

WHEN RECORDED RETURN TO:

WINSTON & STRAWN LLP
ATTN: JAMES P. HEALY, ESQ.
35 WEST ACKER DRIVE
CHICAGO, ILLINOIS 60601



200709130049

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8 11:32AM

Chicago Title Insurance Company

425 Commercial Street – Mount Vernon, Washington 98273

IC43408-ER

DOCUMENT TITLE(s)

1. NON-DISTURBANCE AGREEMENT
- 2.
- 3.

REFERENCE NUMBER(s) OF DOCUMENTS ASSIGNED OR RELEASED:

☐ Additional numbers on page _____ of the document

GRANTOR(s):

1. BANK OF AMERICA, N.A.
- 2.
- 3.

ACCOMMODATION RECORDING

☐ Additional names on page _____ of the document

Chicago Title Company has placed
this document for recording as a
customer courtesy and accepts no
liability for its accuracy or validity

GRANTEE(s):

1. DRAPER VALLEY HOLDINGS LLC
- 2.
- 3.

☐ Additional names on page _____ of the document

ABBREVIATED LEGAL DESCRIPTION:

PTN SE NW 20-35-5

☐ Complete legal description is on page 8 of the document

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(s):

350520-2-008-0016 & 350520-2-002-0100

☐ (sign only if applicable) I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature _____

This cover sheet is for the County Recorder's indexing purposes only.

The Recorder will rely on the information provided on the form and will not read the document to verify the accuracy or completeness of the indexing information provided herein.

**This Document Was Prepared By And
After Recording Please Return To:**

Winston & Strawn LLP
35 West Wacker Drive
Chicago, Illinois 60601
Attention: James P. Healy, Esq.

NON-DISTURBANCE AGREEMENT

THIS NON-DISTURBANCE AGREEMENT (this "**Agreement**") is made as of September 6, 2007, by Bank of America, N.A. (together with its successors and assigns, "**Lender**"), and Draper Valley Holdings LLC, a Delaware limited liability company (together with its successors and assigns, "**Tenant**").

WITNESSETH:

A. Draper Valley Farms, Inc., a Washington corporation ("**Owner**"), is the owner of the land described in **Schedule "A"** attached hereto (together with the improvements located thereon, the "**Real Estate**").

B. The Real Estate is encumbered by a deed of trust made by Owner for the benefit of Lender recorded February 4, 2000, in the real estate records of Skagit County as Document No. 200002040014, as modified on March 2, 2006, which modification was recorded March 9, 2006, as Document No. 20060309090129; and a mortgage made by Owner for the benefit of Lender dated July 25, 2007, and recorded August 7, 2007, in the real estate records of Skagit County as Document No. 200708070113 (as may be amended, modified or otherwise supplemented from time to time, the "**Security Instruments**").

C. The Real Estate will be leased to Tenant on or about September 5, 2007, pursuant to a certain Lease (as may be amended, modified or otherwise supplemented from time to time, the "**Lease**") having a term with the latest termination date (assuming that all renewal options, if any, are exercised) being September 6, 2017 (the "**Term**").

D. The parties wish to enter into an agreement whereby Lender, in the event it obtains title to or right to possession of the Real Estate pursuant to the Security Instruments or otherwise, will recognize the Lease and Tenant's interest thereunder.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:



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1. Non-Disturbance of Tenant. Effective as of the date of this Agreement, so long as Tenant is not in default in payment of rent or in material default in the performance of any of the other terms, covenants and conditions of the Lease beyond any applicable grace or cure period, Lender will not, directly or indirectly: (a) name Tenant in any foreclosure action or in any other action to enforce the Security Instruments; (b) terminate the Lease or Tenant's possession of the Real Estate as a result of any foreclosure judgment or sheriff's or trustee's sale of the Real Estate; or (c) otherwise disturb Tenant's use and possession of the Real Estate pursuant to the Lease. In the event the interests of Owner in the Real Estate are transferred to Lender by any manner, Lender shall be bound to Tenant under all terms, covenants and conditions of the Lease.

2. Successor and Assigns. The rights and obligations hereunder of the parties hereto shall bind and inure to the benefit of their respective successors and assigns.

3. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and both such counterparts, when taken together, shall constitute a single binding agreement.

[signature and notary pages follow]



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

LENDER:

BANK OF AMERICA, N.A.

By: Thomas E. Bravo

Name: THOMAS E. BRAVO

Its: SVP

TENANT:

DRAPER VALLEY HOLDINGS LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____



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STATE OF Washington
COUNTY OF King

SS

Before me, the undersigned authority, a Notary Public in and for said County and State, personally appeared Thomas E. Brown, with whom I am personally acquainted, or who proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the SVP of Bank of America, N.A., the within named bargainer, and who acknowledged that he signed and delivered said instrument as such officer of such corporation, as his own free and voluntary act and as the free and voluntary act of such corporation, not personally, but as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30 day of August, 2007.

Rita J. Wood
NOTARY PUBLIC

My Commission Expires:

2-26-2011

STATE OF _____)
COUNTY OF _____)

SS

Before me, the undersigned authority, a Notary Public in and for said County and State, personally appeared _____, with whom I am personally acquainted, or who proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the _____ of Draper Valley Holdings LLC the within named bargainer, and who acknowledged that he signed and delivered said instrument as such officer of such company, as his own free and voluntary act and as the free and voluntary act of such company, not personally, but as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2007.

NOTARY PUBLIC

My Commission Expires:



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UNOFFICIAL DOCUMENT

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

LENDER:

BANK OF AMERICA, N.A.

By: _____

Name: _____

Its: _____

TENANT:

DRAPER VALLEY HOLDINGS LLC,
a Delaware limited liability company

By: James G Skidmore

Name: James G Skidmore

Its: Vice President



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STATE OF _____)
COUNTY OF _____) SS

Before me, the undersigned authority, a Notary Public in and for said County and State, personally appeared _____, with whom I am personally acquainted, or who proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the _____ of Bank of America, N.A., the within named bargainor, and who acknowledged that he signed and delivered said instrument as such officer of such corporation, as his own free and voluntary act and as the free and voluntary act of such corporation, not personally, but as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2007.

NOTARY PUBLIC

My Commission Expires:

STATE OF Illinois)
COUNTY OF Cook) SS

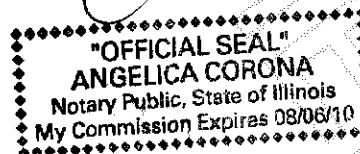
Before me, the undersigned authority, a Notary Public in and for said County and State, personally appeared James G. Skidmore with whom I am personally acquainted, or who proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the Vice President of Draper Valley Holdings LLC the within named bargainor, and who acknowledged that he signed and delivered said instrument as such officer of such company, as his own free and voluntary act and as the free and voluntary act of such company, not personally, but as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5th day of Sept., 2007.

Angelica Corona
NOTARY PUBLIC

My Commission Expires:

8/6/10



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Schedule "A"
to
Non-Disturbance Agreement

Legal Description of Real Estate

The Southeast Quarter of the Northwest Quarter of Section **20**, Township 35 North, Range 5 East of the Willamette Meridian;

EXCEPT the four following described portions thereof:

- 1.) The West 30 feet of the North Half thereof;
- 2.) The West 16.5 feet of the North Half of the South Half of said subdivision;
- 3.) The County Road right-of-way commonly known as the Minkler Road; and
- 4.) That portion of said subdivision lying Northerly of the Minkler Road.

Situated in Skagit County, Washington

