

2012-000681

Klamath County, Oregon



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01/26/2012 09:50:18 AM

Fee: \$102.00

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Cynthia P. Caggiano, Paralegal
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

DATED: JANUARY 10, 2012

BETWEEN: TALLY HO FARMS,
an Oregon general partnership
PO Box 830
Merrill, OR 97633

TENANT

AND: METROPOLITAN LIFE INSURANCE COMPANY,
a New York corporation
205 E. River Park Circle, Suite 330
Fresno, CA 93720

LENDER

AND RLF RUNNING Y RANCH, LLC,
a Colorado limited liability company
c/o Resource Land Holdings
619 N. Cascade Avenue, Suite 200
Colorado Springs, CO 80903

LANDLORD

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

Metropolitan Life Insurance Company
205 E. River Park Circle, Suite 330
Fresno, CA 93720

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "**Agreement**") is made and entered into as of the 10th day of January, 2012, by and among TALLY HO FARMS, an Oregon general partnership ("**TENANT**"), METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation ("**LENDER**") and RLF RUNNING Y RANCH, LLC, a Colorado limited liability company ("**LANDLORD**").

R E C I T A L S:

WHEREAS, LENDER has made or agreed to make a loan in the original principal amount of \$6,000,000 (the "**Loan**") to LANDLORD evidenced and secured by various loan documents (collectively, the "**Loan Documents**"), including a Promissory Note dated August 31, 2011, in the original principal amount of \$6,000,000.00 ("**Note**"), a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated August 31, 2011 and recorded September 2, 2011 as Instrument No. 2011-010051, Records of Klamath County, Oregon (the "**Trust Deed**") and a UCC Financing Statement filed with the Colorado Secretary of State on November 2, 2011 as Filing No. 20112040120. The Trust Deed encumbers the real property in Klamath County, Oregon evidenced on Exhibit A related water rights and personal property (the "**Premises**").

LANDLORD and TENANT have entered into an Agricultural Lease (the "**Lease**") pursuant to which LANDLORD has leased to TENANT portions of the Premises (the portion of the Premises leased to TENANT is referred to as the "**Leased Property**").

WHEREAS, the parties hereto desire to (a) confirm that the Lease (and the Purchase Agreement referenced therein) is subordinate to the Trust Deed and the other Loan Documents and (b) set forth certain the terms governing TENANT's possession and control of the Premises under the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed by the parties hereto, the parties hereto do hereby agree as follows:

A G R E E M E N T:

1. Subordination. The parties hereby agree that the Lease and all of TENANT's rights under the Lease and the Purchase Agreement referenced in the Lease, including without limitation, any and all interests in the buildings, irrigation equipment and other improvements located on the Premises, now is, and shall at all times and for all purposes continue to be, subject and subordinate, in each and every respect, to the Trust Deed and the other Loan Documents, it being understood and agreed that the foregoing subordination shall apply to any and all increases, renewals, modifications, amendments, extensions, substitutions, replacements and/or consolidations of the Loan and the Loan Documents.

2. LANDLORD and TENANT represent and warrant to LENDER that (i) the copy of the Lease attached hereto as Exhibit B is a true and complete copy of the Lease and that there have been no amendments and modifications thereto; and (ii) the Lease and Purchase Agreement referenced therein set forth the entirety of the agreements of LANDLORD and TENANT relating to the Premises.

The parties agree that the counterpart of this Agreement to be recorded shall omit Exhibit B (copy of Lease).

3. Attornment/Non-Disturbance. In the event LENDER or a third party (such person or entity a "New Owner") acquires the Premises in a foreclosure sale under the Trust Deed or by a transfer of the Premises to the holder of the Trust Deed by a deed in lieu of foreclosure, then, so long as TENANT complies with this Agreement and is not in default under any of the terms, covenants, or conditions of the Lease, the Lease shall continue in full force and effect as a direct lease between the succeeding owner of the Premises and TENANT, upon and subject to all of the terms of the Lease. TENANT hereby agrees to adhere to and accept any such successor owner as lessor under the Lease, and to be bound by and perform all of the obligations imposed by the Lease, and LENDER or any such successor owner of the Premises will not disturb the possession of TENANT and will be bound by all of the obligations imposed on the LANDLORD by the Lease; provided, however, that LENDER, or New Owner, shall not be:

- (a) Liable for any act, omission or default of any prior LANDLORD (including, without limitation, the LANDLORD); or
- (b) Subject to or bound by any defenses, offsets or setoffs that TENANT may have against any prior LANDLORD (including, without limitation, the LANDLORD) or that have been claimed with respect to any future rents owing under the Lease, including any claims for set offs pursuant to Sections 2.2 and 2.5 of the Lease, provided that TENANT shall be entitled to the rent credit set forth in Section 2.4 of the Lease, and provided that LANDLORD shall be entitled to collect the deposit (Section 2.2 of the Lease) and TENANT shall be entitled to apply \$250,000 of the deposit to May 1, 2012 rental payment in accordance with Section 2.2 of the Lease.
- (c) Bound by any payment of rent, prepaid rent or additional rent that TENANT might have paid more than one month in advance of the due date under the Lease to any prior

LANDLORD (including, without limitation, the then defaulting LANDLORD), except application of \$250,000 of the deposit to May 1, 2012 rental payment, in accordance with Section 2.2 of the Lease; or

- (d) Accountable for any monies deposited with any prior LANDLORD (including security deposits), except to the extent such monies are actually received by New Owner in segregated cash amounts identified to New Owner in writing as such at the time received; or
- (e) Bound by any obligation to make any payment to TENANT that was required to be made prior to the time New Owner succeeded to any prior LANDLORD's interest; or
- (f) Bound by any amendment or modification of the Lease which materially changes the terms of the Lease in a manner adverse to the LANDLORD, or which extends the term or reduces the rental, unless made with the LENDER's consent; or
- (g) Obligated to complete any improvements or construction on the Premises or to pay or reimburse TENANT for any TENANT improvement allowance or construction allowance (without negating TENANT's offset rights under clause (b) above); or
- (h) Liable for or incur any obligation with respect to any representations or warranties of any nature set forth in the Lease; or
- (i) Liable for or incur any obligation with respect to any indemnifications, agreements to defend or hold harmless TENANT of any nature set forth in the Lease or otherwise, prior to, or conditions of the Premises, existing at, the time New Owner succeeded to any prior LANDLORD's interest; or
- (j) Bound to reimburse TENANT for any costs or fees paid prior to New Owner taking title to the Property; or
- (k) Bound by any notice given by TENANT to LANDLORD unless a copy thereof was also given to the LENDER; or
- (l) Bound by any assignment of the Lease made without LENDER's consent, if LANDLORD's consent to such assignment is required by the Lease.

Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto immediately upon the New Owner succeeding to the interest of LANDLORD in the Premises. Upon request, TENANT will execute a written attornment agreement in favor of the New Owner. LENDER does NOT agree to be bound by or to honor the Purchase Agreement.

4. Direct Payments to LENDER. If LENDER sends written notice to TENANT to direct its rental payments under the Lease to LENDER instead of LANDLORD, then TENANT agrees to follow the instructions set forth in such written instructions and deliver rental payments to LENDER; however, LANDLORD and LENDER agree that TENANT shall be credited under the Lease for any rental

payments received by LENDER pursuant to such written notice or pursuant to any right of TENANT to pay amounts to LENDER pursuant to the Lease.

5. Notices. All notices which may or are required to be sent under this Agreement shall be in writing and shall be sent by first-class certified U.S. mail, postage prepaid, return receipt requested, and sent to the party at the address appearing below or such other address as any party shall hereafter inform the other party by written notice given as set forth herein:

TENANT:

TALLY HO FARMS

PO Box 830

272211 02 97633

LENDER:

Metropolitan Life Insurance Company
Agricultural Investments
Western Branch Office
205 E. River Park Circle, Suite 330
Fresno, CA 93720

and

Metropolitan Life Insurance Company
Agricultural Investments
10801 Mastin Blvd., Suite 930
Overland Park, Kansas 66210

LANDLORD:

RLF RUNNING Y RANCH, LLC
c/o Resource Land Holdings
619 N. Cascade Avenue, Suite 200
Colorado Springs, Colorado 80903

All notices delivered as set forth herein shall be deemed effective three (3) days from the date deposited in the U.S. mail.

