



2017-009797
Klamath County, Oregon
08/30/2017 04:11:00 PM
Fee: \$102.00

After Recording, Return to:

FIRST INTERNET BANK OF INDIANA
ATTN: Commercial Real Estate Dept.
11201 USA Parkway
Fishers, IN 46037

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made as of 8-10, 2017, by and between FIRST INTERNET BANK OF INDIANA, whose address for notice under this Agreement is 11201 USA Parkway, Fishers, IN 46037 ("**Lender**"), Coastal Farm Real Estate, Inc., an Oregon corporation, whose address for notice under this Agreement is 1355 Goldfish Farm Road SE, Albany, OR 97322 ("**Tenant**" or "**Sublandlord**"), and Coastal Farm & Home Supply LLC, an Oregon limited liability company, whose address for notice under this Agreement is 1355 Goldfish Farm Road SE, Albany, OR 97322 ("**Subtenant**").

Statement of Background

A. Lender has agreed to make a loan (the "**Loan**") to YUI CHEONG NG and SHUET YI NG, AS TRUSTEES OF THE NG FAMILY TRUST, DATED AUGUST 31, 2015, a California trust ("**Landlord**"), which will be evidenced by a promissory note (the "**Note**") made by Landlord to order of Lender and will be secured by, among other things, a mortgage/deed of trust/debt to secure debt, security agreement, assignment of rents and leases and fixture filing (the "**Security Instrument**") made by Landlord for the benefit of Lender covering the land (the "**Land**") described on Exhibit A attached hereto and all improvements (the "**Improvements**") now or hereafter located on the Land (the Land and the Improvements hereinafter collectively referred to as the "**Property**"). NOTE: It appears that the property is being sold to the above Landlord; if so, Coastal should be provided with an assignment and assumption of the Lease between the current seller-landlord and the new buyer-landlord, as well as contact information for both informal communications and formal notice under the Lease.

B. Tenant is the tenant or lessee under a lease dated as of May 2, 2016 (which lease, as the same may have been amended and supplemented as of the date hereof, is hereinafter called the "**Prime Lease**"), covering approximately 88,940 square feet of space located in the Improvements and an outdoor display area (the "**Premises**"). Landlord holds all rights and obligations of landlord or lessor under the Prime Lease and Sublandlord holds all rights and obligations of sublandlord or sublessor under the Sublease.

C. Sublandlord and Subtenant have entered into that certain Sublease dated effective December 6, 2016, pursuant to which Sublandlord has granted a subleasehold interest to Subtenant to operate the Property (which Sublease, as the same may have been amended and supplemented as of the date hereof, is hereinafter called the "**Sublease**") (the Prime Lease and the Sublease are hereinafter collectively referred to as the "**Lease**").

D. The parties hereto desire to make the Lease subject and subordinate to the Security Instrument in accordance with the terms and provisions of this Agreement.

Statement of Agreement

For and in consideration of the mutual covenants herein contained and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. Pursuant to Section 30 of the Prime Lease, the Lease and any option granted under the Lease are subject and subordinate to the Security Instrument, to any and all advances made on the Note or otherwise pursuant to the Security Instrument, and to all renewals, modifications, and extensions of the Note and the Security Instrument as if the Security Instrument had been executed and delivered prior to the execution and delivery of the Lease. Lender shall have no liability or obligation to Tenant or Subtenant to perform any of the obligations of the landlord under the Lease. .

2. Also pursuant to Section 30 of the Prime Lease, if Landlord transfers title to the Premises described in the Prime Lease, or the Premises are acquired by another upon the foreclosure or termination of the Security Instrument then: (a) Tenant shall, subject to the non-disturbance provisions set forth in Section 3 below, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of the Prime Lease, with such new owner for the remainder of the term of the Prime Lease, or, at the election of the new owner, the Prime Lease will automatically become a new lease between Tenant and such new owner, and (b) such new owner shall assume all of Landlord's obligations, except that such new owner shall not: (i) be liable for any act or omission of any prior landlord or with respect to events occurring prior to acquisition of ownership; (ii) be subject to any offsets or defenses which Tenant might have against any prior landlord, (iii) be bound by prepayment of more than one month's rent, or (iv) be liable for the return of any security deposit paid to any prior landlord which was not paid or credited to such new owner.

3. Lender agrees that Tenant's and Subtenant's possession and rights under the Lease will not be disturbed so long as Tenant and Subtenant are not default (after any applicable notice and cure period) under the Lease and attorn to the record owner of the Premises.

