

2018-008364

Klamath County, Oregon

07/13/2018 10:38:01 AM

Fee: \$152.00

Recording Requested by:
Farm Credit Services Southwest, PCA

WHEN RECORDED MAIL TO:

Farm Credit Services Southwest, PCA
3003 South Fair Lane
Tempe, AZ 85282

Space Above This Line For Recorder's Use

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST and ASSIGNMENT OF RENTS ("Deed of Trust"), made this 11th day of June, 2018, between **Arnott Duncan**, as "Grantor", **First American Title Insurance Company**, as "Trustee", and **Farm Credit Services Southwest, PCA**, as "Beneficiary", a corporation organized under the laws of the United States of America, with its office at 3003 South Fair Lane, Tempe, AZ 85282.

1. GRANT IN TRUST. Trustor IRREVOCABLY GRANTS, CONVEYS AND ASSIGNS to Trustee, in trust for the benefit of Beneficiary, with power of sale together with right of entry and possession, the property described below in Sections 1.1 through 1.5 inclusive (collectively, the "Property").

1.1 The real property (the "Real Property") situated in the **County of Klamath, State of Oregon**, described as follows: in Exhibit "A".

1.2. BUILDINGS, FIXTURES, AND OTHER IMPROVEMENTS. All buildings, structures, equipment, goods that are or will become fixtures (including, but not limited to, trees, vines and shrubs, or other permanent plantings) upon or under the Real Property and improvements of every kind and description now or hereafter constructed or placed on the Real Property; all standing timber and timber to be cut located on the Real Property; and all pumping plants, electrical generators, wind machines, and fencing and storage tanks, now or hereafter used in connection with the Property, all of which are hereby declared to be fixtures. Without limiting the generality of the foregoing, a description of some fixtures may also be included with the description of the Real Property or in an exhibit hereto.

1.3. LEASES AND OTHER RIGHTS. All existing and future leases, subleases, licenses, permits, agreements, and concessions relating to the use or enjoyment of the Real Property, including those related to grazing rights, all oil, gas, and minerals and interests, and payments therefrom in, under, on or with the Real Property; and all tenements, hereditaments, easements, rights-of-way and appurtenances to the Property.

1.4. WATER ASSETS. All right, title, and interest at any time of Trustor (or any of its bailees, agents, or instrumentalities), whether now existing or hereafter arising or acquired, whether direct or indirect, whether owned legally, of record, equitably or beneficially, whether constituting real or personal property (or subject to any other characterizations), whether created or authorized under existing or future laws, rules, ordinances, permits and regulations of all local, regional, county, state and federal governmental authorities ("Applicable Laws"), and however arising in, including without limitation, the water, water rights and other assets and items described below in Sections 1.4(a) through 1.4(i) inclusive, which shall collectively be called "**Water Assets**". References to "water" and "water rights" are used herein in the broadest and most comprehensive sense of the term(s). The term "**water**" includes water rights and rights to water or whatever rights to money, proceeds,

property or other benefits are exchanged or received for or on account of any Water Assets or any conservation or other nonuse of water, including whatever rights are achieved by depositing one's share of any Water Assets in any water bank or with any water authority, or any other water reallocation rights. Without limiting the generality of the foregoing, a description of some Water Assets may also be included with the description of the Property set forth above or in an exhibit hereto.

- (a) All water (including any water inventory in storage), water rights and entitlements, other rights to water and other rights to receive water or water rights of every kind or nature whatsoever including: (a) the groundwater on, under, pumped from or otherwise available to the Property, whether as the result of groundwater rights, contractual rights or otherwise; (b) Trustor's right to remove and extract any such groundwater including any permits, rights or licenses granted by any governmental authority or agency or any rights granted or created by any use, easement, covenant, agreement, or contract with any person or entity; (c) any rights to which the Property is entitled with respect to surface water, whether such right is appropriative, riparian, prescriptive, decreed or otherwise and whether or not pursuant to permit or other governmental authorization, or the right to store any such water; (d) any water, water right, water allocation, distribution right, delivery right, water storage right, or other water-related entitlement appurtenant or otherwise applicable to the Property by virtue of the Property being situated within the boundaries of any district, agency, or other governmental entity or within the boundaries of any private water company, mutual water company, or other non-governmental entity; (e) all water and existing and future water rights, however evidenced, to the use of water for irrigation, livestock and domestic purposes, including irrigation and watering equipment and systems, ditches, laterals, conduits, and rights-of-way used to convey such water or to drain the Property, all of which rights are or are hereby made appurtenant to the Property.
- (b) All stock, interest or rights (including any water allocations, voting or decision rights) in any entity, together with any and all rights from any entity or other person to acquire, receive, exchange, sell, lease, or otherwise transfer any Water Assets, to store, deposit or otherwise create water credits in a water bank or similar or other arrangement for allocating water, to transport or deliver water, or otherwise to deal with any Water Assets.
- (c) All licenses, permits, approvals, contracts, decrees, rights and interests to acquire or appropriate any Water Assets, water bank or other credits evidencing any right to Water Assets, to store, carry, transport or deliver Water Assets, to sell, lease, exchange, or otherwise transfer any Water Asset, or to change the point for diversion of water, the location of any Water Assets, the place of use of any Water Assets, or the purpose of the use of any Water Assets.
- (d) All rights, claims, causes of action, judgments, awards, and other judicial, arbitral or administrative relief in any way relating to any Water Assets.
- (e) All storage and treatment rights for any Water Assets, whether on or off the Property or other property of Trustor, together with all storage tanks, and other equipment used or usable in connection with such storage and any water bank deposit credits, deposit accounts or other rights arising on account of the storage or nonuse of any Water Assets.
- (f) All rights to transport, carry, allocate or otherwise deliver Water Assets by any means wherever located.
- (g) All irrigation and watering equipment, including all pumps, pumping plants, storage tanks, motors, electrical generators (all of which are declared to be fixtures) and all systems, ditches, laterals, conduits, and rights-of-way used to convey such water or to drain the Property.
- (h) All guaranties, warranties, marketing, management or service contracts, indemnity agreements, and water right agreements, other water related contracts and water reallocation rights, all insurance policies regarding or relating to any Water Assets.
- (i) All rents, issues, profits, proceeds and other accounts, instruments, chattel paper, contract rights, general intangibles, deposit accounts, and other rights to payment arising from or on account of any use, nonuse, sale, lease, transfer or other disposition of any Water Assets.

