

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

American First Credit Union
6 Pointe Drive, Suite 400
Brea, CA 92821
Attn: CRE Lending Services

ENT 87465:2019 PG 1 of 10
Jeffery Smith
Utah County Recorder
2019 Sep 06 11:16 AM FEE 40.00 BY DA
RECORDED FOR First American Title-NCS-SLC1
ELECTRONICALLY RECORDED

SPACE ABOVE THIS LINE FOR RECORDER'S USE

First American Title
National Commercial Services
NCS File # 966936

**SUBORDINATION, NON-DISTURBANCE AND
ATTORNMEN T AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT (the "**Agreement**") is made as of August 26, 2019, between Utah Del, Inc., a Utah corporation ("**Tenant**"), having an address at 4760 South Highland Drive, #604, Salt Lake City, Utah 84117 and **AMERICAN FIRST CREDIT UNION**, a California state chartered credit union, its successors and/or assigns ("**Lender**"), with a mailing address at 6 Pointe Drive, Suite 400, Brea, CA 92821.

RECITALS:

- A. Tenant is the tenant under that certain lease (the "**Original Lease**") dated October 19, 2009, by and between Tenant and Chuong Ho, individual successor in interest to Del Saratoga- West, LLC, a Utah limited liability company (the "**Landlord**"), as landlord (together with any amendments, modifications, renewals, or extensions attached hereto and made a part hereof, whether now or hereafter existing) (the "**Lease**"), wherein Landlord leased to Tenant certain premises known as **128 East Crossroads Boulevard (UT-73), Saratoga Springs, UT 84045** (the "**Premises**") and located on that certain land described in Exhibit A attached hereto and made a part hereof (the "**Land**").
- B. Lender intends to make a loan to Landlord (the "**Loan**") to be evidenced by a Promissory Note executed by Landlord in favor of Lender (the "**Note**"), which Note shall be secured by, among other security, a mortgage, deed of trust, or deed to secure debt of even date herewith (the "**Security Instrument**") The Security Instrument shall be recorded prior to or concurrently herewith and shall encumber the Land. The Security Instrument and all other documents evidencing, accompanying, or securing the Loan are collectively referred to herein as the "Loan Documents."
- C. Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease, subject to the terms of the Security Instrument and to the terms hereof.
- D. Lender is willing to make the Loan on the condition that the Security Instrument is a lien and charge upon the Premises prior and superior to the Lease and provided that Tenant specifically subordinates the Lease to the lien and charge of the Security Instrument.
- E. Tenant is agreeable to the Security Instrument constituting a lien or charge upon the Premises which shall be prior and superior to the Lease, subject to the terms hereof, and is willing to attorn to Lender provided Lender grants Tenant a non-disturbance agreement as provided herein.
- F. Lender and Tenant desire to confirm their agreements with respect to the Lease and the Loan Documents.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements herein contained, and in order to induce Lender to make a loan to Landlord, Lender and Tenant hereby agree and covenant as follows:

1. Lease. As used in this Agreement, "Lease" includes, without limitation, all right, title and interest that Tenant may have in all or any portion of the Premises, whether granted by the terms of the Lease, by a separate written agreement or otherwise, including without limitation, all options, purchase rights, rights of



first refusal or similar rights provided for in the Lease or by separate agreement between Landlord and Tenant.

2. **Subordination.** The Lease and all right, title and interest in the Land created thereby (including without limitation, all options, any purchase rights, rights of first refusal or similar rights possessed by Tenant with respect to the Premises) are, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the terms, covenants, provisions and conditions of the Security Instrument and the Loan Documents, including all renewals, modifications, consolidations, replacements, and extensions thereof, in the same manner and to the same extent as if the Lease were executed subsequent to the execution, delivery, and recording of the Security Instrument.
3. **Non-Disturbance.** So long as the Lease is in full force and effect and Tenant is not in default under the Lease (beyond any period given Tenant to cure such default under the Lease) or under this Agreement:
 - a. Tenant's possession of the Premises, and Tenant's rights and privileges under the Lease (other than all options, any purchase rights, rights of first refusal or similar rights possessed by Tenant with respect to the Premises), shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any extensions or renewals thereof; and
 - b. Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which cut-off would, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease.

Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument, Lender may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

4. **Attornment.**
 - a. After notice is given by Lender to Tenant that a default has occurred under the Security Instrument and that the rentals and all other payments to be made by Tenant under the Lease should be paid to Lender, Tenant will attorn to Lender and pay to Lender, or in accordance with the directions of Lender, all rentals and other monies due and to become due to Landlord under the Lease or otherwise in respect to the Premises. ; and
 - b. In addition, if Lender (or its nominee or designee) shall succeed to the rights of Landlord under the Lease through a foreclosure, deed in lieu of foreclosure or otherwise, or another person purchases the Premises upon or following foreclosure of the Security Instrument, then at the request of Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, each being a "**Successor-Landlord**"), Tenant shall attorn to and recognize Successor-Landlord as Tenant's landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any other instruments on the part of any of the parties hereto; provided, however, Tenant agrees to promptly execute and deliver any instrument that Successor-Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor-Landlord and Tenant upon all terms, conditions and covenants as are set forth in the Lease, except that Successor-Landlord shall not:
 - (i) be bound by any modification of the Lease or by any previous prepayment of rent or additional rent for more than one month which Tenant might have paid to Landlord (or any prior landlord), unless such modification or prepayment shall have been expressly approved in writing by Lender.

