

1st 1704800

2011-007803

Klamath County, Oregon



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RECORDING REQUESTED BY

378604437 9001

47271850-09

Sterling Savings Bank

3558 Round Barn Blvd, Ste 300

Santa Rosa, CA 95403

06/29/2011 03:13:46 PM

Fee: \$57.00

AND WHEN RECORDED MAIL TO:

Sterling Savings Bank

3558 Round Barn Blvd, Ste 300

Santa Rosa, CA 95403

Space Above This Line for Recorder's Use

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS AGREEMENT, made this 27 day of JUNE 2011, by SARA SUE SMITH and HEIDI RAE MCLEAN, owner of the land hereinafter described and hereinafter referred to as "Owner", and ASPEN INN, LLC, AN OREGON LIMITED LIABILITY COMPANY, present owner and holder of the leasehold estate created by the lease hereinafter described and hereinafter referred to as "Lessee";

WITNESSETH

THAT WHEREAS, SARA SUE SMITH and HEIDI RAE MCLEAN, as Lessor, executed a lease dated MAY 16, 2011 covering that certain premises described as: SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF; in favor of ASPEN INN, LLC, AN OREGON LIMITED LIABILITY COMPANY, as Lessee;

WHEREAS, Owner has executed, or is about to execute, a deed of trust and note in the sum of \$450,000.00 dated JUNE 27, 2011, in favor of Sterling Savings Bank hereinafter referred to as "Lender", payable with interest and upon the terms and conditions described therein, which deed of trust is to be recorded concurrently herewith; and

WHEREAS, it is a condition precedent to obtaining said loan that said deed of trust last above mentioned shall unconditionally be and remain at all times a lien or charge upon the land hereinbefore described, prior and superior to the lease above described and to the leasehold estate created thereby; and

WHEREAS, Lender is willing to make said loan provided the deed of trust securing the same is a lien or charge upon said land prior and superior to the lease above described and to the leasehold estate created thereby and provided that Lessee will specifically and unconditionally subordinate and subject the lease above described the leasehold estate created thereby together with all rights and privileges of Lessee thereunder, to the lien or charge of the deed of trust in favor of Lender; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender make such loan to Owner; and lessee is willing that the deed of trust securing the same shall, when recorded, constitute a lien or charge upon said land which is unconditionally prior and superior to the lease above described and to the leasehold estate created thereby.

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 above referred to, it is hereby declared, understood and agreed as follows:

Reference number: 2011-007802

1. That said deed of trust securing said note in favor of Lender, any renewals and extensions thereof, shall unconditionally be and remain at all times a lien or charge on the land described therein, prior and superior to the lease above described, to the leasehold estate created thereby and to all rights and privileges of Lessee thereunder, and said lease, the leasehold estate created thereby together with all rights and privileges of Lessee thereunder is hereby subject, and made subordinate, to the lien or charge of the deed of trust in favor of Lender.
2. That Lender would not make its loan above described without this subordination agreement.
3. That this agreement shall be the whole and only agreement with regard to the subjection and subordination of the lease above described and the leasehold estate created thereby together with all rights and privileges of Lessee thereunder to the lien or charge of the deed of trust in favor of Lender above referred to and shall supersede and cancel, but only insofar as would affect the priority between the lease and the deed of trust hereinbefore specifically described, any prior agreements as to such subjection or subordination, including, but not limited to, those provisions, if any, contained in the lease above described, which provide for the subjection or subordination of said lease and the leasehold estate created thereby to a deed or deeds of trust or to a mortgage or mortgages.

Lessee declares, agrees and acknowledges that:

- a. He consents to and approves (i) all provisions of the note and deed of trust in favor of Lender above referred to, and (ii) all agreements, including but not limited to any loan or escrow agreements, between Owner and Lender for the disbursement of the proceeds of Lender's Loan;
 - b. Lender in making disbursements pursuant to any such agreement is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part; and
 - c. He intentionally and unconditionally waives, relinquishes, subjects and subordinates the lease above described, the leasehold estate created thereby together with all rights and privileges of Lessee thereunder in favor of the lien or charge upon said land of the deed of trust in favor of Lender above referred to and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection and subordination specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subjection and subordination.
4. **ALTERNATE DISPUTE RESOLUTION.** In any judicial action or proceeding arising out of or relating to this Agreement or any agreements or instruments relating hereto or delivered in connection herewith, including, without limitation, a claim based on or arising from an alleged tort, we or you may elect to have all decisions of fact and law determined by a referee in accordance with California Code of Civil Procedure Section 638 et seq. If such an election is made, the parties will designate to the court a referee or referees selected under the auspices of the American Arbitration Association in the same manner as arbitrators are selected in Association-sponsored proceedings. The presiding referee of the panel, or the referee if there is a single referee, will be an active attorney or retired judge. Judgment upon the award rendered by such referee or referees will be entered in

the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 644 and 645.

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

LESSEE: ASPEN INN, LLC, AN OREGON LIMITED LIABILITY COMPANY

OWNER: SARA SUE SMITH and HEIDI RAE MCLEAN

BY: Sara Sue Smith
SARA SUE SMITH, CHIEF EXECUTIVE MEMBER

BY: Sara Sue Smith
SARA SUE SMITH, INDIVIDUALLY

BY: Heidi Rae McLean
HEIDI RAE MCLEAN, MEMBER

BY: Heidi Rae McLean
HEIDI RAE MCLEAN, INDIVIDUALLY

State of Oregon

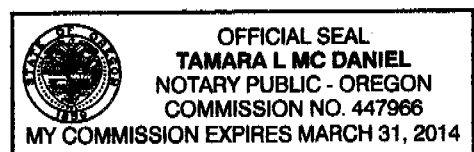
County of Klamath

On June 28, 2011 before me Tamara L. McDaniel
Sara Sue Smith, Notary Public, personally appeared Sara Sue Smith, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of Oregon that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Tamara L. McDaniel (Seal)



State of Oregon

County of Klamath

On June 28, 2011 before me Tamara L.

McDaniel, Notary Public, personally appeared

Heidi Rae McLean, who proved to me on the basis of

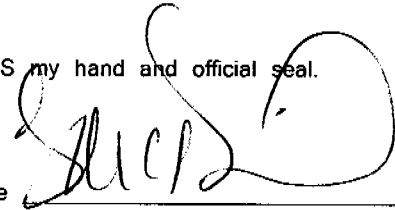
satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and

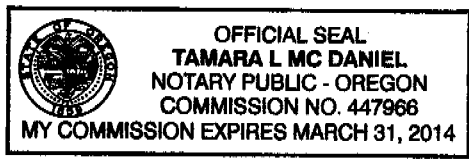
acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity~~(ies)~~, and

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.

I certify under PENALTY OF PERJURY under the laws of the State of Oregon that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.




Signature _____ (Seal)

Rev. 01/08

EXHIBIT A

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

All of Blocks 2 and 3 of HESSIG ADDITION TO FORT KLAMATH, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

TOGETHER WITH vacated Pine Street lying between said Blocks, also the N1/2 of vacated Fifth Street lying between the East line of Hessig Street and the center line of vacated Short Street, also the W1/2 of vacated Short Street abutting said Block 2.

EXCEPTING THEREFROM that portion of Blocks 2 and 3, vacated Pine Street and W1/2 of vacated Short Street lying within the boundaries of the Crater Lake Highway.

ALSO EXCEPTING THEREFROM a parcel of land in the Hessig Addition to Fort Klamath located in the Northwest one-quarter of Section 22, Township 33 South, Range 7 1/2 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the Easterly right of way line of Hessig Street 165.34 feet South 00 degrees 01'23" West from the original Northwest corner of Block 3 Hessig Addition to Fort Klamath; running thence East 143.50 feet; thence South 00 degrees 01'23" West 50.00 feet; thence East 78.50 feet; thence South 00 degrees 01'23" West 30.00 feet to the centerline of vacated 5th Street; thence along said centerline, West 222.00 feet to the Easterly right of way of Hessig Street, thence along said right of way line, North 00 degrees 01'23" East 80.00 feet to the point of beginning.

FURTHER EXCEPTING THEREFROM that portion deeded to Wood River Properties thru Property Line Adjustment 12-05, recorded August 9, 2005 in M05-61569, records of Klamath County, Oregon