

04 SEP 1 PM 1:58

Vol M04 Page 58573

RECORDATION REQUESTED BY:

Washington Mutual Bank
Southern Oregon Commercial Banking Center
601 Crater Lake Avenue
P.O. Box 1047
Medford, OR 97501

State of Oregon, County of Klamath
Recorded 09/01/04 1:58 p m
Vol M04 Pg 58573-28
Linda Smith, County Clerk
Fee \$ 46.00 # of Pgs 6

WHEN RECORDED MAIL TO:

Washington Mutual Bank, FA
Commercial Loan Servicing - Houston
P.O. Box 2485, HOU 1547
Houston, TX 77252-2485

SEND TAX NOTICES TO:

TOWN & COUNTRY CENTER, LLC
818 E CARNIVAL AVE
PORT ST. LUCIE, FL 34983

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

Aspen: 59137

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE COLLATERAL BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ESTOPPEL CERTIFICATE

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT dated June 22, 2004 ("Agreement"), is made and executed among TOWN & COUNTRY CENTER, LLC, whose address is 818 E CARNIVAL AVE, PORT ST. LUCIE, FL 34983 ("Landlord"); PACPIZZA, LLC, whose address is 4407 BEE CAVE, SUITE 511, AUSTIN, TX 78746 ("Tenant"); and Washington Mutual Bank, Southern Oregon Commercial Banking Center, 601 Crater Lake Avenue, P.O. Box 1047, Medford, OR 97501 ("Lender").

LEASE. Tenant and Landlord have executed a lease dated January 1, 1989 of the property described herein (the "Lease"). The following information is the summary of the basic terms and conditions of the Subordinated Lease: monthly.

REAL PROPERTY DESCRIPTION. The Lease covers 3650 South 6th St., Space D1A, Klamath Falls, Oregon of the following described real property (the "Real Property") located in KLAMATH County, State of Oregon:

See EXHIBIT A, which is attached to this Agreement and made a part of this Agreement as if fully set forth herein.

The Real Property or its address is commonly known as 3838-3930 SOUTH 6TH STREET, KLAMATH FALLS, OR 97603. The Real Property tax identification number is MAP NO. R-3909-003DA-00800-000 KEY NO. R528441;

MAP NO. R-3909-003DA-00900-000 KEY NO. R887754;

MAP NO. R-3909-003DA-00900-000 KEY NO. R528450; AND

MAP NO. R-3909-003DB-00200-000 KEY NO. R528628

LENDER'S FINANCIAL ACCOMMODATIONS TO LANDLORD. On the condition that the Lease and all of Tenant's rights in the Real Property ("Lease Rights") be subordinated as provided below, Lender has agreed to make or has made a loan to Landlord, in the principal amount of \$2,000,000.00 ("Loan") pursuant to the "Note" dated June 22, 2004 ("Note") to provide loan financing to Landlord.

LENDER'S LIEN. In connection with the granting of the financial accommodations to Landlord, Lender has or will be executing a deed of trust on the Real Property ("Lender's Lien").

IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, LENDER, LANDLORD, AND TENANT HEREBY AGREE AS FOLLOWS:

ESTOPPEL CERTIFICATE. Tenant hereby certifies to and agrees with Lender that as of the date of this Agreement, Lender is relying on all of the following certifications and agreements of Tenant as consideration for Lender executing this Agreement:

(A) The Lease is in full force and effect and is the valid and binding obligation of Tenant, enforceable in accordance with its terms.

(B) All requirements for the commencement and validity of the Lease have been satisfied.

(C) Neither Tenant nor Landlord is in default under the Lease and no event has occurred and no condition exists, which with the giving of notice, the passage of time, or both, would constitute a default by Tenant or Landlord under the Lease.

(D) There are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease and no claim by Tenant of any nature exists against Landlord under the Lease. All obligations of Landlord have been fully performed.

(E) None of the rent, which Tenant is required to pay under the Lease, has been prepaid, or will in the future be prepaid, more than one month in advance.

