

# UNOFFICIAL COPY



Doc#: 1205942004 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/28/2012 09:01 AM Pg: 1 of 9

PREPARED BY:  
C Svientek/005397641000

WHEN RECORDED RETURN TO:

Commercial Loan Services  
IL1-1145 (Floor 7)  
10 S. Dearborn  
Chicago, IL 60670

888 705 41, D1, PL3 30F 5

Property of Cook County Clerk's Office



## Subordination, Non-Disturbance and Attornment Agreement

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is dated as of December 29, 2011, among JPMorgan Chase Bank, N.A., whose address is 10 S. Dearborn, Chicago, IL 60670, and its successors and assigns (the "Mortgagee"), WHEELING SHOPPING CENTER, INC., whose address is 580 N. Bank Lane, #33, Lake Forest, IL 60045 (the "Landlord") and Marcel of Wheeling, Inc., d/b/a Liquor Barn, whose address is 267-283 E. Dundee, Wheeling, IL 60090 (the "Tenant").

### RECITALS:

- A. The Landlord and the Tenant have entered into a Store Lease dated August 30, 2011 (together with any and all amendments, modifications, extensions, renewals, consolidations and replacements thereof, whether now existing or hereafter entered into, are collectively called the "Lease") covering certain premises (the "Premises") on the real property (the "Property") commonly known as 267-283 E. Dundee, Wheeling, IL 60090 and more particularly described as follows:

Located in the Village of Wheeling, County of Cook, State of Illinois:

#### PARCEL 1:

LOTS 1 AND 7 IN FRESH FARMS - WHEELING SUBDIVISION: BEING A RESUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 2 AND THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 7, 2011 AS DOCUMENT 1134116010, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

A NON-EXCLUSIVE ACCESS EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY PLAT OF SUBDIVISION RECORDED DECEMBER 7, 2011 AS DOCUMENT 1134116010.

Box 400-CTCC

S Y  
P 8  
S N  
SC Y  
INT C.F.

# UNOFFICIAL COPY

Tax Parcel Identification No. 03-02-415-004,-005,-017,-018,-026,-027,-028,-029,-031,-032,-033,-036,-037,-038,-039,-040,-041,-042,-043,-044,-045, and 046.

- B. The Landlord is the owner of fee simple title to the Property and the Premises;
- C. The Mortgagee has made or has agreed to make a loan or other extension of credit to the Landlord, secured or to be secured by, among other collateral, a mortgage from the Landlord to the Mortgagee (said mortgage and all amendments, modifications, extensions, renewals, consolidations and replacements thereof, whether now existing or hereafter entered into, are collectively called the "Mortgage") on the Property; and
- D. The Tenant has agreed to subordinate the Lease to the lien of the Mortgage and the Mortgagee has agreed to grant non-disturbance to the Tenant under the Lease on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. **Subordination.** The Lease, and all of the terms, covenants and provisions thereof (including but not limited to purchase options and first refusal rights), is subordinate in all respects to the Mortgage, to the full extent of any and all of the Liabilities (as defined in the Mortgage), all with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. **Attornment.** The Tenant, for itself and its successors and assigns, agrees that it will attorn to and recognize the Mortgagee or any other New Landlord (as defined below), and the successors and assigns of the Mortgagee or any other New Landlord, as its landlord for the unexpired balance (and any extensions or renewals, if previously, at that time or thereafter exercised by the Tenant) of the term of the Lease upon the same terms and conditions set forth in the Lease, subject to the limitations on liability that are set forth in Paragraph 3 below. This attornment shall be effective and self-operative without the execution of any further instruments.

3. **Non-Disturbance.** The Mortgagee, for itself and its successors and assigns, for any purchaser at any foreclosure, public or private sale under the Mortgage, for any transferee who acquires the Property by deed in lieu of foreclosure or otherwise, and for the successors and assigns of such purchaser and transferee (the Mortgagee and each such other party being collectively called "New Landlord") hereby covenants and agrees with the Tenant that if any New Landlord shall commence foreclosure of the Mortgage, for any reason whatsoever, or shall succeed to the interest of the Landlord by foreclosure, sale by advertisement, power of sale, deed in lieu thereof or otherwise, and provided the Tenant is not then in default (after expiration of any applicable grace period) under the Lease, then: (a) the Tenant shall not be named as a party defendant in any foreclosure action, exercise of power of sale, sale by advertisement or any other proceeding to enforce the Mortgage, unless the Tenant is deemed to be a necessary party; (b) subject to the next succeeding grammatical paragraph, the Lease shall, in accordance with its terms, remain in full force and effect as a direct indenture of lease between such New Landlord and the Tenant, with the same force and effect as if originally entered into with such New Landlord; and (c) the Tenant's possession of the Premises and the Tenant's rights and privileges under the Lease shall not be diminished, interfered with or disturbed by any New Landlord by such foreclosure, sale or other action under the Mortgage or by any such attempt to foreclose, sell or succeed to the interests of the Landlord by foreclosure, exercise of power of sale, sale by advertisement, deed in lieu thereof or otherwise.

