

# UNOFFICIAL COPY

Doc#: 1826006013 Fee: \$70.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/17/2018 09:48 AM Pg: 1 of 12

This instrument was prepared by and,  
after recording, return to:

William J. Mitchell  
Meltzer, Purtil & Stelle LLC  
300 South Wacker Drive, Suite 2300  
Chicago, Illinois 60606

*Permanent Tax Index No.:*  
*See Exhibit A attached hereto*

*Property Address:*  
*See Exhibit A attached hereto*

*This space reserved for Recorder's use only*

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**THIS SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT** (this "Agreement") is entered into as of SEPTEMBER 12, 2018 (the "Effective Date"), between **MB FINANCIAL BANK, N.A.**, its successors and assigns, whose address is 363 West Ontario Street, Chicago, Illinois 60654, Attn: Commercial Real Estate Department ("Mortgagee"), and **BOB'S DISCOUNT FURNITURE, LLC**, a Massachusetts limited liability company, whose address is 434 Tolland Turnpike, Manchester, CT 06042 ("Tenant"), with reference to the following facts:

### RECITALS

- (a) **635-47 W. ROOSEVELT VENTURE LLC**, an Illinois limited liability company, 450 N. Skokie Boulevard, Suite 604, Northbrook, Illinois 60062, Attention: Elan Peretz ("Landlord"), owns the real property located at 635-647 W. Roosevelt Road, Chicago, Illinois 60607 (such real property, including all buildings, improvements, structures and fixtures located or to be constructed thereon, "Landlord's Premises"), as more particularly described in **Exhibit A**.
- (b) Mortgagee has made a loan to Landlord in the principal amount of \$14,592,762.00 (the "Loan"), all as provided in and subject to the terms and conditions set forth in the Loan Documents (as defined in the Mortgage).

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(c) To secure the Loan, Landlord has encumbered Landlord's Premises by entering into that certain Mortgage and Security Agreement dated SEPTEMBER 12, 2018, to and in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Mortgage") to be recorded in the Official Records of the County of Cook, State of Illinois.

(d) Pursuant to a Lease dated as of May 19, 2017 and amended by that certain Agreement of First Amendment to Lease dated July 10, 2018 ("Lease Amendment") (as further amended from time to time, collectively the "Lease Agreement"), Landlord (or its predecessor) demised to Tenant a portion of Landlord's Premises to be constructed as more particularly set forth in the Lease Agreement ("Leased Premises").

(e) Landlord (or its predecessor) and Tenant entered into that certain Memorandum of Lease dated June 25, 2018 recorded in the Official Records of the County of Cook, State of Illinois on July 5, 2018 as Document No. 1818633093 (the "Memorandum"; together with the Lease Agreement, the "Lease") which Memorandum shall be amended and restated after the effective date and recording of this Agreement to reflect the terms and conditions set forth in the Lease Amendment, including but not limited to the increase of the square footage of the Leased Premises within the building to be constructed by Landlord.

(f) The Tenant and the Mortgagee desire to establish certain rights, safeguards, obligations, and priorities with regard to their respective interests by means of this Subordination, Non-Disturbance and Attornment Agreement.

## TERMS OF THE AGREEMENT

IN CONSIDERATION of the mutual covenants of the parties and other good and valuable consideration, the Mortgagee and the Tenant agree as follows.

- 1) Provided the Tenant is not in default under the Lease beyond any period given under the Lease to cure defaults, then:
  - (i) the Tenant's right of possession to the Leased Premises and the Tenant's other rights arising out of the Lease shall not be affected or disturbed by the Mortgagee in the exercise of any of its rights under the Mortgage or the note which it secures.
  - (ii) In the event that the Mortgagee or any other person ("Successor Landlord") acquires title to the Landlord's Premises pursuant to the exercise of any remedy provided for in the Mortgage, or by conveyance in lieu of foreclosure, the Lease shall not be terminated or affected by the foreclosure, conveyance or sale in any such proceeding. If a casualty occurs to, or a condemnation affects, the Leased Premises, insurance and/or condemnation proceeds from such casualty or condemnation shall be applied in accordance with the Lease. The Mortgagee covenants that any sale by it of the Leased Premises as a result of the exercise of any rights and remedies under the Mortgage or otherwise, shall be subject to the Lease and the rights of the Tenant under the Lease and the Tenant covenants and agrees to attorn to the Mortgagee, or such Successor

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Landlord, as its new Landlord, and the Lease shall continue in full force and effect as a direct lease between the Tenant and the Mortgagee or such Successor Landlord, upon all of the terms, covenants, conditions and agreements set forth in the Lease. However, in no event shall the Mortgagee or such Successor Landlord be:

