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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 03/23/2017 11:56 AM PG: 1 OF 9

Attn.: Loan Administration

THIS DOCUMENT PREPARED BY:  
Byron Miller, Vice President  
Bank of America, N.A.  
Doc Retention Center  
NC1-001-05-13  
One Independence Center  
101 North Tryon St  
Charlotte, NC 28255-0001

Space above for Recorder's Use

### SUBORDINATION, NONDISTURBANCE AND ATTORNM ENT AGREEMENT

This Subordination, Nondisturbance and Attornment Agreement ("Agreement") is entered into as of September 30, 2016, by Bank of America, N.A. ("Bank"), 121 E. 35th Street Building Partnership ("Landlord") and Subway Real Estate Corp. ("Tenant").

### RECITALS

A. Landlord and Tenant have entered into a lease agreement dated as of June 11, 2009 ("Lease"), covering certain premises located at 120-126 East 35th Street, Chicago, IL 60616 ("Property"). The Property is more particularly described in Exhibit A attached hereto and incorporated herein.

B. Bank is the mortgagee under a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing ("Mortgage"), dated as of September 30, 2016, which Mortgage will be recorded concurrently herewith in the Official Records of Cook County, Illinois, encumbering the Property. The Mortgage secures certain obligations to Bank as more particularly described therein.

C. On the terms and conditions in this Agreement, the parties desire to subordinate Tenant's leasehold interest in the Property to the lien of the Mortgage and to assure Tenant possession of the Property for the entire term of the Lease, even though Bank may foreclose the lien of the Mortgage before expiration of the Lease.

Therefore, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

#### Section 1. Subordination.

The Lease, the leasehold estate created thereby, and all rights and privileges of Tenant thereunder shall be subject and subordinate to the lien of the Mortgage and to any renewals,

Ref #: 1002354960 - 120 E 35th Street  
(Includes) Subordination, Nondisturbance & Attornment

S Yes  
P Yes  
S N  
M N  
SC Yes  
E Yes  
INT Yes

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modifications, consolidations, replacements and extensions of the Mortgage to the full extent of the obligations now or hereafter secured by the Mortgage.

### Section 2. Nondisturbance.

So long as Tenant is not in default, beyond any period given to Tenant to cure a default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Tenant's possession of the Property and Tenant's rights and privileges under the Lease, including any extensions or renewals, shall not be diminished or interfered with by Bank during the term of the Lease or any extensions or renewals. So long as Tenant is not in default, beyond any period given Tenant to cure such default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Bank will not join Tenant as a party for the purpose of terminating or otherwise affecting Tenant's interest under the Lease, in any action of foreclosure or other proceeding brought by Bank to enforce any rights arising because of any default under the Mortgage. Bank may, however, join Tenant as a party if joinder is necessary under any statute or law to secure the remedies available to Bank under the Mortgage, but joinder shall be for that purpose only and not for the purpose of terminating the Lease or affecting Tenant's right to possession of the Property.

### Section 3. Attornment.

If the Landlord's interest is transferred to and owned by Bank or any successor of Bank ("Acquiring Party") because of foreclosure or other proceeding brought by Bank, or by any other manner, and Bank succeeds to Landlord's interest under the Lease, Tenant shall be bound to the Acquiring Party, and Acquiring Party shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the balance of the remaining term, including any extensions or renewals, with the same effect as if Acquiring Party were Landlord under the Lease. Tenant agrees to attorn to Acquiring Party as the Landlord, with the attornment being effective and self-operable immediately upon Acquiring Party succeeding to the interest of Landlord under the Lease, all without the execution by the parties of any further instruments. However, Tenant shall not be obligated to pay rent to Acquiring Party until Tenant receives written notice from Acquiring Party, together with evidence satisfactory to Tenant, demonstrating that Acquiring Party has succeeded to Landlord's interest under the Lease and directing where rent should be mailed. The respective rights and obligations of Tenant and Acquiring Party upon attornment, to the extent of the then-remaining balance of the term of the Lease, shall be the same as in the Lease, which is incorporated by reference in this Agreement. If Acquiring Party succeeds to Landlord's interest in the Lease, Acquiring Party shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, after Acquiring Party's succession to Landlord's interest, have the same remedies against Acquiring Party for the breach of any agreement in the Lease that Tenant might have had against Landlord.

### Section 4. Tenant's Purchase Option.

The lien of the Mortgage shall unconditionally be and remain at all times a lien on the Property prior and superior to any existing or future option or right of first refusal of Tenant to purchase the Property or any portion thereof. In the event of any transfer of Landlord's interest in the Property, by foreclosure or other action or proceeding for the enforcement of the Mortgage or by deed in lieu thereof, Tenant specifically waives any right, whether arising out of the Lease or otherwise, to exercise any purchase option or right of first refusal which remains unexercised at the time of such transfer.

### Section 5. No Change in Lease.

Landlord and Tenant agree not to ~~change, alter, amend~~ or otherwise modify the Lease without the prior written consent of Bank. Any change, alteration, amendment, or other modification to the Lease without the prior written consent of Bank shall be void as to Bank, **OTHER THAN IN ACCORDANCE WITH THE LEASE. \* MATERIALLY**

ML

### Section 6. Notices

Ref #: 1002354930 ; - 126 E 35th Street  
(Illinois) Subordination, Nondisturbance & Attornment

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In this Agreement, wherever it is required or permitted that notice and demand be given by any party to another party, that notice or demand shall be given in writing and forwarded by certified mail, addressed as follows:

For Landlord:

126 E. 35th Street Building Partnership  
425 Huehl Road, Building 2  
Northbrook, IL 60062-2322

For Tenant:

**SUBWAY REAL ESTATE, LLC, SUCCESSOR IN INTEREST TO**  
Subway Real Estate Corp.  
325 ~~Blg Drive~~  
Milford, CT 06461

For Bank:

Bank of America, N.A.  
Doc Retention Center  
NC1-001-05-13  
One Independence Center  
101 North Tryon St  
Charlotte, NC 28255-0001

Any party may change an address given for notice by giving written notice of that change by certified mail to all other parties.

