

# UNOFFICIAL COPY

This document prepared by and after  
recording return to:

Thompson Coburn LLP  
55 E. Monroe Street, 37<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attn: Gary L. Plotnick, Esq.

CCN12106802CD 4 8/17



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KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 04/20/2022 11:30 AM PG: 1 OF 14

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") dated this 2<sup>nd</sup> day of February, 2022, is made by and among **DO TANK DO LLC, an Illinois limited liability company** ("Tenant"), **9-25 W. HUBBARD, LLC, an Illinois limited liability company** ("Landlord"), and **FIFTH THIRD BANK, NATIONAL ASSOCIATION**, its successors and assigns ("Lender").

WHEREAS, Lender has agreed to make a loan to Landlord (the "Loan"), secured by, among other things, a Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents (herein, as may from time to time be extended, amended, restated or supplemented, the "Security Instrument"), covering, the land (the "Land") described in Exhibit A which is attached hereto and incorporated herein by reference, and the improvements thereon ("Improvements") (such Land and Improvements being herein together called the "Property");

WHEREAS, Tenant is the tenant under a Commercial Lease from Landlord (or Landlord's predecessor in ownership of the Property) dated March 18, 2019 (herein, as may from time to time be extended, amended, restated or supplemented, the "Lease"), covering a portion of the Property (said portion being herein referred to as the "Premises"); and

WHEREAS, the term "Landlord" as used herein means the present landlord under the Lease or, if the Landlord's interest is transferred in any manner, the successor(s) or assign(s) occupying the position of Landlord under the Lease at the time in question.

NOW, THEREFORE, in consideration of the mutual agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Subordination. Tenant agrees and covenants, subject to the terms of this Agreement, that the Lease and the rights of Tenant thereunder, all of Tenant's right, title and interest in and to the property covered by the Lease, and any Lease thereafter executed by Tenant covering any part of the Property, are and shall be subject, subordinate and inferior in all respects to (a) the Security Instrument and the rights of Lender thereunder, and all right, title and interest of Lender in the Property, and (b) all other security documents now or hereafter securing payment of any indebtedness of the Landlord (or any prior landlord) to Lender which cover or affect all or any portion of the Property (collectively, the "Loan Documents"), including the

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Loan. This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust or other security document other than those referred to in the immediately preceding sentence, securing the indebtedness owing to Lender. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that all of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any portion of the Property, shall be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards pursuant to the Loan Documents.

2. 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 Lease on Tenant's part to be performed (beyond the period, if any, specified in the Lease within which Tenant may cure such default):

(a) Tenant's possession of the Premises under the Lease shall not be disturbed or interfered with by Lender in the exercise of any of its foreclosure rights under the Security Instrument or in connection with the conveyance of the Property by deed in lieu of foreclosure, and

(b) Lender will not join Tenant as a party defendant for the purpose of terminating Tenant's interest and estate under the Lease in any proceeding for foreclosure of the Security Instrument.

3. Attornment.

(a) Tenant covenants and agrees that in the event of the foreclosure of the Security Instrument, whether by power of sale or by court action, or upon a transfer of the Property by a deed in lieu of foreclosure (the purchaser at foreclosure or the transferee in such deed in lieu of foreclosure, including Lender if it is such purchaser or transferee, being herein called the "New Owner"), Tenant shall attorn to the New Owner as Tenant's new landlord, and agrees that the Lease shall continue in full force and effect as a direct lease between Tenant and New Owner upon all of the terms, covenants, conditions and agreements set forth in the Lease and this Agreement, except for provisions which are impossible for New Owner to perform; provided, however, that in no event shall the New Owner be:

(i) liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to New Owner'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 the 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 4(b) below;

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(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) bound by any amendment or modification of the Lease hereafter made, without the written consent of Lender (if such consent is required pursuant to the terms of the Loan Documents); or

(v) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) which has not been transferred to New Owner.

(b) The provisions of this Agreement regarding attornment by Tenant shall be self-operative and effective without the necessity of execution of any new lease or other document on the part of any party hereto or the respective heirs, legal representatives, successors or assigns of any such party. Tenant agrees, however, to execute and deliver upon the request of New Owner, any reasonable instrument or certificate which in the reasonable judgment of New Owner may be necessary or appropriate to evidence such attornment, including a new lease of the Premises on the same terms and conditions as set forth in the Lease for the unexpired term of the Lease.

4. Acknowledgment and Agreement by Tenant. Tenant acknowledges and agrees as follows:

(a) Tenant will not amend, alter or waive any provision of, or consent to the amendment, alteration or waiver of any provision of, the Lease without the prior written consent of Lender, unless such amendment is permitted pursuant to the Loan Documents. Tenant shall not prepay any rents or other sums due under the Lease for more than one (1) month in advance of the due date therefor. Tenant acknowledges that Lender will rely upon this instrument in connection with the Loan as secured, in part, by the Security Instrument.

