

NTC 82782

2008-012656

Klamath County, Oregon



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09/10/2008 11:13:27 AM

Fee: \$81.00

After Filing Please Return To:

Farm Credit Leasing Services Corporation

600 Highway 169 South, #300

Minneapolis, MN 55426

Attn.: _____

GROUND LEASE

Grantor(s):

1. JOHN R. WALKER and BRENDA L. WALKER, Tenants By the Entirety

Grantee(s):

1. FARM CREDIT LEASING SERVICES CORPORATION, a federally chartered corporation

Legal Description:

Parcel 1 of Land Partition 20-02, said Land Partition being situated in the NE1/4 NW1/4 and NW1/4 NW1/4 of Section 9, Township 41 South, Range 12 East of the Willamette Meridian, and in the NE1/4 NE1/4 of Section 8, Township 41 South, Range 12 East of the Willamette Meridian Klamath County, Oregon.

Assessor's Property Tax Parcel Account Number(s):

4112-00900-00500-000

4112-00800-00100-000

MAIL TAX STATEMENTS TO: No Change

8/10/08

GROUND LEASE

THIS GROUND LEASE (the "Ground Lease") is made as of September 5, 2008 by and between JOHN R. WALKER and BRENDA L. WALKER as tenants by the entirety (the "Ground Lessor"), and FARM CREDIT LEASING SERVICES CORPORATION, a federally chartered corporation having an address at 600 Highway 169 South, #300, Minneapolis, MN 55426 ("Ground Lessee").

INTRODUCTION:

- A. Together with the execution and delivery of this Ground Lease, Ground Lessee, as Lessor, and J&W Farms, an Oregon general partnership comprised of JOHN R. WALKER and WILLIAM W. WALKER as general partners, as lessee (the "Equipment Lessee"), have entered into a Master Equipment Lease Agreement dated as of August 26, 2008 (such Master Equipment Lease Agreement, together with equipment schedules from time to time executed in connection therewith, are hereinafter collectively referred to as, the "Equipment Lease"), pursuant to which Ground Lessee did lease to Equipment Lessee, and Equipment Lessee did lease from Ground Lessee, the equipment (the "Equipment") described on Exhibit A attached hereto and made a part hereof. It is a condition to Ground Lessee's entering into the Equipment Lease that Ground Lessor execute this Ground Lease and deliver it to Ground Lessee.
- B. Ground Lessor is the fee owner of the real property (the "Premises") described on Exhibit B attached hereto and made a part hereof, free and clear of all liens and encumbrances ("Liens") other than those Liens described in Exhibit C hereto ("Permitted Liens"). In connection with the financing of the Equipment as described above, Ground Lessor, as fee owner of the Premises, is leasing the Premises to Ground Lessee in accordance with the provisions hereof, and Ground Lessee is subleasing the Premises to Equipment Lessee pursuant to a Ground Sublease dated as of the date hereof (the "Ground Sublease").

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Ground Lessee to enter into the Equipment Lease, Ground Lessor and Ground Lessee hereby agree as follows:

1. **Lease of Premises.** Ground Lessor hereby leases to Ground Lessee, and Ground Lessee does hereby lease from Ground Lessor, the Premises for the Ground Lease Term (as hereinafter defined). It is the intention of the parties that the title to the Premises will remain distinct and separate from the title to the Equipment and that the Equipment is and shall remain personal property of Ground Lessee. Ground Lessor hereby waives and disclaims any interest it may have or which may arise in the Equipment by reason of Ground Lessor being the fee owner of the Premises or by reason of the attachment of the Equipment to, or the operation of the Equipment within, the Premises. Ground Lessor hereby acknowledges and covenants that the Equipment is situated on the Premises.
2. **Ground Lease Term.** The "Ground Lease Term" shall commence on September 5th 2008 and shall expire on the earlier to occur of (i) the date on which Ground Lessee has received all sums due and owing by Equipment Lessee under all equipment schedules entered into under the Equipment Lease and no claim can be made that any payments under the Equipment Lease constitute a preference under applicable bankruptcy law and Ground Lessee no longer has an interest in the Equipment; and (ii) the date which is Twenty (20) years after the Rent Commencement Date (as defined in the Equipment Lease). It is hereby acknowledged that Ground Lessee, its successors and assigns, and permitted users or sublessees shall have full right of ingress and egress to and from the Premises, and Ground Lessor shall take any action reasonably requested by Ground Lessee to facilitate the foregoing, including without limitation causing easements to be placed of record.

