

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

REN R HAYHURST, ESQ.
BRYAN CAVE LLP
3161 MICHELSON DRIVE, SUITE 1500
IRVINE, CALIFORNIA 92612

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

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

This LEASE SUBORDINATION, ATTORNMENT AND NONDISTURBANCE AGREEMENT ("**Agreement**") is made as of August 26, 2015, by and among THE COUNTY OF MARIN, a political subdivision of the State of California, as the tenant under the leased premises described below ("**Lessee**"), BSP ROWLAND PLAZA, LLC, a Delaware limited liability company ("**Lessor**"), and CALIFORNIA BANK & TRUST, a California banking corporation ("**Lender**").

RECITALS

A. Lender has made a loan to Lessor ("**Loan**"), which Loan is to be evidenced by a loan agreement dated June 3, 2015 by and between Lessor as borrower and Lender ("**Loan Agreement**"), and by a promissory note dated June 3, 2015 ("**Note**").

B. The Note is secured by a deed of trust dated June 3, 2015 ("**Deed of Trust**"), affecting real property in Marin County, California, described in the attached **Exhibit "A"** ("**Property**") and encumbering Lessor's fee interest in the Property.

C. Lessee and Lessor entered into a lease ("**Lease**"), dated December 16, 2008, by which Lessee leased certain premises ("**Leased Premises**") constituting all or a portion of the Property. On June 16, 2009, a Lease Commencement Memorandum was signed by the Owner and Lessee noting a Commencement Date of April 9, 2009 and an expiration of Lease Term date of April 30, 2016.

D. Lender is willing to make the Loan provided the Deed of Trust is a lien and charge upon the Leased Premises prior and superior to the Lease and provided that Lessee expressly subordinates the Lease to the lien and charge of the Deed of Trust.

E. Lessee is willing that the Deed of Trust shall constitute a lien or charge upon the Leased Premises which is prior and superior to the Lease and is willing to attorn to Lender provided Lender grants Lessee a nondisturbance agreement as provided herein.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and conditions set forth hereinbelow, and in order to induce Lender to make the Loan referred to above, the parties hereto agree as follows:

1. **DEFINITION OF LEASE.** As used in this Agreement, "**Lease**" includes all right, title and interest that Lessee may have in all or any portion of the Leased Premises, whether granted by the terms of the Lease, by a separate written or oral agreement or otherwise.

2. **NO UNAPPROVED ASSIGNMENT OR SUBLETTING.** Except as may otherwise be expressly provided in the Lease, Lessee shall not assign the Lease, nor sublet any portion of the Leased Premises, and Lessor shall not consent to any such assignment or subletting if required pursuant to the terms of the Lease or otherwise requested, without the prior written consent of Lender, which consent shall not be unreasonably withheld.

3. **SUBORDINATION OF LEASE.**

3.1 **Subordination.** The Deed of Trust and any amendments, modifications, renewals and extensions thereof shall be and remain at all times a lien and charge on the Leased Premises, prior and superior to the Lease, to the leasehold estate created thereby and to all rights and privileges of Lessee or any other lessee thereunder, and the Lease, the leasehold estate created thereby and all rights and privileges of Lessee or any other lessee thereunder are hereby subjected and made subordinate to the lien and charge of the Deed of Trust in favor of Lender.

3.2 **Effect of Changes to the Loan.** This Agreement shall extend to any and all increases, renewals, extensions, modifications, substitutions, and consolidations of the Loan, and of any other documents securing the Loan, and Lender may, without notice or demand, and without affecting the subordination hereunder:

3.2.1 renew, compromise, extend, accelerate or otherwise change the time for payment or otherwise change the terms of the Loan or any part thereof, including increase or decrease of interest thereon,

3.2.2 waive or release any part of its lien on the Property,

3.2.3 apply proceeds from the sale of the Property and direct the order or manner of sale thereof as Lender, in its discretion, may determine, and

3.2.4 assign its rights hereunder or under the Loan, or both, in whole or in part.

4. **LESSEE'S ACKNOWLEDGMENTS.** Lessee agrees, declares and acknowledges each of the following:

4.1 **No Duty or Obligation.** Lender in making disbursements pursuant to any agreement with Lessor is under no obligation or duty to, nor has Lender represented that it will, see to the application of the proceeds of the Loan by Lessor or any other persons to whom Lender disburses the proceeds of the Loan. Any application or use of such proceeds for purposes other than those provided for in any agreement between Lender and Lessor shall not defeat the subordination made in this Agreement, in whole or in part.

