

Loan No. 12329

K-50168-D

OREGON MORTGAGE AND SECURITY AGREEMENT

THIS OREGON MORTGAGE AND SECURITY AGREEMENT, (hereinafter referred to as the "Mortgage"), made this 14th day of March, 1997, by and between **CAMERON A. CURTISS** (hereinafter referred to as "Mortgagor"), 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 One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00), 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 March 1, 2012, said Note providing for renegotiation of the interest rate effective at the end of the fifth loan year (March 1, 2002), and at the end of the tenth loan year (March 1, 2007), hereinafter referred to as the "Note", to which Note reference is hereby made, Mortgagor hereby **GRANTS, BARGAINS, SELLS, CONVEYS AND WARRANTS** to the Mortgagee, the real property located in Klamath County, Oregon, and more particularly in Exhibit "A" attached hereto and made a part hereof by this reference. The Optional Payments provision of the Note is made a part hereof by this reference as if fully set forth herein.

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 other equipment now or hereafter attached to and used in connection therewith; 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 more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference.

TOGETHER WITH a security interest in and to: (i) hydro electric power plant facilities, fixtures and equipment now or hereafter owned by Mortgagor and located on or used in connection with the real property described in Exhibit A; and (ii) all sprinklers, sprinkler heads and risers, sprinkler systems, delivery systems, pumps, motors, turbines, mainlines, laterals, center pivots, handlines, wheellines, solid set draglines, and all other irrigation equipment now or hereafter owned by Mortgagor and located on or used in connection with the real property described in Exhibit A. Said hydro electric power plant and irrigation facilities, fixtures and equipment are hereinafter collectively referred to as the "Equipment", and includes, but is not limited to, those items more particularly described on Exhibit "C" attached hereto and incorporated herein by this reference, together with all substitutions, replacements, 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. Mortgagor hereby (a) warrants that said Equipment shall be used only on the above described real property and solely for purposes of electric power generation and irrigation; (b) covenants that no other security interests in said Equipment have been given; (c) agrees not to sell, lease, encumber, or otherwise dispose of said Equipment, or remove the same from the county

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in which the same is now situated, without the Mortgagee's prior written consent, provided, however, that Mortgagor shall have the right to replace items of Equipment in the ordinary course of business with items of equipment of comparable type and value without Mortgagee's consent; and (d) agrees to defend against all adverse claims and demands which may be made against said Equipment.

TOGETHER WITH all right, title and interest of Mortgagor, 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. Mortgagor does 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 covenants and agreements herein contained, then this conveyance shall be null and void; otherwise, it shall remain in full force and effect.

THE MORTGAGOR HEREBY COVENANTS AND AGREES WITH THE MORTGAGEE THAT:

1. **WARRANTIES OF TITLE AND AUTHORITY:** Mortgagor hereby represents and warrants that Mortgagor is lawfully seized or entitled to be seized of indefeasible fee title to the Property, that Mortgagor has the authority and right to execute and deliver this Mortgage, that Mortgagor 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. Mortgagor hereby releases, waives, and relinquishes all exemptions and homestead rights which may exist with respect to the Property. If the Mortgagor is a corporation, partnership or limited liability company, each person executing this instrument on behalf of Mortgagor 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:** Mortgagor 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 Mortgagor 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 Mortgagor's failure to accomplish any of the same shall constitute a default under this Mortgage.

3. **HAZARDOUS MATERIALS:** Except in the ordinary course of business and in material compliance with all applicable Environmental Laws, Mortgagor shall not permit or cause any Hazardous Material to be located on the Property. Mortgagor hereby indemnifies the Mortgagee and agrees to defend and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of every kind and nature, paid, incurred, suffered by or asserted against the Mortgagee for, with respect to, or as a direct or indirect result of the following, regardless of whether or not caused by, or within the control of, Mortgagor, to wit:

- (i) the presence, use, manufacture, generation, processing, distribution, storage or handling of any Hazardous Material on or under the Property in violation of any Environmental Law, or any escape, seepage, leakage, spillage, discharge, emission, release or disposal of any Hazardous Material on or from the Property, or the migration or release or threatened migration or release of any Hazardous Material to or from the Property; or
- (ii) any act, omission, event or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Material on or from the Property; or
- (iii) any Environmental Claim, or the filing or imposition of any environmental lien against the Property resulting from, in connection with or arising out of any of the matters referred to in this paragraph 4.

