

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Bank of America, N.A.  
NC1-001-05-13  
One Independence Center  
101 North Tryon Street  
Charlotte, NC 28255-0001

Parcel Tax Serial No. 15-32-226-017

13160643  
12/31/2019 12:53:00 PM \$40.00  
Book - 10880 Pg - 1667-1674  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 8 P.

12009-CAP

Space above for Recorder's Use

### **SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT**

This Subordination, Nondisturbance and Attornment Agreement ("Agreement") is entered into as of December 31, 2019, by Bank of America, N.A., a national banking association ("Bank"), Corral West Properties, L.C., a Utah limited liability company ("Landlord"), and Corral West Valley, LLC, a Utah limited liability company ("Tenant").

#### **RECITALS**

A. Landlord and Tenant have entered into that certain Lease Agreement dated as of August 9, 2011, as amended by that certain Addendum to Commercial Real Estate Lease dated as of January 1, 2019 (as amended, the "Lease"), covering certain premises located at 3399 West 3500 South, West Valley City, Utah 84119-2639 (the "Property"). The Property is more particularly described in Exhibit A attached hereto and incorporated herein.

B. Bank is the beneficiary of a certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of even date herewith ("Deed of Trust") whereby Landlord, as trustor, grants a lien in the Property to Bank, which will be recorded concurrently herewith in the Official Records of Salt Lake County, State of Utah. The Deed of Trust secures certain obligations to Bank as more particularly described therein.

C. On the terms and conditions in this Agreement, the parties desire to subordinate Tenant's leasehold interest in the Property to the lien of the Deed of Trust and to assure Tenant's possession of the Property for the entire term of the Lease, even though Bank may foreclose the lien of the Deed of Trust before expiration of the Lease.

Therefore, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

#### **Section 1. Subordination.**

The Lease, the leasehold estate created thereby, and all rights and privileges of Tenant thereunder shall be subject and subordinate to the lien of the Deed of Trust and to any renewals, modifications, consolidations, replacements and extensions of the Deed of Trust to the full extent of the obligations now or hereafter secured by the Deed of Trust.

#### **Section 2. Nondisturbance.**

So long as Tenant is not in default, beyond any period given to Tenant to cure a default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Tenant's possession of the Property and Tenant's rights and privileges under the Lease, including any

extensions or renewals, shall not be diminished or interfered with by Bank during the term of the Lease or any extensions or renewals. So long as Tenant is not in default, beyond any period given Tenant to cure such default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Bank will not join Tenant as a party for the purpose of terminating or otherwise affecting Tenant's interest under the Lease, in any action of foreclosure or other proceeding brought by Bank to enforce any rights arising because of any default under the Deed of Trust. Bank may, however, join Tenant as a party if joinder is necessary under any statute or law to secure the remedies available to Bank under the Deed of Trust, but joinder shall be for that purpose only and not for the purpose of terminating the Lease or affecting Tenant's right to possession of the Property.

### **Section 3. Attornment.**

If the Landlord's interest is transferred to and owned by Bank or any successor of Bank ("Acquiring Party") because of foreclosure or other proceedings brought by Bank, or by any other manner, and Acquiring Party succeeds to Landlord's interest under the Lease, Tenant shall be bound to the Acquiring Party, and Acquiring Party shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the balance of the remaining term, including any extensions or renewals, with the same effect as if Acquiring Party were Landlord under the Lease. Tenant agrees to attorn to Acquiring Party as the Landlord, with the attornment being effective and self-operable immediately upon Acquiring Party succeeding to the interest of Landlord under the Lease, all without the execution by the parties of any further instruments. However, Tenant shall not be obligated to pay rent to Acquiring Party until Tenant receives written notice from Acquiring Party, together with evidence satisfactory to Tenant, demonstrating that Acquiring Party has succeeded to Landlord's interest under the Lease and directing where rent should be mailed. The respective rights and obligations of Tenant and Acquiring Party upon attornment, to the extent of the then-remaining balance of the term of the Lease, shall be the same as in the Lease, which is incorporated by reference in this Agreement. If Acquiring Party succeeds to Landlord's interest in the Lease, Acquiring Party shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, after Acquiring Party's succession to Landlord's interest, have the same remedies against Acquiring Party for the breach of any agreement in the Lease that Tenant might have had against Landlord.

