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Rhonda Francis Summit County Recorder

02/06/2024 03:46:05 PM Fee \$42.00

By PARR BROWN GEE AND LOVELESS

Electronically Recorded

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

Hartman Simons & Wood LLP
400 Interstate North Parkway SE, Suite 600
Atlanta, GA 30339
Attn: Benjamin R. Noe, Esq.

Tax ID #: RS-1-1AM, RS-2-1AM, RS-3-1AM, RS-4-1AM,
RS-5-1AM, RS-6-1AM, RS-7-1AM, RS-8-1AM,
RS-9-1AM, RS-10-1AM, RS-20-1AM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT is entered into as of the 23rd day of January 2024, by and among **UNUM LIFE INSURANCE COMPANY OF AMERICA**, a Maine corporation with a place of business at 2211 Congress Street, B259, Portland, Maine 04112-0590 ("Lender"), **BOYER SPRING CREEK, L.C.**, a Utah limited liability company with a place of business at c/o The Boyer Company L.C., 101 S 200 E, Suite 200, Salt Lake City, UT 84111 ("Landlord"), and Barnes & Noble Booksellers, Inc., a Delaware corporation, having an office at 33 East 17th Street, New York, New York 10003 ("Tenant").

Recitals

A. Lender made a loan to Landlord on January 30, 2015 in the original principal amount of \$29,750,000 (the "Loan").

B. Lender is the holder of a Deed of Trust, Security Agreement and Fixture Filing dated January 30, 2015 securing the Loan (the "Mortgage") covering that certain parcel of land owned by Landlord and described on Exhibit "A" attached hereto and made a part hereof, together with the improvements erected thereon, commonly known as "Redstone" (the "Shopping Center").

C. By a certain Lease entered into between Landlord and Tenant, dated as of Dec., 21, 2023 (as amended, the "Lease"), Landlord leased to Tenant certain premises

within the Shopping Center, as more particularly described in the Lease, to which reference is hereby made for all relevant purposes (the "Premises").

D. A copy of the Lease has been delivered to Lender, the receipt of which is hereby acknowledged.

E. The Lease has been assigned by Landlord to Lender by an Assignment of Rents, Leases and Other Benefits dated January 30, 2015 (as amended, replaced, extended, renewed, restated, or otherwise modified in writing from time to time, the "Assignment"); and

F. The parties hereto desire to effect the subordination of the Lease to the Mortgage and to provide for the non-disturbance of Tenant by the holder of the Mortgage or any purchaser under a foreclosure or deed in lieu thereof.

Agreement

In consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Lender hereby consents to and approves the Lease and all of the terms and conditions thereof.

2. The Lease and Tenant's leasehold estate created thereby, including all rights and options to purchase the Premises, if any, shall be and are subject and subordinate to the lien of the Mortgage and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof, provided, however, that at any time hereafter, at the election of the Lender, Lender shall have the right to declare the Lease superior to the lien, provisions, operation and effect of the Mortgage.

3. Landlord and Tenant certify that the Lease is presently in full force and effect and unmodified and neither such party as of this date has knowledge of any default, charge, lien or claim of offset under the Lease.

4. Lender agrees that, so long as Tenant is not in default (beyond the expiration of any applicable cure period) under the Lease:

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for foreclosure by the Lender or to enforce any rights under the Mortgage or the Loan, unless required by law.

(b) The possession by Tenant of the Premises and Tenant's rights under the Lease shall not be disturbed, affected or impaired by (i) any suit, action or proceeding under the Mortgage or the Loan or for foreclosure under the Mortgage, or any other enforcement of any rights under the Mortgage or any other documents pertaining to the Loan, (ii) any judicial or non-

judicial foreclosure, sale or execution of the Premises or the Shopping Center, or any deed given in lieu of foreclosure, or (iii) any default under the Mortgage or the Loan.

(c) Neither the Mortgage nor any other security instrument executed in connection with the Loan shall cover or be construed as subjecting in any manner to the lien thereof any trade fixtures, signs or other personal property at any time furnished or installed by or for Tenant in or on the Premises.

5. By virtue of the Assignment, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges, options and remedies of the Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as the Landlord.

6. If Lender or any future holder of the Mortgage or any other transferee under the Mortgage shall become the owner of the Shopping Center or any part thereof by reason of foreclosure of the Mortgage, or if the Shopping Center or any part thereof shall be sold as a result of any action or proceeding to foreclose the Mortgage, or by transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the then owner of the Shopping Center as "Landlord" under the Lease, upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including also any extension periods, if Tenant elects or has elected to exercise its option to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "Landlord" under the Lease; and

(b) Such new owner shall be bound to Tenant under and hereby assumes all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including also any extension periods, if Tenant elects or has elected to exercise its option to extend the term), and Tenant shall, from and after the date such new owner succeeds to the interest of "Landlord" under the Lease, have the same remedies against such new owner for the breach of any covenant contained in the Lease; provided, however, that such new owner shall not (i) be bound by any rent or additional rent which Tenant might have paid for more than one month in advance to any prior landlord (including Landlord), except as otherwise expressly required by the terms of the Lease, or (ii) be bound by any amendment or modification of the Lease made without Lender's consent which would reduce fixed annual rent or any other monetary obligation of Tenant under the Lease, or (iii) be or become subject to any liability or obligation to Tenant under the Lease or otherwise, until such new owner shall have obtained title to the Premises, by foreclosure or otherwise, and then only to the extent of liabilities or obligations accruing subsequent to the date that such new

owner has obtained title to the Premises. Furthermore, such new owner shall not be liable for: (a) any reason, any amount in excess of the value of such new owner's interest in the Shopping Center; or (b) security deposits or other refundable fees unless paid over to such new owner.

