

# UNOFFICIAL COPY

**This Document Prepared By And**  
**When Recorded Return To:**  
Matthew B. Brotschul, Esq.  
BROTSCHUL POTTS LLC  
230 W. Monroe Avenue  
Suite 230  
Chicago, Illinois 60606  
(312) 551-9003



Doc#: 1136104063 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/27/2011 01:31 PM Pg: 1 of 10

1401-8819510 VH

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For Recorder's Use Only

## **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** **(JORDAN NICKEL)**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"),** made as of December 10, 2010, between JORDAN NICKEL ("Tenant"), and THE PRIVATEBANK & TRUST COMPANY ("Lender").

### WITNESSETH

WHEREAS, May Street Investments, LLC, an Illinois limited liability company ("Borrower"), has executed and delivered or will execute and deliver to Lender that certain Mortgage, to be recorded with the Cook County Recorder of Deeds (such mortgage as the same may be amended, modified or restated from time to time being hereinafter referred to as the "Mortgage") encumbering, inter alia, that certain property commonly known as 400-420 N. May, 401-409 N. Racine, 1146 W. Kinzie, Chicago, Illinois and more accurately legally described on **Exhibit A**, attached hereto and incorporated herein (the "Property") to secure the repayment of that certain indebtedness (the "Loan") advanced by Lender to Borrower pursuant to that certain Note, by Borrower in favor of Lender (the "Note"); and

WHEREAS, Borrower is the "Landlord" under that certain Industrial Lease, dated June 16, 2008 (such Lease, together with all amendments and modifications thereto, being hereinafter referred to as the "Lease") under which Tenant leases a portion of the Property subject to the terms and provision of the Lease; and

WHEREAS, prior to providing the Loan, Lender has required the execution of this Agreement and Lender intends to rely on the provisions hereof.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements herein contained, the receipt and legal sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

1. Tenant agrees that the Lease is and shall be subject and subordinate to the Loan Documents (which shall mean all documents which evidence and/or secure the Loan) and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to time. Said subordination is to have the same force and effect as if the Loan Documents and such

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renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof.

2. Lender agrees that, if the Lender exercises any of its rights under the Loan Documents, including an entry by Lender pursuant to the Mortgage or a foreclosure of the Mortgage, Lender shall not disturb Tenant's right of quiet possession of the Property under the terms of the Lease so long as Tenant is not in default of any term, covenant or condition of the Lease.

3. Tenant agrees that, in the event of a foreclosure of the Mortgage by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to fee ownership, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

- a. liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord);
- b. subject to any defense or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord);
- c. bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord);
- d. bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior Landlord's interest;
- e. accountable for any monies deposited with any prior Landlord (including security deposits); or
- f. bound by any surrender, termination, amendment or modification of the Lease made without the written consent of Lender.

5. Tenant agrees that, notwithstanding any provision hereof to the contrary, all of Tenant's right, title and interest in and to insurance proceeds and condemnation awards with respect to damage to or the condemnation of any portion of the Property, shall be subject to and subordinate to Lender's right, title and interest in and to such proceeds and awards.

6. Tenant hereby agrees to give to Lender copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender a forty-five (45) day period of time to enable Lender to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default.

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Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No Landlord default under the Lease shall exist or shall be deemed to exist as long as Lender, in good faith, shall have commenced to cure such default within the above referenced time period. Tenant shall not pursue any remedy available to Tenant as a result of any default by Landlord under the Lease unless Lender fails to cure such default as provided herein.

7. Tenant hereby acknowledges that existence (or future existence) of that certain Assignment of Rents to be recorded with the Cook County Recorder of Deeds, from Landlord to Lender in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignments, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the fee owner of the Property. Tenant agrees that upon receipt of a written notice from Lender of a default by Landlord under the Loan, Tenant will thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease.

8. The Lease shall not be assigned by Tenant, modified, amended or terminated without Lender's prior written consent in each instance.

9. Tenant acknowledges and agrees that any default by Tenant hereunder shall permit Lender, at its option, to exercise any and all of its rights and remedies at law and/or in equity against Tenant and to join Tenant in a foreclosure action thereby termination Tenant's right, title and interest in and to any portion of the Property.

10. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the following addresses:

**IF TO TENANT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WITH A COPY TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**UNOFFICIAL COPY****IF TO LENDER:**

THE PRIVATEBANK & TRUST COMPANY  
 120 S. LaSalle  
 Chicago, Illinois 60603  
 Attn: Ms. Sara Marszalek

**WITH A COPY TO:**

BROTSCHUL POTTS LLC  
 230 W. Monroe Avenue  
 Suite 230  
 Chicago, Illinois 60606  
 Attn: Matthew B. Brotschul

11. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the terms "Tenant" and "Landlord" as used herein include any successor and assign of the named Tenant and Landlord herein, respectively; provided, however, that such reference to Tenant's or Landlord's successors and assigns shall not be construed as Lender's consent to any assignment or other transfer by Tenant or Landlord.

12. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

13. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

14. This Agreement shall be construed in accordance with the laws of the State of Illinois.

15. The person executing this Agreement on behalf of Tenant is authorized by Tenant to do so and execution hereof is the binding act of Tenant enforceable against Tenant. If Tenant consists of two or more parties, each party shall be jointly and severally liable for the obligations contained herein.

16. THE UNDERSIGNED HEREBY CONSENTS TO THE JURISDICTION OF ANY CIRCUIT COURT LOCATED WITHIN THE STATE OF ILLINOIS. TENANT WAIVES, AT THE OPTION OF LENDER, TRIAL BY JURY AND WAIVES ANY OBJECTION BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS IN ANY ACTION OR PROCEEDING TO WHICH TENANT AND LENDER MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO THIS AGREEMENT AND/OR ANY OTHER LOAN DOCUMENTS (AS DEFINED HEREIN). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST

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PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY TENANT, AND TENANT HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO, IN ANY WAY, MODIFY OR NULLIFY ITS EFFECT. TENANT FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.


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

**TENANT:**

  
PRINTED: Jordan Nickel  
DL# N240-4328-0137

**LENDER:**

**THE PRIVATEBANK & TRUST  
COMPANY**

By: Sam J Marozak  
Its: ASSOCIATE MANAGING DIRECTOR

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that Jordan Nickel, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that (s)he signed and delivered the said instrument as his(her) own free and voluntary act and for the uses and purposes therein set forth.

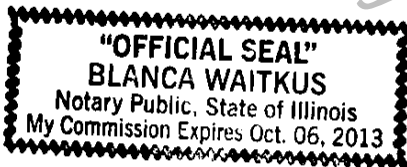
GIVEN under my hand and Notarial Seal this 10 day of DECEMBER, 2010.

Blanca Waitkus

NOTARY PUBLIC

My Commission Expires:

Oct. 6, 2013



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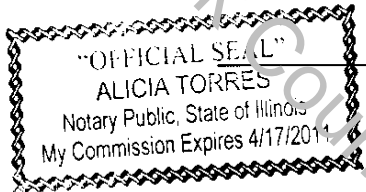
STATE OF ILLINOIS       )  
  ) SS  
COUNTY OF COOK       )

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that Sara Marszalek, as the Assoc Managing Director of THE PRIVATEBANK & TRUST COMPANY, personally known to me to be the Assoc Managing Director as aforesaid, and is the same person whose name is subscribed to the foregoing instrument as such Assoc Managing Director appeared before me this day in person and acknowledged to me that she signed and delivered the said instrument as her own free and voluntary act and the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17 day of December, 2010.

Alicia Torres  
NOTARY PUBLIC

My Commission Expires:





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## EXHIBIT A

### THE PROPERTY -- LEGAL DESCRIPTION

**PARCEL 1:**

SUB-LOTS 1, 2, 3, 4, 5, AND 6 IN C. J. HULLS SUBDIVISION OF LOTS 4 AND 5 IN BLOCK 8 IN OGDEN ADDITION TO CHICAGO, IN SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN,

ALSO

LOTS 15, 16, 17 AND 18 IN THE SUBDIVISION BY THE COMMISSIONERS IN PARTITION IN CASE 23474 IN CIRCUIT COURT OF COOK COUNTY, ILLINOIS OF THE SOUTHWARD 3 ACRES IN THE SOUTH WEST CORNER OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE

14, EAST OF THE THIRD PRINCIPAL MERIDIAN,

ALSO

THE PRIVATE ALLEY LYING WEST AND ADJOINING SAID LOTS 1 TO 6 INCLUSIVE IN SAID C. J. HULL'S SUBDIVISION AFORESAID,

ALSO

THE SOUTH 1/2 OF THE EAST AND WEST 18 FOOT VACATED PUBLIC ALLEY LYING NORTH OF AND ADJOINING THE NORTH LINE, AND SAID NORTH LINE EXTENDED WEST TO THE WEST LINE

OF SAID PRIVATE ALLEY, OF AFORESAID LOT 6 IN C. J. HULLS SUBDIVISION,

AND

THE SOUTH 1/2 OF THE EAST AND WEST 19 FEET VACATED PUBLIC ALLEY LYING NORTH OF AND ADJOINING AFORESAID LOTS 15, 16, 17 AND 18 IN THE SUBDIVISION BY COMMISSIONERS IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

ALL THAT PART OF LOTS 1 TO 19 INCLUSIVE IN COLGATE'S RESUBDIVISION OF LOTS 6 TO 14 INCLUSIVE IN THE SUBDIVISION BY THE COMMISSIONERS, IN PARTITION IN CASE 23474 CIRCUIT COURT OF COOK COUNTY, ILLINOIS OF THE SOUTHWARD 3 ACRES IN THE SOUTH WEST

CORNER OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN,

AND ALSO

OF THE VACATED ALLEY LYING EAST OF LOTS 9 TO 16 IN THE ABOVE SAID RESUBDIVISION, AND ALSO

OF THE SOUTH 1/2 OF THE EAST AND WEST 19 FOOT VACATED PUBLIC ALLEY LYING SOUTH OF

AND ADJOINING LOTS 22 AND 23 IN THE SUBDIVISION BY THE COMMISSIONERS IN PARTITION IN CASE 23474 CIRCUIT COURT OF THE SOUTHWARD 3 ACRES IN THE SOUTHWEST CORNER OF

THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE CENTER LINE OF AFORESAID EAST AND WEST 19 FOOT VACATED ALLEY AND THE EAST LINE EXTENDED NORTH OF SAID LOT 17 IN COLGATES RESUBDIVISION; THENCE WEST ALONG SAID CENTER LINE, AND SAID CENTER LINE

EXTENDED WEST, OF EAST AND WEST 19 FOOT VACATED PUBLIC ALLEY TO A POINT IN THE WEST LINE OF LOT 2 IN SAID COLGATE'S RESUBDIVISION; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT 2 IN SAID COLGATE'S RESUBDIVISION TO A POINT 150.5 FEET NORTH FROM THE SOUTHWEST CORNER OF LOT 9 IN SAID COLGATE'S RESUBDIVISION; THENCE SOUTHEASTERLY TO A POINT IN THE SOUTH LINE OF SAID LOT 9, 90 FEET EAST FROM THE SOUTHWEST CORNER THEREOF, THENCE EAST ALONG THE SOUTH LINE OF SAID LOT 9, THE VACATED ALLEY AND LOT 19 IN THE SAID COLGATE'S RESUBDIVISION 69.14 FEET MORE OR LESS TO THE SOUTHEAST CORNER OF SAID LOT 19; THENCE NORTH ALONG THE EAST LINE,

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AND SAID EAST LINE EXTENDS NORTH OF SAID LOTS 19, 18 AND 17 IN SAID RESUBDIVISION TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

**PARCEL 3:**

THAT PART OF LOT 3 IN BLOCK 8 IN OGDENS ADDITION TO CHICAGO IN THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A STRAIGHT LINE DRAWN BETWEEN A POINT ON THE EAST LINE OF RACINE AVENUE (FORMERLY NORTH CENTER AVENUE) WHICH IS A DISTANCE OF 101.14 FEET SOUTH OF

THE SOUTH LINE OF HUBBARD STREET (FORMERLY AUSTIN AVENUE) AND A POINT ON THE WEST

LINE OF MAY STREET WHICH IS A DISTANCE OF 100.97 FEET SOUTH OF THE SAID SOUTH LINE OF HUBBARD STREET, (FORMERLY AUSTIN AVENUE)

**ALSO**

THE NORTH 1/2 OF THE VACATED EAST AND WEST ALLEY ADJACENT TO THE SOUTH LINE OF SAID LOT 3 IN COOK COUNTY, ILLINOIS.

**PARCEL 4:**

THAT PART OF LOT 5 AND LOTS 19 TO 23, BOTH INCLUSIVE, AND THE VACATED NORTH AND SOUTH ALLEY ADJACENT TO THE WEST LINE OF SAID LOT 23 AND ADJACENT TO THE SAID WEST LINE OF LOT 23 PRODUCED SOUTH TO THE CENTER LINE OF THE VACATED EAST AND WEST ALLEY IN THE SUBDIVISION BY THE COMMISSIONERS IN PARTITION CASE NO. 23474 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS OF THE 3 ACRES IN THE SOUTHWEST CORNER

OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A STRAIGHT LINE DRAWN BETWEEN A POINT ON THE EAST LINE OF RACINE AVENUE, (FORMERLY NORTH CENTER AVENUE) WHICH IS A DISTANCE OF

101.14 FEET SOUTH OF THE SOUTH LINE OF HUBBARD STREET (FORMERLY AUSTIN AVENUE) AND A POINT ON THE WEST LINE OF MAY STREET WHICH IS A DISTANCE OF 100.97 FEET SOUTH OF THE SAID SOUTH LINE OF HUBBARD STREET (FORMERLY AUSTIN AVENUE)

**ALSO**

ALL OF THE NORTH 1/2 OF VACATED EAST AND WEST ALLEY ADJACENT TO THE SOUTH LINE OF

SAID LOTS 19 TO 23 IN COOK COUNTY, ILLINOIS.

**PARCEL 5:**

LOTS 1, 2, 15 AND 16 IN COLGATE'S RESUBDIVISION OF LOTS 6 TO 15 INCLUSIVE, IN THE CIRCUIT COURT PARTITION OF 3 ACRES IN THE SOUTHWEST CORNER OF THE NORTHEAST 1/4 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING THAT PART OF AFORESAID LOTS 2 AND 15 WHICH LIES SOUTH OF THE CENTER LINE PRODUCED WEST OF THE VACATED EAST AND WEST ALLEY WHICH LIES SOUTH OF AND ADJACENT TO LOT 23 IN AFORESAID CIRCUIT COURT PARTITION) IN COOK COUNTY, ILLINOIS.

**PIN: 17-08-254-004-0000; 17-08-254-011-0000; 17-08-254-012-0000; 17-08-254-014-0000; 17-08-254-017-0000; and 17-08-254-018-0000**