



MISC Inst. # 2017081230, Pg: 1 of 9 Rec Date: 10/10/2017 10:47:18.373

Fee Received: \$58.00 Electronically Recorded By: PN

Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

**RECORDING REQUESTED BY**

First American Title Insurance Company  
National Commercial Services

**AND WHEN RECORDED MAIL TO:**

Apple Inc.  
1 Infinite Loop, MS 4-DLAW  
Cupertino, CA 95014

Space Above This Line for Recorder's Use Only

File No.: NCS-917205MH

Document Title

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

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Loan #10299

### SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT 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 AGREEMENT is made as of March 6, 2017, by and among APPLE INC., a California corporation ("Tenant"), whose address is 1 Infinite Loop, Cupertino, California 95014, MS: 306-RTLA, Attn: Retail Lease Administration, 168<sup>TH</sup> AND DODGE, L.P., a Nebraska limited partnership ("Landlord"), whose address is One East Washington Street, Suite 300, Phoenix, AZ 85004, and ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, a Minnesota corporation, whose address is c/o Allianz Real Estate of America LLC, 60 East 42<sup>nd</sup> Street, Suite 3710, New York, NY 10165, Attn: Real Estate Department ("Lender").

### RECITALS

A. In consideration of certain loans and other financial accommodations (the "Loan") made available by Lender to 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, Security Agreement, Fixture Filing with Absolute Assignment of Rents (the "Deed of Trust"). Landlord has also agreed to assign to Lender all leases and rents arising from the Property pursuant to an Absolute Assignment of Leases, Rents and Income (the "Assignment").

B. Tenant is lessee of certain premises located on the Property (the "Premises") pursuant to that certain Lease between Tenant and Landlord, dated for reference purposes only as February 16, 2017, (collectively, the "Lease").

C. As part of the consideration for the Loan, Lender has required that the Lease be made subordinate to the lien of the Deed of Trust 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 Deed of Trust (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 Deed of Trust had been duly executed, acknowledged and recorded, and the indebtedness secured by the Deed of Trust 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 Deed of Trust shall be in effect, Lender agrees that so long as Tenant is not in default (beyond any notice and cure 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 Deed of Trust (unless required by applicable law in order to foreclose the Deed of Trust and then only for such purpose and not for the purpose of terminating the Lease), whether by judicial or nonjudicial foreclosure, deed-in-lieu of foreclosure or other sale in connection with enforcement of the Deed of Trust or otherwise in satisfaction of the Loan, and that Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof in accordance with the Lease, shall not be diminished or interfered with by Lender and Tenant's occupancy of the Premises shall not be disturbed by Lender. If Lender joins Tenant in such an action or proceeding foreclosing the Deed of Trust: (i) Lender shall not seek to terminate the Lease, and (ii) Landlord, by executing this Agreement, agrees to indemnify, defend and hold Tenant harmless from and against any damages, loss, cost or expense incurred or suffered by Tenant, including without limitation, legal fees, in being a party to or arising from such action or proceeding.

3. Tenant to Attorn to Lender. If the Premises shall be transferred to and owned by Lender by reason of foreclosure of the Deed of Trust or other proceedings brought by it in lieu of or pursuant to a foreclosure, or in any other manner, 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 any exercised extensions or renewals 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 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. Upon request, Tenant agrees to confirm such attornment in writing in a form reasonably acceptable to Tenant, provided that (a) such written document shall confirm the recognition by Lender of Tenant as tenant under the Lease, and (b) no such document may increase any of Tenant's obligations or decrease any of Tenant's rights under the Lease or this Agreement.

4. Lender Notice and Right to Cure Defaults of Landlord. Until the Deed of Trust is released by Lender, Tenant will not seek to terminate the Lease by reason of any act or omission of Landlord until Tenant shall have given written notice of such act or omission to Lender and until thirty (30) days have elapsed following the later of (i) the giving of such notice or (ii) the expiration of Landlord's cure period for such default or breach, if any, as provided in the Lease (or such longer period as may reasonably be required, including the time required to foreclose Lender's lien on the Premises, so long as Lender is proceeding diligently to remedy the act or omission), not exceeding in any event ninety (90) days, during which period Lender shall have right, but not the obligation, to remedy such act or omission.

