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E# 2962807 PG 1 OF 7  
Leann H. Kilts, WEBER COUNTY RECORDER  
25-Jan-19 04:13 PM FEE \$22.00 DEP TN  
REC FOR: FIRST AMERICAN TITLE-NCS-SLC1  
ELECTRONICALLY RECORDED

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(SPACE ABOVE RESERVED FOR RECORDER OF DEEDS CERTIFICATION)

TITLE OF DOCUMENT: Subordination, Non-Disturbance & Attornment Agreement

DATE OF DOCUMENT: December 20, 2018

GRANTORS: Creative Publishing Solutions, Inc.  
UTHOLD LLC

GRANTORS MAILING ADDRESSES: Creative Publishing Solutions, Inc.  
1877 West 4000 South  
Roy, Utah 84067

UTHOLD LLC  
820 South Monaco Parkway, #102  
Denver, Colorado 80224

GRANTEE: Academy Bank, N.A.

GRANTEE MAILING ADDRESS: 1111 Main Street, Suite 1600  
Kansas City, Missouri 64105

LEGAL DESCRIPTION: SEE EXHIBIT A ATTACHED HERETO

APN: 08-457-0001

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## SUBORDINATION, NON-DISTURBANCE &amp; ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance & Attornment Agreement ("**Agreement**") is made effective as of December \_\_\_, 2018 ("**Effective Date**"), by and among ACADEMY BANK, N.A., a national banking association (together with its successors and assigns, "**Lender**"), Creative Publishing Solutions, Inc., a Utah corporation ("**Tenant**"), and UTHOLD LLC a Utah limited liability company ("**Landlord**").

Landlord owns or is acquiring certain real property commonly known as 1877 West 4000 South, Roy, Utah 84067, and legally described on Exhibit A (the "**Property**"). A portion of the Property, known as 1877 West 4000 South, is leased to Tenant pursuant to the Lease dated December 13, 2010 (the "**Lease**"). Capitalized terms used but not defined in this Agreement have the meanings set forth in the Lease. Lender has extended or has agreed to extend a loan to Landlord ("**Loan**"), to be secured by (among other things) the following security instruments (collectively, the "**Security Documents**"): (i) [ a deed of trust / mortgage ] recorded or to be recorded in the real property records of Weber County, State of Utah (the "**Records**"), and conveying or encumbering the Property; and (ii) [ an assignment of leases/rents ] recorded or to be recorded in the Records. The parties desire to enter into this Agreement with respect to the Security Documents and the Lease.

In consideration of the premises and the mutual covenants set forth in this Agreement, Lender, Tenant and Landlord covenant and agree, intending to be legally bound, as follows:

1. **Subordination.** The Lease (including any option or right of first refusal to purchase the Property) is now and will remain subject and subordinate to the lien of the Security Documents and to the lien of any renewals, extensions, replacements and modifications of the Security Documents (including all future advances made thereunder). [*Consult Legal for language regarding specific lease or tenant circumstances, such as particular options/rights and franchise tenants.*]

2. **Non-Disturbance.** The term "**Foreclosure Event**" means: (i) foreclosure under the Security Documents; (ii) any other exercise by Lender of rights and remedies (whether under the Security Documents or under applicable law, including bankruptcy law) as owner or holder of the Loan or the Security Documents, as a result of which Lender or another person or entity becomes the owner of the Property; or (iii) delivery of a deed or other conveyance of Landlord's interest in the Property in lieu of any of the foregoing. The term "**Successor Landlord**" means any person or entity (including Lender) that becomes the owner of the Property as the result of a Foreclosure Event. If a Foreclosure Event occurs, then as long as no default exists under the Lease beyond any applicable notice and cure period applicable to such default pursuant to the terms of the Lease: (x) the Lease shall continue in full force and effect as a direct lease between Tenant and the Successor Landlord upon, and subject to, all of the terms, covenants and conditions of the Lease for the remainder of the term thereof, including any extensions provided in the Lease; and (y) Tenant's occupancy of the Property shall not be disturbed. Lender agrees that it will not join Tenant as a party defendant in any action or proceeding for the purpose of enforcing Lender's rights and remedies under the Security Documents, unless applicable law requires that Tenant be made a party thereto as a condition to proceeding against Landlord.

