

# UNOFFICIAL COPY

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KAREN A. YARBROUGH

COOK COUNTY CLERK'S OFFICE

Date 3/14/2024 2:19 PM Pg: 1 of 9

PREPARED BY AND AFTER  
RECORDING, PLEASE  
RETURN TO:  
Polsinelli PC  
900 W. 48<sup>th</sup> Place, Ste. 900  
Kansas City, Missouri 64112  
Attention: Jason Lee, Esq.

Loan No. 301000128

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT ("**Agreement**") dated effective as of the 7<sup>th</sup> day of March, 2024, between PGIM REAL ESTATE U.S. DEBT FUND KEIT, LLC, a Delaware limited liability company (together with its successors or assigns in interest, collectively "**Lender**") and I3 GROUP, INC., a Delaware corporation ("**Tenant**," which includes any permitted assigns and successors in interest of Tenant under the Lease).

### RECITALS:

A. Lender is the owner and the holder of a loan evidenced by a promissory note (the "**Note**") dated as of the date hereof in the original face amount of \$43,350,000.00 by Landlord (as defined below) in favor of Lender. The Note is secured by a Mortgage, Assignment of Leases and Rents, Security Agreement, And Fixture Filing (the "**Mortgage**") dated the same date as said Note, and recorded in the Real Property Records of Cook County, Illinois, covering the real property described therein (the "**Mortgaged Premises**").

B. Tenant is the tenant under that certain Office Lease dated March 7, 2024 (as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of the loan documents securing the Note, the "**Lease**"), between Tenant and 328 N Carpenter, L.L.C as landlord (said landlord and its successors and assigns under the Lease hereinafter called "**Landlord**"), covering all or part of the Mortgaged Premises as set forth under the Lease (hereinafter called the "**Demised Premises**").

C. Tenant and Lender desire to confirm their understanding with respect to the Lease and the Mortgage.

PREDS - SNDA

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THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, Lender and Tenant agree as follows:

1. **Subordination.** The Lease is now, and will at all times and for all purposes be, subject and subordinate, in every respect, to the lien imposed by the Mortgage, with the provisions of the Mortgage and this Agreement controlling over the provisions of the Lease. The Lease is subordinate and subject, in each and every respect, to the lien of any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgage, (collectively a “**Modification**”), and all other loan documents securing the Note, provided that any and all Modifications shall nevertheless be subject to the terms of this Agreement.

2. **Non-Disturbance.** So long as the Lease has not been terminated according to its own terms, and Tenant is not in default, beyond any applicable notice and cure periods, under any of the terms, provisions, agreements, covenants, or obligations set forth in the Lease (a) Lender shall not name or join Tenant as a defendant in any exercise of Lender’s rights and remedies arising upon default under the Mortgage, unless applicable law requires Tenant to be made a party, and (b) Tenant’s possession of the Demised Premises under said Lease shall not be disturbed or interfered with by Lender.

3. **Attornment.** If Lender or any other party succeeds to the interest of Landlord under the Lease in any manner (“**Successor Landlord**”), including but not limited to judicial or non-judicial foreclosure, exercise of any power of sale, succession by deed in lieu or other conveyance resulting from Lender’s exercise of its rights and remedies under the Mortgage (a “**Succession**”), Tenant shall attorn to and be bound to Successor Landlord upon a Succession and will recognize any Successor Landlord as the landlord under the Lease. In such event, the Lease shall continue in full force and effect as a direct lease by and between Tenant and Successor Landlord, in accordance with its terms, except as otherwise provided in this Agreement. Such attornment is effective and self-operative without the execution of any further instrument. Tenant, upon request, will sign and deliver any instruments reasonably requested to evidence such attornment. Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder as a result of any such foreclosure or trustee’s sale.

