

MTC 101693CT

When Recorded Return to:

WASHINGTON FEDERAL
425 Pike St, 4th Floor
Seattle, WA 98101
Attn: Commercial Loan Servicing

2014-009280

Klamath County, Oregon

09/05/2014 03:43:34 PM

Fee: \$77.00

Washington Federal.
invested here.

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

Grantor:	SA Food Services LLC (Tenant)
	Sherrills Properties LLC (Landlord)
Grantee:	WASHINGTON FEDERAL
Legal Description (abbreviated):	Exhibit A
<input checked="" type="checkbox"/> Complete legal on EXHIBIT A	
Assessor's Tax Parcel Identification No(s):	3909-003BB-01200-000
Reference No. of Related Documents:	N/A

THIS SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT (the "**Agreement**") is made as of September 1, 2014, by and between Washington Federal , whose mailing address is 425 Pike Street, Seattle, WA 98101, Attention: Commercial Loan Servicing, and its successors and assigns ("**Lender**"), and SA FOOD SERVICES LLC, a California Limited Liability Company, having an address at 6905 Winter Rush Drive, Rocklin, CA 95677, ("**Tenant**").

RECITALS

A. Tenant leases a portion of the property located in _Klamath County, State of Oregon, and more particularly described on EXHIBIT A attached hereto (the "**Property**"), pursuant to the Commercial Lease dated September 1, 2014, between SHERRILLS PROPERTIES LLC, an Oregon Limited Liability (with its successors in interest, "**Landlord**"), as landlord, and Tenant, as tenant, as such may be amended, restated or assigned (the "**Lease**"). "Lease" shall include any lease of any portion of the Property between Tenant and "Borrower" as defined below. The portion of the Property now or subsequently leased by Tenant is referred to herein as the "**Leased Property**."

B. SHERRILLS PROPERTIES LLC, an Oregon Limited Liability (**Borrower**) is or will be the owner in fee simple of the Property and will become, upon assignment to it of the Lease, the Landlord under the Lease.

C. Lender made a loan to Borrower (the "**Loan**") governed by a Loan Agreement between Lender and Borrower dated 3/28/14 (the "**Loan Agreement**"), evidenced by a Promissory Note made by Borrower to the order of Lender (the "**Note**"), and secured by a Deed of Trust granted concurrently herewith by Borrower for the benefit of Lender (the "**Deed of Trust**"), recorded against the Property. The Loan Agreement, Note, Deed of Trust, and all other documents evidencing, governing, or securing the Loan are collectively referred to herein as the "**Loan Documents**."

D. Tenant has agreed to subordinate the Lease to the lien of the Deed of Trust, on the terms and conditions set forth below.

AGREEMENT

For good and valuable consideration, Tenant and Lender agree as follows:

1. **SUBORDINATION.** The Lease and all of the terms, covenants and provisions thereof and all rights and remedies of Tenant thereunder, including, without limitation, any rights to payment following a default by Borrower under the Lease or casualty or condemnation with respect to the Property, shall at all times be subject and subordinate in all respects to the terms, covenants and provisions of the Deed of Trust and to the lien created by the Deed of Trust thereof, including, without limitation, all renewals, increases, modifications, spreading agreements, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Deed of Trust had been executed, delivered, and recorded prior to the execution and delivery of the Lease.

2. **NON-DISTURBANCE.** If any action or proceeding is commenced by Lender for the foreclosure of the Deed of Trust or the sale of the Property, Tenant shall not be named as a party therein unless such joinder is required by law; *provided, however*, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the Leased Property, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Loan Documents shall be made subject to all rights of Tenant under the Lease, so long as, at the time of the commencement of any such action or proceeding and at the time of any such sale or exercise of any other remedies of Lender under the Deed of Trust, Tenant is not in default under any of the terms, covenants or conditions of the Lease or of this Agreement beyond any applicable cure period. Notwithstanding the foregoing, the foreclosure of the Deed of Trust, at Lender's election in its sole discretion, shall terminate any option or right of first refusal of Tenant to purchase the Leased Property] and Lender does not, by executing this Agreement or consenting to the Lease, waive any right to accelerate the Loan upon transfer of the Leased Property to Tenant pursuant to any purchase option or right of first refusal under the Lease without Lender's prior written consent.

