

MTC #21080-L

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, dated as of the 6th day of March, 1989, is among KLAMATH DAIRY PRODUCTS, INC., an Oregon corporation ("Grantor"), MOUNTAIN TITLE COMPANY OF KLAMATH COUNTY, ("Trustee"), and SEATTLE-FIRST NATIONAL BANK, a national banking association ("Beneficiary").

For Value Received, Grantor hereby irrevocably grants, bargains, sells, conveys and warrants to Trustee in trust, with power of sale that certain real property located in the County of Klamath, State of Oregon, and more particularly described in attached Exhibit "A" (the "Property"),

(The addresses of Beneficiary and Grantor are as set forth in Paragraph 6.4 hereof and the Tax Account Number of the Property are 3809 033BB 02100, 04000, and 04200.)

## TOGETHER WITH:

(a) All buildings, structures and improvements now or hereafter located on the Property, all privileges and other rights now or hereafter made appurtenant thereto, including without limitation all right, title and interest of Grantor in and to all streets, roads and public places, opened or proposed and, all easements and rights of way, public or private, now or hereafter used in connection with the Property;

(b) All of Grantor's interest in and to all fixtures and property now or hereafter attached to or used in the operation of the Property including, but not limited to, heating and incinerating apparatus and equipment, boilers, engines, motors, dynamos, generating equipment, computers, computer workstations and terminals, telephone and other communication systems, piping and plumbing fixtures, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, irrigation equipment, carpeting, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, screens, storm sash, awnings, furnishings of public spaces, halls and lobbies, and shrubbery and plants, and all renewals or replacements thereof or articles in substitution

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therefor. All property mentioned in this subsection (b) shall be deemed part of the realty and not severable wholly or in part without material injury to the Property;

(c) All rents, income, contract rights, leases and profits ("Rents") now due or which may hereafter become due under or by virtue of any lease, rental agreement, or other contract ("Leases"), whether written or oral, for the use or occupancy of the Property, or any part thereof, together with all tenant security deposits, all of which rents, income, contract rights, leases, and profits and similar interests are hereby assigned to Beneficiary as further security for payment of the indebtedness secured hereby (the "Indebtedness"), with the right of Beneficiary (or a receiver), at its election, upon the happening of a default under this Deed of Trust or under any other instrument or document delivered to Beneficiary in connection with the loans ("Loan") secured by this Deed of Trust (this Deed of Trust and such other instruments and documents are referred to herein as "Loan Documents"), to terminate the license granted to Grantor by Beneficiary pursuant to the provisions of the assignment of rents herein and demand, receive and apply upon the Indebtedness any and all rental and revenue as above described;

(d) All awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Property, including without limitation any awards for damages sustained to the Property, for a temporary taking, change of grade of streets or taking of access;

(e) All insurance policies covering all or any portion of the Property;

(f) All present and future rights to the use of any trade name by which all or any portion of the Property is known, and any books and records relating to the use and operation of all or any portion of the Property, and any improvements or development thereon and leases of any portion thereof, all right, title and interest of Grantor in, to and under all present and future plans and specifications and contracts relevant to the design, construction or management or inspection of any construction of any improvements (including without limitation tenant improvements) on all or any portion of the Property, and all right, title and interest of Grantor in and to all present and future licenses, permits, approvals and agreements with or from any municipal corporation, county, state or other governmental or quasi-governmental entity or agency relevant to the development, improvement, division or use of all or any portion of the Property;

(g) All rights of Grantor in and to any checking and savings accounts, escrow or withhold agreements, surety bonds, warranties, management contracts, leasing or sales agreements with any real estate agents or brokers, and service contracts with or

from any entity, which are in any way relevant to the development, improvement, leasing, sale or use of all or any portion of the Property or any personal property located thereon;

(h) All the lands, tenements, privileges, reversions, remainders, irrigation and water rights and stock, oil and gas rights, royalties, minerals and mineral rights, hereditaments and appurtenances belonging or in any way pertaining to the Property; and

(i) All proceeds of the conversion, voluntary and involuntary, of any of the foregoing into cash or liquidated claims.

Items (a) through (i) are hereby declared to be, for all purposes of this Deed of Trust, a part of the "Property".

Grantor makes the foregoing grant to Trustee to hold the Property in trust for the benefit of Beneficiary and for the purposes and upon the terms and conditions hereinafter set forth.

THIS DEED OF TRUST IS FOR THE PURPOSE OF SECURING the payment of the following promissory notes (the "Notes"):

A Promissory Note dated March 6, 1989 in the amount of \$515,000.00, repayable in periodic installments.

A Promissory Note dated March 6, 1989 in the amount of \$685,000.00, repayable in periodic installments.

A Promissory Note dated March 6, 1989 evidencing a \$100,000.00 line of credit.

The last periodic installment under the Notes is anticipated to be December 31, 1996 (the "Maturity Date"); the payment of any further sums advanced or loaned by Beneficiary to Grantor, or any of its successors or assigns, if (1) the Note or other writing evidencing the future advance or loan specifically states that it is secured by this Deed of Trust or (2) the advance, including costs and expenses incurred by Beneficiary, is made pursuant to this Deed of Trust or any other documents executed by Grantor evidencing, securing, or relating to the Notes and/or the collateral, whether executed prior to, contemporaneously with, or subsequent to this Deed of Trust, together with interest thereon at the rate set forth in the Notes unless otherwise specified in the Loan Documents or agreed to in writing; the performance of the obligations described in the Notes, in this Deed of Trust, in the Business Loan Agreement dated March 6, 1989, and in any other Loan Document; all renewals, modifications, or extensions thereof. (References to Sections or Paragraphs, unless otherwise indicated, shall refer to Sections and Paragraphs in this Deed of Trust.)

The parties covenant and agree as follows:

Section 1. Grantor's Covenants and Warranties.

1.1 Payment of Indebtedness, Performance of Covenants. Grantor shall duly and punctually pay each and every installment of principal and interest under the Notes and all other indebtedness secured hereby, as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Notes and any other Loan Document.

1.2 Property. Grantor warrants that (a) it holds good and marketable title to the Property free and clear of liens or encumbrances except those set forth in Beneficiary's title insurance policy or otherwise approved by Beneficiary in writing, (b) it will defend Beneficiary's and Trustee's rights hereunder against the claims and demands of all persons, (c) the proceeds of the Loan shall not be used for Grantor's personal, family, or household purposes, but rather for Grantor's business or commercial purposes, and (d) the use of the Property shall be in compliance with all applicable laws, ordinances and regulations of all governmental authorities.

