

Prepared by and when
recorded, return to:

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

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S
USE ONLY

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (“*SNDA Agreement*”) is made and entered into as of the [] day of August 2020, by and among WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE, a national banking association, (“*Lender*”), PONTIAC 3 & 5, LLC, a California limited liability company (“*Landlord*”), and COUNTY OF FRESNO, a political subdivision of the State of California, as tenant (“*Tenant*”).

WITNESSETH:

WHEREAS, Tenant has been informed that Lender is the holder of that certain Senior Secured Note (“*Note*”) dated August [], 2020, secured by a Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement (as amended, restated or otherwise modified from time to time, “*Deed of Trust*”), dated as of August [], 2020, to or for the benefit of Lender, to be recorded concurrently herewith in the Real Property Records, County of Fresno, State of California, which Deed of Trust, when so recorded, 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*”), pursuant to the terms of that certain unrecorded Lease Agreement dated December 12, 2017, as amended by that certain First Amendment to Lease Agreement dated August 9, 2019, and executed by Tenant and Landlord (collectively, the “*Lease*”); and

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

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

1. The Lease, as the same may hereafter be modified, amended or extended, and all of Tenant's right, title and interest in and to the Premises, are and shall be 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; *provided, however*, and Lender agrees that, so long as (A) no default by Tenant has occurred which has continued to exist for such period of time (after notice, if any, required by the Lease) as would entitle Landlord to terminate the Lease, (B) Tenant shall duly confirm its attornment to Lender or its successor or assign by written instrument as set forth in Section 4 herein, (C) Tenant shall have performed all of its covenants contained herein, and (D) all representations and warranties made herein by Tenant shall be true and correct as of the date of such attornment; then, and in such event (i) Lender shall not join Tenant as a party defendant in any foreclosure action or proceeding which may be instituted or taken by Lender under the Deed of Trust by reason of any default thereunder, unless such joinder is legally necessary to foreclose the Deed of Trust, and then only for such purpose, and not for the purpose of terminating the Lease, (ii) Tenant's leasehold estate under the Lease shall not be terminated or disturbed, and Lender will accept the attornment of Tenant, and (iii) other than as set forth herein, none of Tenant's rights under the Lease shall be affected in any way by reason of any default under the Deed of Trust. Notwithstanding the foregoing, Lender shall not in any event have any liability for any default by Landlord under the Lease occurring prior to the date on which Lender shall have succeeded to the interest of Landlord or any successor to Landlord as owner of the Premises; *provided however*, Lender or its successors and assigns shall be obligated under the Lease from and after the date that Lender or its successors or assigns shall succeed to the interest of Landlord or any successor to Landlord as owner of the Premises.

2. Any dispute between Lender and Landlord as to the existence of a breach of, or default in the performance of, any obligation by Lender or Landlord, respectively, under the terms and conditions of the Note and/or Deed of Trust, or by Landlord under the Lease, or by Lender or Landlord, respectively, under any other agreement between them, the extent or nature of such breach or default, or Lender's exercise of any right or remedy against Landlord, including exercise of power of sale (including trustee's sale and foreclosure), judicial foreclosure, obtaining a deed in lieu of foreclosure, or otherwise, or obtaining possession of the Premises under the terms and conditions of the Note and/or Deed of Trust, or otherwise succeeding to the interests of Landlord in the Lease, shall be dealt with and adjusted solely between Lender and Landlord; the County of Fresno, including its officers, agents, and employees, shall not be named or joined in any such dispute, or other proceedings to enforce the Note and/or the Deed of Trust, or other agreements, unless such naming or joinder of the County of Fresno, including its officers, agents, and employees, shall be legally required with respect to the Lease, including the

Premises, *provided however*, such joinder or naming of the County of Fresno, including its officers, agents, and employees, shall, so long as the County of Fresno is not then in default under the Lease, in no way whatsoever terminate, extinguish, disturb, diminish, or otherwise adversely affect Tenant's rights and remedies under this SNDA Agreement or the Lease. The provisions of this Section 2 shall survive the termination of this SNDA Agreement.

