

Loan No. 254-5434602-01-001

12196326  
12/29/2015 10:49:00 AM \$41.00  
Book - 10391 Pg - 4559-4574  
Gary W. Ott  
Recorder, Salt Lake County, UT  
LANDMARK TITLE  
BY: eCASH, DEPUTY - EF 16 P.

**WHEN RECORDED, RETURN TO:**

Zions First National Bank  
Real Estate Banking Group  
One South Main Street, Suite 470  
Salt Lake City, Utah 84133  
Attn: Real Estate Banking Group Manager

**SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMEN T AGREEMENT**

**(Café Rio)**

This Subordination, Non-Disturbance and Attornment Agreement (the "Agreement") is made and executed as of the 27 day of ~~March~~<sup>May</sup>, 2015, by and between Zions First National Bank, a national banking association ("Lender"), Legacy Plaza at 54<sup>th</sup>, LLC, a Utah limited liability company ("Landlord"), and Café Rio, Inc., a Utah corporation ("Tenant").

RECITALS

A. Tenant has executed and entered into a Lease Agreement dated August 31, 2005 (together with any and all amendments, modifications and extensions, and including all guarantees of the lease, the "Lease"), in which Boyer Plaza 5400 Associates LC, a Utah limited liability company ("Original Landlord"), appears as "Landlord" and Tenant appears as "Tenant", whereby Tenant has agreed to lease the real property described in the Lease as the leased or demised premises, which leased or demised premises are located in Salt Lake County, State of Utah, together with the improvements now or hereafter located on the leases or demised premises, and are more particularly described in Exhibit A attached hereto and incorporated into this Agreement by this reference (the "Property").

B. Original Landlord has assigned all of its right, title and interest as landlord under the Lease to Landlord.

C. On the condition that the Lease and all of Tenant's rights in the Property (the "Lease Rights") be subordinated as provided below, and that Tenant enter into this Agreement, Lender has agreed to make a construction and term loan (the "Loan") in the principal amount of Sixteen Million Three Hundred Fifty Thousand Dollars (\$16,350,000.00) to provide construction and mini term financing for, among other things, Landlord's acquisition and renovation of the Property. In connection with the Loan, Landlord has or will be executing, among other things, a Construction and Term Loan Agreement (the "Loan Agreement"), a Promissory Note (the "Note"), a Construction and Term Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing (the "Trust Deed"), an Assignment of Leases (the "Assignment of Leases") and

any and all other documents required by Lender to evidence and/or secure Landlord's obligations under the Loan and the Loan Documents.

## AGREEMENT

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Lender, Landlord, and Tenant agree as follows:

1. **Subordination to Loan Documents.** Notwithstanding anything in the Lease to the contrary, the Lease and Lease Rights are hereby made subject, subordinate, inferior, and junior to the Loan Documents and the liens created by the Loan Documents, and to all sums advanced on the security for the Loan Documents, including all sums advanced or costs incurred in connection with the Loan Documents or the Loan, and including all renewals, modifications, consolidations, replacements, and extensions of the Loan and any of the Loan Documents, including, without limitation, any increases in the principal amount of the Loan and changes in the interest rate of the Loan, and any future lien or liens affecting the Property held by or made for the benefit of Lender. The Lease and Lease Rights are hereby subordinated to the Loan Documents and the liens created by the Loan Documents, the same and as fully as if the Loan Documents had been executed and delivered, and recorded, where applicable, prior to execution, delivery, and recording of the Lease. If there is any inconsistency between the provisions of the Loan Documents and the provisions of the Lease, the provisions of the Loan Documents shall prevail and govern the Lease.

Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender, and its successors and assigns, without the prior written consent of Lender.

2. **Acknowledgement of Assignment of Rents.** Tenant agrees and acknowledges that it has notice, and notwithstanding anything to the contrary in the Lease hereby consents, that the Lease, the Lease Rights, the rents, and all other sums due under the Lease have been assigned or are to be assigned to Lender. Specifically, but without limitation, Tenant consents to the Assignment of Leases executed by Landlord to Lender. In the event that Lender notifies Tenant of a default under any of the Loan Documents and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise required pursuant to such notice.

3. **Notice and Opportunity to Cure.** Tenant agrees to deliver to Lender, within five (5) days of delivery to Landlord, a copy of all notices and other documents delivered to Landlord in connection with the Lease, specifically including, but without limitation, any notices of default or termination. If any default occurs under the Lease, Lender shall have the right for a period of thirty (30) days after receipt of notice of the default to cure such default. If the nature of the default is such that it cannot reasonably be cured within such thirty (30) day period, then Lender shall have such longer period as is reasonably necessary to cure such default. No default shall be deemed to exist under the Lease so long as Lender is seeking, in good faith, to cure the default.

