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2010-014520

Klamath County, Oregon



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Fee: \$87.00

Recording Requested by
and When Recorded Mail to:

White & Case, LLP
633 West Fifth Street, Suite 1900
Los Angeles, California 90071
Attn: Brenda T. Dieck, Esq.
Ref: 1448012/0011

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT, made as of December 23, 2010 (this "Agreement"), by and between DRISCOLL STRAWBERRY ASSOCIATES, INC., a California corporation ("Lessor"), owner of the land hereinafter described and SIERRA-CASCADE NURSERY, INC., a California corporation ("Lessee"), in favor of AMERICAN AGCREDIT, PCA, as Collateral Agent ("Beneficiary"), the beneficiary under the Trust Deed hereinafter described. Initially capitalized terms used herein, but not defined herein shall have the respective meanings set forth in the Trust Deed hereinafter described.

WITNESSETH:

WHEREAS, Lessor has executed a Line of Credit Instrument-Trust Deed, Security Agreement, Assignment of Rents and Leases, Financing Statement and Fixture Filing in favor of AmeriTitle Inc., as trustee, for the benefit of Beneficiary dated as of December 23, 2010 (as amended, supplemented and restated or otherwise modified from time to time, the "Trust Deed"), covering certain real property (the "Property") located in Klamath County, Oregon more particularly described in Exhibit A attached hereto and incorporated herein by this reference, to secure certain loans and other extensions of credit made by the Secured Parties pursuant to the Secured Debt Agreements, which Trust Deed has been or will be recorded in the Official Records of said County; and

WHEREAS, Lessor and Lessee have entered into that certain Agricultural Lease dated as of May 21, 2008, as amended by that certain First Amendment to Agricultural Lease dated as of May 26, 2010, covering the Property, for the term and the terms and conditions therein set forth (as amended or modified from time to time, collectively, the "Lease"); and

WHEREAS, for the purpose of completing the financing provided by the Secured Parties pursuant to the Secured Debt Agreements, the parties hereto desire to expressly subordinate the Lease and all rights of Lessee thereunder to the lien of the Trust Deed, it being a condition subsequent to the financing that the lien of the Trust Deed be unconditionally and at all times prior and superior to the leasehold interests and estates created by the Lease; and

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed as follows:


1. The parties hereto declare and acknowledge that Lessee hereby intentionally waives, relinquishes and subordinates the priority and superiority of the Lease and the rights and privileges of the Lessee thereunder, including without limitation, any purchase options, rights of first refusal, rights to any condemnation award and similar rights or interests of the Lessee under the Lease, in favor of the Trust Deed and any modifications and extensions thereof.
2. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Lease.
3. The agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.
4. This Agreement may be executed by the parties hereto in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.
5. This Agreement shall be governed by the laws of the State wherein the Property is situated.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

LESSOR:

DRISCOLL STRAWBERRY ASSOCIATES, INC.,
a California corporation

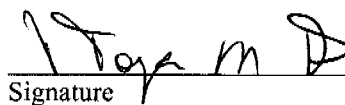
By: 
Name: M. Sean Martin
Title: Chief Financial Officer

State of California)
County of San Francisco) ss.
)

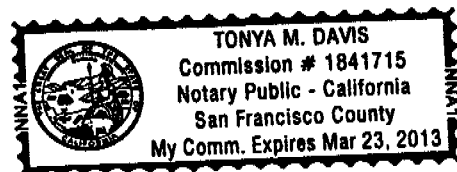
On 12.9.10, before me, Tonya M. Davis personally appeared M. Sean Martin, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), 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

(Seal)



[Additional Signature Pages Follow]

LESSEE:

SIERRA-CASCADE NURSERY, INC.,
a California corporation

By: Carl Robert Akeson
Name: Carl Robert Akeson
Title: Secretary

State of California)
County of Santa Cruz) ss.

On 12/9/10, before me, Jenice Santana, Notary Public, personally appeared Carl Robert Akeson 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.

Jenice Santana
Signature

(Seal)



[Additional Signature Page Follows]

BENEFICIARY:

AMERICAN AGCREDIT, PCA,
as Collateral Agent

By: *Gary Van Schuyver*
Name: Gary Van Schuyver
Title: Vice President

State of California)
County of Monterey) ss.

On 12/09/2010, before me, Mark S. Franco, Notary Public, personally appeared Gary Van Schuyver, 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] (Seal)
Signature

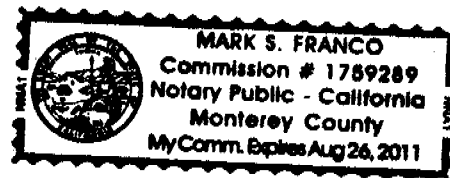


EXHIBIT A

Legal Description of Property

PARCEL A: (Orem)

PARCEL 1:

Parcels 2 and 3 of Land Partition 16-99, said Land Partition being situated in the NW1/4, SW1/4, W1/2 SE1/4 of Section 9 and N1/2 of Section 16, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon,

ALSO

Parcel 3 of Land Partition 124-06, said Land Partition being a replat of Parcel 1 of Land Partition 16-99 and including other property, said Land Partition being situated in the NE1/4 of Section 8 and in the NW1/4 of Section 9, all in Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 2:

The SE1/4 SE1/4 and that portion of Government Lot 8 lying Southerly of the USBR D-10 Lateral in Section 9, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 3:

The following described property in Section 16, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon:

Government Lot 13; that portion of Government Lot 9 in the NW1/4 SE1/4 and, all that portion of the W1/2 NE1/4 and of the NW1/4 lying Northerly and Easterly of Lost River, EXCEPT the following described portion thereof: That part of Government Lot 2 and of Government Lot 9 of Section 16 lying South of "J" Canal and Easterly of the new State Highway.

