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Doc#: 1321829071 Fee: \$56.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/06/2013 03:00 PM Pg: 1 of 10

THIS INSTRUMENT PREPARED
BY AND WHEN RECORDED,
RETURN TO:

Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attn: Christopher T. Nixon, Esq.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made by and between GUGGENHEIM LIFE AND ANNUITY COMPANY, a Delaware life insurance company [REDACTED] (together with its successors and assigns, "Lender") and JOS. A. BANK CLOTHIERS, INC., a Delaware corporation with its principal place of business at 500 Hanover Pike, Hampstead, Maryland 21074, Attn: Charles D. Frazer, Esq., Senior Vice President & General Counsel ("Tenant").

RECITALS:

A. Lender has made or is about to make a mortgage loan (together with all advances and increases, the "Loan") to TCB-Clybourn Galleria, LLC, a Delaware limited liability company ("Borrower").

B. Borrower, (successor in interest to Clybourn Galleria Investor, LLC, DSP Clybourn, LLC and 1845 North Clybourn, LLC) as landlord, and Tenant have entered into a Lease dated March 19, 2003, as amended (the "Lease") which leased to Tenant approximately 4,515 square feet of space (the "Leased Space") located in the Property (defined below).

C. The Loan is or will be secured by the Mortgage, Assignment of Leases and Rents, Fixture Filing Statement and Security Agreement recorded or to be recorded in the official records of the County of Cook, State of Illinois (together with all advances, increases, amendments or consolidations, the "Mortgage") and the Assignment of Leases and Rents recorded or to be recorded in such official records (together with all amendments or consolidations, the "Assignment"), assigning to Lender the Lease and all rent, additional rent and other sums payable by Tenant under the Lease (the "Rent").

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D. The Mortgage encumbers the real property, improvements and fixtures located at 1835-1857 North Clybourn Avenue, in the City of Chicago, County of Cook, State of Illinois, commonly known as Clybourn Galleria, and described on Exhibit "A" (the "**Property**").

IN CONSIDERATION of the mutual agreements contained in this Agreement, Lender and Tenant agree as follows:

1. The Lease and all of Tenant's rights under the Lease are and will remain subordinate to the lien of the Mortgage.

2. This Agreement constitutes notice to Tenant of the Mortgage and the Assignment and, provided Tenant receives a copy of this Agreement executed on behalf of Borrower, upon receipt of notice from Lender to do so, Tenant will pay the Rent as and when due under the Lease to Lender and the payments will be credited against the Rent due under the Lease. Borrower hereby agrees that (i) payment to or as directed by Lender shall be deemed payment to Borrower under the Lease and Tenant shall not be liable for any misapplication of funds; (ii) no notice from Borrower shall be effective to revoke Tenant's right to pay rent as directed by Lender or cancel Lender's right to receive or direct payment unless such notice of revocation shall be consented to in writing by Lender and (iii) Tenant shall be entitled to honor any demand or direction for payment from Lender or any person or entity purporting to act on behalf of Lender without regard to or inquiring into whether a default by Borrower under the loan has actually occurred or the actual authority of the party making such demand or direction.

3. Tenant does not have and will not acquire any right or option to purchase any portion or interest in the Property.

4. Tenant and Lender agree that if Lender exercises its remedies under the Mortgage or the Assignment and if Tenant is not in default beyond any applicable grace and cure periods under the Lease:

(a) Lender will not name Tenant as a party to any judicial or non-judicial foreclosure or other proceeding to enforce the Mortgage unless joinder is required under applicable law but in such case Lender will not seek affirmative relief against Tenant, the Lease will not be terminated and Tenant's possession of the Leased Space will not be disturbed;

(b) If Lender or any other entity (a "**Successor Landlord**") acquires the Property through foreclosure, by other proceeding to enforce the Mortgage or by deed-in-lieu of foreclosure (a "**Foreclosure**"), Tenant's possession of the Leased Space will not be disturbed and the Lease will continue in full force and effect between Successor Landlord and Tenant; and

(c) If, notwithstanding the foregoing, the Lease is terminated as a result of a Foreclosure, a lease between Successor Landlord and Tenant will be deemed created, with no further instrument required, on the same terms as the Lease except that the term of the replacement lease will be the then unexpired term of the Lease. Successor Landlord and Tenant will execute a replacement lease at the request of either.

