

Recorded: 6/30/2015 at 12:06:15.130 PM
Fee Amount: \$47.00
Revenue Tax:
Polk County, Iowa
Julie M. Haggerty RECORDER
Number: 201500113145
BK: 15638 PG: 6

-----SPACE ABOVE THIS LINE FOR RECORDER'S USE-----

Subordination, Non-Disturbance and Attornment Agreement

EQUITABLE LOFTS, LLC
Des Moines, Iowa
HUD Project No. 074-32003

PREPARED BY AND RETURN DOCUMENTS TO:

Paige H. Pease, Esq.
Pease Law PLLC
15105-D John J Delaney Drive, #222
Charlotte, North Carolina 28277

TAXPAYER INFORMATION:

LANDLORD

EQUITABLE LOFTS, LLC
700 West 47th Street, Suite 200
Kansas City, MO 64112
Attn: Stephen J. Block

TENANT:

EQUITABLE TENANT, LLC
700 West 47th Street, Suite 200
Kansas City, MO 64112
Attn: Stephen J. Block

LENDER:

TAVERNIER CAPITAL FUNDING, LLC
2080 N. Bethany Creek Drive
Alpharetta, GA 30004
Attn: Micheline Hunter

LEGAL DESCRIPTION:

See Exhibit A attached at page 9

Document or Instrument Number of Previously Recorded Documents:

Book: 15638 Page: 6 File Number: 2015-00113145 Seq: 1

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN
T AGREEMENT**

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN
T AGREEMENT (this "Agreement") is made effective as of the 26th day of June, 2015 by and among **TAVERNIER CAPITAL FUNDING, LLC**, a Florida limited liability company ("Lender"), **EQUITABLE LOFTS, LLC**, a Missouri limited liability company ("Landlord"), and **EQUITABLE TENANT, LLC**, a Missouri limited liability company ("Tenant").

RECITALS:

WHEREAS, Tenant has entered into a Master Lease dated effective as of June 25, 2015 (the "Lease") with Landlord, covering certain premises more fully described in the Lease (the "Premises"), which Premises are a part of that certain real property known as **The Equitable Building** (the "Property") located in Polk County, Iowa, and more fully described on Exhibit "A" attached hereto; and

WHEREAS, Lender has provided a commitment to extend financing to Landlord (the "HUD Loan") to improve the Property, including the Premises, which financing will be secured by a Mortgage on the Landlord's interest in the Property (the "Security Instrument"), recorded in the real estate records of Polk County, Iowa, and

WHEREAS, in order to facilitate the HUD-insured Loan to Landlord, Tenant has agreed to the subordination of the Lease to the Security Instrument, on the condition that it is assured of continued occupancy of the Premises under the terms of the Lease and this Agreement.

NOW THEREFORE, in consideration of Lender's commitment to extend financing to Landlord to improve the Property and Premises therein, Tenant hereby covenants and agrees as follows:

1. The Lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to the lien and effect of the Security Instrument insofar as it affects the real and personal property of which the Premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon.

2. In the event Lender or any trustee for Lender takes possession of the Property, as mortgagee-in-possession or otherwise, or forecloses the Security Instrument or otherwise causes the Property to be sold pursuant to the Security Instrument, Lender agrees not to affect, terminate or disturb Tenant's right to quiet enjoyment and possession of the Premises under the terms of the Lease or any of Tenant's other rights under the Lease in the exercise of Lender's rights under the Security Instrument so long as Tenant is not then in default under any of the terms, covenants or conditions of the Lease or this Agreement. If the Tenant is in default under the Lease, Lender may take action to effect a termination of the Lease upon a default by Tenant thereunder by first giving written notice to East West Bancorp, Inc., a Delaware corporation, the investor member of the Tenant ("Investor"), of its intention to terminate the Lease subject to the provisions set forth in (i) the Regulatory Agreement for Multifamily Housing Projects between Secretary of Housing and Urban Development ("HUD") and Landlord ("Landlord Regulatory Agreement"); (ii) the Regulatory Agreement for Multifamily Housing Projects between HUD and Tenant ("Tenant Regulatory Agreement"); and (iii) Section 3.3 of the Lease. In accordance with the Landlord Regulatory Agreement and the Tenant Regulatory Agreement, Investor will have a reasonable time, not to exceed thirty (30) days from the date of Investor's receipt of such written notice, to cause Tenant to cure, or to cure on Tenant's behalf, any defect in Tenant's compliance with the Lease, such that upon such cure the Tenant would be entitled to the non-disturbance of the Lease provided in this Section 2.

