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Doc#. 1720212040 Fee: \$68.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 07/21/2017 11:43 AM Pg: 1 of 11

**THIS DOCUMENT WAS PREPARED BY,
AND AFTER RECORDING, RETURN TO:**

Courtney E. Mayster
MUCH SHELIST
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606.1615

PERMANENT TAX INDEX NUMBERS:

17-09-227-008-0000
17-09-227-017-0000
17-09-227-018-0000
17-09-227-019-0000
17-09-227-007-0000

PROPERTY ADDRESS:

9 West Erie Street
Chicago, Illinois 60654

This space reserved for Recorder's use only.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** dated as of July 18, 2017 (this "**Agreement**"), is executed by and among **9 W ERIE HOLDINGS, LLC**, a Delaware limited liability company (the "**Landlord**"), **BARRY'S BOOTCAMP US, LLC**, a Delaware limited liability company (the "**Tenant**"), and **WINTRUST BANK** (together with its successors and assigns (the "**Lender**").

RECITALS:

A. The Lender is the mortgagee under that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of and to be recorded concurrently herewith (the "**Mortgage**"), which Mortgage encumbers the Real Estate (as hereinafter defined).

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B. The Tenant has entered into that certain lease agreement dated July 30, 2015 with the Landlord (or the Landlord's predecessor-in-interest) (the "Lease Agreement", the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "Lease"), pursuant to which the Tenant has leased certain premises (the "Leased Premises") consisting of approximately 1,710 rentable square feet on the ground floor and 4,730 rentable square feet on the second floor in the building commonly known as 9 West Erie Street, Chicago, Illinois 60654 ("Building") on the parcel of land (the "Land"; the Land and Building being collectively referred to herein as the "Real Estate") legally described on Exhibit "A" attached hereto and made a part hereof.

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:

AGREEMENTS:

1. The Tenant represents and warrants to the Lender that the Lease constitutes the entire agreement between the Tenant and the Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of the Tenant with respect to the Leased Premises.
2. The Tenant has executed and delivered to the Lender that certain Tenant Estoppel Certificate dated on or about the date hereof (the "Estoppel Certificate"). The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and the Tenant acknowledges that the Lender will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.
3. The Tenant covenants with the Lender that 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, 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 Real Estate, shall be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards.
4. The Tenant acknowledges that the Landlord has collaterally assigned to the Lender any and all leases affecting the Real Estate, 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, the Tenant agrees that, upon receipt of a notice of a default by the Landlord under such assignment and a demand by the Lender for direct payment to the Lender of the rents due under the Lease, the Tenant will honor such demand and make all

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subsequent rent payments directly to the Lender. The Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to the Landlord and the Lender.

5. The Lender agrees that so long as the Tenant is not in default under the Lease:

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

(b) The possession by the Tenant of the Leased Premises and the 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 Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.

6. Prior to pursuing any remedy available to the Tenant under the Lease, at law or in equity as a result of any failure of the Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by the Landlord under the Lease (any such failure being hereinafter referred to as a "**Landlord's Default**"), the Tenant shall: (a) provide the Lender with a notice of the Landlord's Default, specifying the nature thereof, the section of the Lease under which such Landlord's Default arose, and the remedy which the Tenant will elect under the terms of the Lease or otherwise, and (b) allow the Lender not less than thirty (30) days following receipt of notice of the Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, the Tenant shall give the Lender such additional time as the Lender may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as the Lender is diligently pursuing a cure. The Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless the Lender fails to cure same within the time period specified above. For purposes of this **Section 6**, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without the Landlord having effectuated a cure thereof.

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

(a) The 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 the Tenant elects or has elected to exercise its options to extend the term), and the 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

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(provided, however, if applicable law shall require additional documentation at the time the Lender exercises its remedies then the Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to the Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

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

(ii) subject to any offsets or defenses which the Tenant has against any prior landlord (including the Landlord) unless the Tenant shall have provided the 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 6 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which the Tenant might have paid more than one (1) month in advance to any prior landlord (including the Landlord);

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

(v) bound by any amendment or modification of the Lease made without the Lender's consent;

(vi) 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 the Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

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

To the Lender:

WINTRUST BANK
231 South LaSalle Street, 2nd Floor
Chicago, Illinois 60604
Attention: Kevin Lichterman, Vice President

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With a copy to: M'CH SHELIST
191 North Wacker Drive, Suite 1800
Chicago, Illinois 60606.1615
Attention: Courtney Mayster

To the Landlord: 9 W ERIE HOLDINGS, LLC
275 Madison Avenue
Suite 702
New York, New York 10016
Attention: David Dushey

With copy to: POLSINELLI SHUGHART
150 North Riverside Plaza
Suite 3000
Chicago, Illinois 60606
Attention: Eric Greenfield

To the Tenant: BARRY'S BOOTCAMP US, LLC
14622 Venture Boulevard
Suite 201
Sherman Oaks, California 91403
Attention: Tracy McIntosh

With copy to: ROBINSON BROG LEINWAND GREENE GENOVESE & GLUCK
P.C.
875 Third Avenue
New York, New York 10022
Attention: Thomas E. Kass

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received when actually delivered or when delivery is refused by the addressee, as the case may be.

