

UNRECORDED

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COVER SHEET

KATHY HILL  
SKAGIT COUNTY AUDITOR

9806090063

98 JUN -9 P2:00

RETURN TO:

Metlife Capital Corporation

Franchise Finance Department

10900 N.E. 4th Street, Suite 500

Bellevue, WA 98004

LN #001-1218-001

DOCUMENT TITLE(S) (or transactions contained herein):

Subordination & Lessee-Lessor Estoppel Agreement

FIRST AMERICAN TITLE CO.

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

UNRECORDED LEASE

DT# 9806080143

B55006

|| ADDITIONAL REFERENCE NUMBERS ON PAGE \_\_\_\_\_ OF DOCUMENT.

GRANTOR(S) (Last name, first name and initials):

1. John and Jacqueta Borders, Husband and Wife

2.

3.

4.

|| ADDITIONAL NAMES ON PAGE \_\_\_\_\_ OF DOCUMENT.

GRANTEE(S) (Last name, first name and initials):

1. Metlife Capital Corporation

2.

3.

4.

|| ADDITIONAL NAMES ON PAGE \_\_\_\_\_ OF DOCUMENT.

LEGAL DESCRIPTION (Abbreviated: L., lot, block, plat or quarter, quarter, section, township and range):

North 100 feet of Lots 3 to 6; all of Lots 7 to 10, Block 9,  
"Bohrens & Moody's Addition to West Mount Vernon" (2-101)

|| ADDITIONAL LEGAL(S) ON PAGE \_\_\_\_\_ OF DOCUMENT.

3703-009-006-0009 (R52232)

ASSESSOR'S PARCEL/TAX I.D. NUMBER: 3703-009-010-0102 (R52236)

|| TAX PARCEL NUMBER(S) FOR ADDITIONAL LEGAL(S) ON PAGE \_\_\_\_\_ OF DOCUMENT.

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After recording return to:  
**METLIFE CAPITAL CORPORATION**  
Franchise Finance Department  
10900 N.E. 4th St., Suite 500  
Bellevue, WA 98004  
Loan No.: 001-1218-001

**SUBORDINATION  
AND LESSEE-LESSOR ESTOPPEL AGREEMENT**

**THIS AGREEMENT** is entered into as of June 8, 1998, by and between **JOHN AND JACQUETA BORDERS** (collectively, "Lessee"), whose address is 7283 Skagit View Drive, Concrete, Washington 98237 and **METLIFE CAPITAL CORPORATION** ("METLIFE").

**RECITALS**

- A. Lessee is the present lessee under a lease dated April 23, 1998 made by **JOSEPH AND SUSAN MEDALIA**, and assigned to **MEDALIA, INC.**, a Washington corporation, as Lessor (the "Lease") demising all or a portion of the premises described on Exhibit A (the "Leased Premises").
- B. Lessee has been advised that the Lease has been or will be assigned to METLIFE as security for a loan (the "Loan") secured by a Deed of Trust or Mortgage (the "Deed of Trust") to be recorded concurrently herewith covering the Leased Premises.  
RF# 9806080143
- C. A condition precedent to METLIFE's disbursement of the proceeds of the Loan is that Lessor obtain this Agreement from Lessee in order to confirm certain matters and to subordinate the Lease and Lessee's interest in the Leased Premises to the lien of the Deed of Trust.
- D. It will be of benefit to Lessee if METLIFE disburses the proceeds of the Loan to Lessor.

Now, therefore, the parties hereto agree as follows:

- 1. Lessee represents and warrants to METLIFE as follows:
  - a. Lessee has accepted possession and is in occupancy of the Leased Premises pursuant to the terms of the Lease, and the Lease is in full force and effect.
  - b. The improvements and space required to be furnished according to the Lease have been completed in all respects, and Lessee hereby waives any and all rights and remedies which Lessee may have against Lessor (including, without limitation, any right to terminate the Lease) as a result of any breach by Lessor of any of its construction related obligations under the Lease.

