

When recorded Mail To:
UMB Bank, n.a.
Utah Banking Center
1010 Grand Boulevard
Kansas City, MO 64106

Parcel No's : 01-239-0001 - 01-239-0002

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SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made this 3rd day of Sept, 2021, by Ninyo and Moore, ("Tenant"), for the benefit of UMB BANK, N.A., ("Lender"), and consented to by DB LIMITED, LLC, a limited liability company ("Landlord").

WHEREAS, Lender has made, or will make, a loan to Landlord (Landlord sometimes referred to hereinafter as the "Borrower") (the "Loan") evidenced by a promissory note (the "Note") by Borrower and payable to the order of Lender, the payment of the Note being secured by certain deed of trust, assignment of rents and leases and security agreements, and other collateral agreements (all such agreements, together with the Note, are collectively referred to as the "Loan Documents"); and

WHEREAS, Tenant and Landlord are the current parties to that certain Lease dated May 8, 2020, (together with all amendments, extensions, and renewals of such lease, the "Lease") for certain premises commonly known as 869/871 Robinson Drive, North Salt Lake City, UT 84054 (the "Premises") in the Landlord's real property, as further described on Exhibit A attached hereto (the "Property") that is part of the collateral for the Loan; and

WHEREAS, Tenant desires an agreement of Lender not to disturb the Lease, on the terms and conditions hereinafter set forth, and Lender has agreed to provide the same; and

WHEREAS, in consideration of Lender's agreement not to disturb the Lease, Lender desires an agreement of Tenant to subordinate the Lease and its rights thereunder to the lien of the Loan Documents and to attorn to Lender in the event Lender exercises any of its rights and remedies under the Loan Documents including without limitation a public sale in foreclosure of the liens created by the Loan Documents, the acceptance of a deed in lieu of such public sale, or any similar transaction (a "Foreclosure"), and Tenant has agreed to provide same; and

WHEREAS, these recitals are incorporated in this Agreement and made a part hereof for all purposes;

NOW, THEREFORE, for and in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Tenant hereby agree as follows:

1. Subordination of the Lease. The Lease and all of Tenant's rights thereunder are, and shall remain, expressly subordinate and inferior to the Loan Documents and the liens and security interests created thereby, regardless of how often or in what manner the Note, together with the liens securing the same, and any of the other Loan Documents may be renewed, extended, increased, changed, or altered.

2. Non-Disturbance. So long as Tenant is not in default in the payment of rent or in the performance of any of Tenant's other obligations under the Lease:

- a. Tenant's possession and occupancy of the Premises and Tenant's rights and privileges under the Lease shall not be diminished or interfered with by Lender or its successors or assigns in the exercise of any of its rights or remedies under the Loan Documents including a Foreclosure; and
- b. Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default by Borrowers under the Loan Documents, unless required by applicable law.

3. Tenant's Attornment. In the event of a Foreclosure or in the event Lender succeeds to Landlord's interest as landlord under the Lease, Tenant shall attorn to Lender or to any other purchaser of the Property by the Foreclosure (a "Purchaser"), as the case may be, and shall recognize Lender or such Purchaser as the landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Lender, Landlord, or a Purchaser:

- a. any instrument, certificate, or other document which Lender, Landlord, or a Purchaser may deem necessary or desirable to evidence such attornment; and
- b. any instrument, certificate, or other document pertaining to the Lease and consisting of statements, if true, (1) that the Lease is in full force and effect, (2) the date through which rentals have been paid, (3) the date of the commencement of the term of the Lease, (4) the nature of any amendments or modifications to the Lease, and (5) that no default or state of facts, which with notice, lapse of time, or both would constitute a default, exists on the part of either party to the Lease.

