

RECORDING REQUESTED BY:

202006160101

06/16/2020 03:11 PM Pages: 1 of 9 Fees: \$111.50  
Skagit County Auditor

AND WHEN RECORDED MAIL TO:

CIT Bank, N.A.  
3580 Carmel Mountain Road, Suite 160  
San Diego, CA 9210

CHICAGO TITLE  
420040746

THIS SPACE FOR RECORDER'S USE ONLY

### SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

This SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), dated as of June 11, 2020, executed by ARS - Fresno, a California limited liability company, ("Tenant"), and Porter's Real Estate 1, LLC, an Oregon limited liability company ("Landlord"), in favor of CIT Bank, N.A., ("Lender"), is entered into with reference to the following facts:

A. Tenant is presently leasing four (4) separate properties (the "Properties") pursuant to leases between Tenant and Landlord (as modified from time to time, the "Leases") covering legally described in Exhibit "A" as follows:

1. Property located at 1347 NE Baker Street, McMinnville, OR 97128, State of Oregon, County of Yamhill; APN: 145220, under that certain Lease dated December 26, 2018;

2. Property located at 3828 Lake Washington Blvd, Kirkland, WA 98033, State of Washington, County of King; Tax Parcel No. 202505-9199, under that certain lease dated November 26, 2018;

3. Property located at 2410 Commercial Avenue, Anacortes, WA 98221, State of Washington, County of Skagit, Tax Parcel Nos. P57222, P57313, P57223; 3788-009-003-0000 and 3794-002-003-0007 and 3788-009-005-0008, under that certain lease dated October 1, 2016; and

4. Property located at 153 Easy Street, Wenatchee, WA 98801, State of Washington, County of Chelan, Tax Parcel No. 232021430055, under that certain lease dated December 22, 2017;

B. Lender has made or agreed to make a loan or loans to Landlord (the "Loan") and, in connection therewith, Landlord has executed a deed of trust (as modified from time to time, the "Deed of Trust") and an assignment of leases (the "Assignment of Leases"), assigning to Lender Landlord's interests in the Property, including Landlord's interests as Landlord under the Leases.

AF # 202006160100

IN CONSIDERATION OF THE FOREGOING, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant and Landlord hereby agree as follows:

1. Consent to Assignment. Tenant understands that Landlord has assigned or will assign the Lease to Lender in connection with the Loan, and Tenant hereby consents to such assignment.

2. Advance Payment of Rent. Tenant shall not pay any rent or other amount due to Landlord under the Lease more than 10 days in advance of the due date.

3. Lender Cure Rights. Tenant shall not exercise any termination remedy upon a default by Landlord with respect to the Lease unless Tenant has first given Lender written notice of such default (at the address shown below or any other address hereafter supplied to Tenant by Lender) and such default is not cured within 30 days thereafter; provided that, if such default is non-monetary, is curable by Lender, and (a) is of such a nature that it cannot reasonably be cured within 30 days or (b) the cure thereof by Lender requires Lender to have possession of the Property, then in either such event Tenant shall not exercise any termination remedy so long as Lender is diligently taking all steps required for Lender to cure the default (including pursuit of possession of the Property, to the extent required). Nothing in this Agreement, however, shall be construed as a promise or undertaking by Lender to cure any default of Landlord, and nothing in this Agreement shall be deemed or construed as an agreement by Lender to perform any covenant of Landlord under the Lease.

**Address for Notices to Lender:**

CIT Bank, N.A.  
3580 Carmel Mountain Road, Suite 160  
San Diego, CA 92130  
Attention: Commercial Lending

4. Payments to Lender. Tenant shall make all payments under the Lease to Lender upon receiving a direction to pay from Lender, and shall comply with any such direction to pay without determining whether any default exists with respect to the Loan.

5. Agreement by Landlord. Landlord hereby agrees as follows:

5.1 Tenant shall have no liability to Landlord for any amount otherwise owing to Landlord under the Lease in the event that (a) Tenant receives a written demand from Lender to pay such amount to Lender and (b) Tenant thereafter pay such amount to Lender.

5.2 Tenant shall be entitled to assume that any such demand by Lender is valid and shall be under no obligation, and shall have no right to inquire as to its validity, nor shall any claim by Landlord that such demand is invalid affect Tenant's right and obligation to pay all amounts demanded to Lender and thereupon be discharged of Tenant's obligation to pay such amounts to Landlord.