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- c. Lessor has fulfilled all of its duties of an inducement nature.
  - d. The Lease has not been modified, altered or amended.
  - e. There are no offsets or credits against rentals, nor have rentals been prepaid except as provided by the terms of the Lease.
  - f. Rental commenced to accrue on June 1, 1998, current monthly base rent will be \$2,750.00, and there is currently no outstanding unpaid rent. The primary term of the Lease commences on June 1, 1998 and expires on May 31, 2003.
  - g. Lessee has no notice of a prior assignment, hypothecation or pledge of rents on the Lease.
  - h. Lessee has no claims to or interest in the Leased Premises legal or equitable, or any contract or option therefor other than as a Lessee under the Lease. The Lease does not contain and Lessee does not have an outstanding option to purchase the Leased Premises or an outstanding option to extend or renew the term of the Lease.
  - i. The existing parking facilities at the Leased Premises satisfy the requirements of the Lease.
  - j. There are no concessions or inducements which have been promised by Lessor or any other party to Lessee other than as set forth in the Lease.
  - k. Lessor is not in default of any of its obligations under the Lease and no events have occurred which, with notice, the passage of time or both, would constitute a default in any of Lessor's obligations under the Lease.
  - l. Lessee has paid Lessor \$2,750.00 as a security or similar type deposit.
2. Lessee shall promptly provide METLIFE at its Franchise Finance Department, 10900 N.E. 4th St., Suite 500, Bellevue, WA 98004, with a written notice of any default on the part of the Lessor under the Lease, and Lessee hereby grants to METLIFE the option to cure said default within a reasonable length of time. Lessee further agrees that it shall not invoke any of its rights and remedies under the Lease or any other remedies available to Lessee at law or in equity during any period that METLIFE is proceeding to cure any such default with due diligence, or is taking steps with due diligence to obtain the legal right to enter the Leased Premises and cure any such default.

3. Without the written consent of METLIFE, Lessee shall not (a) modify, extend or in any manner alter the terms of the Lease; (b) pay the rent or any other sums becoming due under the terms of the Lease more than one month in advance; (c) accept Lessor's waiver of, or release from the performance of any obligations under the Lease; or (d) agree with Lessor to terminate the Lease.
4. Should METLIFE advise Lessee that Lessor is in default in the indebtedness to METLIFE and request that payment of all future rentals be made directly to METLIFE, Lessee shall make all future rental payments under the Lease directly to METLIFE until instructed otherwise by METLIFE. Lessee shall not be liable to Lessor for any rental payments actually paid to METLIFE pursuant to this Section 4.
5. Notwithstanding anything in the Lease or any other document to the contrary, Lessee hereby agrees that the Lease and all right, title and interest of Lessee in, to and under the Lease is now, and shall at all times continue to be, unconditionally subject and subordinate in each and every respect, to the Deed of Trust and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Deed of Trust. Lessee hereby agrees that METLIFE shall not be bound by any nondisturbance provisions in the Lease. Lessee hereby agrees that, for so long as the Deed of Trust is a lien on the Leased Premises, Lessee will not subordinate the estate of Lessee in the Lease to any other mortgages or deeds of trust or any other security instruments.
6. To the extent that the Lease shall entitle Lessee to notice of any deed of trust, this Agreement shall constitute such notice to Lessee with respect to the Deed of Trust and Lessee hereby waives notice of any and all renewals, modifications, extensions, substitutions, replacements, and/or consolidations of the Deed of Trust.
7. The terms "holder of any deed of trust/mortgage on the fee title of the building", "fee deed of trust/mortgage", "holder of a deed of trust/mortgage" or any similar terms in the Lease shall be deemed to include METLIFE, its successors and assigns, including anyone who shall have succeeded to Lessor's interest by, through or under foreclosure of the Deed of Trust or deed in lieu of such foreclosure. The terms "deed of trust/mortgage affecting the real property," "deed of trust/mortgage," or any similar terms, shall be deemed to include the Deed of Trust to be recorded concurrently herewith securing the Loan.
8. This Agreement may be modified only by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon METLIFE, Lessor and Lessee, and their successors and assigns.