3. **Ground Lease Rent.** Ground Lessee shall pay to Ground Lessor as rental for the Ground Lease Term the sum of Two Hundred Dollars (\$200.00) which amount shall be payable by Equipment Lessee as Ground Sublessee under the Ground Sublease.
4. **Ground Lessee's Election to Terminate Ground Lease.** At any time during the Ground Lease Term, Ground Lessee may terminate this Ground Lease upon thirty (30) days' prior notice to Ground Lessor. Effective as of the date of such termination, Ground Lessee's obligations hereunder (other than its obligation to pay rent as set forth in Section 3 above) shall terminate.
5. **Assignment and Subletting.** Ground Lessee may sublease the Premises, or may assign this Ground Lease, provided that any such sublease or assignment is made in connection with the utilization of the Equipment on the Premises for its intended purpose. In accordance with and subject to the foregoing, Ground Lessee shall have the right to:
 - (a) sublease the Premises pursuant to the Ground Sublease; and
 - (b) assign this Ground Lease or any rights hereunder to any transferee of any of Ground Lessee's interest in the Equipment Lease or the Equipment. Any such sublease or assignment shall not relieve Ground Lessee of its obligations hereunder unless the sublessee or assignee shall be Ground Lessor or an affiliate of Ground Lessor, or a commercial lender or commercial finance institution.
6. **Quiet Enjoyment.** Ground Lessor covenants and warrants that it has full right and authority to lease the Premises pursuant to the terms of this Ground Lease, and Ground Lessor represents, covenants and warrants that, through the Ground Lease Term, Ground Lessee and its successors and assigns and benefited parties shall have the peaceable and quiet enjoyment of the Premises.
7. **Nature of Ground Lease; Ground Lessor's Obligations.** (a) Ground Lessor and Ground Lessee acknowledge that:
 - (i) this Ground Lease is being entered into as collateral security for Equipment Lessee's performance of all obligations under the Equipment Lease;
 - (ii) notwithstanding the lease of the Premises to Ground Lessee hereunder, Equipment Lessee, a replacement Equipment Lessee and/or Ground Lessor and not Ground Lessee shall (at all times during the Ground Lease Term) occupy the Premises and operate the Equipment thereon;
 - (iii) Ground Lessee shall not be deemed to be occupying the Premises and operating the Equipment thereon until such time as Ground Lessee physically takes possession of the Premises after a default has occurred and is continuing under the Equipment Lease or after expiration of the Equipment Lease during the Ground Lease Term and during which period the Ground Lessee retains an interest in the Equipment; and
 - (iv) simultaneously with the execution of this Ground Lease, and as a condition of the making hereof, Ground Lessee has entered into the Ground Sublease (which is a net sublease imposing upon the Equipment Lessee as Ground Sublessee all obligations to be performed during the Ground Lease Term (other than payment of rent hereunder which has been paid for the entire Ground Lease Term) with respect to the Premises to the extent not herein specifically retained by Ground Lessor hereunder.

- (b) Ground Lessor acknowledges that Ground Lessee has paid in full on execution hereof all rent required to be paid to Ground Lessor the entire Ground Lease Term, and all obligations (including, without limitation, the payment of taxes and insurance) with respect to the Premises are either retained by Ground Lessor hereunder, or imposed on Equipment Lessee pursuant to the provisions of the Ground Sublease (to which Ground Lessor hereby consents). **ACCORDINGLY, IT IS THE INTENTION OF THE PARTIES THAT DURING THE GROUND LEASE TERM, GROUND LESSEE SHALL HAVE NO OBLIGATIONS OR RESPONSIBILITIES WITH RESPECT TO THE PREMISES, AND THAT GROUND LESSOR AND/OR GROUND SUBLESSEE DURING THE GROUND LEASE TERM SHALL PERFORM ALL OBLIGATIONS WITH RESPECT TO THE PREMISES, WHETHER RETAINED BY GROUND LESSOR HEREUNDER, IMPOSED BY LAW OR IMPOSED UPON OR PASSED THROUGH TO GROUND LESSOR AND/OR GROUND SUBLESSEE, AND GROUND LESSOR SHALL NOT LOOK TO GROUND LESSEE FOR THE PERFORMANCE OF SUCH OBLIGATIONS OR RESPONSIBILITIES.** In addition, this Ground Lease may not be terminated by Ground Lessor for any reason during the Ground Lease Term. Notwithstanding the foregoing provisions of this Section, Ground Lessor agrees to indemnify and hold harmless Ground Lessee from any claims, damages and expenses arising out of this Ground Lease, the Ground Sublease, the Equipment or the Premises, except arising solely from the willful misconduct or gross negligence of Ground Lessee during the Ground Lease Term (and thereafter, until the premises are surrendered to Ground Lessor), except to the extent that any such willful misconduct or gross negligence of Ground Lessee was imputed to it solely by virtue of its acting as the sublessor under the Ground Sublease).