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5. Upon Foreclosure, Tenant will recognize and attorn to Successor Landlord as the landlord under the Lease for the balance of the term. Tenant's attornment will be self-operative with no further instrument required to effectuate the attornment except that at Successor Landlord's request, Tenant will execute instruments reasonably satisfactory to Successor Landlord and Tenant confirming the attornment.

6. Successor Landlord shall not be:

(a) liable for any act or omission of Borrower or any prior landlord under the Lease; provided, however, that nothing herein shall relieve Successor Landlord from liability for conditions which constitute continuing defaults under the Lease;

(b) subject to any offsets or defenses which Tenant might have against Borrower or any prior landlord, except for such offsets or defenses as may arise as a result of any alternate rent rights afforded to Tenant under the Lease;

(c) bound by any rent or additional rent which Tenant might have paid for more than the current month to Borrower or any prior landlord;

(d) bound by any amendment or modification of the Lease made without Lender's prior written consent; provided, however, that the exercise by Tenant of any unilateral right reserved to Tenant under the Lease shall not be deemed an amendment or modification to which such consent is required; or

(e) liable for any security deposit Tenant might have paid to Borrower or any prior landlord, except to the extent Lender has actually received said security deposit.

7. Lender will have the right, but not the obligation, to cure any default by Borrower, as landlord, under the Lease. Tenant will notify Lender of any default that would entitle Tenant to terminate the Lease or abate the Rent and Lender shall have the same cure period as set forth in the Lease to cure such default.

8. All notices, requests or consents required or permitted to be given under this Agreement must be in writing and sent by certified mail, return receipt requested or by nationally recognized overnight delivery service providing evidence of the date of delivery, with all charges prepaid, addressed to the appropriate party at the addresses set forth below:

If to Lender: c/o Guggenheim Partners Investment Management, LLC
231 South Bemiston, 14th Floor
St. Louis, Missouri 63105

with a copy to: Christopher T. Nixon
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201

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If to Tenant: Jos. A. Bank Clothiers, Inc.
500 Hanover Pike
Hampstead, MD 21074
Attn: Lease Administrator

with a copy to: Jos. A. Bank Clothiers, Inc.
500 Hanover Pike
Hampstead, MD 21074
Attn: Charles D. Frazer, SVP & General Counsel

If to Borrower: TCB-Clybourn Galleria, LLC
c/o Derrick McGavic
5215 Old Orchard Road, Suite 970
Skokie, IL 60077

with a copy to: Steve Friedland
626 West Jackson Blvd.
Suite 400
Chicago, IL 60661

9. Any claim by Tenant against Successor Landlord under the Lease or this Agreement will be satisfied solely out of Successor Landlord's interest in the Property and Tenant will not seek recovery against or out of any other assets of Successor Landlord. Successor Landlord will have no liability or responsibility for any obligations under the Lease that arise subsequent to any transfer of the Property by Successor Landlord.

10. This Agreement is governed by and will be construed in accordance with the laws of the state or commonwealth in which the Property is located.

11. Lender and Tenant waive trial by jury in any proceeding brought by, or counterclaim asserted by, Lender or Tenant relating to this Agreement.

12. If there is a conflict between the terms of the Lease and this Agreement, the terms of this Agreement will prevail as between Successor Landlord and Tenant.

13. This Agreement binds and inures to the benefit of Lender and Tenant and their respective successors, assigns, heirs, administrators, executors, agents and representatives.

14. This Agreement contains the entire agreement between Lender and Tenant with respect to the subject matter of this Agreement, may be executed in counterparts that together constitute a single document and may be amended only by a writing signed by Lender and Tenant.

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IN WITNESS WHEREOF, Lender has executed and ensealed this Agreement as of July 17, 2013.

LENDER:

GUGGENHEIM LIFE AND ANNUITY COMPANY,
a Delaware life insurance company

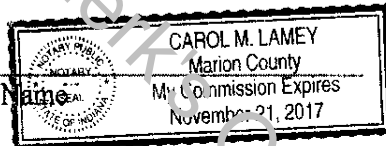
By: [Signature]
Name: James D. Purvis
Title: Chief Operating Officer

STATE OF Indiana
CITY/COUNTY OF Marion, to wit:

The foregoing instrument was acknowledged before me this 17th day of July, 2013, by James D. Purvis, as COO of the Lender executing this Agreement concurrently herewith.

