

When Recorded Mail To:  
Marci L. Morgan Cox, Esq.  
Dinsmore & Shohl, LLP  
255 East Fifth Street #1900  
Cincinnati, OH 45202

ENT 76009:2015 PG 1 of 11  
**Jeffery Smith**  
**Utah County Recorder**  
2015 Aug 20 12:25 PM FEE 30.00 BY SS  
RECORDED FOR Cottonwood Title Insurance Ag  
ELECTRONICALLY RECORDED

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Tax ID No.: 66-255-0001

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), is made this 17 day of August, 2015 between **KEYSTONE CONSTRUCTION, LLC**, a Utah limited liability company ("Tenant") and **NATIONWIDE LIFE INSURANCE COMPANY**, an Ohio corporation ("Lender") and **WILLOW CREEK COURT, LLC**, a Utah limited liability company ("Landlord").

**BACKGROUND**

A. Tenant is a tenant under that certain Master Industrial Real Estate Lease (the "Lease") dated June 5, 2015, with Landlord, for premises more particularly described in the Lease (the "Premises") located in Lehi, Utah and constituting a portion of the Property (as hereinafter defined).

B. This Agreement is being entered into in connection with a loan being made by Lender to Landlord (the "Loan"), secured inter alia, by: (a) either a deed of trust, or mortgage or other similar security instrument (the "Mortgage") to be recorded in the real estate records of Utah County, Utah (the "Official Records"); and (b) an assignment of leases and rents on the Property (the "Assignment of Leases and Rents") to be recorded in the Official Records, covering property commonly known as and numbered 450 South 850 East, Lehi, Utah County, Utah (the "Property"). The Security Instrument and the Assignment of Leases and Rents are hereinafter collectively referred to as the "Security Documents".

C. Tenant, Landlord and Lender desire to confirm their understanding with respect to the Mortgage and the Lease.

NOW THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree and covenant as follows:

1. Subordination. The Lease and the rights of Tenant thereunder (including purchase options, rights of first refusal or similar rights, if any) are hereby subordinated and made subject to the Mortgage, and any amendment, renewal, substitution, extension or replacement thereof and each advance made thereunder as though the Mortgage, and each such amendment, renewal, substitution, extension or replacement were executed and recorded, and the advance made, prior to the execution of the Lease.

2. Non-Disturbance. Provided Tenant is in possession of the Premises and is not in default in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease beyond any applicable notice and cure periods, Lender agrees that no foreclosure (whether judicial or nonjudicial), deed in lieu of foreclosure, or other sale of the Property in connection with the enforcement of the Mortgage or otherwise in satisfaction of the underlying loan shall terminate the Lease or Tenant's rights thereunder to possess and use the leased space.

3. Attornment. If Lender succeeds to the interest of Landlord as landlord under the Lease, or if the Property or the Premises are sold pursuant to Lender's rights under the Mortgage, Tenant shall attorn to Lender, its successors and assigns, or a purchaser upon any such foreclosure sale, and shall recognize Lender, or such purchaser, thereafter as landlord under the Lease and agrees to be bound under all the terms, covenants and conditions of the Lease. Such attornment shall be effective and self-operative without the execution of any further instruments. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage, or upon request of any such purchaser, (a) any instrument or certificate which, in the reasonable judgment of such holder(s), or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment and (b) an instrument or certificate regarding the status of the Lease, consisting of statements, if true (and if not true, specifying in what respect) reasonably requested by such purchaser, including, without limitation: (i) that the Lease is in full force and effect, (ii) the date through which rentals have been paid, (iii) the duration and date of the commencement of the term of the Lease, (iv) the nature of any amendments or modifications to the Lease, (v) that no default, or state of facts, which with the passage of time or notice, or both, would constitute a default, exists on the part of either party to the Lease, and (vi) the dates on which payments of additional rent, if any, are due under the Lease.

