

14062475 B: 11395 P: 9859 Total Pages: 8
01/13/2023 02:57 PM By: kkennington Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: OLD REPUBLIC NCTS - CHICAGO
20 S CLARK STCHICAGO, IL 606031810

This instrument was drawn by and is to be returned to:

After Recording Return to: -3
Victor Hernandez Jr.
Old Republic National Commercial Title Services
20 S. Clark Street, Ste 2900
Chicago, IL 60603

Recording Information

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, (the "Agreement") made this 30 day of DECEMBER, 2022, by and among KUM & GO, L.C., an Iowa limited liability company, with a mailing address of 1459 Grand Avenue, Des Moines, IA 50309 ("Tenant"), CAM-KG Draper LLC, a Utah limited liability company, with principal office and place of business at 4064 Colony Road, Suite 315, Charlotte, NC 28211 ("Landlord" and sometimes hereinafter referred to as "Borrower"); and AMERIS BANK, a Georgia banking corporation ("Lender").

WITNESSETH:

WHEREAS, Borrower is or will become the owner and holder of fee simple title in and to certain real property (the "Land") located in the City of Draper, County of Salt Lake, State of Utah;

WHEREAS, Borrower and Tenant entered into that certain lease agreement (as the same may be amended, the "Lease") dated December 30, 2022 demising a portion of the Land more particularly described in the Lease, and in Exhibit A attached hereto, by Borrower to Tenant for a term of years (the "Leased Premises"); and

WHEREAS, Lender has made or shall make a loan to Borrower (the "Loan") evidenced by a promissory note from Borrower to Lender (the "Note"); and

WHEREAS, payment has been or shall be secured by a Deed of Trust of Real Estate and Security Agreement executed by Borrower to Lender and encumbering the Land (the "Deed of Trust"); and

WHEREAS, payment of the Note may also be secured by an assignment of leases, rents and profits, by separate agreement, or by way of the Deed of Trust (the "Assignment" and together with the Note, the Deed of Trust and any other document evidencing and/or securing the Loan, the "Loan Documents"), wherein the Lease is assigned by Borrower to Lender.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency whereof being hereby acknowledged, Tenant, Landlord and Lender, intending to be legally bound hereby, covenant and agree as follows:

1. Provided Tenant is not in default in the payment of rent, taxes, utility charges or other sums payable by Tenant under the terms of the Lease or under any other provision of the Lease, and Tenant is then in possession of the Leased Premises:

(a) The right of possession of Tenant to the Leased Premises shall not be affected or disturbed by Lender in the exercise of any of its rights and remedies under the Note, the Deed of Trust, or the Assignment; and

(b) In the event Lender obtains title to the Leased Premises through foreclosure or deed in lieu of foreclosure under the Deed of Trust and/or the other Loan Documents, Tenant agrees to continue occupancy of the Leased Premises under the same terms and conditions of the Lease and will attorn to the Lender, its successors or assigns, to the same extent and with the same force as if Lender were the landlord under the Lease.

2. Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges, options and remedies of Borrower under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as Lessor. Lender shall not, by virtue of the Assignment or this Agreement, be or become subject to any liability or obligation to Tenant under the Lease or otherwise, until Lender shall have obtained title to the Leased Premises, by foreclosure or otherwise, and then only to the extent of liabilities or obligations accruing subsequent to the date that Lender has obtained title to the Leased Premises. Lender shall not be responsible for any deposits held by Borrower.

3. Tenant shall not pay an installment of rent or any part thereof more than thirty (30) days prior to the due date of such installment, and Lender shall not be bound by and shall be entitled to recover from Tenant, as rent under the Lease, any payment of rent or additional rent made by Tenant to Borrower for more than one month in advance. Except as expressly permitted in the Lease without consent, Tenant shall not assign the Lease or sublet the Leased Premises without the prior written consent of Lender. In the event of an assignment or subletting, Tenant shall remain fully liable for performance of its obligations under the Lease.

4. After notice is given to Tenant by Lender, pursuant to the Assignment, that the rentals under the Lease should be paid to Lender, Tenant shall pay to Lender, or in accordance with the directions of Lender, all rentals and other monies due and to become due to Borrower under the Lease without offset or defense, and Borrower hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant of and from any liability to Borrower on account of any such payments.

5. Tenant agrees to give Lender written notice of any default by Borrower under the Lease. Lender shall have thirty (30) days after receipt of such written notice in which, at Lender's option, to cure such default; provided, however, that said 30-day period shall be extended so long as within said 30-day period Lender has commenced to cure and is proceeding with reasonable diligence to cure said default. Nothing herein shall be deemed to obligate Lender to cure Borrower's defaults under the Lease.

6. The Lease and Tenant's leasehold estate created thereby, including all rights and options to purchase the Leased Premises, if any, shall be and are completely and unconditionally subject and subordinate to the lien of the Deed of Trust and to all the terms, conditions and provisions thereof, to all

advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof.

