

Recording Requested By:
WELLS FARGO BANK,
NATIONAL ASSOCIATION
Salt Lake North Business Banking
Group, 299 South Main, 11th Floor,
MAC #U1228-111, Salt Lake City, UT
84111

And After Recording, Return To:
WELLS FARGO BANK,
NATIONAL ASSOCIATION
BBOCS Business Lending Loan Operations
LDI, P.O. Box 65119, San Antonio, TX
78265
Attn:

Tax Account Number(s) of Real Property:
06-037-0174

MNT 52335



DTP34290

SUBORDINATION, NON-DISTURBANCE,
ATTORNEY AND ESTOPPEL AGREEMENT

(EASEMENT TO DEED OF TRUST)

THIS AGREEMENT is entered into as of September 30, 2016 by and between TOWERPOINT ACQUISITIONS, LLC (including its successors and assigns) ("Tenant"), Barton Creek Partners, L.L.C. ("Landlord") and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender").

RECITALS

A. Lender, or its predecessor in interest has extended credit or may hereafter extend credit to Barton Creek Partners, L.L.C. ("Borrower") secured, in whole or in part, by a deed of trust dated April 27, 2016 and recorded April 29, 2016 at the Davis County, Utah Recorder's Office as Entry No. 2935542 in Book 6506, Page 595 (the "Deed of Trust") covering that certain real property situated in Davis County, Utah, and described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Tenant receives an easement interest in a portion of the Property pursuant to a easement entered into between Landlord and Tenant, or between Landlord's and/or Tenant's assignors or predecessor(s) in interest, as the case may be, dated as of September 30, 2016, as may have been amended, modified, restated, or otherwise assigned, transferred or sub-let (the "Easement"). It is a condition of Lender's agreement to extend or continue credit to Borrower secured by the Property that the security of the Deed of Trust be and at all times remain a lien or charge on the Property prior and superior to the rights of Tenant under the Easement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. SUBORDINATION.

(a) Subordination of Easement. The Deed of Trust and any and all extensions, renewals, modifications or replacements thereof shall be and at all times remain a lien or charge on the Property prior and superior to the Easement. Tenant intentionally and unconditionally waives, relinquishes and subordinates the priority and superiority of the Easement, and Tenant's right and interest to the Property thereunder; including without limitation, all rights under any option(s) to purchase or right(s) of first refusal with respect to the Property, to the lien or charge of the Deed of Trust, and any and all extensions, renewals, modifications or replacements thereof.

(b) Reliance. Tenant acknowledges that Lender, in extending credit or continuing to extend credit to Borrower secured by the Property is doing so in material reliance on this Agreement.

(c) Acknowledgments of Tenant. Tenant acknowledges that it has such information with respect to any credit extended by Lender to Borrower, and all loan documents executed in connection therewith, as Tenant deems necessary in order to provide this subordination. Tenant further agrees that Lender is under no obligation or duty to, nor has Lender represented that it has or will, see to the application of the proceeds of any such credit by any person or entity, and any application or use of any such proceeds for purposes other than those for which they were intended shall not defeat this subordination.

(d) Entire Subordination Agreement. This Agreement constitutes the whole and only agreement between the parties hereto with regard to the subordination of the Easement, and any applicable option(s) to purchase or rights of first refusal, to the lien or charge of the Deed of Trust; there are no agreements (written or oral) outside or separate from this Agreement with respect to the subject matter hereof; and all prior negotiations with respect thereto, if any, are merged into this Agreement. This Agreement shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Easement, any prior agreements as to such subordination, including without limitation those provisions, if any, contained in the Easement which provide for the subordination thereof to the lien of a deed of trust or mortgage affecting all or any portion of the Property.

2. EASEMENT. Tenant hereby covenants and agrees that, so long as the Deed of Trust remains in force and effect:

(a) No Modification, Termination or Cancellation. Without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed, Tenant shall not consent to (1) any modification of the Easement which would (i) change any notice or cure period set forth therein or (ii) materially increase the responsibilities of Landlord thereunder, provided however, that the foregoing shall not prevent Tenant from terminating the Easement as a result of a default by Landlord thereunder which is not cured within such time periods after notice, as may be applicable thereto under the Easement and this Agreement.