4. Special Rights of Lender. If Lender exercises any of its rights under the Assignment or the Mortgage, or if Lender shall succeed to the interest of Landlord under the Lease, or if any purchaser acquires the Property, or the Premises, upon or after any foreclosure of the Mortgage, or any deed in lieu thereof, Lender or such purchaser, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any applicable notice and cure period) in the payment of rent or in the performance or observance of any of the terms, covenants and conditions of the Lease on Tenant's part to be paid, performed or observed that Landlord had or would have had if Lender or such purchaser had not succeeded to the interest of the present Landlord. Lender or purchaser shall be bound to Tenant under all terms, covenants and conditions under the Lease. Provided, however, that Lender or such purchaser shall only be bound during the period of its ownership, and that in the case of the exercise by Lender of its rights under the Mortgage, or the Assignment, or any combination thereof, or a foreclosure, or deed in lieu of foreclosure, all Tenant claims shall be satisfied only out of the interest, if any, of Lender, or such purchaser, in the Property, and Lender and such purchaser shall not be: (a) liable for any act or omission of any prior landlord (including the Landlord); (b) liable to refund to Tenant any security deposit which Tenant shall have paid to any prior landlord (including the Landlord) unless such security deposit has been delivered to Lender; or (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or (d) bound by any amendment or modification of the Lease made without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, Lender shall have the right to withhold its consent with respect to any amendment or modification which would materially adversely affect Lender's rights in the Premises (including, but not limited to those modifications that affects the economics of the property); or (e) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or (f) liable for or incur any obligation with respect to the construction of the Property or any improvements of the

Premises or the Property; or (g) liable for any obligation with respect to any breach of warranties or representations of any nature under the Lease or otherwise, including without limitation, any warranties or representations respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability and/or fitness for any purpose, or possession; or (h) liable for consequential damages.

5. Payment of Rent to Lender. After written notice is given to Tenant by Lender that Landlord is in default under the Mortgage and that the rentals under the Lease should be paid to Lender (the "Rent Notice") pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender all rent and other amounts due or to become due (the "Rent") to Landlord under the Lease. Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on Lender's written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability, excepting Tenant fraud, to Landlord in connection with Tenant's compliance with Lender's written instructions. Provided that no Rent has been paid more than thirty (30) days in advance of its due date, Tenant shall not be liable to Lender for Rent paid to Landlord prior to receipt of the Rent Notice.

6. Notice and Right to Cure. Tenant agrees, until the Mortgage is released by Lender, to provide Lender with a copy of each notice of default given to Landlord under the Lease at the same time such notice of default is given to Landlord. In the event of any default by Landlord under the Lease, Tenant shall not seek to terminate the Lease or to exercise any rights to setoff or abate Rent or any other remedies, until Lender has received such notice and has been given the opportunity, but without undertaking Landlord's other obligations under the Lease, to cure the default within sixty (60) days from receipt of notice. In the event Lender has begun action to cure the default, but not completed the same during the sixty (60) day period, Tenant agrees that Lender shall have a reasonable period of time thereafter to do so. If the default is such that it cannot practically be cured by Lender without taking possession of the Premises, Tenant agrees that any right it may have to terminate the Lease or to setoff or abate any Rent, shall be suspended for a reasonable period of time so long as Lender is diligently proceeding to acquire possession of the Premises, by foreclosure or is otherwise undertaking to cure the default of Landlord. Notwithstanding the foregoing, Lender shall have no obligation to cure any default under the Lease.

7. Tenant Representations and Warranties. Tenant hereby warrants and represents, covenants and agrees with Lender so long as the Mortgage has not been released: (a) not to amend, alter, modify, cancel or terminate the Lease in any respect without the prior written consent of Lender, which consent will not be unreasonably withheld, conditioned or delayed; (b) not to subordinate the Lease to any other mortgage, without Lender's prior written consent in each instance; and (c) that Tenant is now (or will be) the sole owner of the leasehold estate created by the Lease and shall not hereafter assign the Lease except as permitted by the terms hereof, and that notwithstanding any such assignment or any sublease, Tenant shall remain primarily liable for the observance and performance of its agreements under the Lease.

