

Invest Title 149627
PT 13-042-0013

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Non-Disturbance and Attornment Agreement (the "Agreement") is dated as of the 23 day of June, 2009, between Brighton Bank, a Utah Corporation ("Lender"), and IN-N-OUT BURGERS, a California corporation ("Tenant").

RECITALS

A. Tenant is the tenant under a certain Ground Lease dated May 8, 2009, as amended by way of that certain First Amendment to Ground Lease dated on or about July 21, 2009 (as amended, the "Lease") with DW ASSOCIATES, LLC, a Utah limited liability company ("Landlord"), of premises described in the Lease (the "Premises") and more particularly described in Exhibit A attached hereto and made a part hereof (such restaurant and related facilities, including the Premises, is hereinafter referred to as the "Property"),

B. This Agreement is being entered into in connection with a loan (the "Loan") which was made by Lender to Landlord. The Loan is secured by, among other things; (a) a Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated November 17, 2008 and recorded in the official records of the Utah County Recorder's Office on December 12, 2008 as Entry No. 130177:2008; and that certain Collateral Assignment of Ground Lease and Landlord's Consent dated November 17, 2008 and recorded December 12, 2008 in the official records of Utah County as Entry No. 130178:2008 (the "Leasehold Trust Deed").

C. This Agreement is also being entered into in connection with a second loan (the "Second Loan" and together with the Loan, individually or collectively as the context may imply, the "Loans") which is being made concurrently with this Agreement by Lender to Landlord. The Second Loan is secured by, among other things, (a) a Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture filing of even or recent date herewith and recorded in the official records of the Utah County Recorder's Office shortly thereafter (the "Second Leasehold Trust Deed", and together with the Leasehold Trust Deed, individually or collectively as the context may imply, the "Security Documents").

AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Tenant acknowledges and agrees that the Lease is and shall be subject and subordinate to the Security Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Security Documents, to the full extent of all amounts secured by the Security Documents from time to time.

2. Lender agrees that, if the Lender exercises any of its rights under the Security Documents, including an entry by Lender pursuant to the Security Documents or a foreclosure of the Security Documents, Lender shall not disturb Tenant's right of quiet

possession of the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace, notice and cure periods of any term, covenant or condition of the Lease.

3. Tenant agrees that, in the event of a foreclosure of the Security Documents by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other successor of Lender to fee ownership, Tenant will attorn to and recognize Lender as its landlord under the Lease and, subject to the provisions of Section 4 hereof, Lender will be bound to Tenant as if Lender had been the original landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.

4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

(a) liable for any act or omission of any Prior Landlord (defined below) or subject to any offsets or defenses which Tenant might have against any Prior Landlord, provided, however, that notwithstanding anything to the contrary hereinabove, Purchaser (defined below) shall be (i) obligated to cure any breach or other default under the Lease by Prior Landlord of which Tenant shall have given Lender written notice and an opportunity to cure pursuant to Section 5 of this Agreement and which remains in existence on or after Purchaser succeeds to the interest of Landlord under the Lease; and (ii) subject to any offset rights resulting from a breach or other default under the Lease by Prior Landlord of which Tenant shall have given Lender written notice and an opportunity to cure pursuant to Section 5 of this Agreement and which remains in existence at or after Purchaser succeeds to the interest of Landlord under the Sublease; or

(b) bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any Prior Landlord (including, without limitation, the then defaulting Landlord), except to the extent such payment is permitted by the terms of the Lease or such monies are actually received by Lender; or

(c) bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any Prior Landlord's interest; or

(d) accountable for any monies deposited with any Prior Landlord (including security deposits), except to the extent such monies are actually received by Lender; or

(e) bound by any surrender, termination, amendment or modification of the Lease made after the date of this Agreement without the consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed, and which consent shall be deemed given if Lender fails to respond in writing within fifteen (15) business days after written request therefor.

This attornment shall be immediately effective and self-operative, without the execution of any further instrument, upon Purchaser's acquisition of Borrower's interest in

the Property. As used in this Agreement, "Purchaser" means any transferee, including Lender, of Borrower's interest in the Property pursuant to a Foreclosure and the successors and assigns of such transferee, and "Prior Landlord" means any landlord, including Borrower, under the Lease prior in time to Purchaser.

5. Tenant hereby agrees to give to Lender copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. Lender shall have the right but not the obligation to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants to Lender the same period of time as is granted to Landlord under the Lease to enable Lender to remedy or cause to be remedied such Landlord default, which period of time shall commence on the date that is the later of the date on which the period of time given Landlord to remedy the default expires or the date upon which Lender receives notice that Landlord has failed to remedy the default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No Landlord default under the Lease shall exist or shall be deemed to exist (i) as long as Lender, in good faith, shall have commenced to cure such default within the time period provided in the Lease and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by Lender, as long as Lender, in good faith, shall have notified Tenant that Lender intends to institute proceedings under the Security Documents, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. Lender shall have the right, without Tenant's consent, to foreclose the Security Documents or to accept a deed in lieu of foreclosure of the Security Documents or to exercise any other remedies under the Security Documents.

6. With respect to the assignment of rents made under the Security Documents from Landlord to Lender in connection with the Loans, Tenant acknowledges that the interest of the Landlord under the Lease was assigned to Lender solely as security for the purposes specified in the Security Documents and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the owner of the leasehold interest in the Premises. Tenant agrees that upon receipt of a written notice from Lender of a default by Landlord under one or both of the Loans, Tenant will thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease.

