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Gary W. Ott  
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SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT

BY AND AMONG

SUBWAY REAL ESTATE LLC  
Tenant

OLYMPUS HILLS SHOPPING CENTER, LTD.  
Landlord

AND

LIFE INSURANCE COMPANY OF THE SOUTHWEST  
Lender

*Recording requested by and  
after recording please return to:*

Law Offices of F. J. von Turkovich, PC  
One National Life Drive, M-230  
Montpelier, VT 05604

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENMENT AGREEMENT**

AGREEMENT made effective as of the 10 day of January, 2017, by and among the following persons or entities hereinafter referred to collectively, as the "**Parties**":

SUBWAY REAL ESTATE LLC, a Delaware limited liability company ("**Tenant**").

Olympus Hills Shopping Center, Ltd, a Utah limited partnership ("**Borrower**").

Olympus Hills Shopping Center, Ltd, a Utah limited partnership, including successors and assigns including Borrower ("**Landlord**")

Life Insurance Company of the Southwest, a Texas corporation ("**Lender**").

WITNESSETH:

WHEREAS, the above named persons or entities are Parties to a certain lease agreement as follows:

"**Lease**": That certain lease between Landlord and Tenant dated May 17, 2012.

"**Property**": Olympus Hills Shopping Center, 3950 South Wasatch Boulevard, Salt Lake City, Salt Lake County, Utah

WHEREAS, Lender intends to make a loan ("**Loan**") to Borrower as evidenced by certain documents and agreements, including, *inter alia*, a certain Promissory Note ("**Note**"); and a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing ("**Mortgage**") and all renewals, modifications, consolidations, replacements and extensions thereof. The aforementioned documents together with all other instruments or agreements that now or hereafter evidence or secure the Loan are collectively referred to herein as the "**Loan Documents**"; and

WHEREAS, Tenant *or its Subtenant* occupies or intends to occupy certain premises located at the Property described above, under the Lease (the "**Premises**"); and

WHEREAS, Borrower has acquired, or intends to acquire prior to the closing of the Loan, all of the right, title and interest of Landlord under the Lease; and

WHEREAS, Lender requires, as a condition to the funding of the Loan, that the Lease be subordinated to the lien or charge of the Loan Documents; and

WHEREAS, Tenant desires that Lender recognize Tenant's rights under the Lease in the event of a foreclosure of the Mortgage or other transfer of Landlord's right, title and interest in the Property and provide for the nondisturbance of Tenant as set forth herein; and

WHEREAS, Tenant is willing to attorn to Lender or other purchaser at such foreclosure or transfer provided its rights under the Lease are recognized; and

WHEREAS, Landlord, in conformance with its obligations under the Loan, is willing to fulfill its duties and obligations as set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The Parties agree that the foregoing recitals are true and correct and incorporated herein by this reference.
2. Subordination. Tenant agrees that the Lease and any extensions, renewals, replacements or modifications thereof and all right, title and interest of Tenant in and to the Premises and the Property are now and shall in the future be subject and subordinate to the lien and charge of the Loan Documents including, without limitation, all amendments, renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums and obligations secured thereby with the same force and effect as if the Mortgage and the other Loan Documents had been executed, delivered and recorded prior to the execution and delivery of the Lease. Tenant further acknowledges that, in making disbursements of the Loan, Lender has no obligation or duty to see to the application of such proceeds by the person or persons to whom such proceeds are disbursed by Lender, and any application or use of such proceeds will not defeat the subordination that Tenant makes in this Agreement, in whole or in part.
3. Non-Disturbance. Lender agrees that so long as Tenant is not in default in the performance of its obligations under the Lease beyond any applicable grace or cure periods, Tenant's possession and occupancy of the Premises and its rights and privileges under the Lease shall not be diminished or interfered with by Lender in the exercise of any of its rights under the Loan Documents.
4. Attornment. Lender and Tenant agree that upon change in ownership of the Property by reason of the foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure, or otherwise, the Lease shall not be terminated or affected thereby but shall continue in full force and effect upon all of the terms, covenants and conditions set forth therein and Tenant agrees to attorn to Lender or any other purchaser at a foreclosure sale, or their respective successors or assigns, for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option under the Lease, and Tenant does hereby attorn to Lender or such purchaser, successor or assign as its landlord, said attornment to be effective and self-operative without the need for execution of any further instrument on the part of any of the Parties hereto, immediately upon such succession to the interests of Landlord in the Premises. Tenant agrees, however, upon written demand by Lender or any such purchaser,

successor or assignee, within fifteen (15) days after such demand, to execute an instrument in confirmation of the foregoing provisions, reasonably satisfactory for such purpose, in which Tenant shall acknowledge such attornment and set forth the terms and status of its tenancy.

