



W3173990

APN No.: 05-125-0092

E# 3173990 PG 1 OF 7
Leann H. Kilts, WEBER COUNTY RECORDER
06-Aug-21 0435 PM FEE \$40.00 DEP PC\
REC FOR: MOUNTAIN VIEW TITLE - OGDEN
ELECTRONICALLY RECORDED

Recording Requested By,
And After Recording, Return To:

AMERICA FIRST FEDERAL CREDIT
UNION
Attn: Jill Ulm
4051 South 1900 West
Roy, Utah 84067
Attention: Commercial Real Estate Dept

109274

SUBORDINATION, NON-DISTURBANCE,
ATTORNMEN AND ESTOPPEL AGREEMENT
(DEED OF TRUST)

THIS SUBORDINATION, NON-DISTURBANCE, ATTORNMEN AND ESTOPPEL AGREEMENT (this "*Agreement*") is entered into as of AUGUST 6, 2021, by and between YOUNG H2O, LLC, a Utah limited liability company dba as YOUNG HYUNDAI, (the "*Tenant*"), and AMERICA FIRST FEDERAL CREDIT UNION, a Utah corporation, (the "*Lender*").

RECITALS:

A. The Lender has extended credit or may hereafter extend credit to YOUNG H2ORE, LLC, a Utah limited liability company (the "*Borrower*"), secured, in whole or in part, by a deed of trust (the "*Deed of Trust*") covering that certain real property situated in the City of Ogden, and County of Weber, Utah, and described on Exhibit A attached hereto and incorporated herein by this reference (the "*Property*").

B. The Tenant leases all or a portion of the Property pursuant to a lease agreement entered into between the Borrower and the Tenant dated as of March 30, 2018 (the "*Lease*"), which Lease has not been recorded. It is a condition of the Lender's agreement to extend or continue credit to the Borrower secured by the Property that the security of the Deed of Trust be and at all times remain a lien or charge on the Property prior and superior to the rights of the Tenant under the Lease.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. SUBORDINATION.

(a) Subordination of Lease. The Deed of Trust and any and all extensions, renewals, modifications or replacements thereof shall be and at all times remain a lien or charge on the

Property prior and superior to the Lease. The Tenant intentionally and unconditionally waives, relinquishes and subordinates the priority and superiority of the Lease and the Tenant's right and interest to the Property thereunder to the lien or charge of the Deed of Trust, and any and all extensions, renewals, modifications or replacements thereof.

(b) Reliance. The Tenant acknowledges that the Lender, in extending credit or continuing to extend credit to the Borrower secured by the Property is doing so in material reliance on this Agreement.

(c) Acknowledgments of Tenant. The Tenant acknowledges that it has such information with respect to any credit extended by the Lender to the Borrower, and all loan documents executed in connection therewith, as the Tenant deems necessary in order to provide this subordination. The Tenant further agrees that the Lender is under no obligation or duty to, nor has the Lender represented that it has or will, see to the application of the proceeds of any such credit by any person or entity, and any application or use of any such proceeds for purposes other than those for which they were intended shall not defeat this subordination.

(d) Entire Agreement. This Agreement constitutes the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Deed of Trust; there are no agreements (written or oral) outside or separate from this Agreement with respect to the subject matter hereof; and all prior negotiations with respect thereto, if any, are merged into this Agreement. This Agreement shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including without limitation those provisions, if any, contained in the Lease which provide for the subordination thereof to the lien of a deed of trust or mortgage affecting all or any portion of the Property.

2. LEASE. The Tenant hereby covenants and agrees that, so long as the Deed of Trust remains in force and effect:

(a) No Modification, Termination or Cancellation. The Tenant shall not consent to any modification, termination or cancellation of the Lease without the Lender's prior written consent.

