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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/27/2015 12:00 PM Pg: 1 of 8

STEWART TITLE
800 E. DIEHL ROAD
SUITE 180
NAPERVILLE, IL 60563

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

D10632821 5/6/15

AGREEMENT made this 6th day of May, 2015 by and among **SOUTH PARK PROPERTIES, LLC**, An Illinois limited liability company maintaining an address at 4751 W. 147th Street, Midlothian, IL 60445 ("Landlord"), **MIDLOTHIAN HARDWARE, INC.**, an Illinois corporation maintaining an address at 4751 W/ 147th Street, Midlothian, IL 60445 ("Tenant"), and **NEWTEK SMALL BUSINESS FINANCE, LLC**, a New York limited liability company maintaining an address at 60 Hempstead Avenue, West Hempstead, NY 11552 (the "Mortgagee").

Midlothian, IL 60445
WHEREAS, Landlord is the fee owner of the real property located at 4751 W. 147th Street, Midlothian, IL 60445 (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord's Premises"); and

WHEREAS, Mortgagee has made a certain loan or loans to Landlord, totaling \$682,000.00 as such loans may be modified or amended from time to time (collectively, the "Loan"); and

WHEREAS, to secure the Loan, Landlord has entered into a mortgage or mortgages in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, collectively the "Mortgage") recorded in the office of the Cook County Clerk (the "Land Records"); and

WHEREAS, pursuant to that certain Lease dated March 31, 2015, as such lease may have been, or may be amended, modified or extended from time to time (the "Lease"), Landlord demised to Tenant all or a portion of Landlord's Premises ("Tenant's Premises");

WHEREAS, the parties hereto desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant and Mortgagee agree as follows:

1. DEFINITIONS.

The following terms shall have the following meanings for purposes of this Agreement:

1.1 "Construction-Related Obligation" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition or other improvements or work at Landlord's Premises, including Tenant's Premises. Construction-Related Obligations shall not include: (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

CARD REVIEWER 

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1.2 "Foreclosure Event" means (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

1.3 "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.4 "Offset Right" means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease.

1.5 "Rent" means any fixed rent, base rent or additional rent under the Lease.

1.6 "Successor Landlord" means any party that becomes owner of Landlord's Premises as the result of a Foreclosure Event.

1.7 "Termination Right" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

2. **SUBORDINATION.** The Lease and all of Tenant's rights thereunder shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all indebtedness secured by the Mortgage.

3. **NONDISTURBANCE, RECOGNITION AND ATTORNMENT.**

3.1 No Exercise of Mortgage Remedies Against Tenant. So long as the Lease has not been terminated on account of Tenant's default that has continued beyond applicable cure periods (an "Event of Default"), Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

3.2 Nondisturbance and Attornment. If the Lease has not been terminated on account of an Event of Default by Tenant, then, when Successor Landlord takes title to Landlord's Premises ("Attornment Date"): (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor

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Landlord and Tenant.

3.3 Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

4. **PROTECTION OF SUCCESSOR LANDLORD**. Notwithstanding anything to the contrary in the Lease or the Mortgage, neither Mortgagee nor the Successor Landlord shall be liable for or bound by any of the following matters:

4.1 Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the Attornment Date, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the Attornment Date. The foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the Attornment Date; or (b) Successor Landlord's obligation to correct any conditions that existed as of the Attornment Date and violate Successor Landlord's obligations as Landlord under the Lease.

4.2 Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty days before the date such Rent was first due and payable under the Lease with respect to any period after the Attornment Date other than, and only to the extent that, the Lease expressly required such a prepayment.

4.3 Payment; Security Deposit. Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant; or (b) with respect to any security deposited with Former Landlord. This paragraph is not intended to apply to Landlord's obligation to make any payment that constitutes a "Construction-Related Obligation".

4.4 Modification, Amendment, or Waiver. Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Mortgagee's written consent.

4.5 Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4.6 Construction-Related Obligations. Any Construction-Related Obligation of Former Landlord, except as expressly provided for in Schedule B (if any) attached to this Agreement.

