

Amertitle
MTG 31994m

2015-002938
Klamath County, Oregon
04/01/2015 12:24:41 PM
Fee: \$132.00

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Thomas L. Palotas
Pepple Cantu Schmidt PLLC
1000 Second Avenue, Suite 2950
Seattle, Washington 98104

Prudential Loan No. 717610969

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

**TRUST DEED, SECURITY AGREEMENT,
AND FIXTURE FILING
WITH ASSIGNMENT OF RENTS AND PROCEEDS, LEASES AND AGREEMENTS**

**THIS DOCUMENT CONSTITUTES A FIXTURE FILING
IN ACCORDANCE WITH ORS § 79.0502(3)**

The maturity date of the obligations secured by this Trust Deed is on or before January 1, 2035.

This TRUST DEED, SECURITY AGREEMENT, AND FIXTURE FILING WITH ASSIGNMENT OF RENTS AND PROCEEDS, LEASES AND AGREEMENTS (this "**Trust Deed**") dated March 23, 2015, is made by DUANE MARTIN RANCHES, L.P., a California limited partnership, ("**Borrower**") as grantor, having a mailing address at 2021 Highway 88, Ione, California 95640, to AMERITITLE ("**Trustee**") as trustee, having offices at 300 Klamath Avenue, P.O. Box 5017, Klamath Falls, Oregon 97601, for the benefit of THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation, ("**Lender**") as beneficiary, having offices at 2998 Douglas Blvd, Suite 225 Roseville, California 95661, referencing Loan No. 717610969.

WITNESSETH:

Borrower IRREVOCABLY GRANTS, CONVEYS, TRANSFERS AND ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit of Lender, all of Borrower's right, title and interest now owned or hereafter acquired in and to the Property, FOR THE PURPOSE OF SECURING, in such order of priority as Lender may determine, payment of the Indebtedness and performance of the Secured Obligations.

ARTICLE 1

DEFINITIONS

1.1 Defined Terms.

“Fixtures” means any and all property affixed to the Land and/or located upon or within the Improvements which are so related to the Land that an interest in such property arises under applicable real estate or real property law.

“Improvements”: All (i) building improvements (***“Buildings”***) and fixtures now or hereafter located on the Land, including, without limitation, all buildings, sheds, warehouses, storage facilities and other buildings, (ii) stockwater equipment located on or used in connection with the Land, including, without limitation, wells, well casings, pumps, booster pumps, motors, engines, gearheads, sand filters and pressure systems pumps, drainage pipe, and culverts, (iii) enclosures of the Land or any part thereof, including, without limitation, fences, gates, shuts, posts, poles, barbed wire and electric wire, and (iv) electric, gas and water lines and equipment located on the Land, including, without limitation, transformers, circuit breakers, switch boxes, fuse and breaker panels, regulators, cut on/off valves, wiring and pipe.

“Land” means the real property legally described on Exhibit A, together with all existing and future easements and rights affording access to it, all appurtenances, easements, estates, development rights, air rights, all oil, gas and minerals and other hydrocarbon substances on or hereafter on or under the Land before or after extraction and all rights and interests thereto or therein, and all other interests, rights and privileges relating to the Land, and any land lying in the streets, roads or avenues adjoining the Land or any part thereof.

“Laws and Restrictions” means all laws, regulations, orders, codes, ordinances, rules, statutes and policies, restrictive covenants and other covenants relating to the development, occupancy, ownership, management, use, and/or operation of the Property or otherwise affecting the Property or Borrower.

“Leases” means any and all leases, rental agreements, farm leases, or other occupancy agreements in which Borrower is lessor, including subleases and tenancies following attornment, and any and all guaranties thereof, now or hereafter affecting or covering all or any part of the Land or Improvements.

“Loan Agreement” means the Loan Agreement between Borrower and Lender having the same date as this Trust Deed, as amended, restated, replaced, supplemented or otherwise modified from time to time.

“Note” means the Promissory Note dated on or about the same as this Trust Deed and executed by Borrower in the original principal amount of , payable to Lender or its order, and all modifications, renewals, extensions and replacements thereof. The Note has a maturity date of January 1, 2035.

“Permitted Exceptions” means those title exceptions set forth in the title insurance policy issued in favor of Lender that insures the priority of this Trust Deed, and each Lease permitted under the Loan Agreement.

“Property” means all of Borrower’s right, title and interest, whether now owned or hereafter acquired, in and to:

- (a) The Land, Improvements, Leases, Property Agreements, Rents and Proceeds, and Water Rights.
- (b) All trademarks, service marks, designs, logos, names or similar identifications pertaining to the Land or under which the Property may be known or operated, whether registered or unregistered, and all rights to carry on business under such names, and any related goodwill associated in any way with such names or the Property.
- (c) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or the Improvements.

