



1913606049

Doc# 1913606049 Fee \$58.00

THIS INSTRUMENT WAS PREPARED
BY AND AFTER RECORDING
SHOULD BE RETURNED TO:

Parkway Bank and Trust Company
ATTN: Mortgage Department
4800 N. Harlem Avenue
Harwood Heights, IL 60706

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

EDWARD H. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 05/16/2019 02:32 PM PG: 1 OF 11

Permanent Index Numbers: :

Property Address:
870 N. Meacham Road
Schaumburg, IL 60175

*COH1180315211
CB 575*

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of May 13 2019 ~~2018~~, by and among PARKWAY BANK AND TRUST COMPANY, an Illinois banking corporation (the "Lender"), having its principal place of business at 4800 N. Harlem Avenue, Harwood Heights, IL 60706, OTB ACQUISITION LLC (the "Tenant"), having its principal place of business at 2201 West Royal Lane, Suite 240, Irving, TX 75063 and 870-OTB LLC, an Illinois limited liability company (the "Landlord"), having its principal offices at 401 N. Michigan Avenue, 24th Floor, Chicago, IL 60611.

BACKGROUND

A. The Lender is the mortgagee under the Mortgage and Assignment of Rents dated as of May 13, 2019, to be recorded concurrently herewith (the "Mortgage"), which Mortgage encumbers the Real Estate (as hereinafter defined) and secures a principal indebtedness in the amount of One Million, Seven hundred seventy-five thousand and No/100 Dollars (\$1,775,000.00 ^{no/100}).

B. The Tenant has entered into a lease agreement dated January 29, 2013, that certain First Amendment to Lease Agreement dated September 6, 2018, and that certain Second Amendment to Lease Agreement dated 5-14-19 (individually and collectively, the "Lease") with the Landlord, pursuant to which the Tenant has leased certain premises (the "Leased Premises") consisting of approximately 6,655 rentable square feet of space in the building ("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 contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

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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 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.

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

4. 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.

5. 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 and provides written notice to Tenant that Lender is curing said default. 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.

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6. 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);

(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), except for such acts or omissions of any prior landlord for which Tenant has notified Lender and given Lender an opportunity to cure as provided in this Agreement;

(ii) subject to any offsets or defenses which the Tenant has against any prior landlord (including the Landlord), except for offsets arising under the Lease for which Tenant has notified Lender and given Lender an opportunity to cure as provided in this Agreement;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which the Tenant might have paid in advance for more than the current month to any prior landlord (including the Landlord), except if such payments were required under the Lease; or

(iv) liable to refund or otherwise account to the Tenant for any security deposit 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; however, that in the event Lender fails to disapprove in writing any proposed amendment within ten (10) days after receipt thereof, then Lender shall be deemed to have consented to any such amendment; or

(vi) personally liable, such new owner's liability being limited in all cases to its interest in the Real Estate.

7. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or

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certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Lender: PARKWAY BANK AND TRUST COMPANY
4800 North Harlem Avenue
Harwood Heights, Illinois 60706
Attn: Mortgage Department
Fax: 708-867-2679

To Landlord: 870-OTB LLC
401 N. Michigan Avenue
24th Floor
Chicago, Illinois 60611
Attn: Lance M. Chody
Fax: () _____

To Tenant: OTB ACQUISITION LLC
2201 West Royal Lane
Suite 240
Irving, Texas 75063
Attn: Tom Pennison
Fax: () _____

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 (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

8. 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.

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

10. The Lender is hereby authorized to rely upon and accept as an original this Agreement, any Loan Documents or other communication which is sent to the Lender by facsimile, telegraphic or other electronic transmission (each, a "Communication") which the Lender in good faith believes has been signed by Tenant and Landlord and has been delivered to the Lender by a properly authorized representative of the Tenant and Landlord, whether or not that is in fact the case. Notwithstanding the foregoing, the Lender shall not be obligated to accept any such Communication as an original and may in any instance require that an original document be submitted to the Lender in lieu of, or in addition to, any such Communication.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

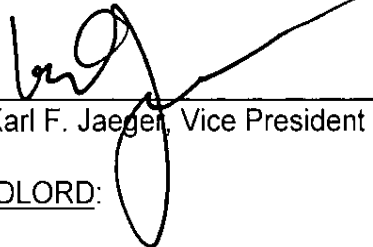
LENDER:

PARKWAY BANK AND TRUST COMPANY,
an Illinois banking corporation

By: _____
Name: _____
Its: _____

TENANT:

OTB ACQUISITION LLC,
a Delaware limited liability company

By:  _____
Karl F. Jaeger, Vice President

LANDLORD:

870-OTB LLC,
an Illinois limited liability company

By: _____
Name: _____
Its: _____

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, _____, the undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that _____ personally known to me to be a _____ of PARKWAY BANK AND TRUST COMPANY, an Illinois banking corporation, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such officer he signed and delivered the said instrument as her free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth and pursuant to such bank's authority.

