



2013-013661

Klamath County, Oregon

12/12/2013 02:52:25 PM

Fee: \$152.00

THIS INSTRUMENT PREPARED BY:
Metropolitan Life Insurance Company
4500 Westown Parkway, Suite 330A
West Des Moines, IA 50266
(515) 223-5600

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
Metropolitan Life Insurance Company
4500 Westown Parkway, Suite 330A
West Des Moines, IA 50266
Attn: Loan Manager, Northern Region

Space above this line for Recorder's Use

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

**THE MAXIMUM PRINCIPAL AMOUNT TO BE ADVANCED PURSUANT TO THE CREDIT AGREEMENT IS
\$4,246,000.00.**

O.R.S. 86.155 STATEMENTS:

PRINCIPAL AMOUNT: \$4,246,000.00

MATURITY DATE: THE SCHEDULED MATURITY DATE OF THE NOTE IS JANUARY 5, 2039

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 LOAN 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 NUMBER(S) FOR THE PROPERTY SUBJECT TO THE LIEN OF THIS INSTRUMENT IS/ARE:

3708-00000-01100-000, 3708-00000-01200-000, 3808-00000-00400-000, 3808-00000-00403-000,
3808-004C0-00101-000, 3808-004D0-00101-000, 3808-005D0-01000-000, 3808-00600-00100-000,
3808-00700-00101-000, 3808-00800-00100-000, 3808-00800-00201-000, and 3808-009B0-01800-000.

THIS DEED OF TRUST ALSO CONSTITUTES A FINANCING STATEMENT FILED AS A FIXTURE FILING UNDER THE UCC

SEE ARTICLE 9 FOR ADDRESS OF TRUSTOR, TRUSTEE AND BENEFICIARY

This deed of trust is effective as of December 11, 2013, and is by HILL ENTERPRISES COMPANY, an Iowa corporation ("**Trustor**"), to and in favor of AMERITITLE, as trustee ("**Trustee**"), for the benefit of METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation ("**Beneficiary**").

Beneficiary has agreed to make a loan in the original principal sum of \$4,246,000.00 to Trustor under the terms and conditions of the Loan Agreement between Trustor and Beneficiary effective as of the effective date of this deed of trust (the "**Loan Agreement**").

Each capitalized term used in this deed of trust that is defined in the Loan Agreement and not defined in this deed of trust will have the meaning specified in the Loan Agreement. This deed of trust will be interpreted in accordance with the Drafting Conventions.

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ARTICLE 1 – GRANT

To secure repayment of the indebtedness evidenced by the Note (defined herein) and payment and performance of all other Secured Obligations (defined herein), Trustor irrevocably and unconditionally, grants, bargains, sells, and conveys to Trustee, in trust, for the benefit of Beneficiary, WITH POWER OF SALE, all of Trustor's estate, right, title and interest which Trustor now has or may later acquire in the following, wherever located, and whether constituting real estate or personal property (individually and collectively, the "**Property**"):

- (1) the real estate and any interest in the real estate located in Klamath County, Oregon, and described in EXHIBIT A (the "**Land**");
- (2) buildings, structures, improvements, and fixtures now or hereafter erected on, affixed or attached to the Land, including all farm products storage and handling units and equipment, and fences, gates and loading chutes (the "**Improvements**");
- (3) to the extent not included within the definition of "Improvements," (A) wells, irrigation and drainage pumps, motors, pipes, windmills, frost protection equipment, center pivot irrigators, sprinklers, drip line and emitters, filters, water measurement meters and control structures and other watering and irrigation equipment; and (B) all other equipment now or hereafter affixed or installed in any manner on the Land or the Improvements or used in connection with the operation of the Property (other than rolling stock and implements customarily towed) (the "**Equipment**");
- (4) easements, rights-of-way, and other rights and entitlements appurtenant to the Land or used in connection with the Land or as a means of access thereto (the "**Easements**");
- (5) other tenements, hereditaments and appurtenances to the Land;
- (6) rights to the use and enjoyment of water, whether surface or subsurface, whether riparian, appropriative, prescriptive or otherwise, and whether or not appurtenant, now or hereafter relating or available to the Land or Improvements or used in connection therewith: (A) water allocations, water banking rights or interests, carryover rights, supplemental water, storage and exchange rights drainage rights, distribution rights, storage rights, delivery rights, and other water-related rights or entitlements, whether available through any public or private irrigation projects, companies, districts, agencies or otherwise, together with all shares of stock evidencing any such rights or entitlements, and all voting rights and other rights and privileges that now or hereafter may exist with respect to such stock or with respect to participation, membership, or other involvement in any such projects, companies, districts, or agencies; (B) water and water inventory in storage; (C) rights under well, pump and filter sharing agreements; and (D) all easements, permits, licenses, leases, contracts, grants, reservations and any other rights and entitlements, however created, to drill, install and maintain wells, pumps and pipeline systems, or to use, appropriate, pump, extract, receive, transport, store or transfer water ("**Water Rights**");
- (7) shares, and rights under such shares, of any private water company, mutual water company, or other non-governmental entity pursuant to which Trustor or the Property may receive water (individually and collectively, the "**Water Stock**") and any other certificated and uncertificated securities, securities entitlements, securities accounts and commodities accounts;
- (8) coal, oil, gas, and other hydrocarbon substances, geothermal resources, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and estates in, under or produced from the Land and other coal, oil, gas, geothermal, and mineral interests with which any of the foregoing interests or estates are pooled or unitized and other "as-extracted collateral" (the "**Mineral Rights**");
- (9) timber now or hereafter standing on or cut from the Land;
- (10) 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, (individually and collectively, the "**Leases**");

Hill

Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing

Rev. 09.12.2013

- (11) working drawings, instructional manuals, and rights in processes directly related to the operation of the Property;
- (12) contracts involving and warranties covering the Property;
- (13) permits and licenses relating or pertaining to the use or enjoyment of the Property;
- (14) 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**");
- (15) 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 Land or Improvements (the "**Condemnation Awards**");
- (16) the right, in the name and on behalf of Trustor, upon notice to Trustor, 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 Beneficiary in the Property;
- (17) accessions, attachments and other additions to, substitutes or replacements for, all proceeds and products of, the Property; and
- (18) books, records and files relating to the Property, including computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data.