If any New Landlord shall succeed to the interest of the Landlord under the Lease, the Tenant agrees as follows:

(a) Such New Landlord shall not be: (i) subject to any credits, offsets, abatements, deductions, defenses, claims or counterclaims, of any nature or type, that the Tenant might have against any prior landlord (including the Landlord); (ii) bound by any rent or additional rent that the Tenant shall have paid more than one (1) month in advance to any prior landlord (including the Landlord); (iii) required to make any improvements to the Property or to the Premises which Landlord may have agreed to make, but had not completed, or to perform or provide any service not related to the possession or quiet enjoyment of the Premises; (iv) obligated to complete any construction work required to be done by Landlord pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant; (v) required to make any repairs to the Premises or the Property as a result of fire or other casualty or by reason of condemnation; (vi) liable under any indemnity provision of whatever nature contained in the Lease, including, but not limited to, any environmental indemnification; (vii) liable for or have any responsibility related to any hazardous materials or other environmental conditions or contamination that existed on or under the Property or the Premises prior to the New Landlord succeeding to the interest of the Landlord under the Lease or (viii) bound by

# UNOFFICIAL COPY

(A) any amendment, modification, renewal or extension (except for extensions unilaterally made by the Tenant pursuant to extension options that are contained in the Lease) to the Lease, (B) any assignment, sublease, mortgage, encumbrance or other disposition of all or any part of the Tenant's interest in the Lease or the Premises, (C) any surrender, cancellation or termination of the Lease, whether in whole or in part (unless the surrender, cancellation or termination is effected unilaterally by the Tenant under a specific term of the Lease; provided, however, that if the Tenant's right to cancel, surrender or terminate the Lease arises because of a default by the Landlord under the Lease, the Tenant shall not terminate, cancel or surrender the Lease because of that default unless (1) the Landlord is in default under the Lease beyond any cure period provided in the Lease; (2) the Tenant has given the Mortgagee prior written notice of the default as provided in Paragraph 5 below; and (3) the cure period provided to the Mortgagee in Paragraph 5 below has expired without the Mortgagee having cured the default), (D) any option in the Lease obligating the Landlord under the Lease to provide additional space at the Property to the Tenant or (E) any waiver of any provision of the Lease, in each of cases (A) through (E) above, that has not been consented to in writing by the Mortgagee;

(b) No New Landlord shall be liable for: (i) any act or omission of any prior landlord (including the Landlord); (ii) the return of any security deposit made by the Tenant to any prior landlord (including the Landlord), unless such New Landlord shall have actually received such security deposit from the prior landlord; or (iii) any payment to the Tenant of any sums or allowances, or any granting to the Tenant of any credit, abatement or other rental concession, in the nature of a contribution towards the cost of preparing, furnishing or completing improvements at, or moving into, the Premises, the Property or any portion thereof;

(c) The Tenant shall look solely to the Property for the recovery of any judgment or damages from the Mortgagee or any other New Landlord and neither any New Landlord, any partner, officer, director, shareholder, member, manager, employee or agent of any of them or any successor or assign of any of the foregoing shall have any personal liability, directly or indirectly, under or in connection with the Lease, this Agreement or any amendment or amendments to either the Lease or this Agreement made at any time or times heretofore or hereafter. The Tenant hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation on liability applicable to any New Landlord under this Agreement, at law, in equity or under any other contract, agreement or instrument; and

(d) The Mortgagee shall be released from all duties and obligations under the Lease from and after the date that it conveys its interest in the Property to any third party.

**4. Mortgagee's Consent.** The Landlord's consent, approval or waiver under or with respect to the Lease, the Premises or any matter related thereto shall not be effective unless such consent, approval or waiver is accompanied by written consent of the Mortgagee.

**5. Landlord's Default.** The Tenant hereby agrees to provide the Mortgagee with prompt written notice of any default under the Lease by the Landlord and to provide the Mortgagee a period of time equal to (a) one hundred twenty (120) days (i) after the end of the Landlord's cure period, if any, under the Lease in connection with such default by the Landlord or (ii) the date on which the Mortgagee received the notice of Landlord's default from the Tenant, plus (b) such reasonable period of time as is necessary thereafter to remedy such default if the Mortgagee has commenced and is diligently pursuing such remedy. Notwithstanding the foregoing, the Tenant agrees that the Mortgagee shall have no obligation to remedy any such Landlord default.

