

WTC 90930

2011-010375

Klamath County, Oregon



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09/14/2011 03:16:08 PM

Fee: \$157.00

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

RABO AGRIFINANCE, INC.  
12443 Olive Blvd, Suite 50  
St. Louis, MO 63141  
Attn: Closing Department

Space above this line for Recorder's Use

RELOC

Real Estate Line of Credit: 10319400/kld

**DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

(Klamath County, Oregon)

(Line of Credit Deed of Trust)

THE MAXIMUM PRINCIPAL AMOUNT TO BE ADVANCED PURSUANT TO THE CREDIT AGREEMENT IS \$5,000,000.00.

O.R.S. 86.155 STATEMENTS:

PRINCIPAL AMOUNT: \$5,000,000.00

MATURITY DATE: October 1, 2026, EXCLUSIVE OF OPTIONS TO EXTEND, IF ANY

NOTICE TO RECORDER: THIS DOCUMENT ALSO CONSTITUTES A FIXTURE FILING THAT SHALL HAVE AN EFFECTIVE PERIOD UNTIL THIS TRUST DEED IS RECONVEYED OR SATISFIED OF RECORD OR ITS EFFECTIVENESS OTHERWISE TERMINATES AS TO THE LAND.

THE NOTE AND THE OTHER TRANASATION DOCUMENTS SECURED BY THIS TRUST DEED CONTAIN PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE FROM TIME TO TIME DURING THE TERM OF THE INDEBTEDNESS.

THE TAX ACCOUNT NUMBERS FOR THE PROPERTY SUBJECT TO THE LIEN OF THIS INSTRUMENT ARE: 4110-00100-01000-000, 4111-00600-0000-000, 4111-01300-00700-000, 4112-01900-00500-000, 4012-03100-00200-000, 4012-03100-00202-000, 4012-03100-00200-000, 4112-00800-00100-000, 4112-00900-00500-000, 4112-00900-00401-000, 4112-01400-00802-000, 4112-01400-00800-000 and 4112-00900-00601-000.

This deed of trust is dated as of August 31, 2011. It is by J & W WALKER FARMS, INC., a California corporation ("J & W Walker Farms, Inc."); J & W FARMS A/K/A JW FARMS A/K/A J&W FARMS PARTNERSHIP, an Oregon general partnership ("J & W Farms"); BRENDA L. WALKER A/K/A BRENDA WALKER ("Brenda Walker") and JOHN R. WALKER A/K/A JOHN WALKER ("John R. Walker"), husband and wife, as Tenants by the Entirety; JAN M. WALKER A/K/A JAN WALKER ("Jan M. Walker") and WILLIAM W. WALKER A/K/A WILLIAM ("William W. Walker"), husband and wife, as Tenants by the Entirety; WJB WALKER PARTNERSHIP, an Oregon general partnership ("WJB Walker Partnership"); and WESTON W. WALKER A/K/A WESTON WALKER ("Weston Walker"), a single person (J & W Walker Farms, Inc.; J & W Farms; Brenda Walker and John R. Walker; Jan M. Walker and William W. Walker; WJB Walker Partnership; and Weston Walker are herein individually and collectively, "Grantor"), to and in favor of Ticor Title Insurance Company ("Trustee"), for the benefit of RABO AGRIFINANCE, INC., a Delaware corporation, as agent for itself and the other Secured Parties (defined herein) under the Collateral Agency Agreement (defined herein; and Rabo Agrifinance, Inc., in that capacity, "Beneficiary").

15.7 Am

RABO AGRIFINANCE, INC., a Delaware corporation, as Lender ("Lender") has agreed to make up to \$5,000,000.00 in loans to Grantor, Gold Dust Potato Processors, Inc., Tally Ho Farms and Tricia M. Hill under the terms and conditions of the Credit Agreement between Grantor and Lender dated as of the date of this deed of trust (the "Credit Agreement"). Each capitalized term used in this deed of trust that is defined in the Credit Agreement and not defined in this deed of trust will have the meaning specified in the Credit Agreement. This deed of trust will be interpreted in accordance with the Drafting Conventions.

Grantor has or will also enter into certain derivatives transactions under Hedging Agreements with Swap Counterparties, under which Grantor has or may incur Hedging Obligations to Swap Counterparties.

TO SECURE repayment of the indebtedness evidenced by the Note (defined herein) and payment and performance of all other Secured Obligations (defined herein), Grantor irrevocably and unconditionally grants, bargains, sells, and conveys to Trustee, in trust, for the benefit of Beneficiary, WITH POWER OF SALE and right of entry and possession wherever located, whether now owned or hereafter acquired or arising, and, except as indicated, whether constituting real estate or personal property (collectively, the "Property"): (a) the real estate and any interest in the real estate located in Klamath County, Oregon, and described in EXHIBIT A (the "Land"); (b) all buildings, structures, improvements, fixtures, attachments, appliances, equipment, machinery and other articles now or hereafter erected on, affixed or attached to, or located in or on the Land, including all watering and irrigation apparatus, pumps, motors, generators, pipes, center pivot irrigators and sprinklers, windmills, and fences (the "Improvements"); (c) all easements, rights-of-way and rights appurtenant to the Land or used in connection the Land or as a means of access thereto ("Easements"); (d) the ground water on, under, pumped from or otherwise available to the Property or any drainage, retention, ditch, canal, reservoir, or other water rights, whether as a result of overlying groundwater rights, contractual rights, or otherwise and whether riparian, appropriative, or otherwise; the right to remove or extract any such ground water including any permits, rights or licenses granted by any Governmental Authority and any rights granted or created by any easement, covenant, agreement or contract with any Person; and any rights to which the Property or Grantor is entitled with respect to surface water, whether such rights are appropriative, riparian, prescriptive or otherwise and whether or not pursuant to historical use, contractual agreement, permit or other governmental authorization; any water right, water allocation for water not yet delivered, distribution right, delivery right, any proscriptive, contractual, easement or other rights necessary or convenient to convey any water to the Property, water storage right, or other water-related entitlement appurtenant to or otherwise applicable to the Property by virtue of the Property being situated within the boundaries of any governmental water district irrigation district or other local agency or within the boundaries of any private water company, mutual water company, or other non-governmental entity (collectively, "Water Rights"); (e) all other tenements, hereditaments and appurtenances to the Land; (f) minerals, oil, gas, and other hydrocarbon substances, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and other interests and estates in, under and on the Land and other oil, gas and mineral interests with which any of the foregoing interests or estates are pooled or unitized (the "Mineral Rights"); (g) timber now or hereafter standing or cut; (h) leases, subleases, licenses, occupancy agreements, concessions and other agreements, granting a possessory interest in and to, or the right to extract, mine, reside in, sell, or use the Property (collectively, the "Leases"); (i) all utility contracts, maintenance agreements, management agreements, service contracts and other agreements directly related to the operation and maintenance of the Property; (j) all bushes, groves, trees, plants, vines or other plantings, upon or under the Land ("Plantings"); (k) any shares, or any rights under such shares, of any private water company, mutual water company, or other non-governmental entity pursuant to which Grantor or the Property may receive water (collectively, the "Water Stock") and any other certificated and uncertificated securities, securities entitlements, securities accounts and commodities accounts, including all stock, bonds and commodities contracts, or other investment property described in EXHIBIT B attached; (l) working drawings, instructional manuals, and rights in processes directly related to the operation of the Property, and all other general intangibles described in EXHIBIT B; (m) other tangible personal property of every kind and description, whether stored on the Land or elsewhere, including all goods, materials, supplies, tools, books, records, chattels, furniture, machinery and equipment (except motor vehicles, trailers, and planting, tillage and harvesting equipment rolling stock) or which is in all cases (i) directly related to the operation of the Property or acquired in connection with any construction or maintenance of the Land or the Improvements, (ii) affixed or installed, or to be affixed or installed, in any manner on the Land or the Improvements, or (iii) described in EXHIBIT B attached; (n) all permits and licenses relating or pertaining to the use or enjoyment of the Property; (o) proceeds of and any unearned premiums on any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property (the "Insurance Claims"); (p) all awards made for the taking by condemnation or the power of eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Real Estate (the "Condemnation Awards"); (q) money or other personal property of Grantor in addition to the foregoing deposited with or otherwise in

Beneficiary's, Trustee's or Secured Parties' possession; (r) rights and interests under the Hedging Agreements, including all rights to the payment of money from Secured Parties or Trustee under the Hedging Agreements; and all accounts, deposit accounts, and general intangibles, including payment intangibles, described in any of the Hedging Agreements; (s) all other real or personal property described in EXHIBIT B; (t) the right, in the name and on behalf of Grantor, upon notice to Grantor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Trustee, Beneficiary or Secured Parties in the Property; and (u) substitutions, replacements, additions, accessions and proceeds for or to any of the foregoing, and all books, records and files relating to any of the foregoing, including, without limitation, computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data.