(b) Notice of Default. Tenant shall notify Lender in writing concurrently with any notice given to Landlord of any breach of or default by Landlord under the Easement. Tenant agrees that Lender shall have the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth in the Easement, and Tenant shall not declare a default of the Easement, as to Lender, if Lender cures such breach or default within thirty (30) days after the expiration of the time period provided in the Easement for the cure thereof by Landlord; provided however, that if such breach or default cannot with diligence be cured by Lender within such thirty (30) day period, the commencement of action by Lender within such thirty (30) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence.

(c) No Advance Rents. Tenant shall not make any payments or prepayments of rent (other than the purchase price for the Easement) more than one (1) month in advance of the time when the same become due under the Easement.

(d) Assignment of Rents. Upon receipt by Tenant of written notice from Lender that Lender has elected to terminate the license granted to Landlord to collect rents, as provided in the Deed of Trust, and directing Tenant to make payment thereof to Lender; Tenant shall, for any revenue share of rent due to Landlord under the Easement that is collected by Tenant, comply with such direction to pay and shall not be required to determine whether Landlord or Borrower is in default under any obligations to Lender. Lender and Landlord acknowledge and agree that Tenant shall be entitled to rely solely upon the written demand given by Lender referred to herein. Landlord, by appending its signature below, acknowledges and agrees that Tenant shall be entitled to full credit under the Easement for any rents paid to Lender in accordance with the provisions hereof to the same extent as if such rents were paid directly to Landlord. Nothing herein shall require Tenant to remit to Lender rent payments that have been assigned to Tenant through the Easement and ancillary documentation.

3. ATTORNEYSHIP. If Lender or any other transferee acquires Landlord's right, title and interest in and to the Property pursuant to a foreclosure of the Deed of Trust or a transfer of the Property in lieu thereof or in any other manner whereby Lender or such transferee succeeds to the interest of Landlord under the Easement, Tenant agrees as follows for the benefit of Lender or such transferee:

(a) Payment of Rent. Tenant shall pay to Lender or such transferee all rental payments required to be made by Tenant pursuant to the terms of the Easement for the remaining term thereof.

(b) Continuation of Performance. Tenant shall be bound to Lender or such transferee in accordance with all of the terms of the Easement for the remaining term thereof, and Tenant hereby attorns to Lender or such transferee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender or such transferee succeeding to Landlord's interest in the Easement and giving written notice thereof to Tenant.

(c) No Offset or Lender Liability acts or omissions of Landlord. Neither Lender nor such transferee shall be liable for, or subject to, any offsets or defenses which Tenant may have by reason of any act or omission of Landlord as the prior Landlord under the Easement, except that Tenant shall be entitled to exercise all remedies provided Tenant under the Easement with respect to continuing defaults thereunder resulting from the acts or omissions of Landlord, and arising after Lender has received notice of such defaults and has not cured the same after notice and the opportunity to do so, as set forth in the Easement and this Agreement.

The foregoing shall not relieve Lender or such transferee from performing the obligations of a landlord under the Easement arising after Lender or any other transferee acquires Landlord's right, title and interest in and to the Property. In no event shall Lender nor any such transferee be liable for, or subject to any offsets or defenses with respect to the return of any sums which Tenant may have paid to Landlord as the prior Landlord under the Easement as security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Landlord to Lender or such transferee.

(d) Subsequent Transfer. If Lender or such transferee, by succeeding to Landlord's interest under the Easement, becomes obligated to perform the covenants of a Landlord thereunder, then, upon any further transfer by Lender or further transfer by such transferee of its interest as a Landlord under the Easement, all of such obligations accruing after the date of such transfer, shall terminate as to Lender or such transferee, as applicable.

