

WHEN RECORDED RETURN TO:

Land Title and Escrow Company
P.O. Box 445
Burlington, WA 98233



200905050086
Skagit County Auditor

5/5/2009 Page 1 of 10 3:32PM

DOCUMENT TITLE(S):

INTERCREDITOR AGREEMENT

LAND TITLE OF SKAGIT COUNTY

130684-80

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

200606300211 , 200902270188, 20090505 0083
(200904270188)

GRANTOR:

GERRET E. KUIPERS AND TRUDY J. KUIPERS

GRANTEE:

SHOREBANK PACIFIC

ABBREVIATED LEGAL DESCRIPTION:

Ptn. SE ¼, SE1/4, 3-33N-3E, W.M.

TAX PARCEL NUMBER(S):

330303-4-006-0001, P15363 IOP

INTERCREDITOR AGREEMENT

BY THIS AGREEMENT, made and entered into this 29th day of April, 2009, ~~Garritt~~* and Trudy J. Kuipers, ("Kuipers") and ShoreBank Pacific, a Washington banking corporation ("ShoreBank") represent, covenant and agree as follows:

*Gerret

1. **RECITALS**

1.1 Whereas a Land Lease Agreement, dated February 24, 2009, evidenced by that certain Memorandum of Lease recorded on February 27, 2009 in Skagit County, Washington under Auditors File No. ~~20090220188~~ (the "Lease") has been entered between (i) Farm Power Rexville LLC, a Washington limited liability company ("FPR") as tenant and (ii) Garritt E. Kuipers and Sheryl L. Kuipers, husband and wife as landlord relating to the real property that is legally described in the attached Exhibit A and depicted in the attached Exhibit B (hereinafter, the "Demised Parcel").
**200902270188
**Rerecorded under Auditor's File #200904270137

1.2 Whereas Kuipers have extended credit to Garritt E. and Sheryl L. Kuipers for which a secured interest has been taken in property owned by Garritt E. and Sheryl L. Kuipers, including, without limitation, the "Demised Parcel". The credit extended to date by Kuipers for which a secured interest has taken in the Demised Parcel and other property is as follows:

Deed of Trust

- a. Grantor(s) : Garritt E. Kuipers and Sheryl L. Kuipers
- b. Loan Amount : \$235,531
- c. Auditor's No. : 200606300211
- d. Beneficiary : Kuipers***

***Gerret who erroneously appears as Gerrit

1.3 Whereas ShoreBank has extended and/or anticipates extending credit to FPR (collectively, ("FPR Credit")) for which a secured interest has been and/or will be taken in the Plant and Personal Property now or hereafter situated on or affixed to the Demised Parcel, as described below. The credit extended to date by ShoreBank for which such a secured interest has been and/or will be taken is as follows:

1. Construction Loan No. 100156001

- a. Lendee : Farm Power Rexville LLC
- b. Loan Amount : \$1,565,000.00
- c. Auditor's No. : TBD 20090505 0083

2. Equipment Loan No. 100156002

- a. Lendee : Farm Power Rexville LLC
- b. Loan Amount : \$575,000.00
- c. Auditor's No. : ~~TBD 20090505~~



1.4 Whereas, in consideration for the FPR Credit extended by ShoreBank, FPR has assigned to ShoreBank for security purposes its present and future rights, title and interest in the Demised Parcel created by the Lease. FPR's assignment of its leasehold interest in the Demised Parcel was made by and through a document entitled Assignment of Rents, dated April 13, 2009.

1.5 ShoreBank, as a condition to its extending credit to FPR, has required that Kuipers agree to vary the priority of its security interest in any Plant and Personal Property now or hereafter situated on or affixed to the Demised Parcel, as described below.

2. AGREEMENT VARYING PRIORITY

2.1 As between Kuipers and ShoreBank, the security interest of ShoreBank shall have first priority and be superior to any interest of Kuipers with respect to any and all improvements, buildings, plant or other type of structure built by or for FPR on the Demised Parcel for the purpose of operating an anaerobic digester operation, and any related personal property that is on or affixed to the Demised Parcel, including but not limited to the following (the "Plant and Personal Property"):

Plant and Personal Property: All inventory, equipment, fixtures, improvements, buildings, plant or other type of structure built by or for FPR on the Demised Parcel for the purpose of operating an anaerobic digester operation, accounts, chattel paper, instruments, (including but not limited to promissory notes), letter of credit rights, letters of credit, documents, deposit accounts, investment property money, other rights to payment and performance, general intangibles (including but not limited to all software and all payment intangibles); all insurance refunds relating to the inventory, equipment, fixtures, accounts, chattel paper, or instruments; all good will relating to the inventory, equipment, fixtures, accounts, chattel paper, or instruments; all records and data and embedded software relating to the inventory, equipment, fixtures, accounts, chattel paper, or instruments, and all equipment and inventory and software to utilize, create, maintain and process any such records and data on electronic media;

All accessions, attachments, accessories, replacements of and additions to any of the Personal Property described immediately above;

All products and produce of any of the Personal Property described above;

All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of the Personal Property described above, and sums due from a third party who has damaged or destroyed the Personal Property described above or from that party's insurer, whether due in judgment, settlement or other process;

All records and data relating to any of the Personal Property described above, whether in the form of a writing, photograph, microfilm, microfiche or electronic media, together with the right, title and interest in and to all computer software



required to utilize, create, maintain and process any such records or data on electronic media.

