



201409220164

Skagit County Auditor  
9/22/2014 Page

1 of 16 1:33PM \$159.00

When Recorded Return to:  
Allison Edwards-Servicing  
NWBD  
9019 E. Appleway BLVD., Suite 200  
Spokane Valley WA 99212

**POOR ORIGINAL**

CHICAGO TITLE  
620021520

SBA Loan Name: Dick's Restaurant Supply North. LLC  
SBA Loan Number: 4071255002

Reference Number(s) of Document Subordinated: 201008270139 & ~~2010080270142~~ <sup>201008270142</sup> and <sup>201409220160</sup>

Grantor(s): U.S. Small Business Administration

Grantee(s): Wells Fargo Bank

**Legal Description:**

Lot 12, "SOUTH MOUNT VERNON BUSINESS PARK BINDING SITE PLAN", Mount Vernon Land Use No. LU05-061, as per plat approved August 30, 2007, recorded September 10, 2007 under Auditor's File No. 200709100133, records of Skagit County, Washington.

Situate in the City of Mount Vernon, county of Skagit, State of Washington

Tax Parcel ID #: 8072-000-012-0000 (P126625)

**SUBORDINATION AGREEMENT**

This agreement dated for reference August 25, 2014 ("Subordination Agreement"), is made by and among: the SMALL BUSINESS ADMINISTRATION, an agency of the United States of America ("SBA"); Wells Fargo Bank ("Lender"); and Dick's Restaurant Supply North RE, LLC ("Owner").

**RECITALS**

SBA is the holder and beneficiary of a deed of trust executed by Owner dated August 20, 2011, which was recorded on August 27, 2011 under recording number 201008270139.

This deed of trust together with an assignment of leases and cash collateral, ("SBA Security Instrument") was pledged to secure a note in the sum of \$1,229,000.00 in favor of Northwest Business Development Association ("CDC"), which evidences a loan made by

the CDC to Dick's Restaurant Supply North RE, LLC ("Borrower") under SBA's 504 Loan Program ("SBA Loan").

Owner has also executed, or is about to execute, a deed of trust dated \_\_\_\_\_ in favor of Lender, which shall be recorded concurrently herewith.

This deed of trust together with an assignment of leases and cash collateral ("Lender's Security Instrument") secures a note in a sum not to exceed \$1,378,000.00 dated \_\_\_\_\_, which evidences a loan to the Owner made by the Lender ("Lender Loan").

Lender has requested that SBA's lien position on the real and personal property described in the SBA Security Instrument ("Property") be subordinated to the lien position of Lender's Security Instrument. SBA is willing to do so provided that it retains its priority with regard to all other legal and equitable interests in the Property.

#### AGREEMENT

In consideration of the mutual benefits to the parties and to induce Lender to make the Lender Loan, it is hereby agreed as follows:

(1) Use of Lender Loan Proceeds. 100% of the proceeds of the Lender Loan shall be used for the following described purpose(s): Refinance senior lien. Any other use of the proceeds, except to pay necessary, reasonable and customary closing costs, shall void this Subordination Agreement.

(2) Lender Warranty. Lender would not make the Lender Loan without this Subordination Agreement.

(3) Subordination of SBA Lien Priority. Lender's Security Instrument, and any renewals or extensions thereof, shall be a lien on the Property prior to the lien of SBA's Security Instrument.

(4) Hold Harmless Agreement. Except as expressly provided herein, this Subordination Agreement shall not operate to, or be construed to, alter the priority of SBA's Security Instrument with regard to any legal or equitable interest in the Property. Owner and Lender shall hold SBA harmless from any impairment of its lien (with regard to any third party) which is occasioned by this Subordination Agreement.

(5) Required Signatures. This Subordination Agreement is void if it is not duly executed by SBA, Lender, and Owner, or does not contain the written approval of all other individuals and legal entities with direct or contingent liability for repaying the SBA Loan such as the Borrower and all guarantors.



(6) Lender Compliance with SBA 504 Loan Program Requirements. All documents evidencing the Lender Loan and Lender's Security Instrument must comply with SBA 504 Loan Program requirements, including but not limited to those identified in the following subparagraphs, and, in the event one or more of the provisions in such documents do not comply with these requirements, Lender waives any right to enforce such provisions while the SBA Loan has any unpaid balance.

(a) No Open-Ended Features and No Future Advances. The Lender Loan must not be open-ended. The Lender may not make future advances except for reasonable costs of collection, maintenance, and protection of the Lender Loan and Lender's Security Instrument.