(F) The Lease shall not after the date of this Agreement be modified, terminated, or amended, without the prior written consent of Lender for any termination and each such amendment or modification. Any attempted modification, termination, or amendment without the prior written consent of Lender shall be void.

(G) Tenant has not assigned, mortgaged, sublet, encumbered or otherwise transferred any or all of its interest under the Lease and, during the term of the Loan, agrees to not assign, mortgage, sublet, encumber, or otherwise transfer any or all of its interest under the Lease

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT
(Continued)

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~~without the prior written consent of Lender.~~

SUBORDINATION. Notwithstanding anything in the Lease to the contrary, the parties acknowledge and agree that the Lease and Lease Rights are and shall be subject and subordinate in right, interest and lien, and for all purposes, to Lender's Lien, and to all renewals, modifications, consolidations, replacements, and extensions thereof, and to any subsequent lien of the Lender with which Lender's Lien may be spread or consolidated, to the full extent of the principal sum and all other amounts secured thereby and interest thereon. Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender, and its successors and assigns, without the prior written consent of Lender.

NON-DISTURBANCE. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default of the Loan under the Note and/or under Lender's Lien unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action. If the Lease has not been terminated, then, when Lender succeeds to the interest of Landlord, the Lender shall not terminate or disturb Tenant's possession of Tenant's premises under the Lease, except in accordance with the terms of the Lease and this Agreement.

ATTORNMENMENT. If Lender shall succeed to the interest of the Landlord under the Lease, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to Lender, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Lender, any instrument or certificate which, in the sole judgment of Lender, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

NO LIABILITY FOR LENDER. Lender in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of annual base rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

- (A) Liable for any act or omission of or any claims against any prior landlord, including Landlord; or
 - (B) Subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord; or
 - (C) Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, including Landlord; or
 - (D) Bound by any amendment or modification of the Lease, or waiver of any of its terms, made without its consent; or
 - (E) Liable for any sum that any prior landlord, including Landlord, owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Lender; or
 - (F) Bound by any surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant; or
 - (G) Liable for any construction obligation of any prior landlord, including Landlord; or
 - (H) Liable for any breach of representation or warranty of any prior landlord, including Landlord.
- except as set out
in the lease*

NEW LEASE. If Lender shall succeed to the interest of the Landlord under the Lease, upon the written request of Lender to Tenant, Tenant shall execute and deliver to Lender a lease of the Real Property upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such transfer.

ACKNOWLEDGMENT AND AGREEMENT BY LANDLORD. Landlord, as landlord under the Lease, acknowledges and agrees for itself and its heirs, successors and assigns to each of the following:

- (A) This Agreement does not in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Note, Lender's Lien or any other documents executed in connection with the Loan.
- (B) In the event of a default under the Note, or any of the other documents executed in connection with the Loan, Landlord hereby consents to Tenant's attornment to Lender and, upon such event, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Lease.

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

Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement 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 Agreement, 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 and title insurance, to the extent permitted by applicable law. Landlord also will pay any court costs, in addition to all other sums provided by law.

Authority. Any person who signs this Agreement on behalf of Landlord and Tenant represents and warrants that he or she has authority to execute this Agreement.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Continued)**

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Counterparts. This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Agreement.

Governing Law. This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the State of Oregon. This Agreement has been accepted by Lender in the State of Oregon.

Notices. Any notice required to be given under this Agreement shall be given in writing, and, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement 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 Agreement 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 Agreement. No prior waiver by Lender, nor any course of dealing among Lender, Landlord, and Tenant shall constitute a waiver of any of Lender's rights or of any of Landlord's and/or Tenant's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, 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.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors. This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement.

NOTICE: THIS AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS. THIS AGREEMENT IS DATED JUNE 22, 2004.

