

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Washington Mutual Bank
Attn. POST CLOSING - 3545RMTX
c/o National Commercial Operations Center
P.O. Box 9011
Coppell, TX 75019-9011
Loan No. 625028871



200609260113
Skagit County Auditor

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CHICAGO TITLE IC38611

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

AF# 200506280198 EXECUTED IN COUNTERPART [Loan No. 625028871] AF# 200609260112

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of September 25, 2006, by and among WASHINGTON MUTUAL BANK, a federal association (together with its successors and assigns, "Lender"), 1600 PORT DRIVE, LLC, a Washington limited liability company ("Borrower"), and ADVANCED H20 LLC, a Delaware limited liability company ("Tenant").

Borrower is or expects to become the landlord and Tenant is the tenant under a lease dated June 28, 2005 (as amended, the "Lease"). The Lease covers all or a portion (such leased premises, the "Leased Premises") of the real property described on the attached Exhibit A and the improvements thereon (the "Property"). Borrower has obtained or applied for a loan (the "Loan"), payment of which is to be secured by, among other things, a deed of trust, mortgage or similar instrument (the "Security Instrument") encumbering the Property. (All documents evidencing or securing the Loan, including the Security Instrument, are referred to as the "Loan Documents.") Tenant has agreed to subordinate the Lease to the Security Instrument, and Lender has agreed not to disturb Tenant's rights under the Lease, all in accordance with the terms and conditions set forth below. The parties agree as follows:

1. **Subordination.** The Lease, and all other rights and interests of Tenant in the Property (including any purchase options and rights of first refusal) are and at all times will be subordinate to the Loan Documents and the lien of the Security Instrument, to all advances made or to be made thereunder, and to any and all renewals, extensions, modifications, or replacements thereof. Tenant acknowledges and agrees that no right of first refusal held by Tenant will be exercisable in connection with any transfer pursuant to a Foreclosure Event (as defined below).

2. **Attornment.** After any transfer of the Property pursuant to a Foreclosure Event, the terms of the Lease will be recognized as a lease from Successor Landlord (as defined below) to Tenant, and Tenant hereby attorns to Successor Landlord as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon such Foreclosure Event. Notwithstanding any other provision of this Agreement, Successor Landlord will not be liable for or bound by any of the following:

(a) any act, omission, breach of the Lease, representation or warranty of Borrower or any other prior landlord (other than defaults of a continuing nature which Lender has notice of prior to commencing a Foreclosure Event and an opportunity to cure in accordance with this Agreement);

(b) any offset or credit Tenant may have against Borrower or any other prior landlord (other than offsets or credits provided for in the Lease or arising from defaults of a continuing nature which Lender has notice of prior to commencing a Foreclosure Event and an opportunity to cure in accordance with this Agreement);

(c) any obligation with respect to any prepaid rent for greater than one (1) month, unless such payment is required under the Lease;

(d) any obligation to return or give credit for any security deposit under the Lease, unless such security deposit has actually been delivered to Successor Landlord;

(e) unless previously approved in writing by Lender, (a) any modification or waiver of any provision of the Lease relating to (i) rent or other sums due Borrower or Tenant, (ii) the Lease term or any options to renew the Lease, or (iii) Lease termination, sublease or assignment; (b) any other modification of the Lease that materially and adversely affects the economics of the Lease to the detriment of the landlord; or (c) any termination, sublease or assignment of the Lease unless permitted under the Lease;

(f) any payment of rent by Tenant to Borrower in violation of Section 5 below; or

(g) any purchase option or right of first refusal with respect to the Property granted under the Lease or otherwise held by Tenant.

"Foreclosure Event" means: (i) foreclosure under the Security Instrument; (ii) any other exercise by Lender of rights and remedies as a result of which a Successor Landlord becomes the owner of the Property; or (iii) delivery to Lender (or its designee or nominee) of a deed or other conveyance of the Property in lieu of (i) or (ii) above.

"Successor Landlord" means Lender or any other person or entity that becomes the owner of the Property as the result of, or after, a Foreclosure Event.

