

Loan No. 12037

MTC 30670-KR

OREGON MORTGAGE AND SECURITY AGREEMENT

THIS OREGON MORTGAGE AND SECURITY AGREEMENT, (hereinafter referred to as the "Mortgage"), made this 30th day of August, 1993, by and between Duane F. Martin and Marlene J. Martin, husband and wife, (hereinafter referred to as "Mortgagors"), and The Mutual Life Insurance Company of New York, a New York corporation, having its principal place of business at 1740 Broadway, New York, New York, 10019, and whose mailing address is One Mid Rivers Drive, Suite 120, St. Peters, Missouri 63376, (hereinafter referred to as "Mortgagee").

WITNESSETH that to secure the payment of an indebtedness in the sum of Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00), lawful money of the United States, to be paid with interest thereon according to a Promissory Note bearing even date herewith, payable in installments, the last of which matures on January 1, 2009, said Note providing for renegotiation of the interest rate effective at the end of the fifth loan year (January 1, 1999) and at the end of the tenth loan year (January 1, 2004), (hereinafter referred to as the "Note"), to which note reference is hereby made, Mortgagors hereby **GRANT, BARGAIN, SELL, CONVEY AND WARRANT** to the Mortgagee, the property located in Klamath County, Oregon, more particularly as follows, to-wit:

**SEE EXHIBIT "A" ATTACHED HERETO AND
INCORPORATED HEREIN BY THIS REFERENCE**

TOGETHER WITH all buildings, improvements, fixtures and permanent plantings located therein or thereon or appurtenant thereto, and all substitutions, replacements, and improvements hereafter made thereto or placed therein or thereon; all rights-of-way, easements, crops and other farm products, income and proceeds therefrom, tenements, hereditaments, remainders, reversions, privileges, and appurtenances thereunto belonging, however evidenced, which are used or enjoyed with said real property or belonging to the same or which hereafter may be acquired and so used or enjoyed.

TOGETHER WITH all water and water rights, whether riparian, appropriative or otherwise and whether or not appurtenant, all ditch and ditch rights and any shares of stock, licenses or permits evidencing such water or ditch rights, and all wells, reservoirs, dams, embankments or fixtures, including but not limited to those water rights described on Exhibit "B" attached hereto and incorporated herein by this reference.

TOGETHER WITH a security interest in and to all wells, pumps, motors and all other irrigation and water delivery improvements and equipment of every kind and nature, now or hereafter located on or used in connection with the real property described in Exhibit "A", including, but not limited to, those items more particularly described in Exhibit "C" attached hereto and incorporated herein by this reference, together with all substitutions, replacements, additions and accessions thereto, and any and all allied equipment, including by way of example, but not by way of limitation, electrical panels, control boxes, wiring, pipes, valves, elbows, couplers, flanges, reducers, plugs, risers and sprinklers. Mortgagors hereby (a) warrant that said irrigation equipment shall be used only on the above described real property and solely for purposes of irrigation; (b) covenant that no other security interest in said irrigation have been given; (c) agree

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not to sell, lease, encumber, or otherwise dispose of said irrigation, or remove the same from the county in which the same is now situated, without the Mortgagee's prior written consent; and (d) agree to defend against all adverse claims and demands which may be made against said irrigation:

TOGETHER WITH all right, title and interest of Mortgagors, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the property described in Exhibit A to the center line thereof.

TOGETHER WITH all judgments, awards of damages, settlements and payments or security (i) hereinafter made as a result of or in lieu of any taking of all or any part of the property under the power of eminent domain or for any damages to the property or the improvements thereon or any part thereof and (ii) hereafter made for any damage to the property or the improvements thereon or any part thereof resulting from exercise or attempted exercise of mining rights or claims, however reserved or asserted, and resulting from the disturbance of any of the surface of said property. Mortgagee may use, pay or apply the monies in the same manner and with the same effect as provided hereinafter for disposition of insurance proceeds. Mortgagors do hereby covenant and agree that they will not give such consent as may be required of the owner for mining or other surface disturbance by the terms of any patent, deed, statute, law or otherwise, without the prior written consent of the Mortgagee, which such consent shall not be unreasonably withheld.

TOGETHER WITH all contract rights, chattel paper, documents, accounts and general intangibles, any right to performance, entitlement to payment in cash or in kind, or other benefits under any current or future governmental program which pertain to the real estate which is the subject of this Mortgage, whether now or hereafter existing or acquired.

ALL OF WHICH real property and the rights and interests in the preceding paragraphs described (hereinafter collectively referred to as the "Property") shall be deemed to constitute a portion of the security hereby given for the payment of the indebtedness and the performance of the obligations evidenced and secured hereby.

TO HAVE AND TO HOLD the same unto the Mortgagee, its successors and assigns, forever. If the Mortgagors shall pay said indebtedness according to the tenor and effect of said Note or any extension, renewal or modification thereof, and shall keep and perform all and singular the covenants and agreements herein contained, then this conveyance shall be null and void; otherwise, it shall remain in full force and effect.

