

ENT 71384 : 2021 PG 1 of 11
Andrea Allen
Utah County Recorder
2021 Apr 15 03:15 PM FEE 40.00 BY SM
RECORDED FOR Cottonwood Title Insurance Agency, Inc.
ELECTRONICALLY RECORDED

RECORD AND RETURN TO:

Thrivent Financial for Lutherans
Attn: Loan Administration, Mortgages and Real Estate Investments
901 Marquette Avenue
Suite 2500
Minneapolis, MN 55402

CTIA 139632-DME

[SPACE ABOVE LINE FOR RECORDER'S USE ONLY]

THRIVENT FINANCIAL FOR LUTHERANS, a Wisconsin corporation
("Mortgagee")

and

MORINDA, INC.
("Lessee")

SUBORDINATION, NON-DISTURBANCE AND
ATTORNEY AGREEMENT

April 5, 2021

This instrument affects real property situated, lying and being in the County of Utah, State of Utah, commonly known as follows: 737 E 1180 SOUTH, AMERICAN FORK, UTAH

**SUBORDINATION, NON-DISTURBANCE AND
ATTORNEY AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNEY AGREEMENT (this "Agreement") is entered into as of April 5, 2021 (the "Commencement Date"), between THRIVENT FINANCIAL FOR LUTHERANS, a Wisconsin corporation whose address is 901 Marquette Avenue, Suite 250, Minneapolis, MN 55402 ("Mortgagee"), and MORINDA, INC., a Utah corporation whose address is 737 E 1180 SOUTH, American Fork, UT 84003 ("Lessee"), with reference to the following facts:

A. Peterbuilt 6M, LLC, a Utah limited liability company, Kamas Farm, LLC, a Wyoming limited liability company, Waly Investment Co., Ltd., a Utah limited partnership, and RH Morinda, LLC, a Utah limited liability company, (collectively "Lessor") own or will own the real property commonly known as 737 E 1180 SOUTH, AMERICAN FORK, Utah, such real property, including all buildings, improvements, structures and fixtures located thereon, the ("Leased Premises"), are more particularly described in Schedule A attached hereto and made a part hereof.

B. Mortgagee has made or will make a loan to Lessor in the original principal amount of Ten Million ----- and No/100 Dollars (\$\$10,000,000.00) (such loan, as it may be decreased, increased, or otherwise modified, and any replacement financing in substitution therefor, in whole or in part, the ("Loan").

C. To secure the Loan, Lessor has encumbered or will encumber the Leased Premises by entering into a certain Deed of Trust and an Assignment of Rents and Leases in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Mortgage") to be recorded in the Official Records of the County of Utah, State of Utah (the "Land Records").

D. Pursuant to a Lease Agreement dated as of May 1, 2015 as amended by the First Amendment to Lease Agreement dated September 14, 2015, and the Second Amendment to Lease Agreement dated February 3, 2016 (the "Lease"), Lessor demised to Lessee the Leased Premises.

E. Lessee and Mortgagee desire to agree upon the relative priorities of their interests in the Leased Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Lessee and Mortgagee agree:

1. **Definitions.** The following terms shall have the following meanings for purposes of this Agreement.

1.1 **Construction-Related Obligation.** A "Construction-Related Obligation" means any obligation of Lessor under the Lease to make, pay for, or reimburse Lessee for any alterations, demolition, or other improvements or work at the Leased Premises. "Construction-Related Obligations" shall not include: (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

1.2 Foreclosure Event. A “Foreclosure Event” means: (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Successor Lessor becomes owner of the Leased Premises; or (c) delivery by Lessor to Mortgagee (or its designee or nominee) of a deed or other conveyance of Lessor’s interest in the Leased Premises in lieu of any of the foregoing.

1.3 Offset Right. An “Offset Right” means any right or alleged right of Lessee to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Lessor pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Lessee’s payment of Rent or performance of Lessee’s other obligations under the Lease, arising (whether under the Lease or under applicable law) from Lessor’s breach or default under the Lease.

1.4 Rent. The “Rent” means any fixed rent, base rent or additional rent under the Lease.

1.5 Successor Lessor. A “Successor Lessor” means any party that becomes owner of the Leased Premises as the result of a Foreclosure Event.

1.6 Termination Right. A “Termination Right” means any right of Lessee to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Lessor’s breach or default under the Lease.

