

UNOFFICIAL COPY

2/27 (97)

20 ST 03 2006 SK

This Document Prepared By
and After Recording Return to:

William D. Dallas
Regas Frezados & Dallas LLP
20 North Clark Street, Ste. 1103
Chicago, IL 60602

Address of Property:
2652 Green Bay Road
Evanston, Illinois 60201

PIN No.: 05-34-423-029-0000

Doc#: 2108321292 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 03/24/2021 02:56 PM Pg: 1 of 14

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

by and between

Algonquin State Bank

and

2650 Greenbay LLC, an Illinois limited company

and

Revitalize EV, LLC, an Illinois limited liability company

UNOFFICIAL COPY

Subordination, Nondisturbance and Attornment Agreement

This SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT (this “Agreement”) is entered into as of December 22, 2020 (the “Effective Date”), between Algonquin State Bank (“Lender”), and REVITALIZE EV, LLC, an Illinois limited liability company (“Tenant”), with reference to the following facts:

A. 2650 Greenbay LLC, an Illinois limited liability company (“Landlord”), owns the real property located at 2652 Green Bay Road, Evanston, Illinois 60201 (such real property, including all buildings, improvements, structures and fixtures located thereon, “Landlord’s Premises”), as more particularly described in Schedule A.

B. Lender has made a loan to Landlord in the original principal amount of \$1,012,500.00 (the “Loan”), all as provided in and subject to the terms and conditions set forth in the Loan Documents (as hereinafter defined).

C. To secure the Loan, Landlord has encumbered Landlord’s Premises by entering into that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of December 22, 2020 for the benefit of Lender (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 Cook County, Illinois (the “Official Records”).

D. Pursuant to a Lease Agreement dated as of April 14, 2020 (the “Lease”); Landlord’s predecessor in interest demised to Tenant a portion of Landlord’s Premises (“Tenant’s Premises”). Tenant’s Premises are commonly known as Unit 2652, consisting of approximately 3,956 rentable square feet.

E. Tenant and Lender desire to agree upon the relative priorities of their interests in Landlord’s Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration and intending to be legally bound hereby, Tenant and Lender agree:

I. Definitions. The following terms shall have the following meanings for purposes of this Agreement.

A. “Civil Asset Forfeiture Reform Act” means the Civil Asset Forfeiture Reform Act of 2000 (18 U.S.C. Sections 983 et seq.), as amended from time to time, and any successor statute.

B. “Construction-Related Obligation(s)” means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at Landlord’s Premises, including Tenant’s Premises. Construction-Related Obligations shall not include: (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

C. “Controlled Substances Act” means the Controlled Substances Act (21 U.S.C. Sections 801 et seq.), as amended from time to time, and any successor statute.

UNOFFICIAL COPY

D. “Foreclosure Event” means: (a) foreclosure under the Mortgage, whether by judicial action or pursuant to nonjudicial proceedings; (b) any other exercise by Lender of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which any Successor Landlord becomes owner of Landlord’s Premises; or (c) delivery by Landlord to Lender (or its designee or nominee) of a deed or other conveyance of Landlord’s interest in Landlord’s Premises in lieu of any of the foregoing.

E. “Former Landlord” means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

F. “Loan Documents” mean the Mortgage and any other document now or hereafter evidencing, governing, securing or otherwise executed in connection with the Loan, including any promissory note and/or loan agreement, pertaining to the repayment or use of the Loan proceeds or to any of the real or personal property, or interests therein, securing the Loan, as such documents or any of them may have been or may be from time to time hereafter renewed, extended, supplemented, increased or modified. This Agreement is a Loan Document.

G. “Offset Right” means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant’s payment of Rent or performance of Tenant’s other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord’s breach or default under the Lease.

