

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

First Republic Bank
111 Pine Street
San Francisco, CA 94111
ATTN: Loan Review Department
RE: Loan # 17-650715-6

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PREMISES BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is dated for reference purposes as of _____, 2021, by and among **County of Contra Costa** ("Tenant"), **Gary Riele and Julie Riele, individually and as trustees of the Riele Family Living Trust** ("Landlord"), and **First Republic Bank** ("Lender").

RECITALS

- A. Tenant is the lessee and Landlord is the lessor under that certain lease between Landlord and Tenant dated **February 15, 2005**, as amended (the "Lease").
- B. Lender is making or has made a loan ("Loan") to Landlord secured by a deed of trust or mortgage from Landlord for the benefit to Lender (the "Security Instrument"), covering the property wherein the premises (the "Premises") covered by the Lease is located, which property is described more fully in Exhibit "A" attached hereto (the "Property").
- C. Lender's condition to making the loan is that, among other things, Landlord and Tenant execute this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant, Landlord and Lender hereby agree as follows:

- 1. **Subordination.** Tenant and Lender hereby agree that the Lease, Tenant's Leasehold estate created thereby and all of Tenant's rights thereunder, including purchase rights or options and all rights to insurance proceeds and condemnation awards, are and shall at all times be subject and subordinate to the Security Instrument and all other documents executed in connection with the Loan (the "Loan Documents") and all obligations and indebtedness secured by the Security Instrument, subject to the terms and conditions of this Agreement.
- 2. **Non-Disturbance.** So long as Tenant is not in default in the performance of its obligations under the Lease (beyond any applicable notice and cure period), Tenant's possession of the Premises and its rights and privileges under the Lease shall not be diminished nor disturbed by Lender in the exercise

of any rights under the Loan Documents. Nothing contained herein shall prevent Lender from joining Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Security Instrument to the extent required under applicable law, but such joinder shall not be in derogation of Tenant's rights as set forth in this Agreement.

3. **Attornment.** If at any time, Lender or any person or entity or any of its successors or assigns (each, a "Successor Landlord") shall acquire the interest of Landlord in and to the Premises through foreclosure, deed in lieu of foreclosure or any other method, then so long as no breach or event of default (beyond any applicable notice and cure period) on the part of the Tenant exists under the Lease and Tenant complies with this Agreement, the Lease shall continue in full force and effect. Tenant shall be bound to Successor Landlord and Successor Landlord shall be bound to Tenant under the terms of the Lease, and any extensions or renewals thereof, with the same force and effect as if Successor Landlord was the original landlord under the Lease. Tenant hereby attorns to Successor Landlord as its lessor which attornment shall be effective and self-operative immediately upon Successor Landlord succeeding to the interest of Landlord under the Lease without the execution of any further instruments by any party hereto. Tenant agrees, however, to execute such instruments as reasonably requested by Successor Landlord for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

4. **Liability of Successor Landlord.** Notwithstanding anything to the contrary in the Lease or the Security Instrument, Successor Landlord shall not be liable for or bound by any of the following matters if Successor Landlord succeeds to the interest of Landlord under the Lease:
 - (a) liable for any default or breach of the Lease by Landlord or any prior lessor except to the extent continuing after the date Successor Landlord succeeds to the interest of Landlord under the Lease and Lender has received notice as provided in Section 6 below and been given the opportunity at its discretion to cure such default; or
 - (b) subject to any offsets or defenses which Tenant might have against Landlord or any prior lessor arising from a default or breach of the Lease by Landlord or any prior lessor except to the extent continuing after the date Successor Landlord succeeds to the interest of Landlord under the Lease and Lender has received notice as provided in Section 6 below and been given the opportunity at its discretion to cure such default; or
 - (c) liable for any representations, warranties or indemnities made by Landlord or any prior lessor under the Lease unless specifically reaffirmed in writing by Successor Landlord; or
 - (d) bound by any payment by Tenant of rent or additional rent for more than one (1) month in advance or for any security deposit or other prepaid charge or fee paid in advance to Landlord or any prior lessor, unless such sums are received by Successor Landlord; or
 - (e) bound by any amendment, modification, assignment or consensual termination of the Lease made without the prior written consent of Lender, except for amendments relating to option terms set forth in the Lease; or
 - (f) bound by any covenant to perform or complete any tenant improvements or other construction to the Premises (other than Landlord's on-going maintenance or repair obligations expressly set forth in the Lease), or to pay to Tenant any tenant improvement or other such allowance, and Tenant hereby releases Successor Landlord from any such obligations and agrees that Tenant shall have no right to cancel the Lease, abate rent or assert any claim against Successor Landlord as a result of such failure to perform.

5. **Notices.** All notices by a party to another party of this Agreement shall be in writing and shall be effective on the earliest of (a) personal delivery; (b) three (3) days after deposit in first-class or certified United States mail, postage prepaid, return receipt requested, addressed to the recipient at the address set forth in this Agreement; or (c) one (1) business day after deposit with a reputable nationally-recognized overnight delivery service, delivery charges prepaid, addressed to the recipient at the address set forth in this Agreement; provided, that non-receipt of any such notice as a result of recipient's refusal to accept delivery or recipient's failure to notify the sender of recipient's change of address shall be deemed receipt by the recipient. A party's address set forth in this Agreement may be changed by written notice given to the other parties hereto in accordance with this Section.

