

UNOFFICIAL COPY

This Instrument Prepared By And After Recording Return To:

Ginsberg Jacobs LLC
300 South Wacker Drive, Suite 2750
Chicago Illinois 60606
Attention: Anthony J. Zeoli, Esq.

Property Identification Number(s):

17-16-241-022-0000

Common Address:

549 S. Wells Street
Chicago, Illinois 60607

GNT: 13-0119



Doc#: 1336519144 Fee: \$52.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/31/2013 01:08 PM Pg: 1 of 8

[Above space reserved for recording information.]

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "*Agreement*") made as of this ~~21~~²⁶ day of December, 2013 by HUNTER PARKING, INC., an Illinois corporation ("*Tenant*"), and PRIVATEBANK AND TRUST COMPANY, an Illinois state chartered bank (in its capacity as "administrative agent" for the Lenders (defined below), the "*Administrative Agent*").

Background

A. Chicago Title Land Trust Company, as Successor Trustee to Chicago Title and Trust Company, as Trustee under Trust Agreement dated 6/8/62 and known as Trust No. 44551 ("*Landlord*") and Administrative Agent are parties to that certain Loan and Security Agreement dated as of December 26, 2013 (the "*Loan Agreement*"), pursuant to which those certain lending institutions identified in the Loan Agreement (individually, and collectively, the "*Lenders*") have agreed to extend certain credit facilities (such facilities being collectively referred to as the "*Loan*") to Landlord and the other Borrowers (as defined in the Loan Agreement).

B. As security for the Loan (and the other obligations of Borrowers and certain related entities) Landlord had executed and delivered a mortgage (or other similar security instrument; the "*Security Instrument*"), in favor of the Administrative Agent for the benefit of the Lenders covering, among other things, that certain real property commonly known and described as 549 S. Wells Street, Chicago, Illinois 60607, and further described on Exhibit "A" attached

UNOFFICIAL COPY

hereto and made a part hereof for all purposes, and the building and improvements thereon (collectively, the "**Property**").

C. Tenant is the lessee under that certain lease agreement between Landlord and Tenant dated September 1, 1998 (as the same may be amended, modified and/or restated from time to time, the "**Lease**"), demising a portion of the Property described more particularly in the Lease ("**Leased Space**").

D. Landlord, Tenant and Administrative Agent (for the benefit and on behalf of the Lenders) desire to enter into the following agreements with respect to the priority of the Lease and Security Instrument.

NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Security Instrument, as if the Security Instrument had been executed and recorded prior to the Lease.

2. Nondisturbance. Administrative Agent agrees that no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, or other sale of the Property in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan shall operate to terminate the Lease or Tenant's rights thereunder to possess and use the leased space provided, however, that: (a) the term of the Lease has commenced; (b) Tenant is in possession of the premises demised pursuant to the Lease; and (c) the Lease is in full force and effect and no uncured default exists under the Lease.

3. Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure (whether judicial or nonjudicial) of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan ("**Successor Owner**"). Provided that the conditions set forth in Section 2 above are met at the time Successor Owner becomes owner of the Property, Successor Owner shall perform all obligations of the landlord under the Lease arising from and after the date title to the Property was transferred to Successor Owner. In no event, however, will any Successor Owner be: (a) liable for any default, act or omission of any prior landlord under the Lease, (except that Successor Owner shall not be relieved from the obligation to cure any defaults which are non-monetary and continuing in nature, and such that Successor Owner's failure to cure would constitute a continuing default under the Lease); (b) subject to any offset or defense which Tenant may have against any prior landlord under the Lease; (c) bound by any payment of rent or additional rent made by Tenant to Landlord more than thirty (30) days in advance; (d) bound by any modification or supplement to the Lease, or waiver of Lease terms, made without Administrative Agent's written consent thereto; (e) liable for the return of any security deposit or other prepaid charge paid by Tenant under the Lease, except to the extent such amounts were actually received by Administrative Agent; (f) liable or bound by any right of first refusal or

UNOFFICIAL COPY

option to purchase all or any portion of the Property; or (g) liable for construction or completion of any improvements to the Property or as required under the Lease for Tenant's use and occupancy (whenever arising). Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Administrative Agent or any Successor Owner such further instruments as Administrative Agent or a Successor Owner may from time to time request in order to confirm this Agreement. If any liability of Successor Owner does arise pursuant to this Agreement, such liability shall be limited to Successor Owner's interest in the Property.

4. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease. After notice is given to Tenant by Administrative Agent that Landlord is in default (and such default remains uncured) under the Security Instrument and that the rentals under the Lease should be paid to Administrative Agent pursuant to the assignment of leases and rents granted by Landlord to Administrative Agent in connection therewith, Tenant shall thereafter pay to Administrative Agent all rent and all other amounts due or to become due to Landlord under the Lease.

