

UNOFFICIAL COPY

This document was prepared by:
Michael A. Moynihan, Esq.
Smith, Gambrell & Russell, LLP
311 S. Wacker Drive, Suite 3000
Chicago, Illinois 60606

Doc#: 2313745005 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 05/17/2023 09:10 AM Pg: 1 of 11

After recording, return to:
JPMorgan Chase Bank, National Association
1111 Polaris Parkway
Mail Code OH1-0241
Columbus, OH 43240-2050
Attn: Lease Administration Manager

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of this 17th day of May 2023, by and between **BankUnited, N.A., a national banking association ("Lender")**, **JPMorgan Chase Bank, National Association, a national banking association ("Tenant")**, and **Maynard-2934 N. Milwaukee LLC, a Delaware limited liability company ("Maynard")** and **C-K Sun Valley LLC, a Delaware limited liability company ("C-K")**, as tenants in common (collectively, "Landlord" and "Borrower").

RECITALS

- A. Landlord is the owner of those certain premises described on Exhibit 1 annexed hereto and made a part hereof and commonly known as 2934 N. Milwaukee Avenue, Chicago, IL 60618 (together with the improvements located thereon, the "Property");
- B. Under the terms of a certain Lease Agreement (the "Lease"), dated May 2, 2023, Landlord, or a predecessor in interest, leased to Tenant, or a predecessor in interest, all or a portion of the Property, as more particularly described in the Lease;
- C. Lender has made a mortgage loan to Landlord or is about to make a mortgage loan to Landlord secured by a mortgage or deed of trust encumbering the Property, which includes an assignment of Landlord's interest in the Lease (the "Mortgage");
- D. The Mortgage constitutes a lien upon the Property;
- E. Tenant desires to be assured of Tenant's rights under the terms of its Lease and is willing to enter into this Agreement to induce Lender to recognize Tenant's rights under the Lease; and
- F. Lender is willing to enter into this Agreement on the terms and conditions hereinafter provided.

UNOFFICIAL COPY

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Tenant and Landlord hereby agree as follows:

1. Provided Lender complies with the provisions of Paragraph 2 hereof, the Lease is and shall be subject and subordinate in all respects to the lien imposed by the Mortgage (the term Mortgage shall include any amendment, renewal, modification, replacement or extension hereafter made), and all advances made or to be made thereunder and all amounts secured thereby.

2. In the event of the foreclosure of the Mortgage or a sale of the Property under a power of sale in the Mortgage, or the acquisition of a deed to the Property in lieu of foreclosure by Lender prior to the expiration of the Lease, including any extensions and renewals of the Lease, provided Tenant is not in default beyond the expiration of any applicable notice or grace period under any of the terms, covenants and conditions of the Lease on its part to be observed and performed, Lender does hereby agree as follows:

- (a) Tenant's occupancy of the Premises shall not be disturbed by Lender;
- (b) The Lease shall continue in full force and effect and Lender shall not interfere with Tenant's rights and privileges thereunder and will thereby establish direct privity of estate and contract as between Lender and Tenant with the same force and effect and relative priority in time and right as though the Lease were originally made directly from Lender to Tenant (but subject to the provisions of this Agreement); and
- (c) Lender shall not join Tenant as a party defendant in any action for the purpose of terminating Tenant's interest under the Lease due to any default by Landlord or its successors under the Mortgage unless the joinder is required by law in order to perfect foreclosure of the Mortgage; provided, however, Lender shall not in any way or to any extent be;
 - (i) Liable to Tenant for any past act or omission to act or default on the part of the original or any prior landlord under the Lease and Tenant shall have no right to assert any damages arising therefrom against Lender;
 - (ii) Liable to Tenant for any prepayment of rent or deposit, rental security or any other sums deposited with the original or any prior landlord (unless paid pursuant to the express terms of the Lease), and not delivered to Lender;
 - (iii) Liable to Tenant for any modification or amendment to the Lease hereafter made without Lender's consent which results in a material reduction of any rent or other charges payable by Tenant under the Lease or which materially increases the obligations of Landlord under the Lease unless such modification or amendment is entered into by Landlord and Tenant to evidence the exercise of any expansion, renewal or termination options expressly set forth in the Lease;

UNOFFICIAL COPY

(iv) Liable to Tenant for any damages or other relief attributable to any latent or patent defects in construction with respect to any portion of the Property;

(v) Obligated to complete any pre-occupancy or post-occupancy construction work;

(vi) Liable for the return of any security deposit under the Lease except to the extent actually in the possession of Lender;

Required to make any repairs to the Property required as a result of fire, other casualty, or condemnation unless obligated under the Lease to make same and shall have received with respect thereto sufficient insurance proceeds or condemnation awards to finance same.

