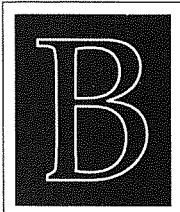


6/6/2012  
\$ 0.5 RT

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DEPARTMENT OF  
WATER RESOURCES



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Hydraulics

Hydrology

Water Resources

June 5, 2012

Nick Van Dyke  
Idaho Department of Water Resources  
Idaho Water Supply Bank  
P.O. Box 83720  
Boise, ID 83720-0098

Re: Lance Funk Rentals

Dear Mr. Van Dyke:

On behalf of our client, Lance Funk, we are submitting six applications to rent water from the Idaho Water Supply Bank. The six applications cover the Huse, Burgemeister, Stewart and NPVR farms.

The Huse Farm is broken down into three different rental applications due to well and field locations.

**Huse 1**

This rental application is for 168.7 acres or 3.4/618 cfs/afa that will be diverted from a well located in Township 7 South Range 28 East Section 1 SWSWSE (ESPA Model cell 84090). The POD and land to be irrigated is owned by Lance and Lisa Funk.

The water rights and amounts proposed to be rented are 35-14080, 35-14083, 35-14088 and 35-14091 for 120.0 acres from Cell 77107, 35-13608 for 5.0 acres from Cell 77105, 35-35-2553B for 28.0 acres from Cell 92099 and 35-7788B for 15.7 acres from Cell 81108.

**Huse 2**

This rental application is for 369.1 acres or 7.4/1349 cfs/afa that will be diverted from a well located in Township 7 South Range 29 East Section 07 NENENW (ESPA Model cell 85091).

The water rights and amounts proposed to be rented are 35-2713 for 40.8 acres from Cell 80107, water rights 35-7169, 35-7373 and 35-10422 for 46.6 acres from Cell 80107, 36-2467 for 27.8 acres from Cell 78074, 35-14014 and 35-14015 for 158.7 acres from Cell 95118 and 35-14058 and 35-14056 for 95.2 acres from Cell 92099. Rental of water from 35-14014 and 35-14015 is

CHARLES E.  
BROCKWAY,  
PH.D., P.E.

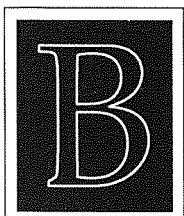
CHARLES G.  
BROCKWAY,  
PH.D., P.E.

2016 NORTH  
WASHINGTON  
STREET • SUITE 4

TWIN FALLS,  
IDAHO 83301

208•736•8543

FAX: 736•8506



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based on the combined diversion rate of two water rights of 8.5 cfs and not the combined volume of the two water rights.

### **Huse 3**

This rental application is for 75.8 acres or 1.5/303.2 cfs/afa that will be diverted from a well located in Township 7 South Range 29 East Section 8 SWNESW (ESPA Model cell 85091).

The water rights and amounts proposed to be rented for this farm are 35-2553A for 41.7 acres from Cell 80107, 35-14058 and 35-14056 for 25.8 acres from Cell 92099 and Simplot for 8.3 acres from Cell 81108.

### **Burgemeister**

This rental application is for 563.0 acres or 11.3/2252 cfs/afa that will be diverted from a well located in Township 6 South Range 29 East Section 34 NWNWNW (ESPA Model cell 84092).

The water rights and amounts proposed to be rented are 35-14014 and 35-14015 for 266.3 acres from Cell 95118, 35-2351, 35-2553B and 35-7372 for 4.9 acres from Cell 81108, 35-2713 for 9.7 acres from Cell 80107, 35-7373 for 1.6 acres from Cell 80107, 35-7788B for 16.5 acres from Cell 92099 and 35-13609, 35-7246M and 35-7632A for 264.0 acres from Cell 78111. Rental of water from 35-14014 and 35-14015 is based on the combined diversion rate of two water rights of 8.5 cfs and not the combined volume of the two water rights.

### **Stewart**

This rental application is for 130.1 acres or 2.6/520.4 cfs/afa that will be diverted from a well located in Township 4 South Range 31 East Section 16 SENESW (ESPA Model cell 78111). This rental is in response to a Notice of Violation.

The water rights and amounts proposed to be rented are 35-14058 and 35-14056 for 80.0 acres from Cell 92099, 35-7788A for 40.0 acres from Cell 92099 and 35-7788B for 10.1 acres from Cell 92099.

### **North Pleasant Valley Road (NPVR)**

This rental application is for 659.0 acres or 13.2/2636 cfs/afa that will be diverted from a well located in Township 7 South Range 29 East Section 5 NENWNE (ESPA Model cell 84094).

CHARLES E.  
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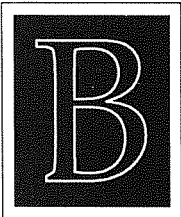
CHARLES G.  
BROCKWAY,  
PH.D., P.E.

