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Skagit County Auditor

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8/16/2017 Page

1 of

14 1:58PM

GUARDIAN NORTHWEST TITLE CO.

114267

After filing return to:

BANK OF AMERICA, N.A.  
Doc Retention - GCF  
CT2-515-BB-03  
70 Batterson Park Road  
Farmington, CT 06032

Attention: Loan Administration

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

**Grantor #1:**

Josah Sales Corp.

**Grantor #2:**

Coconut Kenny's of Burlington, Inc.

**Grantee:**

BANK OF AMERICA, N.A.

**Abbreviated Legal Description:**

LOT 4, FRED MEYER BSP (PTN. SW-NW, SECTION 5, TOWNSHIP 34, RANGE 4 EAST)  
PARCEL NO.: P104517, 8013-000-004-0000

Additional legal description is on Exhibit A of document.

**Assessor's Property Tax Parcel Account Number(s):**

8013-000-004-0000 (P104517)

Ref #: 1002606649 ; - JOSAN SALES CORP.  
Washington-Subordination, Nondisturbance & Attornment

UNOFFICIAL DOCUMENT

**SUBORDINATION, NONDISTURBANCE AND  
ATTORNMEN T AGREEMENT**

This SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT ("Agreement") is entered into as of August 1, 2017, by Bank of America, N.A. ("Bank"), Josan Sales Corp. ("Landlord") and Coconut Kenny's of Burlington, Inc. ("Tenant").

**RECITALS**

A. Landlord and Tenant have entered into a lease agreement dated as of November 6, 2013 ("Lease"), covering certain premises located at 1060 S. Burlington Blvd., Burlington, WA 98233 ("Property"). The Property is more particularly described in Exhibit A attached hereto and incorporated herein.

B. Bank is the beneficiary of Deed of Trust ("Deed of Trust"), dated as of August 1, 2017, which Deed of Trust will be recorded concurrently herewith in the records of Skagit County, Washington, encumbering the Property. The Deed of Trust secures certain obligations to Bank as more particularly described therein.

C. On the terms and conditions in this Agreement, the parties desire to subordinate Tenant's leasehold interest in the Property to the lien of the Deed of Trust and to assure Tenant possession of the Property for the entire term of the Lease, even though Bank may foreclose the lien of the Deed of Trust before expiration of the Lease.

Therefore, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

**Section 1. Subordination.**

The Lease, the leasehold estate created thereby, and all rights and privileges of Tenant thereunder shall be subject and subordinate to the lien of the Deed of Trust and to any renewals, modifications, consolidations, replacements and extensions of the Deed of Trust to the full extent of the obligations now or hereafter secured by the Deed of Trust.

**Section 2. Nondisturbance.**

So long as Tenant is not in default, beyond any period given to Tenant to cure a default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Tenant's possession of the Property and Tenant's rights and privileges under the Lease, including any extensions or renewals, shall not be diminished or interfered with by Bank during the term of the Lease or any extensions or renewals. So long as Tenant is not in default, beyond any period given to Tenant to cure such default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Bank will not join Tenant as a party for the purpose of terminating the Lease or affecting Tenant's right to possession of the Property, in any action of foreclosure or other proceeding brought by Bank to enforce any rights arising because of any default under the Deed of Trust. Bank may, however, join Tenant as a party if joinder is necessary under any statute or law to secure the remedies available to Bank under the Deed of Trust, but joinder shall be for that purpose only and not for the purpose of terminating the Lease or affecting Tenant's right to possession of the Property.

**Section 3. Attornment.**

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If the Landlord's interest is transferred to and owned by Bank or any successor of Bank ("Acquiring Party") because of foreclosure or other proceedings brought by Bank, or by any other manner, and Bank succeeds to Landlord's interest under the Lease, Tenant shall be bound to the Acquiring Party, and Acquiring Party shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the balance of the remaining term, including any extensions or renewals, with the same effect as if Acquiring Party were Landlord under the Lease. Tenant agrees to attorn to Acquiring Party as the Landlord, with the attornment being effective and self-operable immediately upon Acquiring Party succeeding to the interest of Landlord under the Lease, all without the execution by the parties of any further instruments. However, Tenant shall not be obligated to pay rent to Acquiring Party until Tenant receives written notice from Acquiring Party, together with evidence satisfactory to Tenant, demonstrating that Acquiring Party has succeeded to Landlord's interest under the Lease and directing where rent should be mailed. The respective rights and obligations of Tenant and Acquiring Party upon attornment, to the extent of the then-remaining balance of the term of the Lease, shall be the same as in the Lease, which is incorporated by reference in this Agreement. If Acquiring Party succeeds to Landlord's interest in the Lease, Acquiring Party shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, after Acquiring Party's succession to Landlord's interest, have the same remedies against Acquiring Party for the breach of any agreement in the Lease that Tenant might have had against Landlord.