THE MORTGAGORS HEREBY COVENANT AND AGREE WITH THE MORTGAGEE THAT:

1. **WARRANTIES OF TITLE AND AUTHORITY:** Mortgagors hereby represent and warrant that Mortgagors are lawfully seized or entitled to be seized of indefeasible fee title to the Property, that Mortgagors have the authority and right to execute and deliver this Mortgage, that Mortgagors shall defend the title to the Property against all claims and demands whatsoever, that the Property is free and clear of any and all prior liens, claims, encumbrances, restrictions, encroachments, and interests whatsoever in favor of any third party. (except those matters disclosed by Schedule B of the title policy issued in connection herewith), and that any and all obligations it may have incurred in connection with the Property are current and without

default. Mortgagors hereby release, waive, and relinquish all exemptions and homestead rights which may exist with respect to the Property. If the Mortgagors are a partnership or a corporation, each person executing this instrument on behalf of Mortgagors individually and personally represent and warrant that this Mortgage and each other instrument signed in the name of such entity and delivered to evidence or further secure the obligations secured hereby is in all respects binding upon such entity as an act and obligation of said partnership or corporation.

2. **OBLIGATIONS MANDATORY:** Mortgagors shall promptly pay or cause to be paid to Mortgagee, or order, and shall promptly perform or cause to be performed, each and every payment and obligation on the part of the Mortgagors provided to be paid or performed hereunder or in connection with the obligations evidenced and secured hereby when due. All of such payments and obligations are mandatory, and Mortgagors' failure to accomplish any of the same shall constitute a default under this Mortgage upon expiration of the applicable cure period following notice of the default to the Mortgagor without cure having been accomplished.

3. **HAZARDOUS MATERIALS:** Except in the ordinary course of business and in material compliance with all applicable laws, rules and regulations, Mortgagor shall not permit or cause any hazardous material to be located on the Property. Mortgagor hereby indemnifies the Mortgagee and agrees to hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred, suffered by or asserted against the Mortgagee for, with respect to or as a direct or indirect result of (i) the presence on or under the Property, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Property, of any hazardous material, including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous material, or (ii) the presence of any asbestos on the Property (including, without limitation, the cost of removal) regardless of whether or not caused by, or within the control of, Mortgagor. For purposes herein, the term "hazardous material" means and includes any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

Mortgagor shall promptly notify Mortgagee in writing of any order or pending or threatened action by any regulatory agent or other governmental body, or any claims made by any third party, relating to Hazardous Materials on, or emanations from, the Property encumbered hereby, and shall promptly furnish Mortgagee with copies of any correspondence of legal pleadings in connection therewith. At any time hereafter, terminating only upon repayment in full of the indebtedness secured hereby (and for such purpose repayment from proceeds of foreclosure sale shall not be deemed repayment of such indebtedness), if after diligent investigation Mortgagee reasonably believes that an environmental hazard exists on the property, Mortgagee may require Mortgagor to provide Mortgagee, at the expense of Mortgagor, an inspection or audit of the Property encumbered hereby, prepared by a qualified consultant approved by Mortgagee, certifying as to the presence or absence of Hazardous Materials, or to permit Mortgagee to so inspect or audit the Property encumbered hereby at Mortgagor's expense, and Mortgagor hereby

grants Mortgagee, its employees, agents and independent contractors, the right to enter upon the Property encumbered hereby for the purpose of conducting tests, soil borings, the installation of monitoring wells and such other tests as Mortgagee deems necessary or desirable. In addition, Mortgagee shall have the right, but shall not be obligated, to notify any state, federal or local governmental authority of information which may come to its attention with respect to Hazardous Materials on or emanating from the Property encumbered hereby and Mortgagor irrevocably releases Mortgagee from any claims of loss, damage, liability, expense or injury relating to or arising from, directly or indirectly, any such disclosure.

PROVIDED, HOWEVER, that nothing contained in the foregoing paragraphs relating to Hazardous Materials shall be construed to prohibit or limit the right of the Mortgagor to properly use and store substances on the subject property in the ordinary course of Mortgagor's business so long as such storage and use are in compliance with all statutes, laws, rules and regulations applicable thereto.

The liability of Mortgagor to Mortgagee under the covenants of these paragraphs relating to hazardous materials shall survive any foreclosure of this Mortgage or any transfer of the Property encumbered hereby by deed in lieu of foreclosure.

4. MAINTENANCE OF PROPERTY: Mortgagors agree: (a) not to commit or suffer waste of said premises or impairment in any manner of the agricultural value of the land and, without limiting that generality, will cultivate, irrigate, fertilize, spray, prune, keep non-timber land free from foul and noxious weed, brush and other undesirable growth, provide for stock selection, crop rotation, drainage, prevention of erosion and pasture maintenance in accordance with good husbandry and approved methods of agricultural developments; (b) to maintain the Property at all times in good condition and repair; (c) not to remove, damage, or demolish any building, fixture, or improvement thereon; not to cause or permit any building, fixture, or improvement thereon to be removed, damaged, or demolished; to complete promptly and in a good and workmanlike manner any building, fixture, or improvement on the Property which may for any reason be constructed; (d) to restore promptly and in a good and workmanlike manner any building, fixture, or improvement on the Property which may for any reason be damaged or destroyed; (e) to comply at all times with all laws, ordinances, regulations, covenants, and restrictions in any manner affecting the Property; not to commit or permit any act upon the Property in violation of law; to do all acts which by reason of the character or use of the Property may be reasonably necessary to maintain and care for the same, the specific enumeration herein not excluding the general and (f) to allow Mortgagee to inspect the Property at all reasonable times during the term hereof.