3. **Attornment.** If the interests of the Landlord are transferred in connection with any Foreclosure Event, Tenant will be bound to the Successor Landlord with the same force and effect as if the Successor Landlord were the original Landlord under the Lease. Tenant will attorn to any such Successor Landlord as its Landlord under the Lease. The attornment will be effective and self-operative without the execution of any further instruments upon the succession by any such Successor Landlord to the interest of the Landlord under the Lease.

4. **Protection of Successor Landlord.** Notwithstanding anything to the contrary in the Lease, neither Lender nor Successor Landlord shall be liable for or bound by any of the following matters:

(a) **Claims.** Any defenses or offset rights that Tenant may have against the former Landlord relating to any event or occurrence before the Foreclosure Event, including any claim for damages of any kind whatsoever as the result of any breach of the Lease by the former Landlord. The foregoing shall not limit (i) Tenant's right to exercise against Successor Landlord any rights otherwise available to Tenant because of events occurring after the Foreclosure Event or (ii) Successor Landlord's obligation to correct any condition that: (x) existed as of the Foreclosure Event; (y) was not cured by Lender after its receipt of a default notice from Tenant and an opportunity to cure such condition prior to the Foreclosure Event in accordance with Section 6 below; and (z) violates Successor Landlord's obligations as landlord under the Lease.

(b) Prepayments. Any payment of rent or other amount that Tenant may have made to the former Landlord more than thirty (30) days before the date such rent or amount was first due and payable under the Lease, unless such payment was actually delivered to Lender or Successor Landlord.

(c) Payment. Any obligation to pay to or hold for Tenant any sum(s) (including any security deposit) that the former Landlord owed to Tenant.

(d) Representations and Warranties. Any representations or warranties made by the former Landlord.

(e) Notice. Any notice delivered to Landlord, unless simultaneously delivered to Lender.

(f) Modification. Any amendment or modification of the Lease or any waiver or forbearance on the part of the former Landlord made or given without the written consent of Lender or any Successor Landlord.

(g) Termination, Etc. Any cancellation, termination or surrender of the Lease, except as specifically provided under the Lease as in effect as of the Effective Date.

(h) Assignment. Any assignment of the Lease or sublet of any portion of the Property, except as specifically provided under the Lease as in effect as of the Effective Date.

Notwithstanding anything to the contrary in this Agreement or the Lease, Successor Landlord's obligations and liability under the Lease shall not extend beyond the interest of Successor Landlord (or its successors or assigns) in the Property (including any rental or sale proceeds received by Successor Landlord with respect thereto and related insurance and condemnation proceeds) and in the Lease (collectively, "*Successor Landlord's Interest*"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as amended or affected by this Agreement.

5. Rent Payments. If Landlord defaults in the performance of its obligations under the Loan or the Security Documents, then Tenant will recognize any assignment of rents Landlord made to Lender and will pay to Lender all rents and other amounts that become due under the terms of the Lease after the date of Tenant's receipt of a written demand from Lender and Lender's statement that Landlord is in default under the terms of the Loan. Landlord acknowledges that it has assigned all rents and other amounts due under the Lease to Lender and authorizes Tenant to accept Lender's direction, and waives all claims against Tenant for any sums so paid at Lender's direction, and releases and discharges Tenant of and from any liability to Landlord on account of any such payments, even if such payments are made to Lender in error. Landlord shall indemnify, defend and hold harmless Tenant, its agents, representatives and employees, 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 instructions pursuant to this Section 5, even if such instructions were given, and payments made, in error.