1.5. ADDITIONS AND PROCEEDS. All additions, accretions substitutions and replacements of any of the Property; all proceeds of the Property, including all proceeds of present and future insurance policies; and all condemnation awards or payments now or later made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any misrepresentation, damage or injury to, or defect in, the Property; and all books and records and files relating to the Property.

2. ASSIGNMENT OF RENTS. TRUSTOR ABSOLUTELY AND UNCONDITIONALLY ASSIGNS, transfers, conveys and sets over to Beneficiary all the rents including prepaid rents, royalties, issues, profits, revenue, income, security deposits, and other benefits of the Property arising from the use, non-use, enjoyment, sale, transfer or other disposition of all or any portion thereof, including those set forth in Section 1.4(i) above, or from any lease, mineral lease, or agreement pertaining to the Property (collectively the "**Rents**"); whether now existing or hereafter arising and whether now due, past due or to become due; SUBJECT, HOWEVER, to the right and authority given to Trustor by Section 19 hereof. This assignment of the Rents shall be perfected automatically without appointment of a receiver or Beneficiary becoming a mortgagee in possession.

3. OBLIGATIONS SECURED. Trustor makes the grant, conveyance, and assignment of the Property for purposes of securing the following indebtedness and other obligations (collectively, "**Indebtedness**") in any order of priority that Beneficiary may choose:

- (a) payment of the indebtedness and performance of the obligations of Trustor evidenced by the following promissory note(s) (collectively "**Notes**") and/ or the following continuing guaranty(s) (collectively "**Guaranty**"), and any other documents executed by Trustor in conjunction with the Notes or Guaranty:

☒ a Revolving Line of Credit Promissory Note and Supplement to a Master Loan Agreement dated as of 06/11/2018, in the stated principal amount of \$2,000,000.00.

☒ a Revolving Line of Credit Promissory Note and Supplement to a Master Loan Agreement dated as of 06/11/2018, in the stated principal amount of \$4,000,000.00.

- (b) the payment of such additional loans or advances, including advances under a revolving line of credit, with interest thereon, as hereafter may be made to or guaranteed by Trustor, or Trustor's successors or assigns, evidenced by a promissory note, guaranty, loan agreement or otherwise; PROVIDED HOWEVER, THAT, such additional loans or advances will be secured by this Deed of Trust only if the promissory note, guaranty, loan agreement or other document evidencing the obligations of Trustor relative to such loans or advances recites that it is to be secured by this Deed of Trust;
- (c) the payment and performance of the obligations set forth in any document evidencing an extension, renewal, modification, replacement, reamortization, conversion, or restatement of any Indebtedness secured by this Deed of Trust, including without limitation renewal and/or substitute notes, guaranties, and loan agreements.
- (d) the performance of every obligation and agreement of Trustor whether contained or incorporated by reference in this Deed of Trust, or contained in any loan agreement, loan document or guaranty executed by Trustor in favor of Beneficiary, with respect to any loan or advance secured by this Deed of Trust; and
- (e) the payment of all sums expended or advanced by Beneficiary pursuant to the terms of this Deed of Trust, together with interest thereon as herein provided.

The Notes are payable by Trustor and/or others to the Beneficiary as therein set forth. The Notes and other documents evidencing the Indebtedness may contain variable or adjustable interest rate provisions.

The continuing validity and priority of this Deed of Trust as security for future loans or advances shall not be impaired by the fact that at certain times hereafter there may exist no outstanding Indebtedness from Trustor to Beneficiary or no commitment to make loans or advances.

4. PERSONAL PROPERTY SECURITY AGREEMENT. The Property will be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust. To the extent any of the Property, (including without limitation any Water Assets or fixtures), is deemed to be personal property, this Deed of Trust shall also be a security agreement. Trustor does hereby grant to Beneficiary a security interest in all such personal property and shall not grant any security interest in such personal property to any other third party. Trustor authorizes Beneficiary to file financing statements in all jurisdictions as Beneficiary may elect and further, grants to Beneficiary all of the rights and remedies of a secured party under the Uniform Commercial Code and other applicable state law (collectively "UCC"), which rights are cumulative. This Deed of Trust also constitutes a fixture filing under the UCC covering any Property which now is or later may become a fixture attached to the Real Property.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES TO EACH OF THE FOLLOWING:

5. USE OF PROCEEDS. To use loan proceeds solely for the purposes set forth in the loan application(s) or Notes or as otherwise required by Beneficiary.