- (d) All account and general intangibles (as such terms are defined in Article 9 of the Uniform Commercial Code) arising out of or incident to the ownership, development or operation of the Land and Improvements, and all other tangible and intangible property and rights relating to the Land and Improvements or the operation thereof, or to be used in connection with the Land and Improvements.
- (e) All insurance policies pertaining to the Land and the Improvements, and all proceeds, including all claims to and demands for them, from the voluntary or involuntary conversion of any of the Land, Improvements or the other Property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding.
- (f) All claims and causes of action and their proceeds for any damage or injury to the Land, the Improvements or the other Property or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact and all causes of action and recoveries now or hereafter existing for any loss or diminution in value of the Property.
- (g) All products and proceeds of all of the foregoing.

Notwithstanding the foregoing or any other provision in this Trust Deed or the other Loan Documents, "Property" does not include: (A) rolling stock; portable irrigation motors on wheels customarily towed by a motorized vehicle; or (B) any "equipment", as defined in Article 9 of the Uniform Commercial Code, that is not part of the Improvements; or (C) any mobile or manufactured home that may be located on the Land.

"Property Agreements" means any and all agreements related to the development, ownership, management or operation of the Land and its Improvements, including licenses, reports, surveys, studies, development agreements, maintenance or management agreements, agreements regarding water, and governmental authorizations, approvals and permits, as the same may be amended or otherwise modified or newly entered into from time to time.

"Receiver" means any trustee, receiver, custodian, fiscal agent, liquidator or similar officer.

"Rents and Proceeds" means all rents, royalties, revenues, issues, profits, proceeds (including, without limitation proceeds from the sale of all or any portion of the Land, the Property, or any interest therein) and other income and receipts from the Property.

"Secured Obligations" means (a) the due and punctual payment of the Indebtedness by Borrower and (b) the performance of any and all other obligations of Borrower to Lender under the Loan Documents.

"Water Rights" means all of Borrower's right, title and interest in all water (including any water inventory in storage), water rights and entitlements, other rights to water and to receive water, and water rights of every other kind or nature, that serve the Land, including, without limitation, stored water, groundwater, surface water, riparian rights, drainage rights, and all rights to obtain water from governmental water district and non-governmental water companies.

1.2 **Other Definitions.** Capitalized terms used but not defined in this Trust Deed are defined in the Loan Agreement.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender as follows, which representations and warranties shall be true as of the date of this Trust Deed and as of the date of each disbursement of the Loan:

2.1 **Authorization and Validity.** Borrower is the lawful owner of the Property and holds good and marketable title to the Property free and clear of all defects, mortgages, liens, encumbrances, easements, exceptions, assessments, security interests, claims and rights of others, except the Permitted Exceptions. Borrower has the power and authority to grant the Property as provided in and by this Trust Deed, to own and operate the Property, and to execute, deliver, and perform the obligations under the Loan Documents. Borrower is in compliance with all Laws and Restrictions.

2.2 **Additional Representations and Warranties.** (a) The Property is used principally or primarily for agricultural or ranching purposes. (b) All costs for labor and materials for the construction of the Improvements have been paid in full. (c) This Trust Deed secures an obligation incurred exclusively for commercial, business or investment purposes and Borrower warrants to Lender that the Loan proceeds shall be used exclusively for commercial, business or investment purposes. (d) All public roads and streets necessary to serve the Property and its Improvements have been completed, are serviceable, and have been dedicated and formally accepted by the appropriate governmental entities. (e) Except as disclosed to Lender in writing in connection with the Loan closing, there is no personal residence located on the Land. (f) The Property is assessed for real estate tax purposes as one or more wholly independent tax lot(s), separate from any adjoining land or improvements, and no other land or improvements are assessed and taxed together with the Property. (g) This Trust Deed is not now and at no time will it be a residential trust deed as defined in ORS §86.705(3).

2.3 **Water Rights.**

- (a) The Land has, and will continue to have, the continuing, enforceable Water Rights to receive irrigation water from such sources, in such quantities, and at such times and locations as is reasonably satisfactory for the purposes of irrigated agriculture, without interruption and in such quantities, and at such times and locations as has been historically available to the Land, without any currently pending or, to Borrower's best knowledge, threatened interruption. Borrower has duly filed all notices and other documents required under the laws of the State of Oregon in connection with Water Rights and the supply and use of water on the Land. All water rights certificates and permits for the appropriation and use of surface water and groundwater for the Land have been duly issued, are owned solely by Borrower, and are in full force and effect and in good standing.
- (b) Except as previously disclosed in writing by Borrower to Lender, all irrigation, drainage and water control systems necessary or desirable to provide drainage and irrigation to the Property are located within the boundaries of the Property or are available via non-terminable easements benefiting the Property.
- (c) With respect to all portions of the Land that lie within state water project districts, Borrower represents and warrants that: (i) portions of the Land known as the Keno Ranch are located within the Keno Irrigation District; (ii) Borrower has a contract with each such district providing for sufficient state water project water to water stock and cultivate crops grown on such portions of the Land; (iii) such contractual right has not been transferred by grant, contract, condemnation or otherwise; and (iv) Borrower is not in default of district assessments or charges.
- (d) Borrower represents and warrants to Lender that: (i) water used for stock and irrigation on the portions of the Land known as Sprague River Ranch is derived from wells located upon the Land; (ii) Borrower has filed with the Oregon Water Resources Department all notices and other documents required under Water Law and is the sole owner of a water right certificate issued by the Oregon Water Resources Department in connection with such wells authorizing the existing use of the well water, and such Certificate and all such use is appurtenant to the Land; (iii) Borrower's use of well water has been continuous since appropriation of such water rights and is in compliance with its water right certificate; and (iv) to the best of Borrower's knowledge, all water drawn from

