

Tax Serial Number:
16-06-454-023-0000

RECORDATION REQUESTED BY:

12050374
5/14/2015 2:17:00 PM \$28.00
Book - 10324 Pg - 2004-2013
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 10 P.

WHEN RECORDED MAIL TO:

Meadows Bank
Small Business Lending Division
8912 Spanish Ridge Avenue, Suite 100
Las Vegas, NV 89148-1311

SEND TAX NOTICES TO:

THIRD SOUTH LLC
515 SOUTH 400 EAST
SALT LAKE CITY, UT 84111

NCS-684236

FOR RECORDER'S USE ONLY



*****%1110%01302015%*****

NOTICE: THIS SUBORDINATION AGREEMENT - LEASE RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

SUBORDINATION AGREEMENT - LEASE

THIS SUBORDINATION AGREEMENT - LEASE dated January 30, 2015, is made and executed among VIAL FOTHERINGHAM LLP ("Lessee"); THIRD SOUTH LLC ("Borrower"); and Meadows Bank ("Lender").

SUBORDINATED LEASE. Lessee has executed a lease dated January 15, 2015 of the property described herein (the "Subordinated Lease"). The following information is the summary of the basic terms and conditions of the Subordinated Lease: LEASE IS BY AND BETWEEN THIRD SOUTH LLC, AS "LANDLORD" AND VIAL FOTHERINGHAM LLP, AS "TENANT". TENANT AGREES TO PAY LANDLORD A BASE RENT OF \$11,000.00 ON THE FIRST DAY OF EACH MONTH AND EVERY MONTH DURING THE TERM HEREOF.

THE TERM OF THE LEASE SHALL BE FOR A PERIOD OF TWENTY-FIVE (25) YEARS COMMENCING JANUARY 1ST 2015..

REAL PROPERTY DESCRIPTION. The Lease covers a portion of the following described real property located in SALT LAKE County, State of Utah:

See EXHIBIT A, which is attached to this Subordination and made a part of this Subordination as if fully set forth herein.

The Real Property or its address is commonly known as 515 SOUTH 400 EAST, SALT LAKE CITY, UT 84111. The Real Property tax identification number is 16-06-454-023-0000.

SUPERIOR INDEBTEDNESS. Lender has extended or has agreed to extend the following described financial accommodations to Borrower, secured by the Real Property (the "Superior Indebtedness"):

A LOAN IN THE PRINCIPAL AMOUNT OF \$1,021,000.00 AS EVIDENCED BY PROMISSORY NOTE DATED JANUARY 30, 2015 IN THE PRINCIPAL AMOUNT OF \$1,021,000.00.

LENDER'S LIEN. The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, deed of trust, or other lien instrument, dated January 30, 2015, from Borrower to Lender (the "Lender's Lien"). As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Lease.

REQUESTED FINANCIAL ACCOMMODATIONS. Lessee and Borrower each want Lender to provide financial accommodations to Borrower in the form of the Superior Indebtedness. Borrower and Lessee each represent and acknowledge to Lender that Lessee will benefit as a result of these financial accommodations from Lender to Borrower, and Lessee acknowledges receipt of valuable consideration for entering into this Subordination.

NOW THEREFORE THE PARTIES TO THIS SUBORDINATION HEREBY AGREE AS FOLLOWS:

SUBORDINATION. All of Lessee's right, title, and interest in and to the Subordinated Lease and the Real Property is and shall be subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is agreed that Lender's Lien shall be and remain, at all times, prior and superior to Lessee's interests in the Subordinated Lease and the Real Property. Lessee also subordinates to Lender's Lien all other Security Interests in the Real Property held by Lessee, whether now existing or hereafter acquired.

LESSEE'S REPRESENTATIONS AND WARRANTIES. Lessee hereby represents and warrants to Lender that Lessee has heretofore delivered

**SUBORDINATION AGREEMENT - LEASE
(Continued)**

Page 2

to Lender a true, correct and complete copy of the Lease, which constitutes the entire agreement between the parties thereto and Lessee further acknowledges that the Lease is in full force and effect and that no default by Lessee or, to Lessee's knowledge, by other party under the terms and provisions of the Lease exists as of the date hereof.