4. **Limitation On Successor Landlord’s Liability.** Upon any Succession, neither Lender nor Successor Landlord shall be (a) liable for any act or omission of the Landlord under said Lease, (b) subject to any offsets or defenses which Tenant may have against the Landlord arising or occurring prior to the Succession, except to the extent arising after Succession due to a Continuing Default (hereinafter defined); (c) bound by any rent or additional rent which Tenant may have paid to Landlord more than thirty (30) days in advance of the date such payment is due under the Lease, (d) bound by any amendment or modification of the Lease that would reduce or shorten any economic obligations of Tenant under the Lease or materially impair Landlord’s rights under the Lease made without Lender’s prior written consent; provided, however, Lender shall not be bound by any amendment or modification unless Lender receives a fully executed copy of such amendment or modification within ten (10) business days after execution thereof, (e) liable for any security deposit paid by Tenant to Landlord unless such deposit is delivered to Successor Landlord, (f) liable for or obligated to pay for repairs, replacements, damages, new construction or allowances not made, performed or paid by the Landlord if such performance or payment was due

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prior to the Succession, (g) liable for the payment of any leasing commissions, the triggering event for which arose or occurred prior to the Succession or (h) liable for the payment of any tenant improvement allowance or for the performance of any tenant improvement obligations. Any reference to Landlord includes all prior landlords under the Lease. Successor Landlord shall not be liable for the performance of the obligations of the Landlord under the Lease, except for those obligations which first arise during the period of Successor Landlord's ownership of the Mortgaged Premises and for "**Continuing Defaults**" (as defined below). A "**Continuing Default**" is defined as a non-monetary default by Landlord under the Lease that began prior to Succession, is ongoing and continuing following Succession, is susceptible to being cured, and for which Tenant provided Lender with notice as required hereunder prior to Succession. As a matter of clarification, except for the cure period specifically set forth in Section 6 below, Successor Landlord shall have no additional cure period following Succession with respect to a Continuing Default. Successor Landlord shall only have liability for actual damages (not consequential or special damages) that arise after Succession as a result of its failure to cure a Continuing Default.

5. [intentionally omitted]

6. **Notice; Lender Cure Rights.** Tenant will notify Lender in writing of any default by Landlord under the Lease that would entitle Tenant to cancel or terminate the Lease or abate the rents payable thereunder. Such notice shall be sent to Lender at:

c/o PGIM Real Estate Loan Services, Inc.  
2100 Ross Avenue, Suite 2500  
Dallas, Texas 75201  
Attention: Asset Management Department  
Reference Loan No. 301000128

certified mail, return receipt requested. Tenant shall not exercise any of its rights and remedies in connection with such default for a period of at least thirty (30) days from the date Lender receives such default notice; provided, however, that if Lender is diligently proceeding to cure said default within said time period and said cure cannot be effected within such time period or requires possession and control of the Mortgaged Premises, Lender's cure period shall continue for such additional time as Lender may reasonably require. Tenant agrees to accept Lender's cure of any default by Landlord. Lender has no obligation to cure any default by Landlord and shall have no liability for not curing any default. No cancellation or termination of the Lease by Tenant, nor any rent abatement by Tenant, shall be effective as to Lender unless Tenant complies with each provision of this Section 6.

Notices may be sent to Tenant at:

I3 Group, Inc.  
550 Bond Street  
Lincolnshire, IL 60069  
Attention: Mike Greenberg, President

with a copy to:

Husch Blackwell LLP  
8001 Forsyth Blvd., Suite 1500  
St. Louis, MO 63105  
Attention: William M. Hof

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7. **Exculpation of Successor Landlord.** Notwithstanding anything to the contrary in this Agreement or the Lease, Tenant shall look exclusively to Successor Landlord's interest in the Mortgaged Premises or any proceeds from the disposition thereof, any rents or profits derived from the Mortgaged Premises, or any insurance or condemnation proceeds related thereto, for the satisfaction of Tenant's remedies in the event of (a) default by Successor Landlord as landlord under the Lease, (b) any indemnity obligation that arises pursuant to the Lease, or (c) any payment or discharge of any money judgment in favor of Tenant against Successor Landlord with respect to the Lease.
8. **Rent Payment.** Immediately upon written notice to Tenant (a) that Lender is exercising its rights under the Mortgage or any other loan documents acting to secure the Note following a default under the Loan, or (b) of Lender's succeeding to the Landlord's interest under the Lease, Tenant agrees to pay all rents and additional rents due under the Lease directly to Lender in accordance with Lender's instructions. In such event, Landlord hereby expressly authorizes Tenant to make such payments to Lender and further agrees that any sums paid to Lender shall be in satisfaction of Tenant's obligations under the Lease.
9. **Option or Right of First Refusal.** In connection with any Succession, Lender will not be bound to honor any option or right of first refusal in favor of Tenant to purchase all or any part of the Mortgaged Premises. Upon a Succession, the Lease is automatically amended so that Successor Landlord will not be bound to honor any option or right of first refusal in favor of Tenant to purchase all or any part of the Mortgaged Premises.
10. **Complete Agreement.** This Agreement supersedes, as between the parties hereto, all of the terms and provisions of the Lease which are inconsistent herewith.
11. **No Oral Modification/Binding Effect.** 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. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.
12. **Laws.** This Agreement shall be construed in accordance with the laws of the State where the Mortgaged Premises are located.
13. **WAIVER OF JURY TRIAL.** LENDER AND TENANT EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AFTER CAREFUL CONSIDERATION AND AN OPPORTUNITY TO SEEK LEGAL ADVICE, WAIVE THEIR RESPECTIVE RIGHTS TO HAVE A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY OF THE PROVISIONS OF THIS AGREEMENT, OR ANY OTHER DOCUMENTS EXECUTED IN CONJUNCTION HERewith, ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT, THE LANDLORD'S PREMISES, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE LANDLORD, TENANT OR LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER TO ENTER INTO THIS AGREEMENT.
14. [intentionally omitted]