(b) No Early Call or Demand Provisions. The documents evidencing the Lender Loan and the Lender's Security Instrument must not contain an early call feature or any provision that allows Lender to make demand other than when there has been a material default under the terms of the Lender Loan documents, such as failure to make timely payments, failure to pay taxes when due, or violation of any financial covenants that would cause a prudent lender to believe that the prospect of payment or performance of the Lender Loan is impaired.

(c) No Cross-Collateralization. The Property covered by Lender's Security Instrument must only secure the Lender Loan, and the Property must not, currently or in the future, be used as security for any other financing provided by Lender that purports to be in a superior position to that of the SBA Loan, unless authorized in writing by SBA.

(d) No Cross-Default. During the term of the SBA Loan, Lender must not exercise any cross-default, "deem at-risk," or any other provisions in the documents evidencing the Lender Loan or Lender's Security Instrument that allow Lender to make demand on the Lender Loan prior to maturity unless the Lender Loan is in material default.

(e) Reasonable Interest Rate. The Lender Loan must have a reasonable interest rate that must not exceed the maximum interest rate for loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Subordination Agreement.

(7) Notice of Default on Lender Loan. Lender must provide CDC and SBA with written notice of any material default on the Lender Loan or Lender's Security Instrument (referencing the SBA Loan number on page one of this Agreement) within thirty (30) days after the expiration of any cure period. Lender must also provide CDC and SBA with written notice of its intent to enforce collection of the Lender Loan at least sixty (60) days prior to initiating any judicial or non-judicial proceedings against the Borrower, guarantors or the Property. Notice under this Subordination Agreement shall be deemed to have been given when sent to the CDC at the following address: 9019 E. Appleway Blvd.,



Suite 200, Spokane Valley, WA 99212; and to SBA at the following address: 801 R Street, Suite 101, Fresno California.

(8) Limitation on Default Interest Rate on Lender Loan. In the event of default on the Lender Loan, Lender may not escalate the interest rate to a rate greater than the maximum rate published by SBA in the Federal Register and in effect as of the date of this Subordination Agreement. If SBA purchases the Lender Loan or note, SBA will only pay the interest rate on the note in effect before the date of default.

(9) Marshalling of Collateral for Lender Loan. In the event Lender decides to liquidate the Lender Loan, if Lender has taken additional collateral as security for the Lender Loan, Lender must liquidate the additional collateral prior to foreclosing its Security Interest in the Property, and must apply the proceeds from liquidation of the additional collateral to the Lender Loan prior to the proceeds from liquidation of the Property. Provided, however, that the Lender shall not be required to liquidate the additional collateral if it is not commercially reasonable to do so, (e.g., the additional collateral has insufficient value to justify the cost of collection) and Lender provides written justification for not liquidating the additional collateral in the 60 day notice it is required to provide the CDC and SBA prior to foreclosing its Security Interest in the Property.

(10) Subordination of Default Charges to SBA Loan.

(a) The term "Default Charges" includes, but is not limited to, prepayment penalties, as well as late fees, escalated interest, and other charges after default on the Lender Loan.

(b) To the extent the Lender's Security Instrument secures any amounts attributable to Default Charges, the Lender's Security Instrument is and will be subordinate to SBA's Security Instrument. This subordination applies only to CDC and SBA and their successors and assigns, and shall not inure to the benefit of Borrower or any guarantor of the Lender Loan.

(c) In the event of default on the Lender Loan, CDC or SBA may bring the Lender Loan current or acquire the Lender Loan including Lender's Security Instrument. Lender agrees that in either of these circumstances, the amount to bring the Lender Loan current or the purchase price of the Lender Loan will be net of all amounts attributable to Default Charges subordinated to the SBA Mortgage. Lender further agrees that if it receives any amounts attributable to Default Charges, Lender holds such funds in trust for SBA and will immediately remit them to SBA.

(d) If Lender sells, or intends to sell the note evidencing the Lender Loan:



(1) If the Lender Loan is not in default, within 15 calendar days of the sale Lender must provide CDC and SBA with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received an executed copy of this Subordination Agreement.

(2) If the Lender Loan is in default and the Lender intends to sell the note as part of its liquidation strategy, Lender must provide the CDC and SBA with the option to purchase the note at the same price offered by any potential purchaser, net any Default Charges. SBA shall have 45 calendar days from receipt of the notice to exercise its option to purchase the note. If SBA does not exercise its option and the Lender sells the note, within fifteen calendar days of the sale the Lender must provide CDC and SBA with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received an executed copy of this Subordination Agreement.

