

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

1999 AUG -6 AM 11: 21

COAST BUSINESS CREDIT  
12121 Wilshire Boulevard  
Suite 1400  
Los Angeles, California 90025  
Attn: Credit Manager

mtc 47930  
SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS AGREEMENT ("Agreement"), made this 21<sup>st</sup> day of June, 1999, by DARYL J. KOLLMAN and MARTA C. KOLLMAN, as owners of the land hereinafter described (jointly and severally, "Owner") and by KLAMATH COLD STORAGE, INC., an Oregon corporation, as the holder and beneficiary of the deed of trust first hereafter described (collectively, the "Beneficiary") for the benefit of COAST BUSINESS CREDIT, a division of Southern Pacific Bank, a California corporation ("Lender").

WITNESSETH

THAT WHEREAS, Owner executed a deed of trust ("Beneficiary Mortgage") dated November 15, 1994 in favor of Beneficiary which covers the real property described in Exhibit "A" attached hereto and incorporated herein by reference (such real property, together with all personal property and fixtures located or affixed thereon, is referred to herein as the "Property"), which Beneficiary Mortgage was recorded on November 15, 1994 in Volume M94, page 35322 in the Microfilm Records of the County of Klamath, State of Oregon; and

WHEREAS, the Beneficiary Mortgage secures that certain Promissory Note ("Beneficiary Note") dated November 15, 1994 executed by Owner in favor of Beneficiary; and

WHEREAS, The New Algae Company, an Oregon corporation and The New Earth Company, an Oregon corporation (collectively, the "Borrowers") have entered into that certain Loan and Security Agreement ("Loan Agreement") with Lender dated as of June \_\_\_, 1999; and

WHEREAS, in order to induce Lender to continue to extend financial accommodations to Borrower pursuant to the Loan Agreement, and in consideration thereof, and in consideration of any loans or other financial accommodations heretofore or hereafter extended by Lender to Borrower, whether pursuant to the Loan Agreement or otherwise, Owner has agreed to guarantee, inter alia, Borrower's obligations under the Loan Documents by means of that certain Continuing Guaranty ("Lender Guaranty") of even date herewith executed by Owner in favor of Lender; and

WHEREAS, Lender has agreed to extend such financial accommodations to Borrower provided that this Agreement is entered into and recorded; and

WHEREAS, Owner has executed or is about to execute a deed of trust ("Lender Mortgage") dated June 21, 1999, in favor of Lender which Lender Mortgage secures, inter alia, the Guaranty and is to be recorded concurrently with the recordation of this Agreement; and

WHEREAS, Lender is willing to enter into the Loan Agreement provided that Owner and Beneficiary enter into this Agreement and provided that the Lender Mortgage is a lien or charge upon the Property prior and superior to the lien or charge of the Beneficiary Mortgage and provided that Beneficiary will subordinate the lien or charge of the Beneficiary Mortgage to the Lender Mortgage; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender enter into the Loan Agreement with Borrowers, and Beneficiary is willing that the Lender Mortgage, when recorded, constitute a lien or charge upon said land which is prior and superior to the lien or charge of the Beneficiary Mortgage.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce Lender to enter into the Loan Agreement, it is hereby declared, understood, and agreed as follows:

1. Subordination. The Lender Mortgage shall constitute and remain a lien or charge on the Property prior and superior to the lien or charge of the Beneficiary Mortgage.

2. Modification to Loans. The lien priority of the Lender Mortgage shall not be altered or otherwise affected by any amendment, modification, supplement, extension, renewal, restatement or refinancing of the Lender Mortgage, the obligations secured by the Lender Mortgage (including without limitation agreements that increase the amount secured by the Lender Mortgage or increase the interest rate for such obligations), the Beneficiary Mortgage or the obligations secured by the Beneficiary Mortgage nor by any action or inaction which Lender or Beneficiary may take or fail to take in respect of the Lender Mortgage, the Beneficiary Mortgage or the Property.

3. Waiver of Marshalling. Beneficiary waives any and all rights that it may have to require Lender to marshal any collateral which secures the obligation of Borrower or Owner owing to Lender or to seek payment from any particular assets of Borrower or Owner or from any third party.

