

RECORDATION REQUESTED BY:

WHEN RECORDED MAIL TO:

SCOTT VALLEY BANK
LOAN SERVICES

~~P.O. BOX 89~~ 10 CRATER LAKE AVE
~~YREKA, CA 96097~~ MEDFORD, OR 97504

SEND TAX NOTICES TO:

MT 1396-4524

Vol M02 Page 72812

State of Oregon, County of Klamath

Recorded 12/13/2002 2:55 pm.

Vol M02, Pg 72812-18

Linda Smith, County Clerk

Fee \$ 51 # of Pgs 7

AMERITITLE has recorded this
instrument by request as an accommodation only,
and has not examined it for regularity and sufficiency
or as to its effect upon the title to any real property
that may be described therein.

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

SUBORDINATION, ATTORNMEN AND NON-DISTURBANCE AGREEMENT

THIS SUBORDINATION, ATTORNMEN AND NON-DISTURBANCE AGREEMENT, is dated for reference purposes and entered into as of November 1, 2002, by and among **SCOTT VALLEY BANK**, a California state banking corporation ("Lender"), West Main Investments, LLC (Lessor), and JAC, LLC d/b/a Oil Can Henry's ("Lessee").

1. RECITALS

1.1 Lessor is the owner of that certain real property commonly known as 5805 S. 6th Street, Klamath Falls, OR 97601, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("Real Property").

1.2 Lessor and Lessee have entered into that certain Lease dated February 1, 2000, which is incorporated herein by this reference ("Lease"), covering all or a portion of the Real Property more particularly described in the Lease ("Premises").

1.3 Lender has made, or is about to make, a loan to Lessor ("Loan"), evidenced, or to be evidenced, by that certain promissory note dated August 12, 2002, in the amount of the Loan and executed by Lessor to the order of Lender ("Note"). Repayment of the Note is or will be secured by, among other things, a deed of trust encumbering the Real Property which is to be recorded in the official records of the county in which the Real Property is located ("Deed of Trust").

1.4 It is to the mutual benefit of the parties hereto that Lender make the Loan to Lessor.

1.5 Lender has conditioned its commitment to make the Loan on the execution and delivery to Lender of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL BENEFITS ACCRUING TO THE PARTIES HERETO AND OTHER VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH CONSIDERATION IS HEREBY ACKNOWLEDGED, AND IN ORDER TO INDUCE LENDER TO MAKE THE LOAN, IT IS HEREBY DECLARED, UNDERSTOOD AND AGREED AS FOLLOWS:

2. SUBORDINATION

2.1 Subordination of Lease. Lessee, for itself, its successors and its assigns, hereby covenants and agrees that the Lease and all of Lessee's rights thereunder shall be and is hereby made subordinate to the lien of the Deed of Trust and to any extensions, consolidations, modifications thereof and supplements thereto with the same force and effect as if the Deed of Trust had been executed, acknowledged, delivered and recorded prior to the execution and delivery of the Lease.

2.2 No Default Under the Lease. Lessee warrants that, as of the date of this Agreement, Lessor is not in default under the Lease, and no event has occurred which, with the passage of time or the giving of notice will become a default under the Lease.

2.3 Lender Not Liable for Security Deposit. Lessee acknowledges and agrees that should Lender or any third party take title to the Property either as a result of foreclosure or by deed in lieu of foreclosure, Lender or such third party shall not be liable for the repayment or the return of any security deposit paid by Lessee to Lessor under the Lease.

2.4 No Credit For Prepaid Rent. Lessee acknowledges and agrees that should Lender or any third party take title to the Property either as a result of foreclosure or by deed in lieu of foreclosure, Lessee shall not receive credit for any rent paid by Lessee more than thirty (30) days in advance and that Lessee shall be liable for all rent payable under the Lease, notwithstanding any such prepayment of rent.

3. NON-DISTURBANCE

3.1 Litigation. In the event of foreclosure of the Deed of Trust, Lender will not join Lessee in any summary proceedings so long as Lessee is not in default under any of the terms, covenants or conditions of the Lease.

