



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 4, 2014

PAUL CARNEY
2809 E 550 S
PAUL, ID 83347

Re: Denial of Water Supply Bank Lease Proposal for Water Rights 36-2385 and 36-7025

Dear Mr. Carney,

The Idaho Water Resource Board (Board) is authorized to operate a water supply bank (Idaho Code Section 42-1761) and the Board may purchase, lease or otherwise obtain decreed, licensed or permitted water rights to be credited to the water supply bank (I.C. 42-1762). On July 5, 2013, the Water Supply Bank (Bank) received from Carney Farms a proposal to lease portions of water rights 36-2385 and 36-7025 into the Water Supply Bank. In reviewing the applications, the Bank was unable to confirm that the portions of these water rights proposed for lease had not been lost to abandonment or forfeiture due to non-use in the past five years. In light of the concern about forfeiture and abandonment, your applications were denied on March 17, 2014.

You have since submitted additional information to the Water Supply Bank to demonstrate that the nonuse of water was due to circumstances beyond your control as the water right owner and that the portions of the water rights in question should not be considered lost or forfeited. A private lease dated May 10th, 2012 between Carney Farms and Horizon Organic Dairy was provided in which responsibility for the water and the lands are contractually conveyed to the Horizon Organic Dairy (the lessee) under the terms of the lease contract. Terms and conditions within a private lease contract between the owner and lessee fall within the control of the contracting parties and therefore do not rise to circumstances beyond the control of the water right owner as described in Idaho Code Section 42-223(6). Moreover, that the lease contract commenced in 2012 fails to clarify why water was not put to beneficial use for the other years in question, 2008-2011.

Water Supply Bank rule 25-06.c establishes that the Board will consider information available to indicate that a water right has been abandoned or forfeited in determining whether to accept an offered water right into the Board's water supply bank. The information provided indicates abandonment or forfeiture of these water rights remain a concern. As such, the Board elects not to contractually lease portions of these water rights as proposed.

If there is additional information that can be provided to confirm that portions of these water rights proposed for lease have not been lost to abandonment or forfeiture, please ensure to provide such information on any future lease applications related to these water rights. If you feel aggrieved by this decision, you may contact me at (208) 287-4918 with any questions related to this matter.

Regards,

Remington Buyer
Water Supply Bank Coordinator

RECEIVED
JUL 18 2014
DEPARTMENT OF
WATER RESOURCES

To: Pam Skaggs

From: Carney Farms – Paul Carney – Gary Carney
2809 E. 550 S.
Paul, ID 83347

Date: July 14, 2014

Re: Water Bank Irrigation

Pam

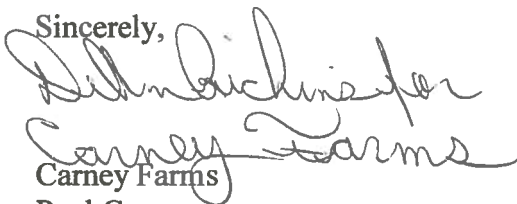
Enclosed please find our land leases regarding water rights 36-7025, 36-2385, 36-16395, 36-15708, 36-2369, 36-7560, 36-75708.

These leases show that the land has been leased for several long term leases. The leases state there was to be no waste of the land and that we needed approval before entering said land. This land was also grazed at some point during each year so your aerial photos may be somewhat misleading. The lease's irrigation needs changed each year depending on crop needs compared to grazing needs.

All of the leases pertaining to the above water rights have been transferred to new owners within the last nine months. The new owners have given their consent to water bank the acres they do not need. With the previous lessee having the first right of refusal to purchase the land and their varying need for the land use, we could not water bank the acres.

Any consideration to this matter will be greatly appreciated. If you need further information please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul Carney", written over the printed name "Carney Farms".

Carney Farms

Paul Carney

Gary Carney

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this 10th day of May, 2012, by and between CARNEY FARMS, an Idaho general partnership ("Lessor"); and HORIZON ORGANIC DAIRY, LLC ("Lessee");

RECITALS:

- A. Lessor owns real property, located in Jerome County, Idaho, which is legally described

TOWNSHIP 9 SOUTH RANGE 21 EAST OF THE BOISE MERIDIAN,
JEROME COUNTY, IDAHO

Section 5: Lot 4; Lot 5; SW $\frac{1}{4}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$;
N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$

TOWNSHIP 8 SOUTH, RANGE 21 EAST OF THE BOISE MERIDIAN,
JEROME COUNTY, IDAHO

Section 32: SW $\frac{1}{4}$ SW $\frac{1}{4}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$

("Real Property")

- B. Located on the south portion of the Real Property is irrigation equipment described as:

~~One (1) 8-Tower Zimmatic Pivot Irrigation System, with related pumps, motors, pipelines, electrical panel and related appurtenances.~~

("Irrigation Equipment")

The existing pivot irrigation system on the north portion of the Real Property is owned by Lessor and is not part of the Irrigation Equipment subject to this Lease Agreement.

- C. Appurtenant to the Real Property are certain water rights, including but not limited the following:

Water Right No. 36-7025

Water Right No. 36-2385

("Water Rights")

- D. The Real Property, Irrigation Equipment and Water Rights are referred to hereinafter collectively as the "Leased Property".

- E. The parties wish to agree upon terms and conditions whereby Lessee will lease from Lessor the Leased Property, for a period of five (5) years, with one (1) possible renewal

term of five (5) years.

IT IS THEREFORE AGREED, in consideration of these recitals and the promises and covenants hereinafter contained, as follows:

1. **LEASE.** Lessor does hereby lease to Lessee, all the Leased Property.

2. **TERM; RENEWAL TERM.** The initial term shall be for five (5) full farming years, commencing as of January 1st, 2012 (the "Commencement Date"), and ending the 31st day of December, 2016. This period of time is referred to hereinafter as the "Term". The Lease shall automatically extend for one (1) additional five (5) year term (the "Renewal Term") on the identical terms and conditions expressed herein, unless the Lessee gives written notice of non-renewal to Lessor prior to Nov. 1, 2016, in which case the Lease shall terminate December 31, 2016.

3. **RENTAL.** Lessee shall pay to the Lessor, as rental for the Leased Property, *Seventy Thousand Dollars (\$70,000.00)* per year, in two (2) equal semi-annual installments of *Thirty-Five Thousand Dollars (\$35,000.00)* each due on January 1st and July 1st of each year during the Term, commencing January 1, 2012, provided that for the year 2012 only, the January 1st, 2012, semiannual installment will be due within ten (10) days of the execution of this Agreement by the parties. Commencing with July 1st, 2012, any rental installment not paid within twenty (20) days of the date upon which it is due will accrue interest at six percent (6%) per annum until fully paid.

4. **WATER RIGHTS.** In the event the use of water on any of the irrigated acreage is curtailed pursuant to law, or is not available because of drought, mechanical failure or other cause unrelated to Lessee's error or omission, Lessee shall have the right to opt out of paying future rent for the acreage upon which water is no longer available or legally usable. In the event Lessee desires to continue using the real property upon which water rights are curtailed or unavailable, Lessee may do so and will pay Lessor a grazing rate for the rent which will be determined by prevailing market rates for rental of similar grazing property in the Jerome County area, which rate will be approximately one half of the rent hereunder. Rent for the year in which the curtailment or unavailability occurs shall be prorated on a calendar year basis as of the date of curtailment or unavailability. Notwithstanding the above, Lessor warrants the following with regard to the water rights:

A. Lessor warrants to Lessee that the Water Rights, are currently in full legal force and effect as now partially decreed; that there is no legal proceeding now pending or, to Lessor's knowledge, threatened, in which any of the Water Rights have been objected to or protested; and that the Water Rights have been historically adequate to irrigate the Real Property to which they are appurtenant to produce crops customarily raised in the eastern Jerome County, Idaho area.

5. **IRRIGATION EQUIPMENT; WELLS.** During the Term (and for the Renewal Term),

the Lessee shall maintain all Irrigation Equipment in as good an operating condition as it was in at the commencement hereof, ordinary wear and tear and casualty excepted, and return possession of the Irrigation Equipment at the expiration hereof (and for the Renewal Term), in as good an operating condition as it was in at the commencement hereof, ordinary wear and tear, and casualty excepted. If the Irrigation Equipment deteriorates to the point that it can no longer be reasonably or cost effectively maintained or repaired to operate properly, Lessor shall, at their cost and expense, replace it with other equipment equivalent in quality and function to the quality and function of the Irrigation Equipment that was replaced as of January 1st, 2012. Lessee shall replace at its cost, any of the Irrigation Equipment damaged beyond repair or destroyed during the Term (and for the Renewal Term), in each case because of the negligence or intentional action of Lessee, its agents, employees, contractors or invitees. All such replacement equipment shall be equivalent in quality and function to the Irrigation Equipment as it existed on January 1st, 2012.

Lessor warrants that Lessor owns the well on the Real Property and such well will provide adequate water to irrigate the portions of the Real Property to which the Water Rights associated with the wells are appurtenant. Lessee will keep the irrigation pumps and motors associated with the wells maintained, in as good an operating condition as they were in at the commencement hereof, ordinary wear and tear and casualty excepted, and return possession thereof at the expiration of the Term (or the Renewal Term), in as good an operating condition as they were in on January 1st, 2012, ordinary wear and tear, and casualty excepted; provided that, if the wells themselves are rendered non-productive, damaged or destroyed by Act of God or any other cause (other than as a result of the negligence or intentional action of Lessee, its agents, employees, contractors or invitees), Lessor will use their best efforts to restore the well to good working order as soon as possible. In addition, Lessor shall retain responsibility to repair the well structure itself, or to deepen the well if necessary because of well collapse.

The parties acknowledge that the pivot irrigation system now located on the north portion of the Real Property is owned by Lessee, does not constitute part of the Irrigation Equipment and is not subject to this Lease, and may be removed by Lessor upon the termination of this Agreement

6. **COVENANTS OF LESSEE.** During the Term and the Renewal Term, the Lessee agrees to:

- A. Take good and reasonable care of the Leased Property and appurtenances leased hereunder, and to allow no injury or damage thereto to be sustained as a result of negligent or willful actions of Lessee or its agents, employees, contractors or invitees;
- B. Farm the Real Property in a husbandlike manner, practicing sound crop rotation and other farming practices;
- C. Use and occupy the Leased Property in full accordance with all applicable laws, ordinances and regulations of the County of Jerome, State of Idaho and the United

States of America, and any department, agency or instrumentality thereof (the "Legal Requirements");

- D. At the end of the Term and the Renewal Term, to surrender the Leased Property promptly to the Lessor;
- E. Purchase and maintain in force, at their expense, a policy of commercial general liability insurance and property damage insurance in the minimum amount of \$2,000,000 per occurrence, \$4,000,000.00 in the aggregate, single limit coverage. Lessor shall be named an additional insured on the policy, and Lessee shall provide a certificate of such insurance in force upon request. Lessee shall also procure and maintain in force worker's compensation insurance on its employees as required by the laws of the state of Idaho;
- F. Not store or use any Hazardous Substances (as defined below) on the Real Property; provided that (i) fuel and other lubricants necessary to operate and maintain the Irrigation Equipment, including the wells and the pump, (ii) small quantities of cleaning products and/or (iii) "office" supplies may be used, provided they are used or stored (but not otherwise Discharged, as defined below) in accordance with all Legal Requirements ("Permitted Substances"); and
- G. Lessee shall not sub-lease or assign any portion of the Leased Property to a third party without the prior written consent of the Lessor. Provided, that Lessee may assign its interests herein without such consent, to any parent, subsidiary or other affiliate of the Lessee (collectively "Affiliate"). Any other consent required under this paragraph shall not be unreasonably withheld by the Lessor.

Notwithstanding anything in this Lease to the contrary, nothing herein shall require Lessee to operate the Real Property (and/or any portions thereof) for any particular purpose and Lessee may use the Real Property (and/or any portions thereof) for any purpose allowed by applicable Legal Requirements, including, but not limited to, organic farming, or for no purpose at all, provided that such use (or non-use) is in compliance with all Legal Requirements.

7. **EXPENSE DISTRIBUTION.** All farming expenses including, but not limited to, electricity for irrigation and stock water delivery, labor, irrigation water assessments from water districts, groundwater districts or otherwise, provision of machinery, field preparation, planting, seeding, cultivation, irrigation, harvesting, hauling, and any other similar expenses to properly farm and/or operate the Real Property, shall be borne exclusively by the Lessee, except as otherwise provided herein.

8. **REPRESENTATIONS AND WARRANTIES OF LESSOR.** Lessor represents and warrants to the Lessee as follows:

- A. Lessor has good and marketable fee title to the Real Property and Water Rights, free and clear of any liens or encumbrances and there are no other leases or other

possessory rights in third parties, except as may otherwise be expressly set forth herein, that could prohibit or otherwise interfere with Lessee's full possession of the Real Property as of the commencement of the Term.

- B. Lessor has good and marketable fee title to the Irrigation Equipment and Water Rights, free and clear of any liens or encumbrances and there are no other leases or other possessory rights in third parties, except as may otherwise be expressly set forth herein, that could prohibit or otherwise interfere with Lessee's full use or enjoyment thereof as of the commencement of the Term.
- C. Except for Permitted Substances used or stored in accordance with all Legal Requirements, there were no Hazardous Substances (as defined below) present, in, on or under the Real Property (or migrating to or from the Real Property) as of the Commencement Date.

"Hazardous Substances" means any product, substance, or waste whose Discharge, either by itself or in combination with other materials expected to be on the Real Property, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Real Property, (ii) regulated or monitored by any governmental authority or contravenes any Legal Requirements (including, but not limited to, the Organic Laws, as defined below), or (iii) which are regulated by, form the basis of liability or are defined as hazardous, extremely hazardous, toxic or words of similar import, under any Legal Requirement, including, but not limited to, the following Federal acts:

- The Resource Conservation and Recovery Act
- The Comprehensive Environmental Response, Compensation and Liability Act
- The Clean Water Act

Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof or additives thereto, all explosive or regulated radioactive materials or substances, hazardous or toxic materials, wastes or chemicals, asbestos or asbestos containing materials, fertilizers, herbicides, pesticides, fungicides and other artificial substances.

