

2012-002874  
Klamath County, Oregon



03/19/2012 11:14:29 AM

Fee: \$67.00

**RECORDATION REQUESTED BY  
AND AFTER RECORDING RETURN  
TO:**

U.S. Bank N.A.  
555 SW Oak St  
Portland, OR 97204

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**SUBORDINATION, NON-DISTURBANCE, AND  
ATTORNMENT AGREEMENT**

Date: December 21, 2011

Among: DOUBLE S. FOODS, L.L.C. ("Tenant")  
302 Shelley Street, Suite 2  
Springfield, OR 97477

And: SHEAHAN INVESTMENT COMPANY ("Landlord")  
14325 SW 141<sup>st</sup> Avenue  
Tigard, Oregon 97224

U.S. BANK N.A. ("Bank")  
555 SW Oak St  
Portland, Oregon 97204

This Subordination, Non-disturbance, and Attornment Agreement (this "Agreement") is made among the above-named Landlord, Tenant and Bank as of the date written above.

**RECITALS**

A. Tenant and Landlord are parties to a lease dated November 24, 2003 (the "Lease"), covering premises (the "Premises") which are located on the real property legally described in Exhibit "A" attached hereto and incorporated herein by reference.

B. Bank has made or agreed to make a loan or loans to Landlord directly or indirectly secured by a Mortgage or Deed of Trust covering the Premises dated on or about October 31, 2011 (check one of the following as appropriate)

and recorded in the office of the Recorder for Klamath County, March on 1<sup>st</sup>, 2012 as 2012-002215

which is to be recorded concurrently herewith

(as previously modified, supplemented, renewed, extended, consolidated, increased or replaced, and as the same may hereafter be modified, supplemented, renewed, extended, consolidated, increased or replaced, and which may also secure future advances made by Bank, the "Mortgage"); provided, however, that said Lease is subordinate to the lien of the Mortgage.

C. The Tenant has requested covenants of non-disturbance from Bank.

### AGREEMENT

In consideration of the above recitals and of the promises and mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

1. **Subordination.** The Lease and any extensions, renewals, replacements or modifications thereof, and all of the right, title, and interest of Tenant in and to the Premises, including but not limited to the first opportunity to purchase the Premises included in Exhibit A to the Lease, or any acquisition of title to the Premises by Tenant during the term of the Mortgage, are and shall be subject and subordinate to the Mortgage and to all of the terms and conditions contained therein and herein, including without limitation any future renewals, modifications, replacements, increases, consolidations and extensions thereof.

2. **Non-Disturbance.** Bank consents to the Lease and, in the event Bank comes into possession of or acquires title to the Premises as a result of the enforcement or foreclosure of the Mortgage or any note or other agreement secured by the Mortgage, Bank agrees to be bound by the terms of the Lease and to not disturb Tenant in its possession of the Premises under the Lease for any reason other than one which would entitle Landlord to terminate the Lease under its terms or would cause, without further action by Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant from the Premises.

3. **Attornment.** Tenant agrees with Bank that if the interest of Landlord in the Premises shall be transferred to and owned by Bank by reason of foreclosure or other proceedings brought by it, or by any other manner, Tenant shall be bound to Bank under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Bank were Landlord under the Lease, and Tenant does hereby attorn to Bank as its Landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Bank succeeding to the interest of Landlord in the Premises. Tenant agrees, however, upon the election of and written request by Bank after Bank receives title to the Premises, to promptly execute an instrument in confirmation of the foregoing provisions, satisfactory to Bank, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.

4. **Bank Not Bound by Certain Actions or Agreements.** Tenant agrees with Bank that if Bank shall succeed to the interest of Landlord under the Lease, Bank shall not be (a) liable for any action or omission of any landlord under the Lease prior to Bank becoming landlord thereunder ("Prior Landlord"), or (b) subject to any offsets or defenses which Tenant might have

against any Prior 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, or (d) bound by any security deposit which Tenant may have paid to any Prior Landlord, unless such deposit is in an escrow fund available to Bank, or (e) bound by any amendment or modification of the Lease made without Bank's consent, or (f) bound by any provision in the Lease which obligates the Landlord to erect or complete any building or to perform any construction work or to make any improvements to the Premises. Landlord and Tenant agree that they will not amend the Lease without Bank's prior written consent. Tenant further agrees with Bank that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance without Bank's prior written consent.

5. **Notice; Bank's Right to Perform Under Lease.** Tenant shall provide Bank with a copy of any written notice that Tenant sends to or receives from Landlord no later than 10 days after transmission or receipt. In the event that Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Bank and Bank shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including and without limitation any action in order to terminate, rescind or void the Lease or to withhold any rental thereunder, for a period of ten (10) days after receipt of such written notice thereof by Bank with respect to any such default capable of being cured by the payment of money and for a period of thirty (30) days after receipt of such written notice thereof by Bank with respect to any other such default (provided, that in the case of any default which cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period because of the nature of such default or because Bank requires time to obtain possession of the Premises in order to cure the default, if Bank shall proceed promptly to attempt to obtain possession of the Premises, where possession is required, and to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity).