4. NON-DISTURBANCE. In the event of a foreclosure of the Deed of Trust, or a transfer of the Property in lieu thereof or in any other manner whereby Lender or such transferee succeeds to the interest of Landlord under the Easement, so long as there shall then exist no breach, default or event of default by Tenant under the Easement, (a) the Easement interest of Tenant shall not be extinguished or terminated by reason of such foreclosure, (b) the Easement shall continue in full force and effect, (c) Lender and its successors-in-interest shall recognize and accept Tenant as the tenant under the Easement, subject to the terms and conditions of the Easement as modified by this Agreement, and (d) Lender will not join Tenant as a party defendant in any action or foreclosure proceeding unless such

joinder is required by law to foreclose, then only for such purpose and not for the purpose of terminating the Easement. Notwithstanding the foregoing, Tenant and Lender agree that any provision of the Easement (if any) with respect to any option to purchase or right of first refusal to purchase all or any portion of Property shall not be binding on Lender.

5. **ESTOPPEL**. Tenant acknowledges and represents and certifies to Lender as follows:

(a) **Easement Effective**. The Easement has been duly executed and delivered by Tenant and, subject to the terms and conditions thereof, the Easement is in full force and effect, the obligations of Tenant thereunder are valid and binding, and there have been no amendments, modifications or additions to the Easement (written or oral), other than those included in the Easement definition set forth above. The Easement, along with ancillary documentation to effect its intent, constitutes the entire agreement between Landlord and Tenant with respect to the Property, and Tenant claims no rights to the Property other than as set forth in the Easement.

(b) **No Default**. As of the date hereof and to the best of Tenant's knowledge, (i) there exists no breach of or default under the Easement, nor any condition, act or event which with the giving of notice or the passage of time, or both, would constitute such a breach or default, and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the terms of the Easement.

(c) **No Prepaid Rent**. [Intentionally omitted.]

6. **MISCELLANEOUS**.

(a) **Remedies Cumulative**. All remedies provided herein are cumulative, not exclusive, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Borrower, Landlord or any other person or entity.

(b) **Costs, Expenses and Attorneys' Fees**. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Lender or any other person) relating to Borrower, Tenant or any other person or entity.

(c) **Notices**. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the address set forth below its signature, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; and (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid.

(d) **Further Assurances**. At the request of any party hereto, each other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

(e) **Borrower; Landlord**. If Borrower and Landlord are the same, each reference in this Agreement to Borrower or Landlord shall be deemed a reference to said person or entity in its respective capacity.

(f) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of Utah.

(g) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Easement, the terms of this Agreement shall control.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

[Signature pages follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above,

LENDER: Wells Fargo Bank, National Association

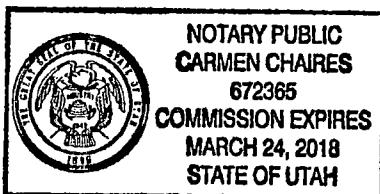
BY: Pete Sattaya
NAME: Pete Sattaya
TITLE: Sr. Business Relationship Manager

STATE OF Utah
COUNTY Salt Lake } ss.

On this 22 day of September, 2016, before me, the undersigned notary public, personally appeared Pete Sattaya, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/DL (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as Authorized Signer of Wells Fargo Bank, National Association.

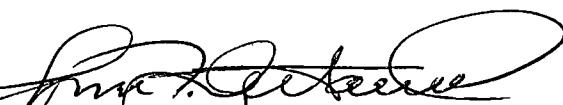
{affix notary seal or stamp}


Notary Public
My Commission Expires:



IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above,

TENANT: TOWERPOINT ACQUISITIONS, LLC

BY: 

NAME: John F. Gutowski
TITLE: Chief Operating Officer

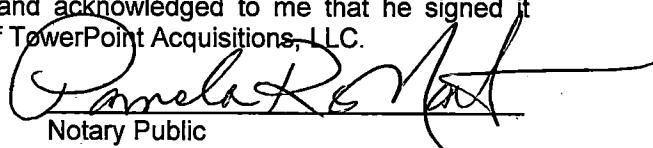
STATE OF GEORGIA

COUNTY OF FULTON

} ss.

