

After Recording Return To:  
Peter A. Deming  
Attorney at Law  
P.O. Box 68  
Kent, WA 98035



200710020090  
Skagit County Auditor

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126909-5A

SUBORDINATION AGREEMENT

Reference # of Related Documents: 200710020085 ; 200710020087

Grantor: (1) ANACORTES CHOCOLATE FACTORY LLC  
(2) Sam Yam  
(3) Sik-Cheung Oeng

Grantee: (1) Ameritrust CDC

Abbreviated Legal: Ptn Lots 1, 2 & 3, Blk 8, First Add. to Ana.

Tax Parcel ID No.: 3788-008-003-0002 (Prop. ID No. P57213); 3788-008-005-0000  
(Prop. ID No. P57215)

THIS AGREEMENT is made and entered into as of the 25th day of September, 2007, by ANACORTES CHOCLATE FACTORY LLC, a Washington limited liability company, ("Landlord"), whose address is 2302 Commercial Avenue, Anacortes, WA 98221 and SAM YAM and SIK-CHEUNG OENG, husband and wife, whose address is 2302 Commercial Avenue, Anacortes, Washington 98221, (hereinafter "Tenant").

WITNESSETH:

WHEREAS, AMERITRUST CDC, a Washington nonprofit corporation, ("Mortgagee"), whose address is 1420 5th Avenue, Suite 2200, Seattle, Washington 98101 has agreed to make a mortgage loan in the amount of **Three Hundred Twenty Eight Thousand and No/100 Dollars (\$328,000.00)** to Landlord, repayment of which is to be secured by a Deed of Trust or Mortgage (herein referred to as "Mortgage") on real estate (the "Premises") legally described as:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN; and

WHEREAS, the Mortgage is to be recorded in the county where the Premises are situate; and  
Recorded Under Auditor File # 200710020085

WHEREAS, Tenant is the present lessee under a Lease, dated August 1, 2007, as amended from time to time, initially made by Landlord demising all or a portion of the Premises (said Lease and all amendments thereto are hereafter referred to as the "Lease"); and  
Recorded Under Auditor File # 200710020087

WHEREAS, as a condition precedent to Mortgagee's disbursement of loan proceeds, Mortgagee has required that Tenant subordinate the Lease and its interest in the Premises in all respects to the lien of the Mortgage; and

WHEREAS, it will be of substantial benefit to Tenant for Mortgagee to disburse the loan proceeds; and

WHEREAS, Mortgagee is disbursing the loan proceeds in reliance upon the agreements contained in this Agreement.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, it is hereby agreed as follows:

1. **SUBORDINATION**. The Lease, and the rights of Tenant in, to or under the Lease and the Premises, are hereby subjected and subordinated and shall remain in all respects and for all purposes subject, subordinate and junior to the lien of the Mortgage, and to the rights and interest of the from time to time holder of the Mortgage, as fully and with the same effect as if the Mortgage had been duly executed, acknowledged and recorded, and the indebtedness secured thereby had been fully disbursed prior to the execution of the Lease or possession of the Premises by Tenants, or its predecessors in interest.

2. **RELIANCE BY MORTGAGEE**. The parties are executing this instrument in order to induce Mortgagee to disburse the indebtedness secured by the Mortgage, and the parties further agree that the disbursement by Mortgagee of all or any part of the indebtedness shall constitute conclusive reliance by Mortgagee upon this Agreement and the provisions hereof and the subordination effected hereby.

3. **ATTORNMEN AT MORTGAGEE'S OPTION**. At Mortgagee's sole option, if the interest of Landlord shall be transferred to and owned by Mortgagee by reason of foreclosure or other proceedings brought by it in lieu of or pursuant to a foreclosure, or by any other manner, Mortgagee succeeds to the interest of the landlord under the Lease, Tenant shall be bound to Mortgagee under all of the terms, covenants, and conditions of the Lease for the



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balance of the term thereof remaining, and any extensions or renewals thereof which may be affected in accordance with any option therefore in the Lease, with the same force and effect as if Mortgagee were the landlord under the Lease. Tenant does hereby agree to attorn to Mortgagee as its landlord, said attornment to be effective and self-operative immediately upon Mortgagee succeeding to the interest of the landlord under the Lease without the execution of any further instruments on the part of any of the parties hereto. Except as required under any Assignment of Leases and/or Rents, Tenant shall be under no obligation to pay rent to Mortgagee until Tenant receives written notice from Mortgagee that it has succeeded to the interests of the Landlord under the Lease. The respective rights and obligations of Tenant to Mortgagee 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 those set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

However, Mortgagee, or any subsequent purchaser, shall not be required to recognize the rights of Tenants under the Lease and the rights of Tenants thereunder, including any options thereunder, shall, at the sole election of and upon notice by Mortgagee, cease and terminate upon acquisition of title to or upon possession of the Premises by Mortgagee, or its successors and assigns, including any purchaser at a foreclosure sale.