5. Lender's Right to Subordinate Mortgage. Notwithstanding anything to the contrary set forth above, Lender may at any time subordinate the Mortgage to the Lease in whole or in part, without any need to obtain Tenant's consent, by execution of documents subordinating the Mortgage to the Lease to the extent set forth in such documents, and thereupon, the Lease shall be deemed prior to the Mortgage without regard to this Agreement or any other instrument, or the dates of their execution, delivery or recording.

Lender's Liability under Lease. Tenant agrees that if Lender or any purchaser, successor or assignee shall succeed to the interests of Landlord under the Lease (Lender, together with any such purchaser, successor, or assignee, being sometimes referred to herein as "**Purchaser**"), neither Lender nor such Purchaser shall be: (a) liable for Landlord's failure to perform any of its obligations under the Lease which have accrued prior to the date on which Lender or any such Purchaser shall become the owner of the Property, provided the foregoing shall not relieve Purchaser from responsibility for failure of Landlord to perform any of its obligation under the Lease which failure continues after the vesting of record title in Purchaser, in which event Purchaser's responsibility for such failure shall be determined as if the failure had first arisen upon the vesting of record title in Purchaser; (b) subject to any setoffs, defenses, abatements or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which such Purchaser shall obtain record title to the Property; (c) liable for the return of rental security deposits, if any, paid by Tenant to Landlord in accordance with the Lease unless such sums are actually received by Lender or any such Purchaser; (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one month in advance of the date when due under the Lease to any prior Landlord unless such sums are actually received or such prepayment shall have been expressly approved of by Lender or any such Purchaser written consent; (e) bound by any agreement *materially* amending, *materially* modifying or terminating the Lease made without Lender's or, after such succession, any such Purchaser's, prior written consent, *other than the exercise of rights, options or elections contained in the Lease*; or (f) bound by any assignment of the Lease or sublease of the Premises, or any portion thereof made without Lender's or, after any such succession, any such Purchaser's prior written consent, *except that Tenant may assign the Lease and/or sublet the premises as permitted by the Rider to Lease, section R2.*

6. Assignment of Rents; Notice to Tenant. Tenant acknowledges that Borrower has or will have, as part of its Loan transaction with Lender, assigned the Lease to Lender and that Borrower as Landlord will have, a license to collect the rent due thereunder. Tenant agrees that any time it receives notice from Lender requesting that the rent and all other sums due Landlord under the Lease be paid to Lender or its designees, that Tenant hereby agrees to honor such request and will promptly pay such sum directly to Lender or its designee without legal process or the necessity of proof of Landlord's default under the Loan Documents, and Landlord irrevocably consents to Tenant's reliance on such notice from Lender without the necessity of any further consent or direction from Landlord and notwithstanding any contrary instructions that Landlord may purport to give, and Landlord shall hold Tenant harmless for performance thereunder. Such payment by Tenant will continue until the first to occur of the following: (a) the Lease expires

pursuant to its terms and no further amounts are payable by Tenant thereunder; (b) Lender gives Tenant written notice that the rents and other payments are to be paid to Landlord; or (c) Lender gives Tenant written notice that a Purchaser has succeeded to the interests of Landlord and Lender under the Lease, after which time the rent and all other sums due under the Lease will be paid as directed by such Purchaser. Payment of rents to Lender as provided for hereunder shall not be deemed to: (i) cause Lender to succeed to or to assume any obligations or responsibilities of Landlord under the Lease, or (ii) relieve Landlord of any obligations under the Lease.

