

2019-009817

Klamath County, Oregon

08/27/2019 08:22:01 AM

Fee: \$142.00

PREPARED BY:

White & Case LLP
555 South Flower Street, Suite 2700
Los Angeles, CA 90071
Attention: Brenda Dieck, Esq.
1448012-0011

WHEN RECORDED, RETURN TO:

Driscoll's, Inc.
345 Westridge Drive,
Watsonville, CA 95076

Klamath.

Reserved for Recording Information

**RELEASE OF
SUBORDINATION AGREEMENT**

FALCO 5625858

4-26, 2019 and made effective as of *4-26*, 2019 (the "Effective Date"), by and between AMERICAN AGCREDIT, PCA, as Collateral Agent ("Beneficiary") and DRISCOLL'S, INC., a California corporation (formerly known as Driscoll Strawberry Associates, Inc.) ("Lessor").

RECITALS:

A. Lessor is the owner of the property located in Klamath County, Oregon as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property").

B. Lessor and SIERRA-CASCADE NURSERY, INC., a California corporation ("Lessee") entered into that certain Lease pursuant to which Lessor leases the Property to Lessee.

C. Beneficiary is the beneficiary under that certain Trust Deed, Security Agreement, Assignment of Rents and Leases, Financing Statement and Fixture Filing, dated as of December 23, 2010 and recorded on December 23, 2010, as Document Number 2010-014519, in the office of the Recorder for Klamath County, Oregon (as amended prior to the Effective Date, the "Trust Deed"), which Trust Deed encumbers the Property and secures certain loans and other extensions of credit made by the Secured Parties (as defined in the Trust Deed) pursuant to the Secured Debt Agreements (as defined in the Trust Deed).

D. In connection with the Trust Deed, Beneficiary, Lessor and Lessee entered into that certain Subordination Agreement dated as of December 23, 2010 and filed of record on December 23, 2010 as Document Number 2010-014520 in the office of the Recorder for Klamath County, Oregon (the "Subordination Agreement").

E. The Trust Deed was released and discharged by that certain Appointment of Successor Trustee and Deed of Full Reconveyance, dated _____, 2019 (the "Discharge"), which Discharge was filed of record on _____, 2019 as Document Number _____ in the office of the Recorder for Klamath County, Oregon. ←

F. The parties hereto desire to terminate, release and discharge the Subordination Agreement of record.

NOW, THEREFORE, intending to be legally bound and in consideration of the mutual promises and conditions hereinafter set forth, and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereto mutually agree as follows:

1. Effective as of the Effective Date, the Subordination Agreement is hereby terminated and released without recourse and without representation or warranty of any kind (express or implied) and the county recorder, register of deeds or similarly titled person for Klamath County, Oregon is directed to discharge the same of record.

2. All capitalized terms set forth in this Release shall have the same meaning given in the Subordination Agreement unless otherwise defined in this Release.

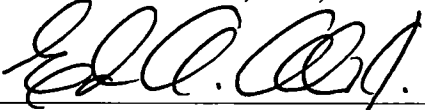
3. This Release may be executed in multiple counterparts all of which taken together shall be considered one and the same instrument.

[The remainder of this page is intentionally blank;
Signatures are on the following pages.]

IN WITNESS WHEREOF, the parties hereto have caused this Release to be duly executed on the date of the acknowledgments set forth below to be effective as of the Effective Date.

BENEFICIARY:

AMERICAN AGCREDIT, PCA, as Collateral Agent

By: _____

Name: Edwin A. Adams, Jr.

Title: Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CA)
COUNTY OF Sonoma)

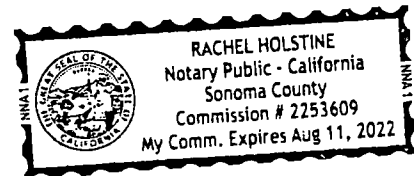
On April 26, 2019, before me, Rachel Holstine, a Notary Public in and for said State, personally appeared Edwin A Adams, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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 [Signature]
Printed Name: Rachel Holstine

(Seal)



LESSOR:

DRISCOLL'S, INC., a California corporation

By: 
Name: Christine Dzwonczyk
Title: Vice President and Treasurer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

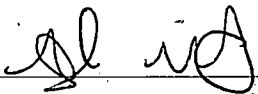
STATE OF California)

COUNTY OF Santa Cruz)

On June 3, 2019, before me, Angelica Martinez, a Notary Public in and for said State, personally appeared Christine Dzwonezyk who 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/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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)

Printed Name: Angelica Martinez



EXHIBIT A
Legal Description

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.