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BK 7698 PG 2666

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
2/17/2021 4:33:00 PM
FEE \$40.00 Pgs: 7
DEP eCASH REC'D FOR MOUNTAIN VIEW TITLE &

Tax Serial Number:
11-794-0005

RECORDATION REQUESTED BY:
Wells Fargo Bank, National Association
SBA Lending
100 W. Washington St., 21st Floor
Phoenix, AZ 85003

WHEN RECORDED MAIL TO:
Wells Fargo Bank, National Association
SBA - BBG Loan Ops - Recorded Docs
P.O. Box 659713
San Antonio, TX 78265-9827

SEND TAX NOTICES TO:
Burger LADS Layton LLC
340 E Gentile St
Layton, UT 84041

FOR RECORDER'S USE ONLY

182614



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

SUBORDINATION AGREEMENT - LEASE

THIS SUBORDINATION AGREEMENT - LEASE dated February 8, 2021, is made and executed among Burger LADS 2 LLC ("Lessee"); Burger LADS 2 LLC and Burger LADS Layton LLC ("Borrower"); and Wells Fargo Bank, National Association ("Lender").

SUBORDINATED LEASE. Lessee has executed a lease dated February 12, 2021 of the property described herein (the "Subordinated Lease").

REAL PROPERTY DESCRIPTION. The Lease covers a portion of the following described real property located in Davis County, State of Utah:

See Exhibit A attached hereto and made a part hereof.

The Real Property or its address is commonly known as 340 E Gentile St, Layton, UT 84041. The Real Property tax identification number is 11-794-0005.

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

All indebtedness now or hereafter secured by the deed of trust or mortgage evidencing the Lender's Lien, including without limitation, all principal, interest and other amounts, costs and expenses payable under the Note or Related Documents and any renewals of, extensions of, modifications of, consolidations of and substitutions for the Note and Related Documents.

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 February 8, 2021, from Burger LADS Layton LLC 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.

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

NOW THEREFORE THE PARTIES TO THIS SUBORDINATION HEREBY AGREE AS FOLLOWS:

SUBORDINATION. All of Lessee's right, title, and interest in and to the Subordinated Lease and the Real Property is and shall be subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is agreed that Lender's Lien shall be and remain, at all times, prior and superior to Lessee's interests in the Subordinated Lease and the Real Property. Lessee also subordinates to Lender's Lien all other Security Interests in the Real Property held by Lessee, whether now existing or hereafter acquired.

LESSEE'S REPRESENTATIONS AND WARRANTIES. Lessee hereby represents and warrants to Lender that Lessee has heretofore delivered to Lender a true, correct and complete copy of the Lease, which constitutes the entire agreement between the parties thereto and Lessee further acknowledges that the Lease is in full force and effect and that no default by Lessee or, to Lessee's knowledge, by other party under the terms and provisions of the Lease exists as of the date hereof.

LESSEE WAIVERS. Lessee waives any right to require Lender: (A) to make, extend, renew, or modify any loan to Borrower or to grant

**SUBORDINATION AGREEMENT - LEASE
(Continued)**

any other financial accommodations to Borrower whatsoever; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of any secured by Lender's Lien, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness, or in connection with the creation of new or additional indebtedness; (C) to resort for payment or to proceed directly or at once against any person, including Borrower; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever.

LENDER'S RIGHTS. Lender may take or omit any and all actions with respect to Lender's Lien without affecting whatsoever any of Lender's rights under this Subordination. In particular, without limitation, Lender may (A) make one or more additional secured or unsecured loans to Borrower; (B) repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Superior Indebtedness or any part of it, including increases and decreases of the rate of interest on the Superior Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) take and hold collateral for the payment of the Superior Indebtedness, and exchange, enforce, waive, and release any such collateral, with or without the substitution of new collateral; (D) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or guarantors on any terms or manner Lender chooses; (E) determine how, when and what application of payments and credits, shall be made on the Superior Indebtedness; (F) apply such security and direct the order or manner of sale of the security, as Lender in its discretion may determine; and (G) transfer this Subordination to another party.