**1. Secured Obligations.** Grantor makes the grant, conveyance, transfer and assignment above, makes the irrevocable and absolute assignment in Section 4, and grants the security interest under Section 5, to secure payment and performance of the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose: (a) all Obligations (defined in the Credit Agreement), including (i) the Real Estate Line of Credit Note dated as of the date of this deed of trust, from Grantor to Lender in the original principal amount of \$5,000,000.00 (together with all extensions, renewals, modifications, substitutions and amendments thereof, the "Note"; (ii) all Hedging Obligations; and (iii) all other indebtedness, liabilities and obligations of Grantor to Lender and the Swap Counterparties arising pursuant to any of the Transaction Documents, whether now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several; (b) all obligations of Grantor under this deed of trust; (c) all obligations of Grantor to Lender, Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., a foreign banking organization organized as a cooperative bank under the laws of The Netherlands ("Rabobank International") and/or Rabobank, N.A., a national banking association ("RNA"), or any other Affiliate of Lender (Lender, Rabobank International and RNA, and any other Affiliate of Lender are herein individually and collectively, "Secured Parties"), whether now existing or hereafter incurred or created, whether voluntary or involuntary, whether obligatory or non-obligatory; whether due or not due, whether absolute or contingent, or whether incurred directly or acquired by assignment or otherwise, under the terms and conditions of any other written instrument or agreement executed by Grantor and which specifically recites that those obligations are secured by this deed of trust; and (d) any of the foregoing that arises after the filing of a petition by or against Grantor under an Insolvency Proceeding. All persons who have or acquire an interest in the Property will be deemed to have received notice of, and will be bound by, the terms of the Credit Agreement, the other Transaction Documents, and each other agreement or instrument made or entered into in connection with each of the Secured Obligations (the Transaction Documents and those other agreements or instruments, the "Secured Obligation Documents"). These terms include any provisions in the Secured Obligation Documents which permit borrowing, repayment and reborrowing, or which provide that the rate of interest on one or more of the Secured Obligations may vary from time to time. This deed of trust does not secure any obligation which is unsecured pursuant to the express terms of the Credit Agreement or any other document, agreement or instrument.

**2. Future Secured Obligations.** The Secured Obligations include future advances made by Beneficiary or Secured Parties, at their option, and for any purpose, and all other future Secured Obligations. Those future advances and other future Secured Obligations are secured to the same extent as if made or incurred on the date of the execution of this deed of trust, and have priority as to third persons with or without actual notice from the time this deed of trust is filed for record as provided by law. The total amount of indebtedness secured by this deed of trust may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed the maximum principal amount of \$5,000,000.00 (the "Maximum Amount Secured"), plus interest and any disbursements made for the payment of taxes, levies or insurance on the Property, with interest on those disbursements, plus any increase in the principal balance as the result of negative amortization or deferred interest. The unpaid balance of any revolving line of credit or Hedging Obligations secured by this deed of trust may at certain times be zero. This deed of trust will remain in full force and effect notwithstanding any zero balance. Grantor shall not file for record any notice limiting the maximum amount secured by this deed of trust to an amount less than the Maximum Amount Secured (a "Maximum Amount Notice"). A Maximum Amount Notice will be an Event of Default (defined herein). Nothing in this Section 2 will constitute a commitment to make additional or future advances which are not specified by the other terms of the Credit Agreement or enter into future derivatives transactions in any amount.

**3. Note Maturity Date.** The Note matures on October 1, 2026.

**4. Assignment.** Grantor irrevocably and unconditionally assigns to Beneficiary and grants Beneficiary a security interest in, the Leases; all rents and other benefits derived from the Leases, and all other issues, profits, royalties,

bonuses, income and other benefits derived from or produced by the Real Estate, including all prepaid rents, security deposits and other supporting obligations (the "Rents"). Beneficiary may collect Rents with or without taking possession of the Property. Beneficiary confers upon Grantor a license to collect and retain the Rents as they become due and payable, so long as there is no Event of Default (the "License"). If an Event of Default has occurred, Beneficiary may terminate the License without notice to or demand upon Grantor. Beneficiary, by its acceptance of this deed of trust does not assume any duty or obligation under the Leases.

5. **Grant of Security Interest.** This deed of trust is a security agreement under the Uniform Commercial Code in effect in the State of Oregon (the "UCC"); and Grantor grants Trustee and Beneficiary a security interest in and pledges and assigns to Trustee and Beneficiary all of Grantor's right, title and interest in the Property, to the extent characterized as personal property (the "Personalty"). The address of Grantor adjacent to its signature below is the mailing address of Grantor as debtor under the UCC. The address for Trustee specified in the first paragraph of this deed of trust is the address for Trustee as secured party under the UCC; and the address for Beneficiary specified in Section 24 is the address for Beneficiary as secured party under the UCC. As used in this deed of trust, the term "lien" is synonymous with the term "lien and security interest."

6. **Warranty of Title.** Grantor represents and warrants that Grantor lawfully possesses and holds fee simple title to all of the Land and the Improvements; that Grantor has the right, power and authority to grant, convey and assign the Property; and that the Property is unencumbered. Grantor covenants that Grantor will warrant and defend generally the title to, and ownership and possession of, the Property against all claims and demands. Grantor especially agrees and declares that the separate estate of each of them, whether vested, contingent or in expectancy, is hereby conveyed and shall be bound for the payment and performance of the Secured Obligations.

7. **Additional Representations.** Grantor represents to Beneficiary and Secured Parties that: (a) the Property does not represent the proceeds of unlawful activity under any state, federal or foreign law; (b) the Property includes all property and rights which may be reasonably necessary or desirable to enable Grantor to use, enjoy and operate the Land and the Improvements for the present uses thereof; (c) none of the Land or Improvements is subject to any Lien, offset or claim; (d) Grantor owns the Personalty free and clear of any security interests, reservations of title or conditional sales contracts, and there is no presently valid financing statement affecting the Personalty on file in any public office; (e) Grantor has title to, or (in the case of leased property) valid leasehold interests in, all of their properties and assets, real and personal, including the properties and assets and leasehold interests reflected in the Financial Information (other than any properties or assets disposed of in the ordinary course of business); (f) the legal name of Grantor is as appears in the first paragraph of this agreement; (g) Grantor has not used any trade name, assumed name or other name except Grantor's name stated in the first paragraph of this agreement; (h) each Grantor who is a natural Person resides at the address adjacent to his or her signature below; (i) if Grantor is anything other than a natural Person, it has complied with all applicable laws concerning its organization, existence and the transaction of its business, and is in existence and good standing in its state of organization and each state in which it conducts its business; (j) the execution, delivery and performance by Grantor of this deed of trust is within the powers and authority of Grantor and has been duly authorized; (k) to Grantor's knowledge, this deed of trust does not conflict with any Applicable Law; (l) this deed of trust is a legal, valid and binding agreement of Grantor, enforceable against Grantor in accordance with its terms, and any instrument or agreement required hereunder, when executed and delivered, will be similarly legal, valid, binding and enforceable; (m) there has been no Material Adverse Effect as to Grantor since the effective date the Financial Information was provided to Beneficiary or Secured Parties; (n) there is no lawsuit, tax claim or other dispute pending or to Grantor's knowledge threatened against Grantor or the Property that, if determined adverse to Grantor, is reasonably likely to have a Material Adverse Effect; (o) Grantor is not the subject of any Judgment; (p) this deed of trust does not conflict with, nor is Grantor in default on any credit agreement, indenture, purchase agreement, guaranty, capital lease, or other investment, agreement, or arrangement presently in effect providing for or relating to extensions of credit in respect of which Grantor is in any manner directly or contingently obligated; (q) Grantor has filed all tax returns (federal, state, and local) required to be filed and has paid all taxes, assessments, and governmental charges and levies thereon, including interest and penalties; (r) Grantor has complied with all current and future laws, regulations and ordinances or other requirements of any governmental authority relating to or imposing liability or standards of conduct concerning protection of health or the environment or hazardous substances ("Environmental Laws"); (s) Grantor has not received any notices of violations of any Applicable Laws; and Grantor is in compliance with all Applicable Laws; (t) there are no claims, actions, proceedings or investigations pending or threatened against Grantor or affecting the Property with respect to any violations of Applicable Laws; (u) Grantor's place of business, or its chief executive office, if it has more than one place of business, is located at the address specified below; and (v) unless otherwise disclosed to Beneficiary, Grantor is not

a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986; and there is no Event of Default or event which, with notice or lapse of time would be an Event of Default.

