



MISC 2014093192



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Fee amount: 46.00  
FB: 68-40328  
COMP: MS

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
12/01/2014 15:47:19.00



2014093192

Loan # [ 10299 ]

### SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT (the "Agreement") is made as of December 1, 2014, by and between High Tides of Omaha, LLC, a Nebraska limited liability company ("Tenant") whose address is 13111 Northwest Freeway, Suite 600, Houston, TX 77040, and ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, a Minnesota corporation, whose address is c/o Allianz Real Estate of America LLC, 60 East 42nd Street, Suite 3710, New York, NY 10165, Attention: Servicing Department ("Lender").

### RECITALS

A. In consideration of certain loans and other financial accommodations (the "Loan") made available by Lender to 168th and Dodge, LP, a Nebraska limited partnership ("Landlord"), Landlord has agreed to grant Lender a mortgage lien on and security interest in the real estate legally described in Exhibit A hereto and all improvements located thereon (the "Property") pursuant to a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage"). Landlord has also agreed to assign to Lender all leases and rents arising from the Property pursuant to an Assignment of Leases and Rents (the "Assignment").

B. Tenant is lessee of certain premises located on the Property (the "Premises") pursuant to a Lease between Tenant and Landlord, dated July 10, 2003 (the "Lease"), a copy of which was given by Landlord to Lender in connection with the Loan.

C. As part of the consideration for the Loan, Lender has required that the Lease be made subordinate to the lien of the Mortgage and Tenant has agreed to do so subject to the terms and conditions set forth below.

### AGREEMENT

Accordingly, the parties hereby agree as follows:

1. Subordination. Except as otherwise provided in paragraph 2 of this Agreement, the Lease and all rights of Tenant in and to the Lease, the Premises and the Property, including without limitation any option to purchase or otherwise acquire title to the Property, are hereby subjected and subordinated, and shall remain in all respects and for all purposes subject and subordinate, to the lien of the Mortgage (as hereafter amended, modified and/or increased), and to the rights and interest of Lender and its successors and assigns, as fully and with the same effect as if the Mortgage had been duly executed, acknowledged and recorded, and the indebtedness secured by the Mortgage had been fully disbursed prior to the execution of the

Lease or possession of the Premises by Tenant, or its predecessors in interest. This Agreement supersedes any inconsistent provision of the Lease.

2. Lender Not to Disturb Tenant. At any time that the Mortgage shall be in effect, notwithstanding anything herein to the contrary, Lender agrees that so long as Tenant is not in default (beyond any period given Tenant under the Lease to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Mortgage (unless required to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease) and Tenant's right of quiet possession of the Premises under the terms of the Lease will not be disturbed, by Lender or otherwise, so long as Tenant is not in default beyond any applicable grace or cure period of any term, covenant or condition of the Lease.

3. Tenant to Attorn to Lender. If the Premises shall be transferred to and owned by Lender by reason of foreclosure of the Mortgage or other proceedings brought by it in lieu of or pursuant to a foreclosure, or in any other manner, subject to paragraph 2 above, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and if Tenant exercises its options to renew under the Lease, any extensions thereof in accordance with any option therefor in the Lease, with the same force and effect as if Lender were originally the landlord under the Lease, and Tenant does hereby attorn, upon written notice, to Lender as its landlord, such attornment to be automatically effective immediately upon Lender's obtaining title to the Property without the execution of any further instruments on the part of any of the parties hereto. If requested in writing by Lender, Tenant agrees to confirm such attornment in writing.

4. Lender Not Bound By Certain Acts of Landlord. If Lender shall obtain title to the Property, Lender shall not be: (i) liable for any act or omission of any prior landlord (excluding any such act or omission which is ongoing at such time that Lender succeeds to the interest of Landlord under the Lease,); nor (ii) bound by any rent or additional rent which Tenant might have paid for more than the then current installment; nor (iii) bound by any amendment or modification of the rent or term of Lease made after the date hereof without Lender's prior written consent which Landlord is required to obtain; nor (iv) liable for the return of any security deposit or other deposit unless actually received by Lender; nor (v) bound by any offsets which Tenant may have against Landlord other than for amounts spent by Tenant as provided under the Lease to cure Landlord defaults after notice to Lender as provided in paragraph 4, above, and expiration of time periods for remedy by Lender, so long as such amounts are reasonable and appropriate and are spent on repairs, replacements or maintenance to or of the Property or for items incorporated into the Property; nor (vi) subject to any claim or counterclaim (specifically excluding defenses and offsets) which Tenant may have against any prior landlord (including Landlord) nor (vii) bound by any construction or construction reimbursement obligations of the Landlord under the Lease.

If Lender shall obtain <sup>P</sup>title to / ~~a leasehold interest in~~ <sup>Q</sup>the Property, Lender shall not be: (i) liable for any act or omission of any prior landlord (excluding any such act or omission which is ongoing at such time that Lender succeeds to the interest of Landlord under the Lease,); nor (ii) liable for the return of any security deposit or other deposit unless actually received by

Lender; nor (iii) bound by any construction or construction reimbursement obligations of the Landlord under the Lease.