LANDLORD:

TOWN & COUNTRY CENTER, LLC

By: 
LINDA J. COLLINS, MEMBER OF TOWN & COUNTRY
CENTER, LLC

LENDER:

x 
Authorized Officer

TENANT:

PACPIZZA, LLC

By: 
Authorized Signer for PACPIZZA, LLC

By: _____
Authorized Signer for PACPIZZA, LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Florida)

COUNTY OF St. Lucie) SS

On this 22 day of June, 2004, before me, the undersigned Notary Public, personally appeared LINDA J. COLLINS, MEMBER of TOWN & COUNTRY CENTER, LLC, and known to me to be a member or designated agent of the limited liability company that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement 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 Agreement and in fact executed the Agreement on behalf of the limited liability company.

By Merrill Parker
Notary Public in and for the State of Florida

Residing at 2301 SW Independence Rd, Ft. Pierce, FL



LENDER ACKNOWLEDGMENT

STATE OF Oregon)

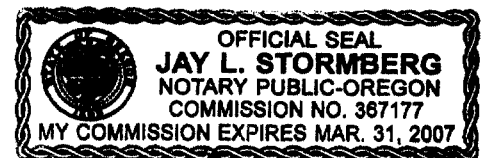
COUNTY OF Jackson) SS

On this 23 day of August, 2004, before me, the undersigned Notary Public, personally appeared Jonathan Holmes and known to me to be the Loan Officer, authorized agent for the Lender that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the said Lender, duly authorized by the Lender 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 that the seal affixed is the corporate seal of said Lender.

By Jay L Stormberg
Notary Public in and for the State of Oregon

Residing at _____

My commission expires _____



LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Texas)

COUNTY OF Travis) SS

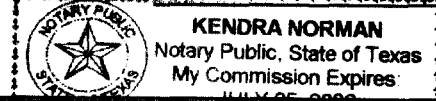
On this 20th day of August, 2004, before me, the undersigned Notary Public, personally appeared James D. Gresser

and known to me to be (a) member(s) or designated agent(s) of the limited liability company that executed the Subordination, Non-Disturbance and Attornment Agreement and acknowledged the Agreement 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/are authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By Kendra Norman
Notary Public in and for the State of Texas

Residing at 3211 Pickwick Lane, Rollingwood, TX

My commission expires 7/27/06



*Exhibit A***PARCEL 1:**

A portion of the NE 1/4 SE 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at an iron pin on the South right of way line of South Sixth Street as presently located and constructed, which bears South 0° 22' 15" East a distance of 48.5 feet from the Northwest corner of said NE 1/4 SE 1/4; thence Easterly, along said right of way line a distance of 142.5 feet to a point; thence South at right angles to said right of way line a distance of 460.0 feet to a point; thence West, parallel to said right of way line, a distance of 142.5 feet, more or less, to the West line of said NE 1/4 SE 1/4; thence North along said West line a distance of 460.0 feet to the point of beginning.

PARCEL 2:

A tract of land situated in the SE 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the East one-fourth corner of said Section 3; thence South 89° 52' West 1,275.74 feet; thence South 00° 21' 47" East 54.10 feet to a one-half inch pipe on the Southerly right of way line of the Dalles-California Highway marking the Northeast corner of that parcel of land described in Deed Volume 251 at Page 162, as recorded in the Klamath County Deed Records; thence continuing South 00° 21' 47" East along the East line of said parcel described in said Deed Volume 251 at Page 162, 233.00 feet to the true point of beginning of this description; thence continuing South 00° 21' 47" East along said line 395.64 feet to the Northerly right of way line of the Oregon-California and Eastern Railway Company; thence North 67° 41' West along said right of way line 156.57 feet (162 feet by record); thence North 00° 55' 30" West along the West line of said parcel described in said Deed Volume 251 at Page 162, 334.24 feet; thence North 89° 14' East 147.71 feet to the true point of beginning of this description with bearings based on the East line of the SE 1/4 of said Section 3 as being South 01° 14' East.