7. Option or Right of First Refusal to Purchase. Any option or rights contained in the Lease or otherwise existing in favor of Tenant to acquire title to any or all of the Property are hereby subordinated to the lien and rights of Lender under the Loan Documents and acquisition of any or all of the Property made by Tenant during the term of the Loan Documents shall be made subordinate and subject to the Loan Documents.

8. Default by Landlord; Lender's Right to Notice and Opportunity to Cure. Tenant agrees that it will *use its best efforts to* simultaneously send to Lender copies of all default notices, which Tenant may serve on Landlord under the Lease. No such default notice to Landlord shall be effective against Lender unless a copy is also served on Lender at the address as set forth below. After receipt of written notice from the Tenant, before the Lease is terminated by any default or failure to act on the part of Landlord, Lender shall have thirty (30) days beyond the time permitted for Landlord to cure a default under the Lease or if the default is of such nature to reasonably require more than thirty (30) days to cure, Lender shall then be permitted such additional time as is reasonably necessary to effect such cure. Lender's cure period shall continue for such additional time as may be required for Lender to (i) obtain possession and control of the Property, or (ii) obtain the appointment of a receiver and give such receiver a reasonable period of time to cure the default.

9. No Prepayment of Rent or Lease Amendment or Termination without Lender's Consent. Landlord and Tenant agree not to make or accept prepayment of rent more than one month in advance of the date when due nor make any amendment of the Lease or other modification of the rights of Landlord and Tenant thereunder and, further, that no person obligated thereunder may be released from liability without Lender's express written consent. The Parties agree that the Lease shall not be terminated consensually by Landlord and Tenant without Lender's express written consent.

10. Compliance with Laws and Regulations. Tenant agrees to abide by all laws, ordinances, rules and regulations, including those in regard to hazardous materials and toxic substances as provided for by state or federal law, and in accordance with the Lease.

11. Satisfaction of Obligation to Provide Non Disturbance Agreement. Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

12. Notice. "Notice" means any notice, demand, or other communication or document to be provided under this Agreement or the Lease. All Notices shall be in writing and shall be given to the Party at its address set forth below or such other address as the Party may later specify for

that purpose by Notice to the other Party. Each Notice shall, for all purposes, be deemed given and received:

- a. If hand delivered to a Party against receipted copy, when the copy of the Notice is receipted;
- b. If given by a nationally recognized and reputable overnight delivery service, on the day on which the Notice is actually received by the Party at the address of the Party as specified above; or
- c. If given by certified mail, return receipt requested, postage prepaid, two (2) business days after it is posted with the United States Postal Service, at the address of the Party as specified below:

If Notice is tendered under the provisions of this Agreement and is refused by the intended recipient, the Notice shall nonetheless be considered to have been given and shall be effective as of the date such notice was refused.

Landlord: Olympus Hills Shopping Center, Ltd.  
1963 S. 1200 E. Suite 106  
Salt Lake City, UT 84105

*With a copy to:*

Freeman Lovell, PLLC  
Attn: Steven R. Lovell, Esq.  
9980 S. 300 W. Suite 200  
Sandy, UT 84070

Tenant: SUBWAY REAL ESTATE LLC  
**325 SUB WAY**  
**MILFORD, CT 06461**

Lender: Life Insurance Company of the Southwest  
c/o Sentinel Asset Management, Inc.  
One National Life Drive, M501  
Montpelier, VT 05604  
Attn: Mortgage Servicing

*With a copy to:*

LAW OFFICES OF F. J. VON TURKOVICH, P.C.  
One National Life Drive, M230  
Montpelier, VT 05604

