

# UNOFFICIAL COPY



Doc#: 1602219042 Fee: \$58.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 01/22/2016 10:11 AM Pg: 1 of 11

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Property of Cook County Clerk's Office

8 to 4

PSH

# UNOFFICIAL COPY

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), is made this ~~21st~~ day of December, 2015, by and between Enterprise Leasing Company of Chicago, LLC, a Delaware limited liability company, Successor in interest to Enterprise Leasing Company of Chicago, a Nevada corporation, with offices c/o 1050 North Lombard Rd, Lombard IL 60148 ("Tenant") and C-III Commercial Mortgage LLC, a Delaware limited liability company, its successors and assigns, having its office at 5221 North O'Connor Boulevard, Suite 600, Irving, Texas 75039 ("Mortgagee") and Glenview MHC LLC, a Delaware limited liability company, having its office at 853 N Elston Avenue, Chicago, IL 60642 ("Landlord").

### WITNESSETH:

WHEREAS, Tenant and Landlord have entered into a certain lease dated December 2008, as assigned, modified, supplemented or amended (the "Lease") covering premises located at Sunset Village, located at 2300 Waukegan Road, Glenview, Illinois, as more specifically set forth in the Lease and as more particularly described on EXHIBIT A hereto (the "Premises"); and

WHEREAS, Mortgagee has made or has agreed to make a mortgage loan ("Loan") to Landlord evidenced by a promissory note secured by, among other security, a certain Mortgage and Security Agreement ("Mortgage") on Landlord's property; and

WHEREAS, the Mortgage, and any other documents or instruments evidencing or securing the Loan are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, Mortgagee has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, Mortgagee and Tenant and Landlord hereby agree and covenant as follows.

1. The Lease and any extensions, renewals, replacements or modifications thereof, and Tenant's interest in the Premises under the Lease, are and shall at all times be subject, subordinate, and inferior to the lien of the Loan Documents and to the lien of all renewals, modifications and extensions thereof, subject to the terms and conditions set forth in this Agreement.

2. Notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) under the Lease, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Mortgagee, and Tenant's occupancy of the Premises shall not be disturbed, nor its rights under the Lease (as the same may be extended) affected by any default under the Mortgage.

3. In addition, notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of fixed rent or any other monetary obligation of Tenant as set forth on the Lease, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Mortgagee will not join Tenant as a party defendant in any foreclosure action or other proceeding for the purpose of terminating Tenant's interest and estate under the Lease or for any other purpose.

# UNOFFICIAL COPY

4. If the interests of Landlord in the Premises shall be transferred to and acquired by a purchaser at foreclosure or grantee under a deed in lieu of foreclosure (an "Acquiring Party") by reason of foreclosure, deed in lieu of foreclosure, or other proceedings brought by the holder of the Mortgage, or if an Acquiring Party takes possession of the Premises pursuant to any provision of the Loan Documents, then (i) Acquiring Party and Tenant shall be directly bound to each other under all the terms, covenants and conditions of the Lease for the balance of the term thereof and for any extensions or renewals thereof which may be exercised by Tenant, with the same force and effect as if Mortgagee were the Landlord under the Lease; and (ii) Tenant does hereby attorn to Acquiring Party as its landlord, said attornment to be effective and self-operative (without the execution of any further instruments), immediately upon Acquiring Party succeeding to the interests of the Landlord under the Lease; provided, however, regarding items (i) and (ii) above, that Tenant shall have received written notice from Acquiring Party that it has succeeded to the interests of the Landlord under the Lease. The respective rights and obligations of Tenant and Acquiring Party upon such attornment, to the extent of the then-remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth from and after Acquiring Party's succession to the interests of the Landlord under the Lease, and Tenant shall have the same remedies against Acquiring Party for the breach of any agreement contained in the Lease that Tenant might have under the Lease against Landlord if Acquiring Party had not succeeded to the interest of Landlord; provided, however, that Acquiring Party shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), except to the extent such act or omission continues by Mortgagee during the period of possession by Acquiring Party or during a period during which Acquiring Party is receiving rent from Tenant pursuant to Section 6 below, provided however, in any event Acquiring Party shall only be liable for Acquiring Party's acts or omissions; or

(b) subject to any offsets, credits, claims or defenses which Tenant might have against any prior landlord (including Landlord) prior to the date that Acquiring Party first takes possession of the Premises; or

(c) bound by any rent which Tenant might have paid for more than the current month; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is in an escrow or other fund available to Acquiring Party.