3. Notwithstanding anything to the contrary contained in the Lease, Tenant hereby agrees that in the event of any act, omission or default by Landlord or Landlord's agents, employees, contractors, licensees or invitees 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 act, omission or default to Lender by delivering notice of such act, omission or default, by certified or registered mail, addressed to Lender at Lender's address as given hereby or at the last address of Lender furnished to Tenant in writing, ("Tenant's Notice to Lender"), which notice of lender shall have been given to Tenant at least fifteen (15) days prior to such Tenant's Notice to Lender, *provided that* (i) in the case of any such act, omission or default that can be cured by the payment of money, until thirty (30) days shall have elapsed following the giving of such Tenant's Notice to Lender 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 following the giving of such Tenant's Notice to Lender, including any time when Lender shall have become entitled under the Deed of Trust to remedy the same; *provided however*, that if Lender's possession of the Premises is necessary to effect such cure, then Lender shall have such additional time as may be necessary to acquire possession of the Premises, provided that (a) Lender shall, promptly after receiving such Tenant's Notice to Lender, initiate and diligently pursue such remedies as are available to it under the Deed of Trust so as gain possession of the Premises, (b) upon gaining possession, Lender shall promptly commence and continue to remedy such act, omission or default or cause the same to be remedied, and (c) during the pendency of Lender's action to obtain possession of the Premises, but after thirty (30) days has elapsed following the Tenant's Notice to Lender, Tenant shall have all rights available to Tenant pursuant to Section 12 of the Lease, except that Tenant's right to terminate the Lease under Section 12 of the Lease shall be available to Tenant one hundred twenty (120) days following the giving of Tenant's Notice to Lender for any such uncured act, omission or default. Notwithstanding anything to the contrary in this Section 3, Tenant shall have, and may exercise, the right under Section 12 of the Lease to terminate the Lease, *provided however*, if Tenant has given a Tenant's Notice to Lender for any such uncured act, omission or default, at least sixty (60) days shall have elapsed following the giving of such Tenant's Notice to Lender before Tenant may give at least thirty (30) days' notice under Section 12 of the Lease to terminate the Lease. Tenant shall also give a copy of any such notices hereunder to any successor to Lender's interest under the Deed of Trust, *provided that* Lender or such successor has given Tenant at least thirty (30) days' notice to Tenant of the name and address of the Lender's successor whom Tenant is to notify, *provided however*, the period for such notice by Lender or such successor shall not extend the time by which Tenant shall give such copy of any such notice to any such successor.

Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Lease, so long as Lender has not obtained title to the Premises. If, in curing any such act, omission or default, Lender requires access to the Premises to effect such cure, Tenant shall provide access to the Premises to Lender as reasonably required by Lender to effect such cure at all reasonable times. Unless Lender 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 with the Lease), both before and after Lender's exercise of any right or remedy under this SNDA Agreement, so long as Lender has not obtained title to the Premises. If Lender or any successor or assign becomes obligated to perform as Landlord under the Lease, such person or entity shall be released from those obligations when such person or entity assigns, sells or otherwise transfers its interest in the Premises, *provided however*, such person's or entity's successor or assign shall be obligated under the Lease from and after the date that such person's or entity's successor or assign shall succeed to the interest in the Premises.

4. Without limitation of any of the provisions of the Lease, in the event that, by reason of any default under the Deed of Trust on the part of Landlord, Lender, or its successors or assigns shall succeed to the interest of Landlord or any successor to Landlord as owner of the Premises, then, subject to the provisions of this SNDA Agreement, including, without limitation, Section 1, herein, the Lease shall nevertheless continue in full force and effect, and Tenant shall and does hereby agree to attorn to and accept Lender or its successors or assigns and to recognize Lender or its successors or assigns as its landlord under the Lease for the then remaining balance of the term thereof, and in such event, the following shall apply:

(a) Lender shall give Tenant written notice that Lender has exercised its rights and remedies against Landlord under the Deed of Trust and has succeeded to the rights, title, and interests of Landlord in the Lease, including Landlord's rights, title, and interests under the Lease in the Premises, which notice shall give a reasonably specific reason for the event or events giving rise to such succession of interests, *provided however*, Lender's failure to give such notice, or Tenant's failure to receive such notice, shall not defeat or otherwise adversely affect Lender's rights and obligations or Tenant's rights and obligations under this Section 4.

(b) When complying with the provisions of this Section 4, Tenant shall be entitled to rely on any written notices given by Lender pursuant to the provisions of this Section 4, without the necessity of conducting any investigation or inquiry with Lender, Landlord, or with anyone with respect to the validity or justification for such notices by Lender, including, but not limited to, whether Landlord is in default or breach of the Note and/or the Deed of Trust, or whether such notices of Lender are permissible thereunder or under this SNDA Agreement.

(c) Lender as landlord under the Lease, shall have all the rights and all the obligations of the Landlord under the Lease, and shall not split the ownership

interest in the Premises or the Lease such that such interest rests with more than one party at any time.

