

WHEN RECORDED RETURN TO:

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



200709130052  
Skagit County Auditor

9/13/2007 Page 1 of 8 11:33AM

## Chicago Title Insurance Company

425 Commercial Street – Mount Vernon, Washington 98273

IC43409-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.

☐ Additional names on page \_\_\_\_\_ of the document

### ACCOMMODATION RECORDING

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:

**TRACT 2, SKAGIT COUNTY SURVEY, VOL. 5, PAGES 42 AND 43**

☐ Complete legal description is on page 8 of the document

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

**350525-1-001-0200**

☐ (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 dated February 9, 2000, and 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 on March 9, 2006, as Document No. 200603090129; 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:



200709130052  
Skagit County Auditor

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]*



200709130052  
Skagit County Auditor

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. Brown

Name: THOMAS E. BROWN

Its: SVP

**TENANT:**

DRAPER VALLEY HOLDINGS LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



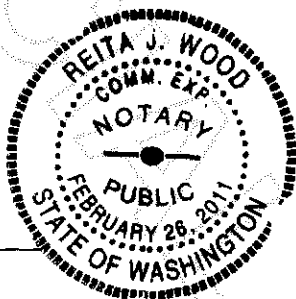
200709130052

Skagit County Auditor

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 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 30 day of August, 2007.



Reita 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 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_



200709130052  
Skagit County Auditor

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



200709130052

Skagit County Auditor

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



Skagit County Auditor

9/13/2007 Page

7 of

8 11:33AM

**Schedule "A"**  
**to**  
**Non-Disturbance Agreement**

**Legal Description of Real Estate**

Tract 2 of SKAGIT COUNTY SURVEY, recorded August 29, 1983, in Book 5 of Surveys, Pages 42 and 43, under Auditor's File No. 8308290022, records of Skagit County, Washington; being a portion of Government Lot 12 in Section 24 and that portion of the Northeast Quarter of the Northeast Quarter in Section 25, both in Township 35 North, Range 5 East of the Willamette Meridian.

Situated in Skagit County, Washington.



200709130052

Skagit County Auditor