

RETURN TO:
Bay Vanguard Bank
7114 North Point Road
Baltimore, MD 21219

13893262 B: 11307 P: 1948 Total Pages: 10
02/17/2022 11:16 AM By: dsalazar Fees: \$40.00
AGREE- AGREEMENT
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: KENSINGTON VANGUARD
39 W 37TH ST FL 3NEW YORK, NY 100180207

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (hereinafter referred to as "**Agreement**") made this 16th day of February, 2022, among **BAYVANGUARD BANK**, its subsidiaries and their successors and/or assigns, (hereinafter referred to as "**Lender**"), **MJM 5G, LLC**, a Nevada limited liability company (hereinafter referred to as "**Tenant**"), and **CAP Niki II, LLC**, a Delaware limited liability company (hereinafter referred to as "**Landlord**").

R E C I T A L S:

A. Landlord and Tenant have entered into a certain Zaxby's Sandy Lease dated February 16, 2022 (the "**Lease**") relating to certain premises commonly known as 9446 South Highland Drive, Sandy, Utah 84092, as more particularly described on Exhibit "A" attached hereto (the "**Property**").

B. Lender has made or has committed to make a loan or loans to Landlord (hereinafter referred to as the "**Loan**") secured by, without limitation, the following: a Deed of Trust, Security Agreement and Fixture Filing (as the same may be amended, restated, extended, or otherwise modified from time to time, the "**Deed of Trust**") and an Assignment of Leases, Rents, Income and Cash Collateral (as the same may be amended, restated, extended, or otherwise modified from time to time, the "**Assignment of Leases**") from Landlord to Lender encumbering the Property.

C. Tenant has agreed that the Lease shall be subject and subordinate to the Deed of Trust held by Lender, provided Tenant is assured of continued occupancy of the Premises under the terms of the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound hereby, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. Subordination and Consent. Lender, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, options, liens and charges created thereby (including, without limitation, any option or rights contained in the Lease, or otherwise existing, to acquire any or all of the Property, or any superior leasehold interest therein), is and shall continue to be subject and subordinate in all respects to the Deed of Trust and to any renewals, modifications,

consolidations, replacements and extensions thereof and to all advancements made thereunder. Tenant acknowledges that Landlord will execute and deliver to Lender an assignment of the Lease as security for the Loan, and Tenant hereby expressly consents to such assignment. Tenant agrees that if there is a default by Landlord in the performance and observance of any of the terms of such Loan, Lender may, at its option, demand all rents due under the Lease be paid by Tenant directly to Lender at the address specified below, or as otherwise specified by Lender. Tenant agrees that upon Lender's written request for payment of rent directly to Lender, Tenant will timely remit any and all payments due under the Lease directly to, and payable to the order of, Lender commencing on the first month immediately following the date of Lender's request. Such payments to Lender will constitute performance of Tenant's rent payment obligations under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

2. Nondisturbance. Lender does hereby agree with Tenant and Tenant hereby warrants that, in the event Lender or any other third party becomes the fee simple owner of the Property by exercise of power of sale, foreclosure, conveyance in lieu of foreclosure or otherwise, so long as Tenant complies with and performs its obligations under the Lease: (a) the Lease shall continue in full force and effect as a direct Lease between the succeeding owner of the Property and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease, and Lender or any purchaser will not disturb the possession of Tenant; and (b) the Property shall be subject to the Lease and Lender or any purchaser shall recognize Tenant as the tenant of the Property for the remainder of the term of the Lease in accordance with the provisions thereof; provided, however, that Lender shall not be:

- (i) subject to any claims, offsets or defenses which Tenant might have against any prior landlord (including Landlord);
- (ii) liable for any act or omission of any prior landlord or mortgagee (including Landlord);
- (iii) bound by any rent or additional rent which Tenant might have paid for more than the current month or any security deposit or other prepaid charge paid to any prior landlord (including Landlord) except for any security deposit actually received by Lender; or
- (iv) bound by any amendment or modification of the Lease made without its written consent (extensions of Due Diligence and Permitting Periods under the Lease shall not require Landlord's consent).

Nothing containing herein shall prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Deed of Trust to the extent necessary under applicable law in order for Lender to avail itself of and complete the sale, foreclosure or other remedy.

3. Attornment. Tenant does hereby agree with Lender that, in the event Lender or any third party becomes the owner of the Property by exercise of power of sale, foreclosure, conveyance in lieu of foreclosure or otherwise, then Tenant shall attorn to and recognize Lender or such other purchaser as the landlord under the Lease for the remainder of the term thereof, and Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Lease. Tenant further covenants and agrees to execute and delivery upon request of Lender an appropriate agreement of attornment to Lender and any subsequent titleholder of the Property.

4. Lease Defaults. In the event Landlord shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Lender and Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including without limitation any action in order to terminate, rescind or avoid the Lease or to withhold any rent or other monetary obligations thereunder, for a period of thirty (30) days following receipt of such written notice by Lender; provided, however, that in the case of any default which cannot with diligence be cured within said thirty (30) day period, if Lender shall proceed promptly to cure such default and thereafter prosecute the curing of such default with diligence and continuity, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity.

5. Severability. If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland. Notwithstanding the foregoing, any action for possession of the Property or with respect to the creation and perfection of any liens encumbering the Property shall be governed by the laws of State where the Property is located.

