

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Non-Disturbance and Attornment Agreement (this "Agreement") is effective as of September ____, 2019, among the City of Santa Fe, New Mexico (the "City"); Casey Jones LLC, a New Mexico limited liability company (the "Borrower"); and BOKF, NA dba Bank of Albuquerque (the "Lender").

RECITALS

A. City, as landlord, and Santa Fe Rail Yard Community Corporation, a New Mexico non-profit corporation ("SFRCC"), as tenant, are parties to a City of Santa Fe Amended and Restated Lease Agreement dated April 30, 2011, and recorded in the real property records of Santa Fe County, New Mexico (the "Recording Office") on May 11, 2012, as Instrument Number 1669127, as amended by City of Santa Fe Amendment #1 to Amended and Restated Lease Agreement recorded in the Recording Office on July 18, 2013, as Instrument Number 1712349, and by City of Santa Fe Amendment #2 to Amended and Restated Lease Agreement recorded in the Recording Office on July 18, 2013, as Instrument Number 1712348, and by City of Santa Fe Amendment #3 to Amended and Restated Lease Agreement recorded in the Recording Office on July 18, 2013, as Instrument Number 1712344, and by City of Santa Fe Amendment #4 to Amended and Restated Lease Agreement recorded in the Recording Office on October 17, 2013, as Instrument Number 1720837, and by City of Santa Fe Amendment #5 to Amended and Restated Lease Agreement recorded in the Recording Office on October 23, 2015, as Instrument Number 1777909, and by City of Santa Fe Amendment #6 to Amended and Restated Lease Agreement recorded in the Recording Office on January 25, 2016, as Instrument Number 1784759, and by City of Santa Fe Amendment #7 to Amended and Restated Lease Agreement recorded in the Recording Office on May 13, 2016, as Instrument Number 1793453 (the "Ground Lease") for property commonly known as the Santa Fe Railyard (the "Premises"). The Premises are more fully described on Exhibit "A" attached hereto.

B. Under the Ground Lease, it was contemplated that SFRCC would enter into long-term subleases leases with tenants for space located within the Premises and that the tenants would encumber the leasehold estates created thereby.

D. SFRCC, as landlord, and Railyard Flats, LLC, a New Mexico limited liability company ("FLATS"), as tenant, are parties to a Lease Agreement dated December 6, 2016, as amended by Amendment No 1 to Lease dated August 1, 2018 (the "Lease Agreement") covering Parcel A-2, commonly known as is 701 Camino de la Familia, Santa Fe, New Mexico (the "Subleased Premises"). The Subleased Premises are more fully described on Exhibit "B" attached hereto. A Memorandum of Lease giving record notice of the Sublease was recorded in the Recording Office on December 8, 2016, as Instrument Number 1811687, and amended by a Second Amended and Restated Memorandum of Lease recorded in the Recording Office on August 12, 2019, as Instrument Number 1893733.

E. FLATS and Borrower, are parties to a Purchase and Sale Agreement dated as of July 16, 2019, pursuant to which FLATS will sell and assign all of FLATS' right, title and interest in the Sublease and the leasehold estate created thereby to Borrower.

G. Borrower requested that Lender make a loan to Borrower in the original principal amount of \$6,750,000.00 (the "Loan") to partially finance the purchase of the Sublease and the leasehold estate created thereby, such Loan to be evidenced by a Promissory Note made by Borrower in favor of Lender in the original principal amount of the Loan (as amended, modified, restated or supplemented, the "Note") and secured by, among other things, a Leasehold Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement encumbering the Sublease and the leasehold estate created thereby (as amended, modified, restated or supplemented, the "Mortgage" and, together with the Note and all other documents, agreements, instruments, assignments and certificates signed or delivered in connection with the Loan, the "Loan Documents") and Lender is willing to do so provided that, among other things, the City and Borrower enter into this Agreement.

F. The parties to this Agreement desire to assure the priority of the City's interest in the Subleased Premises as well as Borrower's possession of the Subleased Premises covered under the Sublease upon the terms and conditions set forth in the Sublease and the Lender's rights under the Loan Documents, irrespective of a termination of the Ground Lease.

