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08/08/2019 10:15:20 AM
SUBAGREM 1/8

This document prepared by:
Diamond Towers V LLC
820 Morris Turnpike, Suite 104
Short Hills, New Jersey 07078

19025565

Site Name: Grey Hill AL045
Parcel ID: 25 6 13 0 000 001.000

Cross Reference:
Instrument: 20141218000397970
Instrument: 20170226000067890
Shelby County, AL 8

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("SNDA") is made as of the 22 day of July, 2019 ("Execution Date"), by and among **SERVISFIRST BANK**, an Alabama banking corporation ("Lender"), with offices at 850 Shades Creek Parkway, Suite 200, Birmingham, AL 35209 and Diamond Towers V LLC, a Delaware limited liability company ("Tenant") with offices at 820 Morris Turnpike, Suite 104, Short Hills, NJ 07078.

WITNESSETH:

WHEREAS, pursuant to an Option and Land Lease Agreement ("Agreement") between Tenant and Shelby Investments, LLC ("Landlord") dated June 18, 2019, Tenant has an interest in a certain premises ("Premises") of the Landlord, which constitutes a portion or all, as the case may be, of the real property of the Landlord described in Exhibit "A" attached hereto (the "Real Property"); and

WHEREAS, Lender has made or has committed to make two loans (collectively the "Loan") to Landlord, an amount secured by, inter alia, a mortgage or deed to secure debt. The first a Mortgage and Security Agreement dated December 16, 2014 ("First Mortgage"), as amended, increased, renewed, extended, spread, consolidated, severed, restated or otherwise changed from time to time, covering the Premises, recorded in Instrument: 20141218000397970 in the Official Records of the County of Shelby and the second a Mortgage and Security Agreement dated February 22, 2017 ("Second Mortgage"), as amended, increased, renewed,

extended, spread, consolidated, severed, restated or otherwise changed from time to time, covering the Premises, recorded in Instrument: 20170228000067890 in the Official Records of the County of Shelby (collective the "Mortgage"); and

WHEREAS, Tenant has agreed that the Agreement shall be subject and subordinate to the Mortgage held by Lender, provided Tenant is assured of continued occupancy of the Premises under the terms of the Agreement; and

WHEREAS, each of the parties desires to set forth herein its agreement concerning the Agreement and the rights of Tenant thereunder in connection with any exercise by Lender of its rights and remedies under the Mortgage, or any other instrument executed in connection therewith (collectively, the "Loan Documents").

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and notwithstanding anything in the Agreement to the contrary, the parties hereto agree as follows:

1. Representations of Lender. Lender hereby represents to and for the benefit of Tenant that:

- (i) Lender is the owner and holder of the Mortgage and all other Loan Documents;
- (ii) The Mortgage and/or Loan Documents have not been transferred, pledged or assigned by Lender; and
- (iii) To the best of Lender's knowledge, Lender is not aware of any breach or default by Landlord under the Mortgage and/or Loan Documents that remains uncured or of any event which, with the giving of notice or the passage of time or both, would constitute a breach or default by Landlord of its covenants or obligations under the Loan Documents.

2. Representations of Tenant.

(a) Tenant hereby represents to and for the benefit of Lender that:

- (i) The Agreement has been duly executed by Landlord and Tenant and is in full force and effect; and
- (ii) No party to the Agreement is in default thereunder;

3. Subordination. Lender and Tenant do hereby covenant and agree that the Agreement, with all rights, options, liens and charges created thereby, is and shall continue to be subject and subordinate in all respects to the Mortgage and to any advancements made thereunder and to any renewals, modifications, consolidations, replacements and extensions thereof.

4. Non-Disturbance.

4.1 So long as Tenant is not in default under any of the terms, covenants or conditions of the Agreement (beyond any period provided to Tenant to cure such default in accordance with the terms of the Agreement), Tenant's rights under the Agreement and possession of the Premises thereunder shall not be affected or disturbed by Lender, or any party ("**Successor Landlord**") that becomes owner of the Premises as a result of a Foreclosure Event (as defined below), in the exercise of any of its rights or remedies under the Loan Documents.

