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E# 3123825 PG 1 OF 10  
Leann H. Kilts, WEBER COUNTY RECORDER  
04-Feb-21 0352 PM FEE \$40.00 DEP PC  
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY  
ELECTRONICALLY RECORDED



Store No. 38847

PREPARED BY AND  
MAIL RECORDED ORIGINAL TO:  
Legal Department (Store No. 38847)  
7-Eleven, Inc.  
3200 Hackberry Road  
Irving, Texas 75063

*13801de-JCP*

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

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement"), made by and among 7-ELEVEN, INC., a Texas corporation ("Tenant"), with principal offices at 3200 Hackberry Road, Irving, Texas 75063; AMERICA FIRST FEDERAL CREDIT UNION ("Lender"), whose address is 4646 South 1500 West, Riverdale, Utah 84405; Attn: Commercial Real Estate Dept.; and C&N HARRISVILLE, LLC, a Utah limited liability company ("Landlord"), whose address is 1835 S. Highway 89, Perry, Utah 84302, executed to be effective as of the date of the last party's execution hereof (the "Effective Date").

**RECITALS:**

WHEREAS, Lender has agreed to make a loan to Landlord, to be secured by a Deed of Trust, dated February 2, 2021 and filed in the official records of Weber County, State of Utah (the "Official Records") on or about Feb. 4, 2021, as Instrument No. 3123808, Book N/A, Page N/A (together with all amendments, renewals, modifications, consolidations, spreaders, combinations, supplements, replacements, substitutions, and extensions, either current or future), and an assignment of all leases relating thereto, including the Lease (as defined below) (the "Security Instrument"), encumbering Landlord's ownership interest in real property located at 101 North Street, Ogden, which is more particularly described in Exhibit A, attached hereto and made a part hereof (the "Premises");

WHEREAS, pursuant to that certain Freestanding Lease dated February 27, 2019 (together with all amendments and modifications thereto, the "Lease"), evidenced by that certain Memorandum of Lease recorded or to be recorded in the Official Records, Landlord has leased all or part of the Premises to Tenant (the "Leased Premises");

NOW THEREFORE, to confirm their understanding concerning the legal effect of the Security Instrument and the Lease and, in consideration of the mutual covenants and agreements contained in this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord, Lender and Tenant, intending to be legally bound, agree and covenant as follows:

1. SUBORDINATION. Subject to the provisions of Sections 2 and 3 below, the Security Instrument shall constitute a lien on the Premises that is prior and superior to the Lease, and to the leasehold estate created by it. By this Agreement, the Lease, the leasehold estate created by it, together with all rights and privileges of Tenant under it, are subordinated, at all times, to the lien or charge of the Security Instrument in favor of Lender, and all supplements, amendments, modifications, renewals and extensions of the Security Instrument.

2. NON-DISTURBANCE. By execution of this Agreement, Lender consents to the Lease. Notwithstanding Section 28 of the Lease to the contrary, so long as the Lease is then in full force and effect and Tenant is not in material default under the Lease (beyond any period given Tenant by the terms of the Lease to receive written notice of any such default and the time period stated therein to cure) in the payment of rent or other amounts owed pursuant to the Lease or in the performance of any of the material terms, covenants or conditions of the Lease on Tenant's part to be performed, then Lender, any successor or assign of Lender, or any owner of the Premises following a foreclosure sale or conveyance in lieu of foreclosure (collectively, the "Lender Entities") acknowledge and agree that: (i) Tenant's possession of the Leased Premises, or any extension or renewal rights therefor in the Lease, shall not be disturbed, diminished or interfered with by the Lender Entities, (ii) the Lease shall not be terminated and all of Tenant's rights and privileges under the Lease shall be recognized by the Lender Entities, and (iii) the Lender Entities will not join Tenant as a party defendant in any action or proceeding foreclosing the Security Instrument unless such joinder is necessary to foreclose the Security Instrument and then only for such purpose and not for the purpose of terminating the Lease.

3. ATTORNTMENT. If (i) Lender or its successors and assigns shall become the owner of the Premises, (ii) the Premises shall be sold by reason of foreclosure or other proceedings brought to enforce the Security Instrument, or (iii) the Premises shall be transferred by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct lease between the then owner of the Premises and Tenant, and Tenant agrees to attorn to the owner of the Premises, said attornment to be effective and self-operative without the execution of any further instruments. Except as otherwise provided in Paragraph 6 below, Tenant shall be under no obligation to pay rent to Lender or any such other owner until Tenant receives written notice from Lender or any such other owner that it has succeeded to Landlord's interest under the Lease, upon which notice Tenant shall be entitled to rely.