5. 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 (including Landlord) other than defaults of a continuing nature with respect to the maintenance or repair of the Premises or the Property or defaults resulting from any act or omission by any prior landlord for which Tenant had given Lender notice and the opportunity to cure the same as provided in paragraph 4 above; provided, however, that Lender shall be liable and responsible for the performance of all covenants and obligations of landlord under the Lease accruing from and after the date that it takes title to the Property; nor (ii) bound by any rent or additional rent which Tenant might have paid for more than the then current installment unless Lender actually receives such payment; nor (iii) bound by any material amendment or modification of the Lease made after the date hereof without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, except for amendments or modifications that are allowed

or contemplated by the Lease, or made pursuant to the exercise of rights or options that Tenant has under the Lease; 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 as expressly provided under the Lease or 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 defenses which Tenant may have against any prior landlord (including Landlord), other than for defenses that arise out of a default of any prior landlord as to which Lender has received written notice and the opportunity to cure the same as provided in paragraph 4 above or defenses asserted by Tenant to a claim acquired by Lender from a prior landlord; nor (vii) bound by any construction or construction reimbursement obligations of the Landlord under the Lease, except with respect to the maintenance or repair of the Premises or the Property.

6. Payment of Rent to Lender. Tenant acknowledges that it has notice that the Lease and the rent and all sums due thereunder have been assigned to Lender pursuant to the Assignment as part of the security for the obligations secured by the Deed of Trust. 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, 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. Landlord hereby irrevocably authorizes and directs Tenant to make all rent payments directly to Lender upon receipt of such written notice and demand from Lender and Landlord agrees that Tenant may rely upon such notice from Lender and shall have no duty to inquire into the factual basis for or appropriateness of such notice and hereby releases Tenant from any and all liability to Landlord in connection with Tenant's compliance with this Paragraph 6. Landlord shall indemnify and hold Tenant harmless from any loss, cost, expense or claim incurred by Tenant in connection with its compliance with this provision.

7. No Amendment or Cancellation of Lease. So long as the Deed of Trust remains undischarged of record, Tenant shall not materially amend, modify, cancel or terminate the Lease, or consent to an amendment, modification, cancellation or termination of the Lease, or agree to subordinate the Lease to any other mortgage, without Lender's prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed, except for amendments, modifications, cancellations or terminations that are allowed or contemplated by the Lease, or made pursuant to the exercise of rights or options that Tenant has under the Lease.

8. Successors and Assigns. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their successors and assigns, including without limitation each and every holder of the Lease or any other person having an interest therein and shall inure to the benefit of Lender, and its successors and assigns. In the event that Lender or any new owner ("New Owner") shall acquire title to the Premises or the Property, Lender or such New Owner shall have no obligation, nor incur any liability, beyond Lender's or New Owner's then equity interest, if any, in the Property or the Premises, and Tenant shall look exclusively to such equity interest of Lender or New Owner, if any, for the payment and discharge of any obligations imposed upon Lender or New Owner hereunder or under the Lease or for recovery of any judgment from Lender or New Owner, and in no event shall the respective officers, directors, shareholders, agents, representatives, servants, employees or partners of Lender or New Owner ever be personally liable for such judgment.

9. 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 California.

10. 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.

11. 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 Deed of Trust, or any transferee of a deed-in-lieu of such a foreclosure.

12. 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 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.

[Remainder of Page Blank; 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: Apple Inc.,  
a California corporation

By: Mykl Dunning

Name: Mykl Dunning

Title: Director, Retail Finance

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 Santa Clara )

On February 23, 2017, before me, Stephanie Graham, Notary Public, personally appeared Mykl Dunning, 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 California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Stephanie Graham

Notary Public

(Seal)





LANDLORD:

168th and Dodge, L.P.,  
a Nebraska limited partnership

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

State of ARIZONA }  
County of MARICOPA } SS.

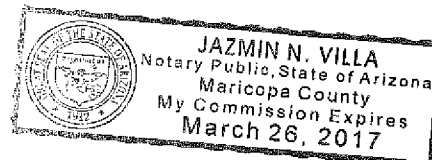
I, Jazmin N. Villa a notary public in and for said County, in the State  
aforesaid, DO HEREBY CERTIFY that Steven M. Maun  
personally known to me to be the President of 168th Dodge, a  
Delimited partnership and personally known to me to be the same person whose name is subscribed  
to the foregoing instrument, appeared before me this day in person and acknowledged that as  
such President, he signed and delivered the said instrument  
pursuant to authority given by said corporation as his free and voluntary act and as the free and  
voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 27th day of  
February, 2017.

Jazmin N. Villa  
Notary Public

My commission expires: 3-26-17

{SEAL}





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

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

Lots 2, 4, 5, 8, and Outlots A and B, Village Pointe, an addition to the City of Omaha, 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.

AND

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

AND

Lot 3 and Outlot A, Village Pointe Replat Two, an addition to the City of Omaha, Douglas County, Nebraska.