



W2857578

When Recorded, Mail To:
FJ Management Inc.
Attn.: Legal Department
185 S. State Street, Suite 1300
Salt Lake City, Utah 84111

E# 2857578 PG 1 OF 7
Leann H. Kilts, WEBER COUNTY RECORDER
16-May-17 0935 AM FEE \$23.00 DEP KL
REC FOR: FIRST AMERICAN TITLE INSURANCE CO
ELECTRONICALLY RECORDED

APNs: 04-029-0050 and 04-029-0051

[Space Above for Recorder's Use]

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), is made this 1 day of February 2017, by and among MAVERIK, INC., a Utah corporation ("Tenant"), FJ MANAGEMENT INC., a Utah corporation ("Lender"), and CEDAR CITY CRYSTAL INN LLC, a Utah limited liability company ("Landlord").

RECITALS

A. Landlord is the owner of the real property located in the City of Ogden, Weber County, State of Utah (the "Property"), as the same is more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

B. Lender has agreed to make a loan to Landlord in the principal amount of TWO MILLION SEVEN HUNDRED TWENTY-EIGHT THOUSAND EIGHT HUNDRED THIRTY-NINE AND 00/100 DOLLARS (\$2,728,839.00) (the "Loan"), to be evidenced by a Secured Promissory Note (the "Note") and secured by a first priority Trust Deed with Assignment of Rents on the Property (the "Trust Deed"). Landlord's interest in the Lease (defined below) will be assigned to Lender as additional security for the Loan. The Note, the Trust Deed, and all other documents and instruments evidencing or securing the Loan and any amendments, extensions, supplements, consolidations, replacements, renewals and advances or re-advances are in this Agreement collectively called the "Loan Documents."

C. Landlord and Tenant entered into a Ground Lease Agreement dated December 28, 2015 (the "Lease") under which Landlord leased to Tenant all of the Property.

D. Tenant desires that Tenant's possession of the Property under the Lease should not be disturbed if Lender exercises Lender's rights under the Loan Documents. Lender agrees not to disturb Tenant's possession subject to and upon the provisions of this Agreement.

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree and covenant as follows:

1. **Subordination.** The Lease and the rights of Tenant thereunder (including purchase options, rights of first refusal or similar rights, if any) are hereby subordinated and made subject to the Loan Documents, and any amendment, renewal, substitution, extension or replacement thereof and each advance made thereunder as though the Loan Documents, and each such amendment, renewal, substitution, extension or replacement were executed and recorded, and the advance made, prior to the execution of the Lease.

2. **Non-Disturbance.** Provided Tenant is in possession of the Property and is not in default in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease beyond any applicable notice and cure periods, Lender agrees that no foreclosure (whether judicial or non-judicial), deed in lieu of foreclosure, or other sale of the Property in connection with the enforcement of the Loan Documents or otherwise in satisfaction of the underlying Loan shall terminate the Lease or Tenant's rights thereunder to possess and use the Property.

3. **Attornment.** If Lender succeeds to the interest of Landlord as landlord under the Lease, or if the Property is sold pursuant to Lender's rights under the Loan Documents, Tenant shall attorn to Lender, its successors and assigns, or a purchaser upon any such foreclosure sale, and shall recognize Lender, or such purchaser, thereafter as landlord under the Lease and agrees to be bound under all the terms, covenants and conditions of the Lease. Such attornment shall be effective and self-operative without the execution of any further instruments. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of any holder(s) of any of the indebtedness or other obligations secured by the Loan Documents, or upon request of any such purchaser, (a) any instrument or certificate which, in the reasonable judgment of such holder(s), or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment and (b) an instrument or certificate regarding the status of the Lease, consisting of statements, if true (and if not true, specifying in what respect) reasonably requested by such purchaser, including, without limitation: (i) that the Lease is in full force and effect, (ii) the date through which rentals have been paid, (iii) the duration and date of the commencement of the term of the Lease, (iv) the nature of any amendments or modifications to the Lease, (v) that no default, or state of facts, which with the passage of time or notice, or both, would constitute a default, exists on the part of either party to the Lease, and (vi) the dates on which payments of additional rent, if any, are due under the Lease.

4. **Special Rights of Lender.** Lender or any subsequent purchaser upon a foreclosure sale shall not be: (a) liable for any act or omission of any prior landlord (including the Landlord); (b) liable to refund to Tenant any security deposit which Tenant shall have paid to any prior landlord (including the Landlord) unless such security deposit has been delivered to Lender; (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); (d) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); (e) liable for or incur any obligation with respect to construction on the Property or any improvements to the Property prior to such foreclosure sale; or (f) liable for any obligation with respect to any breach by Landlord of Landlord's warranties or representations of any nature under the Lease or otherwise, including without limitation, any warranties or representations respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability and/or fitness for any purpose, or possession.

5. **Tenant Financing.** To the extent permitted under the Lease and applicable law, Lender acknowledges that Tenant shall have the right from time to time during the term of the Lease and without Landlord's or Lender's further approval written or otherwise, but with their cooperation if requested by Tenant, to assign or to grant and assign a trust deed, mortgage or other security interest in Tenant's leasehold interest in the Lease, and all of Tenant's other rights under the Lease and this Agreement to Tenant's lender(s) in connection with Tenant's financing arrangements. Lender and Landlord agree to execute such confirmation certificates and other documents and to provide such cooperation as required of Landlord under the Lease or applicable law or as Tenant's lenders may reasonably request in connection with any such financing provided the same are in a form reasonably acceptable to Lender, so long as the financing arrangement and any documents requested are in conformance with the Lease.