such wells is derived from a ground water basin lying wholly beneath the Land upon which such well is located.

- (e) Borrower represents and warrants to Lender that: The rights of Borrower to share in the reasonable beneficial use of the natural flow of water passing any portion of the Land, including the Klamath River and the Sprague River, (together with all other rights to water located upon or supplied to such portion of the Property, the "***Riparian Rights***") have not been transferred by grant, contract, condemnation or otherwise. Borrower has filed with the Oregon Water Resources Department all notices and other documents required under Water Law and is the sole owner of a water right certificate issued by the Oregon Water Resources Department in connection with Riparian Rights authorizing the existing use of such water, and such certificate and all such use is appurtenant to the Land. Borrower's use of its Riparian Rights has been continuous since appropriation of such water rights and is in compliance with its water right certificate. The Riparian Rights are derived from water originating in the watershed supplying such Riparian Rights and no other watershed.
- (f) 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, or any rule or regulation promulgated thereunder.

2.4 **Crop Patents and Trademarks.** Each specimen and name of crops grown on the Land, now or in the future, are legally authorized, and no claim has been made or threatened by any person for patent, trademark or any other intellectual property right infringement with respect to any such crops or their names.

ARTICLE 3 COVENANTS

Borrower covenants and agrees as follows:

3.1 **Insurance.** Borrower, at its sole cost and expense, will keep and maintain for the mutual benefit of Borrower and Lender the insurance required under the Loan Agreement. All of Borrower's right, title and interest in and to all policies of property insurance and any unearned premiums paid thereon are assigned (to the fullest extent assignable) to Lender who shall have the right, but not the obligation, to assign the same to any purchaser of the Property at any foreclosure sale.

3.2 **Irrigation Water.**

- (a) The Property will continue to have continuing, enforceable Water Rights to receive irrigation water from such sources, in such quantities, and at such times and locations as are reasonably satisfactory for the purposes of farming, without substantially increased cost, and in such quantities, and at such times and locations as has been historically available to the Land.
- (b) Borrower shall timely take or cause to be taken such actions as shall be necessary to maintain all Water Rights and shall not materially decrease the entitlement under any Water Right without Lender's prior written consent.
- (c) Borrower shall abide by the provisions of the rules and regulations of the water district and local drainage district in which the Land is located. Borrower covenants to immediately apply for all permits and approvals to adequately provide water for the Property in amounts and of such nature as shall be sufficient to allow the development, operation and maintenance of the agricultural operations on the Land and, once issued, will keep them in full force and effect.
- (d) If Lender acquires title to the Property whether by foreclosure, deed in lieu of foreclosure or otherwise, Borrower agrees to continue to operate and maintain the irrigation, drainage and water control system currently operating on any adjoining land owned or controlled by Borrower to provide drainage and irrigation to the Property and to furnish the same in a fair and equitable

manner and at a cost to be determined but which shall be the then customary and proportional charge for lands in similar use within said irrigation, drainage and water control system. To the extent continuation of the operation and maintenance of said irrigation, drainage and water control system requires the assignment, transfer, or renewal of any Water Right, Borrower agrees to cooperate with Lender in accomplishing the same, to the extent such Water Rights are assignable, transferable or renewable.

- (c) The covenants contained in this Section 3.2 shall survive the foreclosure of this Trust Deed and the conveyance to or acquisition by Lender of title to the Property, and are covenants running with the Land, and shall be binding upon Borrower, its successors and assigns so long as this Trust Deed and the Secured Obligations remain outstanding or so long as Lender or its successors and assigns hold title to the Property, whichever is later, but shall terminate upon payment in full of the Secured Obligations and the reconveyance of this Trust Deed (taking title by foreclosure or deed in lieu of foreclosure is not such payment or reconveyance).

