

# UNOFFICIAL COPY

Doc#: 1817947122 Fee: \$70.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/28/2018 01:05 PM Pg: 1 of 12

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PREPARED BY AND  
MAIL RECORDED ORIGINAL TO:  
Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, IL 60661  
Attention: Mark C. Simon, Esq.

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("Agreement"), made as of ~~June 26~~<sup>28</sup>, 2018, by and among 7-ELEVEN, INC., a Texas corporation ("Tenant"), with principal offices at 3200 Hackberry Road, Irving, Texas 75063, CITIZENS BANK, NATIONAL ASSOCIATION, as Agent ("Lender"), whose address is 71 South Wacker Drive, IH2915, Chicago, Illinois 60606 and CA/ FOCUS EVANSTON PROPERTY OWNER, LLC, a Delaware limited liability company ("Landlord"), whose address is 130 E. Randolph Street, Suite 2100, Chicago, IL 60601.

### RECITALS:

WHEREAS, Lender has agreed to make a loan to Landlord, to be secured by a Mortgage, Security Agreement, Assignment of Rents and Fixture Filing to be recorded with the Recorder of Deeds of Cook County, IL (the "Official Records") on or about the date of recording hereof (together with all amendments, renewals, modifications, consolidations, spreaders, combinations, supplements, replacements, substitutions, and extensions, either current or future, the "Security Instrument"), encumbering Landlord's ownership interest in real property located at 831 Emerson Street, Evanston, Illinois, which is more particularly described in Exhibit A, attached hereto and made a part hereof (the "Premises");

WHEREAS, the Security Instrument, together with the promissory note or notes, the loan agreement(s), the assignment of rents and other documents executed in connection with it are hereafter collectively referred to as the "Loan Documents";

WHEREAS, pursuant to that certain Space Lease dated October 19, 2017 (the "Lease"), evidenced by that certain Memorandum of Lease recorded or to be recorded in the Official Records of Cook County, Illinois, Landlord has leased approximately 3,330 square feet of a building to be constructed on the Premises to Tenant (the "Leased Premises") subject to Tenant satisfying or waiving the conditions precedent set forth in Article 20 of the Lease;

NOW THEREFORE, to confirm their understanding concerning the legal effect of the Security Instrument and the Lease and, in consideration of the mutual covenants and agreements contained in this Agreement and other valuable consideration, the receipt and sufficiency of

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which is hereby acknowledged, Lender and Tenant, intending to be legally bound, agree and covenant as follows:

1. Subordination. Subject to the provisions of Paragraphs 2 and 3 below, the Security Instrument shall constitute a lien on the Premises that is prior and superior to the Lease, and to the leasehold estate created by it. By this Agreement, the Lease, the leasehold estate created by it, together with all rights and privileges of Tenant under it, are subordinated, at all times, to the lien or charge of the Loan Documents in favor of Lender and all supplements, amendments, modifications, renewals and extensions of the Loan Documents.

2. Non-Disturbance. By execution of this Agreement, Lender consents to the Lease. Despite Tenant's subordination under Article 26 of the Lease, so long as the Lease is then in full force and effect and Tenant is not in material default under the Lease (beyond any period given Tenant by the terms of the Lease to cure such default) in the payment of rent or other amounts owed pursuant to the Lease or in the performance of any of the material terms, covenants or conditions of the Lease or Tenant's part to be performed, then Lender, any successor or assign of Lender, or any owner of the Premises following a foreclosure sale or conveyance in lieu of foreclosure (collectively, the "Lender Entities") acknowledge and agree that: (i) Tenant's possession of the Leased Premises, or any extension or renewal rights therefor in the Lease, shall not be disturbed, diminished or interfered with by the Lender Entities, (ii) the Lease shall not be terminated and all of Tenant's rights and privileges under the Lease shall be recognized by the Lender Entities, and (iii) the Lender Entities will not join Tenant as a party defendant in any action or proceeding foreclosing the Security Instrument unless such joinder is necessary to foreclose the Security Instrument and then only for such purpose and not for the purpose of terminating the Lease.

3. Attornment. If (i) Lender or its successors and assigns shall become the owner of the Premises (the applicable party which acquires title to the Premises being referred to as the "New Owner"), (ii) the Premises shall be sold by reason of foreclosure or other proceedings brought to enforce the Security Instrument, or (iii) the Premises shall be transferred by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct lease between the then New Owner of the Premises and Tenant, and Tenant agrees to attorn to the New Owner of the Premises, said attornment to be effective and self-operative without the execution of any further instruments. Tenant shall be under no obligation to pay rent to Lender or any such other owner until Tenant receives written notice from Lender or any such other owner that it has succeeded to Landlord's interest under the Lease, upon which notice Tenant shall be entitled to rely.