4. NOTICE TO CURE DEFAULTS. Tenant agrees to provide to Lender a copy of any notice of default served upon Landlord which with the passage of time or otherwise would entitle Tenant to cancel the Lease or abate the rent under the Lease. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in the Lease, then Lender shall have an additional thirty (30) days after its receipt of notice within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default shall be granted if within such thirty (30) days Lender has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings necessary to effect such cure), in which event the Lease shall not be terminated while such remedies are being so diligently pursued, provided, that, such additional period of time shall not exceed ninety (90) additional days in the aggregate.

5. LIMITATION OF LIABILITY. In the event that Lender succeeds to the interest of Landlord under the Lease, then Lender and any successor to Lender's interest in the Lease shall assume and be bound by the obligations of Landlord under the Lease which accrue from and after such party's succession to any prior landlord's interest in the Leased Premises, but Lender shall not be:

(i) bound by any rent or additional rent which Tenant has paid more than one (1) month in advance to any prior landlord (including, without limitation, Landlord), except as expressly provided in the Lease;

(ii) liable for any act or omission of any prior landlord (including, without limitation, Landlord), except (a) for any tenant improvement allowance owed to Tenant under the Lease that has not been previously remitted to Tenant; or (b) to the extent a landlord default is non-monetary, relates to the repair or maintenance of the Premises, and continues to accrue after attornment, in which event, the successor landlord shall be bound to cure same within the time provided for in the Lease, which time shall be calculated from the date of attornment;

(iii) liable for the retention, application or return of any security deposit to the extent not paid over to Lender;

(iv) subject to any offsets or defenses which Tenant might have against any prior landlord (including, without limitation, Landlord), except as expressly provided in the Lease; or

(v) bound by any amendment or modification of the Lease made after the Effective Date without Lender's written consent, such consent not to be unreasonably withheld or delayed, that: (a) reduces rent or additional rent payments to the landlord under the Lease, or (b) shortens the term of the Lease, or (c) imposes any additional material obligations upon the landlord under the Lease. All other amendments or modifications of the Lease that do not relate to the provisions set forth herein shall not require Lender approval.

Notwithstanding the foregoing, nothing in this section shall be deemed to waive any of Tenant's rights and remedies against any prior landlord (including, without limitation, Landlord).

6. ASSIGNMENT OF LEASES. Tenant consents to the Assignment of Leases contained in the Security Instrument (collectively, the "Assignment"). Tenant agrees that after any foreclosure action, sale under a power of sale, transfer in lieu of the foregoing, or the exercise of any other remedy pursuant to the Security Instrument, if Lender, pursuant to the Assignment, and whether or not it becomes a mortgagee in possession, shall give written notice to Tenant that Lender has elected to require Tenant to pay to Lender the rent and other charges payable by Tenant under the Lease, Tenant agrees that it shall pay rent and all other sums due under the Lease directly to Lender without notice to or the consent of Landlord and without any obligation on the part of Tenant to determine whether or not the demand is proper. Landlord agrees that Tenant shall have the right to rely on any such notice from Lender without incurring any obligation or liability to Landlord as if such notice were given at the direction of Landlord.

7. LEASEHOLD IMPROVEMENTS AND BUSINESS FIXTURES. Lender agrees that it will not claim and shall not have or assert any right, title or interest in and to any leasehold

improvements and/or business fixtures installed upon the Leased Premises by Tenant pursuant to the terms of the Lease.

8. NOTICES. Any notices required or permitted hereunder shall be in writing and effective when delivered to the other party by: (a) courier; (b) United States Certified Mail, Return Receipt, postage prepaid; or (c) a nationally recognized overnight courier, shipping charges prepaid, to the addresses set forth below or to such other addresses as either party may designate in writing and deliver as provided in this Section 8. Any written correspondence delivered via e-mail or facsimile will not constitute formal notice.

If to Lender:

America First Federal Credit Union  
4646 South 1500 West, Suite 130  
Riverdale, Utah 84405  
Attn: Commercial Real Estate Dept.