5. Opportunity to Cure Landlord Defaults. Tenant agrees that, until the Security Instrument is released by Administrative Agent, it will not exercise any remedies under the Lease following a Landlord default without having first given to Administrative Agent: (a) written notice of the alleged Landlord default; and (b) the opportunity to cure such default within the time periods provided for cure by Landlord, measured from the time notice is given to Administrative Agent. Tenant acknowledges that Administrative Agent (nor any of the Lenders) is not obligated to cure any Landlord default, but if Administrative Agent elects to do so, Tenant agrees to accept cure by (or on behalf of) Administrative Agent as that of Landlord under the Lease and will not exercise any right or remedy under the Lease for a Landlord default. Performance rendered by Administrative Agent on Landlord's behalf is without prejudice to Administrative Agent's (or any Lender's) rights against Landlord under the Security Instrument or any other documents executed by Landlord in favor of Administrative Agent and/or any of the Lenders in connection with the Loan.

6. Miscellaneous.

(a) Notices. All notices under this Agreement will be effective only if made in writing and addressed to the address for a party provided below such party's signature. A new notice address may be established from time to time by written notice given in accordance with this Section. All notices will be deemed received only upon actual receipt.

(b) Entire Agreement; Modification. This Agreement is the entire agreement between the parties relating to the attornment, subordination and nondisturbance of the Lease, and supersedes and replaces all prior discussions, representations and agreements (oral and written) with respect to the attornment, subordination and nondisturbance of the Lease. This Agreement controls in case of any conflict between the terms of this Agreement and the Lease. This Agreement may not be modified, supplemented or terminated, nor any provision hereof waived, unless by written agreement of Administrative Agent and Tenant, and then only to the extent expressly set forth in such writing.

UNOFFICIAL COPY

(c) Binding Effect. This Agreement binds and inures to the benefit of each party hereto and their respective heirs, executors, legal representatives, successors and assigns, whether by voluntary action of the parties or by operation of law.

(d) Unenforceability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. Any term or provision of this Agreement that is invalid or unenforceable in any situation shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation. In the event that any clause, term, or condition of this Agreement shall be held invalid or contrary to law: (i) this Agreement shall remain in full force and effect as to all other clauses, terms, and conditions; (ii) the subject clause, term, or condition shall be revised to the minimum extent necessary to render the modified provision valid, legal and enforceable; and (iii) the remaining provisions of this Agreement shall be amended to the minimum extent necessary so as to render the Agreement as a whole most nearly consistent with the parties' intentions in light of the modification or removal of the invalid or illegal provision.

(e) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns cover all genders. Unless otherwise provided herein, all days for performance shall be calendar days, and a "*business day*" is any day other than Saturday, Sunday and days on which Administrative Agent is closed for legal holidays, by government order or weather emergency.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located (without giving effect to its rules governing conflicts of laws).

(g) **WAIVER OF JURY TRIAL**. **TENANT, AS AN INDUCEMENT FOR ADMINISTRATIVE AGENT and the LENDER TO PROVIDE THIS AGREEMENT AND THE ACCOMODATIONS TO TENANT OFFERED HEREBY, HEREBY WAIVES ITS RIGHT, TO THE FULL EXTENT PERMITTED BY LAW, AND AGREES NOT TO ELECT, A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT.**

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document. Copies of signatures transmitted by mail, facsimile, email or any other electronic method, shall be considered authentic and binding. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their respective obligations hereunder.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement is executed this 10 day of December, 2011.

Mailing Address:

527 S. Wells St. #602
Chicago, IL 60607

Attn: Mark E. Galus

TENANT:

HUNTER PARKING, INC.,
an Illinois corporation

By: [Signature]
Name: MARK E. GALUS
Its: Secretary

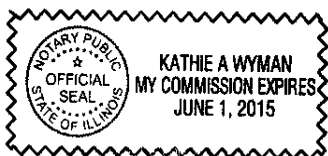
STATE OF Illinois)
COUNTY OF Cook) SS.

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Mark E. Galus being the Secretary of Hunter Parking Inc. who is 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 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 entity for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of DECEMBER, 2013.

[Signature]
Notary Public

My Commission Expires:



UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement is executed this 26 day of December, 2013.

Mailing Address:

The PrivateBank and Trust Company
1110 Jorie Boulevard.
Oak Brook, Illinois 60523
Attn: Donald G. Adams, Managing Director

ADMINISTRATIVE AGENT:

THE PRIVATEBANK AND TRUST COMPANY,
an Illinois state chartered bank

By: [Signature]
Name: Donald G. Adams
Its: Authorized Signatory

STATE OF ILLINOIS

COUNTY OF COOK W.71

SS.

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Donald Adams being the Authorized Signatory of THE PRIVATEBANK AND TRUST COMPANY, an Illinois state chartered bank, who is 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 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 entity for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 26 day of December, 2013.

[Signature]
Notary Public

My Commission Expires:

8-13-16




UNOFFICIAL COPY

Exhibit "A"
(Legal Description of the Property)

See Attached.

Property of Cook County Clerk's Office



UNOFFICIAL COPY

Property of Cook County Clerk's Office

PARCEL 9:
LOT 15 IN GEORGE W MERRILL'S SUBDIVISION OF BLOCK 100 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.
THE FOLLOWING IS FOR INFORMATIONAL PURPOSES ONLY:
ADDRESS: ⁵⁴⁹~~554~~ S. WELLS STREET, CHICAGO, IL
PIN: 17-16-241-022-0000