

WHEN RECORDED RETURN TO:

Royce Ann Simmons Harvest Capital Company P.O. Box 579 Canby, OR 97013 2013-013326 Klamath County, Oregon



12/03/2013 12:10:50 PM

Fee: \$102.00

(space above reserved for recorder's use)

# RELEASE AND AMENDMENT TO MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS RELEASE AND AMENDMENT TO MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Amendment") is made as of November 11, 2013, by and between JESPERSEN SWAN LAKE, INC., an Oregon corporation, LEONARD K. JESPERSEN and VICKY L. JESPERSEN, husband and wife, and JACEN M. JESPERSEN (who appears of record as Jacen Jespersen) and JULIE A. JESPERSEN (who appears of record as Julie Jespersen), husband and wife ("Mortgagor") on the one hand, and U.S. Bank National Association as Custodian/Trustee for Federal Agricultural Mortgage Programs ("Lender") on the other hand.

This Amendment is made with respect to the following facts and circumstances.

- A. Jespersen-Edgewood, Inc., an Oregon corporation, Lawrence (a.k.a. Larry) C. Jespersen and Maureen V. Jespersen, husband and wife, Leonard K. Jespersen and Vicky L. Jespersen, husband and wife, Jacen Jespersen and Julie Jespersen, husband and wife, and Kenneth G. Holmes and Bethany N. Holmes, husband and wife obtained a loan in the original principal amount of \$450,000 (the "Underwood Loan") from Harvest Capital Company ("Harvest"). The Underwood Loan is evidenced by a Promissory Note dated April 7, 2008 in the original principal amount of \$450,000 made to the order of Harvest (the "Underwood Note"). The Underwood Note is secured by, among other things, a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated April 7, 2008 for the benefit of Harvest, and recorded April 10, 2008 in Volume 2008, page 005288; Microfilm Records of Klamath County, Oregon (the "Underwood Mortgage").
- B. The Underwood Mortgage encumbers the real property in Klamath County, Oregon described on attached Exhibit A (the "Underwood Land") and certain related personal property and rights (together with the Underwood Land, the "Underwood Property"). The

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Loan No. 21302020

Underwood Note, Underwood Mortgage, and other agreements executed in connection with the Underwood Loan are hereafter collectively referred to as the "Underwood Loan Documents".

- C. Pursuant to an Assignment dated March 2, 2011 and recorded March 9, 2011 in Volume 2011-003387, Microfilm Records of Klamath County, Oregon, Harvest assigned the Underwood Loan and Underwood Loan Documents to Lender.
- D. Jespersen-Edgewood, Inc. conveyed its interest in a portion of the Underwood Property to Jespersen Swan Lake, Inc., and conveyed the remainder of the Underwood Property to Edgewood Ranch, Inc. Pursuant to a Consent to Transfer and Assumption Agreement dated as of May 15, 2012 and recorded May 17, 2012 in Volume 2012-005370, Microfilm Records of Klamath County, Oregon, Jespersen Swan Lake, Inc. assumed the obligations of Jespersen-Edgewood, Inc. under the Underwood Loan Documents.
- E. Harvest has made or will make a loan to Mortgagor in the amount of TWO MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,700,000.00), as evidenced by a promissory note executed by Mortgagor in favor of Harvest of even date hereof (the "Other Note"), and secured by a Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing securing real property in Klamath County, Oregon and certain personal property described therein (the "Other Mortgage").
- F. Harvest has assigned or will assign the Other Note, the Other Mortgage and the documents associated therewith (the "Other Loan Documents") to Lender.
- G. Mortgagor and Lender desire to amend the Mortgage to provide for certain matters, all as more particularly set forth herein.

NOW, THEREFORE, the parties hereby agree as follows:

- 1. Release. Upon execution and recording of this Amendment, Lawrence (a.k.a. Larry) C. Jespersen and Maureen V. Jespersen, husband and wife, and Kenneth G. Holmes and Bethany N. Holmes, husband and wife, shall be released from any further obligation under the Underwood Loan Documents.
- 2. Release of Lender. As part of the consideration for this Amendment, Mortgagor hereby acknowledges that it has no claims of whatsoever nature against Lender in connection with the Underwood Loan and the Underwood Loan Documents, and forever releases, waives and discharges Lender from, and covenants not to bring any suit against Lender for, any such claim, cause of action, demand, suit, cost or expense it has of whatsoever nature and kind, based on any facts existing prior to the date of this Amendment. Mortgagor acknowledges that this release extends to known and unknown claims.
- 3. <u>Amendment of Underwood Mortgage</u>. The Underwood Mortgage is hereby amended, effective as of the date of recordation of this Amendment, to provide that any default

of Mortgagor under the Other Note, the Other Mortgage, or the Other Loan Documents, where such default is not cured within any applicable grace period provided in the Other Loan Documents, shall constitute an event of default under the Underwood Mortgage.