3.2 Power of Sale or Judicial Foreclosure. It is the express intent of the parties hereto that a foreclosure of the Deed of Trust, the exercise of the power of sale or the exercise of any other remedies provided therein, or provided in any other instrument securing the indebtedness secured by the Deed of Trust, or the delivery of a deed to the subject premises in lieu of foreclosure, shall not, of itself, result in the termination of or otherwise affect the Lease, but Lender, assignee of Lender or purchaser from Lender, shall upon foreclosure of the Deed of Trust or conveyance in lieu of foreclosure shall thereby automatically succeed to the position of Lessor under the Lease.

3.3 Succession to Position of Lessor. If, by dispossession, foreclosure, exercise of the power of sale, or otherwise, Lender, its successors or assigns, or any purchaser at a foreclosure sale or otherwise, shall come into possession of or become Lessor of the Premises, such person shall succeed to the interest of Lessor under the Lease, and, if no default then exists under the terms, conditions and provisions of the Lease, the Lease shall remain in effect as a lease of the demised Premises, together with all of the rights and privileges therein contained, between such person and Lessee for the balance of the term of the Lease.

3.4 Waiver of Lease Obligations. Unless Lessee is in default under the terms of the Lease, Lender, its successors or assigns, or any purchaser at a foreclosure or trustee's sale or otherwise, will not disturb the possession of the Premises by Lessee, and will be bound by all of the obligations imposed by the Lease upon the lessor therein; provided, however, that Lender, or any purchaser at a foreclosure or trustee's sale or otherwise, shall not be:

3.4.1 Liable for any act or omission of a prior lessor (including Lessor); or

3.4.2 Subject to any offsets or defense which Lessee might have against any prior lessor (including Lessor); or

3.4.3 Bound by any rent or additional rent which Lessee might have paid in advance to any prior lessor (including Lessor) for any period beyond the month in which the foreclosure or conveyance occurs; or

3.4.4 Bound by any agreement or modification of the Lease made without the consent of Lender.

3.5 New Lease. Upon the written request of either Lessee or Lender, given to the other at the time of a foreclosure of the Deed of Trust or sale under power of sale therein contained or conveyance in lieu of foreclosure, and if no default then exists under the terms, conditions and provisions of the Lease, Lessee and Lender or Lender's successor in interest shall execute a lease of the Premises upon the same terms and conditions as the Lease between Lessor and Lessee, which lease shall cover any unexpired term of the Lease existing prior to such foreclosure, trustee's sale or conveyance in lieu of foreclosure.

4. ATTORNMENMENT

72814

4.1 Attornment. Lessee covenants and agrees to attorn to and to accept Lender or Lender's assignee, successor, or assign or any purchaser from Lender or from the trustee in a foreclosure sale, as lessor under the Lease, and to be bound by and to perform all of the obligations imposed by the Lease upon Lessee including, without limitation, the payment of rent to the successor of Lessor therein. Lessee further agrees to make rental payments directly to Lender, in accordance with the terms of an Assignment of Rents Agreement or an assignment of rents provision contained in the Deed of Trust, as applicable, in the event that Lender notifies Lessee that Lessor is in default in any term or condition of the obligations secured by the Deed of Trust.

4.2 Foreclosure. Lessee hereby covenants and agrees that, notwithstanding any provisions to the contrary in the Lease, Lender may exercise all rights and remedies granted to it under the Deed of Trust to foreclose its interest and dispose of the Real Property without the consent of or notice to Lessee.

4.3 Termination of Lease. Concurrently upon Lessee's receipt or delivery of any notice of termination or default under the Lease, Lessee will deliver a complete and correct copy of such notice to Lender at the address set forth below.

5. MISCELLANEOUS

5.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender and the parties hereto and their respective successors and assigns upon recordation by or on behalf of Lender.

5.2 Notices. Except as otherwise provided herein, any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally served by messenger, or sent by a commercial overnight delivery service (such as Federal Express), or by certified mail, return receipt requested, and shall be deemed given on the date actually received if served by messenger, or on the next business day after deposit with an overnight delivery service, or on the date of receipt as shown on the return receipt if sent by certified mail. The addresses of the parties to which notices and other communications shall be sent (until notice of a change thereof is served as provided herein) are set forth below. Any party to this Agreement may change its address for giving notices or demands hereunder by written notice of such change to the other party in accordance with the provisions hereof.

5.3 Construction. The terms of this Agreement shall supersede and contravene the terms of the Lease to the extent that the terms of this Agreement are inconsistent with the terms of the Lease. In all other respects this Agreement shall be construed consistently with the terms of the Lease.