- D. The Real Property has been certified "Organic" ("Organic Certification") by the Certifying Agent (as defined in 7 CFR 205.2) in accordance with all Legal Requirements, including, without limitation, (i) the Organic Foods Production Act of 1990 (the "OFPA") and the standards and rules promulgated by the USDA and/or the National Organic Standards Board ("NOSB") under the OFPA and known generally as the National Organic Program (the "Organic Laws") and (ii) those required by any Certifying Agent with respect to any farm products and crops to be produced on the Real Property or used in connection therewith and/or

the Real Property and/or any and all livestock and equipment thereon ("Certified Acreage").

9. **COVENANTS OF LESSOR.**

- A. Lessor shall provide Lessee with quiet enjoyment of the Leased Property.
- B. Lessor will not take any act or fail to take any act which (i) will be in violation of the laws described in Paragraph 8(D); (ii) may lead the Certifying Agent to withhold, suspend or terminate the Organic Certification on the Certifiable Acreage or the Certified Acreage, as the case may be, or any respective part thereof.
- C. Lessor will, at its expense, promptly pay all real and personal property taxes and assessments of any kind or nature levied on the Leased Property during the Term (and the Renewal Term), except as otherwise specifically provided herein.
- D. Lessor will, at its expense, purchase and maintain in force a policy of fire and casualty insurance covering the Leased Property, insuring it for the replacement value thereof.

10. **GOVERNMENT PROGRAMS.** All benefits from any state, federal or local government crop subsidy or similar payments for which Lessee is ineligible shall be paid to the Lessor.

11. **LIENS.** During the Term (and the Renewal Term), Lessee agrees to keep the Leased Property free from all liens and encumbrances whatsoever, except for security interests in crops.

12. **DEFAULT.** In an Event of Default (as defined below), the non-defaulting party shall be entitled to pursue any remedy to which they may be entitled under all applicable Legal Requirements, including, but not limited to:

- A. declaring this Lease terminated, (and in the case of an Event of Default by Lessee, entering onto the Real Property and taking possession thereof or implementing procedures under the Unlawful Detainer Act of the State of Idaho);
- B. Commencing suit for damages (other than punitive, special or other consequential damages all of which are expressly waived by the parties hereto) which may flow from such Event of Default; and/or
- C. Resorting to any other remedy which may be authorized by any applicable Legal Requirements, including, in the case of an Event of Default by Lessor, specific performance in connection with the Lease.

The above remedies shall not be considered exclusive of each other, but are cumulative and may be exercised in any combination at the election of the non-defaulting party.

Each of the following occurrences shall constitute an "Event of Default":

- D. Either party's failure to pay rent or perform any monetary obligation when due, or observe any other agreement or obligation of such party under this lease, and such failure continues for thirty (30) days after the receipt by the party claimed to be in default of the written notice from the party claiming the default specifically setting forth each and every claimed event of default;
- E. The filing of a petition by or against either party (i) in any bankruptcy or other insolvency proceeding; (ii) seeking any relief under any state or federal debtor relief law; (iii) for the appointment of a liquidator or receiver for all or substantially all of such party's property or for such party's interest in this Lease; or (iv) for the reorganization or modification of such party's capital structure.

13. **NOTICES.** Any notices, demands and the like, which are required to be given hereunder, or which either party hereto may desire to give to the other, shall be given in writing and may be delivered personally or may be sent by overnight delivery service or registered mail or certified mail, postage prepaid, to each of the parties as follows:

LESSOR: Carney Farms
2809 E. 550 S.
Paul, Idaho 83347

LESSEE: Horizon Organic Dairy, LLC.
c/o Southern Asset Service Group
2610 Fairmount
Dallas, Texas 75201
Attn: Harold H. Ginsburg

With copy to: White Wave Foods Company
12002 Airport Way
Broomfield, CO 80021
Attn: Legal Department
Fax: 303.635.5108

And to: Robert E. Williams
Williams, Meservy and Lothspeich, LLP
P.O Box 168
Jerome, Idaho 83338

or at any other address of which the parties may advise each other at any future time.

14. **ALTERATIONS, IMPROVEMENTS.** Lessee shall not undertake any alterations, additions or improvements to the Leased Property, other than those permitted and/or required above, without the consent of the Lessor having first been obtained, which will not be unreasonably withheld or delayed. Provided, however, that Lessee may, without the prior consent of the Lessor, construct improvements on the Real Property required in order to obtain or retain organic certification. Any improvements made by the Lessee, unless otherwise agreed to in writing by the parties, shall, at Lessee's option, either (i) be removed at Lessee's sole cost and expense, or (ii) become the property of the Lessor (and be considered part of the Leased Property hereunder) at the expiration or earlier termination of the Term. Lessee agrees to restore the Real Property to its former condition if improvements are removed.

15. **RIGHT OF FIRST REFUSAL.** In further consideration of the promises and covenants contained herein, Lessor does hereby grant to Lessee the first right of refusal to purchase any or all of the Leased Property. The right of first refusal shall be in force during the Term (and the Renewal Term). Should Lessor receive a bona fide offer to purchase the Leased Property, or any portion thereof, which is acceptable to Lessor, Lessor shall, within ten (10) days of the receipt of such offer, send to Lessee by certified mail, postage prepaid, or overnight delivery service, at the addresses provided hereinafter, a notice containing every term and condition of the offer, and describing the portion of the Leased Property to which it is subject. Within fifteen (15) days of the receipt of the initial notice from Lessor, Lessee may send a return notice to Lessor, at the address provided above, accepting the purchase price and the description of the Leased Property (or portion thereof) (the "Accepted Terms"), in which event the transaction shall proceed to close with (i) Lessee being substituted for the Offeror. If no return notice is provided by Lessee as set forth in this paragraph, Lessor may then proceed to close the transaction on the terms and conditions stated in the original notice, with the original Offeror, but not upon any different terms or conditions. Notwithstanding the foregoing, if Lessee elects not to exercise its right of first refusal (whether by rejection thereof or the failure to provide return notice), this Lease shall be assigned to such buyer (or partially assigned as to the portion of the Leased Property actually purchased), the ensuing sale thereof shall be subject in all respects to the terms of this Lease and such new owner must expressly agree to honor this Lease.

16. **NON-DISTURBANCE; ATTORNMEN AND TRANSFERRED LIABILITY.**

A. **NON-DISTURBANCE OF LEASE.** Lessor agrees for the benefit of Lessee, its successors and assigns, that provided there is no Event of Default under this agreement (after all applicable cure periods) they will not disturb Lessee's interest in or possession of the Leased Property under this. Lessee's rights and interests under this Agreement shall continue in effect in accordance with its terms.

B. **ATTORNMEN.** Lessee agrees that if a purchase of the Leased Property pursuant to a foreclosure proceeding or otherwise ("Transferee") acquires title to the Leased Property by foreclosure of a mortgage or any conveyance in lieu thereof, it shall recognize such Transferee as the Lessor under this Agreement so long as the Transferee continues to hold such title and shall pay and attorn to such Transferee all payments owing under the Lease. If a Transferee succeeds to the interest of Lessor under this Agreement, then, from and after Transferee's succession to the interest of Lessor: (i) Transferee shall be bound to Lessee under all of the terms, covenants

and conditions of this Agreement; and (ii) Transferee shall assume and perform (or cause to be assumed and performed) all the terms, covenants and conditions of this Agreement to be performed by Lessor, subject to the limitations herein.

C. TRANSFEREE'S LIABILITY. Lessee agrees that this Agreement shall not impose upon any Transferee any liability under this Agreement prior to the time it actually takes title to the Leased Property, and if Transferee acquires title to the Leased Property it shall have no liability for the defaults, breaches, acts or omissions of any prior owner, including any of the persons who executed the Lease as Lessor, and Transferee shall only be responsible for the performance of Lessor's obligations that are attributable to the period during which it holds title to the Leased Property. Upon the conveyance of such title to any third party, Transferee shall automatically be released from any liability under this Agreement that pertains to any period following the date of such conveyance. In no event shall Transferee be: (a) bound by any assignment, amendment or termination of this Agreement without the prior written consent of Transferee which will not be unreasonably withheld or delayed (other than an assignment to Tenant's parents or other affiliates and/or non-material amendments, in each case for which no consent of Transferee is required, although notice shall be required to be given to Transferee promptly thereafter); (b) subject to any offsets or defenses which Lessee may have against any prior owner (including the Lessor); (c) bound by any payments which Lessee may have made in advance of the payment schedule in this Agreement; (d) obligated with respect to any representations or warranties contained in the Lease; or (e) bound by any indemnity given to Lessee by Lessor. Notwithstanding any provisions of this Agreement to the contrary, from and after the date that Transferee acquires title to the Leased Property, in no event will Transferee be obligated to indemnify Lessee, except where Lessor is in breach of its obligations under this Agreement, or where Transferee has been actively negligent in the performance of its obligations as Lessor, and then only to the extent of its interest in the Leased Property.

17. **COMMISSIONS:** Lessee or its assigns will pay a commission to Southern Asset Service Corporation in the amount of six percent (6%) of the purchase price upon the Closing of the sale, pursuant to the exercise of the right of first refusal contained above, or upon any purchase of the Leased Property for any reason. No commission shall be owed if closing does not occur. Lessee or its assigns shall pay a commission to Southern Asset Service Corporation in the amount of four and 5/10ths percent (4.5%) of the gross rental from the Term or the Renewal Term.. Except for the foregoing, neither party owes a commission to any other person or entity on account of the transactions described in this Agreement.

18. **TIME BEING THE ESSENCE.** It is understood and agreed that failure on the part of either party to require prompt performance on the part of the other shall not extend the time of performance by non-performing party, or be a waiver by the other party of time being the essence of this agreement, it being specifically understood and agreed that time is hereby made the essence of this agreement.

19. **ATTORNEYS FEES ON DEFAULT.** If default be made by any party hereto in keeping or performing any of the covenants, conditions or agreements herein agreed to be kept by them, and the other party is required to employ an attorney to enforce any of the covenants, conditions or agreements herein contained, then and in such event, the party in default agrees to

pay to the non-defaulting party, in addition to all other sums herein agreed to be paid by them, reasonable attorneys fees, together with any costs and disbursements that may be incurred in enforcing this agreement.

20. **BINDING EFFECT.** The terms and conditions of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their respective heirs, executors, administrators and assigns.

21. **INTEGRATION.** The parties acknowledge that the terms, conditions and covenants of this agreement shall supersede any prior negotiations and agreements of the parties, that there are no other agreements not contained in this agreement, and that this agreement shall be the final expression of the agreement of the parties and shall control. No modifications of this agreement shall be valid unless in writing and executed by all the parties hereto.

22. **ADDITIONAL DOCUMENTS.** The parties agree to execute such other, further and additional documents as may be required to carry into effect the terms and conditions of this agreement.

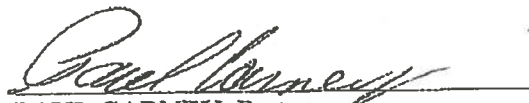
23. **COUNTERPARTS.** This agreement may be signed in counterparts.

24. **MEMORANDUM OF LEASE AND RIGHT OF FIRST REFUSAL:** A Memorandum of Lease and Right of First Refusal in the form copied and attached hereto as EXHIBIT A shall be executed by Lessor and notarized upon the execution hereof and promptly recorded in the records of Jerome County, Idaho.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names, the day and year in this agreement first above written.

"LESSOR"
CARNEY FARMS
An Idaho general partnership


GARY CARNEY, Partner


PAUL CARNEY, Partner

"LESSEE"

HORIZON ORGANIC DAIRY, LLC

By: [Signature]
Its: Authorized Signatory

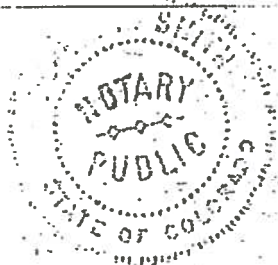
STATE OF Colorado)
TEXAS

County of Bearfield ^{SS:}

On this 22nd day of May, 2012, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Michael Ferry, Member of HORIZON ORGANIC DAIRY, LLC, known to me to be such officer and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of said corporation.

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

[Signature]
NOTARY PUBLIC for Texas, Colorado
Residing at: Frederick, Colorado
Commission Expires: 3/14/14



MEMORANDUM OF LEASE AND RIGHT OF FIRST REFUSAL

Be it remembered, that **CARNEY FARMS**, an Idaho general partnership, has entered into a Lease Agreement with **HORIZON ORGANIC DAIRY, LLC**, which lease contains a Right of First Refusal that affects the following real property located in Jerome County, Idaho:

TOWNSHIP 9 SOUTH RANGE 21 EAST OF THE BOISE MERIDIAN,
JEROME COUNTY, IDAHO

Section 5: Lot 4; Lot 5; SW $\frac{1}{4}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$;
N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$

TOWNSHIP 8 SOUTH, RANGE 21 EAST OF THE BOISE MERIDIAN,
JEROME COUNTY, IDAHO

Section 32: SW $\frac{1}{4}$ SW $\frac{1}{4}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$

The terms of the Lease and Right of First Refusal are more fully described in a Lease Agreement between the above-described parties, dated May 10, 2012, and reference is hereby made to that document for the full expression of the terms of the Lease and Right of First Refusal.

DATED this 10th day of May, 2012.

CARNEY FARMS
An Idaho general partnership

Gary Carney
GARY CARNEY, Partner

Paul Carney
PAUL CARNEY, Partner

STATE OF IDAHO)

County of Teton ^{ss:}

On this 10th day of May, 2012, before me, the undersigned, a Notary Public in and for said County and State, personally appeared GARY CARNEY, as a Partner of CARNEY FARMS, an Idaho general partnership, known to me to be such officer and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of said company.

