

MTZ 84664-KR

2009-009438

Klamath County, Oregon



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07/10/2009 11:21:06 AM

Fee: \$121.00

WHEN RECORDED RETURN TO:

Mark A. Norby
Stoel Rives LLP
Suite 2600
900 SW Fifth Avenue
Portland, OR 97204

(space above reserved for recorders use)

Maximum Principal Amount to be Advanced: \$3,000,000

Maturity Date of Line of Credit: July 1, 2039

**LINE OF CREDIT INSTRUMENT
MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT AND FIXTURE
FILING**

DATED: July 6, 2009

FROM: CAMERON A. CURTISS AND LEONA V. CURTISS, AS
TRUSTEES OF THE CAMERON A. CURTISS REVOCABLE
TRUST U/T/A dated August 17, 2007;
LEONA V. CURTISS AND CAMERON A. CURTISS, AS
TRUSTEES OF THE LEONA V. CURTISS REVOCABLE
TRUST U/T/A dated August 17, 2007;
CAMERON A. CURTISS and LEONA V. CURTISS
21051 Highway 140W
Klamath Falls, OR 97601

BORROWER

TO: HARVEST CAPITAL COMPANY
690 NW First Ave., Suite 101
Canby, Oregon 97013

LENDER

Borrower is the owner of the real property in Klamath County, Oregon described on the attached **Exhibit A.**

Lender has loaned or agreed to loan to Borrower the sum of \$3,000,000 on certain terms and conditions. Such amount will be repayable with interest according to the terms of two promissory notes given to evidence such indebtedness dated the same as this Mortgage, one in the amount of \$2,000,000, under which the final payment of principal and interest will be due July 1, 2039 ("Note A"), and one in the amount of \$1,000,000 on a revolving line of credit, under which the final payment of principal and interest will be due on July 1, 2039 ("Note B"). The Notes provide that the interest rate and payment terms may be adjusted as provided therein. The aggregate advances made under Note B secured hereby may exceed the face amount of Note B, but the unpaid principal balance shall not exceed such face amount. (This limitation of amount does not include interest and other fees and charges validly made pursuant to this Mortgage. Also, this limitation does not apply to advances made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage.) Note A and Note B, and any note or notes given in renewal, modification, substitution or addition to the promissory note originally issued, are referred to as the "Notes."

121 Amt

The term "**Indebtedness**" as used in this Mortgage shall mean (a) the principal and interest payable under the Notes, including without limitation any and all future advances made by Lender thereunder, (b) any future amounts that Lender may in its discretion loan to Borrower, with interest thereon, and any and all additional indebtedness of the Lender to the Borrower, now existing or hereafter created, matured or unmatured, direct or contingent and any renewals and extensions thereof and substitutions therefore, whether or not such other indebtedness is incurred or becomes payable under the provisions hereof and whether as future advances or otherwise, even though the indebtedness of Borrower to Lender from time to time shall be reduced below the maximum amount above stated or be paid in full, (c) any amounts expended or advanced by Lender to discharge obligations of Borrower or expenses incurred by Lender to enforce obligations of Borrower, as permitted under this Mortgage, with interest thereon as provided below, and (d) any amounts with interest thereon at the rate specified in Section 12.4 below, payable by Borrower to Lender under the Environmental Indemnity Agreement executed by Borrower this same date (the "**Environmental Agreement**") to the extent Lender specifically elects by written notice to Borrower to include such amounts in the Indebtedness.

To secure payment of the Indebtedness and performance of all obligations of Borrower under this Mortgage, Borrower mortgages and conveys to Lender the following:

(1) The real property in Klamath County, Oregon described on attached **Exhibit A** (the "**Real Property**").

(2) (i) All fixtures (including trade fixtures) and equipment used for the production of water on the Real Property or for the irrigation or drainage thereof and (ii) all livestock handling equipment located on or used in connection with the Real Property, including, but not limited to, fences, windmills, stock tanks and stock watering equipment, corrals, portable fence panels and scales (but excluding self-propelled motor driven vehicles and farm implements customarily towed or attached thereto) (but excluding self-propelled motor driven vehicles and farm implements customarily towed or attached thereto), and (iii) all equipment and machinery for the protection of electricity, including the equipment comprising the hydroelectric facility on the Real Property, in each case, together with all accessions, parts, additions, replacements and substitutions for any of such property, and all proceeds (including insurance proceeds) from the sale or other disposition of any of such property including, without limitation, the items described on attached **Exhibit B** (the "**Personal Property**").

