

REQUESTED BY
WESTERN TITLE COMPANY, INC.
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2004 JUN 23 AM 11:35

WERNER CHRISTEN
RECORDER

\$ 21⁰⁰ PAID. KY DEPUTY

APN: 1320-05-001-026

Recording Requested By:

Name: WESTERN TITLE COMPANY

Street Address: 1626 HWY 395

City/St/ Zip: MINDEN, NV 89423

R.P.T.T. \$0.00

89956 KLS

(SPACE ABOVE THIS LINE FOR RECORDERS USE)

COVER SHEET

TYPE OF DOCUMENT

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT
AGREEMENT

This page added to provide additional information required by NRS 111 312 Sections 1-2. (Additional recording fee applies)
This cover page must be typed or legibly hand printed.

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APN 1320-05-001-026

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**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT
(Land Lease)**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") made as of the 8th day June, 2004, by and among Bank of America, N.A. ("**Lender**"), James A. Stiltz and Stacey M. Stiltz ("**Tenant**") and Adrian Stiltz, Frank Bortoli and Carol Ann Stiltz, as Trustees of the Exemption Trust created under the Will of Gina Bortoli, Deceased ("**Landlord**").

WITNESSETH:

WHEREAS, Lender has agreed to make a loan (the "**Loan**") to Stiltz Tile, LLC ("**Borrower**");

WHEREAS, the Loan will be evidenced by a deed of trust note (the "**Note**") of even date herewith made by Borrower to order of Lender and will be secured by, among other things, a deed of trust, assignment of leases and rents and security agreement (the "**Deed of Trust**") of even date herewith made by Landlord to Lender covering the land (the "**Land**") described on Exhibit A attached hereto and all improvements (the "**Improvements**") now or hereafter located on the land (the Land and the Improvements hereinafter collectively referred to as the "**Property**"); and

WHEREAS, by a lease dated as of October 24, 2003 (which lease, as the same may have been amended and supplemented, is hereinafter called the "**Lease**"), Landlord leased the Land to Tenant approximately (together with the Improvements, the "**Premises**"); and

WHEREAS, the parties hereto desire to make the Lease subject and subordinate to the Deed of Trust.

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. The Lease, as the same may hereafter be modified, amended or extended, and all of Tenant's right, title and interest in and to the Premises and all rights, remedies and options of Tenant under the Lease (including without limitation Tenant's right to purchase the Premises), are and shall be unconditionally subject and subordinate to the Deed of Trust and the lien thereof, to all the terms, conditions and provisions of the Deed of Trust, to each and every advance made or hereafter made under or secured by the Deed of Trust, and to all renewals, modifications, consolidations, replacements, substitutions and extensions of the Deed of Trust; provided, however, and Lender agrees, that so long as (A) no event has occurred and no condition exists, which would entitle Landlord to terminate the Lease or would cause, without further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant from the Premises, (B) the term of the Lease has commenced and Tenant is in possession of the Premises, (C) the Lease shall be in full force and effect and shall not have been otherwise modified or

supplemented in any way without Lender's prior written consent, (D) Tenant attorns to Lender, which attornment is hereby acknowledged by Tenant as effective and self-operative, without the execution of any other instruments, and (E) neither Lender nor its successors or assigns shall be liable under any warranty of construction contained in the Lease or any implied warranty of construction; then, and in such event Tenant's leasehold estate under the Lease shall not be terminated, Tenant's possession of the Premises shall not be disturbed by Lender and Lender will accept the attornment of Tenant.

2. Notwithstanding anything to the contrary contained in the Lease, Tenant hereby agrees that in the event of any act, omission or default by Landlord or Landlord's agents, employees, contractors, licensees or invitees which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, or to reduce the rent payable thereunder or credit or offset any amounts against future rents payable thereunder, Tenant will not exercise any such right (i) until it has given written notice of such act, omission or default to Lender by delivering notice of such act, omission or default, in accordance with this Agreement, and (ii) until a period of not less than sixty (60) days for remedying such act, omission or default shall have elapsed following the giving of such notice. Notwithstanding the foregoing, in the case of any default of Landlord which cannot be cured within such sixty (60) day period, if Lender shall within such period proceed promptly to cure the same (including such time as may be necessary to acquire possession of the Premises if possession is necessary to effect such cure) and thereafter shall prosecute the curing of such default with diligence, then the time within which such default may be cured by Lender shall be extended for such period as may be necessary to complete the curing of the same with diligence. Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Lease. Unless Lender otherwise agrees in writing, Landlord shall remain solely liable to perform Landlord's obligations under the Lease (but only to the extent required by and subject to the limitation included with the Lease), both before and after Lender's exercise of any right or remedy under this Agreement. If Lender or any successor or assign becomes obligated to perform as Landlord under the Lease, such person or entity will be released from those obligations when such person or entity assigns, sells or otherwise transfers its interest in the Premises or the Property.