4. Lender's Attornment. In the event of a Foreclosure or in the event Lender succeeds to Landlord's interest as landlord under the Lease and if Tenant is not in default under the Lease and no event has occurred which with notice, lapse of time, or both, would constitute a default under the Lease, then Lender or a Purchaser, as the case may be, shall have all of the interests, rights, and remedies under the Lease that Landlord had or would have had if Lender or such Purchaser had not succeeded to the Landlord's interests. From and after the Tenant's attornment, Lender or such Purchaser shall be bound to Tenant under the Lease; provided, however, Lender or such Purchaser shall not be:

- a. liable for any act, omission or failure of performance of any prior landlord (including Landlord);

- b. bound by any rent or other sums due the landlord under the Lease which Tenant might have paid for more than the current month to any prior landlord (including Landlord);
- c. liable for the return of any security deposit not actually received by the Lender or Purchaser, as applicable;
- d. bound by any amendment, extension, or renewal of the Lease made without Lender's knowledge and consent;
- e. subject to any offset or defenses which Tenant might have against any prior landlord (including Landlord); or
- f. bound by this Agreement if the Lease has expired.

5. Casualty; Condemnation. Notwithstanding anything to the contrary contained in the Lease, at Lender's option the provisions of the Loan Documents shall control the distribution and application for all insurance proceeds payable with respect to any casualty at the Property and of all awards or other compensation payable for the condemnation of all or any portion of the Property or any interest therein or by way of negotiated settlement or conveyance in lieu of condemnation; provided, however, nothing contained in this Agreement shall require Tenant to pay Landlord or Lender any proceeds that Tenant separately receives for Tenant's separate claims due to such casualty or condemnation.

6. Notice of Landlord's Default. Tenant shall give Lender prompt written notice of any default by Landlord under the Lease and shall provide Lender a copy of any notice that Tenant gives Landlord under or about the Lease, including, without limitation, a notice of Landlord's default or of an occurrence which with notice, lapse of time, or both would constitute a default by Landlord under the Lease. Tenant shall provide such copy to Lender at the same time that Tenant gives such notice to Landlord. The filing of an action for damages or the cancellation or termination of the Lease by Tenant shall be effective only after Lender has received such notice and has failed within thirty (30) days after receipt of same to cure Landlord's default. However, if more than thirty (30) days shall be required due to the nature of the default, Lender shall be allowed to use more than said thirty (30) days to cure said default if within said thirty (30) day period Lender commences and diligently proceeds to cure the default, but in no event shall such date extend later than sixty (60) days after the date of Lender's receipt of the notice of default.

7. Assignment. Tenant acknowledges that Borrower will make an assignment of leases and rents in favor of Lender that will absolutely assign the Lease and the rents thereunder to Lender. If in the future there is a default by Borrower in the performance and observance of the terms of the deed of trust/mortgage, Lender may, at its option under the Assignment, require that all rents and other payments due under the Lease be paid directly to it. Upon notification to that effect by Lender, Landlord hereby authorizes and directs Tenant and the Tenant agrees to pay the rent and any payments due under the terms of the Lease to Lender. The Assignment does not diminish any obligations of Landlord under the Lease or impose any such obligations on Lender.

8. No Abridgement of Landlord's Rights as Landlord. Nothing contained in this Agreement is intended, nor shall it be construed, to abridge or to affect adversely any of Landlord's rights or remedies under the Lease in the event of Tenant's default under the Lease.

9. Notice. Any notice or communication with respect to this Agreement shall be written, sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, or by telefax, and addressed as follows:

To Lender: UMB Bank, n.a.
1008 Oak Street
Kansas City, Mo 64106

To Tenant: Ninyo and Moore
6700 Paradise Road, Suite E
Las Vegas, NV 89119

IF GIVEN IN ACCORDANCE WITH THE TERMS OF THIS PARAGRAPH 9, THEN THE NOTICE OR OTHER COMMUNICATION WILL BE DEEMED GIVEN AS OF THE DATE OF DEPOSIT IN AN OFFICIAL RECEPTACLE OF THE UNITED STATES MAIL. ANY PARTY MAY DESIGNATE A DIFFERENT ADDRESS OR ADDRESSEE FOR PURPOSES OF THIS PARAGRAPH 9 BY GIVING TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE CHANGE TO ALL OTHER PARTIES.