8. Obligations of Ground Lessor. Ground Lessor hereby covenants and agrees as follows:

- (a) Ground Lessor will comply with all environmental laws, and will not, and will not permit any person (including, without limitation, Equipment Lessee) to dispose of any hazardous materials into or onto the Premises and will not allow any Lien imposed pursuant to any law, regulation or order relating to hazardous materials or the disposal thereof to remain on the Premises.
- (b) During the Ground Lease Term, Ground Sublessee is required to pay or cause to be paid before delinquency all taxes, assessments and governmental charges levied with respect to the Premises. If Ground Sublessee shall fail to make any such payment Ground Lessor shall pay or cause to be paid such payment. In the event Ground Sublessee and Ground Lessor fail to pay such payment, Ground Lessee, at its option may pay the same and any moneys so paid by Ground Lessee shall be repaid by Ground Lessor to Ground Lessee on demand, together with interest at the Late Payment Rate (as defined in the Equipment Lease) from the date such payment is made by Ground Lessee until the date repaid by Ground Lessor. Ground Sublessee is required to pay or cause to be paid all charges for water, gas, heat, electricity, power and other like services used in connection with the Premises.
- (c) During the entire Ground Lease Term, Ground Sublessee is required to, without cost to Ground Lessee, maintain or cause to be maintained in effect casualty insurance and liability insurance coverage with respect to the Premises, with insurance companies of recognized standing, in such form and amounts, with such self-insurance arrangements and deductibles, and covering such risks, as are consistent with that maintained by Ground Sublessee in respect of its other similar properties, and in any event consistent with prudent industry practice and by companies similarly situated with Ground Lessor. The liability insurance maintained by Ground Sublessee shall name Ground Lessee as an additional insured and may have Ground Lessor as an additional insured, and all such insurance shall not be cancelable without thirty (30) days prior written notice to Ground Lessee.
- (d) During the Ground Lease Term, Ground Sublessee is required to pay all charges for water, gas, heat, electricity, power and other like services used in connection with the Premises.

(e) Ground Lessor agrees to indemnify and hold harmless Ground Lessee from any claim, demand, litigation, damages or suit including attorney, accountant or other experts' fees that might arise from Ground Lessor's use, possession or operation of the Premises. In addition, Ground Lessor shall indemnify, defend and hold harmless Ground Lessee from any and all claims, damages, fines judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement or claims, attorneys' fees, consultant and expert fees) arising during or after the term as it may be extended, from or in connection with the presence or suspected presence of Hazardous Substances (as hereinafter defined) in the Premises or in or under the land unless, subject to Section 7(a) hereof, the Hazardous Substances are present solely as a result of the gross negligence or willful misconduct of Ground Lessee, or its assignee or sublessee (other than Ground Lessor under the Ground Sublease), during the period, if any, in which Ground Lessee, or such assignee or sublessee (other than Ground Lessor under the Ground Sublease), has taken physical possession of the Premises. This indemnification shall specifically include, but shall not be limited to, any and all costs due to Hazardous Substances that flow, diffuse, migrate or percolate into, onto or under the land after the Ground Lease Term commences. The term "Hazardous Substances" shall mean any flammable or explosive materials, petroleum or petroleum products, oil, crude oil, natural gas or synthetic gas usable for fuel, radioactive materials, asbestos, radon, lead, hazardous wastes or substances or toxic wastes or substances, including, without limitation, any substances now or hereafter defined as or included in the definition of 'hazardous wastes', 'hazardous materials', 'toxic materials' or 'toxic substances' under any applicable federal, state or local laws or regulations now or hereafter in effect. This indemnity shall survive the expiration or earlier termination of this Ground Lease.

9. **Liens.** During the Ground Lease Term, Ground Lessor shall not directly or indirectly create, incur, assume or suffer to exist any Lien other than Permitted Liens on the Premises, title thereto or any interest therein. In this regard, Ground Lessor shall promptly, at its own expense, take such action as may be necessary duly to discharge or eliminate or bond in a manner satisfactory to Ground Lessee (in its reasonable discretion) any Lien other than Permitted Liens if Ground Lessor's failure to take such action would adversely affect Ground Lessee or the operation of the Equipment at the Premises. Ground Lessee acknowledges that liens for the construction of the Equipment that may exist as of the date herof are to be satisfied in connection with the funding of the Equipment Lease.

