

Assessor's Parcel Number: 1318-23-401-004

Recording Requested By:

Name: Colonial Bank

Address: P.O. Box 5700

City/State/Zip State line, NV 89449

R.P.T.T.: _____

REQUESTED BY
FIRST AMERICAN TITLE CO.
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2004 AUG 19 PM 1:06

WERNER CHRISTEN
RECORDER

\$ 20⁰⁰ PAID BE DEPUTY

Subordination, Estoppel, Attornment and Non-Disturbance
(Title of Document)
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.

C:\bc docs\Cover page for recording

0621859

BK0804 PG08093

WHEN RECORDED, MAIL TO:

Colonial Bank
P.O. Box 5700
Stateline, NV 89449

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

This Subordination, Estoppel, Attornment and Non-disturbance Agreement (this "**Agreement**") is made and is effective as of the 22nd day of April, 2004, by and between Colonial Bank ("**Lender**") and Alex Chia (the "**Tenant**"), with the consent of Chad Smittkamp & Jean Merkelbach ("**Landlord**").

RECITALS:

A. Tenant, by lease dated June 1, 2000 (the "**Lease**"), has leased a portion of certain real property (the "**Property**") in Douglas County, Nevada, described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

B. Landlord has requested Lender to make a loan (the "**Loan**"), secured by a Deed of Trust and Security Agreement With Assignment of Rents and Fixture Filing, of even date herewith (the "**Deed of Trust**") encumbering the Property, including the portion thereof leased to Tenant (the "**Premises**").

C. Lender is willing to make the loan provided Landlord and Tenant execute this Agreement.

AGREEMENT:

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and agreements herein contained, and in order to induce Lender to make the Loan, Tenant and Lender hereby agree and covenant as follows:

1. **Non-Disturbance.** So long as no default exists, nor any event has occurred which has continued to exist for such period of time (after notice, if any, required by the Lease) as would entitle the Landlord under the Lease to terminate the Lease or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess the Tenant thereunder, the Lease shall not be terminated, nor shall the Tenant's use, possession, or enjoyment of the leased Premises be interfered with, nor shall the leasehold estate granted by the Lease be affected in any other manner in any foreclosure, or any action or proceeding instituted under or in any connection with the Deed of Trust, or in case the beneficiary of the Deed of Trust takes possession of the premises subject to the Deed of Trust pursuant to any provision of the Deed of Trust, unless the Landlord would have had such right if the Deed of Trust had not been made. Notwithstanding the

0621859

BK0804PG08094

foregoing, the person acquiring the interests of the Landlord as a result of any action or proceeding, or by deed in lieu of foreclosure, his successors or assigns (herein called the "**Purchaser**"), shall not be (a) liable for any act or omission of Landlord or any other prior landlord; or (b) subject to any offsets or defenses which Tenant might have against Landlord or any other prior landlord; or (c) bound by any amendment or modification of the Lease made without the prior written consent of the Lender or the Purchaser (if any). Tenant acknowledges that the Purchaser may include the Lender.

2. **Attornment.** If the interests of the Landlord under the Lease shall be transferred by reason of foreclosure or other proceedings for enforcement of the Deed of Trust, Tenant shall be bound to the Purchaser 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 the Purchaser were the Landlord under the Lease, and Tenant does hereby attorn to the Purchaser, as its Landlord, the attornment to be effective and self-operative without the execution of any further instruments upon Purchaser succeeding to the interest of the Landlord under the Lease. The respective rights and obligations of Tenant and Purchaser upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein except as herein otherwise expressly provided.

3. **Subordination.** The Lease, and all rights, interest, estates, options (if any), liens and charges contained therein or created thereunder shall unconditionally be and remain at all times subject and subordinate in each and every respect to the Deed of Trust, the indebtedness secured thereby, any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Deed of Trust or the said indebtedness.

4. **Modification; Successors.** This Agreement may not be modified orally or in any manner other than by agreement in writing signed by the parties, or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

5. **Modification to Lease.** Neither the Tenant nor the Landlord shall agree to any oral or written modification to the Lease without the prior written consent of Lender, which shall not be unreasonably withheld.

