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JUL 17 2013

DEPT. OF WATER RESOURCES
SOUTHERN REGION

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.

**AFFIDAVIT OF JOHN A.
BURKE**

STATE OF WYOMING)
) ss.
County of Park)

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. As a member, I have held a number of positions within the Buckeye Farms, including secretary, a position held from approximately 1987 to 1997 and president from approximately 1997 though 2000.
4. Throughout its history, Buckeye Farms has held a property interest in certain lands in the Hagerman Valley, Gooding County, State of Idaho. These lands are commonly known as the North Bar-S and South Bar-S Ranches.

5. Buckeye Farms owns water right nos. 36-15 and 36-18, and others, which were appurtenant to these lands.

6. Based upon my understanding, the irrigation use was represented by water right decrees from the New International Decree, representing water use on the lands indentified above.

7. During my involvement with Buckeye Farms, I have come to understand that the water supply for Buckeye's water rights have been the subject of seasonal variability and steady decline in the spring source.

8. During the 1980s, due to declining flows in Billingsley Creek, Buckeye Farms was forced to find alternative means to secure a water supply, including exchanging summer flows for winter water supplies, and renting water for irrigation use.

9. In 1989, Buckeye Farms sold the North Bar-S lands to Spring Valley Ranches.

10. I was actively involved in the negotiations for the sale of the property to Spring Valley and development of the final sales agreement. As such, I am familiar with the final agreement entered into between Buckeye and Spring Valley.

11. While I have not been able to locate a signed copy of the sales agreement, I have reviewed the attached draft which appears to accurately reflect the terms and conditions of the final sale, in particular, with respect to water rights and water delivery obligations. A true and correct copy of the draft agreement is attached as Exhibit A.

12. With respect the water rights appurtenant to the North Bar-S lands, Buckeye Farms did in fact intend to transfer those rights to the South Bar S lands.

13. As required by the sales agreement, Buckeye Farms filed a transfer for the change in the place of use of water rights nos. 36-15 & 36-18 in 1994.

14. To my knowledge at the time of sale, no other water rights for irrigation other than those rights in the name of Buckeye Farms were appurtenant to the North Bar-S lands. Buckeye Farms did use water from the Spring Valley ranches – including water right no. 36-04 – at times when Spring Valley land had excess water. This water was rented or diverted from Spring Valley with their permission.

15. This accommodation resulted in the property owners negotiating a water exchange dated May 28, 1998 for a water exchange involving water right no. 36-0004. The intent of the exchange agreement was to provide additional water supplies to Buckeye Farms at the higher elevations in the South Bar S and to provide Spring Valley (Western Legends) a water supply for the North Bar S lands. A true and correct copy of that agreement is attached hereto as Exhibit B.

16. That prior to selling the North Bar-S property, Buckeye Farms delivered certain water rights through the North Bar S pipeline. This pipeline delivered portions of Buckeye Farms' rights and certain Weatherby Springs rights, including Verl Bell, water right no. 36-00033E.

17. That as a result of selling the North Bar-S property, Buckeye Farms transferred the obligation to convey and deliver water in the Curren ditch and North pipeline to Spring Valley. Buckeye no longer had the right to access the Curren ditch or North pipeline past Buckeye Farms' last Curren ditch diversion point at the South Bar S pipeline. An aerial photograph identifying the South Bar S pipeline in relation to the North Bar S property is attached as Exhibit C.

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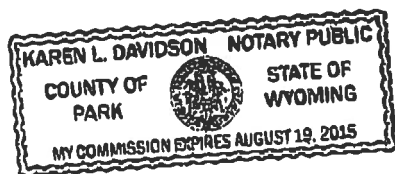
///

Further your affiant sayth naught.

Dated this 16 day of July, 2013.

John A. Burke
John A. Burke

SUBSCRIBED AND SWORN to before me this 16th day of July, 2013.



Karen L. Davidson
Notary Public, State of Wyoming
Residing at: Cody, WY
My Commission expires: 8/19/15

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 17th day of July, 2013, I caused to be served a true and correct copy of the foregoing **AFFIDAVIT OF JOHN A. BURKE** by the method indicated below, and addressed to each of the following:

Verl C. Bell
853 E. 2830 S.
Hagerman, ID 83332

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

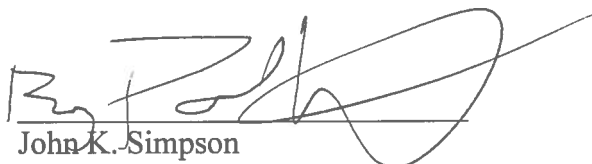

John K. Simpson

Exhibit A

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.

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 65 shares of Big Bend Irrigation and Mining Co. stock.

Seller shall retain ownership of its 65 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.

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 or 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 _____
President

ATTEST:

By _____
Secretary

STATE OF IDAHO)
) ss.
County of _____)

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 _____)
) ss.
County of _____)

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 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.

NOTARY PUBLIC FOR IDAHO

Residing at:_____

My commission expires:_____

0465m

CORPORATION WARRANTY DEED

FOR VALUE RECEIVED, BUCKEYE FARMS, INC., a corporation duly organized and existing under the laws of the State of Idaho, Grantor, does hereby grant, bargain, sell and convey unto

SPRING VALLEY RANCHES, INC., a Utah corporation whose address is P.O. Box 73, Hagerman, Idaho 83332, Grantee, the following described real estate, situated in Gooding County, Idaho, to wit:

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.

Reserving unto the Grantor Water Right Nos. 36-0003, 36-0015, 36-0016, 36-0017; Permit Nos. 36-7742 and 36-7740; or 65 shares of Big Bend Irrigation and Mining Co. stock appurtenant to the above described parcel, it being acknowledged that said property is being conveyed without water rights.

By recordation of this Deed, Spring Valley Ranches, Inc. assumes all obligations concerning the environmental requirements for the above described

property in accordance with Sections 9 and 11 of the Agreement between the parties dated as of January 31, 1989.

To have and to hold the said premises and their appurtenances unto the said Grantee, its successors and assigns, forever.

The said Grantor does hereby covenant to and with the said Grantee that it is the owner in fee simple of said premises; that said premises are free from all encumbrances except as set forth above and assumed by Grantee; and that Grantor will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, The Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its President and its Secretary.

DATED this _____ day of _____, 1989.

BUCKEYE FARMS, INC.

By _____
President

ATTEST:

By _____
Secretary

STATE OF IDAHO)
) ss.)
County of _____)

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: _____

0472m

NOTE

\$135,000.00

Gooding, Idaho
January 31, 1989

FOR VALUE RECEIVED, the undersigned promises to pay BUCKEYE FARMS, INC., an Idaho corporation, or order, the principal sum of One Hundred Thirty-five Thousand Dollars (\$135,000.00), with interest on the unpaid principal balance from the date of this Note, until paid, at the rate of Nine Percent (9%) per annum. Payments shall be amortized on a fifteen (15) year schedule, except as provided in this paragraph below. Principal and interest shall be payable at Buckeye Farm's Inc., P.O. Box 2199, Sun Valley ID 83353, or such other place as the Note holder may designate, in consecutive semi-annual installments of Eight Thousand Two Hundred Eighty-nine Dollars (\$8,289.00) each, such payments to be made on July 31 and January 31 of each year, beginning July 31, 1989. Such semi-annual installments shall continue until the entire indebtedness evidenced by this Note 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.

If any installment under this Note is not paid when due and remains unpaid after a date specified by a notice to the undersigned, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the Note holder. The date specified shall not be less than thirty (30) days from the date such notice is mailed. The Note holder may exercise this option to accelerate during any default by the undersigned regardless of any prior forbearance. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees.

The undersigned shall pay to the Note holder a late charge of One Percent (1%) of any installment not received by the Note holder within Fifteen (15) days after the installment is due.

