

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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MICHAEL B. BROWN  
RECORDER

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

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Dated: May 14, 2019

Location: 7925 Indianapolis Boulevard, Hammond, Indiana

County: Lake

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Nelson Mullins Riley & Scarborough, LLP  
201 17th Street, Suite 1700  
Atlanta, Georgia 30363  
Attention: Rusty A. Fleming, Esq.

I affirm under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. *Rusty A. Fleming, Esq.*

ALDI (INDIANA), L.P.  
(Tenant)

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## SUBORDINATION, NON DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of the 14 day of May, 2019 by and between the undersigned lender, having an address at 142 West 57<sup>th</sup> Street, Suite 1201, New York, New York 10019 (together with its any of its successors and/or assigns any servicer, "Lender"), ALDI (INDIANA), L.P., an Indiana limited partnership, having an address at 197 E. Division Road, P.O. Box 1398, Valparaiso, IN 46384 ("Tenant"), and DPM HAMMOND SHOPPING CENTER, LLC, a Delaware limited liability company, having an address at at 22815 Ventura Blvd., Suite 310, Woodland Hills, California 91364 ("Landlord")

### RECITALS:

A. Lender has made a loan to Landlord (defined below), which Loan is given pursuant to the terms and conditions of a Loan Agreement between Lender and Landlord (the "Loan Agreement"). The Loan is evidenced by a certain promissory note given by Landlord to Lender (the "Note") and secured by a certain mortgage, deed of trust or deed to secure debt dated as of even date with the Note, given by Landlord to Lender (the "Security Instrument"), which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "Property");

B. Tenant occupies a portion of the Property under and pursuant to the provisions of a certain lease between Landlord, as successor-in-interest to Blue Light Holding L.L.C., an Illinois limited liability company, as landlord, and Tenant, as tenant (the "Lease"); and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

### AGREEMENT:

For good and valuable consideration, Tenant and Lender agree as follows:

1. Subordination. Tenant agrees that the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the lien of the Security Instrument and to the lien of all terms, covenants and conditions set forth in the Security Instrument and the Loan Agreement including without limitation all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to the lien of all sums secured thereby with the same force and effect as if the Security Instrument and Loan Agreement had been executed, delivered and (in the case of the Security Instrument) recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. Lender agrees that if any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note, the Security Instrument and the Loan Agreement shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the premises demised under the Lease, (c) the Lease shall be in full force and effect and (d) Tenant shall not be in material default

under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed beyond the expiration of any applicable notice or grace periods.

3. Attornment. Lender and Tenant agree that upon the conveyance of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected thereby (at the option of the transferee of the Property (the "Transferee") if the conditions set forth in Section 2 above have not been met at the time of such transfer) but shall continue in full force and effect as a direct lease between the Transferee and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to the Transferee and the Transferee shall accept such attornment, provided, however, that the liability of Transferee shall be limited as set forth in Section 15.02(b) of the Lease.

4. Use of Proceeds. Lender, in making disbursements pursuant to the Note, the Security Instrument or any loan agreements with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part.

5. Notice to Tenant. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

6. Additional Agreements. Tenant covenants and agrees that, during all such times as Lender is the beneficiary under the Security Instrument:

a. Modification, Termination and Cancellation. Tenant will not make any payment to Landlord in consideration of any termination or cancellation of the Lease ( in whole or in part) without Lender's prior written consent;

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

c. No Advance Rents. Tenant will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease; and

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 Security Instrument, and directing the payment of rents by Tenant to Lender, Tenant

shall comply with such direction to pay and shall not be required to determine whether Landlord is in default under the Loan Agreement, the Note and/or the Security Instrument.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: 197 E. Division Road  
Valparaiso, IN 46383  
Attention: Kaley DeVries,  
Director of Real Estate

If to Lender: Benefit Street Partners Realty Operating Partnership, L.P.  
142 West 57<sup>th</sup> Street, Suite 1201  
New York, New York 10019  
Attention: Micah Goodman, General Counsel

With a copy to: Nelson Mullins Riley & Scarborough, LLP  
201 17th Street, Suite 1700  
Atlanta, Georgia 30363  
Attention: Rusty A. Fleming, Esq.

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Joint and Several Liability. If Tenant consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Lender and Tenant and their respective successors and assigns.

9. Definitions. The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. 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 and the estates therein encumbered by the Security Instrument.

