

11730

MORTGAGE

Vol. M09 Page 15971

CHICAGO TITLE CO.

APR - 2 1999

AT 8:00 AM

APR 27 1999

VOL 3851 PAGE 535

OFFICE OF THE
CLERK OF THE SUPERIOR COURT
SACRAMENTO COUNTY
CALIFORNIA
JAMES L. BALL
Recorder25
12
37pl

Recording Requested By:

Northwest Farm Credit Services, ACA

Return To:

Farm Credit Services - Salem
475 Cottage Street N. E., Suite 250
P. O. Box 1009
Salem, OR 97308

MTC 13916-47380-KR

Mail Tax Statements To:
Agricultural Resources
24011 Jabil Lane
Los Altos Hills, CA 94024AMERITITLE has recorded this
instrument by request as an accommodation only,
and has not examined it for regularity and sufficiency
of as to its effect upon the title to any real property
that may be described therein.

99 APR 26 P 3:26

Document Title(s)

AGREEMENT

AGREEMENT - 1

CIF/Note Nos. 36676-441 and -241

VOL 3851 PAGE 535

Return Address:

FCS - Salem
475 Cottage Street N.E., Suite 250
P.O. Box 1009
Salem, OR 97308

Agricultural Resources
Customer/Note Nos. 36676-441 and -241

AGREEMENT

THIS AGREEMENT (this "Agreement") is made effective as of March 25, 1999, by and among NORTHWEST FARM CREDIT SERVICES, ACA ("FCS"), AGRICULTURAL RESOURCES, SIERRA-CASCADE NURSERY, INC. ("SCN"), and DRISCOLL STRAWBERRY ASSOCIATES, INC. ("Driscoll").

WITNESSETH:

WHEREAS, Lender is making a new loan, Loan No. 36676-441 to Agricultural Resources and has an existing loan with Agricultural Resources (the "Loans");

WHEREAS, the Loans are evidenced respectively by Note dated March 25, 1999, and Note dated December 2, 1994, given by Agricultural Resources to Lender and are secured by, among other things, deeds of trust ("FCS Deeds of Trust") recorded or to be recorded in the real estate records of Klamath County, Oregon (the "Oregon property") and of Merced, California (the "California property") covering the property and improvements more fully described on Exhibit A hereto (collectively the "Property");

WHEREAS, Agricultural Resources, as lessor, and SCN, as lessee, have entered into lease agreements covering the Property (collectively the "Leases");

WHEREAS, SCN and Driscoll have entered or shall enter into certain subleases and related agreements whereby Driscoll and SCN have certain rights and duties concerning, among other things, the growing of strawberries on the Property or portions thereof (collectively the "SCN/Driscoll Agreements"), a memoranda of such subleases have been or shall be recorded in the official records of the counties in which the Property is located;

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Without limitation of any of the provisions of the FCS/Ag Resources Loan Documents or Leases, in the event that following an event of uncured default under FCS notes and related Loan Documents, Lender succeeds to the interest of Agricultural Resources or any successor thereto in the Property, then subject to the provisions of this Agreement the Leases shall be terminated upon FCS's providing written notice of termination to SCN and Driscoll, and the

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parties hereto agree as follows: (a) in no event shall FCS have any liability to SCN or Driscoll for any act or omission of any prior lessor under the Leases which occurs prior to the date FCS succeeds to the rights of Agricultural Resources under the Leases, and b) Driscoll, through its agents and employees, shall have the right, but not the obligation (i) to remain on the Property during the strawberry growing season (if at the time of notice a strawberry season is in progress on the Property) and to harvest the current strawberry crop from the Property; and (ii) to remove or destroy all Plants (as defined below) from the Property at the end of the growing season. Driscoll shall also have the right, but not the obligation, to send in men and equipment to remove or destroy all Plants which may regrow on the Property for one year after the later of the termination of the Lease(s) or the end of the current growing season. As used herein, "Plants" shall mean (a) all nursery stock plants delivered by Driscoll to SCN ("Nursery Stock Plants") and all parts thereof, including runners, (b) all flowers, blossoms, tissue and pollen from the Nursery Stock Plants, (c) all fruit and seeds from the Nursery Stock Plants, (d) all varieties of plants derived by the Nursery Stock Plants, including without limitation, all offspring, mutations and new varieties, and (e) all proprietary rights pertaining to each of the foregoing.

2. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.

3. All notices to be given under this Agreement shall be in writing and shall be deemed served upon receipt by the addressee if served personally or, if mailed, upon the first to occur of receipt or the refusal of delivery as shown on a return receipt, after deposit in the United States Postal Service certified mail, postage prepaid, or if sent by overnight courier, on the next business day after delivery to such courier service, addressed to the address of the parties appearing below, or, if sent by telegram, when delivered by or refused upon attempted delivery by the telegraph office. Such addresses may be changed by notice given in the same manner. If any party consists of multiple individuals or entities, then notice to any one of same shall be deemed notice to such party.

FCS Address: Northwest Farm Credit Services
475 Cottage Street, N.E.
Suite 120
P.O. Box 1009
Salem, OR 97308
Attn: Kristy Searles, Account Manager

Agricultural Resources
Address: Agricultural Resources
24011 Jabil Lane
Los Altos, CA 94024
Attn: Robert D. Murie, General Partner

SCN's Address: Sierra-Cascade Nursery, Inc.
472-715 Johnson Road
Susanville, CA 96130
Attn: Joseph R. Jertberg, President

Driscoll's Address: Driscoll Strawberry Associates, Inc.
345 Westridge Drive
Waterville, CA 95077-5045
Attn: L. Gary Gionnette

With a copy to: Driscoll Strawberry Associates, Inc.
345 Hemsted Drive, Ste. B.
Redding, CA 96002
Attn: Karen Chipley

4. It is expressly understood and agreed among the parties hereto that, except as described in the Loan Documents between Agricultural Resources and FCS, there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as herein set forth, and that this Agreement shall not be modified in any manner except by an instrument in writing and executed by the parties. Failure to exercise any right in one or more instances shall not be construed as a waiver of the right to strict performance.

5. The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof

6. In the event any party hereto requires the services of any attorney in connection with enforcing the terms of this Agreement, the substantially prevailing party will be entitled to a reasonable out of pocket sum for attorney's fees and court costs as determined by an arbitrator or court.

7. Each individual executing this Agreement for and on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said entity in accordance with a duly adopted resolution of said entity or in accordance with the bylaws of said entity, and that this Agreement is binding upon said entity in accordance with its terms.

8. Time is of the essence of this Agreement in each and every covenant and provision in which performance is a factor. This Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and assigns. As used herein, "FCS" shall include any subsequent holder of the Deeds of Trust.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

NORTHWEST FARM CREDIT SERVICES, ACA

By:

Christy Seales
Authorized Agent

**THIS DOCUMENT BEING SIGNED
IN COUNTERPART

AGRICULTURAL RESOURCES, a limited partnership

By:

Robert D. Murie
Robert D. Murie, General Partner

SIERRA-CASCADE NURSERY, INC.

By:

Joseph R. Jertberg, President

By:

Laura Jertberg, Secretary

DRISCOLL STRAWBERRY ASSOCIATES, INC.

By:

L. Gary Gionnette, President

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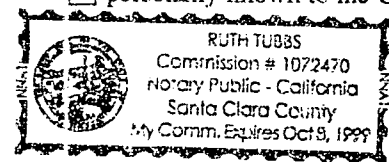
STATE OF CALIFORNIA

County of San Jose

On 3-24-99 before me, Ruth Tubbs Notary Public, personally
name and title of officer, e.g., "Jane Doe, Notary Public"

appeared Robert D. Murie
name of signer

☐ personally known to me OR ☒ proved to me on the basis of satisfactory evidence to be
the person whose name is subscribed to the within instrument
and acknowledged to me that he executed the same in his
authorized capacity, and that by his signature on the
instrument the person, or the entity upon behalf of which the
person acted, executed the instrument.



WITNESS my hand and official seal.

Ruth Tubbs
Signature of Notary

STATE OF CALIFORNIA

County of _____

On _____ before me, _____, personally
name and title of officer, e.g., "Jane Doe, Notary Public"

appeared Joseph R. Jertberg and Laura Jertberg
name of signer

☐ personally known to me OR ☒ proved to me on the basis of satisfactory evidence to be
the person whose name is subscribed to the within instrument
and acknowledged to me that he executed the same in his
authorized capacity, and that by his signature on the
instrument the person, or the entity upon behalf of which the
person acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

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CIF/Note Nos. 36676-441 and -241

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STATE OF CALIFORNIA,

COUNTY OF Stanislaus

} S.S.

