

# UNOFFICIAL COPY

**SNDA**

**U.S. Department of Housing  
and Urban Development**  
Office of Housing  
Federal Housing Commissioner

OMB Approval #2502-0029  
Exp. (xx/xx/xxxx)



RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

40031914 (16)

Doc# 1835418023 Fee \$56.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 12/20/2018 11:26 AM PG: 1 OF 10

(Space above this line for Recorder's Use)

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made as of the 1 day of December, 2018, by and between MARK TWAIN NHPF, LLC, an Illinois limited liability company, successor in interest to New Mark Twain, LLC ("Owner" or "Lessor"), as lessor under the lease hereinafter described, and TOTAL OUTDOOR CORP., a Delaware corporation ("Operator" or "Lessee"), lessee under the aforementioned lease, in favor of BELLWEATHER ENTERPRISE REAL ESTATE CAPITAL, LLC, an Ohio limited liability company ("FHA Lender"), the owner and holder of the Mortgage hereinafter described.

### WITNESSETH:

WHEREAS, Lessor has executed, or will execute that certain Mortgage/Deed of Trust with Assignment of Rents, dated as of December 1, 2018 (the "Mortgage"), in favor of FHA Lender and covering certain real property (the "Property") located in the City of Chicago, County of Cook, State of Illinois, with a legal description as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the "Improvements"); and

WHEREAS, Lessor and Lessee entered into that certain unrecorded Lease dated October 20, 2016, and all amendments thereto (the "Lease"), covering the Improvements for the term and upon the conditions set forth therein; and

WHEREAS, the parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interests, and to provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual Subordination, Non-Disturbance and Attornment Agreement

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benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that the Lease, all terms and conditions set forth in the Lease, the leasehold interests and estates created thereby, and the priorities, rights, privileges and powers of Lessee and Lessor there under shall be and the same are hereby, and with full knowledge and understanding of the effect thereof, unconditionally made subject and subordinate to the lien and charge of the Mortgage, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the trustee and FHA Lender there under, and shall hereafter be junior and inferior to the lien and charge of the Mortgage. The parties further agree as follows:

1. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby to the lien or charge of the Mortgage.
2. FHA Lender consents to the Lease.
3. In the event FHA Lender or any other purchaser at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by FHA Lender of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
  - (a) Lessee shall be bound to FHA Lender or such other purchaser under all of the terms, covenants and conditions of the Lease for the remaining balance of the term thereof, with the same force and effect as if FHA Lender or such other purchaser were the lessor under such Lease, and Lessee does hereby agree to attorn to FHA Lender or such other purchaser as its lessor, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon FHA Lender or such other purchaser succeeding to the interest of Lessor under the Lease.
  - (b) Subject to the observance and performance by Lessee of all the terms, covenants and conditions of the Lease on the part of the Lessee to be observed and performed, FHA Lender or such other purchaser shall recognize the leasehold estate of Lessee under all of the terms, covenants and conditions of the Lease for the remaining balance of the term (as the same may be extended in accordance with the provisions of the Lease) with the same force and effect as if FHA Lender or such other purchaser were the lessor under the Lease and the Lease shall remain in full force and effect and shall not be terminated, except in accordance with the terms of the Lease or this Agreement; provided, however, that FHA Lender or such other purchaser shall not be (i) liable for any act or omission of Lessor or any other prior lessor, (ii) obligated to cure any defaults of Lessor or any other prior lessor under the Lease which occurred prior to the time that FHA Lender or such other purchaser succeeded to the interest of Lessor or any other

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prior lessor under the Lease, (iii) subject to any offsets or defenses which Lessee may be entitled to assert against Lessor or any other prior lessor, (iv) bound by any payment of rent or additional rent by Lessee to Lessor or any other prior lessor for more than one (1) month in advance, (v) bound by any amendment or modification of the Lease made without the written consent of FHA Lender or such other purchaser, or (vi) liable or responsible for or with respect to the retention, application and/or return to Lessee of any security deposit paid to Lessor or any other prior landlord, whether or not still held by Lessor, unless and until FHA Lender or such other purchaser has actually received for its own account as lessor the full amount of such security deposit.

