

109774-ETF
**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

SNELL AND WILMER L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attn: Brian D. Cunningham, Esq.

33-12-478-005

(Space Above for Recorder's Use)

**SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT,
ESTOPPEL, ATTORNMENT 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, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("**Agreement**") is made *Feb. 20th*, 2019 by and between **BG SCENIC POINT OFFICE 3, L.C.**, a Utah limited liability company, owner of the real property hereinafter described (the "**Borrower**"), **HEALTH EQUITY, INC.**, a Delaware corporation ("**Tenant**"), and **KEYBANK NATIONAL ASSOCIATION**, a national banking association (collectively with its successors or assigns, "**Lender**").

RECITALS

- A. Pursuant to the terms and the provisions of a lease dated September 26, 2018 ("**Lease**"), Borrower 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. Borrower has executed, or proposes to execute, that certain Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing ("**Security Instrument**") securing, among other things, that certain Promissory Note in the principal sum of \$23,075,000.00, in favor of Lender ("**Loan**"). The Security Instrument is to be recorded concurrently herewith.
- C. 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 that the Tenant specifically and unconditionally subordinate the Lease to the lien of the Security Instrument

D. Borrower and Tenant have agreed to the subordination, attornment and other agreements herein favor of Lender.

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

1. **SUBORDINATION.** Borrower 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;

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 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, 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 to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Tenant individual 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 **Waiver, Relinquishment and Subordination.** Tenant Intentionally and unconditionally waives, relinquishes and 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 waiver, relinquishment and 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 waiver, relinquishment and subordination.

2. **ASSIGNMENT.** Tenant acknowledges and consents to the assignment of the Lease by

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Borrower in favor of Lender.

3. **ESTOPPEL.** Tenant Acknowledges and represents that:

3.1 **Entire Agreement.** The Lease constitutes the entire agreement between Borrower 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"): _____

3.3 **No Default.** To the best of Tenant's knowledge, as of the date hereof 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

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 amendments, modifications or additions to the Lease, written or oral; and

3.5 **No Broker Liens.** Neither Tenant nor Borrower 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"): 2nd portion of the brokerage fee due to Colliers International in the amount of \$ _____.

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 material modification, amendment, termination or cancellation of the Lease (in whole or in part), including changes in the term, rental rate, or mortgagee protections without Lender's prior written consent and will not make any payment to Borrower in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent. Notwithstanding the foregoing, without Lender's consent Tenant may exercise any right of first refusal currently in the Lease with respect to the Property, including without limitation, any right of first refusal to expand the leased premises, and may otherwise amend the Lease without Lender consent to expand the leased premises provided that such amendment/expansion is on then current market terms which shall include a lease rate of not less than the then current lease rate per square foot set forth in the Lease or the rate under an exercised right of first refusal and a lease term of not less than 5 years.

4.2 **Notice of Default.** Tenant will notify Lender in writing concurrently with any notice given to Borrower of any default by Borrower 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 thirty (30) days from and after the expiration of the time period provided in the Lease for the cure thereof by Borrower; provided, however, that

if such default cannot with diligence be cured by Lender within such thirty (30) day period, the commencement of action by Lender within such thirty (30) 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 payment 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 license granted to Borrower 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 Borrower is in default under the Loan and/or the Security Instrument.

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 Security Instrument shall control.

5. **ATTORNTMENT.** In the event of a foreclosure under the Security Instrument, the acceptance of a deed or assignment in lieu of foreclosure under the Security Instrument, or any transfer of the Property by reason of any other enforcement of the Security Instrument, Tenant agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Borrower's title in and to the Property in connection with the foregoing) 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 **Continuing 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 Borrower'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 Borrower under the Lease, nor for the return of any sums which Tenant may have paid to Borrower under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Borrower to Lender; and

5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Borrower under the Lease, should become obligated to perform the covenants of Borrower thereunder, then, upon any further transfer of Borrower'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.

5.6 **No Representation, Warranties or Indemnities.** Lender shall not be liable with respect to any representations, warranties or indemnities from Borrower, 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 Default (as defined in the Lease) on the part of Tenant under the Lease, 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 the following provisions of the Lease (if any) shall not be binding on Lender nor its successors and assigns: any option to purchase with respect to the Property; any provision regarding the use of insurance proceeds or condemnation proceeds with respect to the Property which is inconsistent with the terms of the Security Instrument.

7. **MISCELLANEOUS.**

7.1 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Borrower 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 Borrower or others.

7.2 **NOTICES.** All notices, demands, or other communications under this Agreement and the other Loan 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:

Borrower: BG Scenic Point Office 3, L.C.
101 South 200 East, Suite 200
Salt Lake City, Utah 84111

Attention: President

Tenant: HealthEquity
15 West Scenic Pointe Drive
Suite 100
Draper, UT 84020
Attention: Controller

Copy to: Dorsey & Whitney
136 South Main Street, Suite 1000
Salt Lake City, Utah 84101
Attention: Mark B. Durrant

Lender: KeyBank National Association
1675 Broadway, Suite 400
Mail Code: CO-02-WT-0401
Denver, Colorado 80202
Attn: Real Estate Capital Servicing
Attention: CRE Client Services Manager

KeyBank National Association
36 South State Street, 25th Floor
Salt Lake City, Utah 84111
Mail Code: UT-51-TW-2500
Attention: Nik Muelleck

Copy to: Snell & Wilmer L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101
Attention: Brian D. Cunningham

Any party shall have the right to change its address for notices hereunder to any other location within the continental United States by giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

7.3 **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.