### **Section 4. Tenant Estoppel Certificate.**

(a) Tenant has no right or option of any nature whatsoever, whether arising out of the Lease or otherwise, to purchase the Property, or any interest or portion in or of the Property, to expand into other space in the Property or to extend or renew the term of the Lease without the prior written consent of Bank.

(b) Tenant represents and warrants to Bank that there are no amendments, supplements, side letters and other agreements and memoranda pertaining to the Lease, the leasehold and/or the Property except as described herein.

(c) As of the date of this Agreement, Tenant represents and warrants that there exist no events of default, or events that with notice or the passage of time or both would be events of default, under the Lease, on either Tenant's part or Landlord's, nor is there any right of offset (including audit or accounting rights which might otherwise give rise to a claim or an offset for rents paid under the Lease) against any of Tenant's obligations under the Lease. The Lease is in full force and effect as of the date of this Agreement.

(d) Tenant acknowledges that Bank is relying on the representations, certifications and undertakings made by Tenant in this Agreement in extending credit secured by the Deed of Trust.

(e) Within ten (10) days after Bank's request, Tenant shall deliver to Bank and to any person designated by Bank, estoppel certificates executed by Tenant, certifying (if such is the case) that the Lease is in full force and effect, that there are no defenses or offsets outstanding under the Lease (or

stating those claimed by Tenant, as the case may be) and such other information about Tenant or the Lease as Bank may reasonably request.

(f) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement from Bank.

#### **Section 5. Tenant's Purchase Option.**

The lien of the Deed of Trust shall unconditionally be and remain at all times a lien on the Property prior and superior to any existing or future option or right of first refusal of Tenant to purchase the Property or any portion thereof. In the event of any transfer of Landlord's interest in the Property by foreclosure, trustee's sale, or other action or proceeding for the enforcement of the Deed of Trust or by deed in lieu thereof, Tenant specifically waives any right, whether arising out of the Lease or otherwise, to exercise any purchase option or right of first refusal which remains unexercised at the time of such transfer.

#### **Section 6. No Change in Lease.**

Landlord and Tenant agree not to change, alter, amend or otherwise modify the Lease without the prior written consent of Bank. Any change, alteration, amendment, or other modification to the Lease without the prior written consent of Bank shall be void as to Bank.

#### **Section 7. Notices.**

In this Agreement, wherever it is required or permitted that notice and demand be given by any party to another party, that notice or demand shall be given in writing and forwarded by certified mail, addressed as follows:

For Landlord:	Corral West Properties, L.C. 77 West 1500 North Centerville, Utah, 84014-1112
For Tenant:	Corral Orem, LLC P.O. Box 488 Centerville, Utah 84014
For Bank:	Bank of America One Independence Center 101 North Tryon Street Charlotte, North Carolina 28255-0001

Any party may change an address given for notice by giving written notice of that change by certified mail to all other parties.

#### **Section 8. Authority.**

If any party is a corporation, limited liability company, or a partnership, all individuals executing this Agreement on behalf of such corporation, limited liability company, or partnership represent and warrant that they are authorized to execute and deliver this Agreement on behalf of the corporation, limited liability company, or partnership and that this Agreement is binding upon such corporation, limited liability company, or partnership.

**Section 9. Miscellaneous.**

This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest. If any party commences any action against any other party based on this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees, expenses, and costs of suit. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns. The headings of this Agreement are for reference only and shall not limit or define any meaning of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which shall constitute one and the same instrument. This Agreement shall be construed in accordance with and governed by Utah law.

[Signature Pages Follow]

The parties have duly executed this Agreement as of the date first above written.

BANK: BANK OF AMERICA, N.A.

By: *Rachel Fitzpatrick*  
Name: Rachel Fitzpatrick  
Title: Director

**ACKNOWLEDGMENT**

State of ~~Utah~~ COLORADO )  
County of ARAPAHOE )  
:ss

The foregoing instrument was acknowledged before me this 23 day of 2019,  
2019, by Rachel Fitzpatrick, a Director of Bank of America, N.A., a national banking association.

**KRISTINA MARIE TELLER**  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20174013311  
MY COMMISSION EXPIRES MARCH 27, 2021

(Seal)

*Kristina Marie Teller*  
(Signature of person taking acknowledgment)

(Title) Notary - RDA  
Residing at: 6400 S Fiddlers Green Cir  
Suite 1100  
Greenwood Village CO 80111

My Commission expires:  
March 27, 2021

LANDLORD:

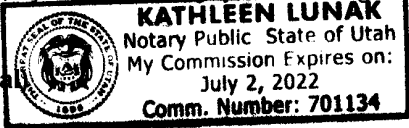
Corral West Properties, L.C.