ARTICLE 2 - ASSIGNMENT OF RENTS

2.01 Assignment. Trustor irrevocably and unconditionally assigns Beneficiary all rents and other benefits derived from the Leases, and all other issues, profits, royalties, bonuses, income and other proceeds of the Property, whether now due, past due or to become due, including all prepaid rents, security deposits and other supporting obligations (collectively, the "**Rents**").

2.02 Grant of License. Notwithstanding the provisions of Section 2.01, Beneficiary confers upon Trustor a revocable 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 Trustor.

2.03 Collection and Application of Rents. Subject to the License granted to Trustor under Section 2.02, Beneficiary has the right, power and authority to collect any and all Rents. Beneficiary, by its acceptance of this deed of trust does not assume any duty or obligation under the Leases.

2.04 Notice. All lessees under any and all Leases are hereby irrevocably authorized and notified by Trustor to rely upon and to comply with (and are fully protected in so doing) any notice or demand by Beneficiary for the payment to Beneficiary of Rents, or for the performance of any of lessees' undertakings under the Leases, and lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. Subject to the License, Beneficiary may notify any person that the leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure of or taken possession of the Property.

2.05 Proceeds. Beneficiary may apply all amounts received by it pursuant to this assignment to pay any of the following in such amounts and in such order as Beneficiary deems appropriate: (a) any and all Secured Obligations; (b) all expenses of leasing, operating, maintaining and managing the Property, including without limitation, the salaries, fees, commissions and wages of a managing agent and such other employees, agents or independent contractors as Beneficiary deems necessary or desirable; (c) all taxes, charges, claims, assessments, any other liens, and premiums for all insurance Beneficiary deems necessary or desirable; (d) the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property.

2.06 Mineral Rights. Without limitation of the foregoing, Trustor irrevocably and unconditionally assigns and transfers to Beneficiary, all bonuses, delay rentals, royalties, production payments, and other sums payable or benefits accruing to Trustor under any and all oil, gas, coal, or other minerals leases now existing or hereafter entered into with respect to the Land. So long as there is no Event of Default, all such sums may continue to be paid to Trustor. Upon an Event of Default, Beneficiary may demand and receive all such sums to apply to pay Secured Obligations, expenses of leasing, operating, maintaining and managing the Property, taxes, charges, claims, assessments, any other liens, and premiums for insurance, in such amounts and in such order as Beneficiary deems appropriate. Trustor has not and will not grant any consent required of the owner of the Property for mining or other surface disturbance on the Property by the terms of any patent, deed, statute, law or otherwise, without the prior written consent of Beneficiary. This paragraph shall not obligate or require Beneficiary to subordinate its interests under this deed of trust to any oil, gas, coal, or other mineral lease or agreement.

2.07 Wind Development Agreements. Without limitation of the foregoing, Trustor irrevocably and unconditionally assigns and transfers to Beneficiary, all bonuses, option payments, royalties, production payments, rents, payments, and other sums payable or benefits accruing to Trustor under any and all wind development agreements, easements, and leases now existing or hereafter entered into with respect to the Land. So long as there is no Event of Default, all such sums may continue to be paid to Trustor. Upon an Event of Default, Beneficiary may demand and receive all such sums to apply to pay Secured Obligations, expenses of leasing, operating, maintaining and managing the Property, taxes, charges, claims, assessments, any other liens, and premiums for insurance, in such amounts and in such order as Beneficiary deems appropriate. Trustor has not and will not grant any consent required of the owner of the Property for wind development on the Property by the terms of any deed, statute, law or otherwise, without the prior written consent of Beneficiary. This paragraph shall not obligate or require Beneficiary to subordinate its interests under this deed of trust to any wind development agreement, easement or lease.

ARTICLE 3 – SECURITY AGREEMENT

3.01 Grant of Security Interest. Trustor grants Beneficiary a security interest in and pledges and assigns to Beneficiary all of Trustor's right, title and interest in all Property to the extent and which may be characterized as personal property (the "**Personalty**"), including the Improvements, Equipment, Water Rights.

3.02 Addresses of Debtor and Secured Party. The address of Trustor adjacent to its signature below is the mailing address of Trustor as debtor under the UCC. The address for Beneficiary specified in Article 9 is the address for Beneficiary as secured party under the UCC.

3.03 Fixture Filing. This deed of trust constitutes a financing statement filed as a fixture filing under the UCC, covering any Property which now is or later may become a fixture attached to the Land or any Improvement. For this purpose, the "debtor" is Trustor, the "Secured Party" is Beneficiary and the collateral is the Property.

ARTICLE 4 – SECURED OBLIGATIONS

4.01 Secured Obligations. Subject to Section 4.05, Trustor makes the grant, conveyance, transfer and assignment in Article 1, makes the irrevocable and absolute assignment in Article 2, and grants the security interest under Article 3 to secure payment and performance of the following obligations (the "**Secured Obligations**") in any order of priority that Beneficiary may choose:

- (1) all Obligations (defined in the Loan Agreement), including: (A) those evidenced by the Promissory Note dated as of the date of this deed of trust, from Trustor to Beneficiary in the original principal amount of \$4,246,000.00 (the "**Note**") and (B) all other indebtedness, liabilities and obligations of Trustor to Beneficiary arising pursuant to any of the Loan Documents, whether now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several;
- (2) all obligations of Trustor under this deed of trust;

- (3) all interest and any disbursements made for the payment of taxes, levies, or insurance on the Property, and the repair, maintenance or improvements of the Property pursuant to the Loan Documents, and all other protective advances, with interest on those disbursements;
- (4) all future advances and other obligations that Trustor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this deed of trust;
- (5) all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations; and
- (6) any of the foregoing that arises after the filing of a petition by or against Trustor under an Insolvency Proceeding.