4. Notice to Cure Defaults. Tenant agrees to provide to Lender a copy of any notice of default served upon Landlord which with the passage of time or otherwise would entitle Tenant to cancel the Lease or abate the rent under the Lease. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in the Lease, then Lender shall have an additional thirty (30) days after its receipt of notice within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default shall be granted if within such thirty (30) days Lender has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings necessary to effect such cure), in

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which event the Lease shall not be terminated while such remedies are being so diligently pursued, provided, that, such additional period of time shall not exceed ninety (90) additional days.

5. Limitation of Liability. In the event that a New Owner succeeds to the interest of Landlord under the Lease, then New Owner shall assume and be bound by the obligations of Landlord under the Lease which accrue from and after such party's succession to any prior landlord's interest in the Leased Premises, but a New Owner shall not be:

(i) bound by any rent or additional rent which Tenant has paid more than one (1) month in advance to any prior landlord (including, without limitation, Landlord), except as expressly provided in the Lease;

(ii) liable for any act or omission of any prior landlord (including, without limitation, Landlord), except (a) for any tenant improvement allowance owed to Tenant under the Lease that has not been previously remitted to Tenant; or (b) to the extent the default is non-monetary, relates to the repair or maintenance of the Premises, and continues to accrue after attornment, in which event, the successor landlord shall be bound to cure same within the time provided for in the Lease, which time shall be calculated from the date of attornment;

(iii) liable for the retention, application or return of any security deposit to the extent not paid over to Lender or a New Owner;

(iv) subject to any offsets or defenses which Tenant might have against any prior landlord (including, without limitation, Landlord), except as expressly provided in the Lease; or

(v) bound by any amendment or modification of the Lease made without New Owner's written consent, such consent not to be unreasonably withheld or delayed, that: (a) reduces rent or additional rent payments to the landlord under the Lease, or (b) shortens the term of the Lease, or (c) imposes any additional material obligations upon the landlord under the Lease. All other amendments or modifications of the Lease that do not relate to the provisions set forth herein shall not require Lender approval.

Notwithstanding the foregoing, nothing in this section shall be deemed to waive any of Tenant's rights and remedies against any prior landlord (including, without limitation, Landlord).

6. Assignment of Leases. Tenant consents to the Assignment of Leases contained in the Security Instrument (collectively, the "Assignment"). Tenant agrees that, if Lender, pursuant to the Assignment, and whether or not it becomes a mortgagee in possession, shall give written notice to Tenant that an "Event of Default" has occurred under the Security Instrument and Lender has elected to require Tenant to pay to Lender the rent and other charges payable by Tenant under the Lease, Tenant agrees that it shall pay rent and all other sums due under the Lease directly to Lender without notice to or the consent of Landlord and without any obligation on the part of Tenant to determine whether or not the demand is proper. Landlord agrees that Tenant shall have the right to rely on any such notice from Lender without incurring any obligation or liability to Landlord as if such notice were given at the direction of Landlord.

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7. Leasehold Improvements and Business Fixtures. Lender agrees that it will not claim and shall not have or assert any right, title or interest in and to any leasehold improvements and/or business fixtures installed upon the Leased Premises by Tenant pursuant to the terms of the Lease.

8. Notices. Any notice required to be sent hereunder shall be in writing and shall be delivered by hand, sent prepaid by Federal Express (or a comparable overnight delivery service) or sent by the United States first-class mail, certified, postage prepaid, return receipt requested, to the following addresses:

If to Lender:

Citizens Bank, National Association  
71 South Wacker Drive, JH2915  
Chicago, IL 60606  
Attn: Michael Browne

With a copy to:  
Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, IL 60661  
Attn: Mark C. Simon, Esq.

If to Landlord:

c/o CA Student Living Evanston, LLC  
130 E. Randolph Street, Suite 2100  
Chicago, IL 60601  
Attn: Katie Kazas and Jim Reiland

With a copy to:

Polsinelli PC  
150 N. Riverside, Suite 3000  
Chicago, IL 60606  
Attn: Patricia Gruber

If to Tenant:

7-Eleven, Inc.  
Attn: Corporate Real Estate  
P.O. Box 711  
Dallas, Texas 75221-0711

Any notice, request, demand or other communication delivery or sent in the manner aforesaid shall be deemed delivered on the earlier to occur of (i) actual receipt or (ii) the date of delivery, refusal or non-delivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the addresses set forth above. Any of the above persons or entities may change such person's or entity's address by notifying the other persons and entities of the new address in any manner permitted by this paragraph.

9. Joinder of Landlord. Landlord hereby agrees to the subordination and attornment effected hereunder upon the terms herein stated.

