

State of Alabama)
County of Shelby)

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

**** BPTC**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN^T AGREEMENT (this "Agreement") is made and entered into as of the 17th day of June, 2011, by and among Subway Real Estate Corp, a Delaware corporation ("Tenant"), whose address is 325 ~~Vie~~ Drive, Milford, Connecticut 06461; Encore Retail, LLC, a Delaware limited liability company ("Borrower"), whose address is 5005 LBJ Freeway, Suite 1200 Dallas, Texas, 75244; and Citigroup Global Markets Realty Corp., its successors and assigns ("Lender"), a New York corporation, whose address is 388 Greenwich Street, New York, New York, 10013. ***BIC**

RECITALS:

Lender has made or may hereafter provide financial accommodations to Borrower, which loan or loans are or will be secured by a Mortgage (defined below) covering all of that certain property described in Exhibit A attached hereto and made a part hereof for all purposes, together with all improvements located thereon (the "Property").

Tenant is the lessee of the premises (referred to herein as the "Premises"), located on the Property and known as Space 317 at Pelham Town Center, under that certain Lease Agreement between Sharp Pelham, LLC ("Landlord") and Tenant dated February 12, 2009. The Lease Agreement and all renewals, extensions and modifications thereof are hereinafter collectively called the "Lease". The Lease is evidenced by that certain Memorandum of Lease recorded on February 16, 2010 at Instrument #20100216000045830 in the Probate Office of Shelby County, Alabama.

Borrower has executed or will execute a mortgage (the "Mortgage" which is also referred to herein as the "Security Instrument") covering the Property for the benefit of Lender as security for Borrower's indebtedness to Lender, which indebtedness is or will be evidenced by one or more promissory notes by and between Borrower and Lender.

As a condition to its making the loans now or hereafter evidenced or secured by the Mortgage (the "Loans"), Lender has required that Tenant subordinate Tenant's leasehold interest in the Premises to all liens and security interests securing payment of the Loans.

Tenant is willing to subordinate its leasehold interest; provided, however, that as a condition to subordinating its leasehold interest in and to the Premises to all liens and security interests securing payment of the Loans, Tenant has required that Tenant's right of possession to the Premises shall not be disturbed by Lender or any third party in the exercise of any of Lender's rights under the Mortgage or any other security instrument securing payment of the indebtedness secured by the Mortgage, which protection Lender is willing to grant in order to induce Tenant to subordinate the Lease to the Mortgage and all security interest securing payment of the Loans.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual terms and provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Tenant covenants and agrees with Lender that all of Tenant's right, title and interest in and to the Premises and the Lease, is and shall be subject, subordinate and inferior to (a) the Mortgage and all liens

and security interests securing payment of the Loans and all other security instrument securing payment of any indebtedness of Borrower to Lender now or hereafter created which cover or affect the Property, and all renewals, extensions, substitutions, replacements, consolidations and increases in amount of the indebtedness secured by the Mortgage or any related loan papers, and to (b) all right, title and interest of Lender in the Property created by the Mortgage or any other security instrument held by Lender, in the same manner and to the same extent as if the Lease had been executed subsequent to the execution, delivery and recordation of such Mortgage and the related loan papers.

2. Lender covenants and agrees with Tenant, for Lender and its successors and assigns, that so long as Tenant is not then in default under the Lease, Lender shall not disturb Tenant's right of possession to the Premises in the event that Lender or Lender's successors or assigns acquire title to all or any part of the Premises pursuant to the exercise of any remedy provided for in the Mortgage, nor shall Tenant be named as a party defendant to any action to foreclose the liens and security interests securing payment of the Loans.

3. Tenant covenants and agrees to attorn to Lender or any other owner of the Property pursuant to any foreclosure sale or by deed in lieu of foreclosure, as Tenant's new landlord, and agrees that the Lease shall continue in full force and effect as a direct lease between Tenant and Lender or such other owner upon all of the terms, covenants, conditions and agreements set forth in the Lease. However, in no event shall Lender or such other owner be:

- (a) liable for any act or omission of any previous landlord;
- (b) subject to any offset or counterclaim which Tenant might be entitled to assert against any previous landlord;
- (c) bound by any payment of rent or additional rent made by Tenant to any previous landlord for more than one (1) month in advance;
- (d) bound by any amendments or material modification of the Lease hereafter made without the consent of Lender or such owner;
- (e) in any way responsible for any deposit or security which was not delivered to Lender or such owner; or
- (f) liable with respect to the breach of any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, landlord's title, landlord's authority, environmental condition of the Property, habitability or fitness for purpose or commercial suitability.

