



W2911371

E# 2911371 PG 1 OF 13
Leann H. Kilts, WEBER COUNTY RECORDER
23-Mar-18 11:52 AM FEE \$38.00 DEP JC
REC FOR: INWEST TITLE - WEST HAVEN
ELECTRONICALLY RECORDED

When Recorded Return To:

Attn: Lisa Snyder
Mountain West Small Business Finance
2595 East 3300 South
Salt Lake City, Utah 84109

Loan Name: RECYCLED EARTH
LLC

Loan No.: 7322375002

Inwest # 245447

15-569-005

15-102-0051

15-102-0052

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SUBORDINATION AGREEMENT

This agreement dated for reference March 19, 2018 (“Subordination Agreement”), is made by and among: the SMALL BUSINESS ADMINISTRATION, an agency of the United States of America (“SBA”); CACHE VALLEY BANK (“Lender”); and RECYCLED EARTH LLC (“Owner”).

RECITALS

SBA is the holder and beneficiary of a Deed of Trust executed by Owner dated January 28, 2016, which was recorded on February 8, 2016 under Entry #2777270 in Weber County.

This Deed of Trust together with a Security Agreement covering all equipment and fixtures associated with State of Utah UCC filing #484280201645 (“SBA Security Instrument”) was pledged to secure a note in the sum of \$2,245,000 in favor of Mountain West Small Business Finance (“CDC”), which evidences a loan made by the CDC to Recycled Earth LLC (“Borrower”) under SBA’s 504 Loan Program (“SBA Loan”).

Owner has also executed, or is about to execute, a Deed of Trust in favor of Lender, which shall be recorded concurrently herewith.

This Deed of Trust secures a note in a sum not to exceed \$1,457,991 which evidences a loan to the Owner made by the Lender (“Lender Loan”).

Lender has requested that SBA’s lien position on the real and personal property described in the SBA Security Instrument (“Property”) be subordinated to the lien position of Lender's Security Instrument. SBA is willing to do so provided that it retains its priority with regard to all other legal and equitable interests in the Property.

AGREEMENT

In consideration of the mutual benefits to the parties and to induce Lender to make the Lender Loan, it is hereby agreed as follows:

(1) Use of Lender Loan Proceeds. 100% of the proceeds of the Lender Loan shall be used for the following described purpose(s): improvements on collateral. Any other use of the proceeds, except to pay necessary, reasonable and customary closing costs, shall void this Subordination Agreement.

(2) Lender Warranty. Lender would not make the Lender Loan without this Subordination Agreement.

(3) Subordination of SBA Lien Priority. Lender's Security Instrument, and any renewals or extensions thereof, shall be a lien on the Property prior to the lien of SBA's Security Instrument.

(4) Hold Harmless Agreement. Except as expressly provided herein, this Subordination Agreement shall not operate to, or be construed to, alter the priority of SBA's Security Instrument with regard to any legal or equitable interest in the Property. Owner and Lender shall hold SBA harmless from any impairment of its lien (with regard to any third party) which is occasioned by this Subordination Agreement.

(5) Required Signatures. This Subordination Agreement is void if it is not duly executed by SBA, Lender, and Owner, or does not contain the written approval of all other individuals and legal entities with direct or contingent liability for repaying the SBA Loan such as the Borrower and all guarantors.

(6) Lender Compliance with SBA 504 Loan Program Requirements. All documents evidencing the Lender Loan and Lender's Security Instrument must comply with SBA 504 Loan Program requirements, including but not limited to those identified in the following subparagraphs, and, in the event one or more of the provisions in such documents do not comply with these requirements, Lender waives any right to enforce such provisions while the SBA Loan has any unpaid balance.

(a) No Open-Ended Features and No Future Advances. The Lender Loan must not be open-ended. The Lender may not make future advances except for reasonable costs of collection, maintenance, and protection of the Lender Loan and Lender's Security Instrument.

(b) No Early Call or Demand Provisions. The documents evidencing the Lender Loan and the Lender's Security Instrument must not contain an early call feature or any provision that allows Lender to make demand other than when there has been a material default under the terms of the Lender Loan documents, such as failure to make timely payments, failure to pay taxes when due, or violation of any financial covenants that

would cause a prudent lender to believe that the prospect of payment or performance of the Lender Loan is impaired.