DEFAULT BY BORROWER. If Borrower becomes insolvent or bankrupt, this Subordination shall remain in full force and effect. Any default by Borrower under the terms of the Subordinated Lease also shall constitute an event of default under the terms of the Superior Indebtedness in favor of Lender.

FACSIMILE AND COUNTERPART. This document shall be valid, binding, and enforceable against a party when executed by an authorized individual on behalf of the party by means of (i) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Even though the parties agree that such signatures are legally enforceable and intended to be effective for all purposes, the signing parties agree to promptly deliver to Lender the original document bearing an original manual signature, if requested by Lender in its sole discretion, in order to reduce the risk of fraud, comply with potentially applicable regulations, or for other operational or risk management purposes. This document may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one document. When this provision is set forth in a promissory note or other negotiable instrument, the term "document" as used in this provision shall mean "instrument".

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Subordination:

Amendments. This Subordination, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Subordination. No alteration of or amendment to this Subordination shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Subordination, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. However, Lessee will only pay reasonable attorneys' fees of an attorney not Lender's salaried employee, to whom the matter is referred after Lessee's default. Lessee also will pay any court costs, in addition to all other sums provided by law.

Authority. The person who signs this Subordination as or on behalf of Lessee represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Lessee's security interests in Lessee's property, if any.

Caption Headings. Caption headings in this Subordination are for convenience purposes only and are not to be used to interpret or define the provisions of this Subordination.

Governing Law. With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, this Subordination will be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of Utah. In all other respects, this Subordination will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Arizona without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Subordination is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Subordination has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Arizona.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Subordination 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 Subordination 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 Subordination. No prior waiver by Lender, nor any course of dealing between Lender and Lessee, shall constitute a waiver of any of Lender's rights or of any of Lessee's

**SUBORDINATION AGREEMENT - LEASE
(Continued)**

obligations as to any future transactions. Whenever the consent of Lender is required under this Subordination, 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.

Successors. This Subordination shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Subordination, and the covenants of Lessee herein in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Subordination. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Subordination shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means Burger LADS 2 LLC and Burger LADS Layton LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Lender. The word "Lender" means Wells Fargo Bank, National Association, its successors and assigns.

Note. The word "Note" means the Note dated February 8, 2021 and executed by Burger LADS 2 LLC and Burger LADS Layton LLC in the principal amount of \$3,402,700.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Subordination.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

EACH PARTY TO THIS SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED FEBRUARY 8, 2021.

BORROWER:

BURGER LADS 2 LLC

By: 

Donald Monte Wichern, Manager of Burger LADS 2 LLC

By: 

Lance R Parks, Manager of Burger LADS 2 LLC

BURGER LADS LAYTON LLC

By: 

Donald Monte Wichern, Manager of Burger LADS Layton LLC

By: 

Lance R Parks, Manager of Burger LADS Layton LLC

LESSEE:

BURGER LADS 2 LLC

By: 

Donald Monte Wichern, Manager of Burger LADS 2 LLC

By: 

Lance R Parks, Manager of Burger LADS 2 LLC

**SUBORDINATION AGREEMENT - LEASE
(Continued)**

LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION

x JH Coman
Authorized Officer

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH)
) SS
COUNTY OF DAVIS)



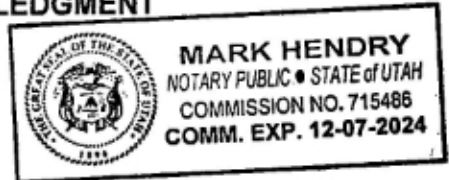
On this 18 day of FEB, 2021, before me, the undersigned Notary Public, personally appeared Donald Monte Wichern, Manager of Burger LADS 2 LLC, and known to me to be a member or designated agent of the limited liability company that executed the Subordination Agreement - Lease and acknowledged the Subordination 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 Subordination and in fact executed the Subordination on behalf of the limited liability company.