4. Tenant has been advised that the Security Instrument gives Lender the right to collect rent and other sums payable under the Lease directly from Tenant upon the occurrence of a default thereunder, and Tenant agrees that upon the receipt from Lender of notice of any such default, Tenant will thereafter pay all rent and other sums payable under the Lease directly to Lender (or as Lender shall direct) as they become due and payable.

5. In the event Lender shall acquire title to the Property, Tenant agrees to look solely to Lender's interest in the Property and rent and income derived therefrom for the recovery of any judgment against Lender, it being agreed that Lender shall have no obligation nor incur any liability beyond Lender's then equity interest, if any, in the Property, for payment and discharge of any obligations imposed upon Lender hereunder or under the Lease, and Lender is hereby released and relieved of any other obligations hereunder and under the Lease.

6. Tenant hereby agrees to ^{*}give prompt written notice to Lender of any default of Borrower under the Lease, if such default is of such a nature as to give Tenant the right to terminate the Lease, reduce rent or to credit or offset any amounts against future rent. It is further agreed that such notice will be given to any successor in interest of Lender under the Mortgage, provided that prior to any such default of Borrower such successor in interest shall have given written notice to Tenant of its acquisition of Lender's interest therein, and shall have designated the address to which such notice is to be directed. Notwithstanding any provisions of the Lease to the contrary, Tenant may not terminate the Lease without affording to Lender or its successors a period of time to remedy any such default by Borrower equal to thirty (30) days, such period to commence upon the receipt by Lender or its successors of written notice of such default. If Lender or such successor commences or institutes foreclosure proceedings or advertises its intention to exercise the power of sale under the Mortgage within thirty (30) days after receipt of written notice of such default and then proceeds diligently to cure Borrower's default, the Lease shall not terminate and any purported termination by Tenant shall be ineffective. *** USE ITS BEST EFFORTS TO -**

7. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing and shall be deemed to have been properly given or served by depositing in the United States Mail, postpaid and registered or certified return receipt requested, and addressed to the addresses set forth on the first page hereof. All notices, demands and requests shall be effective upon being deposited in the United States Mail. The time period in which a response to any notice, demand or request must be given, if any, shall commence to run, however, from the date of actual receipt of the notice, demand or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving at least thirty (30) days written notice thereof, Tenant or Lender shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

8. This Agreement may not be discharged or modified orally or in any manner other than by an agreement in writing specifically referring to this Agreement and signed by the party or parties to be charged thereby.

9. The provisions contained in this Agreement shall be self-operative and effective without the necessity of execution of any further instruments on the part of any party hereto or the respective heirs, legal representatives, successors or assigns of any such party. This Agreement satisfies any conditions or requirements in the Lease relating to the granting of a non-disturbance agreement.

10. This Agreement shall bind and benefit the parties hereto and their respective heirs, legal representatives, successors and assigns.

11. In the event any legal action or proceeding is commenced to interpret or enforce the terms of or obligations arising out of this Agreement, or to recover damages arising out of the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party as shall be pled and awarded by a court of competent jurisdiction.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama and the United States of America.

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Shelby Cnty Judge of Probate, AL
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IN TESTIMONY WHEREOF, this instrument is executed effective as of the day and year first above written.

LENDER: Citigroup Global Markets Realty Corp.

By: *Ana E. Rosu*
Name: Ana E. Rosu
Title: Authorized Signatory

~~TENANT: Subway Real Estate Corp, a Delaware corporation~~

Witness:

By: _____
Its: _____

By: _____
Name: _____
Title: _____

BORROWER: Encore Retail BPTC, LLC, a Delaware limited liability company

Nicholas K. Barber
By: Nicholas K. Barber
Its: President of Managing Member

State of New York)
County of New York)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Ana E. Rosu, whose name as Authorized Signatory of Citigroup Global Markets Realty Corp., a New York corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 16 day of June, 2011.

[Notarial Seal]

Nannette L. Edwards
Notary Public, State of New York
No. 01ED6158862
Qualified in Queens County
Commission Expires Jan. 08, 2015

Nannette L. Edwards
Notary Public
My Commission Expires: 01/08/2015

IN TESTIMONY WHEREOF, this instrument is executed effective as of the day and year first above written.

LENDER: Citigroup Global Markets Realty Corp.