4.02 Future Secured Obligations. The Secured Obligations include future advances made by Beneficiary for any purpose, and all other future Secured Obligations. Those future advances and other future Secured Obligations, together with interest thereon, are secured by this deed of trust 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 \$4,246,000.00 (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, or any other protective or other advances made by Trustee for the purposes of protecting its security hereunder. Trustor shall not file of record or serve Beneficiary with any notice limiting the maximum amount secured by this deed of trust to an amount less than the Maximum Amount Secured, as specified in this deed of trust, or if no such amount is specified, to any amount (a "**Maximum Amount Notice**"). Nothing in this Section 4.02 will constitute a commitment to make additional or future advances in any amount.

4.03 Maturity Date. The scheduled maturity date of the Note is January 5, 2039.

4.04 Notice of Terms of Secured Obligation Documents. 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 Loan Agreement, the other Loan Documents, and each other agreement or instrument made or entered into in connection with each of the Secured Obligations (the Loan Agreement, the Loan Documents and those other agreements or instruments, the "**Secured Obligation Documents**"). These terms include any provisions in the Secured Obligation Documents which may permit or provide that the rate of interest on one or more of the Secured Obligations may vary from time to time. Without limitation, the Loan Agreement expressly provides that Lender may at its option change or adjust the interest rate as referenced therein.

4.05 Unsecured Obligations. This deed of trust does not secure any indebtedness, liability or obligation that is expressly stated to be unsecured.

ARTICLE 5 – WARRANTY OF TITLE

5.01 Warranty of Title. Trustor represents and warrants that, other than the exceptions to title expressly listed on a schedule of exceptions to coverage in the final commitment for title insurance or pro forma policy of title insurance accepted by Beneficiary prior to the Closing (the "**Permitted Exceptions**"), Trustor lawfully possesses and holds fee simple title to all of the Land and Improvements; that Trustor has the right, power and authority to mortgage, grant, convey and assign the Property; and that the Property is unencumbered. Trustor 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.

5.02 Defense and Notice of Claims and Actions. At Trustor's sole expense, Trustor 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 Trustee and Beneficiary created under it, against all adverse claims. Trustor must give Trustee and Beneficiary 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.

5.03 Liens, Charges and Encumbrances. Trustor shall immediately discharge any lien, charge or encumbrance on the Property other than Permitted Exceptions, to which Beneficiary has not consented in writing. Trustor must pay when due all claims for labor performed and material furnished to the Property and all other obligations secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether the lien, charge or encumbrance is or would be senior or subordinate to this deed of trust.

ARTICLE 6 - REPRESENTATIONS

6.01 Representations. Trustor represents to Beneficiary that:

- (1) the Property does not represent the proceeds of unlawful activity under any state, federal or foreign law;
- (2) the Property includes all property and rights which may be reasonably necessary or desirable to enable Trustor to use, enjoy and operate the Land, the Improvements, the Water Rights and the Equipment for the present uses thereof;
- (3) the Property is taxed and billed separately from real property not subject to this deed of trust;
- (4) none of the Land or Improvements is subject to any Lien, offset or claim except any easements, restrictions, and Liens for taxes and assessments on the Land and Improvements, if any, which are not yet due and payable, which are expressly listed on a schedule of exceptions to coverage in the final commitment for title insurance or pro forma policy of title insurance received by Beneficiary prior to the Closing;
- (5) Trustor 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 except as disclosed in writing to Beneficiary prior to the Closing;
- (6) Trustor 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) ;
- (7) the legal name of Trustor is as appears in this deed of trust;
- (8) Trustor has not used any trade name, assumed name or other name except Trustor's name stated in this deed of trust;
- (9) each Trustor who is a natural Person resides at the address adjacent to his or her signature below;
- (10) if Trustor 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;
- (11) the execution, delivery and performance by Trustor of this deed of trust is within the powers and authority of Trustor and has been duly authorized;
- (12) to Trustor's knowledge, this deed of trust does not conflict with any Applicable Law;
- (13) this deed of trust is a legal, valid and binding agreement of Trustor, enforceable against Trustor in accordance with its terms, and any instrument or agreement required hereunder, when executed and delivered, will be similarly legal, valid, binding and enforceable;

- (14) there is no lawsuit, tax claim or other dispute pending or to Trustor's knowledge threatened against Trustor or the Property that, if determined adverse to Trustor, is reasonably likely to have a Material Adverse Effect;
- (15) Trustor is not the subject of any Judgment;
- (16) this deed of trust does not conflict with, nor is Trustor in default on any Loan 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 Trustor is in any manner directly or contingently obligated;
- (17) Trustor 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;
- (18) before signing this deed of trust, Trustor researched, to the satisfaction of Trustor, and inquired into the previous uses and ownership of the Real Estate, and based on that due diligence, to the best of Trustor's knowledge, no Hazardous Substance has been disposed of or released or otherwise exists in, on, under or onto the Real Estate, except as Trustor has disclosed to Beneficiary in the Environmental Information;
- (19) Trustor has complied with all current 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**");
- (20) Trustor has not received any notices of violations of any Applicable Laws (including Environmental Laws); and Trustor is in compliance with all Applicable Laws;
- (21) there are no claims, actions, proceedings or investigations pending or threatened against Trustor or affecting the Property with respect to any violations of Applicable Laws, including, without limitation, any Environmental Law;
- (22) Trustor's place of business, or its chief executive office, if it has more than one place of business, is located at the address opposite its signature below;
- (23) unless otherwise disclosed to Beneficiary, Trustor is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986;
- (24) there is no Event of Default or event which, with notice or lapse of time would be an Event of Default;
- (25) the Water Rights afford the continuing, enforceable right to receive irrigation water on the Property from such sources, in such quantities and at such times and locations as has historically been available to the Property without interruption or substantially increased cost and in any event, based on current projections, sufficient to provide adequate water and/or drainage to continue the current and proposed agricultural operations on the Property;
- (26) all irrigation wells and related facilities used to deliver irrigation water to any portion of the Property are physically located within the boundaries of such Property or the subject of valid, enforceable easements appurtenant to the Property and encumbered hereby. If the use of any irrigation facilities or water serving the Property requires consent or the use of other property, Trustor has obtained all requisite easements or other legally enforceable and assignable rights to use such facilities and/or water to service the Property;
- (27) none of the Land is subject to The Reclamation Act of 1902, the Omnibus Adjustment Act of 1926, the Reclamation Reform Act of 1982 and any act or law supplementary thereto and all rules and regulations promulgated thereunder; and

ARTICLE 7-- COVENANTS

7.01 Performance of Secured Obligations. Trustor shall promptly pay and perform each Secured Obligation in accordance with its terms.

