

MTC 449360

2021-010406

Klamath County, Oregon

07/02/2021 02:07:01 PM

Fee: \$117.00

RECORDING REQUESTED BY:

AND WHEN RECORDED RETURN TO:

Ally Bank
5851 Legacy Circle, Suite 200
Plano, Texas 75024

Attention: Taylor Jordan

SUBORDINATION AND ATTORNMENT AGREEMENT

This SUBORDINATION AND ATTORNMENT AGREEMENT (hereafter referred to as "Agreement") is made this 30th day of June, 2021 by and between ALLY BANK (Ally Capital in Hawaii, Mississippi, Montana and New Jersey) a Utah state-chartered bank with a local business office currently located at 535 Anton Blvd., Suite 300, Costa Mesa, California 92626 ("Bank"), TAG KFS, INC. DBA KLAMATH FALLS SUBARU, an Oregon corporation whose address is 2880 Washburn Way, Klamath Falls, Oregon 97603 ("Tenant"), KLAMATH FALLS PROPERTY HOLDINGS LLC, an Oregon limited liability company ("Borrower"), whose address is 2880 Washburn Way, Klamath Falls, Oregon 97603 ("Landlord").

As security for a loan made by Bank to Landlord, Landlord has given to Bank a Deed of Trust, Assignment of Leases And Rents, Security Agreement And Fixture Filing dated on or about the date hereof and recorded with the Recorder of Deeds in and for Klamath County, State of Oregon, (the "Clerk's Office") herewith (as may be amended, restated, supplemented, extended or otherwise modified from time to time, the "Security Instrument"), and constitutes a first lien against the real property more particularly described therein (the "Property").

Tenant has entered into a lease agreement dated June 30, 2021 (as amended from time to time, the "Lease") covering all or a portion of the Property located at 2880 Washburn Way, Klamath Falls, Oregon, 97603 as more particularly described in Exhibit A attached hereto and made part hereof (the "Leased Premises"). As a condition of making the loan, Bank has required that the Lease be subordinated to the Security Instrument and that Tenant agrees to attorn to the purchaser of the Property in the event of foreclosure of the Security Instrument, or to Bank prior to foreclosure in the event Bank elects to collect the rents and other sums due and becoming due under the Lease, and Tenant is willing to so attorn as hereinafter provided.

Relying on the covenants, agreements, representations and warranties contained in this Agreement, Bank and Tenant agree as follows:

1. **Subordination of Lease.** The Lease is and shall be subject and subordinate to the provisions and lien of the Security Instrument and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal amount and other sums secured thereby and interest thereon, as if the Lease had been executed and delivered after the execution, delivery and recording of the Security Instrument.
2. **Attornment.** Tenant agrees that, if Bank so elects, Tenant will attorn to and recognize: (i) Bank, whether as mortgagee in possession or otherwise; or (ii) any purchaser at a foreclosure sale under the Security Instrument, or any transferee who acquires possession of or title to the Property, or any successors

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and assigns of such purchasers and/or transferees (each, a "Successor"), as its landlord for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the terms and conditions set forth therein. Such attornment shall be effective and self-operative without the execution of any further instruments by any party hereto other than a written notice to Tenant of such election by Bank or any Successor; provided, however, that Tenant will, upon request by Bank or any Successor, execute a written agreement attorning to Bank or such Successor. If Bank does not so elect, then the Lease shall terminate without further action by Tenant or Bank.

3. **Assignment of Leases.** Tenant consents to the Security Instrument providing Bank with an assignment of leases rents and leaseholds (the "Assignment"). Tenant agrees that if Bank, pursuant to the Assignment, and whether or not it becomes a mortgagee in possession, shall give notice to Tenant that Bank has elected to require Tenant to pay to Bank the rent and other charges payable by Tenant under the Lease, Tenant shall, until Bank shall have canceled such election, thereafter pay to Bank all rent and other sums payable under the Lease. Any such payment shall be made notwithstanding any right of setoff, defense or counterclaim which Tenant may have against Landlord, or any right to terminate the Lease.

