

# UNOFFICIAL COPY



Doc#: 1607122020 Fee: \$52.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 03/11/2016 09:44 AM Pg: 1 of 8

When recorded return to:

Fidelity National Title - NCS DIV  
Attn.: KJV  
One East Washington Street Suite 450  
Phoenix, AZ. 85004  
602-343-7556


Escrow No. Z1520396

@525201500624

DO NOT REMOVE THIS COVER SHEET. IT IS NOW PART OF THE  
RECORDED DOCUMENT.

DOCUMENT TO BE RECORDED:

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

  
UCR/...

8

**UNOFFICIAL COPY****WHEN RECORDED RETURN TO:**

This space provided for Returner's Use

Symetra Life Insurance Company  
 Mortgage Loan Department  
 PO Box 84066  
 Seattle, WA 98124-8466  
 Loan No. 5055

---

**NON-DISTURBANCE AND  
 ATTORNMENT AGREEMENT**

---

This Non-Disturbance and Attornment Agreement ("**Agreement**") dated this 26th day of February, 2016, between Symetra Life Insurance Company, an Iowa corporation whose address for notices is PO Box 84066, Seattle, WA 98124-8466 (the "**Lender**"), WADSWORTH STREET LLC, a New York limited liability company (the "**Landlord**"), whose address for notices is 307 East 91<sup>st</sup> Street, Suite 1E, New York, NY 10128; and FQSR, LLC, a Delaware limited liability company (d/b/a KBP Foods) whose address for notices is 8900 Indian Creek Parkway, Ste. 100, Overland Park, KS 66210 (the "**Tenant**") with respect to the real property located in Cook County, IL more particularly described in **Exhibit A** attached hereto and made a part hereof (the "**Property**").

RECITALS:

A. Lender has made a loan to Landlord, evidenced by a Promissory Note and secured by a mortgage recorded at Document No. 1525913085, records of Cook County, Illinois (the "**Security Instrument**") with respect to the Property (the Mortgage 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 a recorded lease between Landlord and Tenant dated February 21, 2016 for property located at 10428 S. Cicero Avenue Oak Lawn, IL (which lease is referred to herein as the "**Lease**"), which lease is evidenced by a memorandum of lease to be recorded in the records of Cook County, IL and

C. Tenant has requested that Lender agree not to disturb Tenant's rights in the Premises in the event Lender should foreclose the Security Instrument, and Lender is willing to so agree, 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. **Acknowledgment of Subordination of Lease.** Notwithstanding any provision in the Lease to the contrary, 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 subject, subordinate and inferior (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.

# UNOFFICIAL COPY

2. **Notice to Lender; Right to Cure.** Tenant agrees to deliver to Lender at the address set forth above (or such other addresses as may be designated from time to time in writing to Tenant by Lender), prompt written notice of any default by Landlord under the Lease which 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. No such notice given on behalf of Tenant shall be effective as to Lender unless Lender has received said notice and Lender has failed within thirty (30) days of the date of receipt thereof to cure Landlord's default.

3. **Tenant Acknowledgment of Assignment.** Tenant acknowledges that the Lease and the rent due under the Lease are assigned to Lender pursuant to the Security Instrument 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 in writing that Tenant pay rent and all other sums due under the Lease to Lender, Tenant agrees to honor such demand without inquiry and pay rent due under the Lease as directed by Lender. Landlord hereby directs Tenant to comply with such demand, and Landlord 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. To the extent that the Lease or any law or regulation shall entitle Tenant to notice of any mortgage, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and any and all other mortgages which may hereafter be affected by this Agreement.

