

# UNOFFICIAL COPY

Doc#: 2119303235 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 07/12/2021 11:01 AM Pg: 1 of 12

## **JPMORGAN REAL ESTATE BANKING** **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

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**JPMORGAN CHASE BANK, N.A., as Administrative Agent**  
(Mortgagee)

- and -

**DELILAH'S GOLD COAST, LLC, a Delaware limited liability company**  
(Tenant)

- and -

**TOWER 10 GLADES LLC, a Delaware limited liability company**  
(Landlord)

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### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

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Dated: as of June 29, 2021

Location: 845-847 N. State Street, Chicago, Illinois

Permanent Index Numbers: 17-03-223-03-032-0000  
17-03-223-03-033-0000  
17-03-223-03-035-0000

County: Cook

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Levenfeld Pearlstein, LLC  
2 N. LaSalle St., Suite 1300  
Chicago, IL 60602  
Attention: Brian K. Kozminski

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of the 29<sup>th</sup> day of June, 2021, by and among JPMORGAN CHASE BANK, N.A., a national banking association, as Administrative Agent for itself and various other lending institutions (defined below) ("Mortgagee"), DELILAH'S GOLD COAST, I.L.C, a Delaware limited liability company ("Tenant"), and TOWER 10 GLADES L.L.C, a Delaware limited liability company and its successors and assigns ("Landlord").

### RECITALS:

A. Landlord owns, leases or controls (or will be acquiring) the land ("Land") described in Exhibit A attached hereto and the building and related improvements located thereon (the "Building"; the Land and Building are collectively referred to as the "Property").

B. Under the terms of a certain lease (the "Lease") dated June 14, 2021 between Tenant and Landlord, or Landlord's predecessor in title, Tenant has leased a portion of the Building, as more particularly described in the Lease (the "Demised Premises").

C. Landlord has executed, or will be executing, a mortgage or deed of trust in favor of Mortgagee (the "Mortgage") pursuant to which Landlord has encumbered or will encumber Landlord's interest in the Land, Building and Lease to secure, among other things, the payment of certain indebtedness owing by Landlord to one or more lenders [(the "Lenders")] as described therein and in all other documents evidencing, securing or guaranteeing such indebtedness (the "Loan Documents").

D. The parties hereto desire to have the Lease be subordinate to the Mortgage and the lien thereof, to establish certain rights of non-disturbance for the benefit of Tenant under the Lease, and further to define the terms, covenants and conditions precedent for such rights.

### AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the parties hereto mutually agree as follows:

1. Subordination. The Lease, as the same may hereafter be modified, amended or extended, and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the Mortgage, including without limitation, all renewals, increases, modifications, consolidations, extensions and amendments thereof with the same force and effect as if the Mortgage and the other Loan Documents had been executed, delivered and (in the case of the Mortgage) recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. In the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration of the term of the Lease, including any extensions and renewals of such term now provided thereunder, and so long as Tenant is not in default under any of the terms, covenants and conditions of the Lease beyond any applicable notice and cure periods, Mortgagee agrees on behalf of itself, its successors and assigns, including any purchaser at such foreclosure (each being referred to herein as an "Acquiring Party"), that Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession, quiet enjoyment or use of the Demised Premises, and the sale of the Property in any such action or proceeding and the exercise by Mortgagee of any of its other rights under the Mortgage shall be made subject to all rights of Tenant under the Lease (subject to the terms of this Agreement); provided, further, however, that Mortgagee and Tenant agree that the following provisions of the Lease (if any) shall not be binding on Mortgagee or Acquiring Party: any option to purchase or any right of first refusal to purchase with respect to the Property, and any provision regarding the use of

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insurance proceeds or condemnation proceeds with respect to the Property which is inconsistent with the terms of the Mortgage.