6. Subordination.

6.1 All of Tenant's rights and interests with respect to the Premises and the Property under the Lease and all related documents (including, without limitation, any options to purchase and rights of first offer and first refusal) are and shall remain subject and subordinate to Lender's rights and interests in the Property under the Deed of Trust, the Assignment of

Leases and all related loan and security documents, and to all amendments, supplements and other modifications now or hereafter executed with respect thereto, including without limitation modifications that substantially increase the obligations to Lender to which Tenant's interests are subordinated. Without limiting the generality of the foregoing, the provisions of the above-described loan and security documents shall prevail over any inconsistent provisions of the Lease relating to the disposition of insurance and condemnation awards.

6.2 Tenant acknowledges and agrees that in making any disbursements related to the Loan, Lender has no obligation or duty to, nor has Lender represented that it will oversee or monitor the application or use of such proceeds by the persons or entities to whom such disbursements are made, and any application or use of such proceeds shall not defeat the subordination made in this Agreement, in whole or in part.

7. Non-disturbance and Attornment. In the event of any judicial or non-judicial foreclosure of the Deed of Trust or transfer by deed in lieu thereof, the Lease shall not terminate, nor shall Tenant's rights thereunder be disturbed, except in accordance with the terms of the Lease or any amendment or other applicable agreement executed by Tenant with respect thereto; provided, however, that the transferee of Landlord's interests pursuant to such foreclosure or other transfer shall not be (a) liable for any act or omission of any prior landlord under the Lease (including, without limitation, the breach of any representation or warranty made by any prior landlord unless such breach is caused by such transferee), (b) obligation to cure any default of any prior landlord under the Lease (other than non-monetary default that remain uncured at the time of foreclosure), (c) subject to any offsets or defenses which Tenant is entitled to assert against any prior landlord under the Lease, (d) bound by any payment of any amount owing under the Lease to any prior landlord which was made more than 10 days prior to the date due, or (e) liable for the return to Tenant of any security or other deposit paid by Tenant to any prior Landlord under the Lease except to the extent that such transferee actually receives such deposit. Tenant shall attorn to and accept any such transferee as the Landlord under the Lease for the unexpired balance of the Lease term, and shall execute any documents reasonably required by such transferee to evidence such attornment. If Lender becomes the transferee of the Property, then Lender's obligations as Landlord under the Lease shall cease upon subsequent transfer of the Property by Lender to a new owner, and Lender shall have no further liability under the Lease after said transfer.

8. Further Assurances. Each party hereto shall execute, acknowledge and deliver to each other party all documents, and shall take all actions reasonable required by such other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Agreement. Notwithstanding the foregoing, this Agreement shall be effective and self-operative without the execution of any further instruments upon Lender's succeeding to the interest of Landlord under the Lease.

9. Attorneys' Fees. In the event that any litigation, reference or arbitration shall be commenced concerning this Agreement, the party prevailing in such proceeding shall be entitled to recover, in addition to such other relief as may be granted, its reasonable costs and expenses, including without limitation, reasonable attorneys' fees and costs (including the allocated costs for in-house counsel), whether or not taxable, as awarded by a court of competent jurisdiction, referee or arbitrator.

10. Reliance by Lender. Tenant understands that Lender will rely upon this Agreement in making the Loan and/or in entering into certain agreements and/or granting certain consents in connection therewith. Notice of acceptance of this Agreement by Lender is waived.

11. Miscellaneous. This Agreement shall bind, and shall inure to the benefit of, the successors and assigns of the parties. This document may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. This Agreement shall be governed by the laws of the State of California. This Agreement integrates all of the terms and conditions of the parties' agreement regarding the matters contained herein. This Agreement supersedes and cancels all oral negotiations and prior and other writings with respect to the matters contained herein. This Agreement may not be modified or amended except in written agreement signed by the parties of their respective successors in interest.

**IN WITNESS WHEREOF,** Tenant and Landlord have caused this Agreement to be duly executed as of the date first written above.

Landlord consents to, and agrees to be bound by, the provisions of Sections 2 through 11, inclusive, of the foregoing Agreement.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

**COUNTERPART SIGNATURES BEGIN ON THE NEXT PAGE.]**

**COUNTERPART SIGNATURE PAGE****LANDLORD:**

Porter's Real Estate 1, LLC  
an Oregon limited liability company

By: American Retail Services, LLC  
a Delaware limited liability company  
Its Manager

By: [Signature]

Name: Howard R. Rude

It: manager

Dated: 6/11/2020

**COUNTERPART SIGNATURE PAGE****TENANT**

ARS – Fresno LLC,  
a California limited liability company

By: American Retail Services, LLC  
a Delaware limited liability company  
Its Manager

By: 

Name: Harold Paul

Title: Manager

Dated: 6/11/2020

State of Nevada

County of

Clark

SS.

on

June 11, 2020

Date \_\_\_\_\_

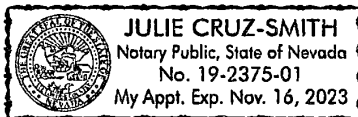
by

Howard Bode

(.)

