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2017 082075

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2017 DEC -5 AM 8:38

MICHAEL B. BROWN
RECORDER



Space Above for Recorder's Use

SUBORDINATION OF MANAGEMENT AGREEMENT AND LEASING AGREEMENT

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THIS SUBORDINATION OF MANAGEMENT AND LEASING AGREEMENT AGREEMENT (this "Subordination Agreement") is made and entered into as of November 30, 2017, by and among Hobart Investors Limited Partnership (f/k/a Merrillville Partners Limited Partnership), an Illinois limited partnership ("Owner"), having an address at 5215 Old Orchard Road, Suite 880, Skokie, Illinois 60077, Next Property Management, Inc., an Illinois corporation ("Manager"), having an address at 5215 Old Orchard Road, Suite 880, Skokie, Illinois 60077, Next Realty, LLC, an Illinois limited liability company ("Leasing Agent"; Leasing Agent and Manager are individually referred to as an "Agent" and collectively referred to herein as the "Agents"), having an address at 5215 Old Orchard Road, Suite 880, Skokie, Illinois 60077 and CIBC Bank USA, an Illinois state chartered bank ("Lender"), having an address at 120 S. LaSalle St, Chicago, Illinois 60603.

BACKGROUND:

RETURN TO
 Chicago Title
 Closer: AJ
 File No. 520049

A. Pursuant to that certain Loan Agreement and Security Agreement between the Owner and Lender dated as of the date hereof (as the same may be amended, restated, modified and supplemented from time to time, the "Loan Agreement"), the Lender has agreed to extend a loan to the Owner in the original principal amount of Four Million Five Hundred Thirty Thousand and No/100 Dollars (\$4,530,000.00) (the "Loan"). Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to such terms in the Loan Agreement, and if not defined therein, the Mortgage.

B. The Loan is secured by, among other things, that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement (Fixture Filing), dated as of the date hereof, by and between Owner and Lender (as the same may be amended, restated, modified and supplemented from time to time, the "Mortgage"), on the real property legally described on Exhibit A attached hereto.

C. Owner and Manager have entered into a certain Amended and Restated Management Agreement, dated effective as of November 30, 2017 (the "Management Agreement"), providing the terms, conditions and limitations under which Manager will manage the Project.

D. Owner and Leasing Agent have entered into a certain Exclusive Leasing Agreement, dated effective as of November 30, 2017 (the "Leasing Agreement"; the

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Management Agreement and Leasing Agreement are individually referred to as an “Agent Agreement” and collectively referred to herein as the “Agent Agreements”), providing the terms, conditions and limitations under which Leasing Agent will act as exclusive leasing agent for the Project.

E. The Loan Agreement requires that the Owner deliver to the Lender, at its request, a subordination agreement executed by the Agents.

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

1. The Agent Agreements, the rights, interests, fees, payments, benefits and estates created thereby, and all terms and conditions thereof are hereby made and shall at all times be subject and unconditionally subordinate in all respects (i) to the Loan and all of the Secured Obligations, (ii) to the lien and charge of each of the Loan Documents, and (iii) to any and all increases, renewals, extensions, modifications (including “work outs” arranging or modifying the repayment of the Loan by Owner in lieu of foreclosure of the Loan by Lender), assignments, replacements or consolidations thereof and the rights, privileges, and powers of Lender thereunder, and any refinancing of the Loan.

2. Owner and Agents hereby covenant and agree that they will not materially change or alter the terms, covenants, conditions and agreements of their respective Agent Agreements without the prior written consent of the Lender. No material amendment or modification of the Agent Agreements shall be effective without Lender’s prior written consent.

3. Owner and Manager hereby represent and warrant to Lender that (i) neither Owner nor Manager is in breach or default of its obligations under the Management Agreement, and no event or state of facts now exists which with notice or the passage of time or both would constitute a default thereunder, and there are no other material liabilities or claims for any default thereunder; (ii) all fees, expense reimbursements and payments due from Owner under the Management Agreement have been paid in full; (iii) Manager has not executed or granted any modification or amendment whatsoever of the Management Agreement other than this Subordination Agreement; and (iv) the Management Agreement is in full force and effect in accordance with its terms.