7. From and after the date of this Agreement the Lease shall not be assigned by Tenant, modified, amended or terminated (except an assignment or termination that is permitted in the Lease without Landlord's consent) without Lender's prior written consent in each instance, which consent with respect to modification or amendment shall not be unreasonably withheld, conditioned or delayed, but which consent with respect to termination may be given or withheld in Lender's sole and absolute discretion, and which consent shall be

deemed given if Lender fails to respond in writing within fifteen (15) days after written request therefor.

8. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the following addresses:

If to Tenant:

In-N-Out Burgers, Inc.
13502 Hamburger Lane
Baldwin Park, California 91706-5885
Attention: Real Estate Department

For Overnight Deliveries Only:

In-N-Out Burgers, Inc.
13752 Francisquito Avenue
Baldwin Park, California 91706
Attn: Real Estate Department

If to Lender:

Brighton Bank
Attn: Bruce L. Hunt
7101 Highland Drive
Salt Lake City, UT 84121

9. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loans, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the terms "Tenant" and "Landlord" as used herein include any successor and assign of the named Tenant and Landlord herein, respectively; provided, however, that such reference to Tenant's or Landlord's successors and assigns shall not be construed as Lender's consent to any assignment or other transfer by Tenant or Landlord.

10. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

11. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing

executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

12. This Agreement shall be recorded with the registry or clerk of the county in which the Property is located.

13. This Agreement shall be construed in accordance with the laws of the state in which the Property is located.

14. The person executing this Agreement on behalf of Tenant is authorized by Tenant to do so and execution hereof is the binding act of Tenant enforceable against Tenant.

Witness the execution hereof as of the date first above written.

LENDER:

BRIGHTON BANK, a Utah Corporation

By: 

Name: Bruce C. Hunt

Title: _____

TENANT:

IN-N-OUT BURGERS, a California corporation

By: 

Carl G. Van Fleet

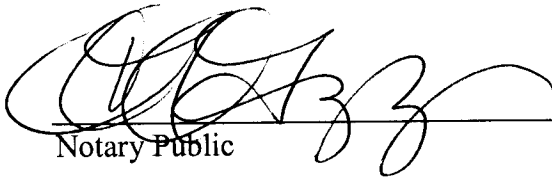
Its: Executive Vice President of Planning and Development

STATE OF UTAH)
)
COUNTY OF Salt Lake) ss.

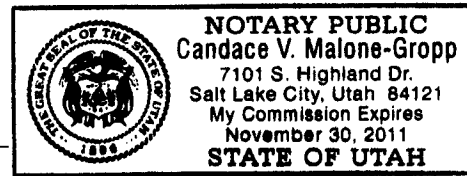
On June 25, 2009 before me, Candace V Malone-Gropp Notary Public,
personally appeared Bruce L. Hunt
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their 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 Utah that the foregoing
paragraph is true and correct.

Witness my hand and official seal.



Notary Public

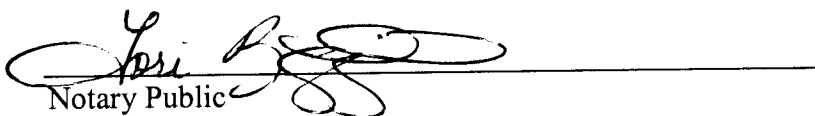


STATE OF CALIFORNIA)
)
COUNTY OF ~~California~~ Los Angeles) ss.

On August 20, 2009 before me, Lori Brazzill, Notary Public,
personally appeared Carl G. Van Fleet, 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.



Notary Public



EXHIBIT A

PREMISES LEGAL DESCRIPTION

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BEGINNING AT A POINT NORTH 89°53'25" WEST ALONG THE SECTION LINE 1108.33 FEET AND SOUTH 291.43 FEET FROM A FOUND UTAH COUNTY BRASS CAP MONUMENT MARKING THE NORTHEAST CORNER OF SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE SOUTH 89°28'19" EAST 7.15 FEET; THENCE NORTH 00°31'00" EAST 30.77 FEET; THENCE EAST 114.16 FEET; THENCE SOUTH 56.76 FEET; THENCE SOUTH 54°20'10" EAST 146.19 FEET; THENCE SOUTH 35°39'51" WEST 131.76 FEET; THENCE SOUTH 62°58'03" EAST 53.12 FEET; THENCE SOUTH 36°09'04" WEST 71.05 FEET TO A POINT ON THE PROPOSED CONTROLLED ACCESS LINE OF INTERSTATE 15, PER PROJECT NO. S-I15-6(175)245, SAID POINT BEING ON THE ARC OF A 2500.86 FOOT NON-TANGENT RADIUS CURVE TO THE RIGHT (CENTER BEARS NORTH 35°03'07" EAST); THENCE ALONG SAID PROPOSED CONTROLLED ACCESS LINE THE FOLLOWING (2) COURSES: (1) NORTHWESTERLY ALONG THE ARC OF SAID 2500.86 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 03°02'21" A DISTANCE OF 132.65 FEET (CHORD BEARS NORTH 53°25'42" WEST 132.64 FEET), (2) NORTH 44°35'46" WEST 89.20 FEET; THENCE NORTH 00°04'37" EAST 157.31 FEET TO THE POINT OF BEGINNING.