

Tax Serial Number:

RECORDATION REQUESTED BY:

BANK OF UTAH
OGDEN LOAN CRE
2605 WASHINGTON BLVD
OGDEN, UT 84401

WHEN RECORDED MAIL TO:

BANK OF UTAH
OGDEN LOAN CRE
2605 WASHINGTON BLVD
OGDEN, UT 84401

SEND TAX NOTICES TO:

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 AND ESTOPPEL CERTIFICATE

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT dated December 9, 2021 ("Agreement"), is made and executed among TFC Antelope and Main, LLC, whose address is 6770 South 900 East, Suite 300, Midvale, Ut 84047 ("Landlord"); Poco Locos, LLC, whose address is 14765 Main Street, Hesperia, California, 92345 ("Tenant"); and BANK OF UTAH, OGDEN LOAN CRE, 2605 WASHINGTON BLVD, OGDEN, UT 84401 ("Lender").

SUBORDINATED LEASE. Tenant and Landlord have executed a lease dated June 7, 2021 of the property described herein and all amendments thereto (the "Subordinated Lease"). The following information is the summary of the basic terms and conditions of the Subordinated Lease: A lease agreement made between TFC Antelope and Main, LLC as "Landlord" and Pocos Locos, LLC as "Tenant" dated June 7th, 2021.

REAL PROPERTY DESCRIPTION. The Subordinated Lease covers Lot 4 of the following described real property (the "Real Property") located in Davis County, State of Utah:

See "Exhibit A" attached hereto and made a part hereof.

The Real Property or its address is commonly known as the proposed Antelope And Main Commercial Subdivision. The Real Property tax identification number is ~~09-022-0171~~ 09-022-0180

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"):

The PROMISSORY NOTE between TFC Antelope and Main, LLC as "Borrower" and Bank of Utah as "Lender" dated August 30, 2021, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

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 August 30, 2021, from Landlord to Lender (the "Lender's Lien") and recorded in Davis County, State of Utah as follows:

Recorded on September 1, 2021; as Entry No. 3414580; in Book No. 7835; on Page No. 1767-1778 in the Office of the Davis County, Utah Recorder.

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 and Tenant each want 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:

ESTOPPEL CERTIFICATE. Tenant hereby certifies to and agrees with Lender that as of the date of this Agreement, Lender is relying on all of the following certifications and agreements of Tenant as consideration for Lender executing this Agreement:

- (A) The Subordinated Lease is in full force and effect and is the valid and binding obligation of Tenant, enforceable in accordance with its terms.
- (B) Neither Tenant nor Landlord is in default under the Subordinated Lease and no event has occurred and no condition exists, which with the giving of notice, the passage of time, or both, would constitute a default by Tenant or Landlord under the Subordinated Lease.
- (C) There are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Subordinated Lease and no claim by Tenant of any nature exists against Landlord under the Subordinated Lease. All obligations of Landlord have been fully performed.
- (D) None of the rent, which Tenant is required to pay under the Subordinated Lease, has been prepaid, or will in the future be prepaid, more than one month in advance.
- (E) The Subordinated Lease shall not after the date of this Agreement be modified, terminated, or amended, without the prior written consent of Lender for any termination and each such amendment or modification. Any attempted modification, termination, or amendment without the prior written consent of Lender shall be void.
- (F) Tenant has not assigned, mortgaged, sublet, encumbered or otherwise transferred any or all of its interest under the Subordinated Lease and, during the term of the Loan, agrees to not assign, mortgage, sublet, encumber, or otherwise transfer any or all of its interest under the Subordinated Lease without the prior written consent of Lender.

SUBORDINATION. Notwithstanding anything in the Subordinated Lease to the contrary, the parties acknowledge and agree that the Subordinated 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 Subordinated 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.

NON-DISTURBANCE. So long as the Subordinated Lease is in full force and effect and Tenant is not in default under the Subordinated 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 Subordinated Lease or otherwise adversely affect Tenant's rights under the Subordinated Lease or this Agreement in such action. If the Subordinated 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 Subordinated Lease, except in accordance with the terms of the Subordinated Lease and this Agreement.

ATTORNNMENT. If Lender shall succeed to the interest of the Landlord under the Subordinated Lease, and the Subordinated Lease shall not have expired or been terminated in accordance with the terms of the Subordinated Lease or this Agreement, Tenant shall, from and after such event, attorn to Lender, all rights and obligations under the Subordinated 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 Subordinated Lease on Tenant's part to be performed that are available to Lender under the Subordinated Lease. Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Subordinated Lease that Tenant might have had against Lender 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 Subordinated 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 Subordinated 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 Subordinated 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 Subordinated Lease between Landlord and Tenant, which Subordinated Lease shall cover any unexpired term of the Subordinated Lease existing prior to such transfer.

ACKNOWLEDGMENT AND AGREEMENT BY LANDLORD. Landlord, as landlord under the Subordinated 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 Subordinated Lease to Lender as provided in the Subordinated Lease.

