



Doc#: 1435157203 Fee: \$58.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/17/2014 01:29 PM Pg: 1 of 11

This document prepared by
and after recording return to:

Ginsberg Jacobs, LLC
300 South Wacker Drive
Suite 2750
Chicago, Illinois 60606
Attn: David A. Lapins, Esq.



Doc#: Fee: \$2.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/17/2014 01:29 PM Pg: 0

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OFFICE

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") dated this 20th day of November, 2014, is made by and among **TROGLIA KAPLAN, LLC**, an Illinois limited liability company ("Tenant"), **ELSTON ADVENTURES, LLC**, an Illinois limited liability company ("Landlord"), and **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois state chartered bank ("Lender").

WHEREAS, Lender has agreed to extend to Landlord certain loans (collectively, the "Loans"), which Loans are evidenced by: (i) a certain Promissory Note A made by Landlord and payable to Lender ("Note A"), and (ii) a certain Promissory Note B made by Landlord and payable to Lender ("Note B"; Note A and Note B are hereinafter referred to as, collectively, the "Notes"). The Loans are secured by, among other things, a certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents made by Landlord to and for the benefit of Lender (herein, as may from time to time be extended, amended, restated or supplemented, the "Mortgage"), encumbering, among other property, the land (the "Land") described in Exhibit "A" which is attached hereto and incorporated herein by reference, and the improvements thereon ("Improvements") (such Land and Improvements being herein together called the "Property");

WHEREAS, Tenant is the tenant under a Lease Agreement from Landlord dated August 6, 2014 (herein, as may from time to time be extended, amended, restated or supplemented, the "Lease"), covering a portion of the Property (said portion being herein referred to as the "Premises"); and

WHEREAS, the term "Landlord" as used herein means the present landlord under the Lease or, if the landlord's interest is transferred in any manner, the successor(s) or assign(s) occupying the position of landlord under the Lease at the time in question.

NOW, THEREFORE, in consideration of the mutual agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

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1. Subordination. Tenant agrees and covenants, subject to the terms of this Agreement, that the Lease and the rights of Tenant thereunder, all of Tenant's right, title and interest in and to the property covered by the Lease, and any lease thereafter executed by Tenant covering any part of the Property, are and shall be subject, subordinate and inferior in all respects to (a) the Mortgage and the rights of Lender thereunder, and all right, title and interest of Lender in the Property, and (b) all other security documents now or hereafter securing payment of any indebtedness of the Landlord (or any prior landlord) to Lender which cover or affect all or any portion of the Property (collectively, the "Security Documents"). This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust or other security document other than those referred to in the immediately preceding sentence, securing the indebtedness owing to Lender. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that any of 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 Property, shall be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards pursuant to the Security Documents.

2. Non-Disturbance. Lender agrees that so long as the Lease is in full force and effect and Tenant is not in default in the payment of rent, additional rent or other payments due under the Lease or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed (beyond the period, if any, specified in the Lease within which Tenant may cure such default),

(a) Tenant's possession of the Premises under the Lease shall not be disturbed or interfered with by Lender in the exercise of any of its foreclosure rights under the Mortgage or in connection with the conveyance of the Property by deed in lieu of foreclosure, and

(b) Lender will not join Tenant as a party defendant for the purpose of terminating Tenant's interest and estate under the Lease in any proceeding for foreclosure of the Mortgage.

3. Attornment.

(a) Tenant covenants and agrees that in the event of the foreclosure of the Mortgage, whether by power of sale or by court action, or upon a transfer of the Property by a deed in lieu of foreclosure (the purchaser at foreclosure or the transferee in such deed in lieu of foreclosure, including Lender if it is such purchaser or transferee, being herein called the "New Owner"), Tenant shall attorn to the New Owner as Tenant's new landlord, and agrees that the Lease shall continue in full force and effect as a direct lease between Tenant and New Owner upon all of the terms, covenants, conditions and agreements set forth in the Lease and this Agreement, except for provisions which are impossible for New Owner to perform; provided, however, that in no event shall the New Owner be:

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(i) liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to New Owner's actual ownership of the Property;

(ii) subject to any offset, defense, claim or counterclaim which Tenant might be entitled to assert against any previous landlord (including Landlord);

(iii) bound by any payment of rent, additional rent or other payments, made by Tenant to any previous landlord (including Landlord) for more than one (1) month in advance of the date when due under the Lease;

(iv) bound by any amendment or modification of the Lease hereafter made, without the written consent of Lender; or

(v) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) which has not been transferred to New Owner.

(b) The provisions of this Agreement regarding attornment by Tenant shall be self-operative and effective without the necessity of execution of any new lease or other document on the part of any party hereto or the respective heirs, legal representatives, successors or assigns of any such party. Tenant agrees, however, to execute and deliver upon the request of New Owner, any reasonable instrument or certificate which in the reasonable judgment of New Owner may be necessary or appropriate to evidence such attornment, including a new lease of the Premises on the same terms and conditions as set forth in the Lease for the unexpired term of the Lease.