3. In the event that Lender succeeds to the interest of the Landlord under the Lease and/or Landlord's fee title to the Property, or if anyone else acquires title to or the right to possession of the Property upon the foreclosure of the Security Instrument or by other sale pursuant to the Security Instrument, or upon the sale of the Property by Lender or its successors or assigns or any trustee for Lender after foreclosure or other sale pursuant to the Security Instrument or acquisition of title in lieu thereof or otherwise, Lender or its successors or assigns or the then owner of Landlord's fee title to the Property after foreclosure or other sale pursuant to the Security Instrument (hereinafter collectively referred to in this paragraph as "Successor Landlord") and Tenant hereby agree to recognize one another as landlord and tenant, respectively, under the Lease and to be bound to one another under all of the terms, covenants and conditions of the Lease, and Successor Landlord shall assume all of the obligations of the Landlord under the Lease. Accordingly, from and after such event, Successor Landlord and Tenant shall have the same remedies against each other for the breach of an agreement contained in the Lease as Tenant and Landlord had before Successor Landlord succeeded to the interest of the Landlord; provided, however, that Successor Landlord shall not be:

- (a) *liable for any act or omission of any prior landlord (including Landlord);*
or
- (b) *subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord); or*
- (c) *bound by any rent or additional rent that Tenant might have paid for more than one month in advance to any prior landlord (including Landlord); or*
- (d) *bound by any amendment or modification of the Lease made after the date of this Agreement without Lender's prior written consent; or*
- (e) *liable for return of any security deposit.*

4. Although the foregoing provisions of this Agreement shall be self-operative, Tenant agrees to execute and deliver to Lender or to any person to whom Tenant herein agrees to attorn, such other instrument or instruments as Lender or such other person shall from time to time request in order to confirm such provision.

5. Tenant hereby warrants and represents, covenants and agrees to and with Lender:

- (a) *not to alter or modify the Lease in any respect without prior written consent of Lender;*
- (b) *to deliver to Lender at the address indicated above a duplicate of each notice of default delivered to Landlord at the same time as such notice is given to Landlord;*
- (c) *that Tenant is now the sole owner of the leasehold estate created by the Lease and shall not hereafter transfer the Lease except as permitted by the terms thereof;*
- (d) *not to seek to terminate the Lease by reason of any default of Landlord without prior written notice thereof to Lender and the lapse thereafter of such time as under the Lease was offered to Landlord in which to remedy the default, and the lapse of thirty (30) days after the expiration of such time as Landlord was permitted to cure such default; provided, however, that with respect to any default of Landlord under the Lease which cannot be remedied within such time, if Lender commences to cure such default within such time and thereafter diligently proceeds with such efforts and pursues the same to completion, Lender*

shall have such time as is reasonably necessary to complete curing such default. Notwithstanding the foregoing, in the event either Lender or Landlord do not cure or commence curing such default within the time provided to Landlord under the Lease and the nature of the default threatens Tenant's ability to conduct its daily business or threatens to materially or adversely damage Tenant's property located on the Premises, Tenant shall be permitted to exercise its right under the Lease;

(e) *not to pay any rent or other sums due or to become due under the Lease more than thirty (30) days in advance of the date on which the same are due or to become due under the Lease;*

(f) *to certify promptly in writing to Lender in connection with any proposed assignment of the Security Instrument, whether or not any default on the part of Landlord then exists under the Lease; and*

(g) *upon receipt from Lender of notice of any default by Landlord under the Security Instrument, to pay to Lender directly all rent and other sums due under the Lease.*

6. Notwithstanding any other provisions of this Agreement, in the event that any provision of this Agreement, conflicts with the documents or instruments executed and/or delivered in connection with the HUD Loan (the "HUD Loan Documents"), the provisions of the HUD Loan Documents shall control.

7. Tenant agrees that in the event that the FHA-Insured Loan is assigned to the Secretary, at HUD's election and upon thirty (30) days notice to Tenant at any time thereafter the Lease shall terminate.

8. The Lender may terminate the lease at anytime to preserve its rights under the Contract of Insurance with HUD in order to assign the HUD-insured Loan to HUD.

9. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

10. This Agreement shall be governed by and construed in accordance with the laws of the **State of Iowa.**

5. All notices, consents and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, and shall be deemed given when postmarked and addressed as follows:

If to Lender: Tavernier Capital Funding, LLC
 2080 N. Bethany Creek Drive
 Alpharetta, GA 30004
 Attn: Micheline Hunter

If to Landlord: Equitable Lofts, LLC
 700 West 47th Street, Suite 200
 Kansas City, MO 64112
 Attn: Stephen Block

With a copy to: Pease Law PLLC
15105-D John J. Delaney Drive, #222
Charlotte, NC 28277
Attn: Paige H. Pease, Esq.

If to Tenant: Equitable Tenant, LLC
700 West 47th Street, Suite 200
Kansas City, MO 64112
Attn: Stephen Block

With a copy to: Pease Law PLLC
15105-D John J. Delaney Drive, #222
Charlotte, NC 28277
Attn: Paige H. Pease, Esq.

If to Investor: East West Bancorp, Inc.
135 N. Los Robles Avenue
Pasadena, CA 91101
Attn: Keith Kishiyama

With a copy to: Jones Day
100 High Street, 21st Floor
Boston, MA 02110
Attn: Jeffrey Gaulin

Each party may designate a change of address by notice to the other party in accordance with this Section 11 given at least fifteen (15) days before such change of address is to become effective.

