Book 2008 Page 89
Document 2008 89 Type 04 008 Pages 10
Date 1/10/2008 Time 10:36:11AM
Rec Amt $52.00

DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

2007-3398

FOR RECORDER'S USE ONLY

Prepared By: John Steen, Wells Fargo Bank, National Association, 302 Main Street, Cedar Falls, IA 50613, (319) 273-8811

ADDRESS TAX STATEMENT:
Ryan Cooperative, 605 Franklin Street, Ryan, IA 52330

RECORDATION REQUESTED BY:
Wells Fargo Bank, National Association; Cedar Falls Main; 302 Main Street; Cedar Falls, IA 50613

ENV. ⊗ **WHEN RECORDED MAIL TO:**
Wells Fargo Bank, National Association, Attn: Collateral Processing - Rep III, 730 2nd Avenue South, Suite 1000, Minneapolis, MN 55479

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE COLLATERAL BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ESTOPPEL CERTIFICATE

The names of all Grantors (sometimes "Landlord") can be found on page 1 of this Agreement. The names of all Grantees (sometimes "Lender") can be found on page 1 of this Agreement. The property address can be found on page 2 of this Agreement. The legal description can be found on page 2 of this Agreement. The related document or instrument number can be found on page 2 of this Agreement.

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT dated November 12, 2007 ("Agreement"), is made and executed among Ryan Cooperative, whose address is 605 Franklin Street, Ryan, IA 52330 ("Landlord"); Ryan Grain Storage, L.L.C., whose address is 605 Franklin Street, Ryan, IA 52330 ("Tenant"); and Wells Fargo Bank, National Association, Cedar Falls Main, 302 Main Street, Cedar Falls, IA 50613 ("Lender").

SUBORDINATED LEASE. Tenant and Landlord have executed a lease dated March 23, 2007 of the property described herein which was recorded as follows: Recorded in the Office of the Delaware County Recorder on July 27, 2007, as Document Number 2007 3392. (the "Lease"). The following information is the summary of the basic terms and conditions of the Subordinated Lease: Memorandum of Lease dated March 23, 2007, between Lessor and Lessee, of premises located at Ryan, Iowa ("Lessor's Property").,

REAL PROPERTY DESCRIPTION. The Lease covers a portion of the following described real property (the "Real Property") located in Delaware County, State of Iowa:

Parcel G, part of the Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) of Section Thirteen (13), Township Eighty-seven North (T87N), Range Six West (R6W) of the Fifth Principal Meridian, City of Ryan, Delaware County, Iowa.

The Real Property or its address is commonly known as 605 Franklin Street, Ryan, IA 52330.

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

All indebtedness now or hereafter secured by the deed of trust or mortgage evidencing the Lender's Lien, including without limitation, all principal, interest and other amounts, costs and expenses payable under any note or related documents, and any renewals of, extensions of, modifications of, consolidations of and substitutions for any note or related documents.

LENDER'S LIEN. The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, dated July 27, 2007, from Landlord to Lender (the "Lender's Lien") and recorded in Delaware County, State of Iowa as follows:

Property recorded on July 31, 2007 as Document No. 2007 2452, Page 16 in the Office of the County Recorder, Delaware County, Iowa.

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 and all of Tenant's rights in the Real Property ("Lease Rights").

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

IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, LENDER, LANDLORD, AND TENANT HEREBY AGREE AS FOLLOWS:

ESTOPPEL CERTIFICATE. Tenant hereby certifies to and agrees with Lender that as of the date of this Agreement, Lender is relying on all of the following certifications and agreements of Tenant as consideration for Lender executing this Agreement:

(A) The Lease is in full force and effect and is the valid and binding obligation of Tenant, enforceable in accordance with its terms.

(B) All requirements for the commencement and validity of the Lease have been satisfied.

(C) Neither Tenant nor Landlord is in default under the Lease and no event has occurred and no

condition exists, which with the giving of notice, the passage of time, or both, would constitute a default by Tenant or Landlord under the Lease.

(D) There are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease and no claim by Tenant of any nature exists against Landlord under the Lease. All obligations of Landlord have been fully performed.

(E) None of the rent, which Tenant is required to pay under the Lease, has been prepaid, or will in the future be prepaid, more than one month in advance.

(F) The Lease shall not after the date of this Agreement be modified, terminated, or amended, without the prior written consent of Lender for any termination and each such amendment or modification. Any attempted modification, termination, or amendment without the prior written consent of Lender shall be void.

(G) Tenant has not assigned, mortgaged, sublet, encumbered or otherwise transferred any or all of its interest under the Lease and, during the term of the Loan, agrees to not assign, mortgage, sublet, encumber, or otherwise transfer any or all of its interest under the Lease without the prior written consent of Lender.

SUBORDINATION. Notwithstanding anything in the Lease to the contrary, the parties acknowledge and agree that the Lease and Lease Rights are and shall be subject and subordinate in right, interest and lien, and for all purposes, to Lender's Lien, and to all renewals, modifications, consolidations, replacements, and extensions thereof, and to any subsequent lien of the Lender with which Lender's Lien may be spread or consolidated, to the full extent of the principal sum and all other amounts secured thereby and interest thereon. Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender, and its successors and assigns, without the prior written consent of Lender.

NON-DISTURBANCE. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default of the Loan under the Note and/or under Lender's Lien unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action. If the Lease has not been terminated, then, when Lender succeeds to the interest of Landlord, the Lender shall not terminate or disturb Tenant's possession of Tenant's premises under the Lease, except in accordance with the terms of the Lease and this Agreement.

