

UNOFFICIAL COPY

Doc#: 2030706614 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 11/03/2020 12:28 PM Pg: 1 of 8

PREPARED BY AND
WHEN RECORDED RETURN TO:
Miller, Canfield, Paddock & Stone, PLC
225 West Washington Street, Suite 2600
Chicago, Illinois 60606
Attn: Joseph C. Huntzicker, Esq.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT (this "Agreement") is effective as of September 18, 2020 by and between ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender"), IMKD 2, LLC, a Delaware limited liability company ("Landlord"), and O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company ("Tenant").

WITNESSETH

WHEREAS, Landlord and Tenant have entered into that certain Lease Agreement dated January 31, 2006 (together with all amendments and modifications thereto collectively, the "Lease"), covering certain premises commonly known as 38 East Golf Road, Suite C, Schaumburg, Illinois 60173-3708 (the "Premises") located on real property situated in Cook County, Illinois and legally described in Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Lender holds that certain Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of February 4, 2020 by Landlord to Lender and recorded with the Recorder's Office of Cook County, Illinois on February 10, 2020 as Document No. 2004145125 (as amended, restated, supplemented or otherwise modified from time to time, the "Mortgage") encumbering the Property.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, provisions and agreements set forth in this Agreement, as of the date hereof, Lender, Landlord and Tenant hereby represent, acknowledge, covenant and agree as follows:

1. The Lease. Landlord and Tenant covenant and represent to Lender and to each other that the Lease is in full force and effect.
2. Subordination. Tenant hereby subordinates the Lease at all times and in all respects to the Mortgage and to all renewals, modifications and extensions thereof. The Lease is and shall at all times be subordinate in all respects to the Mortgage and to all renewals, modifications and extensions thereof, but Lender and Tenant agree that any foreclosure of the Mortgage shall not terminate the Lease, except termination due to Tenant's default beyond any applicable cure and/or grace period or otherwise in accordance with the terms of the Lease.
3. Non-Disturbance. Lender agrees that so long as the Lease is in full force and effect and Tenant is not in default in the payment of rent, additional rent or other payments due under the Lease or in the performance of any of the other terms, covenants or conditions of the

UNOFFICIAL COPY

Lease on Tenant's part to be performed (beyond the period, if any, specified in the Lease within which Tenant may cure such default), Tenant's possession under the Lease and Tenant's rights and privileges thereunder shall not be diminished or interfered with by Lender, and accordingly, Tenant's occupancy shall not be disturbed by Lender during the term of the Lease, except in accordance with the terms of the Lease.

4. Recognition and Attornment. If Lender succeeds to the interest of Landlord in and to the Property or under the Lease, (a) subject to the terms and provisions of this Agreement, the Lease and all terms therein, and the rights of Tenant thereunder shall continue in full force and effect and shall not be altered, terminated or disturbed, and (b) Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the Lease term thereof with the same force and effect as if Lender were the landlord under the Lease. In such event, Tenant shall attorn to Lender as its landlord, such attornment to be effective and self-operative without the execution of any other instruments on the part of Lender or Tenant. Upon receipt by Tenant of such notice from Lender, Tenant shall make all payments of monetary obligations due by Tenant under the Lease to Lender or as Lender may in writing direct, with no liability to Landlord. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the lease term of the Lease, shall be and are the same as are then in existence between Tenant and Landlord as set forth in the Lease, subject to the terms and provisions of this Agreement.

5. Rights Under the Lease. If Lender shall (a) succeed to the interests of Landlord in and to the Property or under the Lease, or (b) enter into possession of the Property, Lender shall not be:

- (i) liable for any act, omission, or default of any prior landlord (including, but not limited to, Landlord), unless Lender was given prior notice thereof, or obligations accruing prior to Lender's actual ownership of the Property;
- (ii) subject to any offset, defense, claim or counterclaim which Tenant might be entitled to assert against any previous landlord (including Landlord) unless the Tenant shall have provided Lender with (A) notice of the applicable 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 below;
- (iii) bound by any payment of rent, additional rent or other payments, made by Tenant to any previous landlord (including Landlord) for more than one (1) month in advance of the date when due under the Lease;
- (iv) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) which has not been transferred to Lender;
- (v) obligated to give Tenant a credit for and/or acknowledge any rent or additional rent which Tenant has paid to Landlord or any prior landlord which is in excess of the rent or additional rent due under the Lease unless such payment is provided for in the Lease as presently existing or as amended in accordance with this Agreement; or
- (vi) liable for any damages Tenant may suffer as a result of any misrepresentation, breach of warranty or any act or failure to act by any party other than Lender.