1.3 Taxes, Assessments and Liens.

1.3.1 Monthly Deposits. Beneficiary, at its option, may require Grantor to pay Beneficiary each month a sum equal to one-twelfth of the annual taxes, assessments, insurance premiums and similar charges on the Property as estimated by Beneficiary. Beneficiary shall apply such sums to payment of those items when due. Sums paid by Grantor under this provision shall not earn interest and may be commingled with other funds of Beneficiary. If Beneficiary is required by law to pay interest on these sums, they shall earn interest at the lowest permissible rate, and Beneficiary may impose any lawful charge for holding and disbursing such funds.

1.3.2 Waiver by Beneficiary. If Beneficiary waives the preceding covenant to prepay taxes, assessments, premiums or similar charges, or if Grantor does not make prepayments sufficient for Beneficiary to pay such charges, then Grantor shall pay such charges when due and upon demand provide Beneficiary satisfactory evidence of such payment and coverage. Such payment shall not excuse breach of the covenant to prepay such charges to Beneficiary. Grantor's timely payment of the property taxes and assessments on the installment basis allowed by law shall be deemed for purposes hereof as "payment when due".

1.3.3 Liens on Property. Grantor shall not permit any lien prior or equal to the Trustee's title to be imposed upon the Property, except liens for taxes or assessments assessed but not

yet due or other liens which arise and are paid and satisfied in the ordinary course of business, and except as provided in Paragraph 1.3.4.

1.3.4 Grantor's Right to Contest. Grantor may withhold payment of any taxes, assessments, claims or demands or may elect to contest any lien if Grantor is in good faith conducting appropriate proceedings to contest its obligation to pay and for so long as Trustee's interest in the Property is not jeopardized. If the Property is subjected to a lien which is not discharged within 30 days from the date that the notice of claim of lien is filed, Grantor shall deposit or cause to be deposited with Beneficiary cash, a sufficient corporate surety bond or other security satisfactory to Beneficiary in an amount adequate to provide for discharge of the lien plus any interest, cost, attorney fees or other charges that could accrue as a result of enforcement of such lien. In any contest Grantor shall, at Grantor's expense, defend itself, Trustee and Beneficiary, and shall satisfy any final adverse judgment before enforcement against the Property.

1.4 Maintenance, Compliance with Law, Inspection. Grantor shall maintain the buildings and other improvements, including without limitation landscaped and recreation areas, the on-site paved parking area, and any other structures on the Property, in first class condition and state of repair, and shall promptly perform all repairs and maintenance necessary to preserve such condition and the value of the Property. Grantor shall neither commit or suffer any waste, promptly comply with all requirements of Federal, State and Municipal authorities and all other laws, ordinances, regulations, covenants, conditions and restrictions respecting the Property, or the use thereof, or Grantor, and pay all fees and charges of any kind in connection therewith. Grantor shall permit Beneficiary, or its agents, upon reasonable prior notice, to inspect the Property, including the interior of any structure.

1.5 Alteration. Grantor shall not, without the prior written consent of Beneficiary, which consent may be granted or withheld in Beneficiary's sole discretion, erect any buildings or additions to existing buildings or other structures on the Property or demolish or remove any improvements on the Property; provided that Grantor may make tenant improvements which it deems necessary for the purpose of renting the Property. No fixture or chattel covered by this Deed of Trust and adapted to the proper use and enjoyment of the Property shall be removed at any time, unless such fixture or chattel is (a) actually replaced by an article of equal suitability, owned by Grantor free and clear of any lien or security interest, except such as may be approved in writing by the Beneficiary, or (b) deemed by Grantor, in its judgment, to be inadequate, obsolete, worn out, or unnecessary for use or operation of the Property and such removal, without replacement, will not impair such use and operation.



## 1.6 Insurance.

1.6.1 Property and Other Insurance. Grantor shall obtain and maintain in full force and effect during the term of this Deed of Trust all risk property insurance together with endorsements for replacement cost coverage, inflation adjustment, and vandalism and malicious mischief coverage, all in amounts not less than the full replacement cost of all improvements including the cost of debris removal, but in any event not less than the principal amount of the loan; and comprehensive general liability insurance with limits, coverages, risks insured and waiver of subrogation clauses acceptable to Beneficiary. Grantor shall obtain and maintain such other insurance as Beneficiary from time to time shall reasonably require, including without limitation rent and rental interruption insurance (equal to twelve months annualized income), flood and earthquake insurance. If any portion of the fire and other risks insured as provided herein are reinsured, the policies shall contain a so-called "cut-through" endorsement.

1.6.2 Insurance Companies and Policies. All such insurance shall be written by a company or companies having a rating of B+VI or higher according to the most recent edition of Best's Insurance Reports ("Best's") and in amounts not in excess of ten percent (10%) of the company policyholder surplus as shown in Best's, unless reinsured by approved companies, shall contain a mortgagee clause in favor of Beneficiary with loss proceeds under any policy payable to Beneficiary, shall be satisfactory to Beneficiary as to form, substance, and, except as specifically designated above, amount, shall provide for thirty (30) days prior written notice of cancellation to Beneficiary, shall contain endorsements that no act or negligence of Grantor or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy will affect the validity or enforceability of such insurance as against Beneficiary, shall be in full force and effect on the date of this Deed of Trust, shall contain such additional provisions as Beneficiary deems necessary or desirable to protect its interest, and shall be accompanied by proof of premiums paid for the current policy year. All such insurance shall be written in amounts sufficient to prevent Grantor from becoming a co-insurer under the applicable policies.

1.6.3 Blanket Policy. If a blanket policy is issued, a certified copy of said policy shall be furnished together with a certificate indicating that Beneficiary is the insured under said policy in the proper designated amount.

1.6.4 Notice of Loss. In the event of loss, Grantor shall immediately notify Beneficiary, who may make proof of loss if it is not made promptly by Grantor.

1.6.5 Insurance Proceeds. All proceeds from any insurance on the Property shall be used in accordance with the provisions of Paragraph 1.13.

1.7 Eminent Domain.

1.7.1 Notice of Condemnation. If the Property, or any part thereof or interest therein, is taken or damaged by reasons of any public improvement or condemnation proceeding, or if Grantor receives any notice or other information regarding a condemnation proceeding or similar type of proceeding, Grantor shall immediately notify Beneficiary.