4. Reliance By Lender. Lender would not enter into the Loan Agreement in the absence of this Agreement.

5. Subordination. Beneficiary shall not exercise any rights or remedies provided for in the Beneficiary Mortgage, in any other agreement with Owner or as may be allowed by law and Beneficiary shall not accept any payments whatsoever from Borrower and/or Owner on the Beneficiary Note or pursuant to any other obligation owing from Borrower and/or Owner to Beneficiary until all obligations by Borrower and by Owner to Lender have been indefeasibly paid and performed in full. Notwithstanding anything in the Beneficiary Mortgage to the contrary, all proceeds (including without limitation all rents and insurance and condemnation proceeds) derived from or related to the Property shall be paid to Lender as provided for in the Lender Mortgage and shall be applied in the manner prescribed in the Lender Mortgage.

6. Entire Agreement. This Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Beneficiary Mortgage to the Lender Mortgage and the rights of the parties in and to the Property and shall supersede and cancel, but only insofar as would affect the priority between the Beneficiary Mortgage and the Lender Mortgage, any prior agreements as to such subordination including, but not limited to, those provisions, if any, contained in the Beneficiary Mortgage, which provide for the subordination of the lien or charge thereof to another deed of trust or mortgage.

7. Further Instruments. Each party hereto shall, whenever and as often as it shall be requested to do so by Lender, cause to be executed, acknowledged and delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of Lender to carry out the intent and purpose of this Agreement.

8. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California (without taking into account principles of conflicts of law).

9. Amendments. This Agreement may be amended only by written agreement executed by Lender and Beneficiary.

10. Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its actual attorneys' fees and costs of suit from the other party.

11. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their successors and assigns and shall inure to the benefit of Lender and all of their successors and assigns.

12. Time of the Essence. Time is of the essence of this Agreement.

13. Counterparts. This Agreement may be executed in any number of counterparts so long as each signatory hereto executes at least one such counterpart. Each such counterpart shall constitute one original, but all such counterparts taken together shall constitute one and the same instrument.

Beneficiary declares, agrees, and acknowledges that it intentionally subordinates the Beneficiary Mortgage in favor of the Lender Mortgage and understands that in reliance upon, and in consideration of this subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for reliance upon this subordination.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH  
ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO

31512

OBTAIN ONE OR MORE LOANS ALL OR A PORTION OF WHICH MAY BE  
EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IN WITNESS WHEREOF, Beneficiary and Owner have executed this  
Agreement as of the day and year first above written.

"Beneficiary"

KLAMATH COLD STORAGE, INC.,  
an Oregon corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

AGREED TO AND ACCEPTED BY:

"Owner"

Daryl J. Kollman  
DARYL J. KOLLMAN

\_\_\_\_\_  
MARTA C. KOLLMAN

31513

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

)  
) ss.  
)

This instrument was acknowledged before me on June \_\_, 1999, by  
\_\_\_\_\_ as \_\_\_\_\_ of Klamath Cold

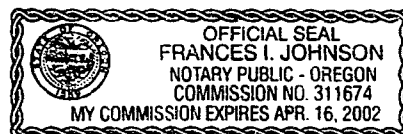
Storage, Inc.

\_\_\_\_\_  
Notary Public for California  
My commission expires \_\_\_\_\_

STATE OF OREGON

COUNTY OF Klamath )

)  
) ss.



This instrument was acknowledged before me on June 23 1999, by Daryl J.  
Kollman.

Frances Johnson  
Notary Public for Oregon  
My commission expires 4/16/2002

OBTAIN ONE OR MORE LOANS ALL OR A PORTION OF WHICH MAY BE  
EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IN WITNESS WHEREOF, Beneficiary and Owner have executed this  
Agreement as of the day and year first above written.

"Beneficiary"

KLAMATH COLD STORAGE, INC.,  
an Oregon corporation

By: Marta C. Kollman  
Print Name: Marta C. Kollman  
Its: PRES.

AGREED TO AND ACCEPTED BY:

"Owner"

DARYL J. KOLLMAN

Marta C. Kollman  
MARTA C. KOLLMAN

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

This instrument was acknowledged before me on June 23, 1999, by  
Marta C. Kollman as President of Klamath Cold  
Storage, Inc.

