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P.O. BOX 50130
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Arthur W. Holden
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Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn

*Also Licensed in Utah and Arizona
**Also Licensed in Missouri & Kansas

November 30, 2005

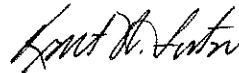
Roxanne Brown
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

RE: McFarland Livestock

Dear Roxanne:

Enclosed with this letter is an Affidavit we indicated we would obtain from Mr. Tex Kauer. We are also enclosing some information he found regarding the lease of the pivot that was placed in this system to commence operation in the 1984 season. Mr. Kauer thought he had a copy of the contract with the power company to connect the electricity to the pivot, but he was unable to locate it. He has requested a copy from the power company and so when it arrives, we will try to forward that as well. As always, if there is anything else we need to do, please feel free to let us know at your convenience.

Yours very truly,



Kent W. Foster

Enclosures

AFFIDAVIT OF TEX J. KAUER

STATE OF IDAHO)
)ss
County of Bonneville)

Tex J. Kauer, being first duly sworn, on his oath, deposes and says:

1. Affiant is a resident of Lemhi County, Idaho, where he has resided near the community of Lemhi, Idaho, since he first came to the community in 1958. Affiant is the president and manager of McFarland Livestock Company, Inc., has personal knowledge of the facts stated herein, and makes this affidavit of his own personal knowledge.
2. Commencing in the early 1980s, affiant, his family members and employees undertook to make some improvements in the operation of portions of McFarland Livestock land in Sections 4, 5, 8 and 9 of Township 16 North, Range 25 E.B.M., all of which were shown in the 1987 FSA aerial photograph which was submitted to IDWR (Boise office) by affiant's counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., of Idaho Falls, Idaho, with a letter dated November 16, 2004, and enclosures. The early 1980s effort included improving the ability to use water from five sources to supply sprinkler irrigation system, including a partial pivot and hand sprinkler lines, as well as flood irrigation, of a total of some 194.2 acres of land. Specifically, the following items were completed by the beginning of the irrigation season of 1984:
 - a. A ditch which formerly brought water from Mill Creek under water right no. 74-2159 was adjusted to deliver water directly into a pond located near the NE corner of the NENW, Section 8 of said Township and Range, a portion of which extends into the NW corner of the NWNE of the same Section. A pump was placed at the downstream end of the pond in the NWNWNE of said Section 8 from which water is delivered for operation of the partial pivot and hand lines, and water is also taken from said pond through a ditch system for flood irrigation of some of the land.
 - b. There are some relatively small springs which arise near the pond in the NENENW of said Section 8, the waters of which are impounded in the pond.
 - c. There are some larger springs located in the SWNENW of said Section 8 which have historically produced approximately 110 miner's inches or 2.2 cfs. When affiant first

came to the land in 1958, the water from said springs was diverted into an old ditch which flowed almost directly north, following the base of a hill and provided water for flood irrigation of approximately 45 to 50 acres of land in the SW¼ of Section 5 of said Township and Range. For reasons that are not clear to affiant, no claim reflecting this diversion and use appears to have been filed in the Lemhi adjudication. During the period of that proceeding (1969 to 1982), affiant's father-in-law was in control of such matters, and, particularly during the latter part of that period, affiant's father-in-law experienced some serious health issues. With the installation of the pump, mainline, partial pivot and hand lines in 1984 and the rearrangement of the ditch system, the acreage formerly irrigated from said springs was increased by some 24.6 acres.