ATTORNMENT. If Lender shall succeed to the interest of the Landlord under the Lease, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to Lender, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Lender, any instrument or certificate which, in the sole judgment of Lender, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

NO LIABILITY FOR LENDER. Lender in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of annual base rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that

Tenant might have had against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

(A) Liable for any act or omission of or any claims against any prior landlord, including Landlord; or

(B) Subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord; or

(C) Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, including Landlord; or

(D) Bound by any amendment or modification of the Lease, or waiver of any of its terms, made without its consent; or

(E) Liable for any sum that any prior landlord, including Landlord, owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Lender; or

(F) Bound by any surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant; or

(G) Liable for any construction obligation of any prior landlord, including Landlord; or

(H) Liable for any breach of representation or warranty of any prior landlord, including Landlord.

NEW LEASE. If Lender shall succeed to the interest of the Landlord under the Lease, upon the written request of Lender to Tenant, Tenant shall execute and deliver to Lender a lease of the Real Property upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such transfer.

ACKNOWLEDGMENT AND AGREEMENT BY LANDLORD. Landlord, as landlord under the Lease, acknowledges and agrees for itself and its heirs, successors and assigns to each of the following:

(A) This Agreement does not in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Note, Lender's Lien or any other documents executed in connection with the Loan.

(B) In the event of a default under the Note, or any of the other documents executed in connection with the Loan, Landlord hereby consents to Tenant's attornment to Lender and, upon such event, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Lease.

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

Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement 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 Agreement, 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 attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including 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. Landlord also will pay any court costs, in addition to all other sums provided by law.

Authority. Any person who signs this Agreement on behalf of Landlord and Tenant represents and warrants that he or she has authority to execute this Agreement.

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

Counterparts. This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Iowa without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Iowa.

Notices. Any notice required to be given under this Agreement shall be given in writing, and, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement 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 Agreement 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 Agreement. No prior waiver by Lender, nor any course of dealing among Lender, Landlord, and Tenant shall constitute a waiver of any of Lender's rights or of any of Landlord's and/or Tenant's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, 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.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors. This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement.

NOTICE: THIS AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED

FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS. THIS AGREEMENT IS DATED NOVEMBER 12, 2007.

LANDLORD:

RYAN COOPERATIVE

By: _____
Ronald W Boss, President of Ryan Cooperative

By: _____
Patrick Neppl, General Manager of Ryan Cooperative

LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION

X _____
Authorized Officer

TENANT:

RYAN GRAIN STORAGE, L.L.C.

By: _____
Patrick Neppl, General Manager of Ryan Grain Storage, L.L.C.

CORPORATE ACKNOWLEDGMENT

STATE OF Iowa)
) SS
COUNTY OF Delaware)

On this 14th day of December, A.D., 20 07, before me, the undersigned Notary Public in said County and State, personally appeared **Ronald W Boss, President of Ryan Cooperative,** to me personally known, who, being by me duly sworn did say he or she is **authorized signer** of said corporation, that no seal has been procured by said corporation and that said instrument was signed on behalf of the said corporation by authority of its Board of directors and that said **Ronald W Boss** acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

NOTARIAL SEAL IOWA
JANE QUINT
Commission Number 707379
My Commission Expires
12-19-09

Jane Quint
Notary Public in the State of
Iowa

CORPORATE ACKNOWLEDGMENT

STATE OF Iowa)
) SS
COUNTY OF Delaware)

On this 14th day of December, A.D., 20 07, before me, the undersigned Notary Public in said County and State, personally appeared **Patrick Neppl, General Manager of Ryan Cooperative,** to me personally known, who, being by me duly sworn did say he or she is **authorized signer** of said corporation, that no seal has been procured by said corporation and that said instrument was signed on behalf of the said corporation by authority of its Board of directors and that said **Patrick Neppl** acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Jane Quint
Notary Public in the State of
Iowa

NOTARIAL SEAL IOWA
JANE QUINT
Commission Number 707379
My Commission Expires
12-19-09

LENDER ACKNOWLEDGMENT

STATE OF Iowa)
) **SS**
COUNTY OF Black Hawk)

On this 5th day of December, A.D., 20 07, before me, the undersigned Notary Public in said County and State, personally appeared John E. Steen and known to me to be the Vice President, authorized agent for **Wells Fargo Bank, National Association** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of **Wells Fargo Bank, National Association,** duly authorized by **Wells Fargo Bank, National Association** 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 **Wells Fargo Bank, National Association.**

By Claudette Myles **Residing at** Waterloo, Ia

Notary Public in and for the State of IA **My commission expires** 06/09/2009

CLAUDETTE MYLES
NOTARIAL SEAL - STATE OF IOWA
COMMISSION NUMBER 720180
MY COMMISSION EXPIRES 06/09/2009

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Iowa)
) **SS**
COUNTY OF Delaware)

On this 14th day of December, A.D., 20 07, before me, the undersigned Notary Public in said County and State, personally appeared **Patrick Neppl, General Manager of Ryan Grain Storage, L.L.C.**, to me personally known, who being by me duly sworn, did say that he or she is a member or designated agent of said limited liability company, and that the instrument was signed and sealed on behalf of the limited liability company by authority of the limited liability company and the member or designated agent acknowledged the execution of the instrument to be the voluntary act and deed of the limited liability company by it and by the member or designated agent voluntarily executed.

Jane Quint
Notary Public in the State of Iowa

NOTARIAL SEAL IOWA
JANE QUINT
Commission Number 707379
My Commission Expires
12-19-09

LASER PRO Lending, Ver. 5.38.10.001 Copr. Harland Financial Solutions, Inc. 1997, 2007. All Rights Reserved. - IA X:\LPROD\CFI\LPLIG216.FC TR-51947 PR-706