5. Notwithstanding Section 4 above, upon the written request of either Acquiring Party or Tenant to the other given at or around the time of any foreclosure, trustee's sale or deed in lieu thereof, the parties agree to execute a new lease of the Premises upon the same terms and conditions as the Lease between Landlord and Tenant, which new lease shall cover any unexpired term of the Lease existing prior to such foreclosure, trustee's sale or conveyance in lieu of foreclosure and include any rights of Tenant to extend or renew the term which were included in the Lease.

6. Except as set forth in that certain direction letter dated contemporaneously herewith from Landlord to Tenant directing Tenant to remit rent to Wells Fargo Bank, NA during the term of the loan secured by the Mortgage, Tenant shall not be under any obligation to pay rent to Mortgagee until the Tenant shall have received written notice from Mortgagee that a default has occurred under the Loan Documents and directing such payments be made to Mortgagee. Landlord by its execution of this Agreement hereby consents to such direct payments by Tenant to Mortgagee and hereby releases and discharges Tenant of and from all liability to Landlord on account of any such payments. Upon receipt of such notice, Tenant shall make future payments due under the Lease to Mortgagee until notified otherwise in writing in accordance with the terms of the Lease and Tenant shall not be liable to Landlord to account for such payments.

# UNOFFICIAL COPY

7. (a) Tenant shall notify Mortgagee in writing at the address set forth herein of the occurrence of any default or event of default by Landlord under the Lease which would give Tenant the right to cancel or terminate the Lease; and Tenant will grant to Mortgagee up to 30 days or a reasonable time (not to exceed 30 days) in which to cure Landlord's default (which time shall be at least the period of time granted to the Landlord by the Lease), provided, however, that Mortgagee shall give Tenant written notice of Mortgagee's intent to cure Landlord's default within ten (10) days of receipt of Tenant's notice of Landlord's default. Tenant agrees that it will not terminate or cancel the Lease on account of such default until such notice to Mortgagee has been given, and Mortgagee has had the opportunity to cure any such default. Should Mortgagee fail to so notify Tenant of Mortgagee's intent to cure Landlord's default within said ten (10) days, then Tenant shall have all available rights and remedies (including any right to cure Landlord's default) under the Lease, at law and/or in equity. It is expressly understood and agreed that the above shall not be deemed to create any obligation of Mortgagee to cure any such default or defaults.

(b) Mortgagee shall endeavor to copy Tenant on any notice of Mortgagor's default under the Loan Documents at the same time that Mortgagee shall serve a Notice of Default on Mortgagor. Failure of Mortgagee to give such notice to Tenant shall not invalidate or vitiate such notice as between Mortgagee and Mortgagor.

8. This Agreement may not be modified or amended except by a writing by all parties hereto. Upon satisfaction of the Mortgage, this Agreement shall become null and void and be of no further effect.

9. Whenever in this Agreement it is provided that notice be given to or served upon any of the parties, each such notice or demand shall be in writing, and shall be given or served as follows: if given or served by the Mortgagee, by mailing the same to the Tenant and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at the addresses listed on Page 1 of this Agreement, or at such other addresses as the Landlord and Tenant may from time to time designate by notice given to the Mortgagee; and if given or served by the Tenant, by mailing the same to the Mortgagee and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Mortgagee and the Landlord at the addresses listed on Page 1 of this Agreement or at such other addresses as the Mortgagee and Landlord may from time to time designate by notice given to the Tenant; and if given or served by the Landlord, by mailing the same to Tenant and Mortgagee by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Tenant and Mortgagee at the addresses listed on Page 1 of this Agreement or at such other addresses as the Tenant and Mortgagee may from time to time designate by notice given to Landlord.

10. Notwithstanding anything herein to the contrary, Tenant shall not be deemed to be in default under any of the terms or conditions of this Agreement until Tenant has received a fully executed original copy of this Agreement. Tenant's signature in this Agreement shall be void if Tenant has not received a fully executed original copy of this Agreement within sixty (60) days from the date of this Agreement.

11. This Agreement shall be binding upon the parties hereto, and their successors and assigns. In addition, this Agreement shall be binding upon any successor to Mortgagee's interest as Landlord of the Lease.

*[No Further Text on this Page; Signature Page Follows]*

# UNOFFICIAL COPY

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

WITNESS:

\_\_\_\_\_

TENANT:

Enterprise Leasing Company of Chicago LLC,  
a Delaware limited liability company

By: 

Name: Jeffrey D. Wilder

Title: Vice President / General Manager

WITNESS:

\_\_\_\_\_

MORTGAGEE:

C-III Commercial Mortgage LLC  
a Delaware limited liability company

By: \_\_\_\_\_

Name:

Title:

WITNESS:

\_\_\_\_\_

LANDLORD:

Glenview MHC LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Robert Wei

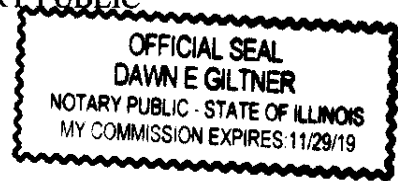
Title: Senior Vice President

# UNOFFICIAL COPY

STATE OF Illinois  
COUNTY OF Rock

On this 21st day of December, 2015, before me personally appeared Telby D. Wilder, who, being by me duly sworn, did depose and say that he/she resides at 1090 W. ...; that he/she is Vice President / General Mgr of Enterprise Leasing Company of Chicago LLC, a Delaware limited liability company described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

Dawn E. Giltner  
NOTARY PUBLIC



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of December, 2015, before me personally appeared \_\_\_\_\_, who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_; that he/she is \_\_\_\_\_ of C-III Commercial Mortgage LLC, a Delaware limited liability company described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of December, 2015, before me personally appeared \_\_\_\_\_, who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_; that he/she is \_\_\_\_\_ of Glenview MHC LLC, a Delaware limited liability company described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

\_\_\_\_\_  
NOTARY PUBLIC

# UNOFFICIAL COPY

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

WITNESS:

\_\_\_\_\_

TENANT:

\_\_\_\_\_, a

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

MORTGAGEE:

C-III Commercial Mortgage LLC  
a Delaware limited liability company

BY: Michael A. Pierro

ITS: Vice President

WITNESS:

\_\_\_\_\_

LANDLORD:

Glenjew MHC LLC,  
a Delaware limited liability company

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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

**LENDER:**

C-III COMMERCIAL MORTGAGE LLC

By: \_\_\_\_\_

Name: Michael A. Pierro

Title: Vice President

STATE OF NEW YORK )

:ss:

COUNTY OF NEW YORK )

On the 20<sup>th</sup> day of December, 2015, before me, Maria Gonzalez, personally appeared Michael Pierro, 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

*[Handwritten Signature]*

**MARIA ALEJANDRA GONZALEZ**  
Notary Public, State of New York  
No. 01GO6317757  
Qualified in Kings County  
My Commission Expires January 12, 2019

[SIGNATURES CONTINUE ON FOLLOWING PAGE]



# UNOFFICIAL COPY

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

WITNESS:

\_\_\_\_\_

WITNESS:

\_\_\_\_\_

WITNESS:

\_\_\_\_\_



TENANT:

Enterprise Leasing Company of Chicago LLC,  
a Delaware limited liability company

BY: Jeffrey D. Wilder

ITS: Vice President / General Manager

MORTGAGEE:

C-III Commercial Mortgage LLC  
a Delaware limited liability company

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

LANDLORD:

Overview MHC LLC,  
a Delaware limited liability company

BY: 

ITS: Robert Weil, its Senior Vice  
President

Property of COOK COUNTY Clerk's Office

# UNOFFICIAL COPY

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_; that he/she is \_\_\_\_\_ of \_\_\_\_\_, a Delaware limited liability company described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

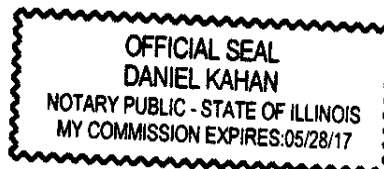
On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_; that he/she is \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF Illinois  
COUNTY OF Cook

On this 17 day of December, 2015, before me personally appeared Robert Weil, who, being by me duly sworn, did depose and say that he/she resides at 2515 Longshore Avenue, Suite 112; that he/she is the Senior VP of Glenview MHC LLC, the corporation described in and which executed the above instrument, and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

*Daniel Kahan*  
NOTARY PUBLIC



# UNOFFICIAL COPY

## EXHIBIT A

(Legal Description of Leased Premises)

PARCEL 7: (RONNIES RESTAURANT):

THAT PART OF LOT 30 IN COUNTY CLERK'S DIVISION OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SAID LOT 30 WITH THE CENTERLINE OF WAUKEGAN ROAD; THENCE WEST ALONG SAID SOUTH LINE, 300.00 FEET; THENCE NORTH PERPENDICULAR TO SAID SOUTH LINE 92.00 FEET; THENCE EAST ALONG A LINE PARALLEL WITH SAID SOUTH LINE TO THE CENTERLINE OF WAUKEGAN ROAD; THENCE SOUTHEASTERLY ALONG SAID CENTERLINE TO THE POINT OF BEGINNING, (EXCEPT THAT PART LYING EASTERLY OF THE WESTERLY LINE OF WAUKEGAN ROAD AS AMENDED PER DOCUMENT 88178434), IN COOK COUNTY, ILLINOIS.

04-23-401-003

7-300 Waukegan Rd

64-1-1-1 IL