

Recording Requested By and
When Recorded Mail To:
Mark A. Gaspar, Esquire
Gebhardt & Smith LLP
1 South Street, Suite 2200
Baltimore, Maryland 21202

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4/25/2019 1:13:00 PM \$26.00
Book - 10773 Pg - 5538-5545
RASHELLE HOBBS
Recorder, Salt Lake County, UT
STEWART TITLE INS AGCY OF UT
BY: eCASH, DEPUTY - EF 8 P.

Loan No. 901001736

Tax ID: 16-19-103-022 and 16-19-103-024

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

GENWORTH LIFE INSURANCE COMPANY, a Delaware corporation (“Lender”), has agreed to make a loan (the “Loan”) to BOYER SOUTH SALT LAKE CROSSING, L.C., a Utah limited liability company (“Landlord”), to be secured by a Deed of Trust, Assignment of Rents and Leases, and Security Agreement (the “Deed of Trust”) on the property commonly known as 2193 South Main Street, South Salt Lake, Utah 84115 (the “Property”), and more particularly described on attached Exhibit A. The parties acknowledge that the Deed of Trust is being recorded concurrently with or after this instrument on April 26, 2019 as Instrument No. 12974448 of Official Records of Salt Lake County, Utah. (The parties hereby authorize the title company to insert the appropriate Deed of Trust recording information when available.)

WINCO FOODS, LLC, a Delaware limited liability company (“Tenant”) is the tenant under a Lease Agreement effective November 13, 2015, as modified by (i) First Amendment to Lease Agreement dated December 10, 2015, (ii) Second Amendment to Lease Agreement dated January 15, 2016, (iii) Third Amendment to Lease Agreement dated May 11, 2016, (iv) Fourth Amendment to Lease Agreement dated July 11, 2016, and (v) Fifth Amendment to Lease Agreement dated February 23, 2017 (collectively the “Lease”) with Landlord on all or a portion of the Property (the “Leased Premises”).

Lender needs assurances from Tenant in order to make the Loan. Tenant is willing to give those assurances if Lender will agree, so long as Tenant is not in default under the Lease, not to disturb Tenant's possession of the Leased Premises in the event of foreclosure of the Deed of Trust. Tenant also understands that, in making the Loan, Lender will rely on the assurances and statements made in this agreement.

NOW, THEREFORE, Lender and Tenant agree as follows:

1. Subordination. Tenant agrees that the Lease, and all rights of Tenant in, to and under the Lease and the Property, are hereby unconditionally subordinated, and shall remain unconditionally subordinate, to the lien of the Deed of Trust and any and all other instruments held by Lender as security for the Loan, and to any and all renewals, modifications, increases and extensions thereof.

2. Tenant Not To Be Disturbed. Lender agrees that, so long as Tenant is not in default under the Lease (beyond any period given Tenant by the terms of the Lease to cure such default):

(a) Tenant's possession of the Leased Premises under the Lease shall not be disturbed by Lender in any foreclosure or other proceedings brought to enforce the Deed of Trust or by any deed in lieu of foreclosure.

(b) Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Deed of Trust unless such joinder is necessary to foreclose the Deed of Trust, and then only for such purpose and not for the purpose of terminating the Lease.

3. Tenant To Attorn To Lender. If Lender becomes the owner of the Property by reason of foreclosure or other proceedings brought to enforce the Deed of Trust or by deed in lieu of foreclosure, the Lease shall continue in full force and effect as if Lender were the original Landlord and Tenant hereby attorns to Lender as Tenant's lessor, except Lender shall not be:

(a) Liable for any act or omission of any prior lessor (including Landlord), provided that, upon becoming owner of the Property, Lender shall perform any maintenance, repair or restoration work to the Leased Premises or the Property required of (but unperformed by) any prior lessor under the Lease; in no event, however, shall Lender have any liability under this subparagraph (a) except for failure to perform such obligations after Lender becomes the owner of the Property; or

(b) Subject to any offset or defense which Tenant might have against any such prior lessor; or

(c) Bound by any prepayment of rent by Tenant, except as required by the terms of the Lease; or

(d) Bound by any amendment, modification or waiver of any material term of the Lease, unless made with the prior written consent of Lender; or

(e) Liable for the return of any security deposit under the Lease unless such security deposit is actually received by Lender; or

(f) Liable for any obligation of Landlord under the Lease with respect to any property other than the Property given as security for the Loan, and Tenant will look solely to Landlord for performance and observance of any and all such obligations.