5. Payment of Rent to Lender. In the event Lender notifies Tenant in writing of a default under the Loan and demands that Tenant pay its rent and all other sums due under the Lease to Lender, subject to paragraph 2 above, Tenant agrees that it will honor such demand and pay its rent and all other sums due under the Lease to Lender, or Lender's designated agent, until otherwise notified in writing by Lender.

6. Choice of Law. This Agreement is made and executed under and in all respects is to be governed and construed by the laws of the State of Nebraska.

7. Captions and Headings. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular.

8. Meaning of Lender. For purposes of this Agreement, the term "Lender" shall also be deemed to mean any purchaser of the Property at a foreclosure of the Mortgage, or any transferee of a deed-in-lieu of such a foreclosure.

9. Notices. Any notices which any party hereto may desire or may be required to give to any other party shall be in writing; and the mailing thereof by certified or overnight mail, or the delivery thereof by messenger service, to the addresses as set forth above, or to such other places as the parties hereto may by notice in writing designate, shall constitute service of notice hereunder.

*[Signature pages follow]*

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

TENANT: High Tides of Omaha, LLC, a  
Nebraska limited liability company

By: Bill Gordon  
Name: Bill Gordon  
Title: Vice President of Real Estate

STATE OF TEXAS                    )  
  ) ss.  
COUNTY OF HARRIS            )

On November 21, 2014, before me, Cherie Otto, Notary Public, personally appeared Bill Gordon, who proved to me on the 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 executed the same in his/ authorized capacity(ies), and that by his/ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

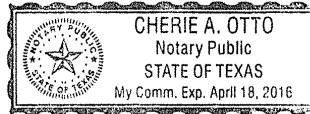
I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Cherie A. Otto

(Seal)

Notary Public

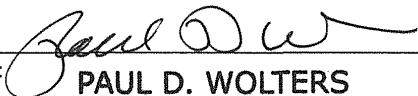


*(Signatures continue on next page)*

LENDER:

ALLIANZ LIFE INSURANCE COMPANY OF  
NORTH AMERICA, a Minnesota corporation

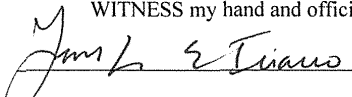
By:   
Name: **ERIC J. BERGWALL**  
Title: **ASSISTANT TREASURER**

By:   
Name: **PAUL D. WOLTERS**  
Title: **ASSISTANT TREASURER**

STATE OF NEW YORK                     )  
   ) ss.  
COUNTY OF NEW YORK                 )

On November 18, 2014, before me, Jennifer E. Triano,  
Notary Public, personally appeared Eric J. Bergwall and  
Paul D. Wolters, who proved to me on the basis of satisfactory evidence to be the persons  
whose names are subscribed to the within instrument and acknowledged to me that he/she/they executed the  
same in his/her/their authorized capacities, and that by his/her/their signatures on the instrument the persons,  
or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of New York that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.  
  
Notary Public

(Seal)

JENNIFER EILEEN TRIANO  
Notary Public- State of New York  
No 01TR6294309  
Qualified in New York County  
My Commission Expires December 16, 2017

[Signature Page to Subordination, Non-Disturbance and Attornment Agreement – Cheeseburger in  
Paradise]

The undersigned accepts and agrees to  
the provisions of Section 5 hereof:

LANDLORD: 168th and Dodge, LP, a Nebraska limited partnership

By: RED Development of West Dodge, L.L.C., a Missouri limited  
liability company, its sole General Partner

By: RED Village Pointe, LLC, a Missouri limited liability  
company, its Manager

By: RED Consolidated Holdings, LLC, a Delaware  
limited liability company, its Managing Member

By: [Signature]  
Name: Steven M. Maun  
Title: President

STATE OF KANSAS                     )  
  ) ss.  
COUNTY OF JOHNSON             )

On November 18, 2014, before me, Melissa A. Goodson, Notary Public, personally appeared Steven M. Maun, who proved to me on the 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.

I certify under PENALTY OF PERJURY under the laws of the State of Kansas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature] (Seal)  
Notary Public



**EXHIBIT A  
TO  
SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

The Property described in the referenced instrument is located in Douglas County, Omaha, and is legally described as follows:

**68-40328**

Lots 2, 4, 5, 8 and Outlots A and B, Village Pointe, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, except that part of Lot 2, Village Pointe as described in Plat and Dedication for Street Purposes filed September 12, 2008 at Instrument No. 2008090053, records of Douglas County, Nebraska.

AND

**68-40329**

Lots 1, 2 and 3, Village Pointe Replat One, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

AND

**68-40344**

Lot 3, Village Pointe Replat Two, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.