4. Owner and Leasing Agent hereby represent and warrant to Lender that (i) neither Owner nor Leasing Agent is in breach or default of its obligations under the Leasing Agreement, and no event or state of facts now exists which with notice or the passage of time or both would constitute a default thereunder, and there are no other material liabilities or claims for any default thereunder; (ii) all fees, expense reimbursements and payments due from Owner under the Leasing Agreement have been paid in full; (iii) Leasing Agent has not executed or granted any modification or amendment whatsoever of the Leasing Agreement other than this Subordination Agreement; and (iv) the Leasing Agreement is in full force and effect in accordance with its terms.

5. At any time after an Event of Default under any of the Loan Documents, each of the Agents shall send a copy of any notice or statement sent by it to Owner pursuant to any article, section or provision of their respective Agent Agreement simultaneously to Lender.

6. Owner shall be solely liable to Agents for all fees, reimbursements, indemnifications and charges of whatsoever kind or nature accruing to the Agents under the Agent Agreements, or at law or in equity with respect to the management or leasing of the Project. Lender shall in no event or under any circumstances be responsible for any management fees, leasing commissions, termination fees, or other fees, charges, indemnifications, reimbursements or other payments to Agents whatsoever, and any right or remedy Agents may have to collect such outstanding fees, charges and indemnifications shall be unconditionally and absolutely subordinated to the indefeasible payment in full in cash of all amounts payable under the Loan Documents (irrespective of any reduction of same as an allowed amount in any bankruptcy proceeding) (the "Repayment"); provided, however, that so long as no default or Event of Default has occurred and is continuing under the Loan Documents, each of the Agents shall have the right to receive all payments due to Agents pursuant to the terms of the Agent Agreements. Should any payment on account of, or any collateral for, any obligation that is subordinated by the preceding sentence be received by either Agent during the continuance of an Event of Default under the Loan Documents, such payment or collateral shall be delivered forthwith to Lender by the applicable Agent for application to the Loan. Until so delivered, any such payment or collateral received after an Event of Default shall be held by such Agent in trust for Lender and shall not be commingled with other funds or property of such Agent. Nothing herein shall limit or restrict each Agent's right to terminate its respective Agent Agreement if Owner shall fail to make payments due to such under the applicable Agent Agreement.

7. At any time after any Event of Default has occurred and remains uncured under any of the Loan Documents, and notwithstanding any provision to the contrary in the Agent Agreements, Lender shall be entitled (but not obligated) to cancel and terminate on behalf of Owner, or may require Owner to cancel and terminate, the Agent Agreements (or either of them) effective immediately upon written notice to the applicable Agent, and Lender shall not have any liability to such Agent for any management fee, leasing fee, termination fees or other amounts of whatsoever kind or nature owed by Owner to such Agent under the terminated Agent Agreement. All such outstanding fees and amounts, and any right that such Agent may have to collect such outstanding fees and amounts, shall be subordinated in full to the Repayment and prior to such Repayment, such Agent will not place a lien on, attach, or otherwise encumber the Project. During the existence of an Event of Default by Owner under the Loan Documents and following notice of such occurrence to Agents, Agents shall make no expenditures from any of the accounts or funds of the Project, without the prior written consent of Lender.

8. Any notice or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, shall be deemed to have been properly given if hand delivered, if sent by reputable overnight courier (effective the business day following delivery to such courier) or if mailed (effective two business days after mailing) by United States registered or certified mail, postage prepaid, return receipt requested to, and shall be addressed as follows (or at such other address as the applicable party may have designated from time to time by like notice):

If to Owner or Lender:

To their respective addresses set forth in the Loan Agreement

If to Manager:

Next Property Management, Inc.
5215 Old Orchard Road, Suite 880
Skokie, Illinois 60077
Attn: Marc Blum

If to Leasing Agent:

Next Realty, LLC
5215 Old Orchard Road, Suite 880
Skokie, Illinois 60077
Attn: Marc Blum

9. Governing Law. Each of the parties hereby acknowledges, consents and agrees that this Subordination Agreement shall be governed by the internal laws of the State of Illinois, without regard to conflict of laws principles.

10. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

11. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS SUBORDINATION AGREEMENT OR ANY OTHER LOAN DOCUMENT OR RELATING THERETO OR ARISING FROM THE RELATIONSHIP WHICH IS THE SUBJECT OF THIS SUBORDINATION AGREEMENT OR THE LOAN DOCUMENTS AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

12. SUBMISSION TO JURISDICTION. WITH RESPECT TO ANY LEGAL OR EQUITABLE SUIT, ACTION, CLAIM OR PROCEEDING ARISING HEREUNDER OR UNDER THE OTHER LOAN DOCUMENTS, EACH OF THE PARTIES: (i) IRREVOCABLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF ILLINOIS AND THE UNITED STATES DISTRICT COURT LOCATED IN CHICAGO, ILLINOIS, (ii) AGREES THAT ALL SUCH SUITS, ACTIONS, CLAIMS OR PROCEEDINGS MAY BE HEARD AND DETERMINED IN SUCH COURTS OF THE STATE OF ILLINOIS OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT AND (iii) IRREVOCABLY WAIVES ANY (A) OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY SUIT, ACTION, CLAIM OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BROUGHT IN ANY SUCH COURT AND (B) ANY CLAIM THAT ANY SUCH SUIT, ACTION, CLAIM OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING IN THIS AGREEMENT WILL BE DEEMED TO PRECLUDE THE LENDER FROM BRINGING ANY SUIT, ACTION, CLAIM OR PROCEEDING IN CONNECTION WITH THE LOAN IN ANY OTHER JURISDICTION OR PRECLUDE THE BORROWER FROM APPEARING IN AND DEFENDING SUCH SUIT, ACTION, CLAIM OR PROCEEDING OR BRINGING A COMPULSORY COUNTERCLAIM IN SUCH SUIT, ACTION, CLAIM OR PROCEEDING.

13. This Subordination Agreement shall be binding on and inure to the benefit of the permitted successors and assigns of Owner, Agents and Lender.

14. Neither anything contained in this Subordination Agreement, nor the fact that Lender has reviewed the Agent Agreements, shall, or shall be deemed or construed to,

modify, amend, waive, abrogate, or nullify any provisions of the Loan Documents or any obligations or liabilities of Owner thereunder.

15. This Subordination Agreement will terminate upon the payment in full of all amounts payable under and the fulfillment of all Secured Obligations under the Loan Documents.

[Remainder of page intentionally left blank; signature pages follow.]



IN WITNESS WHEREOF, the parties hereto have duly executed this Subordination Agreement as of the day and year first above written.

OWNER:

**HOBART INVESTORS LIMITED PARTNERSHIP
(f/k/a Merrillville Partners Limited Partnership), an Illinois limited partnership**

By: HOBART INVESTORS CORP. (f/k/a Merrillville Corp.), an Illinois corporation, its general partner



STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Andrew S. Hochberg, the Vice President of Hobart Investors Corp. (f/k/a Merrillville Corp.), an Illinois corporation, being the general partner of HOBART INVESTORS LIMITED PARTNERSHIP (f/k/a Merrillville Partners Limited Partnership), an Illinois limited partnership, , 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 signed and delivered such instrument, as his free and voluntary act and deed, and as the free and voluntary act and deed of HOBART INVESTORS LIMITED PARTNERSHIP, for the uses and purposes therein set forth.

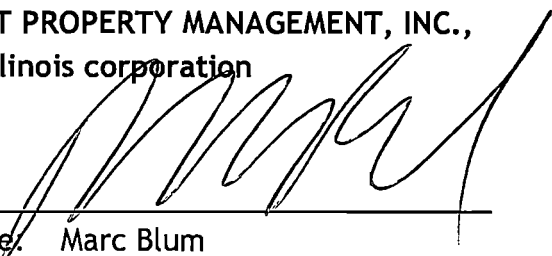
Given under my hand and official seal this 27th day of November, 2017.

