

Ent: 444042 - Pg 1 of 9
Date: 2/14/2017 4:06:00 PM
Fee: \$26.00
Filed By: eCASH
Jerry M. Houghton, Recorder
Tooele County Corporation
For: PLANTINUM TITLE SERVICES (ACH)

RECORDATION REQUESTED BY:
Xceed Financial Federal Credit Union
Commercial Lending Department
888 North Nash Street
El Segundo, CA 90245

WHEN RECORDED MAIL TO:
Xceed Financial Federal Credit Union
Commercial Lending Department
888 North Nash Street
El Segundo, CA 90245

SEND TAX NOTICES TO:
Vicki K. Davis Living Trust
c/o Bonneville Realty Management
PO Box 71590
Salt Lake City, Utah 84171

TAX ID: 14-064-0-0004

FOR RECORDER'S USE ONLY

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE COLLATERAL BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT dated 12-26, 2016 ("Agreement"), is made and executed among Vicki K. Davis Living Trust whose address is c/o Bonneville Realty Management, 8522 South 1300 East, Ste D108, Sandy, UT 84094 ("Landlord"); Cold Stone Creamery, Inc., an Arizona Corporation, whose address is 9311 East Via De Ventura, Scottsdale, AZ 85258 ("Tenant"); and Xceed Financial Federal Credit Union, Commercial Lending Department, 888 North Nash Street, El Segundo, CA 90245 ("Lender").

SUBORDINATED LEASE. Tenant, and Landlord executed a lease dated May 14, 2007 of the property described herein (the "Lease"). The following information is the summary of the basic terms and conditions of the Subordinated lease.

REAL PROPERTY DESCRIPTION. The Lease covers 1197 N. Main Street, Ste E, Tooele, UT 84074 of the following described real property (the "Real Property") located in the City and County of Tooele, State of Utah.

See Exhibit "A", which is attached to this Agreement and made a part of this Agreement as if fully set forth herein.

SUPERIOR INDEBTEDNESS. Lender has extended or has agreed to extend the following described financial accommodations to Landlord, secured by the Real Property (the "Superior Indebtedness"):

Promissory Note dated 12-26, 2016 in the amount of \$1,300,000 executed by Landlord in favor of Lender.

LENDER'S LIEN. The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, deed of trust, or other lien instrument, dated 12-26, 2016, from Landlord to Lender (the "Lender's Lien"). As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Lease and all of Tenant's rights in the Real Property ("Lease Rights").

REQUESTED FINANCIAL ACCOMMODATIONS. Landlord wants Lender to provide financial accommodations

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to Landlord in the form of the Superior Indebtedness. Landlord and Tenant each represent and acknowledge to Lender that Landlord and Tenant will benefit as a result of these financial accommodations from Lender to Landlord, and Landlord and Tenant acknowledge receipt of valuable consideration for entering into this Agreement.

IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, LENDER, LANDLORD, AND TENANT HEREBY AGREE AS FOLLOWS:

SUBORDINATION. Notwithstanding anything in the Lease to the contrary, the parties acknowledge and agree that the Lease and Lease Rights are and shall be subject and subordinate in right, interest and lien, and for all purposes, to Lender's Lien, and to all renewals, modifications, consolidations, replacements, and extensions thereof, and to any subsequent lien of the Lender with which Lender's Lien may be spread or consolidated, to the full extent of the principal sum and all other amounts secured thereby and interest thereon. 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. During the term of the Loan, Tenant agrees except as specifically provided in the lease not to assign, mortgage, sublet, encumber, or otherwise transfer any or all of its interest under the lease without the prior written consent of Lender, which shall not be unreasonably withheld and shall be the express responsibility of Landlord to obtain unless Lender succeeds to the interest of Landlord under the lease.

NON-DISTURBANCE. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default of the Loan under the Note and/or under Lender's Lien unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action. If the Lease has not been terminated, then, when Lender succeeds to the interest of Landlord, the Lender shall not terminate or disturb Tenant's possession of Tenant's premises under the Lease, except in accordance with the terms of the Lease.

ATTORNMEN T. If Lender shall succeed to the interest of the Landlord under the Lease, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to Lender, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Lender, any instrument or certificate which, in the sole judgment of Lender, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

NO LIABILITY FOR LENDER. Lender in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any notice or period given Tenant to cure such default) in the payment of annual base rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Lender had not succeeded to the interest of Landlord.

NEW LEASE. If Lender shall succeed to the interest of the Landlord under the Lease, upon the written request of Lender to Tenant, Tenant shall execute and deliver to Lender a lease of the Real 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.

ACKNOWLEDGMENT AND AGREEMENT BY LANDLORD. Landlord, as landlord under the Lease, acknowledges and agrees for itself and its heirs, successors and assigns to each of the following:

- (A) This Agreement does not in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Note, Lender's Lien or any other

documents executed in connection with the Loan.

(B) In the event of a default under the Note, or any of the other documents executed in connection with the Loan, Landlord hereby consents to Tenant's attornment to Lender and, upon such event, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Lease.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Authority. Any person who signs this Agreement on behalf of Landlord and Tenant represents and warrants that he or she has authority to execute this Agreement.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Counterparts. This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Agreement.

Governing Law. With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Collateral, this Agreement will be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the Utah. In all other respects, this Agreement will be governed by federal law applicable to Lender, and to the extent not preempted by federal laws, the laws of the State of California without regard to its conflict of law provisions. However, if there is a question about whether any provision of this Agreement is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Agreement has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of California.

Choice of Venue. If there is a lawsuit, Landlord agrees upon Lender's request to submit to the jurisdiction of the courts of Los Angeles County, State of California.

Notices. Any notice required to be given under this Agreement shall be given in writing, and, shall be effective when actually delivered, when actually received (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

No Waiver by Lender. Neither party shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by a Party. No delay or omission on the part of a Party in exercising any right shall operate as a waiver of such right or any other right. A waiver by a Party of a provision of this Agreement shall not prejudice or constitute a waiver of a Party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a Party, nor any course of dealing among a Party, shall constitute a waiver of any of Party's rights or of any of Landlord's and/or Tenant's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be

considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors. This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement.

Delivery. This Subordination, Non-Disturbance and Attornment Agreement shall not be effective unless and until a fully executed copy has been delivered to Tenant.

Scope. In no event shall this Subordination Non-Disturbance and Attornment Agreement amend or modify the terms of the Lease Agreement or any addenda or amendments thereto. Nothing set forth in this document is intended or shall be interpreted to constitute a waiver of any of Tenant's rights or remedies under the Lease. Should a conflict arise between the terms of this document and the Lease, the Lease provisions shall control.

NOTICE: THIS AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS. THIS AGREEMENT IS DATED 12-26, 2016.

LANDLORD:

Vicki K. Davis Living Trust

By: *Vicki K. Davis Trustee*
Vicki K. Davis, Trustee of the Vicki K. Davis Living Trust

LENDER:

XCEED FINANCIAL FEDERAL CREDIT UNION

X _____
Authorized Officer

TENANT:

Cold Stone Creamery, Inc., an Arizona Corporation

By: *Kim Lane 11/10/16*
Authorized Officer
Print Name: Kim Lane

Title: Sr. VP and Deputy General Counsel

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EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS. THIS AGREEMENT IS DATED _____, 2016.

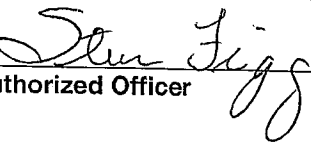
LANDLORD:

Vicki K. Davis Living Trust

By: _____
Vicki K. Davis, Trustee of the Vicki K. Davis Living Trust

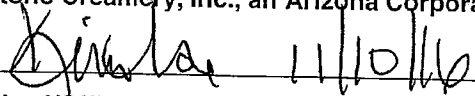
LENDER:

XCEED FINANCIAL FEDERAL CREDIT UNION

X  _____
Authorized Officer

TENANT:

Cold Stone Creamery, Inc., an Arizona Corporation

By:  _____
Authorized Officer
Print Name: Kim Lane

Title: Sr. VP and Deputy General Counsel



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.

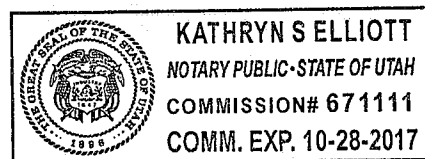
State of ~~California~~ Utah
County of Salt Lake

On Dec 26, 2016 before me, Kathryn Elliott
(insert name and title of the officer)

personally appeared Vicki K Davis, Trustee
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~~ ^{UTAH} that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature] (Seal)

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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 Los Angeles
County of _____)

On 12-28-2010 before me, Farideh Khodayari, Notary Public
(insert name and title of the officer)

personally appeared Steven Figg, MTG Lending Director
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 Farideh Khodayari (Seal)



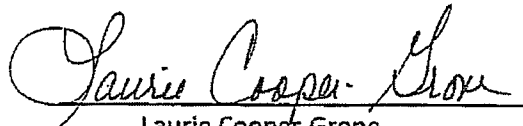
SIGNATURES TO BE NOTARIZED IN THE STATE IN WHICH THEY ARE SIGNED.

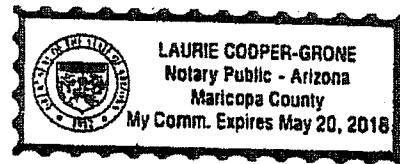
TENANT ACKNOWLEDGEMENT

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

On this 15th day of November 2016, before me appeared Kim Lane, known to me personally, that she executed the attached document as the duly authorized Sr. VP and Deputy General Counsel, on behalf of Cold Stone Creamery, Inc., and Arizona corporation.

My Commission Expires:
May 20, 2018


Laurie Cooper-Grone
Notary Public



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EXHIBIT A

All of Lot 4 of Tooele Landing, a Subdivision in Toole City, Tooele County, Utah, described as follows:

A part of the Southwest Quarter of Section 16, Township 3 South, Range 4 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the South Line of Lot 4 of Tooele Gateway Commercial Subdivision, as amended, being 1192.81 feet South $89^{\circ}43'06''$ West along the Section Line; 1456.20 feet North $0^{\circ}16'54''$ West; and 210.50 feet North $83^{\circ}10'00''$ West 259.20 feet; thence North $83^{\circ}10'00''$ West 188.74 feet; thence North $6^{\circ}50'00''$ East 259.20 feet to the South Line of Lot 3 of said Tooele Gateway Commercial Subdivision, as amended; thence South $83^{\circ}10'00''$ East 188.74 feet along said South Line of Lots 3 and 4 to the point of beginning.