- 4. No Subordination. This Amendment does not constitute nor is it intended to be or create a subordination of the lien of the Underwood Mortgage to any other lien on or interest in the Underwood Property, whether created or recorded before or after the Underwood Mortgage.
- 5. Reaffirmation. Except as expressly set forth herein, the Underwood Mortgage shall remain unmodified and in full force and effect, and Mortgagor hereby affirms and reaffirms, as applicable, each and every of the terms and provisions of the Underwood Mortgage as to the Underwood Property.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above.

# MORTGAGOR

JESPERSEN SWAN LAKE, INC. an Oregon corporation

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hard K. Jespersen, President

. Jespersen

Vicky L. Jesperson

acen M. Jesperse

Julie A. Jespersen

## LENDER

U.S. BANK NATIONAL ASSOCIATION, Custodian/Trustee for Federal Agricultural Mortgage Corporation Programs

By: HARVEST CAPITAL COMPANY, an Oregon corporation, its Attorney in Fact

Royce Ann Simmons, Vice President

STATE OF OREGON  COUNTY OF Klamath  ss.		
This instrument was acknowledged before me on November 13, 2013, by Leonard K. Jespersen, as President of Jespersen Swan Lake, Inc., an Oregon corporation.		
OFFICIAL SEAL CHERICE F TREASURE NOTARY PUBLIC- OREGON COMMISSION NO. 468299 MY COMMISSION EXPIRES JUNE 17, 2016	Notary Public for Oregon My Commission expires: 6/17/2016 Commission No.: 468299	
STATE OF OREGON COUNTY OF Klamath		
This instrument was acknowledged before me November 13, 2013, by Leonard K. Jespersen.		
OFFICIAL SEAL CHERICE F TREASURE NOTARY PUBLIC- OREGON COMMISSION NO. 468299 NY COMMISSION EXPIRES JUNE 17, 2016	Notary Public My commission expires: 6/17/2014 Commission No.: 468299	
STATE OF OREGON COUNTY OF Klamath		
This instrument was acknowledged before me November 13, 2013, by Vicky L. Jespersen.		
OFFICIAL SEAL CHERICE F TREASURE NOTARY PUBLIC- OREGON COMMISSION NO. 468299 MY COMMISSION EXPIRES JUNE 17, 2016	Notary Public My commission expires: 6/17/2014 Commission No.: 4108299	
STATE OF OREGON COUNTY OF Klamath		
This instrument was acknowledged Jespersen.	before me November 13, 2013, by Jacen M. Chevice J. Newwo	



Loan No. 21302020

Notary Public
My commission expires: 4 17 12014
Commission No.: 468299

STATE OF OREGON	)
COUNTY OF Klamath	) ss. )
This instrument was acknow Jespersen.  CHERICE F TREASURE NOTARY PUBLIC- OREGON COMMISSION BYRES JUNE 17, 2016	Notary Public My commission expires: 617/2016 Commission No.: 468299
STATE OF OREGON COUNTY OF CLACKAMAS	) ss. )
Simmons, as Vice President of Har	ged before me on
	Notary Public for Oregon  My Commission expires:  Commission No.:

STATE OF OREGON	-
COUNTY OF	S.
This instrument was acknowledg Jespersen.	ged before me November, 2013, by Julie A.
	Notary Public My commission expires: Commission No.:
STATE OF OREGON )	
COUNTY OF CLACKAMAS ) s	s.
Simmons, as Vice President of Harvest	efore me on <u>November /3</u> , 2013, by Royce Ann Capital Company, an Oregon corporation, the Attorney in as Custodian/Trustee for Federal Agricultural Mortgage
Co	rporation Programs.
OFFICIAL SEAL SHANNON N FORSTER NOTARY PUBLIC - OREGON	Notary Public for Oregon
COMMISSION NO. 457690 MY COMMISSION EXPIRES APRIL 13, 2015	My Commission expires: 4/13/15 Commission No.: 457690

## **EXHIBIT A**

## LEGAL DESCRIPTION

In Township 38 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon:

The S1/2 SW1/4 of Section 4; the S1/2 SE1/4 of Section 5; the N1/2 NE1/4, SE1/4 NE1/4 and that portion of the SW1/4 NE1/4 and of the NE1/4 SE1/4 of Section 8 lying East of Swan Lake Road; the NW1/4 and that portion of the SW1/4 of Section 9 lying East of Swan Lake Road.