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This instrument was prepared by and after recording return to: Walter W. Hays, Jr. Fortson, Bentley and Griffin, P.A. 2500 Daniell's Bridge Road Building 200, Suite 3A Athens, Georgia 30606 (706) 548-1151

E# 2677057 PG 1 OF 9 ERNEST D ROWLEY, WEBER COUNTY RECORDER 03-MAR-14 1118 AM FEE \$26.00 DEP SGC REC FOR: FORTSON

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

PREMISES LOCATION: 12th Street, Ogden, Weber County, Utah

THIS AGREEMENT is made and entered into as of this 21st day of September, 2013, by and among OGDEN COMMONS, LLC, a Utah limited liability company, whose principal address is 1572 Woodland Park Drive, Suite 505, Layton, Utah 84041 (the "Landlord"), MJM 5G, LLC, a Nevada limited liability company, whose principal address is 2152 E. Creek Road, Sandy, Utah 84093 (the "Tenant"), ZAXBY'S FRANCHISING, INC., a Georgia corporation, whose principal address is 1040 Founder's Boulevard, Suite 100, Athens, Georgia 30606 ("ZFI"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, whose principal address is 299 South Main Street, 6th Floor, Salt Lake City, Utah 84111 (the "Lender").

**WITNESSETH:**

THAT WHEREAS, Landlord has entered into and delivered that certain Deed of Trust dated September 9, 2010, in favor of Lender, recorded in the Office of the Weber County Recorder, as instrument E#2491827 (the "Mortgage"), conveying certain property therein described located at 12th Street, Ogden, Weber County, Utah (the "Premises") see Exhibit A; and

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated June 20, 2013, and Rider to Lease Agreement dated September 21, 2013 (collectively, the "Lease"), for the Premises for use by Tenant as a Zaxby's® restaurant to be operated pursuant to a written License Agreement dated September 21, 2013, by and between ZFI and Tenant (including any and all amendments and renewals and extensions thereof) (the "License Agreement"); and

WHEREAS, it is a condition to ZFI's confirmation of the Lease, as required under the License Agreement, that this Agreement be fully executed and delivered by the parties hereto;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do mutually covenant and agree as follows:

1. Lender hereby consents to the Lease.
2. Tenant covenants and agrees with the Lender that the Lease is hereby made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage (as same may be modified and extended) subject to the provisions of this Agreement.
3. Tenant certifies that the Lease is presently in full force and effect.

4. Lender agrees that so long as the Lease shall be in full force and effect and Tenant is not in default thereunder beyond any applicable cure period:

(a) Except as required by applicable law governing foreclosures and/or sales pursuant to power of sale, Tenant shall not be named or joined as a party defendant or otherwise in any suit, action, or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby.

(b) The possession by Tenant of the Premises and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise adversely affected by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage or any other documents held by the Lender, or (ii) any judicial sale or execution or other sale of the Premises, or by any deed given to Lender by any other documents or as a matter of law, or (iii) any default under the Mortgage or the bond or note or other obligation secured thereby.

5. If Lender shall become the owner of the Premises by reason of foreclosure of the Mortgage or otherwise, or if the Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage or by a deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant, as Tenant thereunder, and the then owner of the Premises, as Landlord thereunder, upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) Tenant shall be bound to the Lender or to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the option periods if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as Landlord under the Lease; and

(b) If Tenant is not in default under the Lease beyond any applicable cure period, such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the option periods, if Tenant elects or has elected to exercise its options to extend the term) which terms, covenants and provisions such new owner hereby agrees to assume and perform, provided, however, that Lender or any successor or assignee of Lender shall not (i) be bound by any prepayment of rent or additional rent, unless received and receipted for by Lender or its successor or assignee; (ii) be personally liable under the Lease, and Lender's or its successor's or assignee's liability under the Lease shall be limited to the interest of the Lender or its successor or assignee in the Premises; (iii) be liable for any act or omission of any prior landlord under the Lease, including, without limitation, the Landlord, except for any continuing act or omission of which Lender had notice and failed to cure; (iv) be subject to any offsets or defenses which Tenant may have against any prior landlord under the Lease, including, Landlord, except for any offsets or defenses related to any continuing act or omission of which Lender has had notice and failed to cure; (v) except as provided in Section 8. below, be bound by any amendment, modification or termination of the Lease (other than a termination of the Lease by Tenant pursuant to the express terms of the Lease) made without Lender's prior written consent; (vi) be liable to provide Tenant with any rights in or be bound by or be responsible for any restrictions on any property other than the Premises during the remainder of the term of the Lease; (vii) be liable for any security deposits Lender does not receive; and (viii) be liable to Tenant for the "Landlord's Work" under the Lease.