(b) From and after the date hereof, in the event of a default by Landlord under the Lease which would give Tenant the right, either immediately or after the lapse of time, the giving of notice, or both, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right (i) until it has given written notice of such act or omission to the Lender; and (ii) until Tenant has given Lender a period of thirty (30) days after the expiration of Landlord's applicable cure period to cure such default, or such longer period of time as may be necessary to cure or remedy such default, during which period of time Lender shall be permitted to cure or remedy such default; provided, however, that Lender shall have no duty or obligation to cure or remedy any default. It is specifically agreed that Tenant shall not, as to Lender, require cure of any such default which is personal to Landlord, and therefore not susceptible to cure by Lender.

(c) In the event that Lender notifies Tenant of a default under the Security Instrument or any of the other Loan Documents and demands that Tenant pay its rent and all other sums due under the Lease directly to Lender, Tenant shall honor such demand

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and pay the full amount of its rent and all other sums due under the Lease directly to Lender, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Security Instrument or other Loan Documents, and notwithstanding any contrary instructions of or demands from Landlord.

(d) 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 Security Instrument and is hereby waived and released as against Lender and New Owner.

(e) Lender and any New Owner shall have no obligation nor incur any liability with respect to the erection or completion of any improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy, either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

(f) Lender and any New Owner shall have no obligation nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession provided that to the extent that the breach of any such warranty shall give the Tenant the right to terminate the Lease pursuant to the terms of the Lease, Tenant shall retain such right to terminate pursuant to the terms of the Lease.

(g) In the event that Lender or any New Owner shall acquire title to the Premises or the Property, Lender or such New Owner shall have no obligation, nor incur any liability, beyond Lender's or New Owner's then equity interest, if any, in the Premises or Property, as the case may be, and Tenant shall look exclusively to such equity interest of Lender or New Owner, if any, for the payment and discharge of any obligations imposed upon Lender or New Owner hereunder or under the Lease or for recovery of any judgment from Lender, or New Owner, and in no event shall Lender, New Owner, or any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for any such judgment.

5. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and grantor under the Security Instrument, acknowledges and agrees for itself and its heirs, representatives, successors and assigns, that: (a) this Agreement does not constitute a waiver by Lender of any of its rights under the Security Instrument or any of the other Loan Documents, or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Security Instrument and the other Loan Documents; (b) the provisions of the Security Instrument and the other Loan Documents remain in full force and effect and must and shall be complied with by Landlord; and (c) Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Lender upon

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receipt of a notice as set forth in Section 4(c) above from Lender and that Tenant is not obligated to inquire as to whether a default actually exists under the Security Instrument or any of the other Loan Documents. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment to Lender in accordance with this Agreement. Landlord represents and warrants to Lender that a true and complete copy of the Lease has been delivered by Landlord to Lender.

6. Lease Status. Landlord and Tenant represent and warrant to Lender that neither Landlord nor Tenant has knowledge of any default or event which with the giving of notice or the passage of time, or both, would constitute a default on the part of the other under the Lease, that the Lease is bona fide and contains all of the agreements of the parties thereto with respect to the letting of the Premises and that all of the agreements and provisions therein contained are in full force and effect.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth at the end of this Agreement or as such party may from time to time designate by written notice to the other parties. Any party by notice to the others in the manner provided herein may designate additional or different addresses for subsequent notices or communications.

8. Miscellaneous.

(a) This Agreement supersedes any inconsistent provision of the Lease.

(b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair, or affect the lien, security interest or provisions of the Security Instrument or any of the other Loan Documents.

(c) This Agreement shall bind and shall inure to the benefit of the parties hereto, their respective successors and permitted assigns, and any New Owner, and its heirs, personal representatives, successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, all obligations and liabilities of the assigning Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Lender's interest is assigned or transferred.

(d) THIS AGREEMENT AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS AND APPLICABLE UNITED STATES FEDERAL LAW EXCEPT ONLY TO THE EXTENT, IF ANY, THAT THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED NECESSARILY CONTROL.

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(e) The words “herein”, “hereof”, “hereunder” and other similar compounds of the word “here” as used in this Agreement refer to this entire Agreement and not to any particular section or provision.

(f) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

(g) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]**

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the date first above written.

**ADDRESS OF LENDER:**

222 S. Riverside Plaza  
Chicago, IL 60606  
Attention: David M. Patchin

**LENDER:**

**FIFTH THIRD BANK, NATIONAL ASSOCIATION**

By: [Signature]  
Name: David M. Patchin  
Title: SVP

**ADDRESS OF TENANT:**

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**TENANT:**

**DO TANK DO LLC, an Illinois limited liability company**

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

**ADDRESS OF LANDLORD:**

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**LANDLORD:**

**9-25 W. HUBBARD, LLC, an Illinois limited liability company**

By: \_\_\_\_\_  
Name: Khaldoun Fakhoury  
Title: Manager

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the date first above written.