5. HAZARD INSURANCE: Mortgagor shall secure and at all times maintain an insurance policy or policies in a form and with companies reasonably satisfactory to Mortgagee, and providing coverage in an amount satisfactory to the Mortgagee, in its sole judgment, upon the buildings, fixtures, and improvements now existing or hereafter erected or placed upon the Property, and insuring against the perils of fire, extended coverage, vandalism, and malicious mischief, and deliver proof of such policies to the Mortgagee. Each such policy shall provide for losses to be payable to the Mortgagee to the extent of the interest of the Mortgagee in the Property. In the event of loss, Mortgagor shall give immediate notice to Mortgagee which may, but without any obligation to do so, make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss to the Mortgagee to the extent of the interest of the Mortgagee in the property. In the event Mortgagor elects to rebuild or repair the loss, such funds shall made available by the Mortgagee to the Mortgagor to be applied first in payment of the

costs of such replacement or repair, with the balance thereof in reduction of the indebtedness secured hereby. Within Thirty (30) days following occurrence of the loss, Mortgagor shall give Mortgagee notice of its election to rebuild or repair the loss, in which case Mortgagor shall commence work toward such replacement or repair at the earliest possible time, weather permitting, but not more than sixty (60) days following the date of the Mortgagor's notice of his intention to repair or rebuild. Mortgagor shall substantially complete said repairs at the earliest possible time, weather permitting, but in any event not more than three (3) months after work toward repair or replacement has commenced. In the event Mortgagor fails to give Mortgagee notice of its election to rebuild or repair the loss within thirty (30) following occurrence of the loss, fails to commence work towards replacement or repair within sixty (60) days following the date of the Mortgagor's notice of his intention to repair or rebuild or fails to complete same within a period of three (3) months after work toward repair or replacement has commenced, then, and in any of those events, all insurance proceeds shall be paid to the Mortgagee until the indebtedness secured hereby is fully discharged, with the balance, if any, payable to Mortgagor, and in that event Mortgagor hereby agrees to execute any and all endorsements necessary to Mortgagee's negotiation of payments or to execute any and all consents necessary for insurance carriers to make payment directly to Mortgagee. Any application of insurance proceeds to the indebtedness secured hereby shall not: (i) excuse payment of the regular installment payments called for hereunder, or (ii) be subject to payment of the Make Whole Premium as defined in the Note secured hereby. In the event Mortgagor fails to secure and maintain any of the insurance coverages as provided in this paragraph, Mortgagee may procure such insurance on Mortgagor's behalf, and at Mortgagor's sole cost and expense, in favor of the Mortgagee alone. It is hereby acknowledged by Mortgagee that the coverages and amounts of the insurance policies herein provided to be secured and maintained by Mortgagor, are for the protection of Mortgagee's interest and that Mortgagor is free to secure such additional insurance coverage relating to the Property as Mortgagor may, in his sole discretion, determine to be advisable.

6. **PAYMENTS PROTECTING AGAINST LIENS:** Mortgagors shall pay before delinquent, all taxes, water charges, assessments, or other charges or impositions levied against or affecting the Property; or which might become a lien thereon, and shall promptly deliver all receipts for such payments to Mortgagee upon request. Mortgagors shall also pay, when due, any and all sums constituting an encumbrance, charge, or lien upon the Property, or any part thereof, which may at any time appear to Mortgagee to be prior or superior to the interest of Mortgagee hereunder. In the event of the enactment after this date of any law of Oregon or any political subdivision thereof in which the Property is located deducting from the value of the Property for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagors, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, the Mortgagors, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgagors to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagors, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice, provided, however, that repayment of the loan secured hereby pursuant to this provision shall not require payment of the Make Whole premium as defined in the Note secured hereby.

7. MORTGAGEE'S PERFORMANCE IN MORTGAGORS' STEAD: Should Mortgagors fail to make any payment, to do any act or thing, or to perform any obligation herein provided to be paid, done, or performed, at the time and in the manner herein provided, Mortgagee may, but without any obligation to do so, and after notice to Mortgagors stating Mortgagee's intended payment or action and after passage of the applicable cure period provided in paragraph 22 hereof, and without releasing Mortgagors from any obligation hereunder: (a) make, do, pay, or perform the same in such manner and to such extent as Mortgagee may deem reasonably necessary or desirable to protect the security hereof or to protect any other legitimate interest of Mortgagee, Mortgagee for such purposes being authorized to enter upon the property at all reasonable times and to commence, appear in, or defend any action or proceeding purporting to affect the security hereof; or (b) pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the sole judgment of Mortgagee appears to be prior or superior to the interest of Mortgagee hereunder. In exercising any of such powers Mortgagee, in its absolute discretion, shall be entitled to incur any liability and expend whatever amounts it may deem necessary or desirable, including costs of evidence of title, court costs, and reasonable attorneys' fees. Mortgagee shall be subrogated to the claims and liens of those whose claims and liens are discharged or paid with the loan proceeds hereof.

