

Subordination Agreement Page 1 of 9
 Russell Shirts Washington County Recorder
 09/22/2017 02:34:11 PM Fee \$26.00 By
 METRO NATIONAL TITLE

This instrument was prepared by:

Tarun Chandran
FISHERBROYLES, LLP
 4509 North Lincoln Avenue
 Chicago, IL 60625

and after recording return to:

RED LOBSTER HOSPITALITY LLC
 450 South Orange Avenue, Suite 800
 Orlando FL 32801
 Attention: Legal Department

MAP - 57858

SG - S - 2 - 20 - 235

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT (hereinafter referred to as this "Agreement"), made and entered into on September 21, 2017, by and among **CHATFIELD APARTMENTS, LLC**, a Colorado limited liability company, as to an undivided 80% interest and **DINO KATSOULAS**, an individual, as to an undivided 20% interest, as tenants in common, P.O. Box 631553, Littleton, CO 80163 (hereinafter referred to as the "Owner"), and **AMERICA FIRST FEDERAL CREDIT UNION ISAOA/ATIMA**, P.O. Box 9339, Ogden, UT 84409, Attn: Commercial Real Estate (hereinafter referred to as the "Lender") and **RED LOBSTER HOSPITALITY LLC**, a Delaware limited liability company (hereinafter referred to as the "Tenant") having an address of 450 S. Orange Ave., Suite 800, Orlando, Florida 32801-3383, Attention: General Counsel.

RECITALS:

- A. The Owner owns or is purchasing and will own all right, title and interest in that certain real property being, lying and situate in **WASHINGTON COUNTY, UTAH** and more particularly described as set forth on Exhibit "A" attached hereto and by this reference made a part hereof (the "Property"); and
- B. Pursuant to a lease dated as of June 26, 2017, by and between Owner, as landlord, and Tenant, as tenant (as the same may have been amended and supplemented from time to time, the "Lease"), Owner leases to Tenant the entire Property and the improvements thereon (collectively, the "Leased Premises"); and
- C. A mortgage or deed of trust and security agreement has or will be given by the Owner to the Lender (the "Mortgage") for the purpose of securing a loan by Lender to Owner, which Mortgage is secured, in part, by the Property; and
- D. It is the desire and intention of the parties hereto to subordinate the operation of the Lease for the full term thereof to the lien and operation of the Mortgage, so that the Mortgage shall and

will become a lien upon the Leased Premises and the Lease will be unconditionally subordinated thereto in every manner whatsoever, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties hereto intending to be legally bound hereby, for and in consideration of the mutual covenants contained herein, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. **Recitals.** All of the above Recitals are hereby incorporated herein by reference and are made a part hereof.

2. **Subordination.** The Lease and the rights of Tenant thereunder are and shall be subordinate to the lien of the Mortgage and to any and all advancements made thereunder and to any renewals, modifications, consolidations, replacements, additional advances, future advances and extensions thereof, subject to the terms of this Agreement.

3. **Non-Disturbance.** The Lender does hereby agree with the Tenant that, so long as no Event of Default (as defined in the Lease) by Tenant exists beyond any applicable notice and cure periods (including, without limitation, notice and cure periods applicable to a Leasehold Mortgagee (as defined in the Lease) as set forth in the Lease, if a Leasehold Mortgagee exists) which would entitle the landlord under the Lease to terminate the Lease, (a) the Lender will take no action which will interfere with or disturb the Tenant's possession or lawful use of the Leased Premises or other rights under the Lease, and (b) in the event the Lender becomes the owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise, the Property shall be subject to the Lease and the Lender shall recognize the Tenant as a tenant on the Property for the remainder of the term of the Lease (as the same may be extended in accordance with the provisions of the Lease) and shall be bound by all of the terms of the Lease; provided, however, that the Lender shall not be liable for any act or omission of any prior landlord except for defaults of a continuing nature, or subject to any offsets or defenses which the Tenant might have against any prior landlord except for any offsets or credits against rent that Tenant is entitled to take or receive as expressed in the Lease upon the happening of any event and overpayments of rent paid by Tenant on an estimated basis, nor shall the Lender be bound by any Base Monthly Rent (as defined in the Lease) which the Tenant might have paid for more than the current month to any prior landlord, nor shall Lender be bound by any material amendment or modification of the Lease unless Lender has received written notice of such material amendment or modification of the Lease.

4. **Attornment.** Both Lender and Tenant do hereby agree that, in the event the Lender becomes the owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise, then (i) the Tenant shall attorn to and recognize the Lender (its designees, assigns, or successor owner of the Property) as the landlord under the Lease for the remainder of the term thereof, and the Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of said Lease, and (ii) the Lender (its designees, assigns, or successor owner of the Property) shall recognize the Tenant as the tenant under the Lease and be bound by all of the terms of the Lease, subject to the exceptions expressly provided in the last clause of paragraph 3 above. The Tenant further covenants and agrees to execute and deliver upon request of the Lender, or its successors or assigns, an appropriate and reasonable agreement of attornment, in a form acceptable to Tenant, to any subsequent title holder of the Property.

