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Edward M. Moody
Cook County Recorder of Deeds
Date: 07/19/2019 08:59 AM Pg: 1 of 10

RECORDING REQUESTED BY AND WHEN RECORDED, MAIL TO:

Barack Ferrazzano Kirschbaum & Nagelberg LLP
200 W. Madison Street, Suite 3900
Chicago, IL 60606-3465
Attn.: Jay Byron Leibovitz, Esq.

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of this 11TH day of JULY, 2019, by and among **NORTHBROOK BANK & TRUST COMPANY**, an Illinois state chartered commercial bank ("**Mortgagee**"), **SEPHORA USA, INC.**, a Delaware corporation ("**Tenant**") and **3401-09 N. SOUTHPORT LLC**, an Illinois limited liability company ("**Landlord**").

RECITALS

A. Mortgagee is the holder of a certain note (the "**Note**") and Mortgagee under a mortgage (the "**Mortgage**") dated May 30, 2014, in which Landlord is named as the mortgagor, which Mortgage was recorded on June 4, 2014, in the Official Records of Cook County, State of Illinois, as Document No. 1415518010. The Mortgage covers certain real property together with all appurtenances thereto and improvements thereon (the "**Property**") all as more particularly described in **Exhibit A** attached hereto and made a part hereof and which property is commonly known as 3401 North Southport Avenue and located in Chicago, Illinois.

B. Landlord is the owner in fee simple of the Property and is the current obligor under the Note.

C. By that certain Lease dated June 6, 2019 (the "**Lease**"), Landlord leased to Tenant those certain premises located on the first floor (the "**Premises**") which constitutes or forms a portion of the Property covered by the Mortgage, all as more particularly described in said Lease.

D. The Lease is or may become (subject to this Agreement) subordinate in priority to the lien of the Mortgage.

E. Tenant wishes to obtain from Mortgagee certain assurances that Tenant's possession of the Premises will not (subject to this Agreement) be disturbed by reason of the enforcement of the Mortgage covering the Premises or a foreclosure of the lien thereunder.

F. Mortgagee is willing to provide such assurances to Tenant upon and subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above, the reciprocal promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do mutually agree as follows:

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1. **Ratification.** The Lease now is or shall become upon the mutual execution of this Agreement subordinate in all respects to the lien of the Mortgage and to all renewals, modifications and extensions thereof, subject to the terms and conditions of this Agreement. Tenant and Landlord hereby affirm that, as of the date of this Agreement, the Lease is in full force and effect and that the Lease has not been modified or amended. Mortgagee acknowledges receipt of a copy of the Lease and hereby approves the same.

2. **Landlord's Default.** From and after the date Tenant receives a fully executed copy of this Agreement, Tenant will not seek to terminate the Lease by reason of any act or omission that constitutes (or would over time constitute) a default of Landlord until Tenant shall have given written notice of such act or omission to Mortgagee (at Mortgagee's last address furnished to Tenant) and until a period of thirty (30) days shall have elapsed, Mortgagee shall have the right, but not the obligation, to remedy such act or omission, provided, however, if the act or omission does not involve the payment of money from Landlord to Tenant and (i) is of such a nature that it could not be reasonably remedied within the thirty (30) day period aforesaid, or (ii) the nature of the act or omission or the requirements of local law require Mortgagee to appoint a receiver or to foreclose on or commence legal proceedings to recover possession of the Property in order to effect such remedy and such legal proceedings and consequent remedy cannot reasonably be achieved within said thirty (30) days, then Mortgagee shall have such further time as is reasonable under the circumstances to effect such remedy provided that Mortgagee shall notify Tenant, within ten (10) days after receipt of Tenant's notice, of Mortgagee's intention to effect such remedy and provided further that Mortgagee institutes immediate legal proceedings to appoint a receiver for the Property or to foreclose on or recover possession of the Property within said thirty (30) day period and thereafter prosecutes said proceedings and remedy with due diligence and continuity to completion. Notwithstanding the foregoing, Mortgagee shall have no rights under this Section 2 if Mortgagee is an entity that controls, is controlled by, or is under common control with Landlord.

