

RECORDING REQUESTED BY  
AND  
WHEN RECORDED MAIL TO:

THE BANK OF CALIFORNIA, N.A.  
San Francisco Real Estate Department  
400 California Street  
San Francisco, CA 94104

Attn: David Fu  
Vice President

00-15339-RKT

SUBORDINATION, ATTORNMENT  
AND NON-DISTURBANCE AGREEMENT

NOTICE: THIS AGREEMENT RESULTS IN YOUR LEASEHOLD INTEREST IN  
THE PROPERTY BEING SUBJECT TO AND OF LOWER PRIORITY THAN THE  
LIEN OF A SECURITY INSTRUMENT.

THIS AGREEMENT, dated as of this 15<sup>th</sup> day of  
November, 1990 is entered into by and among THE BANK OF  
CALIFORNIA, N.A. ("Lender"), HART ESTATE INVESTMENT COMPANY, a  
general partnership ("Owner"), HART ESTATE DEVELOPMENT COMPANY, a  
general partnership ("Sublessor"), and ROBERT M. MILLINICH and  
BETTY G. MILLINICH (collectively, "Sublessee").

RECITALS

A. Lender made a loan to Owner and Sublessor in the  
maximum principal amount of \$7,300,000, which loan ("Loan") is  
secured by that certain Construction Deed of Trust dated  
November 6, 1989 and recorded November 7, 1989 at Book 1189,

Page 943 of Official Records, Douglas County, Nevada (the "Deed of Trust"), which Deed of Trust encumbers the real property more particularly described in Exhibit A attached hereto (the "Property").

B. Subsequent to the date on which Lender made the Loan, Sublessor, as tenant, and Owner, as landlord, entered into a master ground lease dated November 6, 1989 (the "Master Lease") covering a portion of the Property.

C. Sublessor and Sublessee entered into that certain Indenture of Lease dated June 27, 1990 (the "Sublease") covering a portion of the Property.

D. While Sublessee acknowledges and agrees that the Deed of Trust is and shall remain a lien on the Property prior and superior to the Sublease in all respects, Sublessee has requested that Lender grant Sublessee certain non-disturbance rights in the event of a foreclosure under the Deed of Trust, and Lender has agreed to grant non-disturbance rights to Sublessee, but not to Sublessor as lessee under the Master Lease.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby declared, understood and agreed as follows:

AGREEMENT

1. The foregoing recitals are true and correct and incorporated herein by this reference.

2. The Deed of Trust, and any renewals or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the Property, prior and superior to the Master Lease and Sublease, the leasehold interest of Sublessor under the Master Lease and the subleasehold interest of Sublessee under the Sublease.

3. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Master Lease and Sublease, the leasehold interest of Sublessor under the Master Lease and the subleasehold interest of Sublessee under the Sublease to the lien or charge of the Deed of Trust, and shall supersede and cancel any prior agreements as to such, or any, subordination, including, but not limited to, those provisions, if any, contained in the Master Lease or Sublease providing for the subordination of the Master Lease or Sublease, the leasehold interest of Sublessor under the Master Lease and the subleasehold interest of Sublessee under the Sublease to a deed or deeds of trust or to a mortgage or mortgages.

4. Sublessor and Sublessee declare, agree and acknowledge that:

(a) They consent to and approve (i) of all provisions of the note and Deed of Trust in favor of Lender, 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 the 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;

5. Notwithstanding the foregoing, Lender and Sublessee hereby agree as follows:

(a) In the event of foreclosure of the Deed of Trust, Lender will not join Sublessee in any summary proceedings so long as Sublessee is not in default under any of the terms, covenants or conditions of the Sublease;