5.4 Prior Agreements. This Agreement shall be the whole and only agreement between the parties hereto and shall supersede and cancel any prior agreements, including without limitation provisions contained in the Lease which may or do provide for the subordination of the Lease and leasehold interest of Lessee to a deed or deeds of trust or a mortgage or mortgages to be thereafter executed or which restrict the right of the beneficiary of any deed of trust from foreclosing its interest in the Real Property or to sell the Real Property obtained through a foreclosure sale.

5.5 Severability. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

5.6 Headings. All section headings and section numbers have been set forth herein for convenience of reference only, and shall not limit or affect the meaning or interpretation of any section hereof.

5.7 Governance. This Agreement shall be governed and interpreted in accordance with California law.

5.8 Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same Agreement.

5.9 Attorneys' Fees. In the event any party to this Agreement shall be required to commence any action or proceeding against any other party by reason of any breach or claimed breach of any provision of this Agreement, to commence any action in any way connected with this Agreement, or to seek a judicial declaration of rights under this Agreement, the party prevailing in such action or proceeding shall be entitled to recover from the other party, or parties, the prevailing party's reasonable attorneys' fees and costs including, without limitation, all

72815

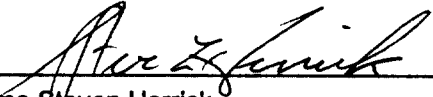
witness fees and associated expenses, including matters on appeal whether or not the proceeding or action proceeds to judgment.

IN WITNESS WHEREOF, this Agreement is executed on behalf of the parties' duly authorized representatives on the date(s) indicated below and effective as of the date set forth above.

Date 11/22/02

LENDER:

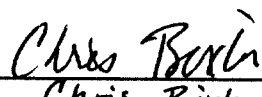
SCOTT VALLEY BANK,
a California state banking corporation

By 
Name Steven Herrick
Title Vice President

Date 12/9/02

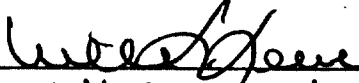
LESSEE:

JAC, LLC d/b/a Oil Can Henry's
a partnership

By 
Name Chris Bixler
Title president

Date 12/9/02

LESSOR: West Main Investment, LLC

By 
Name William L. Leever
Title MEMBER

CERTIFICATE OF ACKNOWLEDGMENT

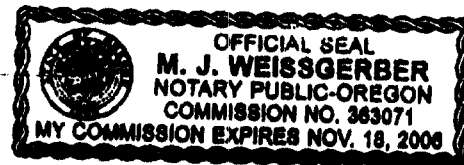
STATE OF Oregon)
COUNTY OF Jackson) SS

On 12/9/02, before me, Mary Weissgerber, personally appeared William Lewis Leever, personally known to me (or 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.

WITNESS my hand and official seal.

Signature M. J. Weissgerber

(Seal)



CERTIFICATE OF ACKNOWLEDGMENT

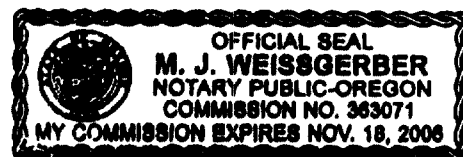
STATE OF Oregon)
COUNTY OF Jackson) SS

On 12/9/02, before me, Mary Weissgerber, personally appeared Christopher Bixler, personally known to me (or 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. Christopher Bixler Aka: Chrus Bixler

WITNESS my hand and official seal.

Signature M. J. Weissgerber

(Seal)



CERTIFICATE OF ACKNOWLEDGMENT

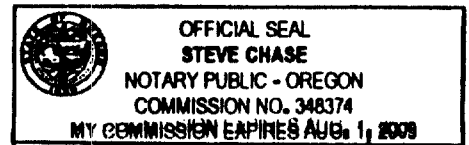
STATE OF Oregon)
COUNTY OF Jackson) SS

On 11/22/02, before me, Steve Chase, personally appeared Steven Herrick, personally known to me (or 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.

WITNESS my hand and official seal.

Signature Steve Chase

(Seal)



72818

EXHIBIT A

Parcel 2 of Land Partition 21-00 situated in the SW 1/4 NW of
Section 1, Township 39 South, Range 9 East of the Willamette Meriden,
Klamath County, Oregon