If to Landlord:

C&N Harrisville, LLC  
1835 S. Highway 89  
Perry, Utah 84302

If to Tenant:

7-Eleven, Inc.  
Attn: Corporate Real Estate, Store #38847  
3200 Hackberry Road  
Irving, Texas 75063

Any notice, request, demand or other communication delivered or sent in the manner aforesaid shall be deemed delivered on the earlier to occur of (i) actual receipt, or (ii) the date of delivery, refusal or non-delivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to any party(ies) hereto at the addresses set forth above. Any party may change its address by notifying the other parties of the new address in any manner permitted by this paragraph.

9. JOINDER OF LANDLORD. Landlord hereby agrees to the subordination and attornment effected hereunder upon the terms herein stated.

10. SUCCESSORS AND ASSIGNS. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors and assigns, as applicable.

11. COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any

person intended to be a signatory hereto may execute this Agreement by signing any such counterpart.

12. GOVERNING LAW. The laws of the state in which the Premises are located shall govern the validity, performance and enforcement of this Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth in their respective acknowledgments.

*[The remainder of this page is intentionally left blank. The signature pages follow.]*

WITNESS the following signatures and seals.

LENDER:

AMERICA FIRST FEDERAL CREDIT UNION

By: *Amanda Kinnersley*  
 Name: *Shari Cheney*  
 Title: *Manager*

ACKNOWLEDGEMENT

STATE OF Utah §  
 COUNTY OF Davis §

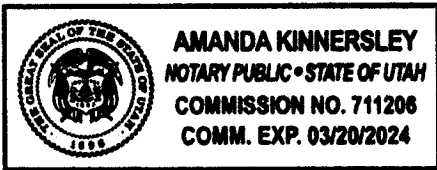
BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared *Shari Cheney*, the *Manager* of *America First*, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said entity and that he/she executed the same as the act of such entity for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2 day of February, 2021.

*Amanda Kinnersley*  
 (Notary signature)  
Amanda Kinnersley  
 (typed or printed name)

My commission expires: *3/20/2024*

(seal)



WITNESS the following signatures and seals.

TENANT:

7-ELEVEN, INC.,  
a Texas corporation

By: *Marijan Smith*  
Name: Marijan Smith  
Title: Assistant Secretary

**ACKNOWLEDGEMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Marijan Smith, an Assistant Secretary of 7-ELEVEN, INC., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said corporation and that he/she executed the same as the act of such corporation for the purposes therein expressed and in the capacity therein stated.

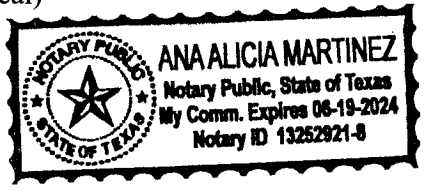
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29 day of January, 2021.

*Ana Alicia Martinez*  
(Notary signature)  
**Ana Alicia Martinez**

(typed or printed name)

My commission expires: 6-19-2024

(seal)



WITNESS the following signatures and seals.

LANDLORD:

C&N HARRISVILLE, LLC, a Utah limited liability company

*Natalie Forsyth*  
**NATALIE FORSYTH**  
**MANAGER**

By: *Christian W. Forsyth*  
 Name: **CHRISTIAN W. FORSYTH**  
 Title: **manager**

**ACKNOWLEDGEMENT**

STATE OF UTAH §  
 COUNTY OF DAVIS §

BEFORE ME, the undersigned, a Notary Public in and for the aforesaid County and State, on this day personally appeared **NATALIE FORSYTH and CHRISTIAN W. FORSYTH**, the **MANAGERS** of **C&N HARRISVILLE, LLC**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said entity and that he or she executed the same as the act of such entity for the purposes therein expressed and in the capacity therein stated.

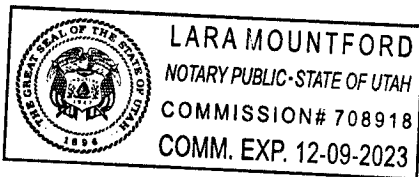
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2<sup>nd</sup> day of Feb, 2021.