(b) If, by dispossession, foreclosure, exercise of the power of sale, or otherwise, Lender, its successors or assigns, or any purchaser at a foreclosure sale, or otherwise shall come into possession of or become the owner of the premises demised by the Sublease, such person shall, if no default then exists under the terms, conditions and provisions of the Sublease, and if requested by Sublessee, execute a lease of the premises demised by the Sublease upon the same terms and conditions as the Sublease, which lease shall cover any unexpired term of the Sublease existing prior to such foreclosure, trustee's sale or conveyance in lieu of foreclosure, provided that Sublessee shall pay all expenses incurred in connection with such lease, including attorneys' fees and costs; Sublessee agrees to attorn

to and accept such person as lessor under such new lease, and to be bound by and to perform all of the obligations imposed by the lease upon the lessee therein, and Lender, its successors or assigns, or any purchaser at a foreclosure or trustee's sale or otherwise will not disturb the possession of Sublessee, and will be bound by all of the obligations imposed by the lease upon the lessor therein; provided, however, that lender, or any purchaser at a foreclosure or trustee's sale or otherwise shall not be:

(i) liable for any act or omissions of a prior lessor (including Sublessor or Owner); or

(ii) subject to any offsets or defenses which Sublessee might have against any prior lessor (including Sublessor or Owner); or

(iii) bound by any rent or additional rent which Sublessee might have paid in advance to any prior lessor (including Sublessor or Owner) for any period beyond the month in which the foreclosure, sale, termination or conveyance occurs.

6. Sublessor acknowledges and agrees that nothing contained herein shall be construed to mean that Sublessor's interest under the Master Lease shall survive in the event that Lender, its successors or assigns, or any purchaser at a foreclosure sale shall come into possession of or become the owner of the Property by dispossession, foreclosure, exercise of the power of sale, or otherwise; it is expressly agreed that it

is not the intent of the parties hereto to create any rights of survival of Sublessor under the Master Lease.

7. This Agreement shall be binding upon and inure to the benefit of Lender and the parties hereto and their respective successors and assigns upon recordation by or on behalf of Sublessee.

8. The terms "Sublessor" and "Sublessee" as used herein shall mean "Landlord" and "Tenant", respectively, as such terms are used in the Sublease referred to herein.

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

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS SUBORDINATION AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT THERETO.

LENDER:

THE BANK OF CALIFORNIA, N.A.

By: David M. Fu  
Its: Vice President  
DAVID M. FU

SUBLESSEE:

Betty G. Millinich  
BETTY G. MILLINICH

Robert M. Millinich  
ROBERT M. MILLINICH

OWNER:

HART ESTATE INVESTMENT COMPANY, a general partnership

By: Eric H. Gabrielsen  
Eric H. Gabrielsen, a general partner

SUBLESSOR:


HART ESTATE DEVELOPMENT COMPANY, a general partnership

By: Eric H. Gabrielsen  
Eric H. Gabrielsen, a general partner




STATE OF NEVADA )  
 ) SS:  
COUNTY OF WASHOE )

On this 14 day of MAY, 1991 personally appeared before me, a Notary Public in and for said County and State, Eric H. Gabrielsen as Managing General Partner of Hart Estate Development Company, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

*Cathy Jo Cupit*  
Notary Public  
 CATHY JO CUPIT  
Notary Public - State of Nevada  
Appointment Recorded In Washoe County  
MY APPOINTMENT EXPIRES SEPT 29, 1991

STATE OF NEVADA )  
 ) SS:  
COUNTY OF WASHOE )

On this 14 day of MAY, 1991 personally appeared before me, a Notary Public in and for said County and State, Eric H. Gabrielsen as a partner of Hart Estate Investment Company, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

*Cathy Jo Cupit*  
Notary Public  
 CATHY JO CUPIT  
Notary Public - State of Nevada  
Appointment Recorded In Washoe County  
MY APPOINTMENT EXPIRES SEPT 29, 1991

252079



STATE OF NEVADA

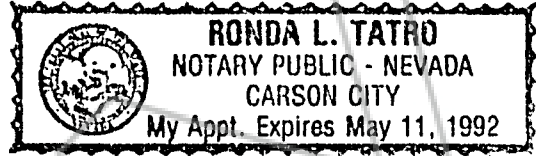
COUNTY OF CARSON CITY

ON THIS 29 DAY OF May, 1991, PERSONALLY APPEARED BEFORE ME A NOTARY PUBLIC IN AND FOR SAID COUNTY, Robert M. Millenich

KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT, WHO ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FREELY AND VOLUNTARILY AND FOR THE USES AND PURPOSES THEREIN MENTIONED.