By: _____
Name: _____
Title: _____

TENANT: Subway Real Estate Corp, a Delaware corporation

Witness:

By: _____
Its: _____

By: _____
Name: **Ernest A. Oliver, Jr.**
Title: **Duly Authorized**

BORROWER: Encore Retail, LLC, a Delaware limited liability company

By: _____
Its: _____

State of _____)
County of _____)

I, the undersigned, a notary public in and for said county in said state, hereby certify that _____, whose name as _____ of Citigroup Global Markets Realty Corp., a _____ corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this _____ day of _____, 2011.

[Notarial Seal]

Notary Public
My Commission Expires: _____

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State of TEXAS
County of DALLAS

****BPTC**

I, the undersigned, a notary public in and for said county in said state, hereby certify that Nicholas K Barber, whose name as President of Encore Retail, LLC, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such [Authorized Member/Manager] and with full authority, executed the same voluntarily for and as the act of said limited liability company.

① Encore Retail, LLC, Managing Member of ER Management BPTC, LLC, Managing Member of
Given under my hand and official seal this 17th day of June, 2011.

Terris Smith

Notary Public

My Commission Expires: _____

[Notarial Seal]

State of CONNECTICUT
County of NEW HAVEN **MILFORD**



I, the undersigned, a notary public in and for said county in said state, hereby certify that ERNEST A OLIVER, JR whose name as DULY AUTHORIZED SIGNATORY of Subway Real Estate Corp., a Delaware corporation is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he/~~she~~, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

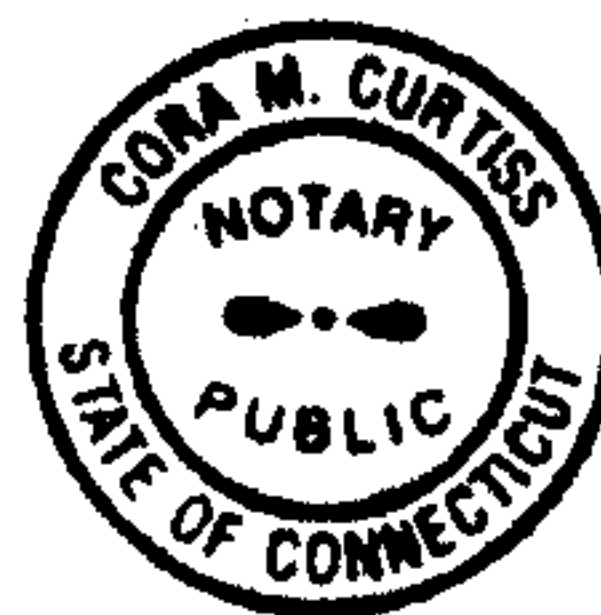
Given under my hand and official seal this 3RD day of JUNE, 2011.

Cora M. Curtiss

Notary Public

My Commission Expires: 1-31-2016

[Notarial Seal]



Cora M. Curtiss
NOTARY PUBLIC
State of Connecticut
My Commission Expires
January 31, 2016

EXHIBIT A

- (a) All that tract or parcel or parcels of land and estates particularly described on Exhibit A-1 attached hereto and made a part hereof (the "Land");
- (b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by the Borrower and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property actually are located on or adjacent to the Land or not, and whether in storage or otherwise, and wheresoever the same may be located (the "Improvements");
- (c) All accounts, general intangibles, contracts and contract rights relating to the Land and Improvements, whether now owned or existing or hereafter created, acquired or arising, including without limitation, all construction contracts, architectural services contracts, management contracts, leasing agent contracts, purchase and sales contracts, put or other option contracts, and all other contracts and agreements relating to the construction of improvements on, or the operation, management and sale of all or any part of the Land and Improvements;
- (d) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, subleases, licenses, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, including but not limited to:
- (i) All rents, royalties, profits, issues and revenues of the Land and Improvements from time to time accruing, whether under leases or tenancies now existing or hereafter created; and
 - (ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Land and Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Land and Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf of and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released;
- (e) Any and all licenses, development permits, building permits, utility supply agreements, sewer and water discharge permits and agreements, and other licenses, permits and agreements relating to the use, development, construction, occupancy and operation of the Land and Improvements, whether now




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or hereafter issued or executed, and all modifications, amendments, replacements or re-issuances of the foregoing;

(f) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a), (b), (c), (d) or (e) above, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in (a), (b), (c), (d) or (e) above.

