

2017-002509

Klamath County, Oregon

03/09/2017 10:45:01 AM

Fee: \$77.00



WHEN RECORDED, RETURN TO:

Pacific Continental Bank  
P.O. Box 10727  
Eugene, OR 97440  
Attn: Loan Processing Department

Recorder's Use

## **SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

### **PARTIES:**

PACIFIC CONTINENTAL BANK  
P.O. Box 10727  
Eugene, OR 97440

("Bank")

DUNHAM HOLDINGS, LLC  
1877 Mallard Lane  
Klamath Falls, OR 97601

("Owner")

and

THE CARRIAGE WORKS LLC  
1877 Mallard Lane  
Klamath Falls, OR 97601

("Tenant")

This Subordination, Nondisturbance and Attornment Agreement ("Agreement") is made and entered into as of this 17th day of January, 2017, by and between Bank, Owner and Tenant.

### **RECITALS**

A. Owner has entered, or is about to enter, into a loan arrangement with Bank which will be secured by the real property more commonly known as 6600 Arnold Avenue, Klamath Falls, OR 97603 ("Premises").

B. Tenant currently leases certain space on Premises pursuant to an unrecorded lease

("Lease"). The term "Lease" includes all extensions, renewals, modifications, and substitutions of the Lease and any other lease of space on the Premises.

C. Bank's loan to Owner (the "Indebtedness") is or will be secured by a Deed of Trust, Mortgage or other encumbrance on the Premises (collectively, the "Trust Deed"), the legal description for which is set forth on Exhibit A attached hereto and incorporated herein. The term "Trust Deed" includes all modifications, amendments and replacements for the Trust Deed. The term "Indebtedness" includes any subsequent increases, consolidations, renewals, extensions, modifications and refinancings of Owner's loan with Bank.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Subordination of Lease.** Tenant hereby irrevocably subordinates to Bank's Trust Deed on the Premises and Bank's lien and rights thereunder, each and every right it may now or hereafter have by virtue of the Lease.

2. **Attornment and Nondisturbance.** Tenant agrees that in the event of Bank's foreclosure of the Trust Deed or other transfer of the fee title to the Premises, Tenant will attorn to the rights of the transferee of the Premises and shall continue to abide by the term of the Lease acknowledging the transferee as landlord of the Premises. Provided Tenant is in full compliance with its obligations under the Lease and this Agreement, Bank agrees that in the exercise and enforcement of any of the rights of Bank as beneficiary under the Deed of Trust, including foreclosure or acceptance of a deed in lieu of foreclosure thereof, the right of peaceful and quiet possession of Tenant in and to the Premises under the Lease shall not be disturbed or affected in any way thereby. The transferee of the Premises shall not be liable for any act or omission of Owner nor subject to any offsets or defenses that Tenant may have against Owner, and Tenant shall retain all of its rights and remedies available to Tenant at law or pursuant to the Lease against the Owner. In the event Bank obtains fee title to the Premises by foreclosure, deed in lieu of foreclosure or other transfer, its duties and obligations as landlord under the Lease shall terminate upon Bank's subsequent transfer of its interest in the Premises.

3. **Estoppel.** Tenant hereby certifies to and agrees with Bank as follows:

3.1 the Lease is in full force and effect;

3.2 all the requirements for the commencement and validity of the Lease have been satisfied;

3.3 Tenant is not in default under the Lease; to the best of the Tenant's knowledge, information and belief, Owner is not in default under the Lease; no act, event or condition has occurred, which with notice or the lapse of time, or both, would constitute a default by

Tenant or Owner under the Lease; and no claim by Tenant of any nature exists against Owner under the Lease;

3.4 there are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease;

3.5 none of the rent which Tenant is required to pay under the Lease has been prepaid, or will in the future be prepaid, more than one month in advance;

3.6 if Tenant has any right or option contained in the Lease or in any other document to purchase all or any portion of the leased Premises, Tenant agrees that such right or option shall terminate and shall have no further force or effect in the event of Bank's foreclosure of the Trust Deed or acceptance of a deed of the Premises in lieu of foreclosure by Bank;

3.7 the Lease has not been modified or amended and shall not hereafter be modified or amended in any material respect without the prior written consent of Bank in each instance; and

3.8 Tenant has not assigned, mortgaged, sublet, encumbered or otherwise transferred any or all of its interest under the Lease.