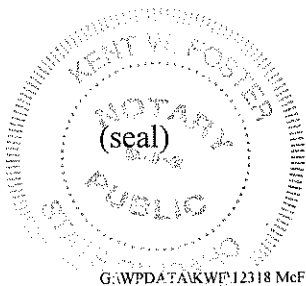
- d. Since before affiant came to this land in 1958, waste water which comes from 3 draws marked with a blue marker on the map supplied with the November 16, 2004, letter was also collected in the ditch system and contributed to the irrigation of all of the lands both prior to and subsequent to the 1984 changes.
- e. In the late 1980s, it became apparent that in drouth years there was not adequate water to irrigate all of the lands under the sprinkler system. In 1990, affiant applied for and received a permit, number 74-7305 to divert groundwater and add it to or use it in place of the other sources which provided for the irrigation of the 194.2 acres. Based upon the claims filed by affiant, the 194.2 acres should be a permissible place of use for the commingled water from all sources, but, affiant assumes that claim number 74-2159 would be limited to 113.6 acres (plus 24.6 acres under the 1984 enlargement) of the total, 74-1560 would be limited to 11 acres (plus 24.6 acres under the 1984 enlargement) of the total, the new claim to the larger springs would be limited to 45 acres (plus 24.6 acres under the 1984 enlargement), the new claim for the wastewater would be limited to 169.6 acres (plus 24.6 acres under the 1984 enlargement which brings the total acreage to 194.2 acres) and 74-7305 would be limited to 150 acres of the total 194.2 actually irrigated.

Tex J. Kauer
Tex J. Kauer

STATE OF IDAHO)
)ss.
County of Bonneville)

On this 29 day of November, 2005, before me a notary public in and for said State, personally appeared Tex J. Kauer known or identified to me (or proved to me on the oath of Tex J. Kauer) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Kent V. Foster
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My commission expires: 11/20/2010

G:\WPDATA\KWF\12318 McFarland Livestock (Tex Kauer)\Tex J. Kauer Affidavit.wpd:cdv



LAKE LEASING Co.

P.O. BOX 2248 • BAKERSFIELD, CALIFORNIA 93303 • PHONE (805) 399-9124
CABLE: LAKECO • TWX: 910-327-1107 LAKECO

December 19, 1983

Mr. Tex J. Kauer
McFarland Livestock Co., Inc.
Box 50
Lemhi, Idaho 83464

RE: Equipment Lease # 83-11/1-A1-7A
Lease Commencement Date . . . November 14, 1983
First Payment Date November 14, 1983 (paid)
Next Payment Date. November 14, 1984 (\$7,972.74)

Dear Mr. Kauer:

We are enclosing copies of the documents signed by you to secure your equipment lease through Lake Leasing Co. If any questions should arise regarding your lease, please do not hesitate to contact us.

We appreciate the opportunity to be of service to you.

Sincerely,

LAKE LEASING CO.

Rosemary Huron-Heming
Administrative Assistant

enclosures

rhk

☐ WOSCO LEASING CO. (LESSOR)

☒ LAKE LEASING CO. (LESSOR)

P.O. Box 2248
3404 State Road
Bakersfield, California 93303

ACCEPTANCE NOTICE

LEASE NO. 83-11/P-A1-7A

DATE OF
LEASE:

LESSEE:

McFarland Livestock Co., Inc.
Box 50
Lewhi, Idaho 83464

SUPPLIER:

Rain For Rent, Inc.
P.O. Box 1743
Idaho Falls, Idaho 93403-1743

☒ Corporation ☐ Partnership ☐ Sole Proprietorship

QUANTITY	DESCRIPTION OF EQUIPMENT	SERIAL NO.
1	Reinke Electrogator center pivot - 1318 ft. in length	
1	100 hp. Aurora Verti-line short couple turbine pump	

EQUIPMENT LOCATION: 6.5 miles north of Leadore, Idaho; Cotton Rd., 1.2 miles west, 1 mi. N into farm
T 16 N, R 25E BM, Section 5 & 8, Lemhi Co., Idaho

TERM	RENTALS PAYABLE	NUMBER AND AMOUNT OF RENTAL PAYMENTS	ADVANCE RENTAL PAYMENTS	SECURITY DEPOSIT
84 months	☐ Monthly ☒ Annually ☐ Quarterly ☐ Semi-Annually	7 payments of \$7,972.74 each	\$7,972.74 first payment and last payments	\$ 0