5. **Lease Modifications.** Tenant agrees that without the prior written consent of Lender, it shall not: (a) amend or modify the Lease or any extensions or renewals thereof; (b) terminate, cancel or tender a

surrender of the Lease; (c) make a prepayment of any rent or additional rent in excess of one (1) month; or (d) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument. Except as may be expressly permitted by the Lease, Tenant shall not assign the Lease, nor sublet any portion of the Premises, and Landlord shall not consent to any such assignment or subletting other than as expressly permitted by the terms of the Lease, without Lender's prior written consent.

6. Notice of Default; Opportunity to Cure.

a. Any notice required or permitted to be given by Tenant to Landlord shall be simultaneously given also to Lender, and any right of Tenant dependent upon notice shall take effect only after such notice to Lender is so given. Subject to section 4 (b) above, performance by Lender shall satisfy any conditions of the Lease requiring performance by Landlord, and Lender shall have a reasonable time to complete such performance as provided in section (b) below.

b. Tenant shall not exercise any right granted to Tenant under the Lease, or which it might otherwise have under applicable law, to cancel or terminate the Lease or claim a partial or total eviction because of a default of Landlord under the Lease (a "Landlord Default") without first giving Lender prior written notice of its intent to cancel or terminate, the Lease, which notice shall include a statement of the Landlord's Default on which such intent to cancel or terminate is based. Thereafter, Tenant shall take no action to cancel or terminate the Lease if:

(i) within thirty (30) days following the end of the period in which Landlord is entitled to cure the default, Lender cures such Landlord's default, if the same can be cured by the payment of money;

or

(ii) Lender diligently starts either:

(A) to cure the default if the same is not reasonably capable of being cured by Lender, with diligence, within said thirty (30) days, and thereafter diligently pursues the cure until a reasonable period for remedying such Landlord Default has elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Loan Documents to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise, after similar notice, to effect such cure);

or

(B) to institute proceedings to obtain possession of the Land through a foreclosure or otherwise, or for the appointment of a receiver for the Land, provided that Lender institutes and prosecutes such proceedings with due diligence to cure or remedy such Landlord Default if Lender cannot reasonably cure Landlord's Default until after Lender obtains possession of the Land.

Lender shall have the right, but not the obligation hereunder, to remedy any default by Landlord.

7. Application of Casualty Insurance Proceeds and Condemnation Awards. Tenant hereby agrees that, notwithstanding anything to the contrary contained in the Lease, the terms and provisions of the Security Instrument shall control with respect to the application of casualty insurance proceeds and condemnation awards.

8. Notice of Lien. To the extent that the Lease entitles Tenant to notice of the existence of any mortgage lien or Deed of Trust and the identity of any lender, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument.

9. Remedies. Upon and after the occurrence of a default under the Security Instrument, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance

of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as Landlord. Landlord agrees that this Agreement does not constitute a waiver by Lender of any of its rights under the Security Instrument or the Loan Documents and that the Security Instrument and the Loan Documents remain in full force and effect and shall be complied with in all respects by the Landlord.

10. Limitation of Liability. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.
11. Priority.
 - a. Tenant acknowledges and agrees that this Agreement supersedes (but only to the extent inconsistent with) any provisions of the Lease relating to the priority or subordination of the Lease and the interests or estates created thereby to the Security Instrument.
 - b. Tenant agrees to enter into a subordination, non-disturbance and attornment agreement with any entity which shall succeed Lender with respect to the Land, or any portion thereof, provided such agreement is substantially similar to this Agreement.
12. Notices. Any notice, consent, request or other communication required or permitted to be given hereunder shall be in writing and shall be: (a) personally delivered; (b) delivered by Federal Express or other comparable overnight delivery service (collectively, a "**Delivery Service**"); or (c) transmitted by the U. S. Postal Service, registered or certified mail, postage prepaid, return receipt requested. All such notices, consents, requests or other communications shall be addressed to Landlord, Lender or Tenant at the following addresses, or to such other address as Landlord, Lender or Tenant shall in like manner designate in writing. All notices and other communications shall be deemed to have been duly given on the first to occur of actual receipt of the same or: (i) the date of delivery if personally delivered; (ii) one (1) business day after depositing the same with the Delivery Service if by Delivery Service; and (iii) five (5) calendar days following posting if transmitted by the U.S. Postal Service. Any party may change its address for purposes hereof by notice to the other parties given in accordance with the provisions hereof.

