

DECLARATION OF ACCESS EASEMENT

Grantor : AQUA FARMS, L.L.C.
Grantee : KENN ARNECKE et al.

After Recording Return To: Gary D. Cole
Ball, Janik & Novack
1100 One Main Place
101 S.W. Main Street
Portland, Oregon 97204

DECLARATION OF ACCESS EASEMENT

DATE: February 14, 1995

BY: AQUA FARMS, L.L.C., an Oregon
limited liability company
720 S.W. Washington Street
Suite 670
Portland, OR 97205

("Owner")

Recitals:

A. Owner represents and guarantees that it is the owner of the parcel of real property in Clatsop County, Oregon, legally described on the attached Exhibit A (the "Property") and that the person signing for Owner is authorized to bind Owner.

B. Owner desires to subject the Property to an easement in favor of (1) Kenneth Arnecke, (2) any entity of which Arnecke is the manager (or person having comparable responsibilities) or the owner of a majority in interest of the outstanding equity securities, and (3) their respective employees together, "Arnecke", solely for purposes of ingress and egress to and from the Property (the "Easement"), on the terms and conditions contained in this Declaration of Access Easement (this "Declaration").

Declaration:

NOW, THEREFORE, Owner hereby subjects the Property to this Declaration as follows:

SECTION 1 GRANT OF EASEMENT:

1.1 Grant for Harvesting Purposes

In each case, subject to the requirements of Sections 1 and 2.2:

1.1.1 Owner hereby declares and creates an easement over and across the Property for the benefit of Arnecke solely for purposes of 24-hour, 365-day ingress and egress sufficient to permit Arnecke at all times to harvest algae on the Upper Klamath Lake utilizing boats or barges and to unload any algae harvested in accordance with this Declaration.

1.1.2 Arnecke shall have the right to utilize any heavy machinery and equipment reasonably necessary for the purpose of placing and removing algae-harvesting equipment in and from the Upper Klamath Lake, provided that Arnecke shall have no right to store such machinery or equipment on the Property longer than 72 hours unless agreed to by Owner for extenuating circumstances, such agreement not to be unreasonably withheld.

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1.1.3 Arnecke shall have the right, at Arnecke's expense, to install a dock and all ancillary equipment relating directly to the temporary docking of barges on the Property in a location mutually designated by Arnecke and Owner for purposes of providing access to barges used by Arnecke in algae harvesting operations, unloading algae, and mooring a boat not exceeding 20 feet in length for transportation to and from any such barge during algae harvesting operations, provided (1) Arnecke furnishes Owner with written evidence prior to commencing construction that Arnecke has obtained all governmental authorizations required to install the dock and has caused to be placed in escrow funds sufficient to complete construction of the dock on disbursement terms reasonably acceptable to Owner (or has obtained bonding or a letter of credit reasonably acceptable to Owner securing completion of such improvements), (2) Arnecke pays when due all amounts owing in connection with the construction of such improvements and keeps the Property free from any liens or encumbrances relating to such improvements, and (3) Arnecke removes the boat from moorage if harvesting has been discontinued for 21 days or more. Owner shall reasonably cooperate with Arnecke in obtaining any governmental authorizations required for such improvements. Owner agrees that operations on the Property shall be conducted so as not to unreasonably interfere with the unloading of algae by Arnecke or the other rights granted to Arnecke hereunder.

1.1.4 Arnecke shall have the right, at Arnecke's expense, to install a separate electrical meter on the Property, provided the cost of all power provided through such meter is borne by Arnecke.

1.2 Grant for Fishing Purposes. Owner hereby declares and creates an easement over and across the Property for the benefit of Kenn Arnecke solely for purposes of ingress and egress sufficient to permit Kenn Arnecke to fish on the Upper Klamath Lake utilizing a boat. The easement is granted for the personal benefit of Kenn Arnecke only and shall expire automatically without the necessity of recording any further instrument upon Kenn Arnecke's death.

1.3 Rights and Restrictions. Owner reserves the right to reasonably designate specific areas of the Property over which, and only over which, Arnecke may exercise Arnecke's rights under this Declaration. Arnecke in exercising Arnecke's rights under this Declaration shall not disturb or interfere with the activities or operations then conducted by Owner or Owner's successor in interest on or in connection with the Property (including, without limitation, the processing of algae). Owner shall be entitled to terminate this Declaration upon repeated or material disturbance or interference with such activities or operations or upon violation of Section 1.1 or 2.2 following a 10-day notice period during which Arnecke may cure such disturbance, interference, or violation. Arnecke shall promptly repair any damage to the Property arising from the use of the Easement, and Owner shall promptly repair any damage caused by Owner to Arnecke's property or installations on the Property.