If Lender becomes the owner of the Property and thereafter sells or otherwise transfers its interest in the Property, Lender shall have no liability with respect to obligations of the lessor under the Lease which arise following the sale or other transfer of the Property by Lender.

4. Third-Party Owner. If someone acquires the Property through Lender, whether at a trustee or foreclosure sale or otherwise, that person shall have the same rights and obligations to continue the Lease with Tenant as Lender would have under this agreement.

5. Purchase Options. Tenant has no option to purchase, right of first refusal, or other right to acquire all or any of the Property except as provided for in Section 23 of the Lease. Tenant agrees that, under paragraph 1 above, any such option or right is hereby made subject and subordinate to the lien of the Deed of Trust and any and all other instruments held by Lender as

security for the Loan, and to any and all renewals, modifications and extensions thereof. Foreclosure of the Deed of Trust or a deed in lieu of foreclosure shall not entitle Tenant to exercise any such option or right, but such option or right shall remain exercisable, upon and subject to the terms of the Lease, after foreclosure of the Deed of Trust or deed given in lieu of foreclosure.

6. Covenants of Tenant. Tenant covenants as follows:

(a) Tenant shall pay to Lender all rent and other payments otherwise payable to Landlord under the Lease upon written demand from Lender. By its signature below, Landlord consents to Tenant's payment of rent to Lender upon Lender's written demand, agrees that Tenant may rely solely upon Lender's written demand regardless of any dispute between Landlord and Tenant, and releases and discharges Tenant from all liability to Landlord for any payment of rent made as instructed by Lender in writing.

(b) Tenant shall not subordinate its rights under the Lease to any other Deed of Trust or other security instrument without the prior written consent of Lender.

(c) Tenant shall notify Lender if Landlord is in default under the Lease and will give Lender thirty (30) days after receipt of such notice in which to cure the default before Tenant invokes any of its remedies under the Lease.

7. Assignment of Lease. Tenant understands that Landlord's interest in the Lease has been assigned to Lender in connection with the Loan. Until Lender becomes owner of the Property, however, Lender assumes no duty, liability or obligation to Tenant under the Lease.

8. Costs and Attorneys' Fees. In the event of any claim or dispute arising out of this agreement, the party that substantially prevails shall be awarded, in addition to all other relief, all attorneys' fees and other costs and expenses incurred in connection with the claim or dispute, including without limitation those fees, costs and expenses incurred before, during or after suit, in any arbitration, in any appeal, in any proceedings under any present or future bankruptcy act or state receivership, and in any post-judgment proceedings.

9. Limitation on Liability. Nothing in this Agreement shall impose upon Lender any liability for the obligations of Landlord under the Lease unless and until Lender takes title to the Property. Anything herein or in the Lease to the contrary notwithstanding, in the event that Lender or its assignee or designee (being collectively referred to as a "Successor Owner") shall acquire title to the Property or the portion thereof containing the Leased Premises, Successor Owner shall have no obligation, subject to Paragraph 3(a) of this Agreement, nor incur any liability, beyond Successor Owner's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor Owner in the Property for the payment and discharge of any obligations imposed upon Successor Owner hereunder or under the Lease, and Successor Owner is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgment which may be obtained or secured by Tenant against Successor Owner, Tenant shall look solely to the estate or interest owned by Successor Owner in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Successor Owner.

10. Notices. Any notices under this agreement shall be in writing and shall be personally delivered or mailed, postage prepaid, certified or registered mail, return receipt requested. Any notice sent to a party shall be sent to the party at its address below its signature hereon. Each mailed notice shall be deemed given three (3) days after its postmark. Any party may change its address by notice to the other parties.

11. Miscellaneous. This agreement may not be modified except in a writing executed by the parties or their successors in interest. This agreement shall be binding upon and shall inure to the benefit of Lender, its affiliates that are directly or indirectly controlled by, controlling or under common control with Lender, and its/their successors and/or assigns. This agreement may be executed in counterparts, in which case all originals together shall constitute a single instrument.

DATED this 29 day of April, 2019.

