

**Subordination, Non-Disturbance  
and Attornment Agreement**

**CENTRAL BANK & TRUST CO.**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") effective as of June 10<sup>th</sup>, 2022 (the "Effective Date") by and among **CENTRAL BANK & TRUST CO.**, a Kentucky banking corporation (the "Mortgagee" or "Lender"), with an address at 300 West Vine Street, Lexington, Kentucky 40507, **EASTLAND LEGACY CENTER, LLC**, a Delaware limited liability company (the "Landlord"), with an address at 321 Henry Street, Lexington, Kentucky 40508, and **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** (the "Tenant"), with an address at 150 East Main Street, Lexington, KY 40507.

**WITNESSETH THAT:**

**WHEREAS**, the Landlord is the fee owner of that certain real property located in Lexington, Fayette County, Kentucky, and more particularly described in Exhibit "A" attached hereto (the "Property"); and

**WHEREAS**, Lender is making a loan (the "Loan") to Landlord pursuant to a Loan Agreement dated \_\_\_\_\_, 2022 (the "Agreement") and a Commercial Note (the "Note"). The obligations under the Agreement and Note are secured by, among other things, a Commercial Mortgage and Assignment of Leases and Rents covering the Property (the "Mortgage") dated \_\_\_\_\_, 2022, and recorded or to be recorded in the real estate records of the aforesaid County and State, and are also secured by a separate Assignment of Rents and Leases, assigning Landlord's interest in all leases, rents and profits related to the Property (the "Assignment") dated \_\_\_\_\_, 2022, and recorded or to be recorded in the real estate records of the aforesaid County and State (the Agreement, Note, Mortgage, Assignment and any and all other documents executed in connection with the Loan, as the same may be amended, renewed, replaced or supplemented from time to time, collectively the "Loan Documents"); and

**WHEREAS**, Landlord, as successor in interest, entered into a certain Lease Agreement dated November 15, 2016 with Tenant, and as amended from time to time, (the "Lease"), whereby Landlord leased to Tenant all of the Property described in the Lease (the "Demised Premises") under the terms and conditions more particularly described therein; and

**WHEREAS**, the Mortgage provides that the Lease shall be subordinate to the Mortgage and the parties hereto desire to confirm such subordination and to establish rights of quiet and peaceful possession for the benefit of the Tenant under the Lease and to define the terms, covenants and conditions precedent for such rights.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained and intending to be legally bound, the parties hereto agree as follows:

1. **Subordination of Lease.** The Lease and the entire right, title and interest of the Tenant thereunder, including any or all options or rights to purchase, are and shall be subject and subordinate in all respects to the lien, right, title and terms of the Loan Documents and, in particular, the Mortgage and all advances made or to be made thereunder, including, without limitation, all renewals, modifications, replacements and extensions.

2. **Consent of Tenant.** The Tenant acknowledges notice of and consents to the Mortgage, the Assignment and the terms and conditions thereof. The Tenant agrees to continue making payments of rent and other amounts owed under the Lease to the Landlord, and to otherwise recognize the rights of the Landlord under the Lease, until notified otherwise in writing by the Mortgagee, as herein provided. The Landlord and Tenant agree that, if the Mortgagee delivers to the Tenant a notice stating that a default has occurred under the Loan Documents and requesting that all payments due under the Lease be thereafter paid directly to the Mortgagee, the Tenant shall thereafter make, and is hereby authorized and directed by the Landlord to make, all such payments directly to the Mortgagee, as provided in the Mortgage and the Assignment, without any duty of further inquiry on the part of the Tenant.

3. **Tenant's Duty to Notify Mortgagee of any Default Under the Lease.** The Tenant shall provide the Mortgagee with prompt notice of any asserted default against the Landlord under the Lease. In the event of any act or omission of the Landlord which would give the Tenant the right, immediately or after lapse of time, to cancel or terminate the Lease, or to claim a partial or total eviction or to exercise any other remedy, the Tenant shall not exercise such right or remedy until Mortgagee has received notice and a reasonable period of time to cure said default, said cure period commencing after the end of Landlord's cure period and after Mortgagee is entitled under the Mortgage and the Assignment to remedy same; provided that the Mortgagee shall give the Tenant notice of its intention to, and shall commence and continue with due diligence to, remedy such act or omission. Notwithstanding the foregoing, the Mortgagee shall have no obligation to remedy or to continue to remedy any such act or omission.