(3) All water, water rights, ditches and ditch rights, any permits, licenses, certificates or shares of stock evidencing any such water or ditch rights, and any such rights acquired in the future, which entitle Borrower to use water for any purpose upon the Real Property, including but not limited to the water rights described on attached **Exhibit C** (the "**Water Rights**").

Borrower presently assigns to Lender all of Borrower's right, title and interest in and to all rents, revenues, income, issues and profits (the "**Income**") from the Real Property, Personal Property, and Water Rights, whether now or hereafter due.

Borrower grants Lender a security interest in the Income, the Water Rights, and Personal Property.

The real and personal property described above is referred to as the "**Property**."

This Mortgage is given and accepted on the following terms and conditions which Borrower will promptly and faithfully observe and perform:

1. **PAYMENT AND PERFORMANCE.** Borrower shall pay to Lender promptly when due all amounts payment of which is secured by this Mortgage and shall strictly perform all obligations imposed upon Borrower by this Mortgage.

2. **POSSESSION AND MAINTENANCE OF THE PROPERTY.**

2.1 Possession. Until in default, Borrower may remain in possession and control of and operate and manage the Property and collect the Income from the Property.

2.2 Duty to Maintain. Borrower shall maintain the Property in good condition and promptly perform all repairs and maintenance necessary to preserve its value. The Real Property shall be cultivated in accordance with good husbandry practices and all farming, and ranching operations shall be conducted in such a manner as to prevent deterioration of the Property.

2.3 Nuisance, Waste. Borrower shall not conduct or permit any nuisance and shall not commit or suffer any strip or waste on the Property.

2.4 Removal of Improvements. Borrower shall not demolish or remove any improvements from the Property without the prior written consent of Lender. Lender shall consent if Borrower makes arrangements satisfactory to Lender to replace any improvement which Borrower proposes to remove with one of at least equal value. "**Improvements**" shall include all existing and future buildings, structures and other fixtures and improvements now or hereafter installed in or attached to the Real Property, including but not limited to all elevators, conveyors, irrigation equipment, hydroelectric facilities or livestock handling fixtures.

2.5 Lender's Right to Enter. Lender and its agents and representatives may enter upon the Property at all reasonable times to attend to Lender's interest and to inspect the Property and to inspect any and all financial and other records relating to Borrower's operations on the Property.

2.6 Compliance with Governmental Requirements. Borrower shall promptly comply with all laws, ordinances and regulations of all governmental authorities applicable to the use or occupancy of the Property. Borrower may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Property is not jeopardized.

2.7 Duty to Protect. Borrower shall do all other acts, in addition to those set forth in this Mortgage, that from the character and use of the Property are reasonably necessary to protect and preserve the security.

2.8 Water Rights. All existing water rights benefiting the Property shall be maintained by Borrower and applied to beneficial use so as to maintain the validity and priority of such rights. Borrower shall not sell or surrender any of the water rights nor, without Lender's written consent, agree with any third party to any period of nonuse of the same.

2.9 Timber. Borrower acknowledges that the current timbered condition of the Real Property contributes substantially to the value and aesthetics of the Real Property. Subject to Borrower obtaining all necessary permits and complying with applicable laws, Borrower may selectively harvest timber from the Real Property, provided that (i) Borrower shall not clearcut any portion of the Real Property, and (ii) Borrower shall not harvest timber in a manner that alters the general appearance of the Real Property or significantly changes the age class distribution of the trees on the Real Property.

3. TAXES AND LIENS.

3.1 Payment. Borrower shall pay when due all taxes and assessments levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Borrower shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for the lien of taxes and assessments not due, and except as otherwise provided in Section 3.2.

3.2 Right to Contest. Borrower may withhold payment of any tax, assessment or claim in connection with a good faith dispute over obligation to pay, so long as Lender's interest in the Property is not jeopardized. If the Property is subjected to a lien which is not discharged within 15 days, Borrower shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale under the lien. In any contest proceedings, Borrower will defend itself and Lender and will name Lender as an additional obligee under any surety bond, and Borrower shall satisfy any final adverse judgment before enforcement against the Property.

3.3 Evidence of Payment. Borrower shall promptly furnish evidence of payment of taxes and assessments to Lender on its demand and shall authorize the appropriate county official to deliver to Lender at any time a written statement of the taxes and assessments against the Property, and shall pay the expense of a tax reporting service for the Property if required by Lender.

3.4 Notice of Construction. Borrower shall notify Lender at least 15 days before any work is commenced, any services are furnished or any materials are supplied to the Property if a construction lien could be asserted on account of the work, services or materials and the cost exceeds \$10,000. On Lender's request, Borrower will promptly furnish advance assurances satisfactory to Lender that Borrower can and will pay the cost of such improvements.