7. Notices. So long as the Deed of Trust remains outstanding and unsatisfied, Tenant will mail or deliver to Lender, at the address and in the manner herein below provided, a copy of all notices permitted or required to be given to the Landlord by Tenant under and pursuant to the terms and provisions of the Lease. All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be in writing and shall be considered as properly given if: (i) mailed to the addressee by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the addressee; or (iii) by delivery to a third party commercial delivery service for same day or next day delivery to the office of the addressee with proof of delivery. Notice so given shall be effective, as applicable, upon: (i) the third (3rd) day following the day such notice is deposited with the U.S. Postal Service; (ii) delivery to the addressee; or (iii) upon delivery to such third party delivery service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be:

Lender:

BAYVANGUARD BANK
7114 North Point Road
Baltimore, Maryland 21219
Attn: Timothy Prindle

Landlord:

CAP NIKI II, LLC
2200 Pacific Coast Highway, Suite 305
Hermosa Beach, California 90254
Attn: Aaron Swerdlow

Tenant:

MJM 5G, LLC
2152 East Creek Road
Sandy, Utah 84093
Attn: Jeff Howes

Notwithstanding the foregoing, any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other parties in the manner set forth herein.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title and assigns. When used herein, the term "Landlord" refers to Landlord and to any successor to the interest of Landlord under the Lease, and the term "Lender" refers to Lender, and to any assignee of the note secured by the Deed of Trust and Lender's servicer of the Loan, if any.

9. Tenant's Personal Property. In no event shall the Deed of Trust cover or encumber (and shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's moveable trade fixtures, business equipment, furniture, signs or other personal property at any time placed on or about the Premises.

10. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

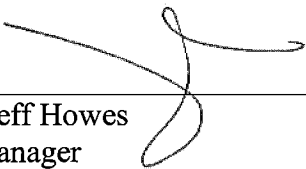
11. Headings. The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12. Merger. There shall be no merger of the Lease or the leasehold estate created thereby with any other estate in the Property, including without limitation the fee estate, by reasons of the same person or entity acquiring or holding, directly or indirectly, the Lease and said leasehold estate and any such other estate.

(Execution on following pages)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

TENANT:
MJM 5G, LLC

By: 
Name: Jeff Howes
Title: Manager

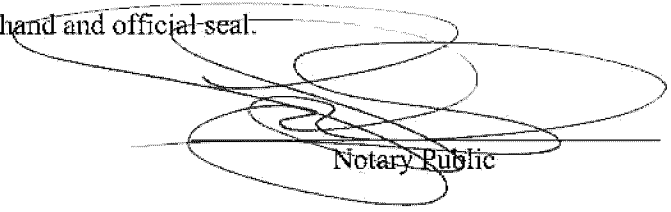
STATE OF Utah
COUNTY OF Salt Lake

:
: ss:
:

On this the 11th day of February, 2021, before me, a Notary Public, personally appeared Jeff Howes, who acknowledged himself to be the Manager of MJM 5G, LLC, a Nevada limited liability company, and that he, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Manager.

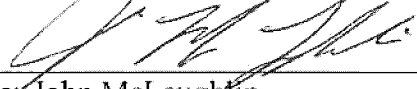
In Witness Whereof, I hereunto set my hand and official seal.




Notary Public

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

LANDLORD:
CAP NIKI II, LLC
By: Equitas Investments, LLC, its Manager

By: 
Name: John McLaughlin
Title: Authorized Person

STATE OF _____ :

: ss:
:

SEE ATTACHED
CERTIFICATE

COUNTY OF _____ :

On this the ____ day of _____, 2022, before me, a Notary Public, personally appeared John McLaughlin, who acknowledged himself/herself/themselves to be the Authorized Person of Equitas Investments, LLC, the Manager of CAP Niki II, LLC, a Delaware limited liability company, and that he/she/they, as such Authorized Person, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself/themselves as Authorized Person.

In Witness Whereof, I hereunto set my hand and official seal.

AF

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

On February 15, 2022 before me, Athena Flores, Notary Public
(insert name and title of the officer)

personally appeared John McLaughlin,
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.

Signature  (Seal)

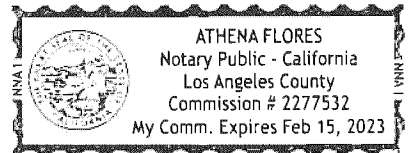


EXHIBIT A
LEGAL DESCRIPTION

PARCEL 1:

LOT 4, LITTLE COTTONWOOD CENTER SUBDIVISION - FIRST AMENDMENT, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

PARCEL 2:

TOGETHER WITH AND EASEMENT FOR INGRESS AND EGRESS, UPON THE TERMS AND CONDITIONS THEREIN PROVIDED AS CONTAINED IN RESTRICTION AGREEMENT AND GRANT OF EASEMENT, RECORDED OCTOBER 27, 2010, AS ENTRY NO. 11062001, IN BOOK 9872, AT PAGE 8004 AND ASSIGNMENT OF RIGHTS UNDER RESTRICTION AGREEMENT AND GRANT OF EASEMENTS, RECORDED MARCH 15, 2018, AS ENTRY NO. 12733984, IN BOOK 6781, PAGE 6800, OF OFFICIAL RECORDS.

Said property is also known by the street address of:

9446 South Highland Drive, Sandy, UT 84092