

UNOFFICIAL COPY



2121515011

Doc# 2121515011 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 08/03/2021 10:20 AM PG: 1 OF 9

Prepared by and after recording mail to:

UMPQUA BANK
P.O. Box 1580
Roseburg, OR 97470
Attention: Veronica Rubio

SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

By and among

UMPQUA BANK (Lender)

And

Weber-Stephen Products LLC (tenant)

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SUBORDINATION, ATTORNMEN AND NON-DISTURBANCE AGREEMENT

THIS AGREEMENT is entered into as of the date set forth below by and between the Lender and Tenant defined below.

The following capitalized terms are definitions for the purpose of this agreement:

- Lender:** Umpqua Bank, its subsidiaries and their successors and/or assigns
- Tenant:** WEBER-STEPHEN PRODUCTS LLC, a Delaware limited liability company
- Landlord:** RANCHO PALATINE, LLC, a Delaware limited liability company, as successor in interest to 250 Hicks Road Corporation, an Illinois corporation
- Lease:** Collectively, the Lease Agreement dated December 17, 2010, as amended by that certain First Amendment to Lease Agreement dated July 13, 2020, and that certain Second Amendment to Lease dated April 6, 2021
- Leased Premises:** The real property, and the entire building situated thereon, located at 306 East Helen Road, Palatine, Illinois 60067, which is legally described on Exhibit A attached hereto,
- Indenture:** The Mortgage and Security Agreement which encumbers the Property to secure a mortgage loan made by Lender to Landlord.

WITNESSETH:

WHEREAS, Lender is the owner and holder of the Indenture; and

WHEREAS, Tenant is the holder of the lessee's interest in the Lease covering the Leased Premises; and

WHEREAS, Tenant and Lender desire to confirm their understanding with respect to the Lease and the Indenture.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. Subordination. The Lease and the rights of Tenant thereunder are now and at all times hereafter shall be subject and subordinate to the Indenture and to all renewals, modifications or extensions thereof, but such renewals, modifications and extensions shall nevertheless be subject and entitled to the benefits of the terms of this Agreement.
2. Non-disturbance. So long as Tenant is not in default (beyond any period given

UNOFFICIAL COPY

Tenant to cure such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed; (a) Tenant's possession of the Leased Premises and Tenant's rights and privileges under the Lease, or any renewals, modifications, or extensions thereof which may be effected in accordance with any option granted in the Lease, shall not be diminished or interfered with by Lender; (b) Tenant's occupancy of the Leased Premises shall not be disturbed by Lender during the term of the Lease or any such renewals, modifications, or extensions thereof; and (c) Lender will not join Tenant as a party defendant for the purpose of terminating or otherwise affecting Tenant's interest and estate under the Lease in any action or proceeding brought by Lender for the purpose of enforcing any of its rights in the event of any default under the Indenture; provided however, Lender may join Tenant as a party in any such action or proceeding IF such joinder is necessary under any statute or law for the purpose of effecting the remedies available to the Lender under the Indenture, BUT ONLY for such purpose and NOT for the purpose of terminating the Lease.

3. Landlord Defaults/Cure. Notwithstanding anything in the Lease to the contrary, Tenant shall notify Landlord and Lender in writing of the occurrence of any default by Landlord and shall permit Lender a period of thirty (30) days from the date of such notice (the "Cure Period") in which to cure such default prior to proceeding to exercise any of the rights or remedies of Tenant under the Lease, including: (a) termination of the Lease, (b) abatement of rental payments due thereunder, or (c) performance of Landlord's covenants or obligations which Tenant asserts to be in default; provided, however, that the Cure Period granted to Lender herein: (i) shall be extended by any period of time during which Lender is diligently pursuing the cure of a default which cannot reasonably be expected to be cured within the initial thirty (30) day Cure Period, and (ii) in the event that possession of title is required in order to effectuate such cure, shall not be deemed to commence until after any period of time during which Lender is pursuing acquisition of title to the Leased Premises through foreclosure or otherwise, such period to include, without limitation, any period of time (A) during which Lender's acquisition of title to the Leased Premises is stayed by any proceeding in bankruptcy, any injunction or other judicial process, and (B) after acquisition of title by Lender during which Landlord or any other party is contesting the validity of the acquisition or Lender's title to the Leased Premises, provided that in no event shall Tenant be required to forbear from executing its remedies for a period in excess of sixty (60) days.

Notwithstanding the foregoing, Tenant agrees that so long as the Indenture (including any extensions or modifications thereof) encumbers the Leased Premises, Tenant shall have no right to terminate the Lease or withhold or abate any rentals due or to become due thereunder by reason of any of the provisions of the Lease as such provisions apply to property not included within the limits of the Leased Premises, provided, however, that nothing herein contained shall be construed as a waiver of Tenant's rights in personam nor remedies by way of injunctive relief against Landlord.

4. Attornment. If Lender shall become owner of the Leased Premises by reason of foreclosure or other proceedings brought by it, or by any other manner, or if Lender succeeds to the interests of the Landlord under the Lease, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option granted

UNOFFICIAL COPY

in the Lease, with the same force and effect as if Lender were the Landlord under the Lease, and Tenant does hereby attorn to Lender as its Landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto, PROVIDED, HOWEVER, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has become such owner or has succeeded to the interest of the Landlord under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

5. Limitation of Liability. If Lender shall become owner of the Leased Premises or if Lender shall succeed to Landlord's interest in the Lease, then with respect to the period of Lender's ownership of the Leased Premises or holding of such interest, but not thereafter, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease and Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant would have had against the Landlord if Lender had not become such owner or had not succeeded to Landlord's interest therein; PROVIDED, HOWEVER, that notwithstanding any provision in the Lease to the contrary, Lender shall not be:

(a) liable for any act or omission of any prior landlord arising under the Lease (including the Landlord) or subject to any offsets or defenses which Tenant may have against any prior landlord arising under the Lease (including the Landlord) except acts, omissions, offsets and defenses of which Lender has previously been given notice in accordance with the terms of this Agreement; or

(b) bound by any rents or additional rent which Tenant might have paid for more than the current month to any prior landlord (including the Landlord), or

(c) bound by any amendment or modification of the Lease made without its consent.