9. This Agreement shall be governed by Washington law applicable to contracts made and to be performed therein (excluding choice-of-law principles). This Agreement may be executed in counterparts for the convenience of the parties.
10. To the extent of any conflict between the provisions of the Deed of Trust and the Lease which govern the application and disbursements of insurance and condemnation proceeds, the provisions of the Deed of Trust shall control.
11. In the event suit or action is instituted to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all expenses reasonably incurred at, before or after trial and on appeal, whether or not taxable as costs, or in any bankruptcy proceeding, including, without limitation, attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses.
12. Lessee agrees that upon the request of METLIFE from time to time, Lessee shall furnish to METLIFE a copy of Lessee's balance sheet and profit and loss statement, which shall be prepared in accordance with generally accepted accounting principles and practices consistently applied.
13. Lessee warrants, represents, covenants and agrees that it will not use, produce, store, release, dispose of or bring into the Leased Premises any hazardous waste or materials or allow any other entity or person to do so. As used herein, the term "hazardous waste or materials" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect including, without limitation, petroleum products and by-products, asbestos, polychlorinated biphenyls, chlorinated solvents, and urea formaldehyde. Lessee agrees to indemnify and hold harmless Lessor and METLIFE against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, cleanup costs, remedial actions, costs and expenses (including, without limitation, attorneys' fees and disbursements) which may be imposed on, incurred or paid by, or asserted against Lessor and/or METLIFE directly or indirectly arising from or attributable to any misrepresentation or breach of any warranty, covenant or agreement by Lessee under this section. The provisions of this section shall survive expiration or termination of the Lease.
14. Lessee hereby agrees that if METLIFE elects at any time to have the Lease superior to its Deed of Trust and gives notice of its election to Lessee, then the Lease shall be superior to the lien of any such Deed of Trust and all renewals, modifications, extensions, substitutions, replacements and/or consolidations thereof, whether the Lease is dated or recorded before or after the Deed of Trust or mortgage. If METLIFE shall become the owner of the Leased Premises, or if the Leased Premises shall be sold by reason of foreclosure or other proceedings brought to enforce the Deed of Trust, or if the Leased Premises shall be transferred by deed in lieu of foreclosure, then at METLIFE's sole option (i) the Lease shall

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continue in full force and effect as a direct lease agreement between Lessee and the then owner of the Leased Premises (including METLIFE or the grantee under any deed given as a result of any foreclosure or in lieu of foreclosure), upon and subject to 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, and (ii) Lessee shall attorn to METLIFE or any other such owner as its Lessor, said attornment to be effective and self-operative without the execution of any further instruments. From and after METLIFE's or other such owner's succession to the interest of Lessor under the Lease, Lessee shall have the same remedies against METLIFE or such other owner for the breach of any covenant contained in the Lease that Lessee might have had under the Lease against Lessor, except that neither METLIFE nor any other such owner shall be:

- a. liable for any act or omission of, or for the performance of any obligation of, any prior lessor (including Lessor), including without limitation any obligation to repair, restore or expand any part of the Leased Premises; or
- b. subject to any offsets or defenses which Lessee might have against any prior lessor (including Lessor); or
- c. bound by any prepayment of rent or additional rent which Lessee might have paid for more than the current month or by payment of any security deposits to any prior lessor (including Lessor), except such security deposits as have actually been received by METLIFE; or
- d. bound by any amendment or modification of the Lease or by any waiver or forbearance on the part of any prior lessor (including Lessor) made or given without the written consent of METLIFE or any subsequent holder of the Deed of Trust; or
- e. bound by any representations or warranties of Lessor under the Lease.

However, METLIFE or such other owner shall not be required to recognize the rights of Lessee under the Lease, and the rights of Lessee thereunder (including any options thereunder) shall at the sole election of and upon notice by METLIFE or such other owner cease and terminate upon acquisition of title to or upon possession of the Leased Premises by METLIFE, or such owner or their respective successors and assigns, including any purchaser at a foreclosure sale.

**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

Dated as of the date first above written.

LESSEE:

*[Signature]*  
JOHN BORDERS

*[Signature]*  
JAQUETA BORDERS

LENDER:

METLIFE CAPITAL CORPORATION,  
a Delaware corporation

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

Lessor joins in the execution of this document for the purpose of acknowledging and confirming the matters herein set forth.