3. **Non-Disturbance and Attornment.** So long as Tenant is not in default under the Lease (beyond any period given Tenant to cure such default) as would entitle Landlord to terminate the Lease or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant thereunder, Mortgagee will not disturb the peaceful and quiet possession or right of possession of the Premises by Tenant nor shall the Lease or its appurtenances be extinguished by reason of any Foreclosure (as hereinafter defined) or otherwise, nor join Tenant as a party in any action or proceeding brought pursuant to the Mortgage. In the event that Mortgagee or its successors or assigns, as defined in Paragraph 7 hereof ("Successor Landlord") acquires the interest of Landlord or comes into the possession of or acquires title to the Premises (the "Succession") by reason of the foreclosure (judicial or non-judicial) or enforcement of the Mortgage (including a private power of sale) or the Note or obligations secured thereby or by a conveyance in lieu thereof or other conveyance or as a result of any other means (any or all of the foregoing hereinafter referred to as a "Foreclosure"), then the Lease and all appurtenances thereto shall remain in full force and effect and Tenant shall be bound to Successor Landlord under all of the provisions of the Lease for the balance of the term thereof (including any extensions or renewals thereof which may be effected in accordance with any options contained in the Lease) with the same force and effect as if Successor Landlord was Landlord under the Lease, and Tenant shall attorn to Successor Landlord as its landlord, such attornment to be effective and self-operative, without the execution of any further instruments on the part of either of the parties hereto, immediately upon the Succession; and further, in such event, Successor Landlord shall be bound to Tenant under all of the provisions of the Lease, and Tenant shall, from and after such Succession, have the same remedies against Successor Landlord for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord thereunder, provided, however, that if Successor Landlord is not an entity that controls, is controlled by, or is under common control with Landlord, then Successor Landlord shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 2 hereof) of such act or omission to the party who was the then holder of the Mortgage (whether or not such holder elected to cure or remedy such act or omission); or

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(b) subject to any offsets (except those expressly permitted under the Lease) or defenses which Tenant might have against any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 2 hereof) of the state of facts or circumstances under which such offset or defense arose to the party who was the then holder of the Mortgage (whether or not such holder elected to cure or remedy such condition); or

(c) bound by any rent or additional rent which Tenant might have paid to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under the Lease; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), except to the extent that such deposit is available to the party who was the holder of the Mortgage at the time of a Foreclosure.

Tenant shall be under no obligation to pay rent to Mortgagee or Successor Landlord until Tenant receives written notice from Mortgagee or Successor Landlord stating that Mortgagee or Successor Landlord is entitled to receive the rents under the Lease directly from Tenant and the Federal Tax Identification Number of such Mortgagee or Successor Landlord. Landlord, by its execution hereof, hereby authorizes Tenant to accept such direction from Mortgagee or Successor Landlord and to pay the rents directly to Mortgagee or Successor Landlord and waives all claims against Tenant for any sums so paid at Mortgagee's or Successor Landlord's direction. Tenant may conclusively rely upon any written notice Tenant receives from Mortgagee or Successor Landlord notwithstanding any claims by Landlord contesting the validity of any term or condition of such notice, including any default claimed by Mortgagee or Successor Landlord, and Tenant shall have no duty to inquire into the validity or appropriateness of any such notice.

4. **Notices of Default/Tenant's Right to Cure.** Mortgagee hereby agrees to give to Tenant a copy of each notice of a failure on the part of the mortgagor or obligor under the Mortgage or Note to perform or observe any of the covenants, conditions or agreements of such Mortgage or Note at the same time as whenever any such notice shall be given to the said mortgagor or obligor, such copy to be sent as provided in Paragraph 6 herein. Further, Mortgagee shall accept the cure by Tenant of any default, which cure shall be made within ten (10) days in the case of monetary defaults of Landlord and within thirty (30) days in the case of non-monetary defaults following Tenant's receipt of such notice, provided, however, (i) if the failure of performance does not involve the payment of money from Landlord to Tenant, and (ii) is of such a nature that it could not be reasonably remedied within the thirty (30) day period aforesaid, then Tenant shall have such further time as is reasonable under the circumstances to effect such remedy provided that Tenant shall notify Mortgagee, within ten (10) days after receipt of Mortgagee's notice, of Tenant's intention to effect such remedy and provided further that Tenant institutes steps to effect such remedy within said thirty (30) day period and thereafter prosecutes said remedy with due diligence and continuity to completion. Mortgagee agrees that it will accept such performance by Tenant of any covenant, condition or agreement to be performed by mortgagor or obligor under the Mortgage or Note with the same force and effect as though performed by such mortgagor or obligor. The provisions of this Paragraph 4 are intended to confer additional rights upon Tenant and shall not be construed as obligating Tenant to cure any default of any such mortgagor or obligor.