As used herein, "Hazardous Material" means any substance, whether solid, liquid or gaseous which is listed, defined or regulated as a "hazardous substance", "hazardous waste", "solid waste" or otherwise classified as hazardous or toxic in or pursuant to any Environmental Law (as herein defined), or which contains asbestos, any polychlorinated biphen, radon, urea formaldehyde, foam insulation, explosive or radioactive material, motor oil or fuel, or which is a hazard to the environment or human health.

As used herein, "Environmental Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree or rule of common law, and any judicial interpretation of any of the foregoing, regulating, relating to or imposing liability or standards of conduct concerning Hazardous Materials, or which otherwise relates to the manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Material, including, but not limited to, the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, and their state and local counterparts.

As used herein, "Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action, at any time threatened or instituted pursuant to any applicable Environmental Law, against Mortgagor or all or any part of the Property, or with respect to any condition, use or activity on the Property, and any claim at anytime made by any person or entity against Mortgagor, or against or with respect to the Property or any condition, use or activity on the Property, relating to damage, contribution, cost, recovery, compensation, loss or injury resulting from, or in any way arising in connection with, any Hazardous Material or Environmental Law.

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 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:** Mortgagor hereby agrees: (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 COVERAGE: 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 Mortgagor and Mortgagee jointly 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 Mortgagor and Mortgagee jointly 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 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 excuse payment of the regular installment payments called for hereunder. 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: Mortgagor 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. Mortgagor 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 Mortgagor, 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 Mortgagor, 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 Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable ninety (90) days from the giving of such notice.

7. **MORTGAGEE'S PERFORMANCE IN MORTGAGOR'S STEAD:** Should Mortgagor 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 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:** Mortgagor 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 Mortgagor's 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 Mortgagor's 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.

10. APPEARANCE IN PROCEEDINGS AFFECTING SECURITY: Mortgagor 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 Mortgagor and Mortgagee in the Property, the rights, powers, duties, covenants, representations, warranties, and authority of Mortgagor 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 Mortgagor, 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 by voluntary conveyance, 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 reasonable 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 capital stock, partnership interests or member's interests, measured cumulatively, of the corporate, partnership or limited liability company Mortgagor, or of any corporate, partnership or limited liability company successor in interest of the Mortgagor, shall be deemed a change of ownership requiring the Mortgagee's consent pursuant thereto.

12. TIMBER FREE CUT: The Mortgagor has reserved certain rights to cut and harvest timber and timber products from the Property. Those rights are set forth in that certain Loan Agreement of even date herewith entered into by and between Mortgagor and Mortgagee, the terms of which are made a part hereof by this reference as fully set forth herein.

13. PARTIAL RELEASES: At any time during the loan secured hereby, the Mortgagor may apply for partial releases of portions of the real property described in Exhibit "A" attached hereto. Such requests must be in writing and addressed to Mortgagee as provided in paragraph 25 hereof. MONY shall grant such partial release if, but only if, the following conditions precedent are met:

1. The loan must be current and in good standing in all respects;
2. The partial release shall not impede, restrict or adversely affect access to and from, nor materially diminish the value of, the real property remaining subject to this Mortgage; and
3. After giving effect to the requested partial release, the value of the real property remaining subject to this Mortgage must have sufficient value in relation to the principal balance remaining outstanding under the Note secured hereby to adequately secure

repayment of the loan evidenced thereby in Mortgagee's reasonable judgment as a prudent lender.

14. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND RULES: Mortgagor represents that to the best of his knowledge he is 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 Mortgagor 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.

15. NON-EXCESS LAND: If the Mortgagor is or becomes the owner 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, Mortgagor 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.

16. 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 compensation, awards, damages, rights, of action, proceeds, or other payments to the indebtedness secured hereby shall not excuse payment of the regular installment payments called for hereunder. 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.