6. Tenant, Landlord, and Lender acknowledge and agree that upon written instruction to Tenant from the Landlord or Lender instructing Tenant to make all rent and other payments due and to become due to Landlord under the Lease directly to Lender, the Tenant agrees to follow such direction until further written notice from the Lender, and Landlord and Lender hereby expressly agree that any such payment shall discharge any obligation of Tenant to Landlord under the Lease to the extent of such payment; provided, however, that the foregoing shall have no effect on Tenant's rights to any offsets nor any effect on Landlord's obligations.

7. Tenant will notify Lender in writing concurrently with any notice given to Mortgagor of any default by Mortgagor under the Lease, and Tenant agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Tenant will not declare a

default of the Lease, as to Lender, if Lender cures such default within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Mortgagor; provided, however, that if such default cannot with diligence be cured by Lender within such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence.

8. Landlord and Tenant may not mutually consent to the termination of the Lease without Lender's consent, which shall not be unreasonably withheld or delayed.

9. Landlord and Tenant may, from time to time, modify or amend the Lease without Lender's consent, provided such modifications or amendments do not result in a change in the Lease Term, the reduction of the Rent payable thereunder or make Landlord's obligations thereunder more onerous; any such modifications having such result and made without Lender's written consent shall be void and of no force and effect as between Lender and Tenant.

10. Tenant shall not pay an installment of rent more than thirty (30) days prior to the due date.

11. Landlord, Tenant and ZFI have entered into, or are about to enter into, a certain Collateral Assignment of Lease whereby ZFI is granted the right to become the tenant of the Premises and continue the operation of a Zaxby's® restaurant (now or to be located thereon) in the event Tenant should fail to cure any default in the Lease within any applicable cure period or in the event the License Agreement should ever, for any reason, be terminated or expire. Accordingly, this Agreement shall inure to the benefit of ZFI, its successors and assigns, in the event ZFI should ever become tenant of the Premises.

12. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Lender, at the address of Lender hereinabove set forth or at such other address as Lender may designate by notice, (b) if to Tenant, at the address of Tenant hereinabove set forth, or at such other address as Tenant may designate by notice, (c) if to Landlord, at the address of Landlord hereinabove set forth or at such other address as Landlord may designate by notice, or (d) if to ZFI, at the address of ZFI hereinabove set forth or at such other address as ZFI may designate by notice.

This Agreement may be executed in one or more counterparts, or by the parties executing separate counterpart signature pages, including facsimiles transmitted by telecopier, all of which shall be deemed to be original counterparts of this Agreement.

This Agreement shall be governed by, and construed in accordance with, the laws of the state in which the Premises are located.

This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.

This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

This Agreement and the covenants contained are intended to run with and bind all lands affected thereby.

*(Continued on following page)*

IN WITNESS WHEREOF, the parties hereby have set their hands and seals as of the day and year first above written.

Signed, sealed and delivered in the presence of:

LANDLORD: OGDEN COMMONS, LLC

Blair Bond  
Witness

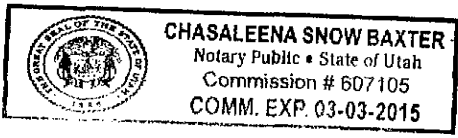
By: [Signature] [SEAL]  
Name: SPENCER H. WRIGHT  
Title: MANAGER

[Signature]  
Witness

State of Utah  
County of DAVIS

I, a Notary Public of said County and State, certify that Spencer H. Wright personally came before me this day and acknowledged that he/she is manager of Ogden Commons, LLC, a Utah limited liability company and that he/she, as manager, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the 25<sup>th</sup> day of September, 2013.