3. **ATTORNMENT.**

3.1 If (a) Lender or any other purchaser of the Property becomes the owner of the Property by reason of the foreclosure of the Deed of Trust or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Deed of Trust (Lender or such other purchaser being hereinafter referred to as "**Purchaser**"), and (b) there was no default by Tenant permitting Purchaser to terminate the Lease in connection with its foreclosure action in accordance with Section 2 above, then, upon Purchaser's acquisition of the Property, the Lease shall not be terminated by Purchaser's acquisition, but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease. With the exception of Lender's rights to terminate any purchase option or right of first refusal in accordance with Section 2 above. Tenant agrees to attorn to Purchaser, and Purchaser, by virtue of acquiring the Property, shall be deemed to have agreed to accept such attornment.

3.2 Subject to Tenant's observance and performance of all of its obligations under the Lease, and subject to Purchaser's termination right in Section 2 above, Purchaser shall recognize the leasehold estate of Tenant for the remainder of the Lease term, including the one 15 year options to extend, with the same force and effect as if Purchaser were

the lessor under the Lease upon all of the terms, covenants and conditions set forth in the Lease,; *provided, however*, that Purchaser shall not be:

(a) liable for the failure of any prior landlord (any such prior landlord, including Borrower and Borrower's successors-in-interest, being hereinafter referred to as a "**Prior Landlord**") to perform any of its obligations under the Lease that have accrued prior to the date on which Purchaser becomes the owner of the Property, but this limitation of liability does not limit Purchaser's obligations under the Lease to correct any omissions, conditions, or violations that specifically relate to the Leased Property if (i) the omissions, conditions, or violations existed as of the date Purchaser became the owner of the Property; (ii) the omissions, conditions, or violations violate Purchaser's obligations as landlord under the Lease; and (iii) Purchaser received written notice of such omissions, conditions or violations prior to acquiring the Property and had a reasonable opportunity to cure the same pursuant to the terms and conditions of the Lease;

(b) subject to any offsets, defenses, abatement or counterclaims that have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser became the owner of the Property;

(c) liable for the return of security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease, unless Purchaser actually receives such security deposits from a Prior Landlord;

(d) bound by any payment of rent, additional rent or other sums that Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser and (ii) such prepayment was expressly approved by Lender in writing;

(e) bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the Leased Property, made without Lender's written consent prior to the time Purchaser succeeded to Borrower's interest;

(f) responsible for the making of repairs in or to the Property in the case of damage or destruction to the Property or any part thereof due to fire or other casualty or by reason of condemnation, provided that the provisions of the Lease shall govern with respect to the disposition of any casualty insurance proceeds ; or

(g) bound by any indemnity or defense obligation of Prior Landlord.

In the event that any liability of Purchaser arises pursuant to this Agreement or under the Lease, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest.

4. TENANT'S ESTOPPEL. Tenant hereby certifies to Lender that: (a) the Lease is in full force and effect, and has not been modified, changed, altered or amended (b) the Lease term commenced on September 1, 2014, (c) Tenant has taken possession to the Leased Property and has accepted the same; (d) the improvements described in the Lease have been constructed in accordance with the plans and specifications and are accepted by Tenant; (f) Tenant has made no agreements concerning free rent, partial rent, rebate of rental payments of any other type of rental concessions; (g) Tenant agrees not to cancel, modify, assign , extend or prepay more than one (1) month's rent without Lender's prior written consent; (h) Tenant knows of no uncured default by Landlord under the Lease; and (i) Tenant does not have an option to purchase the Leased Property.

