

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

Terratron, Inc.  
Attention: David W. Peters  
340 Main Street, Suite 200, POB 3208  
Park City, Utah 84060

11725691  
09/17/2013 10:50 AM \$31.00  
Book - 10178 Pg - 276-285  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
TERRATRON INC  
340 MAIN ST STE 200  
PARK CITY UT 84060  
BY: KSR, DEPUTY - WI 10 P.

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**MEMORANDUM OF LEASE AND NO-BUILD AGREEMENT (NEGATIVE  
COVENANT)**

THIS MEMORANDUM OF LEASE AND NO-BUILD AGREEMENT (NEGATIVE COVENANT (this "No-Build Agreement") is made and entered into as of this 25 day of May, 2013, by and between Terratron, Inc., a Utah corporation ("Sublandlord") and Sizzling Donuts, LLC, a Nevada limited liability company ("Subtenant"), each separately a "Party" and together defined as the "Parties," with reference to the following facts:

RECITALS

- A. Anderson Investment Corporation, a Utah corporation ("Owner"), is the owner of that certain real property (the "Building Parcel") located within Salt Lake City (the "City"), Utah, and legally described on Exhibit "A" attached hereto and incorporated herein by this reference.
- B. Owner is also the owner of that certain real property (the "Parking Parcel", which together with the Building Parcel may be referenced herein as the "Owner Parcels") located within Salt Lake City, Utah, and legally described on Exhibit "B" attached hereto and incorporated herein by this reference. The Parking Parcel consists of a parking lot and other related improvements that service the building (the "Building") located on the Building Parcel and is adjacent to the Building Parcel.
- C. Owner or its predecessor-in-interest and Sublandlord or its predecessor-in-interest entered into that certain long-term Ground Lease With First Right to Purchase dated August 3, 1982, as amended by that certain First Amendment to Ground Lease With First Right to Purchase dated February 12, 2013 (collectively, as amended, the "Lease") whereby Sublandlord leased from Owner and Owner leased to Sublandlord the Building Parcel and the Parking Parcel. Some of the improvements on the Owner Parcels might be owned by Sublandlord rather than Owner.
- D. Sublandlord and Subtenant have entered into a long-term sublease agreement (the "Sublease") dated February 14, 2013, wherein Subtenant has the right to possess and occupy the Owner Parcels as well as the parcel to the east of the Building Parcel.

- E. In order to facilitate Subtenant's proposed remodel of the Building the City has requested a ten (10') foot no-build (negative) covenant over and across the area (the "No-Build Area") of the Parking Parcel cross-hatched on Exhibit "C" attached hereto and incorporated herein by this reference.
- F. The intent of this No-Build Agreement is to satisfy the City's request.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

OPERATIVE PROVISIONS

- 1. Negative Covenant. During the term of the Sublease or as long as the Building remains on the Building Parcel, no building or similar structure shall be constructed, installed or maintained on or over the No-Build Area; provided, however, Sublandlord shall not be prohibited from constructing, installing or maintaining, typical parking related improvements on or over the No-Build Area (to the extent the same is permitted by the Lease and applicable law), including but not limited to concrete sidewalks, asphalt parking areas, landscape areas, signs, lighting, fencing or other markers or parking-related amenities.
- 2. Termination. Upon written notice to the Salt Lake City Building Services or its successor, this No-Build Agreement may be terminated by the then owner (or ground lessee, if the Lease is still in effect) of the Building Parcel at any time upon six (6) months prior written notice to the then owner of the Parking Parcel if and when:
  - 2.1. The No-Build Agreement is no longer necessary for the Building (as proposed or otherwise) under the then applicable safety and other building codes; or
  - 2.2. The Building is demolished.
- 3. Scope. This No-Build Agreement is limited in scope to Sublandlord's covenant not to construct, install or maintain a building or similar structure over the No-Build Area.
- 4. Run With the Land. This No-Build Agreement shall inure to and bind the successors and assigns of the Parties and shall constitute a covenant running with the land.
- 5. Governing Law. This No-Build Agreement shall be construed and enforced in accordance with the laws of the state of Utah.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

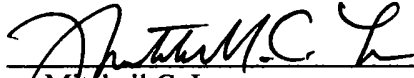
**"SUBLANDLORD"**

Terratron, Inc.,  
a Utah corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**"SUBTENANT"**


Sizzling Donuts, LLC,  
a Nevada limited liability company

By:  \_\_\_\_\_  
Name: Mitchell C. Lowe  
Title: V.P. of Development and General Counsel  
Date: 7.23.2013

**OWNER'S ACKNOWLEDGEMENT AND CONSENT**

Anderson Investment Corporation, a Utah corporation, hereby acknowledges and consents to the foregoing Memorandum of Lease and No-Build Agreement (Negative Covenant).