8. **Performance of Secured Obligations.** Grantor shall promptly pay and perform each Secured Obligation in accordance with its terms.

9. **Maintenance and Preservation of Property.** Grantor shall: (a) immediately discharge any Lien on the Property which Beneficiary has not consented to in writing, and shall also pay when due each obligation secured by or reducible to a Lien which now or hereafter encumbers or appears to encumber all or part of the Property, whether the Lien is or would be senior or subordinate to this deed of trust; (b) not alter, remove or demolish any portion of the Improvements, except as permitted or required by the Credit Agreement; (c) maintain (or cause to be maintained) all policies of insurance required under the Credit Agreement and pay (or cause payment of) all premiums for that insurance on or prior to the date when due; (d) promptly and completely repair and/or restore any portion of the Property which becomes damaged or destroyed, in a good and workmanlike manner in accordance with sound building practices, whether or not Grantor has received the proceeds of any Insurance Claim; (e) not commit or allow any waste of the Property, nor do or suffer to be done any act whereby the value of any part of the Property may be lessened; (f) not initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except as permitted or required by the Credit Agreement; (g) if the Land is agricultural, keep the Property in good condition and repair; operate the Property, whether improved pastures, orchards, grazing, timber, or crop lands, in a good and husbandman like manner in accordance with accepted principles of sound agricultural and forestry practices; take all reasonable precautions to control wind and water erosion; fertilize improved pastures, if any, where necessary to maintain a good stand of desirable grasses; protect orchards and timber, if any, by reasonable precautions against loss or damage by fire including the maintenance of appropriate fire breaks; and neither to remove nor permit the removal of any timber, buildings, oil, gas, mineral, stone, rock, clay, fertilizer, gravel or top soil without the prior written consent of Beneficiary; (h) complete appropriation and all other requirements, if any, necessary to obtain the issuance of any license or water permit issued to Grantor, and take all other steps required or advisable for purposes of perfecting and maintaining in good status all other Water Rights; (i) not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Grantor on the Property or any part of it under this deed of trust; and (j) perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and utility.

10. **Compliance with Applicable Law** Grantor shall not commit or allow any act upon or use of the Property which would violate any Applicable Law, whether now existing or later to be enacted and whether foreseen or unforeseen, or any public or private covenant, condition, restriction or equitable servitude affecting the Property;

11. **Taxes and Assessments.** Grantor shall pay (a) prior to delinquency, all taxes, levies, charges and assessments, including all ditch, canal, reservoir or other water charges, and assessments on appurtenant Water Stock, imposed by Applicable Law or any public or quasi-public authority or utility company which are (or if not paid, may become) a Lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it (individually and collectively "Impositions"); (b) any and all intangible taxes and documentary stamp taxes determined at any time to be due on or as a result of the Secured Obligations, this deed of trust or any other Transaction Documents, together with any and all interest and penalties thereon; and (c) taxes, levies, charges and assessments on Beneficiary's or Secured Parties' interest therein or upon this mortgage or the Secured Obligations (collectively, "Mortgage Taxes"); except that if the amount of Mortgage Taxes exceeds the Maximum Rate, Grantor will not be required to pay any such excess. If after the date of this deed of trust, the State of Oregon passes any law deducting from the value of Land for the purpose of taxation any Lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for state or local purposes, or the manner of the collection of any such taxes, so as to affect this deed of trust, then within 180 days after notice by Beneficiary to Grantor, Grantor shall pay all Secured Obligations. Notwithstanding the foregoing provisions of this section, Grantor may, at its expense, contest the validity or application of any Imposition by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that Beneficiary is satisfied that neither the Property nor any part thereof or interest therein will be at risk of being sold, forfeited, or lost as a result of such contest, and Grantor has posted a bond equal to 115% of the contested amount or furnished such other security required from time to time by Beneficiary for purposes of payment of the contested amount.

12. **Damages and Insurance and Condemnation Proceeds.** Beneficiary may, at its option, (a) in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Property, and it may make any compromise or settlement of the action or proceeding; (b) participate in any action or proceeding relating to any Condemnation Award; and (c) join Grantor in adjusting any Insurance Claim. All insurance proceeds, Condemnation Awards, and proceeds of any other claim based on warranty, or for damage, injury or loss to the Property which Grantor may receive or be entitled to must be paid to Beneficiary. In each instance, Beneficiary may apply those proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds or Condemnation Award, including Legal Fees. The balance shall, at Beneficiary's option, be applied to pay or Prepay some or all of the Secured Obligations in such order and proportions as it may choose. GRANTOR HEREBY SPECIFICALLY, UNCONDITIONALLY AND IRREVOCABLY WAIVES ALL RIGHTS OF A PROPERTY OWNER WHICH PROVIDE FOR ALLOCATION OF CONDEMNATION PROCEEDS BETWEEN A PROPERTY OWNER AND A LIENHOLDER, AND ANY OTHER LAW OR SUCCESSOR STATUTE OF SIMILAR IMPORT.

13. **Site Visits, Observation and Testing.** Beneficiary and its agents and representatives may enter and visit the Property at any reasonable time for the purposes of observing it, performing appraisals, taking and removing soil or groundwater samples, and conducting tests on any part of it, as provided in the Credit Agreement, and otherwise to determine Grantor's compliance with this deed of trust.

14. **Defense and Notice of Claims and Actions.** At Grantor's sole expense, Grantor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this deed of trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Grantor must give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of these matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

15. **Prohibited Transfers.** Grantor agrees that a material factor in Secured Parties' decision to enter into the Secured Obligation Documents is the expertise, financial status and other characteristics of Grantor. Grantor shall not make or permit any Prohibited Transfer. Upon any Prohibited Transfer Beneficiary may declare all Secured Obligations to be due and payable immediately. "Prohibited Transfer" means: (a) any sale, contract to sell, conveyance, encumbrance, pledge, mortgage, lease of the Property to or for the benefit of a Person not the original Grantor under this instrument, and not expressly permitted under this instrument or the other Secured Obligation Documents, or other transfer of all or any material part of the Property or any interest in it, including any transfer of Mineral Rights, Water Rights, or Water Stock, whether voluntary, involuntary, by operation of law or otherwise; (b) if Grantor is a corporation, any transfer or transfers of shares of the voting power or the direct or indirect beneficial ownership of Grantor; (c) if Grantor is a partnership, withdrawal or removal of any general partner or managing partner, dissolution of the partnership under Applicable Law, or any transfer or transfers of the partnership interests; (d) if Grantor is a limited liability company, withdrawal or removal of any managing member, termination of the limited liability company or any transfer or transfers of the voting power or the ownership of the economic interest in the Grantor; or (e) if Grantor is a trust, withdrawal or removal of any trustee or revocation of the trust.

