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DEPT. OF WATER RESOURCES
SOUTHERN REGION

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Attorneys for Buckeye Farms, Inc.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR
TRANSFER, NO. 78283 (fka No. 66354), IN THE
NAME OF BUCKEYE FARMS, INC.

**SECOND AFFIDAVIT OF
JOHN A. BURKE**

STATE OF IDAHO)
) ss.
County of Blaine)

JOHN A. BURKE, being first duly sworn upon his oath, deposes and says:

1. That I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.
2. That I have been a member of the organization today commonly known as Buckeye Farms since 1987.
3. That I previously submitted an affidavit in the above proceedings, filed on July 17, 2013.
4. Attached to my prior affidavit, as Exhibit A, was an unsigned draft of a 1989 Agreement regarding the sale of the North Bar-S lands to Spring Valley Ranches. At the time, I was unable to locate a signed copy of that agreement.

5. Since that time, I have located a signed copy of the 1989 Agreement. A true and correct copy of that signed agreement is attached to this, second, affidavit, as Exhibit D.

Further your affiant sayth naught.

Dated this 28 day of August, 2013.

John A. Burke

John A. Burke

SUBSCRIBED AND SWORN to before me this 28 day of August, 2013.

Robert J. Nasotti
Notary Public, State of Illinois
Residence: 1111 S. Laramie



Exhibit D

AGREEMENT

THIS AGREEMENT, made and entered into as of the 31st day of January, 1989, by and between BUCKEYE FARMS, INC., an Idaho corporation, hereinafter referred to as "Seller" and SPRING VALLEY RANCHES, INC., a Utah corporation, hereinafter referred to as "Buyer".

SECTION 1: AGREEMENT FOR PURCHASE AND SALE

For and in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell and Buyer agrees to purchase from Seller subject to the terms, conditions and limitations hereinafter set forth the following described real property located in T. 7 S., R. 13E., Boise Meridian, Gooding County, Idaho:

Section 23: SW1/4

Section 26: N1/2 NW1/4, W1/2 NE1/4, NW1/4
SE1/4, NE1/4 SW1/4, SE1/4
NW1/4

EXCEPTING THEREFROM the parcel of land described as follows:

BEGINNING at the Southwest corner of the NE1/4 SE1/4 of said Section 26;

Thence North and parallel with the East line of Section 26 to the Northwest corner of the NE1/4 NE1/4 of Section 26;

Thence West along the North line of said Section 26 to a point which is 30 feet West of the West bank of the Big Bend Ditch;

Thence Southerly along a line running 30 feet West of the West bank of said Big Bend Ditch to a point which is directly West of the Southwest corner of the NE1/4 SE1/4 of said Section 26;

Thence East and parallel with the North line of Section 26 to THE POINT OF BEGINNING.

SECTION 2: PURCHASE PRICE

The price for the property as described on Exhibit "A" is One Hundred Fifty-five Thousand Dollars (\$155,000.00). Two Thousand Five Hundred Dollars (\$2,500.00) earnest money shall be deposited by Buyer with First American Title in Gooding,

Idaho, upon the execution of this Agreement. The Buyer shall pay Twenty Thousand Dollars (\$20,000.00) cash less the Two Thousand Five Hundred Dollars (\$2,500.00) earnest money at closing. The remaining principal balance of One Hundred Thirty-five Thousand Dollars (\$135,000.00) of the purchase price shall be payable utilizing a fifteen (15) year amortization schedule, in equal semi-annual installments of Eight Thousand Two Hundred Eighty-nine Dollars (\$8,289.00) each, which installments include interest on the unpaid balance at the rate of nine percent (9%) per annum. Said payments shall be due on July 31 and January 31 of each year with the first payment due July 31, 1989, and said payments shall continue until the entire indebtedness is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable in a lump sum on January 31, 1999.

