

2020-016590

Klamath County, Oregon

12/21/2020 11:44:01 AM

Fee: \$132.00

WHEN RECORDED, RETURN TO
Philip M. J. Edison, Esq.
Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Among

UMB BANK, N.A., as Collateral Trustee, as Beneficiary

KLAMATH FALLS HOLDINGS, LLC, as Landlord

THE STATE OF OREGON, BY AND THROUGH ITS DEPARTMENT OF HUMAN SERVICES, as Tenant

Dated as of December 10, 2020

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
DAS #3306

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("*Agreement*") is made and entered into as of this 12th day of December, 2020, by and among UMB BANK, N.A., as Collateral Trustee ("*Beneficiary*"), KLAMATH FALLS HOLDINGS, LLC, an Oregon limited liability company ("*Landlord*") and THE STATE OF OREGON, BY AND THROUGH ITS DEPARTMENT OF HUMAN SERVICES ("*Tenant*").

WITNESSETH:

WHEREAS, Beneficiary is acting as collateral trustee on behalf of the owners and holders of those certain Senior Secured Notes (the "*Senior Notes*") dated December 10, 2020, secured by a first priority Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing ("*Deed of Trust*"), dated as of December 10, 2020, for the benefit of Beneficiary, which Deed of Trust was recorded in the land records of Klamath County, Oregon as Document Number 2020-016500 and constitutes a lien or encumbrance on the real property described in Exhibit A attached hereto and incorporated herein for all purposes, together with all improvements, appurtenances, other properties (whether real or personal), rights and interests described in the Deed of Trust ("*Property*"); and

WHEREAS, Tenant is the holder of a leasehold estate in and to the Property (the property which is the subject of such leasehold estate, together with Tenant's appurtenant easements in the Property, being referred to as the "*Premises*" located at Timbermill Shores, Lots 10, 12 & 13, Klamath Falls, Klamath County, Oregon 97603), pursuant to the terms of that certain State of Oregon Lease dated March 27, 2018, as amended by Lease Amendment No. 1, dated October 4, 2018 and as further amended by Lease Amendment No. 2, dated December __, 2020 (the "*Lease*"), and executed by Tenant and Landlord, which Lease has not been recorded in the real property records of Klamath County, Oregon; and

WHEREAS, Tenant, Landlord and Beneficiary desire to confirm their understandings with respect to the Lease and the Deed of Trust.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree and covenant as follows:

1. *Non-Disturbance by Beneficiary.* So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed as would entitle Landlord to terminate the Lease, Tenant's possession and occupancy of the Premises and Tenant's rights under the Lease shall not be terminated, impaired, interfered with or otherwise disturbed by Beneficiary during the Term of the Lease. Beneficiary shall not include Tenant in any foreclosure proceeding involving the Premises, unless required by applicable state law for Beneficiary to

accomplish the foreclosure and then not to interfere with or diminish Tenant's rights under said Lease or disturb Tenant's possession.

2. *Attornment by Tenant.* Subject to the covenant of non-disturbance set forth in Paragraph 1 above, if the interests of Landlord in and to the Premises are owned by Beneficiary by reason of judicial foreclosure, private trustee sale or other proceedings brought by it or by any other manner, including, but not limited to, Beneficiary's exercise of its rights under any collateral assignment(s) of leases and rents, and Beneficiary succeeds to the interest of the Landlord under the Lease, Tenant shall be bound to Beneficiary under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extension thereof duly exercised by Tenant with the same force and effect as if Beneficiary were the Landlord under the Lease. Tenant does hereby attorn to Beneficiary, as its Landlord, said attornment to be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately upon Beneficiary's succeeding to the interest of the Landlord under the Lease. Landlord hereby authorizes and directs Tenant to deliver payment to Beneficiary and shall indemnify and hold Tenant harmless from any loss, cost, expense or claim incurred by Tenant in connection with its compliance with this provision. The respective rights and obligations of Tenant and Beneficiary upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extension, shall be and are the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference, with the same force and effect as if set forth at length herein.

