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Karen A. Yarbrough  
Cook County Clerk  
Date: 01/03/2023 11:27 AM Pg: 1 of 8

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This Document Prepared by  
and When Recorded Return To:

Riemer & Braunstein LLP  
660 Newport Center Dr., Suite 340  
Newport Beach, CA 92660  
Attention: Mark Appelbaum

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## AMENDED AND RESTATED SUBORDINATION AGREEMENT

**THIS AMENDED AND RESTATED SUBORDINATION AGREEMENT** (this “**Agreement**”) is made and entered into as of December 22, 2022, by and among 39 CHICAGO MASTER TENANT LLC, a Delaware limited liability company (“**Lessee**”), KHP III 39 CHICAGO LLC, a Delaware limited liability company (“**Lessor**”), and PNC BANK, NATIONAL ASSOCIATION (together with any permitted successors or assigns, “**Lender**”).

### **RECITALS**

WHEREAS, Lessor is the leasehold owner of certain improved real property located in Chicago, Illinois, more particularly described on Exhibit A attached hereto, together with certain improvements thereon and all appurtenances, easements, rights of way and other rights belonging to or in any way pertaining thereto (the “**Real Estate**”); and

WHEREAS, Lessee subleases the Real Estate from Lessor pursuant to the terms of that certain Master Lease, dated July 2, 2015, by and between Lessor and Lessee, as evidenced by that certain Memorandum of Master Lease recorded with the Cook County Recorder of Deeds (the “**Recorder**”) on July 6, 2015 as Doc No. 1518716068, as the same may be amended, restated or replaced from time to time (the “**Lease**”); and

WHEREAS, Lessor entered into and delivered that certain Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of October 25, 2018, in favor of Lender and recorded with the Recorder on October 25, 2018 as Doc No. 1829845098 (as the same has been and may hereafter be amended, restated or replaced from time to time, the “**Mortgage**”), as security for a loan from Lender to Lessor in the original principal amount of up to Sixty-Eight Million Dollars (\$68,000,000) (as increased from time to time, the “**Loan**”) as evidenced by an Amended and Restated Secured Promissory Note in the principal amount of the Loan (as the same may be amended, restated or replaced from time to time, the

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“Note”) (the Mortgage and all other documents evidencing, securing or otherwise executed in connection with the Loan, are hereinafter collectively referred to as the “**Loan Documents**”); and

WHEREAS, the Mortgage encumbers the Real Estate and the Loan Documents require that the Lease be subordinate to the Mortgage.

NOW, THEREFORE, in consideration of the forgoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

1. **SUBORDINATION.** The Lease is hereby made subject, junior and subordinate to the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage so that all rights of Lessee under the Lease are subject, junior and subordinate to the rights of Lender under the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage as fully as if such instrument had been executed, delivered and recorded prior to the execution of the Lease or possession of all or part of the Real Estate by the Lessee or its predecessors in interest.

2. **TERMINATION ON FORECLOSURE.** Lender shall have the right, in its sole and exclusive discretion, to cancel or terminate the Lease, without Lender being subject to any termination fee, penalty, fine or assessment whatsoever, in connection with any foreclosure of the Mortgage or transfer in lieu thereof. Upon such cancellation and termination, all rights of Lessee to occupy and/or control the Real Estate or to collect any rents and profits therefrom shall immediately terminate. Lender shall provide written notice to Lessor and Lessee of any such election by Lender to cancel or terminate the Lease upon the consummation of any foreclosure of the Mortgage or transfer in lieu thereof.

3. **LEASE PAYMENTS.** If in the future there is a default by the Lessor in the performance and observance of the terms of the Mortgage after giving Lessor applicable notice and expiration of applicable cure rights, Lender may require that all rents and other payments due under the Lease be paid directly to Lender. Upon notification to that effect by Lender, Lessor hereby authorizes and directs Lessee and Lessee agrees to pay any payments due under the terms of the Lease to Lender. The assignment does not diminish any obligations of the Lessor under the Lease or impose any such obligations on Lender prior to cancellation or termination under Section 2 above. Any payments by Lessee to Lender in accordance with this Agreement shall be deemed and shall constitute a payment of rent under the Lease.

4. **SUCCESSORS AND ASSIGNS.** This Agreement and each and every covenant, agreement and other provisions hereof shall be binding upon the parties hereto and their heirs, administrators, representatives, successors and assigns, including without limitation each and every holder, from time to time, of the Lease or any other person having an interest therein and shall inure to the benefit of Lender and their respective successors and assigns.

5. **FEES AND EXPENSES.** Lessor hereby agrees to pay the reasonable legal fees and other expenses of Lender incurred in connection with the preparation of this Agreement.

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6. CHOICE OF LAW. This Agreement is made and executed under, and in all respects is to be governed and construed by, the laws of the State of Illinois (excluding its choice-of-law principles).

7. CAPTIONS AND HEADINGS. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

8. EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

9. SEVERABILITY. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

10. AMENDMENTS. No provision of this Agreement may be amended, changed, waived, discharged, or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

11. NOTICES. Any and all notices, elections, demands, or requests permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar service requiring a receipt, to the other party at the address indicated below, or to such other party and at such other address within the United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) business days after the date of mailing by registered or certified mail, (iii) one (1) business day after the date of mailing by Express Mail or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal upon presentation for delivery).