8. Limitation of Liability. Anything herein or in the Lease to the contrary notwithstanding, in the event that Lender shall acquire title to the Property, Lender shall have no

obligation, nor incur any liability, beyond Lender's then interest in the Property, and Tenant shall look exclusively to such interest of Lender in the Property for the payment and discharge of any obligations imposed upon Lender hereunder or under the Lease, or otherwise, subject to the limitation of Lender's obligations provided for in Section 4 above. For purposes hereof, "interest in the Property", shall include rents due from tenants, insurance proceeds, profits from sale and proceeds from condemnation or eminent domain proceedings.

9. Notices. All notices or communications required or permitted hereunder (collectively "Notices") shall be in writing, and shall be deemed properly given, on the date of actual delivery, or on the date that the recipient refuses delivery. Delivery shall be made by United States mail, registered or certified, return receipt requested, or by a nationally recognized overnight courier service; and sent to the addresses set forth below:

LENDER: Nationwide Life Insurance Company  
One Nationwide Plaza  
Columbus, Ohio 43215  
Attn: Real Estate Investment 01-34-02

TENANT: Keystone Construction, LLC  
450 South 850 East  
Building A, Unit #300  
Lehi, Utah 84043  
Attention: Michael B. Horan

LANDLORD: Willow Creek Court, LLC  
6334 W. 10150 N.  
Highland, Utah 84003  
Attention: Michael B. Horan

With courtesy copy  
To: Kirton McConkie  
2600 W. Executive Parkway, Suite 400  
Lehi, Utah 84043  
Attention: David L. Glazier

A party may, by notice to the other parties, designate a new address to which notices shall thereafter be delivered.

10. Parties Bound. The provisions of this Agreement shall be binding upon and inure to the benefit of Tenant, Lender and Landlord and their respective successors and/or assigns. Any party may record this Agreement at any time.

11. Options. With respect to any options for additional space provided to Tenant under the Lease, Lender agrees to recognize the same if Tenant is entitled thereto under the Lease after the date on which Lender succeeds as landlord under the Lease by virtue of

foreclosure or deed in lieu of foreclosure or Lender takes possession of the Premises; provided, however, Lender shall not be responsible for any acts of any prior landlord (including Landlord) under the Lease, or the act of any tenant, subtenant or other party which prevents Lender from complying with the provisions hereof and Tenant shall have no right to cancel the Lease or to make any claims against Lender on account thereof.

12. Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.

13. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state where the Property is located.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGES TO FOLLOW]*