SECTION 3: ESCROW

A. Escrow for Closing

Upon the execution of this Agreement and simultaneously with the tender of the Two Thousand Five Hundred Dollars (\$2,500.00) cash, an escrow shall be established at First American Title, 102 5th Avenue E., Gooding, Idaho. The parties shall deliver all documents necessary to complete this transaction to First American Title on or before January 20, 1989. At closing Buyer shall pay Seventeen Thousand Five Hundred Dollars (\$17,500.00) in cash to First American Title for the benefit of Seller in cash or immediately available federal funds. Buyer shall execute a note for the unpaid balance of One Hundred Thirty-five Thousand Dollars (\$135,000.00), in accordance with the terms of a note dated January 31, 1989, a copy of which is attached hereto as Exhibit "B". Said note shall be secured by a mortgage executed by Buyer at closing, a copy of which is attached hereto as Exhibit "C". Seller shall pay the real property taxes and all assessments for 1988 and previous years. The Buyer shall be responsible for real property taxes and all assessments for 1989 and subsequent years. A closing statement shall be prepared by First American Title and circulated to the parties no later than January 20, 1989.

A title commitment delivered at closing showing title in the Seller as the intended grantor and naming the Buyer as the proposed insured in the amount of the purchase price hereto will suffice for the purposes of the closing. No later than thirty (30) days after the closing, Seller shall deliver to Buyer a title insurance policy insuring title to the property in the Buyer in the amount of the purchase price. Buyer acknowledges that said title policy shall be essentially in the form of Exhibit "D" hereto. The cost of the title insurance commitment and the title policy required by this contract shall be paid for by the Seller, except that the cost of any extended coverages if obtained shall be paid by the Buyer. The cost of the escrow shall be paid one-half (1/2) each by the Seller and

Buyer. Interest earned on the deposit of earnest money by First American Title prior to the date of closing shall be paid to the Seller.

B. Escrow for Collection of Note

The parties shall authorize First American Title Company of 102 5th Avenue E., Gooding, Idaho, to hold the Note (Exhibit "B") for collection according to its terms. All payments shall be made by Buyer to First American Title. Initial costs of placing the Note for collection shall be shared equally by the parties. Subsequent charges shall be borne by Seller. Upon payment in full, First American shall deliver the Note, together with a pre-executed Release of Mortgage (Exhibit "G" hereto) to Buyer.

C. Partial Mortgage Releases

If Buyer seeks release of any acres prior to full payment, Seller will execute appropriate partial mortgage releases upon the receipt by the escrow holder of Five Hundred Dollars (\$500.00) per acre for each acre sought to be released. Said Five Hundred Dollars (\$500.00) per acre release payment shall be applied against the last remaining payments which would be due under Exhibit "B".

The first parcel for which release is sought shall be contiguous to an exterior boundary of the parcel being purchased by Buyer. Subsequent parcels shall also be adjacent to an exterior boundary or contiguous to a boundary of the first parcel released, provided that no partial release shall result in the creation of an isolated parcel, and provided further that the written consent of Seller must be obtained for the proposed release of any parcel of less than five (5) acres.

SECTION 4: CLOSING

The closing shall be conducted by First American Title, 102 5th Avenue E., Gooding, Idaho, on January 31, 1989.

SECTION 5: RESERVATION OF WATER RIGHTS

It is acknowledged that both Seller and Buyer are holders of water rights decreed in the case of New International Mortgage Bank v. Idaho Power Company, Federal District Court of Idaho, No. 1602, March 22, 1932, to divert from Billingsley Creek through the Curran Ditch. There are some other users with decreed water rights which are also conveyed in the Curran Ditch to the point of intersection with the North Bar S pipeline. Buyer owns Right No. 36-0004 for 15 cfs of water with a priority date of September 10, 1884, for use on other lands owned by Buyer although water from said right has been used by Seller and Seller's predecessors on the

parcel which is the subject of this Agreement when not otherwise being used by Buyer. Seller owns decreed Water Right No. 36-0003 for 20 cfs with a priority date of September 10, 1884, for diversion from Billingsley Creek through the Curran Ditch, and decreed Water Right Nos. 36-0015, 36-0016 and 36-0017 for diversion of water from Weatherby Springs through Curran Ditch. Seller holds Permit No. 36-7742 and Permit No. 36-7740 for the diversion of the same waters on a year around basis for nonconsumptive purposes. Portions of these rights are now appurtenant to the property which is the subject of this Agreement.

