[TRUIST CLOSING COUNSEL TO MAKE MODIFICATIONS TO CONFORM TO APPLICABLE STATE LAW REQUIREMENTS, INCLUDING ANY NECESSARY FOR NOTARY/ACKNOWLEDGEMENT AND RECORDING IF THIS AGREEMENT IS TO BE RECORDED. RECORDING IS REQUIRED IF THE UNDERLYING LEASE (OR A MEMORANDUM) HAS BEEN RECORDED.]

**[NOTE: snda FOR USE FOR ARMS’ LENGTH 3RD PARTY TENANT; FOR OWNER OCCUPIED OR RELATED PARTY LEASES CONSULT LEGAL.]**

**PLEASE SEND COPIES OF FULLY EXECUTED SNDAS TO:** **documentbank@SunTrust.com**

 **After Recording Please Return To:**

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

 This SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT (this *"***Agreement***"*) is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ (the *"***Effective Date***"*), between TRUIST BANK, a North Carolina banking corporation, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[*insert address of CRE loan administration office where loan will be serviced, Attn: Loan Servicing*] (*"***Administrative Agent***"*), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*"***Tenant***"*), with reference to the following facts:

 A. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*"***Landlord***"*), owns, or is the contract purchaser of, the real property located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (such real property, including all buildings, improvements, structures and fixtures located thereon, *"***Landlord's Premises***"*), as more particularly described in **Schedule A**.

 B. Administrative Agent, Landlord and certain financial institutions party thereto from time to time, as lenders (together with Administrative Agent, collectively the “**Lenders**”) are parties to that certain **[Construction]** Loan Agreement dated \_\_\_\_\_\_, 20\_\_ (as amended, increased, renewed, extended, spread, consolidated, severed, restated or otherwise changed from time to time, the “Loan Agreement”) for a loan to Landlord in the **[original]** principal amount of **[up to]** $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the *"***Loan***"*) The Loan is further evidenced by one or more promissory notes more particularly described therein (as they may have been or may be from time to time renewed, extended, amended, supplement or restated, hereinafter the “**Notes**”).

C. To secure the Loan, Landlord has encumbered Landlord's Premises by entering into that certain **[Deed to Secure Debt/Deed of Trust/Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing]** dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, in favor of Administrative Agent [*for NC and other Deed of Trust states, replace with “ in favor of \_\_\_\_\_, as Trustee for the benefit of Administrative Agent as beneficiary”]* (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "**Security Instrument**") [to be] recorded [on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at Book \_\_\_\_\_\_\_\_\_\_, Page \_\_\_\_\_\_\_\_\_\_\_,] in the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_(the *"***Records***"*).

 D. Pursuant to a Lease, dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, as amended on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ (together with all rights, remedies and options of Tenant thereunder and all right, title and interest of Tenant in and to the Landlord’s Premises, the *"***Lease***"*); Landlord demises to Tenant **[a portion of]** Landlord's Premises (*"***Tenant's Premises***"*). Tenant's Premises are commonly known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 [E. A memorandum or short form of the Lease [is to be recorded in the Records prior to the recording of this Agreement.] [was recorded in the Records on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at Book \_\_\_\_\_\_, Page \_\_\_\_\_.]

 F. Tenant and Administrative Agent desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

 **NOW, THEREFORE,** for good and sufficient consideration, Tenant and Administrative Agent agree:

 1. *Definitions.*

 The following terms shall have the following meanings for purposes of this Agreement.

 1.1 *Construction-Related Obligation*. A *"***Construction-Related Obligation***"* means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at Landlord's Premises, including Tenant's Premises. "Construction-Related Obligations" shall not include: (a) reconstruction or repair following fire, casualty or condemnation except to the extent such reconstruction or repair requires funds in excess of the insurance or condemnation proceeds specifically allocable to the Landlord’s Premises and arising out of such fire, casualty or condemnation that have actually been received by Administrative Agent or Successor Landlord, as applicable; or (b) day-to-day maintenance and repairs.

 1.2 *Foreclosure Event*. A *"***Foreclosure Event***"* means: (a) foreclosure under the Security Instrument; (b) any other exercise by Administrative Agent of rights and remedies (whether under the Security Instrument or under applicable law, including bankruptcy law) as holder of the Loan and/or the Security Instrument, as a result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Administrative Agent (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

 1.3 *Former Landlord*. A *"***Former Landlord***"* means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

 1.4 *Offset Right*. An *"***Offset Right***"* means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease.

 1.5 *Rent*. The *"***Rent***"* means any fixed rent, base rent or additional rent under the Lease.

 1.6 *Successor Landlord.* A *"***Successor Landlord***"* means any party that becomes owner of Landlord's Premises as the result of a Foreclosure Event.

 1.7 *Termination Right.* A *"***Termination Right***"* means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

 2. *Subordination.*

 The Lease shall be, and shall at all times remain, subject and subordinate to the Security Instrument, the lien imposed by the Security Instrument, and all advances made under or secured by the Security Instrument.