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

[Signature]
NOTARY PUBLIC for Idaho

Residing at: Teton

Commission Expires: 1/27/17

STATE OF IDAHO)

County of Teton ^{ss:}

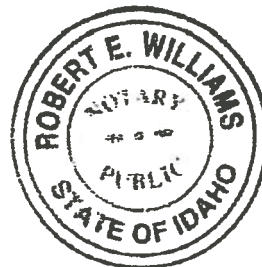
On this 10th day of May, 2012, before me, the undersigned, a Notary Public in and for said County and State, personally appeared PAUL CARNEY, as a Partner of CARNEY FARMS, an Idaho general partnership, known to me to be such officer and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of said company.

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

[Signature]
NOTARY PUBLIC for Idaho

Residing at: Teton

Commission Expires: 1/27/17



RESTATED AND CONSOLIDATED

LEASE AGREEMENT WITH OPTION TO PURCHASE

THIS LEASE AGREEMENT is made and entered into as of the 29th day of August, 2008, by and between GARY CARNEY and BARBARA CARNEY, husband and wife; CARNEY FARMS, an Idaho General Partnership ("Carney Farms"); GARY CARNEY and PAUL CARNEY, Partners; and PAUL CARNEY and POLLY CARNEY, husband and wife (collectively, "Lessor"); and HORIZON ORGANIC DAIRY, LLC ("Lessee");

RECITALS:

- A. Lessor owns several parcels of real property, located in Jerome County, Idaho, which are legally described on EXHIBIT A attached hereto (the "Real Property"). Located on the Real Property is irrigation equipment and other equipment described on EXHIBIT B attached hereto (the "Equipment"). Appurtenant to the Real Property are certain wells and water rights, including but not limited to A & B Irrigation Water Rights, described on EXHIBIT C attached hereto (collectively, the "Water Rights"). Lessor owns two (2) Livestock Confinement Operation Siting Permits ("LCO") associated with the Real Property issued by Jerome County, Idaho, which are copied and attached hereto as EXHIBIT D (the "Permits"). The Real Property, Equipment, Water Rights and Permits are collectively referred to hereinafter as the "Leased Property."
- B. The Real Property is presently subject to two (2) Agricultural Lease Agreements between the parties (or their predecessors in interest) dated April 21, 2006 ("Two Pivots Lease") and September 27, 2005 ("Thacker Jerome Lease"), as well as a Lease Agreement dated the 3rd day of July, 2007 ("Feedlots Lease"). The portion of the Real Property subject to the Lease Agreement is sometimes referred to hereinafter as "the Feedlots". The Agricultural Leases and the Lease Agreement are collectively referred to hereinafter as the "Existing Leases."
- C. Lessee conducts substantial organic dairy and farming operations on the Real Property and other nearby real property owned by Lessee.
- D. The parties wish to agree upon terms and conditions whereby the terms of the Existing Leases will be restated and consolidated into this Lease and the Existing Leases themselves terminated, and whereby Lessor will grant to Lessee the exclusive option to purchase the Leased Property, as set forth herein.

IT IS THEREFORE AGREED, in consideration of these recitals and the promises and covenants hereinafter contained, as follows:

1. **LEASE:** Lessor does hereby lease to Lessee, all the Leased Property described in Recitals A, B, C, and D above, provided that 19.2 acres of A & B Irrigation District water

rights, now appurtenant to the Feedlots (as hereinafter defined) portion of the Real Property, and 7 acres of groundwater rights now appurtenant to two (2) pivot corners as described on EXHIBIT E attached hereto shall be excluded from this Lease Agreement and shall not be considered part of the Leased Property or subject to the option provisions contained below. These water rights shall be retained by Lessor.

2. **TERM:** The initial term shall commence as of June 1, 2008 (the "Commencement Date"), and, unless sooner terminated as provided herein, shall end on December 31, 2013. The lease shall automatically extend for an additional five (5) year term ("the Renewal Term") unless Lessee has given written notice of non-extension to Lessor prior to the end of the initial term or this lease has been otherwise terminated. The Phrase "Term of this Lease" shall include both the initial term, together with the Renewal Term, except to the extent sooner terminated as otherwise set forth herein.

3. **RENTAL:** Lessee shall pay to the Lessor, as rental for the Leased Property, the following amounts:

A. With respect to the portion of the Real Property (other than the Feedlots) comprised of irrigated crop ground, irrigated pasture, and dry pasture and related Equipment and/or Water Rights to:

(i) Carney Farms and Gary and Barbara Carney for the Thacker Jerome Lease, \$130,500.00 per year payable to Lessor in two (2) installments of \$65,250 each, on January 1 and July 1 of each year during the Term of this Lease, beginning July 1, 2008. Lessor shall also pay to Lessee upon the execution of this agreement \$1,075.00, representing the prorated portion of the rent increase on the Jerome/Thacker farms over the rent under the Existing Leases for the month of June, 2008;

(ii) Carney Farms for its portion of the Two Pivots Lease, \$26,550.00 per year payable in two (2) installments of \$13,275 each to Carney Farms on January 1 and July 1 of each year during the Term of this Lease, beginning on July 1st, 2008;

(iii) Paul and Polly Carney for its portion of the Two Pivots Lease, \$42,750.00 per year payable in two (2) installments of \$21,375 each, to Paul and Polly Carney on January 1 and July 1 of each year during the Term of this Lease, commencing with July 1st, 2008.

Any rental previously paid under the Existing Leases for periods which are now subsequent to the Commencement Date hereunder, shall be deemed applied hereto as full payment through June 30, 2008, except as above provided.

B. With respect to the Feedlots and related Equipment, grain and feed storage fixtures, and Water Rights and/or Permits appurtenant to or related to the

Feedlots: the sum of \$9,500 per month, payable to Gary Carney and Barbara Carney, in advance on the 1st day of each month, commencing with the Commencement Date, and continuing the 1st day of each month thereafter during the Term of this Lease.

With respect to the rental payments set forth in Section 3 A(i) above, Lessor shall allocate and distribute of all rental payments among themselves as Lessor shall determine. Lessor hereby jointly and severally agrees to indemnify and hold harmless Lessee from all Damages (as defined below) of whatever kind or nature that may arise from or in any way, touch or concern Lessors' allocation and distribution of the rental proceeds or any other payments made to Lessor from Lessee hereunder.

If the Lease (in all or in part) is terminated prior to the normal expiration of this Lease, whether by the exercise of the Option (as defined below) or for any other reason permitted herein, the rental paid for the Feedlots shall be prorated based on the number of months (or days, as the case may be) in the then current calendar year and the rental for the remainder of the Real Property shall be pro-rated on the basis of the farming year, which shall be April to November of any year; provided that, to the extent that rental has been paid for such year, any such overage shall be promptly reimbursed to Lessee by Lessor either directly, or as a deduction against the purchase price in connection with any Closing (as defined below) in connection with the Option.

4. EQUIPMENT; WELLS:

Lessee acknowledges that the Equipment was in operating condition as of the commencement date of this Lease. During the Term of this Lease, the Lessee shall maintain all Equipment in as good an operating condition as it was in at the commencement hereof, ordinary wear and tear and casualty excepted, and return possession of the Equipment at the expiration hereof (including for the Renewal Term), if the Option is not exercised (or if the Option is exercised, but the Closing, as defined below, does not occur for any reason), in as good an operating condition as it was in at the commencement hereof, ordinary wear and tear, and casualty excepted. If the Equipment deteriorates to the point that it can no longer be reasonably or cost effectively maintained or repaired to operate properly, Lessor shall, at its cost and expense, promptly replace it with other equipment equivalent in quality and function to the quality and function (at the commencement of this Lease) of the Equipment that was replaced. Lessee shall replace at its cost, any of the Equipment damaged beyond repair or destroyed during the Term of this Lease, in each case because of the negligence or intentional action of Lessee, its agents, employees, contractors or invitees. All such replacement equipment shall be equivalent in quality and function to the Equipment as it existed at the commencement date of the Lease.

Lessor warrants that Lessor owns the wells on the Real Property and such wells will provide adequate water to irrigate the Real Property and to provide stock water to the two (2) LCOs on the Feedlots for the numbers of livestock allowed under the Permits. Lessee will keep the irrigation pumps and motors associated with the wells maintained, in as

good an operating condition as it was in at the commencement hereof, ordinary wear and tear and casualty excepted, and return possession thereof at the expiration hereof (including the Renewal Terms), if the Option is not exercised (or if the Option is exercised, but the Closing, as defined below, does not occur for any reason), in as good an operating condition as it was in at the commencement hereof, ordinary wear and tear, and casualty excepted; provided that, if the wells themselves are rendered non-productive, damaged or destroyed by Act of God or any other cause (other than as a result of the negligence or intentional action of Lessee, its agents, employees, contractors or invitees), Lessor will use its best efforts to restore the wells to good working order as soon as possible. In addition, Lessor shall retain responsibility to repair the well structures themselves, or to deepen the wells if necessary because of well collapse.

Notwithstanding anything in this Lease to the contrary, if Lessor does not perform its obligations under this Section 4 (including, but not limited to, the replacement of the deteriorated Equipment or the restoration/repair/deepening of the wells, as the case may be) within 5 days after notification by Lessee of the need therefore, Lessee may perform Lessor's obligation and Lessor shall reimburse Lessee for all costs in connection therewith within 15 days after receipt of written request (with reasonable documentation) from Lessee; provided that Lessee, at its option, may offset such amount to be reimbursed against any current or future rental owed by Lessee hereunder

5. **COVENANTS OF LESSEE:** During the term of the lease, the Lessee agrees to:

- A. take good and reasonable care of the Leased Property and appurtenances leased hereunder, and to allow no injury or damage thereto to be sustained as a result of negligent or willful actions of Lessee or its agents, employees, contractors or invitees;
- B. to the extent Lessee actually farms the Real Property (other than the Feedlots and any other portions not actually capable of being farmed), Lessee shall do so in a husbandlike manner, practicing sound crop rotation and other farming practices;
- C. use and occupy the Leased Property in full accordance with all applicable laws, ordinances and regulations of the County of Jerome, State of Idaho and the United States of America, and any department, agency or instrumentality thereof (collectively, "Legal Requirements");
- D. surrender the Leased Property promptly to the Lessor at the end of the Term of this Lease, unless the Option is exercised and the sale is closed.
- E. purchase and maintain in force, at its expense, a policy of farm liability insurance and property damage insurance in the minimum amount of \$1,000,000 single limit coverage. Lessor shall be named an additional insured on the policy, and Lessee shall provide a certificate of such insurance in force upon request; and

- F. not store or use any Hazardous Substances (as defined below) on the Real Property; provided that (i) fuel and other lubricants necessary to operate and maintain the Equipment, including the wells and the pump, (ii) small quantities of cleaning products and/or (iii) "office" supplies may be used, provided they are used or stored (but not otherwise Discharged (as defined below) in accordance with all Legal Requirements ("Permitted Substances"). If any such Hazardous Substances has been Discharged onto the Real Property by Lessee prior to, or during, the Term of this Lease, Lessee will pay all costs of Remedial Measures (as defined below) arising because of such Hazardous Substances to the extent required by, and in accordance with, the directives or requests of the applicable governmental authorities, except to the extent such Hazardous Substances (or other commingled Hazardous Substances) (i) existed on the date hereof (and not otherwise caused by Lessee or Lessee's employees, agents or contractors), (ii) were caused by Lessor or its employees, agents or contractors, or (iii) migrated from other property (whether or not owned or leased by Lessor).

Notwithstanding anything in this Lease to the contrary, nothing herein shall require Lessee to operate the Real Property (and/or any portions thereof) for any particular purpose and Lessee may use the Real Property (and/or any portions thereof) for any purpose allowed by applicable Legal Requirements, including, but not limited to, organic farming and feeding of livestock, or for no purpose at all, provided that such use (or non-use) is in compliance with all Legal Requirements

6. **EXPENSE DISTRIBUTION:** All farming expenses including, but not limited to, electricity for irrigation and stockwater delivery, heat and lighting, labor, A & B Irrigation District Assessments, provision of machinery, field preparation, planting, seeding, cultivation, irrigation, harvesting, hauling, and any other similar expenses to properly farm and/or operate the Real Property, shall be borne exclusively by the Lessee.

7. **REPRESENTATIONS AND WARRANTIES OF LESSOR:** Lessor represents and warrants to the Lessee as follows:

- A. Lessor has good and marketable fee title to the Real Property and Water Rights, free and clear of any liens or encumbrances, except for a mortgage in favor of D.L. Evans Bank with a current balance of \$75,000.00, and there are no other leases or other possessory rights in third parties, except as may otherwise be expressly set forth herein, that could prohibit or otherwise interfere with Lessee's full possession of the Real Property and Water Rights as of the commencement of the Term of this Lease.
- B. The Permits are presently in full force and effect, are able to be and are hereby leased to the Lessee for the entire Term of this Lease and are freely transferable in connection with Lessee's exercise of the Option (as defined below).

- C. Lessor has good and marketable fee title to the Equipment, and Permits, free and clear of any liens or encumbrances and there are no other leases or other possessory rights in third parties, except as may otherwise be expressly set forth herein, that could prohibit or otherwise interfere with Lessee's full use or enjoyment thereof as of the Commencement Date.
- D. Except for Permitted Substances used or stored (but not otherwise Discharged) in accordance with all Legal Requirements, to the best of Lessor's knowledge, there are no Hazardous Substances (as defined below) present, and no Hazardous Substances are currently being (or have been during the possession and/or ownership by Lessor of the Real Property), manufactured, stored, discharged, released, leaked or otherwise used (collectively, "Discharged"), in, on or under the Real Property (or are migrating to or from the Real Property).