5. **Agreement to Release Proceeds or Awards.**

(a) **Destruction.** In the event of a casualty at the Premises, Mortgagee shall release its interest in any insurance proceeds applicable to the nonstructural improvements installed by Tenant. Mortgagee acknowledges that it has no interest and waives any interest in Tenant's personal property, Tenant's signs, the satellite dish, and any safety systems (such as, without limitation, fire and security monitoring and alarm systems) installed at or about the Premises, or any insurance proceeds payable with respect thereto under either Landlord's or Tenant's policies.

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(b) **Eminent Domain.** In the event of a public taking or act of eminent domain, Mortgagee shall release its interest in that portion of the award to which Tenant is entitled pursuant to the Lease, as well as its interest in so much of the award applicable to the alterations, additions or improvements to or of the Premises or any part thereof if installed by Tenant as shall be necessary for the purposes of restoration, consistent with Landlord's and Tenant's rights and obligations under the Lease.

6. **Notices.** In order to be effective, any notice, demand, request, approval and other communication to be given under this Agreement (a "Notice") must be in writing and either (1) served personally at the following applicable notice address (the "Notice Address"), provided that proof of delivery thereof can be produced; or (2) sent by registered or certified U.S. mail, United Parcel Service, Federal Express or a similar reputable express courier to the applicable Notice Address, provided that proof of delivery thereof can be produced, or (3) if the Notice is not a notice of default, sent by email at the applicable email address under the applicable Notice Address, provided that proof of delivery thereof can be produced, and provided further that a copy of the notice is also concurrently sent by U.S. mail, United Parcel Service, Federal Express or a similar reputable express courier to the applicable Notice Address:

To Mortgagee:

Northbrook Bank & Trust Company
1100 Waukegan Road
Northbrook, Illinois 60062
Email: dgriffin@wintrust.com

To Tenant:

Sephora USA, Inc.
525 Market Street, 32nd Floor
San Francisco, CA 94105
Attn: General Counsel, Store # _____

With copies in like manner to:

Sephora USA, Inc.
525 Market Street, 32nd Floor
San Francisco, CA 94105
Attn: Lease Compliance, Store # _____
Email: LeaseCompliance@Sephora.com

and

Barack Ferrazzano Kirschbaum & Nagelberg LLP
200 West Madison Street, Suite 3900
Chicago, IL 60606
Attn: Jay Byron Leibovitz, Esq.
Email: Jay.Leibovitz@bfkn.com

To Landlord:

3401-09 N. Southport LLC
1800 W. Berenice, Suite 200
Chicago, Illinois 60613
Email: fcampise@jabrealestate.com

No notice of default shall be sent by email. No Notice delivered to the Premises shall be effective. Any party may change its Notice Address by written notice to the other parties clearly stating such party's intent to change its Notice Address for all purposes of this Agreement, which new Notice Address shall be effective thirty (30) days after receipt. Notice shall be deemed given and received when received or when receipt is refused.

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7. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, successors and assigns; it being understood that the obligations herein of Mortgagee shall extend to it in its capacity as mortgagee under the Mortgage and to its successors and assigns, including anyone who shall have succeeded to its interest or to Landlord's interest in the Premises or acquired possession thereof by Foreclosure or otherwise.

8. **Effectiveness of Agreement.** If, within four (4) weeks of Tenant's execution of this Agreement, Tenant has not received two (2) fully executed agreements at Tenant's Notice Address, this Agreement shall, at Tenant's option, be null and void.