3. **Nondisturbance.** Upon a Foreclosure Event, Lender will not (and no other Successor Landlord will be entitled to) terminate the Lease, or interfere with Tenant's use, possession or enjoyment of the Leased Premises, or adversely affect the leasehold estate granted by the Lease in any Foreclosure Event; provided that if Tenant is then in default under the Lease beyond any applicable notice, grace or cure period, at Lender's option, the Lease shall be terminated by virtue of the Foreclosure Event.

4. **Notice and Opportunity To Cure Defaults.** Tenant shall notify Lender of any default by Borrower under the Lease and offer Lender the opportunity (without the obligation) to cure such default and not terminate (or otherwise exercise any remedies with respect to) the Lease for a period of 30 days following Lender's actual receipt of such notice; or such longer period as is



reasonably necessary to cure such default, provided Lender commences such cure within the initial 30-day period and prosecutes the same with reasonable diligence.

5. **Other Acknowledgments and Agreements.** Tenant acknowledges and agrees that: (a) the Lease will be assigned to Lender under the Security Instrument; (b) upon and after Lender's written request and written notice that an event of default has occurred under any of the Loan Documents, Tenant will (and Borrower authorizes Tenant to) pay all rent and other amounts due and owing to Borrower under the Lease directly to Lender; (c) Lender has no obligation to Tenant regarding Borrower's application of the proceeds of the Loan; (d) Tenant shall at the request of Lender certify promptly in writing to Lender and any proposed assignee of the Loan whether or not any default on the part of Borrower then exists under the Lease; (e) notwithstanding Section 1 above, Lender may in its sole discretion at any time record (or otherwise provide in accordance with applicable law) notice that it elects the Security Instrument to become subordinate to the Lease, which recorded or other notice need only be executed by Lender; and upon such recording (or the giving of such other notice), the Security Instrument shall be subordinate to the Lease; and (f) if Lender becomes the Successor Landlord, Lender shall have no liability to Tenant with respect to the Lease after Lender has transferred its ownership interest in the Property to a successor landlord who has assumed the obligations of the Landlord under the Lease.

6. **Miscellaneous.**

(a) **Binding Effect.** This Agreement will inure to the benefit of and be binding upon the parties hereto, their successors and assigns and the holder from time to time of the Note.

(b) **Entire Agreement.** This Agreement constitutes the final expression of the entire agreement of the parties with respect to the subordination of the Lease to the lien of the Security Instrument. If there are any conflicts between the Security Instrument and the Lease, the Security Instrument shall control. This Agreement may not be modified other than by an agreement in writing, signed by the parties hereto or their respective successors in interest.

(c) **Effect on Lease.** Except as modified by this Agreement, all of the terms and provisions of the Lease will remain in full force and effect. If there are any conflicts between the Lease and this Agreement, the terms and provisions of this Agreement will control.

(d) **Counterparts.** This Agreement may be executed in any number of identical counterparts and by each party on a separate counterpart. If so executed, all of such counterparts will collectively constitute one agreement.

(e) **Waiver of Jury Trial.** BORROWER, TENANT AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(f) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state where the Property is located, without regard to its conflicts of laws principles.



(g) **Legal Costs.** In the event of any litigation to enforce the terms of this Agreement or to recover damages for the breach thereof, the prevailing party or parties will be entitled to recover from the nonprevailing party or parties all attorneys' fees and other costs and expenses incurred in connection therewith.

(h) **Notices.** All notices under this Agreement will be in writing and mailed or delivered by recognized overnight delivery service (such as Federal Express) at the following addresses:

If to Lender: Washington Mutual Bank
National Commercial Operations Center
3929 W. John Carpenter Freeway
Portfolio Administration – Transactions
3545 PMTX
Irving, TX 75063
Loan No. 625028871

If to Borrower: 1600 Port Drive, LLC
425 S. San Antonio Road
Los Altos, California 94022

If to Tenant: Advanced H2O, LLC
7853 Southeast 27th Street
Bldg E, Suite 283
Mercer Island, WA 98040

All such notices will: (a) if mailed, be effective three (3) business days following deposit in the United States mail with postage prepaid and return receipt requested; and (b) if delivered as provided above, be effective upon delivery. Any party to this Agreement may change the address for notices to that party by written notice to the other parties to this Agreement.