6. Right of First Refusal. So long as the Indenture (including all extensions, modifications and renewals thereof) encumbers the Property, Tenant agrees that any right of first refusal to purchase contained in the Lease and all rights of Tenant thereunder (a) are now and at all times hereafter shall be subject and subordinate to the Indenture, and (b) that foreclosure of the Indenture by Lender or a taking of a deed in lieu of foreclosure by Lender (collectively "foreclosure") will not give rise to any rights of Tenant under any such right of first refusal and Tenant will not attempt to assert any such rights in the event of foreclosure or assert any such rights against a purchaser at foreclosure; provided, however, foreclosure will not terminate any such right of first refusal which right shall continue to be applicable after foreclosure or a purchase at foreclosure, as applicable.

7. Unlawful Use, Medical Marijuana, Controlled Substances and Prohibited Activities. So long as the Indenture (including all extensions, modifications and renewals thereof) encumbers the Property, Lender is the owner of the Leased Premises, or Lender has succeeded to Landlord's interest in the Lease, Tenant shall not use or occupy or permit the use or occupancy of the Leased Premises in any manner that would be a violation of federal, state or

UNOFFICIAL COPY

local law or regulation (regardless of whether such use or occupancy is lawful under any conflicting law) relating to use, sale, possession, cultivation manufacture, distribution, or marketing of any controlled substances or other contraband or any law relating to the medicinal use or distribution of marijuana.

8. Definitions.

(a) The terms "holder of a mortgage" and "Lender" or any similar term herein or in the Lease shall be deemed to include Lender and any of its successors or assigns, including anyone who shall have succeeded to ownership of the Leased Premises or to Landlord's interests by, through or under foreclosure of the Indenture, or deed in lieu of such foreclosure or otherwise.

(b) The term "Landlord" shall be deemed to include Landlord, the holder of the lessor's interest in the Lease and the fee owner of the Leased Premises and the successors and assigns of any of the foregoing.

9. Rent Assignment. The Landlord has assigned to Lender all of Landlord's right, title and interest in the Lease by an Assignment of Rents and Leases ("Rent Assignment"). If in the future there is a default by the Landlord in the performance and observance of the terms of the Indenture, the Lender may at its option under the Rent Assignment require that all rents and other payments due under the Lease be paid directly to Lender. Upon notification to that effect by the Lender, Tenant agrees to pay any payments due under the terms of the Lease to the Lender in lieu of paying the same to Landlord. The Rent Assignment does not diminish any obligations of the Landlord under the Lease or impose any such obligations on the Lender.

10. Modifications; Successors and Assigns. This Agreement may NOT be modified except by a written agreement signed by the parties hereto or their respective successors in interest. This agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth in the acknowledgements below.

LENDER:

Umpqua Bank

By: _____

Name: HELENICA RUBIO

Title: SVP, Senior Private Wealth Advisor

Lender's Address:

PO Box 1580

Roseburg, Oregon 97470

STATE OF _____)

COUNTY OF _____)

I, _____ a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____ personally known to me to be the _____ of **Umpqua Bank**, they signed and delivered the said instrument pursuant to authority given of said corporation as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 2021.

Notary Public

Commission expires _____

see attached document

UNOFFICIAL COPY

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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.

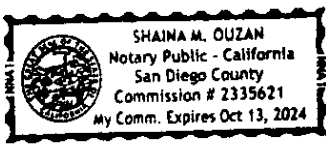
State of California

County of San Diego }

On July 28th 2021 before me, Shaina M. Ouzan, A Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Veronica Rubio
Name(s) of Signer(s)

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 [Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

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: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____

Partner – Limited General Partner – Limited General

Individual Attorney in Fact Individual Attorney in Fact

Trustee Guardian or Conservator Trustee Guardian or Conservator

Other: _____ Other: _____

Signer is Representing: _____ Signer is Representing: _____

UNOFFICIAL COPY

EXHIBIT "A" TO SNDA
(Legal Description of Leased Premises)

THE WEST 248.18 FEET OF THE EAST 670 FEET (EXCEPT THE NORTH 80.00 FEET THEREOF) OF THE NORTH 1/2 OF THAT PART OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE SOUTH LINE OF ARTHUR T. MCINTOSH AND COMPANY'S PALATINE LIGHT INDUSTRIAL DISTRICT, BEING A SUBDIVISION OF THE EAST 1/2 OF THE NORTH WEST 1/4 OF SECTION 23, AND WEST OF THE WEST LINE OF HICKS ROAD, ACCORDING TO THE PLAT OF DEDICATION RECORDED JANUARY 30, 1933 AS DOCUMENT NO 11194100 (EXCEPT THE SOUTH 35.0 FEET THEREOF TAKEN FOR HELEN ROAD) IN COOK COUNTY, ILLINOIS.

PIN: 02-23-114-043-0090 Vol. 149

COMMON ADDRESS: 306 East Helen Road, Palatine, Illinois 60067