4. **Limitation of Liability.** In the event that Bank succeeds to the interest of Landlord under the Lease, or title to the leasehold interest in the Property, and elects to require Tenant to attorn to Bank, then Bank and any Successor shall assume and be bound by the obligations of the landlord under the Lease which accrue from and after such party's succession to any prior landlord's interest in the Leased Premises, but Bank and such Successor shall not be: (i) liable for any act or omission of any prior landlord; (ii) liable for the retention, application or return of any security deposit to the extent not paid over to Bank; (iii) subject to any offsets or defenses which Tenant might have against any prior landlord; (iv) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord; (v) bound by any amendment or modification of the Lease made without Bank's or such Successor's prior written consent; (vi) bound by any obligation to repair or restore the Leased Premises in the event of a casualty or (vii) liable for any construction or build-out of the Leased Premises or tenant improvement allowance or construction allowance to be provided to Tenant. Nothing in this section shall be deemed to waive any of Tenant's rights and remedies against any prior landlord.

Tenant agrees that any person or entity which at any time hereafter becomes the landlord under the Lease, including without limitation, Bank or any Successor, shall be liable only for the performance of the obligations of the landlord which arise during the period of its or their ownership of the Leased Premises and shall not be liable for any obligations of the landlord under the Lease which arise prior to or subsequent to such ownership. Tenant further agrees that any such liability shall be limited to the interest of Bank or such Successor in the Property.

5. **Right to Cure Defaults.** Tenant agrees to give notice to Bank of any default by Landlord under the Lease and specify the nature of such default. Bank shall then have the right (but not the obligation) to remedy any Landlord default under the Lease or to cause any default of Landlord under the Lease to be remedied and shall be allowed such additional time as may be reasonably necessary to cure such default or institute and complete foreclosure proceedings (or otherwise acquire title to the Leased Premises), and so long as Bank shall be proceeding diligently to cure the defaults that are reasonably susceptible of cure or proceeding diligently to foreclosure the Mortgage, no such default shall operate or permit Tenant to terminate the Lease. It is specifically agreed that Tenant shall not require Bank to cure any default which is not susceptible of cure by Bank.

6. **Tenant's Agreements.** Tenant hereby covenants and agrees that: (i) Tenant shall not pay any rent under the Lease more than one month in advance; (ii) Tenant shall have no right to appear in any foreclosure action under the Security Instrument; (iii) Tenant shall not amend, modify, cancel or terminate the Lease without Bank's prior written consent, and any attempted amendment, modification, cancellation or

termination of the Lease without such consent shall be of no force or effect as to Bank; (iv) Tenant shall not subordinate the Lease to any lien or encumbrance (other than the Security Instrument) without Bank's prior written consent; (v) Tenant shall not assign the Lease or sublet all or any portion of the Leased Premises (except as permitted by the terms of the Lease) without Bank's prior written consent; and (vi) Tenant shall promptly deliver to Bank, from time to time, a written statement in form and substance satisfactory to Bank certifying to certain matters relating to the Lease.

7. **Miscellaneous.** (i) The provisions hereof shall be binding upon and inure to the benefit of Tenant and Bank and their respective successors and assigns; (ii) Any demands or requests shall be sufficiently given Tenant if in writing and mailed or delivered to the address of Tenant shown above and to Bank if in writing and mailed or delivered to Bank's office address shown above, or such other address as Bank may specify from time to time; (iii) The Agreement may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (iv) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not part of this Agreement; (v) This Agreement shall be governed by and construed under the laws of the jurisdiction where this Agreement is recorded.

8. **Severability.** If any provision of this Agreement is deemed invalid or unenforceable, then all other provisions of this Agreement shall remain in full force and effect.

9. **Amendment.** Except as otherwise provided, any amendment of this Agreement must be in writing and signed by both parties' respective duly authorized officers or representatives.

10. **Governing Law.** This Agreement is governed by the laws of the State of Oregon.

11. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which are taken together shall constitute one and the same agreement.

[Remainder of page intentionally blank; signatures to follow]

IN WITNESS WHEREOF, the Tenant has signed and sealed this instrument as of the day and year first above written.

