

APR 22 2016

DE

WATER RESOURCES  
WESTERN REGION

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**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.
	63-33207✓			
	63-32680✓			
	63-33296✓			
	63-34038✓			
	63-34202			

Permit  
Application for Permit

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

Wells Fargo Bank, National Association  
Food & Agribusiness Commercial Banking Office  
905 S. Fillmore, Ste. 701; MAC T3005-072  
Amarillo, TX 79101  
 Phone 806-371-3769  
 Email Jeff.Millican@wellsfargo.com

**SUPPORT DATA**  
**IN FILE #** 63-32680

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

CS Property Development, LLC

5. Expiration Date of Notification Period

2028

6. Is this a Renewal of Request for Notification?

YES  NO

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

Jeff S. Millican

Title, if applicable

Vice President

**For Office Use Only**

Received by [Signature] Date 4-22-2016 Receipt No. W044096 Fee \$125.00  
 Processed by AJ X Date Y WR [Signature] Date 5/4/16



**CORRECTED  
BARGAIN AND SALE DEED**

THIS DEED IS RECORDED TO REPLACE THE LEGAL DESCRIPTION IN DEED RECORDED AS INSTRUMENT NO. 2016-027951.

GRANTOR, **J.R. SIMPLOT COMPANY**, a Nevada corporation, whose principal address is P.O. Box 27, Boise ID 83707, for Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby bargain, sell and convey unto **CS PROPERTY DEVELOPMENT, LLC**, a Delaware limited liability company, whose principal address is P.O. Box 27, Boise ID 83707, as GRANTEE, and to Grantee's successors and assigns forever, all of the following described real estate located in Ada County, State of Idaho:

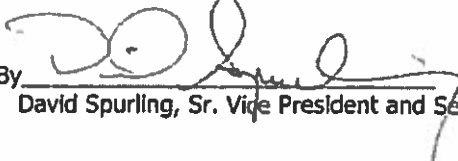
See Exhibit A attached hereto and made a part hereof.

TOGETHER WITH all improvements, easements, hereditaments and appurtenances thereto, and SUBJECT TO such rights, easements, covenants, restrictions and zoning regulations as appear of record or by use upon the premises.

In construing this deed, and where the context so requires, the singular includes the plural and the masculine, the feminine and the neuter.

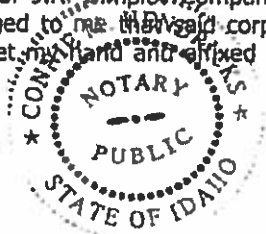
IN WITNESS WHEREOF, Grantor has hereunto caused this deed to be executed in its corporate name this 6<sup>th</sup> day of April, 2016.


**J.R. SIMPLOT COMPANY**

By   
David Spurling, Sr. Vice President and Secretary

STATE OF IDAHO )  
                                  ) ss.  
County of ADA )

On this 6<sup>th</sup> day of April, 2016, before me, a Notary Public in and for said State, personally appeared David Spurling, known to me to be the Sr. Vice President and Secretary, of J.R. Simplot Company, the corporation that executed the within instrument, and acknowledged to me that said corporation 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.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at: Boice  
My Commission Expires: 6/22/2020

**EXHIBIT A**

**LEGAL DESCRIPTION:** Real property in the County of Ada, State of Idaho, described as follows:

**Parcel 1:**

**A parcel of land being East half of the Southwest quarter, and a portion of the West half of the Southeast quarter of Section 6, Township 1 North, Range 2 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:**

**Beginning at a found aluminum cap marking the South quarter corner of Section 6; thence North 89°19'01" West, coincident with the South line of the East half of the Southwest quarter of Section 6, a distance of 1320.86 feet to the West 1/16 corner common to Sections 6 and 7; thence North 0°02'13" East, coincident with said West line of the East half of the Southwest quarter of Section 6, a distance of 2659.65 feet to the center West 1/16 corner of said Section 6; thence South 89°17'57" East, coincident with the North line of said East half of the Southwest quarter of Section 6, a distance of 2441.18 feet; thence South 0°01'30" West, parallel with the East line of the West half of the Southeast quarter of Section 6, a distance of 2163.89 feet; thence North 89°19'01" West, parallel with the South line of the Southeast quarter of Section 6, a distance of 147.50 feet; thence South 0°01'30" West, parallel with the East line of the West half of the Southeast quarter of Section 6, a distance of 495.01 feet to said South line of the Southeast quarter of Section 6; thence North 89°19'01" West, coincident with said South line of the Southeast quarter of Section 6, a distance of 973.36 feet to the Point of Beginning.**

**Excepting Therefrom:**

**A parcel of land being a portion of the West half of the Southeast quarter of Section 6, Township 1 North, Range 2 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:**  
**Commencing at a found aluminum cap marking the South quarter corner of Section 6; thence North 0°01'00" West, coincident with the West line of the West half of the Southeast quarter of Section 6, a distance of 660.05 feet to the Point of Beginning; thence continuing North 0°01'00" West, coincident with said West line of the West half of the Southeast quarter of Section 6, a distance of 330.66 feet; thence South 89°19'01" East, parallel with the South line of said West half of the Southeast quarter of Section 6, a distance of 665.32 feet; thence South 0°40'59" West, 330.64 feet; thence North 89°19'01" West, parallel with said South line of the West half of the Southeast quarter of Section 6, a distance of 661.28 feet to the Point of Beginning.**

**Parcel 2:**

**A parcel of land being a portion of the West half of the Southeast quarter of Section 6, Township 1 North, Range 2 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:**

**Commencing at a found aluminum cap marking the South quarter corner of Section 6; thence**

**North 0°01'00" West, coincident with the West line of the West half of the Southeast quarter of Section 6, a distance of 660.05 feet to the Point of Beginning; thence continuing**

**North 0°01'00" West, coincident with said West line of the West half of the Southeast quarter of Section 6, a distance of 330.66 feet; thence**

**South 89°19'01" East, parallel with the South line of said West half of the Southeast quarter of Section 6, a distance of 665.32 feet; thence**

**South 0°40'59" West, 330.64 feet; thence**

**North 89°19'01" West, parallel with said South line of the West half of the Southeast quarter of Section 6, a distance of 661.28 feet to the Point of Beginning.**

**Parcel 3:**

**Lots 6 and 7 in Section 6, Township 1 North, Range 2 East, Boise Meridian, in Ada County, Idaho.**

**Excepting the East 8 Feet of the West 33 feet of the Southwest quarter of Section 6, Township 1 North, Range 2 East, Boise Meridian.**

**Parcel 4:**

**The South 295 feet of the East 295 feet of the Southeast quarter Southeast quarter of Section 1, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Excepting therefrom the Easterly 8 feet of the two acre tract located in the Southeast corner of Section 1, Township 1 North, Range 1 East, Boise Meridian, said 8 foot strip of land being the 8 foot adjacent to the existing Cole Road right of way.**

**Parcel 7A (Combined Parcel 5, 6, and 7 north of railroad):**

**A parcel of land being a portion of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:**

**Commencing at a found 5/8" rebar marking the northeast corner of Section 12;**

**Thence South 89°54'25" West, coincident with the north line of the Northeast quarter of said Section 12, a distance of 33.00 feet to the westerly right of way of S. Cole Road and the Point of Beginning;**

**Thence South 0°01'59" East, coincident with said westerly right of way of S. Cole Road, 100.00 feet;**

**Thence South 89°54'25" West parallel with said north line of the Northeast quarter of**

**Section 12, a distance of 2,615.30 feet to the west line of said Northeast quarter of Section 12;**

**Thence South 0°18'40" East coincident with said west line of the Northeast quarter of Section 12, a distance of 2,444.17 feet to the northerly right of way of the Union Pacific Railroad and the beginning of a non-tangent curve;**

**Thence 64.41 feet along the arc of said curve to the right, and coincident with said northerly right of way of the Union Pacific Railroad, with a central angle of 0°19'30", a radius of 11,359.19 feet, subtended by a chord bearing North 64°01'21" West 64.41 feet;**

**Thence North 63°51'54" West coincident with said northerly right of way of the Union Pacific Railroad 1,428.64 feet;**

**Thence leaving said northerly right of way of the Union Pacific Railroad North 0°01'42" East 558.93 feet;**

**Thence North 89°59'59" West 1,139.44 feet to said northerly right of way of the Union Pacific Railroad;**

**Thence North 63°51'54" West coincident with said northerly right of way of the Union Pacific Railroad 215.59 feet to the West line of the Northwest quarter of said Section 12;**

**Thence North 0°22'04" East, coincident with said west line of the Northwest quarter of Section 12, a distance of 1,233.01 feet to the northwest corner of said Section 12;**

**Thence South 89°59'39" East, coincident with the north line of said northwest quarter of Section 12, a distance of 2,651.46 feet to the North one quarter corner of said Section 12;**

**Thence North 89°54'25" East, coincident with said north line of the Northeast quarter of Section 12, a distance of 2,615.79 feet to the Point of Beginning.**

**Parcel 7B (south of railroad):**

**The North half of the Northwest quarter, and the Southeast quarter of the Northwest quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Except that portion within the Union Pacific Railroad right of way.**

**Also Less and Excepting:**

**A parcel of land being a portion of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:**

**Commencing at a found 5/8" rebar marking the northeast corner of Section 12;**

**Thence South 89°54'25" West, coincident with the north line of the Northeast quarter of said Section 12, a distance of 33.00 feet to the westerly right of way of S. Cole Road**

**Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Except a portion of the Southwest quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:**

**Beginning at the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 12; thence  
West along the North boundary of the Southwest quarter of the Southeast quarter 41 feet to a point; thence  
South and parallel to the East boundary of the Southwest quarter of the Southeast quarter, to a point 40 feet North of the South boundary of said Section 12; thence  
East 41 feet to the East boundary of the Southwest quarter of the Southeast quarter; thence  
North along said East boundary of the Southwest quarter of the Southeast quarter to the Point of Beginning.**

**And Except that portion within the Union Pacific Railroad right of way.**

**Also Less and Excepting:**

**A parcel of land being a portion of the Northwest quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:**

**Commencing at a found 5/8" rebar marking the northeast corner of Section 12;**

**Thence South 89°54'25" West, coincident with the north line of the Northeast quarter of said Section 12, a distance of 33.00 feet to the westerly right of way of S. Cole Road;**

**Thence South 0°01'59" East, coincident with said westerly right of way of S. Cole Road, 100.00 feet;**

**Thence South 89°54'25" West parallel with said north line of the Northeast quarter of Section 12, a distance of 1,291.08 feet to the west line of Northeast quarter of the Northeast quarter of said Section 12;**

**Thence South 0°10'14" East coincident with the west line of the East half of the Northeast quarter of said Section 12, a distance of 1,714.01 feet**

**Thence South 0°10'14" East 843.36 feet to the northeast corner of the Northwest quarter of the Southeast quarter of said Section 12, and the Point of Beginning:**

**Thence continuing South 0°10'14" East coincident with the east line of said Northwest quarter of the Southeast quarter of Section 12, a distance of 443.83 feet to the northerly right of way of the Union Pacific Railroad**

**Thence North 68°27'48" West coincident with said northerly right of way of the Union Pacific Railroad 584.24 feet to the beginning of a non-tangent curve:**

**and the Point of Beginning;**

**Thence South 0°01'59" East, coincident with said westerly right of way of S. Cole Road, 100.00 feet;**

**Thence South 89°54'25" West parallel with said north line of the Northeast quarter of Section 12, a distance of 2,615.30 feet to the west line of said Northeast quarter of Section 12;**

**Thence South 0°18'40" East coincident with said west line of the Northeast quarter of Section 12, a distance of 2,444.17 feet to the northerly right of way of the Union Pacific Railroad and the beginning of a non-tangent curve;**

**Thence 64.41 feet along the arc of said curve to the right, and coincident with said northerly right of way of the Union Pacific Railroad, with a central angle of 0°19'30", a radius of 11,359.19 feet, subtended by a chord bearing North 64°01'21" West 64.41 feet;**

**Thence North 63°51'54" West coincident with said northerly right of way of the Union Pacific Railroad 1,428.64 feet;**

**Thence leaving said northerly right of way of the Union Pacific Railroad North 0°01'42" East 558.93 feet;**

**Thence North 89°59'59" West 1,139.44 feet to said northerly right of way of the Union Pacific Railroad;**

**Thence North 63°51'54" West coincident with said northerly right of way of the Union Pacific Railroad 215.59 feet to the West line of the Northwest quarter of said Section 12;**

**Thence North 0°22'04" East, coincident with said west line of the Northwest quarter of Section 12, a distance of 1,233.01 feet to the northwest corner of said Section 12;**

**Thence South 89°59'39" East, coincident with the north line of said northwest quarter of Section 12, a distance of 2,651.46 feet to the North one quarter corner of said Section 12;**

**Thence North 89°54'25" East, coincident with said north line of the Northeast quarter of Section 12, a distance of 2,615.79 feet to the Point of Beginning.**

**Parcel 8:**

**The Southwest quarter of the Northwest quarter, and the West half of the Southwest quarter of Section 12 in Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Except that portion within the Union Pacific Railroad right of way.**

**Parcel 9:**

**The East half of the Southwest quarter, and the West half of the Southeast quarter of**

**Thence 586.29 feet along the arc of said curve to the right, and coincident with the said northerly right of way of the Union Pacific Railroad, with a central angle of 2°57'26", a radius of 11,359.19 feet, subtended by a chord bearing North 66°59'01" West 586.23 feet to the north line of said Northwest quarter of the Southeast quarter of Section 12;**

**Thence North 89°59'31" East, coincident with said north line of the Northwest quarter of the Southeast quarter of Section 12, a distance of 1,081.69 feet to the Point of Beginning.**

**Parcel 10:**

**The Southeast quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Including a portion of the Southwest quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:**

**Beginning at the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 12; thence West along the North boundary of the Southwest quarter of the Southeast quarter, 41 feet to a point; thence South and parallel to the East boundary of the Southwest quarter of the Southeast quarter, to a point 40 feet North of the South boundary of said Section 12; thence East 41 feet to the East boundary of the Southwest quarter of the Southeast quarter; thence North along said East boundary of the Southwest quarter of the Southeast quarter to the Point of Beginning.**

**Excluding a strip of land 40 feet wide along the entire length of the South border of the Southeast quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Parcel 11:**

**A strip of land 40 feet wide along the entire length of the South border of the Southeast quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Parcel 12:**

**The Northwest quarter of the Northwest quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Parcel 13:**

**The North half of the Northeast quarter of the Northwest quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Parcel 14:**

**The South half of the Northeast quarter of the Northwest quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Parcel 15:**

**The West half of the Northeast quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Parcel 16:**

**The North half of the Northeast quarter of the Northeast quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Parcel 17:**

**The South half of the Northeast quarter of the Northeast quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Parcel 18:**

**The Southeast quarter of the Northeast quarter and the Northeast quarter of the Southeast quarter of Section 13, Township 1 North, Range 1 East of the Boise Meridian in Ada County, Idaho.**

**Parcel 19:**

**The Southwest quarter of the Southeast quarter, and the Southeast quarter of the Southeast quarter of Section 11 in Township 1 North, Range 1 East of the Boise Meridian, Ada County, Idaho.**

**Parcel 20:**

**The Northwest quarter of the Northeast quarter, and the Northeast quarter of the Northeast quarter of Section 14 in Township 1 North, Range 1 East of the Boise Meridian, Ada County, Idaho.**

**Parcel 21:**

**The South half of the Northeast quarter of Section 14, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

**Parcel 22:**

**The North half of the Southeast quarter of Section 14, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.**

32

ADA COUNTY RECORDER Christopher D. Rich BOISE IDAHO Pgs=32 BONNIE FIRST AMERICAN TITLE AND ESCROW COMPANY	<b>2016-033169</b> 04/20/2016 04:23 PM \$103.00
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Recording Requested By,  
And After Recording, Return To:

WELLS FARGO BANK,  
NATIONAL ASSOCIATION  
MAC R4057-01Q  
7711 Plantation Road, 1st Floor  
Roanoke, VA 24019-3224  
Attn: Loan Documentation

ELECTRONICALLY RECORDED - DO NOT  
REMOVE THE COUNTY STAMPED FIRST  
PAGE AS IT IS NOW INCORPORATED AS  
PART OF THE ORIGINAL DOCUMENT.

# 2621014 - 6

**THIS MORTGAGE SECURES A NOTE WHICH PROVIDES FOR A VARIABLE INTEREST RATE. THIS MORTGAGE SECURES A CONSTRUCTION NOTE. THE INTEREST RATE, PAYMENT TERMS AND BALANCE DUE MAY BE INDEXED, ADJUSTED, RENEWED OR RENEGOTIATED.**

**THIS MORTGAGE IS TO BE INDEXED NOT ONLY AS A MORTGAGE BUT ALSO AS A FIXTURE FILING AND IS TO BE INDEXED AS SUCH IN THE REAL PROPERTY RECORDS OF ADA COUNTY.**

**CONSTRUCTION MORTGAGE WITH ABSOLUTE  
ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is executed as of April 6, 2016, by CS PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company ("Mortgagor"), to WELLS FARGO BANK, NATIONAL ASSOCIATION ("Mortgagee"), Attn: Food & Agribusiness Commercial Banking Office, MAC T3005-072, 905 S. Fillmore, Ste. 701, Amarillo, TX 79101. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Credit Agreement (defined below).

**ARTICLE I. MORTGAGE**

1.1 Grant. For the purposes and upon the terms and conditions in this Mortgage, Mortgagor irrevocably mortgages, grants, conveys and assigns to Mortgagee, with the right of entry and possession, Mortgagor's right, title and interest, whether now existing or hereafter acquired or constructed, in the following real and personal property: (a) all real property (the "Land") located in Ada County, Idaho, and described on Exhibit A attached hereto; (b) all easements, rights-of-way and rights used in connection with or as a means of access to any portion of said real property, including the right to use any rail spur; (c) all tenements, hereditaments and appurtenances thereof and thereto; (d) 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 street, open or proposed, adjoining said real property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with said real property; (e) all buildings, improvements (including, but not limited to, the Construction Improvements relating to the beef processing facility (the "Project") to be constructed and as constructed on approximately 82 acres of the Land, which Construction Real Property is described in Exhibit B attached hereto, and including all Stored Materials, Custom Manufactured Materials and Equipment), and all other building materials, construction materials, raw materials, supplies, work in progress, and all tangible personal property incorporated or to be incorporated into, located in or on, or used in connection with, the Project, fixtures, equipment (including, without limitation, all irrigation equipment, pipes, pumps, pivots, sprinklers and other ancillary irrigation equipment, all livestock equipment, corrals, pens, barns, sheds, chutes, and livestock handling

equipment, all rolling stock (excluding titled vehicles), and other farming equipment) and landscaping now or hereafter erected or located on or used in connection with said real property; (f) all development rights, governmental or quasi-governmental licenses, permits or approvals, zoning rights and other similar rights or interests which relate to the development, use or operation of, or that benefit or are appurtenant to, said real property, and the Construction Contract and Plans and Specifications for the Construction Improvements; (g) all minerals and mineral rights, oil and gas and oil and gas rights, air rights, geothermal resources and geothermal rights; (h) all water and water rights now or hereafter diverted from or used on or in connection with, or appurtenant to, the Land or the Project or the related wastewater application system, including but not limited to (i) all water right applications, permits, licenses, decrees, transfers and claims now or hereafter held by Mortgagor, including but not limited to (A) a portion of water rights 63-3362, 63-7531, 63-10383, and 63-11347 (and any renumbering by a split thereof through the Idaho Department of Water Resources); (B) water right permits and applications 63-12546, 63-33884, 63-33296, 63-32680, 63-33207, and 63-34038 (and any subsequently issued water right permits and licenses), and whether such water rights are decreed or undecreed, tributary or non-tributary, surface or underground, appropriated or unappropriated, (ii) all canals, ditches ponds, impoundments, and reservoirs of any nature and all rights thereto, appurtenant to or associated with said Land, (iii) all shares of stock or other rights in any water, canal, ditch or reservoir company, and (iv) all wells, well permits, water service contracts, drainage rights and other evidences of any such rights (collectively, "Water Rights"); (i) Mortgagor's interest in all farm products consisting of crops (growing, grown, harvested, and to be grown), including crops produced on trees, vines and bushes, from Mortgagor's farming operations on the Land and under the Crop Share Leases (defined below) and any other farming/crop share leases or agreements, all supplies used or produced therein, and all products thereof and replacements and additions thereto, and (j) all interest or estate which Mortgagor now has or may hereafter acquire in said property and all additions and accretions thereto, and all awards or payments made for the taking of all or any portion of said property by eminent domain or any proceeding or purchase in lieu thereof, or any damage to any portion of said property (collectively, the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limitation of general terms.

1.2 Address. The address of the Project (if known) is: 17365 S. Cole Road, Kuna Idaho 83634. The Land consists of approximately 1275 acres of multiple non-contiguous tracts of land, approximately 82 acres of which is known as the Construction Real Property that is the site of the Project, approximately 800 acres is irrigated crop land, approximately 387 acres is native range land, and approximately 6 acres is to be used for access roads and pipelines. The Project also will include a wastewater application system that will also utilize approximately 640 acres of land leased by Mortgagor. Neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Mortgage on the Subject Property as described on Exhibit A. In the event of any conflict between the provisions of Exhibit A and said address, Exhibit A shall control.

## ARTICLE II. OBLIGATIONS SECURED

2.1 Obligations Secured. Mortgagor makes this grant and assignment for the purpose of securing the following obligations (each, a "Secured Obligation" and collectively, the "Secured Obligations"):

(a) performance of the obligations contained herein and in that certain Construction Loan Agreement (Construction Loan Only) dated as of April 6, 2016, to which Mortgagor, CS Beef Packers, LLC, a Delaware limited liability company and affiliate of Mortgagor ("CS Beef" and, together with Mortgagor, the "Borrowers") and Mortgagee are parties, as the same may be amended, revised, amended and restated, replaced, supplemented or otherwise modified from time to time ("Credit Agreement"), which Credit Agreement provides for, among other things, the construction of certain improvements on the Subject Property; and

(b) payment to Mortgagee of all sums at any time owing and performance of all other obligations arising under or in connection with that certain Construction Loan Note ("Note") dated as of April 6, 2016, in the maximum principal amount of One Hundred Four Million Dollars (\$104,000,000.00), with interest as provided therein, executed by Borrowers and payable to Mortgagee or its order, together with the payment and performance of any other indebtedness or obligations incurred in connection with the credit accommodation evidenced by the Note, whether or not specifically referenced therein; and

(c) payment and performance of all obligations under the other Loan Documents, together with all advances, payments or other expenditures made by Mortgagee as or for the payment or performance of any such obligations; and

(d) payment and performance of all obligations of Mortgagor under this Mortgage, together with all advances, payments or other expenditures made by Mortgagee as or for the payment or performance of any such obligations of Mortgagor, and all advances, payments or other expenditures made by Mortgagee to complete the Construction Improvements and otherwise to protect the collateral and the security of this Mortgage, including, but not limited to, expenditures made by Mortgagee to cause the surety under any payment or performance bond to perform on the bond; and

(e) payment and performance of all obligations, if any, and the contracts under which they arise, which any rider attached to and recorded with this Mortgage recites are secured hereby; and

(f) payment to Mortgagee of all obligations of Borrowers to Mortgagee under or related to any deposit account, treasury management or similar transaction or arrangement at any time entered into with Mortgagee; and

(g) payment and performance of all future advances and other obligations that the then record owner of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Mortgage; and

(h) all modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) the conversion of the Construction Loan to a Permanent Loan as contemplated by the Credit Agreement, (ii) modifications, extensions or renewals at a different rate of interest, or (iii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 Obligations. The term "obligations" is used herein in its broadest and most comprehensive sense and includes any and all advances, debts, obligations and liabilities heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, joint or several, including without limitation, all principal, interest, charges, including prepayment charges and late charges, loan fees at any time accruing or assessed on any Secured Obligation, all costs of collecting the Secured Obligations, and all obligations under or related to any deposit account, treasury management or similar transaction or arrangement, and whether Borrowers may be liable individually or jointly with others, and whether recovery upon such obligations may be or hereafter becomes unenforceable.

2.3 Incorporation. All terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property are hereby deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or any other Secured Obligation may permit borrowing, repayment and reborrowing; and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time.

2.4. Nicholson Leasehold Mortgages. As additional security for the Secured Obligations, Mortgagor has recorded in the real property records of Ada County, Idaho a Construction Leasehold Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the date hereof (the "Nicholson Leasehold Mortgage"), in favor of Mortgagee and encumbering Mortgagor's leasehold estate on approximately 640 acres of land described therein (the "Nicholson Land") leased by Mortgagor from Thomas T. Nicholson and Diana Nicholson, husband and wife, as owner/landlord, pursuant to that Lease Agreement and Consent to Apply Industrial Effluent dated February 8, 2016 (the "Nicholson Lease") and Mortgagor's right, title and interest in the other "Subject Property" (as defined therein).

2.5 CS Beef Leasehold Mortgage. Mortgagor has leased the Subject Property to CS Beef pursuant to that certain Lease Agreement dated April 6, 2016 (the "CS Beef Lease"). As additional security for the Secured Obligations, CS Beef has recorded in the real property records of Ada County, Idaho a Construction Leasehold Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the date hereof ("CS Beef Leasehold Mortgage"), in favor of Mortgagee and encumbering (a) CS Beef's leasehold estate on the Land under the CS Beef Lease, (b) CS Beef's sublease leasehold estate on the Nicholson Land under that Sublease Agreement between Mortgagor and CS Beef dated April 6, 2016 (the "Nicholson Sublease"), and (c) the other "Subject Property" (as defined therein).

2.6 Crop Share Leases. Pursuant to that certain Lease Agreement dated July 15, 2014 between J. R. Simplot Company ("Simplot"), as lessor, and Ray Montierth and Susan Montierth, husband and wife (the "Montierths"), as lessee (the "Project Crop Share Lease"), as assigned by Simplot to Mortgagor by Assignment and Assumption Agreement dated April 6, 2016, as assigned by Mortgagor to CS Beef by Assignment and Assumption Agreement dated April 6, 2016, CS Beef leases certain irrigated acreage of the Land for the purposes of growing crops (using land-applied wastewater and other water). The rent payable under the Project Crop Share Lease is a share of the crops grown pursuant thereto and/or the proceeds therefrom. In addition, pursuant to that certain Lease Agreement dated August 5, 2015 between Simplot, as lessor, and the Montierths, as lessee (the "Farm Crop Share Lease"), as assigned by Simplot to Mortgagor by Assignment and Assumption Agreement dated April 6, 2016, as assigned by Mortgagor to CS Beef by Assignment and Assumption Agreement dated April 6, 2016, CS Beef leases other acreage of the Land for the purposes of growing crops (not using land-applied wastewater). The rent payable under the Farm Crop Share Lease is a share of the crops grown pursuant thereto and/or the proceeds therefrom. The crops grown under the Project Crop Share Lease and the Farm Crop Share Lease (together, the "Crop Share Leases") are referred to collectively as the "Crop Rent" or "Crops."

2.7 Mortgage Does Not Secure Guaranties or Environmental Indemnity Agreement. Notwithstanding any provision of this instrument or of any Loan Document to the contrary: (i) this Mortgage does not secure the obligations of any guarantor of the Secured Obligations and no separate guaranty agreement given in connection with the Credit Agreement shall be deemed to be a "Credit Document" or "Loan Document" secured by this Mortgage and (ii) this Mortgage does not secure the obligations of any Indemnitor under that certain separate Environmental Indemnity Agreement of even date herewith made in favor of Mortgagee (the "Indemnity") and such Indemnity shall not be deemed to be a "Credit Document" or a "Loan Document" secured by this Mortgage. Without limiting any of the foregoing, and to avoid doubt, this Mortgage secures Mortgagor's and Borrowers' obligations as an obligor under the Secured Obligations, but not Mortgagor's or Borrowers' obligations as an Indemnitor under the Indemnity.

### ARTICLE III. ASSIGNMENT OF LEASES AND RENTS

3.1 Assignment. For the purposes and upon the terms and conditions set forth herein, Mortgagor hereby irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under the CS Beef Lease, the Crop Share Leases, and all other present and future leases, licenses,

rental agreements, crop share agreements, and other agreements of any kind relating to the use or occupancy of any of the Subject Property or any portion thereof, whether existing as of the date hereof or at any time hereafter entered into, together with all subleases and other agreements for the use or occupancy of the Subject Property or any portion thereof, all guarantees of and security for any tenant's or lessee's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals and modifications thereto (each, a "Lease" and collectively, the "Leases"), together with any and all other rents, issues, revenues, receipts, deposits, and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases, including, without limitation, all Crops, Crop Rents and cash rents payable under the Crop Share Leases and any other farming or crop sharing agreements and the proceeds and products thereof (collectively, "Rents"). This assignment shall not impose upon Mortgagee any duty to produce Rents from the Subject Property, nor cause Mortgagee to be: (a) a "mortgagee in possession" for any purpose; (b) responsible for performing any of the obligations of the lessor or landlord under any Lease; (c) responsible for any waste committed by any person or entity at any time in possession of the Subject Property or any part thereof, or for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair or control of the Subject Property, or (d) directly or indirectly liable to Mortgagor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies, or powers granted to Mortgagee hereunder or to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases. This is an absolute assignment, not an assignment for security only, and Mortgagee's right to Rents is not contingent upon and may be exercised without taking possession of the Subject Property. Mortgagor agrees to execute and deliver to Mortgagee, within five (5) days of Mortgagee's written request, such additional documents as Mortgagee may reasonably request to further evidence the assignment to Mortgagee of any and all Leases and Rents. Mortgagee, at Mortgagee's option and without notice, may notify any lessee or tenant of this assignment of the Leases and Rents. The Leases shall include, without limitation, the Project Lease.

**3.2 Protection of Security.** To protect the security of this assignment, Mortgagor agrees:

(a) At Mortgagor's sole cost and expense: (i) to perform each obligation to be performed by the lessor or landlord under each Lease and to enforce or secure the performance of each obligation to be performed by the lessee or tenant under each Lease; (ii) not to modify any Lease in any material respect, nor accept surrender under or terminate the term of any Lease; (iii) not to anticipate the Rents under any Lease; and (iv) not to waive or release any lessee or tenant of or from any Lease obligations. Mortgagor assigns to Mortgagee all of Mortgagor's right and power to modify the terms of any Lease, to accept a surrender under or terminate the term of or anticipate the Rents under any Lease, and to waive or release any lessee or tenant of or from any Lease obligations, and any attempt on the part of Mortgagor to exercise any such rights or powers without Mortgagee's prior written consent shall be a breach of the terms hereof.

(b) At Mortgagor's sole cost and expense, to defend any action in any manner connected with any Lease or the obligations thereunder, and to pay all costs of Mortgagee, including reasonable attorneys' fees, in any such action in which Mortgagee may appear.

(c) That, should Mortgagor fail to do any act required to be done by Mortgagor under a Lease, then Mortgagee, but without obligation to do so and without notice to Mortgagor and without releasing Mortgagor from any obligation hereunder, may make or do the same in such manner and to such extent as Mortgagee deems necessary to protect the security hereof, and, in exercising such powers, Mortgagee may employ attorneys and other agents, and Mortgagor shall pay necessary costs and reasonable attorneys' fees incurred by Mortgagee, or its agents, in the exercise of the powers granted herein. Mortgagor shall give prompt notice to Mortgagee of any default by any lessee or tenant under any Lease, and of any notice of default on the part of Mortgagor under any Lease received from a lessee or tenant thereunder, together with an accurate and complete copy thereof.

(d) To pay to Mortgagee immediately upon demand all sums expended under the authority hereof, including reasonable attorneys' fees, together with interest thereon at the highest rate per annum payable under any Secured Obligation, and the same, at Mortgagee's option, may be added to any Secured Obligation and shall be secured hereby.

3.3 **License.** Mortgagee confers upon Mortgagor a license ("License") to collect and retain the Rents as, but not before, they come due and payable, until the occurrence of any Default as hereinafter defined. Upon the occurrence of any Default, the License shall be automatically revoked, and Mortgagee may, at Mortgagee's option and without notice, either in person or by agent, with or without bringing any action, or by a receiver to be appointed by a court: (a) enter and take possession of the Subject Property; (b) manage and operate the Subject Property or any part thereof pursuant to the terms of the applicable Lease; (c) make, cancel, enforce or modify any Lease; (d) obtain and evict tenants, fix or modify Rents, and do any acts which Mortgagee deems proper to protect the security hereof; and (d) either with or without taking possession of the Subject Property, in its own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid, and apply the same in accordance with the provisions of this Mortgage. All payments thereafter collected by Mortgagor shall be held by Mortgagor as trustee under a constructive trust for the benefit of Mortgagee. Mortgagor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no duty to inquire as to whether any Default has actually occurred or is then existing. Mortgagor hereby relieves the tenants from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee. The entering and taking possession of the Subject Property, the collection of Rents and the application thereof as aforesaid, shall not cure or waive any Default, nor waive, modify or affect any notice of default hereunder, nor invalidate any act done pursuant to any such notice. The License shall not grant to Mortgagor the right to possession, except as provided in this Mortgage.

#### ARTICLE IV. SECURITY AGREEMENT AND FIXTURE FILING

4.1 **Security Interest.** Mortgagor, as "debtor," hereby grants and assigns to Mortgagee, as "secured party," a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "Collateral"): (a) all items of the Subject Property that are personal property in which a security interest may be created under the UCC (defined below), (b) all goods, tools, machinery, furnishings, furniture and other equipment and fixtures, now or at any time hereafter, owned or acquired by Mortgagor, wherever located, whether in the possession of Mortgagor or any other person and whether located on the Land or elsewhere, now or hereafter affixed or to be affixed to, and whether or not severed and removed from, the Land, and all improvements, replacements, accessions and additions thereto and embedded software included therein, (c) all Leases and all Rents and other payments and security deposits derived from the Subject Property, including but not limited to Mortgagor's interest in Crops and Crop Rents and/or cash payments under the Crop Share Leases and any other crop share, lease or other farming arrangements on the Land, (d) all accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money derived from or relating to the Subject Property, (e) trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Subject Property or any business now or hereafter conducted thereon by Mortgagor, (f) all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Subject Property, (g) all advance payments of insurance premiums made

by Mortgagor with respect to the Subject Property, (h) all loan funds held by Mortgagee, whether or not disbursed, (i) all funds deposited with Mortgagee pursuant to any loan documents, and all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property, (j) all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Mortgagee to Mortgagor under or related to any deposit account, treasury management or similar transaction or arrangement at any time entered into between Mortgagor and Mortgagee in connection with the Note, (k) all rights to payment, including returned premiums, with respect to any insurance relating to any of the Collateral, and all rights to payment with respect to any claim or cause of action affecting or relating to any of the Collateral, (l) whatever is receivable or received when any of the Collateral or proceeds thereof are sold, leased, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, (m) all replacements and proceeds of, and additions and accessions to, any of the Collateral, and (n) all books, records and files relating to any of the Collateral.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing filed in the real property records of Ada County, Idaho under the Idaho Uniform Commercial Code, as amended or recodified from time to time ("UCC"), and is acknowledged and agreed to be a "construction mortgage" under the UCC. Information concerning the security interest herein granted may be obtained from the Mortgagor at the address set forth below the signature block.

**4.2 Rights of Mortgagee.** Upon the occurrence of a Default, Mortgagee shall have all the rights of a "Secured Party" under the UCC. In addition to such rights, Mortgagee may, but shall not be obligated to, at any time, without notice unless required by applicable law, and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; (c) inspect the Collateral during regular business hours; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral. Mortgagee may, upon the occurrence of a Default: (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell and dispose of any or all of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; and/or (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under the UCC or other applicable law.

Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable notice. Mortgagor further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Mortgagee first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations.

**4.3 Financing Statements.** Mortgagor represents and warrants to Mortgagee that its name as set forth on page 1 of this Mortgage is its full legal name and that the address set forth on the signature page is Mortgagor's principal place of business. Mortgagor further represents and warrants to Mortgagee that Mortgagor has, or will have, good title to or interests in the Collateral and has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity. In the event of any change in name or change in the form of legal entity of Mortgagor, Mortgagor shall notify Mortgagee thereof and promptly after written request shall authorize Mortgagee to execute, file and record such UCC forms as are legally required to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and

fees in connection with the filing and recording thereof. Mortgagor represents and warrants to Mortgagee that the only Crops that may be grown on the Land are alfalfa, grass, corn, sorghum, wheat, oats and triticale, and that, if it is determined to grow any other crop on the Land, Mortgagor will provide written notice to Mortgagee at the beginning of the crop season that such crops are to be grown on the Land. If the filing or recording of UCC or UCC1-F or other financing statements or continuation or amendment statements, or other notices of liens or security interests or assignments, is legally required or necessary to perfect or continue perfection of or to provide notice of record of Mortgagee's liens and security interests in the Collateral under the UCC or other applicable law, Mortgagee is hereby authorized to execute, file and record the same, as Mortgagee deems necessary, and Mortgagor shall pay all expenses and fees in connection with the filing and recording thereof. Upon the occurrence and during the continuation of a Default, to the extent not prohibited by applicable law, Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.

#### ARTICLE V. RIGHTS AND DUTIES OF THE PARTIES

5.1 Warranty of Title. Mortgagor warrants that, except as disclosed to Mortgagee prior to the date hereof in a writing which refers to this warranty, Mortgagor lawfully possesses and holds good and marketable unencumbered fee simple title to the Land and Subject Property, or if permitted by Mortgagee in writing a leasehold interest in, the Subject Property, and has rights in the Collateral, without limitation, in each case, on the right to encumber as herein provided, subject only to those exceptions approved by Mortgagee in writing, and that this Mortgage is intended to create a valid lien on the Subject Property and all of Mortgagor's interest therein and valid security interests in the Collateral.

5.2 Taxes and Assessments. Subject to the right, if any, of Mortgagor to contest payment of the following pursuant to any other agreement between Mortgagor and Mortgagee, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed: (a) by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein; or (b) by any public authority upon Mortgagee by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Mortgagee pursuant to any Secured Obligation; provided however, that Mortgagor shall have no obligation to pay any income taxes of Mortgagee. Promptly upon request by Mortgagee, Mortgagor shall furnish to Mortgagee satisfactory evidence of the payment of all of the foregoing. Mortgagee is hereby authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of any of the foregoing.

5.3 Performance of Secured Obligations. Mortgagor shall promptly pay and perform each Secured Obligation when due. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may significantly affect Mortgagee's rights in the Subject Property, then Mortgagee may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to complete construction of the Construction Improvements, including, but not limited to, expending amounts required to cause the surety under any payment or performance bond to perform on the bond to complete construction of the Construction Improvements, and to protect the value of the Subject Property and Mortgagee's rights in the Subject Property, including the retaining of counsel, and any reasonable amount so expended by Mortgagee will be added to the Secured Obligations and will be payable by Mortgagor to Mortgagee on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Note.

5.4 Liens, Encumbrances and Charges. Mortgagor shall immediately discharge any lien on the Subject Property not approved by Mortgagee in writing. Except as otherwise provided in any Secured Obligation or other agreement with Mortgagee, Mortgagor shall pay when due all obligations secured by

or reducible to liens and encumbrances which shall now or hereafter encumber the Subject Property, whether senior or subordinate hereto, including without limitation, any mechanics' liens.

**5.5 Insurance.** Mortgagor shall insure (or cause CS Beef to insure) the Subject Property against loss or damage by fire and such other risks as Mortgagee shall from time to time require. Mortgagor shall carry public liability insurance, flood insurance as required by applicable law and such other insurance as Mortgagee may reasonably require, including without limitation, terrorism, business interruption insurance or loss of rental value insurance. Mortgagor shall maintain all required insurance at Mortgagor's expense, under policies issued by companies and in form and substance satisfactory to Mortgagee. Mortgagee, by reason of accepting, rejecting, approving or obtaining insurance, shall not incur any liability for: (a) the existence, nonexistence, form or legal sufficiency thereof; (b) the solvency of any insurer; or (c) the payment of losses. All policies and certificates of insurance shall name Mortgagee as loss payee, and shall provide that the insurance cannot be terminated as to Mortgagee except upon a minimum of ten (10) days' prior written notice to Mortgagee. Immediately upon any request by Mortgagee, Mortgagor shall deliver to Mortgagee the original of all such policies or certificates, with receipts evidencing annual prepayment of the premiums.

**5.6 Tax and Insurance Impounds.** Upon any Default or upon any Material Adverse Effect on Mortgagor's financial condition, as determined by Mortgagee, at Mortgagee's option and upon its demand, Mortgagor shall, until all Secured Obligations have been paid in full, pay to Mortgagee monthly, annually or as otherwise directed by Mortgagee an amount estimated by Mortgagee to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. If Mortgagee determines that amounts paid by Mortgagor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Mortgagee shall notify Mortgagor of the increased amount required for the payment thereof when due, and Mortgagor shall pay to Mortgagee such additional amount within thirty (30) days after notice from Mortgagee. All amounts so paid shall not bear interest, except to the extent and in the amount required by law. So long as there is no Default, Mortgagee shall apply said amounts to the payment of, or at Mortgagee's sole option release said funds to Mortgagor for application to and payment of, such taxes, assessments, levies, charges and insurance premiums. If a Default exists, Mortgagee at its sole option may apply all or any part of said amounts to any Secured Obligation and/or to cure such Default, in which event Mortgagor shall be required to restore all amounts so applied, as well as to cure any Default not cured by such application. Mortgagor hereby grants and transfers to Mortgagee a security interest in all amounts so paid and held in Mortgagee's possession, and all proceeds thereof, to secure the payment and performance of each Secured Obligation. Upon assignment of this Mortgage, Mortgagee shall have the right to assign all amounts collected and in its possession to its assignee, whereupon Mortgagee shall be released from all liability with respect thereto. The existence of said impounds shall not limit Mortgagee's rights under any other provision of this Mortgage or any other agreement, statute or rule of law. Within ninety-five (95) days following full repayment of all Secured Obligations (other than as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing any Secured Obligation), or at such earlier time as Mortgagee in its discretion may elect, the balance of all amounts collected and in Mortgagee's possession shall be paid to Mortgagor, and no other party shall have any right of claim thereto.

**5.7 Damages; Insurance and Condemnation Proceeds.**

(a) (i) All awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation (or transfer in lieu thereof) for public or private use affecting all or any part of or any interest in the Subject Property or Collateral; (ii) all other claims and awards for damages to or decrease in value of all or any part of or any interest in the Subject Property or Collateral; (iii) all proceeds of any insurance policies payable by reason of loss sustained to the Subject

Property or Collateral; and (iv) all interest which may accrue on any of the foregoing, are all absolutely and irrevocably assigned to and shall be paid to Mortgagee. At the absolute discretion of Mortgagee, whether or not its security is or may be impaired, but subject to applicable law if any, and without regard to any requirement contained in any other Section hereof, Mortgagee may apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any such claim and apply the balance to the Secured Obligations in any order acceptable to Mortgagee, and release all or any part of the proceeds to Mortgagor upon any conditions Mortgagee may impose. Mortgagee may commence, appear in, defend or prosecute any assigned claim or action, and may adjust, compromise, settle and collect all claims and awards assigned to Mortgagee; provided however, that in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or non-feasance by Mortgagee or its employees or agents.

(b) At its sole option, Mortgagee may permit insurance or condemnation proceeds held by Mortgagee to be used for repair or restoration but may impose any conditions on such use as Mortgagee deems necessary, including, without limitation: (i) the deposit with Mortgagee of such additional funds which Mortgagee determines are needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee (the arrangement contained in Credit Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Mortgagee of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Mortgagee, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be in form and substance acceptable and satisfactory to Mortgagee; and (iv) the delivery to Mortgagee of evidence, in form and substance acceptable and satisfactory to Mortgagee, (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases acceptable to and required by Mortgagee; (cc) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no adverse change in the financial condition or credit of Mortgagor and Borrower (if different from Mortgagor) and any guarantors since the date of this Mortgagee; and (ee) of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Mortgagee of such insurance or condemnation proceeds, then Mortgagee may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose.

**5.8 Maintenance and Preservation of Subject Property.** Subject to the provisions of any Secured Obligation, Mortgagor covenants:

(a) to complete construction of the Construction Improvements in accordance with the Credit Agreement;

(b) to keep the Subject Property in good condition and repair, ordinary wear and tear excepted;

(c) except with Mortgagee's prior written consent, not to remove or demolish the Subject Property, nor alter, restore or add to the Subject Property, nor initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property;

(d) to restore promptly and in good workmanlike manner any portion of the Subject Property which may be damaged or destroyed, unless Mortgagee requires that all of the insurance proceeds be used to reduce the Secured Obligations as provided in the Section hereof entitled Damages; Insurance and Condemnation Proceeds;

(e) to comply with and not to suffer violation of any or all of the following which govern acts or conditions on, or otherwise affect the Subject Property: (i) laws, ordinances, regulations, standards and judicial and administrative rules and orders; (ii) covenants, conditions, restrictions and equitable servitudes, whether public or private; and (iii) requirements of insurance companies and any bureau or agency which establishes standards of insurability;

(f) not to commit or permit waste of the Subject Property; and

(g) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.

5.9 Hazardous Substances; Environmental Provisions. Mortgagor represents and warrants to Mortgagee as follows:

(a) Except as disclosed to Mortgagee in writing prior to the date hereof, the Subject Property is not to Mortgagor's Knowledge (which for purposes of this Mortgage shall have the same meaning as "Borrowers' Knowledge" in the Credit Agreement) and has not to Mortgagor's Knowledge been a site for the use, generation, manufacture, storage, treatment, disposal, release or threatened release, transportation or presence of any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws, as defined below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials").

(b) The Subject Property is in all material respects in compliance with all laws, ordinances and regulations relating to Hazardous Materials (collectively, the "Hazardous Materials Laws"), including without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Toxic Substances Control Act and the Occupational Safety and Health Act, as any of the same may be amended, modified or supplemented from time to time, and any other applicable federal, state or local environmental laws, and any rules or regulations adopted pursuant to any of the foregoing.

(c) There are no claims or actions pending or to Mortgagor's Knowledge threatened against Mortgagor or the Subject Property by any governmental entity or agency, or any other person or entity, relating to any Hazardous Materials or pursuant to any Hazardous Materials Laws.

(d) Mortgagor hereby agrees to defend, indemnify and hold harmless Mortgagee, its directors, officers, employees, agents, successors and assigns, from and against any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including without limitation, attorneys' fees and expenses) which Mortgagee may incur as a direct or indirect consequence of the use, generation, manufacture, storage, treatment, disposal, release or threatened release, transportation or presence of Hazardous Materials in, on, under or about the Subject Property. Mortgagor shall pay to Mortgagee immediately upon demand any amounts owing under this indemnity, together with interest from the date of demand until paid in full at the highest rate of interest applicable to any Secured Obligation. MORTGAGOR'S DUTY AND OBLIGATION TO DEFEND, INDEMNIFY AND HOLD HARMLESS MORTGAGEE IS IN ADDITION TO ANY AND ALL OTHER SEPARATE INDEMNITY AGREEMENTS OF MORTGAGOR AND BORROWER TO MORTGAGEE AND SHALL SURVIVE THE CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE OR PARTIAL RELEASE OF THIS MORTGAGE.

(e) Mortgagor shall immediately advise Mortgagee in writing in the event of Mortgagor's Knowledge of any occurrence or condition on the Subject Property, or on any real property adjoining or in the vicinity of the Subject Property, that does or could cause all or any part of the Subject Property to be

contaminated with any Hazardous Materials or otherwise be in violation of any Hazardous Materials Laws, or cause the Subject Property to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Hazardous Materials Laws.

**5.10 Protection of Security.** Mortgagor shall, at Mortgagor's sole expense: (a) protect, preserve and defend the Subject Property and Collateral and Mortgagor's title and right to possession of the Subject Property and Collateral against all adverse claims; and (b) protect, preserve and defend the security of this Mortgage and the rights and powers of Mortgagee under this Mortgage against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any claim, the filing of any action or proceeding, or the occurrence of any damage, condemnation offer or other action relating to or affecting the Subject Property.

**5.11 Powers and Duties of Mortgagee.** Mortgagee may, upon written request, without obligation to do so or liability therefor and without notice: (a) release all or any part of the Subject Property from the lien of this Mortgage; (b) consent to the making of any map or plat of the Subject Property; and (c) join in any grant of easement or declaration of covenants and restrictions with respect to the Subject Property, or any extension agreement or any agreement subordinating the lien or charge of this Mortgage. Mortgagee may from time to time apply to any court of competent jurisdiction for aid and direction in the exercise or enforcement of its rights and remedies available under this Mortgage, and may obtain orders or decrees directing, confirming or approving acts in the exercise or enforcement of said rights and remedies. Mortgagee has no obligation to notify any party of any pending sale or any action or proceeding (including, but not limited to, actions in which Mortgagor or Mortgagee shall be a party) unless held or commenced and maintained by Mortgagee under this Mortgage.

**5.12 Compensation; Exculpation; Indemnification.**

(a) Mortgagor shall pay Mortgagee reasonable compensation for services rendered concerning this Mortgage, including without limitation, the providing of any statement of amounts owing under any Secured Obligation. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise of any rights, remedies or powers granted to Mortgagee in this Mortgage; (ii) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under this Mortgage or any Lease or other agreement related to the Subject Property; or (iii) any loss sustained by Mortgagor or any third party as a result of Mortgagee's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Subject Property after any Default or from any other act or omission (regardless of whether the same constitutes negligence) of Mortgagee in managing the Subject Property after any Default unless such loss is caused by the willful misconduct or gross negligence of Mortgagee; and no such liability shall be asserted or enforced against or imposed upon Mortgagee, and all such liability is hereby expressly waived and released by Mortgagor.

(b) Mortgagor shall indemnify Mortgagee against, and hold Mortgagee harmless from, any and all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, costs of evidence of title, costs of evidence of value, and other expenses which Mortgagee may suffer or incur: (i) by reason of this Mortgage; (ii) by reason of the execution of this Mortgage or the performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Mortgagor to perform Mortgagor's obligations; or (iv) by reason of any alleged obligation or undertaking of Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property, including without limitation, the payment of any taxes, assessments, rents or other lease obligations, liens, encumbrances or other obligations of Mortgagor under this Mortgage. Mortgagor's duty to indemnify Mortgagee shall survive the payment, discharge or cancellation of the Secured Obligations and the release or satisfaction, in whole or in part, of this Mortgage.

(c) Mortgagor shall pay all indebtedness arising under this Section immediately upon demand by Mortgagee, together with interest thereon from the date such indebtedness arises until paid in full at the highest rate per annum payable under any Secured Obligation. Mortgagee may, at its option, add any such indebtedness to any Secured Obligation.

5.13 Due on Sale or Encumbrance. Except as permitted by the provisions of any Secured Obligation, if the Subject Property or any interest therein shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether voluntarily, involuntarily or by operation of law (each of which actions and events is called a "Transfer"), without Mortgagee's prior written consent, THEN Mortgagee may, at its sole option, to the extent not prohibited by applicable law, declare all Secured Obligations immediately due and payable in full. Mortgagor shall notify Mortgagee in writing of each Transfer within ten (10) business days of the date thereof. A Transfer shall include, without limitation, the sale or transfer of a controlling interest of the limited liability company interests of Mortgagor or CS Beef, excluding, however, any change of control of either Mortgagor or CS Beef with respect to and as between either of such entity's existing members, with "control" determined as provided in Section 6.1(i) of the Credit Agreement.

5.14 Releases, Extensions, Modifications and Additional Security. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or Collateral or in any manner obligated under any Secured Obligation (each, an "Interested Party"), Mortgagee may, from time to time, release any Interested Party from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, accept additional security, and enforce, waive, subordinate or release all or a portion of the Subject Property or Collateral or any other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any Interested Party, nor release or impair the priority of the lien of, or the security interests created by, this Mortgage upon the Subject Property and/or the Collateral.

5.15 Release of Mortgage. Upon satisfaction in full of the Secured Obligations, Mortgagee, without warranty, shall deliver for recording in the appropriate real property records a satisfaction or release of Mortgage for the Subject Property, or that portion thereof then covered hereby, from the lien of this Mortgage.

5.16 Subrogation. Mortgagee shall be subrogated to the lien of all encumbrances, whether or not released of record, paid in whole or in part by Mortgagee pursuant to this Mortgage or by the proceeds of any Secured Obligation.

5.17 Mortgagor Different From Obligor ("Third Party Mortgagor"). As used in this Section, the term "Obligor" shall mean each person or entity obligated in any manner under any of the Secured Obligations; and the term "Third Party Mortgagor" shall mean (1) each person or entity included in the definition of Mortgagor herein and which is not an Obligor under all of the Secured Obligations, and (2) each person or entity included in the definition of Mortgagor herein if any Obligor is not included in said definition.

(a) Representations and Warranties. Each Third Party Mortgagor represents and warrants to Mortgagee that: (i) this Mortgage is executed at an Obligor's request; (ii) this Mortgage complies with all agreements between each Third Party Mortgagor and any Obligor regarding such Third Party Mortgagor's execution hereof; (iii) Mortgagee has made no representation to any Third Party Mortgagor as to the creditworthiness of any Obligor; and (iv) each Third Party Mortgagor has established adequate means of obtaining from each Obligor on a continuing basis financial and other information pertaining to such Obligor's financial condition. Each Third Party Mortgagor agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect such Third Party Mortgagor's risks hereunder. Each Third Party Mortgagor further agrees that Mortgagee shall have no obligation to disclose to any Third Party Mortgagor any information or material about any Obligor which is acquired by

Mortgagee in any manner. The liability of each Third Party Mortgagor hereunder shall be reinstated and revived, and the rights of Mortgagee shall continue if and to the extent that for any reason any amount at any time paid on account of any Secured Obligation is rescinded or must otherwise be restored by Mortgagee, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as though such amount had not been paid. The determination as to whether any amount so paid must be rescinded or restored shall be made by Mortgagee in its sole discretion; provided however, that if Mortgagee chooses to contest any such matter at the request of any Third Party Mortgagor, each Third Party Mortgagor agrees to indemnify and hold Mortgagee harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by Mortgagee in connection therewith, including without limitation, in any litigation with respect thereto.

(b) Waivers.

(i) Each Third Party Mortgagor waives, to the extent not prohibited by applicable law, any right to require Mortgagee to: (A) proceed against any Obligor or any other person; (B) marshal assets or proceed against or exhaust any security held from any Obligor or any other person; (C) give notice of the terms, time and place of any public or private sale or other disposition of personal property security held from any Obligor or any other person; (D) take any other action or pursue any other remedy in Mortgagee's power; or (E) make any presentment or demand for performance, or give any notice of nonperformance, protest, notice of protest or notice of dishonor hereunder or in connection with any obligations or evidences of indebtedness held by Mortgagee as security for or which constitute in whole or in part the Secured Obligations, or in connection with the creation of new or additional obligations.

(ii) Each Third Party Mortgagor waives, to the extent not prohibited by applicable law, any defense to its obligations hereunder based upon or arising by reason of: (A) any disability or other defense of any Obligor or any other person; (B) the cessation or limitation from any cause whatsoever, other than payment in full, of any Secured Obligation; (C) any lack of authority of any officer, director, partner, agent or any other person acting or purporting to act on behalf of any Obligor which is a corporation, partnership or other type of entity, or any defect in the formation of any such Obligor; (D) the application by any Obligor of the proceeds of any Secured Obligation for purposes other than the purposes represented by any Obligor to, or intended or understood by, Mortgagee or any Third Party Mortgagor; (E) any act or omission by Mortgagee which directly or indirectly results in or aids the discharge of any Obligor or any portion of any Secured Obligation by operation of law or otherwise, or which in any way impairs or suspends any rights or remedies of Mortgagee against any Obligor; (F) any impairment of the value of any interest in any security for the Secured Obligations or any portion thereof, including without limitation, the failure to obtain or maintain perfection or recordation of any interest in any such security, the release of any such security without substitution, and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security; (G) any modification of any Secured Obligation, in any form whatsoever, including without limitation the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, any Secured Obligation or any portion thereof, including increase or decrease of the rate of interest thereon; or (H) any requirement that Mortgagee give any notice of acceptance of this Mortgage. Until all Secured Obligations shall have been paid in full, no Third Party Mortgagor shall have any right of subrogation, and each Third Party Mortgagor waives any right to enforce any remedy which Mortgagee now has or may hereafter have against any Obligor or any other person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Mortgagee. Each Third Party Mortgagor further waives all rights and defenses it may have arising out of: (1) any election of remedies by Mortgagee, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Secured Obligations, destroys such Third Party Mortgagor's rights of subrogation or such Third Party Mortgagor's rights to proceed against any Obligor for reimbursement; or (2) any loss of rights any Third Party Mortgagor may suffer by reason of any rights, powers or remedies of any Obligor in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging any Obligor's obligations.

(iii) If any of said waivers is determined to be contrary to any applicable law or public policy, such waiver shall be effective to the extent not prohibited by applicable law or public policy.

#### ARTICLE VI. DEFAULT PROVISIONS

6.1 Default. The occurrence of any of the following shall constitute a "Default" under this Mortgage: (a) Mortgagor shall fail to observe or perform any material obligation or agreement contained herein which is not cured in twenty-five (25) calendar days; (b) any representation or warranty of Mortgagor herein shall prove to be incorrect, false or misleading in any material respect when made; or (c) any default in the payment or performance of any material obligation, or any defined Event of Default, under any provisions of the Note or any other contract, instrument or document executed in connection with, or with respect to, any Secured Obligation, including, without limitation, the Credit Agreement, subject to any right to cure stated therein.

6.2 Rights and Remedies. Upon the occurrence of any Default, and at any time thereafter, to the extent not prohibited by applicable law, Mortgagee shall have all the following rights and remedies:

(a) With or without notice, to declare all Secured Obligations immediately due and payable in full, subject to any notice and cure rights under applicable law.

(b) With or without notice, without releasing Mortgagor from any Secured Obligation and without becoming a mortgagee in possession, to cure any Default of Mortgagor and, in connection therewith: (i) to enter upon the Subject Property, possess, manage and operate the Subject Property or any part thereof, to complete construction of Construction Improvements, and to do such acts and things as Mortgagee deems necessary or desirable to protect the security of this Mortgage, including without limitation, to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Mortgagee hereunder; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of Mortgagee, is senior in priority to this Mortgage, the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain, and to pay any premiums or charges with respect to, any insurance required to be carried hereunder; and (iv) to employ counsel, accountants, contractors and other appropriate persons to assist Mortgagee.

(c) To commence and maintain an action (or actions) in any court of competent jurisdiction to foreclose this Mortgage or to obtain specific enforcement of the covenants of Mortgagor under this Mortgage, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. For the purposes of any suit brought under this subsection, Mortgagor waives the defenses of laches and any applicable statute of limitations.

(d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property and/or the Collateral as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Mortgagor consents to such appointment.

(e) To take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Subject Property; to make or modify Leases of, and other agreements with respect to, the Subject Property upon such terms and conditions as Mortgagee deems proper; and to make repairs, alterations and improvements to the Subject Property deemed necessary, in Mortgagee's judgment, to protect or enhance the security hereof.

(f) Subject to the Idaho one-action rule, to resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to

apply the proceeds received in accordance with the Section hereof entitled Application of Foreclosure Sale Proceeds, all in such order and manner as Mortgagee shall determine in its sole discretion.

(g) Upon sale of the Subject Property at any judicial foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Mortgagee in its sole underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g., commissions, attorneys' fees, and taxes), Hazardous Materials clean-up and monitoring, deferred maintenance, repair, refurbishment and retrofit, and costs of defending or settling litigation affecting the Subject Property; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the existence of additional collateral, if any, for the Secured Obligations; and (vii) such other factors or matters that Mortgagee deems appropriate. Mortgagor acknowledges and agrees that: (A) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) this Section does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in any agreement between Mortgagor and Mortgagee or previously discussed by Mortgagor and Mortgagee; and (D) Mortgagee's credit bid may be, at Mortgagee's sole discretion, higher or lower than any appraised value of the Subject Property.

(h) With respect to the security interests granted hereby, Mortgagee shall have all of the rights and remedies of a secured party under the UCC.

6.3 Application of Foreclosure Sale Proceeds. To the extent not prohibited by applicable law or court order, after deducting all costs, fees and expenses of sale, including costs of evidence of title and reasonable attorneys' fees in connection with a sale, all proceeds of any foreclosure sale shall be applied first, to payment of all Secured Obligations (including without limitation, all sums expended by Mortgagee under the terms hereof and not then repaid, with accrued interest at the highest rate per annum payable under any Secured Obligation), in such order and amounts as Mortgagee in its sole discretion shall determine; and the remainder, if any, to the person or persons legally entitled thereto.

6.4 Application of Other Sums. All Rents or other sums received by Mortgagee or any agent or receiver hereunder, less all costs and expenses incurred by Mortgagee or such agent or receiver, including reasonable attorneys' fees, shall be applied to payment of the Secured Obligations in such order as Mortgagee shall determine in its sole discretion; provided however, that Mortgagee shall have no liability for funds not actually received by Mortgagee.

6.5 No Cure or Waiver. Neither Mortgagee's or any receiver's entry upon and taking possession of the all or any part of the Subject Property and Collateral, nor any collection of Rents, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of or failure to exercise any other right or remedy by Mortgagee or any receiver shall impair the status of the security of this Mortgage, or cure or waive any breach, Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations and any other sums then due hereunder have been paid in full and Mortgagor has cured all other Defaults), or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option of the Subject Property or a subordination of the lien of this Mortgage.

6.6 Costs, Expenses and Attorneys' Fees. To the extent not prohibited by applicable law or court order, Mortgagor agrees to pay to Mortgagee immediately upon demand the full amount of all payments, advances, charges, reasonable costs and expenses, including court costs and reasonable attorneys' fees (to include outside counsel fees), expended or incurred by Mortgagee pursuant to this Article VI, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Mortgagee or any other person) relating to Mortgagor or in any way affecting any of the Subject Property and/or the Collateral or Mortgagee's ability to exercise any of its rights or remedies with respect thereto. All of the foregoing shall be paid by Mortgagor with interest from the date of demand until paid in full at the default rate payable under the Note.

6.7 Power to File Notices and Cure Defaults. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns as Mortgagor's true attorney-in-fact to perform any of the following powers, which agency is coupled with an interest: (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest; and (b) upon the occurrence of any event, act or omission which with the giving of notice or the passage of time, or both, would constitute a Default, to perform any obligation of Mortgagor hereunder; provided however, that Mortgagee, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Mortgagee, and Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act under this Section.

6.8 Remedies Cumulative; No Waiver. All rights, powers and remedies of Mortgagee hereunder are cumulative and are in addition to all rights, powers and remedies provided by law or in any other agreements between Mortgagor and Mortgagee. No delay, failure or discontinuance of Mortgagee in exercising any right, power or remedy hereunder shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. By accepting payment or performance of any of the Secured Obligations after its due date, Mortgagee shall not be deemed to have waived the agreement contained herein that time is of the essence, nor shall Mortgagee be deemed to have waived either its right to require prompt payment or performance when due or the remainder of the Secured Obligations or its right to consider the failure to so pay or perform, a Default.

## ARTICLE VII. MISCELLANEOUS PROVISIONS

7.1 No Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Subject Property unless Mortgagee specifically consents to a merger in writing.

7.2 Execution of Documents; Incorporation of Exhibits/Schedules. Mortgagor agrees, upon demand by Mortgagee, to execute any and all documents and instruments required to effectuate the provisions hereof. For all intents and purposes, all exhibits, schedules or other items attached hereto are deemed incorporated into this Mortgage by such attachment.

7.3 Right of Inspection. Mortgagee or its agents or employees may enter onto the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Mortgagor's compliance with the terms hereof.

7.4 Notices. All notices, requests and demands which Mortgagor or Mortgagee is required or may desire to give to the other party pursuant to the terms hereof shall be in writing and shall be delivered to the other party at the address and in the manner as provided in Section 7.2 of the Credit Agreement.

7.5 Successors; Assignment. This Mortgage shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto; provided however, that this Section does not waive the provisions of the Section hereof entitled Due on Sale or Encumbrance. Subject to Section 7.4 of the Credit Agreement, Mortgagee reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Mortgagee's rights and benefits under the Note, any and all other Secured Obligations and this Mortgage. In connection therewith, Mortgagee may disclose all documents and information which Mortgagee now has or hereafter acquires relating to the Subject Property, all or any of the Secured Obligations and/or Mortgagor and, as applicable, any partners, joint venturers or members of Mortgagor, whether furnished by any Mortgagor or otherwise.

7.6 Rules of Construction. (a) When appropriate based on the identity of the parties or other circumstances, the masculine gender includes the feminine or neuter or both, and the singular number includes the plural; (b) the term "Subject Property" means all and any part of or interest in the Subject Property; (c) all Section headings herein are for convenience of reference only, are not a part of this Mortgage, and shall be disregarded in the interpretation of any portion of this Mortgage; (d) if more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such Mortgagors hereunder shall be joint and several; and (e) all terms of Exhibit A, and each other exhibit and/or rider attached hereto and recorded herewith, are hereby incorporated into this Mortgage by this reference.

7.7 Severability of Provisions. If any provision of this Mortgage shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Mortgage.

7.8 Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of Idaho.

7.9 Marshalling and Other Matters. Mortgagor hereby waives, to the extent not prohibited by law, the benefit of all appraisal, valuation, stay, extension, reinstatement, and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Subject Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives to the extent not prohibited by law any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Subject Property subsequent to the date of this Mortgage and on behalf of all persons. The lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (a) any acceptance by Mortgagee of any other security for any portion of the Secured Obligations, (b) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any portion of the Secured Obligations or any collateral security therefore, to the extent not prohibited by applicable law, or (c) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, change, modification, or disposition of any portion of the Secured Obligations or of any of the collateral security therefore, and Mortgagee may, subject to applicable law, foreclose, or exercise any other remedy available to Mortgagee under the Note or Credit Agreement or this Mortgage without first exercising or enforcing any of its remedies under this Mortgage, and any exercise of the rights and remedies of Mortgagee hereunder shall not in any manner impair the Secured Obligations or the liens of the Note, Credit Agreement, this Mortgage, or any of the other Loan Documents or any of Mortgagee's rights and remedies thereunder.

## 7.10 Arbitration.

(a) Arbitration. The parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise in any way arising out of or relating to this Mortgage and its negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination. In the event of a court ordered arbitration, the party requesting arbitration shall be responsible for timely filing the demand for arbitration and paying the appropriate filing fee within 30 days of the abatement order or the time specified by the court. Failure to timely file the demand for arbitration as ordered by the court will result in that party's right to demand arbitration being automatically terminated.

(b) Governing Rules. Any arbitration proceeding will (i) proceed in a location in Idaho selected by the American Arbitration Association ("AAA"); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

(c) No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(d) Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State of Idaho or a neutral retired judge of the state or federal judiciary of Idaho, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of Idaho and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Idaho Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy

shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) Discovery. In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(f) Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, except parties who have executed this Mortgage or any other contract, instrument or document relating to any Secured Obligation, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(g) Payment Of Arbitration Costs And Fees. The arbitrator shall award all costs and expenses of the arbitration proceeding.

(h) Real Property. Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration unless: (i) Mortgagee specifically elects in writing to proceed with the arbitration; or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Idaho, thereby agreeing that all Secured Obligations, and all mortgages, liens and security interests securing any of the Secured Obligations, shall remain fully valid and enforceable.

(i) Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a dispute, the arbitration provision most directly related to the documents between the parties or the subject matter of the dispute shall control. This arbitration provision shall survive termination, amendment or expiration of any of the documents or any relationship between the parties.

(j) Small Claims Court. Notwithstanding anything herein to the contrary, each party retains the right to pursue in Small Claims Court any dispute within that court's jurisdiction. Further, this arbitration provision shall apply only to disputes in which either party seeks to recover an amount of money (excluding attorneys' fees and costs) that exceeds the jurisdictional limit of the Small Claims Court.

7.11 Counterparts. This Mortgage may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

[signature pages follow]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first set forth above.

**MORTGAGOR:**

CS PROPERTY DEVELOPMENT, LLC,  
a Delaware limited liability company

By: Simplot BP Idaho, LLC,  
an Idaho limited liability company  
Its: Member

By: J. R. Simplot Company,  
a Nevada corporation  
Its: Manager

By: Joel B. Barker  
Joel B. Barker,  
Senior Vice President, Chief Financial Officer and  
Treasurer

By: Caviness DEV Idaho, LLC,  
a Texas limited liability company  
Its: Member

By: Terry W. Caviness, Chief Executive Officer

**Addresses for Mortgagor:**

Caviness Beef Packers Ltd.  
P.O. Box 31117  
Amarillo, TX 79120 or  
Fax: 806-372-1215  
Attn: Jim Hargis

and J. R. Simplot Company  
P.O. Box 27  
Boise, ID 83707  
Fax: 208-389-7464  
Attn: Chief Financial Officer

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first set forth above.

**MORTGAGOR:**

**CS PROPERTY DEVELOPMENT, LLC,**  
a Delaware limited liability company

By: Simplot BP Idaho, LLC,  
an Idaho limited liability company  
Its: Member

By: J. R. Simplot Company,  
a Nevada corporation  
Its: Manager

By: \_\_\_\_\_  
Joel D. Barker,  
Senior Vice President, Chief Financial Officer and  
Treasurer

By: Caviness DEV Idaho, LLC,  
a Texas limited liability company  
Its: Member

By: \_\_\_\_\_  
Terry W. Caviness, Chief Executive Officer

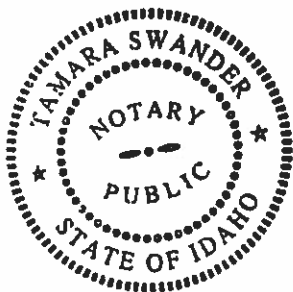
**Addresses for Mortgagor:**

Caviness Beef Packers Ltd.  
P.O. Box 31117  
Amarillo, TX 79120 or  
Fax: 806-372-1215  
Attn: Jim Hargis

and J. R. Simplot Company  
P.O. Box 27  
Boise, ID 83707  
Fax: 208-389-7464  
Attn: Chief Financial Officer

State of Idaho )  
County of Ada ) ss.

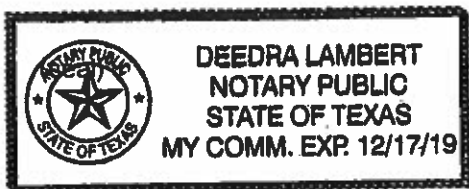
On this 6 day of April in the year 2016, before me Tamara Swander, a notary public for the State of Idaho, personally appeared Joel G. Barker, known or identified to me to be the Senior Vice President, Chief Financial Officer, and Treasurer of J. R. Simplot Company, a Nevada corporation, the Manager of Simplot BP Idaho, LLC, an Idaho limited liability company, a Member of CS PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, the limited liability company that executed the instrument or the person who executed the instrument in such capacity on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.



Tamara Swander  
Notary Public for the State of Idaho  
Residing at: Emmett  
My Commission Expires: 4-14-18

State of Texas )  
County of Peter ) ss.

This instrument was acknowledged before me on April 19, 2016, by Terry W. Caviness, Chief Executive Officer of Caviness DEV Idaho, LLC, a Texas limited liability company, a Member of CS PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, on behalf of said limited liability company.



Deedra Lambert  
Notary Public Signature

EXHIBIT A

TO CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING executed by CS PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, as Mortgagor, to WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgagee, dated as of April 6, 2016.

Description of All Owned Land

Parcel 1:

A parcel of land being East half of the Southwest quarter, and a portion of the West half of the Southeast quarter of Section 6, Township 1 North, Range 2 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Beginning at a found aluminum cap marking the South quarter corner of Section 6; thence North 89°19'01" West, coincident with the South line of the East half of the Southwest quarter of Section 6, a distance of 1320.86 feet to the West 1/16 corner common to Sections 6 and 7; thence North 0°02'13" East, coincident with said West line of the East half of the Southwest quarter of Section 6, a distance of 2659.65 feet to the center West 1/16 corner of said Section 6; thence South 89°17'57" East, coincident with the North line of said East half of the Southwest quarter of Section 6, a distance of 2441.18 feet; thence South 0°01'30" West, parallel with the East line of the West half of the Southeast quarter of Section 6, a distance of 2163.89 feet; thence North 89°19'01" West, parallel with the South line of the Southeast quarter of Section 6, a distance of 147.50 feet; thence South 0°01'30" West, parallel with the East line of the West half of the Southeast quarter of Section 6, a distance of 495.01 feet to said South line of the Southeast quarter of Section 6; thence North 89°19'01" West, coincident with said South line of the Southeast quarter of Section 6, a distance of 973.36 feet to the Point of Beginning.

Excepting Therefrom:

A parcel of land being a portion of the West half of the Southeast quarter of Section 6, Township 1 North, Range 2 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at a found aluminum cap marking the South quarter corner of Section 6; thence North 0°01'00" West, coincident with the West line of the West half of the Southeast quarter of Section 6, a distance of 660.05 feet to the Point of Beginning; thence continuing North 0°01'00" West, coincident with said West line of the West half of the Southeast quarter of Section 6, a distance of 330.66 feet; thence South 89°19'01" East, parallel with the South line of said West half of the Southeast quarter of Section 6, a distance of 665.32 feet; thence South 0°40'59" West, 330.64 feet; thence

North 89°19'01" West, parallel with said South line of the West half of the Southeast quarter of Section 6, a distance of 661.28 feet to the Point of Beginning.

**Parcel 2:**

A parcel of land being a portion of the West half of the Southeast quarter of Section 6, Township 1 North, Range 2 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:  
Commencing at a found aluminum cap marking the South quarter corner of Section 6; thence North 0°01'00" West, coincident with the West line of the West half of the Southeast quarter of Section 6, a distance of 660.05 feet to the Point of Beginning; thence continuing North 0°01'00" West, coincident with said West line of the West half of the Southeast quarter of Section 6, a distance of 330.66 feet; thence South 89°19'01" East, parallel with the South line of said West half of the Southeast quarter of Section 6, a distance of 665.32 feet; thence South 0°40'59" West, 330.64 feet; thence North 89°19'01" West, parallel with said South line of the West half of the Southeast quarter of Section 6, a distance of 661.28 feet to the Point of Beginning.

**Parcel 3:**

Lots 6 and 7 in Section 6, Township 1 North, Range 2 East, Boise Meridian, in Ada County, Idaho.  
Excepting the East 8 Feet of the West 33 feet of the Southwest quarter of Section 6, Township 1 North, Range 2 East, Boise Meridian.

**Parcel 4:**

The South 295 feet of the East 295 feet of the Southeast quarter Southeast quarter of Section 1, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

Excepting therefrom the Easterly 8 feet of the two acre tract located in the Southeast corner of Section 1, Township 1 North, Range 1 East, Boise Meridian, said 8 foot strip of land being the 8 foot adjacent to the existing Cole Road right of way.

**Parcel 7A (north of railroad):**

A parcel of land being a portion of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at a found 5/8" rebar marking the northeast corner of Section 12;

Thence South 89°54'25" West, coincident with the north line of the Northeast quarter of said Section 12, a distance of 33.00 feet to the westerly right of way of S. Cole Road and the Point of Beginning;

Thence South 0°01'59" East, coincident with said westerly right of way of S. Cole Road, 100.00 feet;

Thence South 89°54'25" West parallel with said north line of the Northeast quarter of Section 12, a distance of 2,615.30 feet to the west line of said Northeast quarter of Section 12;

Thence South 0°18'40" East coincident with said west line of the Northeast quarter of Section 12, a distance of 2,444.17 feet to the northerly right of way of the Union Pacific Railroad and the beginning of a non-tangent curve;

Thence 64.41 feet along the arc of said curve to the right, and coincident with said northerly right of way of the Union Pacific Railroad, with a central angle of 0°19'30", a radius of 11,359.19 feet, subtended by a chord bearing North 64°01'21" West 64.41 feet;

Thence North 63°51'54" West coincident with said northerly right of way of the Union Pacific Railroad 1,428.64 feet;

Thence leaving said northerly right of way of the Union Pacific Railroad North 0°01'42" East 558.93 feet;

Thence North 89°59'59" West 1,139.44 feet to said northerly right of way of the Union Pacific Railroad;

Thence North 63°51'54" West coincident with said northerly right of way of the Union Pacific Railroad 215.59 feet to the West line of the Northwest quarter of said Section 12;

Thence North 0°22'04" East, coincident with said west line of the Northwest quarter of Section 12, a distance of 1,233.01 feet to the northwest corner of said Section 12;

Thence South 89°59'39" East, coincident with the north line of said northwest quarter of Section 12, a distance of 2,651.46 feet to the North one quarter corner of said Section 12;

Thence North 89°54'25" East, coincident with said north line of the Northeast quarter of Section 12, a distance of 2,615.79 feet to the Point of Beginning.

Parcel 7B (south of railroad):

The North half of the Northwest quarter, and the Southeast quarter of the Northwest quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

Except that portion within the Union Pacific Railroad right of way.

Also Less and Excepting:

A parcel of land being a portion of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at a found 5/8" rebar marking the northeast corner of Section 12;

Thence South 89°54'25" West, coincident with the north line of the Northeast quarter of said Section 12, a distance of 33.00 feet to the westerly right of way of S. Cole Road and the Point of Beginning;

Thence South 0°01'59" East, coincident with said westerly right of way of S. Cole Road, 100.00 feet;

Thence South 89°54'25" West parallel with said north line of the Northeast quarter of Section 12, a distance of 2,615.30 feet to the west line of said Northeast quarter of Section 12;

Thence South 0°18'40" East coincident with said west line of the Northeast quarter of Section 12, a distance of 2,444.17 feet to the northerly right of way of the Union Pacific Railroad and the beginning of a non-tangent curve;

Thence 64.41 feet along the arc of said curve to the right, and coincident with said northerly right of way of the Union Pacific Railroad, with a central angle of 0°19'30", a radius of 11,359.19 feet, subtended by a chord bearing North 64°01'21" West 64.41 feet;

Thence North 63°51'54" West coincident with said northerly right of way of the Union Pacific Railroad 1,428.64 feet;

Thence leaving said northerly right of way of the Union Pacific Railroad North 0°01'42" East 558.93 feet;

Thence North 89°59'59" West 1,139.44 feet to said northerly right of way of the Union Pacific Railroad;

Thence North 63°51'54" West coincident with said northerly right of way of the Union Pacific Railroad 215.59 feet to the West line of the Northwest quarter of said Section 12;

Thence North 0°22'04" East, coincident with said west line of the Northwest quarter of Section 12, a distance of 1,233.01 feet to the northwest corner of said Section 12;

Thence South 89°59'39" East, coincident with the north line of said northwest quarter of Section 12, a distance of 2,651.46 feet to the North one quarter corner of said Section 12;

Thence North 89°54'25" East, coincident with said north line of the Northeast quarter of Section 12, a distance of 2,615.79 feet to the Point of Beginning.

Parcel 8:

The Southwest quarter of the Northwest quarter, and the West half of the Southwest quarter of Section 12 in Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

Except that portion within the Union Pacific Railroad right of way.

Parcel 9:

The East half of the Southwest quarter, and the West half of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise

Meridian, Ada County, Idaho.

Except a portion of the Southwest quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Beginning at the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 12; thence West along the North boundary of the Southwest quarter of the Southeast quarter 41 feet to a point; thence South and parallel to the East boundary of the Southwest quarter of the Southeast quarter, to a point 40 feet North of the South boundary of said Section 12; thence East 41 feet to the East boundary of the Southwest quarter of the Southeast quarter; thence North along said East boundary of the Southwest quarter of the Southeast quarter to the Point of Beginning.

And Except that portion within the Union Pacific Railroad right of way.

Also Less and Excepting:

A parcel of land being a portion of the Northwest quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Commencing at a found 5/8" rebar marking the northeast corner of Section 12;

Thence South 89°54'25" West, coincident with the north line of the Northeast quarter of said Section 12, a distance of 33.00 feet to the westerly right of way of S. Cole Road;

Thence South 0°01'59" East, coincident with said westerly right of way of S. Cole Road, 100.00 feet;

Thence South 89°54'25" West parallel with said north line of the Northeast quarter of Section 12, a distance of 1,291.08 feet to the west line of Northeast quarter of the Northeast quarter of said Section 12;

Thence South 0°10'14" East coincident with the west line of the East half of the Northeast quarter of said Section 12, a distance of 1,714.01 feet

Thence South 0°10'14" East 843.36 feet to the northeast corner of the Northwest quarter of the Southeast quarter of said Section 12, and the Point of Beginning:

Thence continuing South 0°10'14" East coincident with the east line of said Northwest quarter of the Southeast quarter of Section 12, a distance of 443.83 feet to the northerly right of way of the Union Pacific Railroad

Thence North 68°27'48" West coincident with said northerly right of way of the Union Pacific Railroad 584.24 feet to the beginning of a non-tangent curve:

Thence 586.29 feet along the arc of said curve to the right, and coincident with the said northerly right of way of the Union Pacific Railroad, with a central angle of 2°57'26", a radius of 11,359.19 feet, subtended by a chord bearing North 66°59'01" West 586.23 feet to the north line of said Northwest quarter of the Southeast quarter of Section 12;

Thence North 89°59'31" East, coincident with said north line of the Northwest quarter of the Southeast quarter of Section 12, a distance of 1,081.69 feet to the Point of Beginning.

**Parcel 10:**

The Southeast quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

Including a portion of the Southwest quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Beginning at the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 12; thence West along the North boundary of the Southwest quarter of the Southeast quarter, 41 feet to a point; thence South and parallel to the East boundary of the Southwest quarter of the Southeast quarter, to a point 40 feet North of the South boundary of said Section 12; thence East 41 feet to the East boundary of the Southwest quarter of the Southeast quarter; thence North along said East boundary of the Southwest quarter of the Southeast quarter to the Point of Beginning.

Excluding a strip of land 40 feet wide along the entire length of the South border of the Southeast quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

**Parcel 11:**

A strip of land 40 feet wide along the entire length of the South border of the Southeast quarter of the Southeast quarter of Section 12, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

**Parcel 12:**

The Northwest quarter of the Northwest quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

**Parcel 13:**

The North half of the Northeast quarter of the Northwest quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

**Parcel 14:**

The South half of the Northeast quarter of the Northwest quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

**Parcel 15:**

The West half of the Northeast quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

**Parcel 16:**

The North half of the Northeast quarter of the Northeast quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

**Parcel 17:**

The South half of the Northeast quarter of the Northeast quarter of Section 13, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

**Parcel 18:**

The Southeast quarter of the Northeast quarter and the Northeast quarter of the Southeast quarter of Section 13, Township 1 North, Range 1 East of the Boise Meridian in Ada County, Idaho.

**Parcel 19:**

The Southwest quarter of the Southeast quarter, and the Southeast quarter of the Southeast quarter of Section 11 in Township 1 North, Range 1 East of the Boise Meridian, Ada County, Idaho.

**Parcel 20:**

The Northwest quarter of the Northeast quarter, and the Northeast quarter of the Northeast quarter of Section 14 in Township 1 North, Range 1 East of the Boise Meridian, Ada County, Idaho.

**Parcel 21:**

The South half of the Northeast quarter of Section 14, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

**Parcel 22:**

The North half of the Southeast quarter of Section 14, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

EXHIBIT B

TO CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING executed by CS PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, as Mortgagor, to WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgagee, dated as of April 6, 2016.

Description of Land to be Facility Project Construction Site

Parcel 3:

Lots 6 and 7 in Section 6, Township 1 North, Range 2 East, Boise Meridian, in Ada County, Idaho.

Excepting the East 8 Feet of the West 33 feet of the Southwest quarter of Section 6, Township 1 North, Range 2 East, Boise Meridian.

Parcel 4:

The South 295 feet of the East 295 feet of the Southeast quarter Southeast quarter of Section 1, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

Excepting therefrom the Easterly 8 feet of the two acre tract located in the Southeast corner of Section 1, Township 1 North, Range 1 East, Boise Meridian, said 8 foot strip of land being the 8 foot adjacent to the existing Cole Road right of way.

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Recording requested by

CS Property Development, LLC  
P O Box 27  
Boise, Idaho 83707



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**MEMORANDUM  
OF  
LEASE AGREEMENT AND CONSENT TO APPLY  
INDUSTRIAL EFFLUENT**

This Memorandum of Lease Agreement and Consent to Apply Industrial Effluent ("Memorandum") is made and entered into as of this 8<sup>th</sup> day of February, 2016 (the "Effective Date") between Thomas T. Nicholson and Diana Nicholson, husband and wife ("Landlord") and CS Property Development, LLC, a Delaware limited liability company ("Tenant").

**RECITALS**

- A. Landlord and Tenant entered into that certain Lease Agreement and Consent to Apply Industrial Effluent dated February 8, 2016 (the "Lease").
- B. Landlord and Tenant desire to execute and record this Memorandum to reflect certain terms of the Lease.

**AGREEMENT**


NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Landlord and Tenant hereby execute and record this Memorandum to provide notice of the following:

- DESCRIPTION OF THE LEASED PREMISES.** As of the Effective Date, the real property subject to the Lease (and described therein as the Property) is the 640 acres of land legally described on Exhibit 1, attached hereto (the "Leased Premises").
- TERM.** The term of the Lease shall commence on September 1, 2016 and shall expire on August 31, 2026 (unless extended for additional ten (10) year terms or earlier terminated as set forth therein).
- RELEASE ON TERMINATION.** Upon termination of the term of the Lease (whether by expiration of the stated term thereof or otherwise), Tenant agrees, within ten (10) days following request by Landlord, to execute and deliver to Landlord a written release of this Memorandum in recordable form. If Tenant fails to timely deliver such release to Landlord, Tenant hereby appoints Landlord as its agent and attorney-in-fact (which appointment is coupled with an interest and is irrevocable) to execute such release on Tenant's behalf.


DATED as of the Effective Date.

“Landlord”

Thomas T. Nicholson

  
Date: January 29, 2016

Diana Nicholson

  
Date: January 29, 2016

“Tenant”

CS Property Development, LLC., a Delaware limited liability company

By: Simplot BP Idaho, LLC, Member

By: J. R. Simplot Company, Manager

By:   
Name: David Spurling  
Title: Senior Vice President and Secretary

Date: 8 FEB 2016

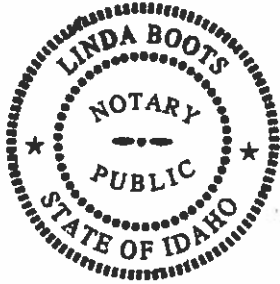
Exhibits:

Exhibit 1 – Legal Description of the Leased Premises

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 29 day of January, 2016, before me, a Notary Public in and for the State of Idaho, personally appeared **Thomas T. Nicholson and Diana Nicholson**, known or identified to me to be the people who acknowledged to me that they executed the foregoing instrument.

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

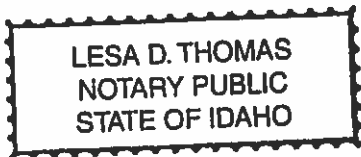


Linda Boots  
Notary Public for Idaho  
Residing at: Boise ID  
My commission expires: 5/3/18

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 8th day of February, 2016, before me, a Notary Public in and for the State of Idaho, personally appeared **David Spurling**, known or identified to me to be the **Senior Vice President and Secretary of J. R. Simplot Company**, a Nevada corporation, the person who subscribed said corporation's name to the foregoing instrument and acknowledged to me that he executed the same in said corporation's name.

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



Lesa D. Thomas  
Notary Public for Idaho  
Residing at: Boise  
My commission expires: 11-11-17

**EXHIBIT 1**

**LEGAL DESCRIPTION OF THE LEASED PREMISES**

**Township 1 North Range 1 East, B.M. Ada County Idaho**

**Section 14: SW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$**

**Section 23: NW $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$**

**Section 24: NW $\frac{1}{4}$**

Recording Requested By,  
And After Recording, Return To:

WELLS FARGO BANK,  
NATIONAL ASSOCIATION  
MAC R4057-01Q  
7711 Plantation Road, 1st Floor  
Roanoke, VA 24019-3224  
Attn: Loan Documentation

ELECTRONICALLY RECORDED - DO NOT  
REMOVE THE COUNTY STAMPED FIRST  
PAGE AS IT IS NOW INCORPORATED AS  
PART OF THE ORIGINAL DOCUMENT.

#2621014-7

**THIS MORTGAGE SECURES A NOTE WHICH PROVIDES FOR A VARIABLE INTEREST RATE. THIS MORTGAGE SECURES A CONSTRUCTION NOTE. THE INTEREST RATE, PAYMENT TERMS AND BALANCE DUE MAY BE INDEXED, ADJUSTED, RENEWED OR RENEGOTIATED.**

**THIS MORTGAGE IS TO BE INDEXED NOT ONLY AS A MORTGAGE BUT ALSO AS A FIXTURE FILING AND IS TO BE INDEXED AS SUCH IN THE REAL PROPERTY RECORDS OF ADA COUNTY.**

**CONSTRUCTION LEASEHOLD MORTGAGE WITH ABSOLUTE  
ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS CONSTRUCTION LEASEHOLD MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is executed as of April 6, 2016 by CS PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company ("Mortgagor"), to WELLS FARGO BANK, NATIONAL ASSOCIATION ("Mortgagee"), Attn: Food & Agribusiness Commercial Banking Office, MAC T3005-072, 905 S. Fillmore, Ste. 701, Amarillo, TX 79101. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Credit Agreement (defined below).

**RECITALS**

A. Mortgagor owns approximately 1275 acres of real property located in Ada County, Idaho (the "CS Property Land"). Pursuant to that certain Lease Agreement between Mortgagor and CS Beef Packers, LLC, a Delaware limited liability company and affiliate of Mortgagor ("CS Beef"), dated April 6, 2016 (the "CS Property Lease"), a Memorandum of which was recorded in the real property records of Ada County, Idaho on April 20, 2016, as Instrument No. 2016 033135, Mortgagor leases the CS Property Land to CS Beef. Mortgagor and CS Beef intend to develop a beef processing facility, ancillary facilities, and related equipment and improvements, including all Construction Improvements as defined in the Credit Agreement (defined below) on the CS Property Land (the "Project"). The CS Property Lease covers all structures, facilities, equipment and other improvements located and to be constructed on the CS Property Land as part of the Project.

B. Pursuant to that certain Lease Agreement and Consent to Apply Industrial Effluent dated February 8, 2016 between Mortgagor and Thomas T. Nicholson and Diana Nicholson, husband and wife, as owner and landlord (the "Nicholson Lease"), a Memorandum of which was recorded in the real property records of Ada County, Idaho on February 8, 2016, as Instrument No. 2016-013649, Mortgagor leases certain real property located in Ada County, Idaho, described in Exhibit A attached hereto (the "Nicholson Land"). Mortgagor will construct and install on the Nicholson Land certain wastewater land

application facilities that are part of the Project and the Construction Improvements (the "Nicholson Improvements").

C. Pursuant to that certain Sublease Agreement dated April 6, 2016 (the "Sublease"), Mortgagor subleases to CS Beef the Nicholson Land and the Nicholson Improvements (collectively, the "Nicholson Leased Premises"). A Memorandum of Sublease was recorded in the real property records of Ada County, Idaho on April 20, 2016, as Instrument No. 2016033136.

## ARTICLE I. MORTGAGE

1.1 Grant. For the purposes and upon the terms and conditions in this Mortgage, Mortgagor irrevocably mortgages, grants, conveys and assigns to Mortgagee, with the right of entry and possession, Mortgagor's right, title and interest in and to, the Nicholson Lease, the leasehold estate in the Land, and the Improvements (including all Subleased Premises), and including, without limitation, Mortgagor's right, title and interest, including both leasehold interests and ownership interests, as the case may be, whether now existing or hereafter acquired or constructed, in and to the following real and personal property: (a)(i) all of Mortgagor's rights under the Nicholson Lease, including but not limited to (A) proceeds, awards, issues, profits and payments, including but not limited to Rents (as defined below), (B) all modifications, extensions and renewals of the Nicholson Lease and (C) all credits, deposits, options, purchase options, privileges and rights of Mortgagor under the Nicholson Lease, including but not limited to, the right, if any, to renew or extend the Nicholson Lease for a succeeding term or terms, or to acquire fee title to or other interest in all or any portion of the Land; (ii) the leasehold estate in the Land described in Exhibit A attached hereto; and (iii) ) all of Mortgagor's rights and remedies at any time arising under or pursuant to Section 365(h) of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), including, without limitation, all of Mortgagor's rights thereunder to remain in possession of the Land and Improvements; (b) all easements, rights-of-way and rights used in connection with or as a means of access to any portion of said real property, including the right to use of any rail spur; (c) all tenements, hereditaments and appurtenances thereof and thereto; (d) 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 street, open or proposed, adjoining said real property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with said real property; (e) all improvements to be constructed and as constructed on the Land, including portions of the Construction Improvements that are Subleased Premises, and including all Stored Materials, Custom Manufactured Materials and Equipment relating thereto, and all other building materials, construction materials, raw materials, supplies, work in progress, and all tangible personal property incorporated or to be incorporated into, located in or on, or used in connection with such improvements, and all fixtures, equipment (including, without limitation, all irrigation equipment, pipes, pumps, pivots, sprinklers and other ancillary irrigation equipment, all rolling stock (excluding titled vehicles) and other farming equipment) located thereon or used in connection therewith; (f) all development rights, governmental or quasi-governmental licenses, permits or approvals, zoning rights and other similar rights or interests which relate to the development, use or operation of, or that benefit or are appurtenant to, said real property, and the Construction Contract and Plans and Specifications for the construction of the Improvements; (g) all minerals and mineral rights, oil and gas and oil and gas rights, air rights, geothermal resources and geothermal rights, to the extent included in the Nicholson Lease; (h) all water and water rights now or hereafter diverted from or used on or in connection with, or appurtenant to, the Land or the Project or the related wastewater application system, including but not limited to (i) all water right applications, permits, licenses, decrees, transfers and claims now or hereafter held by Mortgagor, including but not limited to (A) a portion of water rights 63-3362, 63-7531, 63-10383, and 63-11347 (and any renumbering by a split thereof through the Idaho Department of Water Resources); (B) water right permits and applications 63-12546, 63-33884, 63-33296, 63-32680, 63-33207, and 63-34038 (and any subsequently issued water right permits and licenses), and whether such water rights are decreed or undecreed, tributary or non-tributary, surface or underground, appropriated or unappropriated, (ii) all canals, ditches ponds, impoundments, and reservoirs of any nature

and all rights thereto, appurtenant to or associated with said Land, (iii) all shares of stock or other rights in any water, canal, ditch or reservoir company, and (iv) all wells, well permits, water service contracts, drainage rights and other evidences of any such rights (collectively, "Water Rights"); (i) Mortgagor's interest in all farm products consisting of crops (growing, grown, harvested, and to be grown), including crops produced on trees, vines and bushes, from Mortgagor's operations on the Land and under any crop share or other farming lease, all supplies used or produced therein, and all products thereof and replacements and additions thereto, and (j) all interest or estate which Mortgagor now has or may hereafter acquire in said property and all additions and accretions thereto, and all awards or payments made for the taking of all or any portion of said property by eminent domain or any proceeding or purchase in lieu thereof, or any damage to any portion of said property (collectively, the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limitation of general terms.

1.2 Address. The addresses of the Land (if known) is: \_\_\_\_\_. The Land consists of approximately 640 acres of multiple non-contiguous tracts of land used for irrigated crops. Neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Mortgage on the Subject Property as described on Exhibit A. In the event of any conflict between the provisions of Exhibit A and said address, Exhibit A shall control.

## ARTICLE II. OBLIGATIONS SECURED

2.1 Obligations Secured. Mortgagor makes this grant and assignment for the purpose of securing the following obligations (each, a "Secured Obligation" and collectively, the "Secured Obligations"):

(a) performance of the obligations contained herein and in that certain Construction Loan Agreement (Construction Loan Only) dated as of April 6, 2016 to which Mortgagor, CS Beef (together with Mortgagor, the "Borrowers") and Mortgagee are parties, as the same may be amended, revised, amended and restated, replaced, supplemented or otherwise modified from time to time ("Credit Agreement"), which Credit Agreement provides for, among other things, the construction of certain improvements on the Subject Property; and

(b) payment to Mortgagee of all sums at any time owing and performance of all other obligations arising under or in connection with that certain Construction Loan Note ("Note") dated as of April 6, 2016 in the maximum principal amount of One Hundred Four Million Dollars (\$104,000,000.00), with interest as provided therein, executed by Borrowers and payable to Mortgagee or its order, together with the payment and performance of any other indebtedness or obligations incurred in connection with the credit accommodation evidenced by the Note, whether or not specifically referenced therein; and

(c) payment and performance of all obligations under the other Loan Documents, together with all advances, payments or other expenditures made by Mortgagee as or for the payment or performance of any such obligations; and

(d) payment and performance of all obligations of Mortgagor under this Mortgage, together with all advances, payments or other expenditures made by Mortgagee as or for the payment or performance of any such obligations of Mortgagor, and all advances, payments or other expenditures made by Mortgagee to complete the Construction Improvements and otherwise to protect the collateral and the security of this Mortgage, including, but not limited to, expenditures made by Mortgagee to cause the surety under any payment or performance bond to perform on the bond; and

(e) payment and performance of all obligations, if any, and the contracts under which they arise, which any rider attached to and recorded with this Mortgage recites are secured hereby; and

(f) payment to Mortgagee of all obligations of Borrowers to Mortgagee under or related to any deposit account, treasury management or similar transaction or arrangement at any time entered into with Mortgagee; and

(g) payment and performance of all future advances and other obligations that the then record owner of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Mortgage; and

(h) all modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) the conversion of the Construction Loan to a Permanent Loan as contemplated by the Credit Agreement, (ii) modifications, extensions or renewals at a different rate of interest, or (iii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 Obligations. The term "obligations" is used herein in its broadest and most comprehensive sense and includes any and all advances, debts, obligations and liabilities heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, joint or several, including without limitation, all principal, interest, charges, including prepayment charges and late charges, loan fees at any time accruing or assessed on any Secured Obligation, all costs of collecting the Secured Obligations, and all obligations under or related to any deposit account, treasury management or similar transaction or arrangement, and whether Borrowers may be liable individually or jointly with others, and whether recovery upon such obligations may be or hereafter becomes unenforceable.

2.3 Incorporation. All terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property are hereby deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or any other Secured Obligation may permit borrowing, repayment and reborrowing; and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time.

2.4 Construction Mortgage. As additional security for the Secured Obligations, Mortgagor has recorded in the real property records of Ada County, Idaho a Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the date hereof in favor of Mortgagee (the "CS Property Mortgage"), encumbering Mortgagor's fee estate in the CS Property Land", and the other Subject Property (as defined therein).

2.5 CS Beef Leasehold Mortgage. As additional security for the Secured Obligations, CS Beef has recorded in the real property records of Ada County, Idaho a Construction Leasehold Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the date hereof ("CS Beef Leasehold Mortgage"), encumbering (a) CS Beef's leasehold estate on the CS Property Land, (b) CS Beef's sublease leasehold estate on the Nicholson Land under the Sublease, and (c) the other Subject Property (as defined therein).

2.6 Mortgage Does Not Secure Guaranties or Environmental Indemnity Agreement. Notwithstanding any provision of this instrument or of any Loan Document to the contrary: (i) this Mortgage does not secure the obligations of any guarantor of the Secured Obligations and no separate guaranty agreement given in connection with the Credit Agreement shall be deemed to be a "Credit Document" or "Loan Document" secured by this Mortgage and (ii) this Mortgage does not secure the obligations of any Indemnitor under that certain separate Environmental Indemnity Agreement of even date herewith made in favor of Mortgagee (the "Indemnity") and such Indemnity shall not be deemed to be a "Credit Document" or a "Loan Document" secured by this Mortgage. Without limiting any of the

foregoing, and to avoid doubt, this Mortgage secures Mortgagor's and Borrowers' obligations as an obligor under the Secured Obligations, but not Mortgagor's or Borrowers' obligations as an Indemnitor under the Indemnity.

### ARTICLE III. ASSIGNMENT OF LEASES AND RENTS

3.1 Assignment. For the purposes and upon the terms and conditions set forth herein, Mortgagor hereby irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under the Sublease and all other present and future subleases, licenses, rental agreements, crop share agreements, and other agreements (other than the Nicholson Lease) of any kind relating to the use or occupancy of any of the Subject Property or any portion thereof, whether existing as of the date hereof or at any time hereafter entered into, together with all subleases and other agreements for the use or occupancy of the Subject Property or any portion thereof, all guarantees of and security for any tenant's or lessee's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals and modifications thereto (each, a "Lease" and collectively, the "Leases"), together with any and all rents, issues, revenues, receipts, deposits, and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases, including, without limitation, all crops and cash rents payable under any crop share or other farming agreement and the proceeds and products thereof (collectively, "Rents"). This assignment shall not impose upon Mortgagee any duty to produce Rents from the Subject Property, nor cause Mortgagee to be: (a) a "mortgagee in possession" for any purpose; (b) responsible for performing any of the obligations of the lessor or landlord under any Lease; (c) responsible for any waste committed by any person or entity at any time in possession of the Subject Property or any part thereof, or for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair or control of the Subject Property, or (d) directly or indirectly liable to Mortgagor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies, or powers granted to Mortgagee hereunder or to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases. This is an absolute assignment, not an assignment for security only, and Mortgagee's right to Rents is not contingent upon and may be exercised without taking possession of the Subject Property. Mortgagor agrees to execute and deliver to Mortgagee, within five (5) days of Mortgagee's written request, such additional documents as Mortgagee may reasonably request to further evidence the assignment to Mortgagee of any and all Leases and Rents. Mortgagee, at Mortgagee's option and without notice, may notify any lessee or tenant of this assignment of the Leases and Rents.

3.2 Protection of Security. To protect the security of this assignment, Mortgagor agrees:

(a) At Mortgagor's sole cost and expense: (i) to perform each obligation to be performed by the lessor or landlord under each Lease and to enforce or secure the performance of each obligation to be performed by the lessee or tenant under each Lease; (ii) not to modify any Lease in any material respect, nor accept surrender under or terminate the term of any Lease; (iii) not to anticipate the Rents under any Lease; and (iv) not to waive or release any lessee or tenant of or from any Lease obligations. Mortgagor assigns to Mortgagee all of Mortgagor's right and power to modify the terms of any Lease, to accept a surrender under or terminate the term of or anticipate the Rents under any Lease, and to waive or release any lessee or tenant of or from any Lease obligations, and any attempt on the part of Mortgagor to exercise any such rights or powers without Mortgagee's prior written consent shall be a breach of the terms hereof.

(b) At Mortgagor's sole cost and expense, to defend any action in any manner connected with any Lease or the obligations thereunder, and to pay all costs of Mortgagee, including reasonable attorneys' fees, in any such action in which Mortgagee may appear.

(c) That, should Mortgagor fail to do any act required to be done by Mortgagor under a Lease, then Mortgagee, but without obligation to do so and without notice to Mortgagor and without releasing Mortgagor from any obligation hereunder, may make or do the same in such manner and to such extent as Mortgagee deems necessary to protect the security hereof, and, in exercising such powers, Mortgagee may employ attorneys and other agents, and Mortgagor shall pay necessary costs and reasonable attorneys' fees incurred by Mortgagee, or its agents, in the exercise of the powers granted herein. Mortgagor shall give prompt notice to Mortgagee of any default by any lessee or tenant under any Lease, and of any notice of default on the part of Mortgagor under any Lease received from a lessee or tenant thereunder, together with an accurate and complete copy thereof.

(d) To pay to Mortgagee immediately upon demand all sums expended under the authority hereof, including reasonable attorneys' fees, together with interest thereon at the highest rate per annum payable under any Secured Obligation, and the same, at Mortgagee's option, may be added to any Secured Obligation and shall be secured hereby.

3.3 License. Mortgagee confers upon Mortgagor a license ("License") to collect and retain the Rents as, but not before, they come due and payable, until the occurrence of a Default. Upon the occurrence and continuation of any Default beyond the applicable cure period, the License shall be automatically revoked and Mortgagee may exercise its rights under this Article III.

3.4 [RESERVED]

3.5 Possession on Default. Upon the occurrence and continuation of any Default beyond the applicable cure period, Mortgagee may, at Mortgagee's option and without notice, either in person or by agent, with or without bringing any action, or by a receiver to be appointed by a court: (a) enter and take possession of the Subject Property; (b) manage and operate the Subject Property or any part thereof pursuant to the terms of the applicable Lease; (c) make, cancel, enforce or modify any Lease; (d) obtain and evict tenants, fix or modify Rents, and do any acts which Mortgagee deems proper to protect the security hereof; and (e) either with or without taking possession of the Subject Property, in its own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid, and apply the same in accordance with the provisions of this Mortgage. The entering and taking possession of the Subject Property, the collection of Rents and the application thereof as aforesaid, shall not cure or waive any Default, nor waive, modify or affect any notice of default hereunder, nor invalidate any act done pursuant to any such notice.

#### ARTICLE IV. SECURITY AGREEMENT AND FIXTURE FILING

4.1 Security Interest. Mortgagor, as "debtor," hereby grants and assigns to Mortgagee, as "secured party," a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Mortgagor now or at any time hereafter has any interest (collectively, the "Collateral"): (a) all items of the Subject Property that are personal property in which a security interest may be created under the UCC (defined below), (b) all goods (excluding all inventory and all accounts receivable and all proceeds from inventory), tools, machinery, furnishings, furniture and other equipment and fixtures, now or at any time hereafter, owned or acquired by Mortgagor, wherever located, whether in the possession of Mortgagor or any other person and whether located on the Land or elsewhere, now or hereafter affixed or to be affixed to, and whether or not severed and removed from, the Land, and all improvements, replacements, accessions and additions thereto and embedded software included therein, (c) all Leases and all Rents and other payments and security deposits derived from the Subject Property, including, but not limited to, crops and/or cash payments under crop share or other farming agreements, (d) all accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and

condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money derived from or relating to the Subject Property, (e) trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Subject Property or any business now or hereafter conducted thereon by Mortgagor, (f) all deposits or other security now or hereafter made with or given to utility companies by Mortgagor with respect to the Subject Property, (g) all advance payments of insurance premiums made by Mortgagor with respect to the Subject Property, (h) all loan funds held by Mortgagee, whether or not disbursed, (i) all funds deposited with Mortgagee pursuant to any loan documents, and all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property, (j) all of Mortgagor's right, title and interest, now or hereafter acquired, to the payment of money from Mortgagee to Mortgagor under or related to any deposit account, treasury management or similar transaction or arrangement at any time entered into between Mortgagor and Mortgagee in connection with the Note, (k) all rights to payment, including returned premiums, with respect to any insurance relating to any of the Collateral, and all rights to payment with respect to any claim or cause of action affecting or relating to any of the Collateral, (l) whatever is receivable or received when any of the Collateral or proceeds thereof are sold, leased, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, (m) all replacements and proceeds of, and additions and accessions to, any of the Collateral, and (n) all books, records and files relating to any of the Collateral.

To avoid doubt, the Collateral does not include any inventory of Mortgagor (including, but not limited to, livestock, beef carcasses, finished and unfinished beef products and by-products, packaged and unpackaged meat, and supplies and materials), or products or proceeds therefrom, or cash receipts, accounts receivable, or whatever is receivable or received when any of the inventory or products or proceeds thereof are sold, leased, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a fixture filing filed in the real property records of Ada County, Idaho under the Idaho Uniform Commercial Code, as amended or recodified from time to time ("UCC"), and is acknowledged and agreed to be a "construction mortgage" under the UCC. Information concerning the security interest herein granted may be obtained from the Mortgagor at the address set forth below the signature block.

**4.2 Rights of Mortgagee.** Upon the occurrence of a Default, Mortgagee shall have all the rights of a "Secured Party" under the UCC. In addition to such rights, Mortgagee may, but shall not be obligated to, at any time without notice, unless required by applicable law, and at the expense of Mortgagor: (a) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; (c) inspect the Collateral during regular business hours; and (d) endorse, collect and receive any right to payment of money owing to Mortgagor under or from the Collateral. Mortgagee may, upon the occurrence of a Default: (i) upon written notice, require Mortgagor to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell and dispose of any or all of the Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; and/or (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagor to Mortgagee unless Mortgagee shall make an express written election of said remedy under the UCC or other applicable law.

Mortgagor acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable

notice. Mortgagor further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Mortgagee first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations.

**4.3 Financing Statements.** Mortgagor represents and warrants to Mortgagee that its name as set forth on page 1 of this Mortgage is its full legal name and that the address set forth on the signature page is Mortgagor's principal place of business. Mortgagor further represents and warrants to Mortgagee that Mortgagor has, or will have, good title to or interests in the Collateral and has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity. In the event of any change in name or change in the form of legal entity of Mortgagor, Mortgagor shall notify Mortgagee thereof and promptly after written request shall authorize Mortgagee to execute, file and record such UCC forms as are legally required to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. Mortgagor represents and warrants to Mortgagee that the only crop growing and to be grown on the Land is alfalfa, grass, corn, sorghum, wheat, oats and triticale, and that, if it is determined to grow any other crop on the Land, Mortgagor will provide written notice to Mortgagee at the beginning of the crop season that such crops are to be grown on the Land. If the filing or recording of UCC or UCC1-F or other financing statements or continuation or amendment statements, or other notices of liens or security interests or assignments, is legally required or necessary to perfect or continue perfection of, or to provide notice of record of, Mortgagee's liens and security interests in the Collateral under the UCC or other applicable law, Mortgagee is hereby authorized to execute, file and record the same, as Mortgagee deems necessary, and Mortgagor shall pay all expenses and fees in connection with the filing and recording thereof. Upon the occurrence and during the continuation of any Default, to the extent not prohibited by applicable law, Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.

## **ARTICLE V. RIGHTS AND DUTIES OF THE PARTIES**

**5.1 Warranty of Title.** Mortgagor warrants that, except as disclosed to Mortgagee prior to the date hereof in a writing which refers to this warranty, Mortgagor owns or lawfully possesses and holds a leasehold interest in the Subject Property and has interests in the Collateral, without limitation, in each case, on the right to encumber, as herein provided, and that this Mortgage is intended to create a valid lien on the Subject Property and all of Mortgagor's interest therein and valid security interests in the Collateral. In addition, Mortgagor represents and warrants that (a) the Nicholson Lease and all Leases are in full force and effect and have not been modified in any manner whatsoever, (b) there is no default under the Nicholson Lease or any Leases and no event has occurred, which but for the passage of time, or notice, or both, would constitute a default under the Nicholson Lease or any of the other Leases, (c) all rents, additional rents and other sums due and payable under the Nicholson Lease and the Leases have been paid in full, and (d) no action has commenced and no notice has been given or received for the purpose of terminating the Nicholson Lease or any of the Leases.

**5.2 Taxes and Assessments.** Subject to the right, if any, of Mortgagor to contest payment of the following pursuant to any other agreement between Mortgagor and Mortgagee, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed: (a) by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein; or (b) by any public authority upon Mortgagee by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Mortgagee pursuant to any Secured Obligation; provided however, that Mortgagor shall have no obligation to pay any income taxes of Mortgagee. Promptly upon request by Mortgagee, Mortgagor shall furnish to Mortgagee satisfactory evidence of the payment of all of the foregoing. Mortgagee is hereby

authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of any of the foregoing.

**5.3 Performance of Secured Obligations.** Mortgagor shall promptly pay and perform each Secured Obligation when due. If Mortgagor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may significantly affect Mortgagee's rights in the Subject Property, then Mortgagee may (but is not obligated to), at Mortgagor's expense, take such action as it considers to be necessary to complete construction of the Construction Improvements, including, but not limited to, expending amounts required to cause the surety under any payment or performance bond to perform on the bond to complete construction of the Construction Improvements, and to protect the value of the Subject Property and Mortgagee's rights in the Subject Property, including the retaining of counsel, and any reasonable amount so expended by Mortgagee will be added to the Secured Obligations and will be payable by Mortgagor to Mortgagee on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Note.

**5.4 Liens, Encumbrances and Charges.** Mortgagor shall immediately discharge any lien on the Subject Property not approved by Mortgagee in writing. Except as otherwise provided in any Secured Obligation or other agreement with Mortgagee, Mortgagor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber the Subject Property, whether senior or subordinate hereto, including without limitation, any mechanics' liens.

**5.5 Insurance.** Mortgagor shall insure (or cause CS Beef to insure) the Subject Property against loss or damage by fire and such other risks as Mortgagee shall from time to time require. Mortgagor shall carry public liability insurance, flood insurance as required by applicable law and such other insurance as Mortgagee may reasonably require, including without limitation, terrorism, business interruption insurance or loss of rental value insurance. Mortgagor shall maintain all required insurance at Mortgagor's expense, under policies issued by companies and in form and substance satisfactory to Mortgagee. Mortgagee, by reason of accepting, rejecting, approving or obtaining insurance, shall not incur any liability for: (a) the existence, nonexistence, form or legal sufficiency thereof; (b) the solvency of any insurer; or (c) the payment of losses. All policies and certificates of insurance shall name Mortgagee as loss payee, and shall provide that the insurance cannot be terminated as to Mortgagee except upon a minimum of ten (10) days' prior written notice to Mortgagee. Immediately upon any request by Mortgagee, Mortgagor shall deliver to Mortgagee the original of all such policies or certificates, with receipts evidencing annual prepayment of the premiums.

**5.6 Tax and Insurance Impounds.** Upon any Default or upon any Material Adverse Effect on Mortgagor's financial condition, as determined by Mortgagee, at Mortgagee's option and upon its demand, Mortgagor shall, until all Secured Obligations have been paid in full, pay to Mortgagee monthly, annually or as otherwise directed by Mortgagee an amount estimated by Mortgagee to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. If Mortgagee determines that amounts paid by Mortgagor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Mortgagee shall notify Mortgagor of the increased amount required for the payment thereof when due, and Mortgagor shall pay to Mortgagee such additional amount within thirty (30) days after notice from Mortgagee. All amounts so paid shall not bear interest, except to the extent and in the amount required by law. So long as there is no Default, Mortgagee shall apply said amounts to the payment of, or at Mortgagee's sole option release said funds to Mortgagor for application to and payment of, such taxes, assessments, levies, charges and insurance premiums. If a Default exists, Mortgagee at its sole option may apply all or any part of said amounts to any Secured Obligation and/or to cure such Default, in which event Mortgagor shall be required to restore all amounts so applied, as well as to cure any Default not cured by such application.

Mortgagor hereby grants and transfers to Mortgagee a security interest in all amounts so paid and held in Mortgagee's possession, and all proceeds thereof, to secure the payment and performance of each Secured Obligation. Upon assignment of this Mortgage, Mortgagee shall have the right to assign all amounts collected and in its possession to its assignee, whereupon Mortgagee shall be released from all liability with respect thereto. The existence of said impounds shall not limit Mortgagee's rights under any other provision of this Mortgage or any other agreement, statute or rule of law. Within ninety-five (95) days following full repayment of all Secured Obligations (other than as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing any Secured Obligation), or at such earlier time as Mortgagee in its discretion may elect, the balance of all amounts collected and in Mortgagee's possession shall be paid to Mortgagor, and no other party shall have any right of claim thereto.

#### 5.7 Damages; Insurance and Condemnation Proceeds.

(a) (i) All awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation (or transfer in lieu thereof) for public or private use affecting all or any part of or any interest in the Subject Property or Collateral; (ii) all other claims and awards for damages to or decrease in value of all or any part of or any interest in the Subject Property or Collateral; (iii) all proceeds of any insurance policies payable by reason of loss sustained to the Subject Property or Collateral; and (iv) all interest which may accrue on any of the foregoing, are all absolutely and irrevocably assigned to and shall be paid to Mortgagee. At the absolute discretion of Mortgagee, whether or not its security is or may be impaired, but subject to applicable law if any, and without regard to any requirement contained in any other Section hereof, Mortgagee may apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any such claim and apply the balance to the Secured Obligations in any order acceptable to Mortgagee, and release all or any part of the proceeds to Mortgagor upon any conditions Mortgagee may impose. Mortgagee may commence, appear in, defend or prosecute any assigned claim or action, and may adjust, compromise, settle and collect all claims and awards assigned to Mortgagee; provided however, that in no event shall Mortgagee be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or non-feasance by Mortgagee or its employees or agents.

(b) At its sole option, Mortgagee may permit insurance or condemnation proceeds held by Mortgagee to be used for repair or restoration but may impose any conditions on such use as Mortgagee deems necessary, including, without limitation: (i) the deposit with Mortgagee of such additional funds which Mortgagee determines are needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Mortgagee (the arrangement contained in Credit Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Mortgagee of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Mortgagee, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be in form and substance acceptable and satisfactory to Mortgagee; and (iv) the delivery to Mortgagee of evidence, in form and substance acceptable and satisfactory to Mortgagee, (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of the Nicholson Lease acceptable to and required by Mortgagee; (cc) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no adverse change in the financial condition or credit of Mortgagor and Borrower (if different from Mortgagor) and any guarantors since the date of this Mortgagee; and (ee) of the satisfaction of any additional conditions that Mortgagee may reasonably establish to protect its security. Mortgagor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Mortgagee of such insurance

or condemnation proceeds, then Mortgagee may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Mortgagee in its sole discretion may choose.

**5.8 Maintenance and Preservation of Subject Property.** Subject to the provisions of any Secured Obligation, Mortgagor covenants:

- (a) to complete construction of the Construction Improvements in accordance with the Credit Agreement;
- (b) to keep the Subject Property in good condition and repair, ordinary wear and tear excepted;
- (c) except with Mortgagee's prior written consent, not to remove or demolish the Subject Property, nor alter, restore or add to the Subject Property, nor initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property;
- (d) to restore promptly and in good workmanlike manner any portion of the Subject Property which may be damaged or destroyed, unless Mortgagee requires that all of the insurance proceeds be used to reduce the Secured Obligations as provided in the Section hereof entitled Damages; Insurance and Condemnation Proceeds;
- (e) to comply with and not to suffer violation of any or all of the following which govern acts or conditions on, or otherwise affect the Subject Property: (i) laws, ordinances, regulations, standards and judicial and administrative rules and orders; (ii) covenants, conditions, restrictions and equitable servitudes, whether public or private; and (iii) requirements of insurance companies and any bureau or agency which establishes standards of insurability;
- (f) not to commit or permit waste of the Subject Property; and
- (g) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.

**5.9 Hazardous Substances; Environmental Provisions.** Mortgagor represents and warrants to Mortgagee as follows:

- (a) Except as disclosed to Mortgagee in writing prior to the date hereof, the Subject Property is not to Mortgagor's Knowledge (which for purposes of this Mortgage shall have the same meaning as "Borrowers' Knowledge" in the Credit Agreement) and has not to Mortgagor's Knowledge been a site for the use, generation, manufacture, storage, treatment, disposal, release or threatened release, transportation or presence of any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws, as defined below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials").
- (b) The Subject Property is in all material respects in compliance with all laws, ordinances and regulations relating to Hazardous Materials (collectively, the "Hazardous Materials Laws"), including without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Toxic Substances Control Act and the Occupational Safety and Health Act, as any of the same may be amended, modified or supplemented from time to time, and any other applicable federal, state or local environmental laws, and any rules or regulations adopted pursuant to any of the foregoing.

(c) There are no claims or actions pending or to Mortgageor's Knowledge threatened against Mortgageor or the Subject Property by any governmental entity or agency, or any other person or entity, relating to any Hazardous Materials or pursuant to any Hazardous Materials Laws.

(d) Mortgageor hereby agrees to defend, indemnify and hold harmless Mortgagee, its directors, officers, employees, agents, successors and assigns, from and against any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including without limitation, attorneys' fees and expenses) which Mortgagee may incur as a direct or indirect consequence of the use, generation, manufacture, storage, treatment, disposal, release or threatened release, transportation or presence of Hazardous Materials in, on, under or about the Subject Property. Mortgageor shall pay to Mortgagee immediately upon demand any amounts owing under this indemnity, together with interest from the date of demand until paid in full at the highest rate of interest applicable to any Secured Obligation. MORTGAGOR'S DUTY AND OBLIGATION TO DEFEND, INDEMNIFY AND HOLD HARMLESS MORTGAGEE IS IN ADDITION TO ANY AND ALL OTHER SEPARATE INDEMNITY AGREEMENTS OF MORTGAGOR AND BORROWER TO MORTGAGEE AND SHALL SURVIVE THE CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE OR PARTIAL RELEASE OF THIS MORTGAGE.

(e) Mortgageor shall immediately advise Mortgagee in writing in the event of Mortgageor's Knowledge of any occurrence or condition on the Subject Property, or on any real property adjoining or in the vicinity of the Subject Property, that does or could cause all or any part of the Subject Property to be contaminated with any Hazardous Materials or otherwise be in violation of any Hazardous Materials Laws, or cause the Subject Property to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Hazardous Materials Laws.

5.10 Protection of Security. Mortgageor shall, at Mortgageor's sole expense: (a) protect, preserve and defend the Subject Property and Collateral and Mortgageor's title and right to possession of the Subject Property and Collateral against all adverse claims; (b) pay and perform in a timely manner all obligations to be paid and/or performed by Mortgageor under the Nicholson Lease; and (c) protect, preserve and defend the security of this Mortgage and the rights and powers of Mortgagee under this Mortgage against all adverse claims. Mortgageor shall give Mortgagee prompt notice in writing of the assertion of any claim, the filing of any action or proceeding, or the occurrence of any damage, condemnation offer or other action relating to or affecting the Subject Property and, of any notice of default or demand for performance under the Nicholson Lease.

5.11 Powers and Duties of Mortgagee. Mortgagee may, upon written request, without obligation to do so or liability therefor and without notice: (a) release all or any part of the Subject Property from the lien of this Mortgage; (b) consent to the making of any map or plat of the Subject Property; and (c) join in any grant of easement or declaration of covenants and restrictions with respect to the Subject Property, or any extension agreement or any agreement subordinating the lien or charge of this Mortgage. Mortgagee may from time to time apply to any court of competent jurisdiction for aid and direction in the exercise or enforcement of its rights and remedies available under this Mortgage, and may obtain orders or decrees directing, confirming or approving acts in the exercise or enforcement of said rights and remedies. Mortgagee has no obligation to notify any party of any pending sale or any action or proceeding (including, but not limited to, actions in which Mortgageor or Mortgagee shall be a party) unless held or commenced and maintained by Mortgagee under this Mortgage.

5.12 Compensation; Exculpation; Indemnification.

(a) Mortgageor shall pay Mortgagee reasonable compensation for services rendered concerning this Mortgage, including without limitation, the providing of any statement of amounts owing under any Secured Obligation. Mortgagee shall not directly or indirectly be liable to Mortgageor or any other person as a consequence of: (i) the exercise of any rights, remedies or powers granted to Mortgagee in this

Mortgage; (ii) the failure or refusal of Mortgagee to perform or discharge any obligation or liability of Mortgagor under this Mortgage, the Nicholson Lease, the Sublease or other lease or agreement related to the Subject Property; or (iii) any loss sustained by Mortgagor or any third party as a result of Mortgagee's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Subject Property after any Default or from any other act or omission (regardless of whether the same constitutes negligence) of Mortgagee in managing the Subject Property after any Default unless such loss is caused by the willful misconduct or gross negligence of Mortgagee; and no such liability shall be asserted or enforced against or imposed upon Mortgagee, and all such liability is hereby expressly waived and released by Mortgagor.

(b) Mortgagor shall indemnify Mortgagee against, and hold Mortgagee harmless from, any and all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, costs of evidence of title, costs of evidence of value, and other expenses which Mortgagee may suffer or incur: (i) by reason of this Mortgage; (ii) by reason of the execution of this Mortgage or the performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Mortgagor to perform Mortgagor's obligations; or (iv) by reason of any alleged obligation or undertaking of Mortgagee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property, including without limitation, the payment of any taxes, assessments, rents or other lease obligations, liens, encumbrances or other obligations of Mortgagor under this Mortgage. Mortgagor's duty to indemnify Mortgagee shall survive the payment, discharge or cancellation of the Secured Obligations and the release or satisfaction, in whole or in part, of this Mortgage.

(c) Mortgagor shall pay all indebtedness arising under this Section immediately upon demand by Mortgagee, together with interest thereon from the date such indebtedness arises until paid in full at the highest rate per annum payable under any Secured Obligation. Mortgagee may, at its option, add any such indebtedness to any Secured Obligation.

5.13 Due on Sale or Encumbrance. Except as permitted by the provisions of any Secured Obligation, if the Subject Property or any interest therein shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether voluntarily, involuntarily or by operation of law (each of which actions and events is called a "Transfer"), without Mortgagee's prior written consent, THEN Mortgagee may, at its sole option, to the extent not prohibited by applicable law, declare all Secured Obligations immediately due and payable in full. Mortgagor shall notify Mortgagee in writing of each Transfer within ten (10) business days of the date thereof. A Transfer shall include, without limitation, the sale or transfer of a controlling interest of the limited liability company interests of Mortgagor or CS Beef, excluding, however, any change of control of either Mortgagor or CS Beef with respect to and as between either of such entity's existing members, with "control" determined as provided in Section 6.1(i) of the Credit Agreement.

5.14 Releases, Extensions, Modifications and Additional Security. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or Collateral or in any manner obligated under any Secured Obligation (each, an "Interested Party"), Mortgagee may, from time to time, release any Interested Party from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, accept additional security, and enforce, waive, subordinate or release all or a portion of the Subject Property or Collateral or any other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any Interested Party, nor release or impair the priority of the lien of, or the security interests created by, this Mortgage upon the Subject Property and/or the Collateral.

5.15 Release of Mortgage. Upon satisfaction in full of the Secured Obligations, Mortgagee, without warranty, shall deliver for recording in the appropriate real property records a satisfaction or

release of Mortgage for the Subject Property, or that portion thereof then covered hereby, from the lien of this Mortgage.

5.16 Subrogation. Mortgagee shall be subrogated to the lien of all encumbrances, whether or not released of record, paid in whole or in part by Mortgagee pursuant to this Mortgage or by the proceeds of any Secured Obligation.

5.17 Mortgagor's Covenants Regarding Nicholson Lease.

(a) The Mortgagor shall: (i) pay all rents, additional rents and other sums required to be paid by the Mortgagor as lessee under and pursuant to the provisions of the Nicholson Lease, (ii) diligently perform and observe all of the terms, covenants and conditions of the Nicholson Lease on the part of the Mortgagor, as lessee thereunder, to be performed and observed, unless such performance or observance shall be waived or not required in writing by the lessors under the Nicholson Lease, to the end that all things shall be done which are necessary to keep unimpaired the rights of the Mortgagor, as lessee, under the Nicholson Lease, (iii) promptly notify the Mortgagee in writing of any default by the Mortgagor or lessors under the Nicholson Lease in the performance or observance of any of the terms, covenants or conditions on the part of, respectively, the Mortgagor or lessors to be performed or observed under the Nicholson Lease, (iv) promptly notify the Mortgagee of the giving of any notice by the lessors under the Nicholson Lease to the Mortgagor (other than notices customarily sent on a regular basis) and of any notice noting or claiming any default by the Mortgagor in the performance or observance of any of the terms, covenants or conditions of the Nicholson Lease on the part of the Mortgagor, as lessee thereunder, to be performed or observed and deliver to the Mortgagee a true copy of each such notice, (v) promptly notify the Mortgagee in writing of any request made by either party to the Nicholson Lease for arbitration proceedings pursuant to the Nicholson Lease and of the institution of any arbitration proceedings, as well as of all proceedings thereunder, and promptly deliver to the Mortgagee a copy of the determination of the arbitrators in each such arbitration proceeding, it being acknowledged and agreed that the Mortgagee shall have the right to participate in such arbitration proceedings in association with the Mortgagor or on its own behalf as an interested party, (vi) furnish to the Mortgagee, within ten (10) days after demand, proof of payment of all items which are required to be paid by the Mortgagor pursuant to the Nicholson Lease, and (vii) not consent to the subordination of the Nicholson Lease to any mortgage of the fee interest of the lessors under the Nicholson Lease in the Subject Property except any other mortgage such as agreed to by the Mortgagee or as required by the mortgagee of such lessors.

(b) The Mortgagor, shall not, without the prior written consent of the Mortgagee, surrender the leasehold estate created by the Nicholson Lease or terminate or cancel the Nicholson Lease or modify, change, supplement, alter or amend the Nicholson Lease, in any respect, either orally or in writing, and the Mortgagor hereby assigns to the Mortgagee, as further security for the Secured Obligations and for the performance and observance of the terms, covenants and conditions of this Mortgage, all of the rights, privileges and prerogatives of the Mortgagor, as lessee under the Nicholson Lease, to surrender the leasehold estate created by the Nicholson Lease or to terminate, cancel, modify, change, supplement, alter or amend the Nicholson Lease, and any such surrender of the leasehold estate created by the Nicholson Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Nicholson Lease without the prior written consent of the Mortgagee shall be void and of no force and effect.

(c) Supplementing the provisions of subparagraph (b) above, it is understood and agreed that the Mortgagor shall not, without the Mortgagee's prior written consent, elect to treat the Nicholson Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without the Mortgagee's prior written consent shall be void. The Mortgagor hereby unconditionally assigns, transfers and set over to the Mortgagee all of the Mortgagor's claims and rights to the payment of damages arising under the Bankruptcy Code from any rejection by the lessors under the Nicholson Lease. The Mortgagee shall have the right to proceed in its own name or in the name of the Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Nicholson Lease, including, without limitation, the right to file and prosecute, to the exclusion of the Mortgagor, any proofs of claim, complaints, motions,

applications, notices and other documents, in any case in respect of such lessors under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the indebtedness and obligations secured by the Mortgage shall have been satisfied and discharged in full. Any amounts received by the Mortgagee as damages arising out of the rejection of the Nicholson Lease as aforesaid shall be applied first to all costs and expenses of the Mortgagee (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph and then shall be applied against the Secured Obligations in such order, priority and proportion as the Mortgagee shall determine. If any action, motion or notice shall be commenced or filed in respect of the Mortgagor, as lessee under the Nicholson Lease, or all or any portion of the Subject Property in connection with any case under the Bankruptcy Code, the Mortgagor shall give the Mortgagee prompt written notice thereof and the Mortgagee shall have the option, to the exclusion of the Mortgagor, exercisable upon notice from the Mortgagee to the Mortgagor, to conduct and control any such litigation with counsel of the Mortgagee's choice. The Mortgagee may proceed in its own name or in the name of the Mortgagor in connection with any such litigation, and the Mortgagor agrees to execute any and all powers, authorizations, consents and other documents required by the Mortgagee in connection therewith. The Mortgagor shall, upon demand, pay to the Mortgagee all costs and expenses (including attorneys' fees) paid or incurred by the Mortgagee in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by the Mortgagor as aforesaid shall be secured by the lien of the Mortgage and shall be added to the Secured Obligation. The Mortgagor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Nicholson Lease in any such case under the Bankruptcy Code without the prior written consent of the Mortgagee. The Mortgagor shall, immediately after obtaining knowledge thereof, notify the Mortgagee as set forth in Section 6.04, of any filing by or against the lessors under the Nicholson Lease of a petition under the Bankruptcy Code. The Mortgagor shall thereafter forthwith give written notice of such filing to the Mortgagee, setting forth the date of such filing, the court in which the petition was filed and the relief sought therein. The Mortgagor shall promptly deliver to the Mortgagee, following receipt, any and all notices, summonses, pleadings, applications and other documents received by the Mortgagor in connection with any such petition and any proceedings relating thereto.

(d) If the Mortgagor shall default in the performance or observance of any term, covenant or condition of the Nicholson Lease on the part of the Mortgagor, as lessee thereunder, to be performed or observed, then, without limiting the generality of the other provisions of this Mortgage, and without waiving or releasing the Mortgagor from any of its obligations hereunder, the Mortgagee shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Nicholson Lease on the part of the Mortgagor, as lessee thereunder, to be performed or observed to be promptly performed or observed on behalf of the Mortgagor, to the end that the rights of the Mortgagee in, to and under the Nicholson Lease shall be kept unimpaired and free from default. If the Mortgagee shall make any payment or perform any act or take action in accordance with the preceding sentence, the Mortgagee will notify the Mortgagor of the making of any such payment, the performance of any such act, or the taking of any such action. All sums so paid by the Mortgagee and all costs and expenses incurred by the Mortgagee in connection with the performance of any such act shall be paid by the Mortgagor to the Mortgagee upon demand, and the same shall be deemed to be secured by this Mortgage and shall be a lien on the Subject Property prior to any right, title to, interest in or claim upon the Subject Property attaching subsequent to the lien of this Mortgage. In any such event, subject to the rights, if any, of lessees and other occupants under the Sublease, the Mortgagee and any person designated by the Mortgagee shall have, and are hereby granted, the right to enter upon the Subject Property at any time and from time to time for the purpose of taking any such action. If the lessors under the Nicholson Lease shall deliver to the Mortgagee a copy of any notice of default sent by said lessors to the Mortgagor, as lessee under the Nicholson Lease, such notice shall constitute full protection to the Mortgagee for any action taken or omitted to be taken by the Mortgagee, in good faith, in reliance thereon.

(e) The Mortgagor hereby irrevocably appoints Mortgagee as its true and lawful attorney-in-fact in its name or otherwise to do any and all acts and to execute any and all documents which in the reasonable opinion of the Mortgagee may be necessary or desirable to preserve any rights of the

Mortgagor in, to or under the Nicholson Lease, or any occupancy lease, license or concession, including, without limitation, the right (but not the obligation) to cure any defaults of the Mortgagor as lessee under the Nicholson Lease, preserve any rights of the Mortgagor whatsoever in respect of any part of the Subject Property or to execute an extension or renewal of the Nicholson Lease as hereinafter set forth. The Mortgagor shall, within ten (10) days of request by the Mortgagee or such other time as is set forth in the Nicholson Lease, obtain from the lessors under the Nicholson Lease such certificates of estoppel with respect to compliance by the Mortgagor with the terms of the Nicholson Lease as may be reasonably requested by the Mortgagee and in consistent form with any relevant provision of the Nicholson Lease. The Mortgagor shall exercise each individual option, if any, to extend or renew the term of the Nicholson Lease upon demand by the Mortgagee made at any time within one (1) year of the last day upon which any such option may be exercised, and the Mortgagor hereby expressly authorizes and appoints the Mortgagee the Mortgagor's attorney-in-fact to exercise, either jointly or individually, any such option in the name of and upon behalf of the Mortgagor, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

(f) The generality of the provisions of this paragraph relating to the Nicholson Lease shall not be limited by other provisions of this Mortgage or any other agreement between the Mortgagee and the Mortgagor, setting forth particular obligations of the Mortgagor which are also required of the Mortgagor as tenant under the Nicholson Lease. Mortgagee acknowledges that Mortgagor's performance of its obligations hereunder with respect to the Nicholson Lease is subject to the rights of the lessors under the Nicholson Lease and any Consent executed by the lessors thereunder in connection with this Mortgage. To the extent practicable and without reducing Mortgagee's rights under or the security of this Mortgage, Mortgagee agrees to exercise its remedies hereunder consistent with the rights and obligations of the lessors under the Nicholson Lease and with the tenants under the Sublease.

**5.18 New Lease with Mortgagee.** If the Nicholson Lease shall be terminated prior to the natural expiration of the term due to an event of default thereunder, and if, pursuant to any provision of the Nicholson Lease, the Mortgagee or its designee shall acquire from the lessors under the Nicholson Lease a new lease of the Subject Property, the Mortgagor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

**5.19 No Merger of Fee and Leasehold Estate.** So long as any portion of the Secured Obligations shall remain unpaid, and unless the Mortgagee shall otherwise consent, the fee title to the Subject Property and the leasehold estate therein created pursuant to the provisions of the Nicholson Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estate in the Mortgagor or in any other person, by purchase, operation of law or otherwise. If the Mortgagee shall acquire the fee title to the Subject Property and the leasehold estate therein created pursuant to the provisions of the Nicholson Lease, by foreclosure of this Mortgage or otherwise, such estate shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until the Mortgagee shall elect to merge such estate. Without limitation or derogation of the foregoing, if the Mortgagor acquires the fee interest (including any reversionary interest) in the Subject Property or any portion thereof (including, without limitation, pursuant to a conveyance of such fee interest pursuant to the Nicholson Lease), or any other interest in the Premises or any portion thereof, the lien of this Mortgage shall, ipso facto, without the necessity of any further assignment, mortgage or conveyance, simultaneously with such acquisition, be spread to cover said fee or other interest and, as so spread, shall be prior to the lien of any mortgage or Mortgage placed on said fee or other interest subsequent to the date of this Mortgage. Without limitation or derogation of the foregoing sentence, the Mortgagor nevertheless agrees to execute all instruments and documents which the Mortgagee may require to ratify, confirm and further evidence the Mortgagee's lien on the fee interest. The Mortgagor hereby irrevocably appoints the Mortgagee its true and lawful attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution, to prepare, execute, deliver, file and record all such instruments and documents in the name and behalf of the Mortgagor.

**5.20 Mortgagor Different From Obligor ("Third Party Mortgagor").** As used in this Section, the term "Obligor" shall mean each person or entity obligated in any manner under any of the Secured

Obligations; and the term "Third Party Mortgagor" shall mean (1) each person or entity included in the definition of Mortgagor herein and which is not an Obligor under all of the Secured Obligations, and (2) each person or entity included in the definition of Mortgagor herein if any Obligor is not included in said definition.

(a) Representations and Warranties. Each Third Party Mortgagor represents and warrants to Mortgagee that: (i) this Mortgage is executed at an Obligor's request; (ii) this Mortgage complies with all agreements between each Third Party Mortgagor and any Obligor regarding such Third Party Mortgagor's execution hereof; (iii) Mortgagee has made no representation to any Third Party Mortgagor as to the creditworthiness of any Obligor; and (iv) each Third Party Mortgagor has established adequate means of obtaining from each Obligor on a continuing basis financial and other information pertaining to such Obligor's financial condition. Each Third Party Mortgagor agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect such Third Party Mortgagor's risks hereunder. Each Third Party Mortgagor further agrees that Mortgagee shall have no obligation to disclose to any Third Party Mortgagor any information or material about any Obligor which is acquired by Mortgagee in any manner. The liability of each Third Party Mortgagor hereunder shall be reinstated and revived, and the rights of Mortgagee shall continue if and to the extent that for any reason any amount at any time paid on account of any Secured Obligation is rescinded or must otherwise be restored by Mortgagee, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as though such amount had not been paid. The determination as to whether any amount so paid must be rescinded or restored shall be made by Mortgagee in its sole discretion; provided however, that if Mortgagee chooses to contest any such matter at the request of any Third Party Mortgagor, each Third Party Mortgagor agrees to indemnify and hold Mortgagee harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by Mortgagee in connection therewith, including without limitation, in any litigation with respect thereto.

(b) Waivers.

