

**RECORD & RETURN TO:****STARWOOD MORTGAGE CAPITAL LLC**

4064 Colony Road, Suite 410

Charlotte, NC 28211

Attention: Ms. Leslie K. Fairbanks, Contract Finance

**SAFEWAY INC.**

5918 Stoneridge Mall Road

Pleasanton, CA 94588

**SUBORDINATION, NONDISTURBANCE  
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made this 27<sup>th</sup> day of Sept., 2018 between **ROUND HILL SC, LLC, DAVIDSON RETAIL I LLC, and DAVIDSON RETAIL II LLC**, each a Nevada limited liability company (collectively, the "Lessor"); **SAFEWAY INC.**, a Delaware corporation ("Lessee"); and **STARWOOD MORTGAGE CAPITAL LLC**, a Delaware limited liability company ("Lender").

**1. RECITALS**

1.1 (a) Lessor's predecessor-in-interest, ROIC Zephyr Cove, LLC and Lessee are the original parties to that certain Shopping Center Lease dated July 8, 1997, as amended by that certain Option Letter dated June 23, 2017 (collectively, the "Lease"), demising all or a portion of the property described on Exhibit "A" attached to and made a part of this Agreement (the "Property"), such demised premises being all or a portion of the real estate encumbered by the Deed of Trust referred to below. The Lease is evidenced by that certain Shopper Center Lease (Short Form) dated July 8, 1997, recorded on July 22, 1997, as Instrument Number 0417760, Official Records of Douglas County, Nevada.

(b) In connection with the acquisition of the Property by Lessor from ROIC Zephyr Cove, LLC, the Lender is about to make a loan to Lessor with respect to the Lessor's interest under the Lease, evidenced by a promissory note and secured by a first priority Deed of Trust, Assignment of Leases and Rents and Security Agreement on the Property (the "Deed of Trust"). The Deed of Trust encumbers the real estate demised to Lessee..

1.2 Lender is the owner and holder of the Deed of Trust.

1.3 Lessee requires as a condition of its leasehold estate that the shopping center premises be free from encumbrances, except those it approves. However, Lessee will subordinate its Lease, at Lender's request, subject to Lender's covenant, that Lessee's possession and rights under its Lease shall not be disturbed as provided in this Agreement.

## 2. AGREEMENT

IN CONSIDERATION of the premises and other good and valuable consideration, receipt of which is hereby acknowledged, and the mutual benefits to accrue to the parties to this Agreement, it is hereby declared, understood and agreed as follows:

## 3. TERMS

3.1 The lien or charge of the Lease is hereby made subject and subordinate to the lien or charge of the Deed of Trust on the terms and conditions set forth below; however, except as otherwise set forth herein, if there are any inconsistencies between the Lease and the Deed of Trust, as to Lessee's rights and obligations under the Lease and Lessor's obligations under the Lease, the Lease shall control. In connection therewith, Lender acknowledges that Lessee has a right of first opportunity to purchase the Property as set forth in Section 23.10 of the Lease (the "**Right of First Opportunity**"). Notwithstanding such right however, Lessee acknowledges that such Right of First Opportunity shall subject and subordinate to the Deed of Trust and shall not be triggered by a transfer of the Property by foreclosure of the Deed of Trust, by a deed-in-lieu of foreclosure or by a deed of the Property by order of a bankruptcy court (the party to which the property is transferred pursuant to a foreclosure or deed-in-lieu of foreclosure or order of a bankruptcy court is referred to as the "**Assignee**") provided that the foregoing transfers are not solely to circumvent Tenant's Right of First Opportunity .