5. **EXCULPATION OF SUCCESSOR LANDLORD**. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in Landlord's Premises from time to time, including insurance and condemnation proceeds, Successor Landlord's interest in the Lease, and the proceeds from any sale or other disposition of Landlord's Premises by Successor Landlord (collectively, "Successor Landlord's Interest"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to

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the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

6. MORTGAGEE'S RIGHT TO CURE.

6.1 Notice to Mortgagee. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right or Offset Right, Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing.

6.3 Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided only that Mortgagee undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Mortgagee's cure period shall continue for such additional time (the "Extended Cure Period") as Mortgagee may reasonably require to either (a) obtain possession and control of Landlord's Premises and thereafter cure the breach or default with reasonable diligence and continuity; or (b) obtain the appointment of a receiver And give such receiver a reasonable period of time in which to cure the default

7. **CONFIRMATION OF FACTS.** Tenant represents to Mortgagee and to any Successor Landlord, in each case as of the date of this Agreement ("Effective Date"):

7.1 Effectiveness of Lease. The Lease is in full force and effect, has not been modified, and constitutes the entire agreement between Landlord and Tenant relating to Tenant's Premises. Tenant has no interest in Landlord's Premises except pursuant to the Lease. No unfulfilled conditions exist to Tenant's obligations under the Lease.

7.2 Rent. Tenant has not paid any Rent that is first due and payable under the Lease after the Effective Date.

7.3 No Landlord Default. To the best of Tenant's knowledge, no breach or default by Landlord exists and no event has occurred that, with the giving of notice, the passage of time, or both, would constitute such a breach or default.

7.4 No Tenant Default. Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease.

7.5 No Termination. Tenant has not commenced any action nor sent or received any notice to terminate the Lease. Tenant has no presently exercisable Termination Right(s) or Offset Right(s).

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7.6 Commencement Date. The "Commencement Date" of the Lease was April 1, 2105

7.7 Acceptance. Except as set forth in Schedule B (if any) attached to this Agreement: (a) Tenant has accepted possession of Tenant's Premises; and (b) Landlord has performed all Construction-Related Obligations related to Tenant's initial occupancy of Tenant's Premises and Tenant has accepted such performance by Landlord

7.8 No Transfer. Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein, other than sublease(s) made in compliance with the Lease.

7.9 Due Authorization. Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

8. **TENANT COVENANTS**. Tenant covenants with the Mortgagee that now and continuing as long as the Mortgage shall remain unsatisfied of record as follows:

8.1 Rent Payment Notices. From and after Tenant's receipt of written notice from Mortgagee (a "Rent Payment Notice"), Tenant shall pay all Rent to Mortgagee or as Mortgagee shall direct in writing, until such time as Mortgagee directs otherwise in writing. Tenant shall comply with any Rent Payment Notice notwithstanding any contrary instruction, direction or assertion from Landlord. Mortgagee's delivery to Tenant of a Rent Payment Notice, or Tenant's compliance therewith, shall not be deemed to: (a) cause Mortgagee to succeed to or to assume any obligations or responsibilities as Landlord under the Lease, all of which shall continue to be performed and discharged solely by Landlord unless and until any attornment as occurred pursuant to this Agreement; or (b) relieve Landlord of any obligations under the Lease.

8.2 Tenant shall not subordinate the Lease to the lien of any other mortgage other than the Mortgage in favor of the Mortgagee.

8.3 If requested by the Mortgagee or the Successor Landlord, Tenant shall deliver to Mortgagee or the Successor Landlord (as the case may be) the same periodic deliveries (e.g., updated financial reports, updated estoppel certificates) it delivers to Landlord pursuant to the Lease.

9. **MISCELLANEOUS**.

9.1 Notices. Any demand or notice hereunder or under any applicable law pertaining hereto shall be in writing and duly given if delivered to any party (at the address on page one). Such notice or demand shall be deemed sufficiently given for all purposes when delivered (i) by personal delivery and shall be deemed effective when delivered, or (ii) by mail or courier and shall be deemed effective three (3) business days after deposit in an official depository maintained by the United States Post Office for the collection of mail or one (1) business day after delivery to a nationally recognized overnight courier service (e.g., Federal Express). Notice by e-mail is not valid notice under this agreement.