5. NOTICE TO LENDER AND RIGHT TO CURE. Tenant agrees to notify Lender by certified mail, return receipt requested, with postage prepaid, of any default of Landlord under the Lease that would entitle Tenant to cancel or terminate the Lease or to abate or reduce the rent payable thereunder, and Tenant further agrees that, notwithstanding any provisions of the Lease, no cancellation or termination of the Lease and no abatement or reduction of the rent payable thereunder shall be effective unless (a) Lender has received notice of the default and (b) has failed within thirty (30) days after

both Lender's receipt of such notice and the time when Lender became entitled under the Deed of Trust to (i) remedy the same, (ii) commence to cure the default and thereafter diligently prosecute such cure to completion, or (iii) if Lender cannot commence a cure without possession of the Property, commence judicial or non-judicial proceedings within the 30-day period to obtain possession of the Property and thereafter diligently prosecute such efforts and cure to completion. However, if such default cannot be cured by Lender and Lender or an affiliate of Lender obtains possession of the Property, such default shall be waived. Notwithstanding the foregoing, Lender shall have no obligation to cure any default by Landlord except as specifically provided in Section 3.2(a) upon Lender's acquisition of the Property.

6. NOTICE TO TENANT. After notice is given to Tenant by Lender that Borrower is in default under any of the Loan Documents and that the amounts due under the Lease should be paid to Lender pursuant to the terms of the Deed of Trust, Tenant shall thereafter pay directly to Lender or as directed by Lender, all rent and other amounts due or to become due to Borrower under the Lease, and Borrower hereby expressly authorizes Tenant to make such payments directly to Lender and hereby releases and discharges Tenant from any liability to Borrower on account of any such payments.

7. ASSIGNMENT. Tenant shall not assign its interest in the Lease, nor sublet its interest in the Property, without Lender's prior written consent.

8. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser, and their respective successors and assigns.

9. AUTHORITY. The individuals signing this Agreement are authorized to do so on behalf of the parties for whom they are signing.

10. NOTICES. All notices, requests, demands, or other communications required hereunder shall be in writing and shall be sent to the necessary parties at their addresses set forth below. All notices hereunder shall be effective three (3) days after deposit in the U.S. Mail, postage prepaid, registered or certified mail, return receipt requested, or upon delivery, if delivered in person to the appropriate address:

If to Tenant:

SA FOOD SERVICE, LLC
6509 Winter Rush Drive
Rocklin, CA 95677

If to Lender:

WASHINGTON FEDERAL
425 Pike Street, 4th Floor
Seattle, WA 98101
Attn: Commercial Loan Servicing

The above addresses may be changed by written notice to the other parties; provided that no notice of a change of address shall be effective until actual receipt of such notice.

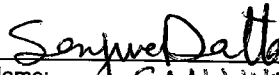
11. GOVERNING LAW. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, without regard to that state's choice of law rules.

12. MISCELLANEOUS. This Agreement may not be modified or terminated except by an instrument in writing executed by the parties hereto. If any provision of this Agreement is finally adjudicated to be invalid, illegal or unenforceable, in whole or in part, it will be deemed deleted to that extent and all other provisions of this Agreement shall remain in full force and effect. This Agreement may be signed in one or more counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Executed as of the date first above written.

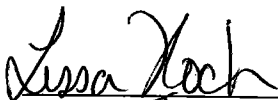
TENANT:

SA Food Service LLC
a California limited liability company

By: 
Name: SANJIVE DATTA
Its: President / OFFICER

LENDER:


WASHINGTON FEDERAL,

By: 
Name: Tessa Koch
Title: Relationship Manager

The undersigned hereby joins in the execution of this Agreement in order to evidence its acceptance of, and agreement to, the provisions of Section 5 hereof.

BORROWER:

Sherrills Properties LLC
a Oregon limited liability company

By: 
Name: Janet R. Sherrill and
Title: Terry D. Sherrill as Members

STATE OF OREGON

COUNTY OF KLAMATH

ss.

I certify that I know or have satisfactory evidence that Sanjive Datta is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Member of SA Food Service LLC, a California Limited Liability Company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 4 day of September, 2014.

13.

14.

15.



Cherice F. Treasure
Printed Name Cherice F. Treasure
NOTARY PUBLIC in and for the State of Oregon, residing at Klamath
County
My Commission Expires 6/17/2016

STATE OF OREGON

COUNTY OF KLAMATH

ss.

