

**RECORDING REQUESTED BY**  
**AND UPON RECORDATION**  
**RETURN TO:**

Cindy J.K. Davis, Esq.  
Greenberg Traurig LLP  
3290 Northside Parkway, Suite 400  
Atlanta, Georgia 30327



201107280055

Skagit County Auditor

7/28/2011 Page 1 of 14 1:31PM

**CHICAGO TITLE**  
620012365

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

Grantors:	Neptune Investment LLC, a Washington limited liability company Draper Valley Holdings LLC, a Delaware limited liability company
Grantee:	Peoples Bank
Abbreviated Legal Description:	Section 17, Township 34, Range 4; PTN. N 1/2 - SW And Lots 67-70, 82A & 82-84, "Parker Business Center" Legal on Exhibit A to document.
Assessor's Tax Parcel I.D. Nos: 4367-000-067-0009; 4367-000-068-0008; 4367-000-069-0007; 4367-000-070-0004; 4367-000-082-0000; 4367-000-082-0109; 4367-000-083-0009; 4367-000-084-0008; 4367-000-117-0108; 340417-3-022-0000; 340417-3-019-0000; and 340417-3-019-0200	
Reference number(s) of documents being assigned or released and related documents: 200711210011, 200711210015 and 201107280053	

After Recording Return To:  
Commonwealth Land Title Insurance Co.  
T. Vaillant 10-001968  
1015 15<sup>th</sup> Street, NW, Suite 300  
Washington, DC 20005

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

This AGREEMENT is made and entered into as of July 25, 2011, by and among PEOPLES BANK, having an address of Mount Vernon Office, 1801 Riverside Drive, Mount Vernon, WA 98273 ("Lender"), NEPTUNE INVESTMENT LLC, a Washington limited liability company, having an address of 1210 Dale Way, Mount Vernon WA 98273 ("Landlord"), and DRAPER VALLEY HOLDINGS LLC, a Delaware limited liability company, having an address of P.O. Box 1537, Salisbury, Maryland 21802-1537, Attn: Thomas Mahn ("Tenant").

### 1. RECITALS.

1.1 Mortgage, Assignment and Vendor's Lien. Lender is the holder of (a) a Promissory Note dated November 20, 2007 (the "Senior Note"), in the original principal amount of Five Million Fifty Thousand Dollars and No/100 (\$5,050,000.00) executed by Landlord, Art's Land, Inc. and DVF Management Corporation (collectively, the "Borrowers"), which is secured, inter alia, by a Deed of Trust recorded under Auditor's Number 200711210011, Records of Skagit County, Washington (the "Senior Mortgage"), covering premises more particularly described in the Senior Mortgage (the "Mortgaged Premises"), a portion of which is owned by Landlord and legally described on Exhibit A attached hereto (the "Landlord Mortgaged Premises"), and (b) a Promissory Note dated November 20, 2007 (the "Junior Note"), in the original principal amount of Five Hundred Thousand Dollars and No/100 (\$500,000.00) executed by the Borrowers, which is secured, inter alia, by a Deed of Trust recorded under Auditor's Number 200711210015, Records of Skagit County, Washington (the "Junior Mortgage" and together with the Senior Mortgage, the "Mortgage"), covering the Mortgaged Premises. The Senior Note is further secured by an Assignment of Rents recorded under Auditor's Number 200711210012, Records of Skagit County, Washington. The Junior Note is further secured by an Assignment of Rents recorded under Auditor's Number 200711210016, Records of Skagit County, Washington.

1.2 LEASE. Landlord and Tenant agree that they are parties to a Lease dated September 6, 2007 and subsequently amended by a First Amendment to Lease dated December 1, 2008 (the "Lease"), whereby Landlord demised to Tenant a leasehold interest in the Landlord Mortgaged Premises (the "Premises").

2. CONSIDERATION. The terms of the Lease constitute a material inducement to Lender's consent thereto and entering into and performing this Agreement.

3. SUBORDINATION OF THE LEASE. Tenant agrees that this Lease shall be and is hereby made subject and subordinate to the Mortgage. Notwithstanding the foregoing, however, Lender agrees that in the event of a casualty or condemnation the provisions of the Lease governing use and disposition of casualty and condemnation proceeds shall control over any and all such provisions in the Mortgage, but only to the extent that said provisions of the Mortgage are in conflict or are inconsistent with the applicable provisions of the Lease.