The undersigned may prepay the total principal amount and accrued interest outstanding at any time. The Note holder may require that any partial prepayments (i) be made on the date installments are due and (ii) be in the amount of that part of one or more installments which would be applicable to principal. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent installments or change the amount of such installments, unless the Note holder shall otherwise agree

in writing. In the event that maker prepays this Note and accrued interest in full on or prior to January 31, 1992, the total payment owing shall be recomputed as though the interest rate had been Seven Percent (7%) per annum from January 31, 1989, until the date of payment.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

Any notice to the undersigned provided for in this Note shall be given by mailing such notice by certified mail addressed to the undersigned at the Property Address stated below, or to such other address as the undersigned may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at the address stated in the first paragraph of this Note, or at such other address as may have been designated by notice to the undersigned.

The indebtedness evidenced by this Note is secured by a Mortgage, dated of even date herewith, and reference is made to the Mortgage for rights as to acceleration of the indebtedness evidenced by this Note.

SPRING VALLEY RANCHES, INC.

By _____
President

ATTEST:

By _____
Secretary

STATE OF _____)
County of _____) ss.

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 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.

NOTARY PUBLIC FOR IDAHO

Residing at:_____

My commission expires:_____

MAKER'S ADDRESS:

Spring Valley Ranches, Inc.
P.O. Box 73
Hagerman ID 83332

0467m

MORTGAGE

This Mortgage, made and entered into this ____ day of _____, 1989, by and between SPRING VALLEY RANCHES, INC., a corporation duly organized and existing under the laws of the State of Utah, whose business address is P.O. Box 73, Hagerman ID 83332 (hereinafter "Mortgagor"), and BUCKEYE FARMS, INC., a corporation duly organized and existing under the laws of the State of Idaho, whose address is P.O. Box 2199, Sun Valley ID 83353, (hereinafter "Mortgagee").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited, the receipt of which is hereby acknowledged, Mortgagor hereby irrevocably grants, transfers, conveys, mortgages and assigns to Mortgagee, its successors and assigns, under and subject to the terms and conditions hereinafter set forth, the real property ("Property"), located in the County of Gooding, State of Idaho, described as follows:

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.

TOGETHER WITH all leasehold estate, right, title and interest of Mortgagor in and to all leases, subleases, or other agreements covering the Property or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Mortgagor thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH all interests, estate or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Property;

TOGETHER WITH all easements, rights-of-way and rights used in connection with the pipeline located off the property as well as the property herein mortgaged herewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements hereafter erected on the Property including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles that may hereafter be attached to said buildings and improvements, (the "Improvements");

TOGETHER WITH existing or replacement ditches and ditch rights, flumes, aqueducts, canals, and any other water distribution facilities used to deliver water to the mortgaged property;

TOGETHER WITH any and all rights of Mortgagor without limitation to make claim for, collect, receive and receipt for any and all rents, income, revenues, rights, royalties, profits, including mineral, oil and gas rights and profits, insurance proceeds, condemnation awards and other moneys payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any agreement effecting or relating to any of the property, to bring any suit in equity, action at law or other proceeding for the collection of such moneys or for the specific or other enforcement of any such agreement, awards or judgments, in the name of Mortgagor or otherwise, and to do any and all things which Mortgagor is or may be entitled to do with respect thereto;

TOGETHER WITH the rights hereinafter granted in Paragraph 1.06 with respect to all the estate, interest, right, title or other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereafter acquire in the Property, and the rights hereinafter granted in Paragraph 1.06 with respect to any and all awards made for the taking of eminent domain, or by any proceeding or purchase in

lieu thereof, of the whole or any part of the Mortgaged Estate, including, without limitation, any awards for severance damages.

Excluding all water and water rights, appropriations, franchises and interest in shares in irrigation and canal companies now or hereinafter made appurtenant to said Property, including appropriations of ground water.

The entire estate, property and interest hereby conveyed to Mortgagee may hereafter be referred to as the "Mortgaged Estate."

FOR THE PURPOSE OF SECURING:

A. Payment of indebtedness in the total principal amount of ONE HUNDRED THIRTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$135,000.00) with interest thereon, evidenced by that certain Promissory Note dated the 31st day of January, 1989, (hereinafter the "Note") with a maturity date of January 31, 1999, which Note has been delivered to and is payable to the order of Mortgagee, and which by this reference is hereby made a part hereof, together with any and all modifications, extensions and renewals thereof.

B. Payment of all sums advanced by Mortgagee to protect the Mortgaged Estate with interest thereon at the rate provided in the Note.

C. Performance of Mortgagor's covenants and agreements with Mortgagee in this Mortgage and the Note dated the 31st day of January, 1989, between Mortgagor and Mortgagee and the addendums thereto, and any other document or instrument given to evidence or further secure the obligations secured hereby.

ARTICLE I

COVENANTS AND AGREEMENTS OF MORTGAGOR

Mortgagor hereby covenants and agrees:

1.01 Payment of Secured Obligations. To pay when due the principal of, and the interest on, the indebtedness evidenced by the Note and all other sums as provided in the Note.

1.02 Maintenance, Repair, Alterations. To complete promptly and in good and workmanlike manner any building or other Improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor, to comply

with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Estate or any part thereof or requiring any alterations or improvements; not to commit or permit any waste or deterioration of the Mortgaged Estate, and to keep the Mortgaged Estate in good condition and repair, not to remove or substantially alter any such Improvements, once constructed or installed (except such alterations as may be required by laws, ordinances or regulations) or any of the Improvements without the prior written consent of Mortgagee; to keep and maintain all existing and future roads, bridges, walkways, parking and landscape areas in good and neat order and repair; not to commit, suffer or permit any act to be done in or upon the Mortgaged Estate in violation of any law, ordinance or regulation.

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

(a) Insurance against loss or damage by fire to any erected or to be erected Improvements and insurance against loss or damage by any of the risks covered by insurance of the type now known as "fire and extended coverage," in the amount of the cost of the buildings.

(b) Comprehensive public liability insurance covering the legal liability of the Mortgagor against claims for bodily injury, death or property damage occurring in or about the Property, to the limits of not less than One Million and No/100ths Dollars (\$1,000,000.00) for one person and One Million and No/100ths Dollars (\$1,000,000.00) for each occurrence, and Mortgagee shall be named as an additional insured on such policy.

1.04 Warranty of Title. Mortgagor has good, absolute and fee simple title to the Mortgaged Estate, and Mortgagor is lawfully seized and possessed of the Mortgaged Estate and every part thereof and has the right and authority to convey the Mortgaged Estate as security for the obligations of Mortgagor secured hereby as herein provided; that the Property is unencumbered and free and clear of all easements, restrictions and covenants except as provided in the Policy of Title Insurance on Exhibit "A" hereto, that Mortgagor will forever warrant and defend the title to the Mortgaged Estate unto the Mortgagee against all claims and demands of all persons whomsoever.

1.05 Delivery of Policies; Payment of Premiums. That all policies of insurance shall be issued by companies and in an amount in each company satisfactory to Mortgagee, provided

that insurance policies written with companies rated "AA" in the insurance industry shall be acceptable to Mortgagee. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee. Mortgagor shall furnish Mortgagee with copies of all policies of required insurance. If Mortgagee consents to Mortgagor providing any of the required insurance through blanket policies carried by Mortgagor and covering more than one location, then Mortgagor shall furnish Mortgagee with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date.