1.7.2 Condemnation Proceeds. Beneficiary shall be entitled to all compensation, awards and other payments or relief related to condemnation, and shall be entitled at its sole option to commence, appear in and prosecute in its own name any such action or proceeding. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Grantor ("Condemnation Proceeds") are hereby assigned to Beneficiary and Grantor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary may require. Beneficiary shall have the option, in its sole and absolute discretion, either to:

(i) apply such Condemnation Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney fees incurred by Beneficiary in connection with such Condemnation Proceeds, upon all or part of the indebtedness secured by this Deed of Trust in such order as Beneficiary may determine, without regard to whether or not the security of Beneficiary is impaired, or

(ii) apply all of such Condemnation Proceeds, after deducting all of Beneficiary's costs and expenses, to the restoration of the Property upon such conditions as Beneficiary may determine.

Neither the application nor the release of such Condemnation Proceeds shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Nothing in this paragraph shall affect the liability of Grantor for payment of the entire balance of the debt secured hereby or Beneficiary's lien evidenced hereby.

1.8 Books and Records. Grantor shall keep adequate books and records of account in accordance with generally accepted accounting principles and shall permit Beneficiary, or its agents, accountants and attorneys, to examine its books and records of

account, and to discuss its affairs, finances and accounts with Grantor, at such reasonable times as Beneficiary may request.

### 1.9 Security Agreement and Fixture Filing.

1.9.1 Grant of Security Interest. Grantor hereby grants to Beneficiary a security interest in the Property pursuant to the Uniform Commercial Code of the State of Oregon for the purpose of further securing the indebtedness secured hereby and all other amounts due hereunder. This Deed of Trust shall constitute a Security Agreement with respect to (i) any portion of the Property which may not be deemed to form part of the real property secured by this Deed of Trust or may not constitute a fixture within the meaning of the Oregon Uniform Commercial Code, (ii) all property listed on any financing statement filed in connection with the Loan or the Loan Documents, and (iii) all replacements of such property, substitutions for such property, additions to such property and the proceeds thereof.

1.9.2 Rights of Beneficiary. In addition to any other rights and remedies available to Beneficiary hereunder, Beneficiary shall have all the rights of a secured party under the Uniform Commercial Code as adopted and amended from time to time in the State of Oregon. Furthermore, to the extent permitted by law, Grantor hereby authorizes Beneficiary to sign and file financing statements at any time in respect of any of the Property without such financing statements being executed, by or on behalf of Grantor, but Grantor, will however, at any time upon request of Beneficiary, execute, or cause to be executed, financing statements in respect of any Property. Grantor shall pay all filing fees, including fees for filing continuation statements in connection with such financing statements, and to reimburse Beneficiary for all costs and expenses of any kind incurred in connection therewith.

1.9.3 Fixture Filing. The recording of this Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be recorded with the appropriate authority where the Property (including said fixtures) is situated. The mailing address of Grantor is set forth in Paragraph 6.4 of this Deed of Trust and the address of Beneficiary from which information concerning the security interest may be obtained is also set forth in Paragraph 6.4.

### 1.10 Repayment of Expenses or Advances.

Grantor shall repay on written notice to Grantor all sums expended or advanced hereunder, under any other Loan Document, or as set forth in Paragraph 1.3.5 by or on behalf of Beneficiary or Trustee with interest thereon at the highest rate of interest then being charged under the Notes (the "Note Rate") from the date of



such advance or expenditure until paid, and the repayment thereof shall be secured hereby. Beneficiary, at its option, may (a) refuse any subsequent payment unless accompanied by repayment of the sums expended or advanced, (b) add such sums to the principal balance of one of the Notes or (c) treat the failure to pay such sums as demanded as a default hereunder. If such sums are added to the principal balance of a Note, they shall bear interest at the Default Rate as defined in the pertinent Note.

1.11 Annual Statements. Within ninety (90) days of the close of each fiscal year of Grantor, Grantor shall furnish Beneficiary, at Grantor's expense, with Grantor's audited financial statement and with annual statements of operations of the Property in a form satisfactory to Beneficiary and certified by Grantor or a general partner of Grantor and accompanied by an opinion of an independent certified public accountant, acceptable to Beneficiary, stating that such annual statement presents fairly the financial condition of the Property being reported upon and has been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in application in which such accountant concurs). Each statement shall include an annual rent schedule, and a schedule of gross receipts of each tenant who is obligated to pay additional rent based on a percentage of gross receipts. Beneficiary shall have the right, upon five (5) days prior written notice, to inspect and make copies of Grantor's books, records, and income tax returns with respect to the Property for the purpose of verifying any such statement. Such examination shall be at Beneficiary's expense unless Grantor's statements are found to contain significant discrepancies, in which case the cost of such examination shall be at Grantor's expense.

1.12 Tax Service Contract. Upon Beneficiary's request, Grantor shall provide, at its expense, a tax service contract for the term of the Notes issued by a tax reporting agency approved by Beneficiary. Otherwise, Grantor shall reimburse Beneficiary for the cost of making annual tax searches throughout the term of the Notes.

1.13 Casualty Loss/Restoration.

(a) After the happening of any casualty to the Property, whether required to be insured against under the policies to be provided by Grantor hereunder, Grantor shall give prompt written notice thereof to Beneficiary generally describing the nature and cause of such casualty and the extent of the damage or destruction to the Property.

(b) Grantor hereby assigns to Beneficiary all insurance proceeds which Grantor may be entitled to receive. In the event of any damage to or destruction of the Property, and provided Grantor is not in default under any of the Loan Documents and Beneficiary has determined that its security has not been impaired,

Grantor shall commence and diligently pursue to completion in accordance with this Paragraph 1.13 the repair, restoration and rebuilding of any portion of the Property that has been partially damaged or destroyed in full compliance with all legal requirements and to the same condition, character and at least equal value and general utility as nearly as possible to that existing prior to such damage or destruction (the "Restoration"). Beneficiary shall deposit such insurance proceeds other than rent or business interruption insurance proceeds in an account and shall disburse such insurance proceeds other than rent or business interruption insurance proceeds, less the cost, if any, to Beneficiary of recovering and paying out such proceeds (including without limitation attorney fees and expenses, adjuster's fees, and fees incurred in Beneficiary's performance of its obligations hereunder) (the "Net Insurance Proceeds"), in the manner hereinafter provided, to the Restoration. In the event that the Property is substantially destroyed, or cannot be rebuilt as a similar project because it was a non-conforming use under applicable governmental or zoning ordinance, or Beneficiary has reasonably determined that its security has been impaired, Beneficiary may, at its option, apply the Net Insurance Proceeds to the reduction of the Indebtedness in such order as Beneficiary may determine or to the cost of Restoration, and, at Beneficiary's option and in its sole discretion, Beneficiary may declare the Indebtedness immediately due and payable.