4. **Attornment.** In the event of (i) foreclosure under the Security Instrument; (ii) any other exercise by Lender of rights and remedies as a result of which a Successor Landlord becomes the owner of the Premises; or (iii) delivery to Lender (or its designee or nominee) of a deed or other conveyance of the Property in lieu of (i) or (ii) above (collectively a "**Transfer**"), so long as no default has occurred and is continuing under the Lease beyond any applicable notice and cure period, 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. Any Transfer of the Property shall be made subject to the Lease and this Agreement. 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 upon Tenant 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 or Successor Landlord is given written notice (a "**Continuing Default**") (ii) subject to any claims, offsets or counterclaims 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, cleaning 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 or Successor Landlord, (iv) bound by any amendment or renewals or extensions thereof which reduces the amount of rent or other sums due under the Lease, changes the frequency of the payment of rent, or shortens the original term or changes any renewal option, made without the prior written consent of Lender or Successor Landlord, (v) bound by any purchase option or right of first refusal for the purchase of the Property granted under the Lease or otherwise held by Tenant, except as otherwise expressly provided in the lease, or (vi) bound by any assignment or subletting, unless expressly permitted by and consummated in accordance with the Lease.

5. **Non-Disturbance.** Lender, and any Successor Landlord, will not disturb the possession of the Tenant, its successors and assigns, so long as no event of default has occurred and is continuing beyond an applicable notice and cure periods which would entitle the Landlord to terminate the Lease, or would cause, without further action of the Landlord, the termination of the Lease or would entitle the Landlord to dispossess the Tenant from the Premises. The

# UNOFFICIAL COPY

foregoing agreement does not constitute Lender's agreement to allow any purchase option to survive a Transfer. Tenant acknowledges that this Agreement satisfies any requirement in the Lease relating to the granting of a non-disturbance agreement.

6. **No Construction by Lender.** Lender shall have no obligation nor incur any liability nor be bound by any covenant to undertake or complete any improvement to or restoration of the building, Premises or the Property, except to the extent insurance proceeds are made available to Lender or Successor Landlord to cover the full cost thereof.

7. **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 Property. 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 Property. In addition, upon such acquisition, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Premises. In the event of the assignment or transfer of the interest of Lender under this Agreement, all obligations and liabilities of Lender under this Agreement shall terminate and, thereupon, all such obligations and liabilities shall be the sole responsibility of the party to whom Lender's interest is assigned or transferred.

8. **Notices.** All notices, consents, requests, demands 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 (like Federal Express or similar firms), freight prepaid, 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).

9. **Delivery of Certificates.** Tenant shall, from time to time, deliver such certificates as Lender shall reasonably request as to the continuance of the Lease in effect, as to payment of rents thereunder, and as to such other factual matters as Lender may reasonably require.

10. **No Lien on Trade Fixtures of Tenant.** None of the Loan Documents shall 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 Tenant or its subtenants or licensees on or within the portion of the Premises leased to Tenant, regardless of the manner or extent of attachment thereof.

11. **Binding Agreement.** This Agreement shall be binding upon the parties and their respective successors and assigns.

12. **Miscellaneous.** This Agreement supersedes any inconsistent provision in the Lease. Nothing in this Agreement shall be construed to derogate from or in any way impair or affect the lien of the Security Instrument. 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.

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

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK



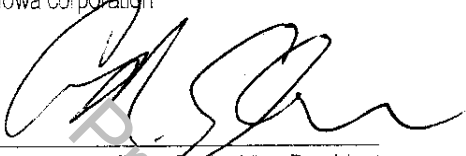


# UNOFFICIAL COPY

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

*(all signatures must be acknowledged)*

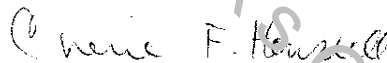
STATE OF WASHINGTON

COUNTY OF King

ss.

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 a 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 4<sup>th</sup> day of March, 2016



(Signature of Notary)

Cherie F Hensdell

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing at Woodinville

My appointment expires 9/28/19



# UNOFFICIAL COPY

## EXHIBIT A

(Legal Description of Property)

**PARCEL 1:**

THE EAST 127 FEET OF BLOCK 1 IN F. H. BARTLETT'S HARLEM AVENUE ACRES, A SUBDIVISION OF THE NORTH 45 ACRES OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 8940 S HARLEM AVE., BRIDGEVIEW, IL 60455

Tax ID No: 23-01-207-002-0000