COUNTERPARTS AND ELECTRONIC SIGNATURES. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original instrument and all of which shall constitute a single agreement. The signature of a party to any counterpart shall be sufficient to legally bind such party and it shall not be necessary for all parties to sign all counterparts. Lender may remove the signature pages from one or more counterparts and attach the same to any other counterpart for the purpose of having a single document containing the signatures of all parties. Any party may effect the execution and delivery of this Agreement by signing the same and sending a signed copy thereof to Lender or its attorney by facsimile, e-mail, or other form of electronic transmission (each an "Electronic Transmission"). Any signed document sent by Electronic Transmission, including the signature thereon, shall be treated in all respects as an original instrument bearing an original signature. Any party sending a signed copy hereof by Electronic Transmission shall also send the original thereof to Lender within five (5) days thereafter, but failure to do so shall not invalidate or otherwise affect the validity, legality or enforceability of the document sent by Electronic Transmission.

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 Lender institutes any suit or action to enforce any of the terms of this Agreement, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees 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 reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable 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. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Utah without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Utah.

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. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing among Lender, Landlord, and Tenant shall constitute a waiver of any of Lender'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.

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

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 December 9, 2021.

LANDLORD:



By:

JASON E SMITH

LENDER:

BANK OF UTAH

X 
Authorized Officer

TENANT:


By: Liborio Alvarez Jr.

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH)

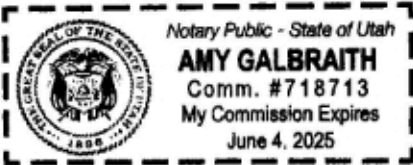
) SS

COUNTY OF SALT LAKE)

On this 10th day of December, 2021, before me, the undersigned Notary Public, personally appeared Jason E. Smith, **Manager of TFC Antelope and Main, LLC** and known to me to be members or designated agents of the limited liability company that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By [Signature] Residing at Salt Lake City, UT

Notary Public in and for the State of Utah My commission expires 6/4/2025



LENDER ACKNOWLEDGMENT

STATE OF Utah)

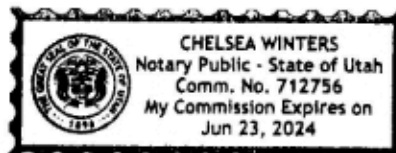
) SS

COUNTY OF Weber)

On this 20th day of December, 20 21, before me, the undersigned Notary Public, personally appeared Steve Diamond and known to me to be the SVP Commercial, authorized agent for **BANK OF UTAH** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **BANK OF UTAH**, duly authorized by **BANK OF UTAH** through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of **BANK OF UTAH**.

By Chelsea Winters Residing at Weber-Ogden

Notary Public in and for the State of Utah My commission expires 6-23-24



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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 San Bernardino

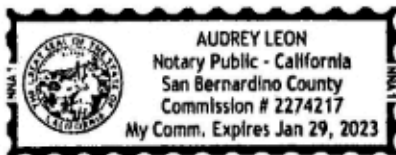
On December 8, 2021 before me, Audrey Leon, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Liborio Alvarez Jr.
Name(s) of Signer(s)

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 Audrey Leon
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer – Title(s): _____
- Partner – Limited General
- Individual Attorney in Fact
- Trustee Guardian of Conservator
- Other: _____

Signer is Representing: _____

Signer's Name: _____

- Corporate Officer – Title(s): _____
- Partner – Limited General
- Individual Attorney in Fact
- Trustee Guardian of Conservator
- Other: _____

Signer is Representing: _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____)

) SS

COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned Notary Public, personally
a p p e a r e d

and known to me to be (an) authorized agent(s) of the corporation that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she/they is/are authorized to execute this Agreement and in fact executed the Agreement on behalf of the corporation.

By _____ Residing at _____

Notary Public in and for the State of _____ My commission expires _____

Exhibit "A"

Legal Description

Real property in the City of Layton, County of Davis, State of Utah, described as follows:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ANTELOPE DRIVE, SAID POINT BEING NORTH 00°03'10" EAST 58.00 FEET AND SOUTH 89°47'00" WEST 818.96 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 89°47'00" WEST 171.13 FEET ALONG THE NORTHERLY RIGHT OF WAY LINE OF ANTELOPE DRIVE; THENCE NORTH 35°21'39" WEST 9.85 FEET; THENCE NORTH 89°58'57" WEST 19.11 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MAIN STREET; THENCE NORTH 36°47'00" WEST 360.95 FEET ALONG SAID RIGHT OF WAY LINE TO THE SOUTHERLY LINE OF ARBY'S SUBDIVISION; THENCE NORTH 53°13'00" EAST 159.19 FEET; THENCE NORTH 89°47'00" EAST 284.94 FEET; THENCE SOUTH 00°03'10" WEST 392.88 FEET TO THE POINT OF BEGINNING.

(ROTATE BEARINGS 00°20'24" CLOCKWISE FOR NAD83 BEARINGS)

APN: ~~09-022-0171~~

09-022-0186