8. REPAYMENT OF ADVANCES: Mortgagors shall immediately repay to Mortgagee all sums, with interest thereon as hereafter provided, which at any time may be paid or advanced by Mortgagee for the payment of insurance, taxes, other assessments, governmental, municipal, or other charges or impositions, title searches, title reports or abstracts, any obligation secured by a prior lien upon or prior interest in the Property, and any other advances made by Mortgagee which are or appear to be reasonably necessary or desirable, in Mortgagee's sole discretion, to maintain this Mortgage as a prior, valid, and subsisting lien upon the Property, to preserve and protect Mortgagee's or Mortgagors' interest therein or hereunder, or to preserve, repair, or maintain the Property. All such advances shall be wholly optional on the part of Mortgagee, and Mortgagors' obligation to repay the same, with interest, to Mortgagee shall be secured by the lien of this Mortgage. The amount of each such advance shall, for the period during which it remains unpaid and both before and after judgment, bear interest at the then existing default rate of interest as defined in the Note secured hereby.

9. IMPROVEMENT DISTRICT LEVIES: If (i) all or any part of the property becomes embraced within the boundaries of any irrigation, levee, drainage or other improvement district (except school or road, and except any such districts in which the property is embraced as of the date of the Mortgage); and (ii) such district shall have power to issue bonds or other evidences of indebtedness requiring a levy and collection of taxes and/or assessments in payment thereof, and (iii) the Mortgagee in the exercise of its reasonable discretion determines that the inclusion of the property in said district materially impairs its secured position with regard to the property, then the Note secured hereby shall become due and payable at the option of the holder without notice, notwithstanding anything contained in said Note, this Mortgage, or any law hereafter enacted. Repayment of the loan secured hereby pursuant to the terms of this paragraph shall not require the payment of the Make Whole premium defined in the Note secured hereby.

10. APPEARANCE IN PROCEEDINGS AFFECTING SECURITY: Mortgagors shall appear in and defend any action or proceeding purporting to or which might in any way affect the title to the Property or the security hereof (the phrase "the security hereof" when used in this Mortgage shall mean the interest of Mortgagors and Mortgagee in the Property, the rights, powers, duties, covenants, representations, warranties, and authority of Mortgagors and

Mortgagee hereunder and under any instrument evidencing or further securing the obligations secured hereby, and the validity, enforceability, and binding effect hereof and of any instrument evidencing or further securing the obligations secured hereby). Should Mortgagee elect to appear in or defend any such action or proceeding, Mortgagors shall, to the extent permitted by law, pay all costs and expenses, (regardless of the particular nature thereof), reasonably and necessarily incurred by Mortgagee in connection therewith, including costs of evidence of title, court costs, and reasonable attorneys' fees.

11. TRANSFER OF OWNERSHIP: During the term of the loan secured hereby, title to the real estate described herein shall be vested, solely in Mortgagors, and if at any time during said term, all or any part of said real estate shall, without the prior written consent of Mortgagee, not be so vested (whether voluntarily or by operation of law or otherwise), the indebtedness secured hereby shall, at the option of Mortgagee, become immediately due and payable without notice. Provided, however, that Mortgagee will not withhold its consent to a change in ownership if the new owner or owners have a satisfactory credit standing and qualified management ability to operate the property described in this Mortgage, in Mortgagee's sole judgment as a prudent lender, and the loan is not then in default. In addition, if the new ownership is of only part of the real estate, there shall be such a principal pay down on the loan as Mortgagee in its sole judgment as a prudent lender may require. A transfer in excess of twenty-five percent (25%) of the partnership interests or capital stock, measured cumulatively, of the partnership or corporate mortgagor, or of any partnership or corporate successor in interest of the Mortgagor, shall be deemed a change of ownership requiring the Mortgagee's consent pursuant thereto.

12. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND RULES: Mortgagors represent that to the best of Mortgagors' knowledge they are not in violation of any Federal Reclamation Law or of any rules or regulation imposed by the Bureau of Reclamation or other governmental authority or by any irrigation district, and further warrants that the ownership by Mortgagors of the premises is in compliance with all applicable laws, rules and regulations governing ownership of land lying within any irrigation district of which they are aware.

13. NON-EXCESS LAND: If the Mortgagors are or become the owners of irrigable lands subject to and in excess of the land limitation provisions of the Federal Reclamation Laws and pursuant to the provisions thereof is required to designate part thereof as non-excess and part as excess land, Mortgagors agrees to designate any irrigable lands on the premises encumbered hereby, or so much thereof as may be so designated with said limitation provision, as non-excess land.