5. Notices Under Lease. So long as the Mortgage remains outstanding and unsatisfied, the Tenant shall deliver to the Lender, at the address and in the manner herein below provided, a copy of all default notices given to the landlord by the Tenant under and pursuant to the terms and provisions of the Lease. Within the time permitted the landlord for curing any default under the Lease as therein provided, the Lender may, but shall have no obligation to, pay any taxes and assessments, make any repairs and improvements, make any deposits or do any other act or thing required of the landlord by the terms of the Lease; and all payments so made and all things so done and performed by the Lender shall be as effective to prevent the rights of the landlord from being forfeited or adversely affected because of any default under the Lease as the same would have been if done and performed by the landlord.

6. Assignment of Lease. The Tenant acknowledges that the Owner may execute and deliver to the Lender an assignment of the Lease and any guaranty thereof as security for the loan which the Mortgage secures, and the Tenant hereby expressly consents to any such assignment and agrees to pay any rents under the Lease directly to Lender beginning thirty (30) days following Tenant's receipt of Lender's written Notice to Tenant to make payments directly to Lender or at the direction of Lender. The Owner hereby authorizes and directs the Tenant (upon written direction to Tenant by the Lender) to pay the above sums directly to the Lender, or at the direction of Lender, and the Owner hereby agrees to hold Tenant harmless for any monies so paid directly to or at the direction of the Lender and agrees that Tenant shall have no liability whatsoever to Owner for any payments made in accordance with Lender's notice or direction. Tenant agrees that neither Lender's demanding or receiving any such payments, nor Lender exercising any other right, remedy, privilege, power, or immunity granted by the Mortgage (or other documents executed in conjunction therewith), will operate to impose any liability upon Lender for performance of any obligation of Owner under the Lease unless and until Lender becomes owner of the Property.

7. Notices. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing and will be deemed delivered or made upon the receipt if sent by a nationally recognized overnight courier, hand delivered or certified mail, return receipt requested, or the date of refusal as documented by the delivery carrier (if sent by a nationally recognized overnight courier or certified mail, return receipt requested), with sufficient postage affixed, and addressed to the parties as follows:

Lender:

AMERICA FIRST FEDERAL CREDIT UNION, ISAOA/ATIMA, P.O. Box 9339, Ogden, UT 84409, Attn: Commercial Real Estate

Owner:

CHATFIELD APARTMENTS, LLC, a Colorado limited liability company, as to an undivided 80% interest and DINO KATSOULOS, an individual, as to an undivided 20% interest, as tenants in common, P.O. Box 631553, Littleton, CO 80163

Tenant:

RED LOBSTER HOSPITALITY LLC, 450 S. Orange Ave., Suite 800, Orlando, Florida 32801-3383, Attention: General Counsel

Such addresses may be changed by thirty (30) days' prior notice pursuant to this paragraph. Each party jointly and severally agrees that it will furnish the other parties with copies of all default notices relating to the Lease.

8. **Binding Effect.** This Agreement shall be binding upon all the parties hereto, their heirs, successors and assigns and all of those holding title under any of them, and the pronouns herein shall include, where appropriate, either gender or both, singular and plural.

9. **Non-Waiver.** No indulgence, waiver, election or non-election by the Lender under the Mortgage or any other loan documents associated with the Mortgage shall affect this Agreement.

10. **Modification of Agreement.** The parties hereby agree that this document contains the entire agreement between the parties, and this Agreement shall not be modified, changed, altered or amended in any way except through written amendments signed by all of the parties hereto.

11. **Governing Law.** It is agreed that the laws of the State where the Property is located shall govern the construction and interpretation of this Agreement and the rights and obligations set forth herein.

12. **Attorneys' Fees.** In the event of any legal or equitable action, including any appeals or bankruptcy proceedings, which may arise hereunder between or among the parties hereto, the prevailing party shall be entitled to recover its costs and its reasonable attorneys' fees actually incurred without regard to statutory presumption.

13. **Severance.** The invalidity or unenforceability of any portion of this Agreement shall not affect the remaining provisions and portions hereof.

14. **Exculpation.** In the event the Lender or any affiliate of the Lender (for purposes of this paragraph the term "Lender" shall include any corporation or partnership owned or controlled by the Lender) acquires title to the Leased Premises and succeeds to the interest of Owner under the Lease, then, anything in the Lease to the contrary notwithstanding, Lender shall have no personal liability for any damages resulting from its default under the terms of the Lease, and Tenant agrees that it shall look solely to the estate and interest of the Lender in the Leased Premises and the rents, issues and profits thereof, and the refinance and sale proceeds thereof, for the collection of any judgment (or other judicial process) requiring the payment of money by Lender in the event of any default or breach by Lender with respect to any of the terms, covenants and conditions of the Lease to be observed and/or performed by Lender, and no other assets of the Lender shall be subject to levy, execution or other procedures for the satisfaction of Tenant's remedies.