"Hazardous Substances" means any product, substance, or waste whose Discharge, either by itself or in combination with other materials expected to be on the Real Property, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Real Property, (ii) regulated or monitored by any governmental authority or contravenes any Legal Requirements (including, but not limited to, the Organic Laws, as defined below), or (iii) which are regulated by, form the basis of liability or are defined as hazardous, extremely hazardous, toxic or words of similar import, under any Legal Requirement, including, but not limited to, the following Federal acts:

- The Resource Conservation and Recovery Act
- The Comprehensive Environmental Response, Compensation and Liability Act
- The Clean Water Act

Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof or additives thereto, all explosive or regulated radioactive materials or substances, hazardous or toxic materials, wastes or chemicals, asbestos or asbestos containing materials, fertilizers, herbicides, pesticides, fungicides and other artificial substances.

Lessor has notified Lessee that a cattle dipping vat and a dump existed near the grain storage facilities on the Real Property before the Lessor acquired the property. Lessor makes no warranty as to hazardous substances which may exist at those locations. The approximate 12 acre portion of the Real Property where the vat and dump existed is outlined on the map attached hereto as **EXHIBIT F**.

- E. The Real Property has been certified "Organic" ("Organic Certification")

by the Certifying Agent (as defined in 7 CFR 205.2) in accordance with all Legal Requirements, including, without limitation, (i) the Organic Foods Production Act of 1990 (the "OFPA") and the standards and rules promulgated by the USDA and/or the National Organic Standards Board ("NOSB") under the OFPA and known generally as the National Organic Program (the "Organic Laws") and (ii) those required by any Certifying Agent with respect to any farm products and crops to be produced on the Real Property or used in connection therewith and/or the Real Property and/or any and all livestock and equipment thereon ("Certified Acreage").

8. COVENANTS OF LESSOR:

- A. Lessor shall provide Lessee with quiet enjoyment of the Leased Property.
- B. Lessor will not take any act or fail to take any act which (i) violates any Legal Requirements, (ii) will cause the loss or impairment of (or other inability of Lessee) to fully utilize the Permits and/or (ii) may lead the Certifying Agent to withhold, suspend or terminate the Organic Certification on the Certified Acreage or any respective part thereof.
- C. Lessor will not mortgage, lien, encumber, sell or transfer any of the Leased Property during the Term of this Lease (including any Renewal Term), if the Option is not exercised (or if the Option is exercised, but the Closing, does not occur for any reason), except for the mortgage identified in paragraph 7A above, and except for a transfer due to death. Lessor will not apply for, or receive, any additional advance of funds secured by any existing mortgage or security interest encumbering any of the real or personal property subject to this Lease, or pursuant to any existing note or loan agreement which they secure. Lessor will not create or otherwise grant any easements, arrangements or otherwise, affecting the Real Property or the Leased Property, except as approved by Lessee, which approval will not be unreasonably withheld.
- D. Lessor will, at its expense, promptly pay all real and personal property taxes and assessments of any kind or nature levied on the Leased Property during the Term of this Lease and all personal income or franchise taxes which, if not promptly paid, could result in a lien against the Leased Property.
- E. Lessor will, at its expense, purchase and maintain in force a policy of fire and casualty insurance covering the Leased Property, insuring it for the replacement value thereof. Lessor shall have Lessee, its parents, and subsidiaries named as a loss payee on such policy and provide Lessee a certificate of insurance to that effect.

9. WATER RIGHTS: In the event the use of water on any of the irrigated acreage

within one of the three farms identified in Recital B above is curtailed pursuant to law, or is not available because of drought, mechanical failure or other cause unrelated to Lessee's error or omission, Lessee, may terminate this lease as to that farm upon written notice to Lessor. If Lessee gives such a written notice to Lessor, this agreement shall terminate and have no further effect as to that entire farm (as identified in Recital B above), but shall remain in effect as to the remainder of the Real Property. Lessor may take immediate repossession of the farm for which notice of partial termination is given under this paragraph.

Notwithstanding the above, Lessor makes the following warranties to Lessee regarding the water rights:

Lessor warrants to Lessee that the Water Rights, are currently in full legal force and effect as now partially decreed, that there is no legal proceeding now pending or, to Lessor's knowledge, threatened, in which any of the Water Rights have been objected to or protested, and that the Water Rights have been historically adequate to irrigate the Real Property to which they are appurtenant to produce crops customarily raised in the eastern Jerome County, ID area and that the stock Water Rights associated with the Feedlots are adequate to provide water for the numbers of livestock allowed under the Permits.

10. LIENS, LESSOR WARRANTY AS TO LIENS; During the Term of this Lease, if the Option is not exercised (or if the Option is exercised but the Closing does not occur for any reason), Lessee agrees to keep the Leased Property free from all liens and encumbrances whatsoever. Lessor warrants that there are presently no mortgages or liens encumbering the Leased Property, except for the mortgage identified in paragraph 7A above. Lessor agrees to keep the mortgage payments current and not allow the mortgage to come into default.

11. DEFAULT: In an Event of Default (as defined below), the non-defaulting party shall be entitled to pursue any remedy to which they may be entitled under all applicable Legal Requirements, including, but not limited to:

- A. declaring this Lease terminated, (and in the case of an Event of Default by Lessee, entering onto the Real Property and taking possession thereof or implementing procedures under the Unlawful Detainer Act of the State of Idaho);
- B. Commencing suit for damages (other than punitive, special or other consequential damages all of which are expressly waived by the parties hereto) which may flow from such Event of Default; and/or
- C. Resorting to any other remedy which may be authorized by any applicable Legal Requirements, including, in the case of an Event of Default by Lessor, specific performance in connection with the Lease and/or Option.

The above remedies shall not be considered exclusive of each other, but are cumulative and may be exercised in any combination at the election of the non-defaulting party.

Each of the following occurrences shall constitute an "Event of Default":

- A. Either party's failure to pay any rent or perform any other obligation under this agreement when due and the continuation of such failure for thirty (30) days after following the receipt by the party claimed to be in default of written notice from the other describing the specific events of default claimed;
- B. The filing of a petition by or against either party (i) in any bankruptcy or other insolvency proceeding; (ii) seeking any relief under any state or federal debtor relief law; (iii) for the appointment of a liquidator or receiver for all or substantially all of such party's property or for such party's interest in this Lease; or (iv) for the reorganization or modification of such party's capital structure.

12. **NOTICES:** Any notices, demands and the like, which are required to be given hereunder, or which either party hereto may desire to give to the other, shall be given in writing and may be delivered personally or may be sent by overnight delivery service or registered mail or certified mail, postage prepaid, to each of the parties as follows:

LESSOR: Carney Farms
314 Crestview Road South
Paul, Idaho 83347

Gary and Barbara Carney
225 North 1250 West
Paul, Idaho 83347

Paul and Polly Carney
384 South ~~300~~ East
Paul, Idaho 83347

LESSEE: Horizon Organic Dairy, L.L.C.
c/o Southern Asset Service Group
2610 Fairmount
Dallas, Texas 75201
Attn: Harold H. Ginsburg

With copy to: WhiteWave Foods Company
12002 Airport Way
Broomfield, CO 80021
Attn: Legal Department

Fax: 303.635.5108

And to: Robert E. Williams
Fredericksen, Williams, Meservy and Lothspeich, LLP
P.O. Box 168
Jerome, Idaho 83338

or at any other address of which the parties may advise each other at any future time.

13. ALTERATIONS; IMPROVEMENTS; INCREASED RENT. Lessee shall not be required to obtain Lessor's consent prior to making alterations or improvements to the Real Property. Any improvements made by the Lessee, unless otherwise agreed to in writing by the parties, shall, at Lessee's option, either (i) be removed at Lessee's sole cost and expense, or (ii) become the property of the Lessor (and be considered part of the Leased Property hereunder) at the expiration or earlier termination of the Term of this Lease, if the Option is not exercised (or if the Option is exercised, but the Closing, as defined below, does not occur for any reason). Lessee will not remove any improvements constructed by which it would render the feedlots unusable in the condition they were in prior to the improvements being made. If Lessee does make improvements to the Real Property, Lessee will reimburse to Lessor, as additional rent, the amount of property taxes assessed on the improvements and any increase in fire and casualty insurance premiums related to the improvements. Lessor shall provide Lessee documentation sufficient to demonstrate the amount of additional property taxes related to the improvements, any increase in fire and casualty insurance premiums related to the improvements and proof that Lessor has actually paid those amounts. Lessee shall reimburse Lessor upon Lessor's compliance with this paragraph within forty-five (45) days of the receipt of the properly documented notice of Lessor.

SECTIONS 14 to 21 shall be deemed the "Option Provisions":

14. OPTION TO PURCHASE: In further consideration of the promises and covenants contained herein, Lessor does hereby grant to Lessee the exclusive, irrevocable option to Purchase all of the Leased Property. The purchase option can be exercised at any time following December 31st, 2013.

15. OPTION TERM: The term of this Option shall be from January 1, 2014 to midnight, Mountain Time, December 31, 2018, provided this Lease Agreement is still in effect.

16. MANNER OF EXERCISE OF OPTION: The Option granted herein may be exercised at any time after December 31st, 2013 and prior to the expiration of the Term of this Lease, by the Lessee giving written notice of intent to exercise the Option to Lessor at the address above provided (the "Notification"). Lessee shall deposit Fifty Thousand and No/100 Dollars (\$50,000.00) earnest money with Land, Title & Escrow, Inc., Jerome, Idaho, at the time of the notification. The earnest money shall be applied to the purchase price at closing. If the transaction fails to close because of the default of Lessee, the earnest money shall be delivered to Lessor as their sole remedy for Lessee's default. If

timely Notification is given, the transaction shall proceed to Closing as on the terms and conditions hereinafter expressed; provided that the exact legal description of the Real Property shall be obtained by an ALTA/ACM boundary line or as-built survey to be obtained by the parties and the cost therefore shall be paid one-half by Lessor and one-half by Lessee.

17. PURCHASE PRICE; TRANSFER OF SOME WATER RIGHTS. The purchase price for the Option shall be the fair market value of the Leased Property (other than for the Feedlots which amount shall be determined as below described in paragraph 19), based on similar organic property in the State of Idaho being used for similar purposes. If Lessor and Lessee are unable to agree upon the price to be paid therefore within ten (10) days of Lessee's Notification to Lessor, each party shall name a licensed MAI real estate appraiser (or other qualified licensed appraiser) experienced in appraising such property for such purposes in the State of Idaho. For the purpose of any appraisal or valuation under this paragraph, the Fair Market Value of the Real Property shall be made on the assumption that fifty four (54) acres of the Real Property that do not now have a water right appurtenant to them, do have a valid water right sufficient for the adequate irrigation of those acres under normal farming practices in the area of Jerome County in the vicinity of the Real Property. If such appraisers are unable to agree on the value of the Real Property being considered (the "FMV"), then each of these appraisers shall, within ten (10) days, prepare a written appraisal, the parties shall exchange these appraisals, and the parties shall continue their good faith efforts to reach agreement about the FMV. If the parties are unable to agree upon the FMV within five (5) days of having exchanged their written appraisals, the parties' appraisers shall jointly name a third licensed MAI real estate appraiser (or other qualified licensed appraiser) experienced in appraising such property for such purposes in the State of Idaho, who shall prepare a totally independent written appraisal without having received any information concerning either parties' views with respect to the FMV and without having reviewed or received any information concerning either parties' written appraisal. The FMV shall then be calculated as follows: of the three written appraisals (the Lessee's, the Lessor's, and the appraisal by the appraiser selected by the agreement of the Parties' appraisers), the appraisal for the respective portion of the Real Property being addressed that is furthest away from the other two shall be disregarded, and the average of such appraised values from the remaining two written appraisals shall be the price to be paid. Lessor and Lessee shall each pay for their own appraisals and they shall each pay one-half of the cost of the appraisal prepared by the appraiser who is selected by the agreement of their appraisers. Notwithstanding any of the foregoing, the minimum price of the Real property, except for the Feedlots, shall be \$2,500 an acre. The maximum price for the Real Property, excluding the Feedlots, shall be \$4,000.00 an acre. In no circumstance will the Option Price for the Real Property, excluding the Feedlots, be more than \$4,000.00 an acre, or less than \$2,500.00 an acre. In addition to the price thus determined, the purchase price shall include the separately appraised fair market value of the brick residence of Paul and Polly Carney on the Real Property.

Prior to closing, Lessor shall be entitled to transfer from the Real Property to other real property owned by Lessor at Lessor's sole cost and expense, 19.3 acres of A & B Irrigation District water rights, and 7 acres of groundwater rights now appurtenant to

pivot corners north and west of the Feedlots.

18. PURCHASE PRICE OF FEEDLOTS; EXCLUSION OF 12 ACRE PARCEL. The purchase price of the Feedlots should the option be exercised, shall be the sum of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00). The appraised fair market value of the trailer house adjacent to the feedlots and the domestic well, septic tank and improvement associated therewith; and appraised fair market value of the three granaries and leg adjacent to the Feedlots, shall also be added to the purchase price of the Feedlots and shall be part of the assets conveyed and transferred to Lessee at closing.

Lessee, at its option, may exclude the portion of the Real Property outlined on **EXHIBIT G** attached hereto (the "Excluded Parcel") from the Real Property to be purchased. If Lessee so notifies Lessor in writing prior to closing, Lessee shall, at its expense, obtain a survey and metes and bound legal description of the Exclude Parcel and its ownership shall be retained by Lessor.

19. CLOSING: Closing of this transaction ("Closing") shall take place at Land Title and Escrow, Inc, Jerome, Idaho, prior to the date one hundred eighty (180) days after the respective Notification is delivered (the "Closing Date"). The period between the end of the initial term or the Renewal Term, as the case may be, and the Closing Date shall be referred to as the "Interim Period".