(c) In the event the Net Insurance Proceeds are to be used for the Restoration, Grantor shall, prior to the commencement of any work in connection with the Restoration (the "Work"), deliver or furnish to Beneficiary: (i) complete plans and specifications for the Work which (A) have been approved by all governmental authorities whose approval is required, if any, (B) bear the signed approval of an architect satisfactory to Beneficiary (the "Architect") and (C) are accompanied by Architect's signed estimate of the total estimated cost of the Restoration [such plans and specifications shall be subject to Beneficiary's approval (the "Approved Plans and Specifications")]; (ii) the amount of money (in the form of cash, letter of credit or other assurance of payment reasonably satisfactory to Beneficiary) which, as determined by Beneficiary, will be sufficient when added to the Net Insurance Proceeds, if any, to pay the entire cost of the Restoration (all money as held by Beneficiary is referred to herein as the "Restoration Funds"); (iii) copies of all permits and approvals required by law in connection with the commencement and conduct of the Restoration; and (iv) a contract for construction executed by Grantor and a contractor satisfactory to Beneficiary (the "Contractor") in form, scope and substance satisfactory to Beneficiary (including the customary retention) for performance of the Work.

(d) Grantor shall not commence any portion of the Work, other than temporary work to protect the Property or prevent

interference with business until Grantor shall have complied with the requirements of this Paragraph 1.13. After commencing the Work, Grantor shall perform or cause the Contractor to perform the Work diligently and in good faith in accordance with the Approved Plans and Specifications approved by Beneficiary. So long as Grantor is not in default under any of the Loan Documents, Beneficiary shall disburse the Restoration Funds in increments to Grantor or as Grantor may direct, from time to time as the Work progresses, to pay (or reimburse Grantor for) the costs of the Restoration, but subject to the following conditions, any of which Beneficiary may waive in its sole discretion:

(i) Beneficiary shall make such payments only upon not less than ten (10) days prior written notice from Grantor to Beneficiary and Grantor's delivery to Beneficiary of (A) Grantor's written request for payment (a "Request for Payment") accompanied by a certificate by Architect in form, scope and substance satisfactory to Beneficiary which states that all of the Work completed to that date has been done in compliance with the Approved Plans and Specifications and in accordance with all provisions of law, that the amount requested has been paid or is then due and payable and is properly a part of the cost of the Restoration and that when added to all sums, if any, previously paid out by Beneficiary, the requested amount does not exceed the value of the Work done to the date of such certificate; (B) evidence satisfactory to Beneficiary that there are no construction liens for labor, materials supplied or equipment rented in connection with the Work to date or that any such liens have been adequately provided for to Beneficiary's satisfaction; and (C) evidence satisfactory to Beneficiary that the balance of the Restoration Funds remaining after making the payments shall be sufficient to pay the balance of the cost of the Restoration not completed to date (giving in such reasonable detail as Beneficiary may require an estimate of the cost of such completion). Each Request for Payment shall be accompanied by waivers of liens satisfactory to Beneficiary covering that part of the Work previously paid for, if any, and by a search prepared by a title company or by other evidence satisfactory to Beneficiary that no construction liens have been filed against the Property and not discharged of record and that no encumbrance exists on or affecting the Property other than encumbrances, if any, which are set forth in the title policy issued to Beneficiary insuring the lien of this Deed of Trust or which are permitted by the provisions of this Deed of Trust;

(ii) Any Request for Payment after the Restoration has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the Property legal.

(e) Upon Beneficiary's receipt of the Certificate of Occupancy for the Property and of evidence acceptable to

Beneficiary that the Restoration has been completed and the costs thereof paid in full, and that the time period for filing construction liens has expired and no construction liens in connection with the Restoration are outstanding against the Property, and provided that Grantor is not then in default under any of the Loan Documents, Beneficiary shall pay any remaining Restoration Funds then held by Beneficiary to Grantor; provided that nothing contained herein shall prevent Beneficiary from applying at any time the whole or any part of the Restoration Funds to the curing of any default under the Loan Documents.

(f) If (i) within sixty (60) days after the occurrence of any damage or destruction to the Property requiring Restoration, Grantor fails to submit to Beneficiary and receive Beneficiary's approval of plans and specifications or fails to deposit with Beneficiary the additional amount necessary to accomplish the Restoration as provided in Paragraph 1.13(c), or (ii) after such plans and specifications are approved by all such governmental authorities and Beneficiary, Grantor fails to commence promptly or diligently continue to completion the Restoration, or (iii) Grantor becomes delinquent in payment of the costs incurred in connection with the Restoration, then, in addition to all of the rights herein set forth and after fifteen (15) days written notice of the non-fulfillment of one or more of the foregoing conditions, if not cured within such time period, Beneficiary may apply the Restoration Funds then or thereafter held by Beneficiary to reduce the unpaid Indebtedness in such order as Beneficiary may determine, and at Beneficiary's option and in its sole discretion, Beneficiary may declare the Indebtedness immediately due and payable.

(g) In the event that Beneficiary applies all or any portion of the Restoration Funds to reduce the unpaid Indebtedness as provided in this Paragraph 1.13, after payment in full of all sums secured by the Loan Documents, any remaining Restoration Funds shall be paid to holders of subordinate security interests or to Grantor, as their respective interests may appear.

1.14 Definitions, Environmental Covenants, Warranties and Compliance.

(a) "Environmental Law" means any federal, state or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under or about the Property, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 et seq.

(b) The term "Hazardous Substance" includes without limitation:

(i) Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq., and in the regulations promulgated pursuant to said laws;

(ii) Those substances defined as "hazardous wastes" in Section 466.005 of the Oregon Revised Statutes and amendments thereto, and in the regulations promulgated pursuant to said laws;

(iii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(iv) Such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations; and

(v) Any material, waste or substance which is (A) asbestos, (B) polychlorinated biphenyls, (C) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sections 1251 et seq. (See 33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317); (D) explosives; or (E) radioactive materials.

(c) Grantor will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or transport to or from the Property any Hazardous Substance or allow any other person or entity to do so except in minor amounts under conditions permitted by applicable law.

(d) Grantor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of, any Environmental Law .

(e) Grantor shall give prompt written notice to Beneficiary of:

(i) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the Property or the migration thereof from or to other premises;

(ii) all claims made or threatened by any third party against Grantor or the Property relating to any loss or injury resulting from any Hazardous Substance; and



(iii) Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Environmental Law.

(f) Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Property in connection with any Environmental Law and have its attorney fees in connection therewith paid by Grantor.