3.3 **Restrictive Uses.** Borrower will not initiate, join in, or consent to any change in the current use of the Land or in any zoning ordinance, private restrictive covenant, assessment proceedings or other public or private restriction limiting or restricting the uses that may be made of the Land or any part thereof or in any way change the boundaries of the Land (including without limitation, any agreed boundary line changes or lot line adjustments).

3.4 **Prohibited Transfers.** Borrower will not cause, suffer or permit any Transfer except as permitted under the Loan Agreement.

3.5 **Permitted Exceptions; Appurtenant Easements.** Borrower will timely perform all of the material covenants and other obligations made or owing by Borrower to any other person related to the Property, including, without limitation, the Permitted Exceptions and each easement that is appurtenant to the Land.

ARTICLE 4

ASSIGNMENT OF RENTS AND PROCEEDS, LEASES AND AGREEMENTS

4.1 **Assignment of Rents and Proceeds and Leases.** As security for the Secured Obligations, Borrower assigns and transfers to Lender and grants Lender a security interest in: (a) the Leases; and (b) the Rents and Proceeds whether now due, past due or to become due, and gives to and confers upon Lender any and all rights and claims of any kind that Borrower may have against lessees under the Leases or account debtors, and the right, power and authority to collect such Rents and Proceeds, and apply the same to the Indebtedness or the satisfaction of any obligation. Borrower irrevocably appoints Lender its agent to, at any time, demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in the name of Borrower or in the name of Lender, for all such Rents and Proceeds.

4.2 **Assignment of Property Agreements.** As security for the Secured Obligations, Borrower sells, assigns, transfers, sets over and delivers to Lender and grants Lender a security interest in all of Borrower's right, title and interest in and to any and all Property Agreements. The foregoing assignment encompasses the right of Borrower to (a) terminate any of the Property Agreements, (b) perform or compel performance and otherwise exercise all remedies under the Property Agreements, and (c) collect and receive all sums which may become due Borrower or which Borrower may now or shall hereafter become entitled to demand or claim, under the Property Agreements.

4.3 **Revocable License.** So long as there is no Event of Default, Borrower shall have a license to collect all Rents and Proceeds and all other sums which may become payable to Borrower under the Property Agreements. If there is an Event of Default, Lender shall have the right, on written notice to Borrower, to terminate and revoke such license and shall have the right and authority then or thereafter to

exercise and enforce any and all of its rights and remedies provided in Section 4.1 and Section 4.2 or by law or at equity.

4.4 **Non-Responsibility.** Lender's acceptance of the assignments in Section 4.1 and Section 4.2 and all the rights, powers, privileges and authority so granted shall not obligate Lender to assume any obligations in respect of the Rents and Proceeds or under the Property Agreements or take any action thereunder or to expend any money or incur any expense or perform or discharge any obligation, duty or liability in respect of the Rents and Proceeds or under the Property Agreements or to assume any obligation or responsibility for the nonperformance of the provisions thereof by Borrower.

ARTICLE 5

SECURITY AGREEMENT AND FIXTURE FILING

5.1 **Fixture Filing.** This Trust Deed constitutes a fixture filing with respect to all Fixtures included in the Property.

5.2 **Grant of Security Interest.** This Trust Deed will be filed for record in the real property records of Klamath County, Oregon, and constitutes a security agreement pursuant to the Uniform Commercial Code with respect to:

- (a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Trust Deed; and
- (b) Any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Borrower as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Trust Deed).

Borrower grants Lender a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations.

5.3 **UCC Filing.** Borrower agrees to execute and deliver on demand and irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower to execute, deliver and, if appropriate, file with the appropriate filing officer or office such instruments as Lender may request or require in order to impose, perfect or continue the perfection of the lien or security interest created by this Trust Deed, all at Borrower's expense. Borrower authorizes Lender to file all documents Lender regards as necessary to evidence or perfect the security interests granted by this Trust Deed and to continue or amend the same.

ARTICLE 6

REMEDIES

6.1 **Remedies.** If there is an Event of Default, Lender may at any time declare all of the Indebtedness to be due and payable without any further presentment, demand, protest or notice of any kind. Lender, in its sole discretion, may also do any of the following: (i) Lender may, in person or by agent, and without notice to Borrower, enter upon and take possession of the Property, in its own name or in the name of Trustee, and exercise all rights and powers of Borrower with respect to the Property, either in the name of Borrower or Lender, and do any act which Lender deems necessary to preserve the value or marketability of the Property. (ii) Lender may sue for or otherwise collect the Rents and Proceeds, and apply them, less Costs incurred in their collection, against the Secured Obligations, all in such order as Lender may determine. (iii) Lender may appear in and defend any action or proceeding purporting to affect, in any manner whatsoever, the Secured Obligations, the security hereof or the rights or powers of Lender or Trustee. (iv) Lender may pay, purchase or compromise any encumbrance, charge or lien that in the judgment of Lender or Trustee is prior or superior to this Trust Deed. (v) Lender may commence an action to foreclose this Trust Deed in any manner provided hereunder or by law, including electing to foreclose by exercise of the power of sale granted under this Trust Deed. (vi) With respect to any