11. This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the date and year first above written.

LENDER:

TAVERNIER CAPITAL FUNDING, LLC
a Florida limited liability company

By: Dean W. Wantland
Dean W. Wantland
Senior Vice President

ACKNOWLEDGMENT

STATE OF MISSOURI)
)ss:
COUNTY OF ST. LOUIS)

I, Robin Carr, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Dean W. Wantland, personally known to me to be the Senior Vice President of **TAVERNIER CAPITAL FUNDING, LLC**, a Florida limited liability company, and personally known to me to be the same person whose name is subscribed to in the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act on behalf of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26 day of May, 2015.

[Signature]
Notary Public



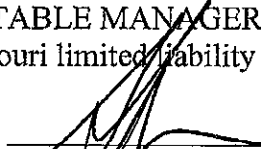
[Signatures continue on following page]

[SIGNATURE PAGE FOR LANDLORD]

EQUITABLE LOFTS, LLC,
a Missouri limited liability company

By its Manager:

EQUITABLE MANAGER, LLC,
a Missouri limited liability company

By: 
Stephen J. Block, Manager

STATE OF Missouri

COUNTY OF Jackson

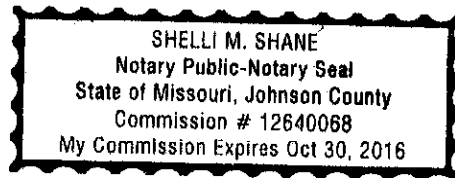
I, Shelli M. Shane, a Notary Public of the County and State aforesaid, certify that STEPHEN J. BLOCK, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is the Manager of EQUITABLE MANAGER, LLC, a Missouri limited liability company, the Manager of EQUITABLE LOFTS, LLC, a Missouri limited liability company, and being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein on behalf of Landlord.

Witness my hand and official stamp or seal, this 4 day of June, 2015.

Shelli M. Shane [NOTARIAL SEAL]

Notary Public

My commission expires: Oct. 30, 2016



[Signatures continue on following page]

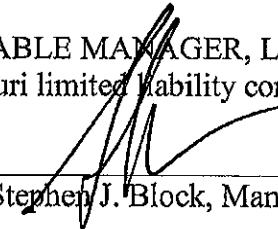
[SIGNATURE PAGE FOR TENANT]

EQUITABLE TENANT, LLC,
a Missouri limited liability company

By its Manager:

EQUITABLE MANAGER, LLC,
a Missouri limited liability company

By:



Stephen J. Block, Manager

STATE OF Missouri

COUNTY OF Jackson

I, Shelli M. Shane, a Notary Public of the County and State aforesaid, certify that STEPHEN J. BLOCK, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is the Manager of EQUITABLE MANAGER, LLC, a Missouri limited liability company, the Manager of EQUITABLE TENANT, LLC, a Missouri limited liability company, and being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein on behalf of Tenant.

Witness my hand and official stamp or seal, this 4 day of June, 2015.

Shelli M. Shane [NOTARIAL SEAL]

Notary Public

My commission expires: Oct. 30, 2016

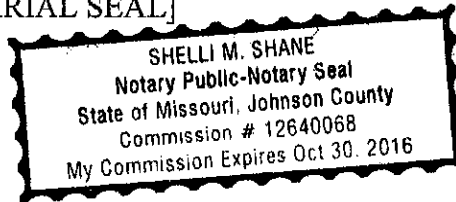


EXHIBIT A

Legal Description

Parcel 1 (Fee Tract):

Apartment 1 in THE EQUITABLE LOFTS, a Horizontal Property Regime, now included and forming a part of the City of Des Moines, Polk County, Iowa, together with the undivided interest in the general and limited common elements appurtenant to such Apartment as provided in the Declaration of Submission to Horizontal Property Regime referred to below, and located upon the property described therein, as set forth in the Declaration of Submission recorded in Book 15608, Page 665, and with any and all other interests appurtenant to such Apartment pursuant to said Horizontal Property Regime.

AND

Lots 7 and 8, Block 12, in FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, EXCEPT Apartments 1 and 2, inclusive, in THE EQUITABLE LOFTS, a Horizontal Property Regime, now included and forming a part of the City of Des Moines, Polk County, Iowa, together with the undivided interest in the general and limited common elements appurtenant to such Apartments as provided in the Declaration of Submission to Horizontal Property Regime referred to below, and located upon the property described therein, as set forth in the Declaration of Submission recorded in Book 15608, Page 665, and with any and all other interests appurtenant to such Apartments pursuant to said Horizontal Property Regime.

Parcel 2 (Leasehold Tract):

All rights appurtenant to the above described real estate pursuant to leasehold interests arising in a portion of Lots 5 and 6 in Block "C" in COMMISSIONER'S ADDITION, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, covered in the Memorandum of Parking Lease filed in Book 11776, Page 989 on July 31, 2006; Special Warranty Deed dated December 23, 2011 and recorded January 25, 2012 in Book 14135 at Page 374, corrected with Corrected Special Warranty Deed dated February 10, 2012 and recorded February 15, 2012 in Book 14161 at Page 168; and Memorandum of Assigned Lease Agreement dated June 9, 2015 and recorded June 10, 2015 in Book 15610 at Page 185.