

2019-007095

Klamath County, Oregon

06/24/2019 02:27:01 PM

Fee: \$122.00

**PREPARED BY AND UPON
RECORDATION RETURN TO:**

David B. Matthews, Esq.
Bartko Zankel Bunzel & Miller
One Embarcadero Center, 8th Floor
San Francisco, CA 94111

Tax Parcel Number: 3909-003BC-00901

(above space for recording only)

**SUBORDINATION NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT ("Agreement"), dated the 17th day of JUNE, 2019, by and between STANDARD INSURANCE COMPANY, an Oregon corporation, having an address at 19225 NW Tanasbourne Drive, Hillsboro, OR 97124 ("Lender"), KLAMATH-JEFFERSON LLC, an Oregon limited liability company ("Landlord"), having an address at 777 NE Second Street, Suite 200, Corvallis, Oregon 97330, and ULTA SALON, COSMETICS & FRAGRANCE, INC., a Delaware corporation ("Tenant"), having an address at 1000 Remington Boulevard, Suite 120, Bolingbrook, IL 60440 ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into that certain Shopping Center Lease dated JUNE 13, 2019 (the "Lease") pertaining to certain premises (the "Premises") located at Jefferson Square Shopping Center in Klamath Falls, OR (the "Shopping Center") as legally described in Exhibit A; and

WHEREAS, Lender has made or agreed to make a loan to Landlord secured by, among other things, a lien recorded as of December 18, 2018 in the Klamath County recorder's office as instrument number 2018-015100 (the "Mortgage") upon the real property legally described in Exhibit A attached hereto (which includes the Premises); and

WHEREAS, Tenant wishes to be assured of the continued use and occupancy of the Premises and related Common Area (as such terms are defined in the Lease) and pylon or other signage of the Shopping Center under the terms of the Lease, notwithstanding any breach or default by Landlord or the exercise of any remedies under the Mortgage; and

**First American Title Accommodation:
Recording Assumes No Liability**

NWADP-002

WHEREAS, Lender wishes for Tenant to recognize and attorn to Lender in the event that Lender succeeds to the rights of the Landlord under the Lease as a result of foreclosure or otherwise.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual undertakings hereinafter set forth, the parties hereby covenant and agree as follows:

1. SUBORDINATION. Subject to the terms of this Agreement, the Lease is and shall be subject and subordinate, as set forth in this Agreement, to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage, to the full extent of amounts secured thereby and interest thereon. The foregoing notwithstanding, in no event shall any of Tenant's trade fixtures, inventory, equipment, furniture and furnishings, accounts, books or records or other assets be or become subject or subordinate to the lien in favor of Lender.

2. NON-DISTURBANCE. Notwithstanding anything to the contrary contained in the Lease, so long as the Tenant (or any permitted assignee or sublessee (hereinafter referred to collectively as "Tenant")) is not in default beyond any applicable notice and cure periods, except in due exercise of Tenant's rights and remedies thereunder, Tenant's possession, use and enjoyment of the Premises and the related Common Area, including but not limited to related signage, shall not be interfered with, disturbed or diminished, or otherwise affected in any manner as a result of any act or omission of Landlord, and all rights and privileges of Tenant under the Lease, or any renewals, modifications, or extensions thereof, shall be recognized by Lender and any Successor Landlord (as defined in paragraph 3 below). If any action or proceeding is commenced by Lender for the foreclosure of the Mortgage or the sale of the Premises, Tenant shall not be named as a party therein unless such joinder shall be required by law and Tenant shall not thereby be subjected or exposed to any liability, cost or expense, and such joinder shall not result in the termination of the Lease or disturb Tenant's possession or use and enjoyment of the premises demised thereunder, and the foreclosure or sale in any such action or proceeding shall be made subject to all rights of Tenant under the Lease. Compliance by Landlord with any of the terms or provisions of the Lease shall not constitute a breach of or a default under or with respect to the Mortgage or any obligation secured thereby.