7.4 **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.

7.5 **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

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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.

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

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

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT THERETO.

[Remainder of page intentionally left blank; signatures appear on the following page]

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“BORROWER”

BG SCENIC POINT OFFICE 3, L.C.

a Utah limited liability company



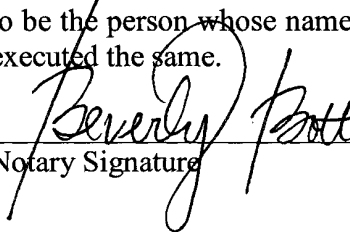
By: _____
Name: Brian Gochnour
Title: Manager

STATE OF UTAH }

SS

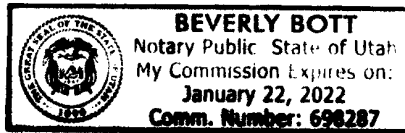
COUNTY OF SALT LAKE }

On this 21st day of February, in the year 2019, before me Beverly Bott, a notary public, personally appeared Brian Gochnour Manager of **BG SCENIC POINT OFFICE 3, 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/she/they) executed the same.



Notary Signature

(Notary Seal)



[Signatures continue on the following page]

“TENANT”

HEALTH EQUITY, INC.

a Delaware corporation

By: [Signature]
Name: Delans W. Ladd
Title: EVP, General Counsel

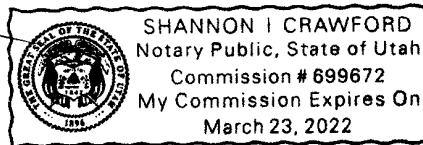
STATE OF Utah }

SS

COUNTY OF Salt Lake }

On this 20 day of February, in the year 2019, before me Shannon Crawford a notary public, personally appeared Del Ladd, a Executive VP of **HEALTH EQUITY, INC.**, a Delaware corporation, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged (he/she/they) executed the same.

[Signature]
Notary Signature




(Notary Seal)

[Signatures continue on the following page]


“LENDER”

KEYBANK NATIONAL ASSOCIATION
a national banking association

By: 
Name: Nikolaus J. Muelleck
Title: Senior Vice President

STATE OF Utah }
COUNTY OF Salt Lake } ss.

On this 21 day of February, in the year 2019, before me Quinn Kelly, a notary public, personally appeared NIKOLAUS J. MUELLECK, a Senior Vice president of **KEYBANK NATIONAL ASSOCIATION**, a national banking 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.


Notary Signature

(Notary Seal)

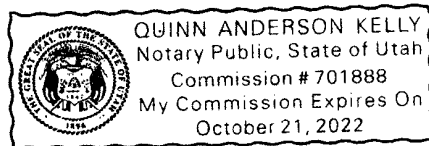


EXHIBIT A – DESCRIPTION OF PROPERTY

That certain real property located in Salt Lake County, Utah more particularly described as follows:

PARCEL 1:

Part of Lot 3, THE POINTE COMMERCIAL SUBDIVISION, being more particularly described as follows:

Beginning at a point North 00°27'52" East 490.00 feet along the East line of Section 12, Township 4 South, Range 1 West, Salt Lake Base and Meridian to the South line of The Point Subdivision and South 70°18'40" West 709.08 feet from the Southeast corner of said Section 12; thence continuing along said line South 70°18'40" West 613.72 feet to the North line of Marion Vista Drive; thence along said line North 89°28'41" West 89.69 feet to the West line of the Southeast quarter of the Southeast quarter of said Section 12; thence along said West line North 00°25'48" East 582.32 feet; thence East 70.74 feet to a point of tangency of a 150.00 foot radius curve to the left; thence Easterly 30.67 feet along said curve through a central angle of 11°42'56" and a long chord of North 84°08'32" East 30.62 feet; thence North 78°17'04" East 170.83 feet to a point of tangency of a 150.00 foot radius curve to the right; thence Easterly 30.67 feet along said curve through a central angle of 11°42'56" and a long chord of North 84°08'32" East 30.62 feet; thence East 235.52 feet; thence South 87.61 feet; thence South 31°08'41" East 60.50 feet; thence South 11°39'45" East 13.60 feet; thence South 19°41'20" East 281.00 feet to the point of beginning.

PARCEL 1A:

Rights of ingress, egress and parking as more specifically defined in that certain Protective Covenants, Easements, Restrictions and Uniform Plan for The Pointe, recorded March 24, 2009 as Entry No. 10655243 in Book 9701 at Page 1566 of official records, and in the Amendment to Protective Covenants, Easements, Restrictions, and Uniform Plan for The Pointe, dated June 30, 2015 and recorded July 1, 2015 as Entry No. 12082995 in Book 10339 at Page 4911, and in the Second Amendment to Protective Covenants, Easements, Restrictions and Uniform Plan for the Pointe, dated October 31, 2018 and recorded October 31, 2018 as Entry No. 12877983 in Book 10726 at Page 7229.