3. *Beneficiary Bound by Terms of Lease.* If Beneficiary succeeds to the interest of Landlord under the Lease, Beneficiary shall be bound to Tenant under all of the terms, covenants and conditions of the Lease and shall perform all duties and obligations of Landlord under the Lease that accrue after the date that Beneficiary succeeds to the interest of Landlord under the Lease. Beneficiary shall not in any event have any liability for any Landlord Default (as defined in Section 34.1 of the Lease) under the Lease occurring prior to the date on which Beneficiary shall have succeeded to the rights of Landlord under the Lease; *provided, however*, to the extent a Landlord Default of which Beneficiary received a timely notice as required by Section 34 of the Lease continues to exist when Beneficiary succeeds to the interest of Landlord under the Lease, Beneficiary shall be bound to cure any such Landlord Default under the Lease to the extent that such Landlord Default is curable by Beneficiary.

4. *Subordination of Lease.* Subject to the terms of this Agreement (including, but not limited to, those in Paragraphs 1 and Paragraph 2), the Lease and all of Tenant's right, title and interest in and to the Premises, are and shall be subject and subordinate to the Deed of Trust and the lien thereof, to all the terms, conditions and provisions of the Deed of Trust and to each and every advance made or hereafter made under the Deed of Trust, and to all renewals, modifications, consolidations, replacements, substitutions and extensions of the Deed of Trust, so that at all times the Deed of Trust shall be and remain a lien on the Premises prior and superior to the Lease for all purposes.

5. *Notice and Cure.* In the event of any Landlord Default which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, or to reduce the rent payable thereunder or credit or offset any amounts

against future rents payable thereunder, Tenant will not exercise any such right until it has given written notice of such Landlord Default to Beneficiary by delivering notice of such Landlord Default, in accordance with the Lease, addressed to Beneficiary at the address as given hereby or at the last address of Beneficiary furnished to Tenant in writing, and (i) in the case of any such act, omission or default that can be cured by the payment of money, until forty five (45) days shall have elapsed following the giving of such notice or (ii) in the case of any other such act, omission or default, until a reasonable period for remedying such act, omission or default shall have elapsed, and in all cases such period shall not exceed one hundred and eighty (180) days, following the giving of such notice and following the time when Beneficiary shall have become entitled under the Deed of Trust to remedy the same, including such time as may be necessary to acquire possession of the Premises if possession is necessary to effect such cure, provided the Beneficiary, with reasonable diligence, shall (a) pursue such remedies as are available to it under the Deed of Trust so as to be able to remedy the act, omission or default, and (b) thereafter shall have commenced and continued to remedy such Landlord Default. Tenant shall also give a copy of any such notice hereunder to any successor to Beneficiary's interest under the Deed of Trust, *provided* that Beneficiary or such successor notifies Tenant of the name and address of the party Tenant is to notify. Beneficiary's cure of Landlord's default shall not be considered an assumption by Beneficiary of Landlord's other obligations under the Lease. If in curing any such Landlord Default, Beneficiary requires access to the Premises to effect such cure, Tenant shall provide access to the Premises to Beneficiary as required by Beneficiary to effect such cure at all reasonable times. Unless Beneficiary otherwise agrees in writing, Landlord shall remain solely liable to perform Landlord's obligations under the Lease (but only to the extent required by and subject to the limitation included within the Lease), both before and after Beneficiary's exercise of any right or remedy under this Agreement. Tenant agrees it will not terminate the Lease if a default by Landlord under the Lease occurs that is not curable by Beneficiary because such default is personal to Landlord, and Beneficiary or a designee of Beneficiary has agreed to take an assignment of the Landlord's interest under the Lease and perform as landlord for the remainder of the term of the Lease.

6. *Successors of Beneficiary Also Included.* The term "Beneficiary" shall be deemed to include the Beneficiary stated hereinabove and any of its successors and assigns, including anyone who shall have succeeded to Landlord's interest by, through or under judicial foreclosure or private trustee's sale or other proceedings brought pursuant to the Deed of Trust, or deed in lieu of such foreclosure or proceedings, or otherwise.

7. *Beneficiary Not Liable.* Tenant agrees that no prepayment of rent or additional rent due under the Lease of more than one month in advance, and no amendment or modification of the Lease or a waiver or consent by Landlord under the terms of the Lease that reduces the Base Rent or Additional Rent (as those terms are defined in the Lease) payable under the Lease, and no surrender or cancellation of the Lease, and no reduction of the Term of the Lease, imposition of additional material obligations on Landlord, or the reduction of any of Tenant's material obligations under the Lease, shall be binding upon or as against Beneficiary, as holder of the Deed of Trust and as Landlord under the Lease if it succeeds to that position, unless consented to in writing by Beneficiary.

