

2011-010379

Klamath County, Oregon



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09/14/2011 03:24:08 PM

Fee: \$77.00

After Recording Return to:
Rabo AgriFinance, Inc.
Attn: Closing Department
12443 Olive Blvd., Suite 50
St. Louis, MO 63141

Lot 90930

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

For use with Commercial Leases

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT ("Agreement") is made to be effective as of the 24th day of August, 2011, between Rabo Agrifinance, Inc., a Delaware corporation organized and existing under the laws of Delaware ("Lender") and Obsidian Finance Group, LLC, an Oregon limited liability company ("Tenant").

BACKGROUND:

Tenant has entered into a lease agreement with Gold Dust, Inc. and J & W Walker Farms, Inc. ("Landlord") dated December 7, 2010, (the "Lease") relating to the property described in Exhibit "A" attached to this Agreement and by this reference made a part of this Agreement (the "Property"). Lender has made or has committed to make or has purchased a loan to Landlord in the original principal amount of \$ 5,000,000.00 (the "Loan") secured by a mortgage, deed of trust or security deed (the "Mortgage") covering the Property. Tenant has agreed that the Lease will be subject and subordinate to the Mortgage held by Lender, provided Tenant is assured of continued use of the Property under the terms of the Lease.

AGREEMENT:

For and in consideration of the mutual covenants contained in this Agreement, the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are acknowledged, and notwithstanding anything in the Lease to the contrary, the parties agree as follows:

1. **Subordination.** The Lease with all rights, options, liens and charges created by the Lease is expressly made and will continue to be subject to and subordinate in all respects to the terms, conditions, lien, operation and effect of the Mortgage and to any renewals, modifications, consolidations, replacements and extensions of the Mortgage.
2. **Nondisturbance.** If Lender takes possession of the Property or becomes the owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise, so long as Tenant complies with and performs its obligations under the Lease and no event of default has occurred under the Lease, then Lender agrees as follows:
 - a. Lender will not terminate, impair or disturb the possession of Tenant.
 - b. The Lease will continue in full force and effect as a direct Lease between Lender and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term of the Lease.

67 Pmt

3. **Mortgage Remedies.** Nothing contained in this Agreement will prevent Lender from naming Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Mortgage to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy.
4. **Attornment.** If Lender or any other party becomes the owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise ("Successor Landlord"), then Tenant agrees as follows:
 - a. Tenant will perform and observe its obligations under the Lease.
 - b. Tenant will attorn to and recognize Successor Landlord as the Landlord under the Lease for the remainder of the term of the Lease, such attornment to be automatic and self-operative.
 - c. Tenant will execute and deliver upon request of Successor Landlord an appropriate agreement of attornment to Successor Landlord.
5. **Protection of Successor Landlord.** Tenant agrees that Successor Landlord will not be liable for, subject to or bound by any of the following:
 - a. claims, offsets or defenses which Tenant might have against Landlord;
 - b. acts or omissions of Landlord;
 - c. rent or additional rent which Tenant might have paid for more than the current month;
 - d. any security deposit or other prepaid charge paid to Landlord;
 - e. construction or completion of any improvements for Tenant's use and occupancy;
 - f. warranties of any nature whatsoever, including any warranties respecting use, compliance with zoning, hazardous wastes or environmental laws, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession; or
 - g. amendments or modifications of the Lease made without its written consent
6. **Successor Landlord Exculpation.** Tenant will look solely to Successor Landlord's interest in the Property for the payment and discharge of any obligation or liability imposed upon Successor Landlord under the Lease.
7. **Estoppel.** To the best of Tenant's knowledge, there does not exist any default, claim, controversy or dispute under the Lease. Tenant has not commenced any action nor sent or received any notice to terminate the Lease.
8. **Notice to Lender.** Tenant agrees that it will deliver to Lender a copy of all notices of default or termination received by it under the terms of the Lease.