It is understood and agreed by the parties that prior to the recording of the executed warranty deed (Exhibit "A" hereto), Buckeye Farms, Inc. shall execute and record a water transfer deed (in the form of Exhibit "E" hereto), prior to the recordation of the warranty deed (Exhibit "A") and the mortgage (Exhibit "C"). Buyer acknowledges that all water rights of the Seller appurtenant to the property which is the subject of this transaction (including those described above) shall be transferred from said property to other properties of the Seller. Provided, however, that the transfer of water rights pursuant to Exhibit "E" shall not include the transfer of any water represented by Buyer's Right No. 36-0004. Buyer acknowledges he has no claim to Water Right Nos. 36-0003, 36-0015, 36-0016, 36-0017; Permit Nos. 36-7742 and 36-7740; or Seller's 67.5 shares of Big Bend Irrigation and Mining Co. stock..

Seller shall retain ownership of its 67.5 shares of stock in the Big Bend Irrigation & Mining Company presently appurtenant to the property which is the subject of this Agreement; and Buyer shall cooperate to the extent necessary to effect a transfer as proposed by Seller.

SECTION 6: RIGHTS OF PARTIES IN NORTH BAR S PIPELINE

It is understood by the parties that a certain pipeline commonly known as the North Bar S Pipeline traverses a portion of the property which is the subject of this Agreement, which said pipeline facilitates the delivery of certain decreed and permitted water rights of the Seller from Weatherby Springs and Billingsley Creek through the Curran Ditch, as well as the rights of other users who own adjacent properties. The Seller contemplates the transfer of the point of diversion of Seller's said water rights from the North Bar S Pipeline to alternate facilities to satisfy Seller's water needs. Buyer acknowledges that there are obligations in favor of the other users for the delivery of water through the North Bar S Pipeline. The parties acknowledge that as a part of the consideration for this Agreement, Buyer shall hereafter be responsible for the delivery of the water of the users of the North Bar S Pipeline (except Seller). Said other users are identified on Exhibit "F" hereto. Buyer agrees to assume any and all obligations existing for the delivery of water through the North Bar S

Pipeline to said users identified on Exhibit "F" and will indemnify and hold Seller harmless from any claim or claims for the delivery of water to said users including repair or replacement of said North Bar S Pipeline.

In any event, after January 31, 1989, Seller shall have no obligation or responsibility for the North Bar S Pipeline, including the removal thereof from the lands of others, and Buyer will indemnify and hold Seller harmless in all respects thereto also pertaining.

It is not the intention of this section to place more obligation on Buyer than can legally be placed on Seller by third parties.

Provided, however, that Seller shall indemnify and hold Buyer harmless from all claims or damages arising from flooding or damage to the property, which is alleged to have occurred prior to January 31, 1989, and which is alleged to have resulted from the condition of the North Bar S Pipeline.

SECTION 7: RIGHTS OF SELLER IN WATER CONVEYANCING SYSTEM IN THE EVENT OF REPOSSESSION

In the event that Buyer defaults in the performance of this Agreement resulting in reinstatement of possession to Seller, Buyer agrees that in such event Seller shall succeed to the ownership of Buyer's proportionate share of any water conveyancing system then being used by Buyer to convey Buyer's water to the property which is the subject of this Agreement. In the event that Buyer is not then using water on the said property and no conveyancing system is then in place for such purpose, Buyer shall be deemed to have granted to Seller such permissions as are necessary across other lands of the Buyer so Seller might reinstitute the use of water on the premises. This right shall be protected by Buyer for the benefit of Seller in the sale of other properties now owned by Buyer until such time as the obligations of this Agreement have been fulfilled.

SECTION 8: MINERAL RIGHTS

It is understood that Exhibit "D" hereto (title insurance policy) does not provide for insurance of mineral rights. While Seller believes that the mineral rights are intact for the properties herein conveyed, it is understood by the parties that if Buyer elects coverage of the mineral rights by the elimination of the title policy exception, that such cost shall be the responsibility of the Buyer.

SECTION 9: SURFACE MINING RECLAMATION

Buyer has inspected the premises and acknowledges that no surface mining project has occurred prior to this date.

Buyer acknowledges Buyer's responsibility for any surface reclamation required by any governmental agency with jurisdiction for the future removal of minerals or gravel from the property being purchased by Buyer.

