

05-077-0003

PREPARED BY: Steve Johnson
AFTER RECORDING RETURN TO:
STANCORP MORTGAGE INVESTORS, LLC
ATTN: LOAN CLOSING, T3A
10265 NE Tanasbourne Drive
HILLSBORO, OR 97124

SIC Loan No. B9092405

120267 - MAP

Parcel Identification Number 05:077:0003

SUBORDINATION and ATTORNMENMENT AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTERESTS IN THE PROPERTY BECOMING SUBJECT TO AND OF A LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT is dated as of 12/12/19

Recitals

A. The undersigned Lessee, and Lessor are parties to a lease dated **September 5, 2019**, defined below, which lease covers part or all of the real property (the "Property") described on Exhibit "A" attached hereto.

B. **Standard Insurance Company, an Oregon corporation ("Lender")**, having a mailing address of 10265 NE Tanasbourne Drive, Hillsboro, OR 97124 has agreed to make or purchase a loan to Lessor, evidenced by a promissory note, dated November 27, 2019, and secured by a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing of even date on the Property and by such other security instruments as Lender may require (the "Security Instruments").

C. As a condition precedent to Lender's disbursement of Loan proceeds, Lender has required that Lessee (i) subordinates the Lease and Lessee's interest in the Property in all respects to the liens of the Security Instruments, if any, securing Lender's other interests in the Property, and (ii) agrees that it will attorn to Lender as a successor Lessor under the Lease.

Agreement

NOW, to induce Lender to make the Loan and in consideration of the promises made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Lessee and Lessor, it is agreed as follows:

1. **Subordination.** The Lease, including but not limited to any rights of first purchase, whether by offer, negotiation and/or refusal and/or purchase options contained therein, and Lessee's leasehold estate and any other interests created thereby and any renewals, extensions, amendments or modifications (collectively, the "Lease"), are completely and unconditionally subject and subordinate to the liens of the Security Instruments, including all Loan advances made or to be made, and to any extensions or modifications.

2. **Foreclosure.** In the event action is taken to foreclose the lien of the Deed of Trust, either pursuant to a power of sale or by judicial proceedings, or, in the event Lender acquires possession of the Property by deed in lieu of foreclosure, Quitclaim Deed or like action, Lender, or any purchaser of the Property at foreclosure sale, shall not be required to recognize the Lease, or the rights of the Lessee under the Lease, and the rights of the Lessee thereunder, including any option thereunder, shall, at the sole election of Lender or such other purchaser at foreclosure sale, cease and terminate upon acquisition of title to or upon possession of the Property by Lender, its successors and assigns, or any purchaser at a foreclosure sale.

3. **Purchase Options.** Any options or rights contained in the Lease allowing Lessee to acquire title to the Property are hereby made subject and subordinate to the rights of Lender under the Security Instruments; any acquisition of title to the Property made by Lessee during the term of the Security Instruments shall be made subordinate and subject to the Security Instruments.

4. **Condemnation.** Without limiting the generality of the foregoing, Lessee subordinates its right, title and interest under the Lease to the interest of Lender in any award of condemnation or eminent domain, and Lessee does assign and transfer to Lender the right and privilege to receive any interest of Lessee in and to the full extent of such award of condemnation or eminent domain, or, if the Deed of Trust is not yet fully satisfied, to the extent necessary to pay in full any and all sums secured by the Deed of Trust (Lessee authorizing Lender to apply any funds so received in satisfaction of any sums secured by the Deed of Trust).

5. **Lessee To Attorn To Lender.** If the interests of Lessor are transferred to and owned by Lender by foreclosure or otherwise, and Lender succeeds to the interest of the Lessor under the Lease, Lessee will be bound to Lender under the Lease for the balance of the term thereof remaining including any extensions or renewals, with the same force and effect as if Lender were the Lessor under the Lease. Lessee attorns to Lender as its Lessor, said attornment to be effective upon Lender succeeding to the interest of the Lessor under the Lease without the execution of any further instrument, provided that, except as described in the next paragraph, Lessee will not be obligated to pay rent to Lender, as Lessor until Lessee receives written notice from Lender that it has succeeded to the interest of the Lessor under the Lease. The respective rights and obligations of Lessee and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, will be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference.

6. **Lease Payments to Lender.** Receipt of Lender's notice will be the only condition to Lessee making payments to Lender or at Lender's direction. Lessor irrevocably authorizes Lessee to make payments to Lender or at Lender's direction. Lessor releases and discharges Lessee from liability for making such payments. Lessor indemnifies Lessee and Lender from all loss, cost, liability, claim, damage and expense (including reasonable attorney fees and costs, whether at pre-trial, at trial, on appeal, discretionary review and/or bankruptcy) that Lessee or

Lender may incur as a result any challenge to Lender's notice or Lessee's payment to Lender or at Lender's direction.

7. **Exercise of Rights Under Loan Documents Not Lease Default.** The undersigned represents to Lender that the exercise by Lender of its rights and remedies under the Loan Documents, including without limitation its rights of foreclosure, will not constitute a default under the Lease.

