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6/28/2019 4:24:00 PM \$40.00
Book - 10798 Pg - 2503-2512
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 10 P.

When recorded, return to:

Brighton Bank
311 South State Street
Salt Lake City, UT 84111

Tax Parcel ID No.: 16-06-302-007, 16-06-302-003, 16-06-302-004

112743-T03

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

This Subordination, Non-disturbance, and Attornment Agreement (this "Agreement") is made as of June 28, 2019, by and between BRIGHTON BANK, a Utah banking corporation ("Lender"), and KIRK'S SHIP, LLC., a Utah limited liability company ("Tenant").

RECITALS

A. COMMERCIAL CLUB BUILDING, LLC, a Utah limited liability company ("Landlord") and Tenant are parties to that certain "LEASE AGREEMENT" dated as of February 28, 2015 (the "Lease") pursuant to which Landlord is leasing to Tenant, and Tenant is renting from Landlord, an office building (the "Building") located at 32 Exchange Place-Annex Bar Area, Salt Lake City, UT 84111, Salt Lake County, Utah, which Building is located on the land described in Exhibit A attached hereto (the "Land").

B. Lender has made, has committed to make, or may hereafter may make a loan, extension of credit, or other financial accommodation (collectively, the "Loan") to COMMERCIAL CLUB PARTNERSHIP, LLC, FORMERLY KNOWN AS COMMERCIAL CLUB BUILDING, LLC ("Borrower") that is or will be secured by a deed of trust and assignment of rents (the "Trust Deed") encumbering the Land and the improvements thereon, including the Building.

C. As a condition to making the Loan, Lender has required or may require, among other things, that Landlord assign to Lender as collateral all of Landlord's interest in the Lease and all rents, issues and profits from the Lease and from the Premises, pursuant to the Trust Deed or a separate assignment of rents and leases.

D. Under the terms of the Lease, Tenant has agreed to execute this Agreement and deliver the same to Lender for the purposes stated herein.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. **Subordination of Lease.** Tenant hereby covenants and agrees that the Lease, and all rights, options, liens and charges set forth therein, created thereby or otherwise held by

Tenant with respect to the Premises, are and shall continue to be subject and subordinate in all respects to the Trust Deed and any renewals, modifications, consolidations, replacements, restatements, increases in amount, and extensions thereof. Notwithstanding the foregoing, Lender may, in its sole discretion, elect to have the Lease deemed to be superior to the lien created by the Trust Deed, but subject to the other terms and conditions of this Agreement, by giving Tenant written notice of such election at any time prior to any foreclosure sale under the Trust Deed.

2. **Non-Disturbance.** Lender hereby agrees that so long as Tenant fully complies with and timely performs its obligations under the Lease, and provided Tenant is not in default under the terms of the Lease beyond any period expressly given therein to cure any such default or would otherwise entitle Landlord to terminate the Lease or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant thereunder, then:

(a) Lender will take no action which will interfere with or disturb Tenant's possession or use of the Premises or other rights under the Lease; and

(b) if Lender or its successor or assign, or any purchaser under any Foreclosure Proceeding (as hereinafter defined) becomes the owner of the Premises by reason of such Foreclosure Proceeding (Lender and any such successor, assign, or purchaser is herein referred to as the "Successor Landlord"), neither the Lease nor any of Tenant's rights pursuant to the Lease shall be extinguished by reason of such Successor Landlord acquiring the interest of Landlord or coming into the possession of, or acquiring title to, the Premises by reason of such Foreclosure. As used herein, "Foreclosure Proceeding" means any foreclosure action taken under the Trust Deed, including any private sale or judicial foreclosure, the acceptance of a "deed-in-lieu" of foreclosure, or any similar action taken to realize on the security interest of Lender in the Land, the Building, and/or the Lease.

Unless required by law, and provided Tenant is not in default under the Lease, Lender shall not join Tenant as a party in any Foreclosure Proceeding. In the event of a Foreclosure Proceeding, the Successor Landlord shall recognize Tenant as the tenant of the Premises for the remainder of the term of the Lease in accordance with the provisions thereof, as the terms of the Lease are modified by this Agreement. Notwithstanding anything to the contrary hereinabove contained, (x) any interest of Tenant in an option to purchase all or any part of the Premises contained in the Lease is specifically subordinated to the rights of Lender under the terms of the Trust Deed and such option shall not be binding upon Lender or any Successor Landlord; and (y) Lender does not intend by this Agreement to waive, negate or alter any covenant or agreement in the Lease, if any, which provides Landlord an option to cancel the Lease independent of any default on the part of Tenant.