(g) Grantor shall protect, indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns from and against any and all loss, damage, cost, expense or liability (including attorney fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under or about the Property including without limitation (i) all foreseeable consequential damages; and (ii) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans. This indemnity shall not survive the reconveyance of the lien of this Deed of Trust, or the extinguishment of the lien by foreclosure or action in lieu thereof, and this covenant shall not survive such reconveyance or extinguishment.

(h) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is reasonably necessary or desirable under any applicable local, state or federal law or regulation, any judicial order, or by any governmental or nongovernmental entity or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance in or into the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the Property (or any portion thereof), Grantor shall, within thirty (30) days after written demand for performance thereof by Beneficiary (or such shorter period of time as may be required under any applicable law, regulation, order or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All Remedial Work shall be performed by contractors approved in advance by Beneficiary, and under the supervision of a consulting engineer approved by Beneficiary. All costs and expenses of such Remedial Work shall be paid by Grantor including, without limitation, Beneficiary's reasonable attorneys fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Grantor shall fail to timely commence, or cause to be commenced, such Remedial Work, Beneficiary may, but shall not be required to, cause

such Remedial Work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall become part of the indebtedness secured hereby.

(i) Intentionally omitted.

(j) Grantor represents and warrants to Beneficiary that:

(i) Neither the Property nor Grantor is in violation of or subject to any existing, pending or threatened investigation by any governmental authority under any Environmental Law.

(ii) Grantor has not and is not required by any Environmental Law to obtain any permits or license to construct or use any improvements, fixtures or equipment forming a part of the Property.

(iii) Grantor has made inquiry into previous uses and ownership of the Property, and after such inquiry has determined that no Hazardous Substance (as defined above) has been disposed of or released on or to the Property.

(iv) Grantor's prior, present and intended use of the Property will not result in the disposal or release of any Hazardous Substance on or to the Property.

1.15 Organization of Grantor; Validity of Loan Documents; Litigation. Grantor hereby represents and warrants to Beneficiary and Trustee that:

(a) If Grantor is a partnership, or corporation, it is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business in the State of Oregon;

(b) Grantor has the requisite power and authority to own and manage its properties, to carry on its business as is being conducted and to own, develop and operate the Property;

(c) To the best of its knowledge, after due inquiry, Grantor is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it in operating the Property;

(d) The execution, delivery and performance by Grantor of the Loan Documents and the borrowings evidenced by the Notes: (i) are within the power of Grantor; (ii) have been duly authorized by all requisite corporate or partnership action, as appropriate; (iii) have received all necessary governmental approval and no registration is needed with any governmental agency; and (iv) will not violate any provision of law, any order of any court or agency

of government, the charter documents of Grantor, or any indenture, agreement or any other instrument to which Grantor is a party or by which Grantor or any of its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its respective property or assets, except as contemplated by the provisions of the Loan Documents;

(e) Each of the Loan Documents, when executed and delivered to Beneficiary, will constitute a legal, valid and binding obligation enforceable against the Grantor in accordance with its terms; and

(f) There is not now pending against or affecting Grantor nor to its knowledge is there threatened any action, suit or proceeding at law or in equity or by or before any administrative agency that, if adversely determined, would materially impair or affect the financial condition of Grantor or the Property or operation thereof.

#### 1.16 Leases, Assignment of Rents, License to Collect Rents.

1.16.1 Leases. Grantor shall fully comply with all of the terms, conditions and provisions of the Leases so that the same shall not become in default and do all that is needful to preserve all said Leases in force. With respect to any Lease of the whole or any part of the Property involving an initial term of three years or more, Grantor shall not, without the prior written consent of Beneficiary, (a) permit assignment or subletting of all or part of the lessee's rights under the Lease unless the right to assign or sublet is expressly reserved by the lessee under the Lease, (b) modify or amend the Lease for a lesser rental or term, and (c) accept surrender of the Lease or terminate the Lease except in accordance with the terms of the Lease providing for termination in the event of a default. Any proceeds or damages resulting from a lessee's default under any such Lease, at Beneficiary's option, shall be paid to Beneficiary and applied against sums owed under the Loan Documents even though such sums may not be due and payable. Except for real estate taxes and assessments, Grantor shall not permit any lien to be created against the Property which may be or may become prior to any Lease. If the Property is partially condemned or suffers a casualty, Grantor shall promptly repair and restore the Property in order to comply with the Leases. Grantor shall promptly notify Beneficiary of lease terminations and/or new leases within any 90 day period affecting, in the aggregate, more than 25% of the net rentable area of the Property.

1.16.2 Assignment of Rents and Leases - Grantor's Right to Collect. Grantor hereby absolutely and irrevocably assigns to Beneficiary all Grantor's interest in the Rents and Leases. This

assignment shall be subject to the terms and conditions of any separate assignment of leases and/or rents, whenever executed, in favor of Beneficiary and covering the Property. Unless otherwise provided in any separate assignment of leases and/or rents, and so long as Grantor is not in default under the Loan Documents, Grantor shall have a license to collect the Rents as they become due. Grantor shall use the Rents to pay normal operating expenses for the Property and sums due and payments required under the Loan Documents. No Rents shall be collected more than one month in advance of the due date. Grantor warrants that it has made no prior assignment of the Rents or Leases and will make no subsequent assignment without the prior written consent of Beneficiary. Grantor's right to collect the Rents shall not constitute Beneficiary's consent to the use of cash collateral in any bankruptcy proceedings.

## Section 2. Events of Default

The following shall constitute events of default under this Deed of Trust and under each of the other Loan Documents:

2.1 Nonpayment. Failure of Grantor beyond any applicable notice and cure period to make any payment required by the Notes, this Deed of Trust or any other Loan Document on or before its due date.

2.2 Breach of Other Covenant. Failure of Grantor beyond any applicable notice and cure period to perform any other obligation contained in the Notes, in this Deed of Trust or in any other Loan Document.

2.3 Misinformation. Falsity in any material respect of the warranties in Sections 1.2, 1.14(j), 1.15 or 1.16.2 or of any representation, warranty or information furnished by Grantor or its agents to Beneficiary in connection with the Loan.

2.4 Other Indebtedness, Secondary Financing. Grantor's default in the performance of any obligation contained in any documents evidencing or securing any other indebtedness owed to Beneficiary or under any document evidencing or securing any secondary financing transaction which uses the Property as security.

