

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

Snell & Wilmer L.L.P.
Gateway Tower West
15 W. South Temple, Suite 1200
Salt Lake City, Utah 84101
Attention: Brian D. Cunningham, Esq.
Loan No.: 1019518

APN: 45.703.0008

ENT 125715 : 2021 PG 1 of 11
Andrea Allen
Utah County Recorder
2021 Jul 15 04:21 PM FEE 40.00 BY SA
RECORDED FOR Cottonwood Title Insurance Agency, Inc.
ELECTRONICALLY RECORDED

(Space Above For Recorder's Use)

**SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,
ATTORNMEN T 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 T AND NON-DISTURBANCE AGREEMENT ("**Agreement**") is made this 21st day of June,
2021 by and between **BOYER NW QUADRANT, L.C.**, a Utah limited liability company, owner of the real
property hereinafter described ("**Mortgagor**"), **MAVERIK, INC.**, a Utah corporation ("**Tenant**") and **WELLS
FARGO BANK, NATIONAL ASSOCIATION** (collectively with its successors or assigns, "**Lender**").

RECITALS

- A. Pursuant to the terms and provisions of a lease dated October 9, 2020 ("**Original Lease**"), as amended by that certain first amendment thereto dated May 18, 2021 ("**First Amendment**") (the Original Lease, as amended by the First Amendment, the "**Lease**"), Mortgagor granted to Tenant a leasehold estate in and to a portion of 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. Said Lease contains provisions and terms granting Tenant an option to purchase the Property (the "**Option to Purchase**").
- C. Mortgagor has executed, or proposes to execute, that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing ("**Security Instrument**") securing, among other things, that certain Promissory Note dated January 17, 2020 ("**Note**") in the principal sum of TEN MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$10,750,000.00), in favor of Lender ("**Loan**"). The Security Instrument was recorded on January 17, 2020 in the official records of the Utah County Recorder as Entry No. 6813:2020. The Security Instrument, the Note, and the other documents evidencing the Loan may hereinafter be collectively referred to as the "**Security Documents**".
- D. As a condition to Lender making the Loan secured by the Security Instrument, 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 the Option To Purchase and that the Tenant specifically and unconditionally subordinate the Lease and the Option To Purchase to the lien of the Security Instrument.

- E. Mortgagor and Tenant have agreed to the subordination, attornment and other agreements herein in favor of Lender.

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

1. **SUBORDINATION**. Mortgagor 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 and the Option To Purchase;
 - 1.2 **Subordination**. Lender would not make the Loan without this agreement to subordinate; and
 - 1.3 **Whole Agreement**. This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease and the Option To Purchase 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 and the Option To Purchase, 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 and the Option To Purchase 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:

 - 1.4 **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
 - 1.5 **Subordination**. Tenant intentionally and unconditionally 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 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 subordination.

 2. **ASSIGNMENT**. Tenant acknowledges and consents to the assignment of the Lease by Mortgagor in favor of Lender.
 3. **ESTOPPEL**. Tenant acknowledges and represents that:
 - 3.1 **Entire Agreement**. The Lease constitutes the entire agreement between Mortgagor 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"): One Thousand Dollars (\$1,000.00) paid upon execution of the Lease, pursuant to Section 2.7, as Additional Consideration;
- 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 additional amendments, modifications or additions to the Lease, written or oral; and
- 3.5 **No Broker Liens.** Neither Tenant nor Mortgagee 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"): Scott Brady, Mountain West Commercial Real Estate (Mortgagee's Broker), and Stuart Thain, Colliers International (Tenant's Broker). Per Section 32 of the Lease, the Mortgagee is responsible for any and all brokerage or real estate commission, finder's fee or similar fee or charge with respect to the Lease.
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, which consent shall not be unreasonably withheld, conditioned or delayed, and will not make any payment to Mortgagee in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed;
- 4.2 **Notice of Default.** Tenant will notify Lender in writing concurrently with any notice given to Mortgagee of any default by Mortgagee 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 Mortgagee; 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 right granted to Mortgagee to collect rents, as provided in the Security Instrument, and directing the payment of rents by Tenant to Lender, Tenant shall comply with such direction to pay and shall not be required to determine whether Mortgagee is in default under the Loan and/or the Security Instrument. Mortgagee consents to the foregoing and shall indemnify, defend and hold harmless Tenant, its officers, agent and employees, and successors and assigns, from and against any and all claims, actions, liabilities, damages and expenses (including reasonable attorneys' fees and costs) arising

out of or related to Tenant's compliance with Lender's directions pursuant to this Section 4.4 even if such instructions were given, and payments made, in error.

- 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 Lease shall control.
5. **ATTORNMEN**T. 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 Mortgagor'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 Mortgagor'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 Mortgagor under the Lease, nor for the return of any sums which Tenant may have paid to Mortgagor under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Mortgagor to Lender; and
- 5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Mortgagor under the Lease, should become obligated to perform the covenants of Mortgagor thereunder, then, upon any further transfer of Mortgagor'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. Upon Lender's succeeding to Mortgagor's interest in the Lease, and without limiting the foregoing limitation on Lender's liability, any and all claims of Tenant shall be made in accordance with the Lease.
- 5.6 **No Representation, Warranties or Indemnities.** Lender shall not be liable with respect to any representations, warranties or indemnities from Mortgagor, 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 beyond any applicable notice and cure periods, 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 Lender shall not be:

- 6.1 liable for any act or omission of any prior landlord under the Lease (including Mortgagor);
- 6.2 subject to any offsets or defenses which Tenant might have against any prior landlord (including Mortgagor);
- 6.3 bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Mortgagor);
- 6.4 bound by any surrender, cancellation, termination, amendment or modification of the Lease, or waiver thereof, made without Lender's consent;
- 6.5 liable for any breach of representation or warranty of any prior landlord (including Mortgagor);
- 6.6 liable for any damages or other relief attributable to any latent or patent defects in construction with respect to any portion of the Property;
- 6.7 liable for or bound by any obligation to construct any improvements on the Property; or
- 6.8 liable for or bound by any obligation to pay or reimburse Tenant for any improvements Tenant constructs or is to construct on the Property.

