

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

11-696

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5000
Contractor	PSIP EBS Francis LLC; by PSIP Francis LLC
Contractor Representative	Quinn Johnson
Telephone Number	(714) 653-9855
Contract Term	Five Years and Two Months; projected commencement date July 1, 2022
Original Contract Amount	\$14,844,466.33
Amendment Amount	
Total Contract Amount	\$14,844,466.33
Cost Center	
GRC/PROJ/JOB No.	6500 4207
Internal Order No.	

Briefly describe the general nature of the contract: Subordination, Nondisturbance, and Attornment Agreement between San Bernardino County, PSIP EBS Francis LLC and City National Bank in connection with the lease agreement for approximately 120,651 square feet of warehouse space consisting of 5,639 square feet of mezzanine space and 3,366 square feet of finished office space located at 1925 South Grove Avenue in Ontario, CA, for the Office of Emergency Services at no cost.

FOR COUNTY USE ONLY

Approved as to Legal Form

KR
Kristina Robb, Principal Assistant County Counsel

Date 7/18/22

Reviewed for Contract Compliance

Date _____

Reviewed/Approved by Department

[Signature]
Lyle Ballard, Real Property Manager, RESD

Date 7/18/22

Recording Requested By
And When Recorded Mail To:

City National Bank
555 South Flower Street, 19th Floor
Los Angeles, CA 90071

Attn: Taehee Kim

Account No. 334290

A.P.N.: 0113-451-14-0-000 and 0113-451-27-0-000

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR LEASEHOLD INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

This Subordination, Nondisturbance and Attornment Agreement ("Agreement") is made as of June 23, 2022 by and among PSIP EBS Francis LLC, a Delaware limited liability company ("Owner"), owner of the land hereinafter described, San Bernardino County, a political subdivision of the State of California ("Tenant"), and City National Bank, a national banking association ("CNB").

RECITALS

A. Owner is the owner of that certain real property together with all appurtenances thereto and improvements now or hereafter located thereon, in the County of San Bernardino (the "County"), State of California, all as more particularly described in Exhibit "A-1" attached hereto and made a part hereof ("Property"). Owner has executed a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated August 24, 2021, in favor of CNB, encumbering the Property and securing payment obligations in the principal amount of up to \$31,000,000 and other obligations specified therein (as such deed of trust and the obligations it secures may be amended, extended, renewed, supplemented or replaced, the "Deed of Trust"). The Deed of Trust was recorded on August 25, 2021, as Document No. 2021-0383732 in the Official Records of the County.

B. Tenant is the present tenant under that certain Single Tenant Industrial Lease dated June 23, 2022 (the "Lease"), made by Owner, as landlord ("Landlord"), demising a portion of the Property consisting of approximately 6.075 acres located in the City of Ontario, County of San Bernardino, State of California as described on Exhibit "A-2" attached hereto (the "Premises").

C. The Lease was not recorded.

D. It is a condition precedent to the extension of credit secured by such Deed of Trust to CNB's approval of the Lease, that the Deed of Trust shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the lien or charge of the Lease, as set forth in this Agreement.

E. It is to the mutual benefit of the parties hereto that CNB approve the Lease, and Tenant is willing that the Deed of Trust shall constitute a lien or charge upon the Property covered by the Lease that is unconditionally prior and superior to the lien or charge of the Lease, as set forth in this Agreement.

F. Tenant wishes to obtain from CNB certain assurances that Tenant's possession of the Premises will not be disturbed by reason of the enforcement of the Deed of Trust or a foreclosure of the lien thereunder, except as provided in, and subject to the terms and conditions of, this Agreement.

G. CNB is willing to approve the Lease, upon and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce CNB to make the extension of credit secured by the Deed of Trust and approve the Lease, the parties hereby agree as follows:

1. **RATIFICATION**. Tenant hereby affirms that the Lease is in full force and effect and that the Lease has not been modified or amended.