6. CONDITION OF PROPERTY. To keep the Property in good condition, working order and repair; to care for the Property in accordance with standards of good husbandry and to keep all trees, vines and crops on said land properly cultivated, irrigated, fertilized, sprayed, and fumigated; not to sell, transfer, assign, encumber or convey any Water Assets, or to enter into an agreement for the nonuse of or permit any action resulting in the loss of any Water Assets, without the prior written consent of Beneficiary; not to remove, destroy or suffer the removal or destruction of any building, fence, canal, well or other improvements or fixtures thereon; not to remove any oil, gas, minerals, or top soil which impairs soil fertility; not to remove, replace or alter any horticultural or viticultural tree, vine or shrub or other permanent plantings thereon without the prior written consent of Beneficiary, except in the ordinary course of business; to promptly complete or restore promptly and in good and workmanlike manner any portion of the Property which may be constructed, damaged or destroyed thereon; to comply with all Applicable Laws, covenants and restrictions affecting the Property; not to commit or permit waste thereof; not to commit, or permit any act upon the Property in violation of Applicable Laws; to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general; and to perform all obligations of Trustor under any lease of the Property.

7. INSURANCE. To provide, maintain and deliver to Beneficiary, fire, extended coverage, flood, and all other types of insurance issued by companies acceptable to Beneficiary, and on terms and amounts as may be required by Applicable Laws or Beneficiary, with loss payable endorsements (including lender loss payable endorsements) solely in favor of Beneficiary. In the event of loss, the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to reduce the Indebtedness or promptly restore or repair the property damaged. Failure to obtain, maintain or deliver to Beneficiary the insurance required is an event of default under this Deed of Trust.

At least thirty (30) days prior to the expiration of any such policy of insurance, Trustor will deliver a policy renewing or extending such expiring insurance and written evidence of payment of the premium for such insurance. If any such policy and evidence of payment (or copies of same, if originals cannot be delivered to Beneficiary) are not so delivered to Beneficiary, without notice to or demand upon Trustor and without releasing Trustor from any obligation under this Deed of Trust, Beneficiary may (but is not obligated to), at Trustor's expense, obtain insurance in such types, on such terms and in such amounts as Beneficiary in its sole discretion shall decide, from any insurance agency or company acceptable to it. Any insurance obtained by Beneficiary shall be for its sole benefit and to protect the security of this Deed of Trust. The expense and cost of such insurance shall, at Beneficiary's sole option, be payable on demand or added to the Indebtedness as provided herein. Neither Trustee nor Beneficiary shall be responsible for the maintenance of any such insurance, the collection of any proceeds from such insurance, or the insolvency of any insurance company or underwriter. Trustor shall promptly notify Beneficiary in writing of any damage caused by fire or other casualty to the Property and if Beneficiary so instructs, shall promptly at Trustor's expense, whether insurance proceeds are sufficient, commence diligently to complete restoration of the Property to its same value and condition existing before such loss.

8. DEFENSE OF TITLE. To appear in and litigate any action or proceeding which may affect the Property, or the rights of Beneficiary or Trustee. Beneficiary or Trustee may appear in and litigate any such action or proceedings,

including any bankruptcy, partition or condemnation proceeding, affecting the Property, or Beneficiary's interest therein, in which event Trustor agrees to pay all costs and expenses thereof, including attorney's fees and costs arising therefrom.

9. TAXES, LIENS AND ASSESSMENTS. To pay on or before the due date all taxes and assessments, encumbrances, charges, rents, and liens affecting all or any part of the Property, including all Water Assets.

10. FEES AND COSTS. If Beneficiary or Trustee uses the services of attorneys, accountants, appraisers, consultants, or other professional or outside assistance, including the services of in-house counsel or any other professional who is an employee of Lender, the reasonable amount of fees, costs and expenses ("Expenses") incurred by Beneficiary or Trustee to use such persons in connection with any of the following, or as indicated elsewhere in this Deed of Trust, shall be payable by Trustor on demand. Beneficiary or Trustee may, at its option, add the amount of such Expenses to any portion of the Indebtedness plus an appropriate amount of Beneficiary's stock or participation certificates required in connection with the loan (as required by federal law or regulation or Beneficiary's bylaws), and charge interest on such amount at the interest rate applicable to such portion of the Indebtedness. These services include:

- (a) The preparation, modification or enforcement of this Deed of Trust, and any other document related to the Indebtedness or to the Property;
- (b) Advising Beneficiary or Trustee concerning its rights and obligations with regard to this Deed of Trust and any other document related to the Indebtedness, or to the Property, including advising Beneficiary or Trustee with regard to any applicable provisions of the Farm Credit Act of 1971, as amended, ("Act"), Farm Credit Administration ("FCA") regulations, any policy or program of Beneficiary, or any other Applicable Laws;
- (c) Any litigation, dispute, proceeding, or action (whether or not dismissed, reduced to judgment, or otherwise resolved), and whether instituted by Beneficiary, Trustee or Trustor or any other person, relating to the Indebtedness, the Property or Trustor's affairs;
- (d) The furtherance of Beneficiary's or Trustee's interest in any bankruptcy, insolvency, or reorganization case or proceeding instituted by or against Trustor, including any steps to (i) modify or terminate the automatic stay, (ii) prohibit or condition Trustor's use of cash collateral, (iii) object to any disclosure statement or plan, (iv) propose or confirm a plan, and (v) prosecute or defend adversary proceedings or contested matters, and take or defend examinations or discovery, whether or not related to any adversary proceeding or contested matter and whether or not dismissed, reduced to judgment, or otherwise resolved;
- (e) The inspection, verification, protection, collection, processing, or disposition of the Property; and
- (f) Any of the type of Expenses incurred by Beneficiary or Trustee in connection with any guaranty of the Indebtedness.