7. Tenant represents and warrants to Lender that the Lease constitutes the entire agreement between Borrower and Tenant and has not been modified or amended, that the Leased Premises are currently in satisfactory condition, that Borrower is not currently in default under the Lease, and that Tenant has no defenses, offsets, credits or counterclaims to its obligations under the Lease.

8. Borrower and Tenant each agree not to amend, modify, terminate or surrender the Lease without the prior written consent of Lender.

9. Any notices required hereunder will be in writing and will be either given by U.S. registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), or sent by personal delivery by a nationally recognized courier service for next day delivery. The current addresses of the parties to which any notice provided for herein shall be sent, are as follows:

If to Landlord:

CAM-KG Draper LLC
a Utah limited liability company
4064 Colony Road, Suite 315
Charlotte, NC 28211

If to Tenant:

If to the Lender:

If to Lender:
Ameris Bank
P.O. Box 200013
Kennesaw, GA 30156-9209
Attn: _____

With a copy to:
Duncan & Associates, P.A.
1601 Jackson St., Ste. 101
Fort Myers, FL 33901
Attn: Gordon R. Duncan, Esq.

Any party may designate another addressee (and/or change its address for notices hereunder by a notice given pursuant to this Section. Notices delivered personally will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by mail in accordance with the above paragraph will be effective upon execution by the addressee of the return receipt requested.

10. This Agreement shall inure to the benefit of and shall be binding upon Tenant, Landlord and Lender, and their respective heirs, personal representatives, successors and assigns. Failure of Tenant to comply with the terms hereof shall be a breach of the Lease. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Lender, not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement may not be modified except in writing by all of the parties hereto. This Agreement shall be governed by and construed according to the laws of the state in which the Leased Premises are located. Tenant agrees to execute an agreement substantially the same as this Agreement for the benefit of any subsequent deed of trust beneficiary/mortgagee of the Land or the Leased Premises.

11. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

[Signature Page to Follow]

Signature Page for Draper – SNDA

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

TENANT:

KUM & GO, L.C.,
an Iowa limited liability company

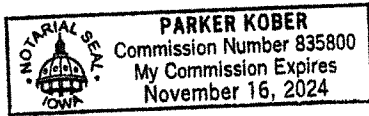
By: [Signature]
Name: Charles W. Campbell
Title: Chief Legal and Risk Officer

STATE OF IOWA

COUNTY OF POLK

I Parker Kober, a Notary Public of the County and State aforesaid certify that Charles W. Campbell personally and voluntarily came before me this day and acknowledged that (s)he is CLRO of Kum & Go, L.C., and that (s)he, as CLRO being authorized to do so, executed the foregoing on behalf of Kum & Go, L.C.

WITNESS, my hand and official stamp or seal, this the 30th day of December, 2022



[Signature]
Notary Public in and for said State
My Commission expires: 11/16/24

Signature Page for Draper – SNDA

LANDLORD:

CAM-KG Draper LLC,
a Utah limited liability company

By: 
Ryan Hanks, Manager

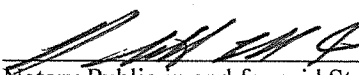
STATE OF NC

COUNTY OF Mecklenburg

I, D. Scott Hester Jr., a Notary Public of the County and State aforesaid certify that Ryan Hanks personally and voluntarily came before me this day and acknowledged that (s)he is Manager of CAM-KG Draper LLC, a Utah limited liability company, and that (s)he, as Manager being authorized to do so, executed the foregoing on behalf of such company.

WITNESS, my hand and official stamp or seal, this the 29 day of December, 2022.




Notary Public in and for said State
My Commission expires: 8-11-24

Signature Page for Draper – SNDA

LENDER:

AMERIS BANK

By: 

Name: Fernando Ycaza

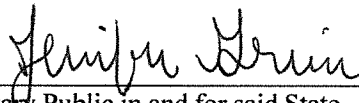
Title: Senior Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Jennifer Griner, a Notary Public of the County and State aforesaid certify that Fernando Ycaza personally and voluntarily came before me this day and acknowledged that he is Senior Vice President of Ameris Bank, and that he, as Senior Vice President being authorized to do so, executed the foregoing on behalf of Ameris Bank.

WITNESS, my hand and official stamp or seal, this the 9th day of January, 2023.



Notary Public in and for said State

My Commission expires: March 25, 2026

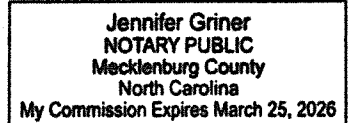


EXHIBIT "A"

Legal Description of the Premises

LOT 101 OF AMENDED LOT 1 OF 136 CENTER OFFICE PLAT, ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED JULY 11, 2022, AS ENTRY NO. 13982948 IN THE SALT LAKE COUNTY RECORDER'S OFFICE.