**ADDRESS OF LENDER:**

\_\_\_\_\_

Attention: \_\_\_\_\_

**LENDER:**

**FIFTH THIRD BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ADDRESS OF TENANT:**

15 W HUBBARD ST

Attention: \_\_\_\_\_

**TENANT:**

**DO TANK DO LLC, an Illinois limited liability company**

By: Matthew Kelly

Name: MATTHEW KELLY

Title: PARTNER

**ADDRESS OF LANDLORD:**

\_\_\_\_\_

Attention: \_\_\_\_\_

**LANDLORD:**

**9-25 W. HUBBARD, LLC, an Illinois limited liability company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the date first above written.

**ADDRESS OF LENDER:**

\_\_\_\_\_

Attention: \_\_\_\_\_

**LENDER:**

**FIFTH THIRD BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ADDRESS OF TENANT:**

\_\_\_\_\_

Attention: \_\_\_\_\_

**TENANT:**

**DO TANK DO LLC, an Illinois limited liability company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ADDRESS OF LANDLORD:**

1010 Hillside

Northbrook, IL 60062

Attention: \_\_\_\_\_

**LANDLORD:**

**9-25 W. HUBBARD, LLC, an Illinois limited liability company**

By: [Signature]

Name: Khalidoun Fakher

Title: Manager

Property of COOK COUNTY Clerk's Office

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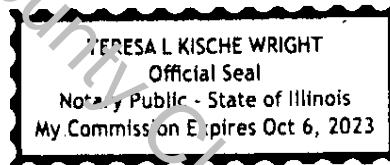
STATE OF Illinois )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that David M. Latchin, the SVP of **FIFTH THIRD BANK, NATIONAL 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/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11 day of April, 2022.

Teresa L Kische Wright  
Notary Public

My Commission Expires: 10/6/2023



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STATE OF IL )  
 ) SS.  
COUNTY OF Cook )

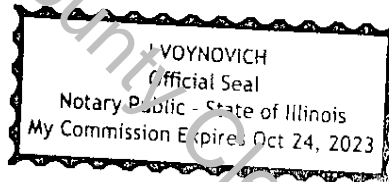
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Matthew Kelly, the Partner of **DO TANK DO LLC, an Illinois limited liability company**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2<sup>nd</sup> day of Feb, 2022.

J. Voynovich  
Notary Public

My Commission Expires:

Oct 24, 2023



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## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189



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 ORANGE )

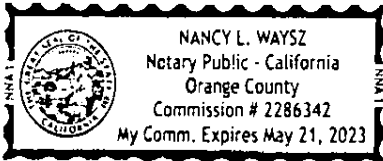
On 3-24-2022 before me, Nancy L. Waysz, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared KHALDOUN FAKHOURY  
Name(s) of Signer(s)

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 Nancy L. Waysz  
Signature of Notary Public

Place Notary Seal Above

### OPTIONAL

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

#### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

#### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



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## GUARANTOR'S CONSENT

MATTHEW KELLY, guarantor of the Lease, signs below to express its consent to the foregoing Agreement and its agreement that its guaranty of the Lease is and shall remain in full force and effect in accordance with its terms.

**MATTHEW KELLY, as an individual**

By: *Matthew Kelly*  
Name: MATTHEW KELLY  
Title: PARTNER

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that MATTHEW KELLY, 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/she signed and delivered the said instrument as his/her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2<sup>nd</sup> day of Feb, 2022.

*J. Voynovich*  
Notary Public  
My Commission Expires:  
Oct 24, 2023



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## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

LOTS 14 AND 15 IN BLOCK 1 IN WOLCOTT'S ADDITION TO CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EAST HALF OF LOT 12 AND ALL OF LOT 13 IN BLOCK 1 IN WOLCOTT'S ADDITION TO CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 11 (EXCEPT THE EAST 1 FOOT) IN BLOCK 1 IN WOLCOTT'S ADDITION TO CHICAGO IN THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

THE WEST HALF OF LOT 12 AND THE EAST 1 FOOT OF LOT 11 IN BLOCK 1 IN WOLCOTT'S ADDITION TO CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 9-25 West Hubbard Street, Chicago, Illinois 60654 (Parcel 1 through Parcel 4)

PIN NOS.: 17-09-262-003-0000 (Parcel 3), 17-09-262-004-0000 (Parcel 4), 17-09-262-005-0000 (part of Parcel 2), 17-09-262-006-0000 (part of Parcel 2), and 17-09-262-007-0000 (Parcel 1)