20. DOCUMENTS AT CLOSING: At Closing, Lessor shall execute and deliver to Lessee the following:

- A. Warranty Deed (in form and substance satisfactory to Lessee) conveying marketable title to the Real Property and Water Rights, free and clear of all liens and encumbrances whatsoever, except for taxes for the current and future years and such other easements, rights of way and similar matters of record not objected to by Lessee, with a legal description conforming to the Survey (as defined below) or as otherwise approved by Lessee.
- B. Warranty Bill of Sale transferring title to the Irrigation Equipment, free and clear of all liens and security interests.
- C. IDWR Water Rights Transfers of Ownership.
- D. Transfer and Assignment of the Permits.
- E. UCC termination of liens and evidence that all mortgages, liens, judgments and other encumbrances securing monetary obligations have been satisfied and satisfactorily released of record (in the state and county records, as the case may be), in each case as of the Closing Date.

- F. Such other documents as may be reasonably necessary in connection with a Closing of this nature or otherwise reasonably requested by Lessee.

21. **TITLE INSURANCE:** Within fifteen (15) days after the respective Notification, Lessor shall order a commitment from First American Title Insurance Company or other title insurance company reasonably acceptable to Lessee for an owner's policy of title insurance with respect to the Real Property showing the current condition of title to the Real Property ("Commitment"), together with copies of all documents of record, whereby the issuer is bound to issue to Lessee for the full amount of the agreed upon purchase Price (less the reasonable value of the Irrigation Equipment located on the Real Property), an A.L.T.A. Policy - Standard Form B 1992, or a comparable form with extended coverage, insuring the Real Property subject only to those matters approved by Lessee ("Title Policy"). In addition, Lessee may obtain a current ALTA/ASCM (or other) boundary line or as-built survey ("Survey. The survey shall be the exclusive basis upon which the acreage within the Real Property encroachment or similar matters shall be determined. Lessee shall not be provided a copy of the survey unless Lessee pays one-half (1/2) the cost thereof. If, in the opinion of Lessee's Legal Department, the Commitment and Survey show good and merchantable title in fee simple in Lessor such that the issuer will insure as provided herein, the transaction shall be Closed within one hundred eighty (180) days from the date of Notification; provided that, if Lessee notifies Lessor of Lessee's title and survey objections, Lessor shall have ten (10) days of receipt of notice to remove or otherwise cure or, after such period, Lessee, as its option, may either (i) cure such objection and reduce the agreed upon purchase price dollar for dollar or (ii) cancel its exercise of the respective Option ("Option Termination"). Notwithstanding anything in this Agreement to the contrary, if either the Commitment and/or Survey is revised/updated after Lessee's review set forth above, but prior to the Closing Date, (i) Lessee shall have such additional time as it may reasonably require to review and provide objections and the same shall be handled as set forth above and (ii) the Closing Date may, at the election of Lessee, be postponed consistent with the foregoing. At Closing, the Lessor shall direct the Title Company to issue to Lessee the Title Policy. Lessor shall be required to pay the portion of the premium attributable to a standard owner's policy of title insurance only, with Lessee being responsible for the portion of the premium attributable to extended coverage.

22. **PRORATIONS; EXPENSES:** Real and Personal Property taxes and assessments and rents hereunder shall be pro rated between the parties for the year of Closing, as of the Closing Date. Lessor shall be responsible for the payment of the following: (a) fifty percent (50%) of all escrow fees; (b) all recording fees associated with releases of unpermitted title exceptions; and (c) all general and customary title insurance premiums and charges for the issuance of the Commitment and a Standard Owner's Title Policy. Lessee shall be responsible for the following: (a) all costs associated with its pre-Closing investigations; (b) all costs of the Survey, and (c) fifty percent (50%) of all escrow fees. Lessor and Lessee shall each pay the fees and expenses of their respective legal counsel. The survey shall be the exclusive property of the Lessee and shall not be available to the Lessor for examination unless Lessor agrees to pay one half (1/2) the cost of the survey.

23. COMMISSIONS: Lessee will pay a commission to Southern Asset Service Corporation in the amount of three percent (3%) of the purchase price, as determined in paragraph 18 above, upon the Closing of the sale pursuant to the Option, or in the event Lessee renews the lease, Lessee agrees to pay Southern Asset Service Corporation and/or its affiliates or assigns a lease commission in the amount of four percent (4%) of the entire rent for the Renewal Term. No commission shall be owed, other than for the commission for the renewal of the term, if closing does not occur. Except for the foregoing, neither party owes a commission to any other person or entity on account of the transactions described in this agreement.

24. CONDEMNATION: If all or any portion of the Real Property should be taken for any public or quasi-public use under any Legal Requirement or by right of eminent domain or should be sold or conveyed to the condemning authority in lieu of condemnation, and such taking shall be so extensive in Lessee's reasonable business judgment (such as the loss of farming area or Water Rights or Permits) as to impair Lessee's ability to fully utilize the Real Property for Lessee's use, then Lessee may, at its sole discretion, terminate this Lease by giving written notice thereof to Lessor within sixty (60) days after the date of such taking, sale, or conveyance, in which event this Lease shall terminate as of the date when physical possession of such portion of the Real Property is taken by the condemning authority. If, upon any such taking or sale, this Lease shall not be thus terminated by Lessee, the rent payable hereunder shall be diminished in a fair and equitable manner and Lessor shall, at Lessor's sole expense and to the extent commercially practicable, restore and reconstruct the remaining portions of the Leased Property to substantially their former condition. Lessor shall not be obligated to replace any furniture, movable fixtures, equipment or other personalty of Lessee; provided that, if Lessee has exercised its Option, Lessee may, at its option, reduce the purchase price by an amount equal to the cost of such repair/replacement (and any other proceeds to be paid to Lessor as a result of such condemnation/taking) and Lessor shall be relieved of its obligation to repair/rebuild. If Lessee has not exercised its Option (or Lessor has repaired/rebuilt the Leased Property), Lessor shall be entitled to receive all of the compensation awarded upon a taking of any part or all of the Leased Property excluding any award for the value of any unexpired lease term, which Lessee shall be entitled to in addition to any awards separately made to Lessee for its moving expenses, transportation expenses and losses for replacing its furniture, movable fixtures, equipment, cattle or other personalty and business interruption.

25. FIRE OR OTHER CASUALTY: If the Feedlots are either (i) totally destroyed by fire, tornado or other casualty or (ii) otherwise so extensively damaged that, in Lessee's reasonable business judgment Lessee's ability to fully utilize the Feedlots for the intended use is impaired and in either case rebuilding or repairs cannot reasonably be completed within ninety (90) days after the date of such damage, Lessee may, at its option, terminate this lease, in which event all further obligations of Lessee shall terminate. If the repair or rebuilding of the Feedlots damaged by fire, tornado or other casualty can be completed within ninety (90) days after the date of such damage, or if the damage should be more serious but Lessee does not elect to terminate this Lease, then in either such events, Lessor shall within fifteen (15) days after the date of such damages,

commence to rebuild or repair the Feedlots and shall diligently proceed to restore the Feedlots to substantially the same condition in which it was immediately prior to the happening of the casualty. All risk of loss shall remain on the Lessor until the Closing Date.

26. CONTINUATION OF LEASE: During the (i) interim period between the date of the notice of exercise of Option and Closing; and (ii) if the Closing does not occur for any reason, sixty (60) days after the scheduled Closing Date (as may be extended by the parties), the Lease shall continue in effect as if the Option had not been exercised and subject to all the provisions of the non-Option Provisions of this Lease.

27. WARRANTIES ON EXERCISE OF OPTION: If the Option herein is exercised and Closing of the sale transaction occurs, Lessee shall purchase the Leased Property on the basis of its own knowledge and inspection, free from any warranty or representation made by Lessor, except for the warranties contained in the Warranty Deed and Warranty Bill of Sale described in paragraph 20 above.

28. MUTUAL INDEMNITY: Lessor shall jointly and severally indemnify, defend and hold Lessee and any affiliate, parent or subsidiary of Lessee, and any officer, director, employee, agent, successor or assigns of any of the foregoing (collectively, "Lessee Indemnitees") harmless from and against any and all claims, suits, liabilities, expenses (including, without limitation, attorneys' and consultants' fees), fines and damages for injury to persons (including death) or damage to property (collectively, "Damages") arising out of, resulting from or in connection with any of the following:

- i. any claim of any third person or entity, whenever asserted, arising out of, resulting from or in connection with any Hazardous Substances which, *prior to the date of the initial possession of the Real Property by Lessee*, existed in, on, under or migrated to or from the Real Property, provided, however, Lessor's duty to indemnify shall not apply to the Excluded Parcel, as defined in paragraph 18 above.
- ii. the breach or inaccuracy of any representation, warranty, covenant or other obligation of Lessor set forth in this Lease; and/or
- iii. the failure of Lessor to fully comply with the terms of this Lease.

Lessee shall indemnify, defend and hold Lessor and any officer, director, employee, agent, heir, successor or assigns of Lessor harmless from and against any and all Damages arising out of, resulting from or in connection with any of the following:

- i. any claim of any third person or entity, whenever asserted, arising out of, resulting from or in connection with the Discharge by Lessee of any Hazardous Substances *from or after the date of the initial possession of the Real Property by Lessee* in, on, under or migrated to or from the Real Property, except to the extent such Hazardous Substances (or other commingled Hazardous Substances) (i) existed on the date hereof, (ii)

- ii. were caused by Lessor or its employees, agents or contractors, or (iii) migrated from other property (whether or not owned or leased by Lessor);
- iii. the breach or inaccuracy of any representation, warranty, covenant or other obligation of Lessee set forth in this Lease; and/or
- iii. the failure of Lessee to fully comply with the terms of this Lease.

This Section shall survive the expiration or earlier termination of this Lease.

29. TIME BEING THE ESSENCE: It is understood and agreed that failure on the part of either party to require prompt performance on the part of the other shall not extend the time of performance by non-performing party, or be a waiver by the other party of time being the essence of this agreement, it being specifically understood and agreed that time is hereby made the essence of this agreement.

30. ATTORNEYS FEES ON DEFAULT: If default be made by any party hereto in keeping or performing any of the covenants, conditions or agreements herein agreed to be kept by them, and the other party is required to employ an attorney to enforce any of the covenants, conditions or agreements herein contained, then and in such event, the party in default agrees to pay to the non-defaulting party, in addition to all other sums herein agreed to be paid by them, reasonable attorneys fees, together with any costs and disbursements that may be incurred in enforcing this agreement.

31. COUNTERPARTS: This agreement shall inure to and be binding upon the parties hereto, and their respective heirs, executors, administrators and assigns.

32. BINDING EFFECT: The terms of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their respective heirs, executors, administrators and assigns.

33. EXISTING LEASES TERMINATED: The Existing Leases are hereby terminated and of no further effect as of the date hereof. The parties acknowledge that all rents under the Existing Leases have been fully paid through the Commencement Date and all obligations thereunder from either party to the other shall terminate except to the extent any such any lease provides that any particular obligation shall survive the expiration or earlier termination thereof.

34. SURVIVAL OF CLOSING: All covenants, agreements and representations contained in this agreement shall not be deemed to be merged into or waived by the instruments at Closing, but shall expressly survive such Closing and be binding upon the parties obligated thereby.

35. RIGHT OF FIRST REFUSAL: In further consideration of the promises and covenants contained herein, Lessor does hereby grant to Lessee the first right of refusal to purchase any or all of the Leased Property. The right of first refusal shall be in force during the Term of this Lease. Should Lessor receive a bona fide offer to purchase the

Leased Property, or any portion thereof, which is acceptable to Lessor, Lessor shall, within ten (10) days of the receipt of such offer, send to Lessee by certified mail, postage prepaid, or overnight delivery service, at the addresses provided hereinafter, a notice containing every term and condition of the offer, and describing the portion of the Leased Property to which it is subject. Within fifteen (15) days of the receipt of the initial notice from Lessor, Lessee may send a return notice to Lessor, at the address provided above, accepting the purchase price and the description of the Leased Property (or portion thereof) (the "Accepted Terms"), in which event the transaction shall proceed to close with (i) Lessee being substituted for the Offeror and (ii) the Option Provisions set forth above being substituted in all respects for those contained in the original notice, other than the Accepted Terms. If no return notice is provided by Lessee as set forth in this paragraph, Lessor may then proceed to close the transaction on the terms and conditions stated in the original notice, with the original Offeror, but not upon any different terms or conditions; provided that Lessee may still elect to exercise its Option and any such election shall supercede with respect to any offer to purchase the Leased Property which might be the subject of this Right of First Refusal. Notwithstanding the foregoing, if Lessee elects not to exercise its right of first refusal (whether by rejection thereof or the failure to provide return notice), this Lease shall be assigned to such buyer (or partially assigned as to the portion of the Leased Property actually purchased), the ensuing sale thereof shall be subject in all respects to the terms of this Lease and such new owner must expressly agree to honor this Lease (including the (i) Option, as to the portion of the Leased Property purchased) or (ii) the subsequent right of first refusal as to the Leased Property actually purchased.

36. MEMORANDUM OF OPTION; MEMORANDUM OF RIGHT OF FIRST REFUSAL: A Memorandum of Option/Memorandum of Right of First Refusal in a form satisfactory to Lessee shall be executed by Lessor and notarized upon the execution hereof and promptly recorded in the records of Jerome County, Idaho.

37. ADDITIONAL REMEDIES; RECOUPMENT: All remedies set forth in this Lease shall be cumulative and non-exclusive, and shall be in addition to any rights and remedies available at law or in equity. In addition to the foregoing, each party expressly agrees that, (i) if either party is in breach of its obligation to perform any requirement set forth herein, and such breach is not cured or remedied within any applicable cure period specified herein (including the failure to timely pay any amount to be paid hereunder including, but not limited to payments owed to third parties (collectively, the "Payments") and such amounts are not paid (or properly and in good faith disputed) within the ten (10) day period following such owing party's receipt of written notice thereof from either the other party hereto or such third party to whom Payment is owed), then, in addition to any rights and remedies hereunder (including any termination rights set forth above), the other party hereto may commence such performance of such requirement, as the non-performing party's agent (including the right to make such Payment on such party's behalf) and demand reimbursement from such non-performing party (or otherwise offset/recoup such payments against any payments owed hereunder by the other party to such non-performing party) and (ii) any such payment and request for reimbursement and/or offset/recoupment shall not be deemed a breach of this Lease

(whether or not such offset/recoupment is ultimately determined to have been justified) and shall not constitute an election of remedies.