1.06 Insurance and Condemnation Provisions. Should said Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Mortgagee shall be entitled to all compensation, awards, and other payments or relief therefor to the extent of Mortgagee's interest, and shall be entitled, at Mortgagee's option, and to the extent of its interest, to commence, appear in and prosecute in its own name, any action or proceedings, or to make a compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Mortgagee, who shall apply the same on any obligations secured hereby. Mortgagor agrees to execute such further assignments or any compensation, award, damages, and rights of action and proceeds as Mortgagee may require to the extent of the balance of the then remaining debt secured hereby.

1.07 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the mortgaged Estate in extinguishment in whole or in part, of the obligations secured hereby, all right, title and interest of Mortgagor in and to all policies of insurance required by Section 1.03 shall inure to the benefit of and pass to the successor in interest to Mortgagor or the purchaser or grantee of the Mortgaged Estate.

1.08 Indemnification; Subrogation; Waiver of Offset.

(a) If Mortgagee is made a party defendant to any litigation concerning this Mortgage or the Mortgaged Estate or any part thereof or interest therein, or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify, defend and hold Mortgagee harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Mortgagee in any such litigation, whether or not any such litigation is prosecuted to

judgment. If Mortgagee commences an action against Mortgagor to enforce any of the terms hereof or because of the breach by Mortgagor of any of the terms hereof, or for the recovery of any obligations secured hereby, Mortgagor shall pay to Mortgagee reasonable attorneys' fees and expenses, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Mortgagor, Mortgagor shall pay to Mortgagee reasonable attorneys' fees and expenses incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor by reason of breach.

(b) Mortgagor waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives, for loss of or damage to the Mortgaged Estate.

(c) All sums due and payable by Mortgagor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein or in the Note) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; or (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; whether or not Mortgagor shall have notice or knowledge of any of the foregoing.

1.09 Taxes and Imposition.

(a) Mortgagor agrees to pay, not later than when due, all real property taxes and assessments, general and special, and all other taxes and assessments of

any kind or nature whatsoever, including, without limitation, taxes, fees and other charges in connection with water, water rights, water shares or other interests in water, nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from permits, conditions and restrictions affecting the Mortgaged Estate, or which become due and payable and which create, may create or appear to create a lien upon the Mortgaged Estate, or any part thereof, or upon any Personal Property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Mortgagor must pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed: (i) a tax or assessment on the Mortgaged Estate in lieu of or in addition to the Impositions payable by Mortgagor pursuant to subparagraph (a) hereof; or (ii) a license fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Mortgagor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, at the option of Mortgagee, all obligations secured hereby together with all accrued interests thereon, shall immediately become due and payable.

(c) Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.09, unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object to any Imposition, and unless, at Mortgagee's sole satisfaction that the legal proceedings shall conclusively operate to prevent the

sale of the Mortgaged Estate, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (ii) Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Mortgagee; or (iii) Mortgagor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(d) Mortgagor covenants and agrees not to suffer, permit or initiate the joint assessment of the real property and any personal property thereon, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Mortgaged Estate as a single lien, and Mortgagor covenants and agrees to contest the validity of such joint assessment by appropriate legal proceedings herein provided.

1.10 Utilities. To pay when due all utility charges which are incurred by Mortgagor for the benefit of the Mortgaged Estate or which may become a charge or lien against the Mortgaged Estate for gas, electricity, water or sewer services furnished to the Mortgaged Estate and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Estate or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

1.11 Actions Affecting Mortgaged Estate. To appear and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Mortgagee may appear.

1.12 Actions by Mortgagee to Preserve Mortgaged Estate. That should Mortgagor fail to make any payment or to do any act as and in the manner provided, Mortgagee in its own discretion, without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as either it may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers), Mortgagee shall have and is hereby given the right, but not the obligation: (i) to enter upon and take possession of the Mortgaged Estate; (ii) to make necessary additions, alterations, repairs and improvements to the Mortgaged Estate which it may consider necessary or proper to keep the Mortgaged Estate in good condition and repair; (iii) to appear and participate in any action or proceeding affecting

or which may affect the security hereof or the rights or powers of Mortgagee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in his judgment may affect or appears to affect the security of this Mortgage or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Mortgagor shall, immediately upon demand therefor by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees. The amount of such costs and expenses shall be added to and be deemed a part of the Indebtedness secured by this Mortgage.

1.13 Successors and Assigns. That this Mortgage applies to, inures to the benefit of and binds all parties hereto, their successors and assigns. The term "Mortgagee" shall mean the owner and holder of the Note, or of any undivided interest therein, including, if any, all participants holding certificates of participation in said Note, whether or not named as Mortgagee herein.

1.14 Inspections. That Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage.

1.15 Liens. Mortgagor agrees to pay and promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Estate, or any part thereof or interest therein; provided that the existence of any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right thereto shall not constitute a violation of this Section if payment is not yet due under the contract which is the foundation thereof and if such contract does not postpone payment for more than fifty-five (55) days after the performance thereof. Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amounts as Mortgagee shall reasonably require, but not less than one and one-half (i.e. 150%) of the amount of the claim, provided further, that Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge, or post appropriate bond to protect against any such lien, encumbrance or charge within ten (10) days of written demand by Mortgagee, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the

same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. The amount so paid by Mortgagee shall be added to and be deemed a part of the indebtedness secured by this Mortgage.

1.16 Mortgagee's Powers. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Mortgage upon any portion of the Property not then or theretofore released as security for the full amount of all unpaid obligations, Mortgagee may, from time to time: (i) release any person so liable; (ii) extend the maturity or alter any of the terms of any such obligations; (iii) grant other indulgences; (iv) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Estate; (v) take or release any other or additional security for any obligation herein mentioned; (vi) make compositions or other arrangements with debtors in relation thereto; or (vii) take such other and further action as Mortgagee in its sole discretion, deems necessary and/or proper.

If Mortgagor seeks release of any acres prior to full payment, Mortgagee 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.

ARTICLE II

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

2.01 Assignment of Rents. If Mortgagor is in default hereunder, Mortgagor hereby assigns and transfers to Mortgagee all present and future rents, issues and profits of the Mortgaged Estate, and hereby gives to and confers upon Mortgagee the right, power and authority to collect such rents, issues and profits in the event of a default by the Mortgagor in any of the terms and conditions hereof. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, in the exercise of good faith, to demand, receive, and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all such rents, issues and profits and apply the same to the indebtedness secured hereby. This provision shall apply to rents, issues and profits payable to the Mortgagor in the nature of lease or royalty payments payable to Mortgagor from any third party which utilize the property to construct electrical generation facilities not now in existence.

2.02 Collection Upon Default. Upon any event of default, Mortgagee may, upon written notice to Mortgagor and upon the expiration of any period provided for the cure of any default, and at any time thereafter, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Mortgaged Estate, or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Mortgaged Estate, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

ARTICLE III

REMEDIES UPON DEFAULT

3.01 Events of Default. Time is of the essence hereof. Any of the following events shall be deemed an event of default hereunder:

(a) Default shall be made in the payment of any installment of interest or in the payment of principal or any other obligation secured hereby when due or default shall be made in the payment of any installment of interest or in the payment of principal or any other obligation secured by the Mortgaged Estate when due:

(b) Mortgagor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or of all or any part of the Mortgaged Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(c) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Mortgagor seeking any reorganization, dissolution or similar relief under any present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for sixty (60) days from the first day of entry thereof; or any trustee, receiver, liquidator or Mortgagor of all or any part of the Mortgaged Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Mortgagor and such appointment shall remain unvacated and unstayed for sixty (60) days; or

(d) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Estate, or any judgment involving monetary damages shall be entered against Mortgagor which shall become a lien on the Mortgaged Estate or any portion thereof or interest therein and such execution, attachment, or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy; or

(e) The title of Mortgagor to the Property or any substantial part thereof shall become the subject matter of litigation which would or might, in the Mortgagee's opinion, upon final determination result in substantial impairment or loss of the security provided by this instrument and upon notice by Mortgagee to Mortgagor such litigation is not dismissed within thirty (30) days of such notice; or

(f) Any indebtedness of the Mortgagor becomes or is declared to be due and payable prior to its expressed maturity by reason of any default by Mortgage in the performance or observance of any obligations or by reason of the existence of any condition constituting a default in respect of such indebtedness;

(g) There has occurred a breach of or event of default under any term, covenant, agreement, condition, provisions, representation or warranty contained in the Note or Mortgage or any part thereof, not referred to in this Section 3.01, and the failure of Mortgagor to cure the same within the applicable cure period, if any.

