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Doc# 1818306161 Fee \$54.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 07/02/2018 12:15 PM PG: 1 OF 9

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

Courtney E. Mayster
MUCH SHELIST
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606

PERMANENT TAX INDEX NUMBERS:

17-17-323-037 0000

PROPERTY ADDRESS:

1202-1208 West Taylor Street
Chicago, Illinois 60607



18AC1816772 LFS
CUB 9 249

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** dated as of June 28, 2018 (this "**Agreement**"), is executed by and among **RS RETAIL LLC**, an Illinois limited liability company (the "**Landlord**"), **ATHLETICO MANAGEMENT, LLC**, a Delaware limited liability company (the "**Tenant**"), and **WINTRUST BANK**, an Illinois state chartered commercial bank (together with its successors and assigns (the "**Lender**")).

RECITALS:

A. The Lender is the mortgagee under that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing executed by Landlord (the "**Mortgage**"), which Mortgage encumbers the Real Estate (as hereinafter defined).

B. The Tenant has entered into that certain Lease dated September 13th, 2016 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 known as approximately 3,520 square feet on the first (1st) floor of the building located at 1202 W. Taylor

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Street (the "Leased Premises") in the building commonly known as **1202-1208 West Taylor Street, Chicago, Illinois 60607** ("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:

A G R E E M E N T S:

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 subsequent rent payments directly to the Lender provided that Tenant may notify Landlord of the same.
5. The Lender agrees that so long as the Tenant is not in default under the Lease:

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(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 (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);

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(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 provided that Tenant shall not be responsible for obtaining such 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: Nick Koricanac, VP

With a copy to: MUCH *SHELIST*
191 North Wacker Drive, Suite 1800
Chicago, Illinois 60606
Attention: Courtney E. Mayster

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To the Landlord: RS RETAIL LLC
 350 West Hubbard Street
 Suite 300
 Chicago, Illinois 60654
 Attention: Kimberlie Pearlman
 Associate General Counsel

To the Tenant: ATHLETICO MANAGEMENT, LLC
 625 Enterprise Drive
 Oak Brook, Illinois 60523
 Attention: Thomas J. Beardsley

With copy to: ATHLETICO MANAGEMENT, LLC
 625 Enterprise Drive
 Oak Brook, Illinois 60523
 Attention: Legal Department

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.

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

LANDLORD:

RS RETAIL LLC,
an Illinois limited liability company

By: [Signature]
Name: Curt R. Bailey
Title: President

Property of Cook County Clerk's Office

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DOES HEREBY CERTIFY** that Curt R. Bailey, the President of **RS RETAIL LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, 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 17th day of June, 2018.

[Signature]
Notary Public

My Commission Expires: 12/29/2021




[Signatures Continue on Following Page]

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[Signatures Continued from Preceding Page]

LENDER:

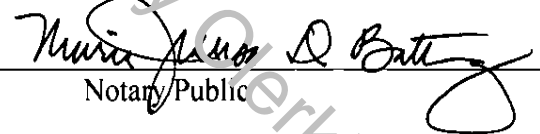
WINTRUST BANK

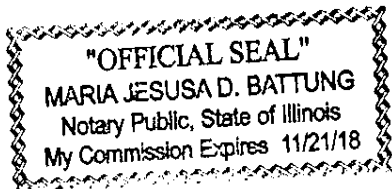
By: 
Name: Brian Cullen
Title: Officer

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DOES HEREBY CERTIFY** that Brian Cullen, an Officer of **WINTRUST BANK**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Officer, 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 Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of June, 2018.


Notary Public



My Commission Expires:
11/21/18

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EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

ALL THE PORTION OF THE FOLLOWING DESCRIBED PREMISES LYING ABOVE ELECTION 14.50 AND BENEATH THE ELEVATION

PART OF LOT 15 AS DESIGNATED UPON PLAT 1 ROOSEVELT SQUARE, A RESUBDIVISION OF PART OF BUCKLEYS SUBDIVISION, PART OF MACALISTER'S SUBDIVISION AND THE SUBDIVISION OF BLOCK 14 OF VERNON PARK ADDITION TO CHICAGO, LYING WITHIN THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS, TO WIT: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 15; THENCE NORTH 89°58'27" WEST ALONG THE SOUTH LINE OF SAID LOT, A DISTANCE OF 10.63 FEET TO A POINT; THENCE NORTH 45°00'08" WEST, A DISTANCE OF 3.67 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 44°59'52" EAST, A DISTANCE OF 5.10 FEET TO A POINT; THENCE NORTHEASTERLY ALONG A NON-TANGENT CURVE TO THE RIGHT SAID CURVE HAVING A RADIUS OF 3.15 FEET AND A CENTRAL ANGLE OF 180°00'00" (THE CHORD OF WHICH BEARS NORTH 44°59'52" EAST, A DISTANCE OF 6.29 FEET; THENCE NORTH 44°59'52" EAST, A DISTANCE OF 5.10 FEET TO A POINT; THENCE NORTH 45°00'08" WEST, A DISTANCE OF 2.00 FEET TO A POINT; THENCE SOUTH 44°59'52" WEST, A DISTANCE OF 0.18 FEET TO A POINT; THENCE NORTH 45°00'08" WEST, A DISTANCE OF 0.61 FEET TO A POINT; THENCE NORTH 00°00'08" WEST, A DISTANCE OF 31.26 FEET TO A POINT; THENCE SOUTH 89°59'52" WEST, A DISTANCE OF 11.46 FEET TO A POINT; THENCE NORTH 00°00'08" WEST, A DISTANCE OF 2.99 FEET TO A POINT; THENCE SOUTH 89°59'52" WEST, A DISTANCE OF 29.17 FEET TO A POINT; THENCE NORTH 00°00'08" WEST, A DISTANCE OF 12.01 FEET TO A POINT; THENCE SOUTH 89°59'52" WEST, A DISTANCE OF 6.12 FEET TO A POINT; THENCE SOUTH 00°00'08" EAST, A DISTANCE OF 2.47 FEET TO A POINT; THENCE SOUTH 89°59'52" WEST, A DISTANCE OF 8.58 FEET TO A POINT; THENCE SOUTH 00°00'08" WEST, A DISTANCE OF 2.47 FEET TO A POINT; THENCE SOUTH 89°59'52" WEST, A DISTANCE OF 38.95 FEET TO A POINT; THENCE SOUTH 00°00'08" EAST, A DISTANCE OF 57.67 FEET TO A POINT; THENCE NORTH 89°59'52" EAST, A DISTANCE OF 82.93 FEET TO A POINT; THENCE SOUTH 45°00'08" EAST, A DISTANCE OF 0.61 FEET TO A POINT; THENCE SOUTH 44°59'52" WEST; A DISTANCE OF 0.18 FEET TO A POINT; THENCE SOUTH 45°00'08" EAST, A DISTANCE OF 2.00 FEET; TO THE POINT OF BEGINNING, IN THE COUNTY OF COOK, STATE OF ILLINOIS.

PROPERTY ADDRESS OF REAL ESTATE:

1202-1208 West Taylor Street
Chicago, Illinois 60607

PERMANENT TAX INDEX NUMBERS:

17-17-323-037-0000