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Doc#: 1432822106 Fee: \$54.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 11/24/2014 03:13 PM Pg: 1 of 9

AFTER RECORDING RETURN TO:

Sean M. Carroll, Esq.
Clark Hill PLC
14850 N. Scottsdale Road
Suite 500
Scottsdale, Arizona 85254

Permanent Tax Index Numbers:

17-09-262-000-0000
17-09-262-000-0000

Property Address:

17-21 W. Hubbard Street
Chicago, Illinois 60654

AMENDED AND RESTATED SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

THIS AMENDED AND RESTATED SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT (the "Agreement") is made and entered into as of the 19th day of September, 2014, by and between Whiskey Row 2, LLC, an Arizona limited liability company ("Tenant") and St. Charles Bank & Trust Company, as successor to Elgin State Bank, an Illinois banking corporation ("Lender") and 9-25 W. Hubbard, LLC, an Illinois limited liability company ("Landlord"). The Tenant, Lender and Landlord may each be referred herein as a "Party" or collectively as the "Parties."

RECITALS:

A. This Agreement amends, restates, supersedes and replaces the Non-Disturbance and Attornment Agreement by and between the Parties, dated June 10, 2013, and recorded on February 8, 2014 as Document No. 1403739103 in the Records of Cook County, Illinois.

B. Lender is the holder of a certain mortgage (as amended from time to time, the "Mortgage") dated November 4, 2004, and recorded on November 15, 2004 as Document No. 0432003088 in the Records of Cook County, Illinois, payable upon the terms and conditions described therein, encumbering the parcel of land (the "Land") legally described in **Exhibit A** attached hereto.

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C. Landlord and Tenant are parties to that certain Ground Lease dated June 10, 2013 ("Ground Lease"), as amended by the First Addendum to Ground Lease dated December 12, 2013, the Second Addendum to Ground Lease dated April 10, 2014, and the Third Addendum to Ground Lease of even date herewith (collectively the Ground Lease and each addendum thereto as modified from time to time, is referred to as the "Lease"), under which Tenant leases from Landlord the Land and has the right to construct a building and other improvements thereon (the "Improvements") (the Land and Improvements are collectively referred to as the "Property").

D. It is a condition to the Mortgage that such Mortgage shall unconditionally be and remain at all times a lien or charge upon the Land, prior and superior to the Lease and to the leasehold estate created thereby.

E. The Parties hereto desire to assure Tenant's possession and control of the Property under the Lease upon the terms and conditions therein contained.

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:

AGREEMENT:

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

2. Notwithstanding any other provision of this Agreement, Lender shall not be (a) liable for any default of any landlord under the Lease (including Landlord) prior to the date of a foreclosure of the Land, (b) subject to any offsets or defenses which have accrued prior to the date of foreclosure, unless Tenant shall have delivered to Lender written notice of the default which gave rise to such offset or defense and permitted Lender the same right to cure such default as permitted to the Landlord under the Lease; (c) bound by any rent that Tenant may have paid under the Lease more than one month in advance; and (d) responsible for the return of any security deposit delivered to Landlord under the Lease and not subsequently received by Lender. Lender agrees to cure any default of a landlord (including Landlord) that arises after or is continuing as of the date Lender forecloses the Property within thirty (30) days from the date Tenant delivers written notice to Lender of such default; provided, however, that, if such default is not readily curable within such thirty (30) day period, Tenant shall give Lender such additional time as Lender may reasonably need to cure such default so long as Lender is diligently pursuing a cure. Tenant shall not pursue any remedy available to it as a result of any landlord's default unless Lender fails to cure the same within the time period specified above.

3. Tenant covenants with Lender that with respect to the Land, 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, Tenant hereby agrees that any of

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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 Land, shall be subject and subordinate to Lender's right, title and interest in and to such proceeds and awards.

4. Tenant acknowledges that Landlord has collaterally assigned to Lender all leases affecting the Land, 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, Tenant agrees that, upon receipt of a notice of a default by Landlord under such assignment and a demand by Lender for direct payment to Lender of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Lender. Landlord and Lender acknowledge and agree that Tenant shall be credited under the Lease for any rent and other payments paid to Lender pursuant to this Section 4.

5. Lender agrees that:

(a) 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 Tenant is a necessary party under applicable law); and

(b) So long as Tenant is not in material default under the Lease after written notice and all applicable opportunities to cure, the possession by Tenant of the Property and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Land, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage;

6. If Lender or any future holder of the Mortgage shall become the owner of the Land by reason of foreclosure of the Mortgage or otherwise, or if the Land 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 Tenant and the new owner of the Land as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

(a) 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 Tenant elects or has elected to exercise its options to extend the term), and 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 Lender exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law); and

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the

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extension periods, if Tenant elects or has elected to exercise its options to extend the term, and the Tenant's right of first refusal); provided, however, that such new owner shall not be:

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

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided 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 2 above;

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

(iv) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord; or

(v) 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 Landlord).

