

STATE OF ALABAMA)
:)
COUNTY OF MONTGOMERY)



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Shelby Cnty Judge of Probate, AL
04/17/2023 10:38:43 AM FILED/CERT

SUBORDINATION, NONDISTURBANCE ATTORNMENT AND AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the 14th day March, 2023 by and between TROY BANK AND TRUST COMPANY, having an address at 1000 US Highway 231, Troy, Alabama 36081 ("Lender") and BLUEMONT GROUP, LLC, a Tennessee limited liability company having an address at 5509 River Point Coven, Knoxville, Tennessee 37919, Attn: David E. Baumgartner ("Tenant").

RECITALS:

A. Tenant is the holder of a leasehold estate in a portion of the property located at 5413 US-280, Hoover, AL, as more particularly described on Schedule A (the "Property") under and pursuant to the provisions of a certain lease dated January 14, 2021, between CM 280, LLC a Georgia limited liability company as assignee of D&G Acquisition, LLC, a Georgia limited liability company, as landlord ("Landlord") and Tenant or its predecessor in interest, as tenant (as amended through the date hereof, the "Lease");

B. The Property is or is to be encumbered by one or more mortgages (collectively, the "Security Instrument") from Landlord, or its successor in interest, in favor of Lender; and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Subordination. The Lease shall be subject and subordinate in all respects to the Security Instrument, to any and all advances to be made thereunder and to all renewals, modifications, consolidations, replacements and extensions thereof.
2. Nondisturbance. So long as Tenant pays all rents and other charges as specified in the Lease and is not otherwise in default (beyond applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, Lender agrees for itself and its successors in



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interest and for any other person acquiring title to the Property through a foreclosure (an "Acquiring Party"), that Tenant's possession of the premises as described in the Lease will not be disturbed during the term of the Lease, as said term may be extended pursuant to the terms of the Lease or as said premises may be expanded as specified in the Lease, by reason of a foreclosure. For purposes of this agreement, a "foreclosure" shall include (but not be limited to) a sheriff's, trustee's, agent's or auctioneer's sale under the power of sale contained in the Security Instrument, the termination of any superior lease of the Property and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.

3. **Attornment.** Tenant agrees to attorn to, accept and recognize any Acquiring Party as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to the Lease. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Tenant as a condition to its effectiveness. Tenant agrees, however, to execute and deliver, at any time and from time to time, upon the request of the Lender or any Acquiring Party any reasonable instrument which may be necessary or appropriate to evidence such attornment.

4. **No Liability.** Notwithstanding anything to the contrary contained herein or in the Lease, it is specifically understood and agreed that neither the Lender, any receiver nor any Acquiring Party shall be:

(a) liable for any act, omission, negligence or default of any prior landlord (other than to cure defaults of a continuing nature with respect to the maintenance or repair of the demised premises or the Property); provided, however, that any Acquiring Party shall be liable and responsible for the performance of all covenants and obligations of landlord under the Lease accruing from and after the date that it takes title to the Property; or

(b) liable for any failure of any prior landlord to construct any improvements;

(c) subject to any offsets, credits, claims or defenses which Tenant might have against any prior landlord; or

(d) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord; or

(e) be liable to Tenant hereunder or under the terms of the Lease beyond its interest in the Property.

Notwithstanding the foregoing, Tenant reserves its rights to any and all claims or causes of action against such prior landlord for prior losses or damages and against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property.



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5. Rent. Tenant has notice that the Lease and the rents and all other sums due thereunder have been assigned to Lender as security for the loan secured by the Security Instrument. In the event Lender notifies Tenant of the occurrence of a default under the Security Instrument and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise authorized in writing by Lender. Landlord hereby irrevocably authorizes Tenant to make the foregoing payments to Lender upon such notice and demand.

6. Lender to Receive Notices. Tenant shall notify Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Lender shall have received notice of default giving rise to such cancellation and shall have failed within sixty (60) days after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default (Nothing contained herein obligates Lender to pursue a cure of any such default).