EXHIBIT A-1
Description of the Property


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Lot 1, according to the survey of Pelham Towne Center, recorded at Map Book 39 Page 69 in the Probate Office of Shelby County, Alabama, more particularly described as follows:

A parcel of land situated in the Southwest one-quarter of Section 19, Township 20 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Southwest one-quarter of the Southwest one-quarter of said Section; thence run South 89 degrees 58 minutes 11 seconds East for a distance of 645.80 feet to the point of commencement of a curve to the right, said curve having a radius of 720.00 feet, a central angle of 06 degrees 05 minutes 18 seconds, a chord bearing of North 11 degrees 10 minutes 26 seconds East for a chord distance of 76.47 feet; thence run along arc of said curve for a distance of 76.51 feet to the point of commencement of a reverse curve to the left, said curve having a radius of 780.00 feet, a central angle of 14 degrees 27 minutes 15 seconds, a chord bearing of North 06 degrees 59 minutes 28 seconds East for a chord distance of 196.25 feet; thence run along arc of said curve for a distance of 196.77 feet; thence run North 00 degrees 14 minutes 10 seconds West for a distance of 317.88 feet to the POINT OF BEGINNING; thence run along last described course for a distance of 300.00 feet; thence run North 89 degrees 45 minutes 50 seconds East for a distance of 241.63 feet; thence run North 00 degrees 14 minutes 10 seconds West for a distance of 333.14 feet; thence run South 85 degrees 59 minutes 18 seconds East for a distance of 162.05 feet; thence run North 27 degrees 07 minutes 20 seconds East for a distance of 103.19 feet; thence run North 04 degrees 01 minutes 50 seconds East for a distance of 119.92 feet to a point on the Southernmost right of way line of Shelby County Highway 52 (right of way varies); thence run South 76 degrees 52 minutes 19 seconds East along said right of way for a distance of 65.82 feet; thence leaving said right of way, run South 04 degrees 01 minutes 50 seconds West for a distance of 65.73 feet; thence run North 85 degrees 58 minutes 10 seconds West for a distance of 17.56 feet; thence run South 02 degrees 34 minutes 52 seconds West for a distance of 110.87 feet to the point of commencement of a curve to the right, said curve having a radius of 89.50 feet, a central angle of 25 degrees 08 minutes 43 seconds, a chord bearing of South 74 degrees 50 minutes 47 seconds East for a chord distance of 38.96 feet; thence run along arc of said curve for a distance of 39.28 feet to the point of commencement of a reverse curve to the left, said curve having a radius of 45.50 feet, a central angle of 27 degrees 57 minutes 44 seconds, a chord bearing of South 76 degrees 15 minutes 18 seconds East for a chord distance of 21.99 feet; thence run along arc of said curve for a distance of 22.21 feet; thence run North 89 degrees 45 minutes 50 seconds East for a distance of 110.69 feet to the point of commencement of a curve to the left, said curve having a radius of 82.50 feet, a central angle of 89 degrees 09 minutes 25 seconds, a chord bearing of North 45 degrees 11 minutes 07 seconds East for a chord distance of 115.81 feet; thence run along arc of said curve for a distance of 128.38 feet; thence run North 00 degrees 36 minutes 23 seconds East for a distance of 59.35 feet to a point on the said Southernmost right of way line of Shelby County Highway 52; thence run South 79 degrees 39 minutes 20 seconds East along said right of way for a distance of 52.19 feet; thence leaving said right of way, run South 00 degrees 36 minutes 23 seconds West for a distance of 75.45 feet; thence run South 36 degrees 47 minutes 32 seconds West for a distance of 128.88 feet; thence run North 89 degrees 21 minutes 05 seconds West for a distance of 127.62 feet; thence run South 00 degrees 12 minutes 58 seconds East for a distance of 173.56 feet; thence run South 70 degrees 27 minutes 05 seconds East for a distance of 120.95 feet; thence run North 89 degrees 45 minutes 50 seconds East for a distance of 86.76 feet; thence run South 00 degrees 36 minutes 23 seconds West for a distance of 35.10 feet; thence run North 71 degrees 07 minutes 47 seconds West for a distance of 39.54 feet; thence run South 00 degrees 03 minutes 55 seconds East for a distance of 435.03 feet; thence run South 89 degrees 45 minutes 50 seconds West for a distance of 515.68 feet; thence run North 00 degrees 14 minutes 10 seconds West for a distance of 90.46 feet; thence run South 89 degrees 45 minutes 50 seconds West for a distance of 239.44 feet to the POINT OF BEGINNING. Said parcel contains 412,931 square feet or 9.48 acres more or less.