6. Notice of Default by Landlord. Tenant covenants and agrees to give Lender written notice simultaneously with the giving of any notice of default to the Landlord under the provisions of the Lease. Tenant agrees that Lender will have the right, but not the obligation, within thirty (30) days after receipt by Lender of such notice (or such longer period as is otherwise available to Landlord under the Lease) to correct or remedy, or cause to be corrected or remedied, each such default before Tenant may take any action under the Lease by reason of such default. The notices to Lender will be delivered to:

|   |             |                                 |
|---|-------------|---------------------------------|
| Academy Bank, N.A.                      | <i>and:</i> | Dickinson Financial Corporation |
| Attn: <u>Christopher Martinez</u>       |             | Attn: Doug Miller               |
| <u>[740 17th Street]</u>                |             | 1111 Main Street, Suite 1600    |
| <u>[Denver, CO 80202]</u>               |             | Kansas City, Missouri 64105     |
| Email: <u>cmartinez@academybank.com</u> |             | Email: dmiller@dfkcc.com        |

or to such other address as the Lender designates to Tenant by giving written notice to Tenant under the terms of the Lease. Notices will be given and will be effective in accordance with the Lease; *however*, all notices to Lender must include copies to the email addresses indicated above.

7. Conflicts Between Lease & Agreement. If this Agreement conflicts with the Lease, then this Agreement shall govern and control.

8. Governing Law; Venue; Jury Trial Waiver. With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, 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 [ property location ]. In

all other respects, 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 [ Missouri / Colorado / Arizona ] without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Agreement is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction secured by the Security Documents has been applied for, underwritten, analyzed, considered, approved and made, and all necessary loan documents have been negotiated and accepted by Lender in the State of [ Missouri / Colorado / Arizona ]. To induce Lender to accept this Agreement, Tenant and Landlord irrevocably agree that subject to Lender's sole and absolute election, Lender may bring suit, action, or other legal proceedings arising out of the Security Documents or this Agreement in courts located in the State of [ Missouri / Colorado / Arizona ], whether state or federal. Tenant and Landlord hereby submit to the jurisdiction of such court(s) and waives any right Tenant or Landlord may have to request a change of venue or a removal to another court. LENDER, LANDLORD AND TENANT EACH HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE ARISING IN CONNECTION WITH THIS AGREEMENT. LENDER, LANDLORD AND TENANT STATE THAT THEY HAVE CONSULTED WITH LEGAL COUNSEL SPECIFICALLY WITH RESPECT TO THIS WAIVER, AND HAVE AGREED TO THIS WAIVER AFTER CONSULTATION WITH SUCH COUNSEL AND WITH FULL UNDERSTANDING OF THE IMPLICATIONS HEREOF.

9. Miscellaneous. This Agreement constitutes the entire agreement among Lender, Landlord and Tenant as to the subject matter of this Agreement. This Agreement may be amended only by a written instrument executed by all parties, which amendment shall be effective only when a duly executed original or copy is delivered to each party. This Agreement will be binding on, inure to the benefit of, and be enforceable by, the parties and their respective successors and permitted assignees. No person other than Borrower and Lender and their permitted successors and assignees shall have any rights or benefits under this Agreement. No failure or delay in exercising any right, power or privilege shall operate as a waiver or modification thereof, nor shall any single or partial exercise of a right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The term "*person*" is intended to be broadly interpreted to include any natural person, corporation, bank, partnership, company, governmental entity or other legal entity. The term "*modified*" means amended, changed, extended, renewed, altered, terminated, or canceled. The term "*or*" has the inclusive meaning represented by the phrase "*and/or*" (except where otherwise indicated). The terms "*include*," "*including*" and similar terms shall be construed as if followed by the phrase "*without being limited to*." The words "*hereof*," "*herein*," "*hereby*," "*hereunder*" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision or section of this Agreement. No inference in favor of, or against, any party shall be drawn from the fact that such party has drafted any portion of this Agreement. Each party has either (i) reviewed this Agreement with legal and other counsel of its choice or (ii) had sufficient opportunity to review this Agreement with legal and other counsel of its choice and declined to do so. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. If any provision of this Agreement is determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the parties contemplate that the court or arbitrator making such determination shall reduce such extent, duration, scope or other provision consistent with the general intent of such provision and should enforce such provision in its reduced form for all purposes contemplated by this Agreement. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable out-of-pocket costs and expenses (including reasonable attorney fees). This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page, and this Agreement may be executed by the affixing the signatures of each of the parties to one of such counterparts. All of such counterparts shall be read as though one, and they shall have the same force and effect as though all the signers had signed a single page. The delivery of a copy of a signed counterpart signature page of this Agreement by facsimile or by electronic mail in pdf (or "*portable document format*" form), or by any other electronic means which shall preserve the original graphic appearance of such signature page and such signature, will have the same effect as the physical delivery of the paper version of such signature page to this Agreement bearing the original signature.