Anderson Investment Corporation,  
a Utah corporation

By:  \_\_\_\_\_  
Name: Corey Anderson  
Title: President  
Date: \_\_\_\_\_

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

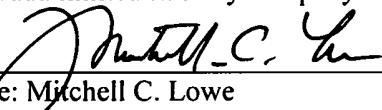
**"SUBLANDLORD"**

Terratron, Inc.,  
a Utah corporation

By:   
Name: David Peters  
Title: President  
Date: 6/18/13

**"SUBTENANT"**

Sizzling Donuts, LLC,  
a Nevada limited liability company

By:   
Name: Mitchell C. Lowe  
Title: V.P. of Development and General Counsel  
Date: 7.23.2013

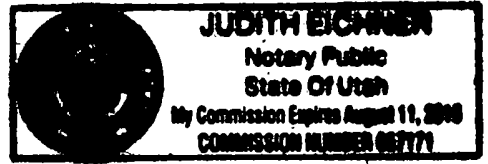
**OWNER'S ACKNOWLEDGEMENT AND CONSENT**

Anderson Investment Corporation, a Utah corporation, hereby acknowledges and consents to the foregoing Memorandum of Lease and No-Build Agreement (Negative Covenant).

Anderson Investment Corporation,  
a Utah corporation

By: \_\_\_\_\_  
Name: Corey Anderson  
Title: President  
Date: \_\_\_\_\_

ACKNOWLEDGEMENT



STATE OF Utah )  
 )  
COUNTY OF RIVERSIDE Summit ) ss

On June 18, 2013, before me, Judith Eichner, a Notary Public in and for said State, personally appeared David Peters, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[Handwritten Signature]  
Signature

SEAL

ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF RIVERSIDE ) ss

On \_\_\_\_\_, 2013, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

SEAL

ACKNOWLEDGEMENT

STATE OF Utah )  
 )  
COUNTY OF RIVERSIDE Salt Lake )

SS



On July 25th, 2013, before me, Angela Street, a Notary Public in and for said State, personally appeared Mitchell C. Lowe, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Angela Street  
Signature

SEAL

**ACKNOWLEDGEMENT**

STATE OF Tennessee )  
                  Hamilton )    SS  
COUNTY OF ~~RIVERSIDE~~ )

On June 21, 2013, before me, James H. Hobbs, a Notary Public in and for said State, personally appeared Corey Anderson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

SEAL



James H. Hobbs  
Signature

EXHIBIT "A"

LEGAL DESCRIPTION OF THE BUILDING PARCEL

Beginning at the Southeast corner of Lot 4, Block 54, Plat "A", Salt Lake City Survey and running thence West 108 feet; thence North 56.75 feet; thence west 1.67 feet; thence North 50.7 feet; thence East 109.67 feet; thence South 107.45 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM:

Beginning at a point on the South line of lot 4, Block 54, Plat "A", Salt Lake City Survey; said point being Easterly 160.28 feet from the Southwest corner of said Lot 4 and running thence North 8.00 feet; thence North 89°58'27" East 5.61 feet to the East line of said lot 4; thence South 8.00 feet to the Southeast corner of said Lot 4; thence South 89°58'27" West 5.61 feet along said South line of said Lot 4 to the point of beginning.

Basis of bearing is the Salt lake City Monuments on 400 South Street at 200 East Street and 300 East Street.



EXHIBIT "B"

LEGAL DESCRIPTION OF THE PARKING PARCEL

Beginning at the Southwest corner of Lot 4, Block 54, Plat "A", Salt Lake City Survey and running thence 57 feet; thence North 56 feet 9 inches; thence West 20 inches; thence North 50 feet 7 inches; thence West 55 feet 4 inches; thence South 107 feet 4 inches to the place of beginning.

LESS AND EXCEPTING THEREFROM:

Beginning at the Southwest corner of Lot 4, Block 54, Plat "A", Salt Lake City survey and running thence North  $0^{\circ}01'32''$  West along the West line of said Lot 2.26 feet; thence Southeasterly along the arc of an 18.00 foot radius curve to the left through a central angle of  $21^{\circ}55'58''$ , 6.78 feet with a chord bearing South  $79^{\circ}14'19''$  East 6.74 feet; thence South  $0^{\circ}01'33''$  East 1.00 foot to the South line of said Lot 4; thence South  $89^{\circ}58'27''$  West 6.62 feet along said South line to the point of beginning.

Basis of bearing is the Salt Lake City Monuments on 400 South Street at 200 East Street and 300 East Street.

EXHIBIT "C"  
NO-BUILD AREA  
[ATTACHED]

4844-1472-3092, v. 3