*[Signature]*  
 (Notary signature)

(seal)

**LARA MOUNTFORD**  
 (typed or printed name)

My commission expires: 12/9/2023





## EXHIBIT A PROPERTY DESCRIPTION

### PARCEL 1:

Part of the Southwest quarter of Section 8, Township 6 North, Range 1 West, Salt Lake Meridian, U.S. Survey: Beginning at a point 1297.72 feet North and 326.7 feet West from the Southeast corner of said quarter section; thence North 263.7 feet; thence East 165.2 feet; thence South 263.7 feet; thence West 165.2 feet to the place of beginning.

LESS AND EXCEPTING THEREFROM that portion of the above described property deeded to the State Road Commission of Utah, by Deed recorded as Entry No. 30944 in Volume 130 of Deeds at Page 24.

ALSO LESS AND EXCEPTING THEREFROM that portion conveyed to the Utah Department of Transportation in that certain Warranty Deed recorded June 3, 2010 as Entry No. 2475743, being more particularly described as follows:

A parcel of land in fee for the traffic safety improvement of Highway State Route 204 known as Project No. S-0204(8)5, being part of an entire tract of property, situate in the Northeast quarter of the Southwest quarter of Section 8, Township 6 North, Range 1 West, Salt Lake Base and Meridian, and filed as Entry No. 1101740 in the Weber County Recorders office, Weber County, Utah. The boundaries of said parcel of land are described as follows:

Beginning at the intersection of the North right of way line of North Street, 33.0 feet wide, and the East line of said tract filed as Entry No. 1101740 being a point 1297.72 feet North and 326.7 feet West and East 165.2 feet, more or less, from the Southeast corner of said Southwest quarter section, and being South 88°50'11" East 227.70 feet along the monument line in North Street and North 01°17'34" East 33.00 feet from the Ogden City Street monument located at the intersection of Wall Avenue and North Street, being also at a point 9.00 feet perpendicularly distant Northerly from the centerline of said North Street, Engineers Station 56+36.42; thence North 88°50'11" West 147.70 feet along said North right of way line to a point in East right of way line of said Wall Avenue 100 feet wide, which point is 9.00 feet perpendicularly distant Northerly from the centerline of said North street, Engineers Station 54+88.72; thence North 01°17'34" East 48.43 feet along said East right of way line of Wall Avenue, to a point 57.42 feet perpendicularly distant Northerly from the centerline of said North Street at Engineers Station 54+88.84; thence South 41°48'49" East 17.62 feet to a point 44.54 feet perpendicularly distant Northerly from the centerline of said North Street at Engineers Station 55+00.84; thence South 01°09'49" West 31.03 feet to a point 13.51 feet perpendicularly distant Northerly from the centerline of said North Street at Engineers Station 55+00.84; thence South 88°44'50" East 100.34 feet to a point 13.36 feet perpendicularly distant Northerly from the centerline of said North Street at Engineers Station 56+01.18; thence South 81°47'21" East 35.51 feet to the East line of said tract filed as Entry No. 1101740 and the point of beginning.

### PARCEL 2:

Part of the Southwest quarter of Section 8, Township 6 North, Range 1 West, Salt Lake Meridian, U.S. Survey: Beginning at a point 1297.72 feet North and 161.7 feet West from the Southeast corner of said quarter section and running thence North 144.5 feet; thence East 76 feet; thence South 144.5 feet; thence West 76 feet to the place of beginning.

LESS AND EXCEPTING from Parcels 1 and 2 the following:

A tract of land in the Southeast quarter of Section 8, Township 6 North, Range 1 West, Salt Lake Base and Meridian: having a Basis of Bearing between the intersection monument at North Street and Wall Avenue and the intersection monument at North Street and Harrisville Road, which is South 89°09'45" East 947.14 feet, more particularly described as follows:

Beginning at a point that is on the North right of way line of North Street, which is South 89°09'45" East 226.80 feet and North 00°50'15" East 33.00 feet from the intersection monument at North Street and Wall Avenue; thence the next two (2) courses following the existing right of way, (1) North 82°07'17" West 35.51 feet, (2) North 89°04'24" West 100.34 feet to the existing Utah Department of Transportation Parcel No. 11-038-0026; thence North 00°50'15" East 14.50 feet; thence South 89°09'45" East 75.00 feet; thence South 84°26'04" East 137.05 feet; thence South 00°50'11" West 7.71 feet to the North right of way line of North Street; thence North 89°09'45" West 76.00 feet to the point of beginning.

Tax Id No.: 11-038-0037 and 11-038-0036