10. No Verbal Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

11. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

12. Inapplicable Provisions. 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.

13. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

14. 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.

15. Limitations on Lender's Liability. Until such time as Lender shall be conveyed the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, Tenant acknowledges that Lender is obligated only to Landlord to make the Loan upon the terms and subject to the conditions set forth in the Loan Agreement.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

**LENDER:**

**BENEFIT STREET PARTNERS REALTY  
OPERATING PARTNERSHIP, L.P.,**  
a Delaware limited partnership

By: \_\_\_\_\_  
Name: Micah Goodman  
Title: Authorized Signatory

State of New York )  
County of NY )

On 4/24/19, before me, Victoria Kuhne, a Notary Public, personally appeared Micah Goodman, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of New York that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

VICTORIA A. KUHNE  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01KU6328486  
Qualified in New York County  
Commission Expires August 03, 2019

TENANT:

ALDI (INDIANA), L.P.,  
an Indiana limited partnership

By: ALDI (INDIANA), LLC,  
an Illinois limited liability company  
Title: General Partner

By: [Signature]  
David Zalunardo  
Its Manager

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF PORTER     )



Before me, a Notary Public in and for said county and state, do hereby certify that David Zalunardo, the Manager of Aldi (Indiana), LLC, an Indiana limited liability company, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that he executed the foregoing instrument of his free and voluntary act.

Given under my hand and notarial seal this 19<sup>th</sup> day of April, 2019.

My Commission Expires:  
3/14/2022

[Signature]  
Notary Public  
Printed: Kathleen J Erwin



LANDLORD:

DPM HAMMOND SHOPPING CENTER,  
LLC, a Delaware limited liability company

By: DPM SPE Hammond, LLC,  
a Delaware limited liability company  
Its: Sole Member

By: DealPoint Merrill, LLC,  
a Delaware limited liability company  
Its: Manager

By: [Signature]  
Name: STERLING MCGREGOR  
Its: MANAGER

Acknowledgement

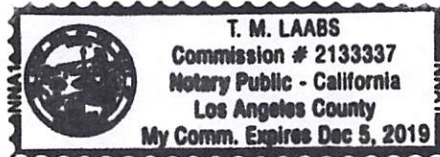
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California CA )  
County of Los Angeles )

On APRIL 26, 2019, before me, T.M. LAABS, a Notary Public, personally appeared STERLING MCGREGOR, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]



**EXHIBIT A**

**LEGAL DESCRIPTION**

The Land referred to herein below is situated in the County of Lake, State of Indiana, and is described as follows:

**PARCEL I**

LOT 1 AND OUTLOT A IN GATEWAY PROMENADE FIRST ADDITION TO THE CITY OF HAMMOND, BEING A SUBDIVISION OF THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 30, 2009 AS DOCUMENT 2009-020214, IN LAKE COUNTY, INDIANA.

**PARCEL II**

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL I CREATED BY DEED RECORDED AUGUST 10, 1967 AS DOCUMENT 717141 FOR INGRESS AND EGRESS OVER AND ACROSS THAT PART OF THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, IN HAMMOND, DESCRIBED AS FOLLOWS:

COMMENCING ON THE EAST LINE OF INDIANAPOLIS BLVD. 913.10 FEET NORTHWESTERLY OF THE THREAD OF THE STREAM OF THE LITTLE CALUMET RIVER LOCATED AND DESCRIBED IN DOCUMENT NO. 481268 RECORDED MAY 13, 1963 AS MEASURED ALONG SAID EAST LINES HAVING A BEARING OF NORTH 35 DEGREES 12 MINUTES 30 SECONDS WEST AND NORTH 37 DEGREES 21 MINUTES WEST; THENCE NORTH 37 DEGREES 21 MINUTES WEST ALONG SAID EAST LINE 60 FEET THENCE NORTH 52 DEGREES 38 MINUTES EAST 800 FEET; THENCE SOUTH 36 DEGREES 28 MINUTES 59 SECONDS EAST 60 FEET; THENCE SOUTH 52 DEGREES 39 MINUTES WEST 800 FEET TO THE PLACE OF BEGINNING, IN LAKE COUNTY, INDIANA.

**PARCEL III**

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL I FOR INGRESS AND EGRESS AS CREATED BY DECLARATION OF COVENANTS, RECIPROCAL EASEMENTS AND OPERATING AGREEMENT RECORDED MAY 11, 2009 AS DOCUMENT 2009031086.