3. Attornment. In the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration date of the term of the Lease, including any extensions and renewals of such term now provided thereunder, Tenant shall, at the election of the Acquiring Party, either: (i) attorn to and recognize the Acquiring Party as the new landlord under the Lease, which Lease shall thereupon become a direct lease between Tenant and the Acquiring Party for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease (subject to the terms of this Agreement); or (ii) if any Landlord default under the Lease is not susceptible to cure and results in the termination of the Lease, or the Lease is terminated for any other reason, including, without limitation, as a result of rejection in a bankruptcy or similar proceeding, then upon receiving the written request of the Acquiring Party, Tenant shall enter into a new lease of the Demised Premises with the Acquiring Party (a "New Lease"), which New Lease shall be upon substantially the same terms, covenants and conditions as are set forth in the Lease (subject to the terms of this Agreement) for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised). In either such event described in the preceding clauses (i) or (ii) of this Section 3, Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease (or the New Lease, as applicable) for the benefit of the Acquiring Party. For all purposes of this Agreement, the word "Lease" shall be deemed to mean the Lease or any such New Lease, as applicable.

4. Limitation of Liability. Notwithstanding anything to the contrary contained herein or in the Lease, in the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration date of the term of the Lease, including any extensions and renewals of such term now provided thereunder, the liability of Mortgagee, its successors and assigns, or Acquiring Party, as the case may be, shall be limited to its interest in the Property; provided, however, that Mortgagee or Acquiring Party, as the case may be, and their respective successors and assigns, shall in no event and to no extent:

(a) be liable to Tenant for any past act, omission or default on the part of any prior landlord (including Landlord), and Tenant shall have no right to assert the same or any damages arising therefrom as an offset, defense or deficiency against Mortgagee, Acquiring Party or the successors or assigns of either of them, provided, however, that Mortgagee, Acquiring Party, or the successors or assigns of either of them, as the case may be, shall be obligated to cure any default on the part of any prior landlord (including Landlord) to the extent such default is continuing at the time of attornment;

(b) be liable for or subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except as provided in Section 3.7 and Section 19.3 of the Lease;

(c) be liable for any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date thereof or any deposit, rental security or any other sums deposited with any prior landlord (including Landlord), except to the extent such monies are actually received by Mortgagee or Acquiring Party, as applicable;

(d) be bound by any amendment, modification or termination of the Lease or by any waiver or forbearance on the part of any prior landlord (including Landlord), in either case to the extent the same is made or given without the prior written consent of Mortgagee;

(e) be bound by any warranty, representation or indemnity of any nature whatsoever made by any prior landlord (including Landlord) under the Lease including any warranties, representations or indemnities regarding any work required to be performed under the Lease, use, compliance with zoning, hazardous wastes or environmental laws, habitability, fitness for purpose, title or possession; or

(f) be liable to Tenant for construction or restoration, or delays in construction or restoration, of the Building or the Demised Premises, or for the obligations of any prior landlord (including Landlord) to reimburse Tenant for or indemnify Tenant against any costs, expenses or damages arising from such construction or any delay in Tenant's occupancy of the Demised Premises except as provided in Section 3.7 of the Lease.

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5. Rent. Tenant hereby agrees to and with Mortgagee that, upon receipt from Mortgagee of a notice of any default by Landlord under the Mortgage, Tenant will pay to Mortgagee directly all rents, additional rents and other sums then or thereafter due under the Lease. In the event of the foregoing, Landlord hereby authorizes Tenant to pay to Mortgagee directly all rents, additional rents and other sums then or thereafter due under the Lease. In addition, Landlord hereby indemnifies and holds Tenant harmless from and against any and all claims, causes of actions, demands, liabilities and losses of any kind or nature, including but not limited, to attorney's fees and expenses, sustained by Tenant as a result of any and all claims by third parties claiming through Landlord all or any portion of the rent, additional rents, and other sums due under the Lease which are paid by Tenant directly to Mortgagee in accordance with the terms and conditions hereof.

6. No Amendment. Landlord and Tenant each agree not to amend, modify or terminate the Lease in any manner without the prior written consent of Mortgagee.

7. Further Documents. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of any party hereto. Tenant agrees, however, to execute and deliver to Mortgagee or Acquiring Party, as the case may be, or such other person to whom Tenant herein agrees to attorn such other instruments as such party shall reasonably request in order to effectuate said provisions.