The Expenses shall be in addition to those set forth in any security instrument or any other written agreement between Beneficiary and Trustor.

11. BENEFICIARY MAY ACT FOR TRUSTOR. Should Trustor fail to make any payment or perform an obligation herein then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may cure such default: in such manner and to such extent as either may deem necessary to protect the Property, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; commence, appear in and litigate any action or proceeding purporting to affect the Property or the rights of Beneficiary or Trustee, including any bankruptcy proceeding; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be senior hereto; pay such fees, charges, rents or other payments accruing under or relating to the Property and in exercising any such rights, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary, including attorney's, accountant's, and appraisal fees, environmental fees and costs of related thereto, and all amounts so expended shall be obligations of Trustor secured by this Deed of Trust and shall at Trustee's or Beneficiary's option, be payable upon demand or added to the Indebtedness with interest on such amount at the interest rate applicable to such

portion of the Indebtedness. Nothing herein shall prohibit Beneficiary from entering the Property, at a reasonable time and upon reasonable notice to Trustor, without incurring any obligations whatsoever, for the sole purpose of inspecting the Property.

12. SUMS EXPENDED BY BENEFICIARY. To pay immediately and without demand all sums expended by Beneficiary or Trustee hereunder, with interest from date of expenditure at the same rate as is provided for in the Notes. All such sums shall be secured hereby.

13. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.

13.1. DEFINITIONS. Defined Terms as used in this Section 13:

- (a) **"Environmental Laws"** shall mean all Applicable Laws now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, industrial hygiene or protection of the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC §§9601–9675); the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC §§6901–6992k); the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub L 99–499, 100 Stat 1613); the Hazardous Materials Transportation Act of 1985 (49 USC §§5101–5128); the Solid Waste Disposal Act (42 USC §§6901–6992k); the Clean Water Act (33 USC §§1251–1387); the Clean Air Act (42 USC §§7401–7671q); the Toxic Substances Control Act (15 USC §§2601–2629); and the Hazardous Waste Control Act (CA Health & S C §§25100–25258.2), as amended from time to time.
- (b) **"Hazardous Substances"** shall mean any substance or material that is described, or regulated as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the Environmental Laws.
- (c) **"Release"** shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including continuing migration, of Hazardous Substances into, onto or through the soil, surface water or groundwater of the Property, whether caused by, contributed to, permitted by, or known to Trustor.
- (d) **"User"** means any person other than Trustor who occupies, uses or comes onto or has occupied, used or come onto the Property or any part thereof and any agent or contractor of such a person.

13.2 TRUSTOR ENVIRONMENTAL REPRESENTATIONS. Trustor represents to Beneficiary that, as of the date of this Deed of Trust and to the best of Trustor's knowledge, based on due inquiry and investigation:

- (a) Except as previously disclosed in writing by Trustor to Beneficiary and acknowledged in writing by Beneficiary: (i) no Hazardous Substances in excess of permitted levels or reportable quantities under applicable Environmental Laws are present in, on or under the Property or any nearby real property which could migrate to the Property; (ii) no Release or threatened Release exists or has occurred; (iii) neither Trustor nor any User has ever used the Property or any part thereof for the production, manufacture, generation, treatment, handling, storage, transportation or disposal of Hazardous Substances; (iv) no underground, surface or elevated storage tanks of any kind, wells (except domestic water wells), septic tanks, pits, ponds or other impoundments ("**Tanks**") are or ever have been located in or on the Property; and (v) no investigation, claim, demand, action or proceeding of any kind relating to any Release or threatened Release or any past or present violation of any Environmental Laws relating to the Property has been made or commenced, or is pending, or is being threatened by any governmental authority or other person;
- (b) All operations and activities at, and the use and occupancy of, the Property comply with all applicable Environmental Laws;
- (c) Trustor and every User has, and is in strict compliance with, every permit, license and approval required by all applicable Environmental Laws for all activities and operations at, and the use and occupancy of, the Property;

- (d) Neither the Property, nor any portion thereof, nor any adjacent property or portion thereof, has been or is proposed to be listed as a Superfund or other hazardous waste site under CERCLA as amended, or any similar applicable Environmental Laws; and
- (e) Any written disclosure submitted by or on behalf of Trustor to Beneficiary at Beneficiary's request concerning any Release or threatened Release, past or present compliance by Trustor, User or any other person of any environmental Laws applicable to the Property, the past and present use and occupancy of the Property, any environmental concerns relating to the Property was true and complete when submitted and continues to be true and complete as of the date of this Deed of Trust.