(b) Notice of Default. The Tenant shall notify the Lender in writing concurrently with any notice given to the Borrower of any breach of or default by the Borrower under the Lease. The Tenant agrees that the Lender shall have the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below, and the Tenant shall not declare a default of the Lease, as to the Lender, if the Lender cures such breach or default within thirty (30) days after the expiration of the time period provided in the Lease for the cure thereof by the Borrower; provided however, that if such breach or default cannot with diligence be cured by the Lender within such thirty (30) day period, the commencement of action by the Lender within such thirty (30) day period to remedy the same shall be deemed sufficient so long as the Lender pursues such cure with diligence.

(c) No Advance Rents. The Tenant shall not make any payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease.

(d) Assignment of Rents. Upon receipt by the Tenant of written notice from the Lender that the Lender has elected to terminate the license granted to the Borrower to collect rents, as provided in the Deed of Trust, and directing the Tenant to make payment thereof to the Lender, the Tenant shall comply with such direction to pay and shall not be required to determine whether the Borrower is in default under any obligations to the Lender.

3. ATTORNMENT. If the Lender or any other transferee acquires the Borrower's right, title and interest in and to the Property pursuant to a foreclosure of the Deed of Trust or a transfer of the Property in lieu thereof or in any other manner whereby the Lender or such transferee succeeds to the interest of the Borrower under the Lease, the Tenant agrees as follows for the benefit of the Lender or such transferee:

(a) Payment of Rent. The Tenant shall pay to the Lender or such transferee all rental payments required to be made by the Tenant pursuant to the terms of the Lease for the remaining term thereof.

(b) Continuation of Performance. The Tenant shall be bound to the Lender or such transferee in accordance with all of the terms of the Lease for the remaining term thereof, and the Tenant hereby attorns to the Lender or such transferee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon the Lender or such transferee succeeding to the Borrower's interest in the Lease and giving written notice thereof to the Tenant.

(c) No Offset. Neither the Lender nor such transferee shall be liable for, or subject to, any offsets or defenses which the Tenant may have by reason of any act or omission of the Borrower as the prior lessor under the Lease, nor for the return of any sums which the Tenant may have paid to the Borrower as the prior lessor under the Lease as security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by the Borrower to the Lender or such transferee.

(d) Subsequent Transfer. If the Lender or such transferee, by succeeding to the Borrower's interest under the Lease, becomes obligated to perform the covenants of a lessor thereunder, then, upon any further transfer by the Lender or such transferee of its interest as a lessor under the Lease, all of such obligations shall terminate as to the Lender or such transferee.

4. NON-DISTURBANCE. In the event of a foreclosure of the Deed of Trust, so long as there shall then exist no breach, default or event of default by the Tenant under the Lease, (a) the leasehold interest of the Tenant shall not be extinguished or terminated by reason of such foreclosure, (b) the Lease shall continue in full force and effect, and (c) the Lender and its successors-in-interest shall recognize and accept the Tenant as the tenant under the Lease, subject to the terms and conditions of the Lease as modified by this Agreement.

5. MISCELLANEOUS.

(a) Remedies Cumulative. All remedies provided herein are cumulative, not exclusive, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between the Lender and the Borrower or any other person or entity.

(b) Costs, Expenses and Attorneys' Fees. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by the Lender or any other person) relating to the Borrower, the Tenant or any other person or entity.

(c) Notices. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the address set forth below its signature, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (iii) if sent by telecopy, upon receipt.

(d) Further Assurances. At the request of any party hereto, each other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

(e) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of Utah.

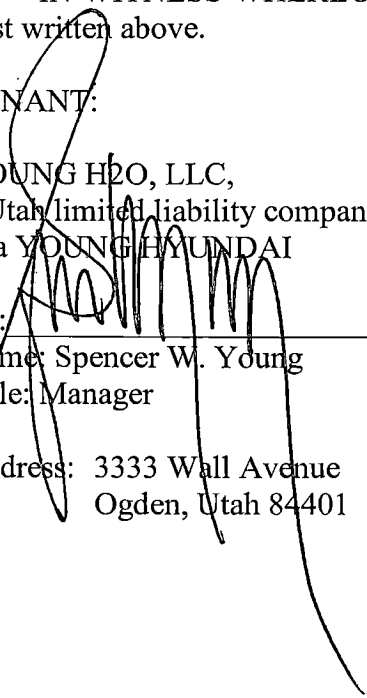
(f) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

