

Recorded: 8/7/2018 at 9:41:23.0 AM  
Fee Amount: \$42.00  
Revenue Tax:  
Polk County, Iowa  
Julie M. Haggerty RECORDER  
Number: 201800010783  
BK: 17029 PG: 347

**TYPE OF DOCUMENT:** Non-Disturbance and Attornment Agreement

**PREPARER INFORMATION:**

Courtney Schultz  
Hogan Law Office  
3101 Ingersoll Ave, Suite 103  
Des Moines, Iowa 50312

**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 13<sup>th</sup> Street, Suite 800  
Lincoln, NE 68508

**LANDLORD:** WAYSIDE ACRES, LLC

**TENANT:** SOUTHERN HOSPITALITY VENTURES, INC.

**LENDER:**

**LEGAL DESCRIPTION:** A PART OF LOT 1, WAYSIDE ACRES COMMERCIAL, AN OFFICIAL PLAT IN THE CITY OF ALTOONA, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 00°06'07" WEST ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 299.70 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 89°58'02" WEST ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 182.00 FEET; THENCE NORTH 00°06'07" EAST, 208.77 FEET; THENCE SOUTH 89°59'25" WEST, 30.00 FEET TO THE NORTHERLY LINE OF SAID LOT 1; THENCE NORTH 00°06'07" EAST ALONG SAID NORTHERLY LINE, 90.94 FEET; THENCE NORTH 89°58'30" EAST CONTINUING ALONG SAID NORTHERLY LINE, 212.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.31 ACRES (57,276 SQUARE FEET).

BUILD TO SUIT LEASE: SHV# 13 3052 8<sup>TH</sup> STREET SW, ALTOONA, 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 University of Iowa Credit Union ("Lender"), and Wayside Acres, LLC ("Landlord").

**RECITALS:**

WHEREAS, Landlord and Tenant executed a Reverse Build to Suit Lease dated as of June 22, 2018 (the "Lease"), a memorandum of which was recorded on August 1, 2018 at Instrument Number 201800008903, Book 17021, page 355, of the official records of the Polk 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 Purchase Money Construction Mortgage (the "Mortgage") dated March 1, 2017 and recorded on March 6, 2017 in Book 16394, Page 937 of the official records of the Polk 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. Further notwithstanding anything contained in this Agreement to the contrary, until such time as the Improvement Cost as defined in the Lease has been paid by Landlord, Lender, or any successor to the interest of Landlord shall remain liable to Tenant for Landlord's obligations or duties under the Lease after Lender forecloses the lien of the Mortgage or accepts a conveyance in lieu of such foreclosure.

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 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 13<sup>th</sup> Street  
Lincoln, NE 68508

Lender: University of Iowa Credit Union  
2355 Landon Road  
PO Box 800  
North Liberty, IA 52317

Landlord: Wayside Acres, LLC  
2540 73<sup>rd</sup> Street  
Urbandale, IA 50322

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 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 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.

IN WITNESS WHEREOF, the parties hereto have caused this Non-Disturbance and  
Attornment Agreement to be executed on the 11<sup>th</sup> day of July, 2018.

LENDER:  
By: [Signature]  
Name:  
Title:

STATE OF Iowa §  
  §  
COUNTY OF Dallas §

BEFORE ME, the undersigned authority, on this 11<sup>th</sup> day of July,  
2018, did personally appear John Poley, Market President Commer. of  
WICCU, a Credit Union, who acknowledged this instrument  
and stated that he executed same on behalf of Credit Union.

[Signature]  
Notary Public, State of IA



BUILD TO SUITE LEASE: SHV# 13 3032 8<sup>TH</sup> STREET SW, ALTOONA, IOWA

**IN WITNESS WHEREOF**, the parties hereto have caused this Non-Disturbance and  
Attornment Agreement to be executed on the 16<sup>th</sup> day of July, 2018.

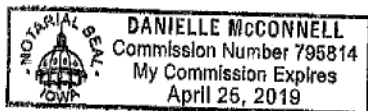
LANDLORD: Wayside Acres, LLC

By [Signature]  
Name: JAMES RIZZUTI  
Title: MEMBER

STATE OF Iowa §  
                                  §  
COUNTY OF Polk §

BEFORE ME, the undersigned authority, on this 16<sup>th</sup> day of July, 2018,  
did personally appear James Rizzuti, Manager of Wayside Acres, LLC, an  
Iowa limited liability company, who acknowledged this instrument and stated that he executed  
same on behalf of the company.

Danielle McConnell  
Notary Public, State of Iowa



IN WITNESS WHEREOF, the parties hereto have caused this Non-Disturbance and  
Attornment Agreement to be executed on the 25 day of July, 2018.

TENANT: Southern Hospitality Ventures, Inc.

By: [Signature]  
Name: Justin Jones  
Title: President

STATE OF Florida §  
  §  
COUNTY OF Walton §

BEFORE ME, the undersigned authority, on this 25 day of July, 2018,  
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.

[Signature]  
Notary Public, State of Florida

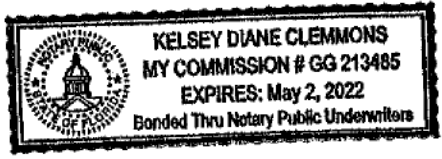


Exhibit A To Non-Disturbance and Attornment Agreement

LEGAL DESCRIPTION OF THE PROPERTY

A PART OF LOT 1, WAYSIDE ACRES COMMERCIAL, AN OFFICIAL PLAT IN THE CITY OF ALTOONA, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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