(11) Subordination of Swap Agreement Costs to SBA Loan. If the Lender Loan documents contain a swap component or hedging contract ("Swap Agreement"), all costs associated with the Swap Agreement, (which may be termed swap fees, termination fees, default fees), or other related fees, shall be subordinate to the amounts secured by SBA's Security Instrument.

(12) Cooperation in Event of Liquidation. In the event either the Lender Loan or SBA Loan is declared in default, the parties agree to liquidate the Property in a commercially reasonable and cooperative manner. For example, Lender agrees to: (a) accept a U.S. Treasury check(s) from SBA or CDC to facilitate SBA's liquidation strategy, including, for example, purchase of the Lender Loan; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement on the Lender Loan; (c) to provide CDC and SBA, at no charge (except for reasonable charges for photocopies) with copies of any appraisal, environmental investigation, title examination or searches conducted by or for the Lender; and (d) provide any other information about Borrower or the Lender Loan requested by CDC and SBA.

(13) Lender Waiver of Right to Indemnification by SBA or CDC. If the Lender Loan documents contain provisions granting Lender the right to indemnification by subsequent owners of the Property, Lender waives its right to enforce such provisions against SBA and CDC in the event SBA or CDC acquires title to the Property through foreclosure, acceptance of a deed in lieu of foreclosure, or otherwise.

(14) No Implied Third Party Beneficiaries. The parties agree that this Subordination Agreement shall not grant any right, benefit, priority, or interest to any third party, including but not limited to the SBA Loan Borrower or guarantor(s).

(15) Successors and Assigns. This Subordination Agreement shall bind and inure to the benefit of the respective parties and their successors and assigns, including any



party acquiring the Lender Loan and Lender's Security Instrument by sale, assignment, or other transfer from Lender. Lender agrees that SBA may assign this Subordination Agreement, and waives all rights to contest such assignment.

(16) Federal Law. When SBA is the holder of the note evidencing the SBA Loan, this Subordination Agreement and all related loan documents shall be construed in accordance with federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. Lender may not claim or assert against SBA any local or state law to deny any obligation of the Borrower, or defeat any claim of SBA with respect to the SBA Loan.

(17) Termination. This Subordination Agreement will terminate upon payment in full of either the Lender Loan or the SBA Loan and all costs related thereto.

(18) Counterparts. This Subordination Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

(19) Validity of Provisions. In the event that any provision of this Subordination Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Subordination Agreement shall remain valid and enforceable.

(20) Authority to Execute Subordination Agreement. The persons signing below certify that they have been duly authorized to execute this Subordination Agreement on behalf of their respective party.



201409220164

U.S. SMALL BUSINESS ADMINISTRATION  
BY \_\_\_\_\_, its Attorney-In-Fact

By: Michelle Serrano  
Supervisor



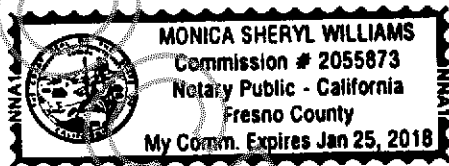
State of California  
County of Fresno

On 6-14-14 before me, Monica Sheryl Williams, notary public, personally appeared Michelle Serrano, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Monica Sheryl Williams



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Dick's Restaurant Supply North RE, LLC  
A Washington limited liability company

*Chad O. Johnstun*

Chad O. Johnstun, Distribution Manager/Managing Member

*Chad O. Johnstun*

Chad O. Johnstun, Trustee on behalf of the  
Chad Johnstun Gift Trust, Member

*Chad O. Johnstun*

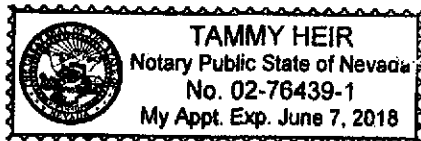
Chad O. Johnstun, Trustee on behalf of the  
Johnstun Family Trust, Member

Nevada TX

STATE OF WASHINGTON )  
County of Skagit CLARK TX ) SS.

I certify that I know or have satisfactory evidence that Chad O. Johnstun signed this instrument and acknowledged it as Managing Member of Dick's Restaurant Supply North RE, LLC, a Washington limited liability company and Trustee of the Chad Johnstun Gift Trust dated 03/01/2006 and the Johnstun Family Trust dated XXXX, Members of Dick's Restaurant Supply North RE, LLC, a Washington limited liability company to be the free and voluntary act, of such limited liability company, for the uses and purposes mentioned in the instrument.