(c) No Cross-Collateralization. The Property covered by Lender's Security Instrument must only secure the Lender Loan; and the Property must not, currently or in the future, be used as security for any other financing provided by Lender that purports to be in a superior position to that of the SBA Loan, unless authorized in writing by SBA.

(d) No Cross-Default. During the term of the SBA Loan, Lender must not exercise any cross-default, "deem at-risk," or any other provisions in the documents evidencing the Lender Loan or Lender's Security Instrument that allow Lender to make demand on the Lender Loan prior to maturity unless the Lender Loan is in material default.

(e) Reasonable Interest Rate. The Lender Loan must have a reasonable interest rate that must not exceed the maximum interest rate for loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Subordination Agreement.

(7) Notice of Default on Lender Loan. Lender must provide CDC and SBA with written notice of any material default on the Lender Loan or Lender's Security Instrument (referencing the SBA Loan number on page one of this Agreement) within thirty (30) days after the expiration of any cure period. Lender must also provide CDC and SBA with written notice of its intent to enforce collection of the Lender Loan at least sixty (60) days prior to initiating any judicial or non-judicial proceedings against the Borrower, guarantors or the Property. Notice under this Subordination Agreement shall be deemed to have been given when sent to the CDC at the following address: 2595 East 3300 South, Salt Lake City, Utah 84109; and to SBA at the following address: 801 R Street, Suite 101, Fresno California.

(8) Limitation on Default Interest Rate on Lender Loan. In the event of default on the Lender Loan, Lender may not escalate the interest rate to a rate greater than the maximum rate published by SBA in the Federal Register and in effect as of the date of this Subordination Agreement. If SBA purchases the Lender Loan or note, SBA will only pay the interest rate on the note in effect before the date of default.

(9) Marshalling of Collateral for Lender Loan. In the event Lender decides to liquidate the Lender Loan, if Lender has taken additional collateral as security for the Lender Loan, Lender must liquidate the additional collateral prior to foreclosing its Security Interest in the Property, and must apply the proceeds from liquidation of the additional collateral to the Lender Loan prior to the proceeds from liquidation of the Property. Provided, however, that the Lender shall not be required to liquidate the additional collateral if it is not commercially reasonable to do so, (e.g., the additional collateral has insufficient value to justify the cost of collection) and Lender provides written justification for not liquidating the additional collateral in the 60 day notice it is required to provide the CDC and SBA prior to foreclosing its Security Interest in the Property.

(10) Subordination of Default Charges to SBA Loan.

(a) The term "Default Charges" includes, but is not limited to, prepayment penalties, as well as late fees, escalated interest, and other charges after default on the Lender Loan.

(b) To the extent the Lender's Security Instrument secures any amounts attributable to Default Charges, the Lender's Security Instrument is and will be subordinate to SBA's Security Instrument. This subordination applies only to CDC and SBA and their successors and assigns, and shall not inure to the benefit of Borrower or any guarantor of the Lender Loan.

(c) In the event of default on the Lender Loan, CDC or SBA may bring the Lender Loan current or acquire the Lender Loan including Lender's Security Instrument. Lender agrees that in either of these circumstances, the amount to bring the Lender Loan current or the purchase price of the Lender Loan will be net of all amounts attributable to Default Charges subordinated to the SBA Mortgage. Lender further agrees that if it receives any amounts attributable to Default Charges, Lender holds such funds in trust for SBA and will immediately remit them to SBA.

(d) If Lender sells, or intends to sell the note evidencing the Lender Loan:

(1) If the Lender Loan is not in default, within 15 calendar days of the sale Lender must provide CDC and SBA with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received an executed copy of this Subordination Agreement.

(2) If the Lender Loan is in default and the Lender intends to sell the note as part of its liquidation strategy, Lender must provide the CDC and SBA with the option to purchase the note at the same price offered by any potential purchaser, net any Default Charges. SBA shall have 45 calendar days from receipt of the notice to exercise its option to purchase the note. If SBA does not exercise its option and the Lender sells the note, within fifteen calendar days of the sale the Lender must provide CDC and SBA with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received an executed copy of this Subordination Agreement.