SAVING AND EXCEPTING from the above described property the following:

That portion of Government Lot 13 lying Easterly of a line lying 180 feet West of the East line of said lot.

Right of way conveyed to the Modoc Northern Railway Company by deed recorded in Volume 30, page 138, Deed Records of Klamath County, Oregon and recorded in Volume 34, page 528, Deed Records of Klamath County, Oregon.

Right of way conveyed to the Great Northern Railway Company by deed recorded in Volume 84 on pages 627 and 628, Deed Records of Klamath County, Oregon.

Right of way conveyed to the Great Northern Railway Company by deed recorded in Volume 85, page 322, Deed Records of Klamath County, Oregon.

Right of way conveyed to the United States of America for Lower Lost River Channel Improvement by deed recorded in Volume 261, page 168, Deed Records of Klamath County, Oregon.

AND ALSO EXCEPTING THEREFROM any portion of Parcel 3 of said Land Partition 16-99.

PARCEL 4:

The following described parcel of land in Section 8, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon:

All that portion of the E1/2 E1/2, Section 8, lying North and East of Lost River and South of the Southern Pacific Railroad right of way.

PARCEL 5:

The following described property in Section 9, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon:

That portion of the SW1/4 of said Section 9 lying Northerly and Easterly of Lost River and Southwesterly of the Southern Pacific Railroad right of way.

PARCEL 6:

That portion of Government Lot 1 in Section 16, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, lying Northerly of the USBR "J" Canal.

PARCEL 7:

All that portion of the S1/2 N1/2 SW1/4 and S1/2 SW1/4 of Section 10, and all that portion of Government Lots 2 and 3 of Section 15, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, which lies West of the West line of the 9-E-2 Drain which runs North and South through the SE1/4 SW1/4 and which lies West of the West line of said Drain extended North to the North line of the S1/2 NE1/4 SW1/4 and South to the South line of Government Lot 2 in said Section 15.

ALSO

All that portion of the SE1/4 SW1/4 lying East of the 9-E-2 Drain in Section 10, EXCEPT THEREFROM the North 351 feet thereof and that portion of Lot 2, in Section 15, lying East of the 9-E-2 Drain and North of the North right of way line of the "J" Canal, all being in Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

ALSO

That portion of the S1/2 N1/2 SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, which lies Easterly of the Northerly extension of the East line of the 9-E-2 Drain which runs North and South through the SE1/4 SW1/4 of said Section 10.

EXCEPTING THEREFROM that portion thereof in Wilson Road.

ALSO

All that portion of the property in the S1/2 NE1/4 SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian in Klamath County, Oregon, not previously granted in the deeds to Orem & Son recorded 11/28/77 in Volume 77, page 23045, and recorded March 10, 1970 in Volume M70, page 1936, all in Microfilm Records of Klamath County, Oregon, lying within the boundaries of the area that would be included in the USBR 9-E-2 Drain if the West and East lines of said drain were extended North to the North line of said S1/2 NE1/4 SW1/4 of Section 10.

AND EXCEPTING THEREFROM any portion thereof lying South of the USBR Canal in the NW1/4 of Section 15, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 8

A tract of land situated in the N1/2 SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, described as follows:

Beginning at the NW corner of the S1/2 N1/2 SW1/4 of said Section 10; thence East along the North line of said S1/2 N1/2 SW1/4 to the East line of the SW1/4; thence North along said East line 164 feet; thence West parallel with the North line of said S1/2 N1/2 SW1/4 to the West line of the SW1/4; thence South along said line 164 feet to the point of beginning, EXCEPTING THEREFROM that portion thereof in Wilson Road.

PARCEL B: (Chin)

PARCEL 1

The SW1/4 SE1/4 and that portion of Lot 7 (NW1/4 SE1/4), Section 10, Township 41 South, Range 11 East of the Willamette Meridian lying Southerly of the Great Northern Railway Right of Way.

All that portion of Government Lot 1 in Section 15, Township 41 South, Range 11 East of the Willamette Meridian, lying West of the East line of the SW1/4 of the SE1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, extended South to the South line of said Lot 1.

