

2017-06773

**KELLIE JOHN
BUFFALO COUNTY REGISTER OF DEEDS
KEARNEY, NEBRASKA
RECORDED ON: 11/13/2017 11:43:25 AM
AGREEMENT
REC FEE: 52.00
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ESCROW:
CK INFO: ACH SIMPLIFILE**

**REC'D: SIMPLIFILE
SUB: NE TITLE COMPANY-
LINCOLN 207**

TYPE OF DOCUMENT:

Non-Disturbance and Attornment Agreement

RETURN DOCUMENT 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

LANDLORD: JoEl Investment Group, LLC

TENANT: Southern Hospitality Ventures, Inc.

LENDER: Great Western Bank

LEGAL DESCRIPTION: Lot No. Forty-eight (48), EXCEPT the East 14 feet and the West 25 feet thereof, in Perkins and Harford's Second Addition to the City of Kearney, Buffalo County, Nebraska.

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 Great Western Bank ("Lender"), and JoEl Investment Group, LLC ("Landlord").

RECITALS:

WHEREAS, Landlord and Tenant executed a Lease dated as of October 12, 2017 (the "Lease"), a memorandum of which was recorded on October 26, 2017 at Instrument Number 2017-06454, of the official records of the Buffalo County Register of Deeds, State of Nebraska 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's predecessor in interest has executed a Construction Deed of Trust (the "Deed of Trust") dated May 17, 2017 and recorded on May 23, 2017 at Instrument Number 2017-02853 of the official records of the Buffalo County Register of Deeds, State of Nebraska in favor of Lender, payable upon the terms and conditions described therein; and

WHEREAS, it is a condition to the Deed of Trust that the Deed of Trust 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 Deed of Trust, 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 Deed of Trust 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 Deed of Trust 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 Deed of Trust 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.
PO Box 83327
Lincoln, NE 68501-3327

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: Great Western Bank
1235 N Street
Lincoln, NE 68508

Landlord: JoEl Investment Group
PO Box 83327
Lincoln, NE 68501-3327

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 Deed of Trust 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 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.

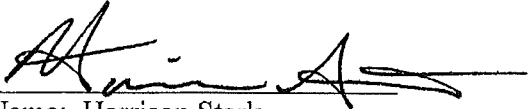
7. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, heirs and assigns and any subsequent owner of the Property secured by the Deed of Trust.

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 Deed of Trust unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing Lender's right and remedies as a result of such default by Landlord. But such joinder shall not terminate the Lease or otherwise adversely affects Tenant's rights under the Lease.

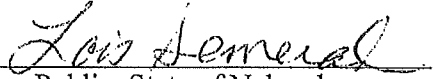
[see following pages for signatures]

LENDER: Great Western Bank

By: 
Name: Harrison Stark
Title: Business Banker

STATE OF NEBRASKA §
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COUNTY OF LANCASTER §

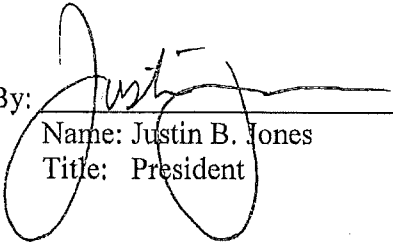
BEFORE ME, the undersigned authority, on this 31st day of October, 2017, did personally appear Harrison Stark, Business Banker of Great Western Bank, who acknowledged this instrument and stated that he executed same on behalf of the Bank.



Notary Public, State of Nebraska

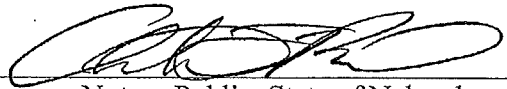


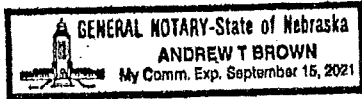
TENANT: Southern Hospitality Ventures, Inc.

By: 
Name: Justin B. Jones
Title: President

STATE OF NEBRASKA §
 §
COUNTY OF LANCASTER §

BEFORE ME, the undersigned authority, on this 8th day of November, 2017, did personally appear Justin B. 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



LANDLORD: JoEl Investment Group, LLC

By: JENNIFER JONES
Name: Jennifer A. Jones
Title: Manager

STATE OF NEBRASKA

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COUNTY OF LANCASTER

BEFORE ME, the undersigned authority, on this 8th day of November, 2017, did personally appear Jennifer A. Jones, Manager of JoEl Investment Group, LLC, a Nebraska limited liability company, who acknowledged this instrument and stated that she executed same on behalf of the Company.



Notary Public, State of Nebraska

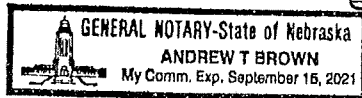


Exhibit A To Non-Disturbance and Attornment Agreement

LEGAL DESCRIPTION OF THE PROPERTY

Lot No. Forty-eight (48), EXCEPT the East 14 feet and the West 25 feet thereof, in Perkins and Harford's Second Addition to the City of Kearney, Buffalo County, Nebraska.