4. **Nondisturbance of Tenant.** Provided (i) the Lease shall at all times be in full force and effect, (ii) the term of the Lease has commenced, (iii) the Tenant is in actual Possession of the Demised Premises, and (iv) the Tenant shall not be in default thereunder or under this Agreement, then:

(a) The right of possession by the Tenant to the Demised Premises and any or all of the Tenant's rights under the Lease shall not be terminated by the Mortgagee (or by anyone claiming by, through or under the Mortgagee) in the exercise of any of the Mortgagee's rights under the Loan Documents.

(b) The Tenant shall not be named as a party defendant to any foreclosure of the lien of the Mortgage for the purpose of terminating the Lease, unless Mortgagee is required by any applicable law, order, regulation, rule of court or judicial decision to name the Tenant as a party defendant.

(c) If the Mortgagee or its successors or assigns comes into possession of the Property (through receivership, as a mortgagee in possession, or otherwise) or acquires the leaseholder interest of the Landlord by foreclosure of the Mortgage, or by proceedings under the Loan Documents, deed in lieu or otherwise, the Lease shall not be terminated by any such foreclosure or proceedings; and the Lease shall continue in full force and effect upon the Tenant's attornment, as hereinafter provided, as a direct lease between the Tenant and the Mortgagee upon all the terms, covenants, conditions and agreements set forth in the Lease and this Agreement.

(d) If the Property or the Landlord's leasehold interest therein is sold or otherwise disposed of pursuant to any right or power contained in the Loan Documents or as a result of proceedings thereon, the Lease shall not be terminated thereby, and the Foreclosure Purchaser of the Property or of the Landlord's leasehold interest or any person acquiring title thereto shall so acquire the Property or such interest, subject to the Lease; and the Lease shall continue in full force and effect upon the Tenant's attornment, as hereinafter provided, as a direct lease between the Tenant and any party acquiring title to the Landlord's leasehold interest therein, as aforesaid, upon all the terms, covenants, conditions and agreements set forth in the Lease.

5. **Attornment of Tenant to Mortgagee or Foreclosure Purchaser.** If the Mortgagee or any Purchaser at foreclosure or otherwise ("Foreclosure Purchaser") shall succeed to the rights of the Landlord under the Lease, then the Tenant shall attorn to and recognize the Mortgagee or such Foreclosure Purchaser as the Tenant's landlord under the Lease and the Mortgagee or such Foreclosure Purchaser shall be conclusively deemed to have accepted such attornment. Such attornment shall be self-operative and effective without execution and delivery of any further instrument, immediately upon the Mortgagee's or any Foreclosure Purchaser's succession to the interest of the Landlord under the Lease. Upon such attornment, the Lease shall continue in full force and effect as a direct lease between the Mortgagee or such Foreclosure Purchaser and the Tenant except that the Mortgagee or such Foreclosure Purchaser shall not be bound by any amendment or modification of the Lease made without the Mortgagee's written consent and except that the Mortgagee or such Foreclosure Purchaser shall not be liable to the Tenant:

(a) For any past act, default or omission on the part of the Landlord or for any accrued obligation of the Landlord under the Lease and the Tenant shall have no right to assert the same or any damages arising therefrom as an offset or defense against the Mortgagee or such Foreclosure Purchaser;

(b) For the commencement or completion of any construction or any contribution toward construction or installment of any improvements upon the Demised Premises, or any expansion or rehabilitation of existing improvements thereon, or for restoration of improvements following any casualty not required to be insured under the Lease or for the costs of any restoration in excess of the proceeds recovered under any insurance required to be carried under the Lease; or

(c) For any prepayment of rent, rental security or any other sums deposited with the Landlord under the Lease and not actually delivered to the Mortgagee or such Foreclosure Purchaser.

The Mortgagee or such Foreclosure Purchaser shall be liable to the Tenant under the Lease only for liabilities incurred during the Mortgagee's or such Foreclosure Purchaser's period of ownership. Notwithstanding anything to the contrary contained herein, officers, directors, shareholders, agents, servants and employees of the Mortgagee shall have no personal liability to Tenant and the liability of the Mortgagee shall be limited to the Mortgagee's interest in the Property.

6. **Modification of Lease.** Without the Mortgagee's prior written consent, which will not be unreasonably withheld, the Tenant shall not (a) amend or terminate the Lease, (b) prepay any rent or other sums due under the Lease for more than one month in advance of the due dates thereof, (c) voluntarily surrender the Demised Premises, or (d) assign the Lease or sublet the Demised Premises or any part thereof other than pursuant to the provisions of the Lease.