7.02 Maintenance and Preservation of Property. Trustor shall:

- (1) 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, charge or encumbrance which now or hereafter encumbers or appears to encumber all or part of the Property, whether the lien, charge or encumbrance is or would be senior or subordinate to this deed of trust;
- (2) not alter, remove or demolish any portion of the Improvements, except as permitted or required by the Loan Agreement;
- (3) not permit any tangible Personalty (except for Equipment being repaired or restored) to be kept at any location other than on the Land;
- (4) if any Personalty is at any time in the possession of a bailee, Trustor shall promptly notify Beneficiary thereof and, at Beneficiary's request, shall promptly obtain an acknowledgement from the bailee, in form and substance reasonably satisfactory to Beneficiary, that the bailee holds the Personalty for the benefit of Beneficiary and such bailee's agreement to comply with any instructions received from Beneficiary;
- (5) maintain (or cause to be maintained) all policies of insurance required under the Loan Agreement and pay (or cause payment of) all premiums for that insurance on or prior to the date when due;
- (6) 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 Trustor has received the proceeds of any Insurance Claim;
- (7) 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;
- (8) 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 Loan Agreement;
- (9) maintain any forest, agricultural or similar tax classification of the Land, and not allow any act or omission which would disqualify the Land for beneficial tax assessment;
- (10) complete appropriation and adjudication and all other requirements, if any, necessary to obtain the issuance of any license or water permit issued to Trustor, and take all other steps required or advisable for purposes of perfecting and maintaining in good status all other Water Rights;
- (11) 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 Trustor on the Property or any part of it under this deed of trust; and
- (12) 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.

7.03 Water Rights. Trustor shall maintain the Water Rights during the term of the Loan at a level and of a nature sufficient to provide the continuing, enforceable right to receive irrigation water on the Property from such sources, in such quantities and at such times and locations as has historically been available to the Property without interruption or substantially increased cost and in any event sufficient to provide adequate water and/or drainage to continue the current and proposed agricultural operations on the Property. All existing Water Rights benefiting or available to the Property shall be maintained in full force and effect for the benefit of the Property by Trustor and applied to beneficial use so as to maintain the validity and priority of such rights. Trustor shall fully comply with, and not permit a default to occur under any water licenses, permits or delivery contracts used to provide water to the Property, and shall timely exercise all renewal or extension rights in such contracts. Trustor shall not modify, amend or terminate any Water Rights without Beneficiary's prior written consent. Trustor shall comply with the rules, regulations and ordinances of any water district, water agency or groundwater management agency in which the Property or any portion thereof is located and pay all related fees and assessments prior to delinquency. All irrigation wells and related facilities used to deliver irrigation water to any

portion of the Property shall remain physically located within the boundaries of such Property or the subject of valid, enforceable easements appurtenant to the Property and encumbered hereby. If the use of any irrigation facilities or water serving the Property requires consent or the use of other property, Trustor shall maintain in effect all requisite easements or other legally enforceable and assignable rights to use such facilities and/or water to service the Property. Trustor shall notify Beneficiary if the irrigation water supply to any portion of the Property is interrupted or subject to interruption for any reason other than temporarily for routine maintenance or repairs in a manner that does not impair the operation of the Property.

7.04 Operations on Property. Trustor shall keep the Property in good condition and repair; operate the Property, whether improved pastures, orchards, grazing, timber, or crop lands, in a good and husband-like manner in accordance with accepted principles of sound agricultural and forestry practices in the area in which the Land is located; 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 oil, gas, mineral, stone, rock, clay, or gravel owned by Trustor, or any timber, buildings, top soil, or fertilizer, without the prior written consent of Beneficiary.

7.05 Compliance with Applicable Law Trustor 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.

7.06 Taxes and Assessments. Trustor shall pay: (a) prior to delinquency all taxes, levies, charges and assessments 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 Loan Documents, together with any and all interest and penalties thereon; and (c) taxes, levies, charges and assessments on Trustee or Beneficiary's or Secured Parties' interest therein or upon this deed of trust or the Secured Obligations (individually and collectively, "**Mortgage Taxes**"); except that if the amount of Mortgage Taxes exceeds the Maximum Rate, Trustor 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 a 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 Trustor, Trustor shall pay all Secured Obligations. Notwithstanding the foregoing provisions of this Section 7.06, Trustor 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: (a) Beneficiary is satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest; and (b) Trustor shall have posted a bond or furnished such other security required from time to time by Beneficiary.

7.07 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 Trustor 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 Trustor 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. TRUSTOR HEREBY SPECIFICALLY, UNCONDITIONALLY AND IRREVOCABLY WAIVES ALL RIGHTS OF A PROPERTY OWNER WITH RESPECT TO ALLOCATION OF CONDEMNATION PROCEEDS BETWEEN A PROPERTY OWNER AND A LIENHOLDER.

7.08 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 Loan Agreement, and otherwise to determine Trustor's compliance with this deed of trust.