38. TESTING RIGHTS. Notwithstanding anything in this Lease to the contrary, (i) Lessor authorizes Lessee to perform at its cost a Phase 1 Environmental Study, a Phase 2 Environmental Study and any other organic and/or environmental tests or analyses which Lessee deems necessary (collectively, the "Tests"), on the Real Property,

39. LESSOR'S RIGHT OF INSPECTION: Lessor shall have the right, upon reasonable prior notice, to access the Real Property for the purpose of compliance by Lessee with the terms hereof; provided that any such access shall be done in during normal operation hours and in such a manner as to minimize any interference with the operations.

40. ASSIGNMENT: This lease may be assigned by Lessee to a third party without the consent of the Lessor. Lessor may not assign their interest in any portion of this Agreement to a third party without the written consent of the Lessee, which consent shall not be unreasonably withheld.

41. CROPS AND GOVERNMENT BENEFITS: All federal or state benefit programs attributable to crops raised on the Real Property during the Term of this Lease by the Lessee shall accrue solely to the Lessee. Lessee shall timely submit all necessary crop reports and other documents required to protect the ability of the Real Property to qualify for all such federal or state benefits raised thereon. Lessee shall not commit the Real Property to any governmental program which extends beyond the Term of this Lease. This section shall not apply to any such programs that Lessee is ineligible for.

42. PERMITS: If, for any reason, the Permits are revoked or any other is taken by Lessor or any third party (including the issuing authority) with respect to such Permits for any reason, such that Lessee is not able to fully utilize the any portion of the Feedlots for Lessee's intended use (the "Event"), Lessee may, at its sole election, without penalty or cost, terminate this Lease as to the Feedlots or as to all the Real Property, in addition to any other rights or remedies that it may be entitled to.

43. SECTION 1031 EXCHANGE: Lessor desires the benefits of §1031 of the Internal Revenue Code with respect to this transaction. Lessee agrees to cooperate with Lessor by executing such documents as may be reasonably necessary in connection with any exchange the Lessor may pursue, subject to the condition that Lessor will pay and be responsible for any and all expenses and costs which Lessee may incur as a result thereof, including any attorney's fees.

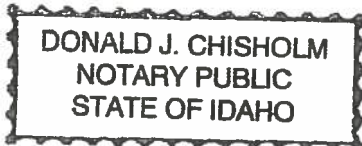
44. JOINT AND SEVERAL: Except as may be expressly otherwise set forth herein to the contrary, all obligations of the Lessor shall be "joint" and "several" and Lessee may, in its sole discretion, seek performance from any Lessor, irrespective of, and without seeking, the performance of any other Lessor(s).

45. INTEGRATION: The parties acknowledge that (i) the terms, conditions and

C:\DOCUME~1\Pearce\MLOCALS~1\Temp\Outlook Rec'd and Conn'd\Jed Lease Agt.pdf Jan Draft 08 Aug 20th (2).doc

Public in and for said County and State, personally appeared PAUL CARNEY, Partner in CARNEY FARMS, known to me to be such partner and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of said partnership.

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



Donald J. Chisholm
NOTARY PUBLIC for Idaho
Residing at: Payson
Commission Expires: 2-14-2012

STATE OF ~~TEXAS~~ ^{Colorado}
County of Broomfield ^{SS:}

On this 7 day of October, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Joseph E. Scalzo, Member of HORIZON ORGANIC DAIRY, LLC, known to me to be the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of said limited liability company.

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



Norma W. Blanchard
NOTARY PUBLIC for ~~Texas~~ ^{Colorado}
Residing at: Westminster, CO
Commission Expires: June 16, 2011

EXHIBIT A

PARCEL 1:

TOWNSHIP 8 SOUTH, RANGE 21 EAST BOISE MERIDIAN,
JEROME COUNTY, IDAHO

Section 33: Tract A

PARCEL 2:

TOWNSHIP 8 SOUTH, RANGE 21 EAST BOISE MERIDIAN,
JEROME COUNTY, IDAHO

Section 4: Tract B

~~Section 34: Tract B~~
~~TOWNSHIP 8 SOUTH, RANGE 21 EAST BOISE MERIDIAN,~~
~~JEROME COUNTY, IDAHO~~ *cf*

PARCEL 3:

TOWNSHIP 8 SOUTH, RANGE 21 EAST BOISE MERIDIAN, JEROME
COUNTY, IDAHO

Section 32: E1/2SE1/4

Section 33: S1/2N1/2, N1/2SW1/4

PARCEL 4:

TOWNSHIP 8 SOUTH, RANGE 21 EAST, BOISE MERIDIAN, JEROME
COUNTY, IDAHO

Section 33: NE1/4NE1/4

Section 28: NE1/4; N1/2SE1/4, SE1/4SE1/4, less the NE 10 acres.

PARCEL 5:

A parcel of land located in part of the North Half of the Southeast Quarter of
Section 33, Township 8 South, Range 21 East, Boise Meridian, Jerome County,
Idaho, and more particularly described as follows:

BEGINNING at the East Quarter corner of Section 33;
THENCE South 00°02'52" West along the easterly boundary of Section 33 for a distance of 1,156.50 feet;
THENCE North 67°26'49" West for a distance of 249.64 feet;
THENCE North 86°53'42" West for a distance of 2,201.75 feet;
THENCE North 01°23'37" West for a distance of 938.17 feet to a point on the northerly boundary of the Southeast Quarter of said Section 33;
THENCE North 89°54'57" East along the northerly boundary of the Southeast Quarter of said Section 33 for a distance of 2,452.86 feet to the POINT OF BEGINNING.

Said parcel contains 56.55 acres, more or less and subject to a 30.00 feet width county road easement along the easterly boundary.

PARCEL 6:

A parcel of land located in part of Farm Tract A and B located in the Southeast Quarter of the Southeast Quarter of Section 33, Township 8 South, Range 21 East and the Northeast Quarter of Section 4, Township 9 South, Range 21 East, Boise Meridian, Jerome County, Idaho, and more particularly described as follows:

BEGINNING at the Northeast corner of Section 4;
THENCE South 00°01'34" East along the easterly boundary of said Section 4 for a distance of 1,288.11 feet to a point on the southerly boundary of Farm Tract A;
THENCE North 88°38'58" West along the southerly boundary of Farm Tract A for a distance of 663.92 feet;
THENCE North 79°14'07" West along the southerly boundary of Farm Tract A and B for a distance of 1,531.38 feet;
THENCE North 00°10'51" West for a distance of 326.93 feet;
THENCE South 88°00'21" East for a distance of 1,506.42 feet;
THENCE North 01°49'53" East for a distance of 110.26 feet;
THENCE North 20°01'31" West for a distance of 93.88 feet;
THENCE North 09°10'29" East for a distance of 232.08 feet;
THENCE North 00°59'10" West for a distance of 283.61 feet to a point on the northerly boundary of the NE4 of said Section 4;
THENCE North 00°59'10" West for a distance of 171.34 feet;
THENCE South 82°30'29" East for a distance of 668.33 feet to a point on the easterly boundary of the SE4 of Section 33;
THENCE South 00°02'52" West along the easterly boundary of the SE4 of Section 33 for a distance of 83.33 feet to the POINT OF BEGINNING.

Said parcel contains 36.79 acres, more or less and subject to a 30.00 feet in width county road easement along the easterly boundary.

EXHIBIT B
(EQUIPMENT)

**All irrigation, well and other equipment existing on and/or currently used in
connection with the Real Property, including, but not limited to:**

**AS SET FORTH IN THE EXISTING LEASES:
RELATED TO THE FORMER "2006 LEASE PROPERTY"**

- 1 Zimmatic 6 Tower Pivot
- 1 Zimmatic 8 Tower Pivot
 Pump and Motor
- 2 30,000 Bushel Butler Grain Storage Bins
- 1 10,000 Bushel Butler Grain Storage Bin
- 1 Grain Leg System (with Augers for unloading all Bins)

RELATED TO THE FORMER "THACKER/JEROME PROPERTY LEASE"

- 1 Full Pivot 8 Tower Zimmatic Pivot (Thacker)
- 1 ¾ Pivot 8 Tower Zimmatic Pivot (Jerome & Thacker)
- 1 Full Pivot 9 Tower Zimmatic Pivot (Jerome)
- 7 32 Joint Hand Lines (Thacker)
- 1 Residential Trailer

EXHIBIT C
(WATER RIGHTS)

ALL WATER WELLS AND WATER RIGHTS, INCLUDING BUT NOT LIMITED TO A & B IRRIGATION WATER RIGHTS INCLUDING, BUT NOT LIMITED TO THOSE DESCRIBED AS FOLLOWS:

AS SET FORTH IN THE EXISTING LEASES:

RELATED TO THE FORMER "2006 LEASE PROPERTY"

Water Right No. 36-14812;
Water Right No. 36-14814;
Water Right No. 36-14816;
Water Right No. 36-14817; and
WATER RIGHT NO. 36-4216

RELATED TO THE FORMER "THACKER/JEROME PROPERTY LEASE"

Water Right No. 36-15708;
Water Right No. 36-15710;
Water Right No. 36-2369;
Water Right No. 36-7949;
Water Right No. 36-16395; and
231 acres of A & B Irrigation District Water.

EXHIBIT D

(PERMITS)

SITING PERMIT

CONFINED ANIMAL FEEDING OPERATION SITING PERMIT APPLICATION

DATE 03-19-02

NAME JEROME FEEDLOT #1

TELEPHONE 208-438-5580

ADDRESS 314 S. Crestview Road, Paul, Idaho
27 S. Crestview Road, Paul, Idaho 83347

FEEDLOT LOCATION

GENERAL LOCATION Aprox 7.5 miles N. of I-80 on Crestview Road (JEROME COUNTY) LEGAL DESCRIPTION N 1/2 SE 1/4 Sec 33

ACRES OF LAND HELD 320 EXISTING USE FEEDLOT Tp 8 S R21E

ZONING DISTRICT Ag

INDICATE ANIMAL UNITS OF THE FOLLOWING FOR AN LCO.

2500 MATURE COW/BULL/STEER HOGS POULTRY HEAD OF SHEEP

5 HORSES OTHER ANIMALS OR BIRDS CALVES 0-3 MONTHS

 CALVES 3 MONTHS - 1 YEAR CALVES 1 - 2 YEARS

 NON LACTATING HEIFERS 2 YEARS AND UP

This permission is granted under Jerome County Zoning Ordinance Chapter 13. The application must be submitted with the following: A full written description of the operation and facilities used including the maximum capacities of the facilities in regards to the number of animals. The numbers and type of livestock currently located on the parcel. Notarized letter attesting to the number of animal units of the LCO operation.

A Complete Site Plan: The Site Plan shall include the dimensions, size and location of existing buildings on the lot, if any, and the location and dimensions of feed storage areas, animal confinement areas, waste storage areas, water wells, canals, ditches, injection wells, traffic access, public thoroughfares and building heights. Submit a topographical map of the parcel.

Transfer of Siting Permit: A Confined Animal Feeding Operation Siting Permit may be transferred to a new owner or operator upon written notification to the Administrator by the holder of the existing permit.

Amendment to Jerome County Zoning Ordinance Chapter 13 approved August 12, 1996.

Gary Carnley
Signature of Owner and/or Applicant

ART BROWN, JEROME COUNTY PLANNING AND ZONING ADMINISTRATOR
(208) 324-9116



County of Jerome Planning and Zoning

121 3rd Avenue East, Jerome, ID 83338

208-324-9116 Fax 208-324-9263

Arthur R. Brown
Administrator

Yvette Le Mon
Secretary

March 20, 2002

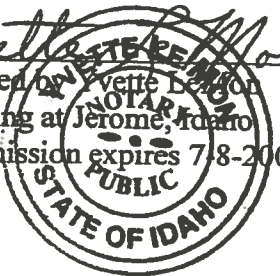
Gary Carney 314 South Crestview Road, Paul, Idaho for Jerome Feedlot #1 at approximately 271 South Crestview Road Paul Idaho a Legal Description N ½ SE ¼ Sec 33, Township 9 South, Range 21 EBM consisting of 320 acres has submitted a Siting Permit for 2505 Animal Units. This will serve as your Siting Permit and Jerome County recognizes that your facility can have up to 2505 animal units.

Arthur R. Brown
Arthur R. Brown, Planning & Zoning Administrator

I Gary Carney certify that the Siting Permit is a true and correct.

Gary Carney
Gary Carney

Gary Carney, known to me, did execute the same this 20 day of March, 2002

Yvette Le Mon
Attested by Yvette Le Mon
Residing at Jerome, Idaho
Commission expires 7/8-2006


SITING PERMIT

CONFINED ANIMAL FEEDING OPERATION SITING PERMIT APPLICATION

DATE 03-19-02

NAME CARNEY FEEDLOT #2

TELEPHONE 208-438-5580

ADDRESS 314 S. Crestview Road, Paul, Idaho 83347

GENERAL LOCATION 315 S CRESTVIEW Rd Paul ID 83347
Aprox 7 miles north of I-80 on Crestview Road (Jerome County) LEGAL DESCRIPTION NENE Sec 4 Tp 9 S R 21E
ACRES OF LAND HELD 85 EXISTING USE FEEDLOT SE SE Sec 33 Tp 8S R 31

ZONING DISTRICT AG

INDICATE ANIMAL UNITS OF THE FOLLOWING FOR AN LCO.