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address set forth above, and:

if to Tenant: Bluemont Group, LLC
5509 River Point Cove
Knoxville, Tennessee 37919

To the attention of: David E. Baumgartner

If to Lender: Troy Bank and Trust Company
1000 US Highway 231
Troy, Alabama 36081

To the attention of: Charles Reynolds

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Paragraph 7, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in Montgomery, Alabama. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Lease. Tenant agrees it will not, without the prior written consent of Lender (i) modify



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the Lease or any extensions or renewals thereof in such a way as to reduce rent, accelerate rent payment, shorten the original term or change any renewal option; (ii) terminate the Lease, except as provided by its terms; (iii) tender or accept a surrender of the Lease or make a prepayment in excess of one (1) month of any rent thereunder; or (iv) subordinate or knowingly permit subordination of the Lease to any lien subordinate to the Mortgage, except for those liens that are superior to the Mortgage by law, if any. Any such purported action without such consent shall be void as against Lender.

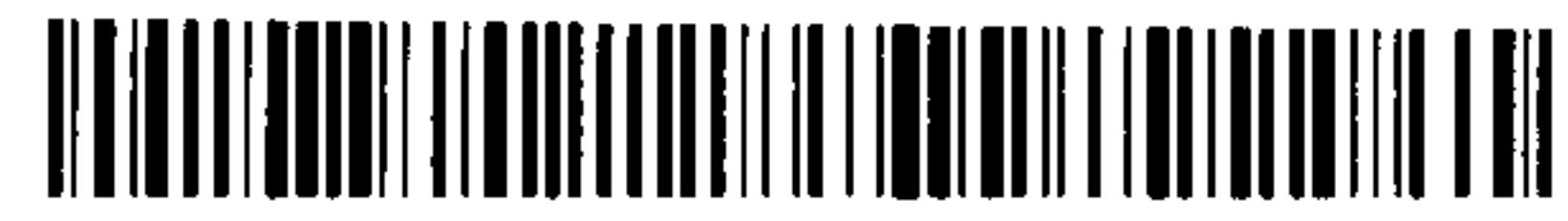
9. Purchase Options. Any options or rights contained in the Lease to acquire title to any portion of the Property are hereby made subject and subordinate to the rights of Lender under the Security Instrument, and any acquisition of title to any portion of the Property made by Tenant, during the term of the Security Instrument shall be made subordinate and subject to the Security Instrument. In any action or proceeding to foreclosure the Security Instrument, or upon the acceptance of a deed in lieu of foreclosure, Lender shall have the right, in its sole discretion, to extinguish any options or rights Tenant may have pursuant to the Lease to acquire title to any portion of the Property. Tenant further confirms and agrees that any options or rights contained in the Lease to acquire title to any portion of the Property shall not apply with respect to the acquisition of, or otherwise limit the rights of the holder of the Security Instrument to acquire all or any portion of the Property through a foreclosure of the Security Instrument, a deed-in-lieu of foreclosure, or pursuant to any other remedy exercised in connection with the Security Instrument.

10. Proceeds from Taking. Anything in the Lease to the contrary notwithstanding, in the event any portion of the Property is taken in any proceedings by public authorities (by condemnation or otherwise) or is acquired for public or quasi-public purposes, then the right of Tenant to a division of any award shall extend only to such portion of the award as may be attributable to Tenant's trade fixtures, equipment, leasehold improvements and moving expenses, and Tenant shall not be entitled to any other portion of the award, including without limitation any portion attributable to the land and buildings comprising the Property, if it would decrease the award otherwise payable to Landlord in connection with the Property.

11. Proceeds from Insurance. Anything in the Lease to the contrary notwithstanding, all insurance proceeds paid to Tenant and/or Lender as a result of a casualty to any portion of the Property shall be applied as provided for under the provisions contained in the Security Instrument.

12. Successors. The obligations and rights of the parties pursuant to this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties. In addition, Tenant acknowledges that all references herein to Landlord shall mean the owner of the landlord's interest in the Lease, even if said owner shall be different than the Landlord named in the Recitals.

13. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This



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Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

14. Amendment. This Agreement may not be modified except by a written Agreement signed by the parties hereto or their respective successors in interest.