6. TENANT represents and warrants to LENDER as follows:
- (a) TENANT is not a "foreign person" under the International Foreign Investment Survey Act of 1976, the Agricultural Foreign Investment Disclosure Act of 1978, the Foreign Investments in Real Property Tax Act of 1980, the amendments of such Acts or regulation promulgated pursuant to such Acts (collectively, the "Foreign Ownership Acts"). TENANT, and all persons holding directly or indirectly any beneficial interest in TENANT, have complied with all filing and reporting requirements of the Foreign Ownership Acts, and are not in violation thereof;
 - (b) Neither TENANT, nor any actual or beneficial owner of TENANT appears on the Specially Designated Nationals and Blocked Persons List (the "SDN List") as published

by the Department of the Treasury of the United States, Office of Foreign Assets Control;
and

- (c) Neither TENANT, nor any actual or beneficial owner of TENANT is a resident or national of any of the following countries: Cuba, North Korea, Libya, Iran, Iraq, Burma (Myanmar), or Sudan.

TENANT covenants that it will not assign the Lease, or sublet the Property or any portion thereof, to an assignee or subtenant (each a "Tenant Successor"),

- (a) If such Tenant Successor is a "foreign person" under the Foreign Ownership Acts or if a person holding directly or indirectly any beneficial interest in the Successor Tenant has not complied with all filing and reporting required by the Foreign Ownership Acts or are in violation thereof.
- (b) If such Tenant Successor or any beneficial owner of Tenant Successor, appears on the SDN List.
- (c) If Tenant Successor or any actual or beneficial owner of Tenant Successor, is a resident or national of any of the following countries: Cuba, North Korea, Libya, Iran, Iraq, Burma (Myanmar) or Sudan.

TENANT and LANDLORD will, upon request from LENDER, provide such information as LENDER may reasonably request to verify compliance with the requirements of this paragraph.

7. Successors. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, heirs and assigns and any subsequent owner of the Premises. The term "LENDER" as used throughout this Agreement includes any successor or assign of LENDER and any holder(s) of any interest in the indebtedness secured by the Trust Deed.

8. Attorney Fees. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees and costs.

9. Named Party. Except as required by state law or otherwise to effectuate LENDER's rights under the Trust Deed and the other Loan Documents or in the event TENANT is in default under the Lease, TENANT shall not be named as a party defendant in any action for foreclosure or other enforcement of the Loan Documents.

10. Modification. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

11. Applicable Law. This Agreement and the rights and duties of the parties hereunder shall be governed by all purposes by the law of the state of Oregon.

12. Counterparts. This Agreement may be executed in multiple counterparts and by the different parties hereto in separate counterparts, each of which shall for all purposes be deemed to be an original and all of which together shall constitute but one and the same instrument, with the same effect as if all parties to this Agreement had signed the same signature page. This Agreement shall not be effective unless signed by LENDER, LANDLORD and TENANT.

[SIGNATURE PAGE FOLLOWS]

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

LENDER:

METROPOLITAN LIFE INSURANCE COMPANY

By: Leon A. Moreno
Title: Director

LANDLORD:

RLF RUNNING Y RANCH, LLC
a Colorado limited liability company

By: RESOURCE LAND FUND IV, LLC
a Colorado limited liability company, Managing Member

By: James W. Geisz
James W. Geisz, Authorized Representative

TENANT:

TALLY HO FARMS,
An Oregon General Partnership

By: W. J. [Signature]
Title: Partner

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

LENDER:

METROPOLITAN LIFE INSURANCE COMPANY

By: _____
Title: _____

LANDLORD:

RLF RUNNING Y RANCH, LLC
a Colorado limited liability company

By: RESOURCE LAND FUND IV, LLC
a Colorado limited liability company, Managing Member

By: James W. Geisz
James W. Geisz, Authorized Representative

TENANT:

TALLY HO FARMS,
An Oregon General Partnership

By: [Signature]
Title: Partner

STATE OF CALIFORNIA
COUNTY OF FRESNO

On JANUARY 19, 2012 before me, CATHY M. KELLY, Notary Public, personally appeared LEON A. MORENO on behalf of Metropolitan Life Insurance Company, 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: _____

Cathy M. Kelly



STATE OF COLORADO)

COUNTY OF _____) ss.