4. NON-DISTURBANCE. Lender shall not, in the exercise of any right, remedy, or privilege granted by the Mortgage, or otherwise available to Lender at law or in equity, disturb Tenant's quiet and peaceful possession under the Lease so long as:

(a) Tenant is not in default under any provision of the Lease or this Agreement beyond any applicable cure period at the time Lender exercises any such right, remedy or privilege; and

(b) The Lease at that time is in force and effect according to its original terms, or with such amendments or modifications as Lender shall have approved, if such approval is required by the terms of the Mortgage; and

(c) Tenant thereafter continues to fully and punctually perform all of its obligations under the Lease without default thereunder beyond any applicable cure period; and

(d) Tenant attorns to or at the direction of Lender, as provided in Paragraph 5.

Without limiting the foregoing, and so long as the foregoing conditions are met, Lender agrees that (i) Tenant will not be named as a party to any foreclosure or other proceeding instituted by Lender to enforce the terms of the Mortgage except for notice purposes; (ii) any sale or other transfer of the Premises or of the Landlord's interest in the Lease, pursuant to foreclosure or any voluntary conveyance or other proceeding in lieu of foreclosure, will be subject and subordinate to Tenant's rights of possession under the Lease; and (iii) the Lease will continue in force and effect according to its original terms, or with such amendments as Lender shall have approved, if such approval is required by the terms and conditions of the Mortgage. Lender further acknowledges and agrees that with respect to any mortgagee of Tenant's interests in the Lease (such person being a "Leasehold Mortgagee"), that Landlord has entered into the Estoppel Certificate And Consent (the "Landlord's Estoppel") in favor of Tenant and Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, in its capacity as Collateral Agent ("Rabobank"), Tenant's current Leasehold Mortgagee, and that provided Rabobank or any subsequent Leasehold Mortgagee either fulfills the conditions for continuation of the Lease or the grant of a "new lease" in accordance with the Landlord's Estoppel and thereafter continues to fully and punctually perform all of Tenant's obligations under the Lease without default thereunder beyond any applicable cure period, Lender shall not terminate the Lease or disturb Rabobank's or such Leasehold Mortgagee's possession of the Premises under the Lease. In the event that Rabobank or such Leasehold Mortgagee acquires Tenant's interest under the Lease (whether by foreclosure, deed in lieu of foreclosure or otherwise), Lender hereby agrees to recognize such party as the lessee under the Lease.

5. ATTORNMENT. Tenant shall attorn to Lender, to any receiver or similar official for the Premises appointed at the instance and request, or with the consent, of Lender and to any person who acquires the Premises, or the Landlord's interest in the Lease, or both, pursuant to Lender's exercise of any right, remedy or privilege granted by the Mortgage, or otherwise at law



or in equity. Without limitation, Tenant shall attorn to any person or entity that acquired the Premises pursuant to foreclosure of the Mortgage, or by any proceeding or voluntary conveyance in lieu of such foreclosure, or from Lender, whether by sale, exchange or otherwise. Any attornment to anyone other than Lender shall be conditioned upon Tenant receiving a non-disturbance agreement from such entity in a form reasonably acceptable to Tenant and any Leasehold Mortgagee, including but not limited to, Rabobank.

Upon any attornment under this Paragraph 5, the Lease shall continue in full force and effect as a direct lease between Tenant and the person or entity to whom Tenant attorns, except that such person or entity shall not be:

(i) liable for any breach, act or omission of any prior landlord, other than a breach, act or omission that is continuing; or

(ii) subject to any offsets, claims or defenses which Tenant might have against any prior landlord; or

(iii) bound by any rent or additional rent or other payment in lieu of rent which Tenant might have paid to any prior landlord more than 30 days in advance of its due date under the Lease unless such person or entity has physical possession of such rents; or

(iv) bound by any amendment or modification of the Lease made without Lender's written consent, where such consent is required by the Mortgage; or

(v) bound by any notice given by Tenant to Landlord, whether or not such notice is given pursuant to the terms of the Lease, unless a copy thereof was then also given to Lender.

The person or entity to whom Tenant attorns shall be liable to Tenant under the Lease only during such person or entity's period of ownership, and such liability shall not continue or survive as to the transferor after a transfer by such person or entity of its interest in the Lease and the Premises.