3.02 Acceleration Upon Default, Additional Remedies.

In the event of any event of default, Mortgagee may declare all obligations secured hereby to be immediately due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Mortgagee may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Estate, or any part thereof, in its own name and do any acts which it deems in the exercise of good faith, necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Estate, sue for or otherwise collect the rents, issues, and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys' fees, upon any indebtedness secured hereby, all in such order as Mortgagee may determine. The entering upon and taking possession of the Mortgaged Estate, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default after written notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Estate or the collection, receipt and application of rents, issues, or profits, Mortgagee shall be entitled to exercise every right provided for in the Note or Mortgage or by law upon occurrence of any event of default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) The waiver by Mortgagee of any default shall not constitute a waiver of any other or subsequent default.

3.03 Foreclosure as Mortgage. Should Mortgagee foreclose this Mortgage in the manner provided by law for the foreclosure of mortgages on real property, Mortgagee shall be entitled to recover in such proceeding all costs and expenses incident thereto (including costs on appeal), and reasonable

attorneys' fee (including attorneys' fee on appeal) in such amount as shall be fixed by the court; provided, however, that the parties hereto hereby request and direct the court to fix as reasonable attorneys' fees the actual fees paid by Mortgagee. Mortgagee shall be entitled to possession of the Property during any redemption period allowed under the laws of the State of Idaho.

3.04 Appointment of Receiver. If an event of default described in Section 3.01 of this Mortgage shall have occurred and be continuing, Mortgagee, as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Mortgaged Estate or the interest of Mortgagor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Estate, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of Mortgagee in case of entry as provided in Section 3.02(a) and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Estate unless such receivership is sooner terminated.

3.05 Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of any obligations secured hereby and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, guaranty, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee and it may pursue inconsistent remedies. The failure on the part of Mortgagee to promptly enforce any right hereunder shall not operate as a waiver of such right.

3.06 Notices. Any notice or any communication provided for hereunder shall be in writing and shall be sufficiently given, when mailed by first class mail, addressed to mortgagor or Mortgagee, as the case may be, or by personal delivery at the following addresses:

Mortgagor: Spring Valley Ranches, Inc.
P.O. Box 73

Hagerman ID 83332 (STREET ADDRESS)

Mortgagee: Buckeye Farms, Inc.
P.O. Box 2199

Sun Valley ID 83353 (STREET ADDRESS)

ARTICLE IV

MISCELLANEOUS

4.01 Governing Law. This Mortgage shall be governed by the laws of the State of Idaho as an agreement between residents and domiciliaries of the State of Idaho. In the event that any provision or clause of any of the documents conflicts with applicable laws, such conflicts shall not affect other provisions of such documents which can be given effect without the conflicting provision, and to this end the provisions of the Loan Instruments are declared to be severable. The terms and provisions of the Mortgage cannot be waived, changed, discharged, or terminated orally, but only by an instrument in writing, signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

4.02 Limitation of Interest. It is the intent of Mortgagor and Mortgagee in the execution of this Mortgage and the Note and all other Loan Instruments to contract in strict compliance with the laws of the State of Idaho governing the loan evidenced by the Note. In furtherance thereof, Mortgagee and Mortgagor stipulate and agree that none of the terms and provisions contained in the Loan Instruments shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of Idaho governing the loan evidenced by the Note. Mortgagor or any guarantor, endorser, or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of Idaho and the provisions of this

Section shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In any event, if any holder of the Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on the Note to a rate in excess of that permitted to be charged by the laws of the State of Idaho, all such sums deemed to constitute interest in excess of the legal rate shall be immediately returned to the Mortgagor upon such determination.

4.03 Statements by Mortgagor. Mortgagor, within ten (10) days after being given notice by mail, will furnish to Mortgagee a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Mortgage and stating whether any offset or defense exists against such principal and interest.

4.04 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

4.05 Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the obligations secured hereby, or if the lien is invalid or unenforceable as to any part of the Mortgaged Estate, the unsecured or partially secured portion of the Mortgagor's obligations shall be completely paid prior to the payment of the remaining and secured portion of the obligations secured hereby, and all payments made on the Mortgagor's obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Mortgagor's obligations which are not secured or fully secured by the lien of this Mortgage.

4.06 Subrogation. To the extent that proceeds of the note are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Estate, such proceeds have been or will be advanced by Mortgagee at Mortgagor's request and Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

4.07 No Merger. If both the lessor's and lessee's estates under any lease or any portion thereof which constitutes a part of the Mortgaged Estate shall at any time become vested in one owner, this Mortgage and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all the rights and privileges of Mortgagee as to the separate estates. In addition, upon the

foreclosure of the lien created by this Mortgage on the Mortgaged Estate pursuant to the provisions hereof, any leases or subleases then existing and created by Mortgagor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Mortgagee or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any lease or sublease unless Mortgagee or such purchaser shall give written notice thereof to such tenant or subtenant.

4.08 Transfer of Interest. It is understood and agreed that Mortgagee is relying on the creditworthiness of the Mortgagor. Accordingly, in the event that the Mortgagor shall sell all or any part of the Mortgaged Estate to any third party, then in such event it is understood and agreed that any purchaser or successor in interest shall be required to assume and perform all of the terms, conditions and obligations herein provided. Any such assumption, assignment, sale or other transfer shall not, however, serve to relieve the Mortgagor from the duties, obligations and liabilities herein assumed, without the written permission of the Mortgagee.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year first above written.

SPRING VALLEY RANCHES, INC.

By _____
President

ATTEST:

By _____
Secretary

STATE OF _____)
County of _____) ss.

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 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.

NOTARY PUBLIC FOR IDAHO

Residing at: _____

My commission expires: _____

0468m



First American Title Insurance Company

INFORMATION

The Title Insurance Commitment is a legal contract between you and the company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT.

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YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, please contact the issuing office.

EXHIBIT A

COMMITMENT FOR TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

AGREEMENT TO ISSUE POLICY

We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-1.

The Exceptions in Schedule B-2.

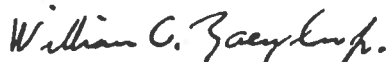
The Conditions on the other side of this page 1.

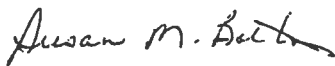
This Commitment is not valid without SCHEDULE A and Sections 1 and 2 of SCHEDULE B.



First American Title Insurance Company

BY  PRESIDENT

ATTEST  SECRETARY

BY  COUNTERSIGNED

CONDITIONS

1. **DEFINITIONS**

(a) "Mortgage" means mortgage, deed of trust or other security instrument. (b) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

2. **LATER DEFECTS**

The Exceptions in Schedule B - Section 2 may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section 1 are met. We shall have no liability to you because of this amendment.

3. **EXISTING DEFECTS**

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. **LIMITATION OF OUR LIABILITY**

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section 1

or

eliminate with our written consent any Exceptions shown in
Schedule B - Section 2.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. **CLAIMS MUST BE BASED ON THIS COMMITMENT**

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.