- a) liable for any act or omission of the Landlord (or any previous landlord) except for (i) acts or omissions of a continuing nature which continue after such time as the Mortgagee comes into possession of or acquires title to all or any portion of the Leased Premises and that Mortgagee has received prior written notice of from Tenant and (ii) Tenant's right to monetary setoff of rent under expressly provided self-help provisions set forth in the Lease for which Mortgagee has received prior written notice of from Tenant;
  - b) bound by any payment of rent or additional rent made by the Tenant to the Landlord for more than one month in advance excluding overpayments of estimated additional rent paid in advance by Tenant and reconciled at a later date;
  - c) bound by any modification or amendment of the Lease, made without Mortgagee's written consent, which will not be unreasonably withheld;
  - d) bound by 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; and
  - e) bound by any obligation of Landlord to make, pay for, or reimburse Tenant for any alterations or improvements to the Leased Premises.
- 2) The Lease shall be subject and subordinate to the lien of the Mortgage and to all advances made or to be made and to any renewals, modifications, consolidations, extensions or replacements of the Mortgage.
  - 3) The above provisions shall be self-operative and effective without the execution of any further instruments on the part of either party. However, the Tenant agrees to execute and deliver to the Mortgagee or to any Successor Landlord such other instruments as either shall reasonably request in order to comply with these provisions.
  - 4) In the event that Mortgagee notifies Tenant of a default under the Mortgage and demands that Tenant pay its rent and all other sums due under the Lease directly to Mortgagee, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease in accordance with the terms of the Lease directly to Mortgagee pursuant to such notice, beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage and notwithstanding any contrary instructions of or demands from Landlord. The consent and approval of Landlord to this Agreement shall constitute an express authorization for Tenant to make such payments to Mortgagee and a release and discharge of all liability of Tenant to Landlord for any such payments made to Mortgagee in compliance with Mortgagee's written demand
  - 5) Mortgagee, in making any advances of the Loan pursuant to any of the Loan Documents,

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shall not be under any obligation or duty to, and Mortgagee has not represented to Tenant that it will see to the application of such proceeds by the person or persons to whom Mortgagee disburses such advances, and any application or use of such proceeds for purposes other than those provided for in any Loan Document shall not defeat Tenant's agreement to subordinate the Lease in whole or in part as set forth in this Agreement.

- 6) Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising 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, Tenant shall provide Mortgagee with written 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:
  - (i) 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.
  - (ii) 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 Section, 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) This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest.
- 8) Mortgagee and Landlord hereby consent to Tenant's right under the Lease to grant a leasehold mortgage and Landlord's written consent thereto.
- 9) This Agreement inures to and binds the successors and assigns of the respective parties, including those permitted assignees as set forth in the Lease and any permitted leasehold mortgage of Tenant.
- 10) In the event that the Mortgagee shall acquire title to the Leased Premises and/or the Landlord's Premises, the Mortgagee shall have no obligation, nor incur any liability, beyond the Mortgagee's then equity interest, if any, in the Leased Premises, and the Tenant shall look exclusively to such equity interest of the Mortgagee, if any, in the Leased Premises for the payment and discharge of any obligations or liability imposed upon the Mortgagee hereunder, under the Lease or under any new lease of the Leased Premises, and the Mortgagee is hereby released and relieved of any other obligations or liability hereunder, under the Lease or under any such new lease.

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- 11) All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this Section. Notices shall be effective the next business day after being sent by overnight courier service, and five (5) business days after being sent by certified mail (return receipt requested).
- 12) The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of Illinois, excluding its principles of conflict of laws.
- 13) 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 beneficiary of, the Mortgage. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, such provision shall be considered severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect as if such provision had not been included.
- 14) Except as expressly provided for in this Agreement, Mortgagee shall not have any 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.

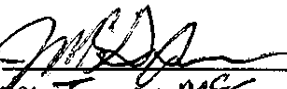
[Signatures on the following page]

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IN WITNESS WHEREOF, this Agreement has been duly executed by Mortgagee and Tenant as of the Effective Date.

**MORTGAGEE:**

**MB FINANCIAL BANK, N.A.**

By:   
Name: James McGregan  
Its: S.V.P.

**TENANT:**

**BOB'S DISCOUNT FURNITURE, LLC, a  
Massachusetts limited liability company**

By: \_\_\_\_\_  
Name: Jeremy Aguilar  
Its: Chief Financial Officer & Executive Vice  
President

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IN WITNESS WHEREOF, this Agreement has been duly executed by Mortgagee and Tenant as of the Effective Date.

**MORTGAGEE:**

**MB FINANCIAL BANK, N.A.**


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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**TENANT:**

**BOB'S DISCOUNT FURNITURE, LLC, a  
Massachusetts limited liability company**

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

Name: Jeremy Aguilar

Its: Chief Financial Officer & Executive Vice  
President

Property of Cook County Clerk's Office



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## MORTGAGEE

STATE OF ILLINOIS     )  
   ) SS.  
 COUNTY OF COOK        )

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that James McGrogan, the S.V.P. of MB FINANCIAL BANK, N.A. (the "Mortgagee"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such James McGrogan, 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 Mortgagee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30<sup>th</sup> day of August, 2018.