AGREEMENT

In consideration of the covenants and other good and valuable consideration set forth below, the receipt and sufficiency of which are hereby acknowledged by each of the parties, and notwithstanding anything to the contrary in the Ground Lease or Sublease, the parties agree as follows:

1. Certification Concerning Ground Lease. City hereby certifies that the Ground Lease has been fully executed and is in full force and effect and has not been amended or modified except as described in this Agreement. City further certifies that, to the best of its knowledge, as of the date this fully executed Agreement, there exists no default or event of default nor any circumstance which, with the passage of time or the giving of appropriate notice or both, would constitute a default or an event of default to date under the terms of the Ground Lease.

2. Non-disturbance and Attornment. City agrees for the benefit of Borrower and Lender that if SFRCC's interest in, to, or under the Ground Lease or in and to the Subleased Premises is terminated for any reason, including, but not limited to, a voluntary surrender or termination of the Ground Lease by SFRCC (a "Ground Lease Termination"), then: (a) City will not disturb Borrower's right to use nor Borrower's possession of the Subleased Premises; (b) the Sublease will continue as a direct lease between City and Borrower with the same force and effect as if City, as landlord, and Borrower, as tenant, had entered into a lease as of the date of termination of the Ground Lease containing the same terms, covenants, and conditions as those contained in the Sublease (subject,

however, to the exception described in paragraph 9 below) for a term equal to the unexpired term of the Sublease (including any renewal terms); (c) upon the written request of the City, Lender or Borrower, City and Borrower will enter into a new lease on the same terms, covenants, and conditions as those contained in the Sublease (subject, however, to the exception described in paragraph 9 below) for a term equal to the unexpired term of the Sublease (including any renewal terms); and (d) Borrower hereby agrees to attorn to City as its landlord under the Sublease, such attornment to be immediately effective and self-operative without the execution of any further instruments by any party hereto.

3. Lender's Rights. In the event the Sublease becomes a direct lease between City and Borrower or City and Borrower enter into a new lease of the Subleased Premises as provided for in paragraph 2 above (each a "Direct Sublease"):

A. City acknowledges that without City's consent, but with notice to the City, from time to time, Lender may exercise its rights and remedies under the Mortgage and other Loan Documents, including, but not limited to, an assignment of the Direct Lease by Borrower to Lender or a designee of Lender in lieu of foreclosure or foreclosure of the liens and security interests granted to Lender in the Mortgage.

B. City will provide Lender with notice at the address provided in paragraph 12 of any default by Borrower under the Direct Sublease at the same time City provides notice of default to Borrower.

C. If Borrower fails to timely cure a default under the Sublease Lender will have the option, but not the obligation, to cure such default. Lender will have an additional period of thirty (30) days after receipt of such default notice to cure the default, or if the event the default is of such a nature that it cannot reasonably be cured within such thirty (30)-day period, Lender shall have such period as is reasonably necessary to effect a cure provided that Lender commences efforts to cure the default within the thirty (30)-day period and thereafter continues diligently to effect a cure. If the nature of the default is such that Lender cannot effect a cure without first obtaining possession of the Subleased Premises, the cure period shall not begin to run until Lender has obtained possession of the Subleases Premises, provided that Lender promptly commences foreclosure or other proceedings, including appointment of a receiver, if the context dictates, to obtain possession and diligently prosecutes such proceeding to completion.

D. In the event of any Borrower default under the Direct Sublease that is not timely cured by Borrower that Lender is unable to cure by reason either of the nature of the default (e.g., Borrower's insolvency) or Lender's inability to obtain possession of the Subleased Premises, City agrees to enter into a new lease (the "New Sublease") with Lender (so long as Lender is not insolvent and is able to cure the default upon entering into a new lease) having the same terms and conditions as the Direct Sublease, including renewal options and rent, with a primary term equal to the then-remaining term of the Direct Sublease.

E. Lender or its nominee, or any transferee, as the case may be, shall be liable to perform the obligations imposed on the lessee under the Lease only for and during the period it is in ownership of the leasehold estate created by the Sublease or any Direct Lease or New Sublease.

4. Consent to Loan. City consents to the Loan and the mortgage of the Sublease, any Direct Lease and New Sublease and the leasehold estate created thereby and agrees that the appointment by Lender of a receiver for the Subleased Premises will not by itself constitute a default under the Sublease or any Direct Lease or New Sublease. Lender will give the City notice at the address in paragraph 12 of this Agreement if Lender obtains the appointment of a receiver for the Subleased Premises.

5. Notice of Defaults under the Loan Documents. Lender agrees to give notice to the City at the address in paragraph 12 of this Agreement of any event of default under the Loan Documents. If Borrower fails to timely cure an event of default under the loan Documents the City will have the option, but not the obligation, to cure such event of default.