3.5 Farm or Forest Classification. Borrower agrees to maintain the farm use or forest lands classification of the Property on the tax rolls, and not to allow any act or omission which would disqualify the Property for assessment as farm or forest lands.

4. PROPERTY DAMAGE INSURANCE.

4.1 Maintenance of Insurance. Borrower shall procure and maintain such policies of insurance as Lender may reasonably require. This shall include policies of fire insurance with standard extended coverage endorsements covering all improvements on the Property for their full insurable value, in an amount sufficient to avoid application of any coinsurance clause and with loss payable to Lender, and comprehensive general liability insurance in such coverage amounts as Lender may request, with Lender as an additional insured. Policies shall be written in amounts, in form, on terms and with companies reasonably acceptable to Lender. Borrower shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of 10 days' written notice to Lender. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Borrower agrees to obtain and maintain Federal Flood Insurance for the unpaid balance of the Note, up to the maximum policy limits set under the National Flood Insurance Program.

4.2 Application of Proceeds. Borrower shall promptly notify Lender of any loss or damage to the Property which exceeds \$2,500, Lender may make proof of loss if Borrower fails to do so within 15 days of the casualty. All proceeds of any insurance on the Property shall be held by Lender as part of the Property. If Borrower elects to restore the Property, Borrower shall repair or replace the damaged or

destroyed improvements in a manner satisfactory to Lender. Upon satisfactory proof of expenditure, Lender shall pay or reimburse Borrower from the proceeds for the reasonable cost of repair or restoration. If Borrower elects not to restore the Property, Lender shall retain a sufficient amount of the proceeds to pay all amounts due under this Mortgage, and shall pay the balance to Borrower. Any proceeds which have not been paid out within one (1) year after their receipt and which Borrower has not committed to the repair or restoration of the Property shall be used to prepay first accrued interest and then principal of Borrower's Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Borrower.

4.3 Unexpired Insurance at Sale. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any foreclosure sale of the Property.

4.4 Borrower's Report on Insurance. Upon request by Lender, not more than once a year, Borrower shall furnish to Lender a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining value; and (e) the expiration date of the policy.

5. WARRANTIES OF BORROWER.

5.1 Title. Borrower warrants that Borrower holds merchantable title to the Property in fee simple free of all encumbrances other than those set forth in the title insurance policy issued to Lender at closing.

5.2 Defense of Title. Subject to the exceptions in the paragraph above, Borrower warrants and will forever defend the title against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Borrower's title or the interest of Lender under this Mortgage, Borrower shall defend the action at its expense.

6. CONDEMNATION.

6.1 Application of Net Proceeds. If all or any part of the Property is condemned, and the value of the portion so condemned exceeds \$2,500, Lender may elect to require that all or any portion of the net proceeds of the condemnation be applied on the Indebtedness. The "**net proceeds**" shall mean the total amount available after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Borrower and Lender in connection with the taking by condemnation. Sale of all or any part of the Property to a purchaser with the power of eminent domain in the face of a threat or the probability of the exercise of the power shall be treated as a taking by condemnation to which this section shall apply.

6.2 Proceedings. If any proceedings in condemnation are filed, Borrower shall promptly take such steps as may be necessary to defend the action and obtain the award. Borrower shall be entitled, at its option, to commence, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage, and to obtain all compensation, awards or other relief therefore to which Borrower may be entitled.

7. TRANSFER BY BORROWER.

7.1 Prohibition of Transfer Without Consent. Borrower shall not sell, agree to sell, assign, convey, subcontract or otherwise transfer any part or all of the Property or any interest in the Property without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

If Borrower or a prospective transferee applies to Lender for consent to a transfer, Lender may require such information as may be reasonably necessary for Lender to assess the prospective transferee's prior business experience, reputation and financial ability to perform Borrower's obligation under this Mortgage. Without limiting the generality of the foregoing, the occurrence at any time of any of the following events, without Lender's prior written consent, shall be deemed a transfer of title to the Property:

(a) Any sale, conveyance, lease with a term greater than 3 years (including renewal options), assignment or other transfer of all or any part of the legal or equitable title to the Property;

(b) Any conveyance, grant or other transfer of the legal or equitable title to the Property which occurs by operation of law, by trustees in bankruptcy, executors or estate administrators or executors, or by or through a bankruptcy court.