#### 6. REPRESENTATIONS AND WARRANTIES

Tenant hereby represents and warrants to Lender as follows regarding the Lease:

(a) A true and correct copy of the Lease (inclusive of all riders and exhibits thereto) is attached to the counterpart of this Agreement being delivered to Lender. There are no other oral or written agreements, understandings or the like between Landlord and Tenant relating to the Premises or the Lease transaction.

(b) Tenant has accepted possession of the Premises, is in occupancy thereof under the Lease, and the term commenced on September 6, 2007. The term of the Lease expires on September 6, 2017.



(c) Under the Lease, Tenant is presently obligated to pay Minimum Monthly Rent without present right of defense or offset, at the rate of \$31,069.84 per month, subject to the adjustments set forth in Section 5 of the Lease dated September 6, 2007 as amended by Section 1 of the First Amendment to Lease dated December 1, 2008. Rent is paid through and including June, 2011. No rent has been paid more than 30 days in advance, and Tenant has no claim against the Landlord for any deposits or other sums.

(d) The Lease has not been modified, altered or amended in any respect except as attached to the counterpart of this Agreement being delivered to Lender.

(e) All of the improvements contemplated by the Lease will be entirely completed as required therein.

(f) The current addresses for notices to be sent to Tenant and Landlord under the Lease are set forth in Section 10 of this Agreement.

(g) Tenant has no right of first refusal, option or other right to purchase the Premises or any part thereof except as expressly set forth in the Lease.

(h) The execution of the Lease was duly authorized, the Lease was properly executed and is in full force and effect and is valid, binding and enforceable against Tenant and Landlord and there exists no default, nor state of facts which with notice, the passage of time, or both, could ripen into a default, on the part of either Tenant or Landlord except as set forth in Exhibit B.

(i) There has not been filed by or against nor, to the best of the knowledge and belief of the representing party, is there threatened against or contemplated by, Landlord or Tenant, a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or of any state thereof, or any other action brought under said bankruptcy laws.

(j) To the best of Tenant's knowledge and belief there has not been any assignment, hypothecation or pledge of the Lease or rents accruing under the Lease, other than pursuant to the Mortgage.

7. RENTS. Tenant agrees not to pay any rent under the Lease more than 30 days in advance without Lender's consent. The provisions of this Paragraph 7 may apply from time to time throughout the term of the Lease.

8. CURE. If Tenant becomes entitled to terminate the Lease or offset, withhold or abate rents because of any default by Landlord, then Tenant shall give Lender written notice specifying Landlord's default. Lender then shall have the right, but not the obligation, to cure the specified default within the following time periods:



(a) Ten (10) days after receipt of such notice with respect to defaults that can be cured by the payment of money; or

(b) Thirty (30) days after receipt of such notice with respect to any other default; unless the cure requires Lender to obtain possession of the Premises, in which case such thirty (30) day period shall not commence until Lender acquires possession, so long as Lender proceeds promptly to acquire possession of the Premises with due diligence, by foreclosure of the Mortgage or otherwise.

Nothing contained in this Paragraph 8 shall require Lender to commence or continue any foreclosure or other proceedings, or, if Lender acquires possession of the Premises, to continue such possession, if all defaults specified by Tenant in its notice are cured. Possession by a receiver, or other similar official appointed at the instance, or with the consent, of Lender shall constitute possession by Lender for all purposes under this Paragraph 8.

9. ESTOPPEL LETTERS. Whenever reasonably requested by Lender, Landlord and Tenant from time to time shall severally execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications of all of the matters as set forth in Paragraph 6, whether Tenant has exercised any renewal option or options and any other information the Lender may reasonably require to confirm the current status of the Lease, including, without limitation, a confirmation that the Lease is and remains subordinated as provided in this Agreement.