3. ATTORNMEN. In the event that title to the Premises or any other interest therein, which includes the right to receive payment of rent or to enforce the performance of other obligations under the Lease, is transferred as a result of any trustee's sale, judicial foreclosure, deed in lieu of foreclosure or other proceedings pursuant to the Mortgage, Tenant will attorn to the purchaser or transferee who acquires such title or other interest ("Successor Landlord") and will recognize such Successor Landlord as landlord under and subject to the terms and conditions of the Lease. Tenant hereby waives the provisions of any statute or rule of law now or hereafter in effect that might give it any right or election to terminate the Lease by reason of any such foreclosure proceeding.

4. PERFORMANCE BY TENANT. Landlord hereby agrees that in the event that Tenant receives any notice from Lender or any Successor Landlord to pay rent or other sums or render any other performance under the Lease to such Lender or Successor Landlord, Tenant may render performance in accordance with such notice without any duty of inquiry and despite any

knowledge or notice to the contrary with the same force and effect as if such payment or performance were rendered to Landlord.

5. SUCCESSOR LANDLORD LIABILITY. Tenant shall have the same rights and remedies for a breach of the Lease against any Successor Landlord, including Lender in the event that Lender shall succeed to the interest of Landlord under the Lease, that Tenant might have had under the Lease against Landlord; provided, however, as long as Lender and Successor Landlord is not an entity that controls, is controlled by, or is under common control with Landlord, then Lender and Successor Landlord shall not:

(a) be liable for any act or omission of any prior landlord (including the Landlord) under the Lease, except for such acts or omissions of any prior Landlord for which Tenant has notified Lender and given Lender an opportunity to cure as such notice and cure is provided for in this Agreement; or

(b) be subject to any offsets, abatements and/or defenses that Tenant might have against any prior landlord (including the Landlord), except for offsets, abatements and/or defenses arising under the Lease for which Tenant has notified Lender and given Lender an opportunity to cure as provided in this Agreement; or

(c) be bound by any rent that Tenant might have paid for more than one month in advance or any other payment made in excess of the amounts provided in the Lease to any prior landlord (including the Landlord), except if such payments were required under the Lease; or

(d) be bound by any material amendment to the Lease affecting term or rent made without Lender's prior written consent; provided, however, that in the event Lender fails to disapprove in writing any proposed amendment within twenty (20) days after receipt thereof, then Lender shall be deemed to have consented to any such amendment.

Provided, however, that nothing herein shall excuse Lender or Successor Landlord from liability or responsibility for, or limit any right or remedy of Tenant with respect to, any breach or default that either becomes known to Tenant or continues from and after the date when Lender or such Successor Landlord obtains title to or takes possession or control of the Premises.

6. NOTICE OF LEASE TERMINATION. Before exercising any remedy to terminate the Lease due to a Landlord default under the Lease, Tenant shall give Lender notice of such default by Landlord. Lender shall have the same period of time provided Landlord under the Lease within which to cure such default. The Lender's cure period shall commence to run upon receipt of Tenant's notice, and may run simultaneously with the Landlord's cure period.

7. SUCCESSORS AND ASSIGNS. The terms "Lender", "Successor Landlord" and "Landlord" shall include such parties and any successors or assigns, including any successors in title to the Premises. The term "Tenant" shall include any permitted assignee or sublessee.

8. GOVERNING LAW. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the state where the Premises are located and shall in all respects be governed, construed, applied, and enforced in accordance with the laws of such state.

9. MISCELLANEOUS. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by all of the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect or regard whatsoever, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterpart shall be deemed an original instrument and all of which together shall constitute a single Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

LENDER:

STANDARD INSURANCE COMPANY,
an Oregon corporation

Witnesses:

Carrie Lynch
Carrie Lynch
Caleb Carroll
Caleb Carroll

By: Amy Frazee
Name: Amy Frazee
Title: Assistant Vice President
Attest: J. F. Webb

State of _____)
County of _____) ss

On _____ before me, _____, a Notary Public, personally appeared _____, 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 _____ that the foregoing paragraph is true and correct.