ML

15. Definitions. The term "Lender" as used herein shall include the Lender, the successors and assigns of Lender and any other person, party or entity which shall become the owner of the Property by foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, but in no event shall Lender be personally liable for the failure of any such purchaser, successor or assignee to comply with the terms of this Agreement. The term "Landlord" as used herein shall mean and include the present Landlord under the Lease and such Landlord's predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon, the rights and appurtenances thereto, and the estates therein encumbered by the Mortgage.
16. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the Parties hereto or their respective permitted assigns or successors in interest.
17. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the state where the Property is located.
18. Inapplicable Provisions; Survival. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.
19. Benefit and Burden of Agreement. This Agreement shall inure to the benefit of the Parties hereto, their successors and permitted assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, all obligations and liabilities of Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the Party to whom Lender's interest is assigned or transferred.
20. Agreement to Run with Land. This Agreement and the covenants herein contained are intended to run with and bind all land affected hereby.
21. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.
22. Duplicate Originals; Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single Agreement and a telecopy or facsimile transmission thereof shall be binding on the party or Parties whose signatures appear thereon. .
23. Effective Date. In the event that this Agreement is executed and delivered by the Parties without entering an effective date, the effective date will be deemed to be the date on which the Loan proceeds were disbursed to the Landlord. If the effective date is left blank, the Parties hereto hereby specifically authorize Lender to enter the date on which the Loan proceeds were disbursed as the effective date.

(Execution pages follow)




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

LANDLORD/BORROWER

Olympus Hills Shopping Center, Ltd  
a Utah limited partnership

By: Revilo, LLC  
a Utah limited liability company  
Its General Partner

By:   
Ned O. Skanchy, Its Manager

STATE OF UTAH )  
 )  
COUNTY OF SALT LAKE )

This instrument was acknowledged before me on this 20 day of January, 2017, by Ned O. Skanchy, the Manager of Revilo, LLC, which entity is the General Partners of Olympus Hills Shopping Center, Ltd, to me known or proved on the basis of satisfactory evidence, who personally appeared before me and who, being duly sworn, acknowledged that he/she executed the foregoing instrument as his/her free act and deed and the free act and deed of said BORROWER.

Before me,

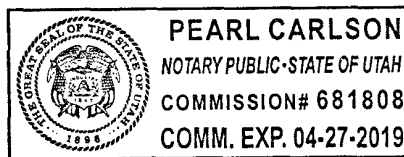
  
\_\_\_\_\_

Notary Public, State of UT

Pearl Carlson

Print Name

My Commission Expires: 4/27/19



TENANT

SUBWAY REAL ESTATE LLC, a Delaware  
limited liability company



By: \_\_\_\_\_  
*Signature*

Its Matthew Whelan [Title] and Duly  
Authorized Agent **Manager**

\_\_\_\_\_  
*Print name of signer*

STATE OF CONNECTICUT)

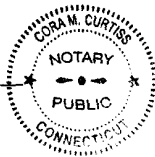
) Milford

COUNTY OF NEW HAVEN)

This instrument was acknowledged before me on this 30<sup>th</sup> day of January, 2017, by Matthew Whelan, the Manager of SUBWAY REAL ESTATE LLC, to me known or proved on the basis of satisfactory evidence, who personally appeared before me and who, being duly sworn, acknowledged that he/~~she~~ executed the foregoing instrument as his/~~her~~ free act and deed and the free act and deed of said SUBWAY REAL ESTATE LLC.

Before me,

Cora M. Curtiss



**Cora M. Curtiss**  
**NOTARY PUBLIC**  
State of Connecticut  
My Commission Expires  
January 31, 2021

Notary Public, State of Connecticut

CORA M. Curtiss

Print Name

My Commission Expires: January 31, 2021

LENDER

LIFE INSURANCE COMPANY OF THE  
SOUTHWEST

By: *Paul D. Wolters*  
Paul D. Wolters  
Duly Authorized Representative

STATE OF VERMONT                     )  
   )  
COUNTY OF WASHINGTON             )

On this 17<sup>th</sup> day of January, 2017, before me, a Notary Public of the State of Vermont, personally appeared Paul D. Wolters, duly authorized representative for LIFE INSURANCE COMPANY OF THE SOUTHWEST, known to me, and acknowledged that he, being authorized to do so, executed the foregoing document for the purposes therein contained as his free act and deed and the free act and deed of LIFE INSURANCE COMPANY OF THE SOUTHWEST.

Before me,

*M. L. Gillespie*  
Notary Public

**MARY L. GILLESPIE**  
**Notary Public, State of Vermont**  
**My Commission Expires Feb. 10, 2019**

Mary L. Gillespie  
Print Name  
My Commission Expires: 2/10/19

**EXHIBIT A  
PROPERTY DESCRIPTION**

Lots 72 and 73, MT. OLYMPUS ACRES SUBDIVISION, excepting therefrom the East 10 feet of Lot 73, according to the official plat thereof, recorded February 27, 1954 as Entry No. 1362518 in Book N of Plats at Page 82, Salt Lake County Recorder's office.