DATED as of the day and year first above written.

BORROWER: 1600 PORT DRIVE LLC, a Washington limited liability company

By: _____
Andrew A. Lewis, Manager

TENANT: ADVANCED H2O LLC, a Delaware limited liability company

By: _____
Name: ROBERT H. ASLAMOWITZ
Its CEO

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Skagit County Auditor

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LENDER:

WASHINGTON MUTUAL BANK, a federal
association

By: Nathan Villarreal

Nathan Villarreal, Vice President

Lender Acknowledgment

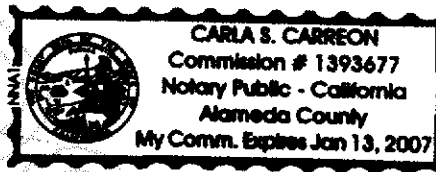
STATE OF California
COUNTY OF San Francisco ss.

On Sept 25, 2006, before me, Carla S. Carreon, personally appeared Nathan Villarreal, personally known to me (or 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.

WITNESS my hand and official seal.

Signature [Signature]

(Seal)



Borrower Acknowledgment

STATE OF _____

SS.

COUNTY OF _____

On _____, before me, _____, personally appeared ANDREW A. LEWIS, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____

Tenant Acknowledgment

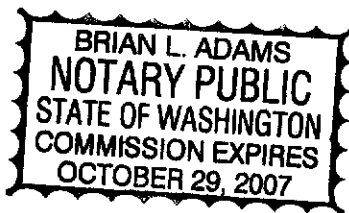
STATE OF Washington

SS.

COUNTY OF King

I certify that I know or have satisfactory evidence that Robert Arramowitz is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the CEO of ADVANCED H2O LLC, a limited liability company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

Dated this 21 day of SEPT, 2006.



Brian L. Adams
(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at Mercer Island

My appointment expires 10/29/07



200609260113

Skagit County Auditor

Exhibit A

Description of the Property

Lots 20 and 22, HOPPER ROAD BUSINESS PARK SECOND REVISED BINDING SITE PLAN, as recorded June 28, 2005, under Auditor's File No. 200506280192, records of Skagit County, Washington.



200609260113
Skagit County Auditor

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Washington Mutual Bank
Attn. POST CLOSING – 3545RMTX
c/o National Commercial Operations Center
P.O. Box 9011
Coppell, TX 75019-9011
Loan No. 625028871

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

[Loan No. 625028871]

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Borrower is or expects to become the landlord and Tenant is the tenant under a lease dated June 28, 2005 (as amended, the "Lease"). The Lease covers all or a portion (such leased premises, the "Leased Premises") of the real property described on the attached Exhibit A and the improvements thereon (the "Property"). Borrower has obtained or applied for a loan (the "Loan"), payment of which is to be secured by, among other things, a deed of trust, mortgage or similar instrument (the "Security Instrument") encumbering the Property. (All documents evidencing or securing the Loan, including the Security Instrument, are referred to as the "Loan Documents.") Tenant has agreed to subordinate the Lease to the Security Instrument, and Lender has agreed not to disturb Tenant's rights under the Lease, all in accordance with the terms and conditions set forth below. The parties agree as follows:

1. **Subordination.** The Lease, and all other rights and interests of Tenant in the Property (including any purchase options and rights of first refusal) are and at all times will be subordinate to the Loan Documents and the lien of the Security Instrument, to all advances made or to be made thereunder, and to any and all renewals, extensions, modifications, or replacements thereof. Tenant acknowledges and agrees that no right of first refusal held by Tenant will be exercisable in connection with any transfer pursuant to a Foreclosure Event (as defined below).