4. Estoppel Certificate. Tenant agrees to execute and deliver from time to time, upon the request of Landlord, Lender, or of any holder(s) of any of the indebtedness or obligations secured by the Mortgage, a certificate regarding the status of the Lease, consisting of statements, if true (or if not, specifying why not), (a) that the Lease is in full force and effect, (b) the date through which rentals have been paid, (c) the date of the commencement of the term of the Lease, (d) the nature of any amendments or modifications of the Lease, (e) to the best of Tenant's knowledge no default, or state of facts which with the passage of time or notice (or both) would constitute a default, exists under the Lease, (f) to the best of Tenant's knowledge, no setoffs, recoupments, estoppels, claims or counterclaims exist against Landlord, and (g) such other matters as may be reasonably requested.

5. Acknowledgment and Agreement by Tenant. Tenant acknowledges and agrees as follows:

(a) Tenant acknowledges that the Mortgage contains or will contain an assignment of rents and leases. Tenant hereby expressly consents to such assignment and agrees that such assignment shall, in all respects, be superior to any interest Tenant has in the Lease of the Property, subject to the provisions of this Agreement. Tenant will not voluntarily surrender the Premises demised under the Lease or terminate the Lease

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without cause or shorten the term thereof. Tenant acknowledges that Lender will rely upon this instrument in connection with such financing.

(b) Lender, in making any disbursements to Landlord, is not under any obligation or duty to oversee or direct the application of the proceeds of such disbursements, and such proceeds may be used by Landlord for purposes other than improvement of the Property.

(c) From and after the date hereof, in the event of any act or omission by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right (i) until it has given written notice of such act or omission to the Lender; and (ii) until the same period of time as is given to Landlord under the Lease to cure such act or omission shall have elapsed following such giving of notice to Lender and following the time when Lender shall have become entitled under the Mortgage to remedy the same, but, in the case of any default which is not curable by the payment of an uncontested monetary amount, thirty (30) days after receipt of such notice, and so long as Lender commences curing the underlying default within such initial thirty (30) day period or commences filing suit in order to obtain possession of the Property during such thirty (30) day period, such longer period of time as may be necessary to cure or remedy such default, act, or omission including such period of time necessary to obtain possession of the Property and thereafter cure such default, act, or omission, during which period of time Lender shall be permitted to cure or remedy such default, act or omission; provided, however, that Lender shall not have any duty or obligation to cure or remedy any breach or default. It is specifically agreed that Tenant shall not, as to Lender, require cure of any such default which is personal to Landlord, and therefore not susceptible to cure by Lender.

(d) In the event that Lender notifies Tenant of a default under the Mortgage, the Notes, or Security Documents and demands that Tenant pay its rent and all other sums due under the Lease directly to Lender, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Lender, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage, Security Documents or otherwise in connection with the Notes, and notwithstanding any contrary instructions of or demands from Landlord.

(e) Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Mortgage.

(f) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement and Tenant waives any requirement to the contrary in the Lease.

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(g) Lender and any New Owner shall have no obligation nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession provided that to the extent that the breach of any such warranty shall give the Tenant the right to terminate the Lease pursuant to the terms of the Lease, Tenant shall retain such right to terminate pursuant to the terms of the Lease.

(h) In the event that Lender or any New Owner shall acquire title to the Premises or the Property, Lender or such New Owner shall have no obligation, nor incur any liability, beyond Lender's or New Owner's then equity interest, if any, in the Property or the Premises, and Tenant shall look exclusively to such equity interest of Lender or New Owner, if any, for the payment and discharge of any obligations imposed upon Lender or New Owner hereunder or under the Lease or for recovery of any judgment from Lender, or New Owner, and in no event shall Lender, New Owner, nor any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for such judgment.

(i) Tenant has never permitted, and will not permit, the generation, treatment, storage or disposal of any hazardous substance as defined under federal, state, or local law, on the Premises or Property, except for such substances of a type and only in a quantity normally used in connection with the occupancy or operation of buildings (such as non-flammable cleaning fluids and supplies normally used in the day to day operation of first class establishments similar to the Improvements), which substances are being held, stored, and used in strict compliance with federal, state, and local laws. Tenant shall be solely responsible for and shall reimburse and indemnify Landlord, New Owner or Lender, for any loss, liability, claim or expense, including without limitation, cleanup and all other expenses, including, without limitation, legal fees that Landlord, New Owner or Lender, as applicable, may incur by reason of Tenant's violation of the requirements of this Section 5(i).

6. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and grantor under the Mortgage, acknowledges and agrees for itself and its heirs, representatives, successors and assigns, that: (a) this Agreement does not constitute a waiver by Lender of any of its rights under the Mortgage or any of the other Security Documents, or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage and the other Security Documents; (b) the provisions of the Mortgage and the other Security Documents remain in full force and effect and must be complied with by Landlord; and (c) Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Lender upon receipt of a notice as set forth in Section 5(d) above from Lender and that Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage or any of the other Security Documents. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment to Lender in accordance with this Agreement. Landlord represents and warrants to Lender that a true and complete copy of the Lease has been delivered by Landlord to Lender.

