

SUBORDINATION OF LEASE AND/OR NON-DISTURBANCE AND ATTORNMENT

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Wells Fargo Bank, National Association
Restaurant Finance
1808 Aston Avenue, Suite 250
Carlsbad, California 92008

Attn: Loan Administration
Obligor No. 5469998759

(Space Above For Recorder's Use)

**SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,
ATTORNMENT AND NON-DISTURBANCE AGREEMENT
(Lease to Security Instrument)**

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("**Agreement**") is made May 23, 2018 by and between EXCEL HOLDINGS 11 LLC, a Delaware limited liability company, owner of the real property hereinafter described ("**Mortgagor**"), EXCEL HOLDINGS URBAN RENEWAL, LLC, a Delaware limited liability company ("**Tenant**"), and WELLS FARGO BANK, NATIONAL ASSOCIATION (collectively with its successors or assigns, "**Lender**").

RECITALS

- A. Pursuant to the terms and provisions of that certain Ground Lease dated May 23, 2018 ("**Lease**"), Mortgagor granted to Tenant a leasehold estate in and to a portion of the property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on the property, is defined as the "**Property**").
- B. Mortgagor has executed, or proposes to execute, that certain Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement, and Fixture Filing ("**Security Instrument**") securing, among other things, (that certain Term Loan Note dated May 23, 2018

("Note") in the principal sum of \$18,850,000.00 ("Loan"), in favor of Lender. The Security Instrument is to be recorded concurrently herewith.

- C. As a condition to Lender making the Loan secured by the Security Instrument, Lender requires that the Security Instrument be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Tenant under the Lease and that the Tenant specifically and unconditionally subordinate the Lease to the lien of the Security Instrument.
- D. Mortgagor and Tenant have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Mortgagor and Tenant hereby agree for the benefit of Lender as follows:

1. **SUBORDINATION.** Mortgagor and Tenant hereby agree that:

- 1.1 **Prior Lien.** The Security Instrument securing the Note in favor of Lender, and any modifications, renewals or extensions thereof (including, without limitation, any modifications, renewals or extensions with respect to any additional advances made subject to the Security Instrument), shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease;
- 1.2 **Subordination.** Lender would not make the Loan without this agreement to subordinate; and
- 1.3 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the lien of the Security Instrument and shall supersede and cancel, but only insofar as would affect the priority between the Security Instrument and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Tenant individually declares, agrees and acknowledges for the benefit of Lender, that:

- 1.4 **Use of Proceeds.** Lender, in making disbursements pursuant to the Note, the Security Instrument or any loan agreements with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part; and
 - 1.5 **Waiver, Relinquishment and Subordination.** Tenant intentionally and unconditionally waives, relinquishes and subordinates all of Tenant's right, title and interest in and to the Property to the lien of the Security Instrument and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.
2. **ASSIGNMENT.** Tenant acknowledges and consents to the assignment of the Lease by Mortgagor in favor of Lender.

3. **ESTOPPEL.** Tenant acknowledges and represents that:
- 3.1 **Entire Agreement.** The Lease constitutes the entire agreement between Mortgagor and Tenant with respect to the Property and Tenant claims no rights with respect to the Property other than as set forth in the Lease;
- 3.2 **No Prepaid Rent.** No deposits or prepayments of rent have been made in connection with the Lease, except as follows (if none, state "None"): None;
- 3.3 **No Default.** To the best of Tenant's knowledge, as of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the Lease;
- 3.4 **Lease Effective.** The Lease has been duly executed and delivered by Tenant and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Tenant thereunder are valid and binding and there have been no amendments, modifications or additions to the Lease, written or oral; and
- 3.5 **No Broker Liens.** Neither Tenant nor Mortgagor has incurred any fee or commission with any real estate broker which would give rise to any lien right under state or local law, except as follows (if none, state "None"): None.
4. **ADDITIONAL AGREEMENTS.** Tenant covenants and agrees that, during all such times as Lender is the Beneficiary under the Security Instrument:
- 4.1 **Modification, Termination and Cancellation.** Tenant will not consent to any modification, amendment, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent and will not make any payment to Mortgagor in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent;
- 4.2 **Notice of Default.** Tenant will notify Lender in writing concurrently with any notice given to Mortgagor of any default by Mortgagor under the Lease, and Tenant agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Tenant will not declare a default of the Lease, as to Lender, if Lender cures such default within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Mortgagor ; provided, however, that if such default cannot with diligence be cured by Lender within such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence;
- 4.3 **No Advance Rents.** Tenant will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease;
- 4.4 **Assignment of Rents.** Upon receipt by Tenant of written notice from Lender that Lender has elected to terminate the license granted to Mortgagor to collect rents, as provided in the Security Instrument, and directing the payment of rents by Tenant to Lender, Tenant shall comply with such direction to pay and shall not be required to determine whether Mortgagor is in default under the Loan and/or the Security Instrument.