Tenant

**TAG KFS, INC. DBA KLAMATH
FALLS SUBARU**, an Oregon
corporation

By: [Signature]
Name: Daniel Crainic
Title: President

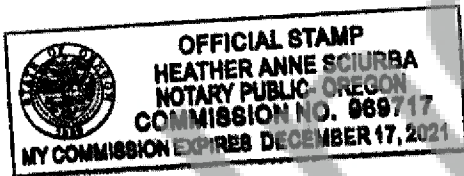
NOTARY ACKNOWLEDGMENT

STATE OF OREGON)
COUNTY OF Klamath) SS.

This instrument was acknowledged before me on June 30, 2021, by Daniel Crainic, as President of TAG KFS, INC. DBA KLAMATH FALLS SUBARU, an Oregon corporation, on behalf of the company.

[Signature]
Notary Public in and for the State of OR

My commission expires: Dec 17 2021



IN WITNESS WHEREOF, the Bank has signed and sealed this instrument as of the day and year first above written.

Bank

**ALLY BANK (ALLY CAPITAL IN
HAWAII, MISSISSIPPI, MONTANA
AND NEW JERSEY)**

Signature: _____

Janet Wood

By (print): _____

Janet Wood

Title: _____

Authorized Representative

STATE/Commonwealth of Texas
COUNTY OF Denton

I certify that before me appeared this day, 6/29/21, a person known to me, who after being sworn said he/she is Authorized Representative of Ally Bank (Ally Capital in Hawaii, Mississippi, Montana and New Jersey), and is duly authorized to act on behalf of said Bank, that the seal affixed to the foregoing instrument is the seal of said Bank and that said instrument was signed and sealed by him/her on behalf of said Bank, and being informed of the contents thereof, acknowledged execution of the foregoing instrument on behalf of said Bank.

Witness my hand and official seal, this 29th day of June, 2021.

Notary Seal

Brandon Lacey

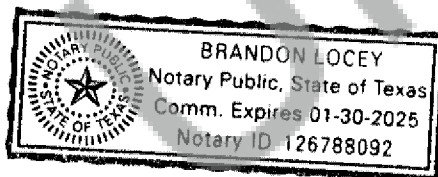
_____, Notary Public

Brandon Lacey

(Printed Name of Notary)

My Commission Expires: _____

1/30/25



IN WITNESS WHEREOF, the Landlord has signed and sealed this instrument as of the day and year first above written.

Landlord

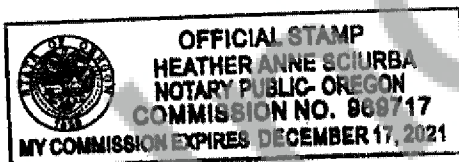
**KLAMATH FALLS PROPERTY
HOLDINGS LLC**, an Oregon limited
liability company

By: [Signature]
Name: Daniel Crainic
Title: Member

NOTARY ACKNOWLEDGMENT

STATE OF OREGON)
COUNTY OF Klamath) SS.

This instrument was acknowledged before me on June 30, 2021, by Daniel Crainic, as member of KLAMATH FALLS PROPERTY HOLDINGS LLC, an Oregon limited liability company, on behalf of the company.



[Signature]
Notary Public in and for the State of Oregon

My commission expires: Dec 17 2021

EXHIBIT A
Legal Description

[TO BE INSERTED]

Unofficial
Copy

EXHIBIT "A"

Property One:

Parcels 1, 2 and 3, Land Partition No. 16-17 a replat of a Portion of Lots 4 and 5, Block 6 of "Tract 1080 - Washburn Park" in the SE1/4 SE1/4 of Section 4, Township 39 South, Range 9 East of the Willamette Meridian, City of Klamath Falls, Klamath County, Oregon. Recorded November 13, 2017 in 2017-013013, Records of Klamath County, Oregon.

Property Two:

Parcels 2 and 3 of Land Partition 42-03 replat of Land Partition 39-92 in SW1/4 Section 3, Township 39 South, Range 9 East, Willamette Meridian, Klamath County, Oregon

Property Three:

The Southerly 220 feet of Lot 3 in Block 6 of TRACT 1080, WASHBURN PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.