DATED: September 18, 2014.



*Tammy Heir*  
NOTARY PUBLIC in and for the State  
of NV, residing at Las Vegas, NV  
My appointment expires: 6-7-18



Consented to and approved by:

Dick's Restaurant Supply North RE, LLC  
A Washington limited liability company

*Chad O. Johnstun*

Chad O. Johnstun, Distribution Manager/Managing Member

*Chad O. Johnstun*

Chad O. Johnstun, Trustee on behalf of the  
Chad Johnstun Gift Trust, Member

*Chad O. Johnstun*

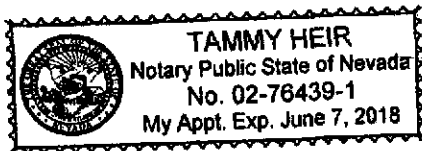
Chad O. Johnstun, Trustee on behalf of the  
Johnstun Family Trust, Member

Nevada (TA)

STATE OF WASHINGTON )  
County of Skagit (CLACK TA) ) ss.

I certify that I know or have satisfactory evidence that Chad O. Johnstun signed this instrument and acknowledged it as Managing Member of Dick's Restaurant Supply North RE, LLC, a Washington limited liability company and Trustee of the Chad Johnstun Gift Trust dated 03/01/2006 and the Johnstun Family Trust dated XXXX, Members of Dick's Restaurant Supply North RE, LLC, a Washington limited liability company to be the free and voluntary act, of such limited liability company, for the uses and purposes mentioned in the instrument.

DATED: September 18, 2014.



*Tammy Heir*

NOTARY PUBLIC in and for the State  
of NV, residing at Las Vegas, NV  
My appointment expires: 6-7-18



201409220164

The undersigned Guarantor(s) join in and consent to all the terms of this agreement and acknowledge that it does not alter their liability to the SBA. The Guarantor(s) acknowledge that SBA has not agreed to release them from any of their obligations.

Dick's Restaurant Supply North, LLC  
a Washington limited liability Company

Chad O. Johnston  
Chad O. Johnston, Distribution Manager/Managing Member

Chad O. Johnston  
Chad O. Johnston, Trustee on behalf of the  
Chad Johnston Gift Trust, Member

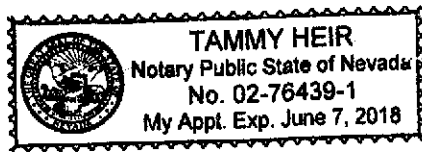
Nevada (TK)

STATE OF WASHINGTON

County of Clark (TK) ss.

I certify that I know or have satisfactory evidence that Chad O. Johnston signed this instrument and acknowledged it as Managing Member of Dick's Restaurant Supply North, LLC, a Washington limited liability company and Trustee of the Chad Johnston Gift Trust dated 03/01/2006, Members of Dick's Restaurant Supply North, LLC, a Washington limited liability company to be the free and voluntary act, of such limited liability company, for the uses and purposes mentioned in the instrument.

DATED: September 18, 2014.



Tammy Heir  
NOTARY PUBLIC in and for the State  
of NV, residing at Las Vegas, NV  
My appointment expires: 6-7-18



CHAD JOHNSTUN GIFT TRUST

*Chad O. Johnston*

CHAD O. JOHNSTUN, Trustee, on behalf  
Of CHAD JOHNSTUN GIFT TRUST, Member

*Nevada* (TX)  
STATE OF ~~WASHINGTON~~ )  
) ss.  
County of ~~Skagit~~ *Clark* (TX)

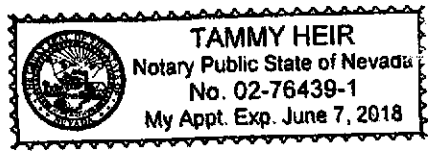
I certify that I know or have satisfactory evidence that CHAD O. JOHNSTUN signed this instrument as a TRUSTEE on behalf of CHAD JOHNSTUN GIFT TRUST, which is a member of DICK'S RESTAURANT SUPPLY NORTH, LLC, oath they stated it to be the free and voluntary act of such limited liability company, for the uses and purposes mentioned in the instrument.