By *BK Tingey*  
Name: Bruce K. Tingey  
Title: Manager

**ACKNOWLEDGMENT**

State of Utah )  
County of Davis )  
:ss

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of Dec., 2019, by Bruce K. Tingey, the Manager of Corral West Properties, L.C., a Utah limited liability company.



(Seal) My Commission expires: 7-2-22

*Kathleen Lunak*  
(Signature of person taking acknowledgment)  
(Title) Notary  
Residing at: Corral West L.C.

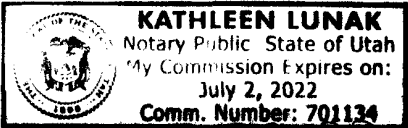
TENANT: Corral West Valley, LLC

By: [Signature]  
Name: Bill Linson  
Title: MANAGER

**ACKNOWLEDGMENT**

State of Utah \_\_\_\_\_ )  
County of Davis ) :ss

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of Dec., 2019, by Bill Linson, the Manager of Corral West Valley, LLC, a Utah limited liability company.

(Seal)   
My Commission expires: 7-2-22

[Signature]  
(Signature of person taking acknowledgment)  
(Title) Notary  
Residing at: Centerville, UT

## EXHIBIT A

### Description of Property

Beginning at a point on the South right of way line of 3500 South Street, said point being North 89°57'17" East 1095.742 feet, and South 53.00 feet from the North quarter corner of Section 32, Township 1 South, Range 1 West, Salt Lake Base and Meridian (basis of bearing being North 89°57'17" East 2648.39 feet from the North quarter corner of said Section 32, to the Northeast corner of said Section 32) and running thence North 89°57'17" East along said 3500 South Street right of way line 302.35 feet; thence South 00°25'20" East 183.93 feet to a point on the North line of Granger Heights No. 4 Subdivision as recorded with the office of the Salt Lake County Recorder; thence South 89°57'00" West along said North line 71.20 feet to the Northwest corner of Lot 2 of said Granger Heights No. 4 Subdivision; thence South 00°25'20" East along the West line of said Lot 2, 95.52 feet to the North right of way line of 3540 South Street; thence South 89°57'00" West along said 3540 South Street right of way line 232.99 feet; thence North 00°02'43" West 279.47 feet to the point of beginning. LESS AND EXCEPTING THEREFROM that portion of subject property as disclosed by that certain Warranty Deed, recorded January 24, 2008 as Entry No. 10329702 in Book 9561 at Page 8029, being described as follows: A parcel of land in fee, being part of an entire tract of property situate in the Northwest quarter of the Northeast quarter and the Northeast quarter of the Northeast quarter of Section 32, Township 1 South, Range 1 West, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows: Beginning at the Northwest corner of said entire tract to the Southerly right of way line of the existing highway State Route 171 which corner is 1095.70 feet (1095.742 feet by record) North 89°57'17" East and 53.00 feet South 00°02'43" East (South by Record) from the North quarter corner of said Section 32 said corner is also approximately 36.67 feet perpendicularly distant Southerly from the control line of said project opposite Engineer Station 683+39.63 and running thence North 89°57'17" East 302.35 feet along said Southerly right of way line to the Northeast corner of said entire tract; thence South 00°25'10" East (South 00°25'20" East by record) 9.00 feet along the Easterly boundary line of said entire tract to a line parallel with and 45.67 feet perpendicularly distant Southerly from said control line; thence South 89°57'17" West 302.40 feet along said parallel line to the Westerly boundary line of said entire tract; thence North 00°02'43" West 9.00 feet along said Westerly boundary line to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation.

(Note: Rotate all bearings in the above description 00°14'30" clockwise to obtain highway bearings.)

A parking, ingress and egress easement as disclosed by that certain Special Declaration of Restriction and Grant of Easements, recorded August 31, 1995 as Entry No. 6155214 in Book 7218 at Page 607, and rerecorded April 22, 1996 as Entry No. 6337094 in Book 7381 at Page 532, and recorded September 15, 1995 as Entry No. 6166322 in Book 7228 at Page 656.

Parcel Tax Serial No. 15-32-226-017

### Street Address of Property

3399 West 3500 South  
West Valley City, Utah 84119-2639

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