If to Tenant:

Utah Del, Inc.
 4760 South Highland Drive, #604
 Salt Lake City, Utah 84117

If to Landlord:

Chuong Ho
 1760 N Heather Drive
 Orem, UT 84097

If to Lender:

American First Credit Union
 6 Pointe Drive, Suite 400
 Brea, CA 92821
 Attn: CRE Lending Services

13. General. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns. The term "**Lender**" shall mean the then holder of any interest in the Security Instrument. The term "**Landlord**" shall mean the then holder of the lessor's interest in the Lease. The term "**person**" shall mean any individual, joint venture, corporation, partnership, trust, unincorporated association or other entity. All references herein to the Lease shall mean the Lease as modified by this Agreement and any amendments or modifications to the Lease which are consented to in writing by the Lender. In the event there is any inconsistency

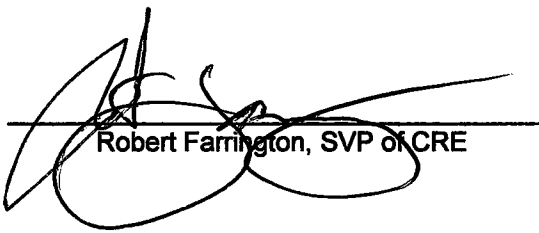
between the Lease and the provisions of this Agreement, the provisions of this Agreement shall be controlling. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

- 14. **Tenant Representations and Warranties.** Tenant hereby represents and warrants, there are no known defects or defaults on the part of the Landlord. The Lease is a complete statement of the Agreement of the parties thereto with respect to the leasing of the Premises.
- 15. **No Warranties by Lender.** Lender shall have no obligations nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose, or possession.
- 16. **Limitation on Lender's Liability.** If Lender shall acquire title to the Premises or the Land, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Premises, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Premises for the payment and discharge of any obligations imposed upon Lender hereunder or under the Lease, and Lender is hereby released and relieved of any other obligations hereunder and under the Lease.
- 17. **Attorneys' Fees.** If any action or proceeding is brought by any party against any other party arising from or related to this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees. Attorneys' fees shall include, without limitation, such amounts as may then be charged by Lender for legal services provided by attorneys in the employ of Lender, at rates not exceeding those that would be charged by outside attorneys for comparable services.
- 18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state in which the Land is located.
- 19. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement. The separate signature pages and notary acknowledgements may be combined into a single original document for recordation.

IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement to be effective as of the day and year first stated above.

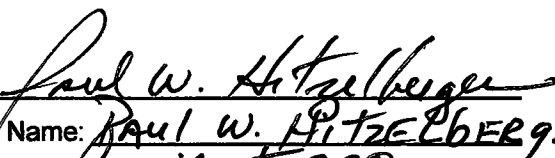
LENDER:

AMERICAN FIRST CREDIT UNION,
a California state chartered credit union

By: 
Robert Farrington, SVP of CRE

TENANT:

Utah Del, Inc.,
a Utah corporation

By: 
Print Name: PAUL W. HITZELBERGER
Title: By: President CEO

Signatures continue on following page

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

On September 4, 2019, before me, John Schiefer, Notary Public
(insert name and title; notary public)

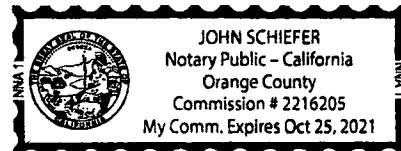
personally appeared Robert Farrington, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature John Schiefer

Seal



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Utah

County of Summit

On August 27, 2019, before me, Daniel Clark, Notary Public
(insert name and title; notary public)

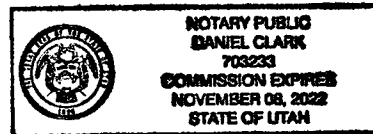
personally appeared Paul W Hitzelberger, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Daniel Clark

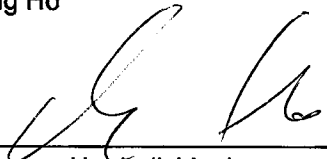
Seal



AGREED AND CONSENTED TO:

LANDLORD:

Chuong Ho

By: 

Chuong Ho, Individual

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Utah

County of Utah

On 8/27/2019, before me, Mayra Anderson
(insert name and title; notary public)

personally appeared Chuony D HO, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Mayra Anderson

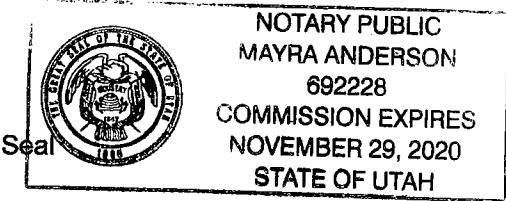


EXHIBIT "A"

LEGAL DESCRIPTION

The Land is described as follows: Real property in the County of Utah, State of UT, described as follows:

PARCEL 1:

LOT 4, SARATOGA TOWN CENTER, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED OCTOBER 3, 2006 AS ENTRY NO. 131021:2006, MAP FILING NO. 11899, IN MAP BOOK 66, AT MAP PAGE 170, OF THE OFFICIAL RECORDS OF THE COUNTY RECORDER OF UTAH COUNTY, STATE OF UTAH.

PARCEL 2:

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS AND COMMON AREA MAINTENANCE AGREEMENT RECORDED OCTOBER 06, 2006 AS ENTRY NO. 132916:2006 OF OFFICIAL RECORDS.

APN: 66-170-0004