

148880-KAP

WHEN RECORDED, RETURN TO:

America First Credit Union
4051 South 1900 West, Building 5
Roy, Utah 84067
Attn: Commercial Real Estate Department

13912885 B: 11317 P: 8964 Total Pages: 10
03/17/2022 08:05 AM By: ggasca Fees: \$40.00
AGREE- AGREEMENT
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

Loan No. 411730401

Tax Parcel No. 27-34-~~101-020~~¹⁰²⁻⁰³⁰-0000

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of March 15, 2022 (the "Effective Date"), between **AMERICA FIRST CREDIT UNION** (the "Lender") and **Top Shelf Riverton, LLC, a Utah limited liability company d/b/a Jersey Mike's Subs** (the "Tenant").

WHEREAS, by Lease Agreement dated November 4, 2021 (the "Lease") between Riverton 2053 LLC, a Utah limited liability company ("Landlord") and Tenant, Landlord has leased to Tenant and Tenant has rented from Landlord the approximately 1,372 rentable square feet of leased premises ("Tenant's Premises") within the commercial property located at 2053 West 12600 South, Riverton, Utah 84065 as more fully described in Exhibit A attached hereto and incorporated by reference (such real property and all other improvements located thereon, as more fully described in the Lease, are collectively referred to herein as the "Property"); and

WHEREAS, Lender has made a loan to Landlord (the "Loan"); and

WHEREAS, to secure the Loan, Landlord, as trustor, has encumbered the Property by entering into that certain Deed of Trust concurrently herewith, in favor of Lender, as beneficiary (as amended, increased, renewed, extended, spread, consolidated, severed, restated or otherwise changed from time to time, the **DEED of TRUST**) which has been recorded in the Office of the County Recorder where the Property is located.

WHEREAS, Tenant desires that Lender recognize Tenant's rights under the Lease upon the occurrence of a Foreclosure Event (as defined below), and Tenant is willing to agree to attorn to the Successor Landlord (as defined below) upon the occurrence of such Foreclosure Event if Lender will recognize Tenant's right of possession under the Lease.

NOW, THEREFORE, for and in consideration of their respective covenants herein made and the receipt of other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** The following terms shall have the following meanings for purposes of this Agreement.

1.1 *Foreclosure Event.* A “*Foreclosure Event*” means: (a) foreclosure under the Deed of Trust; (b) any other exercise by Lender of rights and remedies (whether under the Deed of Trust, or any of the other documents evidencing or pertaining to the Loan [collectively, the “Loan Documents”]) or under applicable law, including, without limitation, bankruptcy law) as holder of the Loan and/or the Deed of Trust, as a result of which Successor Landlord becomes owner of the Property; or (c) delivery by Landlord to Lender (or its designee or nominee) of a deed or other conveyance of Landlord’s interest in the Property in lieu of any of the foregoing.

1.2 *Successor Landlord.* A “*Successor Landlord*” means any party that becomes the owner of the Property including, without limitation, the holder or beneficiary of the Loan, as the result of a Foreclosure Event.

Any defined term not otherwise defined in this Section 1 shall have the meaning given in the Lease.

2. **Subordination.**

2.1 *Subordination of Leasehold Estate.* The Lease and Tenant’s leasehold estate rights created by the Lease shall be, and shall at all times remain, subject and subordinate to the lien of the Deed of Trust, and all advances made under the Loan or any of the Loan Documents.

2.2 *Tenant Acknowledgement of Extension of Credit.* Tenant acknowledges that Lender, in extending or continuing to extend credit to Landlord secured by the Property, is doing so in material reliance on this Agreement.

2.3 *Tenant Acknowledgement of Information.* Tenant acknowledges that it has such information with respect to any credit extended by Lender to Landlord, and all loan documents executed in connection therewith, as Tenant deems necessary in order to grant this subordination. Tenant further agrees that Lender is under no obligation or duty to, nor has Lender represented that it has or will, see to the application of the proceeds of any such credit by any person or entity, and any application or use of any such proceeds for purposes other than those for which they were intended shall not defeat this subordination.

3. **Non-disturbance, Recognition and Attornment.**

3.1 *No Exercise of Deed of Trust Remedies Against Tenant.* Lender shall not name or join Tenant as a defendant in any exercise of Lender’s rights and remedies arising upon a default under the Deed of Trust unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies under the Deed of Trust or any of the other Loan Documents. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant’s rights under the Lease or this Agreement in such action.

