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12/23/2014 14:20:47.00



2014099598

Subordination, Non-Disturbance and
Attornment Agreement

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RETURN TO:

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**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
AND ESTOPPEL CERTIFICATE**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ESTOPPEL CERTIFICATE ("**Agreement**") executed this _ day of November, 2014, by and among SGD-Westridge, LLC, a Texas limited liability company ("**Landlord**"), and Subway Real Estate, LLC, a Delaware limited liability company ("**Tenant**"), and PINNACLE BANK a Nebraska state banking corporation ("**Lender**").

WITNESSETH:

A. Lender intends to make a loan to Landlord (the "**Loan**") to be evidenced by a Promissory Note executed by Landlord in favor of Lender ("**Note**"). The Note shall be secured by a first deed of trust ("**Mortgage**") which has been or shall be recorded and which encumbers or shall encumber Landlord's ownership interest in the real property in Douglas County, State of Nebraska, described on Exhibit A attached hereto and made a part hereof (the "**Property**").

B. Tenant and Landlord (or Landlord's predecessor-in-interest) entered into a lease dated **December 11, 2013**, (the "**Lease**"), by which Tenant leased certain premises (the "**Premises**") constituting all or a portion of the Property.

C. Lender is willing to make the Loan to Landlord provided the Mortgage is a lien on the Premises prior and superior to the Lease and provided that Tenant specifically subordinates the Lease to the lien of the Mortgage subject to the terms below

D. Tenant wants assurance regarding its right to continued occupancy of the Premises under the terms of the Lease and subject to the terms of the Mortgage, subject to the terms hereof.

NOW, THEREFORE, it is mutually agreed as follows:

1. The Lease is and shall be subject and subordinate to the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage.

2. In the event of a foreclosure of the Mortgage or should Lender obtain title by deed in lieu thereof, or otherwise, Lender, for itself, its successors or assigns, agrees that Tenant may continue its occupancy of the Premises in accordance with the terms and provisions of the Lease, so long as Tenant continues to pay rent and otherwise perform its obligations thereunder. Lender agrees not to name Tenant as a party defendant in any foreclosure action unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such foreclosure rights and remedies. In the event Lender is required to join Tenant as a defendant in such action, such joinder shall be only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

3. Tenant agrees to attorn to: (a) Lender when in possession of the Premises; (b) a receiver appointed in an action or proceeding to foreclose the Mortgage or otherwise; or (c) to any party acquiring title to the Premises as a result of foreclosure of the Mortgage or deed in lieu thereof, or otherwise. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto provided, however, Tenant further covenants and agrees to execute and deliver, upon request of Lender, or its assigns, an appropriate agreement of attornment with any subsequent titleholder of the Premises.

4. So long as the Mortgage on the Premises remains outstanding and unsatisfied, Tenant will *use its best efforts* to deliver to Lender a copy of all notices permitted or required to be given to Landlord by Tenant pursuant to which the Tenant proposes to abate or reduce the rental payable under the Lease or to terminate or cancel the Lease, and that no such notices to Landlord shall be effective, unless a copy of such notice is also delivered to Lender. At any time before the rights of Landlord shall have been forfeited or adversely affected because of any default or failure of performance under the Lease as therein provided, Lender shall have the right (but not the obligation) to cure such default or failure of performance within thirty (30) days, or a reasonable period of time (whichever is the later to occur), from Lenders receipt of such written notice from Tenant stating the nature of such default or failure of performance.

5. Tenant certifies that the Lease has been duly executed by Tenant; that no rent under the Lease has been paid more than thirty (30) days in advance of its due date; and that Tenant, as of this date, has no charge, lien or claim of offset under the Lease, or otherwise, against the rents or other charges due or to become due thereunder.

6. If Lender shall succeed to the interest of Landlord under the Lease, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lenders succession to the interest of Landlord under the Lease, have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Lender had not succeeded to the interest of Landlord; provided further, however, that Lender shall not be:

(a) liable for any warranty, act or omission of any prior landlord (including Landlord); or

(b) subject to any offsets or defense which Tenant might have against any prior landlord (including Landlord), except those which arose out of such Landlord's default under the Lease and accrued after Tenant has notified Lender and given Lender an opportunity to cure as provided herein; or

(c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord);

(d) bound by any *material* amendment or *material* modification of the Lease or any collateral agreement, or waiver of any terms of the Lease or any collateral agreement, made without Lender's consent;

(e) liable for any sum that any prior landlord, including Landlord, owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Lender; or

(f) bound by any surrender, cancellation or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, made without Lender's consent, except as expressly provided in the Lease.

7. If Lender shall succeed to the interest of the Landlord under the Lease, upon the written request of Lender to Tenant, Tenant shall execute and deliver to Lender a lease of the Premises upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such transfer.

8. Landlord acknowledges and agrees for itself and its heirs, successors and assigns that this Agreement does not in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Note or Mortgage or other loan documents evidencing or securing the Loan; in the event of a default under the Note or Mortgage or other loan documents evidencing or securing the Loan, Landlord hereby consents to Tenant's attornment to Lender and, upon such event and Lender's written request, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Lease.