Landlord: Gary Riele and Julie Riele, individually and as trustees of the Riele Family Living Trust
845 Bali Court
Danville, CA 94526

Tenant: County of Contra Costa
255 Glacier Drive
Martinez, CA 94553

Lender: First Republic Bank
111 Pine Street
San Francisco, Ca 94111
Attn: Commercial Loan Servicing

6. **Right to Cure Lease Defaults.** Tenant shall promptly give Lender written notice of any breach or event of default, act or omission of Landlord under the Lease (a "Landlord Default"). In the event of a Landlord Default, the Tenant shall not exercise any rights available to it which are prejudicial to Lender's rights (a) until Tenant has given such written notice of such Landlord Default to Lender; and (b) given Lender thirty (30) days after Lender received such notice to cure or remedy the Landlord Default (or within such additional period as is reasonably required to correct such default) provided that Lender uses reasonable diligence to cure. Lender shall have the right, but not the obligation, to cure any Landlord Defaults in its sole discretion.
7. **Exculpation of Successor Landlord.** Notwithstanding any provision of the Lease to the contrary, if Successor Landlord acquires title to the Property, Successor Landlord shall have no obligation, nor incur any liability, beyond Lender's then interest in the Property, and Tenant shall look exclusively to such interest for the payment and discharge of any obligations imposed upon Successor Landlord hereunder or under the Lease. Tenant agrees to look solely to the estate or interest owned by Successor Landlord in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.
8. **Assignment of Lease and Rents.** Tenant agrees to recognize the assignment of the Lease made by Landlord under the Security Instrument or separate written assignment of leases and/or rents executed by Landlord for the benefit of Lender and to pay to Lender rents due under the Lease upon receipt of written notice from Lender of an event of default by Landlord under the Loan Documents. Such payments of rents to Lender shall continue until the first to occur of the following: (a) no further rent is due or payable under the Lease; (b) Lender gives Tenant written notice that Landlord's event of default has been cured and instructs Tenant that the rents shall thereafter be payable to Landlord; or (c) Successor Landlord gives Tenant written notice that Successor Landlord has acquired title to

the Premises and succeeded to the interests of Landlord under the Lease as provided in Paragraph 3 hereof, after which time the rents and other payment due from Landlord under the Lease shall be payable to Successor Landlord. Tenant shall be entitled to rely upon the written notices given by Lender hereunder, and Landlord agrees to indemnify and hold Tenant harmless from and against any and all loss, claim, damage or liability arising out of Tenant's compliance with such written notice. Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with the provision hereof to the same extent as if such rents were paid directly to Landlord. Any dispute between Lender (or other Purchaser) and Landlord as to the existence or continuance of a default by Landlord under the terms of any of the Loan Documents, or with respect to the extent or nature of such default, or with respect to foreclosure of the Deed of Trust by Lender, shall be dealt with and adjusted solely between Lender (or other Purchaser) and Landlord, and Tenant shall not be made a party thereto (unless required by law).

9. **Waiver of Rights by Lender.** Landlord acknowledges and agrees for itself and its heirs, successors and assigns that this Agreement does not constitute a waiver by Lender of any of Lender's rights under any of the Loan Documents or in any way releases Landlord from its obligations to comply with the terms, provisions, covenants and agreements of the Loan Documents.
10. **Lender Rights.** This Agreement shall be the whole and only agreement with regard to the subordination of the Lease, the leasehold estate created thereby and all rights and privileges of Tenant thereunder, to the lien or charge of the Security Instrument. Lender's rights under the Security Instrument and the lien thereof, shall supersede and cancel any prior agreements as to such subordination, including subordination provisions in the Lease. Tenant acknowledges that this Agreement satisfies any condition or requirement in the Lease related to Lender granting a non-disturbance agreement in favor of Tenant.
11. **Governing Law.** This Agreement shall be governed by and construed under the laws of the state in which the Property is located.
12. **Attorneys' Fees.** Landlord agrees to reimburse Lender upon demand for all costs and expenses, including reasonable attorneys' fees and costs, incurred by Lender in connection with the exercise of any or all of Lender's rights and remedies under the Loan Documents whether or not any legal proceedings are instituted by Lender. Such fees shall include Lender's reasonable attorneys' fees and legal expenses for bankruptcy proceedings and appeals.
13. **General.** This Agreement may be modified only by written agreement by the parties hereto or their respective successor in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective heirs, successors and assigns.
14. **Authority.** Tenant, Landlord, and Lender represent to each other that they and the individuals signing below have the right, power, and authority to execute this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

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

County of Contra Costa "Tenant"

By: _____

Name: _____

Title: _____

Gary Riele and Julie Riele, individually and as trustees of the Riele Family Living Trust "Landlord"

By: _____

Name: _____

Title: _____

First Republic Bank "Lender"

By: _____

Name: _____

Title: _____

"EXHIBIT A"

LEGAL DESCRIPTION OF REAL PROPERTY