3.2 *Non-disturbance and Attornment.* Upon any Foreclosure Event, and provided that no Event of Default by Tenant has occurred and is continuing under the Lease, then, when Successor Landlord takes title to Property: (a) Successor Landlord shall not terminate or disturb Tenant’s possession or quiet enjoyment of Tenant’s Premises under the Lease, except in

accordance with the terms of the Lease; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant. Notwithstanding the foregoing, a Foreclosure Event shall not constitute an offer to purchase the Property under any right of first refusal or right of first offer as may be granted to Tenant under the Lease and neither Lender nor Successor Landlord shall be obligated to provide Tenant any notice of any Foreclosure Event except as required by applicable law.

3.3 *Further Documentation.* The provisions of this Section 3 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Section 3 in writing upon request by either of them.

4. **Protection of Successor Landlord.** Notwithstanding anything to the contrary in the Lease or the Deed of Trust, Successor Landlord shall not be: (a) liable for any act or omission of, or any claims against, any prior landlord (including Landlord) arising prior to the date Successor Landlord obtains title to the Property; or (b) liable for any damages or other relief attributable to any latent or patent defects in construction with respect to any portion of the Premises; or (c) liable for any offsets or defenses which Tenant might have against any prior landlord (including Landlord) arising prior to the date Successor Landlord obtains title to the Property; or (d) bound by any amendment or modification of the Lease made without Lender's prior written consent; or (e) responsible for any security deposit paid by Tenant (unless delivered to and held by Lender); or (f) required to construct any improvements on the Premises. Regardless of anything in the Lease or this Agreement to the contrary, in acquiring the interest of Landlord as a result of such action or proceeding, Successor Landlord shall have no obligation or liability beyond its interest in the Premises. Tenant shall look exclusively to Successor Landlord's interest in the Property for payment and discharge of any of their respective obligations under this Agreement or under the Lease. Tenant shall not collect or attempt to collect any judgment based upon such obligations out of any other assets of Lender or Successor Landlord. In addition, upon any sale or transfer of its interest in the Property, Successor Landlord shall not have any further obligation under the Agreement or the Lease with respect to matters occurring after such sale or transfer. By executing this Agreement, Landlord specifically acknowledges and agrees that nothing contained in this Section shall impair, affect, lessen, abrogate or otherwise modify the obligations of Landlord to Tenant under the Lease.

5. **Lease.** Tenant hereby covenants and agrees that, so long as the Deed of Trust remains in force and effect:

5.1 *Notice of Default.* Tenant shall notify Lender in writing of any breach of or default by Landlord under the Lease that would result in the Lease being terminated. Tenant agrees that Lender shall have the right (but not the obligation) to cure any breach or default specified in such notice for a period of thirty (30) days in addition to the time period set forth in the Lease for Landlord's performance.

5.2 *Assignment of Rents.* Upon receipt by Tenant of written notice from Lender that Lender has elected to terminate the license granted to Landlord to collect rents, as provided in the Deed of Trust or any of the other Loan Documents, and directing Tenant to make payment thereof to Lender, Tenant agrees to pay all Rent to Lender, without setoff or deduction, at such place as Lender may direct, and Tenant shall not be required to determine whether Landlord is in default under any obligations to Lender before complying with such direction and shall not be liable to Landlord for failure to pay Landlord any sums that are paid instead to Lender. Notwithstanding Lender's exercise of the foregoing rights to receive payments from Tenant, Lender shall not be responsible for Landlord's duties and obligations under the Lease, unless Lender or any Successor Landlord acquires title to the Property.

6. **Miscellaneous.**

6.1 *Notices.* All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Notices shall be effective the next business day after being sent by overnight courier service, and three (3) business days after being sent by certified mail (return receipt requested). Unless and until notice of a change of address is given under this Agreement, notices or other communications shall be given to Lender, Landlord and Tenant, respectively, at the following address:

Lender: America First Credit Union
4051 South 1900 West, Building 5
Roy, Utah 84067
Attn: Commercial Real Estate Department

Tenant: Top Shelf Riverton, LLC
453 E. 6770 S.
Midvale, Utah 84047
Attn: Matt Switaj

With a copy to: Steve Switaj
394 Mulberry Lane
Avon Lake, Ohio 44012

With a copy to Franchisor at: Jersey Mike's Franchise Systems, Inc.
2251 Landmark Place
Manasquan, New Jersey 08736
Attn: General Counsel

6.2 *Successors and Assigns.* This Agreement shall bind and benefit the parties their successors and assigns, any Successor Landlord, and its successors and assigns.