16. **Compensation and Reimbursement of Costs and Expenses.** Grantor shall pay (a) fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary or Trustee when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this deed of trust, including Beneficiary's providing a statement or Trustee's rendering of services in connection with a reconveyance; (b) all of Beneficiary's or Trustee's costs and expenses which may be incurred in rendering any such services; and (c) all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this deed of trust or protect the Property, including any rights or remedies afforded to Beneficiary or Trustee under Section 21, whether any lawsuit is filed or not, including any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, or in defending any action or proceeding arising under or relating to this deed of trust, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (defined herein) and any cost of evidence of title. If Beneficiary chooses to dispose of Property through more than one Foreclosure Sale, Grantor must pay all costs, expenses or other advances that may be incurred or made by Beneficiary or Trustee in each of those Foreclosure Sales. GRANTOR SHALL INDEMNIFY TRUSTEE, BENEFICIARY and SECURED PARTIES AGAINST AND SHALL HOLD THEM HARMLESS FROM ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER COSTS AND EXPENSES WHICH EITHER MAY SUFFER OR INCUR: (A) IN PERFORMING ANY ACT REQUIRED OR PERMITTED BY THIS DEED OF

TRUST OR ANY OF THE OTHER SECURED OBLIGATION DOCUMENTS OR BY LAW; (B) BECAUSE OF ANY FAILURE OF GRANTOR TO PAY OR PERFORM ANY OF THE SECURED OBLIGATIONS; OR (C) BECAUSE OF ANY ALLEGED OBLIGATION OF OR UNDERTAKING BY BENEFICIARY OR SECURED PARTIES TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS IN ANY DOCUMENT RELATING TO THE PROPERTY (OTHER THAN SUCH WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS IN THE SECURED OBLIGATION DOCUMENTS). THIS AGREEMENT BY GRANTOR TO INDEMNIFY TRUSTEE, BENEFICIARY AND SECURED PARTIES SURVIVES THE RELEASE AND CANCELLATION OF ANY OR ALL OF THE SECURED OBLIGATIONS AND THE FULL OR PARTIAL RELEASE AND/OR RECONVEYANCE OF THIS DEED OF TRUST.

17. **Payments Due under this deed of trust** Grantor must pay all obligations to pay money arising under this deed of trust immediately upon demand by Trustee, Beneficiary or Secured Parties. Each such obligation shall bear interest from the date the obligation arises at the Default Rate.

18. **Events of Default.** The following each shall be an event of default under this deed of trust (an "Event of Default"): (a) an Event of Default under the Credit Agreement, including a default termination event or other similar event under any Hedging Agreement which is not cured within any grace or cure period specified therein, if any; (b) a Prohibited Transfer; (c) the Financial Information or any representation in this deed of trust is materially substantially incorrect or materially misleading; (d) the filing of any notice limiting the maximum amount secured by this deed of trust to a sum less than the maximum amount secured as specified herein, or if no such amount is specified, to any amount; (e) for more than ten days after notice from Beneficiary, Grantor is in default under any term, covenant or condition of this deed of trust not previously described in this Section 20, which can be cured by the payment of a sum of money; or (f) for 30 days after notice from Beneficiary or Secured Parties, Grantor is in default under any term, covenant or condition of this deed of trust not previously described in this Section 20; provided that if (i) it is reasonably certain that the default can be cured by Grantor within that 30 day period and (ii) Grantor has commenced curing that default within that 30 day period and thereafter diligently and expeditiously proceeds to cure that default, then that 30 day period shall be extended for so long as reasonably required by Grantor in the exercise of due diligence to cure that default, up to a maximum of 90 days after the notice to Grantor of the Event of Default.

19. **Remedies.** At any time after an Event of Default, Secured Parties, Beneficiary or Trustee may (a) declare any or all of the Secured Obligations to be due and payable immediately; (b) cure any breach or default of Grantor; (c) may, to the extent permitted by Applicable Law, make an ex parte application to any court of competent jurisdiction, and obtain appointment of, a receiver, trustee, liquidator or conservator of the Property, without notice, without giving bond, and without regard for the adequacy of the security for the Secured Obligations and without regard for the solvency of Borrower, any Guarantor, or of any Person liable for the payment of the Secured Obligations; (d) in person, by agent or by court-appointed receiver, enter, take possession of, manage and operate all or any part of the Property; (e) exercise any or all of the remedies granted to a secured party under the UCC; (f) bring an action in any court of competent jurisdiction to foreclose this deed of trust or to obtain specific enforcement of any of the covenants or agreements of this deed of trust; (g) under the power of sale granted under this deed of trust (the "Power of Sale"), at its option cause some or all of the Property, including the Personalty, to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law; and (h) do any and all other things in connection with those actions that Beneficiary may consider necessary and appropriate to protect the security of this deed of trust. GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS BENEFICIARY AS GRANTOR'S ATTORNEY-IN-FACT TO PERFORM SUCH ACTS AND EXECUTE SUCH DOCUMENTS AS BENEFICIARY CONSIDERS APPROPRIATE IN CONNECTION WITH TAKING THESE MEASURES, INCLUDING ENDORSEMENT OF GRANTOR'S NAME ON ANY INSTRUMENTS. GRANTOR HEREBY WAIVES NOTICE OF THE APPLICATION FOR, AND CONSENTS TO THE APPOINTMENT OF A RECEIVER, TRUSTEE, LIQUIDATOR OR CONSERVATOR OF THE PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION; AND AGREES TO NOT OPPOSE SUCH APPOINTMENT. Notwithstanding the foregoing, in no event will Trustee, Beneficiary or Secured Parties have any obligation to take any of the actions set forth in this Section 21. Beneficiary shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Grantor to Beneficiary, unless Beneficiary has given express written notice of its election of that remedy. The proceeds of any receivership shall be applied by the receiver toward the payment of the Secured Obligations or toward the payment of such part of any judgment thereupon which remains unsatisfied after the sale of the Property. The receiver may make repairs and keep the Property in good condition and repair pending a sale, and pay all taxes and

assessments accrued or accruing or redeem from sales therefore, pay all premiums of insurance required under this mortgage, and pay all other charges as herein provided.

**20. Sales of Property.** Beneficiary may elect to treat as Personally any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. Beneficiary may dispose of any Personally separately from the sale of real property, in any manner permitted by the UCC or any other Applicable Law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation. Beneficiary may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by Applicable Law. To the extent permitted by Applicable Law, Beneficiary may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by the UCC. Grantor agrees that such a sale of Personally together with real property constitutes a commercially reasonable sale of the personal property. For purposes of the Power of Sale, either a sale of real property alone under the Power of Sale, or, to the extent permitted by Applicable Law, a sale of both real and personal property under the Power of Sale, together in accordance with the UCC, will sometimes be referred to as a "Non-Judicial Foreclosure Sale." Before any Non-Judicial Foreclosure Sale, Beneficiary or Trustee must give such notice of default and election to sell as may then be required by law. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee or Beneficiary, as required by Applicable Law, must sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary have any obligation to make demand on Grantor before any Non-Judicial Foreclosure Sale. From time to time in accordance with then applicable law, Trustee or Beneficiary may (and in any event at Beneficiary's request Trustee must), postpone any Non-Judicial Foreclosure Sale by public announcement at the time and place noticed for that sale. Trustee or Beneficiary, as required by Applicable Law, shall execute and deliver to any purchaser(s) a deed(s) or bill(s) of sale conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed(s) or bill(s) of sale of any matters or facts, including any facts bearing upon the regularity or validity of any Non-Judicial Foreclosure Sale, will be conclusive proof of their truthfulness. Any such deed(s) or bill(s) of sale shall be conclusive against all persons as to the facts recited in it. If the Land is located in more than one county, then to the extent permitted by Applicable Law, a judicial or non-judicial foreclosure sale of the Property may be maintained in any one or more of those counties. If the Property consists of more than one lot, parcel or item of property, Beneficiary may: (i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and (ii) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under the Power of Sale, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner (including a Non-Judicial Foreclosure Sale) Beneficiary may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale," any two or more, "Foreclosure Sales"). If it chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale will terminate or affect the lien of this deed of trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full. At any Foreclosure Sale, any person, including Grantor, Beneficiary, Secured Parties or to the extent permitted by Applicable Law, Trustee, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for that property, Beneficiary or Secured Parties may settle for the purchase price by crediting the sales price of the property against the Secured Obligations, unless Applicable Law mandates a specific order of application, in which event payments and collections will be applied as mandated by Applicable Law. Any such credit, and all other proceeds of any Foreclosure Sale shall be applied to the Secured Obligations in any order Beneficiary may choose.