6. **Counterparts.** This document may be executed in counterparts, each of which is enforceable against the signing party.

7. **Estoppel.** The Landlord and Tenant each warrant and represent that:

i) the Lease is in full force and effect, as of this date, represents the entire agreement of the parties thereto, and has not been amended except as disclosed to Lender in writing;

ii) To the best knowledge of Landlord and Tenant, respectively, that there are no

events of default under the terms of the Lease (on the part of either Landlord or Tenant), and the Landlord has complied fully and completely with all of Landlord's obligations under the Lease, including, without limitation, completion to Tenant's satisfaction of all improvements required under the Lease;

iii) Tenant is fully obligated to pay, and is paying, the rent and other charges due under the Lease, and Tenant is fully obligated to perform, and is performing, all of the other obligations of Tenant under the Lease;

iv) Tenant has no charge, lien, claim, credit or offset of any kind under the Lease, against rents or other charges due or to become due thereunder or otherwise against Landlord.

v) Tenant claims no right, title or interest in or to the Premises or the Property other than in connection with the Lease and no other agreements exist between Landlord and Tenant with respect to the Property other than the Lease.

vi) Tenant has unconditionally accepted possession of and is currently occupying the Premises as described in the Lease, which Premises are acceptable to Tenant in all respects, and Tenant is conducting only the business permitted by the terms of the Lease. There is no assignment or sublease existing that affects the Lease or any portion or all of the Premises.

vii) Tenant and Landlord are unaware of any litigation or administrative proceedings (or the existence of any state of facts that now exist that could result in any such litigation, administrative proceeding or the creation of any lien upon the Property) relating to hazardous materials, spills, leaks or potentials spills, release or leaks at the Premises, or any other type of environmental contamination.

8. Lender's Obligations. Nothing herein contained shall impose any obligation on Lender to perform any of the obligations of Landlord under the Lease unless and until Lender shall become a Purchaser, and then only to the extent expressly provided for in this Agreement.

9. Assignment of Lease. Tenant acknowledges that Landlord has assigned the Lease to Lender, as well as all rent payments payable by Tenant to Landlord. Until notified by Lender in writing, Tenant shall continue to make all rent payments under the Lease to Landlord.


10. Notice and Right to Cure. Tenant shall simultaneously provide to Lender, by certified or registered mail, at the address of Lender set forth herein, a copy of any notice of default or breach by Landlord under the Lease that Tenant provides to Landlord. Tenant shall not seek to terminate the Lease by reason of any act or omission of Landlord (and no such termination shall be effective) until Tenant gives written notice of such act or omission to Lender and until Lender shall have had the right, but not the obligation, to cure any such breach or default for a sixty (60) day period of time following receipt of such notice.

11. Security Deposit. Lender shall not be in any way or to any extent responsible for

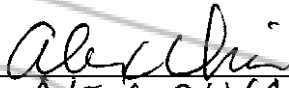
any deposit or security of any kind which was delivered or tendered to Landlord, or any other prior landlord and not delivered or tendered to Lender.

12. Notice to Tenant. To the extent that the Lease entitled Tenant to notice of any mortgage or encumbrance against the Property, this Agreement shall constitute such notice to Tenant with respect to the Deed of Trust.

"Lender"

By: 
Name: Craig Schorr
Title: Tahoe Area President

"Tenant"

By: 
Name: ALEX CHIA
Title: OWNER

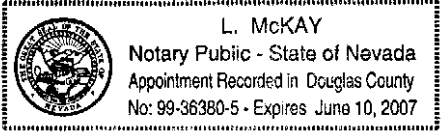
"Landlord"

Chad Smitkamp & Jean Merkelbach
By: 
By: 

STATE OF NEVADA }
 } SS
COUNTY OF DOUGLAS }

Craig Schor

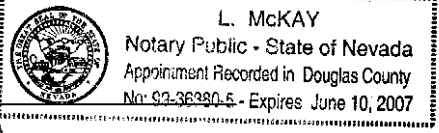
This instrument was acknowledged before me on May 10, 2004, by ~~Alex~~
as President of Colonial Bank.