9. **Assignment to Lender.** Tenant acknowledges that the Landlord may execute and deliver to Lender an assignment of the Lease as security for the Loan.
10. **Invalidity.** If any portion of this Agreement is held invalid or inoperative, then all of the remaining portions will remain in full force and effect, and, so far as is reasonable and possible, effect will be given to the intent manifested by the portion or portions held to be invalid or inoperative.
11. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State where the Property is located.
12. **Notices.**
 - (a) All notices, demands and other communications ("Notices") under or concerning this Agreement must be in writing. Each Notice shall be addressed to the intended recipient at its address set forth in this Agreement, and will be deemed given on the earliest to occur of (1) the date when the Notice is received by the addressee; (2) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. The term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.
 - (b) Any party to this Agreement may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section. Each party agrees that it will not refuse or reject delivery of any Notice given in accordance with this Section, that it will acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it will be deemed for purposes of this Section to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

Any Notice, if given to Lender, must be addressed as follows:

Rabo Agrifinance, Inc.
12443 Olive Blvd., Suite 50
St. Louis, MO 63141

Any Notice, if given to Tenant, must be addressed as follows:


13. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, legal representatives, successors, successors-in-title and assigns.
14. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

LENDER:

Rabo Agrifinance, Inc.,
a Delaware corporation



Name: Susan L. HARRISON
Title: A.U.P.

TENANT:

Obsidian Finance Group, LLC,
an Oregon limited liability company



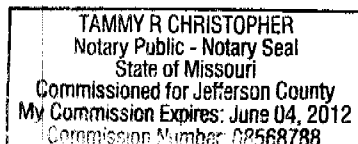
Name: D. Todd Gregory
Title: A.U.P.

STATE OF Missouri)
) SS.
COUNTY OF St. Louis)

Before me, the undersigned, a Notary Public, in and for said County and State, on this 24th day of August, 2011, personally appeared Susan L. Harrison, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its AUD, and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

(SEAL)




Notary Public

My commission expires:

Attached to Subordination, Nondisturbance and Assignment Agreement signed by D. Todd Gregory on August 29, 2011, seven pages.

STATE OF Oregon)
) SS.
COUNTY OF Clackamas)

Before me, the undersigned, a Notary Public, in and for said County and State, on this 29th day of August, 2011, personally appeared D. Todd Gregory, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its Assistant Vice President and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed and as the free and voluntary act and deed of such company, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

(SEAL)

Karyn A Wexted-Moscoe
Notary Public

My commission expires: February 21, 2014



EXHIBIT A

Description of Property

Meter #	Location Name	Utility Account #	Site Address	City/State/Zip	System Size	T	R	Sec
<u>1730333</u>	Shed Cellar	40390281 001 5	30203 Micka Rd,	Malin, OR 97632	9.225	41S	12E	4
<u>2972362</u>	Johnson Cellar	40390281 004 9	Stastny Rd & Morelock,	Malin, OR 97632	9.225	48N	4E	29
<u>28194267</u>	McVay Field	40390281 032 0	21592 Drazil Rd,	Malin, OR 97632	9.225	41S	12E	9
<u>28205884</u>	McVay Cellar	40390281 032 0	21592 Drazil Rd,	Malin, OR 97632	83	41S	12E	9
<u>28866513</u>	Shed (grey box)	40390281 030 4	30203 Micka Rd,	Malin, OR 97632	97.65	41S	12E	9&8
<u>35628857</u>	Home Cellar	40390281 001 5	22167 HWY 39,	Merrill, OR 97633	9.225	41S	11E	10