personal property, Lender may proceed as to both the real and personal property in accordance with Lender's rights and remedies in respect of the Land, or proceed to sell said personal property separately and without regard to the Land. (vii) Lender may seek specific performance of any provisions in the Loan Documents. (viii) Lender may sue for and recover judgment on the Note either before, during or after any proceedings for the enforcement of the Loan Documents and without any requirement of any action being taken to realize on the Property or otherwise enforce the Loan Documents. (ix) Lender may exercise any other right or remedy available at law or in equity under this Trust Deed, the other Loan Documents or any statute. In exercising any of the foregoing, Lender may pay necessary Costs. All remedies of Lender in this Trust Deed are cumulative and in addition to any and all other rights and remedies provided in the other Loan Documents or by law, including any right of offset. The exercise of any right or remedy by Lender shall not cure or waive any Event of Default, or invalidate any act done pursuant to any notice of Default, or prejudice Lender in the exercise of any of its other rights under the Loan Documents.

6.2 **Appointment of Receiver.** In addition to the rights and remedies provided under this Trust Deed, if there is an Event of Default, as a matter of strict right and without notice to Borrower or anyone claiming under Borrower, and without regard to the then value, adequacy or condition of the Property, the danger of loss, removal, or material injury to the Property, or the solvency of any Loan Party, or the condition of the Property, Lender may apply ex parte to any court having jurisdiction to appoint a Receiver without bond to enter upon and take possession of the Property. Borrower waives notice of any application for the appointment of a Receiver, provided a hearing to confirm such appointment with notice to Borrower is set within the time required by law. Any such Receiver shall have all the powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry as provided herein. Unless earlier terminated, the receivership shall continue until the date of confirmation of a foreclosure sale.

6.3 **UCC Remedies.** In addition to the rights and remedies provided under this Trust Deed, if there is an Event of Default, Lender may exercise all rights and remedies of a secured party under the Uniform Commercial Code as to any Property that is personal property and shall have (i) the right to cause any of the Property which is personal property to be sold at any one or more public or private sales as permitted by applicable law and to apply the proceeds thereof to the Indebtedness or the satisfaction of any of the Secured Obligations, and (ii) the right to apply any Property which is cash, negotiable documents or chattel paper to the Indebtedness or to the satisfaction of any of the Secured Obligations. Any such disposition may be conducted by an employee or agent of Lender or Trustee. Any person, including both Borrower and Lender, shall be eligible to purchase any part or all of such personal property at any such disposition.

6.4 **Advances.** If Borrower fails to perform or comply with any term in the Loan Documents or any other agreement, then Lender in its sole discretion: (a) may make any payment hereunder or thereunder payable by Borrower, and take out, pay for and maintain any of the insurance policies provided for herein or therein; and/or (b) if there is an Event of Default, perform any such other act to be performed by Borrower and enter the Property for such purpose. No payment or performance by Lender shall be deemed to have cured any Default or Event of Default.

6.5 **No Mortgagee in Possession.** Neither the assignments in Section 4.1 or Section 4.2 or Lender's exercise of any of its rights or remedies under this Trust Deed shall be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part thereof, unless and until Lender, in person or by its own agent, assumes actual possession thereof, nor shall appointment of a Receiver for the Property by any court at the request of Lender or by agreement with Borrower or the entering into possession of the Property by such Receiver be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation thereof.

6.6 **Foreclosure Sale.** To the full extent allowed by law, Borrower waives its right, if any, to require that the Property be sold as separate lots, parcels or items, and Lender shall have the right, in its sole and absolute discretion, to cause the Property to be sold either as a whole or in separate lots or parcels or items as Lender shall determine, and in such order as Lender may determine, and if Lender elects more than one sale or other disposition of the Property, Lender at its option may cause the sales to be conducted simultaneously or successively, on the same day or at different days or times and in such order as Lender may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Trust Deed on any part of the Property not then sold until all the Indebtedness has been paid. If Lender elects to dispose of the Property through more than one sale, Borrower shall pay the Costs incurred with each such sale and proceeding. At any such sale, Lender may acquire the Property and, in lieu of paying cash, may pay by crediting against the Secured Obligations the amount of its bid, after deducting therefrom any sums which Lender or Trustee is authorized to deduct under the provisions of the Loan Documents.

6.7 **Waiver of Order of Sale and Marshaling.** Lender shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of any of the remedies provided herein. To the fullest extent permitted by law, Borrower, any party who consents to this Trust Deed, and any party who now or hereafter acquires an interest in the Property and who has actual or constructive notice hereof, waives any and all right to require marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein, or to direct the order in which any of the Property will be sold in the event of any sale under this Trust Deed.