## 2.5 Due-on-Sale, Due-on-Encumbrance.

Transfer Restrictions. One of the inducements to Beneficiary for making the Loan is the identity of Grantor. Grantor understands and agrees that the existence of any interest in the Property, other than the interests of Grantor and Beneficiary (by virtue of this Trust Deed and the other Loan Documents) and the existence of any interests in Grantor other than those of the present owners thereof would impair the Property and

the security interest of Beneficiary. The sale, conveyance, transfer or encumbrance of the Property, or any part thereof, or any interest therein, or the transfer of full possessory rights therein, directly or indirectly, either voluntarily, involuntarily, or by operation of law without Beneficiary's prior written consent, shall be deemed to be an event of default under this Deed of Trust. For the purpose of clarification, and without limiting the generality of the foregoing, the occurrence at any time of any of the following events shall be deemed to be a transfer or encumbrance of the Property in violation of this paragraph:

(i) any sale, conveyance, assignment, encumbrance, or other transfer of, or the grant of a security interest in, all or any part of the legal and/or equitable title to the Property or all or substantially all of Grantor's assets;

(ii) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of Grantor, if Grantor is a corporation;

(iii) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any general partnership interest in Grantor, if Grantor is a partnership; or

(iv) any sale, conveyance, assignment or other transfer of fifty percent (50%) or more of the limited partnership interests in Grantor, if Grantor is a limited partnership.

The purpose of this Paragraph 2.5 is to protect Beneficiary's security, keep the Property free from subordinate financing liens, and/or allow Beneficiary to raise the interest rate and collect transfer/assumption fees. The provisions of this paragraph shall apply to each and every sale, transfer, conveyance or encumbrance, regardless of whether or not Beneficiary has consented or waived its rights, (whether by action or inaction), in connection with any previous sale, transfer, conveyance or encumbrance, whether one or more. Beneficiary may attach such conditions to its consent under this Paragraph 2.5 as Beneficiary may determine, including without limitation an increase in the interest rate, payment of transfer or assumption fees, payment of administrative and legal fees and costs incurred by Beneficiary, and/or receipt of Grantor's agreement that immediately upon closing of the subject sale, transfer, conveyance or encumbrance, Grantor shall provide Beneficiary with a copy of the deed or other instrument conveying title to the Property. Notwithstanding the giving of such consent hereunder, Grantor shall not engage in any "prohibited transaction" with any "party-in-interest" as such terms are defined in the Employee Retirement Income Security Act of 1974, as amended from time to time.

2.6 Certain Taxes. For the purposes of this subsection, State Tax shall mean:

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(a) A specific tax on mortgages, trust deeds, secured indebtedness or any part of the indebtedness secured by this Deed of Trust.

(b) A specific tax on the grantor of property subject to a trust deed which the taxpayer is authorized or required to deduct from payments on the trust deed.

(c) A tax on property chargeable against the beneficiary or trustee under a trust deed or holder of the note secured thereby.

(d) A specific tax (other than an income tax or a gross receipts tax) on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

If any State Tax is enacted after the date of this Deed of Trust, enactment of the tax shall constitute an event of default, unless the following conditions are met:

(i) Grantor may lawfully pay the tax or charge imposed by the State Tax without causing any resulting economic disadvantage or increase of tax to Beneficiary or Trustee, and

(ii) Grantor pays or agrees to pay the tax or charge within thirty (30) days after notice from Beneficiary or Trustee that the tax law has been enacted.

In the event of a default under this Paragraph 2.6, and notwithstanding any other provision of the Notes or this Deed of Trust, no prepayment premium shall be payable.

2.7 Bankruptcy. The occurrence of any of the following, with respect to the Property, Grantor, any general partner of Grantor or the then owner of the Property: (i) the appointment of a receiver, liquidator, or trustee; (ii) the adjudication as a bankrupt or insolvent; (iii) the filing of any Petition for Bankruptcy or reorganization under any state or federal bankruptcy, reorganization or insolvency law, except an involuntary petition which is dismissed within ninety (90) days of its filing; (iv) the institution of any proceeding for dissolution or liquidation, except an involuntary proceeding which is dismissed within ninety (90) days of its filing; (v) inability to pay debts when due; (vi) any general assignment for the benefit of creditors; or (vii) the abandonment of the Property.

2.8 Intentionally left blank.

2.9 Notice of Default. Any periods of grace or notice provided for the benefit of Grantor herein or in the other Loan Documents shall run concurrently and not consecutively.

### Section 3. Remedies in Case of Default.

If an event of default shall occur, Beneficiary or Trustee, as the case may be, may exercise any of the following rights and remedies, in addition to any other remedies which may be available at law, in equity, or otherwise:

3.1 Acceleration. Beneficiary may declare all sums secured by this Deed of Trust, including all interest and prepayment charges, to be immediately due and payable.

3.2 Books and Records. Beneficiary may examine all books, records and contracts of Grantor pertaining to the Property and of any guarantors and make such memoranda thereof as may be desired.

3.3 Receiver. Beneficiary may have a receiver of the Property appointed. Beneficiary shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Property exceeds the amount of the indebtedness secured by this Deed of Trust. Employment by Trustee or Beneficiary shall not disqualify a person from serving as receiver. Grantor waives all defenses and consents to the appointment of a receiver at Beneficiary's option.

3.4 Possession. Beneficiary may, either through a receiver or as a lender-in-possession, take possession of all or any part of the Property, and Grantor shall peaceably surrender the same.

3.5 Rents and Revenues. Beneficiary may revoke Grantor's license to collect the rents and revenues from the Property, and may, either itself or through a receiver, collect the same. To facilitate collection, Beneficiary may notify Grantor's tenants to pay rents directly to it. Beneficiary shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this Paragraph 3.5. If rents are collected by Beneficiary under this Paragraph 3.5, Grantor hereby irrevocably designates Beneficiary as Grantor's attorney-in-fact to endorse instruments received in payment of rent, in respect of any part of the Property, in the name of Grantor and to negotiate such instruments and collect the proceeds thereof; and after payment of all amounts owed to Beneficiary pursuant to the Loan Documents, any remaining amounts shall be paid to Grantor and this power shall terminate.

3.6 Foreclosure. Beneficiary may foreclose this Deed of Trust like a mortgage and obtain a decree foreclosing Grantor's interest in all or any part of the Property.

3.7 Fixtures and Personal Property. With respect to any fixtures or personal property subject to a security interest in favor of Beneficiary, Beneficiary may exercise any and all of the

rights and remedies of a secured party under the Oregon Uniform Commercial Code.

3.8 Abandon Security. Beneficiary may abandon any security afforded by this Deed of Trust or any other Loan Document by notifying Grantor of Beneficiary's election to do so.