13.3 TRUSTOR AGREES THAT:

- (a) Except in the ordinary course of business, in a good and husbandlike manner and in strict compliance with all applicable Environmental Laws, Trustor agrees that neither Trustor nor any User shall use, produce, manufacture, generate, treat, handle, store, transport, or dispose of any Hazardous Substances in, on or under the Property, or use the Property or any adjacent property of Trustor for any such purposes;
- (b) Trustor shall not cause, contribute to, permit or acquiesce to any Release or threatened Release;
- (c) Trustor shall comply and shall cause every User to comply, with all Environmental Laws applicable to the Property or any adjacent property of Trustor, and all other Applicable Laws relating to the use or occupancy thereof, or any operations or activities thereon;
- (d) With respect to any Tanks disclosed in writing to Beneficiary, Trustor shall comply with all Environmental Laws and any Applicable Laws of city or county fire departments or any other local governmental agency having jurisdiction thereof, applicable to the maintenance and use of such Tanks;
- (e) Trustor shall regularly inspect the Property, monitor the activities and operations of every User and confirm that Trustor and every User has obtained and complies with all permits, licenses and approvals required by all applicable Environmental Laws;
- (f) Immediately after Trustor obtains any information indicating any Release or threatened Release, or that Hazardous Substances in, on or under any nearby property could migrate to the Property or a violation of any Environmental Laws may have occurred or could occur regarding the Property or adjacent property owned by Trustor, Trustor shall give notice to Beneficiary with a reasonably detailed description of the event, or condition in question;
- (g) If Beneficiary obtains any information that Beneficiary believes in good faith indicates a reasonable possibility of a Release or threatened Release, or that Hazardous Substances in, on or under any nearby real property could migrate to the Property or any violation of any Environmental Laws may have occurred or could occur regarding the Property, then Trustor shall, at the expense of Trustor, promptly after a request by Beneficiary, or Beneficiary may at Trustor's expense any time prior to completion of a judicial or nonjudicial foreclosure, engage a qualified environmental engineer to conduct an environmental assessment of the Property as deemed appropriate by Beneficiary and prepare and submit to Beneficiary an acceptable written report from such investigation. Trustor shall, on demand, pay to Beneficiary all sums expended by Beneficiary in connection with any such environmental assessment, together with interest thereon after such demand at the interest rate as set forth in Notes;
- (h) Trustor shall permit, or cause any User to permit, Beneficiary or its agents or independent contractors to enter and inspect the Property (including the taking of building materials, soil and groundwater samples) at any reasonable time and after reasonable notice, except in an emergency, whether or not a default has occurred under this Deed of Trust, and including after the commencement of judicial or nonjudicial foreclosure proceedings, for purposes of determining, as Beneficiary deems desirable: the existence, location or nature of any Hazardous Substances into, onto, or under or from the Property, that is located or has been spilled,

disposed of, discharged or released on, under or about the Property. Trustor acknowledges that all inspections and reviews undertaken by Beneficiary are solely for the benefit and protection of Beneficiary and agrees that Beneficiary shall have no duty to Trustor with respect to Hazardous Substances or Environmental Laws as a result of any such inspections, which shall not result in a waiver of any default by Trustor. If Trustor or any User fails to comply with this section, Beneficiary may obtain affirmative injunctive relief to compel such compliance; and

- (i) If any Release or threatened Release exists or occurs before this Deed of Trust is reconveyed or foreclosed upon, or if Trustor is in breach of any of its representations, or covenants in this Section 13, Trustor shall immediately give notice of the condition to Beneficiary, and Trustor shall at its own expense cause any Hazardous Substances to be cleaned up and removed from the Property, and the Property shall be restored, in compliance with all applicable Environmental Laws (the "**Remediation Work**"). If requested by Beneficiary, Trustor shall submit to Beneficiary, for Beneficiary's prior approval, complete plans and specifications for all Remediation Work to be done before any Remediation Work is performed, except in an emergency. Alternatively, Beneficiary may cause such Remediation Work to be completed at Trustor's expense.

13.4 NOTICE TO GOVERNMENTAL AUTHORITIES. Beneficiary shall have the right, but not the obligation, to advise appropriate governmental authorities of any environmental condition on or affecting the Property that constitutes or may constitute a breach of Trustor's obligations hereunder.

13.5 INDEMNITY OF TRUSTEE AND BENEFICIARY. Trustor and its successors and assigns shall indemnify, defend, protect, and hold harmless Beneficiary, and/or Trustee, its affiliates, and their directors, officers, employees, agents, shareholders, successors and assigns and their officers, employees or agents, from and against any and all claims, suits, damages, foreseeable and unforeseeable consequential damages, liens, losses, liabilities, interest, judgments, cleanup costs, demands, actions, causes of action, injuries, administrative proceedings and orders, consent agreements and orders, penalties, costs and expenses (including any fees and expenses incurred in enforcing this indemnity, any out-of-pocket litigation costs, sums paid in settlement of claims, and all consultant, expert and the reasonable fees and expenses of counsel, including in-house legal services) of any kind whatsoever ("**Claims**") paid, incurred or suffered by, or asserted against Beneficiary and/or Trustee, by any third party or Trustor or any other party to the loan documents related to the Indebtedness, including but not limited to Claims arising out of loss of life, injury to persons, trespass or damage to or contamination of property or natural resources, or injury to business, in connection with or arising out of the activities of Trustor on the Property, Trustor's predecessors in interest, third parties who have been invited, permitted or trespassed on the Property, or parties in a contractual relationship with Trustor, any adjoining landowner, or any of them, or which directly or indirectly arise out of or result from or in any way connected with the Property, whether or not caused by Trustor or within the control of Trustor, including without limitation: (a) the presence, use, generation, treatment, storage, disposal, Release, threatened Release, or discharge of any Hazardous Material or Contaminant at or from said Property and/or the cleanup of Hazardous Materials or Contaminants within, on or under said Property; (b) Trustor's breach of any of the representations, warranties and covenants herein; and (c) Trustor's violation or alleged violation of any applicable Environmental Laws.