7.09 Prohibited Transfers.

(a) Trustor agrees that a material factor in Beneficiary's decision to enter into the Secured Obligation Documents is the expertise, financial status and other characteristics of Trustor. Trustor 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: (1) any sale, contract to sell, conveyance, encumbrance, pledge, mortgage, or lease of the Property 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; (2) if Trustor is a corporation, any transfer or transfers of shares of more than ten percent (or such other portion, if any, permitted under the Loan Agreement) of the voting power or the direct or indirect beneficial ownership of Trustor, on a cumulative basis; (3) if Trustor is a partnership, withdrawal or removal of any general partner, dissolution of the partnership under Applicable Law, or any transfer or transfers of more than ten percent (or such other portion, if any, permitted under the Loan Agreement) the partnership interests, on a cumulative basis; (4) if Trustor is a limited liability company, withdrawal or removal of any manager or managing member, termination of the limited liability company or any transfer or transfers of more than ten percent (or such other portion, if any, permitted under the Loan Agreement) of the voting power or the ownership of the economic interest in the Trustor, on a cumulative basis; or (5) if Trustor is a trust, withdrawal or removal of any trustee or revocation of the trust.

(b) If there is a Prohibited Transfer, Beneficiary may, at Beneficiary's option, without limitation to any other rights or remedies available to Beneficiary upon an Event of Default, deem that the principal balance of the Loan and, to the extent permitted by Applicable Law, all other Obligations, will bear interest at the Contract Rate plus 2.00% per annum (the "**Prohibited Transfer Rate**"), retroactive to the date of the Prohibited Transfer (without regard to the date that Prohibited Transfer is discovered by Beneficiary) through the Maturity Date, and Trustor shall pay to Beneficiary, upon demand, the difference between the amount of interest calculated at the Contract Rate in effect at the time of the Prohibited Transfer and the amount of interest calculated at the Prohibited Transfer Rate from the date of the Prohibited Transfer to the date payment is received by Beneficiary (that amount, the "**Prohibited Transfer Rate Adjustment Amount**"). Beneficiary's rights under this Section 7.09(b) are an option available to Beneficiary, and unless elected by Beneficiary, a Prohibited Transfer will constitute an Event of Default and all Obligations will bear interest at the Default Rate.

7.10 Compensation and Reimbursement of Costs and Expenses. Trustor shall pay (1) fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Trustee and Beneficiary when the law provides no maximum limit, for any services that Trustee and Beneficiary may render in connection with this deed of trust, including Beneficiary's providing a statement of the Secured Obligations; (2) all of Trustee and Beneficiary's costs and expenses which may be incurred in rendering any such services; and (3) all costs, expenses and other advances which may be incurred or made by Trustee or Beneficiary in any efforts to enforce any terms of this deed of trust or protect the Property, including any rights or remedies afforded to Trustee or Beneficiary under Section 8.02, 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 Legal Fees, costs of any Foreclosure Sale (defined in Section 8.02) and any cost of evidence of title. If Beneficiary chooses to dispose of Property through more than one Foreclosure Sale, Trustor must pay all costs, expenses or other advances that may be incurred or made by Trustee or Beneficiary in each of those Foreclosure Sales.

7.11 Indemnification. TRUSTOR SHALL INDEMNIFY TRUSTEE AND BENEFICIARY AGAINST AND SHALL HOLD THEM HARMLESS FROM ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, LEGAL FEES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER COSTS AND

EXPENSES WHICH EITHER OF THEM 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 TRUSTOR TO PAY OR PERFORM ANY OF THE SECURED OBLIGATIONS; OR (C) BECAUSE OF ANY ALLEGED OBLIGATION OF OR UNDERTAKING BY TRUSTEE AND BENEFICIARY 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 TRUSTOR TO INDEMNIFY TRUSTEE AND BENEFICIARY 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.

7.12 Payments Due Under This Deed of Trust. Trustor must pay all obligations to pay money arising under this deed of trust immediately upon demand by Trustee or Beneficiary. Each such obligation shall bear interest from the date the obligation arises at the Default Rate.

ARTICLE 8 – EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. The following each shall be an event of default under this deed of trust (an "Event of Default"):

- (1) an Event of Default as defined in the Loan Agreement;
- (2) a Prohibited Transfer;
- (3) the filing of a Maximum Amount Notice;
- (4) if Trustor is in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property, whether it be superior or junior in lien to this deed of trust;
- (5) for more than ten days after notice from Beneficiary, Trustor is in default under any term, covenant or condition of this deed of trust not previously described in this Section 8.01, which can be cured by the payment of a sum of money; or
- (6) for 30 days after notice from Trustee or Beneficiary, Trustor is in default under any term, covenant or condition of this deed of trust not previously described in this Section 8.01; provided that if: (A) it is reasonably certain that the default cannot be cured by Trustor within that 30 day period; and (B) Trustor 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 Trustor in the exercise of due diligence to cure that default, up to a maximum of 90 days after the notice to Trustor of the Event of Default.

8.02 Remedies. At any time after an Event of Default, Trustee and Beneficiary may invoke any and all of the rights and remedies described below. All of such rights and remedies are cumulative, and the exercise of any one or more of them does not constitute an election of remedies:

(a) **Acceleration.** Trustee or Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) **Receiver.** Trustee or Beneficiary 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 Trustor, any Guarantor, or of any Person liable for the payment of the Secured Obligations. TRUSTOR 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.

(c) Entry. Trustee or Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also 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. Such other things may include: taking and possessing all of Trustor's or the then owner's books and records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Trustee or Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Trustee or Beneficiary so requests, Trustor will assemble all of the Property that has been removed from the Land and make all of it available to Trustee or Beneficiary at the site of the Land. TRUSTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS TRUSTEE AND BENEFICIARY AS TRUSTOR'S ATTORNEY-IN-FACT TO PERFORM SUCH ACTS AND EXECUTE SUCH DOCUMENTS AS TRUSTEE OR BENEFICIARY CONSIDERS APPROPRIATE IN CONNECTION WITH TAKING THESE MEASURES, INCLUDING ENDORSEMENT OF TRUSTOR'S NAME ON ANY INSTRUMENTS. Regardless of any provision of this deed of trust or the other Secured Obligation Documents, neither Trustee or Beneficiary shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Trustor to Beneficiary, unless Trustee or Beneficiary respectively, has given express written notice of its election of that remedy in accordance with the UCC.