H. “Rent” means any fixed rent, base rent or additional rent under the Lease.

I. “Successor Landlord” means any party that becomes owner of Landlord’s Premises as the result of a Foreclosure Event.

J. “Termination Right” means 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.

II. Subordination. The Lease, including all rights of first refusal, purchase options and other rights of purchase, shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien and security interest imposed by the Mortgage and the right to enforce such lien or security interest, and all advances made under or secured by the Loan Documents. Tenant hereby intentionally and unconditionally subordinates the Lease and all of Tenant’s right, title and interest thereunder and in and to Landlord’s Premises (including Tenant’s right, title and interest in connection with any insurance proceeds or eminent domain awards or compensation relating to Landlord’s Premises and Tenant’s right to receive and retain any rentals or payments made under any sublease or concession agreement of or relating to any portion of Tenant’s Premises), to the lien of the Mortgage and all of Lender’s rights and remedies thereunder, and agrees that the Mortgage shall unconditionally be and shall at all times remain a lien on Landlord’s Premises prior and superior to the Lease.

III. Nondisturbance; Recognition; and Attornment.

UNOFFICIAL COPY

A. No Exercise of Mortgage Remedies Against Tenant. So long as the Lease has not been terminated on account of Tenant's default under the Lease that has continued beyond applicable cure periods (an "Event of Default"), Lender shall not name or join Tenant as a defendant in any judicial action or proceeding that is commenced pursuant to the exercise of Lender's rights and remedies arising upon a default by Landlord under the Mortgage unless: (a) applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or in order to prosecute or otherwise fully enforce such rights and remedies; or (b) such joinder of Tenant is required for the recovery by Lender of any Rent at any time owing by Tenant under the Lease, whether pursuant to the assignment of rents set forth in the Mortgage or otherwise; or (c) such joinder is required in order to enforce any right of Lender to enter Landlord's Premises for the purpose of making any inspection or assessment, or in order to protect the value of Lender's security provided by the Mortgage. In any instance in which Lender is permitted to join Tenant as a defendant as provided above, Lender agrees not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in or pursuant to such action or proceeding, unless an Event of Default by Tenant has occurred and is continuing. The foregoing provisions of this Section shall not be construed in any manner that would prevent Lender from (i) carrying out any nonjudicial foreclosure proceeding under the Mortgage, or (ii) obtaining the appointment of a receiver for the Landlord's Premises as and when permitted under applicable law.

B. Nondisturbance and Attornment. If the Lease has not been terminated on account of an Event of Default by Tenant, then, when Successor Landlord takes title to Landlord's Premises: (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

C. Use of Proceeds. Lender, in making any advances of the Loan pursuant to any of the Loan Documents, shall be under no obligation or duty to, nor has Lender represented to Tenant that it will, see to the application of such proceeds by the person or persons to whom Lender 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.

D. Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon written request by either of them.

E. Default Under Mortgage. In the event that Lender 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 Lender, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Lender, without offset, except as permitted by the Lease or as otherwise required pursuant to such notice beginning with the payment next due after such notice

UNOFFICIAL COPY

of default, without inquiry as to whether a default actually exists under the Mortgage and notwithstanding any contrary instructions of or demands from Landlord. Lender shall indemnify and hold Tenant harmless from any claims by Landlord arising out of Tenant's payment to Lender pursuant to such demand. The consent and approval of Landlord to this Agreement shall constitute an express authorization for Tenant to make such payments to Lender and a release and discharge of all liability of Tenant to Landlord for any such payments made to Lender in compliance with Lender's written demand.

IV. Protection of Successor Landlord. Notwithstanding anything to the contrary in the Lease or the Mortgage, Lender or Successor Landlord shall not be liable for or bound by any of the following matters:

A. Intentionally Omitted.

B. Acts or Omissions of Former Landlord. Any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Former Landlord) or obligations accruing prior to Successor Landlord's actual ownership of the Property; provided, however, Tenant retains all Offset Rights under the Lease with respect to any conditions disclosed by that certain Estoppel Certificate delivered by Tenant to 2650 Greenbay, LLC as of December 22, 2020 (the "Estoppel Certificate").

C. Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of a termination other than, and only to the extent that, the Lease expressly required such a prepayment.