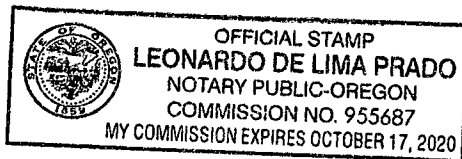
WITNESS my hand and official seal.

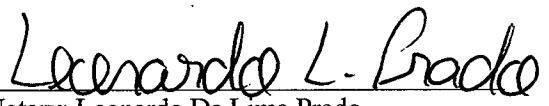
Signature _____ (Seal)

STATE OF OREGON)
) ss:
COUNTY OF WASHINGTON)

On this 17th day of June, 2019, before me, Leonardo De Lima Prado, appeared AMY FRAZEY and JASON F. WELLS, both to me personally known, who being duly sworn did say that she, the said AMY FRAZEY is the Assistant Vice President of STANDARD INSURANCE COMPANY, an Oregon corporation, the within named corporation, and that the seal affixed to said document is the corporate seal of said corporation, and that the said document was signed and sealed in behalf of said corporation by authority of its Board of Directors, and he, the said JASON F. WELLS is the Director of STANCORP MORTGAGE INVESTORS, LLC, an Oregon limited liability company, as Servicer of STANDARD INSURANCE COMPANY and AMY FRAZEY and JASON F. WELLS acknowledged said document to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.




Notary: Leonardo De Lima Prado
Notary Public for Oregon
My Commission Expires: October 17, 2020

TENANT:

Ultra Salon, Cosmetics & Fragrance, Inc.,
a Delaware corporation

Witnesses:

Samatha Stuart
[Signature]

By: [Signature] HC
David G. Krueger
Senior Vice President,
Growth and Development

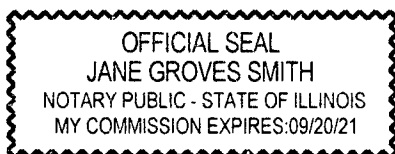
State of Illinois)
) ss
County of Will)

On 5/20/2019 before me, Jane Groves Smith, a Notary Public,
personally appeared David G. Krueger, 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 Illinois that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

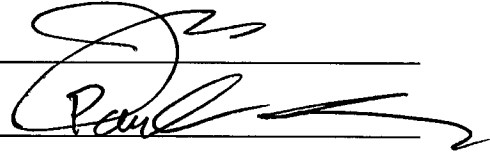
Signature Jane Groves Smith (Seal)



LANDLORD:

Klamath-Jefferson LLC,
an Oregon limited liability company

Witnesses:



By: 

Name: DARREN DICKERHOOF

Title: MANAGER

State of OREGON)
) ss
County of BENTON)

On JUNE 13, 2019 before me, DARIN F. COLE, a Notary Public, personally appeared DARREN DICKERHOOF, 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 OREGON that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

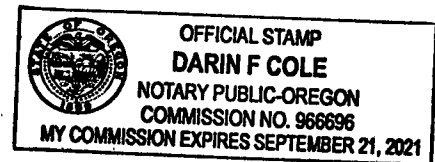


EXHIBIT A

Legal Description

Parcel 2 of Land Partition No. 48-05, said Land Partition being a replat of a portion of Lots 34 and 44 of Enterprise Tracts located in the West 1/2 of the NW 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

TOGETHER WITH a Non-exclusive Reciprocal Easement for pedestrian and vehicular ingress & egress granted in Volume M95, Page 33582, Microfilm records of Klamath County, Oregon.

TOGETHER WITH those non-exclusive easements granted in that certain Declaration of Easements, Covenants, Conditions and Restrictions recorded December 21, 2005 in Volume M05, page 71541, Microfilm Records of Klamath County, Oregon.

The Tax Account Number for the property subject to the lien of this instrument is:
3909-003BC-00901.

Commonly known as: 2834-2900 South 6th Street, Klamath Falls, Oregon, 97603