TO: LESSOR:

1. The undersigned ("Lessee") is the lessee named in the Equipment Lease referred to above ("the Lease"). To induce Lessor to pay the Supplier named above for the personal property covered by the Lease (herein called "Equipment"), Lessee hereby represents, certifies and confirms as follows:

- The Equipment was delivered to Lessee at the location designated in the Lease on Nov. 14, 1983.
- All assembly, installation and other services required for the proper use and operation of the Equipment have been performed and completed to the satisfaction of Lessee.
- The Equipment is in good condition, working order and repair, and is in compliance with all specifications provided by Lessee to Lessor or Supplier.
- The Equipment has been inspected and accepted by Lessee as satisfactory in all respects.

2. Lessee further acknowledges and agrees as follows:

(a) LESSOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CAPACITY, CONDITION, DESIGN, DURABILITY, MATERIAL, MERCHANTABILITY, PERFORMANCE, QUALITY, SUITABILITY, WORKMANSHIP OR VALUE OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, REGULATION, SPECIFICATION OR CONTRACT, OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR ANY ASSOCIATED ITEM OR ANY ASPECT THEREOF, AS TO LESSOR. LESSEE LEASES THE EQUIPMENT "AS IS." Lessor is neither the manufacturer of the Equipment nor a manufacturer's agent, supplier or dealer, and has no familiarity with the Equipment.

(b) If the Equipment fails to comply with any representation or warranty made by Supplier or the manufacturer thereof, or is defective or improperly assembled or installed or otherwise unsatisfactory for any reason, Lessee shall make claim on account thereof solely against Supplier and/or the manufacturer, and shall nevertheless pay all rent and perform all other obligations under the Lease without asserting any such claim against Lessor. Regardless of cause, Lessee will not assert any claim whatsoever against Lessor for loss of anticipatory profits or any other indirect, special or consequential damages.

(c) Upon any assignment of the Lease by Lessor or any assignee of Lessor's interest therein, Lessee agrees that any such assignee shall not assume or have any liability with respect to any obligation of Lessor to Lessee, and that Lessee will pay such assignee all rent and other amounts due under the Lease without asserting any claim, defense or set-off of any kind or nature whatsoever that Lessee may have against Lessor or any previous assignee, whether arising under the Lease or any other transaction or otherwise.

NOTICE TO LESSEE: DO NOT SIGN THIS ACCEPTANCE NOTICE UNTIL THE EQUIPMENT HAS BEEN DELIVERED, ASSEMBLED, INSTALLED AND ACCEPTED BY YOU AS SATISFACTORY IN ALL RESPECTS. PAYMENT TO SUPPLIER WILL NOT BE MADE UNTIL THIS NOTICE IS SIGNED AND RETURNED TO LESSOR.

LESSEE: McFarland Livestock Co., Inc.

By

Tex J. Kauer, President

By

Date signed:

Dec 2, 1983

☐ WOSCO LEASING CO. (LESSOR)

☒ LAKE LEASING CO. (LESSOR)

P.O. Box 2248
3404 State Road
Bakersfield, California 93303

EQUIPMENT LEASE



LEASE NO. 83-11/1-A1-7A

DATE OF LEASE: 11/14/83

LESSEE:
Barnard Livestock Co., Inc.
Box 70
Tulsa, Oklahoma 74101

SUPPLIER:
LAKE FOR RENT, Inc.
P.O. Box 1773
Baker, Idaho 83401-1773

☐ Corporation ☐ Partnership ☐ Sole Proprietorship

QUANTITY	DESCRIPTION OF EQUIPMENT	SERIAL NO.