SECTION 10: TRANSFERS OF WATER RIGHTS

The parties hereto have each filed claims in the Snake River Basin Adjudication as to existing water rights. The parties hereto shall each be responsible for the appropriate necessary transfers as might be required to facilitate the removal and transfer of the water by the Seller, as well as the transfer of water by the Buyer to the purchased parcel at a later date. The parties will cooperate to the extent required to meet Idaho Department of Water Resources requirements in that regard, it being assumed that said transfers would occur after the date of closing.

SECTION 11: HAZARDOUS WASTE

The Seller represents that to the best of Seller's knowledge, prior to the date of closing, there has been no release, spill or discharge of hazardous substances from, on, or under the subject premises. Buyer accepts the property in its existing condition and covenants to indemnify and hold Seller and its successors and assigns harmless from any and all loss, cost, fines, liabilities, damages (including consequential damages suffered by a third party claimant) or expense (including without limitation attorneys' fees and costs incurred in the investigation of the state of the subject premises and the investigation, defense and settlement of claims), which may be incurred by Buyer or its successors as a result of, or arising from, hereinafter discovered presence of any hazardous waste or substance arising as a result of Buyer's activities, and the warranties and covenants to indemnify and hold Seller harmless contained in this paragraph shall survive the closing, and shall run in favor of Seller, its successors and assigns.

SECTION 12: REPRESENTATIONS OF THE SELLER

Seller hereby represents and warrants the following:

- a. Seller is duly authorized to execute and deliver this contract, to perform the covenants on its part herein contained, consummate transactions contemplated hereby and execute, deliver and perform all documents and instruments to be executed and delivered by it pursuant hereto. Seller is not subject to any restriction, agreement, law, judgment or decree which would prohibit or be violated by the execution, delivery and performance of this contract.

- b. Seller's resolution authorizing performance of the contract and conveyance of the property as above represented shall be supplied to First American Title at or before closing.

SECTION 13: REPRESENTATIONS OF BUYER

- a. As of the date hereof and as of closing, Buyer is duly authorized to execute and deliver this contract, perform the covenants on Buyer's part herein contained, consummate transactions contemplated hereby and execute, deliver and perform all documents and instruments to be executed and delivered by it pursuant hereto. Buyer is not subject to any restriction, agreement, law, judgment or decree which would prohibit or be violated by the execution, delivery and performance of this contract.
- b. Buyer shall be qualified to do business in Idaho and shall deliver evidence of said qualification to escrow holder prior to the closing date.
- c. Buyer will accept a conveyance of the real estate in its present condition.

SECTION 14: CONDEMNATION

If, prior to the closing, any part of the property is taken by eminent domain or if any proceeding in the nature of eminent domain is filed against the property, Buyer shall not have any right to cancel this contract, and the transactions contemplated hereby shall nonetheless close in accordance with this contract, without any abatement of the purchase price or any liability or obligation on the part of Seller by reason of such taking; provided, however, that the Seller shall, at the closing (i) turn over and deliver to Buyer the net proceeds of any award or other proceeds of such taking which may have been collected by the Seller as a result of such taking, or (ii) if no award or other proceeds shall have been collected, deliver to Buyer an assignment (without recourse to Seller), of Seller's right to any such award or other proceeds which may be payable as a result of such taking.

SECTION 15: BROKERAGE COMMISSION.

The parties agree that Seller did not have any negotiations or dealings in connection with this transaction with any brokers or finders and no brokerage commissions or

finder's fee is payable in connection with the transaction contemplated by this contract by Seller. The Buyer agrees to indemnify and hold the Seller harmless from and against the claims of any person, firm or corporation claiming any brokerage commission, finder's fee or similar compensation based on any alleged negotiations or dealings with the Seller contrary to the foregoing representations.

SECTION 16: CONTRACT REPRESENTATIONS SURVIVE CLOSING.

The representations and warranties of this Agreement of Sale shall survive the closing, specifically including Sections 3c, 5 and 6.

SECTION 17: DEFAULT.