PARCEL 2

A portion of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the one-quarter corner common to Section 9 and 10 of said Township and Range, thence South $89^{\circ} 58'$ East 3.51 chains, more or less, to the projection of the center line of the 9-E-2 drain; thence South $34^{\circ} 26'$ East along said center line 14.11 chains to its intersection with the North line of the S1/2 N1/2 SW1/4 of said Section 10; thence Easterly along said North line of S1/2 N1/2 SW1/4, 30.80 chains, more or less, to the East line of the SW1/4 of said Section 10; thence Northerly along the East line of the SW1/4 of said Section 10, 10 chains, more or less, to the Northeast corner of the NE1/4 SW1/4 of said Section 10; thence Westerly along the Northerly line of said NE1/4 SW1/4 to the intersection of the said Northerly line with the Southwesterly right of way line of the Great Northern Railway Company Railroad right of way; thence Northwesterly along said Southerly railroad right of way line to its intersection with the West line of said Section 10; thence Southerly along said West line of said Section 10 to the place of beginning.

EXCEPTING THEREFROM that portion described as follows: A triangular parcel of land located in the Northeast corner of the Northeast corner of the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Commencing at the Northeast corner of the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, extending thence West along the Northerly line of said SW1/4 366 feet, more or less, to the intersection of said line with the Northeasterly right of way line of the Great Northern Railway; thence Southeasterly along the Northeasterly right of way line of said Railway a distance of 399 feet, more or less, to the North-South center line of said Section 10; thence North along said center line a distance of 162 feet, more or less, to the point of beginning.

ALSO EXCEPTING THEREFROM a tract of land situated in the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the Northwest corner of the S1/2N1/2SW1/4 of said Section 10, thence East along the North line of said S1/2N1/2SW1/4 to the East line of the SW 1/4; thence North along said East line 164.0 feet; thence West parallel with the North line of said S1/2N1/2SW1/4 to the West line of the SW 1/4; thence South along said line 164.00 feet to the point of beginning.

PARCEL 3

A portion of Lot 5, Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the one-quarter corner common to Section 9 and 10 of said Township and Range; thence South $89^{\circ} 58'$ East 3.51 chains, more or less, to the projection of the center line of the 9-E-2-Drain; thence South $34^{\circ} 26'$ East along the said center line 14.11 chains to its intersection with the North line of S1/2 N1/2 SW1/4 of said Section 10; thence West along said North line to the West line of said Section 10; thence North along said West line to the point of beginning.

EXCEPTING THEREFROM a tract of land situated in the SW1/4 of Section 10, Township 41 South, Range 11 East of the Willamette Meridian, described as follows: Beginning at the Northwest corner of the S1/2N1/2SW1/4 of said Section 10, thence East along the North line of said S1/2N1/2SW1/4 to the East line of the SW 1/4; thence North along said East line 164.0 feet;

thence West parallel with the North line of said S1/2N1/2SW1/4 to the West line of the SW 1/4; thence South along said line 164.00 feet to the point of beginning

PARCEL 4

A tract of land situated in Government Lot 5 in Section 15, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Being that portion of Government Lot 5 lying Northerly of the North right of way line (Easement Line) of the J Canal.

PARCEL C: (Lyons)

PARCEL 1

Parcel 2 of Land Partition 27-03, said Land Partition being a replat of Parcel 2 of Minor Partition No. 80-53, situated in the W1/2 of Section 4 and the E1/2 of Section 5, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

EXCEPTING THEREFROM that portion thereof conveyed to James E. Henry and Lillian A. Henry, as tenants by the entirety, by deed completing Property Line Adjustment 36-06 recorded December 26, 2006 in Volume 2006, page 025348, Microfilm Records of Klamath County, Oregon, described as follows:

Beginning at the Northwest corner of said Parcel 2; thence along the boundary of said Parcel 2, North 86° 00' 00" East 1127.70 feet, South 68° 10' 07" East 90.20 feet and South 87° 19' 34" East 71.17 feet; thence leaving the said boundary of Parcel 2, on the arc of a curve to the left (radius point bears South 01° 59' 12" East 1551.00 feet and central angle equals 36° 56' 28") 1000.00 feet; thence South 51° 04' 20" West 100.00 feet; thence on the arc of a curve to the left (radius point bears South 47° 29' 59" East 1000.00 feet and central angle equals 22° 41' 18") 395.98 feet; thence West 77.65 feet to a point on the West line of said Parcel 2; thence North 701.18 feet to the point of beginning, with bearings based on the plat of LAND PARTITION 27-03 on file at the office of the Klamath County Clerk.

PARCEL 2

Parcel 3 of Land Partition 27-03, said Land Partition being a replat of Parcel 2 of Minor Partition No. 80-53, situated in the W1/2 of Section 4 and the E1/2 of Section 5, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL D: (Pope)

That portion of the NE1/4 NE1/4 of Section 9, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, lying South of the Burlington Northern Railroad;

ALSO Government Lot 1 and that portion of Government Lot 8 in said Section 9, lying North of the U.S.B.R. Irrigation Lateral known as the Robinson Lateral as now located and constructed, which lateral extends across said Government Lot 8 in an Easterly – Westerly direction.

EXCEPTING THEREFROM that portion thereof conveyed to Great Northern Railway Company by deed from Fred L. Pope and Dora C. Pope, his wife, dated May 27, 1931, recorded May 28, 1931 in Volume 95, page 370, Deed Records of Klamath County, Oregon