UNOFFICIAL COPY

6. Lender Opportunity to Cure Landlord Defaults. Tenant hereby agrees that it shall provide Lender with a copy of any notice of default given to Landlord, pursuant to the terms of the Lease. In the case of any default by Landlord under the Lease which is of such a nature as to give Tenant a right to terminate the Lease, to reduce rent, or to credit or offset any amounts against future rents, Tenant agrees that no such remedy shall be exercised unless and until Lender shall have been given written notice of such default and an opportunity to cure the same within a period of time commencing upon receipt of the notice of such default from Tenant and equal in duration to the applicable cure period that Landlord has under the Lease. The cure rights set forth in this Section 6 may be exercised in the sole discretion of Lender, and under no circumstance shall Lender be required to undertake curative measures on behalf of Landlord.

7. No Option to Purchase. Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Mortgage and is hereby waived and released as against Lender.

8. Notices. Any notice required or permitted to be delivered hereunder shall be deemed received on the date actually received or rejected if the notice is deposited in the United States mail, postage prepaid, certified mail, return receipt requested, or one business day after being sent by Federal Express or similar overnight courier, addressed to Tenant, Landlord or Lender, as the case may be, at the address of such party set forth opposite the signature of such party hereto, or such other address as may thereafter be provided in writing to the respective parties. Any notice sent to any party hereunder shall be sent to all parties hereunder. Tenant shall be entitled to rely upon any notice from Lender hereunder as to the matters stated in and covered by any such notice.

9. Assignment of Rents. Tenant acknowledges and agrees that this Agreement constitutes notice to Tenant of the existence of the Mortgage and that the Lease and the rent have been assigned to Lender as security for the note.

10. Applicable Law. This Agreement is governed by and will be construed in accordance with the laws of the State of Illinois.

11. Facsimile/Electronic Signatures. This Agreement may be transmitted and/or signed by facsimile or e-mail transmission (e.g. "pdf" or "tif"). The effectiveness of any such signatures shall have the same force and effect as manually-signed originals and shall be binding on all parties to this Agreement. Lender may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile or e-mail document or signature.

12. Entire Agreement. This Agreement contains the sole and entire agreement and understanding between the parties with respect to the subject matter hereof and shall supersede any and all other oral or written agreements between the parties with respect to the subject matter hereof. If this Agreement conflicts with the Lease, then the Lease shall govern as between the Tenant and the Landlord, but this Agreement shall govern as between the Tenant and the Lender, including, without limitation, upon Lender's succession to the interest of Landlord in and to the Property or under the Lease.

[Remainder of page intentionally left blank.]

UNOFFICIAL COPY

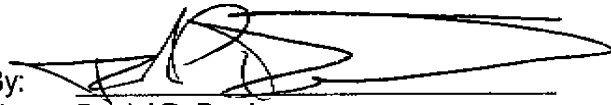
IN WITNESS WHEREOF, the parties hereto have caused this Subordination, Non-Disturbance and Attornment Agreement to be duly executed on the respective dates indicated below (the latest of which is the date hereof), but this Agreement is made by the parties hereto effective as of the day and year first above written.

9/18/20
Date

LENDER:

ASSOCIATED BANK, NATIONAL
ASSOCIATION, a national banking association

Associated Bank, National Association
525 West Monroe Street, 24th Floor
Chicago, Illinois 60661
Attention: Daniel P. Barrins,
Senior Vice President

By: 
Name: Daniel P. Barrins
Title: Senior Vice President

LENDER ACKNOWLEDGEMENT

STATE OF ILLINOIS)

) SS.

COUNTY OF COOK)

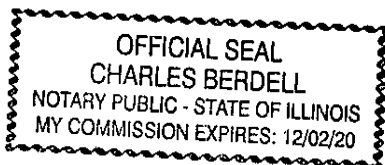
I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Daniel P. Barrins, a Senior Vice President of **ASSOCIATED BANK, NATIONAL ASSOCIATION**, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18 day of September, 2020.