3. **Lease Obligations Upon Foreclosure.** Upon the completion of any Foreclosure Proceeding, all rights and obligations of Tenant under the Lease shall continue as though the interest of Landlord had not terminated or such Foreclosure Proceeding had not occurred, and, except as otherwise set forth herein, Tenant shall have the same remedies under the Lease against the Successor Landlord for the breach of the Lease that Tenant would have had against Landlord

if the Successor Landlord had not succeeded to the interest of Landlord; provided, however, that the Successor Landlord shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), provided that the foregoing shall not be deemed to relieve Successor Landlord from the obligation to perform any obligation of Landlord under the Lease which remains unperformed at the time that Successor Landlord succeeds to the interest of Landlord under the Lease; or

(b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or

(c) bound by any rent or additional rent which Tenant might have paid under the Lease to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under the Lease; or

(d) bound by any amendment or modification of the Lease, or any consent or waiver granted after the date hereof with respect to the Lease, made without the written consent of Lender, provided that Lender agrees not to unreasonably withhold or delay its consent to any proposed amendment or modification which does not materially or adversely affect Lender's security; or

(e) except as otherwise provided in Section 3(a) above, obligated to cure any defaults under the Lease of any prior landlord (including Landlord) unless Tenant has provided Lender or Successor Landlord with written notice of such default as required under this Agreement; or

(f) obligated to make any capital improvements to the Premises or the Building which any prior landlord (including Landlord) has agreed to make but not completed; or

(g) responsible for security deposits or other refundable fees unless paid over to Lender.

4. **Attornment**. If a Successor Landlord acquires title to the Premises through a Foreclosure Proceeding or otherwise, (a) the Lease and all of the rights of Landlord pursuant to the Lease shall remain in full force and effect; (b) Tenant shall be bound to the Successor Landlord under all of the provisions of the Lease for the balance of the term thereof (including any extensions or renewals thereof which may be effected in accordance with any options contained in the Lease) with the same force and effect as if the Successor Landlord was the original landlord under the Lease; and (c) Tenant shall attorn to and recognize the Successor Landlord as its landlord under the Lease as aforesaid. Tenant further agrees to attorn to: (x) Lender when in possession of the Premises pursuant to Lender's rights under the Trust Deed; and (y) any receiver appointed in an action or proceeding to foreclose the Trust Deed or otherwise pursuant to Lender's rights under the Trust Deed. These provisions of attornment and recognition shall be effective and self-operative and shall operate automatically without execution of any further instruments on the part of either of the parties hereto. Tenant agrees,

however, to execute and deliver at any time, and from time to time, upon the request of Landlord, Lender or any Successor Landlord, any further instrument or certificate which, Landlord, Lender or such Successor Landlord, as the case may be, deems to be reasonably necessary or appropriate in any such Foreclosure Proceeding or conveyance or otherwise to evidence such attornment.

5. **Tenant Authorized and Directed to Pay Rents to Lender.** Tenant acknowledges that Landlord has executed and delivered to Lender an assignment of all rents with respect to the Building, including rents under the Lease, and Tenant hereby expressly consents to such assignment. Landlord, by execution of the Joinder and Consent to this Agreement, hereby authorizes and directs Tenant or any other or future tenants or occupants of the Premises, upon receipt from Lender of written notice to the effect that Lender is then the holder of the instruments evidencing the Loan and the holder of the beneficial interest under the Trust Deed, to pay over to Lender all rents, payments, reimbursements and other amounts due, payable, arising or accruing under the Lease, and to continue so to do until otherwise notified in writing by Lender. Landlord, by execution of the Joinder and Consent to this Agreement, agrees that payment of such amounts to Lender shall be in accordance with the terms of the Lease and that Landlord shall have no right to declare Tenant in default under the Lease on account of such payments made to Lender, notwithstanding any notices or contrary instructions which Landlord or Landlord's agents may hereafter deliver to Tenant at the time of a default or otherwise. At such time as Tenant receives written notice from Lender or the Successor Landlord stating that Lender or such Successor Landlord has exercised its rights as aforesaid under the Trust Deed to receive the rents under the Lease directly from Tenant, Tenant shall thereafter pay the rents under the Lease directly to Lender or Successor Landlord.