SCHEDULE A

1. Commitment Date: October 31, 1988 at 8:00 A.M. Commitment No: G-00953/E-00582
2. Policy or Policies to be Issued: Policy Amount
- ☒ (a) Owners Policy (premium will be \$732.00) \$ 180,000.00
Proposed Insured:
SPRING VALLEY RANCH, INC., an Idaho corporation
- ☐ (b) Loan Policy \$
Proposed Insured:
- ☐ (c) \$
Proposed Insured:
3. A fee simple interest in the land described in this Commitment is owned, at the Commitment Date, by BUCKEYE FARMS, INC., an Idaho corporation
4. The land referred to in this Commitment is described as follows:
Township 7 South, Range 13 East of the Boise Meridian, Gooding County, Idaho

Section 23: SW $\frac{1}{4}$

Section 26: N $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$

EXCEPTING THEREFROM the parcel of land described as follows:
BEGINNING at the Southwest corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 26;
Thence North and parallel with the East line of Section 26 to the
Northwest corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ 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 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 26;
Thence East and parallel with the North line of Section 26 to THE POINT
OF BEGINNING.

SCHEDULE B - Section 1

Requirements

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (e) Release(s) or Reconveyance(s) of item(s) _____.
- (f) Other
 - 1. We will require a corporate resolution from Spring Valley Ranch, Inc. authorizing the purchase.
 - 2. We will require a corporate resolution from Buckeye Farms, Inc., an Idaho corporation, authorizing the sale and directing the execution of the deed.
 - 3. We will require a Release of Option Agreement executed by Donnie McFadden, releasing the Abstract of Option Agreement.
- (g) You must give us the following information:
 - 1. Any off record leases, surveys, etc.
 - 2. Statement(s) of identity, all parties.
 - 3. Other

SCHEDULE B - Section 2

Exceptions

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

PART I:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. Unpatented mining claims: reservations or exceptions in patents or in acts authorizing the issuance thereof: water rights, claims, or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. General Taxes for 1988 are an accruing lien, not yet due or payable.
(Taxes for 1988 are \$102.12 on receipt #3552 and \$1,130.74 on receipt #3572; receipt #3572 covers this and other lands.)
8. Any assessments levied by a local irrigation district, including but not limited to assessments for delivery of water which was adjudicated by Decree in the District Court of the United States for the District of Idaho Southern Division, dated March 22, 1932, recorded April 19, 1932 in Book 6 Judgments at Page 31, records of Gooding County, Idaho.
9. Agreement pertaining to an easement and maintenance agreement for a buried pipeline by and between F. D. Brown and Florence M. Brown, husband and wife, and L. L. Ormsby and Lillian F. Ormsby, husband and wife, parties of the first part, and W. H. Clifford, party of the second part, dated April 25, 1918, recorded July 21, 1919 in Book 2 Agreements Page 47 as Instrument No. 20006, Gooding County records.
10. Agreement pertaining to an easement and maintenance agreement for a buried pipeline by and between F. D. Brown and Florence M. Brown, husband and wife, L. L. Ormsby and Lillian F. Ormsby, husband and wife, parties of the first part, and W. C. Barton, party of the second part, dated April 24, 1918, recorded July 21, 1919 in Book 2 Page 53 as Instrument No. 20008, Gooding County records.

continued

The following numbered exceptions _____ will be eliminated in an ALTA Extended Coverage Policy.

SCHEDULE B - Section 2

Exceptions Continued

11. Agreement pertaining to an easement and maintenance agreement for a buried pipeline by and between F. D. Brown and Florence M. Brown, husband and wife, and L. L. Ormsby and Lillian F. Ormsby, husband and wife, parties of the first part, and the Odeon Theater Company, a co-partnership consisting of B. R. Shimp, unmarried and S. B. Shimp, unmarried and R. M. Stanton, unmarried, party of the second part, dated April 25, 1918, recorded July 21, 1919 in Book 2 Agreements Page 56 as Instrument No. 20009, Gooding County records.

12. Exceptions and reservations contained in Deed dated January 23, 1956, recorded March 17, 1956 in Book 46 Deeds Page 385, Wilkins & Company, Ltd. a co-partnership et al to Brailsford Brothers, Inc., a corporation, records of Gooding County, Idaho.

Covering: Part of the W $\frac{1}{2}$ NE $\frac{1}{4}$ and part of NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 26, Twp. 7 S., R. 13 E.B.M.

RE: Pipeline for water

13. An Easement for power lines and incidental purposes in favor of Idaho Power Company, a corporation, as set forth in an instrument recorded August 27, 1979 as Instrument No. 78500, records of Gooding County, Idaho. Covering: a portion of the SW $\frac{1}{4}$, Section 23, Township 7 South, Range 13 E.B.M.

14. Abstract of Option Agreement executed by Buckeye Farms, Inc., recorded August 28, 1987 as Instrument No. 128954, records of Gooding County, Idaho.

11/3/88 sb

COMMITMENT

Conditions and Stipulations

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate of interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the Insuring provisions, exclusion from coverage, and the Conditions and Stipulations of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest or the lien of the insured mortgage covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this Commitment.



The Title Insurance Commitment is a legal contract between you and the company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT.

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YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, please contact the issuing office.

EXHIBIT D

COMMITMENT FOR TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

AGREEMENT TO ISSUE POLICY

We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions In Schedule A.

The Requirements In Schedule B-1.

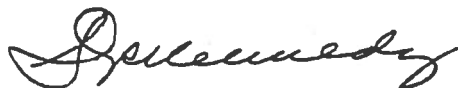
The Exceptions In Schedule B-2.

The Conditions on the other side of this page 1.

This Commitment is not valid without SCHEDULE A and Sections 1 and 2 of SCHEDULE B.



First American Title Insurance Company

BY  PRESIDENT

ATTEST *William C. Zaepke* SECRETARY

BY *Susan M. Batten* COUNTERSIGNED

CONDITIONS

1. DEFINITIONS

(a) "Mortgage" means mortgage, deed of trust or other security instrument. (b) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

2. LATER DEFECTS

The Exceptions in Schedule B - Section 2 may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section 1 are met. We shall have no liability to you because of this amendment.

3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section 1

or

eliminate with our written consent any Exceptions shown in
Schedule B - Section 2.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.

SCHEDULE A

1. Commitment Date: October 31, 1988 at 8:00 A.M. Commitment No: G-00953/E-00582
2. Policy or Policies to be issued: Policy Amount:
 - ☒ (a) Owners Policy (premium will be \$732.00) \$ 180,000.00
Proposed insured:
SPRING VALLEY RANCH, INC., an Idaho corporation
 - ☐ (b) Loan Policy \$
Proposed Insured:
 - ☐ (c) \$
Proposed Insured:
3. A fee simple Interest in the land described in this Commitment is owned, at the Commitment Date, by BUCKEYE FARMS, INC., an Idaho corporation
4. The land referred to in this Commitment is described as follows:
Township 7 South, Range 13 East of the Boise Meridian, Gooding County, Idaho

Section 23: SW $\frac{1}{4}$

Section 26: N $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$

EXCEPTING THEREFROM the parcel of land described as follows:

BEGINNING at the Southwest corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 26;

Thence North and parallel with the East line of Section 26 to the Northwest corner of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ 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 NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 26;

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

SCHEDULE B - Section 1

Requirements

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (e) Release(s) or Reconveyance(s) of Item(s) _____.
- (f) Other
 - 1. We will require a corporate resolution from Spring Valley Ranch, Inc. authorizing the purchase.
 - 2. We will require a corporate resolution from Buckeye Farms, Inc., an Idaho corporation, authorizing the sale and directing the execution of the deed.
 - 3. We will require a Release of Option Agreement executed by Donnie McFadden, releasing the Abstract of Option Agreement.
- (g) You must give us the following information:
 - 1. Any off record leases, surveys, etc.
 - 2. Statement(s) of identity, all parties.
 - 3. Other