13.6 SURVIVAL. NOTWITHSTANDING ANY OTHER PROVISION OF THIS DEED OF TRUST, THE NOTES OR GUARANTY OR ANY LOAN DOCUMENTS, TRUSTOR'S REPRESENTATIONS, COVENANTS AND INDEMNITIES CONTAINED IN THIS SECTION 13 SHALL SURVIVE THE OCCURRENCE OF ANY EVENT WHATSOEVER, INCLUDING WITHOUT LIMITATION THE PAYOFF OF THE NOTES, THE RECONVEYANCE OR FORECLOSURE OF THIS DEED OF TRUST, THE ACCEPTANCE BY TRUSTEE OF A DEED IN LIEU OF FORECLOSURE, OR ANY TRANSFER OR ABANDONMENT OF THE PROPERTY.

14. GRAZING RIGHTS. If any portion of the Property is used by Trustor as the basis for obtaining grazing permits or other grazing rights issued by any governmental agency, including without limitation the U.S. Forest Service, U.S. Department of Agriculture or the Bureau of Land Management, U.S. Department of Interior, Trustor agrees as follows:

- (a) Said grazing permits or other rights are in good standing and have not been modified, reduced or limited in any other respect, except as fully disclosed in writing to Beneficiary;
- (b) Trustor will perform all obligations imposed as a requirement of exercise of said grazing permits or other rights and will comply with all Applicable Laws;
- (c) Trustor will take such timely action as may be required to cause the renewal or reissuance of said grazing permits or other rights as they expire during the term thereof. Trustor agrees the failure to renew or cause the reissuance of any said permits for any reason, is an event of default hereunder and Beneficiary shall have the right to exercise the rights in this Deed of Trust; and
- (d) Trustor agrees to pay all fees, charges, rents or other payments accruing under said permits or any renewals thereof prior to delinquency. In the event Trustor fails to pay any such payment, the amount unpaid shall become a part of the Indebtedness and shall be immediately due and payable.

15. WATER TRANSFERS. Trustor represents that Trustor is not in the business of transferring water and, therefore, any sale or transfer of any Water Assets is not a transfer of goods in the ordinary course of business. Trustor further agrees that in no event will any Water Assets be goods identified to a contract. Trustor represents the Water Assets are sufficient to satisfy all water requirements for the Property, including proper cultivation for all vines, trees, shrubs, and other permanent plantings thereon as of the date hereof. Trustor hereby acknowledges that the availability of the Water Assets to the Property was a significant factor in Beneficiary's decision to extend credit to Trustor and any other persons obligated on the Indebtedness, and that any severance of any Water Assets from the Property would materially harm the Property.

16. FINANCIAL INFORMATION. At Beneficiary's request, Trustor shall provide to Beneficiary financial information in a form acceptable to Beneficiary, including, when so required, a current balance sheet and profit and loss statement. In the case of multiple Trustors, financial information must be provided for each Trustor or otherwise as requested by Beneficiary. Financial information shall be provided at such times during the term of this Deed of Trust as Beneficiary may request.

IT IS MUTUALLY AGREED THAT:

17. CONDEMNATION AWARDS. Any award of damages in connection with any taking or condemnation or injury to the Property by reason of public use, or for damages resulting from private trespass or injury to the Property, is absolutely and unconditionally assigned and shall be paid to Beneficiary, under the terms of this Deed of Trust. Upon receipt of such money, Beneficiary may apply the same on the Indebtedness. Trustor agrees to execute such further documents as may be required to effect the assignments herein made as Beneficiary or Trustee may require. Trustor waives all rights of a property owner under California code of Civil Procedure Section 1265.225 as may be amended, or similar Applicable State Laws, which provides for allocation of condemnation proceeds between the owner and the lienholder.

18. TRUSTEE ACTIONS. At any time, without affecting the liability of any person for the payment of the Indebtedness, and without otherwise affecting the security hereof, Trustee may: (a) consent to or join in the making of any map or plat of the Property; (b) grant any easement or create any restriction thereof; (c) subordinate this Deed of Trust; (d) extend or modify the term of the loan or loans secured hereby; and (e) reconvey without warranty, all or any part of the Property. Trustor agrees to pay reasonable Trustee's fees for any of the foregoing services.

19. COLLECTION OF RENTS. Prior to any default by Trustor in the payment, performance and discharge of any condition, obligation, or agreement of Trustor herein, Trustor may, as the agent and fiduciary representative of Beneficiary for collection and distribution purposes only, collect and receive the Rents as they come due and payable; the Rents are to be applied by Trustor to the payment of the principal and interest and all other sums due or payable on any promissory note or guaranty secured by this Deed of Trust and to the payment of all other sums payable under this Deed of Trust and, thereafter, the balance, if any, shall be distributed to the account of Trustor. However, Beneficiary shall have the right before or after the occurrence of any default to notify any account debtor to pay all amounts owing with respect to Rents directly to Beneficiary. Upon any such default, Beneficiary may at

any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the Indebtedness, enter upon and take possession of the Property or any part thereof, in its own name, sue for or otherwise collect such Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any Indebtedness, and in such order as Beneficiary may determine; also perform such acts of repair, cultivation, irrigation or protection, as may be necessary to conserve the value of the Property; also lease the same or any part thereof for such rental, term, and upon such conditions acceptable to Beneficiary; also prepare for harvest, remove, and sell any crops that may be growing upon the Property, and apply the proceeds thereof upon the Indebtedness.