(c) If Borrower is a corporation, partnership or limited liability company, a sale, transfer or assignment of the corporate stock, partnership interests or membership interests, respectively, which results in more than twenty-five percent (25%) of the corporate stock, partnership interests or membership interests being held by persons or entities which are not, on the date hereof, shareholders, partners or members.

7.2 Condition to Consent. As a condition of its consent to any transfer, Lender may in its discretion impose a service charge not exceeding one (1) percent of the outstanding Indebtedness, and may increase the interest rate of the Indebtedness or otherwise require modification of the Note or this Mortgage. Lender may increase the amount of each remaining installment so that the Indebtedness will be fully paid by the original maturity date. In no event, however, shall the interest rate be increased beyond the maximum rate permitted under applicable law.

7.3 Effect of Consent. Consent by Lender to one transfer shall not constitute a consent to other transfers or a waiver of this section. No transfer by Borrower shall relieve Borrower of liability for payment of the Indebtedness. Following a transfer, Lender may agree to any extension of time for payment or modification of the terms of this Mortgage or the Note or waive any right or remedy under this Mortgage or the Note without relieving Borrower from liability. Borrower waives notice, presentment and protest with respect to the Indebtedness.

8. SECURITY AGREEMENT; SECURITY INTEREST.

8.1 Security Agreement. This instrument shall constitute a security agreement with respect to the Income, Water Rights, and Personal Property included in the description of the Property.

8.2 Security Interest. Upon request by Lender, Borrower shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Income, the Water Rights, and the Personal Property. Borrower hereby appoints Lender as Borrower's attorney in fact for the purpose of executing any documents necessary to perfect or continue the security interest granted therein and authorizes Lender to file such financing statements as Lender deems appropriate to protect its security interest in the Income, Water Rights, and the Personal Property included in the description of the Property. Lender may file copies or reproductions of this Mortgage as a financing statement at any time and without further authorization from Borrower. Borrower will reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Borrower shall assemble the personal property and make it available to Lender within three days after receipt of written demand from Lender.

8.3 Fixture Filing. This instrument constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the county in which the Property is located with respect to any and all fixtures included within the term Property as used herein and with respect to any goods or other personal property that may now be or hereafter become fixtures.

Name and address of Lender (Secured Party) from whom information may be obtained:

Harvest Capital Company
690 NW 1st Avenue, Suite 101
Canby, Oregon 97013

Address of Borrower (Debtor):

21051 Highway 140W
Klamath Falls, OR 97601

9. **RELEASE ON FULL PERFORMANCE.** If Borrower pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Borrower under this Mortgage, Lender shall, if requested, execute and deliver to Borrower a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file.

10. **DEFAULT.** The following shall constitute events of default:

10.1 Failure of Borrower to pay any portion of the Indebtedness when it is due.

10.2 Failure of Borrower within the time required by this Mortgage to make any payment for taxes, insurance, or any other payment necessary to prevent filing or discharge of any lien (or within such time discharge or bond such lien in the manner permitted in Section 3.2 above).

10.3 Transfer or agreement to transfer any part or interest in the Property without the prior written consent of Lender, as required under Section 7 above.

10.4 Dissolution, termination of existence, insolvency on a balance sheet basis or business failure of Borrower; the commencement by Borrower of a voluntary case under the federal bankruptcy laws or under any other federal or state law relating to insolvency or debtor's relief; the entry of a decree or order for relief against Borrower in an involuntary case under federal or state law relating to insolvency or debtor's relief; the appointment or the consent by Borrower to the appointment of a receiver, trustee or custodian of Borrower or of any of Borrower's property; an assignment for the benefit of creditors by Borrower; the making or suffering by Borrower of a fraudulent transfer under applicable federal or state law; concealment by Borrower of any of its property in fraud of creditors; the making or suffering by Borrower of a preference within the meaning of the federal bankruptcy law; the imposition of a lien through legal proceedings or distraint upon any of the property of Borrower which is not discharged or bonded in the manner permitted by Section 3.2 above; or Borrower's failure generally to pay its debts as such debts become due. The events of default in this paragraph shall apply and refer to Borrower and to each of the individuals or entities which are collectively referred to as "**Borrower**."

10.5 Any breach of any representation or warranty in the Environmental Agreement.

10.6 Failure of Borrower to perform any other obligation under this Mortgage or the Environmental Agreement within 15 days after receipt of written notice from Lender specifying the nature of the default or, if the default cannot be cured within 15 days, failure within such time to initiate

steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practicable. No notice of default and no opportunity to cure shall be required if during the prior 12 months Lender has already sent a notice to Borrower concerning default in performance of the same obligation.

