

2024-002712

Klamath County, Oregon

04/11/2024 11:20:02 AM

Fee: \$117.00

MTTC 6/5/2024 AM

After recording return to:

PNC Bank, National Association

1490 Stone Point Dr., Ste 250,
Roseville, CA 95661
Attn: Loan Department

Subordination of Lease Agreement



THIS SUBORDINATION OF LEASE AGREEMENT (this "Agreement") is made as of March 19, 2024, by FAST BREAK OF OREGON, LLC, an Oregon limited liability company (the "Tenant"), with an address at 1301 Esplanade Avenue, Klamath Falls, OR 97601 and SOS FAMILY, LLC, an Oregon limited liability company (the "Landlord"), with an address at 1301 Esplanade Avenue, Klamath Falls, OR 97601 in favor of PNC BANK, NATIONAL ASSOCIATION (the "Bank"), with an address at 1490 Stone Point Dr., Ste 250, Roseville, CA 95661.

WITNESSETH THAT:

WHEREAS, the Landlord is the fee owner of that certain real property located at 3730 N 97 Highway, Klamath Falls, County of Klamath, Oregon, and more particularly described in Exhibit "A" attached hereto (the "Property");

WHEREAS, pursuant to a loan agreement or letter agreement (as the same may be amended, renewed, replaced or supplemented from time to time, the "Loan Agreement") and/or a promissory note (as the same may be amended, renewed, replaced or supplemented from time to time, the "Note"), the Bank made one or more loans (the "Loan") to the Landlord (or to SOS PROPERTIES, LLC, an Oregon limited liability company, ED STAUB & SONS PETROLEUM, INC., a California corporation, and G3 LAND COMPANY, LLC, an Oregon limited liability company). The obligations under the Loan Agreement and Note are secured by a deed of trust covering the Property (as the same may be amended, renewed, replaced or supplemented from time to time, the "Deed of Trust") dated as of the date hereof, from the Landlord to the Bank, and recorded or to be recorded in the real estate records of the aforesaid County and State, and are also secured by an assignment of the Landlord's interest in all leases of the Property (as the same may be amended, renewed, replaced or supplemented from time to time, the "Assignment") and

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recorded or to be recorded in the real estate records of the aforesaid County and State (the Loan Agreement, Note, Deed of Trust, Assignment and any and all other documents executed in connection with the Loan, as the same may be amended, renewed, replaced or supplemented from time to time, collectively the “**Loan Documents**”); and

WHEREAS, under the terms of a certain Station Lease dated March 1, 2016 (as the same may be amended, renewed, replaced or supplemented from time to time, the “**Lease**”), the Landlord leased to the Tenant all or certain portions of the Property described in the Lease (the “**Demised Premises**”) under the terms and conditions more particularly described therein; and

WHEREAS, the Deed of Trust provides that the Lease shall be subordinate to the Deed of Trust and the parties hereto desire to confirm such subordination and to define the terms, covenants and conditions precedent for such rights.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and intending to be legally bound, the parties hereto agree as follows:

1. **Subordination of Lease.** The Lease and the entire right, title and interest of the Tenant thereunder are and shall be subject and subordinate in all respects to the lien, right, title and terms of the Loan Documents and, in particular, the Deed of Trust and all advances made or to be made thereunder.

2. **Consent of Tenant.** The Tenant acknowledges notice of and consents to the Deed of Trust, the Assignment and the terms and conditions thereof. The Tenant agrees to continue making payments of rent and other amounts owed under the Lease to the Landlord, and to otherwise recognize the rights of the Landlord under the Lease, until notified otherwise in writing by the Bank, as herein provided. The Landlord and Tenant agree that, if the Bank delivers to the Tenant a notice stating that a default has occurred under the Loan Documents and requesting that all payments due under the Lease be thereafter paid directly to the Bank, the Tenant shall thereafter make, and is hereby authorized and directed by the Landlord to make, all such payments directly to the Bank, as provided in the Deed of Trust and the Assignment, without any duty of further inquiry on the part of the Tenant.