(d) The parties hereto agree that (i) Tenant's peaceful and quiet enjoyment, including use, occupancy, and possession, of the Premises, including Tenant's leasehold estate in the Premises created by the Lease, shall not in any way whatsoever be terminated, extinguished, disturbed, diminished, or otherwise adversely affected by Lender's exercise of any of its rights or remedies under the Note and/or the Deed of Trust, including further by way of example, and not as a limitation, for any breach or default by Landlord under the Note and/or the Deed of Trust, and Lender obtaining title to the Premises by power of sale (including trustee's sale and foreclosure), judicial foreclosure, deed in lieu of foreclosure, or otherwise, or obtaining possession of the Premises under the terms and conditions of the Note and/or the Deed of Trust, or otherwise succeeding to the rights, title, and interests of Landlord in the Lease, including the Premises, and (ii) in the event of Lender exercising any of its rights or remedies under the Note and/or the Deed of Trust, as provided herein, including obtaining title to or possession of the Premises, or otherwise succeeding to the rights, title, and interests of Landlord in the Lease, including the Premises, Lender shall (and shall cause any purchaser of the Premises to) (a) unconditionally recognize and accept Tenant as the tenant under all of the terms and conditions of the Lease (giving full credit under the Lease to Tenant for all rents paid by Tenant to Landlord), including Tenant's right to use, occupancy and/or possession of the Premises, and all other rights and remedies of Tenant provided therein, and (b) not disturb Tenant in its use, occupancy, and/or possession of the Premises under the terms and conditions of the Lease, including Tenant's leasehold estate in the Premises created by the Lease, for any reason other than one which would entitle Landlord to terminate the Lease for a material breach or default by Tenant under the Lease, *provided* that (i) Tenant is not then in material breach or default hereunder, and that there is not an event of material breach or default by Tenant under the Lease that would entitle Landlord to terminate the Lease, (ii) Tenant makes full and faithful payment and performance of all of its obligations under the Lease, including, but not limited to, Tenant's continued payment of all rent due and payable thereunder (but subject always to the provisions of Sections 12, 13, 14, and 31 of the Lease for setoff and abatement of any rent and of any other amounts otherwise due and payable by Tenant), and (iii) Tenant attorns to Lender or its successor or assign, as the landlord under the Lease, pursuant to this Section 4 herein.

5. If Lender or its successors or assigns shall succeed to the interest of Landlord or any successor to Landlord, in no event shall Lender or its successors or assigns have any liability under the Lease prior to the date Lender or such successor or assign shall succeed to the rights of Landlord under the Lease, (*provided however*, Lender or its successors and assigns shall be obligated under the Lease from and after the date that Lender or its successors or assigns shall succeed to the interest of Landlord or any successor to Landlord as owner of the Premises), nor any liability for claims, offsets or defenses which Tenant might have had against Landlord, except as provided in this SNDA

Agreement, and in any event Lender and its successors or assigns, as with respect to Landlord pursuant to Section 32 of the Lease, shall have no personal liability as successor to Landlord, and Tenant shall look only to the estate and property of Lender or its successors or assigns in the Premises for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender or its successors or assigns as Landlord under the Lease, and no other property or assets of Lender or its successors or assigns shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease, the relationship of Landlord and Tenant thereunder or Tenant's use or occupancy of the Premises.

6. Tenant agrees that no prepayment of rent or additional rent due under the Lease of more than one month in advance, and no amendment, modification, surrender or cancellation of the Lease, and no waiver or consent by Landlord under the terms of the Lease, shall be binding upon or as against Lender, 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 Lender.

7. Landlord represents and warrants that the Lease was duly executed by Landlord, and all consents, resolutions or other approvals required for Landlord to execute the Lease were obtained. Tenant represents and warrants that the Lease was duly executed by Tenant, and all consents, resolutions or other approvals required for Tenant to execute the Lease were obtained.

8. Tenant agrees that, if Landlord's consent is required under the Lease, for Tenant's assignment of the Lease or subletting of all or any portion of the Premises by Tenant, then no assignment of the Lease or subletting of all or any portion of the Premises by Tenant shall be effective unless Lender's prior written consent shall have been obtained.

9. Tenant agrees that (a) the Lease cannot be amended or modified nor have any of its terms waived by the Landlord, (b) Tenant and Landlord may not terminate, cancel or surrender the term of the Lease, except as expressly permitted by the provisions of the Lease, and (c) Tenant shall not pay any rent for more than the month in advance of the date when due, unless in each case Lender's prior written consent shall have been obtained.

