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2132019050

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Doc# 2132019050 Fee \$71.00

Thorntons LLC
ATTN: Legal Department
2600 James Thornton Way
Louisville, Kentucky 40245

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 11/16/2021 03:17 PM PG: 1 OF 11

Document Prepared by:
Richard P. Claes
BSTP Midwest, LLC
963 Topsy Lane, Unit 306
Carson City, Nevada 89705

Markham, Illinois

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made this 15th day of November, 2021, by and among OLD NATIONAL BANK, a national banking association (together with its successors and assigns hereinafter referred to as "Mortgagee"); THORNTONS LLC, a Delaware limited liability company ("Tenant"); and BSTP MARKHAM, LLC, a Delaware limited liability company ("Landlord").

WITNESSETH:

WHEREAS, Mortgagee has made a loan (the "Loan") in the original principal sum of \$2,512,975.00 to Landlord secured, in part, by that certain Mortgage, Assignment of Leases And Rents, Security Agreement, And Financing Statement dated as of November 15, 2021, and recorded in the Office of the Recorder of Deeds for Cook County, Illinois, as Document Number 2132022032 (together with all other instruments securing the Loan the "Mortgage") covering a parcel or parcels of land owned by Landlord and described on Exhibit "A" (the "Mortgaged Property"); and

WHEREAS, Bluestone Single Tenant Properties, LLC (the "Original Landlord"), as landlord, and Tenant, as tenant, entered into that certain Ground Lease Agreement dated October 31, 2021 (collectively, the "Lease"), whereby Original Landlord leased the Mortgaged Property to Tenant (said premises and the improvements on or to be erected thereon being hereinafter called the "Premises" and also described on Exhibit A); and

WHEREAS, Original Landlord has assigned the Lease to Landlord pursuant to that certain Assignment and Assumption of Ground Lease dated November 8, 2021; and

WHEREAS, a Memorandum of the Lease has been or will be recorded in the official records of Cook County, Illinois; and

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WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

WHEREAS, the parties hereto desire to acknowledge the subordination of the Lease to the lien of the Mortgage and to provide for the non-disturbance of Tenant by Mortgagee.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Mortgagee hereby consents to and approves the Lease.
2. Tenant covenants and agrees with Mortgagee that the Lease is hereby made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage (as same may be modified and extended), without regard to the order of priority of recording the Mortgage or the Memorandum of the Lease, subject, however, to the provisions of this Agreement. Tenant agrees that if there is a default by Landlord in the performance and observance of any of the terms of such Loan, Mortgagee, following written notice to Tenant of Landlord's default under the Loan, at its option, may demand in writing that all rents due under the Lease be paid by Tenant directly to Mortgagee, or as otherwise specified by Mortgagee. Landlord and Tenant agree that upon Mortgagee's written request for payment of rent directly to Mortgagee as provided herein, Tenant will timely remit any and all payments due under the Lease directly to, and payable to the order of, Mortgagee. Such payments to Mortgagee will constitute performance of Tenant's payment obligations under the Lease.
3. Tenant certifies that the Lease is presently in full force and effect.
4. Mortgagee agrees that so long as the Lease shall be in full force and effect and Tenant is not in default thereunder beyond any applicable notice or cure period:
 - (a) Tenant shall not be named or joined as a party defendant or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby, unless Tenant is deemed to be a necessary party under applicable law in order for Mortgagee to avail itself of and complete the foreclosure or other remedy, but in the event of such joinder, Mortgagee shall not seek to terminate the Lease unless a default shall then exist under the Lease;
 - (b) The possession by Tenant of the 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 affected by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage or any other documents held by the Mortgagee, or by any judicial sale or execution or other sale of the Mortgaged Property, or by any deed given in lieu of foreclosure, or by the exercise of any other rights given to the Mortgagee by any other documents or as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby; and

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(c) All condemnation awards and insurance proceeds paid or payable with respect to the Premises, whether or not received by the Mortgagee, shall be applied and paid in the manner set forth in the Lease.

5. Mortgagee hereby acknowledges and agrees that all trade fixtures and equipment whether owned by Tenant or any subtenant or leased by Tenant from a lessor/owner (hereinafter called the "Equipment Lessor") installed in or on the Premises, regardless of the manner or mode of attachment, shall be and remain the property of Tenant or any such Equipment Lessor and may be removed by Tenant or any such Equipment Lessor at any time. In no event (including a default under the Lease or Mortgage) shall Mortgagee have any liens, rights or claims in Tenant's or Equipment Lessor's trade fixtures and equipment, whether or not all or any part thereof shall be deemed fixtures; and Mortgagee expressly waives all rights of levy, distraint, or execution with respect to said trade fixtures and equipment.