9. Tenant hereby certifies to and agrees with Lender that as of the date of this Agreement, Lender is relying on all of the following certifications and agreements of Tenant as consideration for Lender executing this Agreement:

(a) The Lease is in full force and effect and is the valid and binding obligation of Tenant, enforceable in accordance with its terms.

(b) Neither Tenant nor Landlord is in default under the Lease.

10. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns) of the parties.

11. This Agreement shall be governed by, and construed and enforced in accordance with the internal laws of the State where the Property is located.

12. This instrument may be executed in multiple counterparts, and the separate signature pages and notary acknowledgments may then be combined into a single original document for recordation

[Remainder of page intentionally left blank]

(Tenant Signature Page)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below their respective signatures.

TENANT:

SUBWAY REAL ESTATE, LLC

By: Madelyn Molynaux 12/10/14
Name: _____
Title: Madelyn Molynaux
Date: Duly Authorized

CONNECTICUT)
STATE OF NEBRASKA)
NEW HAVEN) SS: MILFORD
COUNTY OF DOUGLAS)

This instrument was acknowledged and executed before me this ^{10th} ~~12th~~ day of ~~November~~ ^{DECEMBER}, 2014 by Madelyn Molynaux, who acknowledged to be the Duly Authorized of **Subway Real Estate, LLC**, a Delaware limited liability company, on behalf of such company.

My Commission Expires: 4/30/17

Sharon A. Chaco
Notary Public



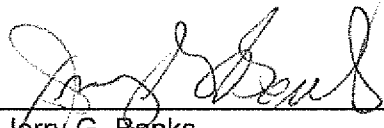
Sharon A. Chaco
NOTARY PUBLIC
State of Connecticut
My Commission Expires
April 30, 2017

(Landlord Signature Page)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below their respective signatures.

LANDLORD:

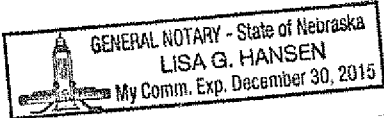
SGD – WESTRIDGE, LLC

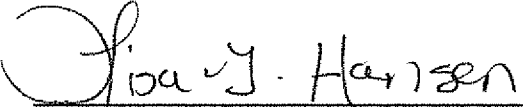
By: 
Name: Jerry G. Banks
Title: Secretary
Date: 12/17/14

STATE OF NEBRASKA)
) SS:
COUNTY OF DOUGLAS)

This instrument was acknowledged and executed before me this 17th day of December, 2014 by **Jerry G. Banks**, who acknowledged to be the **Secretary** of **SGD – WESTRIDGE, LLC**, a Texas limited liability company, on behalf of such company.

My Commission Expires:





Notary Public

(Lender Signature Page)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below their respective signatures.

LENDER:


PINNACLE BANK

By: 
Name: Luke Traynowicz
Title: Vice President
Date: 12/18/14

STATE OF NEBRASKA)
) SS:
COUNTY OF LANCASTER)

This instrument was acknowledged and executed before me this 18 day of December, 2014 by Luke Traynowicz, who acknowledged to be the Vice President of Pinnacle Bank, a Nebraska state banking corporation, on behalf of such corporation.

My Commission Expires:
10/31/17


Notary Public

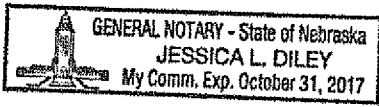


EXHIBIT "A"
LEGAL DESCRIPTION

Lot 1, in KVI - 132nd Street Plaza, an Addition to the City of Omaha, Douglas County, Nebraska

AND

A tract of land being part of Lot 2, as originally surveyed and platted, of the KVI - 132nd Street Plaza, a subdivision located in the Southwest Quarter (SW ¼) of Section 18, Township 15 North, Range 12 East of the 6th P.M., Douglas County Nebraska. Said tract of land being more particularly described as follows: Beginning at the Southeast corner of said Lot 2 and said point also being the Southeast corner of the subdivision; thence N76°53'01"W (Platted Bearing) along the Southerly line of the subdivision a distance of 74.23 feet to a point; thence N0°06'18"W a distance of 247.76 feet to a point; thence N43°26'07"W a distance of 11.49 feet to a point; thence N0°00'22"E a distance of 233.41 feet to a point; thence S89°58'09"W a distance of 226.08 feet to a point; thence N00°01'53"W a distance of 49.29 feet to a point of curvature; thence Northeast along a curve to the right, said curve having a radius of 50.00 feet, a long chord of 38.27 feet bearing N22°28'07"E, an arc length of 39.27 feet to a point of tangency; thence N44°58'07"E a distance of 63.53 feet to a point of curvature; thence Northerly along a curve to the left, said curve having a radius of 80.00 feet, a long chord of 43.97 feet bearing N29°01'15"E, an arc distance of 44.54 feet to a point; thence N89°58'09"E a distance of 228.23 feet to the Northeast corner of said Lot 2; thence S0°12'00"W a distance of 674.42 feet to the Point of Beginning.