TENANT:

YOUNG H₂O, LLC,
a Utah limited liability company
dba YOUNG HYUNDAI

By: 
Name: Spencer W. Young
Title: Manager

Address: 3333 Wall Avenue
Ogden, Utah 84401

LENDER:

America First Federal Credit Union,
a Utah corporation

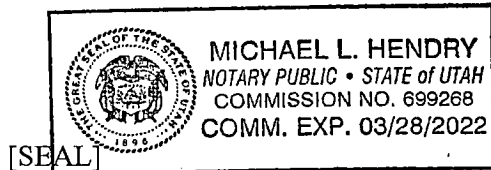
By: 
Name: Shari Cheney
Title: Commercial Loan Manager


Address: 4051 South 1900 West
Roy, Utah 84067

ACKNOWLEDGMENT

STATE OF UTAH §
 §
 COUNTY OF WEBER §

This instrument was acknowledged before me on the 6 day of August 2021; by Spencer W. Young as Manager of YOUNG H2O, LLC, a Utah limited liability company which acknowledged this instrument on behalf of such entity.



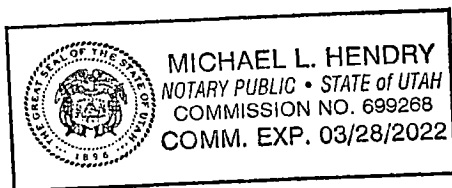

 NOTARY PUBLIC IN AND FOR
 THE STATE OF UTAH

ACKNOWLEDGMENT

STATE OF UTAH §
 §
 COUNTY OF WEBER §

This instrument was acknowledged before me on the 6 day of August, 2021, by SHARI CHENEY, as COMMERCIAL LOAN MANAGER of AMERICA FIRST FEDERAL CREDIT UNION, which acknowledged this instrument on behalf of such entity.

[SEAL]



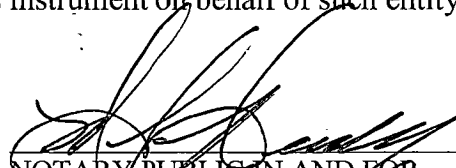

 NOTARY PUBLIC IN AND FOR
 THE STATE OF UTAH

EXHIBIT A
TO
SUBORDINATION, NON-DISTURBANCE,
ATTORNMENMENT AND ESTOPPEL AGREEMENT
(DEED OF TRUST)

Legal Description of Property:

PART OF THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 5 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. BEGINNING AT A POINT ON THE WEST RIGHT OF WAY LINE OF WALL AVENUE, SAID POINT BEING 33.56 FEET SOUTH 00D58'00" WEST AND 50.00 FEET NORTH 89D02'00" WEST FROM THE OGDEN CITY SURVEY MONUMENT AT THE INTERSECTION OF 33RD STREET AND WALL AVENUE; AND RUNNING THENCE SOUTH 00D59'09" WEST 490.85 FEET; THENCE NORTH 89D02'00" WEST [323.80] FEET; THENCE NORTH 00D58'00" WEST 170.59 FEET; THENCE NORTH 89D59'03" EAST 0.46 FEET; THENCE NORTH 00D52'00" WEST 73.39 FEET; THENCE NORTH 89D02'01" WEST 85.25 FEET; THENCE NORTH 00D36'13" EAST 98.21 FEET; THENCE SOUTH 89D23'47" EAST 20.00 FEET; THENCE NORTH 00D36'13" EAST 145.76 FEET; THENCE SOUTH 89D27'04" EAST 398.41 FEET TO THE POINT OF BEGINNING. CONTAINING APPROXIMATELY 4.12 ACRES E#3118150

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