6. If the Mortgagee shall become the owner of the Premises by reason of foreclosure of the Mortgage or otherwise, or if the Landlord's interest in the Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage or by a deed or assignment 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 Tenant, as tenant thereunder, and the then owner of the Landlord's interest in the Premises, as landlord thereunder, upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) 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 renewal periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as landlord under the Lease; and

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the renewal periods, if Tenant elects or has elected to exercise its options to extend the term) which terms, covenants and provisions such new owner hereby agrees to assume and perform; provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) occurring prior to the date upon which the new owner succeeds to the interest of such prior landlord;

(ii) subject to any defenses or claims which Tenant may have against any prior landlord (including Landlord) resulting from any default or breach by such prior landlord occurring prior to the date upon which the new owner succeeds to the interest of such prior landlord, unless such default or breach continues from and after a date which is the later of (A) thirty (30) days from notice of such default or breach of prior landlord, or (B) the date of succession;

(iii) subject to any offsets which Tenant may have against any prior landlord (including Landlord) resulting from any default or breach by such prior landlord and occurring prior to the date upon which the new owner succeeds to the interest of such prior landlord; however, such new owner shall be subject to offsets to the extent such offsets are expressly permitted under the Lease and Mortgagee or such new owner has received notice thereof and the

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opportunity to cure within the applicable time periods set forth in the Lease (it being further agreed that offsets under the Lease that were deducted by Tenant prior to the date upon which the new owner succeeds to the interest of such prior landlord shall not be subject to challenge);

(iv) bound by any rent which Tenant might have paid for more than one month in advance of its due date under the Lease to any prior landlord (including Landlord), unless such new owner acknowledges receipt of such prepayment;

(v) bound by any material amendment, modification, termination, or cancellation of the Lease made without Mortgagee's, or such new owner's consent, such consent not to be unreasonably withheld, conditioned or delayed; and

(vi) be obligated to construct or finish the construction or to renovate or finish the renovation of any part of the Premises.

7. Notice must be provided as specified in Section 3.9 of the Lease. Mortgagee's address for notices is as follows:

Mortgagee:

Old National Bank
333 East Main Street, Suite 100
Preston Pointe
Louisville, Kentucky 40202
Attn: Darrin J. McCauley

With a copy to:

Stites & Harbison, PLLC
400 West Market Street
Suite 1800
Louisville, Kentucky 40202
Attn: David E. Saffer, Esq.

8. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.

9. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or cancelled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

[SIGNATURES AND NOTARY ON FOLLOWING PAGES]

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EXHIBIT "A" TO SNDA MORTGAGED PROPERTY & PREMISES

TRACT 1:

PARCEL 1:

LOTS 1 AND 3 IN SUBURBAN BANK MARKHAM SUBDIVISION, BEING A SUBDIVISION OF LOTS 11 TO 30 (BOTH INCLUSIVE), TOGETHER WITH THE VACATED NORTH-SOUTH AND EAST-WEST ALLEYS ADJOINING SAID LOTS, IN BLOCK 4 IN CROISSANT PARK MARKHAM EIGHTH ADDITION, A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 14, 2008 AS DOCUMENT NUMBER 0819645117, (EXCEPTING THEREFROM THAT PART OF LOT 1 CONVEYED TO THE ILLINOIS DEPARTMENT OF TRANSPORTATION IN WARRANTY DEED RECORDED NOVEMBER 6, 2017 AS DOCUMENT 1731046278, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 1; THENCE NORTH 0 DEGREES 49 MINUTES 07 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 1.30 FEET; THENCE NORTH 89 DEGREES 01 MINUTES 04 SECONDS EAST, 153.15 FEET TO THE EAST LINE OF SAID LOT 1; THENCE SOUTH 0 DEGREES 49 MINUTES 29 SECONDS EAST ALONG SAID EAST LINE, 1.30 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 89 DEGREES 01 MINUTE 04 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 153.15 FEET TO THE POINT OF BEGINNING), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EAST 1/2 OF THAT PART OF TROY STREET WHICH WAS VACATED PURSUANT TO ORDINANCE NO. 20-0-2273 RECORDED AS DOCUMENT NUMBER ~~2132022031~~ DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 3 IN SUBURBAN BANK MARKHAM SUBDIVISION RECORDED JULY 14, 2008 AS DOCUMENT NUMBER 0819645117; THENCE SOUTH 00 DEGREES 13 MINUTES 46 SECONDS WEST ALONG LOTS 3 AND 1 IN SAID SUBURBAN BANK MARKHAM SUBDIVISION TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 89 DEGREES 57 MINUTES 40 SECONDS WEST TO THE SOUTHEAST CORNER OF LOT 28 IN CROISSANT PARK MARKHAM 8TH ADDITION RECORDED MAY 20, 1926 AS DOCUMENT 9282048; THENCE NORTH 00 DEGREES 13 MINUTES 55 SECONDS EAST ALONG THE EAST LINES OF LOTS 28-33 IN SAID CROISSANT PARK MARKHAM 8TH ADDITION; THENCE SOUTH 89 DEGREES 46 MINUTES 05 SECONDS EAST TO THE POINT OF BEGINNING, ALL IN THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS;