By [Signature]
Notary Public in and for the State of UTAH

Residing at LAYTON, UT
My commission expires 12-7-24

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH)
) SS
COUNTY OF DAVIS)



On this 17 day of FEB, 2021, before me, the undersigned Notary Public, personally appeared Lance R Parks, Manager of Burger LADS 2 LLC, and known to me to be a member or designated agent of the limited liability company that executed the Subordination Agreement - Lease and acknowledged the Subordination 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 Subordination and in fact executed the Subordination on behalf of the limited liability company.

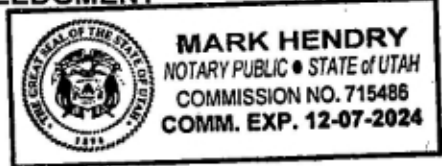
By [Signature]
Notary Public in and for the State of UTAH

Residing at LAYTON, UT
My commission expires 12-7-24

SUBORDINATION AGREEMENT - LEASE
(Continued)

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH)
) SS
COUNTY OF DAVIS)



On this 12 day of FEB, 2021, before me, the undersigned Notary Public, personally appeared Donald Monte Wichern, Manager of Burger LADS Layton LLC, and known to me to be a member or designated agent of the limited liability company that executed the Subordination Agreement - Lease and acknowledged the Subordination 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 Subordination and in fact executed the Subordination on behalf of the limited liability company.

By [Signature]
Notary Public in and for the State of UTAH

Residing at LAYTON, UT
My commission expires 12-7-24

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH)
) SS
COUNTY OF DAVIS)



On this 12 day of FEB, 2021, before me, the undersigned Notary Public, personally appeared Lance R Parks, Manager of Burger LADS Layton LLC, and known to me to be a member or designated agent of the limited liability company that executed the Subordination Agreement - Lease and acknowledged the Subordination 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 Subordination and in fact executed the Subordination on behalf of the limited liability company.

By [Signature]
Notary Public in and for the State of UTAH

Residing at LAYTON, UT
My commission expires 12-7-24

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH)
) SS
COUNTY OF DAVIS)



On this 12 day of FEB, 2021, before me, the undersigned Notary Public, personally appeared Donald Monte Wichern, Manager of Burger LADS 2 LLC, and known to me to be a member or designated agent of the limited liability company that executed the Subordination Agreement - Lease and acknowledged the Subordination 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 Subordination and in fact executed the Subordination on behalf of the limited liability company.

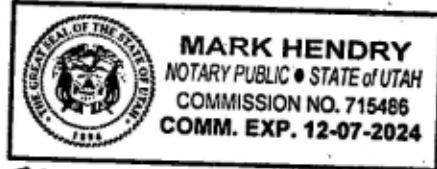
By [Signature]
Notary Public in and for the State of UTAH

Residing at LAYTON, UT
My commission expires 12-7-24

**SUBORDINATION AGREEMENT - LEASE
(Continued)**

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH)
) SS
COUNTY OF DAVIS)



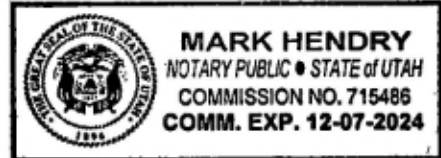
On this 18 day of FEB, 2021, before me, the undersigned Notary Public, personally appeared Lance R Parks, Manager of Burger LADS 2 LLC, and known to me to be a member or designated agent of the limited liability company that executed the Subordination Agreement - Lease and acknowledged the Subordination 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 Subordination and in fact executed the Subordination on behalf of the limited liability company.

By [Signature]
Notary Public in and for the State of UTAH

Residing at LAYTON, UT
My commission expires 12-7-24

LENDER ACKNOWLEDGMENT

STATE OF UTAH)
) SS
COUNTY OF DAVIS)



On this 18 day of FEB, 2021, before me, the undersigned Notary Public, personally appeared JEFF CROMER and known to me to be the _____, authorized agent for Wells Fargo Bank, National Association that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of Wells Fargo Bank, National Association, duly authorized by Wells Fargo Bank, National Association 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 Wells Fargo Bank, National Association.