[EXECUTION BEGINS ON FOLLOWING PAGES]



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IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER:

Troy Bank and Trust Company
an Alabama banking corporation

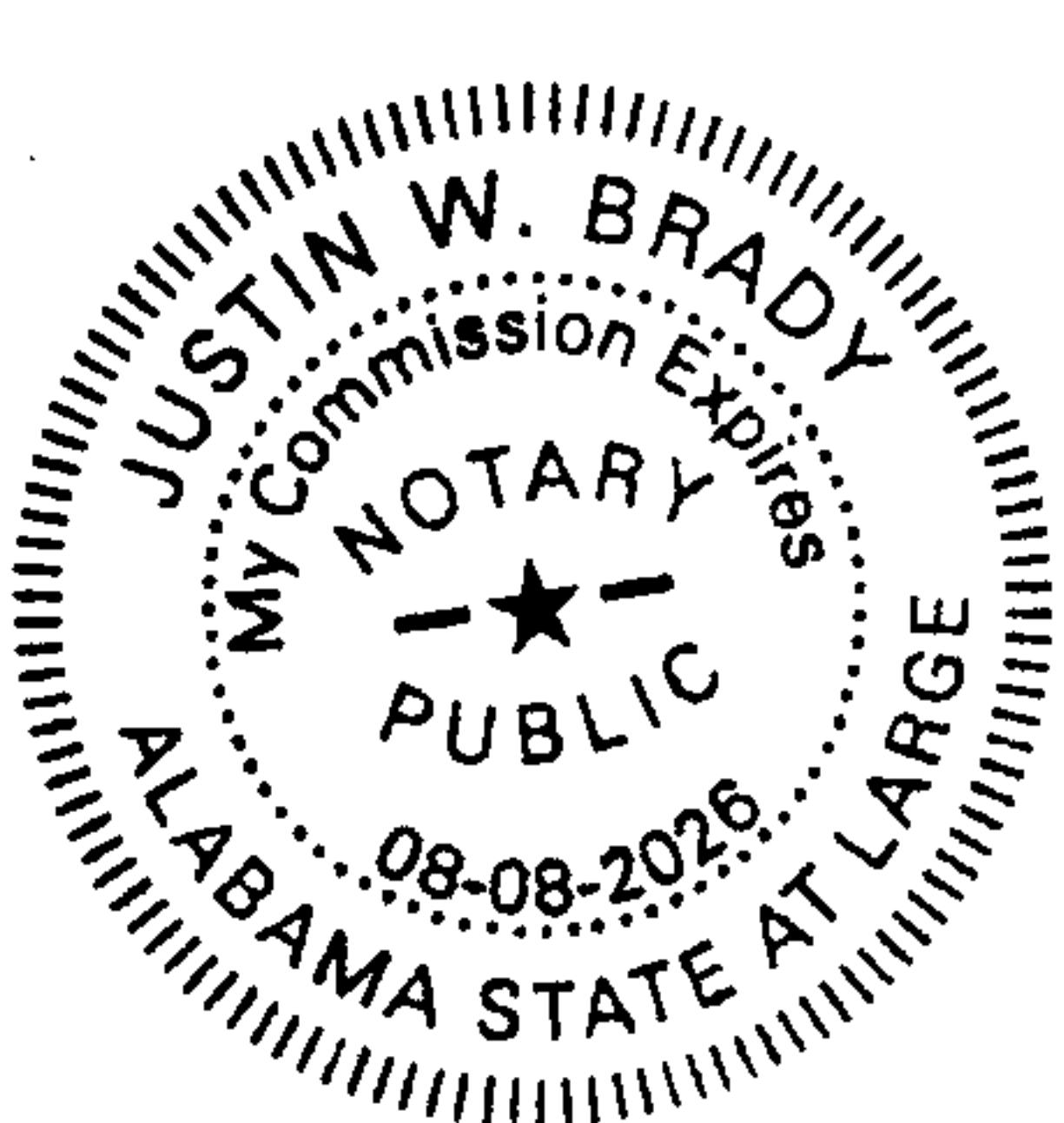
By: Wm D. Coppage
Its: EVP

STATE OF ALABAMA)
:)
COUNTY OF MONTGOMERY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that William D. Coppage, whose name as EVP of Troy Bank and Trust Company, an Alabama banking corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal of office this 13th day of March, 2022.
2023

(SEAL)



Justin W. Brady
Notary Public:
My Commission expires: 8/8/2026



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The undersigned as the Landlord named in the Recitals or as successor thereto hereby accepts and agrees to be bound by the provisions of Paragraph 5 hereof.