3.2 In the event any proceedings are brought for (i) foreclosure and sale or other suit, sale or proceeding under the Deed of Trust or (ii) a deed in lieu of foreclosure, Lender hereby covenants that so long as Lessee is not in default under the Lease (beyond any period given Lessee to cure such default, after notice required by the Lease), that:

- (a) Lessee's possession of the leased premises and its rights under the Lease shall not be interfered with by Lender (or any successor or assign);
- (b) Lessee shall not be made a party to any foreclosure or other suit, sale or proceeding under the Deed of Trust and the same shall not affect Lessee's rights under the Lease;
- (c) The lien of the Deed of Trust shall not encumber any trade fixtures or equipment used by Lessee in its business on the leased premises; and
- (d) The Lender (or any successor or assign) shall assume the Lessor's position under the Lease, including Lessor's liabilities, responsibilities and obligations, as though Lender (or any successor or assign) was the original lessor; except that Lender shall not be: (i) liable for any act or omission of any prior lessor under the Lease for which Lender did not receive notice and have an opportunity to cure as per Section 3.4 below, or (ii) subject to any claims which the Lessee has against the lessor under the Lease for which Lender did not receive notice and have an opportunity to cure as per Section 3.4 below, or (iii) bound by any base rent, percentage rent or any other payments by Lessee under the Lease that might have paid for more than the current month to any prior lessor under the Lease, (iv) liable for the return of any security deposit except to the extent actually received by Lender, or (v) bound by any modification of the Lease which reduces the rent or term of the Lease without the prior written consent of Lender.

3.3 Lessee shall attorn to the purchaser or grantee upon any such foreclosure and sale or deed in lieu of foreclosure and shall recognize such purchaser or grantee as the lessor under the Lease.

3.4 Lessee agrees to give Lender notice of any default of Lessor under the Lease at the same time it gives Lessor such notice, and Lessee further agrees that Lender shall have the right, but not the obligation, to cure such default of Lessor within the same, concurrent period given Lessor to cure such default.

3.5 Upon receipt of notice from Lender of a default by Lessor under the Deed of Trust, Lessee shall make all further payments of rentals and other monies due and to become due to Lessor under the Lease directly to Lender, or in accordance with the directions of Lender. Lessor hereby expressly authorizes Lessee to make such payments to Lender and hereby releases and discharges Lessee of and from any liability to Lessor on account of any such payments.

3.6 Lessee hereby consents to the existence of the Deed of Trust, and Lender hereby consents to the existence of the Lease.

3.7 Any and all notices to be given to Lender pursuant to this Agreement shall be in writing and mailed by United States certified mail, return receipt requested, postage prepaid, or delivered (either by personal delivery or sent by a reputable nationally recognized overnight courier service), at the following address:

Starwood Mortgage Capital LLC  
4064 Colony Road, Suite 410  
Charlotte, NC 28211  
Attention: Ms. Leslie K. Fairbanks, Contract Finance  
Phone: (305) 695-5502  
Facsimile: (305) 695-5539

3.8 This Agreement shall be binding upon and inure to the benefit of the successors and/or assigns of the parties to this Agreement; the singular number includes the plural, and any gender includes all other genders.

3.9 This Agreement may be executed in counterparts, all of which executed counterparts shall together constitute a single document.


**(SIGNATURES ON FOLLOW PAGE)**

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed as of the date first written above.

**[ALL SIGNATURES TO BE ACKNOWLEDGED BEFORE NOTARY PUBLIC]**

**LESSOR:**

**ROUND HILL SC, LLC,**  
a Nevada limited liability company  
By: A & R Realty, LLC,  
a Nevada limited liability company,  
its Manager

By:   
Name: Alan Scott Mann  
Title: Manager

By: \_\_\_\_\_  
Name: Randall L. Fleisher  
Title: Manager

**DAVIDSON RETAIL I, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: Nathan Jay Davidson  
Title: Manager

**DAVIDSON RETAIL II, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: Nathan Jay Davidson  
Title: Manager

**LESSEE:**

**SAFEWAY INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Its Authorized Signatory

\_\_\_\_ Form Approved

**LENDER:**

**STARWOOD MORTGAGE CAPITAL LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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a Nevada limited liability company

By: **A & R Realty, LLC,**  
a Nevada limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Alan Scott Mann  
Title: Manager