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10. Successors and Assigns. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors and assigns, as applicable.

11. Counterparts. This Agreement may be executed in any number of Counterparts, all of which taken together shall constitute one and the same instrument, and any person intended to be a signatory hereto may execute this Agreement by signing any such Counterpart.

12. Governing Law. The laws of the state in which the Premises are located shall govern the validity, performance and enforcement of this Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth in their respective acknowledgments.

*[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGES TO FOLLOW.]*

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[SIGNATURE AND ACKNOWLEDGMENT PAGE OF LENDER TO SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT]

WITNESS the following signatures and seals.

**“LENDER”**

CITIZENS BANK, NATIONAL ASSOCIATION, as Agent

By: [Signature]  
Name: Michael C. Blowne  
Title: Senior Vice President

Property of COOK COUNTY Notary Public's Office

**ACKNOWLEDGMENT**

STATE OF ILLINOIS

§  
§  
§

COUNTY OF COOK

BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared MICHAEL C. BLOWNE a or the SVP of Citizens Bank, National Association, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said entity and that he or she executed the same as the act of such entity for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13 day of JUNE, 2018.

[Signature]  
(Notary signature)

LOTTIE KEARNS  
(typed or printed name)

(seal)

My commission expires: 11-15-2020





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[SIGNATURE AND ACKNOWLEDGMENT PAGE OF TENANT TO SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT]

WITNESS the following signatures and seals.

Attest:

“TENANT”

Buffy Hong  
Name: Buffy Hong  
Title: Assistant Secretary

7-ELEVEN, INC., a Texas corporation

By: Nathanael Gardner  
Name: Nathanael Gardner  
Title: Attorney-in-fact

Property of Cook County Clerk's Office

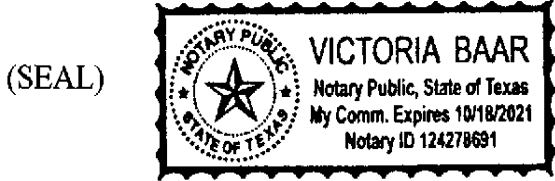
### ACKNOWLEDGMENT

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS     §

BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared Nathanael Gardner and Buffy Hong, a(n) Attorney-in-fact and an Assistant Secretary, respectively, of 7-ELEVEN, INC., known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said corporation and that they each executed the same as the act of such corporation for the purposes therein expressed and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 4th day of June, 2018.

Victoria Baar  
(Notary signature)



Victoria Baar  
(typed or printed name)  
My commission expires: 10-18-2021

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[SIGNATURE AND ACKNOWLEDGMENT PAGE OF LANDLORD TO SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT]

WITNESS the following signatures and seals.

**“LANDLORD”**

**CA/FOCUS EVANSTON PROPERTY OWNER, LLC,**  
a Delaware limited liability company

By: **CA/FOCUS EVANSTON JV, LLC,** a Delaware  
limited liability company, its Manager

By: **CA STUDENT LIVING EVANSTON,**  
**LLC,** a Delaware limited liability company,  
its Co-Manager

By: *Katie Kaye*  
Name: *Katie Kaye*  
Title: Authorized Signatory

By: **FOCUS EMERSON PARTNERS LLC,**  
an Illinois limited liability company,  
its Co-Manager

By: \_\_\_\_\_  
Name: Timothy J. Anderson  
Title: Authorized Signatory

Property of Cook County Clerk's Office



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[SIGNATURE AND ACKNOWLEDGMENT PAGE OF LANDLORD TO SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT]

WITNESS the following signatures and seals.

**“LANDLORD”**

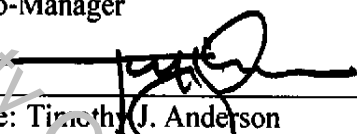
**CA/FOCUS EVANSTON PROPERTY OWNER, LLC,**  
a Delaware limited liability company

By: **CA/FOCUS EVANSTON JV, LLC,** a Delaware limited liability company, its Manager

By: **CA STUDENT LIVING EVANSTON, LLC,** a Delaware limited liability company, its Co-Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

By: **FOCUS EMERSON PARTNERS LLC,** an Illinois limited liability company, its Co-Manager

By:   
Name: Timothy J. Anderson  
Title: Authorized Signatory

Property of Cook County Clerk's Office

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## ACKNOWLEDGMENT

STATE OF ILLINOIS

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COUNTY OF COOK

BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared Timothy Anderson as Authorized Signatory of Focus Evanston Partners LLC, an Illinois limited liability company, as the Co-Manager of CA/Focus Evanston JV, LLC, a Delaware limited liability company, as Manager of CA/Focus Evanston Property Owner, LLC, a Delaware limited liability company, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said entity and that he or she executed the same as the act of such entity for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13 day of JUNE, 2018.