4. **Requirement of Non-Disturbance.** Tenant agrees and acknowledges that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

5. **Non-Disturbance.** In the event of foreclosure of the Trust Deed, or upon a sale of the Property pursuant to the trustee's power of sale contained in the Trust Deed, or upon a transfer of the Property by conveyance in lieu of foreclosure (collectively, a "Transfer"), then so long as Tenant complies with this Agreement and is not in default under any of the terms, covenants, or conditions of the Lease, Lender shall not name or join Tenant in any foreclosure proceeding, unless such joinder is necessary, in Lender's discretion, to complete the foreclosure, nor shall Lender disturb the possession of Tenant, its successors and assigns. In the event of a Transfer, Lender will perform and be bound by all of the obligations imposed on Landlord by the Lease for the balance of the term of the Lease, and any extension or renewals of the Lease, as long as no event of default has occurred under the Lease, which has continued to exist for such period of time, after notice and opportunity to cure, if any, required by the Lease, as would entitle Landlord under the Lease to terminate the Lease, or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant under the Lease.

6. **Attornment.** Upon the occurrence of a Transfer, Tenant hereby agrees to attorn to, adhere to and accept any such successor owner as landlord under the Lease, and to be bound by and perform all of the obligations imposed by the Lease, such attornment to be self-operative without the execution of any further instruments.

7. **No Liability for Lender.** Lender, or any successor owner of the Property resulting from a Transfer, shall not be (a) liable for any obligations under the Lease which arise or accrue prior to a Transfer or which arise or accrue at any time after Lender ceases to be the owner of the Property; (b) liable for any damages or other relief attributable to any act or omission of a prior landlord, including Landlord; (c) liable for any damages or other relief attributable to any latent or patent defect in the Property; (d) liable for any damages or other relief attributable to any breach by any prior landlord, including Landlord, under the Lease or any representation or warranty made in connection with the Lease; (e) subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord; (f) bound by any rent or additional rent which Tenant might 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, except to the extent that such security deposit, cleaning deposit or other prepaid charge or advance was transferred to the Lender; (g) bound by any assignment, subletting, renewal, extension or any other agreement or modification of the Lease made without the prior written consent of Lender; or (h) liable for any indirect or consequential damages, including loss of sublet rentals, loss of profits, or damage to goodwill or reputation.

Nothing in this Agreement is intended to constitute an agreement by Lender to perform any obligation of Landlord as landlord under the Lease prior to the time Lender obtains title to the Property by Transfer or otherwise obtains possession of the Property pursuant to the terms of

the Loan Documents. Specifically, but without limitation, Lender shall have no obligations with respect to the erection or completion of any improvements on the Property, either at the commencement of the term of the Lease or upon any renewal or extension of the term of the Lease, or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

In the event that Lender shall acquire title to the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Property, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Property for the payment and discharge of any obligations imposed upon Lender under this Agreement or under the Lease, and Lender is hereby released and relieved of any other obligations under this Agreement and the Lease.

8. **No Assignment or Subletting.** Tenant agrees not to assign, transfer, mortgage, sublet, or otherwise encumber the Lease or Lease Rights or any interest in the Lease or the Lease Rights except in the manner expressly authorized in Article 20 of the Lease and unless Tenant has obtained the prior written consent of Lender (which consent shall not unreasonably be withheld, conditioned or delayed). Any other assignment, transfer, mortgage encumbrance or sublet of the Leased Premises or the Property or any part of the Leased Premises or the Property shall be void as to Lender. As part of its requirements for granting consent, Lender may require Tenant to assign the sublease to Lender, grant a lien on Tenant's interest in the Property to Lender as collateral for the Loan and all obligations of Landlord under the Loan Documents, and/or subtenant has executed and delivered to Lender a Subordination, Non-Disturbance Attornment Agreement and separate estoppel certificate acceptable to Lender.

9. **New Lease.** Upon the written request of Lender to Tenant after a Transfer, Tenant shall execute and deliver to Lender a lease of the Property upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such Transfer.

10. **Acknowledgment and Agreement by Landlord.** Landlord, as landlord under the Lease and trustor under the Trust Deed, acknowledges and agrees for itself and its heirs, successors, and assigns agrees to each of the following:

a. This Agreement does not constitute a waiver by Lender of any of its rights under the Trust Deed, Assignment of Leases, or any of the other Loan Documents, and/or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Trust Deed.

b. The provisions of the Trust Deed, Assignment of Leases, and all other Loan Documents remain in full force and effect and must be complied with by Landlord.

c. In the event of a default under the Trust Deed, Assignment of Leases, or any of the other Loan Documents, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Loan Documents.

11. **Right to Sublease and Mortgage.** Notwithstanding anything to the contrary in the Lease, upon the occurrence of a Transfer, Tenant agrees that Lender, its successor or assign, or any purchaser at a foreclosure sale, may mortgage, lien, encumber, or otherwise transfer its interest in the Property or assign all of its or Landlord's rights in the Lease without the consent of Tenant.

12. **Insurance Proceeds and Condemnation Awards.** Notwithstanding anything to the contrary in the Lease, unless otherwise agreed by Lender in writing in advance, all insurance proceeds and condemnation awards paid or awarded in connection with the Property and/or any improvements to the Property (not including Tenant's equipment) shall be paid to Lender as payments on the Loan pursuant to the terms and conditions of the Loan Documents and for any and all other obligations of Landlord to Lender in connection with the Loan and under the Loan Documents.

13. **Memorandum of Lease.** If required by Lender, Tenant agrees to execute and cause to be recorded in the county recorder's office of the county in which the Property is located, a memorandum of lease for the Lease in a form reasonably acceptable to Lender.

14. **Future Estoppel Certificates.** Tenant agrees to execute and deliver to Lender, within five (5) days of request by Lender, estoppel certificates in such form and covering such matters as Lender requests. Tenant shall not be obligated to deliver an estoppel certificate more often than one (1) time per calendar year, unless Lender determines, in its reasonable discretion, that an estoppel certificate is required more often.

15. **No Merger.** If any lien granted on the Property or assignment of any lease of the Property made to Lender and the fee title to the Property shall at any time become vested in one owner, the lien created under any trust deed granted or assignment made to Lender shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Lender shall continue to have and enjoy all of the rights and privileges of Lender, beneficiary, and assignee and, if applicable, fee title owner, as to the separate estates. In addition, upon the foreclosure of any such lien or assignment, any leases or subleases then existing and created by Tenant shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender, its successor or assign, or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Lender, its successor or assign, or any such purchaser shall constitute a termination of any lease or sublease unless Lender, its successor or assign, or such purchaser shall give written notice of such termination to such tenant or subtenant.

16. **Unlawful Use, Medical Marijuana, Controlled Substances and Prohibited Activities.** Tenant shall not use or occupy or permit the use or occupancy of the Property in any manner that would be a violation of federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law, including without limitation, any law relating to the use, sale, possession, cultivation manufacture, distribution or marketing of any controlled substances or other contraband or any law relating to the medicinal use or distribution of marijuana.

17. **Notices.** All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered, deposited in the United States mail, by registered or certified mail, or deposited with a reputable overnight mail carrier which provides delivery of such mail to be traced, addressed as follows:

Lender:	Zions First National Bank Real Estate Banking Group One South Main Street, Suite 470 Salt Lake City, Utah 84133 Attn: Timothy P. Raccuia
With copies to:	Callister Nebeker & McCullough Zions Bank Building 10 East South Temple, Suite 900 Salt Lake City, Utah 84133 Attn: Lynda Cook
Landlord:	Legacy Plaza at 54 <sup>th</sup> , LLC c/o Legacy Real Estate Investments, Inc. 1962 East Stag Hill Circle Draper, Utah 84020 Attn: David C. Werts
Tenant:	Café Rio, Inc. 215 North Admiral Byrd Road, Suite 100 Salt Lake City, Utah 84116 Attn: Don Lewandowski
With copies to:	Kirton McConkie, PC 1800 World Trade Center 60 East South Temple Salt Lake City, Utah 84111-1032 Attn: Lee A. Wright

Such addresses may be changed by notice to the other party given in the same manner provided in this Section.

18. **Attorneys' Fees.** Upon the occurrence of a default under this Agreement by Tenant, Lender may employ an attorney or attorneys to protect Lender's rights under this Agreement, and Tenant shall pay Lender reasonable attorneys' fees and costs actually incurred by Lender, whether or not action is actually commenced against Tenant by reason of such breach. Tenant shall also pay to Lender any reasonable attorneys' fees and costs incurred by Lender with respect to any insolvency or bankruptcy proceeding or other action involving Tenant as a debtor.

Otherwise, if any party to this Agreement brings suit against any other party to this Agreement as a result of any alleged breach of this Agreement by the other or failure by the other to perform its obligations under this Agreement or under any other instrument delivered pursuant to this Agreement, or to seek declaratory relief as to the rights or obligations of any party to this Agreement, then the prevailing party in such action, in addition to any other relief which may be granted in such action, shall be entitled to judgment for reasonable attorneys' fees incurred by reason of such action and all costs of such action (including but not limited to reasonable fees of expert witnesses) and costs incurred in preparation of such action, at both trial and appellate levels.

19. **No Derogation of Liens.** Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien and charge or provisions of the Trust Deed, Assignment of Leases, or any other lien created by the Loan Documents.

20. **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

21. **Successors and Assigns.** This Agreement is and shall be binding upon and shall inure to the benefit of Tenant, Lender and their respective successors and assigns.

22. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes without producing or accounting for any other counterpart. Copies of this Agreement, and fax signatures thereon, shall have the same force, effect and legal status as an original.

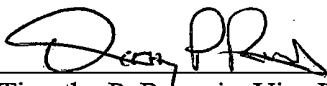
23. **Defined Terms.** Unless otherwise defined in this Agreement, capitalized terms used herein have the meanings given them in the Loan Agreement. The term Loan Documents shall include all amendments and modifications to the Loan Documents.

***[SIGNATURE PAGE(S) AND EXHIBIT(S),  
IF ANY, FOLLOW THIS PAGE]***

DATED: <sup>May</sup>~~March~~ 27, 2015

LENDER

**ZIONS FIRST NATIONAL BANK,**  
a national banking association

By:   
\_\_\_\_\_  
Timothy P. Raccuia, Vice President



LANDLORD


**LEGACY PLAZA AT 54TH, LLC,**  
a Utah limited liability company

By: Legacy Real Estate Investments, Inc.  
a Washington corporation,  
Operating Manager of Legacy Plaza at 54<sup>th</sup>, LLC

By:   
\_\_\_\_\_  
David C. Werts,  
President of Legacy Real Estate Investments, Inc.

TENANT

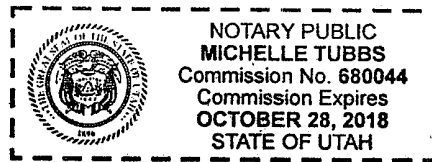
**CAFÉ RIO, INC.,**  
a Utah corporation

By:   
Name: Donald J. LEWANDOWSKI  
Title: Chief Development Officer

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

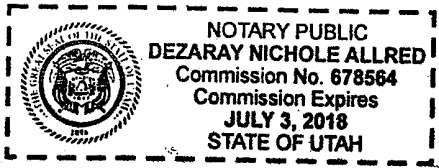
The foregoing instrument was acknowledged before me this 5 day of <sup>June</sup>~~March~~, 2015, by Timothy P. Raccuia, Vice President of Zions First National Bank, a national banking association.

*Michelle Tubbs*  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: *Salt Lake City*



STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

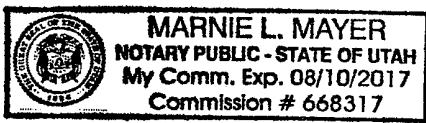
The foregoing instrument was acknowledged before me this 3 day of ~~March~~<sup>June</sup>, 2015, by David C. Werts, President of Legacy Real Estate Investments, Inc., a Washington corporation, Operating Manager of Legacy Plaza at 54th, LLC, a Utah limited liability company.



Dezaray Allred.  
NOTARY PUBLIC  
Residing at: One South Main Street 4<sup>th</sup> Fl. SLC UT 84133.

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of May, 2015, by Donald J. Lewandowski, Chief Development Officer of Café Rio, Inc., a Utah corporation.



Marnie L. Mayer  
NOTARY PUBLIC  
Residing at: 215 N Admiral Byrd Rd #100

**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

The real property located in Salt Lake County, State of Utah, and more particularly described as follows:

(See Attached)

## EXHIBIT A

### REAL PROPERTY DESCRIPTION

The real property located in Salt Lake County, State of Utah, and more particularly described as follows:

BEGINNING at a point on the North property line of 5400 South Street, which point is 1262.36 feet South 89°53'41" West and 53.00 feet North 0°013'19" West from the South Quarter Corner of Section 10, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°53'41" East 0.06 feet; thence 398.14 feet along the arc of a 11406.16 foot radius curve to the left (bearing North 00°06'19" West to the center of its beginning); thence North 87°53'41" East 173.03 feet; thence 401.84 feet along the arc of a 11512.16 foot radius curve to the right (bearing South 02°06'19" East to the center of its beginning); thence North 89°53'41" East 126.78 feet; thence North 73°38'19" East 114.50 feet to the West property line of Redwood Road; thence North 0°02'55" West 557.04 feet; thence West 1211.30 feet; thence South 0°13'19" East 611.34 feet to the point of BEGINNING.

Less and excepting therefrom:

A parcel of land in fee, being part of an entire tract of property situate in the Southeast quarter Southwest quarter of Section 10, Township 2 South, Range 1 West, Salt Lake Base and Meridian, in Salt Lake County, State of Utah. The boundaries of said parcel of land are described as follows:

Beginning at a point on the Northerly right-of-way line of 5400 South Street 980.93 feet South 89°53'41" West along the Section line and 56.47 feet North 00°06'19" West from the South quarter corner of said Section 10, which point is 56.74 feet perpendicularly distant Northerly from the control line of said 5400 South Street opposite approximate Engineer Station 74+29.04, and running thence North 83°00'11" East 150.49 feet to a point 69.56 feet perpendicularly distant Northerly from said control line opposite Engineer Station 75+78.99; thence North 89°08'10" East 311.82 feet to a point 63.16 feet radially distant Northerly from control line opposite Engineer Station 78+90.23; thence North 74°09'54" East 88.86 feet to a point 85.25 feet radially distant Northerly from said control line opposite Engineer Station 79+75.74 and the beginning of a non-tangent 154.32 foot radius curve to the right (Note: Radius bears South 15°50'09" East); thence Easterly along the arc of said curve 40.14 feet through a delta of 14°54'07" (Note: Chord to said curve bears North 81°36'55" East for a distance of 40.02 feet) to a point 90.31 feet radially distant Northerly from said control line opposite Engineer Station 80+15.14 and the beginning of a non-tangent 1273.69 foot radius curve to the right (Note: Radius bears South 00°59'50" East) thence Easterly along the arc of said curve 106.27 feet through a delta of 04°46'50" (Note: Chord to said curve bears South 88°36'25" East for a distance of 106.24 feet) to a point of reverse curvature with a radius of

1988.00 feet, which point is 86.31 feet radially distant Northerly from said control line opposite Engineer Station 81+20.50; thence Easterly along the arc of said curve 144.53 feet through a delta of 04°09'56" (Note: Chord to said curve bears South 88°17'58" East for a distance of 144.50 feet) to a point 81.47 feet perpendicularly distant Northerly from said control line opposite Engineer Station 82+64.34; thence North 89°37'04" East 45.19 feet to a point 81.69 feet perpendicularly distant Northerly from said control line opposite Engineer Station 83+09.53; thence North 44°19'52" East 41.12 feet to a point 11.05 feet perpendicularly distant Northerly from said control line opposite Engineer Station 83+38.32; thence North 89°46'59" East 17.09 feet to the Easterly right-of-way line Redwood Road at a point 111.08 feet perpendicularly distant Northerly from said control line opposite Engineer Station 83+55.40; thence South 00°03'46" East 25.75 feet along said Easterly right-of-way line to said Northerly right-of-way line of 5400 South Street, thence along said Northerly right-of-way line the following five (5) courses and distances: (1) South 73°38'24" West 114.46 feet; thence (2) South 89°53'41" West 126.78 feet to the beginning of a 11512.16 foot radius curve to the left; thence (3) Westerly along the arc of said curve 401.85 feet through a delta of 02°00'00" (Note: Chord to said curve bears South 88°53'41" West for a distance of 401.83 feet); thence (4) South 87°53'41" West 173.03 feet to the beginning of a 11406.16 foot radius curve to the right; thence (5) Westerly along the arc of said curve 116.70 feet through a delta of 00°35'10" (Note: Chord to said curve bears South 88°11'16" West for a distance of 116.68 feet) to the point of beginning. The above described parcel of land contains 16,970 square feet or 0.390 acres in area, more or less. (Note: Rotate all bearings in the above description 0°01'11" clockwise to obtain highway bearings.)

Also less and excepting any and all abutter's rights of the above-referenced less and excepting fee to the center of the existing right-of-way appurtenant to the less and excepting property.

Tax Parcel No.  
21-10-379-002  
21-10-379-011  
21-10-379-012  
21-10-379-013  
21-10-379-014  
21-10-379-004  
21-10-379-014  
21-10-379-009  
21-10-379-008