

2008-003609

Klamath County, Oregon



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03/21/2008 03:22:52 PM

Fee: \$36.00

RECORDATION REQUESTED BY:

West Coast Bank
Oregon Government Guaranteed Lending Dept
c/o West Coast Credit Center
25977 SW Canyon Creek Road Ste J
Wilsonville, OR 97070

WHEN RECORDED MAIL TO:

WEST COAST BANK
WEST COAST CREDIT CENTER
P.O. BOX 8000
WILSONVILLE, OR 97070

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY



NOTICE: THIS SUBORDINATION AGREEMENT - LEASE 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 AGREEMENT - LEASE

THIS SUBORDINATION AGREEMENT - LEASE dated March 14, 2008, is made and executed among Cherie L. Appleby ("Lessor"); Cherie L. Appleby; and Ghost Rock Ranch, LLC ("Borrower"); and West Coast Bank ("Lender").

SUBORDINATED LEASE. Lessor has executed a lease dated January 22, 2007 of the property described herein (the "Subordinated Lease"). The following information is the summary of the basic terms and conditions of the Subordinated Lease: 22 year Commercial Lease commencing on January 22, 2007.

REAL PROPERTY DESCRIPTION. The Lease covers a portion lying East of railroad of the following described real property located in Klamath County, State of Oregon of the following described real property located in Klamath County, State of Oregon:

The E 1/2 NW 1/4 and SW 1/4 NW 1/4 of Section 22, Township 23 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, LESS AND EXCEPTING that portion lying within the right of way of the Great Northern Railroad.

The Real Property or its address is commonly known as 148800 Beal Road, LaPine, OR 97739. The Real Property tax identification number is 2310-00000-01700-000.

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 March 14, 2008 in the amount of \$2,241,197.00.

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 March 14, 2007, from Cherie Lee Appleby to Lender (the "Lender's Lien") and recorded in Klamath County, State of Oregon as follows:

Recorded on March 21, 2007 in Klamath County, Oregon as instrument #2007-004930.

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 Lease.

REQUESTED FINANCIAL ACCOMMODATIONS. Lessor and Borrower each want Lender to provide financial accommodations to Borrower in the form of the Superior Indebtedness. Borrower and Lessor each represent and acknowledge to Lender that Lessor will benefit as a result of these financial accommodations from Lender to Borrower, and Lessor acknowledges receipt of valuable consideration for entering into this Subordination.

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

SUBORDINATION. All of Lessor's right, title, and interest in and to the Subordinated Lease 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 Lessor's interests in the Subordinated Lease. Lessor also subordinates to Lender's Lien all other Security Interests in the Real Property held by Lessor, whether now existing or hereafter acquired.

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

LESSOR WAIVERS. Lessor 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 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 (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. 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.

CHOICE OF VENUE. If there is a lawsuit, you (Borrower, any Guarantor, and the Grantor under any Deed of Trust or security agreement) agree upon Lender's request to submit to the jurisdiction of the courts of the State of Oregon in Clackamas County, and that venue is proper in such courts, provided that any judicial foreclosure action relating to any real property security shall be commenced where the real property, or some part thereof, is located.

GOVERNING LAW. The interest rate and other terms of the credit evidenced or secured by this instrument (the "Credit") shall be governed by, and this instrument shall be governed by, construed and enforced in accordance with, federal laws and the laws of the State of Oregon, without regard to principles of conflicts of law, except that (1) procedural matters related to the perfection and enforcement of the rights and remedies

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**SUBORDINATION AGREEMENT - LEASE
(Continued)**

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of the Beneficiary of any Deed of Trust against any real property securing the Credit shall be governed by the laws of the state in which the real property is located; and (2) to the extent governed by state law, matters relating to perfection and priority of any security interest in personal property securing the Credit shall be governed by the laws of the state where the person granting that security interest is located. This instrument has been accepted by Lender in the State of Oregon.

ARBITRATION. Lender, and each of the undersigned, hereby agree that all disputes, claims and controversies between them, arising from this agreement 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 the request of any party. All parties hereby agree that the arbitrator in any arbitration proceeding shall not conduct class arbitration; that is, all parties agree that the arbitrator shall not allow any party to serve as a representative, or as a private attorney general, or in any other representative capacity for others in the arbitration. No act to take or dispose of any collateral or 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 collateral or property, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral or property, shall also be arbitrated, provided however, that no arbitrator shall have the right or 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 arbitration agreement 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.