8. **Lender Not Bound By Subsequent Lessor/Lessee Acts.** If Lender succeeds to the interests of Lessor under the Lease, Lender will not be (a) liable for any act or omission of any prior lessor (including Lessor), which accrued prior to the date Lender takes title to the Property, unless such act or omission continues after Lender (i) took title to the Property, (ii) received written notice of such act or omission, and (iii) failed to commence and continue cure within thirty (30) days, (b) subject to any offsets or defenses which Lessee might have against any prior lessor (including Lessor), in the Lease, if any, (c) bound by any rent or additional rent which Lessee might have paid for more than one month in advance of the then current installment, except for any monthly escrows required to be paid under the Lease, if any, for operating expenses, insurance and real estate taxes which are subject to annual reconciliation, (d) bound by any Lease termination, cancellation or any material amendment or modification of the Lease made without Lender's prior written consent, or (e) liable for any security or other deposits paid by Lessee, or any predecessor in interest to Lessee, to any Lessor, and which are not actually received by Lender. For purposes of this paragraph, the term "material" refers to changes that would increase Lessor's obligations under the Lease, financial or otherwise, or decrease Lessee's obligations under the Lease, whether financial or otherwise.

9. **Waiver.** Lessee waives notice and agrees that Lender, without notice to or consent of Lessee, upon terms as Lender may deem advisable, without releasing or discharging Lessee from this Subordination Agreement or affecting the lien or priority of the Security Instruments release, exchange, or modify any obligation secured by the Security Instruments and/or settle or compromise any claim with respect to the Loan.

10. **Successors and Assigns.** This Agreement is binding upon the parties and their heirs, executors, administrators, representatives, successors and assigns, including each lessee and lessor under the Lease or any other person having an interest therein and will inure to the benefit of Lender and its successors and assigns.

11. **Choice of Law.** The law of the state in which the Property is located will govern the validity, interpretation, construction, and performance of this Agreement. The parties irrevocably submit to the jurisdiction of any state or federal court in the State where the Property is located in any action or proceeding brought to enforce or otherwise arising out of or relating to this Agreement, and waive any claim that such forum is an inconvenient forum.

12. **Captions and Headings.** The captions and headings in this Agreement are for convenience and not to be construed as confining or limiting the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular includes the plural, the plural includes the singular, and the masculine, feminine and neuter are freely interchangeable.

13. **Notices.** All notices required or permitted under this Agreement will be in writing and may be delivered by hand or a nationally recognized overnight courier service, or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Lender:

Standard Insurance Company
Attn: Loan Closing, T3A
10265 NE Tanasbourne Drive
Hillsboro, OR 97124

If to Lessee:

Soda by the HUT
495 East 600 North
Provo, UT 84606

If to Lessor:

The Hut, LLC
2141 Parleys Terrace
Salt Lake City, UT 84109

Changes in the respective addresses to which such notices will be directed may be made from time to time by either party by notice to the other party given at least ten (10) days before such change of address is to become effective. Notices given by mail in accordance with this provision will be deemed to have been given three (3) days after the date of dispatch; notices given by any other means will be deemed to have been given when received.

14. **Severability and Counterparts.** In the event any one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement will be signed in counterpart signature and notary pages all of which when taken together will constitute one Agreement.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE UNDERSIGNED CONSULT WITH ITS ATTORNEYS WITH RESPECT THERETO.

LESSEE:

Soda by the HUT

By: 

Title: 

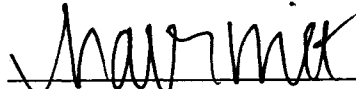
NOTARY ACKNOWLEDGMENTS TO BE ATTACHED IN ACCORDANCE WITH STATE LAW.

SIGNATURES CONTINUE ON FOLLOWING PAGE

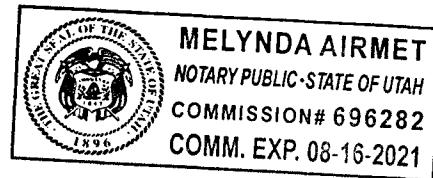
STATE OF UTAH

COUNTY OF UTAH

On the ^{17th} ~~15th~~ day of December, 2019, personally appeared before me Michael N. Wade, who acknowledged himself to be the Manager of Soda by the HUT, and that he, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained.



Notary Public



LESSOR:

The Hut, LLC,
a Utah limited liability company

By: 

Michael N. Wade, Manager

NOTARY ACKNOWLEDGMENTS TO BE ATTACHED IN ACCORDANCE WITH STATE LAW.

STATE OF UTAH

COUNTY OF UTAH

On the ^{12th} ~~25th~~ day of December, 2019, personally appeared before me Michael N. Wade, who acknowledged himself to be the Manager of The HUT, LLC, a Utah limited liability company, and that he, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained.



Notary Public

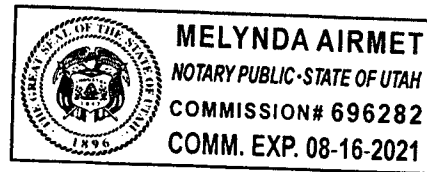


EXHIBIT "A"
LEGAL DESCRIPTION
LOAN NO. B9092405

Commencing at the Southeast corner of Lot 1, Block 33, Plat "C", Provo City Survey of Building Lots; thence North 98 feet; thence West 99.89 feet; thence South 98 feet; thence East 99.89 feet to the place of beginning.