(d) Cure; Protection of Security. Trustee or Beneficiary may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Trustee or Beneficiary may also enter the Property and/or do any and all other things which it considers necessary or appropriate to protect the security of this deed of trust. Such other things may include: (1) appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Trustee or Beneficiary under, this deed of trust; (2) paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Trustee's or Beneficiary's judgment is or may be senior in priority to this deed of trust, such judgment of Trustee or Beneficiary to be conclusive as among the parties to this deed of trust; (3) obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; (4) otherwise caring for and protecting any and all of the Property; and/or (5) employing counsel, accountants, contractors and other appropriate persons to assist Trustee or Beneficiary. Beneficiary may take any of the actions permitted under this Section 8.02 either with or without giving notice to any person. Notwithstanding the foregoing, in no event will Trustee or Beneficiary have any obligation to take any of the actions set forth in this subparagraph (d).

(e) Uniform Commercial Code Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC. To the extent that Applicable Law imposes the duty on Beneficiary to exercise remedies in a commercially reasonable manner, Trustor acknowledges and agrees that it is not commercially unreasonable for Beneficiary to: (1) fail to incur expenses reasonably deemed significant by Beneficiary to prepare the Personalty for disposition or to fail to complete raw material or work in process into finished goods or other finished products for disposition; (2) fail to exercise collection remedies against account debtors or other persons obligated on the Personalty (directly or through the use of collection specialists), or to fail to remove liens, encumbrances or adverse claims against the Personalty; (3) advertise dispositions of the Personalty through publications or media of general circulation, whether or not the Personalty is of a specialized nature; (4) contact Persons for expressions of interest in acquiring all or any portion of the Personalty; (5) hire professional auctioneers to assist in the disposition of the Personalty, whether or not the Personalty is of a specialized nature; (6) dispose of the Personalty by utilizing Internet sites that provide for or are reasonably capable of the auction of assets of the types included in the Personalty; (7) dispose of the Personalty in wholesale rather than retail markets; (8) disclaim disposition warranties; (9) purchase insurance or credit enhancements to insure Beneficiary against risks of loss, collection or disposition of the Personalty or to provide to Beneficiary a guaranteed return from the collection or disposition of the Personalty; or (10) sell any Personalty jointly with any of the Property or to sell any Personalty in a sale separate from a sale of any of the Property. Trustor acknowledges that the purpose of this Section 8.02(e) is to provide a non-exhaustive indication of what actions or omissions by Beneficiary would fulfill Beneficiary's duties under the UCC in Beneficiary's exercise of remedies

against the Personality, and that other actions or omissions by Beneficiary shall not be deemed to fail to fulfill such duties solely on account of not being expressly included or indicated in this Section 8.02(e).

(f) **Power of Sale.** Beneficiary may cause some or all of the Property, including any Personality, to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law.

(g) **Judicial Action.** Beneficiary may bring an action in any court of competent jurisdiction to foreclose this deed of trust in the manner provided under Applicable Law for the foreclosure of mortgages on real property or to obtain specific enforcement of any of the covenants or agreements of this deed of trust.

(h) **Sales of Personal Property.** Beneficiary may elect to treat as Personality any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Beneficiary may dispose of any Personality separately from the sale of real property, in any manner permitted by Article 9 of the UCC, including any public or private sale, or in any manner permitted by any other Applicable Law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation.

(i) **Single or Multiple Foreclosure Sales.** If the Property consists of more than one lot, parcel or item of property, in connection with any sale of the Property described in or permitted under this Section 8.02, Beneficiary may: (1) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and (2) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made 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 Beneficiary may deem to be in its best interests (any such sale or disposition, a "**Foreclosure Sale**"). 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 liens 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.

(j) **Additional Rights.** In addition to the rights and powers given to 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.

8.03 Credit Bids. At any Foreclosure Sale, any person, including Trustor or Beneficiary, 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 may settle for the purchase price by crediting the sales price of the property against the following obligations:

- (1) first, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to reimburse Beneficiary; and
- (2) second, all other Secured Obligations in any order and proportions as Beneficiary may choose.

8.04 Application of Foreclosure Sale Proceeds, Rents and Other Sums. Beneficiary shall apply the proceeds of any Foreclosure Sale to pay (or reimburse Beneficiary for payment of) the Secured Obligations in any order and proportions as Beneficiary may choose, with the surplus, if any, to be paid over to Trustor.

8.05 No Liability for Funds Not Received. Beneficiary has no liability for any funds which it does not actually receive.

8.06 Request for Notice. Trustor hereby requests that, unless otherwise prescribed by law, a copy of any notice of default and a copy of any notice of sale pursuant to the nonjudicial foreclosure of this deed of trust be sent to Trustor at the address specified for notices in accordance with Article 9.

8.07 Waivers.

(a) Trustor waives: (1) any right to require Trustee or Beneficiary to proceed against Trustor, proceed against or exhaust any security held from Trustor, or pursue any other remedy in Trustee's or Beneficiary's power to pursue; (2) any defense based on any legal disability of Trustor, any discharge or limitation of the liability of Trustor to Trustee or Beneficiary, whether consensual or arising by operation of law or any bankruptcy, reorganization, receivership, insolvency, or debtor-relief proceeding, or from any other cause, or any claim that Trustor's obligations exceed or are more burdensome than those of Trustor; (3) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this deed of trust and of the existence, creation, or incurring of new or additional indebtedness of Trustor, and demands and notices of every kind; (4) any defense based on or arising out of any defense that Trustor may have to the payment or performance of the Secured Obligations or any part of it; and (5) until the Secured Obligations have been paid and performed in full, all rights of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under the Bankruptcy Code (Title 11 of the U.S. Code) or any successor statute, all rights to enforce any remedy that Trustee or Beneficiary may have against Trustor, and all rights to participate in any security now or later to be held by Trustee or Beneficiary for the Secured Obligations.