On this 27th day of September, 2016, before me, the undersigned notary public, personally appeared John F. Gutowski, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Chief Operating Officer of TowerPoint Acquisitions, LLC.

{affix notary seal or stamp}


Pamela R. Martin
Notary Public
My Commission Expires: 10-19-2018

Pamela R Martin
NOTARY PUBLIC
Fulton County, GEORGIA
My Commission Expires 10-19-18

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above,

LANDLORD AND BORROWER: Barton Creek Partners, L.L.C.

By:

Name: Thomas C. Mabey
Title: Manager

STATE OF Utah } ss.
COUNTY Davis

On this 29th day of September, 2016, before me, the undersigned notary public, personally appeared Thomas C. Mabey, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Manager of Barton Creek Partners, L.L.C.

{affix notary seal or stamp}

Heidi Mease
Notary Public
My Commission Expires:



EXHIBIT A

PARCEL 1:

A parcel of land lying within Section 24, Township 2 North, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point on the West line of 500 West Street, said point being North 0°08'30" West a distance of 1749.09 feet along the Section line and South 89°51'30" West a distance of 162.91 feet from the East Quarter Corner of said Section 24, said point also being North 0°22'48" East a distance of 1352.51 feet along the centerline of 500 West Street, and North 89°37'12" West a distance of 40.00 feet from the centerline monument found at the intersection of 400 North Street and 500 West Street, and running thence North 89°37'12" West a distance of 425.00 feet to a point on the Easterly right of way line of Interstate 15, said point also being on a 2776.90 foot radius curve to the right (radius bears South 68°58'44" East); thence along the arc of said curve 226.43 through a central angle of 04°40'19"; thence South 89°37'12" East a distance of 336.62 feet; thence South 00°22'48" West a distance of 208.40 feet to the point of beginning.

Less and Excepting therefrom Parcel 1 the following:

Beginning at a point on the West line of 500 West Street, said point being North 00°8'30" West 1943.51 feet along the Section line and South 89°51'30" West 161.15 feet from the East Quarter Corner of Section 24, Township 2 North, Range 1 West, Salt Lake Base and Meridian, said point also being North 00°22'48" East 1547.01 feet along the centerline of 500 West Street and North 89°37'12" West 40.00 feet from the centerline monument found at the intersection of 400 North Street and 500 West Street and running thence North 89°37'12" West 310.38 feet; thence North 65°05'01" West 29.67 feet to the Easterly right of way line of Interstate 15 and a 2776.90 foot radius curve to the right (radius bears South 64°20'25" East); thence along the arc of said curve 1.75 feet; thence South 89°37'12" East 336.63 feet to the West line of 500 West Street; thence along said West line South 00°22'49" West 13.90 feet to the point of beginning.

Parcel 1A:

Together with the beneficial easements as disclosed by that certain Declaration of Reciprocal Easements and Covenants recorded August 28, 1998 as Entry No. 1435347 in Book 2349 at page 594 of official records

PARCEL 2:

Beginning at a point on the West line of 500 West Street, said point being North 00°8'30" West 1749.09 feet along the Section line and South 89°51'30" West 162.91 feet from the East Quarter Corner of Section 24, Township 2 North, Range 1 West, Salt Lake Base and Meridian, said point also being North 00°22'48" East 1352.51 feet along the centerline of 500 West Street and North 89°37'12" West 40.00 feet from the centerline monument found at the intersection of 400 North Street and 500 West Street, and running along said West line South 0°23'02" West 97.08 feet; thence North 89°37'12" West 462.92 feet to a point on the Easterly right of way line of Interstate 15; thence North 21°35'58" East 104.14 feet, more or less, along said right of way; thence South 89°37'12" East a distance of 425.00 feet to thence East point of beginning.

Parcel 2A:

Together with the beneficial easements as disclosed by that certain Declaration of Reciprocal Easements and Covenants recorded August 28, 1998 as Entry No. 1435347 in Book 2349 at page 594 of official records.