7. **Representations of Tenant.** The Tenant represents and warrants to the Mortgagee that (a) the Lease is in full force and effect, and the Tenant has no offsets or defenses to the payment of rent or other sums due thereunder, (b) no default exists under the Lease, (c) all rent and other sums due under the Lease have been paid in full, but have not been paid for more than one month in advance of the due dates thereof; (d) any right of first refusal or option to purchase is subordinate to Lender's rights under the Mortgage and Loan Documents; and (e) Tenant shall name Lender as "lender loss payee" under any and all insurance required by Tenant to purchase under the Lease.

8. **Confirmation of Lease Status.** The Landlord and the Tenant hereby agree that, upon the Mortgagee's request, they shall from time to time execute and deliver to the Mortgagee, and without charge to the Mortgagee, an estoppel certificate setting forth whatever information the Mortgagee may reasonably require to confirm the current status of the Lease including, without limitation, a confirmation that the Lease is and remains in full force and effect.

9. **Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to a party's address set forth above or to such other address as any party may give to the other in writing for such purpose.

10. **Changes in Writing.** No modification, amendment or waiver of, or consent to any departure from, any provision of this Agreement nor consent to any departure by the Landlord or Tenant therefrom will be effective unless made in a writing signed by the Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Landlord or Tenant in any case

will entitle the Landlord or Tenant to any other or further notice or demand in the same, similar or other circumstance.

11. **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

12. **Counterparts.** This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

13. **Definitions.** As used in this Agreement, the word "Tenant" shall mean the Tenant and/or the subsequent holder of an interest under the Lease, provided the interest of such holder is acquired in accordance with the terms and provisions of the Lease, the word "Mortgagee" shall mean the Mortgagee or any subsequent holder or holders of the Mortgage and the Assignment, and the word "Foreclosure Purchaser" shall mean any party other than the Mortgagee acquiring title to the Property by purchase at a foreclosure sale, by deed or otherwise. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Landlord, the Tenant and the Mortgagee, their heirs, legal representatives, successors and assigns.

14. **Governing Law and Jurisdiction.** This Agreement has been delivered to and accepted by the Mortgagee and will be deemed to be made in the State where the Mortgagee's office indicated above is located. **THIS AGREEMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE MORTGAGEE'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES.** The Landlord and the Tenant hereby irrevocably consent to the exclusive jurisdiction of any state or federal court in the county or judicial district where the Mortgagee's office indicated above is located; provided that nothing contained in this Agreement will prevent the Mortgagee from bringing any action to enforce any award or judgment against Landlord, Tenant or the collateral, or exercising any rights against any security or against any property of the Landlord or Tenant within any other county, state or other foreign or domestic jurisdiction. The Mortgagee, the Landlord and the Tenant agree that the venue provided above is the most convenient forum from the Mortgagee, the Landlord and the Tenant. The Landlord and the Tenant waive any objection to venue and any objection based on a more convenient forum that either may have in any action instituted under this Agreement.

15. **WAIVER OF JURY TRIAL.** **EACH OF THE LANDLORD, THE TENANT AND THE MORTGAGEE IRREVOCABLY WAIVE ANY AND ALL RIGHT THAT ANY MAY HAVE A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS**

**EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE LANDLORD, THE TENANT AND THE MORTGAGEE ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.**

The Landlord, the Tenant and the Mortgagee acknowledge that each has read and understood all the provisions of this Agreement, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

**[SIGNATURES ON THE FOLLOWING PAGE.]**







**TENANT:**

**LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT**

By: Linda Gorton  
Name: Linda Gorton  
Title: Mayor

STATE OF Kentucky )  
 )  
COUNTY OF Fayette )

Before me, a Notary Public in and for the State and County aforesaid, personally appeared Linda Gorton, known to me or proven by satisfactory evidence to be the Mayor of Lexington-Fayette Urban County Government, who executed and acknowledged the foregoing instrument as his/her free act and deed and the free act and deed of such government.

IN WITNESS WHEREOF, I have set my hand and seal this 10<sup>th</sup> day of June, 2022.

SEAL

Mackenzie Sommer  
NOTARY PUBLIC, State-at-Large  
My commission expires: 11/7/2023  
Notary ID # 635048

**EXHIBIT "A"**

[Insert Legal Description]