

RECORDING REQUESTED BY
FIRST AMERICAN TITLE INSURANCE CO.
NATIONAL COMMERCIAL SERVICES

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BK 8340 PG 397

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
09/19/2023 11:43:35 AM
FEE: \$40.00 Pgs: 9
DEP eCASH REC'D FOR: FIRST AMERICAN TITLE
INSURANCE COMPANY

NCS - 1085579-SA1

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

IN-N-OUT BURGERS
13502 Hamburger Lane
Baldwin Park, CA 91706-5885
Attention: Real Estate Department

RETURN BY: MAIL (X) PICK UP ()

Tax Parcel No. 10-042-0040

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this 12th day of September, 2023, by and among RIVERSTONE BANK ("Lender"), IN-N-OUT BURGERS, a California corporation ("Tenant"), and KA LAYTON HOTEL, LLC, a Utah limited liability company ("Landlord").

RECITALS:

A. Landlord has executed and delivered to Lender the following security instruments (collectively, the "Security Documents"):

- (i) Deed of Trust from Landlord to Cottonwood Title Agency for the benefit of Lender dated June 13, 2022 and recorded June 16, 2002 as Entry No. 3483066 in Book 8032, Page 189, in the records (the "Records") of Davis County, Utah, and conveying or encumbering the property located at 1977 North 1200 West, Layton, Utah (the "Property");
- (ii) Revolving Credit Deed of Trust from Landlord to Cottonwood Title Agency for the benefit of Lender dated June 13, 2022 and recorded June 16, 2002 as Entry No. 3483067 in Book 8032, Page 203, in the Records, and conveying or encumbering the Property;
- (iii) UCC Financing Statement naming Landlord as debtor and Lender as secured party, recorded June 16, 2022 as Entry No. 3483084 in Book 8032, Page 277, in the Records, and encumbering the Property; and
- (iv) Assignment of Rents from Landlord to Lender, recorded August 3, 2022 as Entry No. 3490988 in Book 8063, Page 509 in the Records, and encumbering the Property.

B. The Security Documents affect certain property including the land described on Exhibit A, which is owned by Landlord and leased to Tenant pursuant to the Ground Lease dated the 26th day of July, 2023 (as may have been or hereafter be amended from time to time, the "Ground Lease").

C. The Premises (as such term is defined in the Ground Lease) are a part of the Property conveyed or mortgaged to Lender pursuant to the Security Documents; and the parties desire to enter into this agreement with respect to the Security Documents and the Ground Lease.

In consideration of the premises and the mutual covenants set forth in this Agreement, Lender, Tenant and Landlord covenant and agree, intending to be legally bound, as follows:

1. Subordination. The Ground Lease is now and will remain subordinate to the lien of the Security Documents and to the lien of any renewals, modifications, consolidations, extensions,

increases and replacements of the Security Documents, subject to the terms and conditions of this Agreement. In no event, however, shall Lender have any interest in any improvements constructed on the Premises by Tenant or any of Tenant's Personalty (as such term is defined in the Ground Lease) or any insurance, proceeds or awards with respect thereto by virtue of this Agreement.

2. **Non-Disturbance.** Lender covenants and agrees that, as long as no default exists, and no event has occurred and has continued to exist for such period of time (after notice and expiration of all cure periods, if any, required by the Ground Lease) as would entitle the Landlord or any other party, including Lender, succeeding to Landlord's interest under the Ground Lease (each, a "**Successor Landlord**") to terminate the Ground Lease, (i) Lender will not terminate the Ground Lease, (ii) Lender will not interfere with Tenant's use, possession or enjoyment of the Premises, and (iii) if Lender or any other person or entity becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, the Premises will be subject to the Ground Lease, and Successor Landlord will recognize Tenant as the tenant of the Premises for the remainder of the term, including all renewal terms, in accordance with the provisions of the Ground Lease. Lender agrees that it will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating the Ground Lease because of any default of Landlord under the Security Documents.

3. **Attornment.** If the interests of the Landlord are transferred by any foreclosure or other proceeding for enforcement of the Security Documents, Tenant will be bound to the Successor Landlord with the same force and effect as if the Successor Landlord were the original Landlord under the Ground Lease. Tenant will attorn to any such Successor Landlord as its Landlord under the Ground Lease. The attornment will be effective and self-operative without the execution of any further instruments upon the succession by any such Successor Landlord to the interest of the Landlord under the Ground Lease.

4. **No Liability for Successor Landlord.** Successor Landlord, in the event of Tenant's attornment in accordance with Section 3 of this Agreement, shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default under the terms of the Ground Lease) in the payment of Rent or in the performance of any of the terms, covenants, and conditions of the Ground Lease on Tenant's part to be performed that are available to Landlord under the Ground Lease. Tenant shall have the same remedies against Successor Landlord for the breach of an agreement contained in the Ground Lease that Tenant might have had against Landlord if Successor Landlord had not succeeded to the interest of Landlord; provided, however, that Successor Landlord shall not be:

(a) Bound by any Rent which Tenant might have paid for more than the current month to any prior landlord, including Landlord (unless such advance payment is required under the Ground Lease); or

(b) Bound by any amendment or modification of the Ground Lease made without its consent (except for any amendment that extends or changes any contingency periods set forth in the Ground Lease including, without limitation, the Permit Period or the Inspection Period (as such terms are defined in the Lease); or

(c) Liable for any sum that any prior landlord, including Landlord, owed to Tenant prior to Successor Landlord succeeding to Landlord's interest under the Ground Lease unless (i) the amount owed was actually delivered to Successor Landlord or (ii) Lender had notice thereof and an opportunity to cure as provided under this Agreement and failed to timely do so; or

(d) Bound by any surrender, cancellation, or termination of the Ground Lease, in whole or in part, agreed upon between Landlord and Tenant that is not otherwise contemplated under the Ground Lease.