Arnecke and Owner shall bear equally the cost of providing security for the property after Owner's normal business hours during periods in which the Easement is in use. The Easement is granted for the benefit of Arnecke only and may not be transferred or assigned, whether directly or indirectly. All improvements constructed on the Property may be utilized by, and shall be the property of, Owner (other than personal property installed by Arnecke which can be removed without material damage to the Property, which shall be the property of Arnecke upon removal), subject to the last sentence of Section 1.1.3.

1.4 Liability Indemnification. Under no circumstances shall Owner be liable to Arnecke for any loss or damage arising out of the use of the Easement by Arnecke. Arnecke hereby agrees to indemnify and hold harmless Owner from and against any and all claims of third persons, losses, or liabilities (including attorneys' fees) arising from the use of the Easement by Arnecke. Owner hereby agrees to indemnify and hold harmless Arnecke from and against any and all claims of third persons, losses, or liabilities (including attorneys' fees) arising from the negligent or other tortious acts of Owner.

SECTION 2

GENERAL PROVISIONS

2.1 Covenants and Easements to Run with Land. Each covenant and easement granted pursuant to this Declaration shall run with the land as to all property benefitted and burdened by such covenant and easement, including any partition or division of such property. The rights, covenants, and obligations contained in this Declaration shall bind, burden, and benefit Owner and its respective successors, assigns, lessees, mortgagees, and beneficiaries under any deed of trust.

2.2 Conformance with Other Requirements. All uses of the Easement, including, without limitation, the harvesting of algae by Arnecke granted pursuant to this Declaration shall be in conformance with all applicable federal, state, county, and municipal laws, ordinances, regulations, and requirements, including without limitation, all employer related obligations. Arnecke shall be permitted to exercise Arnecke's rights under Section 1.1 only upon submission to Owner of (a) written evidence that Arnecke has obtained all governmental authorizations required to conduct algae harvesting operations on the Upper Klamath Lake, (b) evidence reasonably acceptable to Owner that all persons to be engaged in such operations have been retained as employees by Arnecke or qualify as independent contractors, and (c) certificates evidencing liability insurance coverage from a reputable insurer in an amount of not less than \$1,000,000.00 covering Arnecke's algae harvesting operations and naming Owner as an additional insured and workers compensation coverage for Arnecke's employees. Arnecke shall maintain such insurance coverage in force during any period in which Arnecke is conducting harvesting operations pursuant to Section 1.1. Arnecke shall not permit the use of alcohol or illicit drugs on the property or during the harvesting of algae at any time.

2.3 **Recordation.** This Declaration is to be recorded by Owner promptly upon execution. A copy of the recorded Declaration shall be provided to Arnecke.

2.4 **Authority.** Owner represents and warrants that it has the appropriate legal authority to grant the Easement and to have it become of full force and effect upon signing and recordation. Owner represents that any other person or entity having an ownership interest in the Property has consented to the granting of the Easement. Owner agrees to defend any challenge to Owner's authority to sign and record this Declaration.

IN WITNESS WHEREOF, Owner has executed this Declaration as of the date first written above.

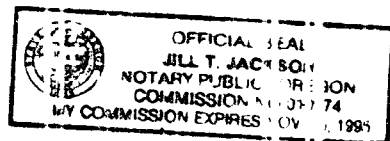
Owner:

AQUA FARMS, L.L.C., an Oregon
limited liability company

By: Walter J. Macmillan
Title: President

STATE OF OREGON)
County of Multnomah) ss.

The foregoing instrument was acknowledged before me on this 14th day of February, 1998 by Walter J. Macmillan, who is President of Aqua Farms, L.L.C., an Oregon limited liability company.



[Signature]
Notary Public for Oregon
My Commission Expires: 11/5/98

EXHIBIT A

Government Lot 30, Section 15, Township 36
 South, Range 7 East of the Willamette
 Meridian, Klamath County, Oregon.

STATE OF OREGON COUNTY OF KLAMATH ss

Filed for record at request of Gary Cole the 23rd day
 of Feb A.D. 19 95 at 1 o'clock A M. and duly recorded in Vol 195
 of Deeds on Page 6007

FEE \$55.00

Bernetha G. Letsch, County Clerk

by Pauline Williams