14. APPLICATION OF AWARDS AND PROCEEDS: Should the Property or any part thereof be taken or damaged by reason of (a) any public improvement or condemnation proceeding, or (b) the exercise or attempted exercise of mining rights or claims, however reserved or asserted, and resulting from the disturbance of any of the surface of the Property, Mortgagee shall be entitled to all compensation, awards, insurance proceeds, and other payments or relief therefor, provided, however, that Mortgagor shall be entitled to all sums paid or payable for loss of business or business interruption, and to all sums so paid or payable for taking, loss or damage to any fixture, structure or improvement provided Mortgagor elects to repair, rebuild or replace same, and notice, rebuilding or repair and completion of the work is done in accordance with the time periods set forth under Paragraph 5 hereof, regarding proceeds of Hazard Insurance. Mortgagee shall be entitled at its option to commence, appear in, and prosecute in its own name any action or

proceeding, and to make any compromise or settlement, in connection with such taking or damage. Except as otherwise provided immediately hereinabove, all such compensation, awards, damages, rights, of action, proceeds, or other payments are hereby assigned to Mortgagee which may, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment, including reasonable attorneys' fee, incurred by it in connection with such compensation, awards, damages, rights of action, proceeds, or other payments), release any and all moneys so received by it or apply the same, or any portion thereof, on any indebtedness (whether or not then due) secured hereby. Any application of such compensation, awards, damages, proceeds or other payments shall not require payment of the Make Whole premium defined in the Note secured hereby. Each party hereto agrees to execute and deliver to the other such further assignments of such compensation, awards, damages, rights of action, proceeds, or other payments as may from time to time be required to carry out the wording and intent of this paragraph.

15. ASSIGNMENT OF RENTS AND INCOME: As additional security for the obligations secured hereby, Mortgagors hereby assign to Mortgagee, during the term of this Mortgage, any and all rents, issues, royalties, income, and profits of and from the Property. Until Mortgagors default in the payment of any agreement hereunder, or in performance under any other instrument given to evidence or further secure the obligations secured hereby, Mortgagors shall have the right to collect and use all such rents, issues, royalties, income, and profits earned prior to default. Upon any such default Mortgagors' right to collect or use any of such proceeds shall cease and Mortgagee shall have the right, with or without taking possession of the Property, and either in person, by agent, or through a court-appointed receiver (Mortgagors hereby consent to the appointment of Mortgagee as such receiver), to sue for or otherwise collect all such rents, issues, royalties, income, and profits, including those past due and unpaid. Any sums so collected shall, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorneys' fees, be applied toward the payment of the obligations secured hereby in such order as Mortgagee, at its sole election decides. Such right of collection and use of such proceeds by Mortgagee shall obtain both before and after foreclosure of this Mortgage and throughout any period of redemption. The rights granted under this paragraph shall in no way be dependent upon, and shall apply without regard to, whether the Property is in danger of being lost, removed, or materially injured, or whether the Property or any other security is adequate to discharge the obligations secured by this Mortgage. Mortgagee's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power, and authority of Mortgagee thereafter to collect the same. Nothing contained herein, nor Mortgagee's exercise of its right to collect such proceeds, shall be, or be construed to be, an affirmation by Mortgagee of any tenancy, lease, option, or other interest in the Property, or any part thereof, directly to Mortgagee upon the demand of Mortgagee. No act or acts referred to in this paragraph shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice or any cause of action to foreclose this Mortgage.

16. SECURITY AGREEMENT: When and if Mortgagor and Mortgagee shall respectively become the Debtor and Secured Party in any Uniform Commercial Code Financing Statement affecting the Property either referred to or described herein, or in any way connected with the use and enjoyment of the Property, this Mortgage shall be deemed the security agreement as defined in the Uniform Commercial Code, and the remedies for failure to perform under the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in said

Financing Statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Property (furniture only excepted) and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Mortgagee, (c) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) the rights in or the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the Debtor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Property mortgaged hereby, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Mortgagee in the event any Court or judge shall at any time hold with respect to (a), (b), and (c) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including but not limited to the Federal government and any subdivisions or entity of the Federal government, must be filed in the Commercial Code Records.

17. **NO WAIVER OF RIGHTS BY COLLECTION OF PROCEEDS:** The entering upon and taking possession of the Property or the collection of rents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of the Property, or the application or release thereof as aforesaid, shall not cure or waive any default pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of, the regularly scheduled installments provided for in the Note secured hereby.

18. **LIABILITY OF MORTGAGORS NOT AFFECTED BY ACTS OF MORTGAGEE:** Without affecting (i) the liability of any person for payment of the indebtedness secured hereby or (ii) the lien hereof upon any of the Property not released pursuant hereto, the Mortgagee may, from time to time, without notice (a) renew the indebtedness, or extend the time, or agree to alter the terms, of payment of any of the indebtedness; (b) accept additional security of any kind; and (c) release any property securing the indebtedness.

19. **APPLICATION OF PAYMENTS:** If at any time during the term hereof Mortgagee receives or obtains a payment, installment, or sum which is less than the entire amount then due under the Note secured hereby, under this Mortgage, under all other instruments further evidencing or securing the obligations secured hereby, and under all other instruments and transactions to which Mortgagors and Mortgagee are parties, Mortgagee shall, notwithstanding any instructions which may be given by Mortgagors, have the right to apply such payment, installment, or sum or any part thereof, to such of the items or obligations then due as Mortgagee may in its sole discretion determine.