7. **Notices.** All notices or communications required or permitted hereunder (collectively "Notices") shall be in writing, and shall be deemed properly given, on the date of actual delivery, or on the date that the recipient refuses delivery. Delivery shall be made by United States mail, registered or certified, return receipt requested, or by a nationally recognized overnight courier service; and sent to the addresses set forth below:

LENDER: FJ Management Inc.
185 S. State Street, Suite 1300
Salt Lake City, Utah 84111
Attn.: CFO

TENANT: Maverik, Inc.
185 S. State Street, Suite 800
Salt Lake City, Utah 84111
Attn.: Real Estate Department

With a copy to: Maverik, Inc.
185 S. State Street, Suite 800
Salt Lake City, Utah 84111

Attn.: Legal Department

LANDLORD

Cedar City Crystal Inn LLC
185 S. State Street, Suite 1300
Salt Lake City, Utah 84111
Attn.: Dave DeYoung

A party may, by notice to the other parties, designate a new address to which notices shall thereafter be delivered.

8. Parties Bound. The provisions of this Agreement shall be binding upon and inure to the benefit of Tenant, Lender and Landlord and their respective successors and/or assigns. Any party may record this Agreement at any time.

9. Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.

10. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state where the Property is located.

[Signature Pages Follow]

**ACCOMMODATION RECORDING ONLY.
FIRST AMERICAN TITLE MAKES NO
REPRESENTATION AS TO CONDITION
OF TITLE, NOR DOES IT ASSUME ANY
RESPONSIBILITY FOR VALIDITY,
SUFFICIENCY OR AFFECT OF DOCUMENT.**

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

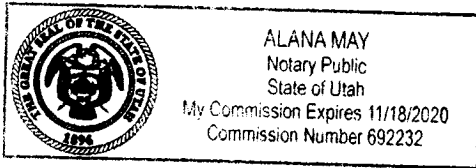
TENANT:

MAVERIK, INC., a Utah corporation

By: [Signature]
Name: ANDRE M LORTZ
Its: CEO + CFO

STATE OF UTAH)
) : ss.
COUNTY OF SALT LAKE)

On this 24 day of April, 2017, personally appeared before me Andre Lortz, known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that he/she is the CEO + CFO of Maverik, Inc., a Utah corporation, and acknowledged to me that he/she executed the same on behalf of said corporation.



[Signature]
Notary Public

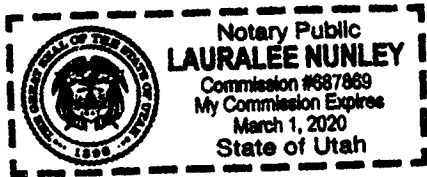
LANDLORD:

CEDAR CITY CRYSTAL INN LLC,
a Utah limited liability company

By: *Crystal Maggelet*
Name: Crystal Maggelet
Its: Managing Director

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

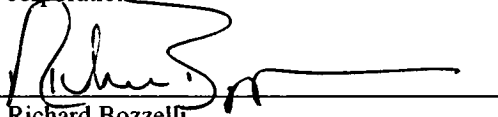
On this 20 day of April, 2017, personally appeared before me Crystal Maggelet, known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that she is the Managing Director of Cedar City Crystal Inn LLC, a Utah limited liability company, and acknowledged to me that she executed the same on behalf of said company.



Lauralee Nunley
Notary Public

LENDER:

FJ MANAGEMENT INC.,
a Utah corporation

By: 
Name: Richard Bozzelli
Its: CFO

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 21 day of April, 2017, personally appeared before me Richard Bozzelli, known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that he is the CFO of FJ Management Inc., a Utah corporation, and acknowledged to me that he executed the same on behalf of said corporation.


Notary Public



Exhibit A

[Legal Description of the Property]

REAL PROPERTY IN THE CITY OF OGDEN, COUNTY OF WEBER, STATE OF UTAH,
DESCRIBED AS FOLLOWS:

PARCEL 1:

A PART OF BLOCK 4, SOUTH OGDEN SURVEY, OGDEN, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT SOUTH 00°58'00" WEST 260.00 FEET FROM THE NORTHWEST
CORNER OF LOT 27 OF SAID BLOCK 4; THENCE SOUTH 89°02'00" EAST 330.00 FEET;
THENCE SOUTH 00°58'00" WEST 115.00 FEET; THENCE NORTH 89°02'00" WEST 330.00 FEET;
THENCE NORTH 00°58'00" EAST 115.00 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A PART OF BLOCK 4, SOUTH OGDEN SURVEY, OGDEN, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 27 OF SAID BLOCK 4; THENCE SOUTH
89°02'00" EAST 270.00 FEET; THENCE SOUTH 00°58'00" WEST 132.00 FEET; THENCE SOUTH
89°02'00" EAST 60.00 FEET; THENCE SOUTH 00°58'00" WEST 128.00 FEET; THENCE NORTH
89°02'00" WEST 330.00 FEET; THENCE NORTH 00°58'00" EAST 260.00 FEET TO THE POINT OF
BEGINNING.