8. *Beneficiary Consent.* Tenant agrees that (a) the Lease cannot be amended or modified in a manner that reduces the Base Rent or Additional Rent payable under the Lease, reduces the term of the Lease, impose additional obligations on Landlord, or reduces any of Tenant's obligations under the Lease, (b) Tenant and Landlord may not terminate, cancel or surrender the term of the Lease without Beneficiary's written consent, except as expressly permitted by the provisions of the Lease and as allowed by law, (c) Tenant will not assign the Lease pursuant to Section 22.1(b) of the Lease without Beneficiary's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided that the parties hereby agree that it shall not be deemed unreasonable for Beneficiary to withhold consent to any such assignment based upon an analysis of the creditworthiness of the proposed assignee, and (d) Tenant shall not knowingly pay any rent for more than the month in advance of the date when due, unless in each case Beneficiary's prior written consent shall have been obtained. For the avoidance of doubt, nothing in clause (c) above restricts Tenant's right to enter into co-location agreements as required by state and federal law whereby Tenant continues to be liable for all rent payments under the Lease.

9. *No Modification.* This Agreement may not be modified orally or in any manner other than by an agreement, in writing, signed by the parties hereto and their respective successors in interest. To the extent allowed by law, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

10. *Counterparts.* To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

11. *Notices.* All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be in writing and shall be deemed served and given at the time of (i) deposit in a depository receptacle under the care and custody of the United States Postal Service, properly addressed to the designated address of the addressee as set forth below, postage prepaid, registered or certified mail with return receipt requested or (ii) delivery to the designated address of the addressee set forth below by a third party commercial delivery service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notices, the addresses of the parties shall be as follows:

If to	
Beneficiary:	UMB BANK, N.A., as Collateral Trustee 6440 S. Millrock Drive, Suite 400 Salt Lake City, Utah 84121

Attention: Corporate Trust and Escrow Services

With copies to: Elyssa K. McMullen
Senior Vice President | Lease Finance Group
Prudential Private Capital
655 Broad Street, 16th Floor
Newark, New Jersey 07102
(973) 802-6386
elyssa.mcmullen@prudential.com

Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603
Philip M. J. Edison, Esq.
edison@chapman.com

Tenant: State of Oregon, by and through its
Department of Human Services
500 Summer Street NE, E-90
Salem, Oregon 97301
Attn: Linda Riddell, or successor
linda.c.riddell@state.or.us
res.info@oregon.gov

With copies to: State of Oregon, by and through its
Department of Administrative Services
res.info@oregon.gov

Landlord: Klamath Falls Holdings, LLC
2870 Nansen Drive
Medford, Oregon 97504

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by notice to the other parties of such new address at least sixty (60) days prior to the effective date of such new address.

12. *No Merger of Estates.* It is the express intention of Landlord and Tenant that the acquisition by either party of the right, title, interest and estate of the other party in and to the Premises shall not result in termination or cancellation of the Lease by operation of the principle of merger of estates or otherwise, notwithstanding any applicable law to the contrary; *provided, however,* that in the event Tenant acquires the right, title, interest and estate of Landlord in and to the Premises, whether pursuant to any purchase option or right of first refusal granted in the Lease or otherwise, if either (i) the indebtedness secured by the Deed of Trust is satisfied or (ii) Tenant assumes or unconditionally guaranties the indebtedness secured by the Deed of Trust (on a recourse basis), then in such event the estates of Landlord and Tenant in and to the Premises shall merge and the Lease will be extinguished.

13. *Concerning the Beneficiary.* It is expressly understood and agreed by the parties hereto that (a) this Agreement is executed by the Beneficiary not in its individual or personal capacity but solely in its capacity as Collateral Trustee under the Trust Indenture, in the exercise of the powers and authority conferred and vested in it as Collateral Trustee under the Trust Indenture, subject to the rights, protections, indemnities and limitations from liability afforded to the Collateral Trustee thereunder; (b) in no event shall UMB Bank, N.A., in its individual capacity have any liability for the representations, warranties, covenants, agreements or other obligations of the Beneficiary hereunder; (c) nothing contained herein shall be construed as creating any liability on UMB Bank, N.A., individually or personally, to perform any expressed or implied covenant, duty or obligation of any kind whatsoever contained herein; and (d) under no circumstances shall UMB Bank, N.A., be personally liable for the payment of any fees, costs, indebtedness or expenses of any kind whatsoever or be personally liable for the breach or failure of any obligation, representation, agreement, warranty or covenant whatsoever made or undertaken by the Beneficiary.