6.3 *Entire Agreement.* This Agreement constitutes the entire agreement between Lender and Tenant regarding the subordination of the Lease to the Loan, the Deed of Trust and the

other Loan Documents and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement.

6.4 *Interaction with Lease and with Deed of Trust.* If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties to this Agreement and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of non-disturbance agreements by the holder of the Deed of Trust. Lender confirms that Lender has consented to Landlord's entering into the Lease.

6.5 *Interpretation; Governing Law.* The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State where the Premises is located, notwithstanding the conflict of laws principles to the contrary.

6.6 *Amendments.* This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by all parties to this Agreement.

6.7 *Execution.* This Agreement may be executed electronically and in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

6.8 *Representations.* Each party represents that it has full authority to enter into this Agreement and that those signatories executing this Agreement on its behalf have full power and authority to executed this Agreement.

6.9 *Recordation.* Upon full execution, this Agreement may be recorded in the real property records of the county in which the Premises is located by either party hereto.

[signature pages to follow]

IN WITNESS WHEREOF, this Agreement has been duly executed by Lender and Tenant as of the date(s) set forth below.

LENDER:

AMERICA FIRST CREDIT UNION

By: [Signature]
Name: Shari Cheney
Title: Commercial Lending Manager

Date: 3/15/2022

STATE OF Utah)
) SS
COUNTY OF Davis)

I, Marie Gibbs, a Notary Public in and for the County and State aforesaid, do hereby certify that Shari Cheney the Commercial Lending Manager of America First Credit Union a Federal Credit Union, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Shari Cheney, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15th day of March, 2022.

[Signature]
Notary Public

My Commission Expires: 5-3-2025



LANDLORD'S CONSENT

Landlord consents and agrees to the foregoing Agreement which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Deed of Trust or the Lease. The above Agreement discharges any obligations of Lender under the Deed of Trust and related Loan Documents to enter into a non-disturbance agreement with Tenant and the obligations of Tenant to enter into a subordination agreement with Lender.

LANDLORD:

Riverton 2053 LLC,
a Utah limited liability company

By: Dee R Hansen
Name: Dee R. Hansen
Title: member
Date: March 15, 2022

STATE OF Utah)
COUNTY OF Salt Lake) SS

I, Katie Saichek, a Notary Public in and for the County and State aforesaid, do hereby certify that Dee R. Hansen the Member of Riverton 2053, LLC, a limited liability company who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15 day of March, 2022.

Katie Saichek
Notary Public

My Commission Expires: 01/10/2025

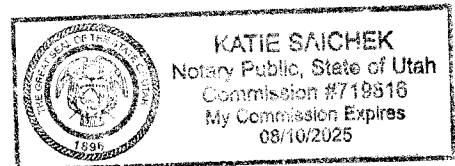


Exhibit A to
Subordination, Non-Disturbance and Attornment Agreement

Property Description

[Insert]

**EXHIBIT A
PROPERTY DESCRIPTION**

PARCEL 1:

Lot 1A, PARK AVENUE RETAIL PLAT 1 AMENDED, according to the official plat thereof, filed for record February 12, 2018 as Entry No. 12714215 in Book 2018P at Page 110, official records.

PARCEL 1A:

A private, nonexclusive easement over, across, through and under that portion of the Owner's land for ingress to and egress from the Owner's land over and across the Access Drive to the publicly dedicated street commonly known as Park Avenue (2080 West), as granted and described in Cross-Easement and Non-Competition Agreement recorded February 8, 2006 as Entry No. 9632280 in Book 9253 at Page 1343 and by Amendment recorded May 6, 2011 as Entry No. 11178918 in Book 9923 at Page 599.

PARCEL 1B:

A private, nonexclusive right of way and easement for vehicular (motorized and non-motorized including bicycles and similar vehicles) and pedestrian traffic upon, over, across and through that portion or portions of the Owner's land improved with drive ways or drive aisles or which may be improved as such at any time hereafter in such locations as they exist from time to time, as granted and described in Cross-Easement, Rights-of-Way and Restriction Agreement recorded May 6, 2011 as Entry No. 11178920 in Book 9923 at Page 604, and by Amendment recorded October 7, 2020 as Entry No. 13420477 in Book 11035 at Page 86.

Tax Id No.: 27-34-102-030