

Ent: 444043 - 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
P.O. Box 71590
Salt Lake City, UT 84171

TAX ID: 14-064-0-0004

FOR RECORDER'S USE ONLY

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT 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 ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT 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"); Playa Del Sol Tooele, LLC, a Utah limited liability company; dba Costa Vida, whose address is 1197 N. Main Street, Suite G, Tooele, UT 84074 ("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 February 5, 2010 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, Suite G, 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 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 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.

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 and this Agreement.

ATTORNMEN. 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 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. ; provided, however, that Lender shall not be:

- (A) Liable for any act or omission of or any claims against any prior landlord, including Landlord; or
- (B) Subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord; or
- (C) Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, including Landlord; or
- (D) Bound by any amendment or modification of the Lease, or waiver of any of its terms, made without its consent; or
- (E) Liable for any sum that any prior landlord, including Landlord, owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Lender; or
- (F) Bound by any surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon

between Landlord and Tenant; or

(G) Liable for any construction obligation of any prior landlord, including Landlord; or

(H) Liable for any breach of representation or warranty of any prior landlord, including 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.

Attorneys' Fees; Expenses. If any party institutes any suit or action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees and costs at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Landlord also will pay any court costs, in addition to all other sums provided by law.

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 by telefacsimile (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.

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 Stu Jigg
Authorized Officer

TENANT:

PLAYA DEL SOL TOOELE, LLC, a Utah limited liability company

By: [Signature]
Authorized Officer

Print Name: Kiplashmore

Title: Manager Member

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

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

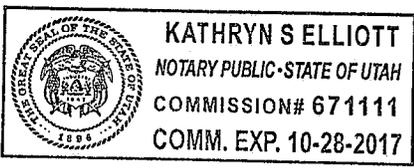
On Dec 26 2016 before me, Kathryn S Elliott
(insert name and title of the officer)

personally appeared Micki 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 Kathryn S Elliott (Seal)



k

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

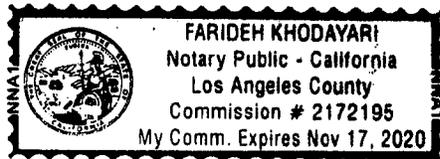
On 12-28-2016 before me, Farideh Khodayari, Notary Public
(insert name and title of the officer)

personally appeared Steven Fligg, Director, Mtg. Lending
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)



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 Weber

On November 18, 2016 before me, Amber Wheatley
(insert name and title of the officer)

personally appeared Kip Cashmore
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]

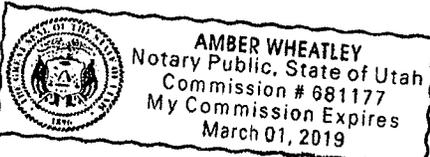
(Seal) 

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°43'06" West along the Section Line; 1456.20 feet North 0°16'54" West; and 210.50 feet North 83° 10'00" West 259.20 feet; thence North 83°10'00" West 188.74 feet; thence North 6°50'00" East 259.20 feet to the South Line of Lot 3 of said Tooele Gateway Commercial Subdivision, as amended; thence South 83°10'00" East 188.74 feet along said South Line of Lots 3 and 4 to the point of beginning.