D. Intentionally Omitted.

E. Modification, Amendment, or Waiver. Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Lender's written consent.

F. Surrender; Etc. 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.

G. Construction-Related Obligations. Any Construction-Related Obligation of Landlord under the Lease.

V. Intentionally Omitted.

VI. Lender's Right to Cure.

A. Notice to Lender. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right, Tenant shall provide Lender with 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.

UNOFFICIAL COPY

B. Lender's Cure Period. After Lender receives a Default Notice, Lender 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. Lender 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 Lender agrees or undertakes otherwise in writing.

C. Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided that Lender 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, and diligently and continuously seeks to effect such cure, Lender's cure period shall continue for such additional time (the "Extended Cure Period") as Lender 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; provided, however, in no event may such cure rights extend beyond sixty (60) days after the occurrence of the event or condition resulting in such breach or default.

VII. Confirmation of Facts. Except as set forth in the Estoppel Certificate, Tenant represents to Lender and to any Successor Landlord, in each case as of the Effective Date:

A. Effectiveness of Lease. The Lease is in full force and effect, has not been modified, and constitutes the entire agreement between Landlord and Tenant relating to Tenant's Premises. Tenant has no interest in Landlord's Premises except pursuant to the Lease. No unfulfilled conditions exist to Tenant's obligations under the Lease.

B. Rent. Tenant has not paid any Rent that is first due and payable under the Lease after the Effective Date.

C. No Landlord Default. To the best of Tenant's knowledge, no breach or default by Landlord exists and no event has occurred that, with the giving of notice, the passage of time or both, would constitute such a breach or default.

D. No Tenant Default. Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease.

E. No Termination. Tenant has not commenced any action nor sent or received any notice to terminate the Lease. Tenant has no presently exercisable Termination Right(s) or Offset Right(s).

F. Commencement Date. The "Commencement Date" of the Lease was August 4, 2020 and the Rent Commencement Date was November 6, 2020.

G. Acceptance. Tenant has accepted possession of Tenant's Premises.

H. No Transfer. Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein, other than sublease(s) made in compliance with the Lease.

UNOFFICIAL COPY

I. Due Authorization. Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

J. No Violations of Laws. Tenant has not violated, and shall not violate, any laws affecting Tenant's Premises, including the Controlled Substances Act, or which would otherwise result in the commencement of a judicial or nonjudicial forfeiture or seizure proceeding by a governmental authority (including the commencement of any proceedings under the Civil Asset Forfeiture Reform Act) on the grounds that Tenant's Premises or any part thereof has been used to commit or facilitate the commission of a criminal offense by any person, including Tenant, pursuant to any law, including the Controlled Substances Act, regardless of whether or not Tenant's Premises is or shall become subject to forfeiture or seizure in connection therewith.

VIII. Miscellaneous.

A. Notices. 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).

B. Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Lender assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

C. Entire Agreement. This Agreement constitutes the entire agreement between Lender and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement.

D. Interaction with Lease and with Mortgage; Severability. 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 holder 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.

E. Lender's Rights and Obligations. Except as expressly provided for in this Agreement, and except for any obligations Lender may assume or take subject to in the event it becomes a Successor Landlord under the Lease, Lender shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Lender under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

UNOFFICIAL COPY

F. Interpretation; Governing Law. 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.

G. Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

H. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument

I. Lender's Representation. Lender represents that Lender has full authority to enter into this Agreement, and Lender's entry into this Agreement has been duly authorized by all necessary actions.

J. Reliance by Lender. Tenant acknowledges the right of Lender (as well as any Successor Landlord) to rely upon the certifications and agreements in this Agreement in making the Loan to Landlord.

[Remainder of page intentionally blank; signature pages follow]

UNOFFICIAL COPY

TENANT:

REVITALIZE EV, LLC

By: *Scott Weinstein*

Name: Scott Weinstein

Title: Manager

STATE OF ILLINOIS

Cook County, ss.