17. ASSIGNMENT OF RENTS AND INCOME: As additional security for the obligations secured hereby, Mortgagor hereby assigns to Mortgagee, during the term of this Mortgage, any and all rents, issues, royalties, income, and profits of and from the Property. Until Mortgagor defaults in the payment of any agreement hereunder, or in performance under any other instrument given to evidence or further secure the obligations secured hereby, Mortgagor shall have the right to collect and use all such rents, issues, royalties, income, and profits earned prior to default. Upon any such default Mortgagor's 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 (Mortgagor hereby consents 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.

18. 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.

19. 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.

20. 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 Mortgagor and Mortgagee are parties, Mortgagee shall, notwithstanding any instructions which may be given by Mortgagor, 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.

21. 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 Mortgagor, or vice-versa, be applied upon principal immediately upon receipt by Mortgagee, with the same force and effect as though the Mortgagor had specifically designated such extra sums to be so applied to principal and the Mortgagee had agreed to accept such extra payment(s) as a bonus-free prepayment.

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.

22. **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.

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

A. For failure to make any payment when due under the Loan Documents, Mortgagor shall have fifteen (15) days, after written notice thereof given by the Mortgagee setting forth the amount necessary to cure such default, to pay all sums then due and payable; and

B. For failure to perform any covenant, agreement or obligation due under the Loan Documents, Mortgagor shall have thirty (30) days, after written notice thereof given by Mortgagee setting forth the nature of the default and the steps required to cure said default, to perform such covenant, agreement or obligation. Provided, however, that if the Mortgagor 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 Mortgagor, the Mortgagor shall have ninety (90) days to complete the measures necessary to cure the said default measured from the notice of default given by the Holder.

Upon the occurrence of any default (as defined herein), 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. If Mortgagee's lien against equipment be realized on separately from the lien against real estate then Mortgagor, upon default, will:

- A Put the Mortgagee in possession of the mortgaged equipment, on demand;
- B Give Mortgagee the authority to enter any premises where said equipment is located and take possession thereof without further notice or demand;
- C At the request of Mortgagee, Mortgagor will assemble equipment and make it available to Mortgagee at a place designated by Mortgagee which is reasonably convenient to both parties;
- D Mortgagor agrees that a period of ten (10) days from the time notice is sent, by first class mail or otherwise, shall be a reasonable period of notification of a sale or other disposition of the equipment;
- E Mortgagor agrees that any notice or other communication by Mortgagee to Mortgagor shall be sent to the mailing address of the Mortgagor as last given to Mortgagee;
- F Mortgagor agrees to pay on demand the amount of all expenses reasonably incurred by Mortgagee in protecting or realizing on the equipment;
- G If Mortgagee disposes of the equipment, Mortgagor agrees to pay any deficiency remaining after application of the net proceeds to any indebtedness secured hereby.

24. **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.

25. **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:

Mutual of New York
1740 Broadway
New York, New York 10019

MORTGAGOR:

Cameron A. Curtiss
21051 Highway 140 West
Klamath Falls, OR 97601

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.

26. **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.

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.

Cameron A. Curtiss
Cameron A. Curtiss

STATE OF OREGON

COUNTY OF KLAMATH

This instrument was acknowledged before me on the 14th day of March, 1997, by Cameron A. Curtiss.



Debora Buckingham
Notary Public, State of Oregon
My Commission Expires: 12-19-2000
Printed Name of Notary: Debora Buckingham

EXHIBIT A
MONY Loan No. 12329
Cameron A. Curtiss

The following described real property situate in Klamath County, Oregon:

Parcel 1:

Township 36 South, Range 7 East of the Willamette Meridian:

Section 32 West of Lake: Government Lots 6, 7 and 8

Section 33 West of Lake: Government Lots 3, 4, 5, 6, 7 and 8 and that portion of Government Lot 2 lying Westerly of a straight line running from the Northwest corner to the Southeast thereof.

Also the SW $\frac{1}{4}$; W $\frac{1}{2}$ SE $\frac{1}{4}$; SE $\frac{1}{2}$ SE $\frac{1}{4}$

Section 34 West of Lake: Government Lots 1, 2, 11 and 12; E $\frac{1}{2}$ SW $\frac{1}{4}$; SW $\frac{1}{4}$ NW $\frac{1}{4}$; SAVING AND EXCEPTING THEREFROM that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ described as follows:

Beginning at the Northwest corner of said SW $\frac{1}{4}$ NW $\frac{1}{4}$; thence Southeasterly along a straight line to the Southeast corner of said SW $\frac{1}{4}$ NW $\frac{1}{4}$; thence North along the East line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ to the Northeast corner thereof; thence West along the North line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ to the point of beginning.