4.2 **Waiver.** Lessee intentionally subordinates the Lease, the leasehold estate created thereby together with all rights and privileges of Lessee or any other lessee thereunder in favor of

the lien and charge upon the Leased Premises of the Deed of Trust, and understands that in reliance upon and in consideration of this subordination, specific loans and advances are being and will be made and specific monetary and other obligations are being undertaken and will be entered into which would not be made or entered into but for said reliance upon this subordination.

4.3 Entry Upon Property. Lender may enter upon the Leased Premises and inspect the same at any reasonable time upon reasonable prior notice to Lessee, provided that any such entry and inspection are undertaken at a time and in a manner which is least disruptive to Lessee's business operations within the Leased Premises as is reasonably practicable under the circumstances.

5. NONDISTURBANCE. So long as Lessee is not in default (beyond any period given Lessee in the Lease to cure such default) in the payment of rent or additional charges or in the performance of any of the other terms, covenants or conditions of the Lease on Lessee's part to be performed, Lessee shall not be disturbed by Lender in its possession of the Leased Premises during the term of the Lease, or any extension or renewal thereof, or in the enjoyment of its rights under the Lease. Lender shall not join Lessee as a party defendant in any action or proceeding foreclosing the Deed of Trust. Further, in the event of a transfer of the Property to Lender or any purchaser from Lender (after Lender has taken title to the Property by foreclosure or deed in lieu thereof) or pursuant to a trustee's sale conducted under the Deed of Trust ("**Purchaser**"), the Lease shall continue in full force and effect as a direct lease between Lender or Purchaser and Lessee, upon and subject to all of the terms of the Lease for the balance of the term remaining.

6. ATTORNMEN; LIMITATION OF LIABILITY.

6.1 Lessee's Attornment. If the interest of Lessor under the Lease shall be acquired by Lender or any Purchaser by reason of the exercise of the power of sale contained in the Deed of Trust or by foreclosure or other proceedings brought to enforce the rights of the holder thereof, by deed in lieu of foreclosure or by any other method, and Lender or Purchaser succeeds to the interest of Lessor under the Lease, Lessee shall attorn to Lender or Purchaser as its landlord, and be bound to Lender or Purchaser under the terms of the Lease for the balance of the term thereof and any extensions or renewals thereof. Said attornment is to be effective and self-operative without the execution of any other instruments on the part of either party hereto immediately upon Lender's or Purchaser's succeeding to the interest of the lessor under the Lease; provided, however, that Lessee agrees to provide written confirmation of its attornment within ten (10) business days after receipt of a written request for such confirmation by Lender or Purchaser. In any such event as described above, the Lease shall continue in accordance with its terms between Lessee as lessee and Lender or Purchaser as lessor; provided, however, that:

6.1.1 No Personal Liability. Lender's liability under the Lease shall be limited to its ownership interest of Lender in the Property, and Lender shall only be liable for the lessor's obligations under the Lease accruing during the period of time that Lender is the owner of the Property;

6.1.2 No Liability for Prior Lessor's Acts or Omissions. Lender shall not be liable for any act or omission of any prior lessor (including Lessor) for which Lender has not received notice and opportunity to cure pursuant to Section 7 below;

6.1.3 Not Subject to Offsets or Defenses. Lender shall not be subject to any offsets or defenses which Lessee might have against any prior lessor (including Lessor), except for any offsets or defenses that may continue (provided Lender has received notice and opportunity to cure pursuant to Section 7 below) or that may arise during Lender's ownership of the Property;

6.1.4 Not Bound by Prepayment of Rent. Lender shall not be bound by any prepayment of rent more than thirty (30) days in advance or deposit, rental security or any other sums deposited with any prior lessor (including Lessor) under the Lease unless actually received by Lender;

6.1.5 Not Bound by Amendment. Lender shall not be bound by any material amendment or modification of the Lease made without Lender's consent (which shall not be unreasonably withheld or delayed);

6.1.6 Not Bound To Conduct Construction Work. Lender shall not be bound to commence or complete any restoration of improvements following any casualty not required to be insured under the Lease or for the costs of any restoration in excess of any proceeds recovered under any insurance required to be carried under the Lease; and

6.1.7 Intentionally Omitted.

Notwithstanding any other provision of this Section 6.1 to the contrary, the provisions of Sections 6.1.1 through 6.1.7 shall not be applicable to any Purchaser of the Property.