10.7 Lender determines in good faith that the prospect of payment of the Indebtedness or the prospect of performance of any agreement or obligation securing the same or relating thereto is significantly impaired.

11. RIGHTS AND REMEDIES ON DEFAULT.

11.1 Remedies. Upon the occurrence of any event of default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies:

- (a) Lender may declare the entire Indebtedness immediately due and payable.
- (b) Lender may obtain a decree foreclosing Borrower's interest in all or any part of the Property. If permitted by applicable law, Lender may foreclose Borrower's interest in all or any part of the Property by nonjudicial sale.
- (c) If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.
- (d) With respect to all or any part of the Property that constitutes personalty, may exercise the rights and remedies of a secured party under the Uniform Commercial Code.
- (e) Lender shall have the right, without notice to Borrower to take possession of the Property, to collect the Income, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user to make payments of rent or use fees directly to Lender. If the Income is collected by Lender, then Borrower irrevocably designates Lender as Borrower's attorney in fact to endorse instruments received in payment thereof in the name of Borrower and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this paragraph either in person, by agent or through a receiver.
- (f) Lender shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, to collect the Income from the Property and to apply the proceeds, over and above cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.
- (g) In the event Borrower remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Borrower, Borrower shall become a tenant at will of Lender or the purchaser of the Property and shall pay a reasonable rental for use of the Property while in Borrower's possession.

(h) Lender shall have any other right or remedy provided in this Mortgage, the Notes or any other instrument delivered by Borrower in connection therewith, or available at law, in equity or otherwise.

11.2 Rights of Receiver or Lender-in-Possession. Upon taking possession of all or any part of the Property, the receiver or Lender may:

(a) Use, operate, manage, control and conduct business on the Property and make expenditures for all maintenance and improvements as in its judgment are proper;

(b) Collect the Income from the Property and apply such sums to the expenses of use, operation and management;

(c) At Lender's option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors and make any changes in plans or specifications as Lender deems appropriate.

If the revenues produced by the Property are insufficient to pay expenses, the receiver may borrow, from Lender (if Lender, in its sole discretion, agrees to lend) or otherwise, or Lender may borrow or advance, such sums as the receiver or Lender may deem necessary for the purposes stated in this paragraph. The amounts borrowed or advanced shall bear interest from the date of expenditure until repaid at the same interest rate as provided in Section 12.4 below. Such sums shall become a part of the Indebtedness secured by this Mortgage and shall be payable by Borrower on demand.

11.3 Sale of the Property. In exercising its rights and remedies, Lender may cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the Property may be sold without selling other portions. Lender may bid at any public sale on all or any portion of the Property.

11.4 Notice of Sale. Lender shall give Borrower reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other disposition of the personal property is to be made. Reasonable notice shall mean notice given at least 10 days prior to the time of the sale or disposition.

11.5 Waiver; Election of Remedies. A waiver by either party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Lender under this Mortgage are cumulative and not exclusive. An election to make expenditures or to take action to perform an obligation of Borrower shall not affect Lender's right to declare a default and exercise its remedies under this Mortgage.

11.6 Attorneys' Fees; Expenses. In the event suit or action is instituted to enforce any of the terms of this Mortgage, the prevailing party shall be entitled to recover its reasonable attorneys' fees at trial, on any appeal and on any petition for review, in addition to all other sums provided by law. Whether or not any court action is involved, all reasonable expenses incurred by Lender that are necessary at any time in Lender's opinion for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the same interest rate as provided in Section 12.4 below. Expenses covered by this paragraph include (without limitation) the cost of searching records and obtaining title reports, surveyors' reports, attorneys' opinions and title insurance.

12. MISCELLANEOUS.

12.1 Time of Essence. Time is of the essence of this Mortgage.

12.2 Binding upon Successors and Assigns. Subject to the limitations stated in this Mortgage on transfer of Borrower's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns.

12.3 Security Agreement. In construing this Mortgage, the term "**Mortgage**" shall encompass the term "security agreement" when the instrument is being construed with respect to any personal property.

12.4 Expenditure by Lender. If Borrower fails to comply with any provision of this Mortgage, Lender may elect to take the required action on Borrower's behalf, and any amount that Lender expends in so doing shall be added to the Indebtedness. Amounts so added shall be payable on demand with interest from the date of expenditure at the Default Rate (as specified in the Note). Such action by Lender shall not constitute a cure or waiver of the default or any other right or remedy which Lender may have on account of Borrower's default.