(a) If to Lessee:

39 Chicago Master Tenant LLC  
 c/o KHP III 39 Chicago LLC  
 101 California Street, Suite 980  
 San Francisco, CA 94111  
 Attention: Judith Miles  
 With copies to:

Latham & Watkins LLP  
 330 North Wabash Avenue, Suite 2800

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Chicago, IL 60611  
Attention: Gary Axelrod

(b) If to Lessor:

KHP III 39 Chicago LLC  
101 California Street, Suite 980  
San Francisco, CA 94111  
Attention: Judith Miles

With copies to:

Latham & Watkins LLP  
320 North Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Attention: Gary Axelrod

(c) If to Lender:

PNC Bank, National Association  
100 Pine Street, 10<sup>th</sup> Floor  
San Francisco, CA 94111  
Attention: Michael Wiedman

12. AMENDMENT AND RESTATEMENT. This Agreement amends and restates in its entirety that certain Subordination, Nondisturbance and Attornment Agreement by and among the Lessee, 39 Chicago Building LLC, a Delaware limited liability company (“**Original Borrower**”), and Lender, dated October 25, 2018, and recorded with the Recorder on October 25, 2018 as Doc No. 1829845100 (the “**Existing Agreement**”). In connection with the execution of this Agreement, Lender agrees that Original Borrower is hereby released from its obligations under the Existing Agreement.


*[Signature Pages Follow]*

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The undersigned, Master Tenant, has executed this Amended and Restated Subordination Agreement as of the date first above written.

**“MASTER TENANT”**

**39 CHICAGO MASTER TENANT LLC,**  
a Delaware limited liability company

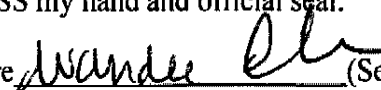
By:   
Name: Judith C. Miles  
Title: Executive Member and Secretary

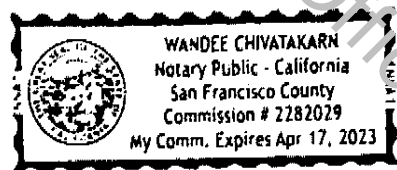
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF San Francisco )

On December 14, 2022, before me, Wandee Chivatakarn, Notary Public, personally appeared Judith C. Miles, 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  (Seal)

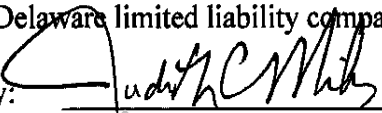


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The undersigned, Lessor, has executed Amended and Restated Subordination Agreement as of the date first above written.

**“LESSOR”**

**KHP III 39 CHICAGO LLC,**  
a Delaware limited liability company

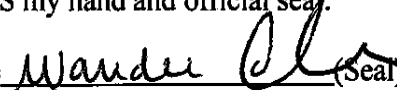
By:   
Name: Judith C. Miles  
Title: Executive Member and Secretary

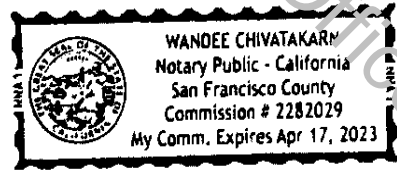
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF San Francisco )

On December 14, 2022, before me, Wandee Chivatakarn, Notary Public, personally appeared Judith C. Miles, 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  (Seal)




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The undersigned, Lender, has executed this Amended and Restated Subordination Agreement as of the date first above written.

**“LENDER”**

**PNC BANK, NATIONAL ASSOCIATION**

By:   
Name: Michael Wiedman  
Title: Senior Vice President

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 Colorado )  
COUNTY OF Denver )

On 20 December 2022, before me Jackeline Cortez Zamudio Notary Public, personally appeared Michael Wiedman, 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 Jackeline Cortez (Seal)

**JACKELINE CORTEZ-ZAMUDIO  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20214038928  
MY COMMISSION EXPIRES 10/01/2025**

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## EXHIBIT A

### Legal Description

Estate A:

(A) The fee estate in the improvements located on parcels 1 and 2 of the land described below; and

(B) The leasehold estate created by the instrument herein referred to as the lease, executed by the University of Chicago, a not for profit corporation of Illinois, as Lessor, and Roc II IL LaSalle, LLC, a Delaware limited liability company, dated January 9, 2014, an amended Memorandum of Lease recorded January 10, 2014 as document number 1401022120 and as further amended by that certain ground lease assignment to KHP III 39 Chicago LLC, a Delaware limited liability company, recorded January 10, 2014 as document number 1401022121, which lease demises the following described land for a term of years beginning January 9, 2014 and ending July 7, 2103.

Parcel 1:

The South 80.00 feet of Lots 6, 7 and 8 (except that part of Lot 8 taken and used for LaSalle Street) in Block 118 in School Section Addition to Chicago, in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, excepting ownership of the buildings and improvements located on the land.

Parcel 2:

The vacated public alley, lying North of and adjoining Lots 21 to 28, both inclusive; lying South of and adjoining Lots 29, 31, 32, and 33; lying East of the East line of LaSalle Street, as widened; and lying West of and adjoining Lots 18 and 19 in Assessor's Division of Block 118 in School Section Addition to Chicago, of the East 1/2 of the Northeast 1/4 of Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, more particularly described as follows:

Beginning at the Northwest corner of Lot 28 aforesaid; thence East along the North line of Lots 28, 27, 26, 25, 24, 23, 22 and 21, aforesaid to the Northeast corner of Lot 21 aforesaid; thence North along the West line of Lots 18 and 19 to the Southeast corner of Lot 33 aforesaid; thence West along the South line of Lots 33, 32 and 31 and part of Lot 29 to a point 45.10 feet East of the West line of said Lot 29; thence South parallel with said West line, a distance of 8.00 feet; thence West along the South line of said Lot 29 to the Southwest corner of Lot 29, being also the East line of South LaSalle Street, as widened; thence South along said East line of South LaSalle Street, as widened, to the point of beginning, excluding therefrom the East 22.75 feet thereof, in Cook County, Illinois, excepting ownership of the buildings and improvements located on the land

For Information Only:

Address: 39 S. LaSalle Street, Chicago, IL 60603

PIN: 17-16-204-034-0000