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Skagit County Auditor

RETURN RECORDED DOCUMENT TO:

AXA Equitable AgriFinance, LLC
6300 C Street SW, MS 3B-CR
Cedar Rapids, Iowa 52499
Attention: Investment Officer

01-172581-0E
CLERK OF SKAGIT COUNTY

Loan No. 60719242

**SUBORDINATION, NONDISTURBANCE, ATTORNMEN AND ESTOPPEL
AGREEMENT**

(Tenant Subordinating Lease to AXA)

THIS SUBORDINATION, NONDISTURBANCE, ATTORNMEN AND ESTOPPEL AGREEMENT (this "**Agreement**") is made and entered into as of June 21st, 2019, by AXA Equitable Life Insurance Company ("**Lender**"), Farm Power Rexville, LLC ("**Tenant**"), and Dirk and Sons, LLC, successor owner to Garritt E. Kuipers and Sheryl L. Kuipers, ("**Owner**") to and for the benefit of Owner, Lender and Tenant (each a "**Party**" and collectively, the "**Parties**").

RECITALS

A. Lender is about to extend financing in the amount of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00) to be secured by that certain mortgage or deed of trust ("**Mortgage**") granted by Owner, as grantor, and to be recorded in the official real property records of Skagit County, Washington (the "**Records**"), encumbering the real property described in Exhibit A attached hereto (the "**Property**").

B. Owner and Tenant are parties to that certain Land Lease Agreement dated February 24, 2009 (the "**Lease**").

C. The Lease grants Tenant, and its successors and assigns, certain rights to use the Property and Tenant has expended (or plans to expend) financial and other resources in use of such rights.

D. Either: (i) Tenant has requested, and Lender has agreed, subject to the terms of this Agreement, that Tenant's rights under the Lease will not be disturbed by Lender pursuant to any exercise of Lender's rights under the Mortgage; or (ii) Lender has conditioned the closing of the financing to be secured by the Mortgage on the execution of this Agreement.

NOW, THEREFORE, in consideration of the premises and in consideration of ten dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner, Lender and Tenant, Owner, Lender and Tenant hereby agree as follows:

AGREEMENT

1. Subordination. The Lease and each and every term and condition thereof, and any extensions, renewals, replacements or modification thereof, and all of the right, title and interest of Tenant in and to the Property are and shall be subject and subordinate to the Mortgage and to all of the terms and conditions contained therein, all advances made or to be made thereunder, and to any renewals, modifications, supplements, replacements, consolidations increases or extensions thereof.

2. Estoppel. Tenant certifies to Lender, holder or proposed holder of a promissory note or other obligation secured or to be secured by the Mortgage upon the Property, and to its successors and assigns and any participant with Lender in such loan, that: the Lease is presently in full force and in effect and unmodified except as indicated at the end of this Agreement; the term thereof has commenced and the full rental is now accruing thereunder; in addition to the basic rent payable under the Lease, Tenant is paying any amounts of additional rent set forth in the Lease; Tenant has accepted possession of the Property, or any portion thereof, is currently operating its business thereon, and any improvements required by the terms of the Lease to be made by Owner have been completed to the satisfaction of Tenant; no rent under the Lease has been paid more than 30 days in advance of its due date; the address for notices to be sent to Tenant is as set forth below; and Tenant, as of this date, has no charge, lien, or claim of offset under the Lease, or otherwise, against rents or other charges due or to become due thereunder.

3. Non-Disturbance. Lender covenants and agrees with the Tenant that, provided that the Lease is in full force and effect and no default of the Tenant exists thereunder beyond the grace periods which apply thereto, the Tenant's right to possession of the Property, and the terms and provisions of the Lease, shall not be affected or disturbed by Lender in the exercise of any of its rights under the Mortgage or of any rights otherwise available to Lender at law or in equity, including, without limitation, foreclosure of the Mortgage or conveyance of the Property in lieu of foreclosure of the Mortgage.

4. Attornment. If a Successor Owner (as hereinafter defined) comes into possession or ownership of the Property, then (i) such Successor Owner shall (A) thereby succeed to the position of the Owner under the Lease and (B) not disturb the possession of the Tenant except in accordance with the terms of the Lease, (ii) the Lease shall continue in full force and effect and (iii) Tenant shall attorn to such Successor Owner. “**Successor Owner**” means any person or entity (including, without limitation, Lender or any nominee or designee of Lender) that shall acquire possession or ownership of the Property by reason of foreclosure of the Mortgage, any other exercise by Lender of rights and remedies available to Lender as holder of the Mortgage or conveyance of the Property in lieu of foreclosure of the Mortgage.