2.2 Kuipers waive any requirement of or right to notice when ShoreBank acquires a security interest in the types of Personal Property described above and subject hereto.

2.3 Kuipers acknowledge the right of ShoreBank, as between Kuipers and ShoreBank, to remove any of the Plant and Personal Property that can be removed without damaging the real property, or to sell it in place, in the event of a default by FRP, all subject to the terms of the Lease.

2.4 As between Kuipers and ShoreBank, the security interest of Kuipers shall have first priority and be superior to any interest of ShoreBank with respect to the real property encompassing the Demised Parcel, other than that the Plant and Personal Property that is financed by ShoreBank. ShoreBank shall not at any time encumber any of the real property encompassing the Demised Property other than such Plant and Personal Property.

2.5 Kuipers acknowledge that, in the event of a foreclosure being taken by Kuipers following a default on any loan for which a secured interest is taken in the Demised Parcel, Kuipers and/or any of their assigns will continue to recognize the leasehold interest in the Demised Premises granted by the Lease to FRP and/or its assigns, including ShoreBank, for the remaining term of the Lease, provided that such Lease is not in default. ShoreBank acknowledges that, in the event of a foreclosure being taken by Kuipers following a default on any loan for which a secured interest is taken in the Demised Parcel, ShoreBank and/or any of its assigns should ShoreBank succeed to the interests of the tenant shall be subject to and shall continue to meet the Tenant's obligations under the leasehold interest in the Demised Premises granted by the Lease to FRP, for the remaining term of the Lease, provided that Kuipers is not in default.

3. GENERAL

3.1 This Agreement is solely for the benefit of Kuipers and ShoreBank and their respective successors and assigns, and no other persons or parties are intended to be benefited in any way by this Agreement.

3.2 This Agreement constitutes the entire agreement between Kuipers and ShoreBank with respect to the subject matter hereof and may not be amended except with the written consent of both Kuipers and ShoreBank.

3.3 The subordinations, agreements and priorities set forth hereinabove shall remain in full force and effect regardless of whether any party hereto in the future seeks to rescind, amend, terminate or reform, by litigation or otherwise, its respective agreements with Debtor. Notwithstanding the foregoing, the rights of ShoreBank shall terminate upon the date which is the later of (a) the expiration date of the Lease or (b) the repayment of the FRP Loans in full.



3.4 THIS AGREEMENT SHALL BE CONSTRUED AND GOVERNED BY THE LAWS OF THE STATE OF WASHINGTON, REGARDLESS OF THE LOCATION OF ANY COLLATERAL DESCRIBED HEREIN.

3.5 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

3.6 Nothing in this Agreement shall be construed or interpreted to require Kuipers or ShoreBank to provide or continue any particular kind or amount of credit accommodation, loans or other financing to (i) Farm Power Rexville LLC and/or Garritt E. Kuipers and Sheryl L. Kuipers.

Signed on due authority as of the day and year first written above.

Garritt E. Kuipers
GARRITT KUIPERS
GERRET

Trudy J. Kuipers
TRUDY J. KUIPERS

SHOREBANK PACIFIC:

John Easterbrooks
By: JOHN EASTERBROOKS
Title: VP, COMMERCIAL RELATIONSHIP OFFICER

The undersigned Farm Power Rexville LLC, Garritt E. Kuipers and Sheryl L. Kuipers, acknowledge the same and agree to be bound thereby and to recognize the priorities set forth therein.

FARM POWER REXVILLE LLC:

Ken Adas
By: Ken Adas
Title: President, Farm Power Rexville LLC

SIGNATURE INTENTIONALLY OMITTED
GARRITT E. KUIPERS

SIGNATURE INTENTIONALLY OMITTED
SHERYL L. KUIPERS



EXHIBIT A

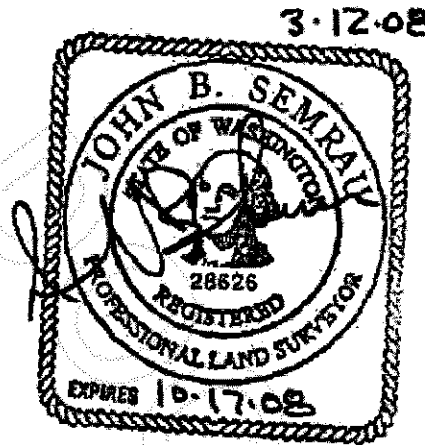
Real Property Legal Description

Legal Description for Lease

That portion of the Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 33 North, Range 3 East, W.M., described as follows:

Commencing at the southeast corner of said section, thence North 542.88 feet along the east line of said section, thence West 25 feet to a point on the west margin of Beaver Marsh Road right of way and the True Point of Beginning; thence West 350 feet, thence North 350 feet, thence East 350 feet more or less to the west margin of Beaver Marsh Road right of way, thence South 350 feet along the west margin of said right of way to the True Point of Beginning.