3.9 Power of Sale. Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Property by advertisement and exercise of the power of sale under applicable law.

3.10 Sale of Collateral. In exercising its rights and remedies, Beneficiary shall be free to sell all or any part of the collateral together or separately, or to sell certain portions of its collateral and refrain from selling other portions. Beneficiary shall be entitled to bid at any public sale of all or any portion of its collateral.

3.11 Cumulative Remedies. Any election to pursue one remedy shall not exclude resort to any other remedy, and, unless the context otherwise requires, all remedies under this Deed of Trust are cumulative and not exclusive. An election to cure under Paragraph 6.10 shall neither prejudice the right to declare a default nor constitute a waiver of the breached term or of any of the remedies provided herein. No delay or omission in exercising any right or remedy shall impair that or any other right to remedy or shall be construed to be a waiver of the default.

#### Section 4. Receiver or Trustee-in-Possession.

Upon taking possession of all or any part of the Property, a receiver or Trustee or Beneficiary or Beneficiary's representative may:

4.1 Management. Use, operate, manage, control and conduct business on the Property and make expenditures for such purposes and for maintenance and improvements as are reasonably necessary.

4.2 Rents and Revenues. Collect all rents, revenues, income, issues and profits from the Property and apply such sums to the reasonable expenses of use, operation, management, maintenance and improvements.

4.3 Construction. At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors and make any changes in plans and specifications as it deems appropriate.

4.4 Additional Indebtedness. If the revenues produced by the Property are insufficient to pay expenses, including without limitation any disbursements made by Beneficiary or Trustee

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pursuant to this Section 4, a receiver may borrow, or Beneficiary or Trustee may advance, such sums upon such terms as it deems necessary for the purposes stated in this section, and repayment of such sums shall be secured by this Deed of Trust.

Section 5. Application of Proceeds.

All proceeds realized from the exercise of the rights and remedies under Sections 3 and 4 shall be applied as follows:

5.1 Costs and Expenses. To pay the costs of exercising such rights and remedies, including the costs of any sale, the costs and expenses of any receiver or lender-in-possession, and the costs and expenses provided for in Paragraph 6.9.

5.2 Indebtedness. To pay all amounts due and payable under the Notes or under any other Loan Document or payment of which is secured by this Deed of Trust.

5.3 Surplus. The surplus, if any, shall be paid to the clerk of the court in the case of a foreclosure by judicial proceeding, otherwise to the person or persons legally entitled thereto.

Section 6. General Provisions.

6.1 Time is of the Essence. Time is of the essence hereof in connection with all obligations of the Grantor herein, in the Notes or in any other Loan Document.

6.2 Reconveyance by Trustee. At any time upon the request of the Beneficiary, payment of its fees and presentation of this Deed of Trust and the Notes for endorsement (in case of full reconveyance for cancellation and retention), without affecting liability of any person for the payment of the Indebtedness, the Trustee may (a) consent to the making of any map or plot of said Property, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof, (d) reconvey, without warranty, all or any part of the Property. The Grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof.

6.3 No Impairment of Security. Grantor shall not, without first obtaining Beneficiary's written consent, assign any of the rents or profits of the Property or collect any rent for more than one month in advance or change the general nature of the occupancy or initiate or acquiesce in any zoning reclassification, or do or suffer any act or thing which would impair the security for said debt or Beneficiary's lien upon the Property or the rents thereof.

6.4 Notice. Except as otherwise provided in this Deed of Trust, all notices and consents required or permitted under this Deed of Trust shall be in writing and may be telecopied, telexed, cabled, delivered by hand, or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Grantor:

Klamath Dairy Products, Inc.  
P.O. Box 1089  
Klamath Falls, OR 97601

If to Beneficiary:

Seattle-First National Bank  
Financial Institutions Dept.  
P.O. Box 3586  
Seattle, Washington 98124-1103

Changes in the respective addresses to which such notices may be directed may be made from time to time by either party by notice to the other party. Notices and consents given by mail in accordance with this paragraph shall be deemed to have been given two (2) days after the date of dispatch; notices and consents given by any other means shall be deemed to have been given when received.

6.5 No Cooperative or Condominium. Grantor shall not operate the Property, or permit same to be operated, as a cooperative or condominium building or buildings in which the tenants or occupants participate in the ownership, control or management of the Property or any part thereof, as tenant stockholder or otherwise.

6.6 Substitute Trustee. In the event of dissolution or resignation of the Trustee, Beneficiary may substitute one or more trustees to execute the trust hereby created, and the new trustee(s) shall succeed to all of the powers and duties of prior trustees.

6.7 Deed of Trust Binding on Successors and Assigns. This Deed of Trust shall be binding on and inure to the benefit of the successors and assigns of Grantor, Trustee and Beneficiary.

6.8 Indemnity. Grantor shall hold Beneficiary and Trustee harmless from any and all loss and expense, including but not limited to attorney fees and court costs, in any suit, action or proceeding or any appeal therefrom brought against Trustee or Beneficiary by a third party resulting from or attributable to Beneficiary's ownership of the Notes or Trustee's or Beneficiary's interest under this Deed of Trust.

6.9 Expenses and Attorney Fees. If Beneficiary refers one or more of the Notes to an attorney for collection or seeks legal

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advice following a default alleged in good faith under the Notes or under any other Loan Document; if Beneficiary is the prevailing party in any litigation instituted in connection with the Notes or any other Loan Document; or if Beneficiary or any other person initiates any judicial or nonjudicial action, suit or proceeding in connection with the Notes or any other Loan Document, the indebtedness evidenced hereby or the security therefor, and an attorney is employed by Beneficiary to (a) appear in any such action, suit or proceeding, or (b) reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve or enforce Beneficiary's interest in the Notes, this Deed of Trust, or any other Loan Document, or any security for the Notes (including but not limited to proceedings under federal bankruptcy law, in eminent domain, under probate proceedings, or in connection with any state or federal tax lien); then in any such event Grantor shall pay attorney's fees and costs and expenses incurred by Beneficiary and/or its attorney in connection with the above-mentioned events or any appeals related to such events, including but not limited to costs incurred in searching records, the cost of title reports and the cost of surveyors' reports. If not paid within ten (10) days after such fees, costs and expenses become due and written demand for payment is made upon Grantor, such amount may, at Beneficiary's option, be added to the principal of one of the Notes and shall bear interest at the Default Rate.

6.10 Beneficiary's Right to Cure. If Grantor fails to perform any obligation required of it under this Deed of Trust, Beneficiary may, without notice, take such action as it deems appropriate to remedy such failure. Such action by Beneficiary shall not constitute a waiver of the default or any other right or remedy which Beneficiary may have on account of Grantor's default.