Description of Premises

Account Name	Meter #	Location Name	Utility Account #	Site Address	City/State/Zip	System Size	Pacific Power Request #
Walker Brothers	<u>1730333</u>	Shed Cellar	40390281 001 5	30203 Micka Rd,	Malin, OR 97632	9.225	5480496
Walker Brothers	<u>35628857</u>	Home Cellar	40390281 001 5	22167 HWY 39,	Merrill, OR 97633	9.225	5480728
Walker Brothers	<u>28194267</u>	McVay Field	40390281 032 0	21592 Drazil Rd,	Malin, OR 97632	9.225	5485100
Walker Brothers	<u>2972362</u>	Johnson Cellar	40390281 004 9	Stastny Rd & Morelock,	Malin, OR 97632	9.225	5480732
Walker Brothers	<u>28866513</u>	Shed (grey box)	40390281 030 4	30203 Micka Rd,	Malin, OR 97632	97.65	5483632
Walker Brothers	<u>28205884</u>	McVay Cellar	40390281 032 0	21592 Drazil Rd,	Malin, OR 97632	83	5480758

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

TRACT A:

The SE1/4 of the SE1/4 lying south of the Railroad right of way and north of the Klamath Falls – Malin State Highway 39 right of way in Section 1, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, and being further described as follows:

That portion lying east of the following line. Beginning at the intersection point of the U.S. B. R. No. 14 Drain center line with the northern right of way line of Klamath Falls – Malin State Highway 39, from which the corner common to Sections 1, 6, 7 and 12 bears South 30 feet and easterly 1286.51 feet more or less; Thence northerly on said drain center line and it's extension north, 982.99 feet more or less to the southern right of way of the Union Pacific (Burlington Northern) Railroad.

This description is pursuant to Klamath County Lot line adjustment #4-11.

TRACT B:

The W1/2 SW1/4 and that portion of the SE1/4 SW1/4 lying South and West of the Southerly right-of-way line of the Main Ditch of the United States Reclamation Service, all in Section 6, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

EXCEPTING THEREFROM that portion lying with the right of way of the Great Northern Railroad, the Klamath Falls Malin Highway; and also excepting therefrom the Easterly 33 feet thereof, reserved in Deed recorded April 16, 1910 in Volume 29, page 39, Deed Records of Klamath County, Oregon.

PARCEL 2:

Farm Unit "M", according to the Farm Unit Plat, or Government Lots 9 and 16 of Section 13, Township 41 South or Range 11 East of the Willamette Meridian, Klamath County, Oregon, and the N1/2 of Government Lots 5 and 23, and Government Lots 17 and 22 of Section 19 in Township 41 South of Range 12 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 3:

Parcel 3 of Land Partition 10-10, situated in the W1/2 NE1/4, the N1/2 SE1/4, the NE1/4 SW1/4 and the E1/2 NW1/4 of Section 31, Township 40 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon. Being recorded October 29, 2010 in Volume 2010-012720, Microfilm Records of Klamath County, Oregon.

(Legal Description Continued)

PARCEL 4:

Parcel 1 of Land Partition 20-02, said Land Partition being situated in the NE1/4 NW1/4 and NW1/4 NW1/4 of Section 9, Township 41 South, Range 12 East of the Willamette Meridian, and in the NE1/4 NE1/4 of Section 8, Township 41 South, Range 12 East of the Willamette Meridian Klamath County, Oregon.

PARCEL 5:

Parcel 2 of Land Partition 20-02, said Land Partition being situated in the NE NW and NW NE of Section 9, Township 41 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon, and in the NE NE of Section 8, Township 41 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 6:

Parcel 1 of Land Partition 21-02, situated in the S1/2 NE1/4 and N1/2 SE1/4 of Section 14, Township 41 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 7:

Parcel 2 of Land Partition 21-02, situated in the S1/2 NE1/4 and N1/4 SE1/4 of Section 14, Township 41 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 8:

All that portion of the SW1/4 of the NW1/4 and the N1/2 of the SW1/4 lying Southwesterly of the USBR "D" Canal, Section Nine (9), Township Forty-One (41) South, Range Twelve (12) East of the Willamette Meridian, Klamath County, Oregon.