[Remainder of Page Intentionally Blank; Signature Pages Follow]

Tenant, Landlord and Lender have executed this Agreement to be effective as of the Effective Date written above.

TENANT:

Creative Publishing Solutions, LLC,  
a Utah limited liability company

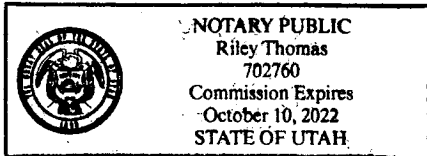
By: Kelly Shaw  
Name: Kelly Shaw  
Title: CFO

STATE OF UTAH )  
 ) ss.  
COUNTY OF WEBER )

On this 7<sup>th</sup> day of JANUARY, ~~2018~~ <sup>2019</sup>, before me, REILEY THOMAS (name of notary), a Notary Public in and for said state, personally appeared KELLY SHAW (name of officer/manager/member/partner), MANAGER (title) of CREATIVE PUBLISHING SOLUTIONS LLC (corporation/LLC/partnership), known to me to be the person who executed the foregoing Subordination, Non-Disturbance & Attornment Agreement on behalf of said [ corporation / limited liability company / partnership ] and acknowledged to me that he or she executed the same for the purposes therein stated.

[seal]

[Signature]  
Notary Public



LANDLORD:

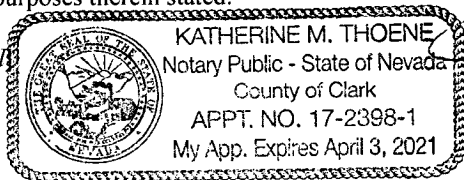
UTHOLD LLC,  
a Utah liability company

By: [Signature]  
Name: Ilya Klein  
Title: President

STATE OF Nevada )  
 ) ss.  
COUNTY OF Clark )

On this 14<sup>th</sup> day of January, 2018, before me, Katherine M. Thoene (name of notary), a Notary Public in and for said state, personally appeared Ilya Klein (name of officer/manager/member/partner), President (title) of UTHOLD, LLC (corporation/LLC/partnership), known to me to be the person who executed the foregoing Subordination, Non-Disturbance & Attornment Agreement on behalf of said [ corporation / limited liability company / partnership ] and acknowledged to me that he or she executed the same for the purposes therein stated.

[seal]



[Signature]  
Notary Public

LENDER:

ACADEMY BANK, N.A.

By: [Signature]  
Name: Chris Martinez  
Title: SVP

STATE OF Colorado )  
 ) ss.  
COUNTY OF Denver )

On this 14<sup>th</sup> day of January, 2018, before me, Noel Nelson (name of notary), a Notary Public in and for said state, personally appeared Christopher Martinez (officer), Senior Vice President (title) of Academy Bank, N.A., known to me to be the person who executed the foregoing Subordination, Non-Disturbance & Attornment Agreement on behalf of Academy Bank, N.A. and acknowledged to me that he or she executed the same for the purposes therein stated.

[seal]

Noel Nelson  
Notary Public

**NOEL NELSON**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
**NOTARY ID 20174049136**  
**MY COMMISSION EXPIRES DECEMBER 8, 2021**

**EXHIBIT A**

**LEGAL DESCRIPTION**

**Lot 1, Golden Spike Technology Park, according to the Official Plat thereof, recorded in the Office of the County Recorder of Weber County, State of Utah**