(SEAL) 

[Signature]  
Notary Public  
My commission expires: 03/03/2015

Signed, sealed and delivered in the presence of:

TENANT: MJM 5G, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ [SEAL]  
Name: Jeff Howes  
Title: Managing Member

\_\_\_\_\_  
Witness

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, a Notary Public of said County and State, certify that Jeff Howes personally came before me this day and acknowledged that he is a Managing Member of MJM 5G, LLC, a Nevada limited liability company, and that he, as a Managing Member, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL) Notary Public  
My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereby have set their hands and seals as of the day and year first above written.

Signed, sealed and delivered in the presence of:

LANDLORD:  
OGDEN COMMONS, LLC

Witness \_\_\_\_\_

By: \_\_\_\_\_ [SEAL]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness \_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, a Notary Public of said County and State, certify that \_\_\_\_\_, personally came before me this day and acknowledged that he/she is \_\_\_\_\_ of Ogden Commons, LLC, a Utah limited liability company and that he/she, as \_\_\_\_\_, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

Notary Public  
My commission expires: \_\_\_\_\_

Signed, sealed and delivered in the presence of:

TENANT:  
MJM 5G, LLC

Witness [Signature]

By: [Signature] [SEAL]

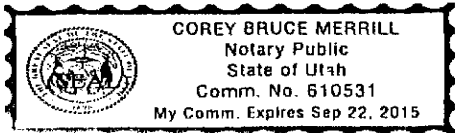
Name: Jeff Howes  
Title: Managing Member

Witness [Signature]

State of Utah  
County of Salt Lake

I, a Notary Public of said County and State, certify that Jeff Howes personally came before me this day and acknowledged that he is a Managing Member of MJM 5G, LLC, a Nevada limited liability company, and that he, as a Managing Member, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the 23rd day of September, 2013.



488498.1  
007927-1339

Notary Public  
My commission expires: 9/22/2015

Signed, sealed and delivered  
in the presence of:

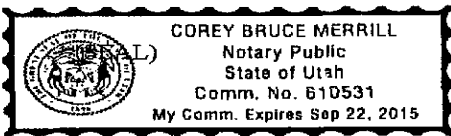
[Signature]  
Witness  
[Signature]  
Witness

By: [Signature] [SEAL]  
Name: Ryan Howes  
Title: Managing Member

State of Utah  
County of Salt Lake

I, a Notary Public of said County and State, certify that Ryan Howes personally came before me this day and acknowledged that he is a Managing Member of MJM 5G, LLC, a Nevada limited liability company, and that he, as a Managing Member, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the 23rd day of September, 2013.



Notary Public  
My commission expires: 9/22/2015

Signed, sealed and delivered  
in the presence of:

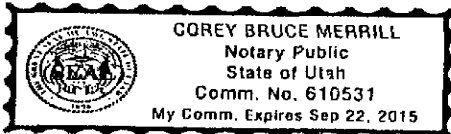
[Signature]  
Witness  
[Signature]  
Witness

By: [Signature] [SEAL]  
Name: Mike Cummings  
Title: Managing Member

State of Utah  
County of Salt Lake

I, a Notary Public of said County and State, certify that Mike Cummings personally came before me this day and acknowledged that he is a Managing Member of MJM 5G, LLC, a Nevada limited liability company, and that he, as a Managing Member, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the 23rd day of September, 2013.