3. Provided that the conditions and agreements set forth herein, including non-disturbance, are complied with, in the event of the foreclosure of the Mortgage or a judicial sale of the Property, or the acquisition of a deed to the Property in lieu of foreclosure by Lender prior to the expiration date of the Lease, including any extensions and renewals of the Lease, Tenant hereby covenants and agrees to make full and complete attornment to Lender for the balance of the term of the Lease, including any extensions and renewals thereof (to the extent elected by Tenant from time to time), upon the same terms, covenants and conditions as therein provided, so as to establish direct privity of estate and contract as between Lender and Tenant with the same force and effect and relative priority in time and right as though the Lease were originally made directly from Lender to Tenant (but subject to the provisions of this Agreement), and Tenant will thereafter make all rent payments directly to Lender. Notwithstanding the foregoing, Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has succeeded to the interest of Landlord under the Lease. Landlord hereby irrevocably authorizes and directs Tenant to make all rent payments directly to Lender upon receipt of such notice from Lender.

4. It is understood and agreed that until Lender shall become the owner of the Property, Lender shall not have any responsibility as owner of the Property or as landlord under the Lease. Tenant hereby acknowledges and agrees that in the event Lender or its affiliate, successor, designee or assignee shall become the owner of the Property, that any liability or obligation of the landlord under the Lease shall be limited to the landlord's interest in the Property and no recourse shall be had to any other assets of Lender or its affiliate, successor, designee or assignee. Subject to the foregoing limitation as to landlord's interest in the Property, during such time as Lender or its affiliate, successor, designee or assignee shall be the owner of the Property, Tenant may exercise any right or remedy provided in the Lease or by law in the event of any failure to perform any obligation of the landlord under the Lease.

5. Tenant shall not during the term of the Lease, without the Lender's prior written consent:

- (a) cancel, terminate or surrender the Lease in the circumstances and during the periods in which such cancellation, termination or surrender of the Lease is prescribed by the terms of Section 7 herein; or

UNOFFICIAL COPY

- (b) assign or sublet any portion of the Lease or the Property without the Lender's prior written consent (other than in connection with an Affiliated Transfer, as such term is defined in the Lease, with respect to which Lender's prior consent shall not be required) which consent shall not be unreasonably withheld; or
- (c) make any addition, improvement, or change in or to the Property or any other property subject to the Mortgage which would impair the Lender's security or adversely affect the structural integrity of any improvement; or
- (d) make any addition or alteration other than those which are permitted under the Lease, or make any addition, improvement or demolition that requires Borrower's prior consent unless it also receives the Lender's prior written consent, which consent shall not be unreasonably withheld.

6. Tenant agrees to send a copy of any notice or statement under the Lease to Lender (at Lender's address as given herein or the last address of Lender furnished to Tenant in writing as described in paragraph 6) at the same time as such notice or statement is sent to the Landlord under the Lease, whenever any such notice or statement alleges a default by, or failure on the part of, the Landlord to perform its duties under the Lease. Notwithstanding anything contained herein to the contrary, failure to send such notice shall not impair the validity of Tenant's notice to Landlord. Landlord from and after the date of this Agreement shall send a copy of any notice, request, or demand which it sends to Tenant under the Lease to Lender at the same time such notice or statement is sent to Tenant under the Lease.

7. Tenant hereby agrees that, from and after the date hereof, in the event of any act or omission by the Landlord under the Lease which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, Tenant will not exercise any such right (a) until it has given written notice of such act or omission, by registered or certified mail, return receipt requested, addressed to Lender, at Lender's address as given herein or at the last address of Lender furnished to Tenant in writing (by registered or certified mail addressed to Tenant at Tenant's address as given herein or the last address of Tenant furnished to Lender by written notice in the manner above specified), and (b) if the default by Landlord is of a nature which can be cured by Lender, and if Lender is proceeding with diligence to cure such default, until expiration of thirty (30) days beyond the receipt of written notice from Tenant (provided that Tenant has not been materially deprived of the effective use and occupancy of the Premises for the normal operation of Tenant's business).

8. Except as expressly permitted in the Lease, Tenant will not make any prepayment of rent for a period in excess of one (1) month.

9. Tenant shall, from time to time upon request of the Lender, certify (to the extent true) that: (i) there are no known defaults on the part of the Landlord under the Lease; (ii) the Lease is a complete statement of the agreement of the parties thereto with respect to the letting of the Property, and all the agreements and provisions therein contained are in full force and effect (or, if not in full force and effect specifying the provisions breached or violated); (iii) the Property has been accepted by Tenant; and (iv) as of such date Tenant has no charge, lien, or offset against the rent or other charges due or to become due under the Lease.

UNOFFICIAL COPY

10. The terms, covenants and conditions hereof shall inure to the benefit of and be binding upon the respective parties hereto, and their respective successors and assigns. For the purposes hereof, any purchaser at a sale foreclosing the Mortgage or at a sale conducted under a power of sale in the Mortgage or otherwise acquiring the Property (for the purposes hereof, acquisition of title to the Property by deed in lieu of mortgage foreclosure, shall be deemed a purchase at a sale) shall be deemed a successor to Lender.

11. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute the same Agreement. This Agreement shall not be binding on or enforceable against any party hereto unless executed by all parties.

