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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 02/23/2015 08:54 AM Pg: 1 of 11

KEYBANK NATIONAL ASSOCIATION
(Lender)
- and -
SLEEPY'S, LLC
(Tenant)

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

Dated: as of FEBRUARY 13, 2015

Location: 3169 N. Lincoln Avenue
Chicago, Illinois 60657

Section: 29
Subdivision Bay Point Condominium
Lot: 2
County: Cook

PREPARED BY AND UPON
RECORDATION RETURN TO:

Sarah Armendariz
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 6411

Box 400

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of the 13 day of FEBRUARY, 2015 by and between KEYBANK NATIONAL ASSOCIATION, a national banking association chartered under the laws of the United States of America, having an address at 11501 Outlook Street, Suite 300, Overland Park, Kansas 66211 ("Lender"), and SLEEPY'S, LLC, a Delaware limited liability company, having an address at 1000 South Oyster Bay Road, Hicksville, New York 11801 ("Tenant").

RECITALS:

A. Lender has agreed to make a loan in the approximate amount of \$ 1,600,000.00 to Landlord (defined below), which Loan will be given pursuant to the terms and conditions of a Loan Agreement between Lender and Landlord (the "Loan Agreement") and will be evidenced by a certain Promissory Note given by Landlord to Lender (the "Note") and secured by a certain mortgage, deed of trust or similar security instrument given by Landlord to Lender (the "Mortgage"), encumbering the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "Property") (the Loan Agreement, Note, Mortgage and other documents securing the loan, the "Loan Documents");

B. Tenant occupies a portion of the Property under and pursuant to the provisions of a certain lease dated July 15, 2014 between Jerome H. Meyer & Co., agent for 3169 N. Lincoln, LLC, as landlord ("Landlord"), and Tenant, as tenant (the "Lease"); and

C. Tenant has agreed to subordinate the Lease to the Mortgage and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

For good and valuable consideration, Tenant and Lender agree as follows:

1. Subordination. Tenant agrees that the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the Mortgage and to the lien thereof and all terms, covenants and conditions set forth in the Mortgage and the other Loan Documents including without limitation all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby with the same force and effect as if the Mortgage and the other Loan Documents had been executed, delivered and (in the case of the Mortgage) recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. Lender agrees that if any action or proceeding is commenced by Lender for the foreclosure of the Mortgage or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's

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possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding shall be made subject to all rights of Tenant under the Lease except as set forth in Section 3 below, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the premises demised under the Lease, (c) the Lease shall be in full force and effect and (d) Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed beyond the expiration of any applicable notice or grace periods.

3. Attornment. Lender and Tenant agree that upon the conveyance of the Property by reason of the foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected thereby (at the option of the transferee of the Property (the "Transferee") if the conditions set forth in Section 2 above have not been met at the time of such transfer) but shall continue in full force and effect as a direct lease between the Transferee and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to the Transferee and the Transferee shall accept such attornment, and the Transferee shall not be (a) 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, (b) liable (i) for Landlord's failure to perform any of its obligations under the Lease which have accrued prior to the date on which the Transferee shall become the owner of the Property, unless such obligations continue after Transferee has (x) taken title to the Property, (y) received notice of said obligations, and (iii) failed to perform within thirty (30) days, or (ii) for any act or omission of Landlord, which accrued prior to the date on which Transferee shall acquire title to the Property, unless such act or omission continues after Transferee has (i) taken title to the Property, (ii) received notice of said act or omission, and (iii) failed to cure within thirty (30) days, (c) required to make any repairs to the Property or to the premises demised under the Lease required as a result of fire, or other casualty or by reason of condemnation unless the Transferee shall be obligated under the Lease to make such repairs and shall have received sufficient casualty insurance proceeds or condemnation awards to finance the completion of such repairs, (d) required to make any capital improvements to the Property or to the premises demised under the Lease which Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the premises demised under the Lease, (e) subject to any offsets, defenses, abatements or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which the Transferee shall become the owner of the Property, except as provided in the Lease, (f) liable for the return of rental security deposits, if any, paid by Tenant to Landlord in accordance with the Lease unless such sums are actually received by the Transferee, (g) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any prior Landlord, except for monthly escrows required to be paid under the Lease for operating expenses, insurance and real estate taxes which are subject to annual reconciliation, unless (i) such sums are actually received by the Transferee or (ii) such prepayment shall have been expressly approved of by the Transferee, (h) bound to make any payment to Tenant which was required under the Lease, or otherwise, to be made prior to the time the Transferee succeeded to Landlord's interest, (i) bound by any agreement amending, modifying or terminating the Lease made hereafter without the Lender's prior written consent prior to the time the Transferee succeeded to Landlord's interest or

