

04 NOV 1 PM 12:04

RECORDATION REQUESTED BY:

Umpqua Bank
CBC Eugene
PO Box 1820
Roseburg, OR 97470

Vol M04 Page 74798

State of Oregon, County of Klamath
Recorded 11/01/04 12:04 p m
Vol M04 Pg 74798-801
Linda Smith, County Clerk
Fee \$ 36.00 # of Pgs 4

WHEN RECORDED MAIL TO:

Umpqua Bank
Business & Real Estate Loan Center
500 SE Cass Street / PO Box 1820
Roseburg, OR 97470

SEND TAX NOTICES TO:

ABRE, L.L.C.
1960 RIVER RD
EUGENE, OR 97404-2502

1st 430921

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

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

THIS SUBORDINATION OF DEED OF TRUST dated September 29, 2004, is made and executed among Abby's Inc., an Arizona corporation ("Beneficiary"); First American Title Insurance Company ("Trustee"); ABRE, L.L.C. ("Borrower"); and Umpqua Bank ("Lender").

SUBORDINATED INDEBTEDNESS. Beneficiary has extended the following described financial accommodations (the "Subordinated Indebtedness") to ABRE, L.L.C., an Arizona limited liability company ("Trustor"):

a Note in the sum of \$208,366.00.

SUBORDINATED DEED OF TRUST. The Subordinated Indebtedness is secured by a deed of trust dated July 13, 1995 from Trustor to Trustee in favor of Beneficiary (the "Subordinated Deed of Trust") recorded in KLAMATH County, State of Oregon as follows:

Recorded July 13, 1995 in Volume M95 page 18158, Mortgage records of Klamath County, Oregon.

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

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

The Real Property or its address is commonly known as 1919 AUSTIN ST, KLAMATH FALLS, OR 97603-5412. The Real Property tax identification number is 525925 and 525907

REQUESTED FINANCIAL ACCOMMODATIONS. Beneficiary, who may or may not be the same person or entity as Trustor, and Borrower each want Lender to provide financial accommodations to Borrower (the "Superior Indebtedness") in the form of (A) new credit or loan advances, (B) an extension of time to pay or other compromises regarding all or part of Borrower's present indebtedness to Lender, or (C) other benefits to Borrower. Borrower 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.

LENDER'S LIEN. As a condition to the granting of the requested financial accommodations, Lender has required that its deed of trust or other lien on the Real Property ("Lender's Lien") be and remain superior to the Subordinated Deed of Trust.

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 hereby represents and warrants to Lender that Beneficiary has heretofore delivered to Lender a true, correct and complete copy of the Lease, which constitutes the entire agreement between the parties thereto and Beneficiary further acknowledges that the Lease is in full force and effect and that no default by Beneficiary or, to Beneficiary's knowledge, by other party under the terms and provisions of the Lease exists as of the date hereof.

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, 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. In the event of a corporate reorganization or corporate arrangement of Borrower under the provisions of the Bankruptcy Code, as amended, this Subordination shall remain in full force and effect and the court having jurisdiction over the reorganization or arrangement is hereby authorized to preserve such priority and subordination provided under this Subordination in approving any such plan of reorganization or arrangement. 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.

ATTORNEY FEES AND EXPENSES. The undersigned agrees to pay on demand all of Lender's costs and expenses, including Lender's attorney fees and legal expenses, incurred in connection with enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement. Lender may also use attorneys who are salaried employees of Lender to enforce this Agreement. The undersigned shall pay all costs and expenses of all such enforcement. In the event arbitration, suit, action or other legal proceeding is brought to interpret or enforce this Agreement, the undersigned agrees to pay all additional sums as the arbitrator or court may adjudge reasonable as Lender's costs, disbursements, and attorney fees at hearing, trial, and on any and all appeals. As used in this paragraph "Agreement" means the loan agreement, promissory note, guaranty, security agreement, or other agreement, document, or instrument in which this paragraph is found, even

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

Loan No: 0468665328

74799

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if this document is also described by another name. Whether or not an arbitration or court action is filed, all reasonable attorney fees and expenses Lender incurs in protecting its interests and/or enforcing this Agreement shall become part of the Indebtedness evidenced or secured by this Agreement, shall bear interest at the highest applicable rate under the promissory note or credit agreement, and shall be paid to Lender by the other party or parties signing this Agreement on demand. The attorney fees and expenses covered by this paragraph include without limitation all of Lender's attorney fees (including the fees charged by Lender's in-house attorneys, calculated at hourly rates charged by attorneys in private practice with comparable skill and experience), Lender's fees and expenses for bankruptcy proceedings (including efforts to modify, vacate, or obtain relief from any automatic stay), fees and expenses for Lender's post-judgment collection activities, Lender's cost of searching lien records, searching public record databases, on-line computer legal research, title reports, surveyor reports, appraisal reports, collateral inspection reports, title insurance, and bonds issued to protect Lender's collateral, all to the fullest extent allowed by law.

VENUE. The loan transaction that is evidenced by this Agreement has been applied for, considered, approved and made in the State of Oregon. If there is a lawsuit relating to this Agreement, the undersigned shall, at Lender's request, submit to the jurisdiction of the courts of Lane, Douglas or Washington County, Oregon, as selected by Lender, in its sole discretion, except and only to the extent of procedural matters related to Lender's perfection and enforcement of its rights and remedies against the collateral for the loan, if the law requires that such a suit be brought in another jurisdiction. As used in this paragraph, the term "Agreement" means the promissory note, guaranty, security agreement or other agreement, document or instrument in which this paragraph is found, even if this document is described by another name, as well.

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 of 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.

