

**Subordination and Non-Disturbance**

41-736-0001

After recording, return to:

Neel, Robinson and Stafford LLC  
5555 Glenridge Connector, Suite 400  
Atlanta, Georgia 30342

File No.:

THIS SUBORDINATION AND NON-DISTURBANCE AGREEMENT ("**Agreement**") is made and entered into this 23<sup>rd</sup> day of **December, 2021**, by and among **IBERIABANK**, a division of First Horizon Bank (hereinafter called the "**Lender**"), **BB HOLDINGS UT, LLC**, an Oregon limited liability company (hereinafter called the "**Tenant**" or "**Lessee**" or "**lessee**"), and **MRP PAYSON, LLC**, a Utah limited liability company (hereinafter called the "**Landlord**").

*WITNESSETH*

WHEREAS, on or about the date hereof, Landlord has entered into and delivered that certain DEED OF TRUST in favor of Lender to be recorded in *Utah County, State of Utah* (the "**Security Instrument**"), conveying and encumbering the property described in **Exhibit "A"** attached hereto and incorporated herein ("**Premises**");

WHEREAS, Land and Tenant entered into that certain Commercial Ground Lease dated November 16, 2021 (said Lease being hereinafter called the "**Lease**"; said premises being hereinafter called the "**Leased Premises**"); and

WHEREAS, the parties hereto desire to enter into this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, Lender, Tenant, and Landlord hereby covenant and agree as follows:

1. *Non-Disturbance*. So long as no default exists by Tenant pursuant to the terms of the Lease, nor any event has occurred which has continued to exist for such period of time (after notice, if any, required by the Lease) as would entitle the lessor under the Lease to terminate the Lease or would cause, without any further action on the part of Landlord, the termination of the Lease or would entitle such lessor to dispossess the lessee thereunder, the Lease shall not be terminated, nor shall such lessee's use, possession or enjoyment of the Leased Premises be interfered with nor shall the leasehold estate granted by the Lease be affected in any other manner, in any exercise of the power of sale contained in the Security Instrument, or by any foreclosure or any action or proceeding instituted under or in connection

with the Security Instrument or in case the Lender takes possession of the property described in the Security Instrument pursuant to any provisions thereof, unless the lessor under the Lease would have had such right if the Security Instrument had not been made, except that the person or entity acquiring the interest of the lessor under the Lease as a result of any such action or proceeding, and the successors and assigns thereof (hereinafter called the "**Purchaser**") shall not be (a) liable for any non-continuing default of any prior lessor under the Lease; or (b) subject to any offsets or defenses which the lessee under the Lease might have against any prior lessor under the Lease; or (c) bound by any base rent, percentage rent or any other payments which the lessee under the Lease might have paid for more than the current month to any prior lessor under the Lease; or (d) bound by any amendment or modification of the Lease which materially decreases the Tenant's obligations or increases the Landlord's obligations under the Lease, made without Lender's prior written consent; or (e) bound by any consent by any lessor under the Lease to any assignment of the lessee's interest in the Lease made without also obtaining Lender's prior written consent.

2. *Attornment.* If the interests of the lessor under the Lease shall be transferred to any person or entity (the "**Purchaser**") acquiring the interest of the lessor under the Lease as a result of any power of sale contained in the Security Instrument, or by any foreclosure or any action or proceeding instituted under or in connection with the Security Instrument or in case the Lender takes possession of the property described in the Security Instrument pursuant to any provisions thereof the lessee thereunder shall be bound to the Purchaser under all of the terms, covenants and conditions of the Lease for the balance of the term thereof and any extensions or renewals thereof which may be affected in accordance with any option therefor in the Lease, with the same force and effect as if the Purchaser were the lessor under the Lease, and Tenant, as lessee under the Lease, does hereby attorn to the Purchaser, including the Lender if it be the Purchaser, as its lessor under the Lease. Said attornment shall be effective and self-operative without the execution of any further instruments upon the succession by Purchaser to the interest of the lessor under the Lease. The respective rights and obligations of Purchaser and of the lessee under the Lease upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth in the Lease except as otherwise expressly provided herein.

3. *Subordination.* Tenant hereby subordinates all of its right, title and interest as lessee under the Lease to the right, title and interest of the Lender under the Security Instrument, and, subject at all times to Tenant's right to non-disturbance provided for herein, Tenant further agrees that the Lease now is and shall at all times continue to be subject and subordinate in each and every respect to the lien of the Security Instrument and to any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Security Instrument to the full extent of the principal sum secured thereby and interest thereon.