6.2 Application of Insurance Proceeds. Any insurance proceeds or condemnation or eminent domain awards shall be applied in accordance with the terms and provisions of the Lease.

7. NOTICE AND CURE RIGHTS. Lessee agrees with Lender that from and after the date hereof, Lessee will not terminate or seek to terminate the Lease by reason of any act or omission of the lessor thereunder or for any other reason until Lessee shall have given written notice, by registered or certified mail, return receipt requested, of said act or omission to Lender, which notice shall be addressed to CALIFORNIA BANK & TRUST, a California banking corporation, 1900 Main Street, Suite 200, Irvine, California 92614; and until a period of time equal to the lessor of: (a) the time allowed Lessor under the Lease, or (b) thirty (30) days, shall have elapsed following the giving of such notice, during which period Lender shall have the right, but not be obligated, to remedy such act, omission or other matter.

8. ENTIRE AGREEMENT. This Agreement shall be the whole agreement with regard to the subjection and subordination of the Lease and the leasehold estate created thereby together with all rights and privileges of Lessee or any other lessee thereunder to the lien and 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 subjection or subordination, subject to paragraphs 5.9 and 5.13 of the Lease.

9. GOVERNING LAW. This Agreement shall be governed by and construed according to the laws of the State of California.

10. ATTORNEYS' FEES. Lessor shall promptly pay to Lender from Lessor's own funds and not from the proceeds of the Loan, upon demand, with interest thereon from the date of demand at the "Default Rate" (as described in the Note), reasonable attorneys' fees and all costs and other expenses paid or incurred by Lender in enforcing or exercising its rights or remedies created by, connected with or provided for in this Agreement. In the event of any dispute between Lender and Lessee, each party shall bear its own attorney's fees and costs.

11. MISCELLANEOUS PROVISIONS. This Agreement shall inure to the benefit of and shall be binding upon Lessee, Lessor and Lender, and their respective heirs, personal representatives, successors and assigns. This Agreement may not be altered, modified or amended except in writing signed by all of the parties hereto. In the event 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 provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement and any attached exhibits requiring signatures may be executed in counterparts, but all counterparts shall constitute but one and the same document.

[Remainder of page intentionally left blank.]
[Signatures follow on next page.]

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

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

LESSEE

THE COUNTY OF MARIN,
a political subdivision of the State of California

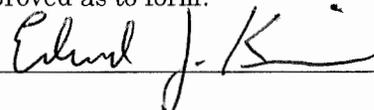
By: _____
Katie Rice, President, Board of Supervisors

ATTEST:

Deputy Clerk of the Board of Supervisors

Date: _____

Approved as to form:

By:  _____
Edward J. Kiernan, Deputy County Counsel

[Signatures continue on next page.]

LESSOR

BSP ROWLAND PLAZA, LLC, a Delaware
limited liability company

By: BSP Rising Fund Manager, LLC, a
Delaware limited liability company, its
Manager

By: _____
Timothy J. Ballard, its President

[Signatures continue on next page.]

LENDER

CALIFORNIA BANK & TRUST, CALIFORNIA
BANK & TRUST, a California banking corporation



By:

Stephanus Jones, Vice President

CALIFORNIA ALL-PURPOSE 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 _____)

On _____, 20____, before me, _____,
Date (Here Insert Name and Title of the Officer)

personally appeared _____
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.

Signature _____
Signature of Notary Public

Place Notary Seal Above

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WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
Legal Description

THE LAND REFERRED TO HEREIN IS IN THE STATE OF CALIFORNIA, MARIN COUNTY,
AND IS DESCRIBED AS FOLLOWS:

TRACT ONE

PARCEL ONE:

Lots 6B, as shown upon that certain Parcel Map entitled, "Parcel Map of Rowland Plaza, A Division of the Lands of BPG-Rock Rowland, LLC, A Delaware Limited Liability Company, as Described by Deed Recorded September 30, 2009 Under Document Number 2009-0055803, Marin County Records; Being a Division of Lot 6 As Shown and Delineated on that Map titled 'Rowland Plaza' filed June 30, 1988 in Volume 20 of Maps at Page 33, Marin County Records, City of Novato, County of Marin, State of California", file for record August 26, 2011 in Volume 2011 of Maps at Page 118, Marin County Records.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT for parking, and vehicular, bicycle and pedestrian ingress and egress, and surface flow storm drainage purposes over and upon the driveways, parking areas and sidewalks as the same may exist from time to time over Lot 7, as shown upon that certain map entitled, "Rowland Plaza, Being a resubdivision of Parcel One (1), 16 P.M. 67, City of Novato, Marin County, California", filed for record June 30, 1988 in Volume 20 of Maps, at Page 33, Marin County Records; as contained in that certain Declaration of Reciprocal Easements and Maintenance Agreement executed by Peter B. Bedford, et al. by Instrument recorded October 3, 1989 as Recorder's Serial No. 89-067789, Marin County Records, and Amendment thereto recorded February 1, 1990 as Recorder's Serial No. 90-006723, Marin County Records, and Declaration of Second Amendment to Declaration of Reciprocal Easements and Maintenance Agreement recorded September 2, 2011, as Instrument No. 2011-0043428, Marin County Records.

TRACT TWO

PARCEL ONE:

LOT 4, as shown upon that certain map entitled "Rowland Plaza, Being a Resubdivision of Parcel One (1), 16 P.M. 67, City of Novato, Marin County, California", filed for record June 30, 1988 in Volume 20 of Maps, at Page 33, Marin County Records.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT as reserved in the Deed from Peter D. Bedford, et ux, to Novato Sanitary District, recorded September 7, 1989 as Recorder's Serial No. 89-061974 and re-recorded October 13, 1989 as Recorder's Serial No. 89-060226, Marin County Records, for ingress and egress over the following described parcel:

BEGINNING at the Northeast corner of said Parcel B; thence South 11° 59' 27" West 30.76 feet; thence South 46° 55' 48" West 2.73 feet to the true point of beginning of the land hereinafter described; thence continuing South 46° 55' 48" West 49.16 feet to a point on a non-tangent curve to the left, the center of which bears South 52° 02' 16" West 61.00 feet; thence Northwesterly along said curve through a central angle of 10° 38' 08" an arc distance of 11.32 feet to a point on a non-tangent curve to the left, the center of which bears North 35° 20' 55" West 12.00 feet; thence Northerly along said curve through a central angle of 132° 39' 38" an arc distance of 27.78 feet; thence leaving said curve on a non-tangent line North 11° 59' 27" East 13.73 feet; thence South 78° 00' 33" East 46.27 feet to said true point of beginning.

PARCEL THREE:

A PORTION of Rowland Way as shown upon that certain map entitled, "Rowland Plaza" filed for record in Volume 20 of Maps, at Page 33, Mann County Records, being more particularly described as follows:

BEGINNING at the Westerly most corner of Lot 4 as delineated upon said map, from which a standard street monument stamped "R.C.E. 24880" bears South 52° 02' 33" West 61.00 feet; said point of beginning is further described as being a point on the Easterly line of Rowland Way as delineated on said map; thence from said point of beginning, along the said Easterly line of Rowland Way, Southeasterly along a curve to the right whose center bears South 52° 02' 33" West, having a radius of 61.00 feet, through a central angle of 43° 14' 47", for an arc distance of 46.04 feet; thence continuing Southerly along the said Easterly line of Rowland Way, South 05° 17' 20" West 20.00 feet; thence continuing along the said Easterly line of Rowland Way, Southeasterly along a curve to the left, tangent to the preceding course, having a radius of 99.50 feet, through a central angle of 22° 45' 47" for an arc distance of 39.53 feet; thence departing from said Easterly line of Rowland Way, Northwesterly along a non-tangent curve to the left, whose center bears South 72° 31' 33" West, having a radius of 65.00 feet, through a central angle of 28° 47' 25", for an arc distance of 32.66 feet; thence continuing Northwesterly, along a curve to the right, tangent to the preceding course, having a radius of 75.00 feet, through a central angle of 36° 22' 53", for an arc distance of 47.62 feet; thence continuing Northwesterly, along a curve to the right, tangent to the preceding course, having a radius of 325.68 feet, through a central angle of 01° 40' 19", for an arc distance of 9.50 feet; thence North 46° 55' 48" East 35.08 feet to the point of beginning.