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15. **Counterparts and Execution and Delivery by Electronic Transmission.** This Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which, collectively, shall comprise one and the same instrument. Furthermore, this Agreement may be executed and delivered by electronic transmission. The parties intend that electronic (e.g. pdf. Form) signatures constitute original signatures and that an electronic copy or counterparts of this Agreement containing signatures (original or electronic) of a party is binding upon that party.

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**BORROWER:**

**328 N. CARPENTER, L.L.C.,**  
a Delaware limited liability company

By: 328 N. Carpenter Holdings, L.L.C.,  
a Delaware limited liability company,  
its sole Member

By: Murphy Investors 328 N. Carpenter, LLC,  
an Illinois limited liability company,  
its Manager

By: [Signature]  
Name: John Murphy  
Title: Manager

STATE OF Illinois  
COUNTY OF Cook ) ss.

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 7<sup>th</sup> day of March, 2024, by John Murphy, Manager of **328 N. CARPENTER, L.L.C.**, a Delaware limited liability company. He is personally known to me or has produced LLC as identification.

[Signature]  
Signature of person taking acknowledgment

Susan M Finis  
Name, typed, printed or stamped

Controller  
Title or rank

\_\_\_\_\_  
Serial number if any



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TENANT:

**I3 GROUP, INC.,**  
a Delaware corporation

By: *Michael Greenberg*  
Name: MICHAEL GREENBERG  
Its: PRESIDENT

STATE OF ILLINOIS  
COUNTY OF LAKE ) ss.

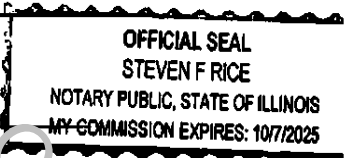
The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 11 day of March, 2024, by Michael Greenberg President of **I3 GROUP, INC.**, a Delaware limited liability company. He/She is personally known to me or has produced N/A as identification.

*Steven F. Rice*  
Signature of person taking acknowledgment

Steven F. Rice  
Name, typed, printed or stamped

Notary  
Title or rank

Serial number if any



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## EXHIBIT A

### LEGAL DESCRIPTION OF THE LAND

REAL PROPERTY IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, DESCRIBED AS FOLLOWS:

THAT PART OF LOTS 1, 4, 5, 8, 9, 12, 13 AND 16 IN SUB BLOCK 13, IN CARPENTER'S ADDITION TO CHICAGO, TAKEN AS A TRACT AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH 00 DEGREES 09 MINUTES 38 SECONDS WEST ALONG THE EAST LINE OF SAID TRACT 127.04 FEET; THENCE NORTH 89 DEGREES 38 MINUTES 06 SECONDS WEST 120.53 FEET TO THE WEST LINE OF SAID TRACT; THENCE NORTH 00 DEGREES 10 MINUTES 25 SECONDS EAST ALONG THE WEST LINE OF SAID TRACT 127.02 FEET TO THE NORTHWEST CORNER OF SAID TRACT; THENCE SOUTH 89 DEGREES 38 MINUTES 41 SECONDS EAST ALONG THE NORTH LINE OF SAID TRACT 120.50 FEET TO THE POINT OF BEGINNING, ALL IN THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 318-328 North Carpenter Street and 1039 West Carroll Avenue, Chicago Illinois  
(f/k/a 328 North Carpenter Street)

Permanent Index Number: 17-08-410-016-0000