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KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 04/25/2022 10:27 AM PG: 1 OF 15

SUBORDINATION, NON-DISTURBANCE ATTORNMENT AND ATTORNMENT AGREEMENT

Prepared by:
Nicholas M. Pyka, Esq.
Winstead PC
401 Congress Avenue
Suite 2100
Austin, Texas 78701

After recording mail to:

Chicago Title Company
National Projects Group
Attn: Kelly Naoum
23929 Valencia Blvd., Suite 304
Valencia, CA 91355

Property of Cook County Clerk's Office

6 of 9

cc# 2200727 MS

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is entered into as of April 8th, 2022 (the "Effective Date"), between **CITI REAL ESTATE FUNDING INC.** and **BARCLAYS CAPITAL REAL ESTATE INC.** (together with their respective successors, assigns, designees, co-lenders, participants and/or nominees, collectively hereinafter referred to as "Lender"), **U.S. BANK NATIONAL ASSOCIATION**, a national banking association ("Tenant"), and **EXCHANGERIGHT NET-LEASED PORTFOLIO 55 DST**, a Delaware statutory trust ("Landlord").

RECITALS

A. Lender and Landlord entered into a Loan Agreement dated as of April 8th, 2022, whereby Lender agreed to make a loan to Landlord in the aggregate amount of \$103,900,000.00 ("Loan") on the terms and conditions contained therein. Landlord executed and delivered to Lender one or more promissory notes (collectively "Note") dated as of April 8th, 2022, each payable to the order of a Lender in the aggregate original principal amount of \$103,900,000.00 with interest and principal payable as therein provided. The Loan and Note are secured by a mortgage, deed of trust or similar security instrument ("Mortgage") dated April 8th, 2022, and recorded with the real property records of Cook County, Illinois simultaneously herewith, encumbering, among other things, the property commonly known as 1100 W. Devon Avenue, Elk Grove Village, IL and 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 December 1, 2012, as amended by that certain First Amendment to Lease dated November 12, 2021 (as so amended, the "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) judicial or non-judicial 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 Landlord or any trustee under the Mortgage to Lender (or its designee or nominee) of a deed or

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other conveyance of Landlord's or such 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 with all rights, options, liens and charges created thereby (including, without limitation, any option or rights contained in the Lease, or otherwise existing, to acquire any or all of the Real Estate, or any superior leasehold interest therein) 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. Notwithstanding anything to the contrary in the Lease, Tenant hereby agrees and acknowledges that any option or right of Tenant to acquire any or all of the Real Estate (whether by option to purchase, right of first refusal, last refusal or otherwise) shall not be exercisable in the event of or in connection with any Foreclosure Event.

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 material 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 (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

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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, unless Lender or Successor Landlord had notice thereof; 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

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- (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

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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:

Citi Real Estate Funding Inc.
390 Greenwich Street 7th Floor
New York, New York 10013
Attention: CMBS Real Estate Legal Notices

and

Barclays Capital Real Estate Inc.
745 Seventh Avenue
New York, New York 10019
Attention: Adam Scott

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:

ExchangeRight Net-Leased Portfolio 55 DST
c/o Exchange Right Real Estate, LLC
1055 E. Colorado Blvd., Suite 310
Pasadena, California 91106

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.

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

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**COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387**

**COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387**

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

LENDER:

TENANT:

CITI REAL ESTATE FUNDING INC.

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

By: [Signature]
Name: Tina Lin
Title: Vice President

By: [Signature]
Name: Marsha Ward
Title: Vice President

LENDER:

LANDLORD:

BARCLAYS CAPITAL REAL ESTATE
INC.

EXCHANGERIGHT NET-LEASED
PORTFOLIO 55 DST,
a Delaware statutory trust

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this 5th day of April, in the year 2022, before me, a Notary Public in and for said State, personally appeared Tina Lin, known or identified to me to be the Vice President of CITI REAL ESTATE FUNDING INC., who executed the instrument, on behalf of said corporation.

Sofia Rivera

Notary Public



STATE OF OHIO)
) ss.
COUNTY OF WARREN)

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

Katherine A Haines

Notary Public



KATHERINE A HAINES
Notary Public, State of Ohio
My Comm. Expires Sept. 9, 2024

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 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

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this _____ day of _____, 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 BARCLAYS CAPITAL REAL ESTATE INC., who executed the instrument, on behalf of said corporation.