(b) Trustor waives all rights and defenses that Trustor may have because the Secured Obligations may be secured by real property other than the Property hereby encumbered. This means, among other things: (1) Trustee or Beneficiary may collect from Trustor (including enforcing this deed of trust against Trustor) without first foreclosing on any real or personal property collateral securing the Secured Obligations; and (2) if Trustee or Beneficiary forecloses on any real property collateral securing the Secured Obligations: (A) the amount of the Secured Obligations may be reduced only by the price for which that collateral is sold at the Foreclosure Sale, even if the collateral is worth more than the sale price, and (B) Trustee or Beneficiary may collect from Trustor (including enforcing this deed of trust against Trustor) even if Trustee or Beneficiary, by foreclosing on the real property collateral, has destroyed any right Beneficiary may have to collect from Trustor. This is an unconditional and irrevocable waiver of any rights and defenses Trustor may have because the Secured Obligations may be secured by real property other than the Property.

(c) Trustor waives any right or defense it may have at law or equity, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure of any real property other than the Property hereby encumbered.

(d) No provision or waiver in this deed of trust shall be construed as limiting the generality of any other provision or waiver contained in this deed of trust.

8.08 Information. Trustor is solely responsible for keeping informed of Trustor's financial condition and business operations and all other circumstances affecting Trustor's ability to pay and perform its obligations to Trustee or Beneficiary, and agrees that Trustee or Beneficiary will have no duty to disclose to Trustor any information which Trustee or Beneficiary may receive about Trustor's financial condition, business operations, or any other circumstances bearing on its ability to perform.

8.09 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article, the assignment of the Rents and Leases under Article 2, the security interests under Article 3, nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity shall cause Beneficiary or Trustee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Beneficiary or Trustee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 9 – NOTICES

All notices, approvals, consents, and other communications, under this deed of trust ("**Notices**") must be in writing and mailed or delivered to the address specified herein. All Notices will be deemed to be given or made upon the earlier to occur of: (1) actual receipt by the intended recipient; or (2) (A) if delivered by hand or by courier, upon delivery; or (B) if delivered by mail, four Business Days after deposit in the U.S. mail, properly addressed, postage prepaid; except that notices and other communications to Lender will not be effective until actually received by Lender. All telephonic Notices to and other telephonic communications with Lender may be recorded by Lender, and each Party consents to such recording. Notices must be mailed or delivered, if to Trustor, to the address adjacent Trustor's signature below; if to Trustee, at 300 Klamath Avenue, P.O. Box 5017, Klamath Falls, OR 97601; if to Beneficiary, to 4500 Westown Parkway, Suite 330A, West Des Moines, IA 50266, Attn: Regional Director.

ARTICLE 10 – TRUSTEE

From time to time, 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 law, or by a written instrument executed and acknowledged by Beneficiary and recorded in the office(s) of the recorder(s) of the county or counties where the Land and Improvements are situated. Any such instrument is conclusive proof of the proper substitution of the successor Trustee, who will automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it. Trustor waives any requirement that Trustee make an oath or give a bond. Trustee, or any one acting in its stead, may, employ agents and attorneys in the execution of this trust and/or in the conducting of any sale made pursuant to the terms hereof, and pay for such services rendered out of the proceeds of the sale of the Property; and if there is no sale or if the proceeds of sale are insufficient to pay for such services, then Trustor will pay the cost of such services to Trustee. Trustee may rely on any document believed by it in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but except to the extent otherwise required by Applicable Law, need not be segregated; and Trustee will not be liable for interest thereon.

ARTICLE 11 – RELEASE AND CONVEYANCE

When all of the Secured Obligations have been paid and performed in full, upon written request by Trustor, Beneficiary shall request Trustee in writing to release and reconvey the Property. When Trustee receives Beneficiary's written request for release and reconveyance and all fees and other sums owed to Trustee by Trustor, Trustee shall release this deed of trust and reconvey 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. That person or those persons must pay any costs of recordation. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts are conclusive proof of their truthfulness. Neither Beneficiary nor Trustee will have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

ARTICLE 12 – MISCELLANEOUS

12.01 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 contain further agreements and affirmative and negative covenants by Trustor which apply to this deed of trust and to the Property.

12.02 Entire Agreement. This deed of trust and the other Secured Obligation Documents collectively: (a) represent the sum of the understandings and agreements between Beneficiary and Trustor concerning this credit; (b) replace any prior oral or written agreements between Beneficiary and Trustor concerning this credit; and (c) are intended by Beneficiary and Trustor as the final, complete and exclusive statement of the terms agreed to by them.

12.03 Other Acts. Trustor shall cooperate with Trustee and 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 deed of trust. Promptly (but in no event more than ten days) after request by Trustee or Beneficiary, Trustor will execute, acknowledge and deliver any document which Trustee or Beneficiary deems necessary or advisable for these purposes, and will, on demand, pay any expenses incurred by Trustee or Beneficiary in the preparation, execution and filing of any such documents.

12.04 No Waiver or Cure. Each waiver by Trustee or Beneficiary 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 or Beneficiary to take action on account of any default of Trustor. Consent by Trustee or Beneficiary to any act or omission by Trustor must not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Trustee's or Beneficiary's consent to be obtained in any future or other instance. The exercise by Trustee or Beneficiary 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, have been cured); or impair the security of this deed of trust; or prejudice Trustee, Beneficiary 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 Trustee or Beneficiary of any tenancy, lease or option, or a subordination of the lien of this deed of trust.

12.05 Merger. No merger shall occur as a result of Trustee's or Beneficiary's acquiring any other estate in or any other lien on the Property.

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

12.07 Waiver of Marshalling. Trustor 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. Each successor and assign of Trustor, 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.