6. **Notices of Default.** So long as the Trust Deed remains outstanding and unsatisfied, Tenant will mail or deliver to Lender, at the address and in the manner provided herein, a copy of all notices permitted or required to be given to Landlord by Tenant under and pursuant to the terms and provisions of the Lease. Without limiting the foregoing, Tenant agrees that in the event of a default by Landlord under the Lease, Tenant shall give written notice to Lender specifying in detail the nature and extent of the default. Lender shall have a period of time equal to the period of time permitted Landlord for curing any default under the Lease as therein provided or, if greater, thirty (30) days after receipt by Lender of such notice, during which time it shall have the right, but not any obligation, to remedy such default of Landlord, by paying any taxes and assessments owing by Landlord, making any repairs and improvements, making any deposits or doing any other act or thing required of Landlord by the terms of the Lease; and all payments so made and all things so done and performed by Lender shall be as effective to prevent the rights of Landlord from being forfeited or adversely affected because of any default under the Lease as the same would have been if done and performed by Landlord; provided, however, that if the act or omission does not involve the payment of money from Landlord to Tenant and (a) is of such a nature that it could not be reasonably remedied within said thirty (30) day period or such period as is permitted Landlord under the Lease; or (b) the nature of the default, act or omission, the requirements of local law or prudent mortgage lending practices require Lender to take possession of, appoint a receiver with respect to, or to foreclose on, or otherwise commence legal proceedings to recover possession of, the Premises in order to effect such remedy and such legal proceedings and consequent remedy cannot reasonably be

achieved within the said thirty (30) days, then Lender shall have such further time as is reasonable under the circumstances to effect such remedy provided that Lender shall notify Tenant within thirty (30) days after receipt of Tenant's notice of Lender's intention to effect such remedy, and, provided further, that if required under the circumstances, Lender shall institute immediate legal proceedings to appoint a receiver for the Premises or to foreclose on or recover possession of the Premises within said thirty (30) day period and thereafter prosecute said proceedings and remedy with due diligence to completion. If neither Lender nor Landlord cures the default specified in the notice within the time periods specified herein, Tenant shall be entitled to exercise and assert its rights under the Lease against Landlord, but not otherwise.

7. **Landlord Consents.** Landlord's consent, approval or waiver after the date of this Agreement under or with respect to the Lease or the Premises or any matter related thereto shall not be effective against Lender unless such consent, approval or waiver is accompanied by the written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. Neither Landlord nor Tenant will, without the prior written consent of Lender, which consent shall not be unreasonably withheld, (a) enter into any agreement amending or terminating the Lease, or (b) cancel the term of, terminate or surrender, the Lease, or accept any cancellation, termination or surrender of the Lease.

8. **Representations.** Landlord and Tenant hereby certify to Lender that (a) the Lease has been duly executed by Landlord and Tenant and is in full force and effect; (b) the Lease has not been modified or amended in any manner; (c) to the best of Tenant's and Landlord's knowledge, no party to the Lease is in default thereunder; (d) no rent under the Lease has been paid more than thirty (30) days in advance of its due date; and (e) to the best of Tenant's and Landlord's knowledge, Tenant, as of this date, has no charge, lien, offset, defense, current abatement right, counterclaim, or other right or claim under the Lease, or otherwise against the rents or other charges due or to become due thereunder.

9. **Certain Lease Provisions.** If and to the extent that the Lease contains any environmental covenants, representations, warranties, certifications, or indemnifications from Landlord to Tenant, Tenant hereby agrees that all such rights and privileges pursuant to any such provision of the Lease shall continue to be recognized by and binding upon Landlord upon the succession by Successor Landlord to Landlord's interest in the Lease and in and to the Premises, but shall not be recognized or binding upon Lender or any Successor Landlord, even if Tenant's possession of the Premises under the Lease is not otherwise disturbed. If any Successor Landlord succeeds to Landlord's interest in the Premises and with respect to the Lease, Successor Landlord agrees that during the period of Successor Landlord's ownership of the property, Successor Landlord will comply with all federal, state, county and local statutes, laws, regulations, rules, ordinances and codes relating to environmental matters.