[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGES FOLLOW]

Property of Cook County Clerk's Office

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

MORTGAGEE:

NORTHBROOK BANK & TRUST COMPANY,
an Illinois state chartered commercial bank

By: [Signature]
Its: EVP

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

On 6/11/19 before me, Kelly Yzaguirre Notary Public, personally appeared Danah Griffin proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

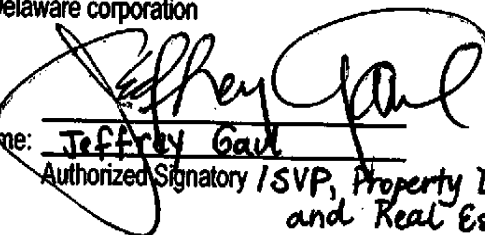
Kelly Yzaguirre (SEAL)
Notary Public Signature



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TENANT:

SEPHORA USA, INC.,
a Delaware corporation

By: 
Name: Jeffrey Gail
Its: Authorized Signatory / SVP, Property Development and Real Estate

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On _____ before me, _____, Notary Public, personally appeared _____ and _____ proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature (SEAL)

**see attached Acknowledgement*


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California All-Purpose Certificate of Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of

Alameda

} s.s.

On

7-11-2019

before me,

Sarah Maria Stichel, Notary Public

Name of Notary Public, Title

personally appeared

Jeffrey Graul

Name of Signer (1)

Name of Signer (2)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public



Seal

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a

document titled/for the purpose of

Seplora - Southport SUDA

containing 9 pages, and dated 7-11-19

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-fact

Corporate Officer(s) SVP, Real Estate &

Title(s)

Property Development

- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other:

representing:

Seplora

Name(s) of Person(s) Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

- form(s) of identification
- credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

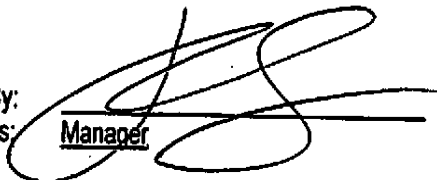
Other

- Additional Signer
- Signer(s) Thumbprints(s)

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LANDLORD:

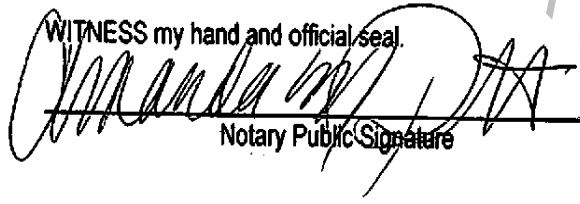
3401-09 N. Southport LLC,
an Illinois limited liability company

By: 
Its: Manager

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

On 6/11/19, before me, Amanda M Rose Hamblin, Notary Public, personally appeared Frank Rampise proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature (SEAL)



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EXHIBIT A

to Non-Disturbance and Attornment Agreement

Legal Description

LOT 24 (EXCEPT THE NORTH 3.78 FEET THEREOF) AND LOTS 25 AND 26 IN BLOCK 7 IN OLIVER'S SUBDIVISION OF THE NORTH ½ OF THE EAST ½ OF THE SOUTH WEST ¼ OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

EXCEPT FOR THAT PART TAKEN IN CASE NO. 04L51090 (COOK COUNTY) DESCRIBED IN THE AGREED FINAL JUDGMENT ORDER RECORDED JUNE 8, 2006 AS DOCUMENT NO. 615912052, AS AMENDED BY THE AMENDED AGREED FINAL JUDGMENT ORDER RECORDED JANUARY 9, 2007 AS DOCUMENT NO. 700931134, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 24 IN BLOCK 7 IN OLIVER'S SUBDIVISION OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, THEN SOUTH ALONG THE EAST LINE OF SAID LOT 24 A DISTANCE OF 3.78 FEET TO THE POINT OF BEGINNING; THENCE WEST AND PARALLEL TO SAID EAST LINE OF LOT 24 A DISTANCE OF 55 FEET; THENCE SOUTH AND PARALLEL TO SAID EAST LINE OF LOT 24, A DISTANCE OF 12 FEET; THENCE EAST AND PARALLEL TO SAID NORTH LINE OF LOT 24 TO SAID EAST LINE OF LOT 24; THENCE NORTH ALONG SAID EAST LINE TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ADDRESS: 3401 N. SOUTHPORT AVENUE, CHICAGO, ILLINOIS

P.I.N.: 14-20-313-037-0000