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**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is entered into as of November 8, 2022 (the "Effective Date"), between **AMERICAN INTERSTATE BANK**, a Nebraska banking corporation ("Lender"), **U.S. BANK NATIONAL ASSOCIATION**, a national banking association ("Tenant"), and **ROYCE CANDLEWOOD WR, LLC**, a Nebraska limited liability company ("Landlord").

**RECITALS**

A. Lender and Landlord entered into a Loan Agreement dated as of March 28, 2018, whereby Lender agreed to make a loan to Landlord ("Loan") on the terms and conditions contained therein. Landlord executed and delivered to Lender a certain promissory note ("Note") dated as of March 28, 2018, payable to the order of Lender in the original principal amount of \$3,016,629.50 with interest and principal payable as therein provided. The Loan and Note were secured by a deed of trust ("Mortgage") dated March 28, 2018, and recorded with the real property records of Douglas County, Nebraska on May 10, 2018, as Document No. 2018035288, encumbering, among other things, the property described on Exhibit A attached hereto and made a part hereof and all improvements thereon ("Real Estate").

B. Tenant (or Tenant's predecessor-in-interest), and Landlord entered into a Lease Agreement dated of even date herewith ("Lease"), pursuant to which Landlord leased all or a portion of the Real Estate to Tenant on the terms and conditions set forth in the Lease.

C. The parties desire to agree upon the relative priority of their interests in the Real Estate and their rights and obligations if certain events occur.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, the parties do hereby covenant and agree as follows:

1. Definitions. The following terms shall have the following meanings for purposes of this Agreement:

(a) "Foreclosure Event" means (i) foreclosure under the Mortgage; (ii) any other exercise by Lender of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Note and/or the Mortgage, as a result of which Successor Landlord becomes owner of the Real Estate; or (iii) delivery by Trustee to Lender (or its designee or nominee) of a deed or other conveyance of Trustee's interest in the Real Estate in lieu of any of the foregoing.

(b) "Successor Landlord" means any party that becomes owner of the Real Estate as the result of a Foreclosure Event.

(c) Initially capitalized terms used in this Agreement and not expressly defined herein have the meanings given them in the Mortgage.

2. Subordination. The Lease is hereby subordinated to the Mortgage and at all times hereafter shall continue to be subject and subordinate in each and every respect to the Mortgage and to the lien of the Mortgage and to any and all increases, renewals, modifications, amendments, supplements, and extensions of the Mortgage, including, without limitation, amendments which increase the amount of the indebtedness secured thereby.

3. Nondisturbance and Attornment.

(a) *No Exercise of Mortgage Remedies Against Tenant.* So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

(b) *Nondisturbance and Attornment.* If the Lease has not expired or otherwise been terminated, then, when Successor Landlord takes title to Landlord's Premises: (i) Successor Landlord shall not terminate or disturb Tenant's possession of the premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (ii) Successor Landlord shall be bound to Tenant under all terms and conditions of the Lease accruing from and after the date on which Successor Landlord takes title to Landlord's Premises (except as provided in this Agreement); (iii) Tenant shall recognize and attorn to Successor Landlord, and all rights and obligations under the Lease shall continue as though the interest of Landlord had not terminated or such foreclosure proceedings had not been brought; and (iv) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

(c) *Further Documentation.* The provisions of this Agreement shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Agreement in writing upon request by either party.

4. Rights and Obligations of Successor Landlord under Lease. Successor Landlord in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any stated cure period) in the payment of annual base rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Successor Landlord for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Successor Landlord had not succeeded to the interest of Landlord; provided, however, that Successor Landlord shall not be:

(a) liable for any act or omission of or any claims against any prior landlord (including Landlord), provided that Successor Landlord must cure any defaults of a continuing nature as

of the date that Successor Landlord acquires title to the Real Estate, such as repair or maintenance obligations; or

(b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except as expressly set forth in the Lease; or

(c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord), except as contemplated in the Lease; or

(d) liable for any sum that any prior landlord (including Landlord) owed to Tenant, including without limitation any security deposit; or

(e) liable for any initial construction obligation of any prior landlord, including Landlord, provided, however, that Tenant may terminate the Lease upon written notice if Successor Landlord fails to complete such initial construction obligations as required pursuant to the Lease; or

(f) liable for any breach of representation or warranty of any prior landlord, including Landlord.

5. Covenants of Tenant. If any act or omission of Landlord would give Tenant the right, immediately or after notice or lapse of a period of time or both, to cancel or terminate the Lease, or to claim a partial or total eviction or constructive eviction, Tenant shall not exercise such right until:

(i) Tenant notifies Landlord and Lender in writing of such act or omission; and

(ii) Landlord shall have failed to cure the same within the time limits set forth in the Lease; and

(iii) Lender shall have failed to remedy such act or omission within the cure period available to Landlord under the Lease.

6. Miscellaneous.

(a) *Successors and Assigns.* This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Lender assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

(b) *Entire Agreement.* This Agreement constitutes the entire agreement among Lender, Landlord, and Tenant regarding the rights and obligations of Tenant, Landlord, and Lender as to the subject matter of this Agreement.

(c) *Interaction with Lease and with Mortgage.* If this Agreement expressly conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for delivery of nondisturbance agreements by the holder of the Mortgage.