ALSO SAVING AND EXCEPTING the Easterly 60 feet of even width of the Fractional SW $\frac{1}{4}$ of said Section 34.

All the above described property further described by instrument establishing boundary lines recorded November 1, 1916, in Volume 46 page 242, Deed records of Klamath County, Oregon.

SAVING AND EXCEPTING from the above described property that portion thereof conveyed to Klamath County, a governmental subdivision of the State of Oregon, for road purposes by deed recorded May 12, 1977, in Volume M77 page 8251, Deed records of Klamath County, Oregon.

Township 37 South, Range 7 East of the Willamette Meridian:

Section 3: NW $\frac{1}{4}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$ EXCEPT the Easterly 60 feet of even width of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ and that portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$ described as follows:

Beginning at the Northeast corner of said S $\frac{1}{2}$ NW $\frac{1}{4}$; thence West along the North line of said S $\frac{1}{2}$ NW $\frac{1}{4}$ to the Northwest corner thereof; thence South along the West line of said S $\frac{1}{2}$ NW $\frac{1}{4}$ to the Southwest corner thereof; thence Northeasterly along a straight line to the point of beginning.

Section 4: Government Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14; NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ SW $\frac{1}{4}$

Exhibit A
 MONY Loan No. 12329
 Cameron A. Curtiss

ALSO Government Lot 1 EXCEPT that portion thereof heretofore conveyed by Weyerhaeuser Timber Company to the State of Oregon by deed dated September 13, 1951, recorded October 3, 1951, in Volume 250 page 175. Deed records of Klamath County, Oregon.

ALSO that portion of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ lying West of a line extending from the Southwest corner of said SE $\frac{1}{4}$ SE $\frac{1}{4}$ to the Northeast corner of Government Lot 6 of said Section 4.

SAVING AND EXCEPTING from the above described property that portion of Government Lot 6 lying Easterly of a straight line extending Southwesterly from the Northeast corner of said Government lot 6 to the Southwest corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4.

Section 8: NW $\frac{1}{4}$ SW $\frac{1}{4}$; S $\frac{1}{4}$ SW $\frac{1}{4}$; NE $\frac{1}{4}$ SW $\frac{1}{4}$; SE $\frac{1}{4}$

Section 9: Government Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9; N $\frac{1}{4}$ SW $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$

ALSO that part of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ described as follows:

Beginning at the Southwest corner of said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence North along the West line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$ to the Northwest corner thereof; thence East along the North line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$ to the Northeast corner thereof; thence Southwesterly along a straight line to the point of beginning.

Section 17: N $\frac{1}{4}$ NW $\frac{1}{4}$

EXCEPTING THEREFROM the following:

A tract of land situated in the SW $\frac{1}{4}$ of Section 34, Township 36 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, and the NW $\frac{1}{4}$ of Section 3, Township 37 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a 5/8 inch iron pin on the Northwesterly right of way line of the County Road to Eagle Ridge, as established by found center line hubs, from which the W 1/4 corner of said Section 3 bears South 51°41'42" West 3152.04 feet; thence North 21°01'06" West 1523.29 feet, to a 5/8 inch iron pin; thence North 81°59'35" West 601.47 feet, to a 5/8 inch iron pin; thence North 08°00'25" East 504.82 feet, to a 5/8 inch iron pin; thence North 11°16'48" West 394.49 feet, to a 5/8 inch iron pin; thence North 12°00'51" East 185.12 feet, to a 5/8 inch iron pin; thence North 20°12'08" East 296.83 feet, to a 5/8 inch iron pin; thence North 16°13'00" East 514 feet, more or less, to a point on the North line of said SW $\frac{1}{4}$ of Section 34; thence Easterly along said North line 946 feet, more or less, to a point that is 60 feet Westerly of the center 1/4 corner of said Section 34; thence Southerly, parallel to and 60 feet from the North-South center section line of said Section 34, 2596 feet, more or less, to a point on the Section line common to said Sections 34 and 3; thence Southerly, parallel to and 60 feet from the North-South center section line of said Section 3, 670 feet, more or less, to a point on the Northwesterly right of way line of the said County Road to Eagle Ridge; thence South 59°44'32" West 100.00 feet, more or less, to the point of beginning, with bearings based on a solar observation. Reference above described tract of land to recorded Survey No. 2744 as recorded in the office of the Klamath County Surveyor.