By: \_\_\_\_\_  
Name: Randall L. Fleisher  
Title: Manager

**DAVIDSON RETAIL I, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: Nathan Jay Davidson  
Title: Manager

**DAVIDSON RETAIL II, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: Nathan Jay Davidson  
Title: Manager

**LESSEE:**

**SAFEWAY INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Its Authorized Signatory

\_\_\_\_ Form Approved

**LENDER:**

**STARWOOD MORTGAGE CAPITAL LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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a Nevada limited liability company  
By: **A & R Realty, LLC,**  
a Nevada limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Alan Scott Mann  
Title: Manager

By: \_\_\_\_\_  
Name: Randall L. Fleisher  
Title: Manager

**DAVIDSON RETAIL I, LLC,**  
a Nevada limited liability company

By: *Nathan Jay Davidson*  
Name: Nathan Jay Davidson  
Title: Manager

**DAVIDSON RETAIL II, LLC,**  
a Nevada limited liability company

By: *Nathan Jay Davidson*  
Name: Nathan Jay Davidson  
Title: Manager

LESSEE:

**SAFEWAY INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Its Authorized Signatory  
\_\_\_\_ Form Approved

LENDER:

**STARWOOD MORTGAGE CAPITAL LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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a Nevada limited liability company

By: A & R Realty, LLC,  
a Nevada limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Alan Scott Mann  
Title: Manager

By: \_\_\_\_\_  
Name: Randall L. Fleisher  
Title: Manager

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a Nevada limited liability company

By: \_\_\_\_\_  
Name: Nathan Jay Davidson  
Title: Manager

**DAVIDSON RETAIL II, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: Nathan Jay Davidson  
Title: Manager

**LESSEE:**

**SAFEWAY INC.,**  
a Delaware corporation

By: Marius K. Beardsley  
Its Vice President  
MARIUS K. BEARDSLEY  
Form Approved

**LENDER:**

**STARWOOD MORTGAGE CAPITAL LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**[ALL SIGNATURES TO BE ACKNOWLEDGED BEFORE NOTARY PUBLIC]**

LESSOR:

**ROUND HILL SC, LLC,**  
a Nevada limited liability company

By: A & R Realty, LLC,  
a Nevada limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Alan Scott Mann  
Title: Manager

By: \_\_\_\_\_  
Name: Randall L. Fleisher  
Title: Manager

**DAVIDSON RETAIL I, LLC,**  
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By: \_\_\_\_\_  
Name: Nathan Jay Davidson  
Title: Manager

**DAVIDSON RETAIL II, LLC,**  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: Nathan Jay Davidson  
Title: Manager

LESSEE:

**SAFEWAY INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Its Authorized Signatory

\_\_\_\_ Form Approved

LENDER:

**STARWOOD MORTGAGE CAPITAL LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: **Grace Y. Chiang**  
Title: **Vice President**