20. **THE MORTGAGORS AND MORTGAGEE AGREE:** That in the event the interest herein provided for, if fully collected by the Mortgagee hereof, shall result, because of the installment reduction of principal or increase in sums payable or any combination of those two (2) or any other cause at any time during the life of the loan, in an effective rate of interest which, for any such installment period transcends the limit of the usury law applicable to this loan, all sums in excess of those lawfully collectible as interest for the time in question shall, without further agreement of the parties hereto or notice by Mortgagee or Mortgagors, or vice-versa, be applied upon principal immediately upon receipt by Mortgagee, with the same force and effect as though the Mortgagors had specifically designated such extra sums to be so applied to principal. The Mortgagee hereby agrees to accept such extra payment(s) without payment of the Make Whole premium defined in the Note secured hereby. Notwithstanding the foregoing, however, Mortgagee may at any time and from time to time elect by notice in writing to the owner of the property affected by this Mortgage, to limit the collection of additional interest on each interest payment date to such sums which, when added to the said minimum interest, shall not cause the effective rate of return on the diminishing balance of principal owing hereunder to transcend the said limits permitted by law under the circumstances.

21. **APPOINTMENT OF RECEIVER:** In the event of the filing of any complaint or other proceedings wherein it is alleged that a default has occurred under this Mortgage, the Mortgagee may apply for and shall be entitled as provided by Oregon law to the appointment of a receiver to take possession of the premises and/or to collect the rents, issues and profits therefrom, with full power to lease the said premises, or any part thereof, and with such other powers as may be necessary.

22. **ACCELERATION AND FORECLOSURE:** Time is of the essence hereof, provided, however, that no default shall occur under this Oregon Mortgage or the Note secured hereby (the "Loan Documents"), until the expiration of the applicable cure period without cure having been accomplished. Unless some other cure provision applies under the terms of the Loan Documents, the following cure provisions shall apply, to-wit:

A. For failure to make any payment when due under the Loan Documents, Mortgagors shall have fifteen (15) days measured from the date such payment was due to pay all sums then due and payable; and

B.. For failure to perform any covenant, agreement or obligation due under the Loan Documents, Mortgagors shall have thirty (30) days measured from the date such performance was due to cure said default, provided, however, that if the Mortgagors shall have commenced the measures necessary to cure the default during the said thirty (30) day period, and if such cure cannot be completed within such thirty (30) day period through the exercise of due diligence by the Mortgagors, the Mortgagors shall have ninety (90) days measured from the date such performance was due to complete the measures necessary to cure the default.

Upon the occurrence of any default hereunder, or upon the discovery that any representation or warranty contained herein or in any instrument further evidencing or securing the obligations secured hereby was untrue when made, Mortgagee shall have the option, without further notice or demand, to declare all sums secured hereby immediately due and payable and to proceed to

foreclose this Mortgage. In the event of foreclosure, Mortgagee shall be entitled as provided by Oregon law to the appointment of a receiver of said Property and such receiver shall have, in addition to all the rights and powers customarily given to and exercised by such a receiver, all the rights and powers granted to the Mortgagee by the covenants contained in Paragraph 15 hereof. In any such proceeding Mortgagee shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of its rights hereunder, including court costs and reasonable attorneys' fees. Mortgagors hereby waive any right it or its successors in interest may have in the event of acceleration or foreclosure to obtain a partial release of the Property from the lien of this Mortgage by paying less than the entire amount then secured hereby, or to partially redeem the Property by paying less than the amount necessary to effect redemption in toto. If a deficiency remains after proper application of the proceeds of sale of the Property, Mortgagors shall pay the same immediately after determination of the amount thereof. Such deficiency shall, both before and after judgment therefor is entered, bear interest at the then existing default rate of interest as defined in the note secured hereby. Mortgagee may foreclose this Mortgage on the Property in one proceeding or may by separate acts foreclose the Mortgage on the land and appurtenances and realize on the security interest in the equipment which is subject to this Mortgage, and may pursue one remedy without affecting its rights to pursue the other remedy and all net proceeds from the remedy undertaken shall be applied against the debt hereby secured but shall be a payment against the final amount due and shall not relieve the obligors from installments next due thereafter.

23. RIGHTS CUMULATIVE AND NOT WAIVED: The rights and remedies accorded by this Mortgage shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising applicable law. All rights and remedies provided for in this Mortgage or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently, or successively. The failure on the part of Mortgagee to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver of any default shall not constitute a waiver of any subsequent or other default. Mortgagee shall be subrogated to the claims and liens of those whose claims and liens are discharged or paid with the loan proceeds hereof.

24. FINANCIAL REPORTS: During the term of the loan secured hereby the Mortgagors shall deliver to Mortgagee as soon as practicable after the end of each fiscal year, and in any event within 90 days thereafter, duplicate copies of their balance sheet and statement of income as of the end of such fiscal year, in reasonable detail and compiled by a regional firm of recognized certified public accountants. Such reports shall be prepared in accordance with generally accepted accounting principals consistently applied.

25. BINDING ON SUCCESSORS: This Mortgage shall be binding upon and shall inure to the benefit of the respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns of the parties hereto. The term "mortgagee" as used herein shall mean the owner and holder, including any pledgee, of the obligations secured hereby.

