

RETURN ADDRESS:

Skagit Bank
Main Office
301 E. Fairhaven Ave
P O Box 285
Burlington, WA 98233



201608290001

Skagit County Auditor

\$77.00

8/29/2016 Page

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5 8:45AM

Land Title and Escrow



* SUBAGREEM%#####%#####%08-24-2016*

NOTICE: THIS SUBORDINATION OF DEED OF TRUST 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 OF DEED OF TRUST

Reference # (if applicable): 155832-0

Additional on page ____

Grantor(s):

1. PENGUIN COFFEE HOLDING COMPANY LLC
2. Miller, Co-Trustee of the W.A. Miller Family Trust, Walter L
- ~~2. Miller, Co-Trustee of the W.A. Miller Family Trust, Alma E~~

Grantee(s)

1. Skagit Bank

Legal Description: Lots 11, 12, 13 & Ptn Lot 14, Blk 3, Stewart's 1st Add

Additional on page 2

Assessor's Tax Parcel ID#: 3833-003-015-0004 (P60419)

THIS SUBORDINATION OF DEED OF TRUST dated August 24, 2016, is made and executed among Walter L Miller, ~~Co-Trustee~~ Trustee of the W.A. Miller Family Trust; and ~~Alma E Miller, Co-Trustee of the W.A. Miller Family Trust~~ ("Beneficiary"); Land Title Company of Skagit County ("Trustee"); PENGUIN COFFEE HOLDING COMPANY LLC ("Borrower"); and Skagit Bank ("Lender").

**SUBORDINATION OF DEED OF TRUST
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SUBORDINATED INDEBTEDNESS. Beneficiary has extended the following described financial accommodations, secured by the Real Property (the "Subordinated Indebtedness"):

Note in the amount of \$20,000.00.

SUBORDINATED DEED OF TRUST. The Subordinated Indebtedness is or will be secured by the Real Property and evidenced by a deed of trust dated December 15, 2011 from PENGUIN COFFEE HOLDING COMPANY LLC ("Trustor") to Land Title Company of Skagit County ("Trustee") in favor of Walter L. Miller, Co-Trustee of the W.A. Miller Family Trust; and Alma E. Miller, Co-Trustee of the W.A. Miller Family Trust ("Beneficiary") (the "Subordinated Deed of Trust") and recorded in SKAGIT County, State of Washington as follows:

Deed of Trust dated December 15, 2011 and recorded December 16, 2011 under Skagit County Auditor's Filing Number 201112160152.

REAL PROPERTY DESCRIPTION. The Subordinated Deed of Trust covers the following described real property (the "Real Property") located in SKAGIT County, State of Washington:

Lots 11, 12, 13 and the West 10 feet of Lot 14, Block 3, "Stewart's First Addition to the City of Anacortes, Wash.," as per plat recorded in Volume 2 of Plats, page 14, records of Skagit County, Washington.

(Also known as Parcel A of boundary Line Adjustment Survey recorded October 25, 2011, under Auditor's File No. 2011102500193).

Situate in the City of Anacortes, County of Skagit, State of Washington.

The Real Property or its address is commonly known as 2119 COMMERCIAL AVE, ANACORTES, WA 98221-2529. The Real Property tax identification number is 3833-003-015-0004 (P60419).

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"):

Promissory Note dated August 24, 2016 in the amount of \$315,000.00.

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 August 24, 2016, from Borrower to Lender (the "Lender's Lien") and recorded in SKAGIT County, State of Washington as follows:

Deed of Trust and Assignment of Rents dated August 24, 2016 and recorded
8-26-16 under Skagit County Auditor's Filing Numbers and
<u>201608260140</u>
<u>201608260141</u>

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 Deed of Trust.

REQUESTED FINANCIAL ACCOMMODATIONS. Trustor, who may or may not be the same person or entity as Borrower, and Beneficiary each want Lender to provide financial accommodations to Borrower in the form of the Superior Indebtedness. Trustor and Beneficiary each represent and acknowledge to Lender that Beneficiary will benefit as a result of these financial accommodations from Lender to Borrower, and Beneficiary acknowledges receipt of valuable consideration for entering into this Subordination.

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

SUBORDINATION. The Subordinated Deed of Trust and the Subordinated Indebtedness secured by the Subordinated Deed of Trust 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 the lien of the Subordinated Deed of Trust. Beneficiary also subordinates to Lender's Lien all other Security Interests in the Real Property held by Beneficiary, whether now existing or hereafter acquired. The words "Security Interest" mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, 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.