- 4.5 **Insurance and Condemnation Proceeds.** In the event there is any conflict between the terms in the Security Instrument and the Lease regarding the use of insurance proceeds or condemnation proceeds with respect to the Property, the provisions of the Security Instrument shall control.
5. **ATTORNMEN T.** Subject to Lender's rights under **Section 6** below, in the event of a foreclosure under the Security Instrument, Tenant agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Mortgagor's title in and to the Property by Lender's exercise of the remedy of sale by foreclosure under the Security Instrument) as follows:
- 5.1 **Payment of Rent.** Tenant shall pay to Lender all rental payments required to be made by Tenant pursuant to the terms of the Lease for the duration of the term of the Lease;
- 5.2 **Continuation of Performance.** Tenant shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Tenant hereby attorns to Lender as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Mortgagor's interest in the Lease and giving written notice thereof to Tenant;
- 5.3 **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Tenant may have by reason of any act or omission of Mortgagor under the Lease, nor for the return of any sums which Tenant may have paid to Mortgagor under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Mortgagor to Lender;
- 5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Mortgagor under the Lease, should become obligated to perform the covenants of Mortgagor thereunder, then, upon any further transfer of Mortgagor's interest by Lender, all of such obligations shall terminate as to Lender;
- 5.5 **Limitation on Lender's Liability.** Tenant agrees to look solely to Lender's interest in the Property and the rent, income or proceeds derived therefrom for the recovery of any judgment against Lender, and in no event shall Lender or any of its affiliates, officers, directors, shareholders, partners, agents, representatives or employees ever be personally liable for any such obligation, liability or judgment; and
- 5.6 **No Representation, Warranties or Indemnities.** Lender shall not be liable with respect to any representations, warranties or indemnities from Mortgagor, whether pursuant to the Lease or otherwise, including, but not limited to, any representation, warranty or indemnity related to the use of the Property, compliance with zoning, landlord's title, landlord's authority, habitability or fitness for purposes or commercial suitability, or hazardous wastes, hazardous substances, toxic materials or similar phraseology relating to the environmental condition of the Property or any portion thereof.
6. **NON-DISTURBANCE.** In the event of a foreclosure under the Security Instrument or other transfer of the Property to Lender or its affiliate, at Lender's sole option and election, Lender may terminate the Lease upon written notice to Tenant. If Lender does not exercise such option and so long as there shall then exist no breach, default, or event of default on the part of Tenant under the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Tenant under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Tenant as tenant under the Lease subject to the terms and provisions of the Lease except as modified by this Agreement; provided, however, that Tenant and Lender agree that the following provisions of the Lease (if any) shall not be binding on Lender nor its successors and assigns: unless Lender elects otherwise, in its sole discretion, in a written notice to Tenant, including without limitation, (i) any right of first refusal or option to purchase with respect to the

Property; (ii) any provision regarding the use of insurance proceeds or condemnation proceeds with respect to the Property which is inconsistent with the terms of the Security Instrument; and (iii) any obligation to construct any improvements on the Property or any obligation to pay or reimburse Tenant for any improvements Tenant constructs on the Property. Lender may exercise its option to terminate the Lease at any time during the term of the Lease notwithstanding any prior attornment by Tenant and notwithstanding any prior non-disturbance of the Lease by Lender by agreement, action, notice, acceptance of rent, full or partial performance, reliance by Tenant, or otherwise.

7. MISCELLANEOUS.

7.1 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Mortgagor under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Mortgagor or others.

