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MAR 28 2017 10:51 P 9

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
3/28/2017 10:51:41.76  
  
2017023220

After Recording Return To NEDCO, 4445 S. 86<sup>th</sup> Street, Suite 200, Lincoln, NE 68526  
**SUBORDINATION AGREEMENT**

This agreement dated for reference February 13, 2017 ("Subordination Agreement"), is made by and among: the SMALL BUSINESS ADMINISTRATION, an agency of the United States of America ("SBA"); American National Bank ("Lender"); and Grover Street Acquisition, LLC ("Owner").

**RECITALS**

Owner holds fee simple title to real estate legally described as follows:

See Exhibit "A" Attached Hereto.

SBA is the holder and beneficiary of a Deed of Trust executed by Owner dated March 20, 2007, which was recorded on April 10, 2007 under Instrument No. 2007039763 in the Register of Deeds of Douglas County, Nebraska.

This Deed of Trust together with an Assignment of Leases and Rents, recorded as Instrument No. 2007039767, and Fixture Filing, recorded as Instrument No. 2007039765, both within the Register of Deeds of Douglas County, Nebraska, together with Financing Statement No. 9807340288-8, filed with the Nebraska Secretary of State, ("SBA Security Instrument") was pledged to secure a note in the original sum of \$2,000,000.00 in favor of Nebraska Economic Development Corporation ("CDC"), which evidences a loan made by the CDC to Grover Street Acquisition, LLC ("Borrower") under SBA's 504 Loan Program ("SBA Loan").

Owner has also executed, or is about to execute, a modification to an existing Deed of Trust dated May 26, 2006 in favor of Lender, which Deed of Trust was recorded on June 7, 2006 under Instrument No. 2006063344 in the Register of Deeds of Douglas County, Nebraska.

This Deed of Trust, as modified, with a Fixture Filing, recorded as Instrument No. 2006063519 within the Register of Deeds of Douglas County, together with Financing Statement No. 9805237454-1, filed with the Nebraska Secretary of State ("Lender's Security Instrument") have been pledged to secure the following:

- (1) a note, fully disbursed, in a sum not to exceed \$2,461,757, which evidences Lender's Third Party Lender Loan to the Owner made by the Lender in conjunction with SBA Loan No. 2086096002;
- (2) a note in a sum, to be disbursed, not to exceed \$1,226,683.27, which evidences Lender's Third Party Lender Loan to the Owner made by the Lender in conjunction with SBA Loan No. 9180495006;

CR #001988

(3) a note in a sum, to be disbursed, not to exceed \$858,678.28, which evidences Lender's Interim Loan to the Owner made by the Lender in conjunction with SBA Loan No. 9180495006 (referred to collectively hereinafter as "Lender Loan").

Lender has requested that SBA's lien position on the real and personal property described in the SBA Security Instrument ("Property") be subordinated to the lien position of Lender's Security Instrument. SBA is willing to do so provided that it retains its priority with regard to all other legal and equitable interests in the Property.

### AGREEMENT

In consideration of the mutual benefits to the parties and to induce Lender to make the Lender Loan, it is hereby agreed as follows:

(1) Use of Lender Loan Proceeds. 100% of the undisbursed proceeds of the Lender Loan shall be used for the following described purpose(s): consistent with the Use of Funds contemplated by Authorization for SBA Loan No. 9180495006, as that Authorization may be amended. Any other use of the proceeds, except to pay necessary, reasonable and customary closing costs, shall void this Subordination Agreement.

(2) Lender Warranty. Lender would not make the Lender Loan without this Subordination Agreement.

(3) Subordination of SBA Lien Priority. Lender's Security Instrument, and any renewals or extensions thereof, shall be a lien on the Property prior to the lien of SBA's Security Instrument.

(4) Hold Harmless Agreement. Except as expressly provided herein, this Subordination Agreement shall not operate to, or be construed to, alter the priority of SBA's Security Instrument with regard to any legal or equitable interest in the Property. Owner and Lender shall hold SBA harmless from any impairment of its lien (with regard to any third party) which is occasioned by this Subordination Agreement.

(5) Required Signatures. This Subordination Agreement is void if it is not duly executed by SBA, Lender, and Owner, or does not contain the written approval of all other individuals and legal entities with direct or contingent liability for repaying the SBA Loan such as the Borrower and all guarantors.