Lessee hereby agrees that it will not exercise any right granted it under the Lease, or which it might otherwise have under applicable law, to terminate the Lease on account of a default of Lessor there under or the occurrence of any other event without first giving to FHA Lender prior written notice of its intent to terminate, which notice shall include a statement of the default or event on which such intent to terminate is based. Thereafter, Lessee shall not take any action to terminate the Lease if FHA Lender (a) within thirty (30) days after service of such written notice on FHA Lender by Lessee of its intention to terminate the Lease, shall cure such default or event if the same can be cured by the payment or expenditure of money, or (b) shall diligently take action to obtain possession of the leased premises (including possession by receiver) and to cure such default or event in the case of a default or event which cannot be cured unless and until FHA Lender has obtained possession, but in no event to exceed ninety (90) days after service of such written notice on FHA Lender by Lessee of its intention to terminate.

4. Lessor and Lessee hereby certify to FHA Lender that the lease as previously submitted to FHA Lender has not been further amended.
5. For the purposes of facilitating FHA Lender's rights hereunder, FHA Lender shall have, and for such purposes is hereby granted by Lessee and Lessor, the right to enter upon the Property and the Improvements thereon for the purpose of affecting any such cure.
6. Lessee hereby agrees to give to FHA Lender concurrently with the giving of any notice of default under the Lease, a copy of such notice by mailing the same to FHA Lender in the manner set forth herein below, and no such notice given to Lessor which is not at or about the same time also given to FHA Lender shall be valid or effective against FHA Lender for any purpose.
7. Subordination of Lease to Mortgage and Regulatory Agreements and Regulation by the U.S. Department of Housing and Urban Development ("**HUD**").
  - (a) The Lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to the lien or interest of (i) the Mortgage on the Lessor's interest in the Property in favor of FHA Lender, its successors and assigns insofar as it affects the real and personal

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property comprising the Property (and not otherwise owned, leased or licensed by Lessee) or located thereon or therein, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made there under, to the full extent of amounts secured thereby and interest thereon, and (ii) that certain Regulatory Agreement for Multifamily Housing Projects between Lessor and HUD to be recorded against the Property.

- (b) The parties to the Lease agree to execute and deliver to FHA Lender and/or HUD such other instrument or instruments as the FHA Lender and/or HUD, or their respective successors or assigns, shall reasonably request from time to time to reconfirm the status of the lease and to effect and/or confirm the subordination of the Lease to the lien of the Mortgage and the above-described Regulatory Agreements. To the extent that any provision of the Lease shall be in conflict with the HUD Program Obligations (as such term is defined below), the HUD Program Obligations shall be controlling.
- (c) In the event HUD, at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by HUD of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
- (i) HUD can terminate the Lease for any violation of the Lease that is not cured within any applicable notice and cure period given in the Lease.
- (ii) As used in this Agreement "HUD Program Obligations" shall mean all applicable statutes and regulations, including all amendments to such statutes and regulations, as they become effective, and all applicable requirements in HUD Handbooks, Notices, and Mortgagee Letters that apply to the Property, including all updates and changes to such Handbooks, Notices and Mortgagee Letters that apply to the Property, except that changes subject to notice and comment rulemaking shall become effective upon completion of the rulemaking process.
- (d) To the extent there is any inconsistency between the terms of this Subordination, Non Disturbance and Attornment Agreement, and the Lease, the terms of this Subordination, Non Disturbance and Attornment Agreement shall be controlling.
8. For purposes of any notices to be given to FHA Lender hereunder, the same shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to FHA Lender at the following address:

Bellwether Enterprise Real Estate Capital, LLC

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or to such other address as FHA Lender may hereafter notify Lessee in writing by notice sent to Lessee as aforesaid at Lessee's address at the Property, or such other address as FHA Lender may hereafter be advised of in writing by notice sent to FHA Lender as aforesaid.

9. The agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.
10. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute a single instrument.
11. This Agreement shall, in all respects, be governed by and construed and interpreted in accordance with the laws of the State of Illinois.

[SIGNATURE PAGES FOLLOW]

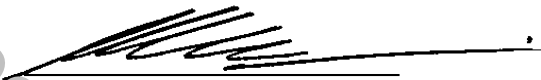
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OWNER:

Mark Twain NHPF, LLC,  
an Illinois limited liability company

By: Mark Twain NHPF Manager, LLC,  
an Illinois limited liability company,  
its managing member

By: The NHP Foundation,  
a District of Columbia nonprofit corporation,  
its managing member

By:   
Name: Mecky Adnani  
Title: Senior Vice President

Property of Cook County Clerk's Office

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STATE OF IL )

COUNTY OF COOK ) ss.

I certify that I know or have satisfactory evidence that MECKY ADNANI is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Senior Vice President of THE NHP FOUNDATION, a District of Columbia nonprofit corporation, the managing member of MARK TWAIN NHPF MANAGER, LLC, an Illinois limited liability company, the managing member of MARK TWAIN NHPF, LLC, an Illinois limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: DEC. 19, 2018.