**21. Additional Rights.** In addition to the rights and powers given to Beneficiary or Beneficiary under this deed of trust, Beneficiary shall have all such other rights both in law and equity for collection of the indebtedness secured hereby as it would have but for this deed of trust.

**22. Notices.** All notices, approvals, consents, and other communications, under this deed of trust ("Notices") must be given in accordance with and will be subject to the terms and provisions of the Credit Agreement. Notices must be mailed or delivered, if to Grantor, to the address adjacent Grantor's signature below; if to Trustee, to the address in the first paragraph of this deed of trust; if to Beneficiary or Lender, to 12443 Olive Blvd, Suite 50, St. Louis, MO 63141, Attention: Customer Service Representative; if to Secured Parties other than Lender, c/o Rabobank International, 245 Park Avenue, New



York, NY 10167, Attention: Customer Service Representative; and in the case of any other Person, to the address designated by that Person in a notice to Grantor, Beneficiary, and Lender.

**23. Request for Notice.** Grantor requests that a copy of any notice of default and any notice of sale be mailed to it at the address specified adjacent to its signature below.

**24. Trustee and Beneficiary.** Without affecting the personal liability of any Person, including Grantor and Borrower, for the payment of the Secured Obligations or the lien of this deed of trust on the remainder of the Property for the unpaid amount of the Secured Obligations: (a) Beneficiary and Secured Parties may from time to time and without notice: (i) release any person liable for payment of any Secured Obligation; (ii) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or (iv) alter, substitute or release any property securing the Secured Obligations; and (b) Trustee may perform any of the following acts when requested to do so by Beneficiary or a Secured Party in writing: (i) consent to the making of any plat or map of the Property or any part of it; (ii) join in granting any easement or creating any restriction affecting the Property; (iii) join in any subordination or other agreement affecting this deed of trust or the lien of it; or (iv) reconvey the Property or any part of it without any warranty.

**25. Exculpation of Trustee and Beneficiary.** None of Trustee, Beneficiary or Secured Parties will be directly or indirectly liable to Grantor or any other person as a consequence of any of the following: (a) the exercise of or failure to exercise any rights, remedies or powers granted to it in this deed of trust; (b) any failure or refusal to perform or discharge any obligation or liability of Grantor under any agreement related to the Property or under this deed of trust; or (c) any loss sustained by Grantor or any third party resulting from any failure to lease the Property or from any other act or omission in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Trustee, Beneficiary or Secured Parties, respectively. GRANTOR HEREBY EXPRESSLY WAIVES AND RELEASES ALL LIABILITY OF THE TYPES DESCRIBED ABOVE, AND AGREES THAT NO SUCH LIABILITY BE ASSERTED AGAINST OR IMPOSED UPON TRUSTEE, BENEFICIARY or ANY SECURED PARTY.

**26. Substitution of Trustee.** Beneficiary may substitute a successor to any Trustee named in or acting under this deed of trust in any manner now or later to be provided at Applicable Law.

**27. Waiver of Dower, Homestead, and Distributive Share.** Grantor relinquishes all right of dower and waives all right of homestead and distributive share in and to the Property. Grantor waives any right of exemption as to the Property.

**28. Waiver of Certain Other Laws.** To the full extent Grantor may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for appraisal, valuation, stay, extension or redemption, and Grantor, for Grantor, and its representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, or notice of election to mature or declare due the whole of the Secured Obligations in the event of foreclosure of the lien created by this deed of trust.

**29. Reconveyance.** When all Secured Obligations have been paid in full, Lender has no obligation to make additional Loans and the Hedging Agreements have been terminated, Trustee shall execute and deliver an instrument reconveying the Property, or so much of it as is then held under this deed of trust, without warranty to the person or persons legally entitled to it. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Trustee, Beneficiary and Secured Parties will have no duty to determine the rights of persons claiming to be rightful grantees of any reconveyance of the Property.

**30. Additional Provisions.** The Secured Obligation Documents state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this deed of trust. The Secured Obligation Documents also grant further rights to Beneficiary and Secured Parties and contain further agreements and affirmative and negative covenants by Grantor which apply to this deed of trust and to the Property.

**31. Collateral Agency Agreement.** This deed of trust is subject to the terms of the collateral agency agreement between the Secured Parties (the "Collateral Agency Agreement").

32. **Entire Agreement.** This deed of trust and the other Secured Obligation Documents collectively: (i) represent the sum of the understandings and agreements between Beneficiary, Secured Parties and Grantor concerning this credit; (ii) replace any prior oral or written agreements between Beneficiary, Secured Parties and Grantor concerning this credit; and (iii) are intended by Beneficiary, Secured Parties and Grantor as the final, complete and exclusive statement of the terms agreed to by them. In the event of any conflict between this deed of trust and any other agreements required by this deed of trust, this deed of trust will prevail.

33. **Other Acts.** Grantor shall cooperate with Beneficiary for the purposes of, and perform all acts which may be necessary or advisable to perfect any lien provided for in this deed of trust or to carry out the intent of this agreement. Promptly (but in no event more than ten days) after request by Beneficiary, Grantor will execute, acknowledge and deliver any document which Beneficiary deems necessary or advisable for these purposes, and will, on demand, pay any expenses incurred by Beneficiary in the preparation, execution and filing of any such documents.

34. **No Waiver or Cure.** Each waiver by Trustee, Beneficiary or Secured Parties must be in writing, and no waiver is to be construed as a continuing waiver. No waiver is to be implied from any delay or failure by Trustee, Beneficiary or Secured Parties to take action on account of any default of Grantor. Consent by Trustee, Beneficiary or Secured Parties to any act or omission by Grantor must not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Trustee's, Beneficiary's or Secured Parties' consent to be obtained in any future or other instance. The exercise by Trustee, Beneficiary or Secured Parties of any right or remedy under this deed of trust or the other Secured Obligation Documents or under Applicable Law, shall not: cure or waive a breach, Event of Default or notice of default under this deed of trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Secured Obligation Documents, including any Hedging Agreements, have been cured); or impair the security of this deed of trust; or prejudice Trustee, Beneficiary, Secured Parties or any receiver appointed in accordance with this deed of trust, in the exercise of any right or remedy afforded any of them under this deed of trust; or be construed as an affirmation by Beneficiary or Secured Parties of any tenancy, lease or option, or a subordination of the lien of this deed of trust.

35. **Waivers.** Grantor waives all rights, legal and equitable, it may now or hereafter have to require marshalling of assets or to require upon foreclosure sales of assets in a particular order. Grantor waives presentment, demand, protest, notice of protest and notice of dishonor and waives all exemptions as to the Secured Obligations. Each successor and assign of Grantor, including any holder of a Lien subordinate to this deed of trust, by acceptance of its interest or Lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

36. **Joint and Several Obligations.** If Grantor consists of more than one Person, each Grantor (a) acknowledges and undertakes, together with the other Grantors, joint and several liability for the indebtedness, liabilities and obligations of Grantor under this deed of trust; (b) acknowledges that this deed of trust is the independent and several obligation of each Grantor and may be enforced against each Grantor separately, whether or not enforcement of any right or remedy hereunder has been sought against any other Grantor; and (c) agrees that its liability hereunder and under any other Secured Obligation Document shall be absolute, unconditional, continuing and irrevocable. GRANTOR EXPRESSLY WAIVES ANY REQUIREMENT THAT BENEFICIARY OR SECURED PARTIES EXHAUST ANY RIGHT, POWER OR REMEDY AND PROCEED AGAINST THE OTHER GRANTORS UNDER THIS DEED OF TRUST, OR ANY OTHER SECURED OBLIGATION DOCUMENTS, OR AGAINST ANY OTHER PERSON UNDER ANY GUARANTY OF, OR SECURITY FOR, ANY OF THE SECURED OBLIGATIONS.