(and

Name of Signer No. 2 (if any)



*Place Notary Seal and/or Stamp Above*

*Julie C. Smit*  
Signature of Notary Public

Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

Escrow No.: 120533BC-002-BC0

**EXHIBIT "A"**  
**Legal Description**

King County Property:

Parcel A:

Lot 25 of Linbrook Yarrow Bay, according to the Plat thereof, recorded in Volume 118 of Plats, pages 94 through 96, in King County, Washington.

Parcel B:

That portion of the Northeast quarter of the Northwest quarter of Section 20, Township 25 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:  
Beginning at the Southwest corner of Lot 25 of the Plat of Linbrook Yarrow Bay, according to the Plat thereof, recorded in Volume 118 of Plats, pages 94 through 96, in King County, Washington; thence North 01°01'10" West 44.74 feet along the East margin of Northeast Lake Washington Boulevard to the point of curvature of a curve to the left having a radius of 986.23 feet being the true point of beginning;  
thence Northerly along said curve an arc distance of 210.94 feet to a point of reverse curvature on said East margin of Lake Washington Boulevard with said reverse curve having a radius of 30.00 feet as deeded to the State of Washington by deed recorded under Recording No. 6643355; thence Northeasterly along the arc of said reverse curve 46.98 feet to the southwesterly margin of N.E. 38th Place;  
thence 43°32'38" East 152.11 feet along said Southwesterly margin to the most Northerly corner of said Lot 25;  
thence South 00°45'02" East 117.74 feet;  
thence South 89°02'55" West 102.72 feet along the North line of said Lot 25 to the Northwest corner of Lot 25 being the true point of beginning.

Skagit County Property

PARCEL A:

Lots 1, 2 and 3, EXCEPT the West 3 feet of said Lot 3, in Block 9, FIRST ADDITION TO THE CITY OF ANACORTES, according to the plat thereof, recorded in Volume 1 of Plats, page 24, records of Skagit County, Washington.

Situated in Skagit County, Washington

PARCEL B:

The North 30 feet of Lots 1, 2 and 3, Block 2, PLAT OF HENSLEY'S FIRST ADDITION TO THE CITY OF ANACORTES, according to the plat thereof, recorded in Volume 3 of Plats, page 46, records of Skagit County, Washington;

TOGETHER WITH the 16 foot wide vacated alley lying between Parcels A and B.

Situated in Skagit County, Washington

PARCEL C:

The West 3 feet of Lot 3, all of Lot 4 and the East 10 feet of Lot 5, Block 9, FIRST ADDITION TO THE CITY OF ANACORTES, according to the plat thereof, recorded in Volume 1 of Plats, page 24, records of Skagit County, Washington;

TOGETHER WITH the North Half of vacated alley adjacent to the West 3 feet of Lot 3, vacated by Ordinance No. 1200, as would attach by operation of law.

Situated in Skagit County, Washington

Chelan County Property

The land referred to in this Commitment is described as follows:

Lot 1, as delineated on Chelan County Binding Site Plan BSP-13, Chelan County, Washington, recorded June 3, 1991, in Book SP-8 of Short Plats, Page 70.

Yamhill County Property

A tract of land in Section 17 in Township 4 South, Range 4 West, City of McMinnville, Yamhill County, Oregon, being part of that tract of land described as Tract 5 of Deed to G.A. Nelson Oil Company recorded in Film Volume 92, Page 2429, Yamhill County, Deed Records, and being more particularly described as follows:



**EXHIBIT A**  
(Continued)

Beginning on the West margin of Baker Street at a point that is North 00°46'30" East, 29.18 feet from an iron pipe at highway Station 92+99.9, said point being the Southeast corner of said Tract 5; thence North 89°55'20" West, 182.43 feet along the South line of said Tract 5 to the Easterly margin of Adams Street; thence Northeasterly along said Easterly margin, 227 feet, more or less, to the South margin of 15th Street (Walnut Way); thence South 89°55'55" East, 82.71 feet along said South margin to the West margin of Baker Street; thence Southerly, 200 feet, more or less, along said West margin to the Point of Beginning.