(i) Each Third Party Mortgagor waives, to the extent not prohibited by applicable law, any right to require Mortgagee to: (A) proceed against any Obligor or any other person; (B) marshal assets or proceed against or exhaust any security held from any Obligor or any other person; (C) give notice of the terms, time and place of any public or private sale or other disposition of personal property security held from any Obligor or any other person; (D) take any other action or pursue any other remedy in Mortgagee's power; or (E) make any presentment or demand for performance, or give any notice of nonperformance, protest, notice of protest or notice of dishonor hereunder or in connection with any obligations or evidences of indebtedness held by Mortgagee as security for or which constitute in whole or in part the Secured Obligations, or in connection with the creation of new or additional obligations.

(ii) Each Third Party Mortgagor waives, to the extent not prohibited by applicable law, any defense to its obligations hereunder based upon or arising by reason of: (A) any disability or other defense of any Obligor or any other person; (B) the cessation or limitation from any cause whatsoever, other than payment in full, of any Secured Obligation; (C) any lack of authority of any officer, director, partner, agent or any other person acting or purporting to act on behalf of any Obligor which is a corporation, partnership or other type of entity, or any defect in the formation of any such Obligor; (D) the application by any Obligor of the proceeds of any Secured Obligation for purposes other than the purposes represented by any Obligor to, or intended or understood by, Mortgagee or any Third Party Mortgagor; (E) any act or omission by Mortgagee which directly or indirectly results in or aids the discharge of any Obligor or any portion of any Secured Obligation by operation of law or otherwise, or which in any way impairs or suspends any rights or remedies of Mortgagee against any Obligor; (F) any impairment of the value of any interest in any security for the Secured Obligations or any portion thereof, including without limitation, the failure to obtain or maintain perfection or recordation of any interest in any such security, the release of any such security without substitution, and/or the failure to preserve the value of, or to comply with applicable law in disposing of, any such security; (G) any modification of any

Secured Obligation, in any form whatsoever, including without limitation the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, any Secured Obligation or any portion thereof, including increase or decrease of the rate of interest thereon; or (H) any requirement that Mortgagee give any notice of acceptance of this Mortgage. Until all Secured Obligations shall have been paid in full, no Third Party Mortgagor shall have any right of subrogation, and each Third Party Mortgagor waives any right to enforce any remedy which Mortgagee now has or may hereafter have against any Obligor or any other person, and waives any benefit of, or any right to participate in, any security now or hereafter held by Mortgagee. Each Third Party Mortgagor further waives all rights and defenses it may have arising out of: (1) any election of remedies by Mortgagee, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Secured Obligations, destroys such Third Party Mortgagor's rights of subrogation or such Third Party Mortgagor's rights to proceed against any Obligor for reimbursement; or (2) any loss of rights any Third Party Mortgagor may suffer by reason of any rights, powers or remedies of any Obligor in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging any Obligor's obligations.

(iii) If any of said waivers is determined to be contrary to any applicable law or public policy, such waiver shall be effective to the extent not prohibited by applicable law or public policy.

#### ARTICLE VI. DEFAULT PROVISIONS

6.1 Default. The occurrence of any of the following shall constitute a "Default" under this Mortgage: (a) Mortgagor shall fail to observe or perform any material obligation or agreement contained herein which is not cured in twenty-five (25) calendar days; (b) any representation or warranty of Mortgagor herein shall prove to be incorrect, false or misleading in any material respect when made; (c) any default in the payment or performance of any material obligation, or any defined Event of Default, under any provisions of the Note or any other contract, instrument or document executed in connection with, or with respect to, any Secured Obligation including, without limitation, the Credit Agreement, subject to any right to cure stated therein; (d) if the Mortgagor shall default in the observance or performance of any material term, covenant or condition of the Nicholson Lease on the part of the Mortgagor, as lessee thereunder, to be observed or performed, unless any such observance or performance shall have been waived or not required in writing by the lessors under the Nicholson Lease, or if any one or more of the events referred to in the Nicholson Lease shall occur which would or may cause the Nicholson Lease to terminate without notice or action by the lessors thereunder or which would entitle the lessors under the Nicholson Lease to terminate the Nicholson Lease and the term thereof by giving notice to the Mortgagor, as lessee thereunder, or if the leasehold estate created by the Nicholson Lease shall be surrendered, in whole or in part, or if the Nicholson Lease shall be terminated or canceled for any reason or under any circumstance whatsoever, or if any of the terms, covenants or conditions of the Nicholson Lease shall in any manner be modified, changed, supplemented, altered or amended without the consent of the Mortgagee; or (e) if the Mortgagor shall, without the Mortgagee's prior written approval, elect to treat the lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made by the Mortgagor, as holder of the fee or leasehold estate in the Subject Property, without the Mortgagee's prior written consent, in addition to constituting a Default, shall be void.

6.2 Rights and Remedies. Upon the occurrence of any Default, and at any time thereafter, to the extent not prohibited by applicable law, Mortgagee shall have all the following rights and remedies:

(a) With or without notice, to declare all Secured Obligations immediately due and payable in full, subject to any notice and cure rights under applicable law.

(b) With or without notice, without releasing Mortgagor from any Secured Obligation and without becoming a mortgagee in possession, to cure any Default of Mortgagor and, in connection therewith: (i) to enter upon the Subject Property, possess, manage and operate the Subject Property or any part thereof, to complete construction of the Construction Improvements, and to do such acts and things as Mortgagee

deems necessary or desirable to protect the security of this Mortgage, including without limitation, to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Mortgagee hereunder; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of Mortgagee, is senior in priority to this Mortgage, the judgment of Mortgagee being conclusive as between the parties hereto; (iii) to obtain, and to pay any premiums or charges with respect to, any insurance required to be carried hereunder; and (iv) to employ counsel, accountants, contractors and other appropriate persons to assist Mortgagee.

(c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Mortgage or to obtain specific enforcement of the covenants of Mortgagor under this Mortgage, and Mortgagor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. For the purposes of any suit brought under this subsection, Mortgagor waives the defenses of laches and any applicable statute of limitations.

(d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property and/or the Collateral as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Mortgagor consents to such appointment.

(e) To take and possess all documents, books, records, papers and accounts of Mortgagor or the then owner of the Subject Property; to make or modify the Sublease of, and other agreements with respect to, the Subject Property upon such terms and conditions as Mortgagee deems proper; and to make repairs, alterations and improvements to the Subject Property deemed necessary, in Mortgagee's judgment, to protect or enhance the security hereof.

(f) Subject to the Idaho one-action rule, to resort to and realize upon the security hereunder and any other security now or later held by Mortgagee concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received in accordance with the Section hereof entitled Application of Foreclosure Sale Proceeds, all in such order and manner as Mortgagee shall determine in its sole discretion.

(g) Upon sale of the Subject Property at any judicial foreclosure, Mortgagee may credit bid (as determined by Mortgagee in its sole discretion) all or any portion of the Secured Obligations. In determining such credit bid, Mortgagee may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Mortgagee in its sole underwriting discretion; (ii) expenses and costs incurred by Mortgagee with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Mortgagee anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g., commissions, attorneys' fees, and taxes), Hazardous Materials clean-up and monitoring, deferred maintenance, repair, refurbishment and retrofit, and costs of defending or settling litigation affecting the Subject Property; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the existence of additional collateral, if any, for the Secured Obligations; and (vii) such other factors or matters that Mortgagee deems appropriate. Mortgagor acknowledges and agrees that: (A) Mortgagee is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) this Section does not impose upon Mortgagee any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Mortgagee's credit bid need not have any relation to any loan-to-value ratios specified in any agreement between Mortgagor and Mortgagee or previously discussed by Mortgagor and Mortgagee; and (D) Mortgagee's credit bid may be, at Mortgagee's sole discretion, higher or lower than any appraised value of the Subject Property.

(h) With respect to the security interests granted hereby, Mortgagee shall have all of the rights and remedies of a secured party under the UCC.

6.3 Application of Foreclosure Sale Proceeds. To the extent not prohibited by applicable law or court order, after deducting all costs, fees and expenses of sale, including costs of evidence of title and reasonable attorneys' fees in connection with a sale, all proceeds of any foreclosure sale shall be applied first, to payment of all Secured Obligations (including without limitation, all sums expended by Mortgagee under the terms hereof and not then repaid, with accrued interest at the highest rate per annum payable under any Secured Obligation), in such order and amounts as Mortgagee in its sole discretion shall determine; and the remainder, if any, to the person or persons legally entitled thereto.

6.4 Application of Other Sums. All Rents or other sums received by Mortgagee or any agent or receiver hereunder, less all costs and expenses incurred by Mortgagee or such agent or receiver, including reasonable attorneys' fees, shall be applied to payment of the Secured Obligations in such order as Mortgagee shall determine in its sole discretion; provided however, that Mortgagee shall have no liability for funds not actually received by Mortgagee.

6.5 No Cure or Waiver. Neither Mortgagee's or any receiver's entry upon and taking possession of the all or any part of the Subject Property and Collateral, nor any collection of Rents, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of or failure to exercise any other right or remedy by Mortgagee or any receiver shall impair the status of the security of this Mortgage, or cure or waive any breach, Default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale (unless all Secured Obligations and any other sums then due hereunder have been paid in full and Mortgagor has cured all other Defaults), or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option of the Subject Property or a subordination of the lien of this Mortgage.

6.6 Costs, Expenses and Attorneys' Fees. To the extent not prohibited by applicable law or court order, Mortgagor agrees to pay to Mortgagee immediately upon demand the full amount of all payments, advances, charges, reasonable costs and expenses, including court costs and reasonable attorneys' fees (to include outside counsel fees), expended or incurred by Mortgagee pursuant to this Article VI, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Mortgagee or any other person) relating to Mortgagor or in any way affecting any of the Subject Property and/or the Collateral or Mortgagee's ability to exercise any of its rights or remedies with respect thereto. All of the foregoing shall be paid by Mortgagor with interest from the date of demand until paid in full at the default rate payable under the Note.

6.7 Power to File Notices and Cure Defaults. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns as Mortgagor's true attorney-in-fact to perform any of the following powers, which agency is coupled with an interest: (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest; and (b) upon the occurrence of any event, act or omission which with the giving of notice or the passage of time, or both, would constitute a Default, to perform any obligation of Mortgagor hereunder; provided however, that Mortgagee, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Mortgagee, and Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to act under this Section.

6.8 Remedies Cumulative; No Waiver. All rights, powers and remedies of Mortgagee hereunder are cumulative and are in addition to all rights, powers and remedies provided by law or in any other

agreements between Mortgagor and Mortgagee. No delay, failure or discontinuance of Mortgagee in exercising any right, power or remedy hereunder shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy, to the extent not prohibited by applicable law. By accepting payment or performance of any of the Secured Obligations after its due date, Mortgagee shall not be deemed to have waived the agreement contained herein that time is of the essence, nor shall Mortgagee be deemed to have waived either its right to require prompt payment or performance when due or the remainder of the Secured Obligations or its right to consider the failure to so pay or perform, a Default.

#### ARTICLE VII. MISCELLANEOUS PROVISIONS

7.1 No Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in, or any other lien on, the Subject Property unless Mortgagee specifically consents to a merger in writing.

7.2 Execution of Documents; Incorporation of Exhibits/Schedules. Mortgagor agrees, upon demand by Mortgagee, to execute any and all documents and instruments required to effectuate the provisions hereof. For all intents and purposes, all exhibits, schedules or other items attached hereto are deemed incorporated into this Mortgage by such attachment.

7.3 Right of Inspection. Mortgagee or its agents or employees may enter onto the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Mortgagor's compliance with the terms hereof. Mortgagee agrees to exercise its rights under this provision in accordance with any relevant notice provision of the Nicholson Lease and any Sublease.

7.4 Notices. All notices, requests and demands which Mortgagor or Mortgagee is required or may desire to give to the other party pursuant to the terms hereof shall be in writing and shall be delivered to the other party at the address and in the manner as provided in Section 7.2 of the Credit Agreement.

7.5 Successors; Assignment. This Mortgage shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto; provided however, that this Section does not waive the provisions of the Section hereof entitled Due on Sale or Encumbrance. Subject to Section 7.4 of the Credit Agreement, Mortgagee reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Mortgagee's rights and benefits under the Note, any and all other Secured Obligations and this Mortgage. In connection therewith, Mortgagee may disclose all documents and information which Mortgagee now has or hereafter acquires relating to the Subject Property, all or any of the Secured Obligations and/or Mortgagor and, as applicable, any partners, joint venturers or members of Mortgagor, whether furnished by any Mortgagor or otherwise.

7.6 Rules of Construction. (a) When appropriate based on the identity of the parties or other circumstances, the masculine gender includes the feminine or neuter or both, and the singular number includes the plural; (b) the term "Subject Property" means all and any part of or interest in the Subject Property; (c) all Section headings herein are for convenience of reference only, are not a part of this Mortgage, and shall be disregarded in the interpretation of any portion of this Mortgage; (d) if more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such Mortgagors hereunder shall be joint and several; and (e) all terms of Exhibit A and each other exhibit and/or rider attached hereto and recorded herewith, are hereby incorporated into this Mortgage by this reference.

7.7 Severability of Provisions. If any provision of this Mortgage shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Mortgage.

7.8 Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of Idaho.

7.9 Marshalling and Other Matters. Mortgagor hereby waives, to the extent not prohibited by law, the benefit of all appraisal, valuation, stay, extension, reinstatement, and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Subject Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives to the extent not prohibited by law any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Subject Property subsequent to the date of this Mortgage and on behalf of all persons. The lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (a) any acceptance by Mortgagee of any other security for any portion of the Secured Obligations, (b) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any portion of the Secured Obligations or any collateral security therefore, to the extent not prohibited by applicable law, or (c) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, change, modification, or disposition of any portion of the Secured Obligations or of any of the collateral security therefore, and Mortgagee may, subject to applicable law, foreclose, or exercise any other remedy available to Mortgagee under the Note or Credit Agreement or this Mortgage without first exercising or enforcing any of its remedies under this Mortgage, and any exercise of the rights and remedies of Mortgagee hereunder shall not in any manner impair the Secured Obligations or the liens of the Note, Credit Agreement, this Mortgage, or any of the other Loan Documents or any of Mortgagee's rights and remedies thereunder.

7.10 Arbitration.

(a) Arbitration. The parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise in any way arising out of or relating to this Mortgage and its negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination. In the event of a court ordered arbitration, the party requesting arbitration shall be responsible for timely filing the demand for arbitration and paying the appropriate filing fee within 30 days of the abatement order or the time specified by the court. Failure to timely file the demand for arbitration as ordered by the court will result in that party's right to demand arbitration being automatically terminated.

(b) Governing Rules. Any arbitration proceeding will (i) proceed in a location in Idaho selected by the American Arbitration Association ("AAA"); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

(c) No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(d) Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State of Idaho or a neutral retired judge of the state or federal judiciary of Idaho, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of Idaho and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Idaho Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) Discovery. In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(f) Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, except parties who have executed this Mortgage or any other contract, instrument or document relating to any Secured Obligation, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(g) Payment Of Arbitration Costs And Fees. The arbitrator shall award all costs and expenses of the arbitration proceeding.

(h) Real Property. Notwithstanding anything herein to the contrary, no dispute shall be submitted to arbitration unless: (i) Mortgagee specifically elects in writing to proceed with the arbitration; or (ii) all parties to the arbitration waive any rights or benefits that might accrue to them by virtue of the single action rule statute of Idaho, thereby agreeing that all Secured Obligations, and all mortgages, liens and security interests securing any of the Secured Obligations, shall remain fully valid and enforceable.

(i) Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the

existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a dispute, the arbitration provision most directly related to the documents between the parties or the subject matter of the dispute shall control. This arbitration provision shall survive termination, amendment or expiration of any of the documents or any relationship between the parties.

(j) Small Claims Court. Notwithstanding anything herein to the contrary, each party retains the right to pursue in Small Claims Court any dispute within that court's jurisdiction. Further, this arbitration provision shall apply only to disputes in which either party seeks to recover an amount of money (excluding attorneys' fees and costs) that exceeds the jurisdictional limit of the Small Claims Court.

7.11 Counterparts. This Mortgage may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first set forth above.

**MORTGAGOR:**

**CS PROPERTY DEVELOPMENT, LLC,**  
a Delaware limited liability company

By: **Simplot BP Idaho, LLC,**  
an Idaho limited liability company  
Its: Member

By: **J. R. Simplot Company,**  
a Nevada corporation  
Its: Manager

By: \_\_\_\_\_  
Joel D. Barker, Senior Vice President,  
Chief Financial Officer and Treasurer

By: **Caviness DEV Idaho, LLC,**  
a Texas limited liability company  
Its: Member

By: \_\_\_\_\_  
Terry W. Caviness, Chief Executive Officer

**Addresses for Mortgagor:**

**Caviness Beef Packers Ltd.**  
P.O. Box 31117  
Amarillo, TX 79120 or  
Fax: 806-372-1215  
Attn: Jim Hargis

and **J. R. Simplot Company**  
P.O. Box 27  
Boise, ID 83707  
Fax: 208-389-7464  
Attn: Chief Financial Officer

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first set forth above.

**MORTGAGOR:**

CS PROPERTY DEVELOPMENT, LLC,  
a Delaware limited liability company

By: Simplot BP Idaho, LLC,  
an Idaho limited liability company  
Its: Member

By: J. R. Simplot Company,  
a Nevada corporation  
Its: Manager

By:   
\_\_\_\_\_  
Joel B. Barker, Senior Vice President,  
Chief Financial Officer and Treasurer

By: Caviness DEV Idaho, LLC,  
a Texas limited liability company  
Its: Member

By:   
\_\_\_\_\_  
Terry W. Caviness, Chief Executive Officer

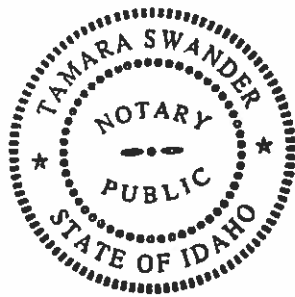
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Fax: 806-372-1215  
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and J. R. Simplot Company  
P.O. Box 27  
Boise, ID 83707  
Fax: 208-389-7464  
Attn: Chief Financial Officer

State of Idaho )  
County of Ada ) ss.

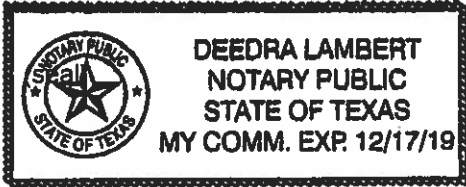
On this 6 day of April in the year 2016, before me TAMARA SWANDER, a notary public for the State of Idaho, personally appeared Joel ~~B~~ Barker, known or identified to me to be the Senior Vice President, Chief Financial Officer, and Treasurer of J. R. Simplot Company, a Nevada corporation, the Manager of Simplot BP Idaho, LLC, an Idaho limited liability company, a Member of CS PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, the limited liability company that executed the instrument or the person who executed the instrument in such capacity on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.



Tamara Swander  
Notary Public for the State of Idaho  
Residing at: Emmett  
My Commission Expires: 4-4-18

State of TEXAS                    )  
County of Potter                ) ss.  
  )

This instrument was acknowledged before me on April 19, 2016 by Terry W. Caviness, Chief Executive Officer of Caviness DEV Idaho, LLC, a Texas limited liability company, a Member of CS PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, on behalf of said limited liability company.



Deedra Lambert  
Notary Public Signature

EXHIBIT A

TO CONSTRUCTION LEASEHOLD MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING executed by CS PROPERTY DEVELOPMENT, LLC, a Delaware limited liability company, as Mortgagor, to WELLS FARGO BANK, NATIONAL ASSOCIATION, as Mortgagee, dated as of April 6, 2016.

Description of Nicholson Land

Parcel 24:

The Southwest quarter and the South half of the Southeast quarter of Section 14, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

Parcel 25:

The Northwest quarter and the North half of the Northeast quarter of Section 23, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

Parcel 26:

The Northwest Quarter of Section 24, Township 1 North, Range 1 East, Boise Meridian, Ada County, Idaho.

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