5. **Notice of Default by Landlord.** Tenant covenants and agrees to give Lender written notice simultaneously with the giving of any notice of default to the Landlord under the provisions

of the Lease or promptly thereafter. Tenant agrees that Lender will have the right, but not the obligation, within thirty (30) days after receipt by Lender of such notice to correct or remedy, or cause to be corrected or remedied, each such default before Tenant may take any action under the Ground Lease by reason of such default. The notices to Lender will be delivered to:

Riverstone Bank
500 West 18th Street
P.O. Box 129
Cheyenne, WY 82003-0129

or to such other address as the Lender designates to Tenant by giving written notice to Tenant at In-N-Out Burgers, 13502 Hamburger Lane, Baldwin Park, California 91706-5885; Attn: Real Estate Dept., or to such other address as may be designated by written notice from Tenant to Lender. Notices will be given and will be effective in accordance with Section 18.15 of the Ground Lease.

6. **Assignment of Rents.** Tenant hereby acknowledges notice that pursuant to the Security Documents, Landlord has granted to Lender an absolute, present assignment of the Ground Lease and Rent payable thereunder which provides that Tenant continue making payments of Rent and other amounts owed by Tenant under the Ground Lease to the Landlord and to recognize the rights of Landlord under the Ground Lease until notified otherwise in writing by Lender. After receipt of such notice from Lender, Tenant shall thereafter make all such payments directly to Lender or as Lender may otherwise direct, without any further inquiry on the part of Tenant. Landlord consents to the foregoing and waives any right, claim or demand which Landlord may have against Tenant by reason of such payments to Lender or as Lender directs.

7. **As to Landlord and Tenant.** As between Landlord and Tenant, Landlord and Tenant covenant and agree that nothing contained in this Agreement, nor anything done pursuant to the provisions of this Agreement will be deemed or construed to modify the Ground Lease.

8. **As to Landlord and Lender.** As between Landlord and Lender, Landlord and Lender covenant and agree that nothing contained in this Agreement, nor anything done pursuant to the provisions of this Agreement will be deemed or construed to modify the Security Documents.

9. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state in which the Property is located.

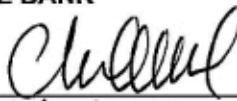
10. **Provisions Binding.** The terms and provisions of this Agreement will be binding on and will inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Lender, Tenant and Landlord.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

Lender, Landlord and Tenant have executed this Agreement as of the day, month and year first written above.

"LENDER"

RIVERSTONE BANK

By: 
Name: CHRIS ALKED
Title: WYOMING MARKET PRESIDENT

"TENANT"

IN-N-OUT BURGERS., a California corporation

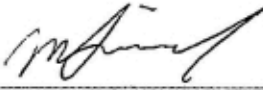
SIGNED IN COUNTERPART

By: _____
Name: _____
Title: _____

[SIGNATURES CONTINUED ON NEXT PAGE]

"LANDLORD"

KA LAYTON HOTEL, LLC, a Utah limited liability
company

By: 
Name: MANWINDER SINGH
Title: MEMBER

Lender, Landlord and Tenant have executed this Agreement as of the day, month and year first written above.

"LENDER"

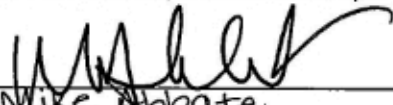
RIVERSTONE BANK

SIGNED IN COUNTERPART

By: _____
Name: _____
Title: _____

"TENANT"

IN-N-OUT BURGERS., a California corporation

By:  _____
Name: Mike Abbate
Title: Asst. Vice Presi

[SIGNATURES CONTINUED ON NEXT PAGE]


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) ss.

On September 12, 2023 before me, Lori Brazzill, Notary Public, personally appeared Mike Abbate 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 



(Seal)

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 _____)
COUNTY OF _____) ss.

On _____ before me, _____, Notary Public, personally appeared _____ 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 _____

(Seal)

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.

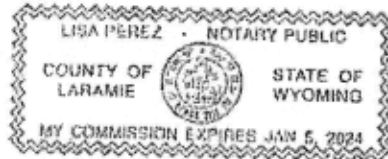
STATE OF Wyoming)
COUNTY OF Laramie) ss.

On August 31, 2023 before me, Lisa Perez, Notary Public, personally appeared Chris Alred 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 *Lisa Perez*



(Seal)

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 Utah)
COUNTY OF Salt Lake) ss.

On Aug 31, 2023 before me, Hector Hernandez, Notary Public, personally appeared Maninder Singh 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 *H/H*

(Seal)