10. **Mortgages.** Ground Lessor shall have the right at any time during the Ground Lease Term, with prior notice to Ground Lessee, to subject the fee interest of Ground Lessor in the Premises, but not improvements or other property of Ground Lessor or Equipment Lessee on the Premises, to one or more mortgages on said fee estate and to renew, modify, consolidate, replace, extend and/or refinance said mortgage ("Fee Mortgage"). Ground Lessor shall be entitled to all of the proceeds from any such Fee Mortgage at any time affected pursuant hereto. Notwithstanding the foregoing, any and all Fee Mortgages shall at all times be subordinate to this Ground Lease (by means of a subordination agreement in form and substance satisfactory to Ground Lessee) as it may be amended or supplemented and to any replacement hereof and to any and all subleases hereunder. Ground Lessee shall not be required to subordinate Ground Lessee's leasehold interest to the lien of any such Fee Mortgage, nor shall Ground Lessee's estate, or any of its rights or the rights of any assignee or mortgagee hereto, be subject to defeasance or the reduction or interference with any of Ground Lessee's rights under this Ground Lease as a result of the foreclosure of any such Fee Mortgage. All such Fee Mortgages affecting the Premises shall recognize this Ground Lease and any and all of the rights of Ground Lessee and its successors and assigns hereunder.

11. **Subordinate Lease.** Ground Lessee acknowledges, and hereby consents to a ground lease between Ground Lessor, as lessor, and Ground Sublessee, as lessee, ("Subordinate Ground Lease") entered into in connection with the Equipment Lease and Ground Sublease. The rights of Ground Sublease to occupy

the Premises under the Subordinate Ground Lessee shall not become effective until the termination of this Ground Lease.

12. **Surrender Upon Full Performance by Ground Lessee under Equipment Lease.** Notwithstanding anything to the contrary contained herein, so long as no Event of Default shall have occurred and is continuing under the Equipment Lease, upon Ground Lessee's receipt of all sums due and owing by Equipment Lessee under the Equipment Lease and when Ground Lessee no longer has an interest in the Equipment or the Equipment has been returned and removed from the Premises, Ground Lessee shall surrender the Premises to Ground Lessor.
13. **Performance by Ground Lessor.** Notwithstanding anything to the contrary contained herein, if Ground Sublessee fully complies with and performs its obligations under the Ground Sublease, such compliance and performance shall be deemed to satisfy all obligations of Ground Lessor under this Ground Lease including, without limitation, the obligations of Ground Lessor under Sections 7 and 8 hereof.
14. **Miscellaneous.** This Ground Lease may not be amended except by a writing signed by Ground Lessor and Ground Lessee. This Ground Lease shall be binding upon, and inure to the benefit of, the parties hereto, their permitted successors and assigns. **THIS GROUND LEASE IS BEING DELIVERED IN THE STATE OF NEW YORK AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.**
15. **More than One Ground Lessor.** If more than one person or entity executes this Ground Lease as "Ground Lessor," the obligations of "Ground Lessor" contained herein shall be deemed joint and several and all references to "Ground Lessor" shall apply both individually and jointly.
16. **Entire Agreement.** This Ground Lease constitutes the entire understanding or agreement between Ground Lessor and Ground Lessee with respect to the leasing of the Premises, and there is no understanding or agreement, oral or written, which is not set forth herein.
17. **Execution in Counterparts.** This Ground Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
18. **Representations and Warranties.** Ground Lessor hereby makes the following representations and warranties, which representations and warranties shall be continuing:
 - (a) Ground Lessor has full authority to own and lease its properties and to carry on its business as currently conducted and as anticipated to be conducted.
 - (b) Ground Lessor has duly authorized the execution, delivery and performance of this Ground Lease, such Ground Lease has been duly executed and delivered and such Ground Lease constitutes the binding and enforceable obligations of Ground Lessor in accordance with its terms.
 - (c) The execution, delivery and performance of this Ground Lease by Ground Lessor:
 - (i) does not violate any law applicable to Ground Lessor, the Premises or its other properties;
 - (ii) does not violate or constitute a breach of, or default under, any document or agreement to which Ground Lessor is a party or to which its properties are subject; and

(iii) does not require any consents, filings with or notices to any party or parties which have not been obtained or made.