GIVEN under my hand and Notarial Seal _____, 2019.

Notary Public

STATE OF TEXAS)
) SS
COUNTY OF Fulton)

I, Sara Goodwin the undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Karl F. Jaeger, personally known to me to be the Vice President of OTB ACQUISITION LLC, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such Vice President of such company, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth and pursuant to such company's authority.

GIVEN under my hand and Notarial Seal March 28, 2019.

Sara Goodwin
Notary Public



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

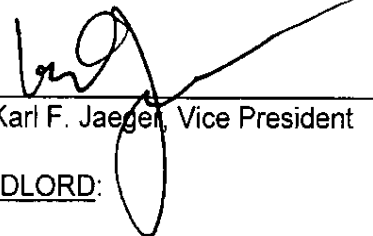
LENDER:

PARKWAY BANK AND TRUST COMPANY,
an Illinois banking corporation

By: _____
Name: _____
Its: _____


TENANT:

OTB ACQUISITION LLC,
a Delaware limited liability company

By: 
Karl F. Jaeger, Vice President

LANDLORD:

870-OTB LLC,
an Illinois limited liability company

By: 
Name: MARC FREEDMAN
Its: MANAGER

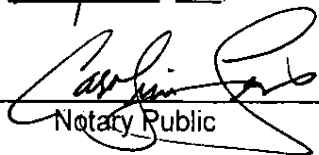
Property of Cook County Clerk's Office

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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 Bart Friedman, the Manager of 870-OTB LLC, 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/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 May 13th, 2019



Notary Public



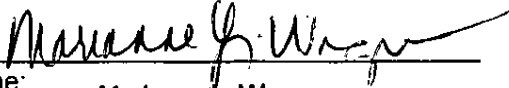
Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

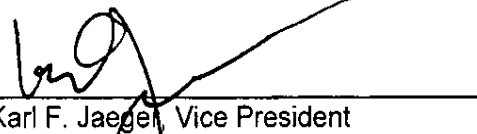
LENDER:

PARKWAY BANK AND TRUST COMPANY,
an Illinois banking corporation

By: 
Name: Marianne L. Wagener
Its: Senior Vice President

TENANT:

OTB ACQUISITION LLC,
a Delaware limited liability company

By: 
Karl F. Jaeger, Vice President

LANDLORD:

870-OTB LLC,
an Illinois limited liability company

By: _____
Name: _____
Its: _____

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
COUNTY OF Cook) SS

I, Diana Beltran, the undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Mariann L. Wagerer personally known to me to be a Semi Vice President of PARKWAY BANK AND TRUST COMPANY, an Illinois banking corporation, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such officer he signed and delivered the said instrument as her free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth and pursuant to such bank's authority.

GIVEN under my hand and Notarial Seal May 13, 2019.

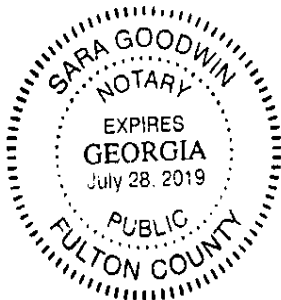


Diana Beltran
Notary Public

STATE OF TEXAS)
COUNTY OF Fulton) SS

I, Sara Goodwin the undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Karl F. Jaeger, personally known to me to be the Vice President of OTB ACQUISITION LLC, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such Vice President of such company, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth and pursuant to such company's authority.

GIVEN under my hand and Notarial Seal March 28, 2019.



Sara Goodwin
Notary Public

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SCHEDULE A

LEGAL DESCRIPTION

ADDRESS: 870 N. Meacham Road
Schaumburg, IL 60173

PIN: 07-13-101-021-0000

LEGAL DESCRIPTION:

LOT 2 IN SDC SCHAUMBURG RESUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 18, 2014 AS DOCUMENT 1435234060, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office