6. **No Amendment without Bank's Consent; No Conveyance or Encumbrance of Tenant's Estate.** Until the Mortgage has been fully released, satisfied or reconveyed, (a) the Lease shall not be amended without the prior written consent of Bank, and (b) Tenant's estate in the Premises shall not be conveyed or encumbered without the prior written consent of Bank.

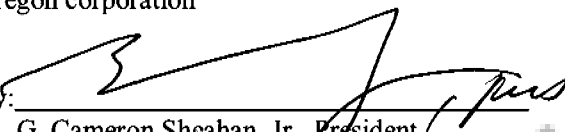
7. **Successors and Assigns; Certain Defined Terms; Recording Information.** This Agreement shall bind and inure to the benefit of all parties hereto, their successors, and assigns. As used herein the term "Tenant" shall include the Tenant herein specifically named and any party who shall succeed to Tenant's interest under the Lease; the words "foreclosure" and "foreclosure sale" as used herein shall include judicial and non-judicial foreclosure and shall also be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure, and the word "Bank" shall include the Bank herein specifically named and any of its successors and assigns, including anyone who shall succeed to Landlord's interest in the Premises by, through or under foreclosure of Mortgage. If at the time of execution of this Agreement the recording information for the Mortgage has not yet been completed, Landlord and Tenant hereby authorize Bank or its recording agent to complete such information. When so completed, such information shall, absent manifest error, be deemed part of this Agreement as if it had been included in this Agreement at the time of execution by each party hereto.

8. **Miscellaneous.** This Agreement shall be governed by the law of the state in which the Premises are located. This Agreement shall not be modified or amended except in writing signed by the parties hereto. The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the context requires.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.


**LANDLORD:**

SHEAHAN INVESTMENT COMPANY, an  
Oregon corporation

By:   
G. Cameron Sheahan, Jr., President

**TENANT:**


DOUBLE S. FOODS, L.L.C., an Oregon limited  
liability company

By:   
Murray R. Gast, Member

By:   
Kathy D. Johnson, Member

**BANK:**

U.S. BANK N.A.

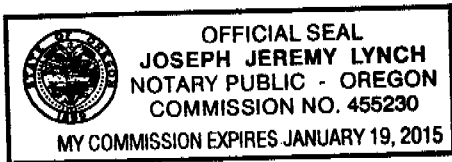
By:   
Name: Joseph J. Lynch  
Title: Commercial Rel. Mgr. AUP

STATE OF Oregon )  
 ) ss.  
County of MARION )

This instrument was acknowledged before me on this 23<sup>rd</sup> day of December, 2011, by G. Cameron Sheahan, Jr. as President of Sheahan Investment Company, an Oregon corporation.

*[Handwritten Signature]*

Notary Public for the State of Oregon  
My commission expires: 1/19/15

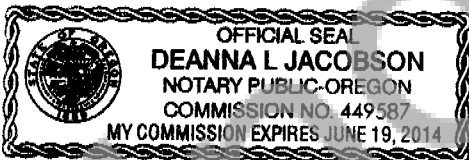


STATE OF Oregon )  
 ) ss.  
County of Lane )

This instrument was acknowledged before me on this 9<sup>th</sup> day of December, 2011, by Murray R. Gast, as Member of Double S. Foods, L.L.C., an Oregon limited liability company.

*[Handwritten Signature: Deanna L Jacobson]*

Notary Public for the State of OR  
My commission expires: June 19, 2014

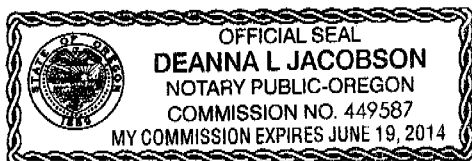


STATE OF Oregon )  
 ) ss.  
County of Lane )

This instrument was acknowledged before me on this 9<sup>th</sup> day of December, 2011, by Kathy D. Johnson, as Member of Double S. Foods, L.L.C., an Oregon limited liability company.

*[Handwritten Signature: Deanna L Jacobson]*

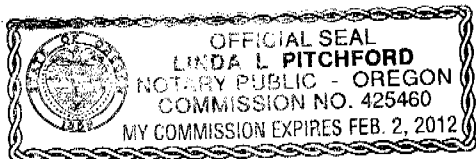
Notary Public for the State of OR  
My commission expires: June 19, 2014



STATE OF Oregon )  
 ) ss.  
County of MARION )

This instrument was acknowledged before me on this 23 day of December 2011, by Joseph J. Lynch, as ASST. Vice President of U.S. Bank N.A.

Linda L Pitchford  
Notary Public for the State of Oregon  
My commission expires: 2-21-12



Unofficial Copy

**EXHIBIT A**  
**Legal Description of Real Property on Which Premises Are Located**

Parcel 2 of Land Partition 77-05 being a replat of Parcel 1 of Major Land Partition 3-P-89 and a portion of Tract 805 Enterprise Tracts, situated in the NE 1/4 of Section 4, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

Property located at: 2508 S 6th St, Klamath Falls, OR 97601

Unofficial  
Copy