4. **Notice of Default.** Contemporaneously with giving or sending notice of default or other noncompliance to Owner or any other party regarding the Lease, Tenant shall also give Bank a copy of such notice. Bank shall have thirty (30) days from receipt of such written notice to cure the default or other noncompliance, although it shall not be required to do so, and Tenant agrees not to invoke any of its remedies for the default or other noncompliance during the thirty-day cure period allotted to Bank.

5. **Construction of Improvements.** Notwithstanding any other provision of this Agreement, if Bank obtains ownership of the Premises by foreclosure or deed in lieu of foreclosure and the Lease requires Landlord to construct any improvements on the Premises, the Lease shall terminate unless (i) Bank delivers written notice to Tenant expressly assuming such obligation within thirty (30) days after the foreclosure sale or deed in lieu of foreclosure, or (ii) Tenant waives such obligation by delivery of written notice to Bank within thirty (30) days after receiving notice of the foreclosure or deed in lieu of foreclosure.

6. **Successors and Assigns.** All the terms and provisions of this Agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and/or assigns of the parties to this Agreement.

7. **Attorney Fees.** If suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is commenced to interpret or enforce any provisions of this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys' fees, costs and expenses actually incurred and reasonably necessary in

connection therewith, at trial, on appeal or in any arbitration proceeding, in addition to all other amounts provided by law.

8.           **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement, and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

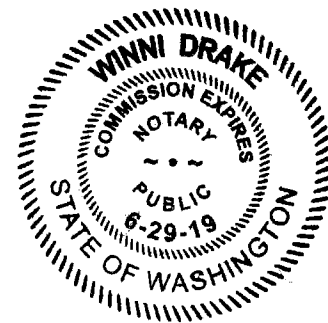
9.           **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

[Signature pages follow]

**OWNER:**

DUNHAM HOLDINGS, LLC

By: [Signature]  
Brian W. Dunham, Member of Dunham  
Holdings, LLC



Limited Liability Company Acknowledgment

STATE OF ~~OREGON~~ <sup>Washington</sup> WASHINGTON  
County of Clark ) ss.

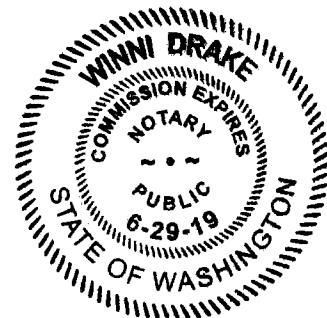
This instrument was acknowledged before me on March 6, 2017, by  
Brian W. Dunham, as Member of Dunham Holdings, LLC, on behalf of the company.

Winni Drake  
Notary Public for the State of ~~Oregon~~ <sup>Washington</sup> Washington ✓  
My Commission Expires: 6/29/2019

**TENANT:**

THE CARRIAGE WORKS LLC

By: [Signature]  
Brian W. Dunham, President/CEO of The  
Carriage Works LLC



Limited Liability Company Acknowledgment

STATE OF ~~OREGON~~ <sup>Washington</sup> WASHINGTON  
County of Clark ) ss.

This instrument was acknowledged before me on March 6, 2017, by  
Brian W. Dunham, as President/CEO of The Carriage Works LLC, on behalf of the company.

Winni Drake  
Notary Public for the State of ~~Oregon~~ <sup>Washington</sup> Washington ✓  
My Commission Expires: 6/29/2019

BANK:  
PACIFIC CONTINENTAL BANK  
By: [Signature]  
Title: Authorized Officer



Lender Acknowledgement

STATE OF WASHINGTON )  
~~OREGON~~ ) ss.  
County of CLARK )

This instrument was acknowledged before me on March 6, 2017, by Dominique Memmweather as the Authorized Officer of Pacific Continental Bank, on behalf of the Bank.

Winni Drake  
Notary Public for the State of Oregon Washington  
My Commission Expires: 6/29/2019

**EXHIBIT A**

Lot 2, KLAMATH FALLS INDUSTRIAL PARK-TRACT 1463, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.