### Section 7. Authority.

If any party is a corporation, limited liability company, or a partnership, all individuals executing this Agreement on behalf of such corporation, limited liability company, or partnership represent and warrant that they are authorized to execute and deliver this Agreement on behalf of the corporation, limited liability company, or partnership and that this Agreement is binding upon such corporation, limited liability company, or partnership.

### Section 8. Miscellaneous.

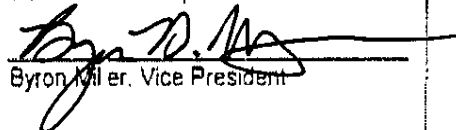
This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest. If any party commences any action against any other party based on this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees, expenses, and costs of suit. This Agreement shall be binding in and inure to the benefit of the parties and their respective heirs, successors and assigns. The headings of this Agreement are for reference only and shall not limit or define any meaning of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which shall constitute one and the same instrument. This Agreement shall be construed in accordance with and governed by Illinois law.

The parties have duly executed this Agreement as of the date first above written.

BANK:

BANK OF AMERICA, N.A.

By:

  
Byron Miller, Vice President

ML

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10/31/2016 12:10

8477149222

CHECK CHANGERS

PAGE 05/09

LANDLORD:

128 E. 25th Street Building Partnership

By: [Signature]  
Gary Gagnon, Partner

By: [Signature]  
Ledward Cryll, Partner

TENANT:

SUBWAY REAL ESTATE, LLC, SUCCESSOR IN INTEREST TO  
Subway Real Estate Corp.

By: [Signature]

Name: Matthew Whelan

Title: Manager

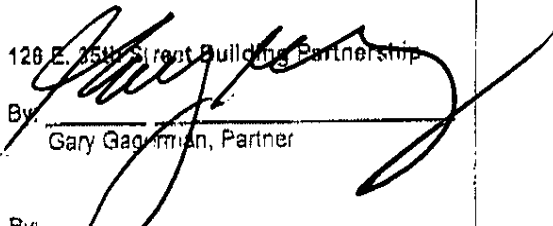
Property of Cook County Clerk's Office

[All signatures must be acknowledged]

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LANDLORD:

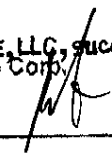
126 E. 35th Street Building Partnership

By:   
Gary Gagnon, Partner

By: \_\_\_\_\_  
Leonard Cryn, Partner

TENANT:

SUBWAY REAL ESTATE, LLC, SUCCESSOR IN INTEREST TO-  
Subway Real Estate Corp.

By: 

Name: Matthew Whelan

Title: Manager

[All signatures must be acknowledged]

Property of Cook County Clerk's Office

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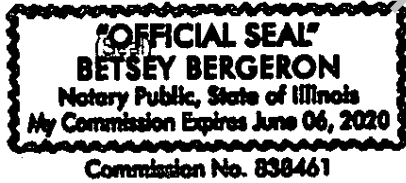
BANK

ACKNOWLEDGMENT

STATE OF ILLINOIS )  
COUNTY OF Cook ) SS.

This Instrument was acknowledged before me on November 4, 2016 by  
Frank Stagerman as \_\_\_\_\_ (date)  
of 126 E. 35th Street (Type of authority, e.g., officer, trustee, etc)  
(name of party on behalf of whom the instrument was executed)

Betsy Bergeron  
Notary Public



Of Cook County Clerk's Office

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TENANT

ACKNOWLEDGMENT

CONNECTICUT  
STATE OF ~~ILLINOIS~~ )  
                                  ) SS. MILFORD  
COUNTY OF NEW HAVEN )

This instrument was acknowledged before me on NOVEMBER 4, 2016 by \_\_\_\_\_ (date)

MATTHEW WHELAN as MANAGER  
\_\_\_\_\_  
(name/s of person/s) (title of authority, e.g., officer, trustee, etc)

of SUBWAY REAL ESTATE, LLC  
\_\_\_\_\_  
(name of party on behalf of whom the instrument was executed)

Sharon A. Chace  
\_\_\_\_\_  
Notary Public



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

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LANDLORD

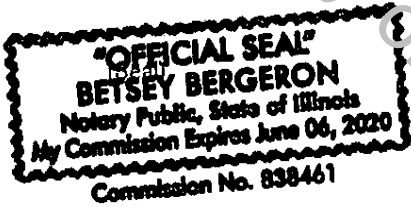
ACKNOWLEDGMENT

STATE OF ILLINOIS )  
COUNTY OF IL ) SS.

This instrument was acknowledged before me on November 9, 2016 by \_\_\_\_\_ (date)

Leonora Lynn as \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc)  
of 126 E. 35th Street (name of party on behalf of whom the instrument was executed)

Betsy Bergeron  
Notary Public



of Cook County Clerk's Office



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EXHIBIT A

Street Address of Property: 120-126 East 35th Street, Chicago IL 60616

PIN: 17-34-119-039-0000

LOTS 21, 22, 23, AND 24 IN BLOCK 7 IN JOHN WENTWORTH'S SUBDIVISION OF THE SOUTH 60 ACRES OF THE WEST 1/2 OF THE WEST 1/4 OF SECTION 34, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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