

# UNOFFICIAL COPY

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Karen A. Yarbrough  
Cook County Clerk  
Date: 01/30/2024 03:19 PM Pg: 1 of 11

PREPARED BY:

Jodi L. Henninger, Esq.  
CLINGEN CALLOW & MCLEAN, LLC  
2300 Cabot Drive, Suite 500  
Lisle, Illinois 60532

RECORDING REQUESTED BY  
AND WHEN RECORDED, MAIL TO:

WHEATON BANK & TRUST COMPANY  
100 N. Wheaton Avenue  
Wheaton, Illinois 60187  
Attn: Joe Nitti, Senior Vice President

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** ("**Agreement**") is made as of the 25<sup>th</sup> day of January, 2024 ("**Effective Date**"), by and between **WHEATON BANK & TRUST COMPANY, N.A.**, a national banking association, whose mailing address is 100 N. Wheaton Avenue, Wheaton, Illinois 60187, its successors and assigns ("**Lender**"), and **VCA ANIMAL HOSPITALS, INC.**, a California corporation, whose address is 12401 West Olympic Blvd., Los Angeles, CA 90064 ("**Tenant**").

**RECITALS:**

A. Tenant is the lessee under that certain Retail Lease between Tenant and **RUBIN SKOKIE LLC**, an Illinois limited liability company ("**Landlord**"), dated January 4, 2024 (together with any amendments thereto, collectively, the "**Lease**"), whereby Landlord leases to Tenant and Tenant leases from Landlord approximately 3,450 square feet in that certain building located at 5211-5219 West Touhy Ave., Skokie, Illinois 60077 as more fully described in the Lease ("**Leased Premises**") described in Exhibit A attached hereto and made a part hereof ("**Property**").

B. Lender has made loans to Landlord ("**Loan**") which are secured by (i) a certain Mortgage, Security Agreement and Fixture Filing dated March 21, 2017, and recorded with the Cook County Recorder of Deeds on March 23, 2017, as Document No. 1708229087, (ii) a certain Assignment of Rents and Leases dated March 21, 2017, and recorded with the Cook County Recorder of Deeds on March 23, 2017, as Document No. 1708229088, and (iii) a Junior Mortgage, Security Agreement and Fixture Filing dated November 18, 2020, and recorded with the Cook County Recorder of Deed on January 15, 2021 as Document No. 2101542121, and (iv) other

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documents in connection with the loans from Landlord to Lender which encumber the Property (collectively, "**Loan Documents**").

C. As a condition to making the Loan, Lender requires that Tenant enter into this Agreement, Tenant acknowledging that Lender will rely on this Agreement in making the Loan to Landlord.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, Lender and Tenant agree as follows:

1. **Subordination.** Tenant covenants, stipulates and agrees that the Lease and all of Tenant's right, title and interest in and to the Leased Premises thereunder is hereby, and shall at all times continue to be, subordinate and made secondary and inferior in each and every respect to the Loan Documents and the lien thereof, to all of the terms, conditions and provisions thereof and to any and all advances made or to be made thereunder, so that at all times the Loan Documents shall be and remain a lien on the Leased Premises prior to and superior to the Lease for all purposes, subject to the provisions set forth herein. This subordination is to have the same force and effect as if the Loan Documents and such renewals, modifications, consolidations, replacements and extensions had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof.

2. **Non-Disturbance.** So long as Tenant complies with all of the terms, provisions, agreements, covenants, and obligations set forth in the Lease, Tenant's possession of the Leased Premises under said Lease shall not be disturbed or interfered with by Lender.

3. **Attornment.** If Lender or any other party succeeds to the interest of Landlord under the Lease in any manner, including but not limited to foreclosure, exercise of any power of sale, succession by deed in lieu or other conveyance (each, a "**Succession**"), Tenant will attorn to and be bound to such party (whether Lender or another party) upon such Succession and will recognize Lender or such other party as the landlord under the Lease. Such attornment is effective and self-operative without the execution of any further instrument. Tenant, upon request, will sign and deliver any instruments reasonably requested to evidence such attornment. Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease, and the obligations of Tenant thereunder as a result of any such foreclosure or trustee's sale.