20. TRUSTEE'S EXERCISE OF REMEDIES IS NO CURE OF DEFAULT. The entering upon and taking possession of the Property, the collection of such Rents, or the proceeds of fire and other insurance policies, or compensation or awards for any taking of or damage to the Property, and the application or release hereunder, shall not waive any default.

21. REMEDIES. Upon default by Trustor in payment of all or a portion of the Indebtedness or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary and in accordance with Applicable Laws for the state ("Applicable State Laws") in which the Property is located. In the event of default, Beneficiary may employ counsel to enforce payment of the Indebtedness, may cause the Trustee to sell the Property in accordance with the power of sale granted herein and the Applicable State Laws, and may exercise such other rights and remedies granted under this Deed of Trust or by law and equity, including but not limited to California Code of Civil Procedure Sections 726.5 and 736 or Applicable State Laws.

Trustee may sell the Property either as a whole or in separate parcels, and in such order as it may determine. The purchase price shall be payable in lawful money of the United States at the time of the sale. In exercising the power of sale herein, Trustee may hold one or more sales of all or any portion of the Property by public announcement at the time and place of sale set forth in the notice thereof, and from time to time thereafter may postpone such sale or sales of all or any portion of the Property to the same or separate days by public announcement at such time fixed by the preceding postponement. Any person, including Trustee or Beneficiary, may purchase at such sale. Beneficiary may credit bid at any such sale, and if Beneficiary is the successful purchaser, it may apply any of the outstanding Indebtedness in settlement of the purchase price.

Beneficiary may resort to and realize upon the security hereunder and any other real or personal property security now or hereafter held by Beneficiary for the obligations secured hereby in such order and manner as Beneficiary may, in its sole discretion, determine; or may resort to any or all such security which may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawful nonjudicial proceedings, or both. If the Indebtedness is also secured by personal property, fixtures or crops, Beneficiary may enforce its security interest in the personal property, fixtures and crops and its lien under this Deed of Trust in any manner and in any order permitted by applicable law.

All remedies are cumulative and none are exclusive; no election by Beneficiary to pursue one remedy or item of collateral shall be deemed to be a release or waiver of any other item of collateral or a release or modification of the liability of Trustor, or any party to the loan documents related to the Indebtedness or any guarantor to pay all Indebtedness or perform in full all obligations to Beneficiary. The foreclosure procedures and provisional remedies against Trustor shall be governed by Applicable State Laws, except that Beneficiary's rights and the Trustor's obligations under the Notes, this Deed of Trust or the Guaranty shall continue to be governed by and construed under the substantive law of the state in which such documents were executed without regard to its conflict of laws principles.

22. NON-WAIVER. The failure of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right. Any waiver by Beneficiary of any default must be in writing and shall not constitute a waiver of any other defaults. Subsequent acceptance of any payment by the holder hereof shall not be deemed a waiver of any default by Trustor or of Beneficiary's rights hereunder as the result of any sale, agreement to sell, conveyance, or alienation, regardless of holder's knowledge of such default, sale, agreement to sell, conveyance, or alienation at the time of acceptance of such payment.

23. SUCCESSORS AND ASSIGNS. This Deed of Trust is binding on all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. In this Deed of Trust, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

24. SUBSTITUTE TRUSTEE. Beneficiary may, from time to time substitute any Trustee to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of the county in which the Property is situated, it shall be conclusive evidence of the appointment of such Trustee, and such new Trustee shall succeed to all of the powers and duties of the Trustee named herein.

25. DUE ON SALE OR TRANSFER.

25.1 In the event the Property, (including any existing or subsequently acquired or created Water Assets), or any interest therein, is transferred or agreed to be transferred or any right to drill is exercised for any oil, gas, or minerals in, on or under the Property, without Beneficiary's prior written consent, all Indebtedness, irrespective of the maturity dates, at the option of the holder hereof, and without demand or notice, shall immediately become due and payable. As used herein, "**transferred**" means sold, conveyed, alienated, exchanged, transferred by gift, further encumbered, pledged, hypothecated, made subject to an option to purchase, or otherwise disposed of, directly or indirectly, or in trust, voluntarily or involuntarily, by Trustor or by operation of law or otherwise. Failure to exercise such option shall not constitute a waiver of the right to exercise this option in the event of any subsequent transfer or subsequent agreement to transfer.

25.2 If Trustor is an entity other than a natural person then all Indebtedness, irrespective of the maturity date, at the option of Beneficiary, and without demand or notice, shall become immediately due and payable if: (a) a beneficial interest in Trustor is transferred; (b) there is a withdrawal or removal of a general partner of a partnership or a manager of a limited liability company; (c) there is a transfer in the aggregate of more than 25% of the voting stock of Trustor if Trustor is a corporation, or there is a transfer in the aggregate of more than 25% of the partnership interests or membership interests if Trustor is a partnership, limited liability company or similar entity; or (d) Trustor is dissolved or its existence as a legal entity is terminated.