12.5 Notices. Any notice under this Mortgage shall be in writing and shall be effective when either delivered in person or, if mailed, shall be deemed effective when deposited as registered or certified mail, postage prepaid, addressed to the party at the address stated in this Mortgage. Any party may change its address for notices by written notice to the other.

12.6 Modification or Extension of Indebtedness; Release of Obligors. The taking by Borrower of any additional security, the release of any person now or hereafter liable for the repayment of the Indebtedness, or any extension of the time of payment of the Indebtedness or the renewal thereof, shall not diminish the effectiveness of this Mortgage or the lien of this Mortgage and shall not affect or impair the liability of any maker, surety or endorser for the payment of the Indebtedness.

12.7 Release of Security. Lender shall have the right to release, with or without consideration or credit on the Indebtedness secured, any part of the Property. Without regard to the existence of any junior encumbrance and without the consent of such junior encumbrance, and such release shall have no further effect upon the rank, lien or estate conveyed of this Mortgage.

12.8 Waiver of Marshalling. Borrower expressly waives, to the full extent permitted by law, and relinquishes any right to claim a marshalling of assets in respect to the Property, or any part thereof, in the event of the foreclosure or other enforcement of this Mortgage.

12.9 Invalid Provisions to Affect No Others. If any of the provisions contained in the Note or this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions in this Mortgage and the Note shall not be affected thereby.

12.10 Changes in Writing. This Mortgage and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Borrower or Lender relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

12.11 Exhibits. The following exhibits are attached to this Mortgage and incorporated herein by reference:

Exhibit A – Real Property

Exhibit B – Certain Equipment
Exhibit C – Water Rights

12.12 Applicable Law. The law of the State of Oregon, including applicable federal law, shall be applicable for the purpose of construing and determining the validity of this Mortgage and, to the fullest extent permitted by the law of any state in which any of the Property is located, determining the rights and remedies of Lender on default.

12.13 Jurisdiction. In the event of a lawsuit relating to, or to enforce, this Mortgage, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Klamath County, State of Oregon.

12.14 Loan Purpose. The Borrower acknowledges that the proceeds of the Note are primarily for agricultural, commercial, investment or business purposes, and are not for a consumer transaction (which is defined as a transaction primarily for personal, family or household purposes).

12.15 Dissemination of Information. If the Lender determines at any time to sell, transfer or assign the Note, this Mortgage and any other security instruments, and any or all servicing rights with respect thereto, or to grant participations therein or issue, in a public offering or private placement, mortgage pass-through certificates or other securities evidencing a beneficial interest in the loan, Lender may forward to each purchaser, transferee, assignee, servicer, participant, investor, or their respective successors in such Participations and/or Securities, any rating agency rating such Securities and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Indebtedness and to the Borrower, any guarantor, any indemnitors and the Property, which shall have been furnished by Borrower, any guarantor or any indemnitors, as Lender determines necessary or desirable.

WARNING: UNLESS YOU (BORROWER) PROVIDE US (LENDER) WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR CONTRACT OR LOAN AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPERTY COVERAGE ELSEWHERE. YOU ARE RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR CONTRACT OR LOAN BALANCE. IF THE COST IS ADDED TO YOUR CONTRACT OR LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING CONTRACT OR LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

(Signature page follows)

BORROWER:

Cameron A. Curtiss, Trustee

CAMERON A. CURTISS, AS TRUSTEE OF THE
CAMERON A. CURTISS REVOCABLE TRUST
U/T/A dated August 17, 2007

Leona V. Curtiss, Trustee

LEONA V. CURTISS, AS TRUSTEE OF THE
CAMERON A. CURTISS REVOCABLE TRUST
U/T/A dated August 17, 2007

Cameron A. Curtiss, Trustee

CAMERON A. CURTISS, AS TRUSTEE OF THE
LEONA V. CURTISS REVOCABLE TRUST U/T/A
dated August 17, 2007

Leona V. Curtiss, Trustee

LEONA V. CURTISS, AS TRUSTEE OF THE
LEONA V. CURTISS REVOCABLE TRUST U/T/A
dated August 17, 2007

Cameron A. Curtiss

CAMERON A. CURTISS (Individually)

Leona V. Curtiss

LEONA V. CURTISS (Individually)

STATE OF OREGON)
COUNTY OF Klamath) ss.

This instrument was acknowledged before me on July 9, 2009, by CAMERON A. CURTISS, AS TRUSTEE OF THE CAMERON A. CURTISS REVOCABLE TRUST U/T/A dated August 17, 2007.



Kristi L. Redd
Notary Public for Oregon
My Commission expires: 11/16/2011
Commission No.: 421742

STATE OF OREGON)
COUNTY OF Klamath) ss.