2. **SUBORDINATION OF LEASE**. Tenant declares, agrees and acknowledges that:

2.1 The Lease shall be and at all times remain subject to and subordinate to the Deed of Trust. Tenant hereby intentionally and unconditionally subordinates the lien or charge of the Lease and all of Tenant's right, title and interest thereunder and in the Premises in favor of the lien or charge of the Deed of Trust and all of Landlord's rights and remedies thereunder and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made pursuant to such extension of credit secured by such Deed of Trust CNB is consenting to the Lease and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subordination. Tenant hereby agrees that, for all purposes, the Deed of Trust shall be deemed recorded prior to the Lease and CNB shall be deemed not to have notice of the Lease within the meaning of California Civil Code §1217.

2.2 CNB would not make the extension of credit secured by such Deed of Trust and consent to the Lease without this Agreement.

2.3 CNB, in making disbursements pursuant to any such extension of credit secured by such Deed of Trust, is under no obligation or duty to, and has not represented that it will, see to the application of such proceeds by the person or persons to whom CNB disburses such proceeds, and any application or use of such proceeds for the purposes other than those provided in the agreement or agreements secured by the Deed of Trust shall not defeat the subordination herein made in whole or in part.

2.4 Any estate in the Property acquired by Tenant shall be fully subject to the Deed of Trust.

3. **LANDLORD'S DEFAULT.** Tenant will not seek to terminate the Lease by reason of any act or omission of Landlord until Tenant shall have given written notice of such act or omission to the holder of the Deed of Trust (at such holder's last address furnished to Tenant). Tenant agrees that CNB shall have the right, but not the obligation, to remedy such act or omission on behalf of Landlord within thirty (30) days after the receipt of such notice; provided, however, that said 30-day period shall be extended so long as within said 30-day period, CNB has commenced to cure as soon as reasonably possible and is proceeding diligently to complete the cure of said default or defaults.

4. **NONDISTURBANCE AND ATTORNMENT.**

4.1 So long as Tenant is not in default under the Lease (beyond any applicable period given Tenant to cure such default), CNB agrees CNB will not disturb Tenant's possession of the Property nor shall the Lease be extinguished by reason of any Foreclosure (as hereinafter defined) or otherwise, subject to the exceptions in Paragraph 4.2 below. CNB shall not join Tenant as a party in any action or proceeding brought pursuant to the Deed of Trust, unless required by applicable law.

4.2 If CNB or any third party acquires the interest of Landlord in the Property by reason of the Foreclosure (whether judicial or non-judicial) under the Deed of Trust or by a conveyance in lieu thereof or as a result of any other means (any or all of the foregoing hereinafter referred to as a "Foreclosure") ("Successor Landlord"), then the Lease and all appurtenances thereto shall remain in full force and effect and Tenant shall be bound to Successor Landlord under all of the provisions of the Lease for the balance of the term thereof (including any extensions or renewals thereof which may be effected in accordance with any options contained in the Lease) with the same force and effect as if Successor Landlord were the Landlord under the Lease, and Tenant hereby agrees to attorn to Successor Landlord, as its landlord, such attornment to be effective and self-operative, without the execution of any further instruments on the part of either of the parties hereto, immediately upon the succession by Successor Landlord to the interest of Landlord in the Property. In such event, Successor Landlord shall be bound to Tenant under all of the provisions of the Lease, and Tenant shall, from and after such event, have the same remedies against Successor Landlord for the breach of any agreement in the Lease that Tenant might have had against Landlord under the Lease; provided, however, that Successor Landlord shall not be:

4.2.1 liable for any act or omission of any prior landlord (including Landlord) except those that have accrued under any prior landlord and are continuing after Successor Landlord's acquisition, provided that Tenant has notified CNB and given CNB an opportunity to cure as provided for in Section 3 above;

4.2.2 subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord) except for (i) offsets specifically provided for in the Lease and (ii) defenses that have accrued under any prior landlord and are continuing after Successor Landlord's acquisition, provided that Tenant has notified CNB and given CNB an opportunity to cure as provided for in Section 3 above;

4.2.3 bound by any rent or additional rent which Tenant might have paid to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under the Lease except as expressly stated in the Lease, including (but not limited to) the prepaid rent set forth in Basic Lease Terms, Paragraph j and the security deposit set forth in Basic Lease Terms, Paragraph k;

4.2.4 obligated to construct any tenant improvements under the Lease;

4.2.5 bound by any amendment or modification of the Lease made without CNB's consent; or

4.2.6 bound by Tenant's rights to purchase the Property set forth in the Lease or otherwise.