DATED: September 18, 2014

*Tammy Heir*

*Nevada*  
(TX)

NOTARY PUBLIC in and for the State  
of ~~Washington~~, residing at *Las Vegas, NV*  
My appointment expires: 6-7-18



Dick's Restaurant Supply Eastside, Inc.  
a Washington corporation

*Edward O. Johnston*

Edward O. Johnston, President

*Edward O. Johnston*

Edward O. Johnston, Trustee on behalf of the  
Johnstun Gift Trust, Member

*Chad O. Johnston*

Chad O. Johnston, Trustee on behalf of the  
Chad Johnston Gift Trust, Member

Nevada (TK)

STATE OF WASHINGTON

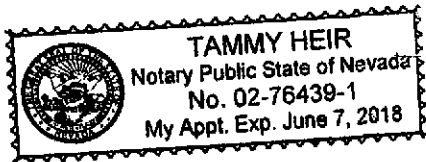
County of ~~Skagit~~ Clark (TA) ss.

I certify that I know or have satisfactory evidence that Edward O. Johnston signed this instrument and acknowledged it as President of Dick's Restaurant Supply Eastside Inc., a Washington corporation and Chad O. Johnston, signed this instrument and acknowledged it as Trustee of the Chad Johnston Gift Trust dated 03/01/2006 and the Johnstun Gift Trust dated XXXXX, Members of Dick's Restaurant Eastside Inc., a Washington corporation to be the free and voluntary act, of such corporation, for the uses and purposes mentioned in the instrument.

DATED: September 18, 2014.

*Tammy Heir*

NOTARY PUBLIC in and for the State  
of NV, residing at Las Vegas, NV  
My appointment expires: 6-7-18



Dick's Restaurant Supply of Washington Inc,  
a Washington corporation

Edward O. Johnston  
Edward O. Johnston, President

Chad O. Johnston  
Chad O. Johnston, Trustee on behalf of the  
Johnstun Family Trust, Member

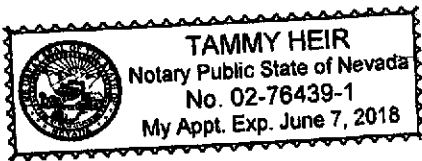
Nevada (M)  
STATE OF WASHINGTON )  
County of Skagit Clark (M) ss

I certify that I know or have satisfactory evidence that Edward O. Johnston signed this instrument and acknowledged it as President of Dick's Restaurant Supply of Washington, Inc., a Washington corporation and Chad O. Johnston signed this instrument and acknowledged it as Trustee of the Johnstun Family Trust dated XXXXX, Member of Dick's Restaurant Supply of Washington, Inc., a Washington corporation to be the free and voluntary act, of such corporation, for the uses and purposes mentioned in the instrument.

DATED September 18, 2014.

Tammy Heir

NOTARY PUBLIC in and for the State  
of NV, residing at Las Vegas, NV  
My appointment expires: 6-7-18



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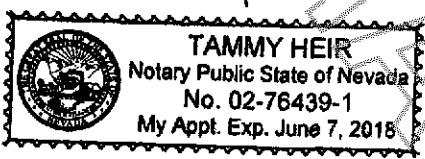
\$159.00  
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Chad O. Johnstun  
Chad O. Johnstun

Nevada (TK)  
STATE OF WASHINGTON )  
County of Clark ) ss.

I certify that I know or have satisfactory evidence that Chad O. Johnstun signed this instrument on oath and stated that he/she is authorized to execute the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: September 18, 2014.



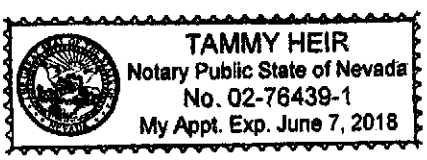
Tammy Heir  
NOTARY PUBLIC in and for the State of NV, residing at Las Vegas, NV  
My appointment expires: 6-7-18

Edward O. Johnstun  
Edward O. Johnstun

STATE OF Nevada )  
County of Clark ) ss.

I certify that I know or have satisfactory evidence that Edward O. Johnstun signed this instrument on oath and stated that he/she is authorized to execute the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: September 18, 2014.



Tammy Heir  
NOTARY PUBLIC in and for the State of NV, residing at Las Vegas, NV  
My appointment expires: 6-7-18



**EXHIBIT A -- "LEGAL DESCRIPTION"**

Lot 12, "SOUTH MOUNT VERNON BUSINESS PARK BINDING SITE PLAN",  
Mount Vernon Land Use No. LU05-061, as per plat approved August 30, 2007,  
recorded September 10, 2007 under Auditor's File No. 200709100133, records of  
Skagit County, Washington.

Situate in the City of Mount Vernon, county of Skagit, State of Washington



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