14. *Governing Law.* This Agreement shall be governed by the laws of the State of Oregon.

15. *Sovereign Immunity.* In no event shall any provision of this Agreement be construed as a waiver by Tenant of any form of defense or immunity, whether sovereign immunity, governmental immunity or similar immunity based on the eleventh amendment to the Constitution of the United States or otherwise, or consent by Tenant to the jurisdiction of any court.

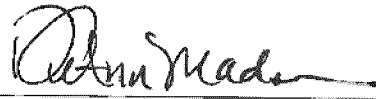
16. *Letter Agreement.* Tenant and Landlord hereby acknowledge and agree that this Agreement constitutes a valid and binding subordination, non-disturbance and attornment agreement for purposes of Section 3(a) of that certain Letter Agreement – Lender Consideration, dated December __, 2020, between Tenant and Landlord.

[Signature on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

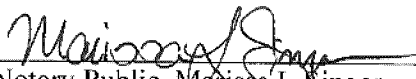
BENEFICIARY:

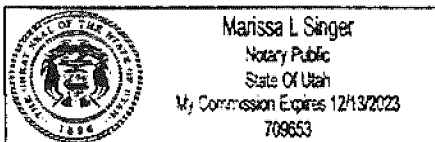
UMB BANK, N.A., as Collateral Trustee

By: 
Name: DeAnn Madsen
Its: Vice President

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

This instrument was acknowledged before me on the 3rd day of December, 2020, by DeAnn Madsen, the Vice President of UMB Bank, N.A., a national banking association, on behalf of said national banking association.


Notary Public, Marissa L. Singer
My Commission Expires: 12/13/2023



TENANT:

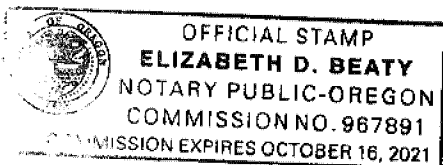
STATE OF OREGON, BY AND THROUGH ITS
DEPARTMENT OF HUMAN SERVICES

By: Glen Bason
Name: Glen Bason
Title: Administrator, Office of Facilities
Management

STATE OF OREGON)
)
COUNTY OF MARION)

This instrument was acknowledged before me on the 17 day of December, 2020, by Glen Bason, the Administrator of Office of Facilities Management, on behalf of the State of Oregon, by and through its Department of Human Services.

Elizabeth D. Beaty
Notary Public of Oregon
My Commission Expires: 10-16-21



APPROVAL:

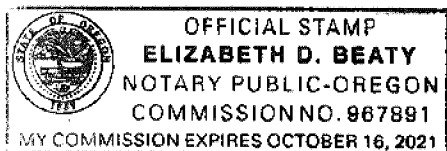
STATE OF OREGON, BY AND THROUGH ITS
DEPARTMENT OF ADMINISTRATIVE SERVICES

By: Brady Ricks
Name: Brady Ricks
Title: Manager, Real Estate Services

STATE OF OREGON)
)
COUNTY OF MARION)

This instrument was acknowledged before me on the 7 day of December, 2020, by Brady Ricks, the Manager, Real Estate Services, on behalf of the State of Oregon, by and through its Department of Administrative Services.

Elizabeth D. Beaty
Notary Public of Oregon
My Commission Expires: 10-16-21



LANDLORD:

KLAMATH FALLS HOLDINGS, LLC, an Oregon
limited liability company

By: Rubicon Investments Corporation
Its: Manager

By: 

Name: Daniel L. Bunn

Title: President and Chief Executive Officer

STATE OF Oregon)
COUNTY OF Jackson)

This instrument was acknowledged before me on the 3rd day of December, 2020, by Daniel L. Bunn, the President and Chief Executive Officer of Rubicon Investments Corporation, the Manager of Klamath Falls Holdings, LLC, an Oregon limited liability company, on behalf of said Oregon limited liability company.



Notary Public, for Oregon
My Commission Expires: 04/10/2022



EXHIBIT A

LEGAL DESCRIPTION

Lot 10, Tract 1430, Timbermill Shores, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.

EXCEPTING THEREFROM the Southeasterly 16 feet thereof.

AND

Lots 12 and 13, Tract 1430, Timbermill Shores, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.