If any party to this contract fails to perform any of its obligations hereunder, or violates the terms of this contract (such party hereinafter referred to as the "Defaulting Party"); the other party shall have the right to give the Defaulting Party a notice of default specifically setting forth the nature of the default and stating that the Defaulting Party shall have a period of 20 days to cure any default specified. If the Defaulting Party does not cure all defaults within such 20 day period, or, as to defaults which are not capable of being cured within such period, the Defaulting Party has not commenced in good faith in curing of such default within such 20 day period and does not thereafter prosecute to completion with diligence and continuity the curing thereof, then:

- a. In the event of the breach of this contract by Buyer, Seller, at Seller's option, shall receive the money paid by Buyer and the interest thereon as liquidated damages and not as a penalty, without in any way limiting Seller's further remedies in equity for specific performance or for damages under applicable law.
- b. In the event of the breach of this contract by Seller, Buyer may pursue all its remedies, either equitable or legal, as are provided by law.
- c. The party found to be in default shall be responsible for all costs including court costs and attorney's fees incurred by the other party in enforcement hereof.

SECTION 18: BINDING EFFECT.

This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 19: CAPTIONS.

The captions of this contract are for convenience and reference only and in no way define, limit or describe the scope or intent of this contract.

SECTION 20: NOTICES.

Any and all notices required or permitted to be given hereunder shall be in writing and shall be considered as given when personally delivered or three days following the day on which such notice is mailed by registered or certified mail, postage prepaid and with return receipt requested, addressed to the parties as follows:

a. If to Seller:

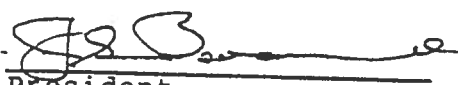
BUCKEYE FARMS, INC.
P.O. Box 2199
Sun Valley ID 83353

b. If to Buyer:

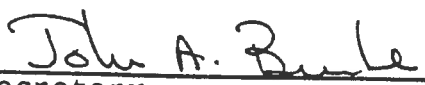
SPRING VALLEY RANCHES, INC.
P.O. Box 73
Hagerman ID 83332

IN WITNESS WHEREOF, this contract has been fully executed by the parties hereto as of the date and year first above written.

BUCKEYE FARMS, INC.

By 
President

ATTEST:

By 
Secretary

SPRING VALLEY RANCHES, INC.

By *Frank Knight*
President

ATTEST:

By *Sean M. Thorpe*
Secretary

STATE OF IDAHO)
) ss.
County of U)

On this _____ day of _____, 1989, before me, a Notary Public, in and for said County and State, personally appeared _____ and _____, known or identified to me to be the President and Secretary, respectively, of BUCKEYE FARMS, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

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

NOTARY PUBLIC FOR IDAHO
Residing at: _____
My commission expires: _____

STATE OF Utah)
) ss.
County of Salt Lake)

On this 29th day of August, 1989, before me, a Notary Public, in and for said County and State, personally appeared Gean M. Thorpe and _____, known or identified to me to be the ~~President~~ and Secretary, ~~respectively~~, of SPRING VALLEY RANCHES, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

SPRING VALLEY RANCHES, INC.

By Frank Knight
President

ATTEST:

By _____
Secretary

STATE OF IDAHO)
County of Idaho) ss.

On this 7th day of February, 1989, before me, a Notary Public, in and for said County and State, personally appeared James G. Brownell and John D. Burke, known or identified to me to be the President and Secretary, respectively, of BUCKEYE FARMS, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

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

Judith A. Sorrels
NOTARY PUBLIC FOR IDAHO
Residing at: Hailey, Idaho
My commission expires: 2/10/91

STATE OF Idaho)
County of Idaho) ss.

On this 2nd day of February, 1989, before me, a Notary Public, in and for said County and State, personally appeared Frank Knight and _____, known or identified to me to be the President and Secretary, respectively, of SPRING VALLEY RANCHES, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

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

Austin M. Latta
NOTARY PUBLIC FOR IDAHO
Residing at: Bozeman
My commission expires: 10-10-92

0465m

USERS (OTHER THAN BUCKEYE FARMS, INC.) OF
NORTH BAR "S" PIPELINE

Stan Hoskovec	80 inches
125 Club Loranger	25 inches
Carlton, Bell, Betty Hoskovec, King, Sauer, Ellis	100 inches

0491m

EXHIBIT "F"