

90774AM

RETURN ADDRESS:

Columbia State Bank

MS: 1114

505 W Riverside Avenue, Suite 100

Spokane, WA 99201

2016-006719

Klamath County, Oregon

06/24/2016 02:52:58 PM

Fee: \$97.00

SPACE ABOVE FOR RECORDER'S USE ONLY

DOCUMENT TITLE: LEASE SUBORDINATION AGREEMENT

GRANTOR NO. 1: WHY BUY, L.L.C.

GRANTOR NO. 2: GREG CARLETON AND JAMES CARLETON
DBA CARLETON FARMS
PO BOX 362
MERRILL, OR 97633

GRANTEE: COLUMBIA STATE BANK, its successors and/or assigns

ABBREVIATED TAX LOT 700, S6, T41S, R11E, KLAMATH COUNTY
LEGAL DESCRIPTION: TAX LOT 900, S9, T41S, R10E, KLAMATH COUNTY
FULL LEGAL
DESCRIPTION ON: EXHIBIT A attached hereto.

ASSESSOR'S TAX R-4111-00600-00700-000
NUMBERS: R-4110-00900-00900-000

9/11/16

LEASE SUBORDINATION AGREEMENT

This Agreement is made as of June 21, 2016 between COLUMBIA STATE BANK, A Washington banking corporation ("Lender") and GREG CARLETON AND JAMES CARLETON DBA CARLETON FARMS ("Tenant").

RECITALS

A. The real property ("**Property**") described on Exhibit A is owned by Why Buy, L.L.C., an Oregon limited liability company ("**Landlord**"). Tenant is a tenant of a portion of the improvements located on the Property ("**Premises**") at 11835 Lower Klamath Lake Rd, Merrill, OR 97633 under a lease ("**that certain Lease**") dated January 1, 2015.

B. Lender has made or agreed to make a loan ("**Loan**") to Landlord, secured by among other things, a Deed of Trust ("**Deed of Trust**") covering the Property. The Deed of Trust includes an assignment to Lender of Landlord's interest under the Lease. The Deed of Trust will be recorded under Klamath County Recording Number _____.

C. Lender's agreement to make the Loan is conditioned on Tenant's subordination of the Lease to the Security Documents, and Tenant's agreement to attorn to Lender (or other future owners of the Property) if possession of the Property is obtained by foreclosure or deed in lieu of foreclosure. Tenant is willing to do so in consideration of Lender's agreement not to disturb Tenant's possession of the Premises under the Lease as more particularly set forth below.

**RECORDED
CONCURRENTLY HERewith**

Agreement

NOW, THEREFORE, in order to induce Lender to make the Loan, Tenant agrees as provided below.

1. **Subordination.** Tenant hereby subjects and subordinates all of its rights under the Lease to the lien of, and all of Lender's rights under, the Security Agreements and the promissory note(s), loan agreement and all other documents evidencing, securing or governing the Loan, and all advances made or to be made thereunder, and to any increases in loan amount, renewals, extensions, modifications, refinances, or replacements thereof.

2. **Attornment.** If Lender obtains possession of the Property by foreclosure or deed in lieu of foreclosure, Tenant shall attorn to Lender and recognize Lender as the landlord under the Lease for the unexpired term provided, Lender shall not be; (i) subject to any offsets or defenses, or otherwise liable, for any act or omission of Landlord, (ii) bound by any amendment, modification, or waiver of any of the provisions of the Lease, unless the amendment, modification or waiver was approved by Lender in writing, (iii) liable for the return of any security or other deposit under the Lease unless the deposit is paid to Lender, (iv) bound by any payment of rent under the Lease made by Tenant more than one (1) month in advance of the due date, or (v) bound by any option, right of first refusal, or similar right of Tenant to lease any portion of the Property (other than the Premises), or to purchase any portion of the Property. Lender's obligations as landlord under the Lease after obtaining possession of the Property by foreclosure or deed in lieu of foreclosure shall terminate upon Lender's subsequent transfer of its interest in the Property.

3. **Termination of Lease.** Notwithstanding any other provision of this Agreement, if Lender obtains ownership of the Property by foreclosure or deed in lieu of foreclosure and the Lease requires Landlord to construct any improvements on the Premises or Property, the Lease shall terminate unless (i) Lender delivers written notice to Tenant expressly assuming such obligation within thirty (30) days after the foreclosure sale or deed in lieu of foreclosure, or (ii) Tenant waives such obligation by delivery of written notice to Lender within thirty (30) days after receiving notice of the foreclosure or deed in lieu of foreclosure.

4. **Representations and Warranties.** Tenant represents and warrants to Lender that (i) Tenant has accepted possession and now occupies the property described above, (ii) the Lease is the only lease or agreement between Tenant and Landlord affecting the Property, and is in full force and effect without amendment, alteration, change or modification (except as otherwise indicated in Recital A above), (iii) Tenant has no existing defenses against enforcement of the Lease by Landlord, and Tenant is entitled to no free rent, offsets, deductions or other leasing concessions, and (iv) no actions are pending against Tenant under the bankruptcy laws of the United States or any State.

