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This document was prepared by,
and after recording, return to:



Aaron B. Zarkowsky
Deutsch, Levy & Engel, Chartered
225 W. Washington Street, Suite 1700
Chicago, Illinois 60606

Doc#: 0932433007 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/20/2009 08:39 AM Pg: 1 of 10

PIN: 11-18-329-011-0000

Property Address:

rders use only.

806 Greenwood
Evanston, Illinois 60201

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT dated as of November 12, 2009 (the "Agreement"), is executed by and among **High Falls, LLC**, an Illinois limited liability company (the "Landlord"), LEAPFROG ONLINE CUSTOMER ACQUISITION, LLC, a Delaware limited liability company (the "Tenant"), and AMERICAN ENTERPRISE BANK, an Illinois state chartered bank (the "Lender").

RECITALS:

A. The Lender is the mortgagee under that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of even date herewith (the "Mortgage"), which Mortgage encumbers the Real Estate (as hereinafter defined) and secures a principal indebtedness set forth in the Mortgage.

B. The Tenant has entered into that certain lease agreement dated as of August 27, 2008 with the Landlord (the "Lease Agreement", the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "Lease"), pursuant to which the Tenant has leased certain premises (the "Leased Premises") consisting of approximately 2500 rentable square feet of space on the first floor in the building ("Building") on the parcel of land (the "Land"; the Land and Building being collectively referred to herein as the "Real Estate") legally described on Exhibit "A" attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

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AGREEMENTS:

1. The Tenant represents and warrants to the Lender that the Lease constitutes the entire agreement between the Tenant and the Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of the Tenant with respect to the Leased Premises.

2. The Tenant has executed and delivered to the Lender that certain Tenant Estoppel Certificate dated on or about the date hereof (the "Estoppel Certificate"). The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and the Tenant acknowledges that the Lender will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.

3. The Tenant covenants with the Lender that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards.

4. The Tenant acknowledges that the Landlord has collaterally assigned to the Lender any and all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, the Tenant agrees that, upon receipt of a notice of a default by the Landlord under such assignment and a demand by the Lender for direct payment to the Lender of the rents due under the Lease, the Tenant will honor such demand and make all subsequent rent payments directly to the Lender. The Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to the Landlord and the Lender.

5. The Lender agrees that so long as the Tenant is not in default under the Lease:

(a) The Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless the Tenant is a necessary party under applicable law); and

(b) The possession by the Tenant of the Leased Premises and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the

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Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.

6. Prior to pursuing any remedy available to the Tenant under the Lease, at law or in equity as a result of any failure of the Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by the Landlord under the Lease (any such failure being hereinafter referred to as a "Landlord's Default"), the Tenant shall: (a) provide the Lender with a notice of the Landlord's Default, specifying the nature thereof, the section of the Lease under which such Landlord's Default arose, and the remedy which the Tenant will elect under the terms of the Lease or otherwise, and (b) allow the Lender not less than thirty (30) days following receipt of notice of the Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, the Tenant shall give the Lender such additional time as the Lender may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as the Lender is diligently pursuing a cure and any such additional time does not adversely affect the rights of the Tenant for continuous peaceful use and enjoyment of the Premises as otherwise provided for herein or in the Lease. The Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless the Lender fails to cure same within the time period specified above and a disruption to the Tenant's use and enjoyment has occurred. For purposes of this Section 6, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without the Landlord having effectuated a cure thereof.

7. If the Lender or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between the Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subsection (b) below), and in such event:

(a) The Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term), and the Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time the Lender exercises its remedies then the Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to the Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

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(i) liable for any act or omission of any prior landlord (including the Landlord);

(ii) subject to any offsets or defenses which the Tenant has against any prior landlord (including the Landlord) unless the Tenant shall have provided the Lender with (A) notice of the Landlord's Default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of Section 6 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which the Tenant might have paid in advance for more than the current month to any prior landlord (including the Landlord);

(iv) liable to refund or otherwise account to the Tenant for any security or other deposits not actually paid over to or assigned with a credit to, such new owner by the Landlord;

(v) bound by any amendment or modification of the Lease made without the Lender's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including the Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate; provided, however that the foregoing limitation shall not be deemed to limit those covenants from the Landlord set forth in the Lease concerning its obligations to: (i) maintain, repair and restore the building and/or Premises; (ii) maintain electrical, lighting, plumbing and other mechanical installations or systems in or connected to the Premises in good condition and working order and repair including all replacements, including replacements to ceiling tiles if damage to same was caused by other Tenants; and (iii) maintain the insurance coverage on the building, all as set forth by the terms and provisions of the Lease.

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

To the Lender

American Enterprise Bank
600 N. Buffalo Grove Road
Buffalo Grove, Illinois 60089
Attention: Stanford D. Gertz, President -

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Highland Park

With a copy to: Deutsch, Levy & Engel, Chartered
25 W. Washington Street, Suite 1700
Chicago, Illinois 60606
Attn: Aaron B. Zarkowsky

To the Landlord: High Falls, LLC
806 Greenwood
Evanston, Illinois 60201
Attn: Charles F. Clarke, III

With a copy to: Keith L. Moore
806 Greenwood Street
Evanston, Illinois 60201

To the Tenant: LEAPFROG ONLINE CUSTOMER
ACQUISITION, LLC
807 Greenwood Street
Evanston, Illinois 60201
Attn: Legal Department

With a copy to: Fredric B. Prohov, J.D., LEED AP
Prohov & Associates, Ltd.
200 East Randolph Street, 24th Floor
Chicago, IL 60601

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 section 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.

9. The Tenant acknowledges and agrees that the Lender will be relying on the representations, warranties, covenants and agreements of the Tenant contained herein and that any default by the Tenant hereunder shall permit the Lender, at its option, to exercise any and all of its rights and remedies at law and in equity against the Tenant and to join the Tenant in a foreclosure action thereby terminating the Tenant's right, title and interest in and to the Leased Premises.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of the Lender, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

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11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

(Signature Page Follows)

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

LANDLORD:

High Falls, LLC, an Illinois limited liability company

By: *Andrew Brown*
Name: Andrew Brown
Title: Member *and Manager*

By: *[Signature]*
Name: Charles F. Clarke, III
Title: Member *and Manager*

Property of Cook County Clerk's Office

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 Andrew Brown and Charles F. Clarke, III, the members of High Falls, LLC, an Illinois limited liability company, who is personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such members, 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 limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 12th day of November, 2009
Keith L. Moore
Notary Public



My Commission Expires:

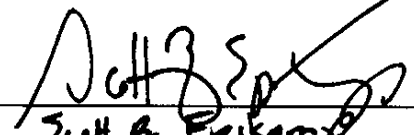
5-31-10

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

TENANT:

LEAPFROG ONLINE CUSTOMER ACQUISITION, LLC, a Delaware limited liability company

By: 
Name: Scott E. Epskamp
Title: President & Co-Founder

Property of Co-Founder
Client's Office

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 SCOTT EPSKAMP, the PRESIDENT & Co-Founder, of LEAPFROG ONLINE CUSTOMER ACQUISITION, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, 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 limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10 day of NOVEMBER, 2009




Notary Public
My Commission Expires:

4.24.12

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EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

11-18-329-011-0000

Property Address:

806 Greenwood
Evanston, Illinois 60201

LOT 12 (EXCEPT THE EAST 10 FEET THEREOF) IN A.J. BROWN'S SUBDIVISION OF BLOCK 40 IN VILLAGE OF EVANSTON IN SECTION 13, TOWNSHIP 41 NORTH, RANGE 18 AND 7, 18 AND SECTION 19, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.