EQUIPMENT LOCATION: 1.2 miles north of Leadore, Idaho, Cotton Hill, 1.2 miles west, 1 mi. S. 1 mi. E. of R 20E, W 1, Section 5 & 7, Lush Co., Idaho

TERM	RENTALS PAYABLE	NUMBER AND AMOUNT OF RENTAL PAYMENTS	ADVANCE RENTAL PAYMENTS	SECURITY DEPOSIT
_____ months	☐ Monthly ☒ Annually ☐ Quarterly ☐ Semi-Annually	_____ payments of \$ _____ each	\$7,572.74 First payment and last _____ payments	\$ _____

TERMS AND CONDITIONS OF LEASE

1. **Lease.** Subject to the terms and conditions set forth herein, Lessor hereby leases to Lessee, and Lessee hereby hires from Lessor, the personal property described above and on any schedule attached hereto or made a part hereof (herein with all present and future accessories, additions, attachments, repairs and replacement parts called "Equipment").

2. **Term.** The lease term shall commence on the date of shipment of the Equipment or any part thereof to Lessee or such later date as Lessor may designate in writing ("the Commencement Date") and shall continue thereafter for the term set forth above. This Lease is not cancelable by Lessee during the term hereof.

3. **Rent.** Lessee agrees to pay all rental payments set forth above on the dates designated herein without notice or demand. All rental payments and any other amounts due from Lessee to Lessor shall be payable to Lessor at Lessor's address set forth above or to such other person or address as Lessor may specify from time to time in writing. The first rental payment shall be due on the commencement date or such later date as Lessor may designate in writing, and all subsequent rental payments shall be due on the same day of each successive rental period thereafter until paid in full. Any advance rental payments other than the first rental payment shall be applied on the Commencement Date to the last maturing rental payments due hereunder. Advance rental payments shall not be refundable for any reason whatsoever. Lessee's obligation to pay rent shall be absolute and unconditional and shall be made without abatement, deduction or set-off of any kind or nature whatsoever.

4. **Request for Equipment.** Lessee requests Lessor to order the Equipment from the Supplier named above; arrange for delivery to Lessee at Lessee's expense, and pay for the Equipment upon acceptance thereof by Lessee. Lessee acknowledges and agrees: (a) that Lessee has independently selected the Supplier and the Equipment and that Lessor will rely on specifications provided by Lessee in ordering the Equipment; (b) that Lessee shall be responsible for all costs and expenses relating to the selection, shipment, delivery, assembly, installation, testing, adjusting, servicing, operation and acceptance of the Equipment; (c) that Lessor's payment to Supplier will occur only after Lessee has confirmed (on Lessor's standard form) satisfactory delivery, assembly, installation, inspection and acceptance of the Equipment; (d) that Lessor shall have no responsibility for any delay, failure or refusal on the part of Supplier to accept or fill Lessor's order; (e) that upon acceptance of the Equipment by Lessee, Lessee shall execute Lessor's standard acceptance notice; (f) that Lessor may, at its option, terminate this Lease and all obligations to Lessee, and recover from Lessee any deposit paid by Lessee to Supplier, if the Equipment has not been delivered, assembled, installed and accepted by Lessee as provided herein within 60 days from the date that Lessor orders the Equipment; and (g) that Supplier is neither an agent of Lessor nor authorized to bind Lessor or waive or alter any term, condition or provision of this Lease.

5. **Disclaimer of Warranties and Waiver of Defenses.** LESSOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CAPACITY, CONDITION, DESIGN, DURABILITY, MATERIAL, MERCHANTABILITY, PERFORMANCE, QUALITY, SUITABILITY, WORKMANSHIP OR VALUE OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, REGULATION, SPECIFICATION OR CONTRACT, OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR ANY ASSOCIATED ITEM OR ANY ASPECT THEREOF. AS TO LESSOR, LESSEE LEASES THE EQUIPMENT "AS IS." Lessee acknowledges: (a) that Lessor is neither the manufacturer of the Equipment nor a manufacturer's agent, supplier or dealer, and has no familiarity with the Equipment; and (b) that Lessor shall have no obligation to assemble, install, test, adjust or service the Equipment. Lessor makes no representation or warranty as to the treatment of this Lease for tax or accounting purposes or otherwise.