5. **PAYMENT OF RENT ON DEFAULT.** Tenant acknowledges and agrees that the Lease has been assigned to CNB by Owner. Tenant agrees that, upon receipt of notice from CNB that an Event of Default exists under the Deed of Trust or any other Loan Document, Tenant shall make all rental and other payments required pursuant to the Lease, to CNB, as directed in such written notice or any subsequent written notice from CNB. Owner acknowledges and agrees that CNB shall be entitled to collect and receive rents pursuant to the Lease as provided herein and Tenant is authorized and hereby directed to make all such payments of rent to CNB upon receipt of the written notice from CNB, provided that Tenant shall be under no duty or obligation to make further inquiry. Tenant shall continue to make all such payments of rent to CNB unless and until Tenant is otherwise authorized and directed in writing by CNB. Landlord acknowledges and agrees that Tenant shall be credited for such payments to CNB, as against the rental payments then due under the Lease.

6. **NO MODIFICATION.** Tenant agrees that so long as CNB has an assignment of Owner's interest in the Lease, Tenant will not, without the prior written consent of CNB (a) modify, extend or in any manner alter the terms of the Lease; (b) pay the rent or any other sums becoming due under the terms of the Lease more than one month in advance; or (c) accept Owner's waiver of or release from the performance of any material obligations under the Lease.

7. **NOTICES.** All written notices or demands of any kind that any party hereto may be required or may desire to serve on any other party hereto in connection with this Agreement shall be served by personal service, by registered or certified mail, return receipt requested, or recognized overnight courier service. Any such notice or demand served personally or by registered or certified mail, return receipt requested, or recognized overnight courier service shall be delivered with all applicable delivery charges thereon fully prepaid and addressed as follows:

CNB: City National Bank
18111 Von Karman Avenue, Suite 550
Irvine, California 92612
Attn: Ilya Voziyan, Senior Vice President

Copies To: City National Bank
555 South Flower Street, 18th Floor
Los Angeles, California 90071
Attn: Office of the General Counsel

Owner: PSIP EBS Francis LLC
c/o Penwood Real Estate Investment Management, LLC
75 Isham Road, 4th Floor
West Hartford, Connecticut 06107
Attn: Karen Nista and Joseph Koziol

Copies To: PSIP EBS Francis LLC
c/o EBS Realty Partners, LLC
1300 Bristol Street North, Suite 290
Newport Beach, CA 92660
Attn: Quinn Johnson and Michael McKenna

Tenant: San Bernardino County
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

Service of any such notice or demand so made by personal service or by mail or recognized overnight courier shall be deemed complete on the date of actual delivery or the recipient's refusal to accept delivery as shown on the return receipt if mailed or the proof of delivery if delivered by personal service or overnight courier. Any party hereto may from time to time, by notice in writing served upon the other pursuant to this paragraph, designate a different mailing address to which or a different person to whose attention all such notices or demands are thereafter to be addressed.

8. **SUCCESSORS AND ASSIGNS; EFFECTIVENESS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

9. **WHOLE AGREEMENT.** This Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Lease to the lien or charge of the Deed of Trust, and shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination including, but not limited to, those provisions, if any, contained in the Lease which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to other mortgage or mortgages.

10. **LIMITED RECOURSE.** Without limiting any other provisions of this Agreement, in the event that any Successor Landlord shall acquire title to the Property, Tenant agrees to look solely to Successor Landlord's interest in the Property, including (but not limited to) any revenue streams, equity interest, and insurance or condemnation proceeds with respect to the Property, for the satisfaction of any remedy of Tenant on account of any claim, cause of action, obligation, contractual, statutory or otherwise, of Tenant, arising from or in any manner related to the Lease, and no other property or assets of CNB or any other Successor Landlord, or any officer, director, shareholder, partner, trustee, agent, servant or employee of CNB or any other Successor Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease, any Successor Landlord's obligations to Tenant, whether contractual, statutory or otherwise, the relationship of CNB or any other Successor Landlord and Tenant hereunder, or Tenant's use or occupancy of the Property.