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7. Lease Status. Landlord and Tenant represent and warrant to Lender that neither Landlord nor Tenant has knowledge of any default on the part of the other under the Lease, that the Lease is bona fide and contains all of the agreements of the parties thereto with respect to the letting of the Premises and that all of the agreements and provisions therein contained are in full force and effect.

8. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by expedited delivery service with proof of delivery, or by registered or certified United States mail, postage prepaid, at the addresses specified at the end of this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt by the parties hereto other than the particular party whose address is to be changed. This Section 8 shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in the Lease or in any document evidencing, securing or pertaining to the loan secured by the Mortgage or to require giving of notice or demand to or upon any person in any situation or for any reason.

9. Miscellaneous.

- (a) This Agreement supersedes any inconsistent provision of the Lease.
- (b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair, or affect the lien, security interest or provisions of the Mortgage or the other Security Documents.
- (c) This Agreement shall inure to the benefit of the parties hereto, their respective successors and permitted assigns, and any New Owner, and its heirs, personal representatives, successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, all obligations and liabilities of the assigning Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Lender's interest is assigned or transferred.
- (d) THIS AGREEMENT AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS AND APPLICABLE UNITED STATES FEDERAL LAW EXCEPT ONLY TO THE EXTENT, IF ANY, THAT THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED NECESSARILY CONTROL.
- (e) The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" as used in this Agreement refer to this entire Agreement and not to any particular section or provision.

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(f) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

(g) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

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Property of Cook County Clerk's Office

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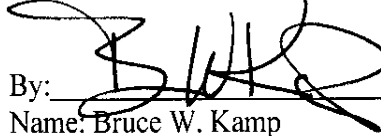
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the date first above written.

ADDRESS OF MORTGAGEE:

120 South LaSalle Street
Chicago, Illinois 60602
Attention: Bruce W. Kamp

MORTGAGEE:

THE PRIVATEBANK AND TRUST COMPANY,
an Illinois state chartered bank

By: 

Name: Bruce W. Kamp
Title: Managing Director

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Bruce W. Kamp, the Managing Director 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 signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

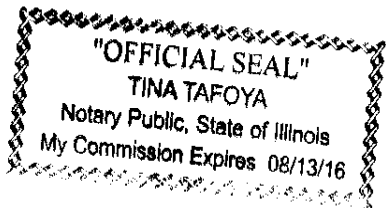
GIVEN under my hand and notarial seal this 15 day of October, 2014.



Notary Public

My Commission Expires:

8-13-16



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the date first above written.

ADDRESS OF LANDLORD:

1765 N. Elston Ave., Suite 226
Chicago, Illinois 60642
Attention: Alexander C. Pearsall

LANDLORD:

ELSTON ADVENTURES LLC, an Illinois limited liability company

By: 

Name: Alexander C. Pearsall

Title: Manager

Property of Cook County Notary Office


STATE OF ILLINOIS)

) SS.

COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Alexander C. Pearsall, the Manager of Elston Adventures 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 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 company, for the uses and purposes therein set forth.

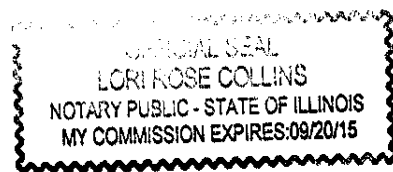
GIVEN under my hand and notarial seal this 14th day of October, 2014.



Notary Public

My Commission Expires:

09/20/2015



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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

ELSTON PROPERTY:

UNIT 101 IN THE APCA COMMERCIAL CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE: PARTS OF BLOCK 17 IN SHEFFIELD'S ADDITION TO CHICAGO, PARTS OF HIRSCH AND STEIN'S SUBDIVISION OF BLOCK 17 IN SHEFFIELD'S ADDITION TO CHICAGO TOGETHER WITH CERTAIN VACATED STREETS AND ALLEYS, ALL IN THE SOUTHWEST $\frac{1}{4}$ OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN; WHICH SURVEY IS ATTACHED AS EXHIBIT "D" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 1206031049 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

PIN: 14-32-302-016-1002

PROPERTY ADDRESS: 1765 NORTH ELSTON AVE., CHICAGO, ILLINOIS 60642

ADA PROPERTY:

LOT 39 (EXCEPT THE SOUTHEASTERLY 25.00 FEET THEREOF) AND LOT 40 IN THE SUBDIVISION OF BLOCK 3 OF BLOCK 18 IN SHEFFIELDS ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINS: 14-32-316-021-0000; 14-32-316-022-0000; 14-32-316-023-0000

PROPERTY ADDRESSES: 1666-1672 NORTH ADA ST., CHICAGO, IL