**6. Estoppel Certificate.** The Tenant agrees at any time and from time to time to execute, deliver and acknowledge to the Landlord, to the Mortgagee or to any third party designated by the Landlord or by the Mortgagee, within ten (10) days following the Landlord's or the Mortgagee's written request therefore: (a) a statement in writing certifying that (i) the Lease is in full force and effect, (ii) the Landlord is not in default thereunder (or specifying any defaults by the Landlord that the Tenant alleges), (iii) rent has not been prepaid more than one (1) month in advance and (iv) any further information about the Lease or the Premises that the Landlord, the Mortgagee or said third party may reasonably request; (b) a statement in writing that the Tenant will recognize any New Landlord as the assignee of the Landlord's rights under the Lease; and (c) a statement in writing acknowledging or denying receipt of notice of any conditional or security assignment of the Lease to any third party. The Tenant understands that the Mortgagee and/or prospective purchasers, other mortgagees or lessors of the Premises or any part thereof will rely on such certificates. The Tenant's obligation to deliver such certificates within ten (10) days, as described above, is a material obligation of the Tenant hereunder and under the Lease.

**7. Further Subordination.** The Tenant, for itself and its successors and assigns, agrees that, without the prior written consent of the Mortgagee, the Tenant will not: (a) enter into any subordination agreement with any person other than the

# UNOFFICIAL COPY

Mortgagee; or (b) agree to attorn to or recognize any purchaser or transferee of the Property at any foreclosure sale, by exercise of power of sale, by sale by advertisement by deed in lieu thereof or otherwise, in each case, under any lien other than that of the Mortgage (provided, however, that this provision shall not be deemed to constitute the Mortgagee's consent to the placing of any lien other than the Mortgage on the Property).

**8. Insurance Proceeds and Condemnation Awards.** The Tenant agrees that any interest of the Tenant in any insurance, condemnation or eminent domain proceeds or awards made with respect to any interest in the Premises and/or the Property shall be subordinate to the interests of the Mortgagee in such proceeds or awards. The Tenant will neither seek nor accept any insurance, condemnation or eminent domain proceeds or awards made with respect to any interest in the Premises and/or the Property until all amounts secured by the Mortgage have been paid in full. However, the Tenant reserves the right to make a separate claim for trade fixtures and moving expenses if separately allocated.

**9. Modification of Liabilities.** From time to time, the Mortgagee may, without notice to or consent of the Tenant and without impairing or affecting this Agreement, do any of the following as to any of the Liabilities (as defined in the Mortgage): (a) amend, modify, extend, or renew any or all of the Liabilities; (b) change the rate of interest being charged on any or all of the Liabilities; (c) release the Landlord, any guarantor, any surety or any other third party from liability on any or all of the Liabilities; (d) compromise or settle the terms of any or all of the Liabilities; (e) forbear or agree to forbear from taking any action against the Landlord, any guarantor, any surety or any other party in regard to any or all of the Liabilities; or (f) substitute, release, exchange, or take any other action in regard to any collateral, including the Property, for any or all of the Liabilities.

**10. Notice.** Any notices and demands under or related to this Agreement shall be in writing and delivered to the intended party at its address stated herein, and if to the Mortgagee, at its main office if no other address of the Mortgagee is specified herein, by one of the following means: (a) by hand; (b) by a nationally recognized overnight courier service; or (c) by certified mail, postage prepaid, with return receipt requested. Notice shall be deemed given: (a) upon receipt if delivered by hand; (b) on the Delivery Day after the day of deposit with a nationally recognized courier service; or (c) on the third Delivery Day after the notice is deposited in the mail. "Delivery Day" means a day other than a Saturday, a Sunday or any other day on which national banking associations are authorized to be closed. Any party may change its address for purposes of the receipt of notices and demands by giving notice of such change in the manner provided in this provision.

**11. Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. The Tenant and the Landlord agree that the Mortgagee may at any time sell or transfer all or any part of the Liabilities to one or more purchasers, whether or not related to the Mortgagee.

**12. Recording.** The parties hereto agree that this Agreement may be recorded in the public records of the county in which the Property is located.

**13. Counterparts.** This Agreement may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

**14. Captions.** Captions in this Agreement are for convenience of reference only and do not limit the provisions of this Agreement.

**15. Time.** Time is of the essence in this Agreement.

**16. Information Waiver.** The Tenant and the Landlord agree that the Mortgagee may provide any information or knowledge the Mortgagee may have about the Landlord, the Tenant or any matter relating to this Agreement or the Related Documents (as defined in the Mortgage) to JPMorgan Chase & Co., or any of its subsidiaries or affiliates or their successors or to any one or more purchasers or potential purchasers of all or any part of the Liabilities and/or any Related Documents.