SCHEDULE B - Section 2

Exceptions

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

PART I:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. Unpatented mining claims: reservations or exceptions in patents or in acts authorizing the issuance thereof: water rights, claims, or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. General Taxes for 1988 are an accruing lien, not yet due or payable.
(Taxes for 1988 are \$102.12 on receipt #3552 and \$1,130.74 on receipt #3572; receipt #3572 covers this and other lands.)
8. Any assessments levied by a local irrigation district, including but not limited to assessments for delivery of water which was adjudicated by Decree in the District Court of the United States for the District of Idaho Southern Division, dated March 22, 1932, recorded April 19, 1932 in Book 6 Judgments at Page 31, records of Gooding County, Idaho.
9. Agreement pertaining to an easement and maintenance agreement for a buried pipeline by and between F. D. Brown and Florence M. Brown, husband and wife, and L. L. Ormsby and Lillian F. Ormsby, husband and wife, parties of the first part, and W. H. Clifford, party of the second part, dated April 25, 1918, recorded July 21, 1919 in Book 2 Agreements Page 47 as Instrument No. 20006, Gooding County records.
10. Agreement pertaining to an easement and maintenance agreement for a buried pipeline by and between F. D. Brown and Florence M. Brown, husband and wife, L. L. Ormsby and Lillian F. Ormsby, husband and wife, parties of the first part, and W. C. Barton, party of the second part, dated April 24, 1918, recorded July 21, 1919 in Book 2 Page 53 as Instrument No. 20008, Gooding County records.

continued

The following numbered exceptions _____ will be eliminated in an ALTA Extended Coverage Policy.

SCHEDULE B - Section 2

Exceptions Continued

11. Agreement pertaining to an easement and maintenance agreement for a buried pipeline by and between F. D. Brown and Florence M. Brown, husband and wife, and L. L. Ormsby and Lillian F. Ormsby, husband and wife, parties of the first part, and the Odeon Theater Company, a co-partnership consisting of B. R. Shimp, unmarried and S. B. Shimp, unmarried and R. M. Stanton, unmarried, party of the second part, dated April 25, 1918, recorded July 21, 1919 in Book 2 Agreements Page 56 as Instrument No. 20009, Gooding County records.

12. Exceptions and reservations contained in Deed dated January 23, 1956, recorded March 17, 1956 in Book 46 Deeds Page 385, Wilkins & Company, Ltd. a co-partnership et al to Brailsford Brothers, Inc., a corporation, records of Gooding County, Idaho.

Covering: Part of the W $\frac{1}{2}$ NE $\frac{1}{4}$ and part of NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 26, Twp. 7 S., R. 13 E.B.M.

RE: Pipeline for water

13. An Easement for power lines and incidental purposes in favor of Idaho Power Company, a corporation, as set forth in an instrument recorded August 27, 1979 as Instrument No. 78500, records of Gooding County, Idaho. Covering: a portion of the SW $\frac{1}{4}$, Section 23, Township 7 South, Range 13 E.B.M.

14. Abstract of Option Agreement executed by Buckeye Farms, Inc., recorded August 28, 1987 as Instrument No. 128954, records of Gooding County, Idaho.

11/3/88 sb

COMMITMENT

Conditions and Stipulations

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate of interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the Insuring provisions, exclusion from coverage, and the Conditions and Stipulations of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest or the lien of the insured mortgage covered hereby or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this Commitment.

TRANSFER DEED

Buckeye Farms, Inc.
P.O. Box 2199
Sun Valley ID 83353

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, BUCKEYE FARMS, INC., an Idaho corporation, as Grantor, the owner of the following described real property in Gooding County, Idaho, to wit:

T. 7S., 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.

hereby grants and transfers to BUCKEYE FARMS, INC., as Grantee, all of the water rights appurtenant thereof, represented by 65 shares in the Big Bend Irrigation and Mining Company, the appropriate portion of Rights No. 36-003, No. 36-0015, No. 36-0016 and No. 36-0017 in that certain case of New International Mortgage Bank v. Idaho Power Company, Federal District Court of Idaho, Case No. 1602, March 22, 1932, now appurtenant to the above described property, together with all

right in and to Water Permit Nos. 36-7742 and 36-7740, and after the recording of this Deed, said rights to be hereafter appurtenant to other real property owned by the Grantee in Sections 27, 28, 33, 34 and 35, T. 7S., R. 13E., Boise Meridian, Gooding County, Idaho, all as more particularly described on Exhibit "A" hereto, and made a part hereof as if set out at length herein.

Dated this ____ day of _____, 1989.

BUCKEYE FARMS, INC.

By _____
President

ATTEST:

Secretary

STATE OF IDAHO)
) ss.
County of _____)

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: _____

0471m

EXHIBIT "A"

T. 7S., R. 13E., Boise Meridian, Gooding County, Idaho:

Section 26: SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$,
SE $\frac{1}{4}$, SE $\frac{1}{4}$.

Section 35: NE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$; NW $\frac{1}{4}$ NW $\frac{1}{4}$; N $\frac{1}{2}$ SE $\frac{1}{4}$; NE $\frac{1}{4}$ SW $\frac{1}{4}$;

EXCEPTING THEREFROM the following land:

Beginning at the Northeast corner of SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said
Section 35;

Thence North along said Section line 3440 feet;

Thence West 1201 feet;

Thence in a Southeasterly direction 3531 feet, more
or less to a point on the North line of the SE $\frac{1}{4}$ SE $\frac{1}{4}$,
401 feet West of the Point of Beginning;

Thence East 401 feet to the point of beginning.

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"

RELEASE OF MORTGAGE

In consideration of the full payment of that certain Note payable to Buckeye Farms, Inc., by Spring Valley Ranches, Inc., dated January 31, 1989, the receipt of which is hereby acknowledged, Buckeye Farms, Inc., as owners and holders of that certain Mortgage dated January 31, 1989, executed by Spring Valley Ranches, Inc., Mortgagors, to Buckeye Farms, Inc., Mortgagees, and recorded _____ in the office of the County Recorder of Gooding County, State of Idaho, as Instrument No. _____ is fully paid, satisfied, released and discharged.

IN WITNESS WHEREOF, the Undersigned have executed this Release of Mortgage this ____ day of _____, 1989.

BUCKEYE FARMS, INC.

By _____
President

ATTEST:

By _____
Secretary

STATE OF IDAHO)
) ss.
County of _____)

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: _____

0492m

EXHIBIT G

Exhibit B

AGREEMENT

This Agreement is made and entered as of the 28 day of May, 1999 by and between BUCKEYE FARMS, INC., an Idaho Corporation, whose address is 18335 U.S. Highway 30, Hagerman, Idaho 83332, (hereinafter "Buckeye"), WESTERN LEGENDS LC, an Idaho limited liability company, whose address is P.O. Box 737, Hagerman, Idaho, 83332, (hereinafter "Legends") and AQUA LIFE, INC. an Idaho Corporation, whose address is 1128 East 4150 North, Buhl, Idaho 83316, (hereinafter "Aqua Life") as follows:

Recitals

WHEREAS, the parties hereto own parcels of land near Hagerman in Gooding County, Idaho, and have interfaces as to the use of certain water rights; and

WHEREAS, the parties hereto desire to settle all differences as to the use of said water rights between themselves on their respective parcels of land and hereafter to be good and cooperating neighbors; and

WHEREAS, the parties hereto are also parties to SRBA Subcase No. 36-00004 relating to the Billingsley Creek water right no. 36-00004 owned by Legends and desire to settle all of their differences concerning said water right so that it may be decreed by the SRBA Court; and

WHEREAS, it is in the best interest of the parties to delineate their Agreement expeditiously, and in writing;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