(6) Lender Compliance with SBA 504 Loan Program Requirements. All documents evidencing the Lender Loan and Lender's Security Instrument must comply with SBA 504 Loan Program requirements, including but not limited to those identified in the following subparagraphs, and, in the event one or more of the provisions in such documents do not comply with these requirements, Lender waives any right to enforce such provisions while the SBA Loan has any unpaid balance.

(a) No Open-Ended Features and No Future Advances. The Lender Loan must not be open-ended. The Lender may not make future advances except for reasonable costs of collection, maintenance, and protection of the Lender Loan and Lender's Security Instrument.

(b) No Early Call or Demand Provisions. The documents evidencing the Lender Loan and the Lender's Security Instrument must not contain an early call feature or any provision that allows Lender to make demand other than when there has been a material default under the terms

of the Lender Loan documents, such as failure to make timely payments, failure to pay taxes when due, or violation of any financial covenants that would cause a prudent lender to believe that the prospect of payment or performance of the Lender Loan is impaired.

(c) No Cross-Collateralization. The Property covered by Lender's Security Instrument must only secure the Lender Loan; and the Property must not, currently or in the future, be used as security for any other financing provided by Lender that purports to be in a superior position to that of the SBA Loan, unless authorized in writing by SBA.

(d) No Cross-Default. During the term of the SBA Loan, Lender must not exercise any cross-default, "deem at-risk," or any other provisions in the documents evidencing the Lender Loan or Lender's Security Instrument that allow Lender to make demand on the Lender Loan prior to maturity unless the Lender Loan is in material default.

(e) Reasonable Interest Rate. The Lender Loan must have a reasonable interest rate that must not exceed the maximum interest rate for loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Subordination Agreement.

(7) Notice of Default on Lender Loan. Lender must provide CDC and SBA with written notice of any material default on the Lender Loan or Lender's Security Instrument (referencing the SBA Loan number on page one of this Agreement) within thirty (30) days after the expiration of any cure period. Lender must also provide CDC and SBA with written notice of its intent to enforce collection of the Lender Loan at least sixty (60) days prior to initiating any judicial or non-judicial proceedings against the Borrower, guarantors or the Property. Notice under this Subordination Agreement shall be deemed to have been given when sent to the CDC at the following address: 4445 S. 86<sup>th</sup> Street, Suite 200, Lincoln, Nebraska, 68526; and to SBA at the following address: 801 R Street, Suite 101, Fresno California.

(8) Limitation on Default Interest Rate on Lender Loan. In the event of default on the Lender Loan, Lender may not escalate the interest rate to a rate greater than the maximum rate published by SBA in the Federal Register and in effect as of the date of this Subordination Agreement. If SBA purchases the Lender Loan or note, SBA will only pay the interest rate on the note in effect before the date of default.

(9) Marshalling of Collateral for Lender Loan. In the event Lender decides to liquidate the Lender Loan, if Lender has taken additional collateral as security for the Lender Loan, Lender must liquidate the additional collateral prior to foreclosing its Security Interest in the Property, and must apply the proceeds from liquidation of the additional collateral to the Lender Loan prior to the proceeds from liquidation of the Property. Provided, however, that the Lender shall not be required to liquidate the additional collateral if it is not commercially reasonable to do so, (e.g., the additional collateral has insufficient value to justify the cost of collection) and Lender provides written justification for not liquidating the additional collateral in the 60 day notice it is required to provide the CDC and SBA prior to foreclosing its Security Interest in the Property.

(10) Subordination of Default Charges to SBA Loan.

(a) The term "Default Charges" includes, but is not limited to, prepayment penalties, as well as late fees, escalated interest, and other charges after default on the Lender Loan.

(b) To the extent the Lender's Security Instrument secures any amounts attributable to Default Charges, the Lender's Security Instrument is and will be subordinate to SBA's Security

Instrument. This subordination applies only to CDC and SBA and their successors and assigns, and shall not inure to the benefit of Borrower or any guarantor of the Lender Loan.