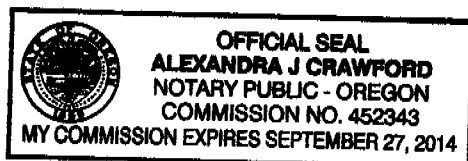
This instrument was acknowledged before me on _____, 2012, by James W. Geisz as Authorized Representative of Resource Land Fund IV, LLC, a Colorado limited liability company, Managing Member of RLF Running Y Ranch, LLC, a Colorado limited liability company.

Notary Public
My commission expires:
Commission No.:

STATE OF OREGON)

COUNTY OF Klamath) ss.

This instrument was acknowledged before me on January 10, 2012, by William Walker, of Tally Ho Farms, an Oregon General Partnership, on its behalf.



Alexandra J. Crawford

Notary Public
My commission expires: 09/27/14
Commission No.: 452343

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 2012 before me, _____
Notary Public, personally appeared _____ on behalf of Metropolitan Life Insurance Company, 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.

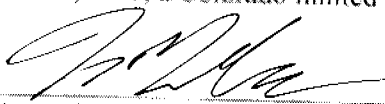
Signature: _____ (seal)

STATE OF COLORADO)
COUNTY OF El Paso)ss.

This instrument was acknowledged before me on January 10th, 2012, by James W. Geisz as Authorized Representative of Resource I and Fund IV, LLC, a Colorado limited liability company, Managing Member of RLF Running Y Ranch, LLC, a Colorado limited liability company.



My Comm. Expires January 11, 2015

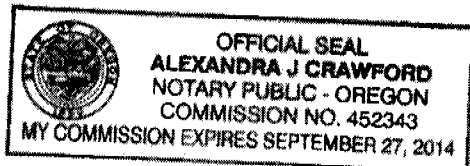


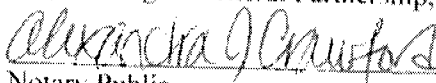
Notary Public

My commission expires: January 11, 2015
Commission No.:

STATE OF OREGON)
COUNTY OF Klamath)ss.

This instrument was acknowledged before me on January 10, 2012, by William Whiter, of Tally Ho Farms, an Oregon General Partnership, on its behalf.





Notary Public
My commission expires: 09/27/14
Commission No.: 452343

EXHIBIT A

Legal Description

TRACT 1:

Tract 1 Parcel A: (Account 3808-00600-00300 & 3808-00700-00400)

A tract of land situated in Sections 6 and 7, Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the Northerly boundary of State Highway 140 West 658 feet North (610 feet on Klamath County Survey 4035) of the East-West centerline of said Section 7; thence following the Caledonia-Wocus division line South $88^{\circ} 04' 41''$ West to the Southerly boundary of said highway which is the True Point of Beginning, then continuing to follow the Caledonia-Wocus division line South $88^{\circ} 04' 41''$ West to a stone marked with across, mentioned as the "place of beginning" in Deed Volume 47, page 331, Deed Records of Klamath County, Oregon, located at the Easterly end of the cross-dike between the Caledonia and Wocus Tracts, which point is 2621 feet West of the section line common to sections 7 and 8, Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon; thence North 24° East 100 feet; thence North 66° West 1050 feet, more or less, to the centerline of the Caledonia Canal in the SE1/4 of the NW1/4 of Section 7, Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon; thence Northerly along the centerline of said Caledonia Canal to the intersection of said centerline with the Southerly boundary of State Highway 140 West; thence Southeasterly along the Southerly boundary of said highway to the true point of beginning.

Tract 1 Parcel B: (Account 3808-00000-00900, 001000, 001200, 01900, 02100, 02200 (por), 02300, 02500, 3808-00800-00300, 00500, 00700, 3808-00900-00900, 3808-01500-00300 (por), 3808-01600-00200, 3808-03400-00100, 3808-03500-00200, 00300 & 3808-03600-00500)

Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

Section 8: All that portion of said section lying South and West of the Orindale Draw State Highway.

Section 9: That portion of the S1/2 lying Southerly of the South Right of way line of Lake of the Woods Highway 140

Section 15: that portion of the SW1/4 SW1/4 lying Westerly of the Lake of the Woods State Hwy 140

Section 16: lying Westerly of the West Right of way line of Lake of the Woods Highway 140

Section 17: E1/2, NW1/4, N1/2 SW1/4, SE1/4 SW1/4 and Lot 2

Section 18: SE1/4 SE1/4; N1/2 NE1/4, SE1/4 NE1/4 all those portions of the N1/2 SE1/4, SW1/4 NE1/4, NE1/4 NW1/4, SE1/4 NW1/4 lying North and East of Government Meander line.