9.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the

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assignor shall terminate.

9.3 Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage. Mortgagee confirms that Mortgagee has consented to Landlord's entering into the Lease.

9.4 Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

9.5 Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of New York, excluding its principles of conflicts of laws. TENANT HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN THE STATE OF NEW YORK IN A COUNTY OR JUDICIAL DISTRICT WHERE THE MORTGAGEE MAINTAINS A BRANCH, AND CONSENTS THAT THE MORTGAGEE MAY EFFECT ANY SERVICE OF PROCESS IN THE MANNER AND AT TENANT'S ADDRESS SET FORTH ABOVE. Tenant acknowledges and agrees that the venue provided above is the most convenient forum for both the Mortgagee and Tenant. Tenant waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

9.6 Miscellaneous. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Mortgagee represents that Mortgagee has full authority to enter into this Agreement, and Mortgagee's entry into this Agreement has been duly authorized by all necessary actions. No provisions of this Agreement may be amended, waived or modified except by an instrument in writing signed by the party to be bound. The headings and captions in this Agreement are for convenience of reference only and in no way define, limit or describe the scope or the intent of any provision or section of this Agreement and shall not be deemed to have any substantive effect. Inapplicability or unenforceability of any provisions of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement.

9.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

9.8 No Agency Relationship. The Mortgagee is not the agent or representative of Landlord and this Agreement shall not make the Mortgagee liable to materialmen, contractors, craftsmen, laborers or others for goods delivered to or services performed by them upon the Landlord's Premises, or for debts or claims accruing to such parties against Landlord and there

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is no contractual relationship, either expressed or implied, between the Mortgagee and any materialmen, subcontractors, craftsmen, laborers, or any other person supplying any work, labor or materials for the Improvements .

9.9 WAIVER OF JURY TRIAL. TENANT AND THE MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY EACH WAIVE ANY RIGHT TO TRIAL BY JURY THEY MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS RELATED THERETO. TENANT REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF THE MORTGAGEE HAS REPRESENTED, EXPRESSLY OR OTHERWISE THAT THE MORTGAGEE WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE ITS RIGHT TO JURY TRIAL WAIVER. THE TENANT ACKNOWLEDGES THAT THE MORTGAGEE HAS BEEN INDUCED TO ACCEPT THIS AGREEMENT BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the first date set forth above.

LANDLORD:

SOUTH PARK PROPERTIES, LLC

By: Dale Ter Haar
Dale Ter Haar, Member

By: Nancy Ter Haar
Nancy Ter Haar, Member

TENANT:

MIDLOTHIAN HARDWARE, INC.

By: Dale Ter Haar
Dale Ter Haar, President

STATE OF ILLINOIS)
) SS.:
COUNTY OF Cook)

On this 6th day of May, 2015, before me, the undersigned, a Notary Public in and for the State of Illinois, personally appeared **Dale Ter Haar and Nancy Ter Haar**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the individuals whose names are subscribed to the within instrument and they acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

Janet M Huff
Notary Public

OFFICIAL SEAL
JANET M HUFF
NOTARY PUBLIC, ILLINOIS
MY COMMISSION EXPIRES 12-4-18

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Exhibit A - Legal Description

THE EAST 216 FEET OF THE WEST 482.10 FEET OF LOTS 4 AND 5 TAKEN AS A TRACT (EXCEPT THE SOUTH 333.45 FEET THEREOF AND EXCEPT THE NORTH 17 FEET THEREOF TAKEN FOR HIGHWAY PURPOSES) IN A. T. MCINTOSH'S ADDITION TO MIDLOTHIAN FARMS, BEING A SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 AND THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 9 AND THE WEST 1/2 OF THE SOUTHWEST 1/4 AND THE WEST 33.80 FEET OF THE EAST 1/2 OF THE SAID SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

28-10-300-023

Prop by a
mail to

Newtek Small Business Finance LLC

60 Hempstead Ave

West Hempstead, NY 11552

After Closing Dept

Prop: 4751 W. 147th St.

Midlothian, IL 60445