37. **Binding Effect; Successors and Assigns.** The Secured Obligation Documents shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns; provided, that Grantor shall not assign its rights or obligations hereunder without Secured Parties' consent. However, this Paragraph does not waive the provisions of Section 17; and Grantor shall not assign its rights or obligations hereunder without Beneficiary's and Secured Parties' consent. Beneficiary and Secured Parties may transfer all or any portion of its rights under the Secured Obligation Documents to any other Person. Beneficiary and Secured Parties may disclose to any actual or proposed transferee any information that Grantor has delivered to Beneficiary and Secured Parties in connection with the negotiation of this deed of trust or pursuant to the Secured Obligation Documents; and Grantor shall cooperate fully with Beneficiary and Secured Parties in providing that

information to any actual or proposed transferee. Any individual signing this deed of trust does so on his or her own behalf and on behalf of his or her marital community, and agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of all indebtedness, liabilities and obligations of Beneficiary under this deed of trust.

**38. Governing Law.** This deed of trust shall be governed exclusively by the applicable laws of the State of Oregon (the "Governing Law State") without regard or reference to its conflict of laws principles. Grantor understands that the laws of the Governing Law State may differ from the laws of the State where Grantor resides or otherwise is located or where the Property is located. However, Grantor understands, agrees and acknowledges that (a) this deed of trust and the Secured Obligation Documents have significant and substantial contacts with the Governing Law State, (b) it is convenient to Grantor and Lender to select the law of the Governing Law State to govern this deed of trust and the transactions evidenced hereby, (c) the transactions evidenced by the Credit Agreement and this deed of trust bear a reasonable connection to the laws of the Governing Law State, (d) the choice of the internal laws of the Governing Law State was made for good and valid reasons, and (e) the choice of the Governing Law State constitutes good and valuable consideration for Secured Parties to enter into the Secured Obligation Documents and Secured Parties have entered into the Secured Obligation Documents in reliance on this choice.

**39. Miscellaneous.** This deed of trust may be executed in counterparts, each of which will be an original and all of which together are deemed one and the same instrument. If Grantor is comprised of multiple Persons, any Person comprising Grantor is hereby authorized to bind all parties comprising Grantor. Beneficiary or Secured Parties may, at any time and without notice, waive any prior requirement that requests, authorizations, or other actions be taken only by a Designated Person. Time is of the essence of this deed of trust. Each Party has participated in negotiating and drafting this deed of trust, so if an ambiguity or a question of intent or interpretation arises, this deed of trust is to be construed as if the parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this deed of trust. Beneficiary is authorized to execute any other documents or take any other actions necessary to effectuate this deed of trust and the consummation of the transactions contemplated herein. This deed of trust may not be amended, changed, modified, altered or terminated without the prior written consent of Beneficiary and Secured Parties. Any provision of any Secured Obligation Document which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of that Secured Obligation Document or affecting the validity or enforceability of that provision in any other jurisdiction; except that if such provision relates to the payment of any monetary sum, then Beneficiary or Secured Parties may, at its option, declare all Secured Obligations immediately due and payable. No merger shall occur as a result of Beneficiary's or Secured Parties' acquiring any other estate in or any other lien on the Property. All rights and remedies under this deed of trust and the Secured Obligation Documents are cumulative, and the exercise of any one or more of them does not constitute an election of remedies.

**40. INDEMNIFICATION.** GRANTOR SHALL DEFEND, INDEMNIFY AND HOLD TRUSTEE, BENEFICIARY AND SECURED PARTIES AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, AGENTS AND ATTORNEYS (THE "INDEMNIFIED PERSONS") HARMLESS AGAINST ANY AND ALL LOSSES OF ANY KIND OR NATURE WHATSOEVER THAT MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST THE INDEMNIFIED PERSONS ARISING OUT OF CLAIMS ASSERTED AGAINST THE INDEMNIFIED PERSONS AS A RESULT OF TRUSTEE, BENEFICIARY OR SECURED PARTIES BEING PARTY TO THIS DEED OF TRUST OR THE TRANSACTIONS CONSUMMATED PURSUANT TO THIS DEED OF TRUST; except that Grantor shall have no obligation to an Indemnified Person under this section with respect to Losses resulting from the gross negligence or willful misconduct of that Indemnified Person as determined by a court of competent jurisdiction. If and to the extent that an Indemnity is unenforceable for any reason, Grantor shall to make the maximum contribution to the payment and satisfaction thereof which is permissible under Applicable Law. THE PROVISIONS OF ALL INDEMNITIES SHALL SURVIVE THE TERMINATION OF THIS DEED OF TRUST.

**41. WAIVER OF TRIAL BY JURY.** GRANTOR (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY IN ANY ACTION OR PROCEEDING FOR THE RESOLUTION OF ANY CONTROVERSY OR CLAIM THAT ARISES OUT OF OR RELATES TO: (I) THIS DEED OF TRUST; OR (II) ANY SECURED OBLIGATION DOCUMENT, WHETHER ARISING IN CONTRACT, TORT OR BY STATUTE (INDIVIDUALLY AND COLLECTIVELY, A "CONTROVERSY OR CLAIM"); AND, (B) TO THE EXTENT PERMITTED BY APPLICABLE LAW, WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY CONTROVERSY OR CLAIM TO THE EXTENT SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THE PROVISIONS OF THIS SECTION ARE GIVEN KNOWINGLY AND VOLUNTARILY; AND ARE A MATERIAL INDUCEMENT FOR THE SECURED PARTIES ENTERING INTO THE SECURED OBLIGATION DOCUMENTS.

42. Review of Statutory Requirements. Grantor represents to Beneficiary and Secured Parties that Grantor has reviewed the following statutory requirements and has reviewed with or had the opportunity to review same with counsel of Grantor's choosing:

(A) LAND USE. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

(B) STATUTE OF FRAUDS. UNDER OREGON LAW, MOST AGREEMENTS, PROMISES, AND COMMITMENTS MADE BY BENEFICIARY CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY GRANTOR'S/BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION, AND BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BENEFICIARY TO BE ENFORCEABLE.

(C) WARNING. UNLESS YOU PROVIDE US 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.

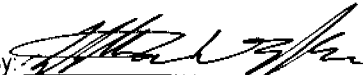
YOU ARE RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR CONTRACT OR LOAN BALANCE. IF THE COST IS ADDED TO YOUR CONTRACT OR LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING CONTRACT OR LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.

Grantor is signing this deed of trust effective as of the day and year first written above.

GRANTOR

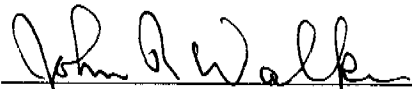
J & W WALKER FARMS, INC., a California corporation

By: 

WILLIAM W. WALKER A/K/A WILLIAM WALKER  
President

J & W FARMS, an Oregon general partnership

By:   
WILLIAM W. WALKER A/K/A WILLIAM WALKER  
General Partner

By:   
JOHN R. WALKER A/K/A JOHN WALKER  
General Partner

  
BRENDA L. WALKER A/K/A BRENDA WALKER

  
JOHN R. WALKER A/K/A JOHN WALKER

  
JAN M. WALKER A/K/A JAN WALKER

  
WILLIAM W. WALKER A/K/A WILLIAM WALKER

WJB WALKER PARTNERSHIP, an Oregon general partnership

By:   
WESTON W. WALKER A/K/A WESTON WALKER  
General Partner

By:   
WILLIAM W. WALKER A/K/A WILLIAM WALKER  
General Partner

By: John R Walker  
JOHN R. WALKER A/K/A JOHN WALKER  
General Partner

Weston W Walker  
WESTON W. WALKER A/K/A WESTON WALKER

STATE OF OREGON )  
COUNTY OF KLAMATH ) SS.

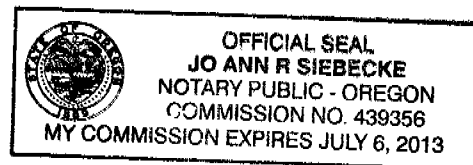
SEPT 9th  
Before me, the undersigned, a Notary Public, in and for said County and State, on this 9th day of ~~August~~, 2011, personally appeared WILLIAM W. WALKER A/K/A WILLIAM WALKER to me known to be the identical person who subscribed the name of the maker thereof J & W WALKER FARMS, INC., an Oregon corporation, to the foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such company, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

(SEAL)

Jo Ann R. Siebecke  
Notary Public

My commission expires: 07.06.2013



STATE OF OREGON )  
COUNTY OF KLAMATH ) SS.