ALSO: Lots 71, 120, 121 and a portion of Lot 122 and vacated street Mt. Olympus Acres Subdivision, more particularly described as follows:

Beginning at the Northwest corner of Lot 121, Mt. Olympus Acres Subdivision, in part of the Southwest quarter of Section 36, Township 1 South, Range 1 East, Salt Lake Base and Meridian and running thence South 80°00' East 102.14 feet; thence North 167.73 feet; thence West 100.00 feet; thence North 00°13'44" East 750.19 feet to a point of a 25.00 foot radius curve to the right; thence Northeasterly along the arc of said curve 39.17 feet to a point of tangency; thence East 301.03 feet to a point of a 300.00 foot radius curve to the right; thence Southeasterly along the arc of said curve 246.09 feet; thence South 47° West 147.18 feet; thence South 42° East 335.76 feet; thence South 16°30' West 424.84 feet; thence South 19°00' East 313.45 feet; thence North 68°00' West 203.00 feet; thence South 22° West 27.00 feet; thence North 68°00' West 58.00 feet; thence North 22° East 27.00 feet; thence North 68°00' West 226.99 feet; thence South 22°00' West 140.41 feet to a point on a curve to the left, the center of which is South 19°06' West 316.00 feet; thence Northwesterly along the arc of said curve 50.19 feet to a point of tangency; thence North 80°00' West 75.86 feet to a point of a 25.00 foot radius curve to the right; thence Westerly and Northerly along the arc of said curve 35.84 feet to a point of a reverse curve to the left, the center of which is North 87°52'20" West 1959.86 feet; thence Northeasterly along the arc of said curve 64.95 feet to a point of tangency; thence North 00°13'44" East 55.06 feet to the point of beginning.

The entirety of the above property may also be described as follows:

Beginning at a point, said point being the Northwest corner of Lot 121, Mt. Olympus Acres Subdivision, said point also lying on the Easterly right of way line of Wasatch Boulevard and being North 814.09 feet and East 53.25 feet from the Southwest corner of Section 36, Township 1 South, Range 1 East of the Salt Lake Base and Meridian; thence South 80°00' East 102.14 feet; thence North 167.73 feet; thence West 100.0 feet; thence North 00°13'44" East 750.19 feet to a point of a 25.00 foot radius curve to the right; thence Northeasterly along the arc of said curve 39.17 feet to a point of tangency; thence East 301.03 feet to a point of a 300.00 foot radius curve to the right; thence Southeasterly along the arc of said curve 329.87 feet to the point of a reverse curvature of a 216.00 foot radius curve to the left; thence along the arc of said curve 80.49 feet; thence South 39°00' West 132.58 feet; thence South 42°00' East 154.92 feet; thence South 16°30' West 424.84 feet; thence South 19°00' East 313.45 feet; thence North 68°00' West 203.00 feet; thence South 22°00' West 27.00 feet; thence North 68°00' West 58.00 feet; thence North 22°00' East 27.00 feet; thence North 68°00' West 226.99 feet; thence South 22°00' West 140.41 feet to a point on the Northerly right of way line of Apollo Drive, said point also being a point on a 316.00 foot radius curve to the left, the bearing to the center of said curve being South 19°06' West 316.00 feet; thence Northwesterly along the arc of said curve 50.19 feet to a point of tangency; thence North 80°00' West 75.86 feet, to a point of a 25.0 foot radius curve to the right; thence along the arc of said curve 35.84 feet to a point of a reverse curve to the left, the center of which is North 87°52'20" West 1959.86 feet; thence Northeasterly along the arc of said curve 64.95 feet to a point of tangency; thence North 00°13'44" East 55.06 feet to the point of beginning.

Tax Id No.: 16-36-351-005, 16-36-351-009, 16-36-351-010, 16-36-351-011, 16-36-351-025, 16-36-351-026, 16-36-351-027, 16-36-351-028 and 16-36-351-029