[Signature Page Follows]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered in their respective names and behalf, by its officers duly authorized, the date and year first written above.

LENDER:
BankUnited, N.A., a national banking association

Address:
14817 Oak Lane
Miami Lakes, Florida 33016

By: _____

Title: _____

Attest: _____

TENANT:
JPMorgan Chase Bank, National Association, a national banking association

Address:
JPMorgan Chase Bank, National Association
1111 Polaris Parkway
Mail Code: OH1-0241
Columbus, OH 43240-2050
Attn: Lease Administration Manager

By: Ceci Cella

Title: Executive Director

Attest: _____

LANDLORD:
(the following entities as tenants in common)
Maynard-2934 N. Milwaukee LLC, a Delaware limited liability company

Address:
c/o CLK Properties
135 Crossways Park Drive, Suite 401
Woodbury, New York 11797
Attention: Leasing Department

By: Craig

Title: Authorized Signatory

Attest: John

C-K Sun Valley LLC, a Delaware limited liability company

By: Craig

Title: Authorized Signatory

Attest: John

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered in their respective names and behalf, by its officers duly authorized, the date and year first written above.

LENDER:

BankUnited, N.A., a national banking association

Address:
14817 Oak Lane
Miami Lakes, Florida 33016

By: Carmel O'Neil

Title: Vice President

Attest: [Signature]

TENANT:

JPMorgan Chase Bank, National Association, a national banking association

Address:
JPMorgan Chase Bank, National Association
1111 Polaris Parkway
Mail Code: OH1-0241
Columbus, OH 43240-2050
Attn: Lease Administration Manager

By: [Signature]

Title: Executive Director

Attest: _____

LANDLORD:

(the following entities as tenants in common)
Maynard-2934 N. Milwaukee LLC,
a Delaware limited liability company

Address:
c/o CLK Properties
135 Crossways Park Drive, Suite 401
Woodbury, New York 11797
Attention: Leasing Department

By: [Signature]

Title: Authorized Signatory

Attest: [Signature]

C-K Sun Valley LLC,
a Delaware limited liability company

By: [Signature]

Title: Authorized Signatory

Attest: [Signature]


UNOFFICIAL COPY

LENDER'S NOTARY

STATE OF New York)
) SS
COUNTY OF Suffolk)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Caroline O'Donnell, Vice President of **BankUnited, N.A.**, a national banking association, personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such personally appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation/association, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of May, 2023.


Notary Public
My Commission Expires: _____

CYNTHIA FORLENZA NOTARY PUBLIC, STATE OF NEW YORK Registration No. 01FO6126911 Qualified in Suffolk County Commission Expires May 16, 20 <u>23</u>
--

UNOFFICIAL COPY

TENANT'S NOTARY

STATE OF Ohio)
COUNTY OF Franklin) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Tim Vestell, Executive Director of **JPMorgan Chase Bank, National Association**, a national banking association, personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such personally appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation/association, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of May, 2023.



James P. McMaken II
Notary Public, State of Ohio
My Commission Expires 09-29-26

[Signature]
Notary Public
My Commission Expires: 09-29-26

UNOFFICIAL COPY

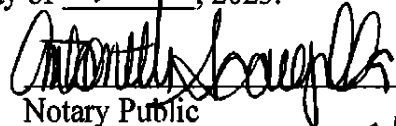
LANDLORD'S NOTARY

STATE OF New York)
) SS
COUNTY OF Nassau)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Craig Koenigsberg, Authorized Signatory of **Maynard-2934 N. Milwaukee LLC**, a Delaware limited liability company, personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such personally appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation/association, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 10th day of MAY, 2023.

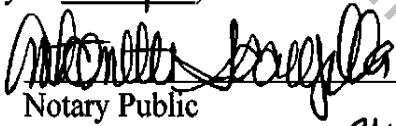
ANTOINETTE SCARANGELLA
Notary Public-State of New York
No. 01SC6354068
Qualified in Suffolk County
Commission Expires February 6, 2025


Notary Public
My Commission Expires: 2/6/25

STATE OF New York)
) SS
COUNTY OF NASSAU)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Craig Koenigsberg, Authorized Signatory of **C-K Sun Valley LLC**, a Delaware limited liability company, personally known to me to be the same persons whose name is subscribed to the foregoing instrument as such personally appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation/association, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 10th day of MAY, 2023.


Notary Public
My Commission Expires: 2/6/25

ANTOINETTE SCARANGELLA
Notary Public-State of New York
No. 01SC6354068
Qualified in Suffolk County
Commission Expires February 6, 2025

UNOFFICIAL COPY

Exhibit 1 Property Description

LOTS 1, 2, 3, 4, 5, 6 AND 7 IN BLOCK 1 IN WILLIAM E. HATTERMAN'S MILWAUKEE AVENUE SUBDIVISION IN BRAND'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address commonly known as: 2934 N Milwaukee Ave Chicago, IL 60618

PIN#: 13-26 222-001-0000

Property of Cook County Clerk's Office