Notary Public

My Commission Expires:

12-02-2020



UNOFFICIAL COPY

8/28/20
Date

IMKD 2, LLC
700 Commerce Drive, Suite 130
Oak Brook, Illinois 60523

LANDLORD:

IMKD 2, LLC,
a Delaware limited liability company

By: IM Kensington Developments, LLC,
a Delaware limited liability company,
its sole member

By: Matt Bresnahan
Name: Matt Bresnahan
Title: Manager

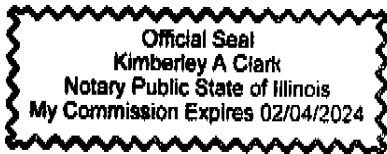
Property of Cook County Office

LANDLORD ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Matthew Bresnahan, the Manager of IM KENSINGTON DEVELOPMENTS, LLC, a Delaware limited liability company ("Sole Member"), acting in its capacity as the Sole Member of IMKD 2, LLC, a Delaware 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 he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of the Sole Member, acting in its capacity as the Sole Member of Landlord, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of August, 2020.



Kimberley A. Clark
Notary Public

My Commission Expires:
02/04/24

UNOFFICIAL COPY

TENANT:

9-8-2020
Date

O'Reilly Auto Enterprises, LLC,
a Delaware limited liability company

O'Reilly Auto Enterprises, LLC
233 South Patterson
Springfield, Missouri 65802
Attn: Property Management

By: *Carol E. Kirkman*
Name: Carol E. Kirkman
Title: Director of Property Management
& ADA Compliance

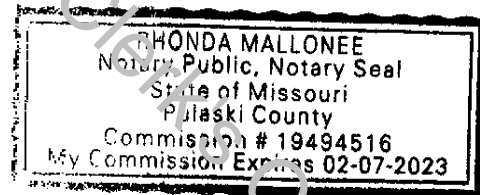
TENANT ACKNOWLEDGEMENT

STATE OF MISSOURI)
) SS:
COUNTY OF GREENE)

On this 8th day of September, 2020, before me personally appeared Carol E. Kirkman, to me known to be the person described in and who executed the foregoing and acknowledged that (s)he executed the same as her/his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal in the County of Greene, the day and year first above written.

Rhonda Mallonee
Notary Public



UNOFFICIAL COPY

EXHIBIT A

SHOPPING CENTER LEGAL DESCRIPTION

REAL PROPERTY LOCATED IN COOK COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PART OF THE SOUTH 1074.0 FEET OF THE WEST 667.50 FEET OF THE SOUTHEAST 1/4 OF SECTION 10, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE NORTH LINE OF GOLF ROAD AS DEDICATED UNDER DOCUMENT 10488002 DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 10 IN GOLF-ROSELLE DEVELOPMENT UNIT 4, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 10 AFORESAID, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 16, 1994 AS DOCUMENT 94236801; THENCE ON AN ASSUMED BEARING OF SOUTH 86 DEGREES 31 MINUTES 02 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOT 10 PROJECTED WESTERLY, ALSO BEING THE NORTH LINE OF GOLF ROAD, A DISTANCE OF 242.50 FEET TO THE EAST LINE OF THE WEST 667.50 FEET OF THE SOUTHEAST 1/4 OF SAID SECTION 10 TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 86 DEGREES 31 MINUTES 02 SECONDS WEST ALONG THE NORTH LINE OF GOLF ROAD, AS CONVEYED BY DOCUMENT 21480786, A DISTANCE OF 80.44 FEET, THENCE NORTH 03 DEGREES 28 MINUTES 58 SECONDS WEST, A DISTANCE OF 15.00 FEET; THENCE SOUTH 86 DEGREES 31 MINUTES 02 SECONDS WEST, A DISTANCE OF 390.00 FEET TO THE GRANTOR'S WEST LINE, BEING THE EAST LINE OF THE WEST 163.0 FEET OF THE SOUTH 268.0 FEET OF THAT PART OF SAID SOUTHEAST 1/4 WHICH LIES EAST OF THE EAST LINE OF ROSELLE ROAD, AS PER TOWNSHIP DEDICATION RECORDED MAY 28, 1850; THENCE NORTH 00 DEGREES 15 MINUTES 26 SECONDS EAST ALONG GRANTOR'S WEST LINE, A DISTANCE OF 232.93 FEET TO THE NORTH LINE OF THE SOUTH 268.0 FEET OF THAT PART OF SAID SOUTHEAST 1/4 WHICH LIES NORTH OF THE NORTH LINE OF GOLF ROAD, AS DEDICATED UNDER DOCUMENT 10488002; THENCE SOUTH 86 DEGREES 31 MINUTES 02 SECONDS WEST ALONG SAID NORTH LINE, A DISTANCE OF 131.93 FEET TO THE EAST LINE OF ROSELLE ROAD, SAID LINE BEING 64.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SOUTHEAST 1/4 OF SECTION 10; THENCE NORTH 00 DEGREES 15 MINUTES 26 SECONDS EAST ALONG SAID EAST LINE OF ROSELLE ROAD, A DISTANCE OF 736.41 FEET; THENCE NORTH 4 DEGREES 28 MINUTES 47 SECONDS EAST, A DISTANCE OF 8.06 FEET TO THE NORTH LINE OF THE SOUTH 1074.0 FEET OF THE SOUTHEAST 1/4 OF SECTION 10; THENCE NORTH 86 DEGREES 42 MINUTES 57 SECONDS EAST ALONG SAID NORTH LINE, A DISTANCE OF 602.63 FEET TO THE EAST LINE OF THE WEST 667.50 FEET OF THE SOUTHEAST 1/4 OF SECTION 10; THENCE SOUTH 00 DEGREES 15 MINUTES 26 SECONDS WEST ALONG SAID EAST LINE, A DISTANCE OF 990.27 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY ILLINOIS.