7. In the event of a default by Landlord under the Lease, Tenant shall give written notice thereof to Lender at the address set forth in this Agreement specifying the nature and extent of the default. Tenant hereby gives Lender the right (but not the obligation) to cure Landlord's defaults within thirty (30) days after receipt of written notice from Tenant of Landlord's failure to do so; provided, however, that the thirty (30) day period shall be extended so long as within the thirty (30) day period Lender has commenced to cure and is proceeding with due diligence to cure the defaults.

8. After notice is given to Tenant by Lender, pursuant to the Assignment, that the rentals under the Lease should be paid to Lender, Tenant shall pay to Lender, or to its agent in accordance with the directions of Lender, all rentals and other monies due and to become due to the Landlord under the Lease, and Landlord hereby irrevocably authorizes Tenant to make such payment to Lender, or to its agent in accordance with the directions of Lender, and hereby releases and discharges Tenant of, and from any liability to Landlord on account of any such payments.

9. Any notices or communications given under this Agreement shall be in writing and shall be deemed given on the earlier of actual receipt or three (3) days after deposit in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, at the respective addresses set forth above, or at such other address as the party entitled to notice may designate by written notice as provided herein.

10. Intentionally deleted.

11. This Agreement shall bind and inure to the benefit the parties hereto and their respective successors and assigns. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Lender, not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be governed by and construed according to the laws of the State of Utah. **Lender, Landlord and Tenant irrevocably, as an independent covenant, waive the right to jury trial in any action or proceeding in connection with this Agreement.**

12. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or cancelled except by an agreement in writing executed by the parties against whom enforcement of such modification, change, waiver or cancellation is sought.

13. This Agreement and the covenants contained herein shall run with and shall bind the land on which the Shopping Center is located.

14. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**REMAINDER OF PAGE INTENTIONALLY BLANK
SIGNATURE PAGES FOLLOW**

EXECUTED as of the date first written above.

LENDER:

UNUM LIFE INSURANCE COMPANY
OF AMERICA, a Maine Corporation

By: C D Alexander
Name: Catherine D. Alexander
Title: Vice President

LANDLORD:

BOYER SPRING CREEK, L.C., a Utah
corporation

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

By: Nathan R Boyer
Name: NATHAN R. BOYER
Title: MANAGER

TENANT:

BARNES & NOBLE BOOKSELLERS,
INC., a Delaware corporation

By: Bradley A Feuer
Name: Bradley A Feuer
Title: Vice President, General Counsel

STATE OF MAINE §
COUNTY OF CUMBERLAND §

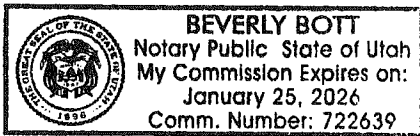
The foregoing instrument was acknowledged before me this 23rd day of January, 2023, by Catherine D. Alexander VP of Unum Life Insurance Company of America, a Maine corporation, on behalf of such corporation.

[Signature]
Notary Public in and for the State of Maine

My Commission Expires: JANICE R. BRODEUR
NOTARY PUBLIC
State of Maine
My Commission Expires
January 30, 2024

STATE OF UTAH §
COUNTY OF SALT LAKE §

The foregoing instrument was acknowledged before me this 3rd day of January, 2024, by Nathan R. Boyer, of Boyer Spring Creek, L.C., a Utah limited liability company, on behalf of such company.



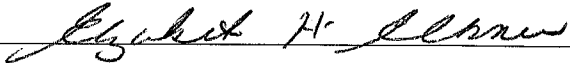
[Signature]
Notary Public in and for the State of Utah

My Commission Expires: January 25, 2026

STATE OF NEW YORK §

COUNTY OF NEW YORK §

The foregoing instrument was acknowledged before me this 27th day of December, 2023, by Bradley A Feuer, Vice President, General Counsel of Barnes & Noble Booksellers, Inc., a Delaware corporation, on behalf of such corporation.



Notary Public in and for the State of New York

My Commission Expires: 11/8/2025

ELIZABETH H ELKNER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01EL6424667
Qualified in Orange County
My Commission Expires 11-08-2025

EXHIBIT A

LEGAL DESCRIPTION

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 20 of the Redstone Amendment No. 1, according to the official plat recorded November 25, 2003 as Entry No. 681341, records of Summit County, Utah.