*Sept 2011*  
Before me, the undersigned, a Notary Public, in and for said County and State, on this 9th day of ~~August~~, 2011, personally appeared WILLIAM W. WALKER A/K/A WILLIAM WALKER and JOHN R. WALKER A/K/A JOHN WALKER to me known to be the identical persons who subscribed the name of the maker thereof J & W FARMS A/K/A JW FARMS A/K/A J&W FARMS PARTNERSHIP, an Oregon general partnership, to the foregoing instrument as its General Partners, and acknowledged to me that they executed the same as their free and voluntary act and deed and as the free and voluntary act and deed of such company, for the uses and purposes therein set forth.

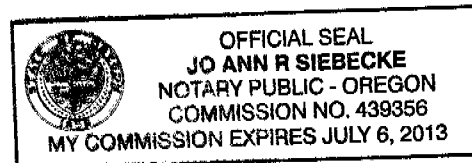
Given under my hand and seal of office the day and year last above written.

(SEAL)

*Jo Ann R. Siebecke*  
Notary Public

My commission expires: 07.06.2013

STATE OF OREGON )  
COUNTY OF KLAMATH ) SS.



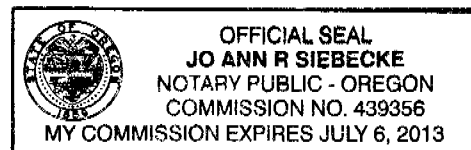
*Sept 2011*  
Before me, the undersigned, a Notary Public, in and for said County and State, on this 9th day of ~~August~~, 2011, personally appeared WESTON W. WALKER A/K/A WESTON WALKER, WILLIAM W. WALKER A/K/A WILLIAM WALKER and JOHN R. WALKER A/K/A JOHN WALKER to me known to be the identical persons who subscribed the name of the maker thereof WJB WALKER PARTNERSHIP, an Oregon general partnership, to the foregoing instrument as its General Partners, and acknowledged to me that they executed the same as their free and voluntary act and deed and as the free and voluntary act and deed of such company, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

(SEAL)

*Jo Ann R. Siebecke*  
Notary Public

My commission expires: 07.06.2013



STATE OF OREGON

)  
) SS:

COUNTY OF KLAMATH

JO ANN R. SIEBECKE

I,                     , a Notary Public in and for said County and State, do hereby certify that on this 7th day of SEPT, 2011, personally appeared before me the within named JOHN R. WALKER A/K/A JOHN WALKER and BRENDA L. WALKER A/K/A BRENDA WALKER, husband and wife, as Tenants by the Entirety to me known to be the individual(s) described in and who executed and whose name(s) is (are) subscribed to the within and foregoing instrument, and duly acknowledged to me that THEY signed and executed the same as THEIR free and voluntary act and deed, for the uses and purposes therein mentioned.

**GIVEN** under my hand and official seal, the day and year in this certificate first above written.

(SEAL)

Jo Ann R. Siebecke  
Notary Public

My commission expires: 07.06.2013

STATE OF OREGON

)  
) SS:

COUNTY OF KLAMATH

JO ANN R. SIEBECKE

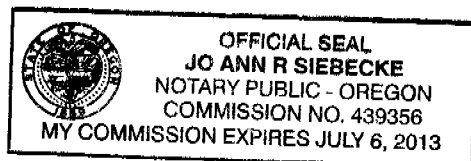
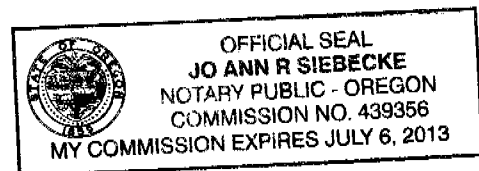
I,                     , a Notary Public in and for said County and State, do hereby certify that on this 7th day of SEPT, 2011, personally appeared before me the within named WILLIAM W. WALKER A/K/A WILLIAM WALKER and JAN M. WALKER A/K/A JAN WALKER, husband and wife, as Tenants by the Entirety to me known to be the individual(s) described in and who executed and whose name(s) is (are) subscribed to the within and foregoing instrument, and duly acknowledged to me that THEY signed and executed the same as THEIR free and voluntary act and deed, for the uses and purposes therein mentioned.

**GIVEN** under my hand and official seal, the day and year in this certificate first above written.

(SEAL)

Jo Ann R. Siebecke  
Notary Public

My commission expires: 07.06.2013





STATE OF OREGON

)  
) SS:

COUNTY OF KLAMATH )

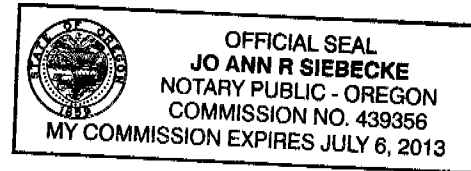
I, JOANN R. SIEBECKE, a Notary Public in and for said County and State, do hereby certify that on this 9th day of SEPT, 2011, personally appeared before me the within named WESTON W. WALKER A/K/A WESTON WALKER, to me known to be the individual(s) described in and who executed and whose name(s) is (are) subscribed to the within and foregoing instrument, and duly acknowledged to me that HE signed and executed the same as HIS free and voluntary act and deed, for the uses and purposes therein mentioned.

**GIVEN** under my hand and official seal, the day and year in this certificate first above written.

(SEAL)

Joann R. Siebecke  
Notary Public

My commission expires: 07.06.2013



**EXHIBIT A**

RELOC  
DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

**Legal Description of Real Estate**

Klamath County, Oregon

**PARCEL 1:**

**TRACT A:**

The SE1/4 of the SE1/4 lying south of the Railroad right of way and north of the Klamath Falls – Malin State Highway 39 right of way in Section 1, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, and being further described as follows:

That portion lying east of the following line. Beginning at the intersection point of the U.S. B. R. No. 14 Drain center line with the northern right of way line of Klamath Falls – Malin State Highway 39, from which the corner common to Sections 1, 6, 7 and 12 bears South 30 feet and easterly 1286.51 feet more or less; Thence northerly on said drain center line and it's extension north, 982.99 feet more or less to the southern right of way of the Union Pacific (Burlington Northern) Railroad.

This description is pursuant to Klamath County Lot line adjustment #4-11.

**TRACT B:**

The W1/2 SW1/4 and that portion of the SE1/4 SW1/4 lying South and West of the Southerly right-of-way line of the Main Ditch of the United States Reclamation Service, all in Section 6, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

EXCEPTING THEREFROM that portion lying with the right of way of the Great Northern Railroad, the Klamath Falls Malin Highway; and also excepting therefrom the Easterly 33 feet thereof, reserved in Deed recorded April 16, 1910 in Volume 29, page 39, Deed Records of Klamath County, Oregon.

**PARCEL 2:**

Farm Unit "M", according to the Farm Unit Plat, or Government Lots 9 and 16 of Section 13, Township 41 South or Range 11 East of the Willamette Meridian, Klamath County, Oregon, and the N1/2 of Government Lots 5 and 23, and Government Lots 17 and 22 of Section 19 in Township 41 South of Range 12 East of the Willamette Meridian, Klamath County, Oregon.

**PARCEL 3:**

Parcel 3 of Land Partition 10-10, situated in the W1/2 NE1/4, the N1/2 SE1/4, the NE1/4 SW1/4 and the E1/2 NW1/4 of Section 31, Township 40 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon. Being recorded October 29, 2010 in Volume 2010-012720, Microfilm Records of Klamath County, Oregon.

PARCEL 4:

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.

PARCEL 5:

Parcel 2 of Land Partition 20-02, said Land Partition being situated in the NE NW and NW NE of Section 9, Township 41 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon, and in the NE NE of Section 8, Township 41 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 6:

Parcel 1 of Land Partition 21-02, situated in the S1/2 NE1/4 and N1/2 SE1/4 of Section 14, Township 41 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 7:

Parcel 2 of Land Partition 21-02, situated in the S1/2 NE1/4 and N1/4 SE1/4 of Section 14, Township 41 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 8:

All that portion of the SW1/4 of the NW1/4 and the N1/2 of the SW1/4 lying Southwesterly of the USBR "D" Canal, Section Nine (9), Township Forty-One (41) South, Range Twelve (12) East of the Willamette Meridian, Klamath County, Oregon.