4. **MORTGAGEE NOT BOUND BY CERTAIN ACTS OF LANDLORD.** If Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall not be liable for any act or omission of any prior landlord (including Landlord herein) nor be subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord herein); nor bound by any rent or additional rent which Tenant might have paid for more than the then current installment nor be bound by any amendment or modification of the Lease made without its consent.

5. **NOTICE.** In the event that Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Mortgagee, and Mortgagee shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including and without limitation, any action in order to terminate, rescind or avoid the Lease or to withhold any rental thereunder, for a period of ten (10) days after receipt of such written notice thereof by Mortgagee with respect to any such default capable to being cured by the payment of money and for a period of thirty (30) days after receipt of which written notice thereof by Mortgagee with respect to any other such default (provided, that in the case of any default which cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30)-day period because of the nature of such default or because Mortgagee requires time to obtain possession of the Premises in order to cure the default, if Mortgagee shall proceed promptly to attempt to obtain possession of the Premises, where possession is required, and to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be



extended for such period as may be necessary to complete the curing of the same with diligence and continuity).

6. **PURCHASE OPTIONS.** Any option or rights contained in the Lease to acquire title to the Premises are hereby made subject and subordinate to the rights of Mortgagee under the Mortgage and any acquisition of title to the Premises made by Tenant during the term of the Mortgage shall be made subordinate and subject to the Mortgage.

7. **SUCCESSORS AND ASSIGNS.** This Agreement and each and every covenant, agreement and other provisions hereof shall be binding upon the parties hereto and their heirs, administrators, representatives, successors and assigns, including without limitation each and every from time to time holder of the Lease or any other person having an interest therein and shall inure to the benefit of Mortgagee and its successors and assigns.

8. **CHOICE OF LAW.** This Agreement is made and executed under and in all respects is to be governed and construed by the laws of the state where the Premises are situate.


9. **CAPTIONS AND HEADINGS.** The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

**IN WITNESS WHEREOF,** the parties hereto have each caused this Agreement to be executed as of the date first above.

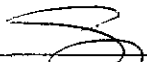
[Signatures on Next Page]

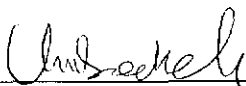


Landlord:  
ANACORTES CHOCOLATE FACTORY LLC

By:   
Sam Yam, Operating Manager

Tenant:  
SAM YAM and SIK-CHEUNG OENG,  
husband and wife

  
Sam Yam, Individually/Sole Proprietor

  
Sik-Cheung Oeng, Individually/Sole Proprietor

[Notary's Acknowledgments on Next Page]




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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that SAM YAM and SIK-CHEUNG OENG are the persons who signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 25th day of September, 2007.



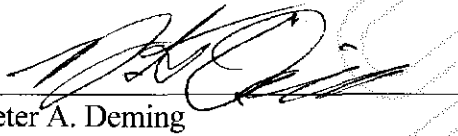
  
Peter A. Deming  
NOTARY PUBLIC in and for the State  
of Washington, residing at Kent.  
My appointment expires: May 7, 2008

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that SAM YAM signed this instrument and acknowledged it as the OPERATING MANAGER of ANACORTES CHOCOALTE FACTORY LLC, a Washington limited liability company, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED this 25th day of September, 2007.



  
Peter A. Deming  
NOTARY PUBLIC in and for the State  
of Washington, residing at Kent.  
My appointment expires: May 7, 2008



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EXHIBIT "A"  
LEGAL DESCRIPTION

PARCEL A:

THE NORTH 70 FEET OF LOTS 1, 2 AND 3, BLOCK 8, "FIRST ADDITION TO THE CITY OF ANACORTES, SKAGIT CO., WASHINGTON", AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 24, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE CITY OF ANACORTES, COUNTY OF SKAGIT, STATE OF WASHINGTON.

PARCEL B:

LOTS 4 AND 5, BLOCK 8, "FIRST ADDITION TO THE CITY OF ANACORTES, SKAGIT CO., WASHINGTON", AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 24, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE CITY OF ANACORTES, COUNTY OF SKAGIT, STATE OF WASHINGTON.



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