2. Subordination. Subject to Lessee’s rights of non-disturbance herein set forth, the Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

3. Non-Disturbance, Recognition And Attornment.

3.1 No Exercise of Mortgagee Remedies Against Lessee. So long as the Lease has not been terminated on account of an Event of Default (as defined in the Lease) of Lessee, Mortgagee shall not name or join Lessee as a defendant in any exercise of Mortgagee’s rights and remedies arising upon a default under the Mortgage unless applicable law requires Lessee to be made a party thereto as a condition to proceeding against Lessor or prosecuting such rights and remedies. In the latter case, Mortgagee may join Lessee as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Lessee’s rights under the Lease or this Agreement in such action.

3.2 Non-Disturbance and Attornment. If the Lease has not been terminated on account of an Event of Default by Lessee, then, when Successor Lessor takes title to the Leased Premises: (a) Successor Lessor shall not terminate or disturb Lessee’s possession of the Leased Premises under the Lease except in accordance with the terms of the Lease; (b) Successor Lessor shall be bound to Lessee under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Lessee shall recognize and attorn to Successor Lessor as

Lessee's direct Lessor under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Lessor and Lessee.

3.3 Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Lessor or Lessee to execute any further documents. Lessee and Successor Lessor shall, however, confirm the provisions of this Article in writing upon request by either of them.

4. Protection of Successor Lessor. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Lessor shall not be liable for or bound by any of the following matters:

4.1 Prepayments. Any payment of Rent that Lessee may have made to Former Lessor more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment and except to the extent that such a prepayment was actually delivered to Mortgagee.

4.3 Payment; Security Deposit. Any obligation: (a) to pay Lessee any sum(s) that any Former Lessor owed to Lessee or (b) with respect to any security deposited with Former Lessor, unless such security was actually delivered to Mortgagee.

4.4 Modification, Amendment, or Waiver. Any material modification or material amendment of the Lease, any waiver of any material obligations of Lessee under the Lease, any consent to assignment or subletting, or any other action that materially affects the obligations of Lessee under the Lease, made without Mortgagee's written consent.

4.5 Surrender. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Lessor and Lessee, unless effected unilaterally by Lessee pursuant to the express terms of the Lease.

4.6 Construction-Related Obligations. Any Construction-Related Obligation of Former Lessor.

5. Exculpation of Successor Lessor. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to provide that Successor Lessor's obligations and liability under the Lease shall never extend beyond Successor Lessor's (or its successors' or assigns') interest, if any, in the Leased Premises from time to time, including insurance and condemnation proceeds, Successor Lessor's interest in the Lease, and the proceeds from any sale or other disposition of the Leased Premises by Successor Lessor (collectively, "Successor Lessor's Interest"). Lessee shall look exclusively to Successor Lessor's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Lessor under the Lease as affected by this Agreement. If Lessee obtains any money judgment against Successor Lessor with respect to the Lease or the relationship between Successor Lessor and

Lessee, then Lessee shall look solely to Successor Lessor's Interest (or that of its successors and assigns) to collect such judgment. Lessee shall not collect or attempt to collect any such judgment out of any other assets of Successor Lessor.

6. Mortgagee's Right to Cure.

6.1 Notice to Mortgagee. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right or Offset Right, Lessee shall provide Mortgagee with a copy of any notice provided to Lessor of any breach or default by Lessor giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Lessor under the Lease in which to cure the breach or default by Lessor. Mortgagee shall have the right to cure (and shall have no liability or obligation for not curing) any breach or default by Lessor.

7. Miscellaneous.

7.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and five (5) business days after being sent by certified mail (return receipt requested).

7.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Lessor, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Lessee of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

7.3. Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Lessee regarding the subordination of the Lease to the Mortgage and the rights and obligations of Lessee and Mortgagee as to the subject matter of this Agreement.

7.4 Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Lessor, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of non-disturbance agreements by the holder of, the Mortgage. Mortgagee confirms that Mortgagee has consented to Lessor's entering into the Lease.

7.5 Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State where the Leased Premises are located, excluding its principles of conflict of laws.

7.6 Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

7.7 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7.8 Mortgagee's Representation. Mortgagee represents that Mortgagee has full authority to enter into this Agreement, and Mortgagee's entry into this Agreement has been duly authorized by all necessary actions.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been duly executed by Mortgagee and Lessee as of the Commencement Date.