EXCEPTING FROM SAID PARCEL 2 THOSE PORTIONS ADJACENT AND ADJOINING THE LAND CONVEYED IN WARRANTY DEED RECORDED AS DOCUMENT NO. 1731046278.

TRACT 2:

PARCEL 1:

LOTS 14 THROUGH 34, BOTH INCLUSIVE, IN BLOCK 2 IN CROISSANT PARK MARKHAM 8TH ADDITION, BEING A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 13, LYING SOUTH OF THE INDIAN BOUNDARY LINE, IN TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO

* Plat Rec # 2132022031

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THE PLAT THEREOF RECORDED MAY 20, 1926 AS DOCUMENT 9282048, EXCEPTING THEREFROM THAT PART OF LOTS 22 AND 23 IN SAID BLOCK 2 DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 23; THENCE NORTH ALONG THE WEST LINE OF SAID LOTS 22 AND 23 A DISTANCE OF 50 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 50 FEET AND TANGENT TO THE LAST DESCRIBED COURSE, A DISTANCE OF 78.54 FEET TO A POINT OF TANGENCY IN THE SOUTH LINE OF SAID LOT 23; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 23 A DISTANCE OF 50 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

THOSE PORTIONS OF THE NORTH-SOUTH AND EAST-WEST ALLEYS LOCATED AND ADJOINING LOTS 14 THRU 32 DESCRIBED ABOVE, VACATED BY ORDINANCE 94-0-1500, RECORDED APRIL 3, 1998 AS DOCUMENT 98266797 AND VACATED BY ORDINANCE 98-0-1661, RECORDED NOVEMBER 18, 1998 AS DOCUMENT 08039864.

EXCEPTING FROM PARCELS 1 AND 2 THOSE PORTIONS TAKEN BY CONDEMNATION IN CASE 17L050860, DESCRIBED AS FOLLOWS:

PARCEL NO. 0LC0019A

THAT PART OF LOTS 15 THROUGH 23 IN SAID BLOCK 2, DESCRIBED AS FOLLOWS, USING BEARINGS AND GRID DISTANCES REFERENCED TO ILLINOIS STATE PLANE COORDINATE SYSTEM, EAST ZONE, NAD 83 (2011) WITH A COMBINED FACTOR OF 0.9999851591: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 14; THENCE SOUTH 0 DEGREES 46 MINUTES 33 SECONDS EAST ALONG THE WEST LINE OF SAID BLOCK 2, A DISTANCE OF 31.99 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 2 DEGREES 05 MINUTES 43 SECONDS EAST, 35.04; THENCE SOUTH 0 DEGREES 50 MINUTES 13 SECONDS EAST, 81.54 FEET; THENCE SOUTHEASTERLY 97.45 FEET ON A CURVE TO THE LEFT, HAVING A RADIUS OF 239.42 FEET, THE LONG CHORD OF SAID CURVE BEARS SOUTH 12 DEGREES 28 MINUTES 57 SECONDS EAST, 96.78 FEET TO THE EASTERLY RIGHT OF WAY LINE OF KEDZIE AVENUE, AS DESCRIBED IN DEED RECORDED JULY 26, 1967 AS DOCUMENT 67L5420; THENCE NORTHWESTERLY 47.34 FEET ALONG SAID EASTERLY RIGHT OF WAY LINE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 50.00 FEET, THE LONG CHORD OF SAID CURVE BEARS NORTH 27 DEGREES 32 MINUTES 27 SECONDS WEST, 45.59 FEET TO THE WEST LINE OF SAID BLOCK 2; THENCE NORTH 0 DEGREES 46 MINUTES 33 SECONDS WEST ALONG SAID WEST LINE, 170.62 FEET TO THE POINT OF BEGINNING; AND