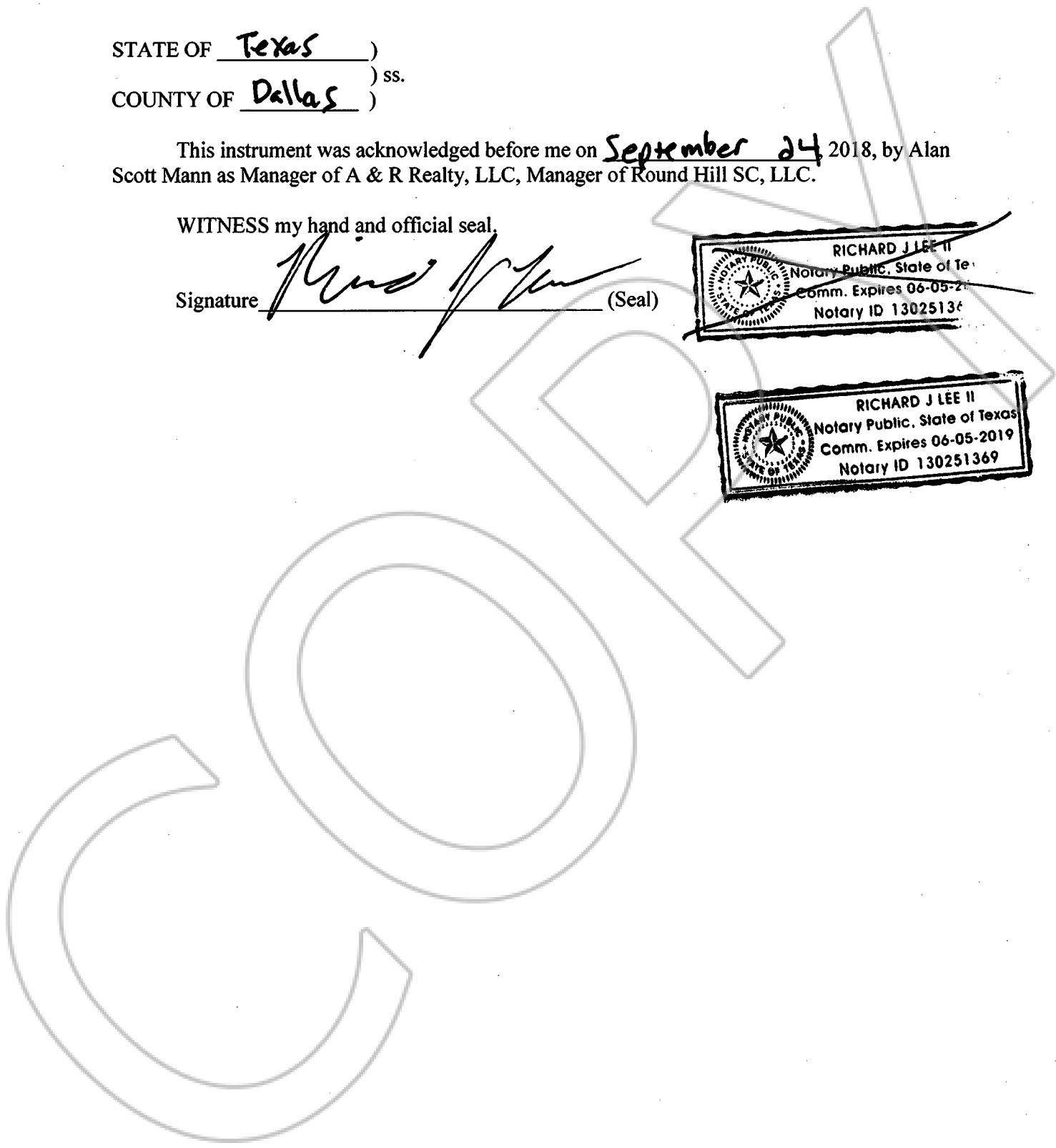
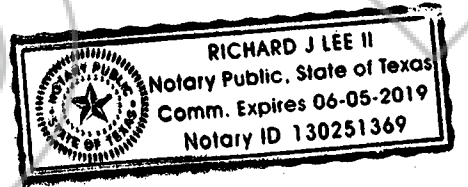
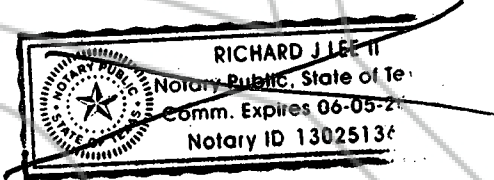


STATE OF Texas )  
 ) ss.  
COUNTY OF Dallas )

This instrument was acknowledged before me on September 24 2018, by Alan Scott Mann as Manager of A & R Realty, LLC, Manager of Round Hill SC, LLC.

WITNESS my hand and official seal.

Signature *[Handwritten Signature]* (Seal)

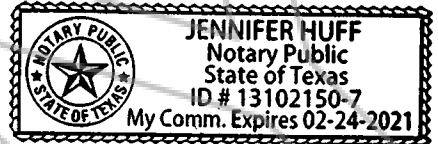


STATE OF Texas )  
 ) ss.  
COUNTY OF Dallas )

This instrument was acknowledged before me on September 24, 2018, by  
Randall L. Fleisher as Manager of A & R Realty, LLC, Manager of Round Hill SC, LLC.