This instrument was acknowledged before me on July 9, 2009, by LEONA V. CURTISS, AS TRUSTEE OF THE CAMERON A. CURTISS REVOCABLE TRUST U/T/A dated August 17, 2007.



Kristi L. Redd
Notary Public for Oregon
My Commission expires: 11/16/2011
Commission No.: 421742

STATE OF OREGON)
COUNTY OF Klamath) ss.

This instrument was acknowledged before me on July 9, 2009, by CAMERON A. CURTISS, AS TRUSTEE OF THE LEONA V. CURTISS REVOCABLE TRUST U/T/A dated August 17, 2007



Kristi L. Redd
Notary Public for Oregon
My Commission expires: 11/16/2011
Commission No.: 421742

STATE OF OREGON)
COUNTY OF Klamath) ss.

This instrument was acknowledged before me on July 9, 2009, by LEONA V. CURTISS, AS TRUSTEE OF THE LEONA V. CURTISS REVOCABLE TRUST U/T/A dated August 17, 2007.



Kristi L. Redd
Notary Public for Oregon
My Commission expires: 11/16/2011
Commission No.:

STATE OF OREGON)
COUNTY OF Klamath) ss.

This instrument was acknowledged before me on July 9, 2009, by CAMERON A. CURTISS.



Kristi L. Redd
Notary Public for Oregon
My Commission expires: 11/16/2011
Commission No.:

STATE OF OREGON)
COUNTY OF Klamath) ss.

This instrument was acknowledged before me on July 9, 2009, LEONA V. CURTISS.



Kristi L. Redd
Notary Public for Oregon
My Commission expires: 11/16/2011
Commission No.:

EXHIBIT A TO MORTGAGE

EXHIBIT "A" LEGAL DESCRIPTION

PARCEL 1:

Parcel 1 of Land Partition 43-01 in Sections 28, 32, 33 and 34 in Township 36 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon and Sections 3, 4 and 9 in Township 37 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon by and through its Department of Transportation by Warranty Deed recorded December 5, 2003 in Volume M03, page 89160, Microfilm Records of Klamath County, Oregon.

PARCEL 2:

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

Section 21: Government Lot 1

Section 27: Government Lots 1, 2, 3, 4 and 5, SW1/4, SW1/4 SE1/4

Section 28: Government Lots 1 and 2, NE1/4, E1/2 SE1/4, and NW1/4 SE1/4
EXCEPTING the following: Beginning at the Northwest corner of said NW1/4 SE1/4; thence South along the West line of said NW1/4 SE1/4 to the Southwest corner thereof; thence East along the South line of said NW1/4 SE1/4 to the Southeast corner thereof; thence Northwesterly along a straight line to the point of beginning.

Section 33: That portion of Government Lot 1, more particularly 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 SE1/4 SE1/4 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.

Section 34: Government Lot 6, NW1/4 NE1/4, N1/2 NW1/4, SW1/4 NE1/4, SE1/4 NW1/4, The East 60 feet of the E1/2 SW1/4, that portion of the SW1/4 NW1/4, more particularly described as follows:

Beginning at the Northwest corner of said SW1/4 NW1/4; thence Southeasterly along a straight line to the Southeast corner of said SW1/4 NW1/4; thence North along the East line of said SW1/4 NW1/4 to the Northeast corner thereof; thence West along the North line of said SW1/4 NW1/4 to the point of beginning.

EXHIBIT A TO MORTGAGE

PARCEL 3:

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

Section 4: Government Lots 2, 3, 7, 8, 12, 13 and 14; SE1/4 NW1/4; NE1/4 SW1/4 and Government Lot 9 lying Southerly and Westerly of the Lake of the Woods Highway.

ALSO Government Lot 1 EXCEPT that portion thereof heretofore conveyed to 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.

Section 8: NW1/4 SW1/4; S1/2SW1/4; NE1/4 SW1/4; SE1/4

Section 9: Government Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9; N1/2 SW1/4; NW1/4 SE1/4

ALSO that part of the SW1/4 SW1/4 described as follows:

Beginning at the Southwest corner of said SW1/4 SW1/4; thence North along the West line of said SW1/4 SW1/4 to the Northwest corner thereof; thence East along the North line of said SW1/4 SW1/4 to the Northeast corner thereof; thence Southwesterly along a straight line to the point of beginning.

Section 17: N1/2 NW1/4

EXCEPTING THEREFROM that portion conveyed to the State of Oregon by and through its Department of Transportation by Warranty Deed recorded December 5, 2003 in Volume M03, page 89160, Microfilm Records of Klamath County, Oregon.