3. **Tenant's Duty to Notify Bank of any Default Under the Lease.** The Tenant shall provide the Bank with prompt notice of any asserted default against the Landlord under the Lease. In the event of any act or omission of the Landlord which would give the Tenant the right, immediately or after lapse of time, to cancel or terminate the Lease, or to claim a partial or total eviction or to exercise any other remedy, the Tenant shall not exercise such right or remedy until Bank has received notice and a reasonable period of time to cure said default, said cure period commencing after the end of Landlord's cure period and after Bank is entitled under the Deed of Trust and the Assignment to remedy same; provided that the Bank shall give the Tenant written notice of its intention to, and shall commence and continue with due diligence to, remedy such act

or omission. Notwithstanding the foregoing, the Bank shall have no obligation to remedy or to continue to remedy any such act or omission.

4. **Modification of Lease.** Without the Bank's prior written consent, the Tenant shall not (a) amend or terminate the Lease, (b) prepay any rent or other sums due under the Lease for more than one month in advance of the due dates thereof, (c) voluntarily surrender the Demised Premises, or (d) assign the Lease or sublet the Demised Premises or any part thereof other than pursuant to the provisions of the Lease.

5. **Representations of Tenant.** The Tenant represents and warrants to the Bank that (a) the Tenant occupies and is the leasehold owner of the Demised Premises pursuant to the terms of the Lease, (b) the Lease is in full force and effect, and the Tenant has no offsets or defenses to the payment of rent or other sums due thereunder, (c) no default exists under the Lease, and (d) all rent and other sums due under the Lease have been paid in full, but have not been paid for more than one month in advance of the due dates thereof.

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

7. **Confirmation of Lease Status.** The Landlord and the Tenant hereby agree that, upon the Bank's request, they shall from time to time execute and deliver to the Bank, and without charge to the Bank, an estoppel certificate setting forth whatever information the Bank may reasonably require to confirm the current status of the Lease including, without limitation, a confirmation that the Lease is and remains in full force and effect.

8. **Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to a party's address set forth above or to such other address as any party may give to the other in writing for such purpose.

9. **Changes in Writing.** No modification, amendment or waiver of, or consent to any departure from, any provision of this Agreement nor consent to any departure by the Landlord or Tenant therefrom will be effective unless made in a writing signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Landlord or Tenant will entitle the Landlord or Tenant to any other or further notice or demand in the same, similar or other circumstance.

10. **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

11. **Counterparts.** This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a manually executed signature page to this Agreement by electronic transmission shall be effective as delivery of a manually executed counterpart, and any party so delivering this executed Agreement by electronic transmission shall also promptly deliver a hard copy of the manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by electronic transmission.

12. **Definitions.** As used in this Agreement, the word "Tenant" shall mean the Tenant and/or the subsequent holder of an interest under the Lease, provided the interest of such holder is acquired in accordance with the terms and provisions of the Lease, and the word "Bank" shall mean the Bank or any subsequent holder or holders of the Deed of Trust and the Assignment. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Landlord, the Tenant and the Bank, their heirs, legal representatives, successors and assigns.

13. **Governing Law and Jurisdiction.** This Agreement has been delivered to and accepted by the Bank and will be deemed to be made in the State where the Bank's office indicated above is located. **THIS AGREEMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE BANK'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES, EXCEPT THAT THE LAWS OF THE STATE WHERE THE APPLICABLE PROPERTY IS LOCATED (IF DIFFERENT FROM THE STATE WHERE SUCH OFFICE OF THE BANK IS LOCATED) SHALL GOVERN THE CREATION, PERFECTION, ENFORCEMENT AND FORECLOSURE OF THE LIENS CREATED HEREUNDER ON THE APPLICABLE PROPERTY OR ANY INTEREST THEREIN.** Landlord and the Tenant hereby irrevocably consent to the exclusive jurisdiction of any state or federal court in the county or judicial district where the Bank's office indicated above is located; provided that nothing contained in this Agreement will prevent the Bank from bringing any action, enforcing any award or judgment or exercising any rights against the Landlord or Tenant individually, against any security or against any property of the Landlord or Tenant within any other county, state or other foreign or domestic jurisdiction. The Landlord and the Tenant agree that the venue provided above is the most convenient forum for the Bank, the Landlord and the Tenant. The Landlord and the Tenant waive any objection to venue and any objection based on a more convenient forum that either may have in any action instituted under this Agreement.