(11) Subordination of Swap Agreement Costs to SBA Loan. If the Lender Loan documents contain a swap component or hedging contract ("Swap Agreement"), all costs associated with the Swap Agreement, (which may be termed swap fees, termination fees, default fees), or other related fees, shall be subordinate to the amounts secured by SBA's Security Instrument.

(12) Cooperation in Event of Liquidation. In the event either the Lender Loan or SBA Loan is declared in default, the parties agree to liquidate the Property in a commercially reasonable and cooperative manner. For example, Lender agrees to: (a) accept a U.S. Treasury

check(s) from SBA or CDC to facilitate SBA's liquidation strategy, including, for example, purchase of the Lender Loan; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement on the Lender Loan; (c) to provide CDC and SBA, at no charge (except for reasonable charges for photocopies) with copies of any appraisal, environmental investigation, title examination or searches conducted by or for the Lender; and (d) provide any other information about Borrower or the Lender Loan requested by CDC and SBA.

(13) Lender Waiver of Right to Indemnification by SBA or CDC. If the Lender Loan documents contain provisions granting Lender the right to indemnification by subsequent owners of the Property, Lender waives its right to enforce such provisions against SBA and CDC in the event SBA or CDC acquires title to the Property through foreclosure, acceptance of a deed in lieu of foreclosure, or otherwise.

(14) No Implied Third Party Beneficiaries. The parties agree that this Subordination Agreement shall not grant any right, benefit, priority, or interest to any third party, including but not limited to the SBA Loan Borrower or guarantor(s).

(15) Successors and Assigns. This Subordination Agreement shall bind and inure to the benefit of the respective parties and their successors and assigns, including any party acquiring the Lender Loan and Lender's Security Instrument by sale, assignment, or other transfer from Lender. Lender agrees that SBA may assign this Subordination Agreement, and waives all rights to contest such assignment.

(16) Federal Law. When SBA is the holder of the note evidencing the SBA Loan, this Subordination Agreement and all related loan documents shall be construed in accordance with federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. Lender may not claim or assert against SBA any local or state law to deny any obligation of the Borrower, or defeat any claim of SBA with respect to the SBA Loan.

(17) Termination. This Subordination Agreement will terminate upon payment in full of either the Lender Loan or the SBA Loan and all costs related thereto.

(18) Counterparts. This Subordination Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

(19) Validity of Provisions. In the event that any provision of this Subordination Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Subordination Agreement shall remain valid and enforceable.

(20) Authority to Execute Subordination Agreement. The persons signing below certify that they have been duly authorized to execute this Subordination Agreement on behalf of their respective party.

U.S. SMALL BUSINESS ADMINISTRATION
BY John Evans, it's Attorney-In-Fact

By: [Signature]
President
Mountain West Small Business Finance

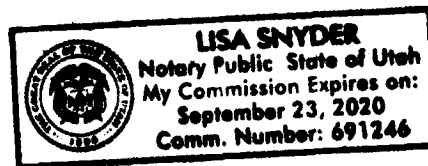
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Utah
County of Salt Lake

On this 21 day of March in the year 2018, before me, Lisa Snyder a notary public, personally appeared John Evans, proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same.

Witness my hand and official seal.

[Signature]
(notary signature)



LENDER: CACHE VALLEY BANK

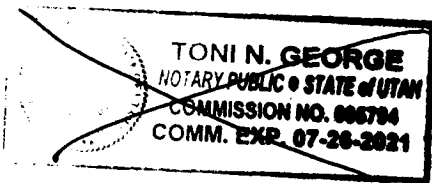
Date: 3-21-18

By: *Bruce G. Rigby*
Its: Bruce G. Rigby - President

CORPORATE ACKNOWLEDGEMENT

STATE OF UTAH)
 Weber : ss.
County of ~~Salt Lake~~)

On the 21 day of March personally appeared before me TONI N. GEORGE who being by me duly sworn, did say that he is the PRESIDENT of CACHE VALLEY BANK a Utah corporation and that the foregoing, attached instrument was signed in behalf of the corporation by authority of a resolution of its board of directors, and the said CACHE VALLEY BANK acknowledged to me that the corporation executed the same.