(d) The execution, delivery and performance of this Ground Lease by Ground Lessor will not cause it to be insolvent and will not result in a fraudulent conveyance under any applicable laws.


(e) Ground Lessor is the fee owner of the Premises, free and clear of all Liens other than Permitted Liens.

IN WITNESS WHEREOF, Ground Lessor and Ground Lessee have executed this Ground Lease as of the day and year first above written.


Ground Lessor:

Ground Lessee:

FARM CREDIT LEASING SERVICES CORPORATION

By: 
Name: John R. Walker

By: _____
Name: _____
Title: _____

By: 
Name: Brenda L. Walker

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

On this _____ day of September, 2008, before me the subscriber personally appeared _____, who being by me duly sworn depose and say that (s)he resides at _____ County, State of Minnesota; that (s)he is a _____ of Farm Credit Leasing Services Corporation, the corporation described in and which executed the foregoing instrument; and that (s)he signed his/her name thereto by order of the Board of Directors of said corporation.

NOTARY PUBLIC
My Commission Expires:

STATE OF OREGON)
) ss.
COUNTY OF KLAMATH)

The foregoing instrument was acknowledged before me this 5th day of September, 2008, by
JOHN R. WALKER.



STATE OF OREGON)
) ss.
COUNTY OF KLAMATH)

A handwritten signature in cursive script, appearing to read "Tricia M. Hill", written over a horizontal line.

NOTARY PUBLIC for Oregon,
My commission expires 9-18-09

The foregoing instrument was acknowledged before me this 5th day of September, 2008, by
BRENDA L. WALKER.



A handwritten signature in cursive script, appearing to read "Tricia M. Hill", written over a horizontal line.

NOTARY PUBLIC for Oregon,
My commission expires 9-18-09

- (iii) does not require any consents, filings with or notices to any party or parties which have not been obtained or made.
- (d) The execution, delivery and performance of this Ground Lease by Ground Lessor will not cause it to be insolvent and will not result in a fraudulent conveyance under any applicable laws.
- (e) Ground Lessor is the fee owner of the Premises, free and clear of all Liens other than Permitted Liens.

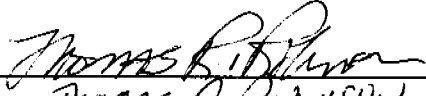
IN WITNESS WHEREOF, Ground Lessor and Ground Lessee have executed this Ground Lease as of the day and year first above written.

Ground Lessor:

Ground Lessee:

FARM CREDIT LEASING SERVICES CORPORATION

By: _____
Name: John R. Walker

By: 
Name: THOMAS R. ROBINSON
Title: VICE PRESIDENT

By: _____
Name: Brenda L. Walker

Exhibit A

DESCRIPTION OF EQUIPMENT

One 62'x 288' double wide white Behlen metal storage building

Four endwalls with framed openings

Two endwalls with storage to 18'

Central air plenum down length of building split into two zones(designed for 27 cfm per ton)

Two sets of stairs

Electrical and storage control room

Storage height calculated to 18'

Concrete

8' Concrete wall the full perimeter and down air plenum

Recessed air plenum floor

Concrete floor and cap on air plenum

Plenum cap sealed with single ply membrane

Footings and buttresses by design

Doors

(4) 16'-10" x 14' all metal swing doors with swinging bulk head doors

(11) 2868 walk doors

(2) Stairway access doors

Insulation

4" urethane insulation throughout building

Air System and Pipe

(94) rows of 24" – 16 ga. Ventilation pipe with galv. end caps

Galvanized splice gates

Exhibit B

DESCRIPTION OF PREMISES

Parcel 1 of Land Partition 20-02, said Land Partition being situated in the NE1/4 NW1/4 and NW1/4 NW1/4 of Section 9, Township 41 South, Range 12 East of the Willamette Meridian, and in the NE1/4 NE1/4 of Section 8, Township 41 South, Range 12 East of the Willamette Meridian Klamath County, Oregon.

Exhibit C

PERMITTED LIENS

1. Easements of Record
2. Trust Deed dated May 23, 2007 recorded May 25, 2007, in Volume 2007, page 009492, Microfilm Records of Klamath County, Oregon, and rerecorded July 27, 2007, in volume 2007, page 011536, Microfilm Records of Klamath County, Oregon.
3. Trust Deed dated May 23, 2007 recorded May 25, 2007, in Volume 2007, page 009491, Microfilm Records of Klamath County, Oregon, and rerecorded July 27, 2007, in volume 2007, page 011535, Microfilm Records of Klamath County, Oregon.