5. **Covenants of Tenant.** Tenant covenants and agrees with Lender as follows:

(a) Tenant shall pay to Lender all rent and other payments payable to Landlord under the Lease upon written demand from Lender. The consent and approval of Landlord to this Agreement shall constitute an express authorization for Tenant to make the payments to Lender and a release and discharge of all liability of Tenant to Landlord for the payments made to Lender.

(b) Without Lender's prior written consent, Tenant shall enter into no material amendment or modification of the Lease.

(c) Without Lender's prior written consent, Tenant shall not accept Landlord's waiver or release of Tenant's obligations under the Lease or a termination of the Lease.

(d) Tenant shall not subordinate its rights under the Lease to any other mortgage, deed of trust or other security instrument without the prior written consent of Lender.

(e) In the event the Lease is rejected or deemed rejected in any bankruptcy proceeding with respect to Landlord, Tenant shall not exercise its option to treat the Lease as terminated under 11 U.S.C. 365(h), as amended.

(f) Tenant shall promptly deliver written notice to Lender of any default by Landlord under the Lease. Lender shall have the right to cure such default, and Tenant agrees not to invoke any of its remedies for the default during any period Lender is proceeding to cure the default with due diligence, or is attempting to obtain the right to enter the Premises to cure the default.

(g) Tenant shall execute a subordination, non disturbance and attornment agreement for any mortgage loan used to refinance and pay off the Loan; provided that the form of agreement required by the new mortgage lender is substantially the same as this Agreement.

6. **Effect of Assignment.** Lender shall not be liable for any of the obligations of Landlord to Tenant under the Lease unless and until Lender has obtained possession of the Property by foreclosure or deed in lieu of foreclosure, and then only to the extent provided in Section 3.

7. **Costs and Attorneys' Fees.** In the event of any claim or dispute arising out of this Agreement, the party that substantially prevails shall be awarded, in addition to all other relief, all attorneys' fees and other costs and expenses incurred in connection with such claim or dispute; including without limitation those fees, costs and expenses incurred before or after suit, and in any arbitration, any appeal, any proceedings under any present or future bankruptcy act or state receivership, and any post-judgment proceedings.

8. **Notices.** All notices to be given under this Agreement shall be in writing and personally delivered or mailed, postage prepaid, certified or registered mail, return receipt requested, to Lender at the address indicated on the first page of this Agreement, and to Tenant at P.O. Box 362, Merrill, OR 97633. All notices which are mailed shall be deemed given three (3) days after the postmark thereof. Either party may change their address by delivery of written notice to the other party.

9. **Miscellaneous.** This Agreement may not be modified except in writing and executed by the parties hereto or their successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns. Without limiting the foregoing, Lender may assign, pledge or otherwise transfer any promissory note(s) evidencing the Loan and/or any other documents, executed in connection with the Loan or any part thereof or any interest therein or rights thereunder without notice, and in such event the assignee shall have, at the option of lender, the same rights as if originally named herein in place of Lender. As used in the Agreement, "Landlord" shall include Landlord's predecessors and successors in interest under the Lease and "Lender" shall include any purchaser of the Property at any foreclosure sale or any subsequent owner. If any provision of the Agreement is determined to be invalid, illegal or unenforceable, such provision shall be considered severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect as if such provision has not been included. This Agreement shall be governed by the laws of the State of Washington. This Agreement is to be recorded concurrently with the recording of the Security Agreements and Tenant authorizes Lender or its agent to insert the appropriate recording number. This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

[signatures on following page]

LENDER:

COLUMBIA STATE BANK, a Washington banking corporation

By: _____

Its: _____

TENANT:

GREG CARLETON AND JAMES CARLETON DBA CARLETON FARMS

By: Greg Carleton

By: Richard J. Carleton

The undersigned Landlord consents and agrees to the foregoing Lease Subordination Agreement.

LANDLORD:


WHY BUY, L.L.C., an Oregon limited liability company

By: [Signature]

By: [Signature]

LENDER:

COLUMBIA STATE BANK, a Washington banking corporation

By: 
Its: Vice President

TENANT:

GREG CARLETON AND JAMES CARLETON DBA CARLETON FARMS

By: _____

The undersigned Landlord consents and agrees to the foregoing Lease Subordination Agreement.

LANDLORD:

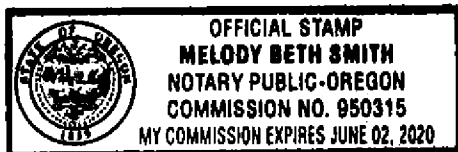
WHY BUY, L.L.C., an Oregon limited liability company

By: _____

By: _____

STATE OF Oregon)
COUNTY OF Clatsop) ss. INDIVIDUAL ACKNOWLEDGEMENT

On this 22nd day of June, 2016. Before me, the undersigned Notary Public, personally appeared Richardson Gamerton personally known to me or proved to me on the basis of satisfactory evidence and acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes therein mentioned.