#### **Section 4. Tenant Estoppel Certificate.**

(a) Tenant has no right or option of any nature whatsoever, whether arising out of the Lease or otherwise, to purchase the Property, or any interest or portion in or of the Property, to expand into other space in the Property or to extend or renew the term of the Lease, except as described in the attached Exhibit B.

(b) Tenant represents and warrants to Bank that Exhibit C accurately identifies all amendments, supplements, side letters and other agreements and memoranda pertaining to the Lease, the leasehold and/or the Property.

(c) As of the date of this Agreement, Tenant represents and warrants that there exist no events of default, or events that with notice or the passage of time or both would be events of default, under the Lease, on either Tenant's part or Landlord's, nor is there any right of offset (including audit or accounting rights which might otherwise give rise to a claim or an offset for rents paid under the Lease) against any of Tenant's obligations under the Lease, except as described in the attached Exhibit D. The Lease is in full force and effect as of the date of this Agreement.

(d) Tenant acknowledges that Bank is relying on the representations, certifications, and undertakings made by Tenant in this Agreement in extending credit secured by the Deed of Trust.

(e) Within ten (10) days after Bank's request, Tenant shall deliver to Bank and to any person designated by Bank, estoppel certificates executed by Tenant, certifying (if such is the case) that the Lease is in full force and effect, that there are no defenses or offsets outstanding under the Lease (or stating those claimed by Tenant, as the case may be) and such other information about Tenant or the Lease as Bank may reasonably request.

(f) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement from Bank.

#### **Section 5. Tenant's Purchase Option.**

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The lien of the Deed of Trust shall unconditionally be and remain at all times a lien on the Property prior and superior to any existing or future option or right of first refusal of Tenant to purchase the Property or any portion thereof. In the event of any transfer of Landlord's interest in the Property by foreclosure, trustee's sale, or other action or proceeding for the enforcement of the Deed of Trust or by deed in lieu thereof, Tenant specifically waives any right, whether arising out of the Lease or otherwise, to exercise any purchase option or right of first refusal which remains unexercised at the time of such transfer.

**Section 6. No Change in Lease.**

Landlord and Tenant agree not to change, alter, amend or otherwise modify the Lease without the prior written consent of Bank. Any change, alteration, amendment, or other modification to the Lease without the prior written consent Bank shall be void as to Bank.

**Section 7. Notices.**

In this Agreement, wherever it is required or permitted that notice and demand be given by any party to another party, that notice or demand shall be given in writing and forwarded by certified mail, addressed as follows:

For Landlord:

JOSAN SALES CORP.  
1060 S. Burlington Blvd  
Burlington, WA 98233-3312

For Tenant:

Coconut Kenny's of Burlington, Inc.  
5767 Applegrove  
Ferndale, WA 98233

For Bank:

Bank of America, N.A  
Doc Retention - GCF  
CT2-515-BB-03  
70 Batterson Park Road  
Farmington, CT 06032.

Any party may change an address given for notice by giving written notice of that change by certified mail to all other parties.

**Section 8. Authority.**

If any party is a corporation, limited liability company, or a partnership, all individuals executing this Agreement on behalf of such corporation, limited liability company, or partnership represent and warrant that they are authorized to execute and deliver this Agreement on behalf of the

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corporation, limited liability company, or partnership and that this Agreement is binding upon such corporation, limited liability company, or partnership.

**Section 9. Miscellaneous.**

This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest. The prevailing party shall be entitled to its reasonable attorney's fees and other costs and expenses in any action to enforce or interpret this Agreement. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns. The headings of this Agreement are for reference only and shall not limit or define any meaning of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which shall constitute one and the same instrument. This Agreement shall be construed in accordance with and governed by Washington law.

The parties have duly executed this Agreement dated as of the day and year first above written.

**PLEASE BE ADVISED THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

BANK:

BANK OF AMERICA, N.A.

By: C. Elena Marquez

Print Name: C. Elena Marquez

Title: AVP

LANDLORD:

JOSAN SALES CORP.

By: \_\_\_\_\_

Sukhwinder Josan, President

By: \_\_\_\_\_

Manjinder Josan, Vice President

TENANT:

Coconut Kenny's of Burlington, Inc.