LENDER:

GENWORTH LIFE INSURANCE COMPANY,
A Delaware corporation

By: 
Its: Investment Officer

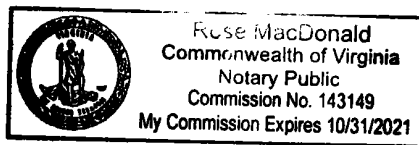
Address: Servicing Department
10851 Mastin, Suite 300
Overland Park, Kansas 66210

STATE OF Virginia)
) ss.
COUNTY OF Henrico)

I certify that I know or have satisfactory evidence that Philip Hart is the person who appeared before me, and said person acknowledged that [he][~~she~~] signed this instrument, on oath stated that [he][~~she~~] was authorized to execute the instrument and acknowledged it as the Investment Officer of Genworth Life Insurance Company to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.


DATED this 22nd day of April, 2019.

Rose MacDonald
Notary Public in And For the State of Virginia,
residing at Henrico County
Name (printed or typed): ROSE MacDONALD
My appointment expires: 10-31-21



TENANT:

WINCO FOODS, LLC,
a Delaware limited liability company

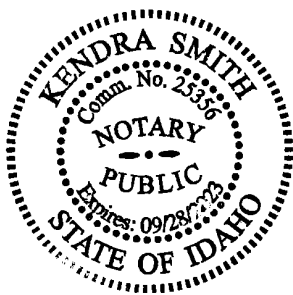
By: 
Name: Del Ririe
Title: vp/controller

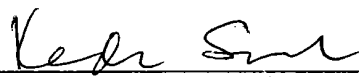
Address:
650 N. Armstrong Place
Boise, ID 83704
Attn: Greg Goins, Vice President of Real Estate

STATE OF IDAHO)
 : ss.
COUNTY OF ADA)

On this 1st day of March, 2019, before me, the undersigned notary public for said state, personally appeared Del Ririe, known to me to be the vp/controller of WinCo Foods, LLC, a Delaware limited liability company, the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.




Kendra Smith
NOTARY PUBLIC in and for the State
of Idaho, residing at Boise
My commission expires September 28, 2023

CONSENTED AND AGREED TO this 25th day of April, 2019.

LANDLORD:

BOYER SOUTH SALT LAKE CROSSING, L.C.,
a Utah limited liability company

By: The Boyer Company, L.C.,
a Utah limited liability company,
Manager

By:  (SEAL)
Name: Brian Gochnour
Title: Manager

Address:
c/o The Boyer Company, L.C.
101 South 200 East, Suite 200
Salt Lake City, Utah 84111
Attn: Wade Williams

STATE OF UTAH, CITY/COUNTY OF SALT LAKE:

I HEREBY CERTIFY that on this 18th day of April, 2019, before me, the undersigned Notary Public of the jurisdiction aforesaid, personally appeared Brian Gochnour, and acknowledged himself to be the Manager of The Boyer Company, L.C., a Utah limited liability company, which is the Manager of BOYER SOUTH SALT LAKE CROSSING, L.C., a Utah limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of BOYER SOUTH SALT LAKE CROSSING, L.C., by The Boyer Company, L.C., its Manager, by himself as Manager thereof.

IN WITNESS MY Hand and Notarial Seal.

 (SEAL)
Notary Public

My Commission Expires:
1/22/22

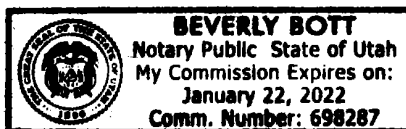


EXHIBIT A

Legal Description

PARCEL 1:

Lots 1 and 3, THE CROSSING AT SOUTH SALT LAKE SUBDIVISION, according to the Official Plat thereof as recorded in the Office of the Salt Lake County Recorder, State of Utah.

PARCEL 2:

Non-exclusive easement for vehicular and pedestrian access, ingress and egress, as set forth in that certain Declaration of Easements and Use Restriction, recorded December 4, 2015 as Entry No. 12182736, in Book 10385, at Page 167 of the Official Records.

PARCEL 3:

Non-exclusive easement for access and the vehicular and pedestrian ingress, egress and parking of vehicles, as set forth in that certain Declaration of Easements and Conditions, recorded February 24, 2017 as Entry No. 12483780, in Book 10532, at Page 7445, of the Official Records, as said Declaration was amended by that certain First Amendment to Declaration of Easements and Conditions recorded October 18, 2017 as Entry No. 12639460, in Book 10610, at Page 2478, and as further amended by that certain Second Amendment to Declaration of Easements and Conditions recorded December 13, 2017 as Entry No. 12678528, in Book 10629, Page 2473, of Official Records.