L. McKay
NOTARY PUBLIC

STATE OF NEVADA }
 } SS
COUNTY OF DOUGLAS }

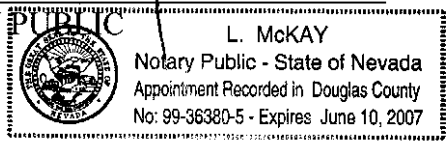
Chia This instrument was acknowledged before me on May 10, 2004, by Alex



L. McKay
NOTARY PUBLIC

STATE OF NEVADA }
 } SS
COUNTY OF DOUGLAS }

This instrument was acknowledged before me on June 30, 2004, by *Craig Smithkamp*
Jeanne Meikelbach



L. McKay
NOTARY PUBLIC

STATE OF NEVADA }
 } SS
COUNTY OF DOUGLAS }

This instrument was acknowledged before me on _____, 2004, by _____
acting as _____ of _____

NOTARY PUBLIC

Exhibit "A"
DESCRIPTION

All that real property situated in the County of Douglas, State of Nevada, bounded and described as follows:

A portion of the Southwest 1/4 of the Southwest 1/4 of Section 23, Township 13 North, Range 18 East, M.D.B.&M., more particularly described as follows:

PARCEL 1:

COMMENCING at the Northwestern corner of that certain 22.60 acre parcel of land conveyed to Tahoe Village Properties, Inc., by Deed dated April 19, 1955, recorded July 30, 1959 in Book E1 of Deeds, Page 360, File No. 14708, Douglas County, Nevada Records; thence from said Point of Commencing East, a distance of 313 feet along the Northerly line of said parcel, so conveyed to Tahoe Village Properties, Inc.; thence leaving said line South, a distance of 50.00 feet to the True Point of Beginning; thence continuing South a distance of 100 feet; thence West a distance of 310.18 feet, more or less, to a point on the Easterly right-of-way line of U.S. Highway 50; thence Northerly along said Easterly right-of-way line along the arc of a curve, concave to the West, having a radius of 25.40 feet, through a central angle of 4°30'47" for an arc distance of 100.02 feet; thence East, a distance of 311.07 feet, more or less, to the Point of Beginning.

PARCEL 2:

BEGINNING at the Northwestern corner of that certain 22.60 acre parcel of land, conveyed to Tahoe Village Properties, Inc., dated April 19, 1955, recorded July 30, 1959 in Book E1 of Deeds, Page 360, File No. 14708, Douglas County, Nevada Records; thence from said Point of Beginning South 89°56'24" East, 312.94 feet along the Northerly line of said parcel, so conveyed to Tahoe Village Properties, Inc.; thence leaving said line South 0°03'41" West, 50.00 feet; thence North 89°56'19" West, 310.97 feet to a point on the Easterly right-of-way line of U.S. Highway 50; thence Northerly along said Easterly right-of-way line along a curve to the left, having a radius of 25°40'00" through a central angle of 1°07'43", an arc distance of 50.03 feet to the Point of Beginning.

PARCEL 3:

COMMENCING at the Northwestern corner of that certain 22.60 acre parcel of land conveyed to Tahoe Village Properties, Inc., by Deed dated April 19, 1955, recorded July 30, 1959 in Book E1 of Deeds, Page 360, File No. 14708, Douglas County, Nevada Records; thence from said Point of Commencing East, a distance of 313.00 feet along the Northerly line of said parcel, so conveyed to Tahoe Village Properties, Inc.; thence leaving said line South, a distance of 150 feet to the Point of Beginning; thence continuing South, a distance of 100 feet; thence West, a distance of 313.22 feet to a point on the Easterly right-of-way line of U.S. Highway 50; thence Northerly along said Easterly right-of-way line along the arc of a curve, concave to the West, having a radius of 25.40 feet through a central angle of 4°30'47" for an arc distance of 100.05 feet; thence East a distance of 310.18 feet to the Point of Beginning.

Reference is made to Record of Survey filed October 12, 1976 as File No. 3893, Official Records, Douglas County, Nevada.

The above metes and bounds description appeared previously in that certain document recorded November 9, 1995 in Book 1195, Page 1550 as Instrument No. 374534.