Section 20: The NE1/4; that portion of the SE1/4 North of Government Meander line and that portion of W1/2 North and East of Government Meander line.

Section 21: All

(Legal Description Continued)

Section 27: All, except that portion thereof in State Highway 140 and that portion lying Northeasterly of State Highway 140

Section 28: SE1/4 SE1/4, N1/2 SE1/4, E1/2 NW1/4, and the portion of W1/2 NW1/4 North of Government Meander line through said Section 28; NE1/4

Section 29: The portion of NE1/4 NE1/4 North of Government Meander line through Section 29.

Section 34: SE1/4, E1/2 SW1/4, NW1/4, N1/2 NE1/4, SW1/4 NE1/4

Section 35: All that portion of said section lying South and West of the Orindale Draw State Highway.

Section 36: All that portion of said section lying South and West of the Orindale Draw State Highway.

Tract 1 Parcel C: (Account 3808-00600-00400, 3808-00700-00200 & 3808-00700-00600)

Those portions of Sections 6 and 7, Township 38 South Range 8 East of the Willamette Meridian, within the following described boundaries:

Beginning at the section corner common to Sections 7, 8, 17 and 18; thence North along the section line common to Sections 7 and 8 to Southerly boundary of the Klamath Lake Highway; thence Northwesterly along the Southerly boundary of the Klamath Lake Highway to its intersection with a line parallel to the East-West center line of Section 7 and North 658 feet of said line (said line being the division line between the Caledonia and Wocus Tracts); thence following said Caledonia-Wocus division line Westerly to a point on the Easterly end of the crossdike between the Caledonia and Wocus Tracts, which point is 2621 feet West of the Section line common to Sections 7 and 8; thence South 24° West 100 feet; thence North 66° West 1000 feet, more or less, to the Westerly end of the crossdike; thence North 24° East 200 feet; thence North 66° West 50 feet to the center of the Caledonia Canal in the SE1/4 NW1/4 of Section 7; thence Northerly along the center line of said Caledonia Canal to intersection of said center line with the West boundary of Lot 3, Section 6, Township 38 South, Range 8 East of the Willamette Meridian; thence South along the West boundary of Lot 3, continuing South along the West boundary of Lot 4 in said Section 6; thence continuing South along the West boundaries of Lots 4 and 5 in Section 7, Township 38 South, Range 8 East of the Willamette Meridian, to the intersection of the West boundary of Lot 5 with the Easterly boundary of the Old State Highway #421 in S1/2 NW1/4 of Section 7; thence Southwesterly along said Easterly boundary of the old State Highway #421 to its intersection in Lot 6 with the East line of the W1/2 NW1/4 SW1/4 of Section 7; thence South 0° 16' West 973 feet, more or less, to the South line of NW1/4 SW1/4 of Section 7, which point is 660 feet East of the Southwest corner of Lot 6; thence South 14° 58' East 403.9 feet to a meander point in Lot 7, Section 7; thence following the Government Meander line Southerly and Easterly to the intersection of said Meander Line with the South line of Section 7; thence East along the South line of Section 7 to the point of beginning.

SAVING AND EXCEPTING from any of the above described real property any portions lying within the boundaries of the State Highway.

ALSO SAVING AND EXCEPTING that portion conveyed to State of Oregon, by and thru its State Highway Commission by Deed recorded September 12, 1967 in Volume M67 at page 7067, Microfilm Records of Klamath County, Oregon.

Tract 1 Parcel D: (Account 3808-00700-00500)

A parcel of land located in Section 7, Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the quarter section corner on the East line of Section 7, Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon; thence North 658 feet thence West 2621 feet to a stone marked with a cross which stone is the place of beginning; thence South 24° West 100 feet; thence North 66° West 1000 feet; thence North 24° East 200 feet; thence South 66° East 1000 feet; thence South 24° West 100 feet to the place of beginning.

Tract 1 Parcel E: (Account 3908-00200-00100, 00200 & 00300)

Township 39 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

Section 2: N1/2 NE1/4 and SW1/4 NE1/4