

# UNOFFICIAL COPY

This Document Prepared by  
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DLA Piper LLP (US)  
203 North LaSalle Street, Suite 1900  
Chicago, Illinois 60601  
Attn: Merle Teitelbaum Cowin, Esq.

Permanent Tax Index Numbers:  
17-03-206-001  
17-03-206-009  
17-03-206-010

Property Addresses  
940-950 North Rush Street  
1-15 East Oak Street  
947-951 North State Street  
Chicago, Illinois



Doc#: 0829833174 Fee: \$60.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/24/2008 01:44 PM Pg: 1 of 13

use only.

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This AGREEMENT made as of the 16th day of October, 2008 by and between CITIBANK, N.A., a national banking association, having its principal place of business c/o Citigroup Realty Services, 500 West Madison Street, Chicago, Illinois 60661 (hereinafter referred to as "Lessee") and ANGLO IRISH BANK CORPORATION PLC, a banking corporation organized under the laws of the Republic of Ireland, having its principal place of business at Stephen Court, 18/21 St. Stephen's Green, Dublin 2, Ireland (hereinafter referred to as "Mortgagee").

WHEREAS, Mortgagee has made a mortgage loan (the "Loan") to M OAK RUSH LLC, an Illinois limited liability company having its principal place of business at 412 N Paulina Street Chicago, Illinois 60622, and L.I. OAK RUSH, LLC, an Illinois limited liability company having its principal place of business at 908 N. Halsted Chicago, Illinois 60622 (hereinafter jointly referred to as "Lessor"), secured by, among other things, a certain Construction Mortgage and Security Agreement dated March 9, 2007 (the "Mortgage") and recorded March 21, 2007 as Document No. 0708005215 in the official records of Cook County, Illinois (the "Official Recorder's Office"), as modified by a certain First Loan Modification Agreement dated June 17, 2008 (the "Loan Modification") and recorded June 25, 2008 as Document No. 0817733198 in the Official Recorder's Office, on land owned by Lessor located at 940-950 North Rush Street, 1-15 East Oak Street, Chicago Illinois and 947-951 North State Street, Chicago, Illinois and is legally described on Exhibit A attached hereto (the "Premises"), upon which Lessor has caused to be constructed a building containing approximately 95,100 rentable square feet (hereinafter referred to as the "Building"); and

Box 400-CTCC

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WHEREAS, on or about the date hereof, Lessee has entered into a certain Retail Lease dated \_\_\_\_\_, 2008 (the "Lease") with Lessor, for approximately 4,600 rentable square feet of space in the Building (the "Demised Premises"). All capitalized terms used herein that are not otherwise defined shall have the same meanings as are ascribed thereto in the Lease.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, Lessee and Mortgagee do hereby agree as follows:

1. Lessee hereby certifies and agrees with Mortgagee as follows, recognizing that Mortgagee will rely on the information herein contained:

(a) There have been no amendments, modifications or revisions to the Lease, and there are no agreements of any kind between Lessor and Lessee regarding the Demised Premises and the Building, except as provided in the Lease.

(b) The Lease is in full force and effect in accordance with its terms. To the best of Lessee's knowledge, neither Lessee nor Lessor is in default under the Lease. To the best of Lessee's knowledge, there is no defense, offset, claim or counterclaim by or in favor of Lessee against Lessor under the Lease or against the obligations of Lessee under the Lease.

(c) Lessee has not received notice and is not aware of any prior transfer, assignment, hypothecation or pledge by Lessor or of any of Lessor's interest in the Lease or the Premises, except for the assignment from Lessor to Mortgagee in connection with the Loan.

(d) There are no actions, voluntary or otherwise, pending or, to the best knowledge of Lessee, threatened against Lessee under the bankruptcy, reorganization, moratorium or similar laws of the United States, any state thereof or any other jurisdiction.

2. Lessee and Mortgagee hereby consent and agree that:

(a) the Lease shall be, and the same hereby is, made subject and subordinate in each and every respect to the lien of the Mortgage and to all advances made thereunder and to all extensions, renewals and modifications thereof and amendments thereto, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby;

(b) any of the foregoing notwithstanding, if the interests of Lessor in the Premises shall be acquired by Mortgagee by reason of foreclosure of the Mortgage or other proceedings brought to enforce the rights of Mortgagee, by deed in lieu of foreclosure or by any other method, or acquired by any other purchaser or purchasers pursuant to a foreclosure sale (Mortgagee or such purchaser(s), as the case may be, being referred to as "Purchaser"), (i) the Lease and the rights of Lessee thereunder shall continue in full force and effect strictly in accordance with the terms of the Lease and shall not be terminated or disturbed, provided Lessee is not in default of any of the terms of the Lease beyond any applicable notice or cure period and (ii) Mortgagee will not join Lessee as a party defendant in any action or proceeding to foreclose the Mortgage for the purpose of terminating the Lease. Lessee shall be bound to Mortgagee or Purchaser, as the case may be, and Mortgagee or Purchaser, as the case may be, shall be bound to Lessee, under all of the terms, covenants, and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance

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with any option therefor contained in the Lease, with the same force and effect as if Mortgagee or Purchaser, as the case may be, were the lessor under the Lease; provided that:

(1) Lessee is not in default, beyond the expiration of any applicable grace or notice period, under any provision of the Lease or this Agreement at the time Mortgagee exercises any such right, remedy, or privilege, and Mortgagee or Purchaser, as the case may be, has not terminated the Lease;

(2) the Lease at that time is in force and effect according to its original terms; and

(3) Lessee attorns to Purchaser as provided below; and

(c) in the event of any foreclosure of the Mortgage by Mortgagee, its successors or assigns or at the request of Mortgagee at any time pursuant to the assignment of the Lease to Mortgagee, Lessee will recognize Mortgagee, its successors and assigns, as the new lessor under the Lease and will attorn to and continue to be bound by each and every term of the Lease; and upon such attornment, the Lease and the rights of Lessee shall continue in full force and effect as if it were a direct Lease between Mortgagee, or any Purchaser, and Lessee upon all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining; provided however, Mortgagee, or any Purchaser, shall not be:

(i) liable for any act or omission of any prior landlord (including Lessor), except as set forth below;

(ii) subject to any offsets or defenses which Lessee might have against any prior landlord (including Lessor), except as provided in the Lease and except as set forth below;

(iii) bound by any rent or additional rent which Lessee might have paid for more than one (1) month in advance to any prior landlord (including Lessor);

(iv) bound by any amendment or modification of the Lease made without Mortgagee's written consent;

(v) liable for any security deposit or other sums held by any prior landlord (including Lessor) not actually received by Mortgagee;

(vi) personally liable or obligated to perform any term, covenant or provision of the Lease.

Notwithstanding anything contained in subparagraphs 2(c)(i) through (v) above to the contrary: (1) Mortgagee and Purchaser shall remain liable (subject to the limitation of liability described in subparagraph 2(c)(vi) above) for any obligation of Lessor under the Lease to complete construction of improvements to the Demised Premises and to deliver the Demised Premises to Lessee in accordance with the terms of the Lease; (2) Lessee shall continue to have all rights of offset and all rights to terminate the Lease as set forth in the Lease; and (3) Mortgagee and Purchaser shall remain liable (subject to the

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limitation of liability described in subparagraph 2(c)(vi) above) for any breach of the Lease by Lessor which is continuing from and after the date Mortgagee or Purchaser takes title to the Demised Premises.

(d) Mortgagee may at any time unilaterally subordinate (or cause to be subordinated) the lien of the Mortgage on the Premises to the Lease.

3. Lessee hereby acknowledges receipt of notice that pursuant to an Assignment of Leases and Rents from Lessor, as modified by the Loan Modification, all leases and rents involving the Building, including the Lease, are assigned to Mortgagee as security for the Loan.

4. Lessee hereby agrees that upon Mortgagee's demand, it will make all payments of rent then and thereafter due to Lessor directly to Mortgagee and not to Lessor or any independent rental agent which Lessor might at any time utilize.

5. Lessee hereby agrees that the interest of the Lessor in the Lease has been collaterally assigned to Mortgagee solely as security for the purposes indicated in the said instrument of assignment or Purchase, as applicable and that, until such time as Mortgagee has taken possession of the Premises and exercised its rights under said assignment, Mortgagee assumes no duty, liability or obligation, whatever under the Lease, or any extension or renewal thereof, by virtue of said assignment.

6. Lessee hereby: (a) agrees to notify Mortgagee, its successors and assigns, in writing at the notice address set forth above for Mortgagee, or at any other address specified in writing to Lessee, of any default on the part of Lessor under the Lease; and (b) grants to Mortgagee, its successors and assigns, the right and opportunity to cure any such default within the same grace period as is given to Lessor for remedying such default, plus, in each case, an additional period of thirty (30) days after the later of (i) the expiration of such grace period, or (ii) the date on which Lessee has served notice of such default upon Mortgagee, its successors or assigns.

7. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee:	Anglo Irish Bank Corporation plc Stephen Court 18/21 St. Stephen's Green Dublin 2, Ireland Attn: Owen O'Neill Fax No.: 0113531 616 2420
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With copies to:	Anglo Irish Bank Corporation plc 71 South Wacker Drive, Suite 1840 Chicago, Illinois 60606 Attn: Joshua Proctor
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Fax No.: 312-924-2222

and:

DLA Piper LLP (US)  
 203 N. LaSalle Street, Suite 1900  
 Chicago, Illinois 60601  
 Attn: Merle Teitelbaum Cowin, Esq.

To Lessee:

Citibank, N.A.  
 c/o Citigroup Realty Services  
 500 W. Madison Street  
 Chicago, Illinois 60661  
 Attn: Real Estate Manager  
 Re: 1 East Oak Street, Chicago, Illinois

With a copy to:

Citigroup, Inc.  
 125 Broad Street  
 New York, New York 10004-2400  
 Attn: General Counsel Real Estate  
 Re: 1 East Oak Street, Chicago, Illinois

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

8. This Agreement shall be binding upon and shall inure to the benefit of Lessee and Mortgagee and their respective successors and assigns, as the case may be. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

9. This Agreement may be executed in counterparts and all said counterparts shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, under seal, as of the day and year first written above.