Situated in the County of Skagit, State of Washington

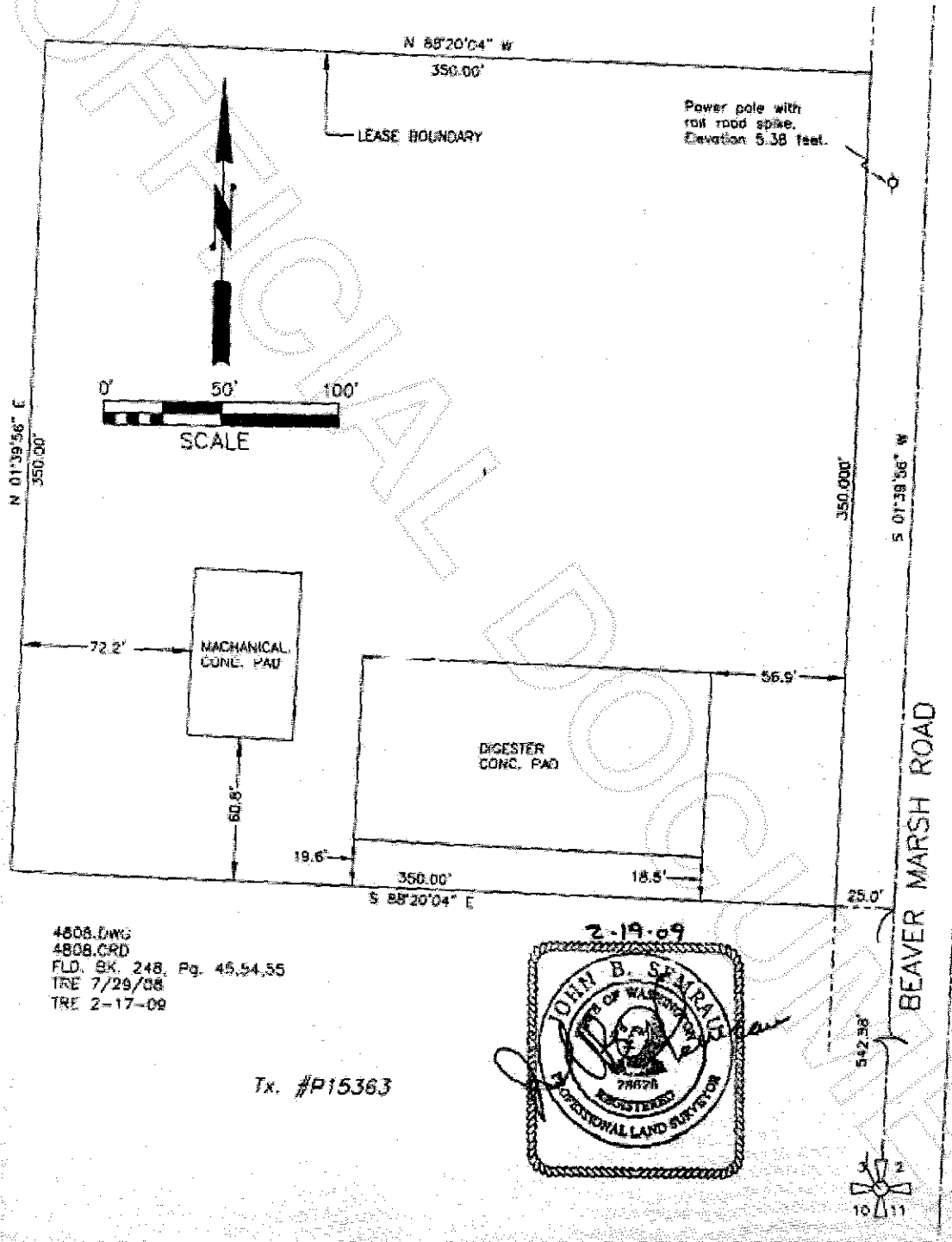


200905050086

Skagit County Auditor

EXHIBIT B

Depiction of the Real Property



4808.DWG
4808.CRD
FLD. BK. 248, Pg. 45,54,55
TRF 7/29/08
TRF 2-17-09

Tx. #P15363



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Skagit County Auditor

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