26. SEVERABILITY. If any one or more of the provisions in this Deed of Trust or in any promissory note, guaranty, or other document secured hereby shall for any reason be held to be unenforceable, such unenforceability shall not affect any other provision of this Deed of Trust or said promissory note or guaranty, but this Deed of Trust and said promissory notes or guaranties shall be construed as if such unenforceable provision had never been herein or therein

27. NOTICES. The Trustor agrees that he/she is entitled only to those notices required by Applicable Laws and requests that a copy of any notices, including notice of default and of any notice of sale hereunder be delivered to Trustor at the address set forth below and any notices to Beneficiary shall be at the address set forth in the first paragraph of this Deed of Trust. Any notices to either party, including a change of address for receiving any notices, shall be given in accordance with the notice section of the Notes, or master loan agreement or Guaranty or other loan document relating to the Indebtedness.

28. EXHIBITS. All exhibits to this Deed of Trust are made a part of this Deed of Trust.

29. JOINT AND SEVERAL LIABILITY AND LEGAL ENTITY WARRANTY AND CERTIFICATION. If Trustor consists of more than one person, each will be jointly and severally liable for the performance of all of Trustor's obligations under this Deed of Trust. If Trustor is a legal entity, Trustor (and any person signing this Deed of Trust in a representative capacity on behalf of Trustor) represents, that Trustor is duly constituted under Applicable Laws and in good standing; that Trustor has the power, authority, and appropriate authorization to execute this Deed of Trust and enter into the transactions herein and that, when executed, this Deed of Trust, and any document executed by Trustor in connection herewith, shall be legally binding on Trustor. If Trustor is a trust, each trustee executing this Deed of Trust on behalf of the trust also represents, that this Deed of Trust and any document executed in connection herewith is authorized and being executed by all the currently acting trustees of the trust and that the trust has not been revoked, modified, or amended in any manner which would cause any of the foregoing to be incorrect.

30. NON-MERGER. No merger will occur as a result of Beneficiary acquiring any other estate in or any other lien on the Property, unless Beneficiary consents to a merger in writing.

31. WAIVER OF JURY TRIAL/JUDICIAL REFERENCE. AS A SPECIFICALLY BARGAINED INDUCEMENT FOR BENEFICIARY TO ENTER INTO THE NOTES AND TO EXTEND CREDIT TO BORROWER, TRUSTOR WAIVES, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, DISPUTE, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS DEED OF TRUST ALL AS FURTHER SET FORTH IN THE NOTES, MASTER LOAN AGREEMENT, ANY OTHER LOAN DOCUMENT EVIDENCING THE INDEBTEDNESS OR GUARANTY, AS APPLICABLE. IN THE EVENT THIS JURY TRIAL WAIVER IS DEEMED UNENFORCEABLE, THEN TRUSTOR AGREES THAT ALL ACTIONS SHALL BE RESOLVED BY JUDICIAL REFERENCE UNDER THE JUDICIAL REFERENCE PROVISIONS OF THE NOTES, MASTER LOAN AGREEMENT OR GUARANTY, AS APPLICABLE, WHICH ARE HEREBY INCORPORATED INTO THIS DEED OF TRUST BY REFERENCE.

32. COUNTERPARTS. This Deed of Trust may be signed in one or more counterparts which shall constitute one and the same document. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this document.

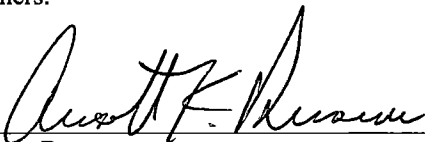
33. MISCELLANEOUS. As used herein, the word “including” means “including without limitation.” The captions used in this Deed of Trust are for convenience only and do not define or limit any terms or provisions. No listing of any specific collateral, items, or other matters in any way limits the scope or generality of any language of this Deed of Trust.

ADDRESSES WHERE NOTICES TO TRUSTOR ARE TO BE SENT:

Arnott Duncan, 17203 W. Indian School Rd., Goodyear, AZ 85338

By signing below, Trustor agrees to all of the terms of this Deed of Trust.

Signers:



Arnott Duncan

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

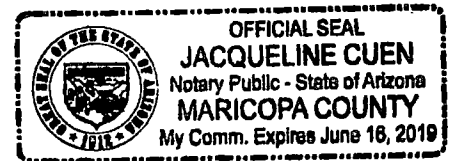
State of Maricopa ^{AZ} J.C.
County of Maricopa

On 6/28/18, before me, Jacqueline Cuen Notary Public, personally appeared Arroth Konean, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Signature Jacqueline Cuen (Seal)



Arnott K. Duncan, III
Customer No. 0006544673
June 11, 2018
Page 1 of 1

Deed of Trust and Assignment
of Rents
County of Klamath, OR
Description of Real Property

Exhibit "A"

The SW1/4 and the West 1/2 of the SE1/4 of Section 9, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon. Except the SW1/4 SW1/4 SW1/4, ALSO EXCEPTING THEREFROM, any portion lying within the limits of the County Road.

All of the SE 1/4 of the NE 1/4 of Section 8, Township 41 South, Range 10 East of the Willamette Meridian, excepting therefrom approximately one acre in the Southwest corner; more particularly described as follows:

Commencing at the Southwest corner of said SE 1/4 of NE 1/4 of said Section 8; thence North on forty line 135 feet to a point; thence East 100 feet to a point; thence Southeasterly to a point on the South line of said forty which point is 396 feet East of the point of beginning; thence West on forty line 396 feet to the point of beginning.

NE 1/4 NE 1/4 of Section 8; NW 1/4 NW 1/4 of Section 9 all being in Township 41 South, Range 10 East of the Willamette Meridian.

All of the SW 1/4 of the NW 1/4 of Section 9, Township 41 South, of Range 10 East of the Willamette Meridian.