6.8 **Trustee's Deed.** If there is a non-judicial sale of the Property, or any part thereof, the recitals in the Trustee's deed shall be conclusive proof of the matters recited, including all notices and procedures required for a duly conducted trustee's sale, and such recitals shall be effective and conclusive against Borrower, its successors and assigns, and all other persons. The Trustee's receipt of the purchase money shall be sufficient discharge to such purchaser from all obligations to see to the proper application of the purchase money.

6.9 **Costs.** All Costs incurred by Lender or Trustee in the exercise of any right or remedy under this Trust Deed: (i) shall be immediately due and payable on demand; (ii) shall accrue interest under the Loan Agreement from the date of expenditure by Lender or Trustee; and (iii) shall be added to the Indebtedness and secured by the other Loan Documents prior to any right, title or interest in or claim upon the Property attaching or accruing subsequent to the lien of this Trust Deed. This Section 6.9 shall apply whether or not the sum was expended or the cost or expense incurred while there is an Event of Default.

6.10 **Expenses.** Expenses of retaking, holding, preparing for sale, selling or the like pertaining to the Property shall be borne by Borrower and shall include Lender's and Trustee's Attorney Fees. Borrower, upon demand of Lender shall assemble the Property and make it available to Lender at the Property, a place which is deemed to be reasonably convenient to Lender and Borrower. Lender shall give Borrower at least ten (10) days prior written notice of the time and place of any public sale or other disposition of the Property or of the time after which any private sale or any other intended disposition is to be made. Any such notice sent to Borrower in the manner provided for the mailing of notices herein is deemed to be reasonable notice to Borrower.

6.11 **Expenses during Redemption Period.** The purchaser at any foreclosure sale hereunder may, during any redemption period, make such repairs and take such actions on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insurance of the Property. All sums expended by the purchaser in the exercise of any such right or remedy and all reasonable costs and expenses so incurred, together with interest thereon as provided in the Loan Agreement from the date of expenditure are Costs and shall be added to the amount required to be paid for the redemption from such sale.

6.12 **Additional Provisions as to Remedies.** No recovery of any judgment by Lender or Trustee and no levy of an execution upon the Property or any other property of Borrower shall affect the lien and security interest created by this Trust Deed and such liens, rights, powers, and remedies shall continue unimpaired as before. Lender or Trustee may resort to any security given by this Trust Deed or any other security now given or hereafter existing to secure the Indebtedness, in whole or in part, in such portions and in such order as Lender or Trustee may deem advisable, and no such action shall be construed as a waiver of any of the liens, rights, or benefits granted hereunder. If Lender or Trustee has started enforcement of any right by foreclosure, sale, entry, or otherwise and such proceeding shall be discontinued, abandoned, or determined adversely for any reason, then Borrower, Lender and Trustee shall be restored to their former positions and rights under the Loan Documents with respect to the Property, subject to the lien and security interest hereof.

6.13 **Waiver of Rights and Defenses.** To the fullest extent Borrower may do so under applicable law, Borrower (a) will not at any time insist on, plead, claim, or take the benefit of any statute or rule of law now or later enacted providing for any appraisalment, valuation, stay, extension, moratorium, redemption, or any statute of limitations; (b) for itself, its successors and assigns, and for any person ever claiming an interest in the Property (other than Lender), waives and releases all rights of redemption, reinstatement, valuation, appraisalment, notice of intention to mature or declare due the whole of the Indebtedness, in the event of foreclosure (or extinguishment by transfer of title by power of sale) of the liens and security interests created under the Loan Documents; (c) shall not be relieved of its obligation to pay the Indebtedness as required in the Loan Documents nor shall the lien or priority of the Loan Documents be impaired by any agreement renewing, extending, or modifying the time of payment or the provisions of the Loan Documents (including a modification of any interest rate), unless expressly released, discharged, or modified by such agreement. Regardless of consideration and without any notice to or consent by the holder of any subordinate lien, security interest, encumbrance, right, title, or interest in or to the Property, (i) Lender may release any person liable for payment of the Indebtedness or any portion thereof or any part of the security held for the Indebtedness, and (ii) any of the provisions of the Loan Documents may be modified without impairing or affecting the lien, security interest, or the priority of the modified Loan Documents as security for the Indebtedness over any such subordinate lien, security interest, encumbrance, right, title, or interest.

ARTICLE 7

ADDITIONAL TERMS

7.1 **No Waiver.** No failure or delay by Lender to insist upon strict, full and complete payment when due of any portion of the Indebtedness, or to insist upon the performance of any Secured Obligation when due, or to exercise any right or remedy hereunder shall constitute a waiver of any such failure to pay, or waiver of the breach of any such Secured Obligation, or a waiver of the later exercise of such right or remedy.