(c) In the event of default on the Lender Loan, CDC or SBA may bring the Lender Loan current or acquire the Lender Loan including Lender's Security Instrument. Lender agrees that in either of these circumstances, the amount to bring the Lender Loan current or the purchase price of the Lender Loan will be net of all amounts attributable to Default Charges subordinated to the SBA Mortgage. Lender further agrees that if it receives any amounts attributable to Default Charges, Lender holds such funds in trust for SBA and will immediately remit them to SBA.

(d) If Lender sells, or intends to sell the note evidencing the Lender Loan:

(1) If the Lender Loan is not in default, within 15 calendar days of the sale Lender must provide CDC and SBA with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received an executed copy of this Subordination Agreement.

(2) If the Lender Loan is in default and the Lender intends to sell the note as part of its liquidation strategy, Lender must provide the CDC and SBA with the option to purchase the note at the same price offered by any potential purchaser, net any Default Charges. SBA shall have 45 calendar days from receipt of the notice to exercise its option to purchase the note. If SBA does not exercise its option and the Lender sells the note, within fifteen calendar days of the sale the Lender must provide CDC and SBA with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received an executed copy of this Subordination Agreement.

(11) Subordination of Swap Agreement Costs to SBA Loan. If the Lender Loan documents contain a swap component or hedging contract ("Swap Agreement"), all costs associated with the Swap Agreement, (which may be termed swap fees, termination fees, default fees), or other related fees, shall be subordinate to the amounts secured by SBA's Security Instrument.

(12) Cooperation in Event of Liquidation. In the event either the Lender Loan or SBA Loan is declared in default, the parties agree to liquidate the Property in a commercially reasonable and cooperative manner. For example, Lender agrees to: (a) accept a U.S. Treasury check(s) from SBA or CDC to facilitate SBA's liquidation strategy, including, for example, purchase of the Lender Loan; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement on the Lender Loan; (c) to provide CDC and SBA, at no charge (except for reasonable charges for photocopies) with copies of any appraisal, environmental investigation, title examination or searches conducted by or for the Lender; and (d) provide any other information about Borrower or the Lender Loan requested by CDC and SBA.

(13) Lender Waiver of Right to Indemnification by SBA or CDC. If the Lender Loan documents contain provisions granting Lender the right to indemnification by subsequent owners of the Property, Lender waives its right to enforce such provisions against SBA and CDC in the event SBA or CDC acquires title to the Property through foreclosure, acceptance of a deed in lieu of foreclosure, or otherwise.

(14) No Implied Third Party Beneficiaries. The parties agree that this Subordination Agreement shall not grant any right, benefit, priority, or interest to any third party, including but not limited to the SBA Loan Borrower or guarantor(s).

(15) Successors and Assigns. This Subordination Agreement shall bind and inure to the benefit of the respective parties and their successors and assigns, including any party acquiring the Lender Loan and Lender's Security Instrument by sale, assignment, or other transfer from Lender. Lender agrees that SBA may assign this Subordination Agreement, and waives all rights to contest such assignment.

(16) Federal Law. When SBA is the holder of the note evidencing the SBA Loan, this Subordination Agreement and all related loan documents shall be construed in accordance with federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. Lender may not claim or assert against SBA any local or state law to deny any obligation of the Borrower, or defeat any claim of SBA with respect to the SBA Loan.

(17) Termination. This Subordination Agreement will terminate upon payment in full of either the Lender Loan or the SBA Loan and all costs related thereto.

(18) Counterparts. This Subordination Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

(19) Validity of Provisions. In the event that any provision of this Subordination Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Subordination Agreement shall remain valid and enforceable.

(20) Authority to Execute Subordination Agreement. The persons signing below certify that they have been duly authorized to execute this Subordination Agreement on behalf of their respective party.

U.S. SMALL BUSINESS ADMINISTRATION

By: \_\_\_\_\_

**John L. Gossett**  
Assistant Center Director



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Fresno

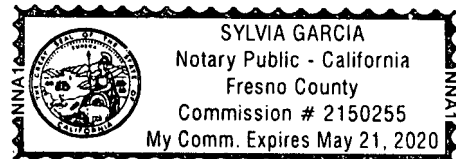
On **FEB 13 2017** before me, **Sylvia Garcia**, notary public, personally appeared **John L. Gossett**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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 California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

*Sylvia Garcia*



American National Bank

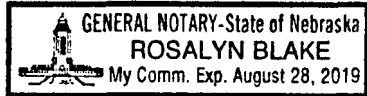
By: [Signature] FVP  
Name, Title

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on 13<sup>th</sup> day of March, 2017 by Jason Tiedtke, as First Vice President of American National Bank, on behalf of the Bank.