2. **Attornment.** After any transfer of the Property pursuant to a Foreclosure Event, the terms of the Lease will be recognized as a lease from Successor Landlord (as defined below) to Tenant, and Tenant hereby attorns to Successor Landlord as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon such Foreclosure Event. Notwithstanding any other provision of this Agreement, Successor Landlord will not be liable for or bound by any of the following:



(a) any act, omission, breach of the Lease, representation or warranty of Borrower or any other prior landlord (other than defaults of a continuing nature which Lender has notice of prior to commencing a Foreclosure Event and an opportunity to cure in accordance with this Agreement);

(b) any offset or credit Tenant may have against Borrower or any other prior landlord (other than offsets or credits provided for in the Lease or arising from defaults of a continuing nature which Lender has notice of prior to commencing a Foreclosure Event and an opportunity to cure in accordance with this Agreement);

(c) any obligation with respect to any prepaid rent for greater than one (1) month, unless such payment is required under the Lease;

(d) any obligation to return or give credit for any security deposit under the Lease, unless such security deposit has actually been delivered to Successor Landlord;

(e) unless previously approved in writing by Lender, (a) any modification or waiver of any provision of the Lease relating to (i) rent or other sums due Borrower or Tenant, (ii) the Lease term or any options to renew the Lease, or (iii) Lease termination, sublease or assignment; (b) any other modification of the Lease that materially and adversely affects the economics of the Lease to the detriment of the landlord; or (c) any termination, sublease or assignment of the Lease unless permitted under the Lease;

(f) any payment of rent by Tenant to Borrower in violation of Section 5 below; or

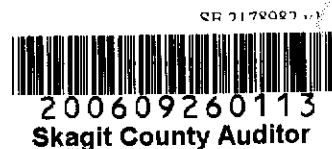
(g) any purchase option or right of first refusal with respect to the Property granted under the Lease or otherwise held by Tenant.

"Foreclosure Event" means: (i) foreclosure under the Security Instrument; (ii) any other exercise by Lender of rights and remedies as a result of which a Successor Landlord becomes the owner of the Property; or (iii) delivery to Lender (or its designee or nominee) of a deed or other conveyance of the Property in lieu of (i) or (ii) above.

"Successor Landlord" means Lender or any other person or entity that becomes the owner of the Property as the result of, or after, a Foreclosure Event.

3. **Nondisturbance.** Upon a Foreclosure Event, Lender will not (and no other Successor Landlord will be entitled to) terminate the Lease, or interfere with Tenant's use, possession or enjoyment of the Leased Premises, or adversely affect the leasehold estate granted by the Lease in any Foreclosure Event; provided that if Tenant is then in default under the Lease beyond any applicable notice, grace or cure period, at Lender's option, the Lease shall be terminated by virtue of the Foreclosure Event.

4. **Notice and Opportunity To Cure Defaults.** Tenant shall notify Lender of any default by Borrower under the Lease and offer Lender the opportunity (without the obligation) to cure such default and not terminate (or otherwise exercise any remedies with respect to) the Lease for a period of 30 days following Lender's actual receipt of such notice; or such longer period as is



reasonably necessary to cure such default, provided Lender commences such cure within the initial 30-day period and prosecutes the same with reasonable diligence.

5. **Other Acknowledgments and Agreements.** Tenant acknowledges and agrees that: (a) the Lease will be assigned to Lender under the Security Instrument; (b) upon and after Lender's written request and written notice that an event of default has occurred under any of the Loan Documents, Tenant will (and Borrower authorizes Tenant to) pay all rent and other amounts due and owing to Borrower under the Lease directly to Lender; (c) Lender has no obligation to Tenant regarding Borrower's application of the proceeds of the Loan; (d) Tenant shall at the request of Lender certify promptly in writing to Lender and any proposed assignee of the Loan whether or not any default on the part of Borrower then exists under the Lease; (e) notwithstanding Section 1 above, Lender may in its sole discretion at any time record (or otherwise provide in accordance with applicable law) notice that it elects the Security Instrument to become subordinate to the Lease, which recorded or other notice need only be executed by Lender; and upon such recording (or the giving of such other notice), the Security Instrument shall be subordinate to the Lease; and (f) if Lender becomes the Successor Landlord, Lender shall have no liability to Tenant with respect to the Lease after Lender has transferred its ownership interest in the Property to a successor landlord who has assumed the obligations of the Landlord under the Lease.