I. Legends Curran Water Rights.

Legends owns water right 36-00004 for 15 cfs of Billingsley Creek water diverted into the Curran ditch in the SWNE of Sec. 31, T. 7 S., Range 14 E. B.M., Gooding County, Idaho with a priority date of 9/10/1884 as decreed in the certain case of *New International Mortgage Bank vs. Idaho Power Company*, entered in the Federal District Court for Idaho dated March 22, 1932, (hereinafter *New International*) and has filed claim no. 36-00004 in the Snake River Basin Adjudication (SRBA) which is presently ongoing in the 5th Judicial District for the State of Idaho, in Twin Falls

County Case No. 39576. Legends' claim includes 15 cfs for the irrigation of 416 acres during the irrigation season of February 15 through November 30, 0.21 cfs for stockwater from January 1 through December 31 and 14.1 cfs for wildlife habitat purposes from January 1 through December 31. The parties to this Agreement, together with the other parties to SRBA Subcase No. 36-00004, have signed and filed with the SRBA Court, Standard Form 5's ("SF-5's") whereby the right claimed by Legends in that Subcase is split into two (2) rights, 36-00004 and 36-15534. Copies of these SF-5's are attached hereto as Exhibits 1 and 2 and made a part hereof by this reference.

A. Legends Exchange of Curran Water Rights.

A.1. May 15 - September 15.

Legends will exchange eight (8) cfs of the 36-00004 and 36-15534 rights above referenced to Buckeye to be hereafter diverted from Billingsley Creek into the Curran ditch and into the south Bar S pipeline for the beneficial uses of Buckeye.

A.2. September 15 - May 15.

During this period of use the exchange contemplated would follow the following incremental exchange formula:

- (a) If the flow into the Curran Ditch is greater than 32 cfs, Legends will exchange 8 cfs; or
- (b) If the flow into the Curran Ditch is less than 32 cfs but greater than 27 cfs, Legends will exchange 9 cfs; or
- (c) If the flow into the Curran Ditch is less than 27 cfs, Legends will exchange 10 cfs.

Measurements at the Curran Ditch headgate will be on a weekly basis, recorded by a Buckeye representative and shall be communicated, or made available for inspection to Legends upon request. The measurements shall constitute the number utilized in the above referenced formula. Any dispute regarding measurements shall be mediated by the Water District 36A watermaster. For the purposes of this paragraph, any portions of Buckeye's water right no. 36-00018 which is left in Billingsley Creek pursuant to paragraph IV, below, shall be included in the amount measured as flowing into the Curran Ditch. Buckeye and Legends agree they shall not, without the prior written consent of each other, request the transfer of all or any portion of their water rights nos. 36-00004, 36-15534 or 36-00018 from the Curran Ditch headgate to any other point of diversion.

A.3. Legends distribution of Curran Water Rights 36-00004 and 36-15534.

In addition to the exchange contemplated in Article I.A. above which would permit Buckeye a maximum diversion of thirty (30) cfs when combined with Buckeye's 36-00018 right under I.A.2. (c), if there is not at least 15 cfs for diversion into Curran ditch pursuant

to Legends' 36-00004 right during the irrigation season or 14.1 cfs for diversion into the Curran Ditch pursuant to Legends' 36-15534 right during the rest of the year, the parties shall share the 36-00004 and 36-15534 rights proportionately, as determined by Sections A.1. and A.2 above.

- B. Legends agrees to discharge into either the Big Bend Ditch or the Buckeye Ditch those portions of its water rights nos. 36-00004 and 36-15534 not consumed by Legends' uses, provided, however, that such discharge shall only be made after reasonable notice to Buckeye and if it can be accomplished without pumping and at no additional expense to Legends. Legends agrees to supply and Buckeye agrees to accept this water at the discharge points for ultimate use on Buckeye lands. Buckeye and Legends agree to work with the ditch companies in seeking approval for this discharge and conveyance.
- C. Legends withdrawal of objections and protests.
Legends will withdraw all previous objections and protests to the transfer of Buckeye Water Right 36-00018(Curran Ditch) and 36-00015(Weatherby Springs), and to existing applications and permits filed by Buckeye for water out of Billingsley Creek. Buckeye agrees to take those actions required in the SRBA or otherwise, to remove those lands presently owned by Legends from the place of use for water rights 36-00018 and 36-00015.

II. Buckeye's Buckeye Ditch Water.

Buckeye owns water right no. 36-00003H for 11.9 cfs of Billingsley Creek water diverted into the Buckeye Ditch with a priority date of September 10, 1884 diverted in the SENE of section 11, T.7 South, Range 13 E.B.M. Gooding County, Idaho, as decreed in *New International*, and has obtained partial decree No. 36-00003H to said water in the SRBA. Buckeye also has a permit, 36-08335, with a 1987 priority date for recreation, wildlife habitat and aesthetics.

A. Buckeye's Exchange of part of Buckeye Right 36-00003H and use under permit 36-08335.

A.1. September 15 – February 15.

Buckeye will exchange the equivalent amount of water rights 36-00003H and 36-08335 to Legends in exchange for the amount determined under paragraph I.A.2, above. This amount shall be diverted from Billingsley Creek into the Buckeye Ditch for beneficial use of Legends. Buckeye will do those things necessary to assign the appropriate percentage of Buckeye's interest in the Buckeye Ditch Company, including but not limited to responsibility for maintenance of the Buckeye Ditch to Legends, and support Legends efforts to obtain permission to construct and operate a new headgate so as to divert said water from said ditch on the Legends property.

A.2. February 15 – May 15.

Buckeye will exchange the equivalent amount of water rights 36-00003H and 36-08335, less the amount of Buckeye's Weatherby Springs water rights actually delivered into the Bar S Ditch for the beneficial use of Legends as described in paragraph III, below, to Legends in exchange for the amount determined under paragraph I.A.2, above. This amount shall be diverted from Billingsley Creek into the Buckeye Ditch for beneficial use of Legends.

A.2. May 15 – September 15.

Buckeye will exchange 8.0 cfs of water rights 36-00003H and 36-08335, less the amount of Buckeye's Weatherby Springs water rights actually delivered into the Bar S Ditch for the beneficial use of Legends as described in paragraph III, below, to be diverted into the Buckeye Ditch for the beneficial uses of Legends.

III. Buckeye's Weatherby Springs Water.

Buckeye owns Water Right 36-00015 for 6.5 cfs of Weatherby Springs Water diverted into the Bar S Ditch with a priority date of March 8, 1902 as decreed in *New International*, and has obtained a partial decree, 36-00015 to said water in the SRBA.

A. Buckeye's transfer of a part of Buckeye Right No. 36-00015.

Buckeye shall take all appropriate steps to obtain a transfer of 4.5 cfs of Buckeye Right 36-00015 with its source from Weatherby Springs to a diversion point at the Buckeye Ditch headgate. Buckeye will seek permission of the Buckeye Ditch Company and property owners through which the Buckeye Ditch runs. The filing of this transfer shall take place upon the completion of this Agreement. The parties will support the application. However, enforcement of this Agreement is not dependent upon the approval of the transfer by the Idaho Department of Water Resources.

B. Buckeye will exchange Weatherby Springs Right from February 15 - September 15.

Buckeye will exchange 2.0 cfs of the 36-00015 Buckeye Right to Legends to be hereafter diverted from Weatherby Springs into the Bar S Ditch and the Curran Ditch for beneficial uses of Legends. This exchange, together with the 36-00003H and 36-08335 exchange water shall constitute the total amount of water to be exchanged for Legends' Curran water.