Bridget A. White

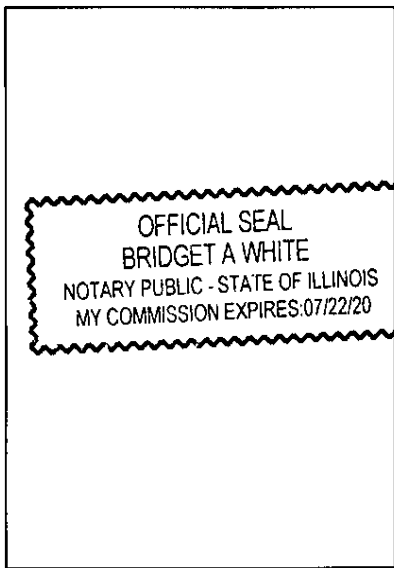
Notary Public

Print Name

BRIDGET A. WHITE

My commission expires

1/20/2020



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LESSEE:

TOTAL OUTDOOR CORP.,  
a Delaware corporation

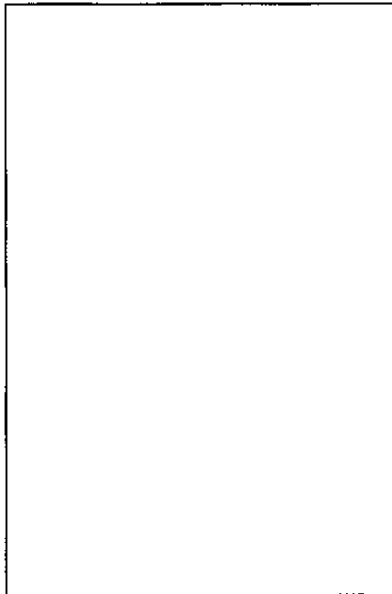
By: [Signature]  
Name: Jonathan Dobres  
Title: CEO

STATE OF New York  
) ss.

COUNTY OF New York

I certify that I know or have satisfactory evidence that Jonathan Dobres is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the CEO of TOTAL OUTDOOR CORP., a Delaware corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 14, 2018.



Elizabeth E. Moskowske

Notary Public

Print Name \_\_\_\_\_

My commission expires \_\_\_\_\_

**ELIZABETH E. MOSKOWSKI**  
Notary Public - State of New York  
No. 01MO002297  
Qualified in New York County  
My Comm. Expires May 5, 2022



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FHA LENDER:

BELLWETHER ENTERPRISE REAL ESTATE CAPITAL, LLC,  
an Ohio limited liability company

By: [Signature]  
Name: RANN GURLEY  
Title: SVP

STATE OF Georgia

) ss.

COUNTY OF FORSYTH

I certify that I know or have satisfactory evidence that RANN GURLEY is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the SVP of BELLWETHER ENTERPRISE REAL ESTATE CAPITAL, LLC, an Ohio limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

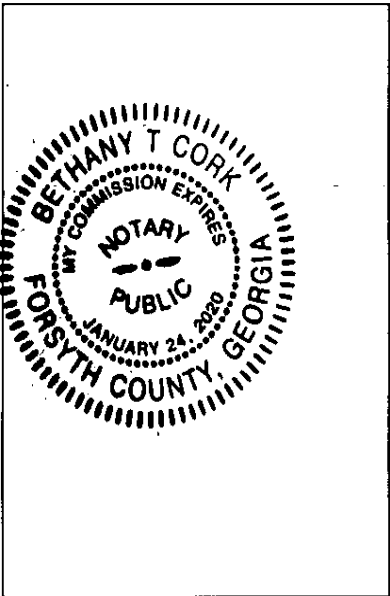
Dated: Dec 19, 2018.

Bethany T. Cork

Notary Public

Print Name Bethany T. Cork

My commission expires 1/24/20



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**EXHIBIT A**  
**(Legal Description)**

LOT 1 AND THE NORTH 25 FEET OF LOT 2, ALSO THE WEST 50 FEET OF SAID LOT 2 (EXCEPT THEREFROM THE NORTH 25 FEET AND THE SOUTH 3.5 FEET THEREOF) IN THE SUBDIVISION OF BLOCK 22 IN BUSHNELL'S ADDITION TO CHICAGO IN THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AS SHOWN ON THE ANTE-FIRE PLAT RECORDED AS DOCUMENT 15817.

Common Address: 101-111 West Division Street, Chicago, Illinois 60610-1909  
PIN: 17-04-405-006-0000