Jessica Stelzer  
(Notary signature)

(seal)

Jessica Stelzer  
(typed or printed name)

My commission expires: 10/24/18



# UNOFFICIAL COPY

STATE OF ILLINOIS

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COUNTY OF COOK

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BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared KATIE KAZAS as Authorized Signatory of CA Student Living Evanston, LLC, a Delaware limited liability company, as the Co-Manager of CA/Focus Evanston JV, LLC, a Delaware limited liability company, as Manager of CA/Focus Evanston Property Owner, LLC, a Delaware limited liability company, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said entity and that he or she executed the same as the act of such entity for the purposes therein expressed and in the capacity therein stated.

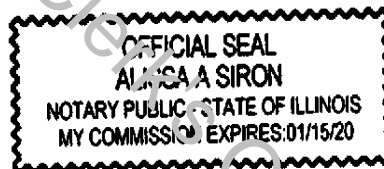
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14th day of JUNE, 2013.

Alissa A. Siron  
\_\_\_\_\_  
(Notary signature)

(seal)

ALISSA A. SIRON  
\_\_\_\_\_  
(typed or printed name)

My commission expires: 01/15/20



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## EXHIBIT A

### Legal Description

The Land is described as follows:

Parcel 1:

Lot 11 in Paul Pratt's Addition to Evanston, said Addition being a subdivision of the Southwest 8 1/2 Acres of the South 1/2 of the Northeast 1/4 of the Northwest 1/4 of Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Lot 10 (except the West 40.0 feet thereof) in Paul Pratt's Addition to Evanston, being a subdivision of the Southwest 8 1/2 acres of the South 1/2 of the Northeast 1/4 of the Northwest 1/4 of Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3:

The South 25.30 feet of lot 14 in Huse and Power's Addition to Evanston in Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 4A:

That part of the North 24.70 feet of Lot 14 in Huse and Power's Addition to Evanston in Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, described as follows:

Commencing at the Southeast corner of the North 24.70 feet of Lot 14 of Huse and Power's Addition; thence West parallel with the North Line of said Lot 14, 30.09 feet to the East Line of Lot 12 in Paul Pratt's Addition; thence South 0.77 feet to the Southeast corner of said Lot 12 in Paul Pratt's Addition; thence West on the South line of Lots 12 and 13 of Paul Pratt's Addition to a point 15.0 feet East of the Southwest corner of Lot 13; thence Northwesterly 19.12 feet to a point 13.34 feet East of the West Line of said Lot 13 and 19.05 feet North of the South Line of said Lot 13; thence Easterly in a straight line to a point on the East line of Lot 14 in Huse and Power's Addition, which point is 19.04 feet North of the South line of the north 24.70 feet of lot 14 of said Huse and Power's Addition; thence South on the East Line of said Lot 14 of Huse and Power's Addition, 19.04 feet to the place of beginning, in Cook County, Illinois.

Parcel 4B:

That part of Lots 12 and 13 in Paul Pratt's addition to Evanston, a subdivision of the southwest 8 1/2 acres of the South 1/2 of the Northeast 1/4 of the Northwest 1/4 of Section 18, Township 41 North, Range 14, East of the Third Principal Meridian described as follows:

Commencing at the Southeast corner of the North 24.70 feet of Lot 14 of Huse and Power's addition, thence West parallel with the North line of said Lot 14, 30.09 feet to the East line of Lot 12 in Paul Pratt's Addition; thence South 0.77 feet to the Southeast corner of said Lot 12 in Paul Pratt's Addition; thence West on the South line of Lots 12 and 13 of Paul Pratt's Addition to a point 15.0 feet East of the Southwest corner of Lot 13; thence Northwesterly 19.12 feet to a point 13.34 feet East of the West line of said Lot 13 and 19.05 feet North of the South Line of said Lot 13; thence Easterly in a straight line to a point on the East line of Lot 14 of Huse and Power's Addition which point is 19.04 feet North of the South line of the North 24.70 feet of Lot 14 of said Huse and Power's Addition; thence South on the East line of said Lot 14 of Huse and Power's Addition, 19.04 feet to the place of beginning, in Cook County, Illinois.

Parcel 5:

Lot 13 in Huse and Power's Addition to Evanston, a subdivision of Lot 7 of Assessor's Division of Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PINS: 11-18-109-018, 11-18-109-019, 11-18-109-020, 11-18-109-043,  
11-18-109-052, 11-18-109-053, 11-18-109-062 and 11-18-109-064

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Address: 811 Emerson Street, Evanston, IL 60201