ELECTRONIC TRANSACTIONS. A facsimile, Portable Document Format ("PDF") or similar electronic version of Borrower(s), Guarantor(s) or Grantor(s) signature, in any capacity, shall have the same effect as an original signature on any agreement with or other document provided to Lender.

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

Amendments. This Subordination, together with any Related Documents, 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.

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 and title insurance, to the extent permitted by applicable law. Lessor 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 Lessor represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Lessor's security interests in Lessor'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.

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

Waive Jury. All parties to this Subordination hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Subordination. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Subordination shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means Cherie L. Appleby; and Ghost Rock Ranch, LLC, and all other persons and entities signing the Note in whatever capacity.

Lender. The word "Lender" means West Coast Bank, its successors and assigns.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Subordination.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral 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.

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 MARCH 14, 2008.



SUBORDINATION AGREEMENT - LEASE
(Continued)

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BORROWER:

X Cherie L. Appleby, Individually

GHOST ROCK RANCH, LLC

By: Cherie L. Appleby, Member of Ghost Rock Ranch, LLC

LESSOR:

X Cherie L. Appleby, Individually

LENDER:

WEST COAST BANK

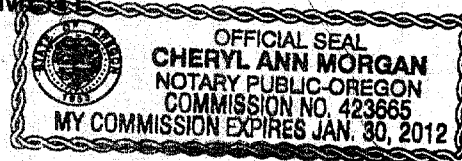
X Laura Woodruff-Lentz
Authorized Officer

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Oregon

COUNTY OF Deschutes

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On this day before me, the undersigned Notary Public, personally appeared **Cherie L. Appleby**, to me known to be the individual described in and who executed the Subordination Agreement - Lease, and acknowledged that he or she signed the Subordination as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 15th day of March, 20 08.

By Cherie Lee Appleby Residing at La Pine, Oregon

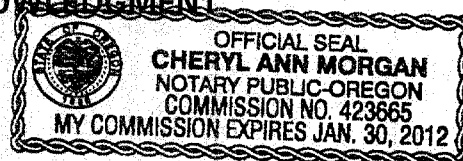
Notary Public in and for the State of Oregon My commission expires 1-30-2012

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Oregon

COUNTY OF Deschutes

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On this 15th day of March, 20 08, before me, the undersigned Notary Public, personally appeared **Cherie L. Appleby, Member of Ghost Rock Ranch, LLC**, and known to me to be a member or designated agent of the limited liability company that executed the Subordination Agreement - Lease 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 Cherie L. Appleby as Ghost Rock Ranch LLC Residing at La Pine, Oregon

Notary Public in and for the State of Oregon My commission expires 1-30-2012



INDIVIDUAL ACKNOWLEDGMENT

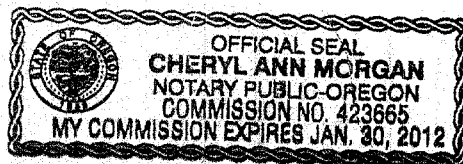
STATE OF Oregon

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COUNTY OF Deschutes

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On this day before me, the undersigned Notary Public, personally appeared **Cherie L. Appleby**, to me known to be the individual described in and who executed the Subordination Agreement - Lease, and acknowledged that he or she signed the Subordination as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 15th day of March, 2008.

By Cherie Lee ApplebyResiding at Lafine, OregonNotary Public in and for the State of OregonMy commission expires 1-30-2008

LENDER ACKNOWLEDGMENT

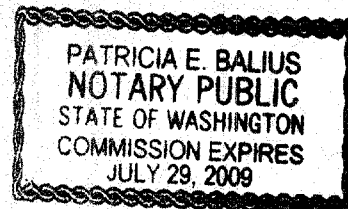
STATE OF Washington

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COUNTY OF Clark

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On this 19th day of March, 2008, before me, the undersigned Notary Public, personally appeared Luwana Woodruff-Lentz and known to me to be the Vice President, authorized agent for **West Coast Bank** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **West Coast Bank**, duly authorized by **West Coast 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 **West Coast Bank**.

By Patricia E. BaluisResiding at Portland ORNotary Public in and for the State of WaMy commission expires 7/29/2009