7. **MISCELLANEOUS.**

- 7.1 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Mortgagor 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 Mortgagor or others.
- 7.2 **Tenant Financing.** To the extent permitted under the Lease and applicable law, Lender acknowledges that Tenant shall have the right from time to time during the term of the Lease and without Mortgagor's or Lender's further approval written or otherwise, but with their reasonable cooperation if requested by Tenant, to assign or to grant and assign a trust deed, mortgage or other security interest in Tenant's leasehold interest in the Lease, and all of Tenant's other rights under the Lease and this Agreement to Tenant's lender(s) in connection with Tenant's financing arrangements. Lender and Mortgagor agree to execute such confirmation certificates and other documents and to provide such cooperation as required of Mortgagor under the Lease or applicable law or as Tenant's lenders may reasonably request in connection with any such financing provided the same are in a form reasonably acceptable to Lender, so long as the financing arrangement and any documents requested are in conformance with the Lease.
- 7.3 **NOTICES.** All notices, demands, or other communications under this Agreement and the other Security 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:

Mortgagor:	Boyer NW Quadrant, L.C. 101 S 200 E, Suite 200 Salt Lake City, Utah 84111 Attention: Brian Gochnour
With a copy to:	Parr Brown Gee & Loveless 101 S 200 E, Suite 700 Salt Lake City, Utah 84111 Attention: Lamont R. Richardson
Tenant:	Maverik, Inc. 185 S State Street, Suite 800 Salt Lake City, Utah 84111 Attention: VP Real Estate, realestate@maverik.com
With a copy to:	FJ Management Inc. 185 S State Street, Suite 800 Salt Lake City, Utah 84111 Attention: Legal Department, legal@maverik.com
Lender:	Wells Fargo Bank, National Association Real Estate Banking Group (AU #1074) (for overnight or hand delivery) 299 South Main Street, 6th Floor Salt Lake City, Utah 84111 (for U.S. mail) PO Box 45490 Salt Lake City, Utah 84145-0490 Attention: Ben Bliss Loan #: 1019518
With a copy to:	Wells Fargo Bank, National Association Minneapolis Loan Center 600 S 4th Street, 9th Floor Minneapolis, Minnesota 5541 5-1 526 Attention: Kyle Schwanke Loan #: 1019518 and Snell & Wilmer L.L.P. Gateway Tower West 15 West South Temple, Suite 1200 Salt Lake City, Utah 84101 Attention: Brian D. Cunningham, Esq

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.

- 7.4 **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.
- 7.5 **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.
- 7.6 **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.
- 7.7 **Exhibits, Schedules and Riders.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Agreement by such attachment for all purposes.

[signatures and acknowledgements on following pages]

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.

"MORTGAGOR"

BOYER NW QUADRANT, L.C.
a Utah limited liability company

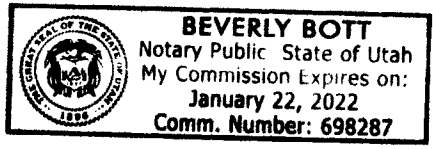
By: THE BOYER COMPANY, L.C.
a Utah limited liability company
its Manager



By: _____
Name: Brian Gochmour
Title: Manager

State of Utah)
County of salt Lake) ss.

On this 7th day of July, in the year 2021, before me Beverly Bott, a notary public, personally appeared Brian Gochmour an individual, a manager of THE BOYER COMPANY, L.C., a Utah limited liability company, the manager of **BOYER NW QUADRANT, L.C.**, a Utah limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.



(Notary Seal)

Beverly Bott
Notary Signature

[additional signatures and acknowledgements on following pages]

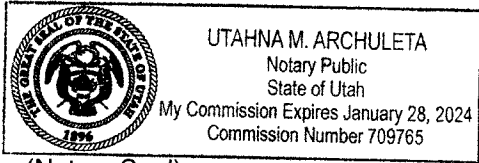
"TENANT"

MAVERIK, INC.
a Utah corporation

By: Tyler Call
Name: TYLER CALL
Title: CFO

State of Utah)
County of SALT LAKE) ss.

On this 6 day of July, in the year 2021, before me Utahna M. Archuleta, a notary public, personally appeared Tyler Call, an individual, a CFO of **MAVERIK, INC.**, a Utah corporation, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.



(Notary Seal)

Utahna M. Archuleta
Notary Signature

[additional signatures and acknowledgements on following page]

"LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: *Ben Bliss*
Name: Ben Bliss
Title: Director

State of Utah)
County of Salt Lake) ss.

On this 13th day of July, in the year 2021, before me LORI NEWEY, a notary public, personally appeared BEN BLISS, an individual, a Director of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

Lori Newey
Notary Signature

(Notary Seal)

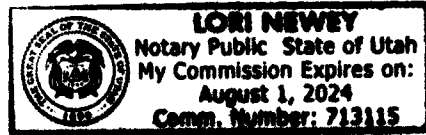


EXHIBIT A - DESCRIPTION OF PROPERTY

All that certain real property located in the County of Utah, State of Utah, described as follows:

Lot 8, LEHI BLOCK PLAT A, according to the official plat thereof as recorded in the Office of the Utah County Recorder on March 12, 2020 as Entry No. 31840:2020.