 3. *Nondisturbance, Recognition and Attornment.*

 3.1 *No Exercise of Security Instrument Remedies Against Tenant.* So long as the Lease has not been terminated on account of Tenant's default that has continued beyond applicable cure periods (an *"***Event of Default***"*), Administrative Agent shall not name or join Tenant as a defendant in any exercise of Administrative Agent's rights and remedies arising upon a default under the Security Instrument unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Administrative Agent 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.

 3.2 *Nondisturbance and Attornment.* If the Lease has not been terminated on account of an Event of Default by Tenant, then, when Successor Landlord takes title to Landlord's Premises: (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) 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.

 3.3 *Further Documentation.* The provisions of this Article shall be effective and self-­operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

 4. *Protection of Successor Landlord.*

 Notwithstanding anything to the contrary in the Lease or the Security Instrument, Successor Landlord shall not be liable for or bound by any of the following matters:

## 4.1 *Claims Against Former Landlord.* Any Offset Right that Tenant may have against any

## Former Landlord relating to any event or occurrence before the date of attornment, and any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment, or any act, omission, default, misrepresentation, or breach of warranty, of Former Landlord or obligations accruing prior to the date of attornment. (The foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease.)

 4.2 *Prepayments.* Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

 4.3 *Payment; Security Deposit.* Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Administrative Agent. This paragraph is not intended to apply to Landlord's obligation to make any payment that constitutes a "Construction-Related Obligation."

 4.4 *Modification, Amendment, or Waiver.* Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Administrative Agent's written consent.

 4.5 *Surrender, Etc.* Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

 4.6 *Construction-Related Obligations.* Any Construction-Related Obligation of Former Landlord.

 5. *Exculpation of Successor Landlord.*

#  Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in Landlord's Premises from time to time, including insurance and condemnation proceeds, Successor Landlord's interest in the Lease, and the proceeds from any sale or other disposition of Landlord's Premises by Successor Landlord (collectively, *"Successor Landlord's Interest"*). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord. Further, neither Administrative Agent nor any Lender nor Successor Landlord shall have any liability or responsibility under or pursuant to the terms of the Lease and/or this Agreement after it ceases to own a fee interest in or to the Landlord’s Premises.

 6. *Administrative Agent's Right to Cure.*

 6.1 *Notice to Administrative Agent.* Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right or Offset Right, Tenant shall provide Administrative Agent with notice of the breach or default by Landlord giving rise to same (the *"***Default Notice***"*) and, thereafter, the opportunity to cure such breach or default as provided for below.

 6.2 *Administrative Agent's Cure Period.* After Administrative Agent receives a Default Notice, Administrative Agent shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Administrative Agent shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Administrative Agent agrees or undertakes otherwise in writing.

 6.3 *Extended Cure Period.* In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided only that Administrative Agent undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Administrative Agent's cure period shall continue for such additional time (the *"***Extended Cure Period***"*) as Administrative Agent may reasonably require to either (a) obtain possession and control of Landlord's Premises and thereafter cure the breach or default with reasonable diligence and continuity or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

 7. *Confirmation of Facts. [Note: All or part of this is optional as factually appropriate for new lease, for construction loans or with separate current estoppels]*

 Tenant represents to Administrative Agent and to any Successor Landlord, in each case as of the Effective Date:

 7.1 *Effectiveness of Lease.* The Lease is in full force and effect, has not been modified, and constitutes the entire agreement between Landlord and Tenant relating to Tenant's Premises. Tenant has no interest in Landlord's Premises except pursuant to the Lease. No unfulfilled conditions exist to Tenant's obligations under the Lease.

 7.2 *Rent.* Tenant has not paid any Rent that is first due and payable under the Lease after the Effective Date.

 7.3 *No Landlord Default.* To the best of Tenant's knowledge, no breach or default of or under the Lease by Landlord exists and no event has occurred that, with the giving of notice, the passage of time or both, would constitute such a breach or default.

 7.4 *No Tenant Default.* Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease.

 7.5 *No Termination.* Tenant has not commenced any action nor sent or received any notice to terminate the Lease. Tenant has no presently exercisable Termination Right(s) or Offset Right(s).

 7.6 *Commencement Date.* The *"Commencement Date"* of the Lease was \_\_\_\_.

 7.7 *Acceptance.* Except as set forth in **Schedule B** (if any) attached to this Agreement: (a) Tenant has accepted possession of Tenant's Premises; and (b) Landlord has performed all Construction-Related Obligations related to Tenant's initial occupancy of Tenant's Premises and Tenant has accepted such performance by Landlord.

 7.8 *No Transfer.* Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein.

 7.9 Satisfaction of Construction-Related Obligations. Landlord has satisfied in full all Construction-Related Obligations required of Landlord under the Lease.