CM 280, LLC
a Georgia limited liability company

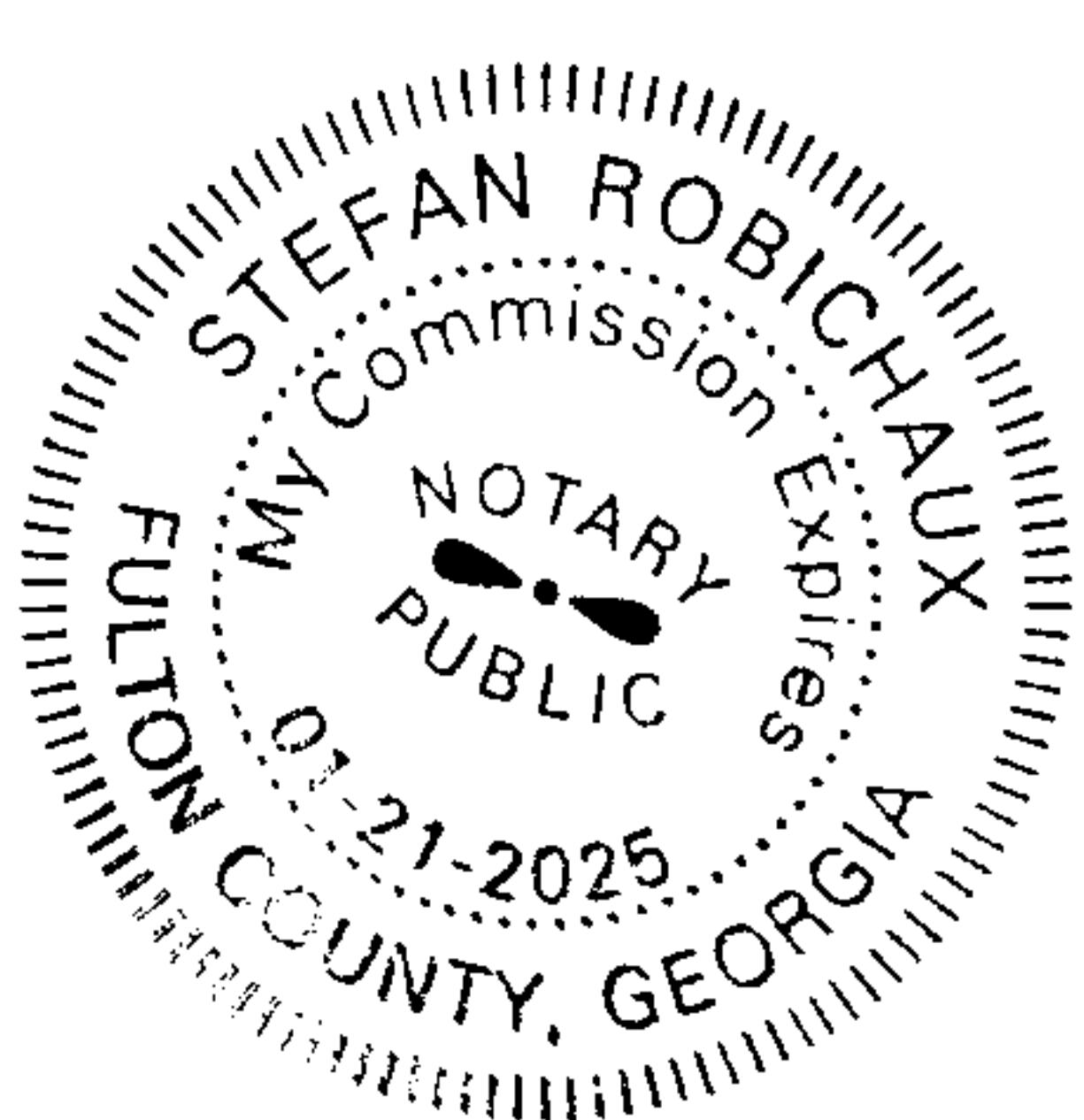
By: Michael Davis
Its Manager

STATE OF Georgia)
:
COUNTY OF Fulton)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Michael Davis, whose name as Manager of CM 280, LLC, a Georgia limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing conveyance, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal of office this 2nd day of March, 2023.

(SEAL)



SKR

Notary Public:
My Commission expires: 1/21/25



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TENANT:

Bluemont Group, LLC
a Tennessee limited liability company

By:

Its President

STATE OF Tennessee)
:
COUNTY OF Knox)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Dave Baumgartner, whose name as President of Bluemont Group, LLC, a Tennessee limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing conveyance, he, as such President and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal of office this 13th day of December, 2022.

Lara Sievers
Notary Public:
My Commission expires: 6/1/2025

(SEAL)

