



MISC 2016032877



MAY 04 2016 10:57 P 10

Fee amount: 64.00
FB: 67-43975
COMP: MB

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
05/04/2016 10:57:36.00



2016032877

(Space above reserved for Register of Deeds certification)

Title of Document: SUBORDINATION, NONDISTURBANCE AND ATTORNMEN AGREEMENT

Date of Document: April 29, 2016

Grantor(s): GEM ISLAND INVESTMENT LIMITED PARTNERSHIP

and

KELLOGG SALES COMPANY

Grantee: GENWORTH LIFE AND ANNUITY INSURANCE COMPANY
Servicing Department
10851 Mastin, Suite 300
Overland Park, Kansas 66210

Legal Description: See "Exhibit A" attached

Reference: Document No.: 2016031826

FOR INDEXING PURPOSES ONLY

Chicago Title
20163310-DD

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

Loan No. 901001019

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

GENWORTH LIFE AND ANNUITY INSURANCE COMPANY, a Virginia corporation (“Lender”), has agreed to make a loan (the “Loan”) to GEM ISLAND INVESTMENT LIMITED PARTNERSHIP, a Florida limited partnership (“Landlord”), to be secured by a Deed of Trust, Assignment of Rents and Leases, and Security Agreement (Also Constituting A Fixture Filing) (the “Deed of Trust”) on the property commonly known as 10203 Crown Point Avenue, Omaha, Nebraska 68134 (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 May 2 , 2016 as Instrument No. 2016031826 of Official Records of Douglas County. (The parties hereby authorize the title company to insert the appropriate Deed of Trust recording information when available.)

KELLOGG SALES COMPANY, a Delaware corporation (“Tenant”) has a Lease dated June 5, 1990, as modified by: (i) a First Amendment to Lease dated January 14, 2005; (ii) a Letter Agreement dated December 5, 2007; (iii) a Third Amendment to Lease dated February 18, 2011; (iv) a Fourth Amendment to Lease dated October 4, 2011; and (v) a Fifth Amendment to Lease dated May 28, 2015 (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); 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.

With respect to Section 3(d) above, any consent to be given or denied by Lender with respect to the Lease shall be given or denied no later than ten (10) business days after the receipt by Lender of the amendment or modification to be approved and any other additional information reasonably requested by Lender regarding such amendment or modification, or such amendment or modification shall be deemed approved; provided, however, that (i) no amendment or modification shall be deemed approved to the extent that any such amendment or modification contains any provision that (A) contains, seeks to add or permits the exercise of any purchase option or right of first offer or refusal; or (B) permits the early termination of the Lease, shortens the Lease term, decreases the size of the Leased Premises, postpones, delays or decreases the rent payable under the Lease, or otherwise diminishes the economic value of the Lease; or (C) obligates Landlord to complete any construction or expansion upon the Leased Premises or to make future contributions to Tenant for tenant improvements at the Property; or (D) permits

Tenant to make any structural alterations or additions to the Property, (ii) such ten (10) business day period shall not commence until Lender's receipt of all requested information reasonably necessary to make an informed decision about the amendment or modification, and (iii) the request for such amendment or modification shall include at the top of the first page of such request a statement in bold capitalized letters which states as follows:

THIS IS A REQUEST FOR APPROVAL OF A LEASING MATTER FOR GENWORTH LIFE AND ANNUITY INSURANCE COMPANY LOAN NUMBER 901001019; FAILURE TO RESPOND WITHIN TEN (10) BUSINESS DAYS TO THIS REQUEST FOR APPROVAL OF A LEASING MATTER SHALL RESULT IN DEEMED APPROVAL OF SUCH LEASING MATTER.

To request Lender's consent to such amendment or modification, Borrower must deliver to Lender, at the addresses and in the manner specified below, a complete copy of the final documentation associated with the proposed amendment or modification, together with any related information requested by Lender (the "Consent Request Package"). Lender's receipt of the Consent Request Package shall not occur, and therefore the time frames set forth above shall not begin, unless and until (1) the Consent Request Package shall have been sent to Lender's notice address in the Deed of Trust and to the two addresses shown below and shall actually have been received by Lender, and (2) Borrower shall have confirmed such receipt by Lender (to be evidenced by email or other written confirmation from Lender). The Consent Request Package must be sent by national express courier or certified US mail to Lender at the following addresses (or such other addresses as Lender may hereafter designate in writing):

Genworth Life And Annuity Insurance Company
c/o Genworth Financial, Inc.
3001 Summer Street
Stamford, CT 06905-4317
Attention: Real Estate Servicing Manager

And

Colliers International
160 Federal Street, Floor 11
Boston, MA 02110
Attention: Lynn S. Scarbo, Senior Vice President, Capital Markets

With copy to:

Genworth Life And Annuity Insurance Company
c/o Genworth Financial, Inc.
3001 Summer Street
Stamford, CT 06905-4317
Attention: Real Estate Investments Counsel

In addition, the parties hereto agree that an acknowledgement page shall be attached to all such amendments or modifications for execution by Lender to evidence its approval of such amendment or modification.