10. NOTICES. All notices, demands, and other communications that must or may be given or made in connection with this Agreement must be in writing and, unless receipt is expressly required, will be deemed delivered or made 5 days after having been mailed by registered or certified mail, return receipt requested, or by express mail, in any event with sufficient postage affixed, and addressed to the parties as follows:

TO LENDER:	People's Bank Mount Vernon Office 1801 Riverside Drive Mount Vernon, WA 98273 Attn: Jim VanderMey
TO LANDLORD:	Neptune Investment LLC 1210 Dale Way Mount Vernon WA 98273 Attn: James Koplowitz
TO TENANT:	Draper Valley Holdings LLC P.O. Box 1537 Salisbury, Maryland 21802-1537 Attn: Thomas Mahn



Such addresses may be changed by notice pursuant to this Paragraph 10; but notice of change of address is effective only upon receipt. Landlord and Tenant jointly and severally agree that they will furnish Lender with copies of all notices relating to the Lease.

11. SUCCESSORS AND ASSIGNS. As used in this Agreement, the word "Tenant" shall mean Tenant and any subsequent holder or holders of an interest under the Lease, as the text may require, provided that the interest of such holder is acquired in accordance with the terms and provisions of the Lease and the word "Lender" shall mean Lender or any other subsequent holder or holders of the Mortgage or any party acquiring title to the Premises by purchase at a foreclosure sale, by deed of the Lender, or otherwise. Subject to the foregoing, this Agreement shall bind and inure to the benefit of Landlord, Tenant and Lender, their legal representatives, successors and assigns. The terms "Lease" and "Mortgage" shall include any and all amendments, modifications, replacements, substitutions, extensions, renewals and supplements thereto.

12. FURTHER ASSURANCES. Landlord and Tenant from time to time shall execute and deliver at Lender's request all instruments that may be necessary or appropriate to evidence their agreement hereunder provided such instrument neither increases Tenant's obligations or decreases its rights under the Lease.

13. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

14. SEVERABILITY. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or to any person or to particular circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

15. LEASEHOLD MORTGAGEES. The provisions of this Agreement shall inure to the benefit of Rabobank, any subsequent Leasehold Mortgagee and their respective legal representatives, successors and assigns. Rabobank and any subsequent Leasehold Mortgagee are specifically intended to be third party beneficiaries of this Agreement; and the Lender, the Landlord and the Tenant hereby specifically grant to Rabobank and any subsequent Leasehold Mortgagee the right to enforce this Agreement and all provisions hereof which benefit Rabobank and any subsequent Leasehold Mortgagee as though said parties were parties and signatories to this Agreement; *provided, however*, that such benefits are subject to and conditioned upon the rights of Lender and Landlord to enforce the obligations imposed upon Rabobank and/or any subsequent Leasehold Mortgagee and their respective successors and assigns under this Agreement as third-party beneficiaries (with respect to Section 17 below) or under the Lease (to the extent that Rabobank and/or any subsequent Leasehold Mortgagee acquires Tenant's interest under the Lease (whether by foreclosure, deed in lieu of foreclosure or otherwise)). No amendment, modification or termination of this Agreement shall be effective without the consent of all then-existing Leasehold Mortgagees.



16. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the law of the State of Washington.

17. ATTORNEYS FEES. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by or against Lender or any other person relating to Lender, Landlord, Tenant or any of the parties designated in section 15 above.

18. AMENDMENTS. This Agreement shall not be modified or amended except in writing signed by the parties hereto.

[signature page follows]





**TENANT:**

DRAPER VALLEY HOLDINGS LLC,  
a Delaware limited liability company

By: Thomas E. Mahn  
Name: Thomas E. Mahn  
Title: Treasurer

**Acknowledgment**

STATE OF Maryland )  
COUNTY OF Wicomico )

ss.

On this day personally appeared before me Thomas E. Mahn to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that Thomas E. Mahn signed the same as Treasurer of DRAPER VALLEY HOLDINGS LLC, a Delaware limited liability company, free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21 day of July, 2011.

Kaye Wilgus Notary Public in and for the State of  
Maryland, residing at 31149 Old Ocean City Rd, Salisbury Md 21804  
My appointment expires 3-18-15


Kaye Wilgus



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

LENDER:

PEOPLES BANK,  
A Washington State corporation

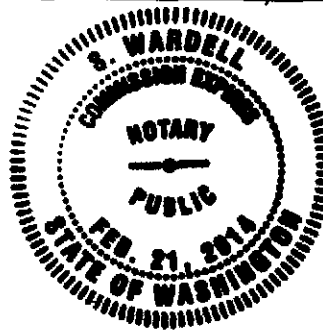
By:   
Name: Jim VanderMey  
Title: Senior Vice President and Manager

**Acknowledgment**

STATE OF WASHINGTON )


ss.