WITNESS MY HAND AND OFFICIAL SEAL.

*Ronda L. Tatro*  
Signature



**ALL-PURPOSE ACKNOWLEDGMENT**

NO 209

State of CALIFORNIA  
County of CONTRA COSTA

On 6/3/91 before me, FRED F. TABSHARAMI  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Betty G. Millenich & Robert M. Millenich  
NAME(S) OF SIGNER(S)

personally known to me - OR -  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.



Witness my hand and official seal.

*Fred F. Tabsharami*  
SIGNATURE OF NOTARY

**CAPACITY CLAIMED BY SIGNER**

- INDIVIDUAL(S)
- CORPORATE OFFICER(S) \_\_\_\_\_ TITLE(S) \_\_\_\_\_
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- SUBSCRIBING WITNESS
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

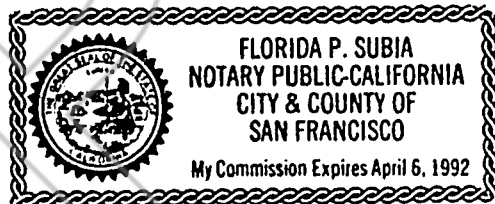
Title or Type of Document \_\_\_\_\_  
Number of Pages \_\_\_\_\_ Date of Document \_\_\_\_\_  
Signer(s) Other Than Named Above \_\_\_\_\_

STATE OF CALIFORNIA :  
 : ss.  
COUNTY OF San Francisco :

On this 15th day of November 19 90 before  
me, Florida P. Subia, the undersigned Notary Public, personally  
appeared DAVID M. FU, personally known to me (or proved  
to me on the basis of satisfactory evidence) to be the person(s) who executed  
the within instrument as VICE PRESIDENT or on behalf of  
the corporation therein named, and acknowledged to me that the corporation  
executed it.

WITNESS my hand and official seal.

NOTARY'S SIGNATURE: Florida P. Subia



[6530r]

252079

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EXHIBIT A

Property Description

DESCRIPTION

All that certain rear property being a portion of the Northeast 1/4 of Section 4, Township 12 North, Range 20 East, M.D.B.&M., Douglas County, Nevada, more particularly described as follows:

Commencing at a point on the Easterly right-of-way line of Nevada State Highway 395, said point being the southwesterly corner of that certain parcel of land shown on that Grant Deed to Thorobred Photo Service, Inc., file No. 29420, Douglas County, Records, from which point the Northeast corner of said Section 4, bears North 30° 43' 28" East, 2116.56 feet; thence along said Easterly right-of-way line North 51° 02' 32" West, 166.00 feet to the TRUE POINT OF BEGINNING; thence continuing along said Easterly right-of-way line North 51° 02' 32" West, 634.00 feet to the Southerly right-of-way line of Waterloo Lane, being a 100 foot right-of-way; thence along said Southerly line North 44° 54' 36" East, 701.78 feet; thence leaving said Southerly right-of-way, South 29° 39' 15" East, 741.00 feet; thence South 60° 20' 45" West, 196.00 feet; thence North 89° 39' 15" West 44.24 feet; thence South 44° 54' 36" West, 218.83 feet to the True Point of Beginning.

a Portion of A.P.N. 25-143-01

REQUESTED BY

Northern Nevada Title Company  
IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

91 JUN -5 A9:36

SUZANNE BLAUDREAU  
RECORDER

252079

\$15<sup>00</sup> PAID *ke* DEPUTY

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