15. **Insurance Proceeds.** Notwithstanding anything to the contrary in the Lease or in this Agreement, Lender hereby agrees to promptly make any and all insurance proceeds and condemnation proceeds unconditionally available to Tenant for restoration of the Leased Premises.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall together constitute but one agreement.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly executed as of the day and year, first above written.

WITNESSES:

By: [Signature]
Name: Drew Isaac

By: [Signature]
Name: Karin Mauley

OWNER:

CHATFIELD APARTMENTS, LLC
a Colorado limited liability company

By: [Signature]
Name: Dino Katsoulas
Its: Manager

STATE OF Colorado)
County of Denver) §

On this 19 day of September 2017, before me, a Notary Public in and for said County and State, personally appeared Dino Katsoulas, the Manager of Chatfield Apartments, LLC, who executed the foregoing instrument and acknowledged that he/she did examine and read the same and did sign the foregoing instrument, and that the same is his/her free act and deed and the free act and deed of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seat.



[Signature]
Notary Public

My Commission Expires:

08/21/2019

WITNESSES:

By: Drew Isaac
Name: Drew Isaac

DINO KATSOULAS
an individual

[Signature]

By: Kaitlin O'Malley
Name: Kaitlin O'Malley

STATE OF Colorado
County of Denver

On this 19 day of September 2017, before me, a Notary Public in and for said County and State, personally appeared Dino Katsoulas, who executed the foregoing instrument and acknowledged that he/she did examine and read the same and did sign the foregoing instrument, and that the same is his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



[Signature]
Notary Public

My Commission Expires:
08/21/2019

WITNESSES:

By: Carol E. Murray
Name: Carol E. Murray

By: Margerie Tenberton
Name: MARGERIE TENBERTON

TENANT:

RED LOBSTER HOSPITALITY LLC,
a Delaware limited liability company

By: Horace G. Dawson, III
Horace G. Dawson, III
Vice President and Secretary

STATE OF FLORIDA)

ss.

COUNTY OF ORANGE)

The foregoing document was acknowledged before me this 18th day of September, 2017, by Horace G. Dawson, the Vice President and Secretary of Red Lobster Hospitality LLC, a Delaware limited liability company, on behalf of the limited liability company, who is personally known to me.

WITNESS my hand and official seal.

Raymond Ali
Notary Public, State of Florida

(SEAL)



Printed Name: Raymond Ali

My Commission Expires: 7/7/2020

WITNESSES:

By:

Name:

[Signature]
Michelle Maloney

By:

Name:

[Signature]
JESSICA EDDY

LENDER:

AMERICA FIRST FEDERAL CREDIT UNION

By:

Name:

Its:

[Signature]
TYLER MATHIS
ASSISTANT MANAGER

STATE OF

Utah

)
ss.
)

COUNTY OF salt lake

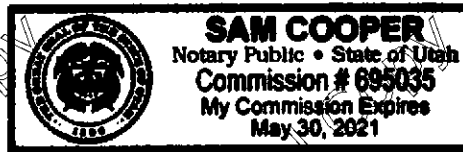
I, Sam Cooper a notary public in and for said County in said State, hereby certify that tyler mathis whose name as tyler mathis of America First Federal Credit Union is signed to the foregoing document and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he, as such tyler mathis, executed same voluntarily for and as the act of said corporation.

Given under my hand this the 21 day of Sept, 2017

[Signature]
Notary Public

My Commission Expires:

may 30, 2021



**EXHIBIT A
PROPERTY**

RED LOBSTER RESTAURANT NO. 0857 ST. GEORGE UT

Parcel 1:

Commencing at the South Quarter (South 1/4) Corner of Section 20, Township 42 South, Range 15 West of the Salt Lake Base and Meridian; and running thence North 89°24'28" East 1255.06 feet along the Section line and North 00°00'00" East 584.89 feet to the Point of Beginning of Parcel No. 3; and running thence North 00°00'00" East 210.33 feet; thence South 90°00'00" East 173.68 feet to a point on the West right-of-way line of a frontage road known as Red Cliffs Drive; thence along said Red Cliffs Drive South 00°03'52" West 210.33 feet; thence departing said Red Cliffs Drive North 90°00'00" West 173.44 feet to the Point of Beginning.

Parcel 1A:

Together with the beneficial interest created in that certain Declaration of Restrictions and Grant of Easements recorded August 12, 1994, as Entry No. 475737, in Book 842, at Pages 292-324 of Official Records.

Parcel 1B:

Together with the beneficial interest created that certain Declaration of Easements, Covenants and Restrictions recorded January 26, 1996 as Entry No. 521557, in Book 968, at Pages 717-728 of Official Records.