Arbitration. Borrower and Beneficiary and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Subordination or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; foreclosing by notice and sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Subordination shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

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. 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 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, construed and enforced in accordance with federal law and the laws of the State of Oregon. This Subordination has been accepted by Lender in the State of Oregon.

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.

NOTICE: THIS SUBORDINATION 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 SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED SEPTEMBER 29, 2004.

BORROWER:

ABRE, L.L.C.

By: 

Richard P. Olson, Member of ABRE, L.L.C.

BENEFICIARY:

ABBY'S INC., AN ARIZONA CORPORATION

By: 

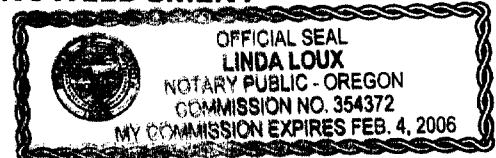
Authorized Signer for Abby's Inc., an Arizona corporation

LENDER:

UMPQUA BANK

x Mary E. Miller
Authorized Officer

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF OregonCOUNTY OF Lane

On this 8th day of October, 20 04, before me, the undersigned Notary Public, personally appeared Richard P. Olson, Member of ABRE, L.L.C., and known to me 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 Linda Loux
Notary Public in and for the State of Oregon

Residing at Pleasant Hill ORMy commission expires 2/04/06

CORPORATE ACKNOWLEDGMENT

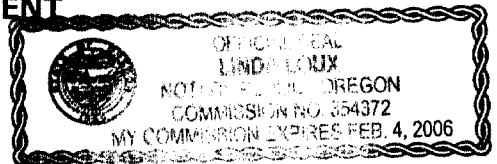
STATE OF OregonCOUNTY OF Lane

On this 8th day of October, 20 04, before me, the undersigned Notary Public, personally appeared Richard P. Olson
Chief Financial Officer of Abby's, Inc.
and known to me 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 Linda Loux
Notary Public in and for the State of Oregon

Residing at Pleasant Hill ORMy commission expires 2/04/06

LENDER ACKNOWLEDGMENT

STATE OF OregonCOUNTY OF Lane

On this 8th day of October, 20 04, before me, the undersigned Notary Public, personally appeared Mary E. Miller and known to me to be the S. Vice President, 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 Linda Loux
Notary Public in and for the State of Oregon

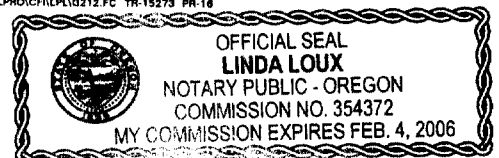
Residing at Pleasant Hill ORMy commission expires 2/4/06

Exhibit "A"

Property Description

Real property in the County of Klamath, State of Oregon, described as follows:

PARCEL 1:

A piece or parcel of land situate in Tract 33A Enterprise Tracts, being a portion of the NW ¼ of Section 3, Township 39 South, Range 9 East, Willamette Meridian, and being more particularly described as follows:

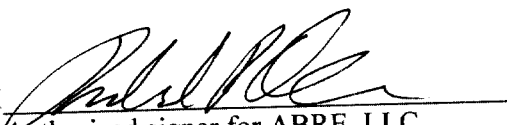
Beginning at a 5/8 inch aluminum capped rebar on the Easterly right of way line of Austin Street as the same is presently located and constructed from which the iron pipe monument marking the Northeast corner of Tract 33A of Enterprise Tracts bears N. 34° 07' 30" E. 53.32 feet and S. 89° 30' 00" E. 209.67 feet distant; thence S. 34° 07' 30" W. along said right of way line of Austin Street 100.00 feet to a 5/8 inch aluminum capped rebar; thence S. 55° 52' 30" E. 255.00 feet to a 5/8 inch aluminum capped rebar; thence N. 34° 07' 30" E. 95.05 feet to a 5/8 inch aluminum capped rebar (said point being 30.00 feet distant from, when measured at right angles to, the East boundary of said Tract 33A of Enterprise Tracts); thence N. 0° 21' 15" E. parallel to said Tract 33A boundary 6.00 feet to a 5/8 inch aluminum capped rebar; thence N. 55° 52' 30" W. 251.66 feet, more or less, to the point of beginning; containing 0.585 acres, and RESERVING THEREFROM an easement of a 4.0 foot overhang from the adjacent property and for walkway purposes along the Southeasterly 140.0 feet of the Southwesterly side of the above described parcel. TOGETHER with an easement for walkway purposes 4.0 feet wide and 140.0 feet long adjacent to the Southwesterly from the Easement herein reserved.

PARCEL 2:

A tract of land situated in Tracts 33A Enterprise Tracts, in the NW ¼ of Section 3, Township 39 South, Range 9 E. W. M., Klamath County, Oregon, more particularly described as follows:

Beginning at a point on the East line of said Tract 33A from which the Northeast corner of said Tract 33A bears N. 00° 21' 15" E. 203.65 feet more or less; thence N. 55° 52' 30" W. 36.09 feet to the Northeasterly corner of that tract of land described in Volume M72 page 6088 of the Klamath County Deed Records; thence along the Easterly line of said tract S. 00° 21' 15" W. 6.09 feet (6.00 by deed), S. 34° 07' 30" W. 94.94 feet (95.05 by Deed) to the Southeasterly corner of said tract; thence S. 55° 52' 30" E. 99.58 feet to a point on the East line of said Tract 33A; thence N. 00° 21' 15" E. 120.30 feet to the point of beginning, containing 6623 square feet and with bearings based on R.O.S. No. 3672 as filed with the Klamath County Surveyor.

Tax Parcel Number: 525925 and 525907
Also know as: 1919 Austin Street, Klamath Falls OR 97601

X 
Authorized signer for ABRE, LLC