WITNESS my hand and official seal.

Signature Jennifer Huff (Seal)



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 )  
 ) ss.  
COUNTY OF San Joaquin )

On September 24, 2018, before me, S.F. TORRES, a notary public, personally appeared Nathan Jay Davidson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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 S. F. Torres (Seal)



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 )  
 ) ss.  
COUNTY OF San Joaquin

On September 24, 2018, before me, S.F. TORRES, a notary public, personally appeared Nathan Jay Davidson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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 S. F. Torres (Seal)



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    )  
  ) ss.  
COUNTY OF ALAMEDA    )

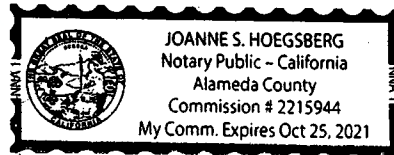
On September 24, 2018, before me, Joanne S. Hoegsberg, Notary Public, personally appeared Marilyn K. Beardsley who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized 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.

*Joanne S. Hoegsberg*  
Signature

(Seal)



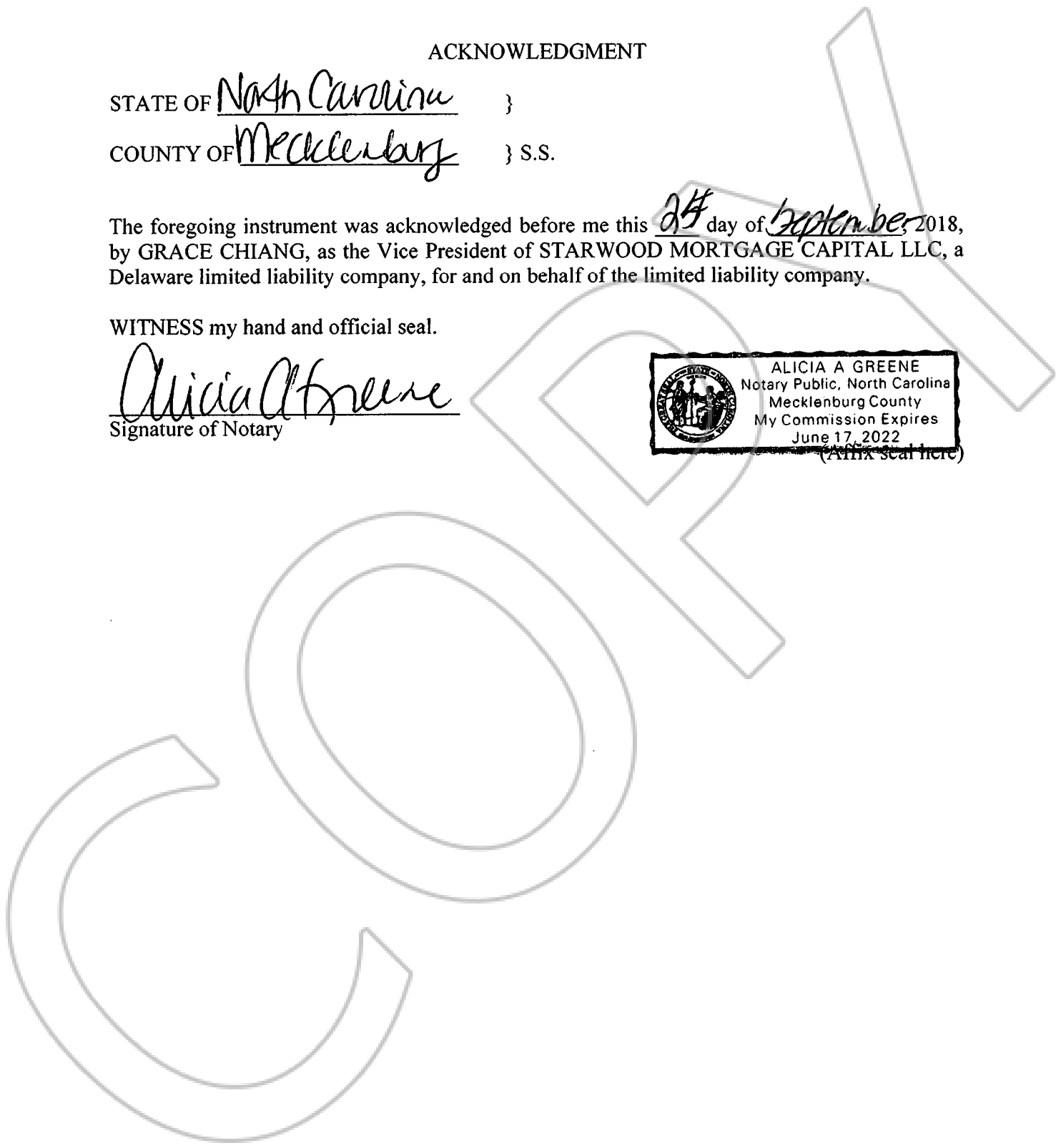
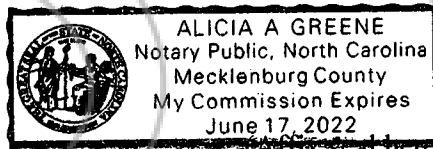
ACKNOWLEDGMENT