**17. Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois (without giving effect to its laws of conflicts). The Landlord and the Tenant agree that any legal action or proceeding with respect to any of their obligations under this Agreement may be brought by the Mortgagee in any state or federal court located in the State of Illinois, as the Mortgagee in its sole discretion may elect. By the execution and delivery of this Agreement, the Landlord and the Tenant submit to and accept, for themselves and in respect of their property, generally and unconditionally, the non-exclusive jurisdiction of those courts. The Landlord and the Tenant waive any claim that the State of Illinois is not a convenient forum or the proper venue for any such suit, action or proceeding.

# UNOFFICIAL COPY

**18. WAIVER OF SPECIAL DAMAGES.** THE LANDLORD AND THE TENANT WAIVE, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM THE MORTGAGEE IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

**JURY WAIVER.** THE LANDLORD, THE TENANT AND THE MORTGAGEE (BY THEIR ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) AMONG ANY OF THE LANDLORD, THE TENANT AND/OR THE MORTGAGEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE MORTGAGEE TO PROVIDE OR CONTINUE PROVIDING THE FINANCING EVIDENCED BY THE LANDLORD'S DEBT.

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

**Mortgagee:**

JPMorgan Chase Bank, N.A.

By: *[Signature]*  
Laura J. Harman Officer  
Printed Name Title

**Tenant:**

Marcel of Wheeling, Inc., d/b/a Liquor Barn

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

**Landlord:**

WHEELING SHOPPING CENTER, INC.

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

C Svientek \ILCDP-2489X000000  
005397641000 \DW000B009615839C15E6

# UNOFFICIAL COPY

## ACKNOWLEDGMENT OF MORTGAGEE

State of Illinois )  
County of Cook ) ss

I, Megan Anderson, a Notary Public in and for said County and State,  
certify that Laura Hinnan, a Officer of JPMC  
a(n) \_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_\_, a \_\_\_\_\_ of said \_\_\_\_\_, personally known to me to be the 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 said  
instrument as their own free and voluntary act and as the free and voluntary act of said \_\_\_\_\_  
\_\_\_\_\_, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 25 day of January, 20 12

My Commission expires: 4/5/14

Megan Anderson  
Notary Public



Property of Cook County Clerk's Office



# UNOFFICIAL COPY

**18. WAIVER OF SPECIAL DAMAGES.** THE LANDLORD AND THE TENANT WAIVE, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM THE MORTGAGEE IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

**JURY WAIVER.** THE LANDLORD, THE TENANT AND THE MORTGAGEE (BY THEIR ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) AMONG ANY OF THE LANDLORD, THE TENANT AND/OR THE MORTGAGEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE MORTGAGEE TO PROVIDE OR CONTINUE PROVIDING THE FINANCING EVIDENCED BY THE LANDLORD'S DEBT.

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

**Mortgagee:**

JPMorgan Chase Bank, N.A.

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

Printed Name Title

**Tenant:**

Marcel of Wheeling, Inc., d/b/a Liquor Barn

By: Marcell Olshansky

Printed Name Title

**Landlord:**

WHEELING SHOPPING CENTER, INC.

By: Paul Svirgus

Printed Name Title

C:\Svientek\JLCDP-2489X000000  
003397641000\DW000B009615839C15E6

# UNOFFICIAL COPY

## ACKNOWLEDGMENT OF TENANT

State of Illinois )  
County of Lake ) ss

I, Jennifer Melvin, a Notary Public in and for said County and State,  
certify that Marcel Olshansky, a President of Marcel of Wheeling Inc  
d/b/a Liquor Barn a(n) ILLINOIS Corp. and \_\_\_\_\_  
\_\_\_\_\_, a \_\_\_\_\_ of said \_\_\_\_\_, personally known to me to be the 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 said  
instrument as their own free and voluntary act and as the free and voluntary act of said \_\_\_\_\_  
\_\_\_\_\_, for the use and purposes therein set forth.

Given under my hand and notarial seal this 27<sup>th</sup> day of January, 2012

My Commission expires: 11/20/13

Jennifer Melvin  
Notary Public



Notary Public of Cook County Clerk's Office



# UNOFFICIAL COPY

## ACKNOWLEDGMENT OF LANDLORD

State of Illinois )  
County of Lake ) ss

I, Jennifer Melvin, a Notary Public in and for said County and State,  
certify that Paul Swagos, a Vice President of Wheeling Shopping  
Center Inc a(n) LLC and \_\_\_\_\_

\_\_\_\_\_ a \_\_\_\_\_ of said \_\_\_\_\_, personally known to me to be the persons  
whose names are subscribed to the foregoing instrument as such Paul Swagos and \_\_\_\_\_  
respectively, appeared before me this day in person and acknowledged that they signed and delivered said  
instrument as their own free and voluntary act and as the free and voluntary act of said Wheeling Shopping Center Inc  
for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of January, 2012

My Commission expires: 11/20/13

Jennifer Melvin  
Notary Public