(d) *Lender's Rights and Obligations.* Except as expressly provided for in this Agreement, Lender shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Lender under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement, or the amendments to the Lease set forth herein.

(e) *Interpretation; Governing Law.* The interpretation, validity, and enforcement of this Agreement shall be governed by and construed under the internal laws of the jurisdiction in which the Real Estate is situated, excluding its principles of conflicts of law.

(f) *Amendments.* This Agreement may be amended, discharged, or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

(g) *Execution.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) *Lender's Representation.* Lender represents that Lender has full authority to enter into this Agreement, and Lender's entry into this Agreement has been duly authorized by all necessary actions.

7. Notices. All notices, waivers, demands, requests, or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served, and received (i) if delivered by messenger, when delivered; (ii) if mailed, on the third business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested; or (iii) if delivered by national overnight express courier, freight prepaid, the next business day after delivery to such courier; in every case addressed to the party to be notified as follows:

In the case of Lender, to:

American Interstate Bank  
3331 N 204<sup>th</sup> Street  
Elkhorn, Nebraska 68022

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In the case of Tenant, to:

U.S. Bank National Association  
800 Nicollet Mall

BC-MN-H15F  
Minneapolis, Minnesota 55402  
Attn: Corporate Real Estate

with copy to:

U.S. Bank National Association  
800 Nicollet Mall  
BC-MN-H21R  
Minneapolis, Minnesota 55402  
Attn: Corporate Real Estate – Corporate Counsel

In the case of Landlord, to:

Royce Candlewood WR, LLC  
12910 Pierce Street  
Omaha, NE 68144  
Attn: Robert E. Begley, Jr.

with copy to:

Pansing, Hogan, Ernst & Bachman  
10250 Regency Circle, Suite 300  
Omaha, NE 68114  
Attn: Ben Pick


or such other address or in care of such other person as hereafter shall be designated in writing by the applicable party and shall be deemed to have been given as of the date of receipt.

*[Remainder of page intentionally left blank. Signature and acknowledgment pages follow.]*

IN WITNESS WHEREOF, Lender, Tenant and Landlord have executed the foregoing agreement as of the Effective Date.

LENDER:

American Interstate Bank,  
a(n) Nebraska banking corporation

By:   
Name: Barrett L.L. James  
Title: Chairman


TENANT:

**U.S. BANK NATIONAL ASSOCIATION,**  
a national banking association

\_\_\_\_\_  
Malik Cavallo, its Senior Vice President

LANDLORD:

**ROYCE CANDLEWOOD WR, LLC,** a  
Nebraska limited liability company

  
\_\_\_\_\_  
Lawrence R. James, II, Manager

IN WITNESS WHEREOF, Lender, Tenant and Landlord have executed the foregoing agreement as of the Effective Date.

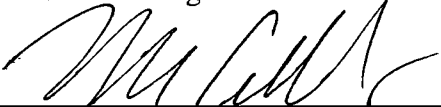
LENDER:

American Interstate Bank,  
a(n) Nebraska banking corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

**U.S. BANK NATIONAL ASSOCIATION,**  
a national banking association

  
\_\_\_\_\_  
Malik Cavallo, its Senior Vice President

LANDLORD:

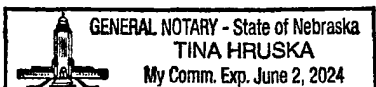
**ROYCE CANDLEWOOD WR, LLC,** a  
Nebraska limited liability company

\_\_\_\_\_  
Lawrence R. James, II, Manager



STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

On this 7<sup>th</sup> day of November in the year 2022, before me, a Notary Public in and for said State, personally appeared Lawrence R James II, known or identified to me to be the Manager of Rose Sandwood WR, LLC, who executed the instrument, on behalf of said company



[Signature]  
Notary Public

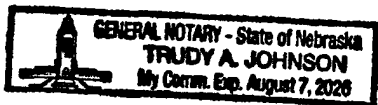
STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

On this \_\_\_ day of November, in the year 2022, before me, a Notary Public in and for said State, personally appeared Malik Cavallo, known or identified to me to be the Senior Vice President of **U.S. Bank National Association**, who executed the instrument, on behalf of said national banking association.

\_\_\_\_\_  
Notary Public

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

On this 7<sup>th</sup> day of November, in the year 2022, before me, a Notary Public in and for said State, personally appeared Burrett L.L. Jones, known or identified to me to be the Chairman of American Interstate Bank, who executed the instrument, on behalf of said Bank



[Signature]  
Notary Public

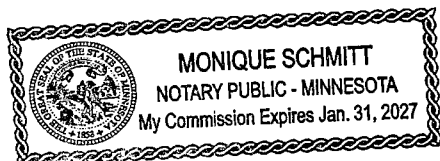
STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

On this \_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of \_\_\_\_\_, who executed the instrument, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

On this 7th day of November, in the year 2022, before me, a Notary Public in and for said State, personally appeared Malik Cavallo, known or identified to me to be the Senior Vice President of **U.S. Bank National Association**, who executed the instrument, on behalf of said national banking association.



*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

On this \_\_\_\_ day of November, in the year 2022, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of \_\_\_\_\_, who executed the instrument, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**Exhibit A to the SNDA**

**Legal Description of Real Estate**

Lot 4, Candlewood Hills, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska.