

E 3395444 B 7791 P 1529-1536  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
6/29/2021 1:38:00 PM  
FEE \$40.00 Pgs: 8  
DEP eCASH REC'D FOR PARAMOUNT TITLE CORP

WHEN RECORDED, PLEASE RETURN TO:

Brighton Bank  
311 South State Street  
Salt Lake City, Utah 84111  
Attention: Melissa Snell

SEND TAX NOTICES TO:

RAISING CANE'S RESTAURANTS, L. L.C.  
6800 Bishop Road  
Plano, TX 75024  
Attn: Tax Department - C0710

Tax ID No.: 09-371-0004

space above for Recorder's use

2021-11342

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made and entered into as of the date of the last signatory hereto, by and between **RAISING CANE'S RESTAURANTS, L.L.C.**, a Louisiana limited liability company ("Tenant"), **BRIGHTON BANK**, a Utah corporation ("Lender"), and **CIG LAYTON, LLC**, a Utah limited liability company ("Landlord").

**RECITALS:**

WHEREAS, Landlord and Tenant executed a Ground Lease executed as of March 19, 2021 (the "Lease"), a memorandum of which was recorded on June 29, 2021, 2021 in the official records of Davis County, Utah, as Instrument Number 3395437, covering certain premises therein described located on a parcel of real estate, a legal description of which is attached hereto and incorporated herein by this reference as *Exhibit A* (said parcel of real estate and the premises being sometimes collectively referred to herein as the "Property"); and

WHEREAS, Landlord has executed a Deed of Trust dated May 26, 2021 and recorded on May 29, 2021 in the official records of Davis County, Utah, as Instrument Number 3306732, in favor of Lender (the "Deed of Trust"), payable upon the terms and conditions described therein; and

WHEREAS, it is a condition to the Deed of Trust that the Deed of Trust shall unconditionally be and remain at all times a lien or charge upon the Property, prior and superior to the Lease and to the leasehold estate created thereby; and

WHEREAS, the parties hereto desire to assure Tenant's possession and control of the Property under the Lease upon the terms and conditions therein contained.

NOW, THEREFORE, for and in consideration of the mutual covenants and premises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by the parties hereto, the parties hereto do hereby agree as follows:

**AGREEMENT:**

1. The Lease is and shall be subject and subordinate to the Deed of Trust, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all future advances made thereunder.
2. Should Lender become the owner of the Property, or should the Property be sold by reason of foreclosure, or other proceedings brought to enforce the Deed of Trust which encumbers the Property, or should the Property be transferred by deed in lieu of foreclosure (dation en paiement or giving in payment), or should any portion of the Property be sold under a trustee's sale, the Lease shall continue in full force and effect as a direct lease between the then owner of the Property resulting from the enforcement of the Deed of Trust and Tenant, upon, and subject to, all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, including any extensions therein provided, and so long as Tenant is not in default under the terms of the Lease, Tenant's occupancy of the Property shall not be disturbed. Tenant does hereby agree to attorn to Lender or to any such owner as its landlord, and Lender hereby agrees that it will accept such attornment.
3. Notwithstanding any other provision of this Agreement, Lender shall not be (a) liable for any default of any landlord under the Lease (including Landlord), except that Lender agrees to cure any default of Landlord that occurs or continues uncured from and after the date Lender forecloses the Property within thirty (30) days from the date Tenant delivers written notice to Lender of such continuing default, unless such default is of such a nature to reasonably require more than thirty (30) days to cure and then Lender shall be permitted such additional time as is reasonably necessary to effect such cure, provided Lender diligently and continuously proceeds to cure such default; (b) subject to any offsets or defenses which have accrued prior to the date of foreclosure, unless Tenant shall have delivered to Lender written notice of the default which gave rise to such offset or defense and permitted Lender the same right to cure such default as permitted Landlord under the Lease; (c) bound by any rent that Tenant may have paid under the Lease more than one (1) month in advance; (d) bound by any amendment or modification of the Lease hereafter made without Lender's prior written consent, except Landlord and Tenant may enter into non-material amendments to the Lease without Lender's consent and Lender shall be bound to such non-material amendments so long as such amendments do not (i) materially increase the obligations of Landlord, (ii) reduce the frequency or amount of rent payable under the Lease, or (iii) decrease the size of the Property; and (e) responsible for the return of any security deposit delivered to Landlord under the Lease and not subsequently received by Lender.
4. If Lender sends written notice to Tenant to direct its rent payments under the Lease to Lender instead of Landlord, then Tenant agrees to follow the instructions set forth in such written instructions and deliver rent payments to Lender; however, Landlord and Lender agree that Tenant shall be credited under the Lease for any rent payments sent to Lender pursuant to such written notice.

5. All notices which may or are required to be sent under this Agreement shall be in writing and shall be sent by overnight courier delivery, by certified or registered U.S. mail, postage prepaid, return receipt requested, or by electronic mail (provided that delivery by one of the other permitted methods is also made) and sent to the party at the address appearing below or such other address as any party shall hereafter inform the other party by written notice given as set forth above:

Tenant: Raising Cane's Restaurants, L.L.C.  
6800 Bishop Road  
Plano, TX 75024  
Attn: Real Estate Department  
Email: [realestate@raisingcanes.com](mailto:realestate@raisingcanes.com)  
Re: C0710

With a copy to: Dawn M. Rawls, Esq.  
Rawls Law Firm, PLLC  
315 S. Jupiter Road, Suite 200  
Allen, TX 75002  
Email: [dawn@rawlslaw.com](mailto:dawn@rawlslaw.com)  
Re: C0710

Lender: Brighton Bank  
311 South State Street  
Salt Lake City, Utah 84111  
Attention: Melissa Snell  
Email: [msnell@brightonbank.com](mailto:msnell@brightonbank.com)

Landlord: CIG Layton, LLC  
889 Eaglewood Loop  
North Salt Lake, UT 84054  
Email: [craig.kleinman@comcast.net](mailto:craig.kleinman@comcast.net)

All notices delivered as set forth above shall be deemed effective three (3) days from the date deposited in the U.S. mail or the business day after deposit with the overnight courier service or upon receipt if by electronic mail (so long as the other method of delivery is also made).

6. Said Deed of Trust shall not cover or encumber and shall not be construed as subjecting in any manner to the lien thereof any of Tenant's improvements or trade fixtures, furniture, equipment or other personal property at any time placed or installed in the Property. In the event the Property or any part thereof shall be taken for public purposes by condemnation or transfer in lieu thereof or the same are damaged or destroyed, the rights of the parties to any condemnation award or insurance proceeds shall be determined and controlled by the applicable provisions of the Lease.

7. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, heirs and assigns and any subsequent owner of the Property secured by the Deed of Trust.

8. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.

9. Unless required by applicable law, Tenant shall not be joined as a party/defendant in any action or proceeding which may be instituted or taken by reason of any default by Landlord in the performance of the terms, covenants, conditions and agreements set forth in the Deed of Trust.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Lender has executed this Subordination, Non-Disturbance and  
Attornment Agreement on the 26<sup>th</sup> day of May, 2021.

LENDER:

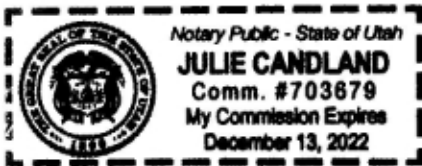
BRIGHTON BANK,  
a Utah corporation

By: [Signature]  
Name: Melissa Snell  
Its: Assistant vice president

STATE OF Utah §  
COUNTY OF Salt Lake §

BEFORE ME, the undersigned authority, on this 26 day of May, 2021, did personally  
appear Melissa Snell AVP of Brighton Bank, a  
Utah corporation, who acknowledged this instrument and stated that he executed same on behalf  
of said corporation.

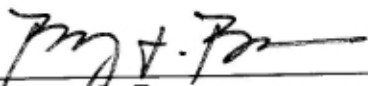
[Signature]  
Notary Public, State of UT



IN WITNESS WHEREOF, Tenant has executed this Subordination, Non-Disturbance and  
Attornment Agreement on the 14<sup>th</sup> day of June, 2021.

TENANT:

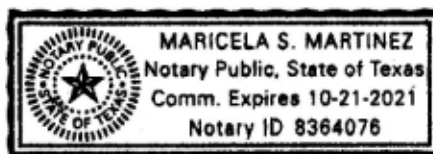
**RAISING CANE'S RESTAURANTS, L.L.C.**,  
a Louisiana limited liability company

By:   
Bryan L. Brown  
Chief Development Officer

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

BEFORE ME, the undersigned authority, on this 14<sup>th</sup> day of June, 2021, did  
personally appear Bryan L. Brown, Chief Development Officer of RAISING CANE'S  
RESTAURANTS, L.L.C., a Louisiana limited liability company, who acknowledged this  
instrument and stated that he executed same on behalf of said limited liability company.

  
Notary Public, State of Texas



IN WITNESS WHEREOF, Landlord has executed this Subordination, Non-Disturbance and Attornment Agreement on the 26<sup>th</sup> day of May, 2021.

LANDLORD:

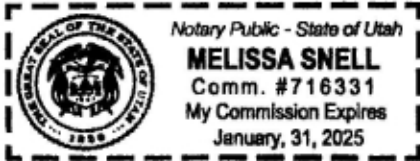
**CIG LAYTON, LLC,**  
a Utah limited liability company

By: Craig R. Kleinman  
Name: Craig Kleinman  
Its: Manager

By: James L. Hardy  
Name: James L. Hardy  
Its: Manager

STATE OF Utah §  
COUNTY OF Salt Lake §

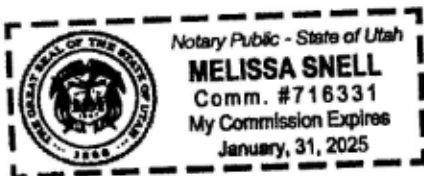
BEFORE ME, the undersigned authority, on this 26<sup>th</sup> day of May, 2021, did personally appear Craig Kleinman, Manager of CIG Layton, LLC, a Utah limited liability company, who acknowledged this instrument and stated that he executed same on behalf of said limited liability company.



[Signature]  
Notary Public, State of Utah

STATE OF Utah §  
COUNTY OF Salt Lake §

BEFORE ME, the undersigned authority, on this 26<sup>th</sup> day of May, 2021, did personally appear James Hardy, Manager of CIG Layton, LLC, a Utah limited liability company, who acknowledged this instrument and stated that he executed same on behalf of said limited liability company.



[Signature]  
Notary Public, State of Utah

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

That certain property located in Davis County, State of Utah, more particularly described as follows:

Beginning at a point on the North line of S.R. 108 (Antelope Drive), said point being 46.67 feet North  $0^{\circ}08'00''$  East from the South quarter corner of Section 8, Township 4 North, Range 1 West, Salt Lake Base and Meridian, the South quarter corner being located 173.95 feet South  $59^{\circ}53'31''$  West from a witness corner. The basis of bearing being between said witness corner and the witness corner for the Southwest corner, said basis of bearing being South  $88^{\circ}14'33''$  East; and running thence South  $89^{\circ}55'10''$  West, a distance of 315.81 feet along said North line of S.R. 108; thence along the East line of 700 West Street the following two calls: (1) North, a distance of 130.62 feet to a point on a 400.00 feet radius curve to the left and a central angle of  $03^{\circ}58'57''$ ; (2) Northerly along said curve a distance of 27.80 feet; thence East, a distance of 317.14 feet; thence South  $00^{\circ}08'00''$  West, a distance of 157.96 feet to the point of beginning.