4. Tenant agrees that, in the event Lender or any future holder of the Security Instrument succeeds to the interest of Landlord under the Prime Lease or Sublandlord under the Sublease or shall become the owner of the Property, Lender shall not be:

(a) liable for any act or omission of any prior landlord (including, without limitation, Landlord or Sublandlord);

(b) subject to any defense or offsets which Tenant or Subtenant may have against any prior landlord (including, without limitation, Landlord or Sublandlord) other than with respect to assert Tenant's or Subtenant's payment or performance of an obligation of Tenant or Subtenant to any prior landlord (including, without limitation, Landlord or Sublandlord);

(c) bound by any payment of monthly base rent, percentage rent, additional rent or any other amounts which Tenant or Subtenant might have paid for more than one month in advance of the due date under the Lease to any prior landlord (including, without limitation, Landlord or Sublandlord);

(d) bound by any obligation to make any payment to Tenant or Subtenant which was required to be made prior to the time Lender succeeded to any prior landlord's interest;

(e) accountable for any monies deposited with any prior landlord (including security deposits), except to the extent such monies are actually received by Lender;

(f) liable for any breach, occurring prior to the time Lender succeeded to any prior landlord's interest, of any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord or Sublandlord).

5. Tenant and Subtenant acknowledge that Landlord, by executing and delivering the Security Instrument to Lender, has assigned the Lease and the rent and all other sums due thereunder to Lender as security for the Loan, and Tenant and Subtenant hereby expressly consent to such assignment. Tenant and Subtenant acknowledge that the interest of Landlord and Sublandlord under the Lease have been assigned to Lender solely as security for the purposes specified in said assignments, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the fee owner of the Premises. Tenant and Subtenant further agree that upon receipt of a written notice from Lender of a default by Landlord under the Loan, Tenant and Subtenant will thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease. Landlord and Sublandlord shall have no claim against Tenant or Subtenant for any amounts paid to Lender pursuant to any such notice.

6. Tenant and Subtenant hereby agree to give to Lender copies of all notices of Landlord and Sublandlord default(s) under the Lease in the same manner as, and whenever, Tenant or Subtenant shall give any such notice of default to Landlord or Sublandlord. Lender shall have the right to remedy any Landlord or Sublandlord default under the Lease, or to cause any default of Landlord or Sublandlord under the Lease to be remedied, as and to the same extent as Landlord under the Lease. Tenant and Subtenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord or Sublandlord under the Lease with the same force and effect as though performed by Landlord or Sublandlord. No Landlord or Sublandlord default under the Lease shall exist or shall be deemed to exist as long as Lender, in good faith, shall have commenced to cure such default within the above referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure. In the event of the termination of the Lease by reason of any default thereunder by Landlord or Sublandlord, upon Lender's written request, given within thirty (30) days after any such termination, Tenant and Subtenant, within fifteen (15) days after receipt of such

request, shall execute and deliver to Lender or its designee or nominee a new lease of the Premises for the remainder of the term of the Lease upon all of the terms, covenants and conditions of the Lease. Tenant and Subtenant shall not pursue any remedy available to it as a result of any default by Landlord or Sublandlord unless Lender fails to cure same within the time period specified above. A default by Landlord or Sublandlord shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease or hereunder have lapsed without Landlord or Sublandlord having effectuated a cure thereof. Lender shall have the right, without Tenant's or Subtenant's consent, to foreclose the Security Instrument or to accept a deed in lieu of foreclosure or to exercise any other remedies under the Security Instrument.

7. Lender shall have no obligation or incur any liability with respect to the construction or completion of the improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's or Subtenants's use and occupancy. Lender shall have no obligations nor incur any liability with respect to any warranties of Landlord or Sublandlord of any nature whatsoever, including, without limitation, any warranties respecting use, compliance with zoning, hazardous wastes or environmental laws, Landlord's or Sublandlord's title, authority, habitability, fitness for purpose or possession.

8. Tenant and Subtenant acknowledge, without limitation, that the subordinations provided hereby include a full and complete subordination by Tenant and Subtenant of any options it may have to purchase all or any portion of the Property, rights of first refusal or similar rights, whether such rights are provided in the Lease or elsewhere. Tenant and Subtenant hereby further agree that any such option to purchase or right of first refusal shall be expressly inapplicable to any foreclosure of the Security Instrument or acquisition of the Property or any interest therein by Lender or any designee of Lender by conveyance in lieu thereof or similar transaction.

9. If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

10. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

11. Lender shall not, either by virtue of the Security Instrument or this Agreement be or become a mortgagee in possession or be or become subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired the interest of Landlord in the Premises, by foreclosure or otherwise, and then such liability or obligation of Lender under the Lease shall extend only to those liability or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises as modified by the terms of this Agreement.

12. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (a) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (b) by delivering same in person to the intended addressee; or (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for

evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated address of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth on the first page; provided, however, that every party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other parties in the manner set forth herein.

13. 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 Prime Lease, the term "Sublandlord" refers to "Sublandlord and to any successor to the interest of Sublandlord under the Sublease" and the term "Lender" refers to Lender and to any successor-in-interest of Lender under the Security Instrument.

14. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

[THE REMAINDER OF THE PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal to be effective as of the date set forth in the first paragraph hereof.

LENDER:

FIRST INTERNET BANK OF INDIANA

By: Denise R Cleaver
Name: Denise R Cleaver
Title: VP-CRE Closing Mgr

[CHANGE NOTARY FORM AS MAY BE REQUIRED]

STATE OF INDIANA

§
§
§

COUNTY OF HAMILTON

This instrument was ACKNOWLEDGED before me on the 16th the of August, 2017, by Denise R Cleaver VP-CRE of FIRST INTERNET BANK OF INDIANA, on behalf of said bank. Closing Mgr

[SEAL]

My Commission Expires:

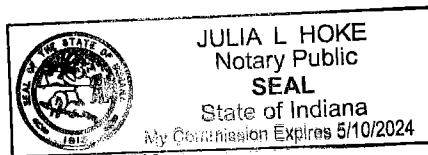
5/10/24

Julia L. Hoke
Notary Public, State of Indiana

Julia L. Hoke
Printed Name of Notary Public

My County of Residence:

Mason



TENANT:

Coastal Farm Real Estate, Inc.,
an Oregon corporation

By: Byron G. Baule
Name: Byron G. Baule
Title: Vice President

[CHANGE NOTARY FORM AS MAY BE REQUIRED]

STATE OF Oregon §
COUNTY OF Linn §
§

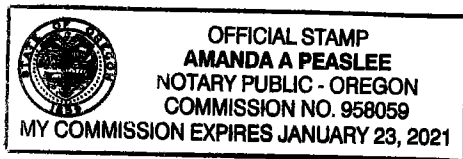
This instrument was ACKNOWLEDGED before me on 8-10-17 by
Byron Baule the VP of Coastal Real Estate
Oregon Corp, on behalf of said Tenant.

[SEAL]

My Commission Expires:

1-23-21

Amanda Peaslee
Notary Public, State of Oregon
Amanda Peaslee
Printed Name of Notary Public



SUBTENANT:

Coastal Farm & Home Supply LLC, an Oregon
limited liability company

By: Byron G. Baule
Name: Byron G. Baule
Title: Vice President

[CHANGE NOTARY FORM AS MAY BE REQUIRED]

STATE OF Oregon §
COUNTY OF Linn §
§

This instrument was ACKNOWLEDGED before me on 8-10-17, by
Byron Baule the VP of Real Estate a
Oregon Corp, on behalf of said Subtenant.

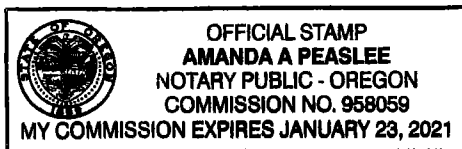
[SEAL]

My Commission Expires:

1-23-21

Amanda A. Peaslee
Notary Public, State of Oregon

Amanda Peaslee
Printed Name of Notary Public



The undersigned Landlord hereby consents to the foregoing Agreement and confirms the facts stated in the foregoing Agreement.

LANDLORD:

YUI CHEONG NG and SHUET YI NG, AS
TRUSTEES OF THE NG FAMILY TRUST,
DATED AUGUST 31, 2015, a California trust

By: *Yui Cheong Ng*
Name: YUI CHEONG NG
Title: Trustee

By: *Shuet Yi Ng*
Name: SHUET YI NG
Title: Trustee

[CHANGE NOTARY FORM AS MAY BE REQUIRED]

STATE OF _____

§
§
§

COUNTY OF _____

*3wa
8-29-17*

This instrument was ACKNOWLEDGED before me on _____, by
_____ the _____ of _____ a
_____, on behalf of said _____.

[SEAL]

My Commission Expires:

Notary Public, State of _____

Printed Name of Notary Public _____

See attached Certificate →

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Contra Costa)

On 8/29/17 before me, Bonnie W. Arnold, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Yui Cheong Ng and
Name(s) of Signer(s)
Shuet Yi Ng

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Bonnie W. Arnold
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

[DELETE IF INAPPLICABLE]

[DELETE IF INAPPLICABLE] The undersigned, or holder of that certain Security Instrument entitled _____, dated _____, hereby enters into this Agreement for the purpose of subordinating its interest in the Property and all improvements and fixtures thereon, to the interests of Lender. The foregoing shall be binding upon the undersigned to the same extent as the Tenant.

LEASEHOLD MORTGAGE LENDER:

By: _____
Name: _____
Title: _____

Exhibit A
[PROPERTY LEGAL DESCRIPTION]

EXHIBIT "A"

Parcel 1 of Land Partition 4-17, replat of a portion of Lots 36 and 43 Enterprise Tracts situate in NW1/4 NW1/4, Section 3, Township 39 South, Range 09 East of the Willamette Meridian, Klamath County, Oregon recorded July 10, 2017 in 2017-007664, Records of Klamath County, Oregon.