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Book - 10245 Pg - 4481-4487
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 7 P.

Prepared by, Recorded at the Request of
and After Recording Return To:
Andrew Sternoff
Symetra Life Insurance Company
Mortgage Loan Department
PO Box 84066
Seattle, WA 98124-8466

Tax Parcel No. 22-29-128-003-0000

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT is dated as of July 2, 2014, and is entered into among SYMETRA LIFE INSURANCE COMPANY, an Iowa corporation whose address for notices is PO Box 84066, Seattle, WA 98124-8466 (the "Lender"); FMS INVESTMENTS, LLC, a Nevada limited liability company ("Landlord"), whose address for notices is 2800 Darby Falls Drive, Las Vegas, NV 89134; and TOSH, INC., a Utah corporation whose address for notices is 2474 N University, Provo, UT 84604, Attn: Todd Rawle (the "Tenant"), with respect to the real property located in Salt Lake County, Utah more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

RECITALS:

- A. Lender has made, or is about to make, a loan to Landlord, evidenced by a Promissory Note and secured by a mortgage or deed of trust (the "Security Instrument," which term includes all renewals, modifications and replacements thereof) recorded concurrently herewith with respect to the Property (the Security Instrument and any other documents evidencing or securing the loan are jointly referred to herein as the "Loan Documents"); and
- B. Tenant leases all or a portion of the Property (the "Premises") pursuant to an unrecorded lease between Grae Ventures, LLC as Landlord's predecessor in interest and Baja Fresh Westlake Village, Inc. as Tenant's predecessor in interest dated December 27, 2002, and as amended and assigned prior to the date hereof (the "Lease"), which Premises are commonly known as Suite #911 located at 911-913 E Fort Union Blvd, Midvale, UT 84047; and
- C. The parties desire to provide for Tenant's subordination of the Lease to the lien of the Security Instrument and for Lender's agreement not to disturb Tenant's rights in the Premises in the event Lender should foreclose the Security Instrument, and the parties are willing to so agree on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby represented and agreed as follows:

1. **Subordination of Lease.** The Lease and the leasehold estate created thereby and all of Tenant's rights under the Lease (including without limitation, any right, option or opportunity of Tenant to purchase the Property) are and shall at all times remain subordinate (i) to the Security Instrument and the lien thereof, to the extent of all amounts secured by the Security Instrument and interest thereon, and (ii) to all rights of Lender under the Security Instrument. Tenant will not cause the Lease to be subordinated to any interests other than those held by Lender (and its successors and assigns) without notice to and written consent of Lender.
2. **Notice to Lender; Option to Cure.** Tenant agrees to deliver to Lender prompt written notice of any default by Landlord under the Lease that would entitle Tenant to cancel the Lease or abate the Rent payable thereunder or that would provide Tenant with a right of offset against any monetary obligations under the Lease. Lender shall have the right, but not the obligation, to cure such default within the same period of time that Landlord has to cure such default.

FIRST AMERICAN TITLE
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3. **Tenant Acknowledgment of Assignment.** Tenant acknowledges that the Lease and the rent due under the Lease will be assigned to Lender pursuant to the Assignment of Leases as security for the loan secured by the Security Instrument. If Lender notifies Tenant of a default by Landlord under the Loan Documents and demands that Tenant pay rent and all other sums due under the Lease to Lender, Tenant agrees to honor such demand and pay rent due under the Lease as directed by Lender, and Landlord hereby directs Tenant to comply with such demand, and agrees that any such payment by Tenant to Lender pursuant to such a demand shall satisfy Tenant's payment obligations to Landlord under the Lease to the extent of the amount so paid. Tenant will not, without the prior written consent of Lender, pay to Landlord any rent under the Lease more than thirty (30) days in advance of its due date.
4. **Attornment.** In the event of foreclosure under the Security Instrument or deed in lieu thereof, or any other exercise by Lender of rights and remedies as a result of which Lender or another party (collectively, a "Successor Landlord") becomes the owner of the Premises (such a transfer being referred to herein as a "Transfer"), the Lease shall continue in full force and effect as a direct lease between the succeeding owner of the Property (a "Successor Landlord") and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease for the balance of the Lease term and any extensions or renewals (if exercised). Tenant agrees to attorn to and accept any such Successor Landlord as landlord under the Lease, and to be bound by and perform all of the obligations imposed by the Lease, said attornment to be self-operative, without execution of any further instruments, upon a Transfer. Notwithstanding the foregoing, neither Lender nor any other Successor Landlord shall be (i) liable for any act or omission of a prior landlord, other than a non-monetary default of a continuing nature that continues past the date of the Transfer, and of which Lender is given written notice prior to the Transfer (a "Continuing Default") (ii) subject to any claims, offsets, counterclaims, or defenses which Tenant may have against any prior landlord (including Landlord), other than those arising from a Continuing Default, (iii) bound by any rent or additional rent which Tenant may have paid in advance to any prior landlord (including Landlord) for a period in excess of one month or by any security deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord (including Landlord), unless such advance rent, deposit or charge has been delivered to Lender, (iv) bound by any amendment to the Lease which reduces the amount of rent or other sums due thereunder, changes the frequency of the payment of rent, or shortens the initial term or shortens or eliminates any renewal option, made without the prior written consent of Lender, or (v) bound by any purchase option or right of first refusal for the purchase of any portion of the Property granted under the Lease or otherwise held by Tenant, except as otherwise expressly provided herein, or expressly provided in the Lease.
5. **Non-Disturbance.** Upon a Transfer, Lender, and any Successor Landlord, will not disturb the possession of the Tenant, its successors and assigns, so long as no default on the part of Tenant has occurred under the Lease which would cause or permit the termination or would entitle the Landlord to dispossess the Tenant from the Premises.
6. **No Recourse to Lender.** Lender shall not, either by virtue of the Security Instrument or this Agreement, be or become (i) a mortgagee-in-possession or (ii) subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired by foreclosure or otherwise the interest of Landlord in the Premises. Lender's liability or obligation under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises, including Continuing Defaults.
7. **Notices.** All notices and other communications hereunder shall be in writing and deemed to have been duly given, served or received (i) if mailed, on the third day after deposit in the United States Mail, registered or certified, postage prepaid, return receipt requested, or (ii) if delivered by reputable commercial overnight courier the next business day after delivery to such courier, in each case addressed to the party at its address set forth herein (or at such other address as shall hereafter be designated in writing by the applicable party to the sender).
8. **Binding Agreement.** This Agreement shall be binding upon the parties and their respective successors and assigns.
9. **Miscellaneous.** Tenant understands that as between Tenant and Lender, the terms of this Agreement are binding on Tenant even if they grant rights to Lender that Lender would not necessarily otherwise enjoy under the Lease as a successor landlord in the absence of this Agreement. This Agreement represents the entire agreement of the parties and supersedes any prior or contemporaneous communications, written or oral, relating to the terms hereof. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the Parties hereto or their