12.08 Waiver of Certain Other Laws. To the full extent Trustor may do so, Trustor agrees that Trustor 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, equity or redemption, any statutory or common law right of redemption, and all other exemptions, and Trustor, for Trustor, 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 (including, without limitation, any common law or statutory right of redemption), and all other exceptions, as well as 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. WITHOUT LIMITATION, IF THE UNDERSIGNED TRUSTOR, OR ANY OF THEM, IS A CORPORATION, TRUSTOR HEREBY RELEASES AND WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY JUDGMENT OF FORECLOSURE AND EACH OF THE ITEMS WAIVED AND RELEASED ABOVE, ON BEHALF OF TRUSTOR, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY, SUBSEQUENT TO THE DATE OF THIS DEED OF TRUST, AND ON BEHALF OF ALL OF THE PERSONS TO THE EXTENT PERMITTED BY APPLICABLE LAW OF THE STATE OF OREGON.

12.09 Joint and Several Obligations. If Trustor consists of more than one Person, each Trustor (a) acknowledges and undertakes, together with the other Trustors, joint and several liability for the indebtedness, liabilities and obligations of Trustor under this deed of trust; (b) acknowledges that this deed of trust is the independent and several obligation of each Trustor and may be enforced against each Trustor separately, whether or not enforcement of any right or remedy hereunder has been sought against any other Trustor; and (c) agrees that its liability hereunder and under any other Secured Obligation Document shall be absolute, unconditional, continuing and irrevocable. TRUSTOR EXPRESSLY WAIVES ANY REQUIREMENT THAT TRUSTEE EXHAUST ANY RIGHT, POWER OR REMEDY AND PROCEED AGAINST THE OTHER TRUSTOR 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.

12.10 Authority to Bind Trustor. If Trustor is comprised of multiple Persons, any Person comprising Trustor is hereby authorized to bind all parties comprising Trustor. Trustee or Beneficiary may, at any time and without notice, waive any prior requirement that requests, authorizations, or other actions be taken only by a Designated Person.

12.11 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 Trustor shall not assign its rights or obligations hereunder without Beneficiary's consent. However, this section does not waive the provisions of Section 7.09; and Trustor shall not assign its rights or obligations hereunder without Beneficiary's consent. Beneficiary may transfer all or any portion of its rights under the Secured Obligation Documents to any other Person. Beneficiary may disclose to any actual or proposed transferee any information that Trustor has delivered to Beneficiary in connection with the negotiation of this deed of trust or pursuant to the Secured Obligation Documents; and Trustor shall cooperate fully with Beneficiary in providing that information to any actual or proposed transferee.

12.12 Rights and Remedies Cumulative. 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.

12.13 Severability. 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 may, at its option, declare all Secured Obligations immediately due and payable.

12.14 Amendments in Writing. This deed of trust may not be amended, changed, modified, altered or terminated without the prior written consent of Beneficiary.

12.15 Governing Law. This deed of trust shall be governed exclusively by the laws of the State of Oregon without regard or reference to its conflict of laws principles.

12.16 Counterpart Execution. 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.

12.17 Necessary Action. Trustee and 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.

12.18 Time of the Essence. Time is of the essence of this deed of trust.

12.19 No Construction Against Drafter. 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.

ARTICLE 13— ADDITIONAL OREGON PROVISIONS

In addition to and notwithstanding any provision to the contrary in this deed of trust:

13.01 Review of Statutory Requirements. Trustor represents to Beneficiary that Trustor has reviewed the following statutory requirements and has reviewed with or had the opportunity to review same with counsel of Trustor'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 TRUSTOR'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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURE PAGE TO DEED OF TRUST]

TRUSTOR BY EXECUTION AND DELIVERY OF THIS DEED OF TRUST TO BENEFICIARY, AND BENEFICIARY, BY ACCEPTANCE HEREOF, TO THE EXTENT PERMITTED BY APPLICABLE LAW (A) COVENANT AND AGREE 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 LOAN DOCUMENT, WHETHER ARISING IN CONTRACT, TORT OR BY STATUTE (INDIVIDUALLY AND COLLECTIVELY, A "CONTROVERSY OR CLAIM"); AND (B) WAIVE 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 BENEFICIARY ENTERING INTO THE LOAN AGREEMENT AND OTHER LOAN DOCUMENTS.

Trustor is executing this deed of trust effective as of the day and year first written above.

TRUSTOR

Dated: December 9, 2013

Address for notices:
1255 Jordan Creek Parkway
West Des Moines, Iowa 50266
Attention: David Hill

HILL ENTERPRISES COMPANY, an Iowa corporation

By: _____

DAVID HILL
President

[ACKNOWLEDGEMENTS OF DEED OF TRUST ON FOLLOWING PAGE]

[ACKNOWLEDGEMENTS OF DEED OF TRUST]

STATE OF Florida)
COUNTY OF Lee) SS

This instrument was acknowledged before me on December 9th, 2013 by DAVID HILL, as President of HILL ENTERPRISES COMPANY, an Iowa corporation.

(SEAL)

My commission expires:

January 17, 2016

Dorothy F. Gresh
Notary Public

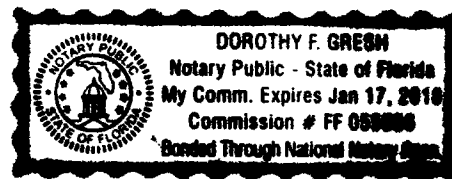


EXHIBIT A

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

Legal Description of Real Estate

Parcel A:

Parcels 1 and 2 of Land Partition 05-11 being a re-plat of portions of Parcel 1 & 2 of LP 60-94 situated in the SW 1/4 of Section 28, the SE 1/4 of Section 29, Sections 31, 32, 33, Township 37 South, Range 8 East of the Willamette Meridian and Sections 4, 5, 6, the NE1/4 of Section 7, The North 1/2 of Section 8, The NW 1/4 of Section 9, Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, being recorded with the County Clerk on June 2, 2011 in Volume 2011-006764.

Parcel B:

A 60 foot wide drainage/irrigation easement across Parcel 3 of Land Partition 05-11 for the benefit of Parcel 2 of Land Partition 05-11 as created by the plat filed June 2, 2011 in Volume 2011-006764.