10. From and after the date hereof, Landlord directs that all payments of Base Rent and Additional Rent payable by Tenant to Landlord under the Lease be payable thereunder, when and as due, to Landlord but delivered to Wells Fargo Trust Company, National Association (collectively with its successors and assigns, "**Lender**") at the following address:

Wells Fargo Trust Company, National Association, as Trustee
299 South Main Street, 5th Floor
MAC U1228-051
Salt Lake City, Utah 84111

Attention: Corporate Trust Lease Group

Tenant shall not accept any other directions with respect to the delivery of such payments under the Lease except in writing from Lender or its successors and assigns.

11. Subject to Section 11 of the Lease, Tenant represents and/or covenants that Tenant's County Administrative Officer will use reasonable efforts to take such action as may be necessary to propose for consideration the appropriation by Tenant's governing board of all Base Rent and Additional Rent payable under the Lease in a given year in relation to the Tenant's County Administrative Officer annual budget request to Tenant's governing board for such year.

12. This SNDA Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

13. All remedies which Lender may have against Landlord, provided herein, if any, are cumulative, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Landlord or others. If any party consists of multiple individuals or entities, each of same shall be jointly and severally liable for the obligations of such party hereunder.

14. The reasonable cost of attorneys' fees and disbursements for any legal action or arbitration between or among the parties arising out of any dispute or litigation relating to enforcement of this SNDA Agreement shall be borne by the party or parties against whom a final decision is rendered.

15. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by electronic mail with receipt acknowledged by the recipient thereof prior to 5:00 p.m., recipient's time, on a Business Day (otherwise on the next Business Day), (ii) one (1) Business Day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the applicable party at the addresses set forth in this Section 15 or addressed as such party may from time to time designate by written notice to the other parties. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. Any party by written notice to the other parties may designate additional or different addresses within the United States of America for subsequent notices or communications. "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York or Salt Lake City, Utah.

If to the Lender : Wells Fargo Trust Company, National
Association, as Trustee

299 South Main Street
5th Floor, MAC: U1228-051
Salt Lake City, Utah 84111
Attention: Corporate Trust Lease Group

With a copy to: Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603
Attention: Philip M. J. Edison
Email: edison@chapman.com

Tenant: County of Fresno
Internal Services Department
333 W. Pontiac Way
Clovis, California 93612
Attention: Robert W. Bash
Email: rbash@fresnocountyca.gov

With a copy to: County of Fresno
Department of Social Services
205 W. Pontiac Way
Clovis, California 93612
Attention: Delfino Neira

Landlord: Pontiac 3 & 5, LLC
2780 North Miami Avenue, Suite 101
Fresno, California 93727
Attention: Jerry E. Cook

With a copy to: Dowling Aaron Incorporated
8080 North Palm Avenue, Third Floor
Fresno, California 93711
Attention: Mark A. Waller

16. 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, the indebtedness secured by the Deed of Trust is repaid in full, then in such event the estates of Landlord and Tenant in and to the Premises shall merge, and the Lease will be extinguished.

17. The parties agree that any conflict between the provisions of the Lease and the provisions of this SNDA Agreement shall be resolved in favor of this SNDA Agreement. However, Tenant is not a party to, and is not bound by the Deed of Trust, and any reference to the Deed of Trust does not make it part of this SNDA Agreement.

18. This SNDA Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of California. Venue for any action arising out of or relating to this Lease shall be in Fresno County, California.

19. This SNDA Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns. As used herein, "Lender" shall include any subsequent holder of the Deed of Trust.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this SNDA Agreement to be duly executed as of the date first set forth above.

LENDER:

WELLS FARGO TRUST COMPANY, N.A., as
Trustee

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF)
) SS
COUNTY OF)

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____ to me known, who declared and acknowledged that he is the _____ of WELLS FARGO TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said limited liability company and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and notarial seal this ____ day of August 2020.

Notary Public

Printed Name: _____

(SEAL)

Commission expires:

TENANT:

COUNTY OF FRESNO
a political subdivision of the State of California

By: _____

Name:

Title:

STATE OF)
) SS
COUNTY OF)

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____ to me known, who declared and acknowledged that he is the _____ of County of Fresno, a political subdivision of the State of California, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said limited liability company and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and notarial seal this ____ day of August 2020.

Notary Public

Printed Name: _____

(SEAL)

Commission expires:

SCHEDULE A
LEGAL DESCRIPTION

[to be inserted]