7.2 **NOTICES.** All notices, demands, or other communications under this Agreement and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) Business Days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Mortgagor:	Excel Holdings 11 LLC 1621 North Kent Street, Suite 1115 Arlington, Virginia 22209 Attention: Shoham Amin
Tenant:	Excel Holdings Urban Renewal, LLC 1621 North Kent Street, Suite 1115 Arlington, Virginia 22209 Attention: Shoham Amin
Lender:	Wells Fargo Bank, National Association Franchise Finance 1808 Aston Avenue, Suite 250 Carlsbad, California 92008 Attention: Loan Administration Obligor #: 5469998759
With a copy to:	Wells Fargo Bank, National Association 1740 Broadway Denver, Colorado 80274 MAC#C7300-033 Attn.: Records Management

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

7.3 **Heirs, Successors and Assigns.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Agreement shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto.

7.4 **Headings.** All article, section or other headings appearing in this Agreement are for convenience of reference only and shall be disregarded in construing this Agreement.

Counterparts. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

7.5 **Exhibits, Schedules and Riders.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Agreement by such attachment for all purposes.

[SIGNATURE PAGES FOLLOW]

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

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

"MORTGAGOR"

EXCEL HOLDINGS 11 LLC, a Delaware limited liability company

By: ~~Excel Manager 6 LLC~~, a Delaware limited liability company, its Manager

By: _____
Printed Name: Shoham Amin
Its: Manager

State of Virginia
County of Armington

On May 18, 18 before me, Meesha Patel, Notary
Date Name, Title of Officer-e.g. "Jane Doe, Notary"

personally appeared Shoham Amin

personally known to me -OR-

proved to me on 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.

Witness my hand and official seal.

Meesha Patel
SIGNATURE OF NOTARY



CAPACITY CLAIMED BY SIGNER

INDIVIDUAL

CORPORATE OFFICER(S)

PARTNER(S)

ATTORNEY-IN-FACT

TRUSTEE(S)

SUBSCRIBING WITNESS

GUARDIAN/ CONSERVATOR

OTHER: _____

SIGNER IS REPRESENTING:

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized documents.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT AT THE RIGHT:

Title or Type of Document _____
Number of Pages _____ Date of Document _____
Signer(s) Other Than Named
Above: _____

"TENANT"

EXCEL HOLDINGS URBAN RENEWAL, LLC, a New Jersey limited liability company

By: Excel Holdings 11 LLC, a Delaware limited liability company, its Sole Member

By: Excel Manager 6 LLC, a Delaware limited liability company, its Manager

By: 

Printed Name: Shoham Amin
Its: Manager

State of Virginia
County of Arlington

On May 18, 18 before me, Meesha Patel, Notary
Date Name, Title of Officer-e.g. "Jane Doe, Notary"

personally appeared Shoham Amin

personally known to me -OR-

proved to me on 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.

Witness my hand and official seal.

Meesha Patel
SIGNATURE OF NOTARY



CAPACITY CLAIMED BY SIGNER

INDIVIDUAL

CORPORATE OFFICER(S)

PARTNER(S)

ATTORNEY-IN-FACT

TRUSTEE(S)

SUBSCRIBING WITNESS

GUARDIAN/ CONSERVATOR

OTHER: _____

SIGNER IS REPRESENTING:


ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized documents.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT AT THE RIGHT:

Title or Type of Document _____
Number of Pages _____ Date of Document _____
Signer(s) Other Than Named _____
Above: _____

"LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: 
Name: Darcy McLaren
Title: Director

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 DIEGO

§

§

On May 18, 2018, before me, Linda A. Paap, Notary Public, personally appeared Darcy McLaren who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person 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.



Linda A Paap
Notary Public

(SEAL)

EXHIBIT A - DESCRIPTION OF PROPERTY

All that certain tract, parcel and lot of land lying and being situate in the Town of Harrison, County of Hudson, State of New Jersey, being more particularly described as follows:

Parcel One: Tract One

Beginning at a point in the Westerly line of Passaic Avenue 376.00 feet Northerly from the corner formed by the intersection of the Northerly line of Harrison Avenue with the Westerly line of Passaic Avenue; thence

1. Along the said Westerly line of Passaic Avenue, North 10 degrees 57 minutes West, 229.41 feet; thence
2. Still along the same, North 1 degrees 17 minutes West, 52.62 feet to a point in the Southerly line of the right of way of the Delaware, Lackawanna and Western Railroad Co.; thence
3. Along the said right of way, North 87 degrees 30 minutes West, 115.48 feet to a point in the bulkhead and pierhead line of the Easterly side of the Passaic River as adopted by the U.S. Harbor Line Board; thence
4. Along the said bulkhead line, South 1 degrees 30 minutes West, 308.99 feet; thence
5. Still along the same, South 0 degrees 45 minutes East, 6.51 feet; thence
6. North 79 degrees 03 minutes East, 171.24 feet to the point and place of beginning.