6. Assignment by Lender. In the event that Lender or Lender's designee succeeds to Borrower's interest under the Sublease or any Direct Sublease or New Sublease, Lender or Lender's designee may sell or assign such interest on such terms and to such persons or entities as are acceptable to Lender or Lender's designee; provided, however that: (a) as a condition to any sale or assignment Lender will pay all past due rent and other sums owed to the City by Borrower under the Sublease or any Direct Sublease or New Sublease; and (b) so long as the Subleased Premises will continue to be used predominately for residential purposes and are in accordance with the Railyard Master Plan Leasing Preference the consent of the City to the assignment or sale is not required. For avoidance of doubt, the "Railyard Master Plan Leasing Preference" relates to the use of the Subleases Premises and does not require local ownership of the lessee's interest in the Subleases Premises. Lender will notify the City in writing of any sale or assignment by Lender or Lender's designee.

7. Casualty and Condemnation. In the event of any casualty or condemnation affecting all or any portion of the Subleased Premises, insurance or condemnation proceeds shall be disbursed upon the terms and subject to the conditions set forth in the Mortgage.

8. Encumbrance of Premises. So long as the Ground Lease remains in effect, the Sublease and any Direct Sublease or New Sublease will be subordinate to the terms of the Ground Lease, any leasehold mortgage, deed of trust, or other encumbrance or indenture, together with any renewals, extensions, modifications, consolidations and replacements of them that now or at any subsequent Lien affects City's Premises or any interest City has in its Premises or the City's interest in the Ground Lease and leasehold estate created by the Ground Lease, provided, however, that City will not grant or permit any mortgages, liens or other encumbrances on fee or leasehold estates in the Subleased Premises unless the mortgagee, beneficiary or other holder of the encumbrance agrees in a writing in form and content reasonably acceptable to Lender: (a) to acknowledge

Borrower's and Lender's rights under this Agreement; and (b) not to take any action to cause the termination of the Sublease or any Direct Lease or New Sublease, as applicable, or to foreclose the Mortgage.

9. Rights Upon Succession. Upon a Ground Lease Termination, City will be bound to Borrower under all of the terms and conditions of the Sublease as allowed by law, and Borrower will, from and after the date of the Ground Lease Termination, have the same rights and remedies against City for the breach of any agreement or covenant contained in the Sublease that Borrower might have had under the Sublease against SFRCC; provided, however, that City will not be liable to Borrower for any damages, costs or claims Borrower may have against SFRCC which accrue prior to the date of the Ground Lease Termination.

10. Obligations of the City. The term "City" as used in this Agreement means only the owner for the time being of the Premises, so that in the event of a sale of the Premises by City, City will be freed and relieved of all covenants and obligations of the City under the terms and conditions of this Agreement from and after the date of the transfer. The provisions of this Agreement, however, will bind any subsequent owner of the Premises.

11. Surrender; Amendment. For the benefit of Lender, without Lender's prior approval City agrees not to consent to an amendment of the Ground Lease as to the Subleased Premises which shortens the term of the Ground Lease as to the Subleased Premises, which reduces the area of the Subleased Premises or which materially adversely affects the rights of Lender under the Mortgage.

12. Notices. Any notice or other communication that is required or permitted to be given under the terms of this Agreement (Notice) must be in writing and will be deemed to have been duly given (a) three (3) days after being deposited in the mail, postage prepaid via certified mail, return receipt requested, or (b) when personally delivered, or (c) the next business day after deposit when sent by Federal Express, or (d) when given by email, with a copy either personally delivered the next day or sent by Federal Express the same day, in each case, to the parties hereto at the following addresses. Any party may change its address by written notice given and received in the manner provided in this paragraph 12.