Parcel 2:

Township 36 South, Range 7 East of the Willamette Meridian:

Section 28 West of Lake: Government Lots 3, 4, 5, and 6 and that portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ described as follows:

Beginning at the Northwest corner of said NW $\frac{1}{4}$ SE $\frac{1}{4}$; thence South along the West line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ to the Southwest corner thereof; thence East along the South line of said NW $\frac{1}{4}$ SE $\frac{1}{4}$ to the Southeast corner thereof; thence Northwesterly along a straight line to the point of beginning.

Section 33 West of Lake: Government Lot 1, SAVING AND EXCEPTING therefrom that portion described as follows:

Beginning at the Northeast corner of said Section 33; thence West along the North line thereof to the Southwest corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28; thence Southeasterly along a straight line to the Southeast corner of said Government Lot 1; thence North along the East line of said Section 33 to the point of beginning.

ALSO that portion of Government Lot 2 described as follows:

Beginning at the Northwest corner of said Government Lot 2; thence East along the North line of said Government Lot to the Northeast corner thereof; thence South along the East line of said Government Lot to the most Southerly corner thereof; thence Northwesterly in a straight line to the Northwest corner thereof and the point of beginning.

LESS AND EXCEPTING from said Government Lots 1 and 2 the following parcel:

Beginning at an iron pipe in Government Lot 2 from which the East quarter corner of Section 33, Township 36 South, Range 7 East of the Willamette Meridian, West of Klamath Lake, bears South 23°51' East 1190.3 feet distant; thence North 33°09'10" West 500 feet; thence South 56°50'50" West 435.6 feet; thence South 33°09'10" East 500 feet; thence North 56°50'50" East 435.6 feet, more or less to the point of beginning.

ALONG WITH a non-exclusive easement for ingress and egress over and across the existing road running from the above described tract of land to its intersection with the Lake of the Woods Highway and lying within the following described tract of land:

Government Lot 2, Section 33: SW $\frac{1}{4}$ NW $\frac{1}{4}$, Government Lot 1 and E $\frac{1}{4}$ SW $\frac{1}{4}$ Section 34, All in Township 36 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, and NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 3 and Government Lot 5, 6, and 7 in Section 4, Township 37 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon.

EXHIBIT B
 MONY Loan No. 12329
 Cameron A. Curtiss

Water Rights

Section	Source	Amount (CFS)	Water Right Acres	Priority Date	Application Number	Permit Number	Certificate Number	Permittee Name
T36S-R7E 32, 33, 34	Rock Creek Moss Creek	13.5 1.5	415.90	1932	14426	22472	27444	Page H. & Marjorie N. Lamoreaux
T37S-R7E 3, 4, 9	Rock Creek Moss Creek	13.5 1.5	520.70	1932	14426	22472	27444	Page H. & Marjorie N. Lamoreaux

Total Acres 936.60

EXHIBIT C
 MONY Loan No. 12329
 Cameron A. Curtiss

Irrigation Equipment

1/4 mile wheel line

Power Units

<u>Manufacturer</u>	<u>Horse Power</u>	<u>Serial Number</u>
US Electric	30	1445HP
US Motors	15	A324UP
Century Motors	20	M203B
IJS Electric	5	7310B-Y 6210-22j/03
General Electric	5	5K0213UP6001

Pump Units

<u>Type</u>	<u>Serial Number</u>
Turbine	N/A
Turbine	N/A
Pressure Pump	321219-01
Turbine	NRR R214-1-265M
Turbine	L213TP10

Hydro Electric Equipment

James Effel - turbine and all related equipment for Hydro Electric Power Plant

STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title the 18th day
 of March A.D. 19 97 at 10:29 o'clock A.M., and duly recorded in Vol. M97
 of Deeds on Page 7896

FEE \$85.00

Bemetha G. Letsch, County Clerk
 by Kathleen Rose