Cecilia Romanowski  
 Notary Public

(SEAL)

My Commission Expires: 4-12-2020





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## TENANT

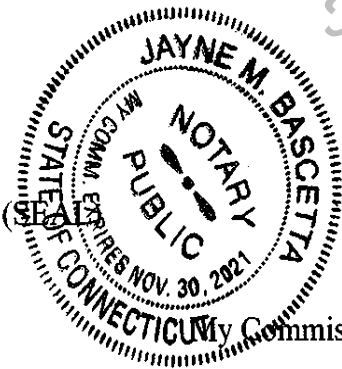
STATE OF CONNECTICUT)

) SS. Manchester

COUNTY OF HARTFORD)

The undersigned, a Notary Public in and for said State, do hereby certify that Jeremy Aguilar, the Chief Financial Officer and Executive Vice President of BOB'S DISCOUNT FURNITURE, LLC, a Massachusetts limited liability company (the "Company"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such officer, he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4<sup>th</sup> day of September   , 2018.



Jayne M. Baschetta  
Notary Public.

My Commission Expires: 11/30/21

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## LANDLORD'S CONSENT

Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant. Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Mortgagee upon receipt of a notice as set forth in Section 4 above from Mortgagee and Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage. Landlord is not a party to the above Agreement.

Dated: SEPTEMBER 12, 2018

### LANDLORD:

**635-47 W. ROOSEVELT VENTURE LLC**

By: [Signature]  
Name: Elan Peretz  
Its: Authorized Signatory

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Elan Peretz, the Authorized Signatory of 635-47 W. ROOSEVELT VENTURE LLC, an Illinois limited liability company ("Landlord"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Authorized Signatory, 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 Landlord, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3rd day of August, 2018.



(SEAL)

[Signature]  
Notary Public

My Commission Expires: May 17, 2021

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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

LOT 3 (EXCEPT THE NORTH 42.00 FEET THEREOF TAKEN FOR STREET) AND LOT 6 IN SHOUP'S SUBDIVISION OF LOT 4 IN BLOCK 67 IN CANAL TRUSTEE'S NEW SUBDIVISION OF BLOCKS AND LOTS IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THAT PART OF THE NORTH HALF OF VACATED WEST 12TH PLACE (DESCRIBED BY ORDER PASSED BY THE CITY COUNCIL OF CHICAGO ON JANUARY 29, 1984, PAGE 4653) LYING SOUTH OF AND ADJOINING THE SOUTH LINE OF LOT 6, IN SHOUP'S SUBDIVISION OF LOT 4, IN BLOCK 67, IN SAID CANAL TRUSTEE'S NEW SUBDIVISION, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

A PARCEL OF LAND IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN CONSISTING OF A PART OF LOT 2 AND ALL OF LOT 7 IN THE SUBDIVISION OF LOT 4 IN BLOCK 67 IN CANAL TRUSTEE'S NEW SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT BLOCKS 57 AND 58) SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED, WITH THE EAST LINE OF SAID LOT 2 IN THE SUBDIVISION OF LOT 4 AND RUNNING THENCE SOUTH ALONG SAID EAST LINE OF LOT 2 AND ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 131.32 FEET TO THE SOUTHEAST CORNER OF SAID LOT 7; THENCE WEST ALONG THE SOUTH LINE OF LOT 7 A DISTANCE OF 25.07 FEET TO THE SOUTHWEST CORNER OF LOT 7; THENCE NORTH ALONG THE WEST LINE OF SAID LOT 7 AND ALONG THE WEST LINE OF SAID LOT 2 A DISTANCE OF 131.32 FEET TO THE SOUTH LINE OF SAID WEST ROOSEVELT ROAD AS WIDENED; AND THENCE EAST ALONG SAID SOUTH LINE OF WEST ROOSEVELT ROAD AS WIDENED A DISTANCE OF 25.07 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

SUBLOT 4 (EXCEPT THE NORTH 42.00 FEET) AND SUBLOT 5 OF LOT 4; ALSO THE EAST 59.00 FEET OF LOT 5 (EXCEPT THE NORTH 42.00 FEET) IN BLOCK 67 IN CANAL TRUSTEE'S NEW SUBDIVISION OF BLOCKS IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN EXCEPTING THEREFROM THAT PART OF THE NORTH 1/2 OF VACATED WEST 12TH PLACE (DESCRIBED BY ORDER PASSED BY THE CITY COUNCIL OF

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CHICAGO ON JANUARY 20, 1984 PAGE 4653) LYING SOUTH OF THE ADJOINING SOUTH LINE OF SUB LOT 5 OF LOT 4 AND THE EAST 59.00 FEET OF LOT 5 IN BLOCK 67 IN CANAL TRUSTEES NEW SUBDIVISION OF BLOCKS IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PARCEL 4:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCELS 1, 2 AND 3 PURSUANT TO GRANT OF EASEMENT RECORDED NOVEMBER 15, 1984 AS DOCUMENT 27338040 OVER THAT PART OF VACATED 12TH PLACE PER VACATION ORDINANCE RECORDED NOVEMBER 14, 1984 AS DOCUMENT 27336633.

PINS: 17-21-101-014-0000  
17-21-101-041-0000  
17-21-101-042-0000  
17-21-101-011-0000  
17-21-101-040-0000

ADDRESS: 635-647 W. ROOSEVELT ROAD, CHICAGO, ILLINOIS 60607