[Signature]  
Notary Public

Grover Street Acquisition, LLC, a  
Nebraska Limited Liability Company



By: [Signature]  
Scott R. Makinster, Member Manager

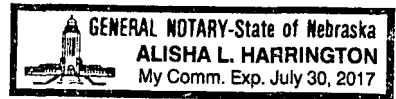
STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on 9 day of March, 2017 by Scott Makinster, Member Manager, of Grover Street Acquisition, LLC, on behalf of the limited liability company.

[Signature]  
Notary Public

Consented to and approved by:

Grover Street Operating, LLC, a  
Nebraska Limited Liability Company



By: [Signature]  
Name, Title

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on 9 day of MARCH, 2017 by VERNON DOLBEY as MANAGING MEMBER of Grover Street Operating, LLC, on behalf of the limited liability company.

[Signature]  
Notary Public



Vernon E. Dolleck

Vernon E. Dolleck, Personally

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on 9<sup>th</sup> day of March, 2017 by Vernon E. Dolleck, Personally.

Lowell L. Frederes

Lowell L. Frederes, Personally

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

Harlyn Brandt  
Notary Public



The foregoing instrument was acknowledged before me on 9<sup>th</sup> day of March, 2017 by Lowell L. Frederes, Personally.

Scott R. Makinster

Scott R. Makinster, Personally

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

Harlyn Brandt  
Notary Public



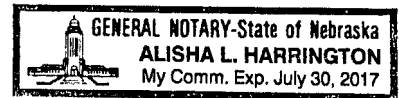
The foregoing instrument was acknowledged before me on 9 day of March, 2017 by Scott R. Makinster, Personally.

John W. Adair

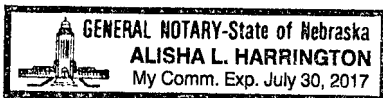
John W. Adair, Personally

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

Alisha L. Harrington  
Notary Public



The foregoing instrument was acknowledged before me on 9 day of March, 2017 by John W. Adair, Personally.



Alisha L. Harrington  
Notary Public

**Axel C. Adair, Personally**

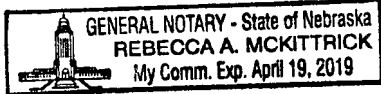
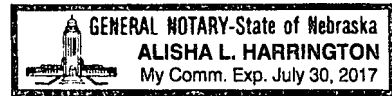
STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on 9 day of March, 2017 by Axel C. Adair Personally.

  
**Christine J. Newhouse, Personally**

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on 10<sup>th</sup> day of March, 2017 by Christine J. Newhouse, Personally.

  
Notary Public  
Notary Public  
**Kathryn M. Barker, Personally**

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on 9 day of March, 2017 by Kathryn M. Barker, Personally.

  
Notary Public



EXHIBIT A

LEGAL DESCRIPTION

Attached to and forming a part of file number: OT101163

Lot 1, except the North 17 feet thereof, and all of Lots 2, 3, 4 and 5, in Block 12, in Lawnfield, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Except: A part of Lot 1, except the North 17 feet thereof, Block 12, in Lawnfield, an Addition to the City of Omaha, Douglas County, Nebraska, more particularly described as follows: Commencing at the original Northeast corner of Lot 1, Block 12, Lawnfield Addition; thence South for a distance of 17.0 feet to the Northeast corner of said Lot 1 (as it exists today), with said point also being the intersection of the South right of way line of Grover Street and the West right of way line of 70th Street, and said point is also the point of beginning; thence South  $00^{\circ}00'00''$  East along the said West right of way line of 70th Street for a distance of 10.0 feet; thence North:  $45^{\circ}00'00''$  for a distance of 14.14 feet more or less; thence South  $90^{\circ}00'00''$  East along said right of way line of Grover Street for a distance of 10.0 feet and to the point of beginning.