1470 MATURE COW/BULL/STEER HOGS POULTRY HEAD OF SHEEP

4 HORSES OTHER ANIMALS OR BIRDS CALVES 0-3 MONTHS

 CALVES 3 MONTHS - 1 YEAR CALVES 1 - 2 YEARS

 NON LACTATING HEIFERS 2 YEARS AND UP

This permission is granted under Jerome County Zoning Ordinance Chapter 13. The application must be submitted with the following: A full written description of the operation and facilities used including the maximum capacities of the facilities in regards to the number of animals. The numbers and type of livestock currently located on the parcel. Notarized letter attesting to the number of animal units of the LCO operation.

A Complete Site Plan: The Site Plan shall include the dimensions, size and location of existing buildings on the lot, if any, and the location and dimensions of feed storage areas, animal confinement areas, waste storage areas, water wells, canals, ditches, injection wells, traffic access, public thoroughfares and building heights. Submit a topographical map of the parcel.

Transfer of Siting Permit: A Confined Animal Feeding Operation Siting Permit may be transferred to a new owner or operator upon written notification to the Administrator by the holder of the existing permit.

Amendment to Jerome County Zoning Ordinance Chapter 13 approved August 12, 1996.

Gary Carney
Signature of Owner and/or Applicant

ART BROWN, JEROME COUNTY PLANNING AND ZONING ADMINISTRATOR
(208) 324-9116



Arthur R. Brown
Administrator

County of Jerome Planning and Zoning
121 3rd Avenue East, Jerome, ID 83338
208-324-9116 Fax 208-324-9263

Yvette Le Mon
Secretary

March 20, 2002

Gary Carney 314 South Crestview Road, Paul, Idaho for Carney Feedlot #2 at 315 South Crestview Road Paul Idaho a Legal Description NENE Sec 4 Township 9 South, Range 21 EBM consisting of 85 acres has submitted a Siting Permit for 1474 Animal Units. This will serve as your Siting Permit and Jerome County recognizes that your facility can have up to 1474 animal units.

Arthur R. Brown
Arthur R. Brown, Planning & Zoning Administrator

I Gary Carney certify that the Siting Permit is a true and correct.

Gary Carney
Gary Carney

Gary Carney, known to me, did execute the same this 20 day of March, 2002

Yvette Le Mon
Attested by Yvette Le Mon
Residing at Jerome, Idaho
Commission Expires 7-8-2006
STATE OF IDAHO

EXHIBITF

COPY

AGRICULTURAL LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered on September, 2005, by and between CARNEY FARMS, AN IDAHO GENERAL PARTNERSHIP, GARY CARNEY AND PAUL CARNEY, PARTNERS, and GARY CARNEY AND BARBARA CARNEY, HUSBAND AND WIFE, hereinafter collectively referred to as "Lessee", and IDAHO FARM, INC., A COLORADO CORPORATION, hereinafter referred to as "Lessor";

Contract is properly/
Water rights other than
those reserved

- A. Lessor owns certain land and irrigation equipment located in Jerome County, Idaho, consisting of 630 acres, more or less. The real property and irrigation equipment are more particularly described on EXHIBIT A attached hereto. This property is collectively referred to as the "Real Property".
- B. Lessee conducts a substantial organic dairy and farming operation in the vicinity of the Real Property.
- C. The parties wish to agree upon terms and conditions whereby Lessor will lease to the Lessee and Lessee will lease from the Lessor, for a seven (7) year period, with options for renewal, the Leased Property, upon terms and conditions to be set forth in this agreement.

IT IS THEREFORE AGREED, in consideration of these recitals and the promises and covenants hereinafter contained, as follows:

1. **LEASE TERM; OPTIONS TO RENEW:**

Lessor does hereby lease to Lessee, and Lessee agree to lease from the Lessor, the Leased Property, as described on Exhibits A, B and C attached hereto, commencing with the 1st day of January 2006 and expiring at midnight December 31, 2012 ("Initial Period"). This agreement shall automatically extend for additional terms of one (1) year on the identical terms and conditions stated herein, unless Lessee shall have given to Lessor at the address provided

hereinafter, written notice of termination at least ninety (90) days prior to the end of the Initial Period or then-current renewal period of the lease, as the case may be, whereupon the lease will terminate as of the end of the Initial Period or then-current renewal period of the lease, as the case may be. The Initial Period and any such exercised renewal periods shall be referred to as the "Term".

2. **RENTAL:**

Lessee shall pay to the Lessor, as rental for the Leased Property, the amount of *ONE HUNDRED SEVENTEEN THOUSAND SIX HUNDRED DOLLARS (\$117,600.00)* per year, payable as follows:

(\$58,800.00 due on or before January 1st of each year during the term of the lease, commencing with January 1, 2006;)

(\$58,800.00 due on or before July 1 of each year during the term of the lease, commencing with July 1, 2006.)

3. **LIABILITY INSURANCE; INDEMNIFICATION:**

Lessee agrees to purchase and maintain in force, at its own expense, a commercial general liability insurance covering its farming operations in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Lessor shall be named an additional insured on the policy. Lessee agrees to procure a Certificate of Insurance in force for the insurance policy and provide it to the Lessor at the commencement of the lease. The company issuing the policy shall be required to give Lessor a minimum of fifteen (15) days notice prior to cancellation of the policy. Lessee also agrees to indemnify and hold harmless Lessor from all damages, claims, causes of action, attorney fees, costs and liability of whatever nature which may accrue or arise from the negligence or willful misconduct in connection with Lessee's possession, use and occupancy of the Leased Property during the Term, except to the extent caused by, or contributed to by, the negligence or willful misconduct of Lessor.

4. **WORKERS COMPENSATION INSURANCE:**

Lessee shall procure and maintain in force at all times during the term of this lease Worker's Compensation insurance as required by the laws of the State of Idaho for all employees of the Lessee who may work within the Real Property.

5. **FIRE AND CASUALTY INSURANCE**

Lessor shall have the duty to insure the irrigation equipment described in EXHIBIT B against fire and casualty in such amounts as Lessor reasonably deems appropriate. Lessee shall insure any of its personal property brought onto the Real Property during the term of the lease.

6. **FARMING EXPENSES DISTRIBUTION:**

All farming expenses, including but not limited to labor, electrical power for irrigation, provision of machinery, field preparation, planting, seeding, cultivation, irrigation, harvesting, hauling, and any other expenses to properly farm the Real Property shall be borne exclusively by the Lessee. The parties acknowledge that Lessee will conduct organic farming operations on the Real Property.

7. **IRRIGATION EQUIPMENT; WELLS:**

Lessor warrants to Lessee that the irrigation equipment described on Exhibit "C" attached hereto is in good operating condition as of the commencement of the Term. Lessee shall maintain the irrigation equipment in a good state of repair throughout the term of the lease, reasonable wear and tear and casualty excepted. If the irrigation equipment deteriorates to the point that it can no longer be maintained or repaired to good operating condition, Lessor shall, at their cost and expense, replace such equipment with other equipment equivalent in quality and function to the quality and function (at the commencement of the lease) of the equipment that was replaced. Lessee shall replace at its cost, any of the irrigation equipment damaged beyond repair or destroyed during the term of the lease, in each case because of the negligence or intentional action of Lessee, its agents, employees, contractors or invitees. All such replacement equipment shall be equivalent in quality and function to the original equipment.

Lessor warrants that the well on the Real Property will provide adequate water to irrigate the Real Property. Lessee will keep the irrigation pumps and motors associated with the wells maintained, repaired and in good working order. Provided, that if the wells themselves are rendered non-productive, damaged or destroyed by Act of God, Lessor will use his best efforts to restore the wells to good working order as soon as possible. Lessor shall retain responsibility to repair structures themselves, or to deepen the wells if necessary because of well collapse or changes in depth to ground water.

8. UTILITIES:

Lessee agrees to have electrical and other utility service to the Real Property placed in its own name, and to timely pay the electrical bills generated during the term of the lease, as provided herein.

9. STANDARD OF PERFORMANCE:

Lessee agrees to farm the Real Property during the Term of the lease consistent with good organic husbandry practices. Lessee shall properly prepare good seed beds, plow, plant, cultivate, irrigate, grow, harvest, and otherwise care for all crops planted upon the Real Property.

Lessee shall not commit, nor permit the commission of, any waste of the Leased Property and covenants to exercise sound conservation practices consistent with good organic farming.

Lessee shall abide by all applicable laws, rules or regulations of the United States of America, the State of Idaho and the County of Jerome, or any of their separate departments, commissions or agencies which affect the Leased Property. Lessee shall conduct no unlawful operations on the Real Property of any kind.

10. LESSEE'S INSPECTION; Water Rights:

Lessee acknowledges entering into this lease upon the basis of its own knowledge and inspection and that no warranty, representation or affirmation of fact made by Lessor or Lessor's agents has been relied upon by Lessee in that regard, except as otherwise set forth expressly

elsewhere herein. Lessee affirms that it has examined the water rights appurtenant to the Real Property and are familiar with the elements of each water right as now constituted. Lessor warrants to Lessee that the water rights appurtenant to the Real Property, as described on Exhibit B attached hereto, are currently in full legal force and effect as now partially decreed, that there is no legal proceeding now pending, to Lessor's knowledge, threatened, in which any of the water rights have been objected to or protested, and that the water rights have been historically adequate to irrigate the Real Property to which they are appurtenant to produce crops customarily raised in the eastern Jerome County area.

11. ALTERATIONS; IMPROVEMENTS:

Lessee may not make alterations, improvements or additions to the Real Property without prior written consent of the Lessor. Lessee shall not permit any lien of any kind or nature to attach to the Leased Property or any part of it, as a result of the construction of any alterations or improvements, should permission be granted to construct them, or for any other reason.

12. LESSOR'S RIGHT OF INSPECTION:

Lessee shall allow Lessor or its agents, upon prior reasonable notice, access to the Real Property for the purpose of examining and inspecting the same.

13. RESTRICTIONS TO USE OF IMPROVEMENTS:

Lessee shall not use the Leased Property or permit its use by others (other than any Affiliate (as defined below), nor do or permit acts, that will increase the existing rates of insurance on the Real Property, or cause a cancellation of any insurance policy covering the Real Property.

14. HAZARDOUS SUBSTANCES.

Lessee shall not bring upon the Leased Property nor allow to be placed on or under the Real Property during the term of this Lease, any hazardous substances in violation of any environmental law. The term "environmental law" for purposes of this agreement shall mean:

Any statute, regulation, rule, order or decision of the United States of America, the State of Idaho or the County of Jerome, or any commission, department, agency or tribunal thereof, regulating the presence of hazardous substances or their equivalent, on or under the Real Property including, but not limited to, the following Federal acts:

- i The Resource Conservation and Recovery Act
- ii The Comprehensive Environmental Response,
Compensation and Liability Act
- iii The Clean Water Act

Lessor warrants to Lessee, that to the best knowledge of Lessor, the Real Property contains no Hazardous Substances in violation of any "environmental law", as above defined, as of the date of this agreement first written above.

15. COVENANTS OF LESSOR:

During the Term of this lease:

- A. Lessor shall provide quiet possession of the Leased Property to the Lessee so long as Lessee is not in default under this lease, after all applicable cure periods.
- B. Lessor shall pay all real and personal property taxes or assessments levied or assessed on the Leased Property.

16. CROPS AND GOVERNMENT BENEFITS:

All federal or state benefit programs attributable to crops raised on the Real Property during the term of the lease by the Lessee shall accrue solely to the Lessee. Lessee shall timely submit all necessary crop reports and other documents required to protect the ability of the Real Property to qualify for all federal or state benefits for crops raised thereon. Lessee shall not commit the Real Property to any governmental program which extends beyond the term of this agreement. This paragraph shall not apply to any such programs that Lessee is ineligible for.

17. **SUBLEASE; ASSIGNMENT:**

Lessee may not sublease or assign any portion of the Real Property, or its interest in this lease, to any third party without the prior written consent of the Lessor, provided that Lessee may assign its interest herein without such consent to any parent, subsidiary or other affiliate of Lessee (collectively, "Affiliate"). Any consent under this paragraph shall not be unreasonably withheld by the Lessor.

18. **CONDITION OF PROPERTY AT TERMINATION OF LEASE:**

At the termination of the lease for any reason, Lessee agrees to surrender possession of the Leased Property to Lessor in as good as a condition as it was in at the outset of the lease, reasonable wear and tear, casualty and condemnation excepted.

19. **RIGHT OF FIRST REFUSAL:**

In further consideration of the promises and covenants contained herein, Lessor does hereby grant to Lessee the first right of refusal to purchase any of the Leased Property. The right of first refusal shall be in force during the original Term. Should Lessor receive a bona fide offer to purchase the Leased Property, or any portion thereof, Lessor shall, within ten (10) days of the receipt of such offer, send to Lessee by certified mail, postage prepaid, or overnight delivery service, at the addresses provided hereinafter, a notice containing every term and condition of the offer, and describing the portion of the Leased Property to which it is subject. Within fifteen (15) days of the receipt of the initial notice from Lessor, Lessee may send a return notice to Lessor, at the address provided below, accepting the terms and conditions of sale contained in the initial notice, in which event the transaction described in the initial notice shall proceed to close in accordance with the initial notice, with Lessee being substituted for the Offeror; provided that Lessee shall not be required to take any "owner-provided" financing and shall have a reasonable period to do normal due diligence typical in purchases such as this. If no return notice is provided by Lessee as set forth in this paragraph, Lessor may then proceed to close the transaction on the terms and conditions stated in the original notice, with the original Offeror, but not upon any different terms or conditions. A Memorandum of Right of First Refusal, in the

form attached hereto as Exhibit "D", shall be executed by the parties and recorded in the records of Jerome County, Idaho at the time this agreement is executed. Notwithstanding the foregoing, if Lessee elects not to exercise its right of first refusal (whether by rejection thereof or the failure to provide return notice), the ensuing sale thereof shall be subject to the terms of this lease and such new owner must expressly agree to honor this lease (including the right of first refusal as to the remainder of the Leased Property , if such purchase was for less than all of the Leased Property or the subsequent right of first refusal as to the Leased Property actually purchased), so long as Lessee is not in default hereunder after all applicable cure periods.