6. **Miscellaneous.**

(a) **Binding Effect.** This Agreement will inure to the benefit of and be binding upon the parties hereto, their successors and assigns and the holder from time to time of the Note.

(b) **Entire Agreement.** This Agreement constitutes the final expression of the entire agreement of the parties with respect to the subordination of the Lease to the lien of the Security Instrument. If there are any conflicts between the Security Instrument and the Lease, the Security Instrument shall control. This Agreement may not be modified other than by an agreement in writing, signed by the parties hereto or their respective successors in interest.

(c) **Effect on Lease.** Except as modified by this Agreement, all of the terms and provisions of the Lease will remain in full force and effect. If there are any conflicts between the Lease and this Agreement, the terms and provisions of this Agreement will control.

(d) **Counterparts.** This Agreement may be executed in any number of identical counterparts and by each party on a separate counterpart. If so executed, all of such counterparts will collectively constitute one agreement.

(e) **Waiver of Jury Trial.** BORROWER, TENANT AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(f) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state where the Property is located, without regard to its conflicts of laws principles.



(g) **Legal Costs.** In the event of any litigation to enforce the terms of this Agreement or to recover damages for the breach thereof, the prevailing party or parties will be entitled to recover from the nonprevailing party or parties all attorneys' fees and other costs and expenses incurred in connection therewith.

(h) **Notices.** All notices under this Agreement will be in writing and mailed or delivered by recognized overnight delivery service (such as Federal Express) at the following addresses:

If to Lender: Washington Mutual Bank
National Commercial Operations Center
3929 W. John Carpenter Freeway
Portfolio Administration – Transactions
3545 PMTX
Irving, TX 75063
Loan No. 625028871

If to Borrower: 1600 Port Drive, LLC
425 S. San Antonio Road
Los Altos, California 94022

If to Tenant: Advanced H2O, LLC
7853 Southeast 27th Street
Bldg E, Suite 283
Mercer Island, WA 98040

All such notices will: (a) if mailed, be effective three (3) business days following deposit in the United States mail with postage prepaid and return receipt requested; and (b) if delivered as provided above, be effective upon delivery. Any party to this Agreement may change the address for notices to that party by written notice to the other parties to this Agreement.

DATED as of the day and year first above written.

BORROWER:

1600 PORT DRIVE LLC, a Washington limited liability company

By: _____

Andrew A. Lewis, Manager

TENANT:

ADVANCED H2O LLC, a Delaware limited liability company

By: _____

Name: _____

Its _____

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200609260113

Skagit County Auditor

LENDER:

WASHINGTON MUTUAL BANK, a federal
association

By: _____
Nathan Villarreal, Vice President

Lender Acknowledgment

STATE OF _____
COUNTY OF _____ ss.

On _____, before me, _____, personally appeared
_____, personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____

(Seal)



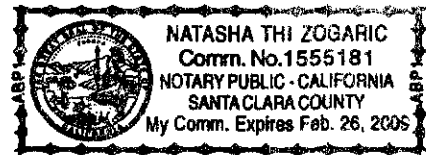
Borrower Acknowledgment

STATE OF California |
COUNTY OF Santa Clara | ss.

On September 21, 2006, before me, Natasha Thi Zogarić, personally appeared ANDREW A. LEWIS, personally known to me (~~or 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.

WITNESS my hand and official seal.

Signature Natasha Thi Zogarić



Tenant Acknowledgment

STATE OF _____ |
COUNTY OF _____ | ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of ADVANCED H2O LLC, a limited liability company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2006.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of _____,
residing at _____

My appointment expires _____



Exhibit A

Description of the Property

Lots 20 and 22, HOPPER ROAD BUSINESS PARK SECOND REVISED BINDING SITE PLAN, as recorded June 28, 2005, under Auditor's File No. 200506280192, records of Skagit County, Washington.