On April 1, 1999

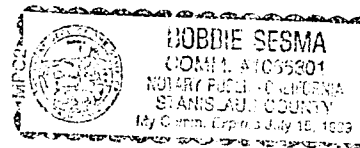
before me, Bobbie Sesma

a Notary Public in and for said County and State, personally

appeared KRISTY SEARLES * * * * *

personally known to me (or 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.

FOR NOTARY SEAL OR STAMP



WITNESS my hand and official seal.

Signature

Bobbie Sesma

STATE OF CALIFORNIA,

COUNTY OF

} S.S.

On

before me,

a Notary Public in and for said County and State, personally

appeared

personally known to me (or 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.

FOR NOTARY SEAL OR STAMP

WITNESS my hand and official seal.

Signature

Exhibit A to
Subordination Agreement

OREGON PROPERTY:

PARCEL 1

NW1/4NE1/4, S1/2NE1/4 and SE1/4 of Section 36, Township 37 South, Range 11 1/2 East of the Willamette Meridian, Klamath County, Oregon.

EXCEPTING THEREFROM:

A tract of land being a portion of Parcel 2 of "Minor Land Partition 15-90", Situated in the W1/2E1/2 and the NE1/4NW1/4 of Section 36, Township 37 South, Range 11 1/2 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the North 1/4 corner of said Section 36; thence North 89 degrees 05'03" East 1,323.78 feet to the East 1/16 corner common to Sections 25 and 36 and the West line of that tract of land owned by Mike and Donna Russell; thence South 00 degrees 21'57" West, along the said tract of land, 1,320.15 feet to a fence corner; thence the following courses and distances generally along an existing fence line; South 88 degrees 49'15" West 114.29 feet, South 00 degrees 14'09" East 1,318.34 feet, South 00 degrees 05'02" East 962.47 feet and South 89 degrees 25'11" West 1,132.76 feet; thence South 89 degrees 25'11" West, to a point on the center line of Squaw Flat road on the West boundary line of said Parcel 2, 26.9 feet more or less; thence the following courses and distances along said boundary; North 00 degrees 10'06" West 2,732.58 feet, along the arc of a curve to the left (radius equals 1,909.86 feet and central angle equals 05 degrees 00'00") 166.67 feet, North 05 degrees 10'06" West 546.22 feet and along the arc of a curve to the left (radius equals 954.93 feet and central angle equals 09 degrees 09'08") 152.54 feet, North 89 degrees 05'03" West 42.65 feet to the point of beginning, with bearings based on "Minor Land Partition 15-90".

Subject to: A 20 foot wide irrigation easement, the centerline of which is more particularly described as follows:

Beginning at a point on the South line of the above described tract of land, from which the Southeast corner of said Tract of land bears North 89 degrees 25'11" East 587.87 feet; thence North 31 degrees 11'49" East 1,132.14 feet to a point on the East boundary line of the said tract of land.

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PARCEL 2

W1/2NE1/4 and all that portion of the NW1/4SE1/4 of Section 1, Township 38 South, Range 11 1/2 East of the Willamette Meridian, Klamath County, Oregon, lying North of the center of the County Road running Easterly and Westerly through said tract as said County Road presently exists on the ground.

Tax Account Nos. 3711-V0000-07301;
3811-V0100-00800;
3811-V0100-00200;

CALIFORNIA PROPERTY:

PARCEL A:

Parcel 1 of parcel Map for McIntosh Properties filed July 15, 1993 in Vol. 75 of Parcel Maps at Page 11, of Merced County Records, and being a portion of Lots 440 and 441, Ballico Unit of the Delhi State Land Settlement.

EXCEPTING THEREFROM the property rights reserved to the State of California, as provided by the "Mineral Land Leasing Act of 1921", Statutes of 1921, page 404.

PARCEL B:

Lot 436 according to Map entitled "BALICO UNIT OF THE DELHI STATE LAND SETTLEMENT DELHI, MERCED COUNTY, CALIFORNIA", recorded December 28, 1922, in Book 8 of Maps, Pages 15 and 16, inclusive, Merced County Records.