STATE OF North Carolina }  
COUNTY OF Mecklenburg } S.S.

The foregoing instrument was acknowledged before me this 24 day of September, 2018, by GRACE CHIANG, as the Vice President of STARWOOD MORTGAGE CAPITAL LLC, a Delaware limited liability company, for and on behalf of the limited liability company.

WITNESS my hand and official seal.

Alicia A. Greene  
Signature of Notary



**EXHIBIT A**

Legal Description of Shopping Center

**PARCEL 1:**

A parcel of land located within a portion of Section 15, Township 13 North, Range 18 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at the Southeast corner of said Section 15; thence along the Section line common to Sections 15 and 22 North 89°54'09" West, 1,513.39 feet to a point on the Northeasterly right-of-way of U.S. Highway 50 as described in the conveyance to the State of Nevada recorded July 18, 1933 in the office of Recorder, Douglas County, Nevada in Book T of Deeds, at Page 436; thence along said Northeasterly right-of-way North 47°36'00" West, 674.72 feet to the Southwest corner of a parcel of land shown as Nevada Allied Industries on the Record of Survey for Nevada Allied Industries recorded September 25, 1980 in the office of Recorder, Douglas County, Nevada in Book 980, at Page 1969, as Document No. 48927, a found 3/4" iron pipe and plug RLS 3519, the POINT OF BEGINNING; thence along said Northeasterly right-of-way North 47°36'00" West, 590.28 feet to the Southeasterly corner of Parcel #1 as shown on said Record of Survey; thence along the boundary of said Parcel #1 the following three courses: thence North 42°24'00" East, 90.00 feet; thence North 47°36'00" West, 120.00 feet; thence South 42°24'00" West, 90.00 feet to a point on said Northeasterly right-of-way of U.S. Highway 50; thence along said Northeasterly right-of-way North 47°36'00" West 55.55 feet to the Southeasterly corner of Shell Oil Company, A.P.N. 05-290-01, as recorded in the office of Recorder, Douglas County, Nevada in Book 1094, at Page 559; thence along the boundary of said Shell Oil Company the following five courses: thence North 42°24'00" East, 88.00 feet; thence along the arc of a curve to the left having a radius of 82.50 feet, central angle of 46°00'00", and an arc length of 66.24 feet; thence North 03°36'00" West, 65.41 feet; thence South 80°30'10" West, 117.91 feet; thence South 42°24'00" West, 100.00 feet to a point on said Northeasterly right-of-way of U.S. Highway 50; thence along said Northeasterly right-of-way North 47°36'00" West, 14.45 feet; thence North 42°24'00" East, 545.28 feet; thence South 52°35'30" East, 40.63 feet; thence North 68°56'23" East, 124.71 feet; thence South 47°39'37" East, 119.37 feet; thence South 09°08'39" East,