26. NOTICES: Any notices, demands or communication provided or required to be sent to either party hereunder or under the Promissory Note or Loan Agreement secured hereby shall be in writing, and shall be sent by United States Postal Service, postage prepaid, certified or registered, return receipt requested, or by courier, or personally delivered. All notices shall be

deemed to have been delivered seventy-two (72) hours following deposit in the United States Postal Service or upon personal delivery if sent by courier or personally delivered. All such notices shall be addressed to the parties at the addresses listed below, or to such other addresses as the parties may from time to time designate in writing, to wit:

MORTGAGEE:

The Mutual Life Insurance Company of New York
One Mid Rivers Drive, Suite 120
St. Peters, Missouri 63376

Copy to:

The Mutual Life Insurance Company of New York
1740 Broadway
New York, New York 10019

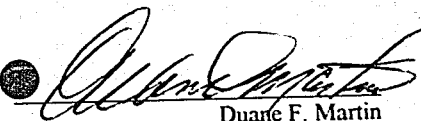
MORTGAGORS:

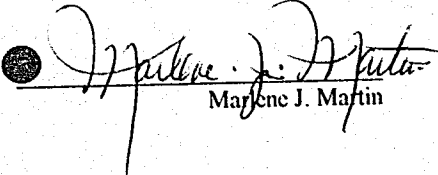
Duane F. Martin and
Marlene J. Martin
8710 E. Collier Road
Acampo, CA 95220

Any address or name may be changed by notice in accordance with this paragraph. The inability to deliver because of a changed address of which no notice was given or rejection or other refusal to accept any notice shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the legal counsel for such party.

27. **INTERPRETATION:** The captions which precede the paragraphs of this Mortgage are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders. In the event there is more than one Mortgagor hereunder, the liability of each shall be joint and several. The invalidity or unenforceability of any portion or provisions of this Mortgage shall in no way affect the validity or enforceability of the remainder hereof. This Mortgage shall be governed by and construed in accordance with the laws of the State of Oregon.

DATED the day and year first above written.


Duane F. Martin

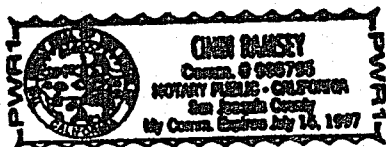

Marlene J. Martin

22175

STATE OF ~~OREGON~~ CALIFORNIA

COUNTY OF SAN JOAQUIN

This instrument was acknowledged before me on the 30th day of August,
1993, by Duane F. Martin and Marlene J. Martin, husband and wife.



Cindi Ramsey
Notary Public, State of ~~OREGON~~ CALIFORNIA

My Commission Expires: July 16, 1997

Printed Name of Notary: Cindi Ramsey

C:\WINWORD\DEL
MARTIN.MTG

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5193

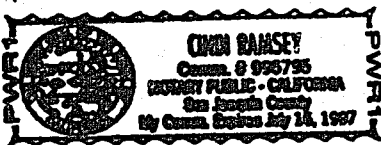
State of California }

County of San Joaquin }

On 8/30/93 before me, Cindi Ramsey, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared DUANE F. MARTIN AND MARLENE J. MARTIN
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Cindi Ramsey
SIGNATURE OF NOTARY

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO
THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law,
it could prevent fraudulent reattachment of this form.

TITLE OR TYPE OF DOCUMENT _____

NUMBER OF PAGES _____ DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☒ INDIVIDUAL

☐ CORPORATE OFFICER(S)

TITLE(S)
☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

EXHIBIT A**PARCEL 1**

In Township 36 South, Range 11 East of the Willamette Meridian, in the County of Klamath, State of Oregon:

SECTION 8: All of Section EXCEPT that part lying North of Sprague River and

SECTION 9: All of South 1/2 EXCEPT that part lying North of the Sprague River and

SECTION 10: All of Government Lots 19 through 32, inclusive EXCEPT that part lying North of the Sprague River and

SECTION 11: Government Lots 20, 21, 28 and 29

SECTION 17: Government Lots 1 through 16, inclusive and

SECTION 16: Government Lots 1 through 16 inclusive, Lots 19 through 22, inclusive, and Lots 27 through 30, inclusive and

SECTION 15: The West 1/2 of Government Lot 4, all of Lots 19 through 22, inclusive

EXCEPTING THEREFROM those portions conveyed to the Oregon-California Eastern Railway Company in deed dated June 11, 1928 and recorded June 11, 1928 in Volume 80 in page 458, and also in deed dated May 20, 1927 and recorded May 21, 1927 in Volume 75, in page 474, Deed records of Klamath County, Oregon.

ALSO EXCEPTING THEREFROM a portion conveyed to Klamath County for road purposes by deed dated November 24, 1928 and recorded April 23, 1929 in Volume 85 in page 613, Deed Records of Klamath County, Oregon.

PARCEL 2

Government Lots 27 through 30, inclusive of Section 15, Township 36 South, Range 11 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

EXCEPTING THEREFROM that portion conveyed to the Oregon-California Eastern Railway Company in deed dated May 20, 1927 and recorded May 21, 1927 in Volume 75 in page 474, Deed records of Klamath County, Oregon.