20. **ORGANIC CERTIFICATION:** Except for that portion of the Real Property previously certified by the Lessor to the Lessee, Lessor will supply an affidavit to the Lessor setting forth the last input of commercial fertilizers, herbicides, pesticides, fungicides, and other artificial substances so the Lessee can secure certification that the Real Property qualifies as organic for the purpose of raising organic feeds for Lessee's organic dairy operation.

21. **NOTICES:**

Any notices, demands and the like, which are required to be given hereunder, or which either party hereto may desire to give to the other, shall be given in writing and may be delivered personally or may be sent by U.S. registered mail or certified mail, or overnight delivery service, postage prepaid, to each of the parties as follows:

LESSOR: Paul Carney
~~400 North 1550 West~~
Paul, Idaho 83347

GC PC K.C.
291 S. 2800 E.

LESSEE: Horizon Organic Dairy, Idaho Farm, Inc.
c/o Southern Asset Service Group
Attn: Harold H. Ginsburg
2610 Fairmount
Dallas, Texas 75201

With copy to: Dean Foods Company

2515 McKinney Ave., Suite 1200
Dallas, TX 75201
Attn: Legal Department

And to: Robert E. Williams
Fredericksen, Williams, Meservy and Lothspeich, LLP
P.O Box 168
Jerome, Idaho 83338

or to any other address which either of the parties may advise the other of in writing at any future time.

22. WAIVER:

A single waiver by either party of a breach of any term, covenant or condition contained in this lease shall not be treated as a waiver of a future breach of the same or any other term, covenant or condition contained in this lease.

23. LESSEE NOT AGENT:

Nothing in this agreement shall be construed to constitute Lessee the agent of Lessor, for the purpose of authorizing any construction, modification or other activity which may, in any way, give rise to the establishment of a lien on the real property above described, except as specifically set forth herein. The placement of any such lien on the above described real or personal property, without the consent of Lessor, shall be considered an event of default hereunder.

24. DEFAULT:

Should Lessee default in the payment of rental or any part thereof or in the performance of any other term or condition of this lease required to be performed or abstained from by Lessee, upon the occurrence of such an event of default the Lessor shall have the following rights:

- A. Institute suit for the nonpayment of rent and the collection of any other damages to which Lessor may be entitled for the breach of any term or condition of this

- lease, excluding any consequential, punitive or special damages.
- B. Proceed under the Unlawful Detainer laws of the State of Idaho.
 - C. Initiate any other remedy to which the Lessor may be entitled under the laws of the State of Idaho.

The remedies described above shall not be exclusive but shall be cumulative of each other. The resort of Lessor to any one particular remedy shall not prevent Lessor from resorting to any other additional remedies to which they may be entitled under this lease or the laws of the State of Idaho, statutory or otherwise. Notwithstanding the foregoing, prior to commencing to pursue any remedy to which Lessor may be entitled in the event of default by Lessee, Lessor shall first serve upon Lessee a notice, in writing, detailing the event of default. Lessee shall have *thirty (30)* days from the date of the receipt of the notice in which to fully effectuate a cure thereof. If a cure has not been timely affected, Lessor may then resort to any remedy to which they may be entitled. Any payment due Lessor under this agreement, if not paid within fifteen (15) days of when due, shall accrue interest at Twelve Percent (12%) per annum from the payment's due date until fully paid.

25. **INTEGRATION:**

The parties acknowledge that the terms, conditions and covenants of this agreement shall supersede any prior negotiations and agreements of the parties, that there are no other agreements not contained in this agreement, and that this agreement shall be the final expression of the agreement of the parties and shall control. No modifications of this agreement shall be valid unless in writing and executed by all the parties hereto.

26. **ADDITIONAL DOCUMENTS:**

The parties agree to execute such other, further and additional documents as may be required to carry into effect the terms and conditions of this agreement.

27. **GOVERNING LAW:**

This agreement shall be subject to and governed by the laws of the State of Idaho.

28. **TIME BEING THE ESSENCE:**

It is understood and agreed that failure on the part of the Lessor to require prompt performance on the part of the Lessee shall not extend the time of performance by Lessee, or be a waiver by Lessor of time being the essence of this agreement, it being specifically understood and agreed that time is hereby made the essence of this agreement.

29 **ATTORNEY FEES ON DEFAULT:**

In the event of Lessee's default hereunder, in addition to whatever other damages Lessor shall be entitled to under this agreement or applicable provisions of law, Lessor shall be entitled to all reasonable attorney fees and costs incurred by the Lessor.

30. **BINDING EFFECT:**

This agreement shall inure to and be binding upon the parties hereto, and their respective heirs, executors, administrators and assigns.

31 **COUNTERPARTS:**

This agreement may be signed in counterparts.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this agreement the day and year first above written.

"LESSOR"
CARNEY FARMS, an Idaho general partnership

Gary Carney
GARY CARNEY, Partner

Paul Carney
PAUL CARNEY, Partner

Gary Carney
GARY CARNEY

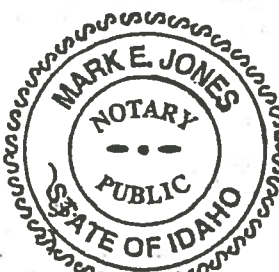
Barbara Carney
BARBARA CARNEY

STATE OF IDAHO)
 ss:
County of Jerome)

On this 27 day of September, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared GARY CARNEY, individually and as a Partner in Carney Farms, known to me to be such partner and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same, individually and on behalf of Carney Farms.

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

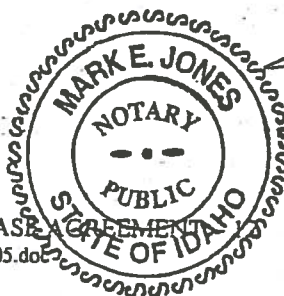
STATE OF IDAHO
County of Jerome



Mark E. Jones
NOTARY PUBLIC for Idaho
Residing at: TWIN FALLS
Commission Expires: 12-01-06

On this 27 day of September, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared PAUL CARNEY, individually and as a Partner in Carney Farms, known to me to be such partner and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same, individually and on behalf of Carney Farms.

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

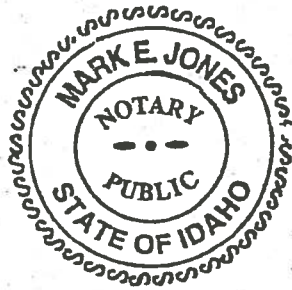


Mark E. Jones
NOTARY PUBLIC for Idaho
Residing at: TWIN FALLS
Commission Expires: 12-01-06

STATE OF IDAHO)
 ss:
County of Idaho)

On this 27 day of September, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared BARBARA CARNEY, known to me to be such person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that she executed the same.

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



[Signature]
NOTARY PUBLIC for Idaho
Residing at: TWIN FALLS
Commission Expires: 12-01-06

"LESSEE"

HORIZON ORGANIC DAIRY, IDAHO FARM, INC.,
a Colorado corporation

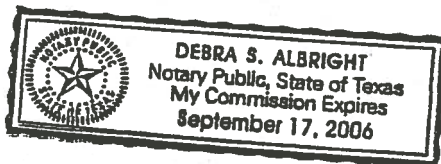

By: Edward Herman
Its: Authorized Signatory

STATE OF TEXAS)

County of Dallas ^{SS:}

On this 29th day of September, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Edward Herman of HORIZON ORGANIC DAIRY, IDAHO FARM, INC., a Colorado corporation, known to me to be such officer and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of said corporation.

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




NOTARY PUBLIC for Texas
Residing at: Dallas
Commission Expires: 9/17/06

EXHIBIT "A"

JEROME PLACE:

TOWNSHIP 8 SOUTH, RANGE 21 EAST BOISE MERIDIAN, JEROME COUNTY, IDAHO

SECTION 32: E $\frac{1}{2}$ SE $\frac{1}{4}$

SECTION 33: S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$

THACKER PLACE:

TOWNSHIP 8 SOUTH, RANGE 21 EAST, BOISE MERIDIAN, JEROME COUNTY, IDAHO

SECTION 33: NE $\frac{1}{4}$ NE $\frac{1}{4}$

SECTION 28: NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, less the NE 10 acres.

EXHIBIT "B"

Water Right No. 36-15708

Water Right No. 36-15710

Water Right No. 36-2369

Water Right No. 36-7949

EXHIBIT "C"

- 2 3" Hand Lines
- 5 Wheel Lines
- 3 Pivot Irrigation Systems with associated Pump and Motors
- Miscellaneous additional Hand Lines on Thacker Place

EXHIBIT

D

MEMORANDUM OF RIGHT OF FIRST REFUSAL

BE IT REMEMBERED: That CARNEY FARMS, AN IDAHO GENERAL PARTNERSHIP, GARY CARNEY AND PAUL CARNEY, PARTNERS, AND GARY CARNEY AND BARBARA CARNEY, HUSBAND AND WIFE, as Lessor, and HORIZON ORGANIC DAIRY, IDAHO FARM, INC., A COLORADO CORPORATION, as Lessee, entered into an Agricultural Lease Agreement on the 26th day of September, 2005, wherein, among other things, the Lessor granted to Lessee a right of first refusal to purchase certain real property located in Jerome County, Idaho, more particularly described as follows:

JEROME PLACE:

TOWNSHIP 8 SOUTH, RANGE 21 EAST BOISE MERIDIAN, JEROME COUNTY, IDAHO

SECTION 32: E $\frac{1}{4}$ SE $\frac{1}{4}$

SECTION 33: S $\frac{1}{2}$ N $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$

THACKER PLACE:

TOWNSHIP 8 SOUTH, RANGE 21 EAST, BOISE MERIDIAN, JEROME COUNTY, IDAHO

SECTION 33: NE $\frac{1}{4}$ NE $\frac{1}{4}$

SECTION 28: NE $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, less the NE 10 acres.

The right of first refusal shall be in effect with respect to the entire seven (7) year initial term of the lease and any renewals thereof. Reference is hereby made to the Agricultural Lease Agreement for details as to the Right of First Refusal. This Memorandum may be signed in Counterparts and the originals shall be recorded in the records of Jerome County, Idaho

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this agreement the day and year first above written.

"LESSOR"

CARNEY FARMS, an Idaho general partnership

Gary Carney
GARY CARNEY, Partner

Paul Carney
PAUL CARNEY, Partner

Gary Carney
GARY CARNEY

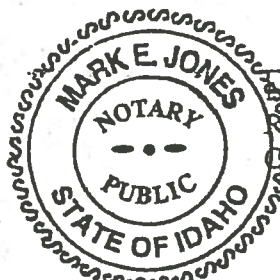
Barbara Carney
BARBARA CARNEY

STATE OF IDAHO)

County of Jerome) ss:

On this 27 day of September, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared GARY CARNEY, individually and as a Partner in Carney Farms, known to me to be such partner and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same, individually and on behalf of Carney Farms.

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



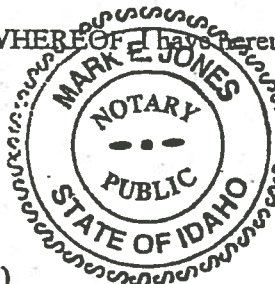
[Signature]
NOTARY PUBLIC for Idaho
Residing at: TWIN FALLS
Commission Expires: 12-01-06

STATE OF IDAHO)

County of Jerome) ss:

On this 27 day of September, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared PAUL CARNEY, individually and as a Partner in Carney Farms, known to me to be such partner and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same, individually and on behalf of Carney Farms.

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



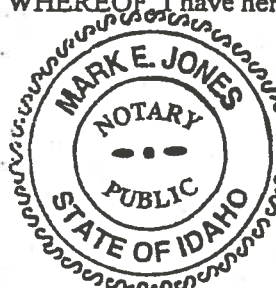
[Signature]
NOTARY PUBLIC for Idaho
Residing at: TWIN FALLS
Commission Expires: 12-01-06

STATE OF IDAHO)

County of Jerome) ss:

On this 27 day of September, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared BARBARA CARNEY, known to me to be such person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that she executed the same.

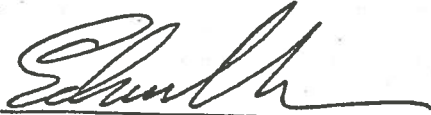
IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.



[Signature]
NOTARY PUBLIC for Idaho
Residing at: TWIN FALLS
Commission Expires: 12-01-06

"LESSEE"

HORIZON ORGANIC DAIRY, IDAHO FARM, INC.,
a Colorado corporation



By: Edward Herman

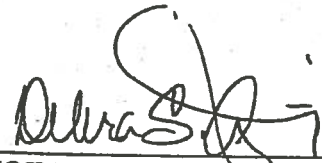
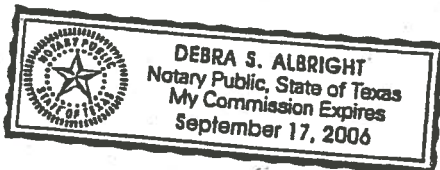
Its: Authorized Signatory

STATE OF TEXAS)

County of Dallas ^{ss:}

On this 28th day of September, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Edward Herman of HORIZON ORGANIC DAIRY, IDAHO FARM, INC., a Colorado corporation, known to me to be such officer and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of said corporation.

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



NOTARY PUBLIC for Texas

Residing at: Dallas

Commission Expires: 9/17/06

EXHIBIT G

- Home and 10 acres in Section 24, Township 8 South, Range 21 East, Boise Meridian, Jerome County, Idaho
- Home and 3 acres in Section 3, Township 9 South, Range 21 East, Boise Meridian, Jerome County, Idaho