3. If Lender succeeds to the interest of Landlord or any successor to Landlord, in no event shall Lender have any liability for any act or omission of any prior landlord under the Lease which occurs prior to the date Lender succeeds to the rights of Landlord under the Lease, nor any liability for claims, offsets or defenses which Tenant might have had against Landlord. In no event shall Lender have any personal liability as successor to Landlord and Tenant shall look only to the estate and property of Lender in the Land and the Improvements for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as Landlord under the Lease, and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease. Tenant agrees that Lender, as holder of the Deed of Trust and as landlord under the Lease, if it succeeds to that position, shall in no event have any liability for the performance or completion of any initial work or installations or for any loan or contribution or rent concession towards initial work, which are required to be made by Landlord (A) under the Lease or under any related Lease documents or (B) for any space which may hereafter become part of said Premises, and any such requirement shall be inoperative in the event Lender succeeds to the position of Landlord prior to the completion or

performance thereof. Tenant further agrees with Lender that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance without Lender's prior written consent.

4. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Nevada without reference to conflicts of laws principles.

5. All notices to be given under this Agreement shall be in writing and shall be deemed served upon receipt by the addressee if served personally or, if mailed, upon the first to occur of receipt or the refusal of delivery as shown on a return receipt, after deposit in the United States Postal Service certified mail, postage prepaid, addressed to the address of Landlord, Tenant or Lender appearing below, or, if sent by telegram, when delivered by or refused upon attempted delivery by the telegraph office. Such addresses may be changed by notice given in the same manner. If any party consists of multiple individuals or entities, then notice to any one of same shall be deemed notice to such party.

Lender's Address:

Bank of America, N.A.
Dallas CCS - Attention Notice Desk
Dallas, TX 75202

Tenant's Address:

James A. Stiltz
Stacey M. Stiltz
1528 Hussman Ave.
Gardnerville, NV 89410

Landlord's Address:

Adrian Stiltz
Frank Bortoli
Carol Ann Stiltz
c/o Adrian Stiltz
1650 Lombardy Rd.
Gardnerville, NV 89410

6. This Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and assigns. As used herein "Lender" shall include any subsequent holder of the Deed of Trust.

7. Tenant acknowledges that Landlord has assigned to Lender its right, title and interest in the Lease and to the rents issues and profits of the Property and the Property pursuant to the Deed of Trust, and that Landlord has been granted the license to collect such rents provided no Event of Default has occurred under, and as defined in, the Deed of Trust. Tenant agrees to pay all rents and other amounts due under the Lease directly to Lender upon receipt of written

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

LENDER:
BANK OF AMERICA, N.A.

By: [Signature]
Print Name: Heather A. Navarro
Print Title: VP

LANDLORD:

By: [Signature] TTEE
Adrian Stiltz, Trustee

By: _____
Frank Bortoli, Trustee

By: [Signature] TTEE
Carol Ann Stiltz, Trustee

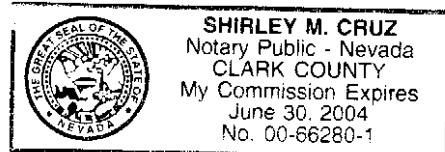
TENANT:

[Signature]
James A. Stiltz
[Signature]
Stacey M. Stiltz

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on June 17, 2004, by Heather A. Navarro as BANK OFFICER of BANK OF AMERICA, N.A.

[Signature]
Notary Public



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demand by Lender, and Landlord hereby consents thereto. The assignment of the Lease to Lender, or the collection of rents by Lender pursuant to such assignment, shall not obligate Lender to perform Landlord's obligations under the Lease.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

LENDER:
BANK OF AMERICA, N.A.

By:

Print Name:

Print Title:

LANDLORD:

By: *Adrian P. Stiltz* TRUSTEE
Adrian Stiltz, Trustee

By: *Frank Bortoli*
Frank Bortoli, Trustee

By: *Carol Ann Stiltz* TRUSTEE
Carol Ann Stiltz, Trustee

TENANT:

James A. Stiltz
James A. Stiltz

Stacey M. Stiltz
Stacey M. Stiltz

STATE OF NEVADA

COUNTY OF _____

STATE OF NEVADA

COUNTY OF Douglas

This instrument was acknowledged before me on June 8, 2004, by
ADRIAN STILTZ.

Kathy Swain
Notary Public

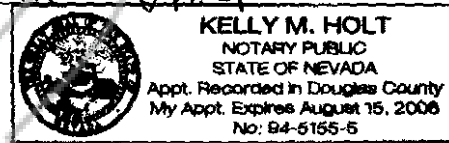


STATE OF NEVADA

COUNTY OF Douglas

This instrument was acknowledged before me on June 5, 2004, by
FRANK BORTOLI.

Kelly M. Holt
Notary Public



STATE OF NEVADA

COUNTY OF Douglas

This instrument was acknowledged before me on June 8, 2004, by
CAROL ANN STILTZ.

Kathy Swain
Notary Public



STATE OF NEVADA

COUNTY OF Douglas

This instrument was acknowledged before me on June 8, 2004, by
JAMES A. STILTZ.

Kathy Swain
Notary Public



STATE OF NEVADA

COUNTY OF Douglas

This instrument was acknowledged before me on June 8, 2004, by
STACEY M. STILTZ.

Kathy Swain
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION

Situated in Section 5 T. 13N R 20E, M.D.B.&M., more particularly described as follows:

Parcel B-3 as set forth on parcel map for Lester J. Harris filed for record in the office of the Douglas County Recorder, recorded on August 1, 1991 in Book 891, Page 001, as Document No. 256768, Official Records of Douglas County, Nevada.

