

1718905

Tax Serial Number:
12-883-0003

E 3506090 B 8126 P 289-296
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
11/2/2022 12:27:00 PM
FEE \$40.00 Pgs: 8
DEP eCASH REC'D FOR STEWART TITLE INS AGENCY

RECORDATION REQUESTED BY:
SUNWEST BANK
SALT LAKE CITY COMMERCIAL REAL ESTATE
10011 CENTENNIAL PKW., SUITE 45
SANDY, UT 84070

WHEN RECORDED MAIL TO:
SUNWEST BANK
LOAN SERVICING DEPARTMENT
5660 E. FRANKLIN ROAD, STE. 301
NAMPA, ID 83687

SEND TAX NOTICES TO:
SYRACUSE PROPERTY HOLDINGS, LLC
1178 W LEGACY CROSSING BLVD, STE 100
CENTERVILLE, UT 84014

FOR RECORDER'S USE ONLY

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE COLLATERAL BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT CERTIFICATE

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT dated August 5, 2022 ("Agreement"), is made and executed among SYRACUSE PROPERTY HOLDINGS, LLC, whose address is 1178 W LEGACY CROSSING BLVD, STE 100, CENTERVILLE, UT 84014 ("Landlord"); KEW HOLDINGS, LLC (JETS PIZZA), whose address is 942 N 450 W, SUNSET, UT 84015 ("Tenant"); and SUNWEST BANK, SALT LAKE CITY COMMERCIAL REAL ESTATE, 10011 CENTENNIAL PKW., SUITE 45, SANDY, UT 84070 ("Lender").

SUBORDINATED LEASE. Tenant and Landlord have executed a lease dated March 24, 2022 of the property described herein (the "Lease"). The following information is the summary of the basic terms and conditions of the Subordinated Lease: Lease with a term of five (5) years and four (4) months.

REAL PROPERTY DESCRIPTION. The Lease covers Part of the shopping center with approximately 1,320 sf, located at 817 West Antelope Drive, Syracuse, Utah 84075 of the following described real property (the "Real Property") located in DAVIS County, State of Utah:

See EXHIBIT "A", which is attached to this Agreement and made a part of this Agreement as if fully set forth herein.

The Real Property or its address is commonly known as 817 W ANTELOPE DRIVE, SYRACUSE, UT 84075. The Real Property tax identification number is 12-883-0003.

SUPERIOR INDEBTEDNESS. Lender has extended or has agreed to extend the following described financial accommodations to Landlord, secured by the Real Property (the "Superior Indebtedness"):

Note dated August 5, 2022 in the amount of \$1,580,000.00.

LENDER'S LIEN. The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, deed of trust, or other lien instrument, dated August 5, 2022, from Landlord to Lender (the "Lender's Lien"). As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Lease and all of Tenant's rights in the Real Property ("Lease Rights").

REQUESTED FINANCIAL ACCOMMODATIONS. Landlord and Tenant each want Lender to provide financial accommodations to Landlord in the form of the Superior Indebtedness. Landlord and Tenant each represent and acknowledge to Lender that Landlord and Tenant will benefit as a result of these financial accommodations from Lender to Landlord, and Landlord and Tenant acknowledge receipt of valuable consideration for entering into this Agreement.

IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, LENDER, LANDLORD, AND TENANT HEREBY AGREE AS FOLLOWS:

SUBORDINATION. Notwithstanding anything in the Lease to the contrary, the parties acknowledge and agree that the Lease and Lease Rights are and shall be subject and subordinate in right, interest and lien, and for all purposes, to Lender's Lien, and to all renewals, modifications, consolidations, replacements, and extensions thereof, and to any subsequent lien of the Lender with which Lender's Lien may be spread or consolidated, to the full extent of the principal sum and all other amounts secured thereby and interest thereon. Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender, and its successors and assigns, without the prior written consent of Lender.

NON-DISTURBANCE. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default of the Loan under the Note and/or under Lender's Lien unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. 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. If the Lease has not been terminated, then, when Lender succeeds to the interest of Landlord, the Lender shall not terminate or disturb Tenant's possession of Tenant's premises under the Lease, except in accordance with the terms of the Lease and this Agreement.

ATTORNMENT. If Lender shall succeed to the interest of the Landlord under the Lease, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to Lender, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Lender, any instrument or certificate which, in the sole judgment of Lender, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

NO LIABILITY FOR LENDER. Lender in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of annual base rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

- (A) Liable for any act or omission of or any claims against any prior landlord, including Landlord; or
- (B) Subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord; or
- (C) Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, including Landlord; or
- (D) Bound by any amendment or modification of the Lease, or waiver of any of its terms, made without its consent; or
- (E) Liable for any sum that any prior landlord, including Landlord, owed to Tenant, including without limitation

when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing among Lender, Landlord, and Tenant shall constitute a waiver of any of Lender's rights or of any of Landlord's and/or Tenant's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors. This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement.

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AUGUST 5, 2022.

LANDLORD:

SYRACUSE PROPERTY HOLDINGS, LLC

By: 
SPENCER H. WRIGHT, Manager of SYRACUSE PROPERTY HOLDINGS, LLC


MILLCREEK PARTNERS LLC, Member of SYRACUSE PROPERTY HOLDINGS, LLC

TETON LAND COMPANY, L.L.C., Manager of MILLCREEK PARTNERS LLC

By: 
SPENCER H. WRIGHT, Manager of TETON LAND COMPANY, L.L.C.