PARCEL 4:

A parcel of land situated in the N1/2 of the N1/2 of Section 3, Township 37 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point which bears North 89° 10' 48" West 60.00 feet from the N1/4 corner of said Section 3; thence South 01° 12' 43" East 699.28 feet to the North line of Eagle Ridge Road; thence along the North line of Eagle Ridge Road 152.28 feet along the arc of a 307.03 feet radius curve to the left, the long chord of which bears North 43° 46' 29" East 150.73 feet and having a delta angle of 28° 25' 04"; thence 307.71 feet along the arc of a 480.00 foot radius curve to the right, the long chord of which bears North 47° 55' 52" East 302.47 feet and having a delta angle of 36° 43' 51"; thence 64.33 feet along the arc of a 110.00 radius curve to the right, the long chord of which bears North 83° 03' 05" East 63.42 feet and having a delta angle of 33° 30' 36"; thence leaving the North line of Eagle Ridge Road North 00° 09' 31" East 374.12 feet to a point on the North line of said Section 3; thence along the North line of said Section 3 at a bearing of North 89° 10' 48" West 407.63 feet to the point of beginning; with bearings based on County Survey 6076.

EXHIBIT B TO MORTGAGE

IRRIGATION FINANCING STATEMENT SUMMARY

Name Cameron A. & Leona V. Curtiss / Rock Creek Ranch
County, State Klamath County
Acres 3,160.09

POWER UNIT					PUMP UNIT		
PUMP SITE	MANUFACTURER	HORSE POWER	FRAME NUMBER	SERIAL NUMBER	MANUFACTURER	TYPE	SERIAL #
<u>Tract I - Main Ranch</u>							
Pumpsite #1	Hallow Shaft	15	A324UP	P4185047	US Electric	turbine	
Pumpsite #2	High Thrust	30	A445MP	1365615	US Electric	turbine	
Pumpsite #3	Century	20		632219501	Berkley	turbine	
Pumpsite #4	US Electric	5	R7199-02-034	7310B-Y		centrifugal	
Pumpsite #6	General Electric	5	5KGTI3DP6001	KP153		centrifugal	
Pumpsite #7 (New Well)	US Electric	60	BF59A	H02-BF59A-MC11			

OTHER IRRIGATION EQUIPMENT

<u>Tract I - Main Ranch</u>	
One Wade Rain - non-self leveling 1/4 mile wheel line	

LIVESTOCK HANDLING EQUIPMENT

Make/Model	Plate Number
<u>Tract I - Main Ranch</u>	
JW Ferguson 30,000 lbs	hand made - no stamp or identification number

POWER PLANT EQUIPMENT

Make/Model	Plate Number
<u>Tract I - Main Ranch</u>	
Northwest Water Power System Panel	
Sprague ECCOL Unipack Power Capacitor	
20 KVAR 600Vlt, 3-Phase, Serial #839245	
2 Electrical Panels	
1 Sylvania 240 x 480 Power Transformer	
1 James Leffel & Co. 1923 pen-stock with Horizontal Shaft and 14 3/8" tarpin	
1 General Electric 75 kw Generator	
5 Schrock Bellows control air valves with shut off cylinders	
Model 500 motor saver	
Wilmer Revers Power Relay Model #723TDX	
Inline voltage meter	
Built in hoist with suitable capacity for current equipment	
All pipe, gates, valves and machinery necessary for operation at a level consistent with the past ten years of production.	

EXHIBIT C TO MORTGAGE

WATER RIGHT SUMMARY

Cameron A. & Leona V. Curtiss
Klamath County

Section	Source	Amount (CFS)	Primary Water Right Acres	Supplemental Water Right Acres	Priority Date	Application Number	Permit Number	Certificate Number	Permittee Name
Tract I - Main Ranch									
3,4,9,32,3	Rock Creek	13.50	936.60		2/1/1932	14426	22472	27444	Page H. & Marjorie N. Lamoreaux
3 & 34	Moss Creek	1.50							
3,4,9,32,3	Two wells	12.56	68.00	936.60	12/13/2001	G-15666	G-15253		Cameron Curtiss
3 & 34									
9	Denny Creek	12.00	Electrical production for sale to the public		1981/1983	HE 332		80810	Cameron Curtiss
9	Denny Creek		7.2 Ac./Fl.	Reservoir for Electrical Production	2004	R-85924	R-13986		Cameron Curtiss
Total Acres			1,004.60	936.60					