

After recording, return to:

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Tax Parcel No. \_\_\_\_\_

### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this “Agreement”) is made as of [\_\_\_\_\_, 202[\_\_\_]], by and among **UNITED COMMUNITY BANK**, a South Carolina state-chartered bank (together with its successors and assigns, “Bank”), [\_\_\_\_\_] (together with its successors and assigns, “Tenant”), and [\_\_\_\_\_] (“Owner”).

#### **RECITALS:**

**WHEREAS**, Owner is the owner of the property described in Exhibit A attached hereto and incorporated herein by reference (the “Property”).

**WHEREAS**, Bank has made a loan (the “Loan”) to Owner, and such Loan is secured by, among other things, that certain [Mortgage and Security Agreement<sup>1</sup>] given by Owner, as mortgagor, to Bank, as mortgagee, dated [\_\_\_\_\_] (as amended from time to time, hereinafter referred to as the “Mortgage”), which constitutes a first lien against the Property.

**WHEREAS**, pursuant to that certain [lease<sup>2</sup>] dated [\_\_\_\_\_] (together with any and all modifications or amendments at any time thereto and assignments thereof, hereinafter referred to as the “Lease”) between Owner, as landlord, and Tenant, as tenant, Owner is leasing to Tenant [*FOR MULTI-TENANT PROPERTIES: a certain portion of the Property*] [*FOR SINGLE TENANT PROPERTIES: the Property*] and the improvements located thereon (the “Leased Premises”) at the rental rates and upon the terms and conditions set forth in said Lease.

**WHEREAS**, Bank desires to assure Tenant possession of the Leased Premises upon the terms and conditions set forth in the Lease for the entire original term and any optional renewal term therein provided without regard to any default under the terms of the Mortgage.

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<sup>1</sup> Insert the exact name of the security instrument

<sup>2</sup> Insert the exact name of the lease

**WHEREAS**, Tenant desires to assure Bank that Tenant will attorn to Bank under the circumstances set forth in this Agreement and under the Lease.

**WHEREAS**, Bank desires to assure Tenant that its possession of the Leased Premises and rights under the Lease will not be disturbed so long as Tenant is not in default under the Lease or the terms of this Agreement.

**WHEREAS**, Tenant has agreed to subordinate the Lease and its interest therein to the Mortgage.

**AGREEMENT:**

**NOW, THEREFORE**, in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by each of the parties herein to the other, of other good and valuable consideration, and of the mutual promises contained herein, the receipt and sufficiency of which is hereby acknowledged by each of the parties, Bank, Tenant and Owner, intending to be legally bound, covenant and agree as follows:

1. **SUBORDINATION.** Anything to the contrary in the Lease notwithstanding, the Lease, and all rights of Tenant thereunder, are and shall be subject and subordinate in all respects to the Mortgage, to each and every advance made or hereafter to be made under the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage. Notwithstanding any provisions of the Lease to the contrary, and for so long as the Mortgage and any modification or extensions thereof shall remain unsatisfied, the Mortgage, this Agreement, the Lease and the rights of Tenant under the Lease shall be superior to any subsequent financing or other encumbrances with a party other than Bank, its successors or assigns, with respect to the Leased Premises. Tenant and Owner each agree that it will not, at any time prior to satisfaction of the Mortgage, voluntarily subordinate the Lease to any mortgage or encumbrance to a party other than Bank, its successors or assigns, respecting the Leased Premises.

2. **RIGHT OF BANK TO CURE DEFAULTS.** Notwithstanding anything to the contrary in the Lease, if any default shall occur under the Lease which would give Tenant the right (or under which Tenant might claim the right) to cancel or terminate the Lease or abate the rent payable thereunder, Tenant shall promptly give written notice thereof to Bank specifying the nature of such default. Bank shall have the right (but not the obligation) to cure such default, and Tenant shall not cancel or terminate the Lease or abate the rent payable thereunder by reason of such default until it has afforded Bank thirty (30) days after Bank's receipt of such notice to cure such default, or if such default is not reasonably capable of being cured within such thirty (30) day period, a reasonable period of time in addition thereto if Bank has commenced and is diligently pursuing such cure. In the event any such default is so cured, the Lease shall not be deemed to be in default, and Tenant's duties thereunder shall continue unabated. Nothing herein shall be deemed to be a duty on the part of Bank to cure any such default, but only a right on its behalf.

3. **TENANT TO ATTORN TO BANK; LIMITATION ON LIABILITY.**

(A) In the event that Bank shall succeed to the interest of Owner under the Lease, the Lease shall continue with the same force and effect as if Bank, as landlord, and Tenant had entered into a Lease for a term equal to the then unexpired term of the Lease, containing the same terms, conditions and covenants as those contained in the Lease, including, but not limited to, any rights of renewal therein, and Tenant shall be bound to Bank under all of the provisions of the Lease for the remaining term thereof with the same force and effect as if Bank were the landlord under the Lease, and Tenant hereby attorns and agrees to attorn to, accept and recognize Bank as its landlord. Such attornment shall be effective and self-operative without the execution of any further instruments by any party hereto immediately upon the succession of Bank to the interest of Owner under the Lease; provided, however, that Tenant will, upon request by Bank or any successor to Bank, execute a written agreement attorning to Bank or such successor. Nothing contained herein shall in any manner limit or restrict the right of Bank to have a receiver appointed or to seek any other appropriate relief or remedy under any one or more of the loan documents relating to the Loan. The respective rights and obligations of Tenant and Bank

upon such attornment and their relationship shall be as tenant and landlord respectively, for the remaining term of the Lease, including any renewal periods set forth in the Lease.