Parcel One: Tract Two

Beginning in the Westerly line of a New Street or Road called Passaic Avenue as laid out on a map of Hebden and Meeker property made by G. Dunn and Thompson, Surveyors, and filed in the Clerk's Office of Hudson County at a point therein distant 336 feet Northerly from the Northwesterly corner of same and Harrison Avenue (or the Turnpike Road leading to Jersey City) thence running Northerly along said New Street or Passaic Avenue, 40 feet; thence Westerly at right angles to the same, 168 feet 9 inches more or less, to the line of the Passaic River established by the Riparian Commissioners; thence Southerly along the same 40 feet 7 inches; thence Easterly and parallel with the first described line, 175 feet 10 inches, more or less, to the place of beginning.

Parcel Two:

Beginning at a point in the Westerly line of Passaic Avenue, said point being 180.00 feet measured Northwesterly along the Westerly line of Passaic Avenue, from the Intersection formed by the Northerly line of Harrison Avenue and the Westerly line of Passaic Avenue and from said beginning point running thence:

1. Along lands retained by Hess Realty Corporation, South 87 degrees 30 minutes West, at right angles to Passaic Avenue, 206.50 feet to the pierhead and bulkhead line of the Passaic River; thence
2. North 7 degrees 45 minutes East, along the said pierhead and bulkhead line of the Passaic River, 158.53 feet to the most Northwesterly corner of Lot 3 in Block 1676 as shown on the Official Tax Map of the Town of Harrison; thence

3. North 87 .degrees 30 minutes East, along said Northerly line of Lot 3 in Block 1676, 178.29 feet to the Westerly line of Passaic Avenue; thence
4. South 2 degrees 30 minutes East, along said Westerly line of Passaic Avenue, 156.00 feet to the point or place of beginning.

Being further described by survey made by Partner Engineering and Science, Inc. (Martin F. Tirella, P.L.S.) dated October 14, 2014 (revised through October 31, 2014) as follows:

BEGINNING at a point in the westerly line of Passaic Avenue (60' wide R.O.W.), said point being distant one hundred eighty and zero hundredths feet (180.00') northerly from its intersection with the northerly line of Harrison Avenue (66' wide R.O.W.), and running thence:

1. South seventy-nine degrees three minutes zero seconds West (S 79°03'00" W), two hundred and eight hundredths feet (200.08') to the easterly bulkhead line of the Passaic River; thence
2. Along said easterly bulkhead line, North three degrees two minutes twenty-seven seconds West (N 03°02'27" W), two hundred forty-one and eighty-nine hundredths feet (241.89') to a point in same; thence
3. Still along said bulkhead line, North one degree five minutes zero seconds East (N 01°05'00" E), ninety-seven and zero hundredths feet (97.00') to a point in same; thence
4. Still along said bulkhead line, North three degrees eighteen minutes zero seconds East (N 03°18'00" E), one hundred seventy-five and nine hundredths feet (175.09') to a point in same; thence
5. South eighty-seven degrees thirty minutes zero seconds East (S 87°30'00" E), one hundred fifteen and forty-eight hundredths feet (115.48') to a point in the aforementioned westerly line of Passaic Avenue; thence
6. Along said westerly line of Passaic Avenue, South one degree seventeen minutes zero seconds East (S 01°17'00" E), fifty-two and sixty-two hundredths feet (52.62') to a point in same; thence
7. Still along said westerly line of Passaic Avenue, South ten degrees fifty-seven minutes zero seconds East (S 10°57'00" E), four hundred twenty-five and forty-one hundredths feet (425.41') to the point or place of BEGINNING.

BEING the same premises which by Deed dated December 23, 2002 and recorded in the Hudson County Clerk's Office in Deed Book 7021 Page 149 was granted and conveyed by The Harrison Redevelopment Agency unto Harrison Waterfront Associates, LLC, a New Jersey limited liability company.

Being also known as (Reported for Informational Purposes Only):

Lots 2.B, 3, 4.A, 4.B, 5.A and 5.B, Block 1, on the Official Tax Map of the Town of Harrison (now known as Lots 2.02, 3, 4.01, 4.02, Additional Lot 5A, and Lot 5.02 in Block 1).