7.2 **Notices.** All notices or other written communications hereunder between Borrower and Lender shall be given as provided in the Loan Agreement. All notices to Trustee shall be delivered to the address indicated on page 1 of this Trust Deed.

7.3 **Joinder of Foreclosure.** Should Lender hold any other or additional security for the performance of the Secured Obligations, its sale or foreclosure upon any Event of Default, in Lender's sole discretion, may be prior to, subsequent to, or joined or otherwise contemporaneous with any sale or foreclosure under this Trust Deed.

7.4 **Governing Law.** This Trust Deed shall be governed by and construed in accordance with the laws of the State of Oregon without regard to its conflict of laws rules.

7.5 **Subordination.** At Lender's option evidenced by Lender's unilateral declaration to this effect, this Trust Deed may be foreclosed subject to any or all Property Agreements or Leases and to any and all

contracts of sale; provided that the lien of this Trust Deed and Lender's rights to any proceeds and Net Proceeds for any Casualty or Taking shall remain prior.

7.6 **Waiver of Right to Trial by Jury.** Borrower waives, to the fullest extent allowed by law, the right to a jury trial in any action under or relating to the Loan Documents, all as provided in the Loan Agreement.

7.7 **Successors and Assigns.** This Trust Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

7.8 **Execution in Counterparts.** This Trust Deed may be executed in any number of counterparts, each of which shall be effective upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Trust Deed may be detached from any counterpart of this Trust Deed without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Trust Deed identical in form hereto but having attached to it one or more additional signature pages.

7.9 **Certain Obligations Unsecured.** Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Trust Deed shall not secure the following obligations (the "*Unsecured Obligations*"): (a) any obligation evidenced by or arising under the Indemnity Agreement; or (b) any other obligation in this Trust Deed or in any of the other Loan Documents to the extent that such other obligation relates specifically to the presence on the Property of Hazardous Materials (as defined in the Indemnity Agreement) and is the same or has the same effect as any of the obligations evidenced by or arising under the Indemnity Agreement. Any Event of Default under the Indemnity Agreement with respect to the Unsecured Obligations is an Event of Default under this Trust Deed, notwithstanding the fact that the Unsecured Obligations are not secured by this Trust Deed. Nothing in this Section shall, in itself, impair or limit Lender's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all Secured Obligations.

ARTICLE 8

STATE-SPECIFIC PROVISIONS

8.1 Oregon Warning.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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 THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, 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 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010

EXHIBIT A

(Legal Description of the Land)

The Land is located in Klamath County, Oregon, and is legally described as follows:

Keno Ranch

Parcel 1:

A tract of land situated in Sections 2, 3, 9, 10, 11, 15 and 16, Township 40 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

- Section 2: Government Lot 10 and Government Lot 4, lying Westerly of the mean high water mark of the Klamath River.
- Section 3: S1/2 S1/2
- Section 9: NE1/4, E1/2 NE1/4 NW1/4, the East 20 acres of Government Lot 12; the S1/2, lying Easterly of the mean high water mark of the Klamath River.
- Section 10: All of Section 10, lying North and Westerly of the mean high water mark of the Klamath River.
- Section 11: Government Lot 6 and Government Lot 1, lying North and Westerly of the mean high water mark of the Klamath River.
- Section 15: All of Section 15, lying North and Westerly of the mean high water mark of the Klamath River.
- Section 16: All of Section 16, lying North and Easterly of the mean high water mark of the Klamath River.

Parcel 2:

Government Lots 3 and 11 in Section 2 and the N1/2 of the S1/2 of Section 3, Township 40 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

Sprague Ranch

Parcel 3:

In Township 36 South, Range 11 East of the Willamette Meridian, in the County of Klamath, State of Oregon:

- Section 8: All of Section EXCEPT that part lying North of Sprague River and
 - Section 9: All of South 1/2 EXCEPT that part lying North of the Sprague River and
 - Section 10: All of Government Lots 19 through 32, inclusive EXCEPT that part lying North of the Sprague River and
 - Section 11: Government Lots 20, 21, 28 and 29
 - Section 17: Government Lots 1 through 16, inclusive and
 - Section 16: Government Lots 1 through 16 inclusive, Lots 19 through 22, inclusive, and Lots 27 through 30, inclusive and
 - Section 15: The West 1/2 of Government Lot 4, all of Lots 19 through 22, inclusive
- EXCEPTING THEREFROM those portions conveyed to the Oregon-California Eastern Railway Company in deed dated June 11, 1928 and recorded June 11, 1928 in Volume 80 in page 458, and also in

deed dated May 20, 1927 and recorded May 21, 1927 in Volume 75, in Page 474 Deed records of Klamath County, Oregon.

ALSO EXCEPTING THEREFROM a portion conveyed to Klamath County for road purposes by deed dated November 24, 1928 and recorded April 23, 1929 in Volume 85 in page 613, Deed Records of Klamath County, Oregon.