By: Chay Ten

Chay Ten, President

[All signatures must be acknowledged]

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Washington Subordination, Nondisturbance & Attornment

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**BANK:** **BANK OF AMERICA, N.A.**  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:**  
**JOSAN SALES CORP.**  
By: [Signature]  
Sukhwinder Josan, President

By: [Signature]  
Manjinder Josan, Vice President

**TENANT:**  
**Coconut Kenny's of Burlington, Inc.**  
By: \_\_\_\_\_  
Chay Ten, President

[All signatures must be acknowledged]

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Ref #: 1002806649 : - JOSAN SALES CORP.  
Washington Subordination, Nondisturbance & Attornment

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                    }

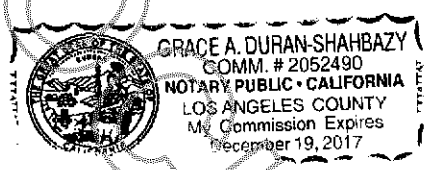
County of Los Angeles            }

On August 11, 2017, before me, Grace Duran-Shahbazy, Notary Public, personally appeared Cruz Elena Marquez, who 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 she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Grace A. Duran-Shahbazy (Seal)





TENANT

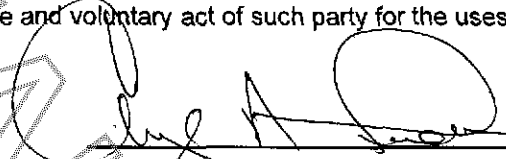
**ACKNOWLEDGMENT**

*[Representative capacity]*

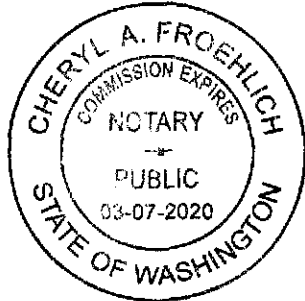
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Skagit )

I certify that I know or have satisfactory evidence that Chay Ten 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 President of Coconut Kenny's of Buel, a Corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: 8/5/17

  
\_\_\_\_\_

NOTARY PUBLIC in and for the State of WA  
Washington residing at: Sedro Woolley  
My commission expires: 3/7/20  
Print name: Cheryl A Froehlich



LANDLORD

**ACKNOWLEDGMENT**

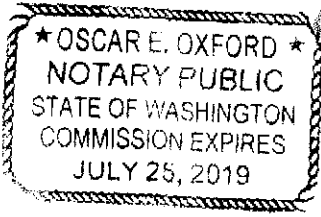
[Representative capacity]

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

I certify that I know or have satisfactory evidence that Sukhinder Jagan, Maryjander Jagan 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 President & Vice President of JOSAN SALES CORP, a Corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: 8.9.2017

[Signature]  
NOTARY PUBLIC in and for the State of  
Washington residing at: None  
My commission expires: 7.25.2019  
Print name: Oscar E. Oxford



**EXHIBIT A**

THE LAND REFERRED TO IN THIS REPORT/POLICY IS SITUATED IN THE STATE OF WASHINGTON, COUNTY OF SKAGIT, AND IS DESCRIBED AS FOLLOWS:

LOT 4, FRED MEYER RETAIL STORE BINDING SITE PLAN, APPROVED DECEMBER 29, 1993, AND RECORDED JANUARY 10, 1994, UNDER AUDITOR'S FILE NO. 9401100038, IN VOLUME 11 OF SHORT PLATS, PAGES 41-48, INCLUSIVE AS AMENDED BY DOCUMENT RECORDED NOVEMBER 3, 1997 AS AUDITOR'S FILE NO. 9711030141, BEING A PORTION OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.

TOGETHER WITH THOSE CERTAIN RIGHTS INCLUDING, BUT NOT LIMITED TO, INGRESS, EGRESS, UTILITIES AND PARKING AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED SEPTEMBER 10, 1993 UNDER AUDITOR'S FILE NO. 9309100052, RECORDS OF SKAGIT COUNTY, WASHINGTON, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT RECORDED OCTOBER 16, 1996 UNDER AUDITOR'S FILE NO. 9610160077, RECORDS OF SKAGIT COUNTY, WASHINGTON

**EXHIBIT B**

**(PURCHASE, EXPANSION, FIRST REFUSAL, EXTENSION AND RENEWAL OPTIONS)**

Ref #: 1002606649 : - JOSAN SALES CORP.  
EXHIBIT B TO SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (Purchase, Expansion, First  
Refusal, Extension and Renewal Options)

**EXHIBIT C**

**(SCHEDULE OF AMENDMENTS, SUPPLEMENTS, SIDE LETTERS AND OTHER AGREEMENTS  
AND MEMORANDA PERTAINING TO LEASE)**

Ref #: 1002606649 : - JOSAN SALES CORP.  
EXHIBIT C TO SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (Schedule of Amendments,  
Supplements, Side Letters, and other Agreements & Memoranda pertaining to Lease)

**EXHIBIT D**

**(EXISTING DEFAULTS OR OFFSETS UNDER LEASE)**

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Ref #: 1002606849 : - JOSAN SALES CORP.  
EXHIBIT D TO SUBORDINATION, NONDISTURBANCE AND ATTORNMEN AGREEMENT (Existing Defaults or Offsets Under  
Lease)