respective successors in interest. The laws of the State where the Property is located shall govern the validity, construction and enforcement of this Agreement, without giving effect to the conflict of laws principles thereof.

10. **Counterparts.** This Agreement may be executed in separate counterparts all of which shall constitute a single instrument.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year stated above.

TENANT:

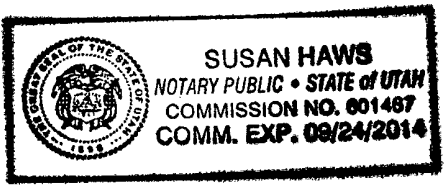
TOSH, INC., a Utah corporation

By: [Signature]
Typed or Printed Name: TRACY RAWLS
Its: PRESIDENT

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

The foregoing Security Instrument was acknowledged before me this 3 day of JULY, 2014,
by TRACY RAWLS PRESIDENT of Tosh, Inc., a Utah corporation.

[Signature]
NOTARY PUBLIC
residing at PROVO, UT
My commission expires: 9/24/2014



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year stated above.

LANDLORD:

FMS INVESTMENTS, LLC,
a Nevada limited liability company

By: [Signature]
Fred Ralph Sistilli, Manager

By: [Signature]
Maureen Sistilli, Manager

STATE OF NEVADA)
COUNTY OF Clark) ss.

The foregoing instrument was acknowledged before me this 3 day of July, 2014, by FRED RALPH SISTILLI, the manager of FMS Investments, LLC, a Nevada limited liability company.

[Signature]
NOTARY PUBLIC
residing at 9350 Sun City Blvd Ste 120
My commission expires: 05-24-2017



STATE OF NEVADA)
COUNTY OF Clark) ss.

The foregoing instrument was acknowledged before me this 3 day of July, 2014, by MAUREEN SISTILLI, the manager of FMS Investments, LLC, a Nevada limited liability company.

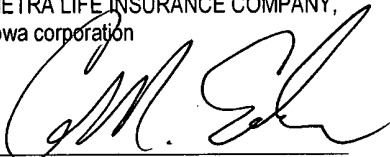
[Signature]
NOTARY PUBLIC
residing at 9350 Sun City Blvd Ste 120
My commission expires: 05-24-2017



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year stated above.

LENDER:

SYMETRA LIFE INSURANCE COMPANY,
an Iowa corporation

By: 
Colin M. Elder, Senior Vice President

STATE OF WASHINGTON

COUNTY OF KING

I certify that I know or have satisfactory evidence that COLIN M. ELDER is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Senior Vice President of Symetra Life Insurance Company, an Iowa corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this 10th day of July, 2014.

SUSAN P. NUNMAKER
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
12-09-15

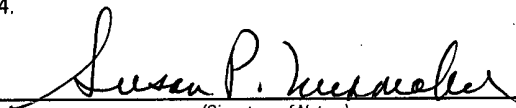

(Signature of Notary)
Susan P. Nunmaker
(Legibly Print or Stamp Name of Notary)
Notary public in and for the state of Washington,
Residing at Everett
My appointment expires 12/09/2015

EXHIBIT 'A'

File No.: **NCS-668180-SLC1 (cp)**
Property: **911 East Fort Union Boulevard, Midvale, UT 84047**

05/02/2014

REAL PROPERTY IN THE CITY OF MIDVALE, COUNTY OF SALT LAKE, STATE OF UTAH, DESCRIBED AS FOLLOWS:

**BEGINNING AT A POINT SOUTH 88°56'20" WEST 953.13 FEET AND SOUTH 0°04'40 WEST 466.041 FEET AND SOUTH 89°55'20" EAST 73.00 FEET FROM THE NORTH QUARTER CORNER OF SECTION 29, TOWNSHIP 2 SOUTH RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; RUNNING THENCE SOUTH 73°09' EAST ALONG AN OLD FENCE LINE 360.280 FEET TO THE NORTH LINE OF THE STATE HIGHWAY RIGHT OF WAY; THENCE SOUTHWESTERLY ALONG SAID RIGHT OF WAY LINE AROUND A 1,076.92 FOOT RADIUS CURVE TO THE RIGHT 208.320 FEET; THENCE SOUTH 85°21'20" WEST ALONG SAID RIGHT OF WAY LINE 140.761 FEET; THENCE NORTH 0°04'40 EAST PARALLEL TO AND 73.00 FEET PERPENDICULAR DISTANCE FROM THE CENTERLINE OF 900 EAST STREET 152.615 FEET TO THE POINT OF BEGINNING
A.P.N. 22-29-128-003-0000**

Initials: _____