By Melody Smith
Name Printed Melody Smith
Residing at Wentworth, OR 97143
Notary Public in and for the State of Oregon
My commission expires 06-02-2020

STATE OF _____)
COUNTY OF _____) ss. LLC ACKNOWLEDGEMENT

On this _____ day of _____, 20____, before me, the undersigned Notary Public, personally appeared _____, and _____ of Why Buy, L.L.C., and personally known to me or proved to me on the basis of satisfactory evidence to be a member or designated agent of the limited liability company that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the limited liability company, by authority of statute, its article 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 instrument and in fact executed this instrument on behalf of the limited liability company.

By _____
Name Printed _____
Residing at _____
Notary Public in and for the State of _____
My commission expires _____

STATE OF _____)

BANK ACKNOWLEDGEMENT

) ss.

COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned Notary Public, personally appeared _____

_____ of COLUMBIA STATE BANK and personally known to me or proved to me on the basis of satisfactory evidence to be an authorized agent of the corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this instrument and in fact executed this instrument on behalf of the corporation.

By _____
Name Printed _____
Residing at _____
Notary Public in and for the State of _____
My commission expires _____

STATE OF Oregon)

INDIVIDUAL ACKNOWLEDGEMENT

) ss.

COUNTY OF Klamath)

On this 22nd day of June, 2016 Before me, the undersigned Notary Public, personally appeared Greg Carleton personally known to me or proved to me on the basis of satisfactory evidence and acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes therein mentioned.



By Teresa M. Miles
Name Printed Teresa May Miles
Residing at Klamath Falls
Notary Public in and for the State of OREGON
My commission expires 1-25-2020

STATE OF _____) INDIVIDUAL ACKNOWLEDGEMENT
) ss.
COUNTY OF _____)

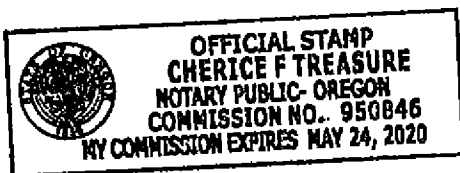
On this _____ day of _____, 20____. Before me, the undersigned Notary Public, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence and acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes therein mentioned.

By _____
Name Printed _____
Residing at _____
Notary Public in and for the State of _____
My commission expires _____

STATE OF Oregon) LLC ACKNOWLEDGEMENT
) ss.
COUNTY OF Klamath)

On this 22 day of June, 2016, before me, the undersigned Notary Public, personally appeared Denis Hickey and Tim Parks of Why Buy, L.L.C., and personally known to me or proved to me on the basis of satisfactory evidence to be a member or designated agent of the limited liability company that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the limited liability company, by authority of statute, its article 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 instrument and in fact executed this instrument on behalf of the limited liability company.

By Cherice F. Treasure
Name Printed Cherice F. Treasure
Residing at Klamath County
Notary Public in and for the State of Oregon
My commission expires 5/24/2020



STATE OF WA)

BANK ACKNOWLEDGEMENT

COUNTY OF Spokane) ss.

On this 21st day of June, 2016, before me, the undersigned Notary Public, personally appeared John Bartels of COLUMBIA STATE BANK and personally known to me ~~or proved to me on the basis of satisfactory evidence~~ to be an authorized agent of the corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he ~~or she~~ is authorized to execute this instrument and in fact executed this instrument on behalf of the corporation.



By Rene M Young
Name Printed Rene M Young
Residing at Idaho
Notary Public in and for the State of WA
My commission expires 1-7-2017

STATE OF _____)

INDIVIDUAL ACKNOWLEDGEMENT

_____) ss.
COUNTY OF _____)

On this _____ day of _____, 20____. Before me, the undersigned Notary Public, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence and acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes therein mentioned.

By _____
Name Printed _____
Residing at _____
Notary Public in and for the State of _____
My commission expires _____

EXHIBIT "A"
LEGAL DESCRIPTION

All that portion of the SE 1/4 of Section 6, Township 41 South, Range 11 East of the Willamette Meridian, lying and being North of the North boundary line of the right of way of the Great Northern Railway Company, (which right of way is described in instrument of record in Deed Book 95 on page 499) and as said right of way is now located, established and extending over and across the said SE 1/4 of said Section 6, from the East to the West Boundary lines thereof; Excepting rights of way heretofore conveyed the United States of America; ALSO EXCEPTING THEREFROM, any portion lying within the limits of the County Road along the East one half of said Section 6. EXCEPT those portions conveyed to the United States by Deed: Recorded October 13, 1908 in Volume 25, page 134, recorded May 17, 1909, Volume 27, page 593 and recorded October 9, 1935 in Volume 105, page 261, Deed Records of Klamath County, Oregon.

(Tax Account No. R-4111-00600-00700-000)

The SW 1/4 and the West 1/2 of the SE 1/4 of Section 9, Township 41 South, Range 10 East of the Willamette Meridian, EXCEPT the SW 1/4 SW1/4 SW1/4

(Tax Account No. R-4110-00900-00900-000)