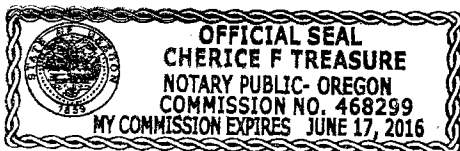
I certify that I know or have satisfactory evidence that Janet R. Sherrill and Terry D. Sherrill are the person(s) who appeared before me, and said person(s) acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Members of Sherrills Properties LLC, an Oregon Limited Liability Company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 4 day of September, 2014.

16.

17.

18.

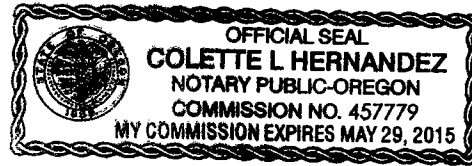


Cherice F. Treasure
Printed Name Cherice F. Treasure
NOTARY PUBLIC in and for the State of Oregon, residing at Klamath
County
My Commission Expires 6/17/2016

STATE OF OREGON

COUNTY OF Klamath

SS.



I certify that I know or have satisfactory evidence that Tessa Koch is the person who appeared before me, and said person acknowledged that ~~(he)~~(she) signed this instrument, on oath stated that ~~(he)~~(she) was authorized to execute the instrument and acknowledged it as the Relationship Manager of WASHINGTON FEDERAL, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 4 day of September 20 14.

19.

20.

21.

Colette Hernandez
Printed Name Colette L. Hernandez
NOTARY PUBLIC in and for the State of Oregon, residing at 303 Main St, K Falls, OR
My Commission Expires May 29, 2015

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

The following described parcel as situate in the NW1/4 of the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at the Northwest corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, and running; thence South 0 degrees 00 1/2' East, 826.8 feet, more or less along the West line of said Section 3, to its intersection with a line parallel to and 75.0 feet distance from (when measured at right angles to) the center line of Klamath Falls-Lakeview Highway (also known as South Sixth Street); thence South 55 degrees 52 1/2' East, parallel to said center line of South Sixth Street, 601.2 feet, more or less, to the true point of beginning; thence North 34 degrees 07 1/2' East, 100 feet; thence South 55 degrees 52 1/2' East, 100.0 feet; thence South 34 degrees 07 1/2' West, 100.00 feet; thence North 55 degrees 52 1/2' West, 100 feet to the point of beginning. All situate in the Northwest 1/4 Northwest 1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 2:

The following described parcel as situate in the NW1/4 of the NW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at the Northwest corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, and running thence South 0 degrees 00 1/2' East 826.8 feet, more or less, along the West line of said Section 3 to its intersection with a line parallel to and 75.0 feet distant from (when measured at right angles to) the center line of the Klamath Falls-Lakeview Highway (also known as South Sixth Street); thence South 55 degrees 52 1/2' East parallel to said center line of South Sixth Street, 601.2 feet; thence North 34 degrees 07 1/2' East, 100 feet to the point of beginning; thence continuing North 34 degrees 07 1/2' East, 75 feet; thence South 55 degrees 52 1/2' East 100 feet; thence South 34 degrees 07 1/2' West 75 feet; thence North 55 degrees 52 1/2' West 100 feet to the point of beginning.

PARCEL 3:

Commencing at the Northwest corner of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, and running thence South 0 degrees 00 1/2' East 826.8 feet, more or less, along the West line of said Section 3 to its intersection with a line parallel to and 75.0 feet distant from (when measured at right angles to) the center line of Klamath Falls-Lakeview Highway (also known as South Sixth Street); thence South 55 degrees 52 1/2' East, parallel to said center line of South Sixth Street, 601.2 feet, more or less, to the true point of beginning of the description; thence North 34 degrees 07 1/2' East a distance of 175 feet; thence North 55 degrees 52 1/2' West 126 feet; hence South 34 degrees 07 1/2' West 175 feet; thence South 55 degrees 52 1/2' East 126 feet to the point of beginning.