EXCEPTING THEREFROM any portion thereof that may lie within the Southeasterly one-quarter of the Southwesterly one-quarter of Section 5, Township 6 South, Range 12 East, Mount Diablo Base and Meridian.

ALSO EXCEPTING THEREFROM the property rights reserved to the State of California, as provided by the "Mineral Land Leasing Act of 1921" Stats. 1921, Page 404.

PARCEL C:

Lot 437 according to the Map entitled, "BALICO UNIT OF THE DELHI STATE LAND SETTLEMENT DELHI, MERCED COUNTY, CALIFORNIA", recorded December 28, 1922 in Book 8 of Maps, pages 15 and 16, inclusive, Merced County Records.

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EXCEPTING THEREFROM any portion thereof that may lie within the Southeasterly one-quarter of the Southwesterly one-quarter of Section 5, Township 6 South, Range 12 East, Mount Diablo Base and Meridian.

ALSO EXCEPTING THEREFROM the property rights reserved to the State of California, as provided by the "Mineral Land Leasing Act of 1921" Stats. 1921, Page 404.

PARCEL D:

Lot 438 according to Map entitled, "BALLICO UNIT OF THE DELHI STATE LAND SETTLEMENT DELHI, MERCED COUNTY, CALIFORNIA", recorded December 28, 1922 in Book 8 of Maps, Pages 15 and 16, inclusive, Merced County Records.

EXCEPTING THEREFROM any portion thereof that may lie within the Southeasterly one-quarter of the Southwesterly one-quarter of Section 5, Township 6 South, Range 12 East, Mount Diablo Base and Meridian.

ALSO EXCEPTING THEREFROM the property rights reserved to the State of California, as provided by the "Mineral Land Leasing Act of 1921" Stats. 1921, Page 404.

PARCEL E:

Lot 439 according to Map entitled, "BALLICO UNIT OF THE DELHI STATE LAND SETTLEMENT DELHI, MERCED COUNTY, CALIFORNIA", recorded December 28, 1922 in Book 8 of Maps, Pages 15 and 16, inclusive, Merced County Records.

EXCEPTING THEREFROM any portion thereof that may lie within the Southeasterly one-quarter of the Southwesterly one-quarter of Section 5, Township 6 South, Range 12 East, Mount Diablo Base and Meridian.

ALSO EXCEPTING THEREFROM the property rights reserved to the State of California, as provided by the "Mineral Land Leasing Act of 1921" Stats. 1921, Page 404.

PARCEL F:

Lot 466 of a Map entitled "BALLICO UNIT OF THE DELHI STATE LAND SETTLEMENT", recorded in Volume 8, Official Plats, page 16, Merced County Records along with all those portions of the Southeast one quarter of the Southwest one quarter, the Southwest one-quarter of the Southeast one quarter of Section 5, Township 6 South, Range 12 East, Mount Diablo Base and Meridian and those portions of abandoned roads of said Map situated in the said one quarter of said Section that lie South of the Southerly line of Lots 440 and 441 of said Map. The herein described property being Northeasterly of a 60.00 foot wide County road now

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known as Santa Fe Drive as described in documents to the County of Merced, recorded in Book 84, Deeds, Page 382, and Book 1083, Deeds, Page 31, Merced County Records, and delineated on a Map entitled, "RIGHTS OF WAY SURVEY ON COUNTY ROAD NO. 29," in the file 6-1A-37, County Surveyors Office, and North of a 60.00 foot wide road now known as El Capitan Way, described in a document to Merced County recorded in Book 34, Deeds, page 510, Merced County Records, and Northeasterly of that portion of the 60.00 foot wide said Santa Fe Drive in said Southwest one quarter of Southeast one quarter as delineated on a Map entitled, SURVEY OF ROAD IN SEC. 5 6-12, filed in Merced County Surveyors file 5-120.

Assessment Nos.: 140 040 026, 140 040 027, 140 040 028, 140 040 032, 140 040 033, 140 040 034 and 140 040 037

STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Ameri title the 28th day
of April A.D. 1999 at 3:26 o'clock P. M. and duly recorded in Vol. M99
of Mortgages on Page 15971

FEE \$60.00

by Linda Smith, County Clerk

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CIF/Note Nos. 36676-441 and -241

End of Document

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