IV. Buckeye's Curran Water Right.

Buckeye owns water right 36-00018 for 20 cfs of Billingsley Creek water diverted into the Curran ditch in the SWNE of Sec. 31, T.7 S., Range 14 E. B.M. Gooding County, Idaho, with a priority date of April 1, 1917 as decreed in the certain case of *New International Mortgage Bank vs. Idaho Power Company*, entered in the Federal District Court for Idaho dated March 22, 1932, and has filed and been partially decreed, right no 36-00018 in the SRBA.

A. Pursuant to a previous agreement dated February 17, 1998 between Buckeye and Aqua Life, Buckeye agreed to leave 15 cfs of the 36-00018 water right in Billingsley Creek from the beginning of the irrigation season, February 15 until June 1 as mitigation due to declining spring flows, for beneficial use through Aqua Life's fish facility subject to the conditions of paragraph IV.C. Under the terms of February 17, 1998 agreement Aqua Life agreed to subordinate its Billingsley Creek water rights to Buckeye's Curran Ditch permits from October 1- February 1 of each year. The parties to that agreement recognized Buckeye's prior obligation to leave 10 cfs of the 36-00018 right in Billingsley Creek until May 15 in resolution of the 36-07742 permit.

B. Upon the execution of this Agreement, Buckeye hereby agrees to leave in Billingsley Creek an additional 5 cfs of its 36-00018 water right from February 15 until June 1 as mitigation due to declining spring flows, subject to the conditions of paragraph IV.C.

C. The parties acknowledge that to the extent that flows in Billingsley Creek are sufficient to fulfill Aqua Life's rights, Buckeye shall not be obligated to turn back water into Billingsley Creek under paragraphs A & B of this paragraph IV. Further, the parties agree that to the extent that Aqua Life can not put the water to beneficial uses contemplated under its existing fish propagation rights, Buckeye shall not be obligated to deliver the water.

V. Delivery Calls.

In the event that flows available for diversion into the Curran Ditch as measured at the Curran Ditch headgate fall below 15 cfs, based upon an average flow over a thirty (30) day period, Legends shall make a delivery call for its water right no. 36-00004 and Buckeye shall make a delivery call for its water right no. 36-00018. In the event that flows available for diversion into the Buckeye Ditch fall below the level at which the full amount of Buckeye's water right no. 36-00003H is deliverable, based upon an average flow over a thirty (30) day period, Buckeye shall make a delivery call for this water right. Such delivery calls shall be made pursuant to all applicable rules of the Idaho Department of Water Resources ("IDWR") and shall be diligently pursued by the party making the call. The parties hereto acknowledge and agree that certain Western Legends' water rights, including, without limitation, Water Right Nos. 36-00004 and 36-15534, are subject to the terms and conditions of the Water Right Agreement between Western Legends and certain ground water pumpers dated September 16, 1998 (the "Ground Water Pumpers Agreement"), copies of which have been provided to both Buckeye and Aqua Life. Legends' obligation to make a delivery call pursuant to this Agreement shall be subject to the terms and conditions of the Ground Water Pumpers Agreement. The parties hereto recognize and confirm that the ground water right holders and their representatives who are parties to the Ground Water Pumpers Agreement are not parties to, and are not bound by or in any way subject to, this Agreement.

VI. Cooperation of the Parties.

The parties hereto agree to not oppose the confirmation of each other's water rights in the SRBA, the transfer of water rights by Buckeye, and formalization of the exchange of water as herein agreed, and to execute such documents as are necessary for such results. In carrying out the exchange of water rights pursuant to this Agreement, the parties shall use each other's water rights only for the beneficial uses for which such rights are decreed, permitted or licensed, as the case may be.

VII. Default.

In the event of a breach of this Agreement, and failure of the defaulting party to cure the breach within a reasonable time after written notice from the non-defaulting party or parties, the party found in default shall be responsible for all costs, attorney fees and damages incurred by the other party in the enforcement thereof, including, but not limited to providing mitigation in the form of substitute water, if necessary, as a result of said breach together with reasonable associated costs of said mitigation.

VIII. Notice.

All notices and communications under this Agreement shall be in writing and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, addressed in each case to the party's address set forth in the introductory paragraph of this Agreement, or (iii) sent by facsimile with the original to follow by mail in the manner described above. It is provided, however, that any party may change its respective address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party hereto in the manner provided above. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if sent by overnight, express carrier, on the next business day immediately following the day sent, (ii) if sent by registered or certified mail, on the third business day following the day sent or (iii) if sent by facsimile on the date so sent.

IX. Maintenance of the Curran Ditch.

Buckeye and Legends hereby agree to split their cost of maintaining the Curran Ditch from its head gate to the South Bar S pipeline diversion according to the following percentages: Buckeye – 75% and Legends – 25%. Cleaning of the Ditch shall occur at least twice yearly, once in April and again in August, depending upon the Ditch conditions. Further, the Parties agree that based upon 1998 costs and the exchange contemplated herein, a reasonable allocation of expenses necessary for each cleaning shall be \$500 to Legends and \$1500 to Buckeye. The expenses shall be due on the 15th day of the month preceding the Ditch cleaning. In the event either party fails to make payment as contemplated by this paragraph within 20 days of said due date, that party shall be

considered in default under the provisions of paragraph VII.

X. Assignment and Modification.

The parties acknowledge that this Agreement resolves Aqua Life Life's and Buckeye's objections as to water right 36-00004. This Agreement may not be modified without the express written consent of the parties or their successors or assigns. Further, all of the terms and conditions of this Agreement shall be covenants running with the land, which shall enure to the benefit of the properties of the parties hereto, as described herein, and shall be binding upon the parties hereto and all their assigns and successors in interest.

XI. Measuring Devices.

Legends and Buckeye agree to share equally the expenses associated with the installation and maintenance of Measuring Devices as agreed upon by both parties.

XII. Recording Agreement.

This Agreement shall be recorded in the records of Gooding County, Idaho.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

Buckeye Farms, Inc.

By: John A. Burke
Its: President

Western Legends L.C.

By: William F. Roman
Its: Co-Manager

Aqua Life, Inc.

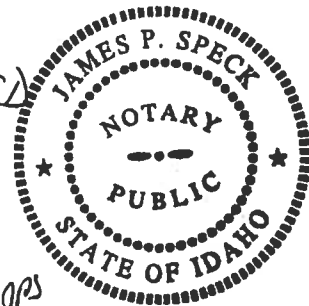
By: [Signature]
Its: Pres.

STATE OF IDAHO)
) ss.
County of Blaine)

On this 28 day of May, 1999, before me, the undersigned, a notary public in and for said state, personally appeared John A. Burke, known or identified to me to be the president of Buckeye Farms, Inc., the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

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

[Signature]
Notary Public for Idaho
Residing at: Blaine County, ID
Comm. Expires: 1/29/2003



STATE OF IDAHO)
) ss.
County of Blaine)

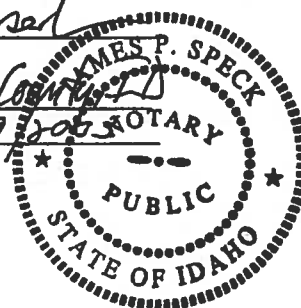
On this 1st day of June, 1999, before me, the undersigned notary public in and for said state, personally appeared William F. Lehman known or identified to me to be one of the members in Western Legends, LC, an Idaho limited liability company, and the member or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he executed the same in said limited liability company name.

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

J.P. Speck
Notary Public for Idaho

Residing at: Blaine County ID

Comm. Expires: 1/29/2005



STATE OF IDAHO)

County of T. FAIRBANKS) ss.
Blaine)

On this 11 day of ^{June} ~~May~~, 1999, before me, the undersigned, a notary public in and for said state, personally appeared Kenneth Ellis, known or identified to me to be the president of Aqua Life, Inc., the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

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

Rosella Rabeneri
Notary Public for Idaho
Residing at: Idaho
Comm. Expires: 7-15-2000

Exhibit C