LESSOR:

MEDALIA, INC.,  
a Washington corporation

By: *[Signature]*  
Print: Susan C Medalia  
Its: V.P. Secretary/Treasurer

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax

JUN - 9 1998

Amount Paid 6  
By W Skagit Co. Treasurer Deputy

Dated as of the date first above written.

LESSEE:

\_\_\_\_\_  
JOHN BORDERS

\_\_\_\_\_  
JAQUETA BORDERS

LENDER:

METLIFE CAPITAL CORPORATION,  
a Delaware corporation

By: Becky A Morrison  
Print: Becky A Morrison  
Its: Vice President

Lessor joins in the execution of this document for the purpose of acknowledging and confirming the matters herein set forth.

LESSOR:

MEDALIA, INC.,  
a Washington corporation

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

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THE STATE OF WASH §  
COUNTY OF SKagit §

This foregoing instrument was acknowledged before me this 5<sup>th</sup> day of June, 1998, by **JOHN BORDERS**, an individual.

Barbara Lowery  
Notary Public in and for the  
State of WA  
Printed Name of Notary Public:  
**BARBARA LOWERY**

My Commission Expires:  
11-15-99

THE STATE OF WASH §  
COUNTY OF SKagit §

This foregoing instrument was acknowledged before me this 5<sup>th</sup> day of June, 1998, by **JAQUETA BORDERS**, an individual.

Barbara Lowery  
Notary Public in and for the  
State of WA  
Printed Name of Notary Public:  
**BARBARA LOWERY**

My Commission Expires:  
11-15-99

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STATE OF WA §  
  § ss.  
COUNTY OF Skagit §

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

On this 5<sup>th</sup> day of June, 1998, before me personally appeared Susan Medalia, to me known to be Sec/Treas of MEDALIA, INC., a Washington corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

**BARBARA LOWERY**  
*Barbara Lowery*  
Notary Public in and for the State of WA, residing at Mount Rainier

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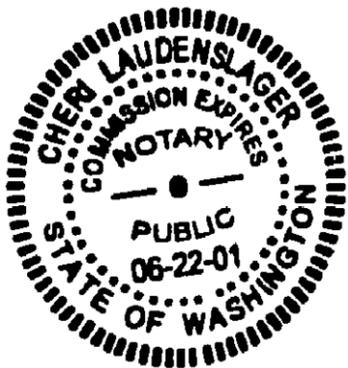
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MAY.

STATE OF WASHINGTON §  
§ ss.  
COUNTY OF KING §

On this 9<sup>th</sup> day of ~~May~~ <sup>June</sup>, 1998, before me, a Notary Public in and for the State of Washington, personally appeared Becky A. Morrison, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that she was authorized to execute the instrument, and acknowledged it as the Vice President of METLIFE CAPITAL CORPORATION to be the free and voluntary act and deed of said corporation for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Cher Laudenslager  
NOTARY PUBLIC in and for the State of Washington, residing at Renton  
My appointment expires: 6/22/2001

**EXHIBIT A**

The land referred to herein is situated in the County of Skagit, State of Washington, and is described as follows:

**PARCEL "A":**

The North 100 feet of Lots 3, 4, 5 and 6, Block 9, "BEHRENS & MOODY'S ADDITION TO WEST MOUNT VERNON, SKAGIT COUNTY, WASHINGTON", as per plat recorded in Volume 2 of Plats, page 101, records of Skagit County, Washington. (Also known as Tract "A" of that certain Short Plat No. MV-27-76 recorded September 10, 1976 under Auditor's File No. 842405 in Volume 1 of Short Plats, page 166, records of Skagit County, Washington.

**PARCEL "B":**

Lots 7, 8, 9 and 10, Block 9, "BEHRENS & MOODY'S ADDITION TO WEST MOUNT VERNON, SKAGIT COUNTY, WASHINGTON", as per plat recorded in Volume 2 of Plats, page 101, records of Skagit County, Washington.