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(j) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time the Transferee succeeded to Landlord's interest other than if pursuant to the provisions of the Lease.

4. Notice to Tenant. After notice is given to Tenant by Lender that the Landlord is in default under the Loan Documents beyond any notice and applicable cure periods and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly irrevocably authorizes Tenant to make such payments to Lender or as directed by the Lender, and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments and further indemnifies Tenant from any loss, cost, liability, claim, damage and expense (including reasonable attorneys' fees and disbursements) that Tenant may incur as a result of a challenge made by anyone to Tenant's payments to Lender or at Lender's direction. Receipt of Lender's notice shall be the only condition to Tenant's making payments to Lender, or at Lender's direction.

5. Lender's Consent. Tenant shall not hereafter, without obtaining the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed (a) enter into any agreement amending, modifying or terminating the Lease, (b) prepay any of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due dates thereof, (c) voluntarily surrender the premises demised under the Lease or terminate the Lease without cause or shorten the term thereof, other than pursuant to the provisions of the Lease, or (d) assign the Lease or sublet the premises demised under the Lease or any part thereof other than pursuant to the provisions of the Lease; and any such amendment, modification, termination, prepayment, voluntary surrender, assignment or subletting, without Lender's prior consent, shall not be binding upon Lender.

6. Lender to Receive Notices. Tenant shall provide Lender with copies of all written default notices sent to Landlord pursuant to the Lease simultaneously with the transmission of such notices to the Landlord. Tenant shall notify Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease or to an abatement of the rents, additional rents or other sums payable thereunder, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of such an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and shall have failed within thirty (30) days after receipt of such notice to cure such default, or if such default cannot be cured within thirty (30) days, shall have failed within thirty (30) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default, but in no event shall Lender's cure period exceed sixty (60) days after receipt of such default notice.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (ii) three (3) Business Days after having been deposited in any post office or mail depository regularly

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maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: 1000 South Oyster Bay Road
Hicksville, New York 11801
Attention: David Acker, President

With a copy to:
1000 South Oyster Bay Road
Hicksville, New York 11801
Attention: General Counsel

If to Lender: KeyBank National Association
11501 Outlook Street, Suite 300
Overland Park, Kansas 66211
Attention: Servicing Department
(377) 379-1625 (facsimile)

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Joint and Several Liability. If Tenant consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Lender and Tenant and their respective successors and assigns.

9. Definitions. The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Mortgage.

10. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

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11. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.
12. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.
13. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.
14. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.
15. Transfer of Loan. Lender may sell, transfer and deliver the Note and assign the Mortgage, this Agreement and the other documents executed in connection therewith to one or more investors in the secondary mortgage market ("Investors"). In connection with such sale, Lender may retain or assign responsibility for servicing the loan, including the Note, the Mortgage, this Agreement and the other documents executed in connection therewith, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer, on behalf of the Investors. All references to Lender herein shall refer to and include any such servicer to the extent applicable.
16. Further Acts. Tenant will, at the cost of Tenant, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts and assurances as Lender shall, from time to time, reasonably require, for the better assuring and confirming unto Lender the property and rights hereby intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording this Agreement.
17. Limitations on Lender's Liability. Tenant acknowledges that Lender is obligated only to Landlord to make the Loan upon the terms and subject to the conditions set forth in the Loan Documents. In no event shall Lender or any purchaser of the Property at foreclosure sale or any grantee of the Property named in a deed-in-lieu of foreclosure, nor any heir, legal representative, successor, or assignee of Lender or any such purchaser or grantee (collectively the Lender, such purchaser, grantee, heir, legal representative, successor or assignee, the "Subsequent Landlord") have any personal liability for the obligations of Landlord under the Lease and should the Subsequent Landlord succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Subsequent Landlord in the Property (including the sale and insurance proceeds thereof and the rents collected therefrom) for the satisfaction of Tenant's remedies for the collection of a judgment (or