WITNESS my hand and official seal.

[Signature]
Notary Public in and for said
County and State



Registration Number _____
My Commission expires: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGES]

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IN WITNESS WHEREOF, Lender, Tenant and Borrower have executed and delivered this Agreement as of _____, 2013.

GUGGENHEIM PARTNERS INVESTMENT
MANAGEMENT, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

JOS. A. BANK CLOTHIERS, INC.,
a Delaware corporation

By: Charles D. Frazer
Name: Charles D. Frazer
Title: General Counsel

TCB-CLYBOURN GALLERIA, LLC,
a Delaware limited liability company

By: NEWPORT CAPITAL PARTNERS FUND, I, LP,
a Delaware limited partnership
its Managing Member

By: NEWPORT CAPITAL I, LLC,
an Illinois limited liability company
its General Partner

By: TCB-NEWPORT I, L.L.C.,
an Illinois limited liability company
its Manager

By: NEWPORT PROPERTY INVESTORS, LLC,
an Illinois limited liability company,
its Manager

By: _____
Name: Derrick E. McGavie
Title: Managing Member

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ACKNOWLEDGEMENT

State of Maryland

County of Carroll

On this 3rd day of July, 2013, before me, Jennifer L. Myers, personally appeared Charles D. Frazer, who acknowledged himself to be the General Counsel of JOS. A. BANK CLOTHIERS, INC., a Delaware corporation, and that he, as such General Counsel being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as General Counsel.

In witness whereof I hereunto set my hand and official seal.





Jennifer L. Myers
NOTARY PUBLIC
Harford County
State of Maryland
My Commission Expires
October 2, 2013

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IN WITNESS WHEREOF, Landlord has executed and ensealed this Agreement as of August 5, 2013.

LANDLORD:

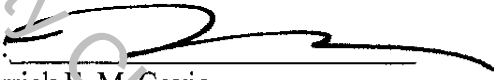
TCB – CLYBOURN GALLERIA, LLC,
a Delaware limited liability company

By: Newport Capital Partners Fund I, LP,
a Delaware limited partnership,
its Managing Member

By: Newport Capital I, LLC,
an Illinois limited liability company,
its General Partner

By: TCB-Newport I, L.L.C.,
an Illinois limited liability company,
its Manager

By: Newport Property Investors, LLC,
an Illinois limited liability
company, its Manager

By: 
Derrick E. McGavic
Managing Member

[PLEASE ATTACH STATE SPECIFIC FORM OF EXECUTION AND
ACKNOWLEDGMENT]

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 29th day of July, 2013, before me, the undersigned notary public, personally appeared Derrick E. McGavic, the Managing Member of NEWPORT PROPERTY INVESTORS, LLC, an Illinois limited liability company, the Manager of TCB-NEWPORT I, L.L.C., an Illinois limited liability company, the Manager of NEWPORT CAPITAL I, LLC, an Illinois limited liability company, the General Partner of NEWPORT CAPITAL PARTNERS FUND I, LP, a Delaware limited partnership, the Managing Member of TCB-Clybourn Galleria, LLC, a Delaware limited liability company, who proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Denise G. Corcoran
Notary Public

My Commission Expires:

8/20/15

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EXHIBIT A

Property Description

That certain real property located in the City of Chicago, County of Cook, State of Illinois, having a street address of 1835 - 1857 North Clybourn Avenue, Chicago, Illinois.

More particularly described as follows:

Lots 11 through 23 all in Clark and Thomas' Subdivision of Lot 4 in Block 9 in Sheffield's addition to Chicago, situated in the South East $\frac{1}{4}$ of Section 32, township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

P.L.N. Nos.: 14-32-416-011-0000
 14-32-416-012-0000
 14-32-416-013-0000
 14-32-416-014-0000
 14-32-416-015-0000
 14-32-416-016-0000
 14-32-416-017-0000
 14-32-416-018-0000
 14-32-416-019-0000
 14-32-416-020-0000
 14-32-416-021-0000
 14-32-416-022-0000
 14-32-416-023-0000