If the Equipment fails to comply with any representation or warranty made by Supplier or the manufacturer thereof, or is defective or improperly assembled or installed or otherwise unsatisfactory for any reason, Lessee shall make claim on account thereof solely against Supplier and/or the manufacturer, and shall nevertheless pay all rent and perform all other obligations hereunder without asserting any such claim against Lessor. Lessor hereby assigns to Lessee, without recourse and solely for the purpose of prosecuting such a claim, all rights that Lessor may have against Supplier and the manufacturer for breach of warranty or other representations with respect to the Equipment. Regardless of cause, Lessee will not assert any claim whatsoever against Lessor for loss of anticipatory profits or any other indirect, special or consequential damages.

6. **Care, Use, Alterations and Location.** During the term hereof and until return of the Equipment to Lessor, Lessee shall, at Lessee's sole cost and expense: (a) maintain the Equipment in good condition, working order and repair, and provide all accessories, repairs, replacement parts and service required therefor; (b) use the Equipment in a careful, proper and lawful manner in accordance with standards, specifications or instructions issued by the manufacturer, and provide all necessary site preparation, supplies, energy and personnel; (c) comply with all laws, ordinances, rules, regulations and other requirements relating to the installation, possession, use or maintenance of the Equipment, including the requirements of any applicable insurance policy or warranty; (d) obtain and comply with the requirements of all permits, licenses and agreements relating to the installation, possession, use or maintenance of the Equipment; and (e) permit Lessor and Lessor's agents to enter Lessee's premises and inspect the Equipment from time to time at reasonable times requested by Lessor.

Unless Lessor otherwise consents in writing, Lessee shall not: (a) part with possession of or control over the Equipment; (b) permit any person other than Lessee or Lessee's qualified employees to operate the Equipment; (c) permit any nonqualified persons to repair or service the Equipment; (d) permit the Equipment to be used for personal, family or household purposes; or (e) make any additions, alterations or improvements to the Equipment. All repairs and replacement parts and all additions, alterations and improvements to the Equipment, whether or not authorized by Lessor, shall become the property of Lessor. The Equipment shall be delivered to Lessee at the location shown above, and Lessee shall not permit the Equipment to be removed from such location without Lessor's prior written consent.

THIS LEASE IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ON BOTH SIDES HEREOF

LESSEE ACKNOWLEDGES RECEIPT OF A COPY OF THIS LEASE

THIS LEASE SHALL BECOME EFFECTIVE UPON WRITTEN ACCEPTANCE BY LESSOR AT LESSOR'S HOME OFFICE.

☐ WOSCO LEASING CO. (LESSOR),
☒ LAKE LEASING CO. (LESSOR)
P.O. Box 2248
3404 State Road
Bakersfield, California 93303

LEASE NO.: 83-11/1-A1-7A	
DATE OF LEASE:	11/14/83

PURCHASE OPTION

This Purchase Option is made a part of that certain Equipment Lease referred to above ("the Lease") between **Lessor** and the undersigned Lessee.

Subject to the terms and conditions set forth herein, Lessor hereby grants to Lessee the option to purchase the Equipment at the expiration of the term of the Lease. As a condition to this option, Lessee shall give Lessor written notice of its intent to purchase the Equipment at least 30 days, but not more than 90 days, prior to the expiration of the term of the Lease.

The purchase price for the Equipment shall be in the amount shown below, plus applicable taxes, and shall be payable on the last day of the term of the Lease. Upon receipt of such payment, Lessor will execute a bill of sale conveying title to the Equipment to Lessee on an "AS IS, WHERE IS" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED.