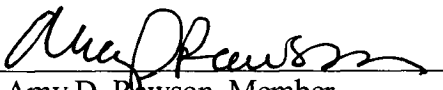
Toni N. George
NOTARY PUBLIC



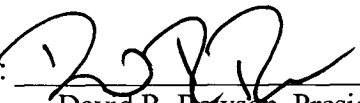
SUBORDINATION AGREEMENT
SIGNATURE PAGE


The undersigned Obligors and Guarantors, consent to this transaction and unconditionally acknowledge their continuing legal responsibility as Obligors and Guarantors of the primary obligation of RECYCLED EARTH LLC and agree to all terms set forth in this subordination agreement.

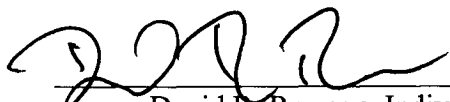
RECYCLED EARTH LLC

By: 
Amy D. Rawson, Member

RAWSON DEVELOPMENT INC.

By: 
David R. Rawson, President


Amy D. Rawson, Individually

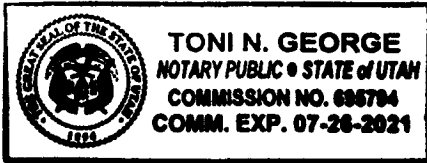

David R. Rawson, Individually

SUBORDINATION AGREEMENT
NOTARY PAGE

LIMITED LIABILITY ACKNOWLEDGEMENT

STATE OF UTAH)
County of Weber) :ss.

On the 21 day of March, 2018, personally appeared before me Amy D. Rawson, Member of RECYCLED EARTH LLC, that the foregoing, attached instrument was signed and acknowledged in behalf of said limited liability company by authority of its articles of organization and the said member acknowledged to me that said limited liability company executed the same.

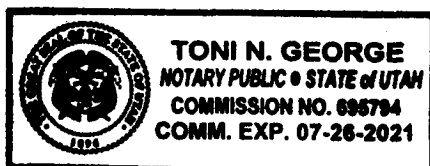


Toni N. George
NOTARY PUBLIC

CORPORATE ACKNOWLEDGEMENT

STATE OF UTAH)
County of Weber) :ss.

On the 22 day of March, 2018 personally appeared before me David R. Rawson, who being by me duly sworn, did say that he/she is the President of RAWSON DEVELOPMENT INC., a Utah corporation and that the foregoing, attached instrument was signed in behalf of the corporation by authority of a resolution of its board of directors, and the said David R. Rawson acknowledged to me that the corporation executed the same.



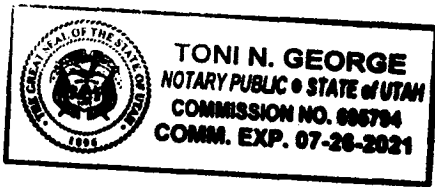
Toni N. George
NOTARY PUBLIC

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF UTAH)

:SS
County of Weber)

On the 21 day of March, 2018, personally appeared before me Amy D. Rawson, signer of the above instrument, who duly acknowledged to me that he/she executed the same.



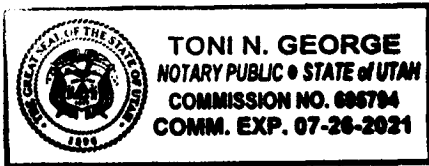
Toni N. George
NOTARY PUBLIC

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF UTAH)

:SS
County of Weber)

On the 22 day of March, 2018, personally appeared before me David R. Rawson, signer of the above instrument, who duly acknowledged to me that he/she executed the same.



Toni N. George
NOTARY PUBLIC

EXHIBIT A -- "LEGAL DESCRIPTION"

EXHIBIT "A"

(15-569-0005)

PARCEL 1: (15-569-0005)

ADDRESS: 3054 S 1500 W, OGDEN, UT 84401

ALL OF LOT 5, MIDLAND INDUSTRIAL SUBDIVISION, OGDEN CITY, WEBER COUNTY, STATE OF UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE WEBER COUNTY RECORDER.