LESSEE:

MORINDA, INC.,
a Utah corporation

By: 
Name: H. Michael Drake
Title: Corporate Secretary and General Counsel

MORTGAGEE:

THRIVENT FINANCIAL FOR LUTHERANS
a Wisconsin corporation

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Agreement has been duly executed by Mortgagee and Lessee as of the Commencement Date.

LESSEE:

MORINDA, INC..
a Utah corporation

By: 
Name: H. Michael Drake
Title: Corporate Secretary and General Counsel

MORTGAGEE:

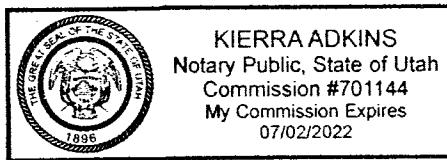
THRIVENT FINANCIAL FOR LUTHERANS
a Wisconsin corporation

By: 
Name: Steven P. Peterson
Title: Assistant Vice President

ACKNOWLEDGMENTS

STATE OF UTAH)
:§
COUNTY OF UTAH)

This instrument was acknowledged before me this 5th day of April 2021, on behalf of Morinda, Inc., a Utah corporation.



Kierra Adkins

Notary Public

Kierra Adkins

Print name of Notary

STATE OF _____)
:§
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____,
20____, on behalf of said _____ a _____.

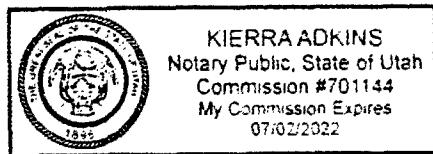
Notary Public

Print name of Notary

ACKNOWLEDGMENTS

STATE OF UTAH)
:\$
COUNTY OF UTAH)

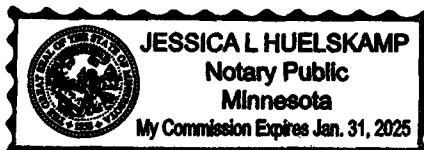
This instrument was acknowledged before me this 5th day of April 2021, on behalf of Morinda, Inc., a Utah corporation.



Kierra Adkins
Notary Public
Kierra Adkins
Print name of Notary

STATE OF Minnesota)
:\$
COUNTY OF Hennepin)

This instrument was acknowledged before me this 9th day of April 2021, on behalf of said Thrivent Financial for Lutherans a Wisconsin corporation.



Jessica Huelskamp
Notary Public
Jessica Huelskamp
Print name of Notary

**SCHEDULE A TO SUBORDINATION AGREEMENT
LEGAL DESCRIPTION**

Property Address: 737 EAST 1180 SOUTH - AMERICAN FORK

Mailing Address: 737 East 1180 South, American Fork, UT 84003

Acreage: 11.956144

The Property is situated in the County of Utah, State of Utah, and described as follows:

Commencing at a point located South 00°25'09" East along the Section Line 78.94 feet and West 2148.10 feet from the East Quarter Corner of Section 25, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 00°00'14" West 111.05 feet; thence North 89°23'22" East 47.36 feet; thence North 77°58'05" East 285.69 feet; thence North 76°13'17" East 68.01 feet; thence North 89°54'38" East 354.90 feet; thence South 64°27'14" East 110.95 feet; thence South 50°05'30" East 127.84 feet; thence South 49°38'50" East 264.15 feet; thence South 40°08'13" West 389.97 feet; thence North 49°51'47" West 164.57 feet; thence along an arc of a 260.00 foot Radius Curve to the left 182.14 feet (chord bears North 69°55'54" West 178.43 feet); thence West 706.12 feet; thence along an arc of a 15.00 foot Radius Curve to the right 23.56 feet (chord bears North 45°00'00" West 21.21 feet); thence North 53.19 feet; thence along an arc of a 233.00 foot Radius Curve to the left 93.53 feet (chord bears North 11°30'00" West 92.91 feet); thence North 23°00'00" West 81.28 feet; thence along an arc of a 350.00 foot Radius Curve to the right 140.50 feet (chord bears North 11°30'00" West 139.56 feet); thence North 79.06 feet; thence along an arc of a 15.00 foot Radius Curve to the right 23.47 feet (chord bears North 44°49'37" East 21.15 feet); thence North 89°39'14" East 181.93 feet to the point of beginning.

Parcel:

TAX SERIAL: Serial Number: 13:063:0026