5. Successor Liability. Notwithstanding anything to the contrary contained in this Agreement or in the Lease, in the event that a Successor Owner acquires title to the Property pursuant to the exercise of any remedy provided for in the Mortgage or under applicable law or as a result of a deed-in-lieu of foreclosure, Successor Owner shall not be:

(a) liable for any act or omission of Owner which occurs prior to the date Successor Owner obtains title to the Property or any obligation of Owner to perform or incur any liability with respect to the completion of improvements to be located on the Property; or

(b) bound by any payment made by Tenant to Owner for periods extending more than six months beyond the date on which Successor Owner obtains title to the Property or by any security deposit Tenant may have paid to Owner and not received by Lender; or

(c) bound by any material amendments to the Lease entered into without the written consent of Lender, not to be unreasonably withheld or delayed.

In the event that Lender acquires title to the Property, Lender shall have no obligation nor incur any liability beyond Lender’s then equity interest in the Property.

6. Assignment of Rents. Owner and Tenant hereby agree that any and all amounts payable to Owner pursuant to the terms of the Lease or any other document related thereto, including but not limited to any rent, signing fee, operating fee, initial lease payment, extension payment, acreage allowance, base rent, royalty rent, minimum rent, contract rate, construction bonus, or any rents, royalties, or monies of all similar kinds or nature are “rents, issues, royalties, income and/or profits” as described in the Mortgage and have been pledged to Lender pursuant to the terms of the Mortgage (“**Rents**”). Owner hereby irrevocably authorizes and directs Tenant, upon receipt from Lender of written notice to do so, to pay all Rents payable by Tenant to or as directed by Lender. Owner irrevocably releases Tenant from any liability to Owner for all payments so made. Tenant agrees that upon receipt of such notice it will pay all Rents then due and becoming due from Tenant to or as directed by Lender, notwithstanding any provision of the Lease to the contrary.

7. Covenants of Tenant. Tenant covenants and agrees as follows:

(a) Tenant shall send a copy of any default notice under the Lease to Lender at the same time Tenant sends such default notice to Owner.

(b) Tenant has no right or option of any nature to purchase the Property or any portion of the Property or any interest in the Owner. To the extent Tenant has or acquires any such right or option, those rights or options are acknowledged to be subject and subordinate to the Mortgage and are of no force and effect as to Lender and any Successor Owner or with regard to any conveyance by Lender or any Successor Owner.

8. Conflicting Terms. To the extent the terms of this Agreement are inconsistent with the terms of the Lease, the conflicting terms of the Lease shall be deemed amended hereby to incorporate the terms contained herein.

9. Enforcement. The Parties intend that this Agreement be specifically enforceable. If any action is brought to interpret or enforce the provisions of this Agreement, the substantially prevailing party therein shall be entitled to recover from the losing party all of its costs and reasonable attorneys' fees incurred in connection therewith.

10. Notices. Any notices given in connection with this Agreement shall be sent by certified mail, return receipt requested, with postage prepaid and addressed to the recipient at the address stated below its signature herein.

11. Successors. The terms and provisions of this Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, legal representatives, successors and assigns and, without limiting the generality of the foregoing, are specifically intended to be relied upon and be enforceable by any successor and assign of Tenant, and any person holding a lien against any estate or interest in or under the Lease or any part thereof.

12. Entire Agreement. This Agreement supersedes all previous oral and written understandings and agreements between the Parties with respect to the priority of the Mortgage and the Lease and the effect of a foreclosure or trustee's sale of the Mortgage (or conveyance in lieu thereof) on the Lease, and comprises the entire agreement of the Parties with respect thereto. No provisions of this Agreement may be modified or waived except through the execution and recordation of a subsequent written agreement by the Party to be charged therewith.

13. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

14. Execution in Counterparts. This Agreement may be executed in counterparts, all of which shall constitute one and the same contract.

15. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located, without regard to those governing conflicts of law.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE ON FOLLOWING PAGE(S)]**

EXHIBIT A
LEGAL DESCRIPTION

PARCEL "A":

The East 330 feet of the East $\frac{1}{2}$ of Government Lot 3, Section 10, Township 33 North, Range 3 East, W.M., EXCEPT County road and dike right of way.

Situate in the County of Skagit, State of Washington.

PARCEL "B":

The Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 33 North, Range 3 East, W.M., EXCEPT the North 10 feet thereof conveyed to Drainage Ditch No. 15 for drainage ditch, AND EXCEPT that portion lying within the boundaries of the as built and existing County road commonly known as the Beaver-Marsh Road running along the East line thereof, AND EXCEPT dike rights of way.

TOGETHER WITH the South 230 feet of the East 330 feet of the East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 33 North, Range 3 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "C":

Government Lot 4 in Section 10, Township 33 North, Range 3 East, W.M., EXCEPT that portion lying within the boundaries of the as built and existing County road commonly known as the Beaver-Marsh Road running along the East line thereof, AND EXCEPT dike rights of way.

Situate in the County of Skagit, State of Washington.