PARCEL 2: (15-102-0051)

ADDRESS: NONE ASSIGNED

PART OF LOT 12, SECTION 36, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, LOCAL SURVEY: BEGINNING AT A POINT 837.7 FEET WEST AND 797 FEET, MORE OR LESS, SOUTH 34°04' WEST FROM THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, AND RUNNING THENCE NORTH 89°52'40" EAST 1028.06 FEET TO THE ROAD; THENCE SOUTHWESTERLY ALONG SAID ROAD TO THE SOUTH LINE OF LOT 12; THENCE NORTH 89°52' WEST 857.3 FEET TO THE EAST LINE OF THE D.&R.G.R., THENCE NORTH 34°04' EAST TO THE POINT OF BEGINNING.

EXCEPT MIDLAND BUSINESS PARK LOT 2, FIRST AMENDED (E#2252278)

ALSO EXCEPT: A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, IN THE CITY OF OGDEN, COUNTY OF WEBER, STATE OF UTAH, BEING THE SOUTHERLY FIVE ACRES OF THOSE CERTAIN PARCELS OF LAND CONVEYED TO THE CARLOS M BERGUSON TRUST AND THE SHIRLEY L BERGESON TRUST PER THE SPECIAL WARRANTY DEED RECORDED JULY 2ND, 1999 AS INSTRUMENT NUMBER 1647269 IN THE OFFICE OF THE RECORDER OF SAID COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER, THENCE NORTH 89°44'55" WEST 900.44 FEET ALONG THE NORTHERLY LINE OF SAID SOUTHWEST QUARTER, THENCE SOUTH 34°21'06" WEST 1303.79 FEET TO A POINT ON THE WESTERLY MOST LINE OF BERGUSON PARCELS AND THE POINT OF BEGINNING. THENCE SOUTH 89°31'32" EAST 981.12 FEET TO THE NORTHWESTERLY RIGHT OF WAY OF MIDLAND DRIVE, 66.00 FEET WIDE, THENCE SOUTH 43°20'04" WEST 312.18 FEET ALONG SAID RIGHT OF WAY TO THE SOUTHERLY LINE OF SAID BERGUSON PARCELS, THENCE NORTH 89°31'32" WEST 922.41 FEET ALONG THE SOUTHERLY LINES OF SAID BERGUSON PARCELS TO SAID WESTERLY MOST LINE OF THE BERGUSON PARCELS, THENCE NORTH 34°21'06" EAST 275.62 FEET ALONG SAID WESTERLY LINE TO THE POINT OF BEGINNING.

SITUATE IN WEBER COUNTY, STATE OF UTAH.

PARCEL 3: (15-102-0052)

ADDRESS: NONE ASSIGNED

TRACT OR PARCEL OF LAND IN THE NORTH 1/2 OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, NEAR EVONA UTAH, SAID TRACT OR PARCEL BEING THE SOUTHEASTERLY 50 FEET OF THE 200 FOOT WIDE RIGHT OF WAY OF THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY BETWEEN THE SOUTH LINE OF SAID NORTH 1/2 OF THE SOUTHWEST QUARTER OF SECTION 36, OPPOSITE RAILROAD MILEPOST 778+3827 FEET AND THE NORTH LINE OF SAID NORTH 1/2 OF THE SOUTHWEST QUARTER OF SECTION 36, OPPOSITE RAILROAD MILEPOST 779+129 FEET.

EXCEPT MIDLAND BUSINESS PARK LOT 2, FIRST AMENDED (E#2252278)

ALSO EXCEPT: A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, IN THE CITY OF OGDEN, COUNTY OF WEBER, STATE OF UTAH, BEING THE SOUTHERLY FIVE ACRES OF THOSE CERTAIN PARCELS OF LAND CONVEYED TO THE CARLOS M BERGUSON TRUST AND THE SHIRLEY L BERGESON TRUST PER THE SPECIAL WARRANTY DEED RECORDED JULY 2ND, 1999 AS INSTRUMENT NUMBER 1647269 IN THE OFFICE OF THE RECORDER OF SAID COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT

THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER, THENCE NORTH 8E# 2911371 PG 13 OF 13
FEET ALONG THE NORTHERLY LINE OF SAID SOUTHWEST QUARTER, THENCE SOUTH 34°21'06" WEST
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WAY TO THE SOUTHERLY LINE OF SAID BERGUSON PARCELS, THENCE NORTH 89°31'32" WEST 922.41
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TO THE POINT OF BEGINNING.

SITUATE IN WEBER COUNTY, STATE OF UTAH.