall Property Holdings, LLC, as tenant. The Lease has not been amended or modified except as follows:

- First Amendment to Commercial and Industrial Lease (Triple Net) dated as of May 26<sup>th</sup>, 2020 by and between Diamond Hall Development Partners, LLC, as landlord, and Hall Property Holdings, LLC, as tenant.



**EXHIBIT "A"****(PROPERTY DESCRIPTION)**

## PARCEL 1:

Lot 2 of NEW VISTA SUBDIVISION PLAT "B", according to the official plat thereof, on file and of record in the Utah County Recorder's office, Utah County, Utah, recorded July 19, 2018 as Entry No. 67827:2018.

## PARCEL 1A:

The "No-Build" Easement, appurtenant to Lot 2 described above, situated within Parcel 1 of New Vista Subdivision Plat "B", according to the official plat thereof, on file and of record in the Utah County Recorder's office, Utah County, Utah, recorded July 19, 2018 as Entry No. 67827:2018.

## PARCEL 1B:

The nonexclusive Access and Parking Easements, appurtenant to Lot 2 described above, as established, defined and described in that certain Parking, Access and Utility Easement and Abandonment Agreement recorded MAY 29, 2020 as Entry No. 73143:2020 in the Utah County Recorder's office, Utah County, Utah, over, upon and across the Access and Parking Easement Area as described in said instrument, being situated within Lot 1 of New Vista Subdivision Plat "A", according to the official plat thereof on file and of record in the Utah County Recorder's office, Utah County, Utah, recorded February 15, 2018 as Entry No. 15293:2018.

## PARCEL 1C:

A nonexclusive easement for access, passage and use, both pedestrian and vehicular, appurtenant to Lot 2 described above, as established, defined and described in that certain Road Easement Agreement recorded MAY 29, 2020 as Entry No. 73144:2020 in the Utah County Recorder's office, Utah County, Utah, over, upon and across that portion of the following described parcel of land that is situated within Lot 1 of New Vista Subdivision Plat "A" according to the official plat thereof on file and of record in the Utah County Recorder's office, Utah County, Utah, recorded February 15, 2018 as Entry No. 15293:2018, to-wit:

A parcel of land being a strip of land 58.00 feet in width lying entirely within Lot 1, New Vista Subdivision Plat "A" recorded February 15, 2018 as Entry No. 15293:2018 as Map # 15926 and Lot 2, New Vista Subdivision Plat "B" recorded July 19, 2018 as Entry No. 67827:2018 as Map # 16155 in the Office of the Utah County Recorder. Said parcel of land is located in the Southeast Quarter of

Exhibit "A" to Subordination, Non-Disturbance and Attornment Agreement

Section 20, Township 7 South, Range 3 East, Salt Lake Base and Meridian. Said 58.00 foot wide strip of land lies 29.00 feet each side of the following described centerline:

Beginning at a point on the northeasterly boundary of said Lot 1, New Vista Subdivision Plat "A" recorded February 15, 2018 as Entry No. 15293:2018 as Map # 15926 in the Office of said Recorder, which is 78.23 feet N. 29°28'41" W. from the southeasterly corner of said Lot 1 also, being 1590.02 feet S. 00°41'57" E. and 397.87 feet West from the East Quarter of said Section 20; thence S. 65°35'46" W. 1022.64 feet; thence N. 22°01'50" W. 1020.30 feet to a northerly boundary line of said Lot 2, New Vista Subdivision Plat "B" recorded July 19, 2018 as Entry No. 67827:2018 as Map # 16155 in the Office of said Recorder and the Point of Terminus.

The sidelines of said strip of land to be lengthened or shortened to begin on said northeasterly line of Lot 1, New Vista Subdivision Plat "A" recorded February 15, 2018 as Entry No. 15293:2018 as Map # 15926 and end on said northerly line of said Lot 2, New Vista Subdivision Plat "B" recorded July 19, 2018 as Entry No. 67827:2018 as Map # 16155.

Tax Id No.: 47-344-0002

Exhibit "A" to Subordination, Non-Disturbance and Attornment Agreement