6.11 Prepayment. The principal balance of the Notes may be prepaid in full or in part, at any time, without payment of a prepayment premium.

6.12 Applicable Law. The law of the State of Oregon shall govern the validity, interpretation, construction and performance of this Deed of Trust.

6.13 Headings. The headings to the sections and paragraphs of this Deed of Trust are included only for the convenience of the parties and shall not have the effect of defining, diminishing or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Deed of Trust.

6.14 Severability. If any provision of this Deed of Trust shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6.15 Additional Livestock. In the event Grantor acquires additional livestock in connection with the Property by purchase, birth or otherwise, Grantor shall promptly notify Beneficiary of such acquisition, including the type, breed, number, sex, age, brands, and marks, and shall, upon Beneficiary's request, execute such documentation as Beneficiary deems appropriate to grant Beneficiary a security interest in such livestock.

6.16 Late Charge. The Notes provides that if any payment is not received by Beneficiary at the place of payment specified in the Notes on or before ten (10) days after its due date, Beneficiary, at its option, may assess a late charge equal to five percent (5%) of each dollar not timely paid, and that such late charge shall be due and payable on demand, and Beneficiary, at its option, may (a) refuse any late payment or any subsequent payment unless accompanied by such late charge, (b) add such late charge to the principal balance of the pertinent Note or (c) treat the failure to pay such late charge as demanded as a default under the pertinent Note. If such late charge is added to the principal balance of such Note, it shall bear interest at the Default Rate (as defined in such Note).

6.17 Entire Agreement. This Deed of Trust and the Notes contain the entire agreement of the parties with respect to the matters covered, and no other previous agreement, statement or promise made by any party to this Deed of Trust which is not contained in its terms or in the terms of the Notes shall be binding or valid.

6.18 Warning Required by ORS 93.090. THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

6.19 Adjustable Rate Note. The Notes contains provisions which allow the interest rate and the monthly payments to change periodically. The interest rate, payment terms or balance due on the Loan secured by this Deed of Trust may be indexed, adjusted, renewed or renegotiated.

6.20 Commitment Survives Closing. To the extent any provision in the Commitment issued by the Beneficiary in connection with the Loan (a) imposes burdens or confers benefits to be performed or enjoyed after the date of funding which are not reflected in the Loan Documents or (b) contains representations or warranties which are specifically stated to survive closing, such provision, together with all obligations of Grantor under the Commitment to pay fees to Beneficiary or to pay any costs and expenses relating to the Loan or the Commitment, are incorporated herein by reference and shall survive the closing of the Loan. A

default under any such provision or obligation shall also be deemed to be a default under this Deed of Trust and under any other Loan Documents. In the event of a conflict between the Loan Documents and the Commitment, the Loan Documents shall control.

6.21 Effective Fixture Filing Date. Indicate whether document is being filed with an effective period of (check box) ☐ five years, ☐ ten years or ☒ until this Deed of Trust is reconveyed or satisfied of record or its effectiveness otherwise terminates as to the Property.

6.22 Redemption Proceeds.

6.22.1 Notice of Redemption. If the Property, or any part thereof or interest therein, is redemned, or if Grantor receives any notice or other information regarding a redemption proceeding or similar type of proceeding, Grantor shall immediately notify Beneficiary.

6.22.2 Redemption Proceeds. Beneficiary shall be entitled to all compensation and other payments or relief related to redemption, and shall be entitled at its sole option to commence, appear in and prosecute in its own name any such action or proceeding. All such compensation, payments, rights of action and proceeds ("Redemption Proceeds") are hereby assigned to Beneficiary and Grantor agrees to execute such further assignments of the Redemption Proceeds as Beneficiary may require. Beneficiary may, in its sole and absolute discretion, apply such Redemption Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney fees incurred by Beneficiary in connection with such Redemption Proceeds, upon all or part of the indebtedness secured by this Deed of Trust in such order as Beneficiary may determine, without regard to whether or not the security of Beneficiary is impaired or whether Grantor is then in default hereunder or under any other Loan Document. The application of such Redemption Proceeds shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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Nothing in this paragraph shall affect the liability of Grantor for payment of the entire balance of the debt secured hereby or Beneficiary's lien evidenced hereby.

"GRANTOR"

KLAMATH DAIRY PRODUCTS, INC.  
an Oregon corporation

By Rodney Murray  
Its President

By [Signature]  
Its Secretary

STATE OF Oregon )  
County of Klamath ) ss.

On this 16<sup>th</sup> day of March, 1989, personally appeared Rodney Murray who, being first duly sworn, did say that he is the President, [Signature] of Klamath Dairy Products, Inc., an Oregon corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its board of directors; and acknowledged said instrument to be its voluntary act and deed. Before me:

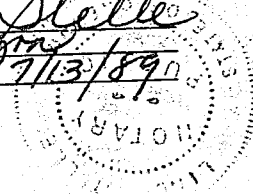
[Signature]  
Notary Public for Oregon  
My Commission Expires: 7/13/89

(Space left intentionally blank)

STATE OF Oregon )  
County of Klamath ) ss.

On this 16<sup>th</sup> day of March, 1989, personally appeared Harold Messiah, who, being first duly sworn, did say that he is the Sec of Klamath Dairy Products, Inc., an Oregon corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its board of directors; and acknowledged said instrument to be its voluntary act and deed. Before me:

Spade Stelle  
Notary Public for Oregon  
My Commission Expires: 7/13/89



Return:

MTC

Info: NO change

## EXHIBIT "A"

## Legal Description

Lots 7, 8, 9, 10 and a strip of land one foot wide off the Easterly side of Lot 11, Block 10, RAILROAD ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Lots 4D and the North 8 1/3 feet of Lot 4C, Lots 3C, 3D, 2D, 2C, 2B, 2A, 1D and the Westerly 15 feet of Lot 1C, all in Block 4, RAILROAD ADDITION TO THE CITY OF KLAMATH FALLS, according to the supplemental plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

That portion of the S1/2 SE1/4 of Section 18, Township 40 South, Range 10 East of the Willamette Meridian, lying Southerly and Westerly of the Southern Pacific Railroad right of way and Northerly and Easterly of the Klamath Irrigation District No. 5 Drain.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title Co. the 16th day  
of March A.D., 19 89 at 4:17 o'clock P. M., and duly recorded in Vol. M89  
of Mortgages on Page 4489.

FEE \$148.00

Evelyn Biehn County Clerk

By Pauline M. Miller