Notary Public

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

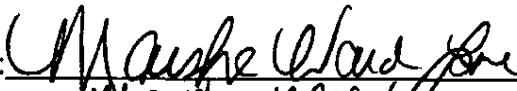
LENDER:

TENANT:

CITI REAL ESTATE FUNDING INC.

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

By: _____
Name: Tina Lin
Title: Vice President

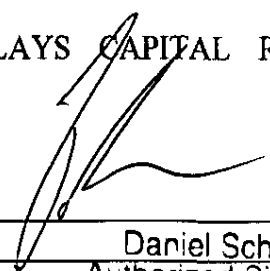
By: 
Name: Marsha Wade Lane
Title: Vice President

LENDER:

LANDLORD:

BARCLAYS CAPITAL REAL ESTATE
INC.

EXCHANGERIGHT NET-LEASED
PORTFOLIO 55 DST,
a Delaware statutory trust

By: 
Name: Daniel Schmidt
Title: Authorized Signatory

By: _____
Name: _____
Title: _____

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STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this _____ day of _____, in the year 2022, before me, a Notary Public in and for said State, personally appeared Tina Lin, known or identified to me to be the Vice President of CITI REAL ESTATE FUNDING INC., who executed the instrument, on behalf of said corporation.

Notary Public

STATE OF OHIO)
) ss.
COUNTY OF WARREN)

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

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)



KATHERINE A HAINES
Notary Public, State of Ohio
My Comm. Expires Sept. 9, 2024

On this _____ day of _____, 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

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this 5 day of April, in the year 2022, before me, a Notary Public in and for said State, personally appeared Dana Schmitt, known or identified to me to be the Authorized Signatory of BARCLAYS CAPITAL REAL ESTATE INC., who executed the instrument, on behalf of said corporation.

Notary Public

MERCEDES OTERO
NOTARY PUBLIC-STATE OF NEW YORK
No. 010T6348948
Qualified in Orange County
My Commission Expires 10-11-2024

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

LENDER:

TENANT:

CITI REAL ESTATE FUNDING INC.

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

By: _____
Name: _____
Title: _____

By: Martha Ward Lake
Name: Martha Ward Lake
Title: Vice President

LENDER:

LANDLORD:

BARCLAYS CAPITAL REAL ESTATE
INC.

EXCHANGERIGHT NET-LEASED
PORTFOLIO 55 DST,
a Delaware statutory trust

By: _____
Name: _____
Title: _____

By: [Signature]
Name: _____
Title: _____

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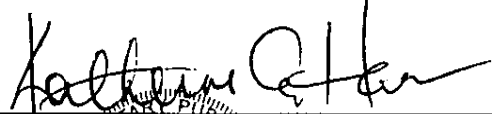
STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this ____ day of _____, 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 CITI REAL ESTATE FUNDING INC., who executed the instrument, on behalf of said corporation.

Notary Public


STATE OF OHIO)
) ss.
COUNTY OF WARREN)

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



Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)


KATHERINE A HAINES
Notary Public, State of Ohio
My Comm. Expires Sept 9, 2024

On this ____ day of _____, 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

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

See Attached

On this ____ day of _____, 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 BARCLAYS CAPITAL REAL ESTATE INC., who executed the instrument, on behalf of said corporation.

Notary Public

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ACKNOWLEDGMENT

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 Los Angeles

On March 31 before me, Shanel Cason, Public Notary
(insert name and title of the officer)

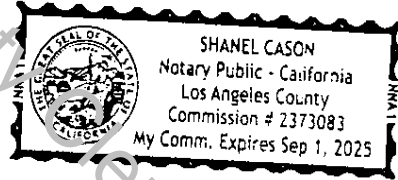
personally appeared Warren Thomas
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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 

(Seal)



Property Book County Clerk's Office

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Exhibit A

Legal Description of Real Estate

LOT 2 IN ROHLWING GROVE 1-A BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 1100 W. Devon Avenue, Elk Grove Village, IL

Pin: 08-31-400-019-0000

Property of Cook County Clerk's Office