PARCEL 3

All of Government Lots 17, 18, 23, 24, 25, 26, 31 and 32, Section 7, Township 36 South, Range 11 East of the Willamette Meridian, in the County of Klamath, State of Oregon; Lots 1 through 16, inclusive in Section 18, Township 36 South, Range 11 East of the Willamette Meridian; Lots 19, 20 and 22, lying Northeasterly of the Northeasterly right of way line of the Sprague River Highway in Section 18, Township 36 South, Range 11 East of the Willamette Meridian.

EXCEPTING that portion deeded to Oregon California & Eastern Railway Company for right of way by deed recorded in Book 80 at page 432 and Book 90 at page 474, Deed Records of Klamath County, Oregon.

AND ALSO EXCEPTING THEREFROM a strip of land 60 feet wide conveyed to Klamath County for road purposes by deed dated November 26, 1928, recorded April 23, 1929 in Book 85 at page 617, Deed Records of Klamath County, Oregon.

*** Continued ***

DLK
JRM

PARCEL 4

A parcel of land situate in the SW1/4 of Section 17, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

A permanent easement for a 50 foot road right of way across the East side of the SW1/4 of Section 17, Township 36 South, Range 11 East of the Willamette Meridian as contained in instrument recorded November 10, 1958 in Book 306, page 151, Deed Records of Klamath County, Oregon.

PARCEL 5

A parcel of land situate in Section 16, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

The East 676 feet of the South 676 feet of Section 16, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon. EXCEPTING THEREFROM any portion lying within the Sprague River Highway.

PARCEL 6

Government Lots 17, 18, 23, 24, 25, 26, 31 and 32, in Section 16, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, EXCEPTING therefrom any portion lying within the right of way of the O.C. & E. Railroad right of way. ALSO EXCEPTING THEREFROM the East 676 feet of the South 676 feet of said Section 16.

Government Lots 17, 18, 23, 24, 25, 26, 31 and 32 in Section 17, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

*** * * End of Legal Description * * ***

● *DM*
● *AK*

EXHIBIT B

Sections	Source	Amount (CFS)	Primary Water Right Acres	Supplemental Water Right Acres	Priority Date	Application Number	Permit Number	Certificate Number	Permittee Name
7.18	Sprague River	3.51	281.40	0.00	4/29/27	11447	7806	8896	F. Hamworth
7.18	Well	1.50	0.00	299.60	10/20/48	U-244	U-254	20314	D. Hess
8.9, 16, 17	5 Wells	9.40	706.10	45.40	7/03/48	U-240	U-216	19830	T.W. Jones
8.9, 16	Sprague River	13.29	29.00	501.60	2/14/51	25643	21236	20358	F. Goularte
8.9, 16	Well	5.00	83.00	326.60	8/6/52	U-515	U-463	27806	J. Briggs
15	Well	1.28	100.70	0.00	6/30/54	U-585	U-534	20319	F. Goularte
17	Well	1.97	157.20	0.00	4/3/52	U-485	U-439	24679	E. Firsiack
16	Well	1.75	140.00	0.00	12/24/79	G-6390	G-5861	46974	D. Walton
TOTALS:		37.68	1507.40	1173.20					

Other Rights that may have been lost through non-use

9.10, 11	Whiskey Creek	11.06	804.05	0.00	8/15/27	8052	5184	8597	C. Drew
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The water right land under the Drew right above is now irrigated directly out of the Sprague River.

[Handwritten signature]
[Handwritten initials]

EXHIBIT C

PUMP SITE	POWER UNIT			PUMP UNIT		
	MANUFACTURER	HORSE POWER	SERIAL NUMBER	MANUFACTURER	TYPE	SERIAL NUMBER
Well No. 1	U.S. Electric	50	8232A-60-W03W013R305M	Johnson	Turbine	2028333
Well No. 2	U.S. Electric	30	5002115	Berkely	Turbine	5002115
Well No. 3	Gen. Electric	100	08J400132	Johnson	Turbine	YJ4694
Well No. 4	Neumann	40	5127007	Johnson	Turbine	Unknown
Well No. 5	U.S. Electric	Unknown	Unknown	Cornell	Centrifugal	20811
Well No. 6	U.S. Motor	30	403515	Peetfess	Turbine	15661
Well No. 7	U.S. Electric	25	F422AH12000R142F	Ingersoll Rand	Turbine	92046171
Well No. 8	No Tag	No Tag	No number	Layne	Turbine	10986
River Station 1	Fairbanks Morse	30	No number	National Turbine	Turbine	N280
River Station 2	Electra	15	No number	Unknown	Turbine	Unknown
River Station 3	U.S. Electric	25	120110	Unknown	Turbine	Unknown
Homesite Domestic Wells						
Hess Place Domestic Well	Jacuzzi	0.5	AE9TH	Pressure Tank		
Headquarters Domestic Well	Franklin Electric	1	2801084910	Submersible		

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Mountain Title co the 1st day
of Sept. A.D., 19 93 at 9:01 o'clock A M., and duly recorded in Vol. M93
of Mortgages on Page 22163.

FEE \$90.00

Evelyn Biehn County Clerk

By Debra M. Anderson