*SIGNATURE PAGE TO  
SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT*

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

**TENANT:**

**KEYSTONE CONSTRUCTION, LLC, a Utah  
limited liability company**

By: Michael B. Horan  
Name: Michael B. Horan  
Title: Manager

**LANDLORD:**

**WILLOW CREEK COURT, LLC, a Utah  
limited liability company**

By: Michael B. Horan  
Name: Michael B. Horan  
Title: Manager

**LENDER:**

**NATIONWIDE LIFE INSURANCE  
COMPANY, an Ohio corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


*[NOTARY ACKNOWLEDGMENTS TO FOLLOW]*

*SIGNATURE PAGE TO  
SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT*

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


**TENANT:**

**KEYSTONE CONSTRUCTION, LLC, a Utah  
limited liability company**

By:   
Name: Michael B. Haran  
Title: Manager

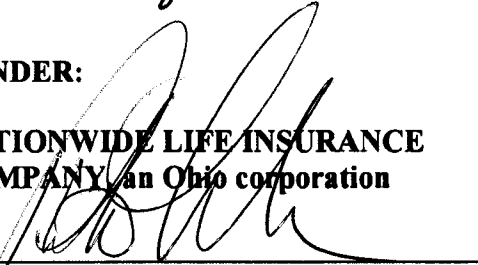
**LANDLORD:**

**WILLOW CREEK COURT, LLC, a Utah  
limited liability company**

By:   
Name: Michael B. Haran  
Title: Manager

**LENDER:**

**NATIONWIDE LIFE INSURANCE  
COMPANY, an Ohio corporation**


By:  *BLC*  
Name: PETER A. LYNCH  
Title: SENIOR INVESTMENT PROFESSIONAL

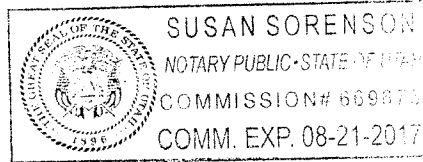
*[NOTARY ACKNOWLEDGMENTS TO FOLLOW]*  
**REAL ESTATE INVESTMENTS  
AUTHORIZED SIGNATORY**



STATE OF Utah  
COUNTY OF Utah

The foregoing instrument was acknowledged before me this 12 day of Aug, 2015, by Michael B. Horan the Manager of Keystone Construction, LLC, a Utah limited liability company, on behalf of the limited liability company.

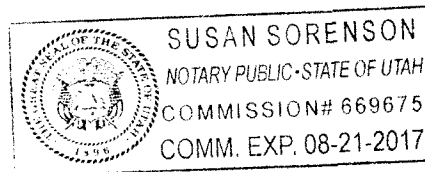
  
\_\_\_\_\_  
Notary Public



STATE OF Utah  
COUNTY OF Utah

The foregoing instrument was acknowledged before me this 12 day of Aug, 2015, by Michael B. Horan the Manager of Willow Creek Court, LLC, a Utah limited liability company, on behalf of the limited liability company.

  
\_\_\_\_\_  
Notary Public




STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

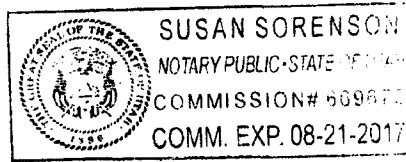
The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_ the \_\_\_\_\_ of Nationwide Life Insurance Company, an Ohio corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

STATE OF Utah  
COUNTY OF Utah


The foregoing instrument was acknowledged before me this 12 day of Aug, 2015, by Michael B. Horan the Manager of Keystone Construction, LLC, a Utah limited liability company, on behalf of the limited liability company.

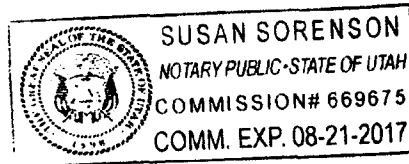
  
Notary Public



STATE OF Utah  
COUNTY OF Utah

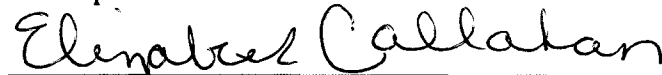
The foregoing instrument was acknowledged before me this 12 day of Aug, 2015, by Michael B. Horan the Manager of Willow Creek Court, LLC, a Utah limited liability company, on behalf of the limited liability company.

  
Notary Public



STATE OF Ohio  
COUNTY OF Franklin

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of Aug, 2015, by Peter Lynch the Sr. Investment Rep of Nationwide Life Insurance Company, an Ohio corporation, on behalf of the corporation.

  
Notary Public



ELIZABETH CALLAHAN  
Notary Public, State of Ohio  
My Commission Expires  
May 18, 2018

**EXHIBIT A  
PROPERTY DESCRIPTION**

PARCEL 1:

Lot 1, S & K INDUSTRIAL SUBDIVISION, according to the plat thereof as recorded in the office of the Utah County Recorder on May 2, 2008 as Entry No. 52392:2008.

PARCEL 1A:

A cross-access easement over that portion of Lot 2, as shown upon and disclosed by the recorded plat of said subdivision.

Tax Id No.: 66-255-0001