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other judicial process) requiring the payment of money in the event of any default by any Subsequent Landlord as landlord under the Lease, and no other property or assets of any Subsequent Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law in the event of any failure by Subsequent Landlord to perform any such material obligation.

[Signature page to follow]

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IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER

KEYBANK NATIONAL ASSOCIATION,
a national banking association



Name: MARY ANN GRIPKA
Title: VICE PRESIDENT

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ACKNOWLEDGMENTS

STATE OF KANSAS

COUNTY OF JOHNSON

On February 9, 2015 before me, *L. Ann Garrison*, a Notary Public in and for the State of Kansas, personally appeared *Mary Ann Gripka* personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument she person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

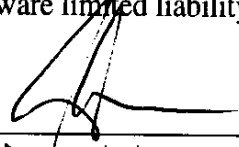
L. Ann Garrison
(Signature)
L. ANN GARRISON
Notary Public
State of Kansas
My Commission Expires 4/25/17

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IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

TENANT:

SLEEPY'S, LLC,
a Delaware limited liability company

By: 
Name: David Acker
Title: President

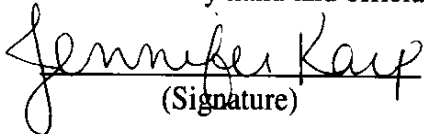
ACKNOWLEDGMENT

STATE OF New York

COUNTY OF Nassau

On 1/30/15 before me, Jennifer Karp, a Notary Public in and for the State of New York, personally appeared David Acker [and _____], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person[s] whose name[s] [is/are] subscribed to the within instrument and acknowledged to me that [he/she/they] executed the same in [his/her/their] authorized [capacity/capacities], and that by [his/her/their] signature[s] on the instrument the person[s], or the entity upon behalf of which the person[s] acted, executed the instrument.

WITNESS my hand and official seal.


(Signature)

JENNIFER KARP
NOTARY PUBLIC-STATE OF NEW YORK
No. 01KA6141874
Qualified in Suffolk County
My Commission Expires February 27, 2018

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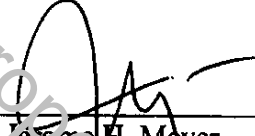
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The undersigned accepts and agrees to the provisions of Section 4 hereof:

LANDLORD:

3169 LINCOLN LLC,
an Illinois limited liability company

By: **JEROME H. MEYER & CO.,** as agent as aforesaid

By: 
Name: Jerome H. Meyer
Title:


ACKNOWLEDGMENT

STATE OF Illinois

COUNTY OF COOK

On 2/10/15 before me, JAYNE KASZYNSKI a Notary Public in and for the State of Illinois personally appeared Jerome H. Meyer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



(Signature)



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EXHIBIT "A"

LEGAL DESCRIPTION

Common Property Address: 3169 N. Lincoln Avenue, Chicago, Illinois

60657

Permanent Index Numbers: 14-29-100-041-0000

PARCEL 1:

LOT 2 IN BAY POINT CONDOMINIUM SUBDIVISION, BEING RESUBDIVISION OF LAND, PROPERTY AND SPACE IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED MAY 6, 1997 AS DOCUMENT 97318782, FOR THE PURPOSES AS SET FORTH IN ARTICLE 4 THEREIN.