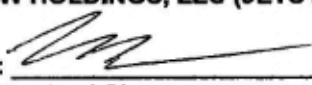
LENDER:

SUNWEST BANK

X 
Authorized Officer

TENANT:

KEW HOLDINGS, LLC (JETS PIZZA)

By:  **Eric Holmes**
Authorized Signer **Owner**
for KEW HOLDINGS, LLC (JETS PIZZA)

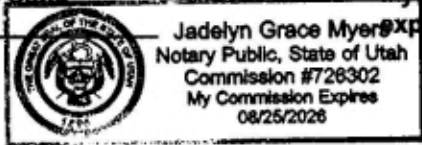
By: _____
Authorized Signer
for KEW HOLDINGS, LLC (JETS PIZZA)

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)
) SS
COUNTY OF DAVIS)

On this 11th day of Sept, 20 22, before me, the undersigned Notary Public, personally appeared **SPENCER H. WRIGHT, Manager of SYRACUSE PROPERTY HOLDINGS, LLC**, and known to me to be a member or designated agent of the limited liability company that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By Jadelyn Grace Myers Residing at DAVIS County, UT
Notary Public in and for the State of UT My commission expires 8/25/26

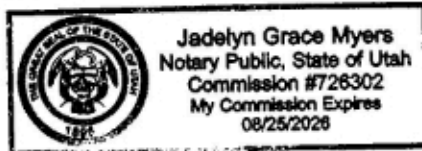


LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah)
) SS
COUNTY OF Davis)

On this 11th day of Sept, 20 22, before me, the undersigned Notary Public, personally appeared **SPENCER H. WRIGHT, Manager of TETON LAND COMPANY, L.L.C., Manager of MILLCREEK PARTNERS LLC, Member of SYRACUSE PROPERTY HOLDINGS, LLC**, and known to me to be a member or designated agent of the limited liability company that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By Jadelyn Grace Myers Residing at Davis County, UT
Notary Public in and for the State of UT My commission expires 8/25/26



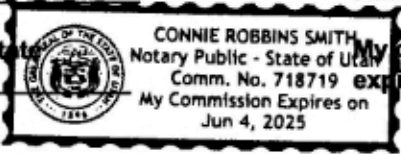
LENDER ACKNOWLEDGMENT

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

On this 1st day of NOVEMBER, 20 22, before me, the undersigned Notary Public, personally appeared CHAD CANTOR and known to me to be the SENIOR VICE PRESIDENT, authorized agent for **SUNWEST BANK** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **SUNWEST BANK**, duly authorized by **SUNWEST BANK** through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of **SUNWEST BANK**.

By [Signature] Residing at Lehi, Utah

Notary Public in and for the State of Utah My commission expires 6/4/2025



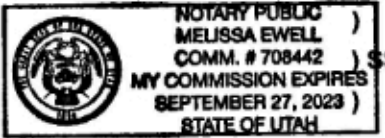
CORPORATE ACKNOWLEDGMENT

STATE OF Utah)
) SS
COUNTY OF DAVIS)

On this 9 day of September, 20 22, before me, the undersigned Notary Public, personally appeared ERIC HOLMES, owner of Kew Holdings and known to me to be (an) authorized agent(s) of the corporation that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she/they is/are authorized to execute this Agreement and in fact executed the Agreement on behalf of the corporation.

By [Signature] Residing at DAVIS County Utah

Notary Public in and for the State of Utah My commission expires 9/27/2023



CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20 _____, before me, the undersigned Notary Public, personally appeared _____, and known to me to be (an) authorized agent(s) of the corporation that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she/they is/are authorized to execute this Agreement and in fact executed the Agreement on behalf of the corporation.

By _____

Residing at _____

Notary Public in and for the State
of _____

My commission
expires _____

EXHIBIT "A" LEGAL DESCRIPTION

File No.: 1718905

The following tract of land in Davis County, Utah:

Lot 2, Briggs & Sons Subdivision, Syracuse City, Davis County, Utah, according to the Official Plat thereof.

Less and Excepting:

Beginning at a point on the South right-of-way line of Antelope Drive (A.K.A. 1700 South Street or SR-108), said point also being the Northwest corner of Lot 2, Briggs & Sons Subdivision as recorded on March 21, 2017 as Entry No. 3009258 in Book 6726 at Page 35 in the Davis County Recorder's Office, which is South 89°59'50" East along the Section Line 786.92 feet and South 00°00'10" West 55.00 feet from the Northwest corner of Section 14, Township 4 North, Range 2 West, Salt Lake Base and Meridian; and running thence South 89°59'50" East along said South right-of-way line of Antelope Drive 119.78 feet; thence South 142.17 feet; thence East 174.78 feet; thence North 70°50'46" East 40.26 feet; thence South 89°56'18" East 53.87 feet to the West line of Lot 4, Syracuse Gateway Phase 2 Commercial Subdivision as recorded on October 30, 2009 as Entry No. 2490308 in Book 4892 at Page 619 in the Davis County Recorder's Office; thence South along said West line and the extension of the West line of Lot 1, Syracuse Gateway Phase 1 Commercial Subdivision as recorded on January 9, 2009 as Entry No. 2420074 in Book 4703 at Page 2814 in the Davis County Recorder's Office a distance of 470.43 feet; thence North 89°59'50" West along said line of Lot 1, and then along the North lines of Sunset Park Villas Plat 'A' recorded September 4, 2009 as Entry No. 2479628 in Book 4854 at Page 270; and also Sunset Park Villas Plat 'B' amended recorded on July 17, 2013 as Entry No. 2754544 in Book 5812 at Page 408 in the Davis County Recorder's Office, a distance of 386.49 feet to the West line of said Lot 2, Briggs & Sons Subdivision; thence North 00°00'10" East along said West line of Lot 2, a distance of 599.43 feet to the point of beginning. (NAD83, rotation is 00°19'49" clockwise)

Tax ID No. 12-883-0003 (shown for informational purposes only)