On this 18th day of December, 2020 before me, the undersigned notary public, personally appeared Scott Weinstein, proved to me through satisfactory evidence of identification, being (check whichever applies):

- driver's license or other state or federal governmental document bearing a photographic image,
- oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him/her voluntarily for its stated purpose, as the duly authorized Manager of Revitalize EV, LLC.

Notary Public *Mubla A. ...*

My commission expires: _____

Print Notary Public's Name: Mubla A. ...

Qualified in Cook County of Illinois

[Notary Seal]

Property of [Notary Public's Office]

UNOFFICIAL COPY

Property of Cook County Clerk's Office

"OFFICIAL SEAL"
MICHAEL A CRAMAROSSO
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 6/15/2022

UNOFFICIAL COPY

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 Lender 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 Lender upon receipt of a notice from Lender 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.

LANDLORD:

By: 2650 GREENBAY LLC

Name: Stanley Dayan

Title: Manager

Dated: 2/1/2021, 2021

SD

STATE/COMMONWEALTH OF Illinois

Cook County, ss.

On this 1st day of February, 2021 before me, the undersigned notary public, personally appeared Stanley Dayan, proved to me through satisfactory evidence of identification, being (check whichever applies):

- driver's license or other state or federal governmental document bearing a photographic image,
- oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him/her voluntarily for its stated purpose, as the duly authorized Manager of 2650 Greenbay LLC

Notary Public

My commission expires: 3/31/2022

Print Notary Public's Name: Eliyahu Morgenstern

Qualified in Cook County of Illinois

[Notary Seal]



UNOFFICIAL COPY

SCHEDULE A

Description of Landlord's Premises

Property address of real estate: 2652 Green Bay Road, Evanston, Illinois 60201

permanent tax identification numbers: 05-34-423-029-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered under seal by Lender and Tenant as of the Effective Date.

LENDER:

ALGONQUIN STATE BANK

By: [Signature]
Name: Steve Karaba
Title: EVP

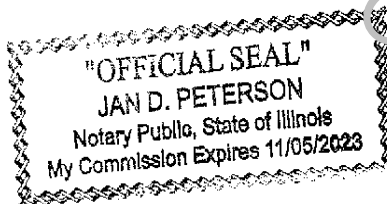
STATE/Commonwealth of ILLINOIS

McHenry County, ss.

On this 1st day of March, 2021 before me, the undersigned notary public, personally appeared Steve Karaba, proved to me through satisfactory evidence of identification, being (check whichever applies):

- driver's license or other state or federal governmental document bearing a photographic image,
- oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him/her voluntarily for its stated purpose, as the duly authorized EVP of Algonquin State Bank

Notary Public J. D. Peterson
My commission expires: 11.5.23
Print Notary Public's Name: Jan D. Peterson
Qualified in McHenry County of Illinois
[Notary Seal]



UNOFFICIAL COPY

EXHIBIT A

Order No.: 20ST03006SK

For APN/Parcel ID(s): 05-34-423-029-0000 and 05-34-423-028-0000

Parcel 1: Lot 1 in Block 20 in North Evanston being a subdivision of Lots 11 to 16 and the West 4 3/10 Acres of Lot 17 in Smiths Subdivision of the South part of Quilmette Reserve also of Lots 1 and 3 and that part of Lot 2 lying between Chicago and Milwaukee Railway and the West Line of Lot 3 produced to the North Line of Section 12, Township 41 North, Range 13 East of the Third Principal Meridian, assessors Plat of Evanston, according to the Plat thereof recorded December 17, 1868 as document 18783 in Book 162 of Maps, Page 35, in Cook County, Illinois.

Parcel 2: Lot 1 in Green Bay Auto Consolidation of Lots 2 and 3 in Block 20 in North Evanston in Township 42 North, Range 13, East of the Third Principal Meridian according to the Plat of Consolidation recorded September 26, 1985 as document 85207088, in Cook County, Illinois.

Property of Cook County Clerk's Office