Notary Public  
My commission expires: 9/22/2015

Signed, sealed and delivered  
in the presence of:

ZFI:  
ZAXBY'S FRANCHISING, INC.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: Amy C. Pritchett  
Title: Vice President of Franchise Administration

\_\_\_\_\_  
Witness

[CORPORATE SEAL]

State of Georgia  
County of Oconee

I, a Notary Public of said County and State, certify that Amy C. Pritchett personally came before me this day and acknowledged that she is Vice President of Franchise Administration for Zaxby's Franchising, Inc., a Georgia corporation, and that she, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

Notary Public  
My commission expires: \_\_\_\_\_

Signed, sealed and delivered  
in the presence of:

LENDER:  
WELLS FARGO BANK, NATIONAL ASSOCIATION

[Signature]  
Witness

By: [Signature]  
Name: Erik Bengtzen  
Title: Vice President

[Signature]  
Witness

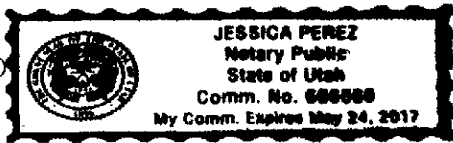
[CORPORATE SEAL]

State of  
County of

I, a Notary Public of said County and State, certify that ERIK BENGTZEN, personally came before me this day and acknowledged that he/she is VICE PRESIDENT of Wells Fargo Bank, National Association, and that he/she, as VICE PRESIDENT of Wells Fargo Bank, National Association, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the 23 day of SEPTEMBER 2013.

(SEAL)



Notary Public [Signature]  
My commission expires: MAY 24, 2017

Signed, sealed and delivered  
in the presence of:

ZFI:  
ZAXBY'S FRANCHISING, INC.

Kathryn B. Hat  
Witness  
Shelley Wilson  
Witness

By: [Signature]  
Name: Amy C. Pritchett  
Title: Vice President of Franchise Administration  
[CORPORATE SEAL]

State of Georgia  
County of Oconee

I, a Notary Public of said County and State, certify that Amy C. Pritchett personally came before me this day and acknowledged that she is Vice President of Franchise Administration for Zaxby's Franchising, Inc., a Georgia corporation, and that she, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the 11<sup>th</sup> day of November, 2013.



Notary Public [Signature]  
My commission expires: 3-18-2016

Signed, sealed and delivered  
in the presence of:

LENDER:  
WELLS FARGO BANK, NATIONAL ASSOCIATION

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
[CORPORATE SEAL]

State of  
County of

I, a Notary Public of said County and State, certify that \_\_\_\_\_, personally came before me this day and acknowledged that he/she is \_\_\_\_\_ of Wells Fargo Bank, National Association, and that he/she, as \_\_\_\_\_ of Wells Fargo Bank, National Association, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

Notary Public  
My commission expires: \_\_\_\_\_



EXHIBIT "A"LEGAL DESCRIPTION OF PREMISES

BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF 12TH STREET, SAID POINT BEING LOCATED SOUTH 87°03'35" EAST 210.62 FEET AND SOUTH 84°50'29" EAST 86.23 FEET FROM THE NORTHWEST CORNER OF LOT 2 OF THE COMMONS AT OGDEN FIRST AMENDMENT, SAID POINT ALSO BEING LOCATED SOUTH 88°8'35" EAST ALONG THE MONUMENTED CENTERLINE OF 12TH STREET 1212.11' AND SOUTH 38.20 FEET FROM THE CENTERLINE MONUMENT LOCATED AT THE INTERSECTION OF THE MONUMENTED LINE OF 12TH STREET AND THE CENTERLINE OF GIBSON AVENUE AND RUNNING THENCE SOUTH 84°50'29" EAST ALONG SAID SOUTH LINE 80.24 FEET TO THE BEGINNING OF A NON-TANGENT CURVE; THENCE SOUTHEASTERLY ALONG SAID SOUTH LINE 150.19 FEET ALONG THE ARC OF A 10066.92 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 0°51'17" (CHORD BEARS SOUTH 89°51'08" EAST 150.19 FEET, RADIAL BEARING IS N 0°34'31" E); THENCE SOUTH 01°35'30" WEST 190.95 FEET; THENCE NORTH 88°24'30" WEST 230.23 FEET; THENCE NORTH 01°35'30" EAST 192.15 FEET TO THE POINT OF BEGINNING.

CONTAINS: 43,547 SQ. FT. / 1.0 AC.

Out of 12-241-0001; 12-241-0002 and 12-241-0003