**LESSEE:**

CITIBANK, N.A., a national banking association

**GREG FURCH, VP**  
Citicorp North America, Inc.  
Citigroup Realty Services  
500 W. Madison/2nd Floor  
Chicago, IL 60661-2591  
312.627.3968

By: Greg Furch  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MORTGAGEE:**

ANGLO IRISH BANK CORPORATION PLC

By: Josh Procter  
Name: Josh Procter  
Title: Vice President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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## JOINDER

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby joins in the execution of the attached Subordination, Non-Disturbance and Attornment Agreement (the "Agreement") by and between CITIBANK, N.A. and ANGLO IRISH BANK CORPORATION PLC ("Mortgagee") for the purpose of acknowledging and agreeing that rents shall be paid to Mortgagee upon demand by Mortgagee pursuant to Section 4 of the Agreement.

### LESSOR:

**M OAK RUSH LLC**, an Illinois limited liability company

By: 

Name: Mark A. Hunt

Title: Manager

**L.I. OAK RUSH, LLC**, an Illinois limited liability company

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

Name: Frederick S. Latsko

Title: Manager

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## JOINDER

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby joins in the execution of the attached Subordination, Non-Disturbance and Attornment Agreement (the "Agreement") by and between CITIBANK, N.A. and ANGLO IRISH BANK CORPORATION PLC ("Mortgagee") for the purpose of acknowledging and agreeing that rents shall be paid to Mortgagee upon demand by Mortgagee pursuant to Section 4 of the Agreement.

### LESSOR:

**M OAK RUSH LLC**, an Illinois limited liability company

By: \_\_\_\_\_  
 Name: Mark A. Hunt  
 Title: Manager

**L.I. OAK RUSH, LLC**, an Illinois limited liability company

By: \_\_\_\_\_  
 Name: Frederick S. Latsko  
 Title: Manager



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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Greg Furch, the V.P. of Citibank, N.A., a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as V.P., appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23<sup>rd</sup> day of September 2008.



Sylvia Mishail  
Notary Public

My Commission Expires: 10/26/09

COUNTY OF DUBLIN, IRELAND

~~I, \_\_\_\_\_, a Notary Public in and for said County, in the Country aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, respectively, of ANGLO IRISH BANK CORPORATION PLC, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act in their respective capacities as aforesaid and as the free and voluntary act of ANGLO IRISH BANK CORPORATION PLC, for the uses and purposes therein set forth.~~

~~GIVEN under my hand and Notarial Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.~~

~~\_\_\_\_\_  
Notary Public~~

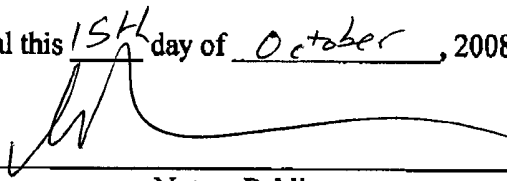
My Commission Expires:

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STATE OF ILLINOIS        )  
                                      ) SS.  
COUNTY OF Cook        )

I, Jake Meilach, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Josh Proctor, the VP of ANGLO IRISH BANK CORPORATION PLC, a banking corporation organized under the laws of the Republic of Ireland, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such JD, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act in his capacity as aforesaid and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 15th day of October, 2008.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:



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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Cook )

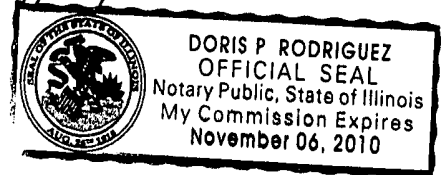
I, Doris Rodriguez a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Mark A. Hunt, the Manager of M Oak Rush LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 15<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 11/06/2010

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )



I, \_\_\_\_\_, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Frederick S. Latka, the Manager of L.I. Oak Rush, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Mark A. Hunt, the Manager of M Oak Rush LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

My Commission Expires:

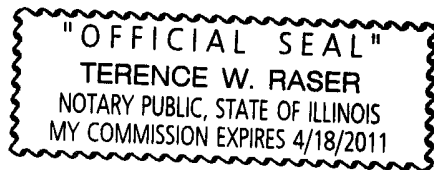
STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF Cook        )

I, Terence W. Raser, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Frederick S. Latsko, the Manager of L.I. Oak Rush, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3rd day of October, 2008.

*Terence W. Raser*  
\_\_\_\_\_  
Notary Public

My Commission Expires: 4-18-11



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## EXHIBIT A

### Legal Description of Premises

PARCEL 1:

LOTS 1, 2 AND 3 IN THE PARTITION OF THE NORTH 1/2 OF BLOCK 9 CANAL TRUSTEE'S SUBDIVISION OF THE SOUTH FRACTIONAL 1/4 OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 6 IN THE PARTITION OF THE NORTH 1/2 OF BLOCK 9 OF CANAL TRUSTEE'S SUBDIVISION OF THE SOUTH FRACTIONAL 1/4 OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.