Parcel 4:

Government Lots 27 through 30, inclusive of Section 15, Township 36 South, Range 11 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

EXCEPTING THEREFROM that portion conveyed to the Oregon-California Eastern Railway Company in deed dated May 20, 1927 and recorded May 21, 1927 in Volume 75 in page 474, Deed records of Klamath County, Oregon.

Parcel 5:

All of Government Lots 17, 18, 23, 24, 25, 26, 31 and 32, Section 7, Township 36 South, Range 11 East of the Willamette Meridian, in the County of Klamath, State of Oregon; Lots 1 through 16, inclusive in Section 18, Township 36 South, Range 11 East of the Willamette Meridian; Lots 19, 20 and 22, lying Northeasterly of the Northeasterly right of way line of the Sprague River Highway in Section 18, Township 36 South, Range 11 East of the Willamette Meridian.

EXCEPTING that portion deeded to Oregon California & Eastern Railway Company for right of way by deed recorded in Book 80 at page 432 and Book 90 at page 474, Deed Records of Klamath County, Oregon.

AND ALSO EXCEPTING THEREFROM a strip of land 60 feet wide conveyed to Klamath County for road purposes by deed dated November 26, 1928, recorded April 23, 1929 in Book 85 at page 617, Deed Records of Klamath County, Oregon.

Parcel 6:

A parcel of land situate in the SW1/4 of Section 17, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

A permanent easement for a 50 foot road right of way across the East side of the SW1/4 of Section 17, Township 36 South, Range 11 East of the Willamette Meridian as contained in instrument recorded November 10, 1958 in Book 306, page 151, Deed Records of Klamath County, Oregon.

Parcel 7:

A parcel of land situate in Section 16, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

The East 676 feet of the South 676 feet of Section 16, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon. EXCEPTING THEREFROM any portion lying within the Sprague River Highway.

Parcel 8:

Government Lots 17, 18, 23, 24, 25, 26, 31 and 32, in Section 16, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, EXCEPTING therefrom any portion lying within the right of way of the O.C. & E. Railroad right of way. ALSO EXCEPTING THEREFROM the East 676 feet of the South 676 feet of said Section 16.

Government Lots 17, 18, 23, 24, 25, 26, 31 and 32 in Section 17, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

Parcel 9:

The East 1650 feet of that portion of the Southwest quarter of Section 17, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, EXCEPTING THEREFROM the Northerly 1267.20 feet

Parcel 10:

In Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon

Section 17: Government Lots 20, 21, 28 and 29 EXCEPTING THERFROM the East 1650 feet of the SW1/4

Section 18: Government Lots 17, 18, 23, 24, 25, 26 and 32

EXCEPTING THEREFROM any portion of the above described property lying Southerly of the Sprague River Highway.

Parcel 11:

Government Lots 17, 18, 23, 24, 25, 26, 31 and 32 of Section 15, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

Parcel 12:

Government Lots 21 and 22, EXCEPTING the West 990 feet of Government Lot 21 in the SW1/4 of Section 17, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

Parcel 13:

Government Lots 19 and 20, EXCEPTING the West 990 feet of Government Lot 20 in the SW1/4 of Section 17, Township 36 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

Parcel 14:

Government Lots 1, 2, 7, 8, 9, 10, 15 and 16 in Section 13, Township 36 South, Range 10 East, Willamette Meridian, County of Klamath, State of Oregon, EXCEPT any portion thereof lying within the right-of-way of the O. C. & E. Railroad.

Keno Ranch APN's:

4008-00000-00400-000, 4008-00000-00500-000, 4008-00000-00110-000, 4008-00000-01400-000, 4008-00000-01500-000, 4008-01500-00200-000, 4008-01500-00300-000, 4008-01500-00400-000, 4008-01600-00100-000, 4008-01600-00400-000, 4008-01600-00500-000.

Sprague Ranch APN's:

3610-01300-00100-000, 3611-00000-00500-000, 3611-00000-00600-000, 3611-00000-00900-000, 3611-00000-01000-000, 3611-00000-02600-000, 3611-00000-02700-000, 3611-00000-02800-000, 3611-008A0-06600-000, 3611-008B0-06500-000, 3611-009C0-00800-000, 3611-009D0-00600-000, 3611-010C0-00500-000, 3611-010D0-00101-000, 3611-010D0-00700-000, 3611-01600-00100-000, 3611-01600-00200-000, 3611-01600-00300-000, 3611-01600-00400-000, 3611-01600-00500-000, 3611-01700-00100-000, 3611-01700-00200-000, 3611-01700-00300-000, 3611-01700-00400-000, 3611-01700-00500-000, 3611-01700-00600-000, 3611-01700-00700-000, 3611-01800-00100-000, 3611-01800-00200-000, 3611-01800-00300-000