4.2 Upon a Foreclosure Event, the Agreement (including all renewal and other options contained therein) shall continue in full force and effect as though the default giving rise to such Foreclosure Event had not occurred. A "**Foreclosure Event**" means: (a) foreclosure under the Mortgage and/or Loan Documents; (b) any other exercise by Lender of rights and remedies (whether under the Mortgage, Loan Documents, or under applicable law, including bankruptcy law) as holder of the Mortgage and/or Loan Documents, as a result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Lender (or its designee or nominee) of a deed or other conveyance of Landlord's interest in the Premises or Real Property in lieu of any of the foregoing. The Lender and any Successor Landlord shall recognize all of the rights and interest of Tenant under the Agreement and shall perform all of the duties and responsibilities of the Landlord under the Agreement with the same force and effect and with the same priority in right as if the Agreement were directly made between Lender, or Successor Landlord as the case may be, and Tenant, so long as Tenant is not in default thereunder beyond any applicable cure period available to Tenant by law, in equity or by the terms of the Agreement. Upon a Foreclosure Event, Tenant shall attorn to and recognize the Lender or Successor Landlord, as the case may be, to the same extent and with the same force as if the Lender or Successor Landlord, as the case may be, were the Landlord under the Agreement and shall be bound by and perform all of the obligations imposed upon Tenant under the Agreement. Tenant's attornment hereunder shall be effective and self-operative without the execution of any other instruments on the part of any party and shall be effective concurrently with Lender's or Successor Landlord's acquisition of title to the Premises.

4.3 So long as the Agreement has not been terminated, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Mortgage or Loan Documents, unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Agreement or otherwise adversely affect Tenant's rights under the Agreement or this SNDA in such action.

4.4 The provisions of this Article shall be effective and self-operative without any need for Lender, any Successor Landlord, or Tenant to execute any further documents.

5. Interpretation; Effect on Loan Documents. Except as provided herein, neither this SNDA nor the Agreement shall expand, enlarge, alter, affect or diminish Lender's rights under the Mortgage and/or Loan Documents. Except as provided in this SNDA, the Mortgage and/or

Loan Documents shall not expand, enlarge, alter, affect or diminish Tenant's rights or obligations under the Agreement.

6. Amendment to SNDA. This SNDA may be modified only by an agreement in writing signed by the parties hereto or their respective successors in interest. No renewal, extension, modification, consolidation or replacement of any of the Loan Documents, the Mortgage or the Agreement shall affect the terms of this SNDA without the written approval of the parties affected thereby.

7. Notices. Unless and except as otherwise specifically provided herein, any and all notices, elections, approvals, consents, demands, requests and responses thereto ("Communications") permitted or required to be given under this SNDA shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective upon the earlier of receipt thereof or deposit thereof in the United States mail, postage prepaid, certified with return receipt requested, to the other party at the address of such other party set forth hereinbelow or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any Communication must be given shall commence on the date of receipt thereof. Receipt of Communications hereunder shall occur upon actual delivery (whether by mail, telecopy transmission, messenger, courier service, or otherwise) to an individual party or to an officer or general or limited partner of a party or to any agent or employee of such party at the address of such party set forth hereinbelow, subject to change as provided hereinabove. An attempted delivery in accordance with the foregoing, acceptance of which is refused or rejected, shall be deemed to be and shall constitute receipt; and an attempted delivery in accordance with the foregoing by mail, messenger, or courier service (whichever is chosen by the sender) which is not completed because of changed address of which no notice was received by the sender in accordance with this provision prior to the sending of the Communication shall also be deemed to be and constitute receipt. Any Communication shall be addressed as follows, subject to change as provided hereinabove:

Communications to Lender: SERVISFIRST BANK
850 Shades Creek Parkway, Suite 200
Birmingham, AL 35209
Attn: _____

Communications to Tenant: Diamond Towers V LLC
820 Morris Turnpike, Suite 104
Short Hills, New Jersey 07078
Attn: Legal Department

8. Governing Law. This SNDA shall be governed by and construed in accordance with the laws of the state in which the Premises are located.

9. Successors; Assignment. This SNDA shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors,

successors-in-title, and assigns. Lender and Tenant shall have the right to assign this SNDA without the consent of the other party.

10. Captions. The description headings of the various sections or parts of this SNDA are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

{Signatures on following pages}

IN WITNESS WHEREOF, the parties hereto have caused this SNDA to be executed by their duly authorized officers, agents or representatives, as the case may be, as of the Execution Date.

LENDER:

SERVISFIRST BANK

Witness:

Name:

[Signature]
Allen Dye

By:

Name:

Title:

[Signature]
Tim Tawry
Vice President

STATE OF

AL

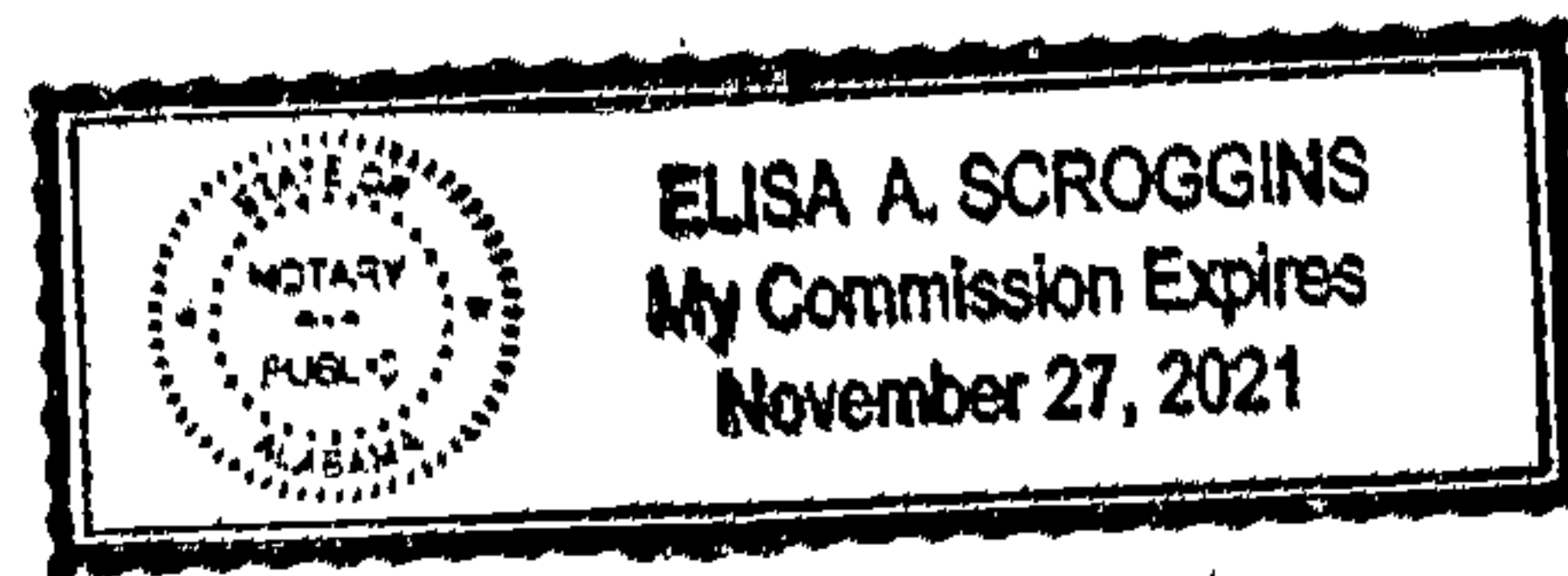
)

) ss:

COUNTY OF

Jefferson

)



On the 11 day of July in the year 2019 before me, the undersigned, a notary public in and for said state, personally appeared Tim Tawry, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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 capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Notary Public:

My Commission Expires:

11/27/21

TENANT:

Diamond Towers V LLC

Witness: Maria Burghardt
Name: Maria Burghardt

By: Michael G. Brett
Name: Michael G. Brett
Title: CFO

STATE OF New Jersey)
COUNTY OF Essex) ss:

On the 22nd day of July in the year 2019 before me, the undersigned, a notary public in and for said state, personally appeared Michael G. Brett, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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 capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Michelle Zakalik
Notary Public: _____
My Commission Expires: _____

MICHELLE ZAKALIK
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 6/12/2023

EXHIBIT "A"

Legal Description of the Real Property

SITUATED IN THE COUNTY OF SHELBY, IN THE STATE OF ALABAMA:

BEING A PORTION OF THE FOLLOWING LANDS:

PART OF SECTION 13, TOWNSHIP 21 SOUTH, RANGE 5 WEST, SITUATED IN SHELBY COUNTY, ALABAMA AS FOLLOWS:

THE NORTHWEST 1/4; THE NORTHEAST 1/4; THE EAST 1/2 OF THE SOUTHEAST 1/4; THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4; THE WEST 1/2 OF THE SOUTHWEST 1/4, EXCEPT THAT PORTION OF PROPERTY LYING WEST OF LITTLE SHADES CREEK.

LESS AND EXCEPT:

- 1.) ANY PORTION OF PROPERTY WHICH MAY BE INCLUDED IN THAT CERTAIN DEED TO DONNA G. WRIGHT AND HAROLD D. WRIGHT, FROM SHELBY INVESTMENTS, LLC, A GEORGIA LIMITED LIABILITY COMPANY, AS RECORDED IN INSTRUMENT 20170620000218600 IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY ALABAMA.
- 2.) ANY PORTION OF PROPERTY WHICH MAY BE INCLUDED IN THAT CERTAIN DEED TO SHELBY COUNTY FROM SHELBY INVESTMENTS, LLC, A GEORGIA LIMITED LIABILITY COMPANY, AS RECORDED IN INSTRUMENT 20161027000396070 IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY ALABAMA.

Tax ID: 25 6 13 0 000 001.000



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
08/08/2019 10:15:20 AM
\$37.00 CHERRY
20190808000286320

Allie S. Bayl