(B) In the event that Bank shall succeed to the interest of Owner in the Property (whether by deed, foreclosure, deed in lieu of foreclosure or otherwise) or under the Lease, Bank agrees to be bound to Tenant under all of the terms, covenants and conditions of the Lease; provided, however, that Bank shall not be:

(1) liable for any act, omission, or default of Owner or any prior landlord other than a Continuing Default. As used herein, a “Continuing Default” shall mean a non-monetary default by Owner under the Lease (i) that is not personal to Owner or any predecessor to Owner, (ii) that began prior to Bank obtaining possession to or title to the Property, (iii) that is ongoing and continuing following Bank obtaining possession or title to the Property, (iv) that is reasonably susceptible of being cured by Bank, and (v) of which Tenant provided Bank with notice and an opportunity to cure as provided hereunder; or

(2) subject to any credits, claims, offsets or defenses which Tenant might have against Owner or any prior landlord, except for offsets (i) resulting from a Continuing Default, (ii) which are expressly set forth in the Lease, and (iii) of which Tenant has given Bank notice of Tenant’s intent to exercise; or

(3) liable for the retention, application or return of any security deposit to the extent not paid over to Bank;

(4) bound by any prepayment of more than one (1) month’s minimum rental under the Lease to any prior landlord (including Owner);

(5) bound by an amendment or modification to the Lease, or any waiver of any terms of the Lease made or given without Bank’s written consent, that would (i) decrease the rental amount due under the Lease, (ii) reduce the term of the Lease, (iii) materially decrease the rights of Landlord under the Lease, (iv) materially increase the obligations of Landlord under the Lease, or (v) provide Tenant with any additional rights of cancellation or termination; or

(6) bound by any cancellation, termination or surrender of the Lease, in whole or in part, on the part of Owner or any prior landlord made or given without Bank’s written consent.

4. **TENANT’S AGREEMENTS.** Tenant agrees that (a) it shall not, without the express consent of Bank, prepay any minimum rental under the Lease to Owner in excess of one (1) month’s advance minimum rental; (b) Tenant shall have no right to appear in any foreclosure action under the Mortgage unless required by applicable law, in which case the Lease shall be recognized pursuant to the terms of this Agreement; (c) this Agreement satisfies any requirement in the Lease relating to the granting of a non-disturbance agreement; and (d) Tenant shall promptly deliver to Bank upon request, but no more than once every ninety (90) days, a signed estoppel containing such certifications as may be reasonably requested by Bank.

5. **ASSIGNMENT OF LEASES.** Tenant consents to the assignment of the Lease and the rents payable thereunder contained in the Mortgage or any other recorded document such as an assignment of rents executed by Owner in favor of Bank (the “Assignment”). Tenant and Owner agrees that if Bank, pursuant to the Assignment, and whether or not it becomes a mortgagee in possession, shall give notice to Tenant that Bank has elected to require Tenant to pay to Bank the rent and other charges payable by Tenant under the Lease, Tenant shall, until Bank shall have canceled such election, thereafter pay to Bank all rent and other sums payable under the Lease. Any such payment shall be made notwithstanding any right of setoff, defense, or counterclaim which Tenant may have against Landlord, or any right to terminate the Lease.

6. **NON-DISTURBANCE PROVISIONS.** In the event the Mortgage shall be foreclosed, or in the event Bank otherwise succeeds to the interest of Owner under the Lease, and provided that Tenant is not then in default under the Lease and Tenant complies with its obligations under this Agreement, the Lease shall not terminate on account of such foreclosure or other such succession, by operation of law or otherwise, so long as Tenant continues to pay the rents reserved in the Lease and otherwise does not become in default under the Lease.

7. **BANK'S APPROVAL OR CONSENT.** Wherever Bank's consent or approval under the Lease is required, Bank agrees to not unreasonably withhold such consent, and it is understood and agreed that Bank shall not be deemed to have unreasonably withheld such consent or approval, wherein Bank's reasonable discretion to give such approval or consent would reduce the value, decrease the size or impair the structural integrity of the Leased Premises and/or the Property or otherwise impair the security granted under the Mortgage.

8. **OWNER'S AND TENANT'S CERTIFICATION**<sup>33</sup>. Owner and Tenant hereby confirm and certify to Bank the following:

(A) That the Lease is in full force and effect and has not been modified, altered or amended and constitutes a complete statement of the agreement between Owner and Tenant with respect to the leasing of the Leased Premises.

(B) That Tenant has accepted possession of and is occupying the Leased Premises.

(C) That the Leased Premises have been completed in all respects and that Owner has complied with all obligations on its part with respect to the construction, fixturing and equipping of the same.