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

To Tenant:	Whiskey Row 2, LLC 7525 E. Camelback Road, #100 Scottsdale, Arizona 85251 Attn: Ryan W. Hibbert
With a copy to:	Clark Hill PLC 14850 N. Scottsdale Road, Suite 500 Scottsdale, Arizona 85254 Attn: Sean M. Carroll, Esq.
To Lender:	St. Charles Bank & Trust Company 411 W. Main Street St. Charles, Illinois 60174 Attn: _____
To Landlord:	9-25 W. Hubbard, LLC 1010 N. Hillside Drive Northbrook, IL 60062

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Attn: Khaldoun Fakhoury

or to any other address as to any of the Parties hereto, as such Party shall designate in a written notice to the other Parties hereto. All notices sent pursuant to the terms of this Section 7 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.

8. Lender and Landlord acknowledge and agree that the Mortgage shall not cover or encumber and shall not be construed as subjecting in any manner a lien on any of Tenant's improvements (including the Improvements) on the Land, nor on any of the Tenant's trade fixtures, furniture, equipment or other personal property at any time placed or installed in the Property.

9. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective successors and assigns and any nominees of Lender, all of whom are entitled to rely upon the provisions hereof.

10. This Agreement shall be governed by the laws of the State of Illinois.

11. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.

12. 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 Amended and Restated Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

Tenant:

Whiskey Row 2, LLC, an Arizona limited liability company

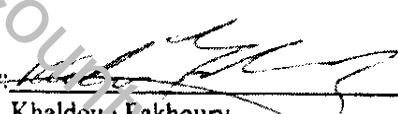
By: Rooke, LLC
Its: Manager

By: Milo Companies, LLC
Its: Manager

By: 
Ryan W. Hibbert
Its: Manager

Landlord:

9-25 W. Hubbard, LLC, an Illinois limited liability company

By: 
Khaldoun Fakhoury
Its: Managing Member

Lender:

St. Charles Bank & Trust Company, an Illinois banking corporation

By: 
Name: MICHAEL P. TRIMARCO
Title: EVP

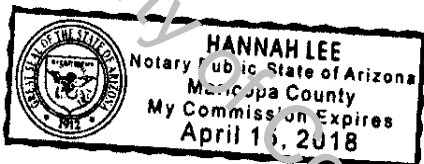
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STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

I, Hannah Lee, a Notary Public in and for said County in the State aforesaid, do hereby certify that **Ryan W. Hibbert**, as Manager of Milo Companies, LLC, an Arizona limited liability company, the Manager of Rooke, LLC, an Arizona limited liability company, the Manger of **Whiskey Row 2, LLC**, an Arizona limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he/she signed and delivered such 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 set forth therein.

Given under my hand and notarial seal on NOV 7th, 2014.

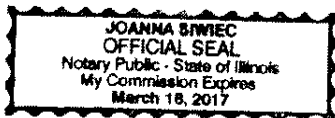


Hannah Lee
Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Joanna Swiec, a Notary Public in and for said County in the State aforesaid, do hereby certify that **Khaloud Fakhary**, as Managing Member of **9-25 W. Hubbard, LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Member, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his 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 on 10/20, 2014.



Joanna Swiec
Notary Public

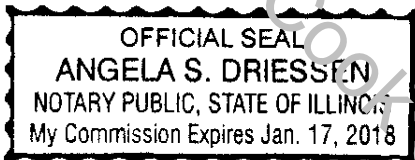
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, ANGELA S. DRIESSEN, a Notary Public in and for said County in the State aforesaid, do hereby certify that MICHAEL P. TRIMARCO, EVP of St. Charles Bank & Trust Company, an Illinois banking corporation, who is personally known to be to be the same person whose name is subscribed to the foregoing instrument as such EVP, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of St. Charles Bank & Trust Company, for the uses and purposes set forth therein.

Given under my hand and notarial seal on 23rd Oct, 2014.

Angela S. Driessen
Notary Public



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EXHIBIT A

Legal Description of Real Estate

THE EAST ½ OF LOT 12 (EXCEPT THE WEST 6 INCHES THEREOF) AND ALL OF LOT 13 IN BLOCK 1 IN WOLCOTT'S ADDITION TO CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

More Commonly Known As: 17-21 W. Hubbard Street, Chicago, Illinois 60654

Property Identification Numbers: 17-09-262-005-0000
17-09-262-006-0000

9191289.3 42975/164363

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