 8. *Miscellaneous.*

 8.1 *Notices.* All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and five (5) business days after being sent by certified mail (return receipt requested).

 8.2 *Successors and Assigns.* This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Administrative Agent assigns the Security Instrument, 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.

 8.3 *Entire Agreement.* This Agreement constitutes the entire agreement between Administrative Agent and Tenant regarding the subordination of the Lease to the Security Instrument and the rights and obligations of Tenant and Administrative Agent as to the subject matter of this Agreement.

 8.4 *Interaction with Lease and with Security Instrument.* If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Security Instrument. Administrative Agent confirms that Administrative Agent has consented to Landlord's entering into the Lease.

 8.5 *Administrative Agent's Rights and Obligations.* Except as expressly provided for in this Agreement, Administrative Agent 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 Administrative Agent under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

 8.6 *Interpretation; Governing Law.* The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the **[Commonwealth/District/State of \_\_\_\_\_\_\_\_]**, excluding its conflict of laws principles.

 8.7 *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.

 8.8 *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.

 8.9 *Due Authorization.* Each of the parties hereto represents that it has full authority to enter into this Agreement and that its entry into this Agreement has been duly authorized by all necessary actions.

 8.10 *Consequential Damages*. In no event shall either party hereto and/or its successors and assigns be liable for any incidental, consequential, punitive, or exemplary damages in connection with this Agreement, the Lease and the Security Instrument.

 8.11 *Payments to Administrative Agent after* *Default under Security Instrument*. Landlord’s interest under the Lease and the rent and all other sums due thereunder have been assigned to Administrative Agent as part of the security for the Loan, and In the event that Administrative Agent notifies Tenant of a default under the Security Instrument and demands that Tenant pay its rent and all other sums due under the Lease directly to Administrative Agent, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Administrative Agent, without any obligation on the part of Tenant to provide notice to or obtain the consent of Landlord or to determine whether a default actually exists under the Security Instrument and notwithstanding any contrary instructions of or demands from Landlord. Until Tenant receives any such request from Administrative Agent, Tenant will pay all of said rent to Landlord in accordance with the terms of the Lease.

[*Signatures Commence on Following Page*]

IN WITNESS WHEREOF, this Agreement has been duly executed and sealed by Administrative Agent and Tenant as of the Effective Date.

 **ADMINISTRATIVE AGENT**

 **TRUIST BANK**,

 a North Carolina banking corporation

 By: (SEAL)

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[insert applicable state notary/acknowledgement]

 **TENANT**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,

 a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By: (SEAL)

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[insert applicable state notary/acknowledgement]

**LANDLORD'S CONSENT**

Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Security Instrument or the Lease. The above Agreement discharges any obligations of Administrative Agent under the Security Instrument and related loan documents to enter into a nondisturbance agreement with Tenant. Landlord is not a party to the above Agreement. Landlord hereby authorizes and directs Tenant to abide by any written notice from Administrative Agent or Successor Landlord to pay the rents and all other sums due under the Lease directly to Administrative Agent or Successor Landlord. Landlord waives all claims against Tenant for any sums so paid at Administrative Agent or Successor Landlord's direction. Tenant may conclusively rely upon any written notice Tenant receives from Administrative Agent or Successor Landlord notwithstanding any claims by Landlord contesting the validity of any term or condition of such notice, including any default claimed by Administrative Agent or Successor Landlord, and Tenant shall have no duty to inquire into the validity or appropriateness of any such notice.

 **LANDLORD**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,

 a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By: (SEAL)

 Name:

 Title:

[insert applicable state notary/acknowledgement]

**GUARANTOR'S CONSENT**

Each of the undersigned, a guarantor of Tenant's obligations under the Lease (a *"Guarantor"*), consents to Tenant's execution, delivery and performance of the foregoing Agreement. From and after any attornment pursuant to the foregoing Agreement, that certain Guaranty dated \_\_\_\_\_\_\_\_\_\_, \_\_\_\_ (the *"Guaranty"*) executed by Guarantor in favor of shall automatically benefit and be enforceable by Successor Landlord with respect to Tenant's obligations under the Lease as affected by the foregoing Agreement. Successor Landlord's rights under the Guaranty shall not be subject to any defense, offset, claim, counterclaim, reduction or abatement of any kind resulting from any act, omission or waiver by any Former Landlord for which Successor Landlord would, pursuant to the foregoing Agreement, not be liable or answerable after an attornment. The foregoing does not limit any waivers or other provisions contained in the Guaranty. Guarantor confirms that the Guaranty is in full force and effect and Guarantor presently has no offset, defense (other than any arising from actual payment or performance by Tenant. which payment or performance would bind a Successor Landlord under the foregoing Agreement), claim, counterclaim, reduction, deduction or abatement against Guarantor's obligations under the Guaranty.

 **GUARANTOR**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,

 a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By: (SEAL)

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

[insert applicable state notary/acknowledgement]

**SCHEDULE A**

 Description of Landlord's Premises