8. Notice and Cure. Tenant agrees that if there occurs a default by Landlord under the Lease:

(a) A copy of each notice given to Landlord pursuant to the Lease shall also be given simultaneously to Mortgagee; and

(b) If Landlord shall fail to cure any default within the time prescribed by the Lease, Tenant shall give further notice of such fact to Mortgagee. Mortgagee shall have the right (but not the obligation) to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied and shall be allowed such additional time as may be reasonably necessary to cure such default, and so long as Mortgagee shall be proceeding diligently to cure the defaults that are reasonably susceptible of cure, no such default shall operate or permit Tenant to terminate the Lease.

9. Notices. All notices, demands, approvals and requests given or required to be given hereunder shall be in writing and shall be deemed to have been properly given upon receipt when personally served or sent by overnight delivery service or upon the third (3rd) business day after mailing if sent by U. S. registered or certified mail, postage prepaid, addressed as follows:

Mortgagee:

JPMorgan Chase Bank, N.A., as Administrative Agent  
 Monarch Tower, Suite 2100  
 3424 Peachtree Road, NE  
 Atlanta, GA 30326  
 Attention: Aaron Jacobson-Swanson

with a copy to:

JPMorgan Chase Loan Administration  
 700 N. Pearl St. 13<sup>th</sup> Floor  
 Dallas, Texas 75201  
 Attention: Kyle Dixon

Landlord:

Tower 10 Glades LLC  
 c/o Newcastle Limited  
 150 North Michigan Avenue, Suite 2700  
 Chicago, IL 60601

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Attention: Kent A. Swanson

Tenant:

Delilah's Gold Coast, LLC  
 11 West Illinois Street, Suite 400  
 Chicago, Illinois 60654  
 Attention: James R. Lasky

or to such other address in the United States as such party may from time to time designate by written notice to the other parties.

10. Binding Effect. The terms, covenants and conditions hereof shall be binding upon and inure to the benefit of Mortgagee [(for the benefit of the Lenders)], Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.

11. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by all the parties hereto or their respective successors in interest.

12. Governing Law. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

13. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

14. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

15. Authority. Each of the undersigned parties further represents and warrants to the other parties hereto that the person executing this Agreement on behalf of each such party hereto has been duly authorized to so execute this Agreement and to cause this Agreement to be binding upon such party and its successors and assigns.

16. Tenant's Personal Property. It is expressly agreed to between Mortgagee, Landlord and Tenant that in no event shall the Mortgage cover or encumber (and shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's trade fixtures, equipment, furniture, signs, inventory, goods, or other personal property at any time placed in, on or about the Property.

17. Subsequent Transfer. If any Acquiring Party, by succeeding to the interest of Landlord under the Lease, should become obligated to perform the covenants of Landlord thereunder, then, upon any transfer of Landlord's interest by such Acquiring Party, all obligations shall terminate as to such Acquiring Party.

18. Waiver of Jury Trial. LANDLORD, TENANT AND MORTGAGEE HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT.

19. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

**MORTGAGEE:**

**JPMORGAN CHASE BANK, N.A., as Administrative Agent**

By: [Signature]  
Name: Haron Jackson-Swanson  
Title: Vice President

**TENANT:**

**DELILAH'S GOLD COAST, LLC, a Delaware limited liability company**

By: What If Syndicate, LLC, a Delaware limited liability company, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:**

**TOWER 10 GLADES LLC, a Delaware limited liability company**

By: \_\_\_\_\_  
Name: Michael R. Haney  
Title: Manager

Property of Cook County Clerk's Office

[Signature Page to Subordination, Non-Disturbance and Attornment Agreement]

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

**MORTGAGEE:**

**JPMORGAN CHASE BANK, N.A., as Administrative Agent**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

**DELILAH'S GOLD COAST, LLC, a Delaware limited liability company**

By: What If Syndicate, LLC, a Delaware limited liability company, its Manager

By: \_\_\_\_\_  
Name: *James R. Laffey*  
Title: *Manager*

**LANDLORD:**

**TOWER 10 GLADES LLC, a Delaware limited liability company**

By: \_\_\_\_\_  
Name: Michael R. Haney  
Title: Manager

Property of Cook County Clerk's Office

[Signature Page to Subordination, Non-Disturbance and Attornment Agreement]