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168.59 feet; thence South 09°10'30" East, 122.01 feet; thence along the arc of a curve to the left having a radius of 34.12 feet, central angle of 89°43'38" and an arc length of 53.43 feet; thence North 81°05'52" East, 64.33 feet; thence South 12°39'37" East, 30.95 feet; thence South 35°39'37" East, 348.46 feet to a point on the Westerly right-of-way of Elks Point Road; thence along said Westerly right-of-way along the arc of a curve to the right having a radius of 320.00 feet, central angle of 33°22'12", arc length of 186.37 feet, chord bearing South 25°42'54" West, and chord length of 183.75 feet; thence along said Westerly right-of-way South 42°24'00" West, 244.60 feet; thence along the arc of a curve to the right having a radius of 25.00 feet, central angle of 90°00'00", and an arc length of 39.27 feet to a point on said Northeasterly right-of-way of U.S. Highway 50, the POINT OF BEGINNING.

Portion of Assessors Parcel No. 05-290-12

Reference is hereby made to that certain Record of Survey to support a Lot Line Adjustment filed for record in the office of the Douglas County Recorder on June 2, 1997 in Book 697, Page 403, as Document No. 414039, Official Records.

**PARCEL 2:**

A parcel of land located within a portion of Section 15, Township 13 North, Range 18 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at the Southeast corner of said Section 15; thence along the Section line common to Sections 15 and 22 North 89°54'09" West, 1,513.39 feet to a point on the Northeasterly right-of-way of U.S. Highway 50 as described in the conveyance to the State of Nevada recorded July 18, 1933 in the office of Recorder, Douglas County, Nevada in Book T of Deeds, at Page 436; thence along said Northeasterly right-of-way North 47°36'00" West, 674.72 feet to the Southwest corner of a parcel of land shown as Nevada Allied Industries on the Record of Survey for Nevada Allied Industries recorded September 25, 1980 in the office of Recorder, Douglas County, Nevada in Book 980, at Page 1969, as Document No. 48927, a found 3/4" iron pipe and plug RLS 3519; thence along said Northeasterly right-of-way North 47°36'00" West, 590.28 feet to the Southeasterly corner of Parcel #1 as shown on said Record of Survey; thence along the boundary of said Parcel #1 the following three courses:

Continued on next page



thence North 42°24'00" East, 90.00 feet; thence North 47°36'00" West, 120.00 feet; thence South 42°24'00" West, 90.00 feet to a point on said Northeasterly right-of-way of U.S. Highway 50; thence along said Northeasterly right-of-way North 47°36'00" West 55.55 feet to the Southeasterly corner of Shell Oil Company, A.P.N. 05-290-01, as recorded in the office of Recorder, Douglas County, Nevada in Book 1094, at Page 559; thence along the boundary of said Shell Oil Company the following five courses: thence North 42°24'00" East, 88.00 feet; thence along the arc of a curve to the left having a radius of 82.50 feet, central angle of 46°00'00", and an arc length of 66.24 feet; thence North 03°36'00" West, 65.41 feet; thence South 80°30'10" West, 117.91 feet; thence South 42°24'00" West, 100.00 feet to a point on said Northeasterly right-of-way of U.S. Highway 50; thence along said Northeasterly right-of-way North 47°36'00" West, 14.45 feet; thence North 42°24'00" East, 545.28 feet; thence South 52°35'03" East, 40.63 feet; thence North 68°56'23" East, 124.71 feet to the POINT OF BEGINNING; thence continuing North 68°56'23" East, 40.17 feet; thence North 04°43'13" East, 17.70 feet to a point on the Southwesterly right-of-way of McFaul Way; thence along said Southwesterly right-of-way of McFaul Way South 59°30'37" East, 128.00 feet; thence South 76°36'23" West, 67.98 feet; thence South 09°08'39" East, 32.19 feet; thence North 47°39'37" West, 119.37 feet to the POINT OF BEGINNING.

**Assessors Parcel No. 05-290-03**

as per NRS 111.312 this legal previously recorded in Document 0417760, on July 22, 1997, records of Douglas County, Nevada.