LESSEE WAIVERS. Lessee waives any right to require Lender: (A) to make, extend, renew, or modify any loan to Borrower or to grant any other financial accommodations to Borrower whatsoever; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of any secured by Lender's Lien, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness, or in connection with the creation of new or additional indebtedness; (C) to resort for payment or to proceed directly or at once against any person, including Borrower; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever.

LENDER'S RIGHTS. Lender may take or omit any and all actions with respect to Lender's Lien without affecting whatsoever any of Lender's rights under this Subordination. In particular, without limitation, Lender may, without notice of any kind to Lessee, (A) make one or more additional secured or unsecured loans to Borrower; (B) repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Superior Indebtedness or any part of it, including increases and decreases of the rate of interest on the Superior Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) take and hold collateral for the payment of the Superior Indebtedness, and exchange, enforce, waive, and release any such collateral, with or without the substitution of new collateral; (D) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or guarantors on any terms or manner Lender chooses; (E) determine how, when and what application of payments and credits, shall be made on the Superior Indebtedness; (F) apply such security and direct the order or manner of sale of the security, as Lender in its discretion may determine; and (G) transfer this Subordination to another party.

DEFAULT BY BORROWER. If Borrower becomes insolvent or bankrupt, this Subordination shall remain in full force and effect. Any default by Borrower under the terms of the Subordinated Lease also shall constitute an event of default under the terms of the Superior Indebtedness in favor of Lender.

COUNTERPARTS. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but when taken together shall constitute one Agreement.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Subordination:

Amendments. This Subordination, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Subordination. No alteration of or amendment to this Subordination shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Subordination, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Lessee also will pay any court costs, in addition to all other sums provided by law.

Authority. The person who signs this Subordination as or on behalf of Lessee represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Lessee's security interests in Lessee's property, if any.

Caption Headings. Caption headings in this Subordination are for convenience purposes only and are not to be used to interpret or define the provisions of this Subordination.

Governing Law. With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, this Subordination will be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of Utah. In all other respects, this Subordination will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Subordination is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Subordination has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Nevada.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Subordination unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Subordination shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Subordination. No prior waiver by Lender, nor any course of dealing between Lender and Lessee, shall constitute a waiver of any of Lender's rights or of any of Lessee's obligations as to any future transactions. Whenever the consent of Lender is required under this Subordination, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Successors. This Subordination shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Subordination, and the covenants of Lessee herein in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

**SUBORDINATION AGREEMENT - LEASE
(Continued)**

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Subordination. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Subordination shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means THIRD SOUTH LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Lender. The word "Lender" means Meadows Bank, its successors and assigns.

Note. The word "Note" means the Note dated January 30, 2015 and executed by THIRD SOUTH LLC in the principal amount of \$1,021,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Subordination.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

EACH PARTY TO THIS SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED JANUARY 30, 2015.

BORROWER:

THIRD SOUTH LLC

By: _____
A. RICHARD VIAL, Manager of THIRD SOUTH LLC

By: _____
THOMAS M. JOHNSON, Manager of THIRD SOUTH LLC


LESSEE:

VIAL FOTHERINGHAM LLP

By: _____
A. RICHARD VIAL, General Partner of VIAL FOTHERINGHAM LLP

LENDER:

MEADOWS BANK

x  _____
Mark S. Petit, Vice President

**SUBORDINATION AGREEMENT - LEASE
(Continued)**

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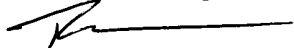
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BORROWER:

THIRD SOUTH LLC

By: _____
A. RICHARD VIAL, Manager of THIRD SOUTH LLC

By:  _____
THOMAS M. JOHNSON, Manager of THIRD SOUTH LLC

LESSEE:

VIAL FOTHERINGHAM LLP

By: _____
A. RICHARD VIAL, General Partner of VIAL FOTHERINGHAM LLP

LENDER:

MEADOWS BANK

X _____
Mark S. Petit, Vice President

**SUBORDINATION AGREEMENT - LEASE
(Continued)**

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BORROWER:

THIRD SOUTH LLC

By: 

A. RICHARD VIAL, Manager of THIRD SOUTH LLC

By: _____

THOMAS M. JOHNSON, Manager of THIRD SOUTH LLC

LESSEE:

VIAL FOTHERINGHAM LLP

By: 

A. RICHARD VIAL, General Partner of VIAL FOTHERINGHAM LLP

LENDER:

MEADOWS BANK

X _____

Mark S. Petit, Vice President

**SUBORDINATION AGREEMENT - LEASE
(Continued)**

LENDER ACKNOWLEDGMENT

STATE OF Nevada
COUNTY OF Clark

)
) SS
)



On this 4th day of February, 2015, before me, the undersigned Notary Public, personally appeared **Mark S. Petit** and known to me to be the **Vice President**, authorized agent for **Meadows Bank** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **Meadows Bank**, duly authorized by **Meadows Bank** through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of **Meadows Bank**.

By Judy L. Henderson
Notary Public in and for the State of NEVADA

Residing at 8912 Spanish Ridge Avenue
Las Vegas NV
My commission expires 08-02-16

**SUBORDINATION AGREEMENT - LEASE
(Continued)**

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Colorado)
) SS
COUNTY OF Jefferson)

ADRIANE L. TRAVER
NOTARY PUBLIC
STATE OF COLORADO
Notary ID 20064036930

On this 30th day of January, 20 15, before me, the undersigned Notary Public, personally appeared **A. RICHARD VIAL, Manager of THIRD SOUTH LLC**, and known to me to be a member or designated agent of the limited liability company that executed the Subordination Agreement - Lease and acknowledged the Subordination to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles 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 Subordination and in fact executed the Subordination on behalf of the limited liability company.

By Adriane L Traver
Notary Public in and for the State of Colorado

Residing at Ken Caryl
My commission expires 9/12/2018

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20 _____, before me, the undersigned Notary Public, personally appeared **THOMAS M. JOHNSON, Manager of THIRD SOUTH LLC**, and known to me to be a member or designated agent of the limited liability company that executed the Subordination Agreement - Lease and acknowledged the Subordination to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles 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 Subordination and in fact executed the Subordination on behalf of the limited liability company.

By _____
Notary Public in and for the State of _____

Residing at _____
My commission expires _____

PARTNERSHIP ACKNOWLEDGMENT

STATE OF Colorado)
) SS
COUNTY OF Jefferson)

On this 30th day of January, 20 15, before me, the undersigned Notary Public, personally appeared **A. RICHARD VIAL, General Partner of VIAL FOTHERINGHAM LLP**, and known to me to be a partner or designated agent of the partnership that executed the Subordination Agreement - Lease and acknowledged the Subordination to be the free and voluntary act and deed of the partnership, by authority of statute or its Partnership Agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Subordination and in fact executed the Subordination on behalf of the partnership.

By Adriane L Traver
Notary Public in and for the State of Colorado

Residing at Ken Caryl
My commission expires 9/12/2018

ADRIANE L. TRAVER
NOTARY PUBLIC
STATE OF COLORADO
Notary ID 20064036930
My Commission Expires 9/12/2018

Exhibit "A"

Legal Description

Real property in the City of Salt Lake City, County of Salt Lake, State of Utah, described as follows:

PARCEL 1:

BEGINNING AT A POINT ON THE WEST LINE OF LOT 5, AND THE EAST LINE OF 400 EAST STREET, SAID POINT BEING SOUTH 00°01'50" EAST 90.00 FEET FROM THE NORTHWEST CORNER OF LOT 5, BLOCK 23, PLAT "B", SALT LAKE CITY SURVEY, AND RUNNING THENCE NORTH 89°57'37" EAST 97.24 FEET; THENCE ALONG THE WEST FACE OF AN EXISTING WALL SOUTH 00°03'19" EAST 132.75 FEET; THENCE SOUTH 89°57'37" WEST 97.30 FEET; THENCE NORTH 00°01'50" WEST 132.75 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

TOGETHER WITH THE APPURTENANT RIGHTS, TERMS AND CONDITIONS AS SET FORTH IN THAT CERTAIN DECLARATION OF EASEMENTS AND COVENANTS FOR JOINT USE OF PARKING TERRACE, RECORDED MARCH 28, 1979 AS ENTRY NO. 3256391 IN BOOK 4835 AT PAGE 697 OF OFFICIAL RECORDS.

APN: 16-06-454-023-0000