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

**MORTGAGEE:**

**JPMORGAN CHASE BANK, N.A., as Administrative Agent**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

**DELILAH'S GOLD COAST, LLC, a Delaware limited liability company**

By: What If Syndicate, LLC, a Delaware limited liability company, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:**

**TOWER 10 GLADES LLC, a Delaware limited liability company**

By: \_\_\_\_\_  
Name: Michael R. Haney  
Title: Manager

Property of Cook County Clerk's Office

[Signature Page to Subordination, Non-Disturbance and Attornment Agreement]



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## ACKNOWLEDGMENTS

STATE OF GA )

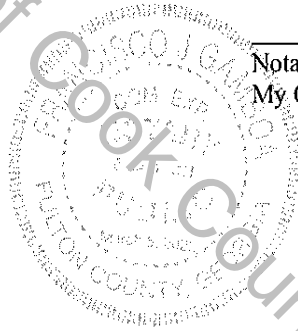
COUNTY OF FULTON ) ss.

On 6/15, 2021, before me, FRANCISCO J. GAMBOA, a Notary Public in and for said State, personally appeared AARON TANNER JACOBSON SWANSON of JPMorgan Chase Bank, N.A., a national banking association, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, of the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Francisco Gamboa

Notary Public  
My Commission Expires: Mar 5, 2022



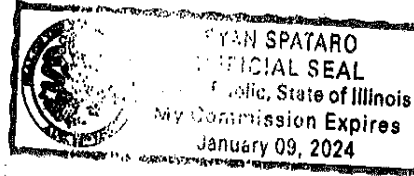
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STATE OF ILLINOIS )

COUNTY OF COOK ) ss.

On June 11<sup>th</sup>, 2021, before me, Ryan Spataro, a Notary Public in and for said State, personally appeared Samuel R. Wilby, the Manager of What If Syndicate, LLC, a Delaware limited liability company, which is the Manager of Delilah's Gold Coast, LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, of the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal



Notary Public  
My Commission Expires: January 09, 2024



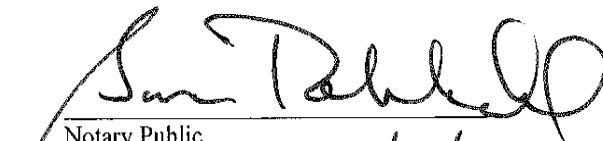
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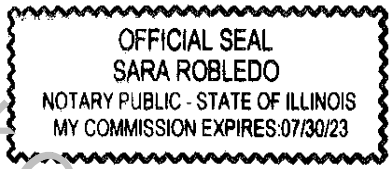
STATE OF ILLINOIS )

COUNTY OF COOK ) ss.

On June 17, 2021, before me, Sara Robledo, a Notary Public in and for said State, personally appeared Michael R. Haney, the Manager of Tower 10 Glades LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, of the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

  
Notary Public  
My Commission Expires: 07/30/23



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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 4, 5, AND 7 IN LOYOLA RESUBDIVISION, BEING A RESUBDIVISION OF LOTS 2, 3, 4, 5, "A", AND PART OF LOT 6 IN THE SUBDIVISION OF BLOCK 18 IN CANAL TRUSTEE'S SUBDIVISION (ANTE-FIRE), TOGETHER WITH LOTS 1, 2, 3, 4, 9 AND PARTS OF THE PRIVATE ALLEYS IN ANDREW LARSON'S SUBDIVISION OF LOT 1 IN THE SUBDIVISION OF BLOCK 18 AFORESAID (ANTE-FIRE), AND LOTS 1, 2, 3, AND 4 IN THE SUBDIVISION OF LOT 7 OF BLOCK 18 IN THE CANAL TRUSTEE'S SUBDIVISION AFORESAID (ANTE-FIRE) OF THE SOUTH FRACTIONAL  $\frac{1}{4}$  OF FRACTIONAL SECTION 3, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, SUCH PLAT HAVING BEEN APPROVED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON JULY 24, 2013 AND RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY ON AUGUST 6, 2013 AS DOCUMENT NO. 1321816010.

Commonly known as 345 N. State Street, Chicago, Illinois

Permanent Index Numbers: 17-03-223-03-032-0000  
17-03-223-03-033-0000  
17-03-223-03-035-0000