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14. WAIVER OF JURY TRIAL. EACH OF THE LANDLORD AND THE TENANT IRREVOCABLY WAIVE ANY AND ALL RIGHT THAT ANY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE LANDLORD AND THE TENANT ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

The Landlord and the Tenant acknowledge that each has read and understood all the provisions of this Agreement, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

WITNESS the due execution hereof as a document under seal, as of the date first written above, with the intention to be legally bound hereby.

LANDLORD:

SOS FAMILY, LLC,
an Oregon limited liability company

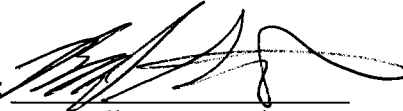
By: DOB, Inc., an Oregon corporation
Its: Manager

By: 
Name: Bradley W. Staub
Title: Secretary and Authorized Agent

[ADDITIONAL SIGNATURES ON FOLLOWING PAGE]

TENANT:

FAST BREAK OF OREGON, LLC, an
Oregon limited liability company

By: 

Name: Bradley W. Staub

Title: Manager

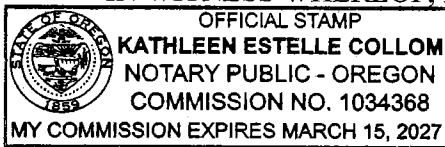
STATE OF OREGON)

COUNTY OF Klamath)

SS:

On this, the 28th day of March, 2024, before me, a Notary Public, the undersigned officer, personally appeared Bradley W. Staub, who acknowledged himself/herself to be the Secretary & Authorized Agent of SOS Family, LLC Oregon LLC, and that he/she, in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of said SOS Family, LLC.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Kathleen Estelle Collopy
Notary Public

Print Name: Kathleen Estelle Collopy

My commission expires: March 15, 2027

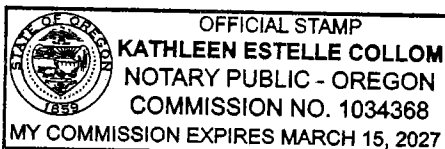
STATE OF OREGON)

COUNTY OF Klamath)

SS:

On this, the 28th day of March, 2024, before me, a Notary Public, the undersigned officer, personally appeared Bradley W. Staub, who acknowledged himself/herself to be a general partner of Fast Break of Oregon, LLC, (an) Oregon LLC partnership, and that he/she, as general partner, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of said partnership as general partner.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Kathleen Estelle Collopy
Notary Public

Print Name: Kathleen Estelle Collopy

My commission expires: March 15, 2027

EXHIBIT A

Property Description

All of Lots 5 and 6, and those portions of Lots 2, 3, 4, 7, 8 and 9, lying Southwesterly of State Highway 97 in Block 3 of Chelsea Addition to Klamath Falls, according to the official plat thereof filed December 11, 1929, in volume 16 sheet 11 Klamath County plat book in the office of the county recorder, Klamath County, Oregon; ALSO all of closed Pelican Street lying between Block 3 and Block 4 of said Chelsea Addition and lying Southwesterly of State Highway 97, and that portion of closed Lindberg Street lying between Block 4 and 5 of said Chelsea Addition; also all of Lots 1 to 12 inclusive in Block 4 of said Chelsea Addition, and all of the Easterly 50 feet of Lots 7 to 12 inclusive in Block 5 of Chelsea Addition; also all that portion of the North one-half of vacated Nungesser Avenue in Chelsea Addition to the City of Klamath Falls lying between the Southwesterly right-of-way line of the Dalles-California Highway and a line 50 feet West of and parallel with the East line of Block 5 in said Chelsea Addition, extended Southerly.