Christine S. Latona
Printed Name: Christine Latona
My Commission Expires: 12/14/20
County of Residence: Cook

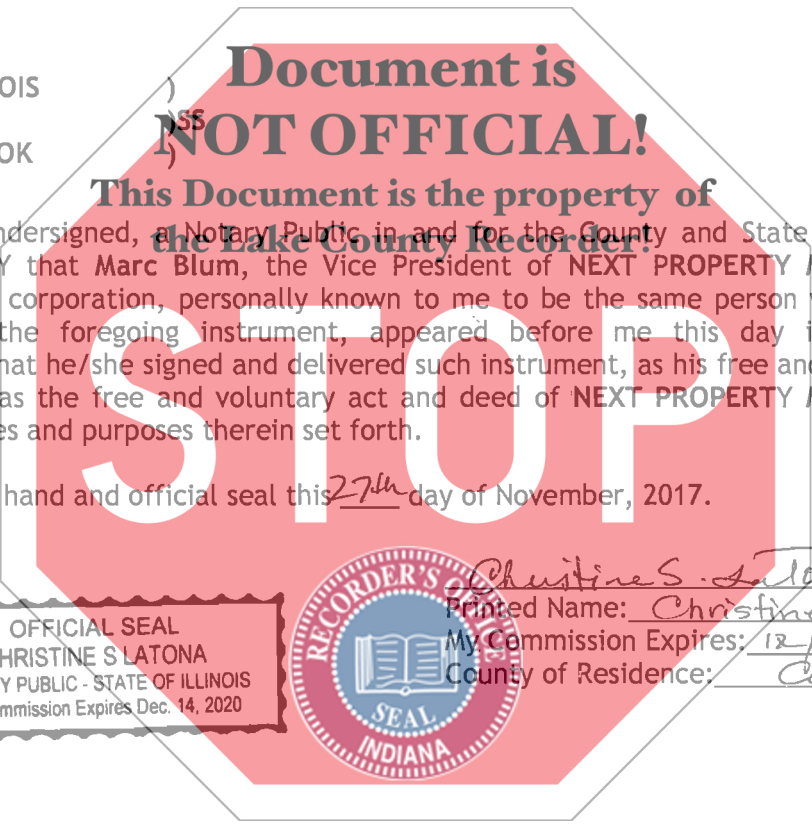


MANAGER:

NEXT PROPERTY MANAGEMENT, INC.,
an Illinois corporation

By: 
Name: Marc Blum
Title: Vice President

STATE OF ILLINOIS
COUNTY OF COOK




I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Marc Blum, the Vice President of NEXT PROPERTY MANAGEMENT, INC., an Illinois corporation, 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 such instrument, as his free and voluntary act and deed, and as the free and voluntary act and deed of NEXT PROPERTY MANAGEMENT, INC., for the uses and purposes therein set forth.

Given under my hand and official seal this 27th day of November, 2017.

OFFICIAL SEAL
CHRISTINE S LATONA
NOTARY PUBLIC - STATE OF ILLINOIS
My Commission Expires Dec. 14, 2020




Printed Name: Christine Latona
My Commission Expires: 12/14/20
County of Residence: Cook

LEASING AGENT:

NEXT REALTY, LLC,
an Illinois limited liability company

By: Andrew Hochberg

Name: Andrew Hochberg

Title: Manager

STATE OF ILLINOIS
COUNTY OF COOK

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I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that **Andrew S. Hochberg**, the Manager of NEXT REALTY, L.L.C., an Illinois limited liability company, 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 such instrument, as his free and voluntary act and deed, and as the free and voluntary act and deed of NEXT REALTY, L.L.C., for the uses and purposes therein set forth.

Given under my hand and official seal this 24th day of November, 2017.



Christine S. Latona
Printed Name: Christine Latona
My Commission Expires: 12-14-20
County of Residence: Cook



LENDER:

CIBC BANK USA, an Illinois state chartered bank

By: Eloise Whitlock
Name: Eloise Whitlock
Title: Managing Director

STATE OF ILLINOIS
COUNTY OF COOK

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I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Eloise Whitlock, the Managing Director of CIBC BANK USA, an Illinois state chartered bank, 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 such instrument, as his/her free and voluntary act and deed, and as the free and voluntary act and deed of CIBC BANK USA, for the uses and purposes therein set forth.

Given under my hand and official seal this 29th day of November, 2017.



Printed Name: Monika Sarna
My Commission Expires: 10/12/2020
County of Residence: Will



EXHIBIT A

LEGAL DESCRIPTION

Parcels "A" and "B", in Riss Square, as per Plat thereof, recorded in Plat Book 47, Page 28, in the Office of the Recorder of Lake County, Indiana.

Address of Property: 3199-3249 East Lincoln Highway
Hobart, Indiana

Parcel Nos.: 45-12-24-301-001.000-046
45-12-24-302-001.000-046
45-12-24-302-002.000-046