9. The Tenant acknowledges and agrees that the Lender will be relying on the representations, warranties, covenants and agreements of the Tenant contained herein and that any default by the Tenant hereunder shall permit the Lender, at its option, to exercise any and all of its rights and remedies at law and in equity against the Tenant and to join the Tenant in a foreclosure action thereby terminating the Tenant's right, title and interest in and to the Leased Premises.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of the Lender, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

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11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

[Remainder of Page Intentionally Left Blank—Signature Page Follows]

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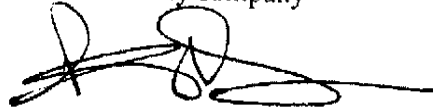
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[Signatures Continued from Preceding Page]

TENANT:

BARRY'S BOOTCAMP US, LLC, a Delaware limited liability company

By:



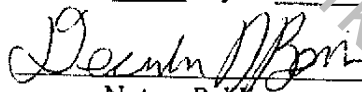
Name: Tracy McIntosh

Title: Chief Development Officer

STATE OF NY)
) SS.
COUNTY OF NY)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DOES HEREBY CERTIFY** that Tracy McIntosh, the CDO of **BARRY'S BOOTCAMP US, LLC**, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he/she signed and delivered the said 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 therein set forth.

GIVEN under my hand and notarial seal this 19 day of July, 2017.


Notary Public

DEIRDRE NORA BEIRNE
Notary Public, State of New York
Registration #01BE6302662
Qualified in New York County
Commission Expires May 5, 2018

My Commission Expires:

May 5, 2018

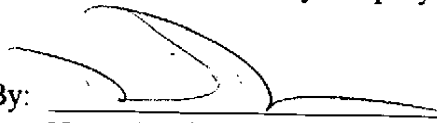
[Signatures Continue on Following Page]

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

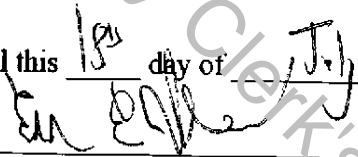
LANDLORD:

9 W ERIE HOLDINGS, LLC,
a Delaware limited liability company

By: 
Name: David Dushey
Title: Manager

STATE OF New York)
COUNTY OF New York) **SS.**

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DOES HEREBY CERTIFY** that David Dushey, the Manager of **9 W ERIE HOLDINGS, LLC**, a Delaware, 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 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 this 18th day of July, 2017.


Notary Public

EDWARD E. KLEIN
NOTARY PUBLIC-STATE OF NEW YORK
No. 02KL4971210
Qualified in New York County
My Commission Expires August 27, 2017

My Commission Expires:
8/27/18

[Signatures Continue on Following Page]

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EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

Parcel 1

A part of Lots 1 and 2 of Assessors Division of Lot 16 in Block 24 in Wolcott's Addition to Chicago and the North 1/2 of Block 37 in Kinzie's Addition to Chicago described as follows:
Commencing at a point on the North line of said Lot 1, 20 feet 2 inches West of the North East corner of said Lot 1; running thence South on a line parallel with the East line of said Lots 1 and 2, 51 feet to the South line of said Lot 2; thence West on the South line of said Lot 2, 19 feet and 4 inches; thence North on line parallel with the East line of said Lots 1 and 2, 51 feet to the North line of said Lot 1; thence East 19 feet 4 inches to the place of beginning in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2

A tract of land described as follows:
Commencing at a point on the North line of Lot 1 of Assessors Division of Lot 16 in Block 24 of Wolcott's Addition to Chicago and the North 1/2 of Block 37 of Kinzie's Addition to Chicago, 39 feet 6 inches West of the North East corner of said Lot 1; thence running South on a line parallel with the East line of said Lot 1 and Lot 2 in said Assessor's Division, 51 feet to the South line of the said Lot 2; thence West along the South line of said Lot 2, 19 feet 4 inches; thence North on a line parallel with the East line of said Lots 1 and 2, 51 feet to the North line of said Lot 1; thence East 19 feet 4 inches to the place of beginning, in Cook County, Illinois.

Parcel 3

The West 20.66 feet of Lots 1 and 2 in Assessor's Division of Lot 16 in Block 24 in Wolcott's Addition to Chicago with the North 1/2 of Block 37 in Kinzie's Addition to Chicago, in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 4

Lot 14 in Block 24 in Wolcott's Addition to Chicago in the East 1/2 of the North East 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 5

Lot 15 in Block 24 in Wolcott's Addition to Chicago in the East 1/2 of the North East 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

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PROPERTY ADDRESS OF REAL ESTATE:

9 WEST ERIE STREET
CHICAGO, ILLINOIS 60654

PERMANENT TAX INDEX NUMBERS:

17-09-227-008-0000

17-09-227-017-0000

17-09-227-018-0000

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