4. **Limitation On Lender's Liability.** Upon any Succession, Lender or any other party which succeeds to the interest of Landlord (a "**Successor**") shall not be (a) liable for any act or omission of the Landlord under said Lease occurring prior to the Succession and not continuing thereafter for which Successor is liable for under the Lease and had prior notice thereof, (b) subject to any offsets or defenses which Tenant may have against the Landlord arising or occurring prior to the Succession, (c) bound by any rent or additional rent which Tenant may have paid to Landlord for more than the current month, (d) bound by any material amendment or modification of the Lease made without Lender's prior written consent which amendment or modification has the effect of increasing Landlord's obligations thereunder or decreasing or releasing Tenant's obligations thereunder, (e) liable for the retention, application or return of any security deposit paid by Tenant to Landlord unless such deposit is delivered to Lender, (f) liable for or obligated



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to pay for repairs, replacements, damages or allowances not made, performed or paid by the Landlord, (g) liable for the payment of any leasing commissions, the triggering event for which arose or occurred prior to the Succession, or (h) be obligated to cure any defaults of Landlord under the Lease which occurred prior to the date on which a Successor succeeded to Landlord's interest under the Lease and which Successor had prior notice thereof prior to the Succession. Any reference to Landlord includes all prior landlords under the Lease. Neither Lender nor any party taking under a Succession shall be liable for the performance of the obligations of the Landlord under the Lease, except for those obligations which arise during the period of Lender's or such entity's or person's ownership of the Property. Tenant further agrees that any such liability shall be limited to the interest of Lender or successor in the Property, and Tenant shall not be able to enforce any such liability against any other assets of Lender or such successor.

5. **Tenant's Warranty.** Tenant hereby represents, warrants and covenants to Lender that (a) attached is a true, correct and complete copy of the Lease, (b) there are no known defaults on the part of Landlord beyond any applicable notice and cure periods, (c) the Lease is a complete statement of the agreement of the parties with respect to the leasing of the Leased Premises, (d) the Lease is validly executed by Tenant and in full force and effect, (e) all conditions to the effectiveness or continuing effectiveness thereof required to be satisfied as of the Effective Date hereof have been satisfied, except the conditions set forth in Section 2 of the Lease, (f) Tenant shall not pay any rent or additional rent under the Lease more than one month in advance, (g) Tenant shall not amend, modify, cancel or terminate the Lease without Lender's prior written consent, and any attempted amendment, modification, cancellation or termination of the Lease without such consent shall be of no force or effect as to the Lender, except for (i) any amendment or modification which does not have the effect of increasing Landlord's obligations thereunder or decreasing Tenant's obligations thereunder, or (ii) any cancellation or termination of the Lease permitted by the express terms of the Lease, (h) Tenant shall not assign the Lease or sublet all or any portion of the Leased Premises (except as permitted by the terms of the Lease) without Lender's prior written consent, which consent shall not be unreasonably conditioned, withheld, or delayed, (i) this Agreement satisfies any requirement in the Lease relating to the granting of a non-disturbance agreement, and (j) Tenant shall deliver to Lender, from time to time, and within ten (10) business days from the date of request, a written statement in form and substance reasonably satisfactory to Lender and to Tenant certifying to certain matters relating to the Lease.

6. **Lender Cure Rights.** Before exercising any of its rights and remedies under the Lease for a Landlord default, Tenant will send written notice to Lender of the occurrence of any default by Landlord and will specify with reasonable clarity the events constituting such default, and thereupon Lender shall have the right (but not the obligation) to cure such default. If the referenced default would entitle Tenant to cancel the Lease or abate the rent payable thereunder, no such cancellation or abatement of rent will be effective unless Lender receives such notice and Lender fails (a) within thirty (30) days of the date of the receipt of such notice by Lender to cure or cause to be cured any default which can be cured by the payment of money and (b) to cure or cause to be cured within sixty (60) days of the receipt of such notice any default which cannot be cured by the payment of money ("*Non-Monetary Default*"); provided, however, that if the Non-Monetary Default is not capable of cure within such sixty (60) day period, no cancellation or abatement by Tenant will be effective as to Lender unless Lender fails within the original sixty (60) day period to commence and diligently prosecute the cure of such default to completion. Tenant will accept cure of any Landlord default by Lender. Nothing herein shall require Lender to cure any default by Landlord under the Lease.

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7. **Rent Payment.** Immediately upon written notice to Tenant (a) that Lender is exercising its rights under the Loan Documents following a default by Landlord under the Loan, or (b) of Lender's succeeding to the Landlord's interest under the Lease, Tenant agrees to pay all rents due under the Lease directly to Lender (in accordance with the Lease).

8. **Notices.** All notices to be given under this Agreement shall be in writing and shall be deemed served upon receipt by the addressee if served personally or, if mailed, upon the first to occur of receipt or the refusal of delivery as shown on a return receipt, after deposit in the United States Postal Service certified mail, postage prepaid, addressed to the address of Tenant or Lender appearing on page 1 of this Agreement. Such addresses may be changed by notice given in the same manner.

9. **Complete Agreement.** This Agreement supersedes, as between the parties hereto, all of the terms and provisions of the Lease which are inconsistent herewith.

10. **No Oral Modification.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

11. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. Nothing contained in this Agreement shall in any way affect or impair the lien created by the Loan Documents except as specifically set forth herein.

12. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

14. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute a single Agreement. Signatures delivered by facsimile or PDF shall be deemed to constitute original signatures for purposes of execution of this Agreement.

*[Signature Page Follows.]*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

**LENDER:**

**WHEATON BANK & TRUST, N.A.,**  
a national banking association

By: Joseph J. Nitty  
Name: Joseph J. Nitty  
Title: Senior Vice President

**TENANT:**

**VCA ANIMAL HOSPITALS, INC.,**  
a California corporation

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

CONSENTED TO BY LANDLORD AS OF THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024

**LANDLORD:**

**RUBIN SKOKIE LLC,**  
an Illinois limited liability company

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

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

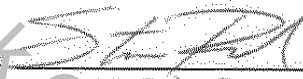
**LENDER:**

**WHEATON BANK & TRUST, N.A.,**  
a national banking association.

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

**TENANT:**

**VCA ANIMAL HOSPITALS, INC.,**  
a California corporation

By:  \_\_\_\_\_  
Print Name: STEVEN RICH  
Title: VICE PRESIDENT

CONSENTED TO BY LANDLORD AS OF THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024

**LANDLORD:**

**RUBIN SKOKIE LLC,**  
an Illinois limited liability company

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

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

**LENDER:**

**WHEATON BANK & TRUST, N.A.,**  
a national banking association

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

**TENANT:**


**VCA ANIMAL HOSPITALS, INC.,**  
a California corporation

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

CONSENTED TO BY LANDLORD AS OF THIS 25<sup>th</sup> DAY OF January, 2024

**LANDLORD:**

**RUBIN SKOKIE LLC,**  
an Illinois limited liability company

By:   
Print Name: SAMUEL RUBIN  
Title: MANAGER

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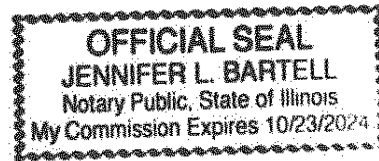
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Kendall )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Joseph F. Naldi, the Senior Vice President of **WHEATON BANK & TRUST, N.A.**, a national banking association (the "**Bank**"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior V. P., appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, as the free and voluntary act of the Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 11 day of January, 2024.

Jennifer Bartell  
Notary Public  
My Commission Expires: 10/23/24

[SEAL]



STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, the \_\_\_\_\_ of **VCA ANIMAL HOSPITALS, INC.**, a California corporation (the "**Company**"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, as the free and voluntary act of the Company, for the uses and purposes therein set forth.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[SEAL]



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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 JANUARY 12, 2024 before me, GEOFFREY WILLIAMS, NOTARY PUBLIC  
(insert name and title of the officer)

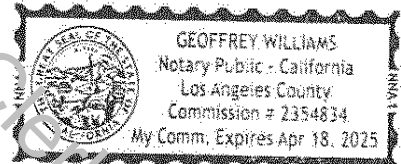
personally appeared STEVEN RICH  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)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



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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.

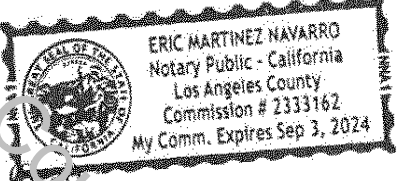
State of California )  
County of Los Angeles )

On 1/25/2024 before me, ERIC MARTINEZ NAVARRO, Notary Public, personally appeared Samuel L Rubin, 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 [Handwritten Signature]



OFFICE OF COOK COUNTY CLERK'S OFFICE

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

### Exhibit A

### Property

#### PARCEL 1:

THE EAST 220 FEET (EXCEPT THE EAST 33 FEET THEREOF DEDICATED FOR PUBLIC STREET (LAPAMIE AVENUE) BY PLAT OF DEDICATION RECORDED MARCH 22, 1976 AS DOCUMENT NO. 23424206) OF LOT 1 OF ASSESSOR'S DIVISION, ALSO KNOWN AS LOT 14 OF COUNTY CLERK'S DIVISION, BEING THE NORTH 3 CHAINS OF NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

THE WEST 100 FEET OF THE EAST 320 FEET OF LOT 1 OF ASSESSORS DIVISION ALSO KNOWN AS LOT 14 IN COUNTY CLERKS DIVISION IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

THE WEST 120 FEET OF THE WEST 220 FEET OF THE EAST 440 FEET OF LOT 1 OF THE ASSESSOR'S DIVISION; ALSO KNOWN AS LOT 14 OF THE COUNTY CLERK'S DIVISION, BEING THE NORTH 3 CHAINS OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Tax Index Number: 10-33-101-104-0000

Property Address: 5201-5229 W. Touhy Avenue, Skokie, Illinois 60077