(D) The Lease term commenced on [ ] and expires on [ ], subject to renewals as contained in the Lease.

(E) That rentals are payable monthly in advance under the Lease.

(F) Neither Owner nor Tenant have no notice of a prior assignment, hypothecation or pledge of rents or the Lease.

(G) That, as of the date hereof, Tenant has no charge, lien or claim of offset or credit against rentals or other charges coming due under the Lease, nor have rentals been prepaid except as expressly provided by the terms of the Lease.

(H) That Tenant has been notified that the Lease has been or will be assigned to Bank as security for the Loan, and Tenant has no notice of a prior assignment, hypothecation or pledge of rents or the Lease.

(I) That there are no actions, either voluntary or involuntary, pending against Tenant under the bankruptcy laws of the United States, or under the bankruptcy laws of any state.

(J) That to the knowledge of Owner and Tenant, no party to the Lease is in default thereunder.

(K) That all rentals due or coming due under the Lease are currently paid or due to be paid to Owner.]

9. **SURVIVAL.** This instrument shall survive any foreclosure of the Leased Premises, or any other succession by Bank to the interest of Owner with respect to the Leased Premises, and shall remain in full

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<sup>33</sup> To be used only when the Lease is in effect – otherwise delete

force and effect until the end of the Lease term and all exercised optional extension periods, or until satisfaction of the Mortgage and all renewals, modifications, consolidations, replacements, and extensions of the Mortgage, whichever shall first occur.

10. **LIMITATION OF BANK'S LIABILITY.** Tenant shall look solely to the Leased Premises for recovery of any judgment or damages from Bank, its successors and assigns, and neither Bank nor its successors or assigns shall have any personal liability, directly or indirectly, under or in connection with the Lease or this Agreement or any amendment or amendments to either thereof made at any time or times, heretofore or hereafter, and Tenant hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation on liability applicable to Bank, its successors and assigns, provided by law or by any other contract, agreement or instrument.

11. **APPROVALS.** Owner has joined in this Agreement for the purpose of expressing its consent and agreement to be bound by the provisions hereof.

12. **NOTICES.** All notices or demands hereunder shall be sufficient if sent by United States registered or certified mail, postage prepaid, or by nationally recognized overnight delivery service with proof of delivery, in either instance addressed as follows:

**If to Bank:** United Community Bank  
[\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_]

With a copy to Legalsupport@ucbi.com

**If to Tenant:** [\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_]

**If to Owner:** [\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_]

or such other address as any party may hereafter designate in writing to the other.

13. **BINDING EFFECT.** This Agreement and all of the covenants, terms, conditions and obligations herein contained are covenants running with the land (the Property and the Leased Premises) and binding thereon and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and successors in title to the Leased Premises and successors in title to the Property, including without limitation, any co-lender, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure.

14. **INTERPRETATION; GOVERNING LAW.** The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of Florida, excluding its conflict of laws principles.

15. **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.

16. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between Bank and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Bank as to the subject matter of this Agreement. Notwithstanding anything herein to the contrary or in conflict herewith, Owner and Tenant shall be bound to any separate agreements, including any guaranties or other agreements with Bank, and nothing contained in this Agreement shall supersede or abrogate Bank's rights, or Owner's and Tenant's obligations under such guaranties or other agreements.

17. **INTERACTION WITH LEASE.** If this Agreement conflicts with the Lease, then this Agreement shall govern as between Tenant and Bank, including upon any attornment pursuant to this Agreement. This Agreement 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 Mortgage.

18. **MISCELLANEOUS.** 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. This Agreement may not be changed, terminated, or modified orally or in any manner other than by an instrument in writing signed by the parties hereto. The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not part of this Agreement. 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.

(Signatures commence on the following page.)

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

Signed, Sealed and Delivered  
in the Presence of:

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

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

**OWNER:**

[\_\_\_\_\_]

By: \_\_\_\_\_(SEAL)

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

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

**Acknowledgment**

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as the \_\_\_\_\_ of \_\_\_\_\_, on behalf of said entity, who is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

[Notary Seal]

\_\_\_\_\_  
NOTARY PUBLIC

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

My Commission Expires:\_\_\_\_\_

*[Signatures continued on following page]*

Signed, Sealed and Delivered  
in the Presence of:

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

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

**BANK:**

**UNITED COMMUNITY BANK,**  
a South Carolina state-chartered bank

By: \_\_\_\_\_

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

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

**Acknowledgment**

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as the \_\_\_\_\_ of United Community Bank, on behalf of said entity, who is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

[Notary Seal]

\_\_\_\_\_  
NOTARY PUBLIC

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

My Commission Expires: \_\_\_\_\_

*[Signatures continued on following page]*



Signed, Sealed and Delivered  
in the Presence of:

**TENANT:**

[\_\_\_\_\_]

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

By: \_\_\_\_\_(SEAL)

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

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

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

**Acknowledgment**

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, as the \_\_\_\_\_ of \_\_\_\_\_, on behalf of said entity, who is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

[Notary Seal]

\_\_\_\_\_  
NOTARY PUBLIC

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

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**