10. **Notices.** Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same, and shall be given by personal delivery, overnight courier, registered or certified United States mail (return receipt requested), or by facsimile transmission. Such notice shall be deemed to have been delivered (a) if by personal delivery, on the date of delivery; (b) if by overnight courier, on the earlier of (i) the date delivery was first attempted or

(ii) the first Business Day after the notice was delivered to a reputable overnight courier; (c) if by registered or certified United States mail (return receipt requested), on the earlier of (i) the date deliver was first attempted, or (ii) the third Business Day after the same was deposited or delivered to the United States Postal Service; or (d) if by facsimile transmission, on the day of transmission if transmitted on a Business Day prior to 3:00 p.m., Salt Lake City time, or on the next Business Day if transmitted thereafter, provided (i) the person sending such facsimile transmission retains evidence that the facsimile transmitted was successfully completed and the date and time thereof, and (ii) a copy of such notice is also sent on the same day by another means for giving notice herein. As used herein, "Business Day" means a day other than a Saturday, Sunday, or legal holiday in the State of Utah. Any such notice, election, demand, request or response shall be addressed as follows:

If to Lender: Brighton Bank
Attn: Melissa Snell
311 South State Street
Salt Lake City, UT 84111

If to Tenant: Kirk's Ship, LLC
1380 E. Merritt Circle
Murray, UT 84117

If to Landlord: Commercial Club Building, LLC
2876 S. Highland Drive
Salt Lake City, UT 84106

11. **Limitation of Liability.** Upon the completion of any Foreclosure Proceeding, Tenant shall look solely to the Premises for the recovery of any judgment, claim, or damage arising under the Lease from and after the completion of such Foreclosure Proceeding, and neither Lender nor any such other Successor Landlord shall have any personal liability, directly or indirectly, under or in connection with the Lease or this Agreement or any amendment or amendments to either thereof made at any time or times, and Tenant hereby irrevocably waives and releases any and all such personal liability against Lender and such other Successor Landlord.

12. **No Further Subordinations.** By execution of the Joinder and Consent to this Agreement, Landlord agrees that, without the prior written consent of Lender, Landlord will not request that Tenant (a) enter into any subordination agreement with any person other than Lender; or (b) agree to attorn to or recognize any purchaser of the Premises at any foreclosure sale under any lien other than a Successor Landlord pursuant to a foreclosure of the Trust Deed of Lender (provided, however, that this provision shall not be deemed to constitute Lender's consent to the placing of any lien other than the Trust Deed on the Premises). Any such agreement executed by Tenant at any time shall be entirely subject to the terms of this Agreement and the rights of Lender hereunder.

13. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors,

successors-in-title and assigns. When used herein, the term "Landlord" refers to Landlord and to any successor to the interest of Landlord under the Lease, the term "Tenant" refers to Tenant and to any successor to the interest of Tenant under the Lease but only to the extent a successor to such interest is permitted under the Lease; and the term "Lender" refers to Lender and any successor to the interest of Lender under the Trust Deed and to any purchaser, including Lender, of the Premises at a Foreclosure Proceeding.


14. **Governing Law.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Utah.

15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original instrument and all of which shall comprise a single agreement. Lender is authorized to remove the signature pages from any counterpart and attach the same to any other counterpart in order to have a single document with the original signatures of all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

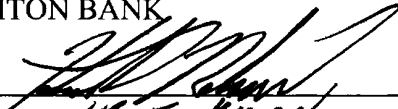
TENANT:

KIRK'S SHIP, LLC

By: 
Name: Kirk Benoitzen
Title: MANAGER

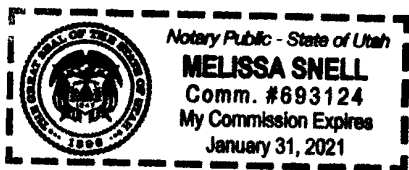
LENDER:

BRIGHTON BANK

By: 
Name: KENT NELSON
Title: EXECUTIVE VP

STATE OF UTAH)
 : ss
County of Salt Lake)

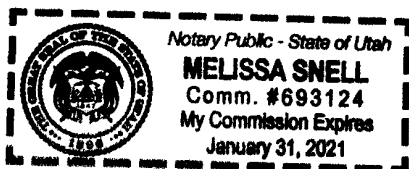
On the 27th day of June, 2019 before me, the undersigned notary public, personally appeared Kirk Dington to me known to be the individual described in and who executed the foregoing instrument, and acknowledge that they signed the foregoing instrument as their free and voluntary act and deed, for the uses and purposes therein mentioned.



[Signature]
Notary Public

STATE OF UTAH)
 : ss
County of Salt Lake)

On the 27th day of June, 2019 before me, the undersigned notary public, personally appeared Kent Nelson, the Executive V.P. of BRIGHTON BANK, a Utah banking corporation, who duly acknowledged to and before me that he executed the foregoing instrument for and on behalf of said Brighton Bank, having all requisite authority to so act.



[Signature]
Notary Public

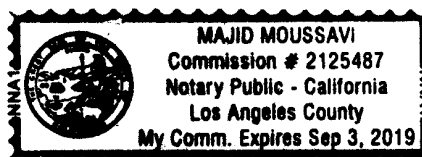
JOINDER AND CONSENT

The undersigned, JACK SIMANTOB, referred to as "Landlord" in the foregoing Subordination, Non-Disturbance and Attornment Agreement, does hereby join in and consent to the terms of the foregoing Subordination, Non-Disturbance and Attornment Agreement for the purpose of evidencing and confirming the Landlord's agreements, covenants and acknowledgments contained in the foregoing Subordination, Non-Disturbance and Attornment Agreement.

Dated as of 6/26, 2019.

LANDLORD: COMMERCIAL CLUB PARTNERSHIP, LLC
FORMERLY KNOWN AS COMMERCIAL CLUB BUILDING, LLC

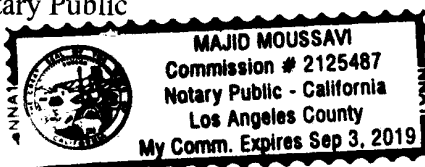
By: Jack Simantob
Name: JACK SIMANTOB
Title: Manager



CALIFORNIA)
STATE OF UTAH)
LOS ANGELES : ss
County of Salt Lake)

On the 26th day of JUNE, 2019, before me, the undersigned notary public, personally appeared JACK SIMANTOB, who duly acknowledged to and before me, that he executed the foregoing instrument for and on behalf of said COMMERCIAL CLUB PARTNERSHIP LLC, having all requisite authority to so act.

Notary Public



**EXHIBIT A
LEGAL DESCRIPTION**

PARCEL 1:

Beginning at the intersection of Exchange Place and Cactus Street, which point is 297 feet East and 179 feet North from the Southwest corner of Block 52, Plat "A", Salt Lake City Survey and running thence Westerly along the South line of Exchange Place 75 feet; thence South 109 feet; thence East 75 feet to the West line of Cactus Street; thence Northerly along the West line of Cactus Street 109 feet to the point of beginning, being in and a part of Lot 3, Block and Plat aforesaid.

PARCEL 2:

Beginning at a point 122 feet North from the Southwest corner of Lot 3, Block 52, Plat "A", Salt Lake City Survey and running thence East 57 feet; thence North 57 feet to Exchange Place; thence along Exchange Place West 57 feet; thence South 57 feet to the place of beginning.

PARCEL 3:

Beginning at a point 53 feet North from the Southwest corner of Lot 3, Block 52, Plat "A", Salt Lake City Survey and running thence East 82 feet; thence North 17 feet; thence West 25 feet; thence North 52 feet; thence West 57 feet; thence South 69 feet to the place of beginning.

PARCEL 4:

A non-exclusive easement, appurtenant to Parcels 2 and 3 for an alley and driveway over the East 13 feet of the South 179 feet of Lot 4, Block 52, Plat "A", Salt Lake City Survey, except the East 30 inches thereof.

1. Initials 2. Initials