By [Signature]
Notary Public in and for the State of UTAH

Residing at LAYTON, UT
My commission expires 12-7-24

EXHIBIT "A"

PARCEL 1:

A PORTION OF PARCEL 5, FORT LANE VILLAGE AMENDED RECORDED JULY 29, 2016 AS ENTRY NUMBER 2955022 IN BOOK 6568 AT PAGE 338, LOCATED IN THE NORTH HALF OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LAYTON CITY, DAVIS COUNTY, UTAH. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF GENTILE STREET, SAID POINT BEING SOUTH 00°54'20" WEST 73.00 FEET AND NORTH 89°06'13" WEST 60.17 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 28 (NAD83 BEARING BEING: NORTH 89°51'30"EAST BETWEEN THE NORTH QUARTER CORNER AND THE NORTHEAST QUARTER CORNER OF SAID SECTION 28 AS NOTED ON DAVIS COUNTY NAD 83 TOWNSHIP REFERENCE PLAT) AND RUNNING THENCE: SOUTH 00°54'20" WEST 337.34 FEET TO THE SOUTH LINE OF PARCEL 5; THENCE NORTH 88°51'07" WEST 194.37 FEET ALONG THE SOUTH LINE TO THE SOUTHWEST CORNER OF PARCEL 5; THENCE ALONG THE WEST LINE OF PARCEL 5 THE FOLLOWING THREE(3) COURSES AND DISTANCES: 1) NORTH 01°01'23" EAST 73.81 FEET; 2) NORTH 10°47'10" EAST 91.38 FEET; 3) NORTH 00°54'20" EAST 172.68 FEET TO THE SOUTHERLY RIGHT OF WAY OF GENTILE STREET; THENCE SOUTH 89°05'40" EAST 178.53 FEET ALONG SAID SOUTHERLY RIGHT OF WAY TO THE POINT OF BEGINNING.

PARCEL 1A:

NONEXCLUSIVE EASEMENT FOR VEHICULAR AND PEDESTRIAN TRAFFIC ACCESS, INGRESS AND EGRESS, AS CREATED AND DESCRIBED IN THAT CERTAIN CROSS ACCESS EASEMENT AGREEMENT RECORDED FEBRUARY 12, 2010, AS ENTRY NUMBER 2511470, IN BOOK 4961 AT PAGE 1054, AND AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO CROSS ACCESS EASEMENT AGREEMENT RECORDED AUGUST 30, 2016, AS ENTRY NO. 2962370 IN BOOK 6590 AT PAGE 222

PARCEL 1B:

NONEXCLUSIVE EASEMENT FOR THE PASSAGE OF VEHICLES AND PEDESTRIANS, AS CREATED AND DESCRIBED IN THAT CERTAIN CROSS ACCESS EASEMENT AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT AND RESTRICTION AGREEMENT RECORDED AUGUST 30, 2016, AS ENTRY NUMBER 2962367, IN BOOK 6590 AT PAGE 146

PARCEL 1C:

NONEXCLUSIVE EASEMENT, AS CREATED AND DESCRIBED IN THAT CERTAIN AMENDED AND RESTATED DECLARATION OF EASEMENTS AND CONDITIONS, RECORDED AUGUST 30, 2016, AS ENTRY NUMBER 2962369, IN BOOK 6590 AT PAGE 166, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF EASEMENTS AND CONDITIONS RECORDED JULY 12, 2017, AS ENTRY NO. 3032092 IN BOOK 6805 AT PAGE 384

PARCEL 1D:

NONEXCLUSIVE EASEMENT FOR THE PASSAGE OF VEHICLES AND PEDESTRIANS, AS CREATED AND DESCRIBED IN THAT CERTAIN ACCESS EASEMENT, TEMPORARY CONSTRUCTION EASEMENT AND MAINTENANCE AGREEMENT RECORDED February 17, 2021, AS ENTRY NUMBER 3349432, IN BOOK 7198 AT PAGE 2134