10. Governing Law. The internal substantive laws of the State of Utah shall govern the validity and construction of this Agreement.

11. Amendments; Binding Effect. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns. Specifically, for purposes of this Agreement, the term "Lender" shall include any holder(s) of any of the indebtedness or other obligations secured by the Loan Documents. Tenant agrees that this Agreement shall be in full force and effect, notwithstanding that the date on which Tenant executes this Agreement may precede the making of the Loan and the date of the Loan Documents. Tenant hereby irrevocably makes and appoints Landlord as its agent for the delivery of this Agreement to Lender.

12. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by telefacsimile or PDF e-mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or PDF e-mail also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

[Remainder of Page Intentionally Blank. Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Subordination, Non-Disturbance and Attornment Agreement as of the date first written above.

TENANT: Ninyo and Moore

By: Tamera L. Richards
Name: Tamera Richards
Title: Controller

STATE OF CA)
COUNTY OF San Diego) ss

On this 3 day of September, 2021, before me appeared Tamera Richards to me personally known, who, being by me duly sworn, did say that he/she is Controller of Ninyo & Moore, a Corporation, and that said instrument was signed on behalf of said entity and acknowledged said instrument to be the free act and deed of said entity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

Donna Madrigal
Notary Public

My Commission Expires:



IN WITNESS WHEREOF, the parties have executed this Subordination, Non-Disturbance and Attornment Agreement as of the date first written above.

LENDER: UMB Bank, n.a.,
a national association

By: 
Name: President Officer
Title: Jason Boudreaux

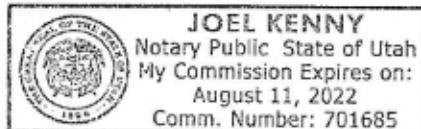
STATE OF Utah)
) ss
COUNTY OF Davis)

On this 16th day of September, 2021, before me appeared Jason Boudreaux to me personally known, who, being by me duly sworn, did say that he is Vice-President of UMB Bank, n.a., and that said instrument was signed on behalf of said Bank and acknowledged said instrument to be the free act and deed of said Bank.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.


Notary Public

My Commission Expires:



IN WITNESS WHEREOF, the parties have executed this Subordination, Non-Disturbance and Attornment Agreement as of the date first written above.

LANDLORD:

DB Limited, LLC,
a Utah limited liability company

By: Dee T. Butterfield
Name: Dee T. Butterfield
Title: Manager

STATE OF Utah)
COUNTY OF Davis) ss

On this 16th day of September 2021, before me appeared Dee T. Butterfield to me personally known, who, being by me duly sworn, did say that he/she is Manager of DB Limited, LLC, a utah limited liability company and that said instrument was signed on behalf of said entity and acknowledged said instrument to be the free act and deed of said entity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

Notary Public

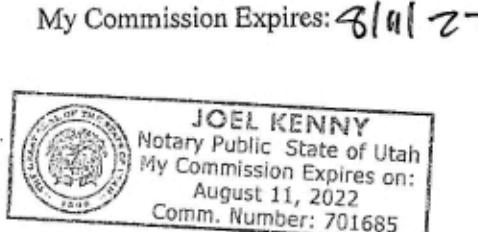


EXHIBIT A

Legal Description

Order No.: **6-094585**

EXHIBIT "A"

LEGAL DESCRIPTION

All of Units 1 and 2, North Wood Lot 13, Planned Unit Development, as said Units are identified in the Plat of said Development, recorded in Davis County, Utah on October 12, 1998 as Entry No. 1450182 in Book 2377, Page 279, and in the Declaration of Covenants, Conditions and Restrictions recorded in Davis County, Utah on October 21, 1998 as Entry No. 1450183 in Book 2377, at Page 280.

Together with a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions and Restrictions, which include, without limitation, an easement for vehicular ingress and egress over and across said Common Areas to and from said Units and Cutler Drive and Robinson Drive, a physically open and legally dedicated public street.

Parcel No.: **01-239-0001, 01-239-0002**