11. **GOVERNING LAW.** This Agreement and all matters relating thereto shall be governed by the laws of the State of California.

12. **MISCELLANEOUS.** This Agreement may not be modified or amended except in writing signed by all the parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or

unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such provision had never been contained herein.

13. **ATTORNEYS' FEES.** In any legal action, arbitration, or other proceeding between Tenant and CNB in connection with the enforcement of this Agreement, the prevailing party shall be entitled to all attorneys' fees and other costs and expenses incurred in connection therewith.

14. **FURTHER ASSURANCES.** From time-to-time upon written request by CNB, Tenant shall promptly execute such additional ancillary documents that do not alter the economic terms of the Lease, including but not limited to, the monthly Rent, amend the Term of the Lease nor materially increase any of Tenant's other obligations or materially diminish Tenant's rights in the Lease, as CNB may reasonably require to implement the terms hereof, and such estoppel certificates as CNB may request in accordance with the Lease as to whether or not any default on the part of Landlord exists under the Lease and the nature of any such default, as to the terms of the Lease and any modifications, amendments, and revisions thereto, and to such other matters as CNB may request.

[Signatures appear on following page]

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY LEASE TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE PROPERTY.

"TENANT"

San Bernardino County,
a political subdivision of the State of California

By: *Dawn Rowe*
~~Curt Hagman, Chairman~~ *Dawn Rowe, Vice Chair*
Board of Supervisors

Date: *6-30-22*

(ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC)

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

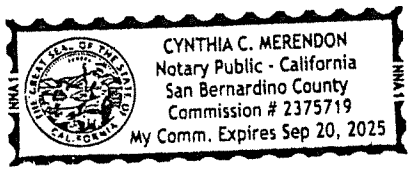
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of San Bernardino }
On June 30, 2022 before me, Cynthia C Merendon
Date Here Insert Name and Title of the Officer
personally appeared Dawn M. Rose
Name(s) of Signer(s)

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.



Place Notary Seal and/or Stamp Above

Signature Cynthia C. Merendon
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

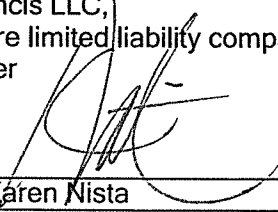
Other: _____

Signer is Representing: _____

“OWNER”

PSIP EBS Francis LLC,
a Delaware limited liability company

By: PSIP Francis LLC,
a Delaware limited liability company,
its Member

By: 
Name: Karen Nista
Title: Managing Director

Date: 6/28/2022

(ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC)

“CNB”

City National Bank,
a national banking association

By: _____

Name: _____

Title: _____

Date: _____

(ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC)

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Ontario, County of San Bernardino, State of California, described as follows:

PARCEL A:

PARCELS 1, 2, 3 AND 4 OF PARCEL MAP NO. 20187, AS SHOWN BY PARCEL MAP ON FILE IN BOOK 257, PAGES 5 THROUGH 9, INCLUSIVE, OF PARCEL MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

PARCEL B:

NON-EXCLUSIVE EASEMENTS FOR RECIPROCAL ACCESS AND STORM DRAIN PURPOSES AS DESCRIBED IN DOCUMENT ENTITLED "DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR GROVE ONTARIO COMMERCE CENTER", RECORDED AUGUST 20, 2021 AS INSTRUMENT NO. 2021-0375744 OF OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

APNs: 0113-451-14-0-000 and 0113-451-27-0-000

LEGAL DESCRIPTION OF THE PREMISES

Real property in the City of Ontario, County of San Bernardino, State of California, described as follows:

PARCEL 3 OF PARCEL MAP NO. 20187, AS PER MAP FILED IN BOOK 257, PAGES 5 THROUGH 9, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.