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. Any option to purchase, right of first refusal, or other right that Tenant has to acquire all or any of the Property is set forth in 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.

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 mortgage, 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 reasonable 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, 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.

as of the
DATED this 29 day of April, 2016.

LENDER:

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY, a Virginia corporation

By: *PC. S. Dena* (SEAL)
Its: *Investment Officer*

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

COMMONWEALTH 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 AND ANNUITY INSURANCE COMPANY, a Virginia corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 26th day of April, 2016.

Rose MacDonald
Notary Public in And For the State of Virginia
residing at Henrico County
Name (printed or typed): Rose MacDonald
My appointment expires: 10-31-17.

Rose MacDonald
NOTARY PUBLIC
Commonwealth of Virginia
My Commission Expires 10/31/2017

TENANT:

KELLOGG SALES COMPANY,
a Delaware corporation

By: Frank Schade (SEAL)
Name: FRANK SCHADE
Title: VP GLOBAL WORKPLACE

Address:
235 Porter Street
Battle Creek , Michigan 49016

STATE OF Michigan)
) ss
COUNTY OF Calhoun)

On March 9, 2016, before me, Alan L. Darnier, a Notary Public, the foregoing instrument was acknowledged by Frank Schade, as VP Global Workplace of KELLOGG SALES COMPANY, a Delaware corporation, personally known to me (or 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.

WITNESS my hand and official seal.

Signature Alan L. Darnier (Seal)
Title: Director Real Estate KNA
Serial Number (if any): _____
Printed Name: Alan L. Darnier

Alan L. Darnier
Notary Public - State of Michigan
Kalamazoo County, MI
Acting in Calhoun County, MI
Commission Expires 10/01/2021

CONSENTED AND AGREED TO this 16 day of March, 2016.

LANDLORD:

GEM ISLAND INVESTMENT LIMITED
PARTNERSHIP, a Florida limited partnership

By: Gem Island Investment, Inc.,
a Florida corporation,
its Manager

By: *Charles M. Bayer, Jr.* (SEAL)
Charles M. Bayer, Jr., President

Address:

3399 PGA Boulevard, Suite 260
Palm Beach Gardens, Florida 33410

STATE OF Florida)
) ss
COUNTY OF PALM BEACH)

On March 16 2016 before me, Luzlyzaa Velazquez, a Notary Public, the foregoing instrument was acknowledged by Charles M. Bayer, Jr., as President of Gem Island Investment, Inc., a Florida corporation, which is the Manager of GEM ISLAND INVESTMENT LIMITED PARTNERHSIP, a Florida limited partnership, personally known to me (or 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.

WITNESS my hand and official seal.

Signature *Luzlyzaa Velazquez* (Seal)
Title: Name: Luzlyzaa Velazquez
Serial Number (if any): _____

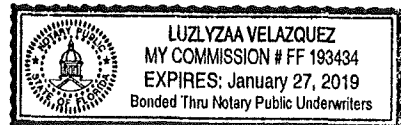


EXHIBIT A

Legal Description

All of Lots Eleven (11), Twelve (12), Thirteen (13), and Fourteen (14), and the East 15.58 feet of Lots Ten (10) and Fifteen (15), in Wiesman Executive Plaza, an Addition to the City of Omaha, in Douglas County, Nebraska, EXCEPT that part of said Lot Twelve (12) described as follows:

Beginning at the Northeast corner of said Lot Twelve (12); thence South (assumed bearing), 60.90 feet, on the East line of said Lot Twelve (12); thence North 03 degrees 48 minutes 51 seconds West, 22.22 feet, to a point of curve; thence Northwesterly, on a 50.00 foot radius curve to the left, chord bearing North 45 degrees 00 minutes 00 seconds West, chord distance 52.68 feet, an arc distance of 57.51 feet, to a point of tangency; thence North 86 degrees 11 minutes 09 seconds West, 22.22 feet, to the North line of said Lot Twelve (12); thence East 60.90 feet, on the North line of said Lot Twelve (12), to the point of beginning.