PARCEL 3:

A portion of the NW 1/4 SE 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a one-half inch iron pin on the South right of way line of South Sixth Street, as the same is presently located and constructed, said point being on the West line of tract of land deeded to Miller by Deed Volume 251 at Page 162 and the East line of a tract of land deeded to Wheeler by Deed Volume 142 at Page 349, Klamath County Deed Records; thence South 0° 55' 30" East along the line between the two above described tracts a distance of 341.6 feet to a 5/8 inch iron pin marking the Southeast corner of a tract of land deeded to United States National Bank of Oregon by Deed recorded in Volume M-72 at Page 13690, Deed Records of Klamath County, Oregon, and the true point of beginning of this description; thence continuing South 0° 55' 30" East a distance of 225.64 feet, more or less, to the Northeasterly right of way line of the O.C. & E. Railroad; thence North 67° 41' West along said right of way line a distance of 148.11 feet to the Southwest corner of said Wheeler Tract; thence North 0° 55' 30" West along the West line of said Wheeler Tract, a distance of 167.58 feet to the Southwest corner of said United States National Bank Tract; thence North 89° 14' East along the South line of said tract, a distance of 136.09 feet to the point of beginning.

PARCEL 4:

A tract of land situated in the NE 1/4 SE 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at a 1/2 inch iron pin which bears South 89° 52' West a distance of 745.73 feet and South 0° 20' 55" East a distance of 220.16 feet from the brass cap monument marking the East quarter corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, said beginning point also being on the South line of Tract described as Parcel #1 in Deed from Klamath County School District to Klamath County, recorded in Volume 295 at Page 135, Deed Records of Klamath County, Oregon; thence continuing from said beginning point South 0° 20' 55" East along a line parallel to said 4.0 feet distant Easterly, when measured at right angles to , from the existing Easterly wall of the Payless Drug Store Building as the same is presently located and constructed, a distance of 402.04 feet to a 1/2 inch iron pipe; thence South 53° 42' 15" West a distance of 304.44 feet, more or less, to a 1/2 inch iron pipe on the Northeasterly boundary of the O.C. & E. Railroad right of way as the same is presently located and constructed and from which point the aforesaid monument marking the East quarter corner of said Section 3 bears North 50° 50' 20" East a distance of 1273.34 feet; thence Northwesterly along said Northeasterly boundary of the O.C. & E. Railroad right of way a distance of 299.5 feet, more or less, to the West line of said NE 1/4 SE 1/4; thence North along said West line a distance of 186.5 feet, more or less, to a point on said West line which bears South 0° 22' 15" East a distance of 460.0 feet from the Southerly boundary line of the relocated right of way of the Klamath Falls-Lakeview Highway; thence Easterly, parallel with said highway right of way line a distance of 142.5 feet to a point; thence North, parallel with the West line of said NE 1/4 SE 1/4, a distance of 460.0 feet, more or less, to the Southerly boundary of said relocated highway right of way; thence Easterly along said relocated right of way line a distance of 387.7 feet, more or less, to a point which bears North 0° 20' 55" West from the point of beginning; thence South 0° 20' 55" East a distance of 174.66 feet, more or less, to the point of beginning.

PARCEL 5:

A parcel of land lying in the NE 1/4 SE 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at a point which bears South 01° 14' East a distance of 55.03 feet and South 89° 14' West a distance of 580.0 feet from the quarter section corner common to Sections 2 and 3, said Township and Range, said point being on the South right of way line of South Sixth Street as presently located and constructed; thence continuing South 89° 14' West along said South right of way line a distance of 129.4 feet to the Northwest corner of this description; thence South 0° 18' East a distance of 137.0 feet to an iron pin; thence North 89° 14' East a distance of 131.9 feet to an iron pin; thence North 01° 14' West a distance of 137.0 feet, more or less, to the point of beginning.

EXCEPTING a strip of land 8 feet wide running North and South on the West side of said parcel reserved for sidewalk purposes.