

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
MAY 03 2017
WATER RESOURCES
WESTERN REGION

Notice of Security Interest in a Water Right
and a request to be notified of a change in ownership or any proposed
or final action to amend, transfer, or otherwise modify the water right(s)

Attach pages with additional information. Incomplete forms will be returned.

1.	Water Right/Claim No.	Water Right/Claim No.	Water Right/Claim No.	Water Right/Claim No.
	57-2232			
	57-4002			

2. The following **REQUIRED** information must be submitted with this form:

A) Evidence of the security interest. This may be a copy of a **DEED of TRUST, MORTGAGE, CONTRACT OF SALE** or other legal document indicating your interest in the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**

B) A **FEE of \$25.00 per** water right or adjudication claim.

3. Name and Mailing Address of Person or Company Holding Security Interest

McFinney Agri-Finance, LLC

P.O. Box 1598

Twin Falls, ID 83303-1598

Phone (208) 734-6622

Email liversen@clearcreekag.com

4. Name of Water Right Owner/Claimant(s)

Brackett Ranches Limited Partnership

5. Expiration Date of Notification Period

June 1, 2045

6. Is this a Renewal of Request for Notification?

☐ YES

☒ NO

7. Signature(s) of Security Interest Holder(s)

McFinney Agri-Finance, LLC

Title, if applicable

By:

Herman Finney
HERMAN FINNEY

Member

OC. Processed by
State Office 6/27/17

For Office Use Only

Received by

Date

5/3/17

Receipt No.

W045239

Fee

\$50⁰⁰

Processed by AJ

X

Date

X

WR

CJ

Date

8/24/17

Electronically Recorded - DO NOT
Remove the County Stamped First
Page as it is now incorporated as
Part of the original Document.

RECORDING REQUESTED BY)
AND WHEN RECORDED RETURN TO:)
)
McFinney Agri-Finance, LLC)
P.O. Box 1598)
Twin Falls, ID 83303-1598)

**FIRST MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS**

This First Mortgage, Security Agreement and Assignment of Rents (the "Mortgage") is made as of this 20th day of April, 2017 by Brackett Ranches Limited Partnership, an Idaho limited partnership whose address is Flat Creek Ranch, Rogerson, ID 83302 (the "Mortgagor") to MCFINNEY AGRI-FINANCE, LLC, an Idaho limited liability company whose address is 409 Shoshone St. South, Suite 25, Twin Falls, Idaho 83301 (the "Mortgagee");

WITNESSETH:

Mortgagor, for valuable consideration, the receipt of which is hereby acknowledged, and in consideration of and to secure repayment in accordance with the terms of (i) the Deed of Trust Promissory Note of the Trustor, Ira N. Brackett and Kimberly J. Brackett, husband and wife, whose address is 2001 Bear Valley Road, Williams, CA 95987 ("Brackett," and together with the Trustor, the "Borrower") dated as of April 1, 2015 in the principal amount of Two Million and No/100ths Dollars (\$2,000,000.00) (as amended and in effect on the date hereof, the "First Note"), and (ii) the Deed of Trust Promissory Note of Borrower dated as of April 15, 2015 in the principal amount of Three Million Five Hundred Thousand and No/100ths Dollars (\$3,500,000.00) (as amended and in effect on the date hereof, the "Second Note," and together with the First Note, the "Notes") does hereby irrevocably, GRANT, BARGAIN, SELL, CONVEY, MORTGAGE, ASSIGN, PLEDGE, TRANSFER AND SET OVER, WITH POWER OF SALE, unto Mortgagee and to its successors and assigns, (a) all the real property, water, water rights, ditches, ditch rights, storage rights, permits, licenses, certificates and shares of stock described in Exhibit "A" attached hereto and by this reference incorporated herein; and (b) all the property, permits and rights described in Exhibit "B" attached hereto and by this reference incorporated herein, whether now owned or hereafter acquired; (collectively, the "Property");

TOGETHER WITH all leasehold estate, right, title and interest of Mortgagor in, to or under all leases (including grazing permits, leases and oil and gas leases) or subleases covering or benefiting the Property or any portion thereof during the period in which this Mortgage is in effect, whether now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto; and all water, water rights, water appropriations, irrigation works, lines, pivots, drip lines, hand lines, wheel lines, pumps, motors, equipment and electric panels of every kind and nature, ditches, canals, wells, franchises upon, leading to or connected with said property, in addition to any replacements, substitutions and additions thereto, and all other rights and privileges now or hereafter owned by Mortgagor, or belonging to, with, leading to, connected with, or usually had or enjoyed in connection with the Property or appurtenant thereto, whether represented by shares of capital stock in any ditch company, irrigation company, irrigation district or water association, by voting or other rights or interests with respect thereto or by actual individual ownership, or which may hereafter be acquired by Mortgagor, during the existence of this Mortgage;

TOGETHER WITH all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any road adjoining the Property

TOGETHER WITH any and all buildings, structures, fences, pipelines, pipes, tanks, dams, reservoirs, pumps, pumping equipment and all other improvements and fixtures now located or hereafter erected thereon or used in connection therewith, including, but not limited to, the fixtures, attachments, equipment, machinery, and other articles attached to said buildings and improvements (collectively, the "Improvements"), but not including farm machinery and vehicles;

TOGETHER WITH, all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Property; and

TOGETHER WITH all accounts arising out of, or in connection with, the Property (including all leases, bonuses, royalties, subleases, franchises, rents, issues, profits and income in connection with the Property, and all the estate, right, title and interest of every nature whatsoever of the Mortgagor in and to the same), whether now owned or hereafter acquired. Mortgagor will execute such assignments as Mortgagee may from time to time reasonably request, which shall include, but not be limited to, assignments of rents, issues and profits in reasonable form acceptable to Mortgagee. Mortgagee shall pay the cost of recording any such assignments. Mortgagee is authorized to notify any or all lessees, tenants or occupants of all or part of said Property of the assignment of rents, issues or profits made hereunder or under any such special assignments. Mortgagee shall have no personal liability and shall not be responsible for the performance of Mortgagor's covenants under any of said leases or rentals. Mortgagee shall not be liable to Mortgagor for any action taken or omitted in connection with any such leases or rentals or the operation of said Property. Until the occurrence of a default as hereinafter provided, Mortgagor may use and occupy the Property and receive all rents, issues and profits thereof.

The entire estate, property (both real and personal) and interest hereby conveyed to Mortgagee may hereafter collectively be referred to as the "Mortgaged Property." All property except the real property may hereinafter be referred to as the "Personal Property." Personal Property does not include farm machinery, vehicles, livestock, crops (including growing crops), household furnishings, household appliances or unattached household fixtures, or any income therefrom. The parties acknowledge that the lien on the Personal Property created hereunder is a blanket lien, and that there may be some items of Personal Property described on Exhibit B hereto that do not exist on the date hereof but that may be hereafter acquired.

FOR THE PURPOSE OF SECURING:

- (a) Payment of indebtedness in the total principal amount of Two Million and No/100ths Dollars (\$2,000,000.00) under the First Note, and indebtedness in the total principal amount of Three Million Five Hundred Thousand and No/100ths Dollars (\$3,500,000.00) under the Second Note, together with interest on the unpaid balances thereof (which interest may be variable), from date of funding by the Mortgagee until paid, evidenced by that certain First Note dated April 1, 2015 with a maturity date of May 1, 2045 executed by the Borrower (as amended and in effect on the date hereof), and that certain Second Note dated April 15, 2015 with a maturity date of May 1, 2045 executed by Borrower (as amended and in effect on the date hereof), which have been delivered to and is payable to the order of Mortgagee, and which by this reference is hereby made a part hereof, together with any and all modifications, extensions and renewals thereof; both principal and interest and all other indebtedness accruing hereunder or thereunder being payable in lawful money of the United States which shall be legal tender for the payment of all debts and dues, public and private, at the time of payment, at the address set forth on the Notes with the following notations, or at such other place as may be designated in writing by the Mortgagee:

Lender: McFinney Agri-Finance, LLC

Borrower: Brackett Ranches Limited Partnership, Ira N. Brackett & Kimberly J. Brackett

- (b) Performance of all obligations of Borrower (and each of them) under any loan application, report, commitment letter, loan agreement, mortgage, deed of trust, security agreement, financing statement, assignment, assignment of bonuses, rentals and royalties, intercreditor agreement, subordination agreement, power of attorney (limited or otherwise), guaranty, or other agreement given as security for the Notes or entered into in connection with the transactions contemplated hereby (collectively, with the Notes, the Loan Agreements (as such term is defined below), and this Mortgage, the "Credit Documents").
- (c) Payment of all sums advanced by Mortgagee to protect the Mortgaged Property, with interest thereon at the rates set forth in the Notes.

- (d) Performance of all obligations of any guarantor of any of the obligations of Borrower (or any of them) contained in the Credit Documents or any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES:

ARTICLE I

COVENANTS AND AGREEMENTS OF MORTGAGOR

Mortgagor hereby represents, covenants and agrees:

- 1.01 Title. That at the time of delivery hereof, Mortgagor is the lawful owner of the property hereinabove granted, and is seized of good, marketable and indefeasible title in fee simple therein, free and clear of all encumbrances, and that Mortgagor will warrant and defend the same in the quiet and peaceful possession of the Mortgagee, its successors and assigns, forever, against the claims of all persons whomsoever.
- 1.02 Payment of Secured Obligations. That Borrower has executed and delivered to Mortgagee the Notes; that Borrower has executed and delivered to Mortgagee the Loan Agreement dated April 1, 2015 by and among the Borrower and the Mortgagee (as amended and in effect on the date hereof, the "First Loan Agreement"); that Borrower has executed and delivered to Mortgagee the Loan Agreement dated April 15, 2015 by and among the Borrower and the Mortgagee (as amended and in effect on the date hereof, the "Second Loan Agreement," and together with the First Loan Agreement, the "Loan Agreements"); that Mortgagor has executed and delivered to Mortgagee this Mortgage; that Borrower shall pay when due the principal of, and the interest on, the indebtedness evidenced by the Notes, charges, fees and all other sums as provided in the Credit Documents, and the principal of, and interest on, any future advances secured by this Mortgage.
- 1.03 Maintenance, Repair, Alterations and Good Standing. To keep the Mortgaged Property in good condition and repair, not to remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Improvements; to complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore, to comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property or any part thereof; not to commit, suffer or permit any waste or deterioration of the Mortgaged Property; not to commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation

of any law, ordinance or regulation; in the event any Borrower is a corporation, partnership, limited liability company, cooperative, business trust or other entity, to keep such Borrower in existence and in good standing.

1.04 Required Insurance. To at all times provide, maintain and keep in force the following policies of insurance:

- (a) If Mortgagor constructs or installs improvements on the Property that were not existing on the Property on the date of this Mortgage, then Mortgagee may require that Mortgagor keep and maintain in force with respect to said improvements such of the following policies of insurance ("insurance" or "policies of insurance") as may be reasonably requested. Insurance may, in the discretion of Mortgagee, be in the form of individual policies or blanket policies covering other improvements.
- (b) Physical hazard insurance covering the perils of fire, flood, tornado, lightning, and extended coverage in an amount equal to at least the full insurable value of the Mortgaged Property, and such additional coverage as Mortgagee may from time to time reasonably require.
- (c) Such other insurance, and in such amounts, as may from time to time reasonably be required by Mortgagee against the same or other hazards.
- (d) All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Mortgagor.

1.05 Delivery of Policies, Payment of Premiums. That all policies of insurance shall be issued by companies and in amounts in each company satisfactory to Mortgagee. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee. Mortgagor shall furnish Mortgagee copies of all policies of required insurance. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Mortgagee. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Section, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor the amount of all such premiums together with interest thereon at the rate provided in the Notes shall be secured by this Mortgage.

1.06 Insurance Proceeds. That after the happening of any casualty to the Mortgaged Property or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.

- (a) In the event of any damage or destruction of the Improvements, Mortgagee shall have the option in its sole discretion of applying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Mortgagee may determine, (ii) to the restoration of the Improvements, provided the Improvements are restored to good working condition, or (iii) to Mortgagor; provided that at Mortgagor's election, the insurance proceeds shall be applied to restoration of the Improvements if Mortgagor has had a satisfactory credit record with Mortgagee, is not then in default under the Notes or the other Credit Documents, and establishes to Mortgagee's reasonable satisfaction that the insurance proceeds together with Mortgagor's other resources, if required, would be sufficient to restore the Improvements to a condition satisfactory for operation of Mortgagor's business.
- (b) In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee. After applying the proceeds to all indebtedness secured hereby, the balance of such proceeds, if any, shall be promptly paid to Mortgagor. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.
- (c) Except to the extent that insurance proceeds are received by Mortgagee and applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Property or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in an amount, and the application or release by Mortgagee, of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

1.07 Assignment of Policies Upon Foreclosure. That in the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Mortgagor in and to all policies of insurance required by this Section shall inure to the benefit of and pass to the successor in interest to Mortgagor or the purchaser or grantee of the Mortgaged Property.

1.08 Indemnification; Subrogation; Waiver:

- (a) If Mortgagee or any of its members, officers, employees and agents (each in its capacity as an indemnified party, a "Mortgagee Indemnitee") is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, concerning this Mortgage or the Mortgaged Property or any part thereof or interest therein or the occupancy thereof by Borrower, then Mortgagor shall indemnify, defend, protect and hold harmless each Mortgagee Indemnitee from and against any and all claims, losses, liabilities, damages, assessments, adjustments, costs and expenses (including specifically, but without limitation, attorneys' fees and expenses of investigation incurred by counsel of such Mortgagee Indemnitee's choosing) (collectively, "Damages") incurred by such Mortgagee Indemnitee in connection with such suit or proceeding, unless such Damages arise as a direct result of the gross negligence or willful misconduct of the Mortgagee. If Mortgagee commences an action against Mortgagor to enforce any of the terms hereof or because of the breach by Mortgagor of any of the terms hereof, or for the recovery of any such secured hereby, Mortgagor shall pay to Mortgagee attorney's fees and expenses, and the right to such attorney's fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Mortgagor, Mortgagor shall pay Mortgagee attorney's fees and expenses incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor by reason of breach.
- (b) Mortgagor waives any and all right of claim or recovery against Mortgagee, its members, officers, employees and agents, for loss of or damage to Mortgagor, the Mortgaged Property, Borrower's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.
- (c) All sums payable by Mortgagor hereunder shall be paid without notice, demand counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) subject to provisions of applicable law, any bankruptcy.

insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; (v) any claim which Mortgagor has or might have against Mortgagee or Borrower (or any of them); (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Borrower (or any of them); or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, and except as otherwise prohibited by applicable law, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

- (d) To the extent applicable and permitted by law, the Mortgagor waives all homestead exemption rights relating to the Mortgaged Property.
- (e) To the extent permitted by law, the Mortgagor expressly agrees that the Notes, or any payment thereunder, may be extended from time to time, or the terms of payment or interest may otherwise be varied by agreement with any person now or hereafter liable for payment of the Notes (including without limitation conversion of the Notes to another product in accordance with the terms and provisions thereof), without in any way affecting the obligations of the Mortgagor hereunder or the lien, encumbrance and security interest created hereby.

1.09 Taxes and Impositions.

- (a) Mortgagor agrees to pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation payments with respect to water rights (collectively, the "Impositions"); *provided, however*, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.
- (b) Mortgagor covenants to furnish Mortgagee within forty-five (45) days after the date upon which any such Imposition is due and payable by Mortgagor, official receipts of the appropriate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payments thereof.
- (c) Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate

legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Imposition at the time and in the manner provided in this Section.

- 1.10 Power and Utilities. Mortgagor agrees to pay when due all power and utility charges which are incurred by Borrower for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property.
- 1.11 Actions by Mortgagee to Preserve Mortgaged Property. That should Borrower fail to make any payment or to do any act as and in the manner provided in any of the Credit Documents, Mortgagee, in its own discretion, without obligation so to do and without notice to or demand upon Borrower and without releasing Borrower from any obligation, may reasonably make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. Mortgagor shall, immediately upon demand therefore by Mortgagee, pay all reasonable costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorney's fees.

That in the event Mortgagee is called upon to pay any sums of money to protect this Mortgage and the Notes secured hereby as aforesaid, all monies advanced or due hereunder shall become immediately due and payable, together with interest at a rate as is set forth in the Notes for regular and default interest.

- 1.12 Survival of Warranties. To fully and faithfully satisfy and perform the obligations of Borrower contained in the Borrower's loan application and any of the Credit Documents. All representations, warranties and covenants of Borrower contained therein shall survive the close of escrow and funding of the loans evidenced by the Notes and shall remain continuing obligations, warranties and representations of Borrower during any time when any portion of the obligations secured by this Mortgage remain outstanding.
- 1.13 Eminent Domain. That should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Mortgagor receive any notice or other information regarding such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee.
- (a) Mortgagee shall be entitled to all compensation, awards and other payments or relief therefore, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Mortgagor (the "Proceeds") are hereby assigned to Mortgagee and Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require.

- (b) In the event any portion of the Mortgaged Property is so taken or damaged, Mortgagee shall have the option, in its sole and absolute discretion, to apply all such Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney's fees, incurred by it in connection with such Proceeds, upon any indebtedness secured hereby and in such order as Mortgagee may determine, or to apply all such Proceeds, after such deductions, to the restoration of the Mortgaged Property upon such conditions as Mortgagee may determine. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. After applying the Proceeds to the restoration of the Mortgaged Property, the balance of such Proceeds, if any, shall be promptly paid to Mortgagor.
- 1.14 Additional Security. That in the event Mortgagee at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.
- 1.15 Successors and Assigns. That this Mortgage applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Mortgagee" shall mean the owner and holder of the Notes, whether or not named as Mortgagee herein. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 1.16 Inspections. That Mortgagee, or its agents, representatives or workmen, upon giving reasonable notice to Mortgagor, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Credit Documents.
- 1.17 Liens. To pay and promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property, or any part thereof or interest therein (other than purchase money security interests on Personal Property not owned by the Borrower on the date hereof but hereafter acquired). Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amounts as Mortgagee shall reasonably require, but not more than one and one-half (150%) of the amount of the claim, and provided further that Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge or such lien by

depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

- 1.18 Other Mortgages. That Mortgagor will not create, assume or suffer to exist in respect of the Mortgaged Property, or any part thereof, any mortgage or security agreement other than this Mortgage without the Mortgagee's prior express written consent.
- 1.19 Financial Statements. That Mortgagor will cause to be delivered to Mortgagee, without expense to Mortgagee, such financial records and information as are required by the Mortgagee from time to time.
- 1.20 Mortgagor's Waiver of Certain Rights. The Mortgagor waives to the extent not prohibited by applicable law that cannot be waived (a) the benefit of all laws now existing or hereafter enacted providing for any appraisal before sale of any portion of the Mortgaged Property, (b) the benefit of all laws now existing or hereafter enacted in any way extending the time for enforcement or collection of the obligations contained in the Credit Documents, (c) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, moratorium, or extension of time for payment, and (d) all notices of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Credit Documents or at law or in equity. To the extent it may lawfully do so, the Mortgagor agrees that it will not at any time insist upon, plead, claim or take the benefit or advantage of, any law now or hereafter in force providing for any appraisal, valuation, stay or extension, and the Mortgagor hereby waives and releases all rights of valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the obligations contained in the Credit Documents and marshaling in the event of foreclosure of the liens hereby created. To the extent permitted by applicable law, the Mortgagee shall not be required in connection with any foreclosure, pursuant to any power of sale herein granted, or in connection with any deed in lieu of foreclosure, to foreclose, to sell or to take a deed in lieu of foreclosure, covering all or any specific portion of the Mortgaged Property and the Mortgagee may elect to foreclose, to sell or to take a deed in lieu of foreclosure to all or any portion of the Mortgaged Property and the Mortgagee's rights in connection with any foreclosure, pursuant to the power of sale herein granted, or in connection with any deed in lieu of foreclosure hereunder granted by the Mortgagor, may be exercised in any combination with respect to some or all of the Mortgaged Property. To the extent permitted by applicable law, the Mortgagee shall not be required to marshal or sell the Mortgaged Property, the leases, rents, issues and profits assigned by the Mortgagor or any other security by which the obligations contained in the Credit Documents are secured in any particular order.

- 1.21 Acknowledgment. It is in the best interest of each Borrower to enter into this

Agreement and the other Credit Documents, and the amounts loaned to such Borrower under the Notes will directly or indirectly inure to the benefit of such Borrower.

ARTICLE II

SECURITY AGREEMENT

- 2.01 Creation of Security Interest. Mortgagor hereby grants to Mortgagee a security interest in the Personal Property described in the Credit Documents and in this Mortgage, including without limitation any and all property of similar type or kind hereafter located on or at the Property for the purpose of securing all obligations of Borrower contained in any of the Credit Documents.
- 2.02 Warranties, Representations and Covenants of Mortgagor. Mortgagor hereby warrants, represents and covenants as follows:
- (a) Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.
 - (b) Mortgagor will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor.
 - (c) The Personal Property will be kept on or at the Property and Mortgagor will not remove the Personal Property from the Property without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor. Mortgagor may replace any item of Personal Property in the ordinary course of business, without the prior consent of Mortgagee.
 - (d) Mortgagor maintains a place of business in the State of Idaho and Mortgagor will immediately notify Mortgagee in writing of any change in its place of business as set forth in the beginning of this Mortgage.
 - (e) At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable.

- (f) All covenants and obligations of Mortgagor contained herein relating to the Mortgaged Property shall be deemed to apply to the Personal Property whether or not expressly referred to herein.
- (g) Mortgagor understands and agrees that certain items of irrigation equipment and feedlot or dairy equipment (if any) hereinbefore described or referred to as "personal property" actually and as a matter of law are fixtures and are deemed a part of the land covered by this Mortgage, and that said designation as "personal property" is for convenience only and shall be disregarded in the case of any fixtures described or referred to following such designation. The Mortgagor will not sell or dispose of any of said personal property, nor attempt to do so, nor part with possession of any of the same, nor remove the mortgaged personal property or any of the same, nor permit it to be removed, from the real property described on Exhibit "A", or from the adjoining or adjacent lands where said personal property may be located, while this Mortgage shall remain in force and affect, without the written consent of the Mortgagee; *provided, however*, that the language of this paragraph shall not prevent the Mortgagor from replacing or upgrading any personal property subject to this Mortgage in the ordinary course of business without the written consent of the Mortgagee. All upgrades or replacements shall become subject to this Mortgage and security interest herein provided for. All the mortgaged Personal Property shall at all times while this Mortgage remains in force and effect be kept and maintained by the Mortgagor, at Mortgagor's own cost and expense, in good working order, condition and repair, and the Mortgagor will from time to time make all replacements of such Personal Property which may reasonably be necessary for the irrigation and cultivation of the real property described on Exhibit "A" and Mortgagor will neither commit nor suffer any damages or waste on or to the mortgaged premises and said personal property nor do or permit to be done anything that may lessen or impair the value of the mortgaged property, real or personal, or the lien or security thereof.
- (h) This Mortgage constitutes a security agreement as that term is used in the Uniform Commercial Code of Idaho.

ARTICLE III

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

- 3.01 Assignment of Rents. Mortgagor hereby assigns and transfers to Mortgagee all accounts arising out of, or in connection with, leases, bonuses, royalties, subleases, franchises, rents, issues and profits arising out of, or in connection with, the Mortgaged Property (hereinafter collectively referred to as "rents"), and hereby gives to and confers upon Mortgagee the right, power and authority to collect such rents. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time from time to time, to

demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all such rents, and apply the same to the indebtedness secured hereby; *provided, however*, that Mortgagor shall have the right to collect such rents (but not more than thirty days in advance) prior to or at any time there is not an event of default under any of the Credit Documents.

- 3.02 Collection Upon Default. Upon any event of default under any of the Credit Documents, Mortgagee may, at any time without notice, enter upon and take possession of the Mortgaged Property, or at any part thereof, in its own name sue for or otherwise collect such accounts, rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorney's fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such rents, issues and profits or the entering upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.
- 3.03 Restriction on Further Assignments, etc. Except as herein specifically provided, Mortgagor will not, without prior written consent of the Mortgagee, assign the accounts, rents, issues or profits, or any part thereof, from the Mortgaged Property; and will not consent to the modification, cancellation or surrender of any lease or sublease covering the Mortgaged Property, or any part thereof. Any action of Mortgagor in violation of the terms of this Section shall be void as against Mortgagee in addition to being a default under this Mortgage.

ARTICLE IV

REMEDIES UPON DEFAULT

- 4.01 Event of Default. The occurrence of any one or more of the following events shall constitute a default hereunder:
- a) the occurrence of an Event of Default under either of the Notes, including without limitation the sale, assignment, lease with the option of sale disposal or other transfer of the Mortgaged Property or any interest in the Mortgagor; or
 - b) failure to observe or perform any covenant, agreement, condition, term or provision of this Mortgage or any other Credit Document (other than an Event of Default described in clause (a) above).
- 4.02 Remedies. In the event of the occurrence and during the continuance of any default, the Mortgagee may at any time thereafter, subject to the provisions set forth in this Section, exercise any or all of the following remedies:

- a) all of the rights and remedies provided in the Notes, including declaring the entire amount of the indebtedness and obligations immediately due and payable, and the indebtedness and obligations thereupon shall become immediately due and payable without presentment, protest, notice of protest or further demand or notice of any kind, all of which are hereby expressly waived;
- b) all of the rights and remedies of a secured party under the Uniform Commercial Code in effect in the jurisdiction in which the Property is located;
- c) enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto, and if Mortgagor remains in possession of the Property during the continuance of an event of default without Mortgagee's written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor;
- d) to the greatest extent permitted by law, sell or offer for sale the Mortgaged Property in such portions, order and parcels as Mortgagee may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction, and the right of sale arising out of any event of default shall not be exhausted by one or more sales. Such sale shall be made in accordance with the laws of Idaho relating to the sale of real estate or by Article 9 of the UCC relating to the sale of other collateral after default by a debtor (as such laws now exist or may be hereafter amended or succeeded), or by any other present or subsequent articles or enactments relating to same;
- e) commence an action to foreclose this Mortgage;
- f) specifically enforce any of the covenants hereof;
- g) the right to appoint a receiver of the Mortgaged Property, which appointment, to the extent permitted by applicable law, may be made either before or after foreclosure sale, upon notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Property;
- h) such other actions or proceedings available to the Mortgagee under applicable law as it deems necessary or advisable to protect its interest in the Mortgaged Property and the indebtedness and obligations secured thereby; and
- i) the right to receive rent under Article III, including without limitation the right to receive payments under any assignment of bonuses, rentals and royalties, governmental subsidy or program referenced in Section 5.04 hereof.

In the event of default hereunder, the interest rate shall be as is set forth in the Notes.

To the extent it may lawfully do so, the Mortgagor agrees that it will not (i) invoke or utilize any law now or hereafter in force which might prevent, cause a delay in or otherwise impede the enforcement of the rights of the Mortgagor in the Mortgaged Property or (ii) protest the appointment of a receiver of the Property pursuant to Section 4.02(g) hereof.

Notwithstanding the foregoing, prior to exercising any remedy with respect to an Event of Default under Section 4(a) or Section 4(k) of the Notes (arising out of a payment default), the Mortgagor shall have ten (10) days to effect a full and complete cure of such Event of Default by paying all amounts due and payable in accordance with the terms thereof.

Notwithstanding the foregoing, prior to exercising any remedy with respect to any such default other than (i) an Event of Default under Section 4(a), Section 4(i), or Section 4(k) of the Notes (arising out of a payment default), the Mortgagee shall first give written notice to the Mortgagor at the address set forth on the signature page hereto, which notice shall specify in writing each and every claimed Event of Default. The Mortgagor shall have twenty (20) days from the receipt of such notice to effect a cure of each and every claimed Event of Default. If any claimed Event of Default remains uncured after such twenty (20) day period, the Mortgagee may then proceed to exercise any of the remedies to which it may be entitled, including those set forth in this Section, without the obligation to provide further notice to the Mortgagor. Any written notice to the Mortgagor (or any of them) shall be mailed to the address of such individual or entity set forth on the signature page hereto. The parties acknowledge and agree that with respect to any partnership, limited liability company or trust that is a Mortgagor, notice to any partner of such partnership, member of such limited liability company or trustee of such trust shall constitute notice to such partnership, limited liability company or trust.

- 4.03 Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any Credit Document or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it is being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to

Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Credit Documents to Mortgagee or to which it may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

ARTICLE V

MISCELLANEOUS

- 5.01 Interpretation; Governing Law; etc. Time is (and shall be) of the essence in this Mortgage and the other Credit Documents. All covenants, agreements, representations and warranties made in this Mortgage or any other Credit Document or in certificates delivered pursuant hereto or thereto shall be deemed to have been relied on by the Mortgagee, notwithstanding any investigation made by the Mortgagee on its behalf, and shall survive the execution and delivery to the Mortgagee hereof and thereof. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision hereof, and any invalid or unenforceable provision shall be modified so as to be enforced to the maximum extent of its validity or enforceability. The headings in this Mortgage are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. This Mortgage and the other Credit Documents constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous understandings and agreements, whether written or oral. This Mortgage may be executed in any number of counterparts which together shall constitute one instrument. This Mortgage, and any issue, claim or proceeding arising out of or relating to this Mortgage or the conduct of the parties hereto, whether now existing or hereafter arising and whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws (other than the conflict of laws rules) of the State of Idaho, provided that the laws of the state in which the Mortgaged Property is located shall govern lien perfection, lien priority and validity of this Mortgage and the procedures with respect to the enforcement hereof.
- 5.02 Notices. Except as otherwise specified in this Mortgage or any other Credit Document, any notice required to be given pursuant to this Mortgage or any other Credit Document shall be given in writing. Any notice, consent, approval, demand or other communication in connection with this Mortgage or any other Credit Document shall be deemed to be given if given in writing addressed as provided below (or to the addressee at such other address as the addressee shall have specified by notice actually received by the addressor), and if either (a) actually delivered in fully legible form to such address or (b) in the case of a letter, unless actual receipt of the notice is required by any Credit Document, five days shall have elapsed after the same shall have been deposited in the United States mails, with first-class postage prepaid.

- a) If to the Mortgagor, to it at the addresses listed on the signature page hereto.

5.03 Joint and Several Obligations; Heirs and Assigns. In the event any of the Borrower consists of more than one individual or entity, the covenants, agreements, conditions, provisions, representations, warranties or obligations of each hereunder or under any Credit Document shall apply to each and shall be joint and several. A default hereunder shall also apply with respect to the act or omission of any one or more individuals or entities comprising the Borrower. This Mortgage and the other Credit Documents shall bind the heirs, personal representatives, successors and assigns of each of the Mortgagor; *provided, however*, that neither this Mortgage nor any other Credit Document be assigned without the express written consent of the Mortgagee.

5.04 Subsidy and Payment in Kind Compensation.

- a) Mortgagor shall not register the Property, or any portion thereof, with any federal, state or local government office for the purpose of obtaining subsidy or payment-in-kind compensation without first obtaining Mortgagee's prior written consent. Mortgagor hereby grants to Mortgagee a security interest in any such subsidy or payment-in-kind compensation whether or not Mortgagee gives its written consent to Mortgagor to register the Property, or any portion thereof, for such compensation. Mortgagor, upon the written request of Mortgagee, shall execute any documents necessary to further perfect Mortgagee's security interest in such compensation. Any such document is to be in form and substance acceptable to Mortgagee. Mortgagor hereby appoints Mortgagee its attorney-in-fact to execute such documents in Mortgagor's name and behalf. Upon Mortgagee's request, Mortgagor shall deliver to Mortgagee any document of title Mortgagee desires to hold to secure Mortgagee's interest in any such government compensation.
- b) Upon any event of default under any of the Credit Documents, Mortgagee may, at any time without notice, take possession of any such subsidy or payment-in-kind compensation, or at any part thereof, in its own name sue for or otherwise collect such subsidy or payment-in-kind compensation, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorney's fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such government compensation or the entering upon and taking possession of any subsidy or payment-in-kind compensation, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

5.05 Habendum Clause. Upon payment in full of the indebtedness secured hereby and the performance by Borrower of all of the obligations imposed on Borrower

herein and in the Loan Agreements and the Notes, these presents shall be null and void, and Mortgagee shall release this Mortgage and the lien hereof by proper instrument executed in recordable form.

- 5.06 **Hazardous Substances.** Mortgagor represents and warrants that to the best of its knowledge (1) the Property (including, without limitation, the subsurface soil and the ground water thereunder) does not contain any "hazardous or toxic substances" (as hereinafter defined); (2) Mortgagor has no knowledge of any generation, transportation, storage, treatment or disposal of any hazardous or toxic substances on the Property, or within one-half mile thereof, now or in the past; (3) Mortgagor is not aware of any pending or threatened litigation or proceedings before any court or administrative agency in which any person or entity alleges, or threatens to allege, the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment, or disposal at the Property, of any hazardous substance; (4) Mortgagor has not received any notice of and has no knowledge that any governmental authority or any employee or agent thereof has determined or alleged, or is investigating the possibility, that there is a presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment, or disposal at the Property, of any hazardous or toxic substance; (5) to Mortgagor's knowledge, there have been no communications or agreements with any governmental authority or agency (federal, state or local) or any private person or entity (including, without limitation, any prior owner of the Property) relating in any way to the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property, of any hazardous or toxic substance.

For the purpose of this paragraph, "hazardous or toxic substance" shall mean and include (1) a "hazardous substance" as defined in 42 U.S.C. § 9601(14) and as hereafter amended from time to time, or as defined under applicable state health, safety and water codes, and (2) any other material, gas or substance known or suspected to be toxic or hazardous (including, without limitation, any radioactive substance, methane gas,¹ volatile hydrocarbons, industrial solvents and asbestos) or which could cause a material detriment to, or materially impair the beneficial use of the Property, or constitute a material health, safety or environmental risk to tenants, occupants or patrons of the Property. The term "hazardous substance" shall not include water containing nutrients from livestock waste lawfully stored or applied to the real property of the Mortgagor or third parties.

- 5.07 **Legal Compliance.** The Mortgagor shall furnish evidence satisfactory to the Mortgagee confirming the issuance on terms and conditions satisfactory to the Mortgagee, by the appropriate federal, state, county, regional or local authorities (including authorities whose jurisdiction involves environmental protection), of all licenses, approvals or permits necessary in connection with (a) the operation of

¹ Methane gas generated by animal manure is not included so long as Mortgagor is in full compliance with any and all codes and regulations governing animal manure and its by-products.

the Mortgagor's business and the lawful occupancy thereof for the purpose for which such project was created (including the issuance by any federal, state, county, regional or local authorities of such licenses, approvals or permits where jurisdiction involves environmental protection), and (b) the possession of all Property in connection therewith. The Mortgagor covenants to continue to maintain compliance with all such licenses, approvals or permits as well as any applicable federal, state, county, regional or local laws and regulations.

5.08 INTEREST RATE ADJUSTMENTS; VARIABLE INTEREST. THE NOTES SECURED HEREBY EXPRESSLY PROVIDE FOR INTEREST RATE ADJUSTMENTS AS SET FORTH THEREIN.

5.09 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest: (i) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee reasonably deems appropriate to protect Mortgagee's interest in the Mortgaged Property if Mortgagor shall fail to do so within three (3) days after written request by Mortgagee. (ii) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery (and acceptance by Mortgagee) of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to leases, rents and the other Mortgaged Property in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, and (iii) upon the occurrence of an event of default, to perform any duty or obligation of Mortgagor under this Mortgage or under any of the other Credit Documents (including payment of taxes and insurance premiums); *provided, however*, that: (1) Mortgagee shall not under any circumstances be obligated to perform any duty or obligation of Mortgagor; (2) Mortgagor shall reimburse Mortgagee for all sums expended in such performance plus interest at any applicable default rate; (3) Mortgagee, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person for any failure to take any action which it is empowered to take under this Section.

5.10 Amendment. This Mortgage may not be amended, modified or restated without the express written consent of the Mortgagor and the Mortgagee.

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292594

Exhibit A

Tract I:

In Township 3 South, Range 5 West, Boise Meridian, Owyhee County, Idaho

Section 7: West Half of the Southeast Quarter, Southeast Quarter of the Southwest Quarter

Section 15: Southeast Quarter, East Half of the Southwest Quarter

Section 18: West Half of the Northeast Quarter, East Half of the Northwest Quarter,
Government Lots 2 and 4, East Half of the Southwest Quarter, Southeast Quarter

Section 19: Government Lots 1, 2 and 3, East Half of the Northwest Quarter,
Northeast Quarter, Northeast Quarter of the Southwest Quarter, North Half of the Southeast Quarter

Section 20: North Half, Northwest Quarter of the Southwest Quarter

Section 22: Northeast Quarter, East Half of the Northwest Quarter

Section 23: West Half of the Northwest Quarter, Northeast Quarter of the Northwest
Quarter, Northwest Quarter of the Northeast Quarter

In Township 3 South, Range 6 West, Boise Meridian, Owyhee County, Idaho

Section 13: Southeast Quarter, Southeast Quarter of the Southwest Quarter

Section 24: Northeast Quarter, East Half of the Northwest Quarter

Tract II:

In Township 3 South, Range 6 West, Boise Meridian, Owyhee County, Idaho.

Section 14: Government Lots 1 and 2, Southeast Quarter of the Northwest Quarter, Northeast
Quarter of the Southwest Quarter

EXCEPTING THEREFROM

"The balance of said mineral rights and the rights for exploration, development or extraction", as
reserved and excepted in the Deed from CHARLES E. MAYER, JR., also known as CHARLES E.
MAYER, and recorded May 16, 1994 as Instrument No. 212825, Owyhee County Records.

Together with any and all water, water rights, ditches and ditch rights, storage rights and permits, licenses, certificates or shares of stock belonging or in any way appurtenant to the real property described in this Exhibit A, whether now owned or hereafter acquired, whether now existing or hereafter arising, and all proceeds from the sale or other disposition of any such property. Such water rights shall include, without limitation, the following:

Idaho Department of Water Resources

Number	Priority Date	Source	Diversion Rate	Use
57-2232	03/09/1959	Succor Creek	1 CFS	Irrigation
57-4002	04/01/1908	Succor Creek	2.28 CFS	Irrigation

Succor Creek District Improvement Company

281 acres

Exhibit B

Any and all as-extracted collateral (including, without limitation, oil, gas and other minerals); fixtures (including, without limitation, trade fixtures, windmills and other wind machines); equipment (excluding farm machinery rolling stock and vehicles, but including, without limitation, all livestock handling equipment, compressors, pumps, stanchions, equipment relating to power generation, irrigation equipment, pivots, pumps, motors, sprinkler systems, mainlines, hand lines, wheel lines, siphon tubes, gated pipe and all other irrigation equipment used for the production or transportation of water on the real property described in the attached Exhibit A or for the irrigation or drainage thereof); embedded software relating to the foregoing; permits, licenses, agreements and documents necessary to own or operate the real property described in the attached Exhibit A (including, without limitation, all animal feeding operation permits and any state or federal grazing permits); supplies; and accounts generated from the real property described in the attached Exhibit A (including, without limitation, all leases, royalties, subleases, franchises, rents, issues, profits and incomes arising therefrom and all the estate, right, title and interest of every nature in and to the same); whether now owned or hereafter acquired, whether now existing or hereafter arising, and all accessions, parts, additions, replacements and substitutions for any of such property, and all proceeds (including, without limitation, insurance proceeds) from the sale or other disposition of any such property. The foregoing shall include, without limitation, the following:

10hp lift pump
5hp lift pump
5hp lift pump
5hp lift pump

BLM Allotment No. ID00527
BLM Allotment No. ID00607
BLM Allotment No. ID00471
BLM Allotment No. ID00566
BLM Allotment No. ID00511
BLM Allotment No. ID00506

Irrigation equipment shall include without limitation above and under ground pipeline, main lines, hand lines, wheel lines, pivots, pumps, motors and all allied equipment such as switch panels, pivot controls, wiring, shafting, openers, tubing, bowls, suction pipe, cones, valve openers, reducers, end plugs, risers, stems, sprinkler heads, hoses and nozzles.

Livestock handling equipment shall include without limitation all corrals, cow stands, lockups, feed alleys, water troughs, waste water management systems, loading chutes and windbreaks.

THIS SPACE RESERVED FOR RECORDER'S USE

After recording return to:
Malheur County Title Company
81 South Oregon St.
Ontario, OR 97914

Instrument # 292592
MURPHY, OWYHEE, IDAHO
2017-04-26 03:39:40 No. of Pages: 2
Recorded for: PIONEER TITLE COMPANY/OWYHEE
ANGELA BARKELL Fee: \$13.00
Ex-Officio Recorder Deputy: map
Index To: DEED WARRANTY
Electronically Recorded by Simplifile

Until a change is requested all tax statements shall be sent to the following address:

Brackett Ranches, LP
5331 Old Sullivan Road
Homedale, ID 83628

Electronically Recorded - DO NOT
Remove the County Stamped First
Page as it is now incorporated as
Part of the original Document.

WARRANTY DEED

TIMOTHY STEPHEN MCBRIDE, a single man, whose address is P.O. Box 438, Jordan Valley, OR 97910, Grantor, conveys and warrants to **BRACKETT RANCHES, LP**, whose address is 5331 Old Sullivan Lane, Homedale, ID 83628, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

****Limited Partnership**, an Idaho limited partnership

SEE EXHIBIT 'A' ATTACHED HERETO AND MADE A PART HEREOF

To HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and Grantees heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee and subject to U.S. Patent reservations, restrictions, dedications, easements, rights of way and agreements, if any, of record and current years taxes, levies, and assessments, includes irrigation and utility assessments, if any, which are not yet due and payable and that Grantor will warrant and defend the same from all lawful claims whatsoever.

The true consideration for this conveyance is: Relinquished property on behalf of the grantor and Replacement Property on behalf of the grantee as part of an IRC 1031 tax-deferred exchange

Dated this 20th day of April, 2017

Timothy Stephen McBride
Timothy Stephen McBride

STATE OF OREGON

County of Malheur)ss

On the 20th day of April, 2017, personally appeared before me **TIMOTHY STEPHEN MCBRIDE**, who acknowledged to me that he executed the same as his voluntary act and deed.

Sharon Lee Miles
Notary Public for Oregon

My commission expires: 2-10-20

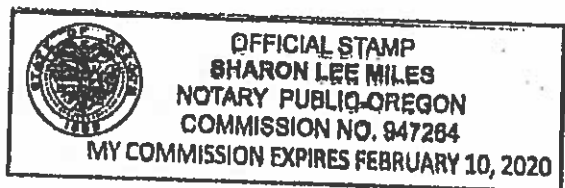


EXHIBIT A

In Township 3 South, Range 6 West, Boise Meridian, Owyhee County, Idaho.

Section 14: Government Lots 1 and 2, Southeast Quarter of the Northwest Quarter, Northeast Quarter of the Southwest Quarter

EXCEPTING THEREFROM

"The balance of said mineral rights and the rights for exploration, development or extraction", as reserved and excepted in the Deed from CHARLES E. MAYER, JR., also known as CHARLES E. MAYER, and recorded May 16, 1994 as Instrument No. 212825, Owyhee County Records.

Rerecord to correct Grantee

After recording return to:
Malheur County Title Company
81 South Oregon St.
Ontario, OR 97914

Until a change is requested all tax statements shall be
sent to the following address:
Brackett Ranches, LP

5331 Old Sullivan Road
Homedale, ID 83628

Escrow No. 31535 E

THIS SPACE RESERVED FOR RECORDER'S USE

Instrument # 292440
MURPHY, OWYHEE, IDAHO
2017-04-07 02:50:53 No. of Pages: 2
Recorded for: PIONEER TITLE COMPANY/OWYHEE
ANGELA BARKELL Fee: \$13.00
Ex-Officio Recorder Deputy: map
Index To: DEED WARRANTY
Electronically Recorded by Simplifile

Electronically Recorded - DO NOT
Remove the County Stamped First
Page as it is now incorporated as
Part of the original Document.

WARRANTY DEED

BALTZOR CATTLE COMPANY, an Oregon corporation, whose address is 752 Mahogany Gap Rd., Jordan Valley, OR 97910, Grantor, conveys and warrants to BRACKETT RANCHES, LP, whose address is 5331 Old Sullivan Lane, Homedale, ID 83628, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:
** Limited Partnership, an Idaho limited partnership

SEE EXHIBIT 'A' ATTACHED HERETO AND MADE A PART HEREOF

To HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and Grantees heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee and subject to U.S. Patent reservations, restrictions, dedications, easements, rights of way and agreements, if any, of record and current years taxes, levies, and assessments, includes irrigation and utility assessments, if any, which are not yet due and payable and that Grantor will warrant and defend the same from all lawful claims whatsoever.

The true consideration for this conveyance is: Replacement Property on behalf of the grantee as part of an IRC 1031 tax-deferred exchange

Dated this 6th day of April, 2017

BALTZOR CATTLE COMPANY, an Oregon corporation

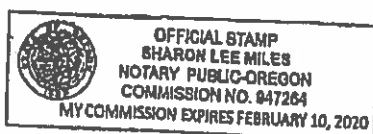
By: Virginia Baltzor
Virginia Baltzor, President

Instrument # 292593
MURPHY, OWYHEE, IDAHO
2017-04-26 03:57:36 No. of Pages: 3
Recorded for: PIONEER TITLE COMPANY/OWYHEE
ANGELA BARKELL Fee: \$16.00
Ex-Officio Recorder Deputy: map
Index To: DEED WARRANTY CORRECTION
Electronically Recorded by Simplifile

STATE OF OREGON

County of Malheur)ss

On the 6th day of April, 2017, personally appeared before me VIRGINIA BALTZOR, as the President of BALTZOR CATTLE COMPANY, an Oregon corporation, who acknowledged to me that she executed the same by authority and on behalf of said corporation.



Sharon Lee Miles
Notary Public for Oregon

My commission expires: 2-10-20

292593
292440

THIS SPACE RESERVED FOR RECORDER'S USE

After recording return to:
Malheur County Title Company
81 South Oregon St.
Ontario, OR 97914

Until a change is requested all tax statements shall be
sent to the following address:

Brackett Ranches, LP
5331 Old Sullivan Road
Homedale, ID 83628

Escrow No. 31535 E

Electronically Recorded - DO NOT
Remove the County Stamped First
Page as it is now Incorporated as
Part of the original Document.

WARRANTY DEED

BALTZOR CATTLE COMPANY, an Oregon corporation, whose address is 752 Mahogany Gap Rd., Jordan Valley, OR 97910, Grantor, conveys and warrants to BRACKETT RANCHES, LP, whose address is 5331 Old Sullivan Lane, Homedale, ID 83628, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

** Limited Partnership, an Idaho limited partnership

SEE EXHIBIT 'A' ATTACHED HERETO AND MADE A PART HEREOF

To HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and Grantees heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee and subject to U.S. Patent reservations, restrictions, dedications, easements, rights of way and agreements, if any, of record and current years taxes, levies, and assessments, includes irrigation and utility assessments, if any, which are not yet due and payable and that Grantor will warrant and defend the same from all lawful claims whatsoever.

The true consideration for this conveyance is: Replacement Property on behalf of the grantee as part of an IRC 1031 tax-deferred exchange

Dated this 16th day of April, 2017

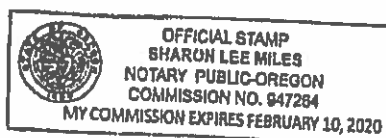
BALTZOR CATTLE COMPANY, an Oregon
corporation

By: Virginia Baltzor
Virginia Baltzor, President

STATE OF OREGON

County of Malheur)ss

On the 16th day of April, 2017, personally appeared before me VIRGINIA BALTZOR, as the President of BALTZOR CATTLE COMPANY, an Oregon corporation, who acknowledged to me that she executed the same by authority and on behalf of said corporation.



Sharon Lee Miles
Notary Public for Oregon

My commission expires: 2-10-20

EXHIBIT A

In Township 3 South, Range 5 West, Boise Meridian, Owyhee County, Idaho

Section 7: West Half of the Southeast Quarter, Southeast Quarter of the Southwest Quarter

Section 15: Southeast Quarter, East Half of the Southwest Quarter

Section 18: West Half of the Northeast Quarter, East Half of the Northwest Quarter,

Government Lots 2 and 4, East Half of the Southwest Quarter, Southeast Quarter

Section 19: Government Lots 1, 2 and 3, East Half of the Northwest Quarter,

Northeast Quarter, Northeast Quarter of the Southwest Quarter, North Half of the Southeast Quarter

Section 20: North Half, Northwest Quarter of the Southwest Quarter

Section 22: Northeast Quarter, East Half of the Northwest Quarter

Section 23: West Half of the Northwest Quarter, Northeast Quarter of the Northwest
Quarter, Northwest Quarter of the Northeast Quarter

In Township 3 South, Range 6 West, Boise Meridian, Owyhee County, Idaho

Section 13: Southeast Quarter, Southeast Quarter of the Southwest Quarter

Section 24: Northeast Quarter, East Half of the Northwest Quarter



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 24, 2017

MCFINNEY AGRI-FINANCE LLC
PO BOX 1598
TWIN FALLS ID 83303

RE: Notice of Security Interest for Water Right No's: 57-2232 & 57-4002

Dear Party Holding Security Interest:

The Department of Water Resources acknowledges receipt of correspondence adding security interest of the above referenced water rights to you. The Department has modified its records to reflect the change in security interest for the water rights, and has enclosed computer-generated reports for your records.

Updating the ownership record for a water right does not reconfirm the validity of the right. When processing an ownership change notice, the department does not review the history of water use to determine if the right has been forfeited through five years or more of non-use. To read more about water right forfeiture, including how to protect a water right from forfeiture, please see Sections 42-222 and 42-223, Idaho Code.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department or online at www.idwr.idaho.gov.

Please feel free to contact this office at 208-334-2190 if you have any questions regarding this matter.

Sincerely,

Chad Jones
Office Specialist II
Western Regional Office

Enclosures

Cc: BRACKETT RANCHES LTD PARTNERSHIP
5331 OLD SULLIVAN LN
HOMEDALE ID 83628

Jones, Chad

From: Jones, Chad
Sent: Thursday, May 11, 2017 1:51 PM
To: 'liversen@clearcreekag.com'
Subject: Security Interest in a Water Right for Brackett Ranches Limited Partnership

To whom it may concern,

IDWR (the Department) received a Notice of Security Interest in a Water Right for water right numbers 57-2232 & 57-4002 in the name of McFinney Agri-Finance LLC on May 3rd, 2017. At this time, a **Notice of Change in Water Right Ownership** application has not been received from Brackett Ranches Limited Partnership for the above mentioned rights. The department cannot process the security interest until the ownership change from the new owner is received and processed.

Because the Department cannot process this request without the ownership of the listed water rights being updated first, we will hold any action pending receipt of the necessary documentation. If the documentation is not received within 30 days, the notice will be returned to McFinney Agri-Finance LLC and will not be processed.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right, to the Department. Notice of the change must be provided to the Department within 120 days of the change. Change reporting forms are available from any office of the Department, or at www.idwr.idaho.gov.

If you have any questions, please let me know.

Chad Jones
Idaho Dept. of Water Resources - Western Region
chad.jones@idwr.idaho.gov
(208)334-2190



- NO response to email.
- State Office received O.C. on 6/23/17 & processed on 6/27/17

Malheur County Title Company, Inc.
81 South Oregon St.
Ontario, OR 97914

1-541-889-7625

May 1, 2017

RECEIVED
MAY 03 2017
WATER RESOURCES
WESTERN REGION

Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

Re: Water Rights/Security Interest
Brackett Ranches
Escrow No. 32166 E

In connection with the above described escrow, we enclose herewith the following:

- ☒ Our Check in the amount of \$50.00 representing 2 fees
- ☒ Notice of Security Interest in a Water Right from McKinney Agri-Finance, LLC
- ☒ Copy of recorded Warranty Deed from McBride to Brackett Ranches
- ☒ Copy of recorded Mortgage from Brackett to McFinney Agri-Finance, LLC

We appreciate the opportunity to assist you with this transaction and if we can be of further assistance please do not hesitate to contact us.

Sincerely,



Sharon L. Miles
President

Enc.