

Unique Doc ID: 1564618
Recorded: 5/22/2019 at 2:22:25.0 PM
County Recording Fee: \$47.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$50.00
Revenue Tax:
Rita A. Vargas RECORDER
Number: 201900011935
Scott County, Iowa

TYPE OF DOCUMENT:

Non-Disturbance and Attornment Agreement

PREPARER INFORMATION:

Tim O'Neill
O'Neill, Heinrich, Damkroger,
Bergmeyer & Shultz, P.C., L.L.O.
121 South 13th Street, Suite 800
Lincoln, NE 68508

Address Tax Statement:

Southern Hospitality Ventures, Inc.
PO Box 83327
Lincoln, NE 68501-3327

RETURN DOCUMENT TO:

Tim O'Neill
O'Neill, Heinrich, Damkroger,
Bergmeyer & Shultz, P.C., L.L.O.
121 South 13th Street, Suite 800
Lincoln, NE 68508

LANDLORD: WCT Investments, LLC – Davenport Series

TENANT: Southern Hospitality Ventures, Inc.

LEGAL DESCRIPTION: Lot Two (2), of the Final Plat of Hanlin's Crossing, a re-subdivision of a part of Lots Six (6) and Seven (7), of Hanlin's Addition to the Northeast Quarter of the Southeast Quarter (NE¼ SE¼) of Section Seven (7), Township Seventy-Eight (78) North, Range Four (4) East of the 5th P.M., Scott County, Iowa.

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made and entered into as of the date of the last signatory hereto, by and between Southern Hospitality Ventures, Inc. ("Tenant") and Morton Community Bank ("Lender"), and WCT Investments, LLC – Davenport Series ("Landlord").

RECITALS:

WHEREAS, Landlord and Tenant executed a Reverse Build to Suit Lease dated as of October 24, 2018 (the "Lease"), a memorandum of which was recorded on November 5, 2018 at Instrument Number 201800051399, of the official records of the Scott County, State of Iowa covering a 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 Construction Mortgage (the "Mortgage") dated October 1, 2018 and recorded on October 3, 2018 at Instrument Number 2018-00031521 of the official records of the Scott County, State of Iowa in favor of Lender, payable upon the terms and conditions described therein; and

WHEREAS, it is a condition to the Mortgage that the Mortgage 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 Mortgage, 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 Mortgage 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 Mortgage 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; and (d) 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.

Before exercising any of its rights and remedies under the Lease for a Landlord default, Tenant will send written notice to Lender of the occurrence of any default by Landlord and will specify with reasonable clarity the events constituting such default, and thereupon Lender shall have the right (but not the obligation) to cure such default. If the referenced default would entitle Tenant to cancel the Lease, no such cancellation will be effective unless Lender receives such notice specifying such Landlord default in reasonable detail, and affording Lender a reasonable opportunity to cure such Landlord default, at its election, for and on behalf of Landlord, except that (i) Lender shall have at least forty-five (45) days to cure the default if it is a non-monetary default [or fifteen (15) business days, in the event of a monetary default]; (ii) if any nonmonetary default cannot be cured with reasonable diligence and continuity within forty-five (45) days, Lender shall have any additional time as may be reasonably necessary to cure such Landlord default provided that Lender commences said cure within forty-five (45) days and thereafter diligently pursues the cure of said failure; and (iii) if any nonmonetary default cannot reasonably be cured without Lender having obtained possession of the Premises, Lender shall have such additional time as may be reasonably necessary under the circumstances to obtain possession of the Property and thereafter to cure the default with reasonable diligence and continuity.

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 or by certified or registered U.S. mail, postage prepaid, return receipt requested 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: Southern Hospitality Ventures, Inc.
1220 Lincoln Mall, Suite 200
Lincoln, NE 68508

With a copy to: Tim O'Neill
O'Neill, Heinrich, Damkroger,
Bergmeyer & Shultz, P.C., L.L.O.
800 Lincoln Square
121 South 13th Street
Lincoln, NE 68508

Lender: Morton Community Bank
721 West Jackson Street
Morton, IL 61550

Landlord: WCT Investments, LLC – Davenport Series
2813 N Main Street
East Peoria, Illinois 61611

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.

6. Said Mortgage 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 including, but not limited to, all kitchen equipment, signs and sign poles, cabinets, counters, menu and reader boards and neon lighting. 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 Mortgage.

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 to the extent allowed by law.

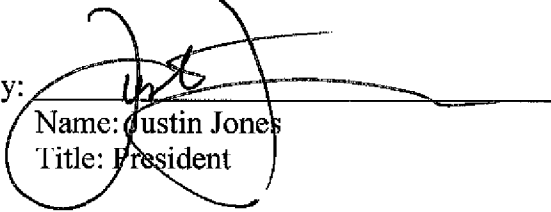
9. Tenant shall not be joined as a party/defendant in any action or proceeding which may be instituted or taken by reason of any default by Landlord in the performance of the terms, covenants, conditions and agreements set forth in the Mortgage.

[SIGNATURES CONTAINED ON SEPARATE PAGES.]

IN WITNESS WHEREOF, the parties hereto have caused this Non-Disturbance and
Attornment Agreement to be executed on the 20 day of May, 2019.

TENANT: Southern Hospitality Ventures, Inc.

By:

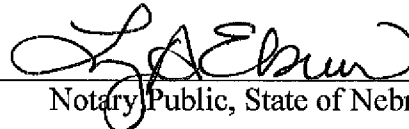

Name: Justin Jones
Title: President

STATE OF NEBRASKA

§
§
§

COUNTY OF LANCASTER

BEFORE ME, the undersigned authority, on this 20th day of May, 2019,
did personally appear Justin Jones, President of Southern Hospitality Ventures, Inc., a Nebraska
corporation, who acknowledged this instrument and stated that he executed same on behalf of
corporation.


Notary Public, State of Nebraska

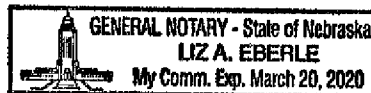


Exhibit A To Non-Disturbance and Attornment Agreement

LEGAL DESCRIPTION OF THE PROPERTY

Lot Two (2), of the Final Plat of Hanlin's Crossing, a re-subdivision of a part of Lots Six (6) and Seven (7), of Hanlin's Addition to the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Seven (7), Township Seventy-Eight (78) North, Range Four (4) East of the 5th P.M., Scott County, Iowa.