If to City:

City of Santa Fe
Attention: Mayor
200 Lincoln Avenue
Santa Fe, New Mexico 87504-0909
Email: amwebber@santafenm.gov

With copy to:

City Attorney
200 Lincoln Avenue
Santa Fe, New Mexico 87504-0909
Email: ekmcsherry@santafenm.gov

If to Lender: BOKF, NA dba Bank of Albuquerque
Attention: Jordan Herrington
100 Sun Avenue NE, Suite 500
Albuquerque, New Mexico 87109
Email: jherrington@bankofalbuquerque.com

With a copy to: Sutin, Thayer & Browne
Attention: Anne P. Browne
6100 Uptown Boulevard NE
Albuquerque, New Mexico 87110
Email: apb@sutinfirm.com

If to Borrower Casey Jones LLC
Attention: Andrew Rogers
369 Montezuma Ave #220
Santa Fe, New Mexico 87501-2835
Email: _____

13. Severability. If any provision of this Agreement is illegal, invalid or unenforceable to the extent permitted by New Mexico law and any other present or future laws during the term of this Agreement, it is the intention of all parties that the remainder of this Agreement shall not be affected, and that a clause be added to this Agreement as similar to such illegal, invalid or unenforceable clause as possible and be legal, valid and enforceable.

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto and their respective successors and assigns.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement to be effective as of the date set forth above.

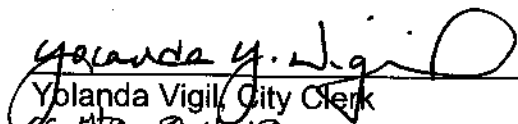
CITY:

CITY OF SANTA FE, NEW MEXICO



Alan M. Webber, Mayor

ATTEST:


Yolanda Vigil, City Clerk
cc Mtg. 9-11-19

APPROVED AS TO FORM:

 for
Erin K. McSherry, City Attorney


APPROVED:


Mary McCoy, Finance Director

STATE OF NEW MEXICO

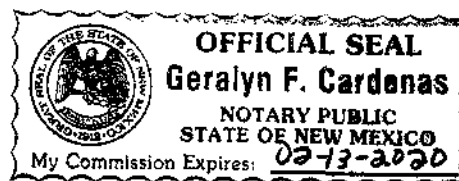
COUNTY OF SANTA FE

The foregoing instrument was acknowledged before me on September 13, 2019, by Alan M. Webber, Mayor of the City of Santa Fe, New Mexico, a New Mexico municipal corporation, on its behalf.


Notary Public

My commission expires:

February 13, 2020



LENDER:

BOKF, NA dba Bank of Albuquerque

By _____
Name: Jordan Herrington
Title: Vice President

BORROWER:

CASEY JONES LLC, a New Mexico limited
liability company

By _____
Name: _____
Title: _____

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

This instrument was acknowledged before me on _____, 2019,
by Jordan Herrington, Vice President of BOKF, NA dba Bank of Albuquerque, on its
behalf.

Notary Public

My commission expires:

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, 2019,
by _____ as _____ of Casey Jones LLC, a New
Mexico limited liability company, on its behalf.

Notary Public

My commission expires:

EXHIBIT A

Legal Description of Premises

THAT PORTION OF PARCEL A consisting of Tracts 2-B, 15, 16, 17, 18-A, 19A, 20, 21, 22, 24, 139B-1, 149-A, 150, 151, 152, 153, 154, 155; THAT PORTION OF PARCEL B consisting of Tracts 1, 142, 143, 144, 145, 146 and 156; and THAT PORTION OF PARCEL D consisting of Tracts 10, 11, 12, 13, 22, as shown on Sheets 2, 3 and 5 of the certain plat of survey entitled "Plat of Survey Prepared of Catellus Railyard and Baca Street Property" recorded in the records of Santa Fe County on December 20, 1995 at Plat Book 323 pages 017 - 022 as document no. 928,704.

EXHIBIT B

(Subleased Premises)

Parcel A-2, as shown on plat of survey entitled "ALTA/NSPS Survey of Parcel A-2 of the South Area of the Santa Fe Railyard Prepared for Santa Fe Railyard Community Corporation, and Casey Jones LLC", filed on September 13, 2019, in Plat Book 854, Page 40, as Instrument No. 1896599, records of Santa Fe County, New Mexico.

Those 58 parking spaces labeled as "Standard Parking Spaces" as shown on plat of survey entitled "ALTA/NSPS Survey of Parcel A-2 of the South Area of the Santa Fe Railyard Prepared for Santa Fe Railyard Community Corporation, and Casey Jones LLC", filed on September 13, 2019, in Plat Book 854, Page 40, as Instrument No. 1896599, records of Santa Fe County, New Mexico.

TOGETHER WITH a non-exclusive easement for ingress and egress over Area A and Area B as contained in Grant of Easement For Benefit of Parcel A-2 recorded December 8, 2016 as Instrument No. 1811686, records of Santa Fe County, New Mexico.