## **EXHIBIT B**

### **RELOC DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

#### **Additional Property**

(a) all buildings, structures, improvements, fixtures, attachments, appliances, equipment, machinery and other articles now or hereafter erected on, affixed or attached to, or located in or on the real estate and any interest in the real estate located in Klamath County, Oregon, and described in EXHIBIT A (the "Land"), including all watering and irrigation apparatus, pumps, motors, generators, pipes, center pivot irrigators and sprinklers, windmills, and fences (the "Improvements");

(b) all easements, rights-of-way and rights appurtenant to the Land or used in connection the Land or as a means of access thereto ("Easements");

(c) the ground water on, under, pumped from or otherwise available to the Collateral or any drainage, retention, ditch, canal, reservoir, or other water rights, whether as a result of overlying groundwater rights, contractual rights, or otherwise and whether riparian, appropriative, or otherwise; the right to remove or extract any such ground water including any permits, rights or licenses granted by any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government ("Governmental Authority") and any rights granted or created by any easement, covenant, agreement or contract with any Person; and any rights to which the Collateral or Debtor is entitled with respect to surface water, whether such rights are appropriative, riparian, prescriptive or otherwise and whether or not pursuant to historical use, contractual agreement, permit or other governmental authorization; any water right, water allocation for water not yet delivered, distribution right, delivery right, any prescriptive, contractual, easement or other rights necessary or convenient to convey any water to the Collateral, water storage right, or other water-related entitlement appurtenant to or otherwise applicable to the Collateral by virtue of the Collateral being situated within the boundaries of any governmental water district irrigation district or other local agency or within the boundaries of any private water company, mutual water company, or other non-governmental entity (collectively, "Water Rights");

(d) all other tenements, hereditaments and appurtenances to the Land;

(e) minerals, oil, gas, and other hydrocarbon substances, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and estates in, under and on the Land and other oil, gas and mineral interests with which any of the foregoing interests or estates are pooled or unitized (the "Mineral Rights");

(f) timber now or hereafter standing or cut;

(g) leases, subleases, licenses, occupancy agreements, concessions and other agreements, granting a possessory interest in and to, or the right to extract, mine, reside in, sell, or use the Collateral (collectively, the "Leases");

(h) all utility contracts, maintenance agreements, management agreements, service contracts and other agreements directly related to the operation and maintenance of the Collateral;

(i) all bushes, groves, trees, plants, vines or other plantings, upon or under the Land ("Plantings");

(j) any shares, or any rights under such shares, of any private water company, mutual water company, or other non-governmental entity pursuant to which Debtor or the Collateral may receive water (collectively, the "Water Stock") and any other certificated and uncertificated securities, securities entitlements, securities accounts and commodities accounts, including all stock, bonds and commodities contracts, or other investment property described in EXHIBIT C attached;

(k) working drawings, instructional manuals, and rights in processes directly related to the operation of the Collateral, and all other general intangibles described in EXHIBIT C;

(l) other tangible personal property of every kind and description, whether stored on the Land or elsewhere, including all goods, materials, supplies, tools, books, records, chattels, furniture, machinery and equipment (except motor vehicles, trailers, and planting, tillage and harvesting equipment rolling stock) or which is in all cases (i) directly related to the

operation of the Collateral or acquired in connection with any construction or maintenance of the Land or the Improvements, (ii) affixed or installed, or to be affixed or installed, in any manner on the Land or the Improvements, or (iii) described in EXHIBIT C attached;

- (m) all permits and licenses relating or pertaining to the use or enjoyment of the Collateral;
- (n) proceeds of and any unearned premiums on any insurance policies covering the Collateral, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Collateral (the "Insurance Claims");
- (o) all awards made for the taking by condemnation or the power of eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Real Estate (the "Condemnation Awards");
- (p) money or other personal property of Debtor in addition to the foregoing deposited with or otherwise in Beneficiary's, Trustee's or Secured Parties possession;
- (q) rights and interests under any interest rate swap, interest rate caps, interest rate collars or other similar agreement between Borrower and a Swap Counterparty, for the purpose of fixing or limiting interest expense, or any foreign exchange, currency hedging, commodity hedging, security hedging or other agreement between Grantor, Gold Dust Potato Processors, Inc., Tally Ho Farms and Tricia M. Hill and Secured Parties or any of their affiliates, for the purpose of limiting the market risk of holding currency, a security or a commodity in either the cash or futures markets, including all rights to the payment of money from Secured Parties or trustee under any deed of trust granted to Secured Parties (the "Trustee") Trustee under the Hedging Agreements; and all accounts, deposit accounts, and general intangibles, including payment intangibles, described in any of the Hedging Agreements;
- (r) all other real or personal property described in EXHIBIT C;
- (s) the right, in the name and on behalf of Debtor, upon notice to Debtor, to appear in and defend any action or proceeding brought with respect to the Collateral and to commence any action or proceeding to protect the interest of Trustee, Beneficiary or Secured Parties in the Collateral; and
- (t) substitutions, replacements, additions, accessions and proceeds for or to any of the foregoing, and all books, records and files relating to any of the foregoing, including, without limitation, computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data.

Also including, but not limited to the following:

Solar Lease dated December 7, 2010 between Obsidian Finance Group, LLC, as Tenant and Gold Dust, Inc. and J & W Walker Farms, Inc., as Landlord.

Lease of Real Property dated May 16, 2011 between Weston W. Walker, as Landlord and Walker Brothers, as Lessee.

Lease of Real Property dated January 13, 2011 between Weston W. Walker, as Landlord and Walker Brothers, as Lessee.

Lease of Real Property dated April 11, 2011 between Weston W. Walker, as Landlord and Walker Brothers, as Lessee.

**EXHIBIT C**

Modoc County, CA

64.3 assessed acres of water rights from Tulelake Irrigation District are appurtenant to the land.

50 Pump and Motor

Klamath County, OR

72 assessed acres of water rights from the Shasta view Irrigation District are appurtenant to the land.

Irrigation equipment, including

(2) approx.. ¼ mile wheelines 2/ 7' wheels and 4" pipe

Approx.. 720'10" aluminum main line w/risers

Approx.. 720'8" aluminum main line w/risers

119.7 assessed acres of water rights from the Klamath Irrigation District are appurtenant to the land.

(4) ¼ +/- mile wheelines with 7' wheels and 4" pipe

Motor (40 hp) w/centrifugal pump

Baldor motors (30 hp) w/Cornell centrifugal pumps

Approx.. 2200' 12" aluminum main line

Approx.. 2280' 10" aluminum main line

Merrill & Malin OR & Tulelake, CA

Klamath County OR -117 assessed acres of water rights from Shasta View Irrigation District are appurtenant to the land

143.25 assessed acres of Malin Irrigation District water rights are appurtenant to the land

One center pivot and 75 hp pump

Siskiyou County, CA - 36.1 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land

One center pivot pump and panel

Klamath County OR - 50 assessed acres of Malin Irrigation District water rights are appurtenant to the land

(2) 50 hp pumps

Siskiyou County, CA - 57.4 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land

(2) 50 hp pumps

Siskiyou County, CA - 42.4 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land

(2) 50 hp pumps

Siskiyou County, CA - 57.4 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land

(2) 50 hp pumps

Siskiyou County, CA - 56.8 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land

Modoc County, CA - 70 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land

One linear and (2) 60 hp pumps

Modoc County, CA - 85.1 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land

(2) 75 hp pumps

Modoc County, CA - 64.6 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land

40 hp pump

Modoc County, CA - 71.2 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land

50 hp pump, 60 hp pump and panels and filters

Modoc County, CA - 72.8 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land

(2) 60 hp pumps and filters

Klamath County, OR - 25.7 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land

Klamath County, OR - 47 assessed acres of Tulelake Irrigation District water rights are appurtenant to the land