PARCEL NO. 0LC0019B

THAT PART OF LOTS 23 THROUGH 28 AND PART OF THE VACATED ALLEY, ALL IN BLOCK 2, DESCRIBED AS FOLLOWS, USING BEARINGS AND GRID DISTANCES REFERENCED TO ILLINOIS STATE PLAN COORDINATE SYSTEM, EAST ZONE, NAD (2011) WITH A COMBINED FACTOR OF 0.9999851591, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 28; THENCE SOUTH 89 DEGREES 01 MINUTES 04 SECONDS WEST ALONG THE SOUTH LINE OF SAID BLOCK 2, A DISTANCE OF 197.69 FEET TO THE EASTERLY RIGHT OF WAY LINE OF KEDZIE AVENUE, AS DESCRIBED IN DEED RECORDED JULY 26, 1967 AS DOCUMENT 67L5420; THENCE WESTERLY 10.51 FEET ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 50.00 FEET, THE LONG CHORD OF SAID

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CURVE BEARS NORTH 84 DEGREES 57 MINUTES 43 SECONDS WEST, 10.49 FEET; THENCE NORTH 89 DEGREES 01 MINUTES 04 SECONDS EAST, 208.13 FEET TO THE EAST LINE OF SAID LOT 28; THENCE SOUTH 0 DEGREES 49 MINUTES 07 SECONDS EAST ALONG SAID EAST LINE, 1.10 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE WEST 1/2 OF THAT PART OF TROY STREET WHICH WAS VACATED PURSUANT TO ORDINANCE NO. 20-0-2273 RECORDED AS DOCUMENT NUMBER 2132022030 DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 3 IN SUBURBAN BANK MARKHAM SUBDIVISION RECORDED JULY 14, 2008 AS DOCUMENT NUMBER 0819645117; THENCE SOUTH 00 DEGREES 13 MINUTES 46 SECONDS WEST ALONG LOTS 3 AND 1 IN SAID SUBURBAN BANK MARKHAM SUBDIVISION TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 89 DEGREES 57 MINUTES 40 SECONDS WEST TO THE SOUTHEAST CORNER OF LOT 28 IN CROISSANT PARK MARKHAM 8TH ADDITION RECORDED MAY 20, 1926 AS DOCUMENT 9282048; THENCE NORTH 00 DEGREES 13 MINUTES 55 SECONDS EAST ALONG THE EAST LINES OF LOTS 28-33 IN SAID CROISSANT PARK MARKHAM 8TH ADDITION; THENCE SOUTH 89 DEGREES 46 MINUTES 05 SECONDS EAST TO THE POINT OF BEGINNING, ALL IN THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS;

EXCEPTING FROM SAID PARCEL 3 THOSE PORTIONS LYING ADJACENT AND ADJOINING THE LAND TAKEN IN CONDEMNATION CASE 17L050860.

Addresses commonly known as:

* Plat Rec# 2132022031

3122 W. 159th St., Markham, IL 60428
 15834 Albany Avenue, Markham, IL 60428
 3138 W. 159th St., Markham, IL 60428
 3142 W. 159th St., Markham, IL 60428
 15830, Troy Avenue, Markham, IL 60428
 15832, Troy Avenue, Markham, IL 60428
 15836, Troy Avenue, Markham, IL 60428
 15840 Troy Avenue, Markham, IL 60428
 15842 Troy Avenue, Markham, IL 60428
 15839 Kedzie Avenue, Markham, IL 60428
 15841 Kedzie Avenue, Markham, IL 60428

PINs:

28-13-325-043-0000
 28-13-325-045-0000
 28-13-324-014-0000
 28-13-324-015-0000
 28-13-324-016-0000
 28-13-324-017-0000
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- 28-13-324-040-0000
- 28-13-324-041-0000
- 28-13-324-042-0000
- 28-13-324-043-0000
- 28-13-324-044-0000

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

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