PARCEL 2:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1, AS RESERVED IN THE TRUSTEE'S DEED FROM CHICAGO TITLE AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 19, 1968 AND KNOWN AS TRUST 52271 TO THE VILLAGE OF SCHAUMBURG, ILLINOIS,

EXHIBIT A

UNOFFICIAL COPY

DATED JULY 16, 1971 AND RECORDED JULY 20, 1971 AS DOCUMENT 21552162 OVER THE WEST 5.00 FEET OF THE FOLLOWING DESCRIBED TRACT:

THE SOUTH 1074.0 FEET OF THE WEST 667.0 FEET OF THE SOUTHEAST 1/4 OF SECTION 10, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART LYING SOUTH OF THE NORTH LINE OF GOLF ROAD, AS DEDICATED UNDER DOCUMENT 10488002);

AND EXCEPT THAT PART LYING WEST OF A LINE 5.00 FEET EAST OF AND PARALLEL TO THE EAST LINE OF ROSELLE ROAD, AS DEDICATED UNDER DOCUMENT 20430983;

AND EXCEPT THE WEST 163.0 FEET OF THE SOUTH 268.0 FEET OF THAT PART OF SAID

SOUTHEAST 1/4, WHICH LIES NORTH OF THE NORTH LINE OF GOLF ROAD, AS DEDICATED UNDER DOCUMENT 10488002 AND WHICH LIES EAST OF THE EAST LINE OF ROSELLE ROAD AS PER TOWNSHIP DEDICATION RECORDED MAY 28, 1850;

AND EXCEPT THAT PART LYING SOUTH OF A LINE DRAWN PARALLEL WITH AND DISTANT 20.00 FEET NORTH OF THE NORTH LINE OF GOLF ROAD, AS DEDICATED UNDER DOCUMENT 10488002 AS CONVEYED TO THE STATE OF ILLINOIS FOR THE USE OF THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS BY DOCUMENT 21480786, IN COOK COUNTY ILLINOIS.

PARCEL 3:

NON-EXCLUSIVE EASEMENT FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE MUTUAL EASEMENT AGREEMENT DATED OCTOBER 4, 2001 AND RECORDED AUGUST 3, 2006 AS DOCUMENT 0621516089 AND CORRECTED IN DOCUMENT 1926662006 RECORDED SEPTEMBER 23, 2019.

ADDRESSES:

BLDG. #1: 16A-16E E. GOLF ROAD, SCHAUMBURG, IL 60173

BLDG. #2: 18-64 E. GOLF ROAD, SCHAUMBURG, IL 60173

TAX PARCEL IDENTIFICATION NUMBERS: 07-10-400-056-0000
07-10-400-057-0000

EXHIBIT A