COUNTY OF SKAGIT )



On this day personally appeared before me JIM VANDERMEY to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as Vice President and Senior Manager of PEOPLES BANK, a Washington State corporation, free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 20th day of July, 2011.

, Notary Public in and for the State of WA, residing at Mount Vernon.

My appointment expires 2-21-14.



LANDLORD:

NEPTUNE INVESTMENT LLC,  
a Washington limited liability company

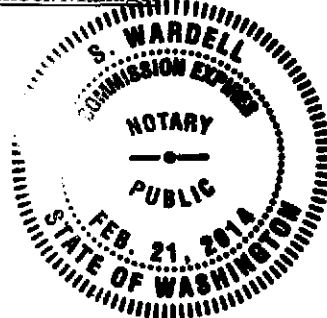
By: James H. Koplowitz  
Name: James H. Koplowitz  
Title: Member/Manager

**Acknowledgment**

STATE OF WASHINGTON )

ss.

COUNTY OF SKAGIT )



On this day personally appeared before me JAMES H. KOPLOWITZ to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as Member/Manager of NEPTUNE INVESTMENT LLC, a Washington limited liability company, free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 21<sup>st</sup> day of July, 2011.

S. Wardell, Notary Public in and for the State of  
WA, residing at Mount Vernon.

My appointment expires 2-21-14.



**EXHIBIT A**

**LEGAL DESCRIPTION**

**PARCEL A:**

The Northerly 417 feet of the portion of the South Half of the Northwest Quarter of the Southwest Quarter, lying Easterly of the Great Northern Railway Company's right-of-way, in Section 17, Township 34 North, Range 4 East of the Willamette Meridian;

EXCEPT the North 30 feet thereof as conveyed to the City of Mount Vernon for street purposes, by deed recorded June 25, 1958, under Auditor's File No. 567041, records of Skagit County, Washington;

TOGETHER WITH that portion of the West Half of adjoining vacated 9th Street, City of Mount Vernon Ordinance No. 2882, as recorded March 2, 1999, under Auditor's File No. 9903020125, records of Skagit County, Washington.

Situated in Skagit County, Washington

**PARCEL B:**

Lots 67 through 70, inclusive, Parker Business Center, according to the plat thereof, recorded in Volume 11 of Plats, pages 91 through 96, inclusive, records of Skagit County, Washington;

TOGETHER WITH those portions of private roads adjoining to the centerline thereof, as delineated on the face of said Plat;

AND TOGETHER WITH that portion of the East Half of adjoining vacated 9th Street, City of Mount Vernon Ordinance No. 2882, recorded March 2, 1999, under Skagit County Auditor's File No. 9903020125, records of Skagit County, Washington.

Situated in Skagit County, Washington

**PARCEL C:**

Lots 82A, 82, 83 and 84 and the South Half of private road known as William Way adjoining thereto of Parker Business Center, according to the plat thereof, recorded in Volume 11 of Plats, pages 91 through 96, inclusive, records of Skagit County, Washington;

TOGETHER WITH that portion of the East Half of adjoining vacated 9th Street, City of Mount Vernon Ordinance No. 2882, as recorded March 2, 1999 under Skagit County Auditor's File No. 9903020125, records of Skagit County, Washington.



Situated in Skagit County, Washington

**PARCEL D:**

Lot 2, and the South 33 feet of Lot 1, CITY OF MOUNT VERNON SHORT PLAT NO. MV-06-95, approved October 11, 1995, recorded October 11, 1995, in Volume 12 of Short Plats, pages 34 and 35, under Auditor's File No. 9510110093, records of Skagit County, Washington; and being a portion of the Southwest Quarter of Section 17, Township 34 North, Range 4 East of the Willamette Meridian.

Situated in Skagit County, Washington



## **EXHIBIT B**

### **EXCEPTIONS TO REPRESENTATIONS OF TENANT SET FORTH IN SECTION 6(H)**

1. Landlord has not received confirmation from Tenant that it has on deposit, for the benefit of Landlord, a letter of credit in the amount of \$65,000 as security for the Tenant's performance of its obligations under the Lease as required by Section 2 of the First Amendment to Lease dated December 1, 2008.