Stephanie T. Praise  
Notary Public for California  
My commission expires March 30, 2001



STATE OF OREGON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on June \_\_, 1999, by Daryl J.  
Kollman.

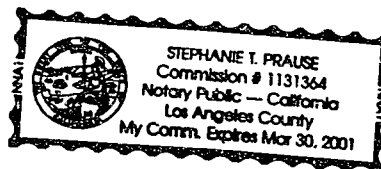
\_\_\_\_\_  
Notary Public for Oregon  
My commission expires \_\_\_\_\_



STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF LOS ANGELES            )

This instrument was acknowledged before me on June 23 1999, by Marta C. Kollman.

Stephanie T. Prause  
Notary Public for California  
My commission expires March 30, 2001



## EXHIBIT A

A TRACT OF LAND LYING IN THE SOUTHWEST ONE-QUARTER OF SECTION 33, TOWNSHIP 38 SOUTH, RANGE 9 EAST, OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST ONE-QUARTER CORNER OF SAID SECTION 33, THENCE NORTH  $00^{\circ}00'49''$  EAST, 69.37 FEET TO A POINT ON THE ORIGINAL SOUTHERLY RIGHT-OF-WAY LINE OF SOUTH 6<sup>TH</sup> STREET; THENCE SOUTH  $55^{\circ}27'00''$  EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 188.55 FEET; THENCE SOUTH  $10^{\circ}46'30''$  WEST, 25.27 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID SOUTH 6<sup>TH</sup> STREET AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF SOUTH 6<sup>TH</sup> STREET THE FOLLOWING THREE COURSES, SOUTH  $73^{\circ}06'17''$  EAST, 32.30 FEET; THENCE SOUTH  $61^{\circ}22'11''$  EAST, 32.28 FEET; THENCE SOUTH  $55^{\circ}27'00''$  EAST 149.88 FEET; THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE OF SOUTH 6<sup>TH</sup> STREET, SOUTH  $10^{\circ}46'30''$  WEST, 589.64 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE ALONG THE ARC OF A 706.05 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF  $01^{\circ}27'00''$ , AN ARC DISTANCE OF 17.87 FEET (THE LONG CHORD OF WHICH BEARS SOUTH  $17^{\circ}12'30''$  WEST, 17.86 FEET) TO A POINT OF TANGENCY; THENCE SOUTH  $10^{\circ}46'30''$  WEST, 70.23 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 702.55 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF  $22^{\circ}37'00''$ , AN ARC DISTANCE OF 277.32 FEET (THE LONG CHORD OF WHICH BEARS SOUTH  $00^{\circ}32'00''$  EAST, 275.52 FEET) TO A POINT OF COMPOUND CURVATURE; THENCE ALONG THE ARC OF A 484.18 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF  $32^{\circ}53'29''$ , AN ARC DISTANCE OF 277.95 FEET (THE LONG CHORD OF WHICH BEARS SOUTH  $28^{\circ}17'14''$  EAST, 274.15 FEET) TO A POINT OF TANGENCY; THENCE SOUTH  $44^{\circ}44'00''$  EAST, 40.49 FEET; THENCE NORTH  $51^{\circ}04'00''$  WEST, 302.60 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE ALONG THE ARC OF A 573.14 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF  $48^{\circ}14'00''$ , AN ARC DISTANCE OF 482.49 FEET (THE LONG CHORD OF WHICH BEARS NORTH  $13^{\circ}20'30''$  WEST 468.36 FEET) TO A POINT OF TANGENCY; THENCE NORTH  $10^{\circ}46'30''$  EAST, 687.07 FEET TO THE POINT OF BEGINNING.

THIS TRACT OF LAND CONTAINS 4.80 ACRES MORE OR LESS.

TOGETHER WITH ALL RIGHTS IN AND TO THAT CERTAIN EASEMENT DATED JUNE 30, 1999 AND RECORDED Aug 6, 1999 IN VOLUME 99, PAGE 31517 IN THE OFFICIAL RECORDS OF KLAMATH COUNTY, OREGON.

State of Oregon, County of Klamath  
Recorded 8/06/99, at 11:21 a.m.  
In Vol M99 Page 31517  
Linda Smith  
County Clerk Fee \$