As an additional condition to this option, Lessee shall pay to Lessor, on the last day of the term of the Lease, all other amounts due from Lessee to Lessor thereunder.

This option shall terminate and be of no further force or effect if at any time Lessee is in default under the terms of the Lease for a period of 30 days or more.

PURCHASE PRICE: \$ 5,559.29

ADDITIONAL TERMS OF PURCHASE OPTION (IF ANY):

☐ WOSCO LEASING CO. (LESSOR)
☒ LAKE LEASING CO. (LESSOR)
P.O. Box 2248
3404 State Road
Bakersfield, California 93303



LEASE NO. <u>83-11-A1-7A</u>
DATE OF LEASE: <u>11/14/83</u>

LEASE/FINANCE QUOTATION

CUSTOMER

McFarland Livestock Co. Inc.
Box 50
Lemhi, Idaho 83464

SUPPLIER

Rain For Rent, Inc.
P.O. Box 1743
Idaho Falls, Idaho 83403-1743

☒ Corporation ☐ Partnership ☐ Sole Proprietorship

QUANTITY	DESCRIPTION OF EQUIPMENT
1	Reinke Electrogator Center Pivot - 1318 ft. Length
1	100 H.P. Aurora Verti-line Short Couple Turbine Pump

EQUIPMENT LOCATION: 6.5 Miles North of Leadore, Idaho Cotton Rd, 1.2 Miles West, 1 Mile North into farm

DES. RED TERM	DESIRED PAYMENT FREQUENCY	DESIRED FEATURES	PURCHASE OPTION
<u>7</u> years	☒ Annually ☐ Quarterly ☐ Semi-Annually ☐ Other	☒ ITC/Depreciation to Lessor ☐ ITC/Depreciation to Lessee	☐ FMV ☒ 15% *Lease Finance Plans Only ☐ \$1.00* Renewal Option

1. Equipment Cost	\$ <u>37,061.95</u>
2. Installation Charges	\$ <u>2,560.00</u>
3. Freight Charges	\$ <u>1,600.00</u>
4. Taxes	\$ _____
5. TOTAL COST (Less Down Payment if Conditional Sale Contract)	\$ <u>41,221.95</u> (5)
6. Number of payments	<u>7</u> (6)
7. RATE FACTOR: (Refer to Rate Charts)	Plan <u>A-1</u> <u>.19341</u> (7)
8. Amount of Each Payment (Line 7 x Line 5)	\$ <u>7,972.74</u> (8)
9. Cost Per Acre Per Year (\$ <u>7972.74</u> (Annual Cost) ÷ (<u>95</u> Acres Irrigated)	\$ <u>83.05</u> (9)
10. Commitment Fee (To be forwarded with signed Quotation) <u>add</u>	\$ <u>1,500.00</u> (10)

The undersigned desires to lease or finance the acquisition of the equipment described above. The undersigned acknowledges that you are under no obligation to enter into any transaction with the undersigned, and that any lease or financing arrangement approved by you shall be subject to such terms and conditions as you may require (including guaranties and/or additional security).

The undersigned represents that all credit and financial information submitted to you is accurate, true and complete in all respects.

If the undersigned's application is approved by you, the Commitment Fee shall be applied to any advance payment or deposit required by you. If the application is not approved, the Commitment Fee is to be returned within 30 days.

THE UNDERSIGNED ACKNOWLEDGES THAT NO COMMITMENT HAS BEEN MADE BY YOU OR ANY SALESMAN TO ENTER INTO ANY LEASE OR OTHERWISE EXTEND CREDIT TO THE UNDERSIGNED, AND THAT THE TERMS OF ANY FINANCING ARRANGEMENT APPROVED BY YOU SHALL NOT BECOME EFFECTIVE UNLESS ACCEPTED BY YOU IN WRITING.

CUSTOMER McFarland Livestock Co. Inc.

By Lex J. Kanner (Title)

Date signed: 11/8/83