BENEFICIARY'S REPRESENTATIONS AND WARRANTIES. Beneficiary represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Beneficiary which would limit or qualify in any way the terms of this Subordination; (B) this Subordination is executed at Borrower's request and not at the request of Lender; (C) Lender has made no representation to Beneficiary as to the creditworthiness of Borrower; and (D) Beneficiary has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Beneficiary agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Beneficiary's risks under this Subordination, and Beneficiary further agrees that Lender shall have no obligation to disclose to Beneficiary information or material acquired by Lender in the course of its relationship with Beneficiary.

BENEFICIARY WAIVERS. Beneficiary waives any right to require Lender: (A) to make, extend, renew, or modify any loan to Borrower or to grant 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 Superior Indebtedness 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, without notice of any kind to Beneficiary, (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,

**SUBORDINATION OF DEED OF TRUST
(Continued)**

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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 Indebtedness also shall constitute an event of default under the terms of the Superior Indebtedness in favor of Lender.

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

Amendments. This Subordination constitutes the entire understanding and agreement of the parties as to the matters set forth in this Subordination. No alteration 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 attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including 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, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Beneficiary 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 Beneficiary represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Beneficiary's security interests in Beneficiary'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. 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 Washington without regard to its conflicts of law provisions. This Subordination has been accepted by Lender in the State of Washington.

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 Beneficiary 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.

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 Beneficiary, shall constitute a waiver of any of Lender's rights or of any of Beneficiary's 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.

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 AUGUST 24, 2016.

BORROWER:

PENGUIN COFFEE HOLDING COMPANY LLC

By:

AARON J. HOWELL, Manager of PENGUIN COFFEE HOLDING COMPANY LLC

BENEFICIARY:

X

Walter L. Miller, Co-Trustee of the W.A. Miller Family Trust

X

Anna E. Miller, Co-Trustee of the W.A. Miller Family Trust

SUBORDINATION OF DEED OF TRUST
(Continued)

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TRUSTEE:

LAND TITLE COMPANY OF SKAGIT COUNTY

By: Authorized Signer for Land Title Company of Skagit County

By: Authorized Signer for Land Title Company of Skagit County

LENDER:

SKAGIT BANK

x Steven P. Henry, SVP
Authorized Officer

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Washington)
COUNTY OF Skagit) SS

On this 24th day of August, 20 16, before me, the undersigned Notary Public, personally appeared AARON J. HOWELL, Manager of PENGUIN COFFEE HOLDING COMPANY LLC, and personally known to me or proved to me on the basis of satisfactory evidence to be a member or designated agent of the limited liability company that executed the Subordination of Deed of Trust 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 Laura L. Iles
Notary Public in and for the State of WA

Residing at Anacortes
My commission expires 2-17-19

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Washington)
COUNTY OF Skagit) SS

On this day before me, the undersigned Notary Public, personally appeared Walter L. Miller, Co-Trustee of the W.A. Miller Family Trust and Alma E. Miller, Co-Trustee of the W.A. Miller Family Trust, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals described in and who executed the Subordination of Deed of Trust, and acknowledged that they signed the Subordination as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 25th day of August, 20 16
By Laura L. Iles
Notary Public in and for the State of WA

Residing at Anacortes
My commission expires 2-17-19

SUBORDINATION OF DEED OF TRUST
(Continued)

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CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

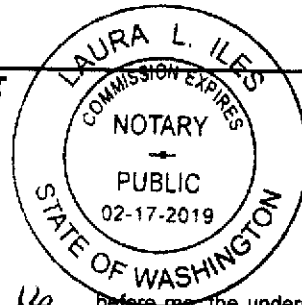
On this _____ day of _____, 20____, before me, the undersigned
Notary Public, personally appeared _____

and personally known to me or proved to me on the basis of satisfactory evidence to be (an) authorized agent(s) of the corporation that executed the Subordination of Deed of Trust and acknowledged the Subordination to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she/they is/are authorized to execute this Subordination and in fact executed the Subordination on behalf of the corporation.

By _____ Residing at _____
Notary Public in and for the State of _____ My commission expires _____

LENDER ACKNOWLEDGMENT

STATE OF Washington)
) SS
COUNTY OF Skagit)



On this 24th day of AUGUST, 2014, before me, the undersigned
Notary Public, personally appeared Steven P. Henry and personally known to me or proved to me
on the basis of satisfactory evidence to be the SR. VICE PRESIDENT, authorized agent for Skagit Bank
that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act
and deed of Skagit Bank, duly authorized by Skagit Bank 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 Skagit Bank.

By Laura L. Iles Residing at Anacortes
Notary Public in and for the State of WA My commission expires 2-17-19