4. *Notice of Default by Lessor.* Tenant, as lessee under the Lease, hereby covenants and agrees to give Lender written notice properly specifying wherein the lessor under the Lease has failed to perform any of the covenants or obligations of the lessor under the Lease, simultaneously with the giving of any notice of such default to the lessor under the provisions of the Lease. Tenant agrees that Lender shall have the right, but not the obligation, within thirty (30) days after receipt by Lender of such notice (or within such additional time as is reasonably required to correct any such default) to correct or remedy, or cause to be corrected or remedied, each such default before the lessee under the Lease may take any action under the Lease by reason of such default. Such notices to Lender shall be delivered in duplicate to:

IBERIABANK, a division of First Horizon Bank  
165 Madison Avenue  
Memphis, TN 38103  
Attn: Chris Catone

or to such other address as the Lender shall have designated to Tenant by giving written notice to Tenant at:

ATTN: Legal Department  
110 SW 4<sup>TH</sup> ST.  
GRANTS PASS, OREGON 97526

or to such other address as may be designated by written notice from Tenant to Lender.

5. *No Further Subordination.* Landlord and Tenant covenant and agree with Lender that there shall be no further subordination of the interest of lessee under the Lease to any Lender or to any other party without first obtaining the prior written consent of Lender. Any attempt to effect a further subordination of lessee's interest under the Lease without first obtaining the prior written consent of Lender shall be null and void.

6. *As to Landlord and Tenant.* As between Landlord and Tenant, Landlord and Tenant covenant and agree that nothing herein contained nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Lease.

7. *As to Landlord and Lender.* As between Landlord and Lender, Landlord and Lender covenant and agree that nothing herein contained, nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Security Instrument or other loan documents made to Lender.

8. *Title of Paragraphs.* The titles of the paragraphs of this agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this agreement.

9. *Governing Law.* This agreement shall be governed by and construed in accordance with the laws of the state in which the Premises is located.

10. *Provisions Binding.* The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Lender, Tenant and Landlord. The reference contained to successors and assigns of Tenant is not intended to constitute and does not constitute a consent by Landlord or Lender to an assignment by Tenant, but has reference only to those instances in which the lessor under the Lease and Lender shall have given written consent to a particular assignment by Tenant thereunder.

*[Remainder of page intentionally left blank]*

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

Signed, sealed and delivered in the presence of:

[Signature]  
Witness

[Signature]  
Notary Public

My commission expires: 4-2-2025

[Notarial Seal]

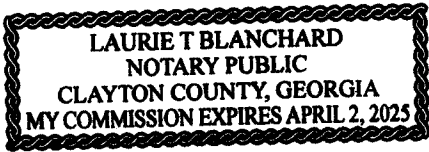
LENDER

**IBERIABANK,**  
a division of First Horizon Bank

By: [Signature] (SEAL)

Name: Chris Catone  
Title: Senior Vice President

[BANK SEAL]

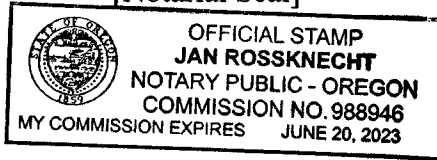


Signed, sealed and delivered in the presence of:

Jarvis Carnus  
Witness

Jan Rossknecht  
Notary Public  
My commission expires: 6-20-2023

[Notarial Seal]



TENANT

**BB HOLDINGS UT, LLC,**  
an Oregon limited liability company

By: Boersma Bros. LLC, its Member  
By: Dutch Mafia, LLC, its Member

By: Christin Schmitt  
Title: CAO  
Name: Christine Schmidt

Signed, sealed and delivered in the presence of:

LANDLORD

**MRP PAYSON, LLC,**  
a Utah limited liability company

\_\_\_\_\_  
Witness

By: [Signature] (Seal)

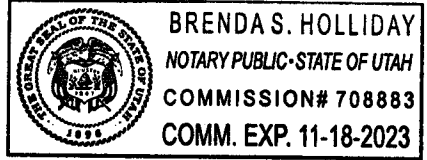
[Signature]  
\_\_\_\_\_  
Notary Public

Name: Matt McWhirter

My commission expires: 11-18-2023

Title: Manager

[Notarial Seal]



**Exhibit "A"**

A PARCEL OF LAND BEING A PART OF LOT 1, HENLINE SUBDIVISION PLAT "B" AS RECORDED WITH THE OFFICE OF THE UTAH COUNTY RECORDER AS MAP NO. 13299, SAID PARCEL BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT A POINT ON THE MOST NORTH LINE OF LOT 3 OF SAID SUBDIVISION, SAID POINT BEING SOUTH 88°33'40" EAST ALONG SAID NORTH LINE A DISTANCE OF 108.81 FEET FROM THE MOST NORTHWEST CORNER OF SAID LOT 1, AND RUNNING THENCE ALONG THE SAID MOST NORTH LINE, THE EAST LINE AND THE SOUTH LINE OF SAID LOT 3 THE FOLLOWING THREE COURSES: 1) SOUTH 88°33'40" EAST 94.26 TO THE NORTHEAST CORNER THEREOF, 2) SOUTH 0°07'05" EAST 406.47 FEET TO THE SOUTHEAST CORNER THEREOF, 3) NORTH 89°52'37" WEST 95.61 FEET; THENCE NORTH 0°04'35" EAST 408.63 FEET TO THE POINT OF BEGINNING.

CONTAINS 38,683 SQ. FT. OR 0.890 ACRES