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The currently identified water rights and amounts proposed to be rented are 35-2824 for 121.0 acres from Cell 80122, 35-7788B for 61.4 acres from Cell 92099 and 35-14058 and 35-14056 for 22.5 acres from Cell 92099.

Additional water rights are being identified and lease applications prepared to fulfill the water requirement for the rental of the remaining portions of the 659.0 acres on the NPVR farm. As soon as the lease applications are signed, a electronic copy will be emailed to the Idaho Water Supply Bank and the original copies will be mailed.

Through correspondence with Monica Van Bussum, it was decided that IDWR would prefer to have the ESPA Model analysis be performed from the historical place of use of 35-14014 and 35-14015. The historical place of use was at the old FMC fertilizer plant in Pocatello. The point of diversion for FMC is located in ESPA model cell 950118. Transfer 75147 changed the point of diversion, place of use and the ownership of water rights 35-14014 and 35-14015.

ESPA model data and analysis for these rental applications will be posted on the IDWR ftp site to enable the water bank to review the ESPA model analysis.

Aerial maps of each of the five rental applications have been submitted to IDWR.

Please copy our office on all correspondence regarding these applications.

Sincerely,

Greg Sullivan, M.S., E.I.T.

Cc: Lance Funk  
Enc: Rental Applications, Aerial Maps, Farm Lease Agreements

CHARLES E.  
BROCKWAY,  
PH.D., P.E.

CHARLES G.  
BROCKWAY,  
PH.D., P.E.

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**JUN 06 2012**  
DEPARTMENT OF  
WATER RESOURCES

Water Supply Bank No. \_\_\_\_\_  
(For Department Use Only)

STATE OF IDAHO  
WATER RESOURCE BOARD

**APPLICATION TO SELL OR LEASE A WATER RIGHT  
TO THE WATER SUPPLY BANK**

Name of Seller/Lessor David Bethke Phone \_\_\_\_\_

Mailing address 3149 Rast Road American Falls, Idaho 83211 Email \_\_\_\_\_

**A. DESCRIPTION OF WATER RIGHT, OR PORTION THEREOF, OFFERED TO THE BANK**

If the entire right is for sale or lease, show "ALL" below and skip the remainder of part A. Attach a copy of the water right report.

1. <u>Water Right Number</u>	<u>Amount (cfs/ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>35-7788A</u>	_____	_____	_____ to _____
	_____	_____	_____ to _____
	_____	_____	_____ to _____
Total Amount: _____			

2. Source of water \_\_\_\_\_ tributary to \_\_\_\_\_

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County

4. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				

If the right is for irrigation, show total number of acres offered to the bank. **Total Acres** \_\_\_\_\_

**B. OWNERSHIP**

1. Are you currently listed in IDWR's records as the owner of the water right being offered to the bank? Yes  No   
**If no**, provide documentation of your authority to sign on behalf of the right holder OR attach a Notice of Change in Water Right Ownership form along with the required documentation and fee.

2. Is the water right appurtenant to land subject to any liens, deeds of trust, mortgages, or contracts? Yes  No   
**If yes**, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes and list name of entity: \_\_\_\_\_

**C. GENERAL INFORMATION**

1. Please provide a description of the current diversion system.

Existing wells, mainlines and irrigation systems

2. Describe any other water rights used for the same purpose or at the same place of use as described above.

35-14056, 35-7788B, 35-14058, 35-7788A

3. Will the present place of use continue to receive water from any source?

Yes  No

If yes, describe. Aberdeen Springfield Canal Shares

4. Has any portion of this water right undergone a period of five or more consecutive years of non-use?

Yes  No

If yes, describe and attach watermaster records or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code.

5. Is this water right involved in any other Department process such as an application for transfer or a mitigation plan? Yes  No

If yes, describe.

**D. SALE/LEASE AGREEMENT**

1. Is the water right, or portion thereof, described above offered to the Idaho Water Resource Board for sale  or lease ?

If Lease, for a period from 5/1/2012 to 5/1/2017 (not to exceed 5 years).  
(Month / Day / Year) (Month / Day / Year)

2. Show the minimum payment acceptable to the Seller/Lessor. The minimum payment may be shown as the "current rental rate" as established by the Idaho Water Resource Board. Include the method of determining the minimum payment if other than the current rental rate. current rental rate

**I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this right for sale or lease to the Idaho Water Resource Board.**

The owner/lessor acknowledges the following:

1. Payment to the owner/lessor is contingent upon the sale or rental of the right from the bank.
2. While a right is in the bank, the owner/lessor of the right may not use the right even if the right is not rented from the bank.
3. A right accepted into the bank stays in the bank until the Board releases it or the lease term expires.
4. While a right is in the bank, forfeiture provisions are stayed.
5. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right.

David Bethke  
Signature of Applicant

David Bethke  
Printed Name and Title\*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Printed Name and Title\*

\_\_\_\_\_  
Date

\*Please provide title of signatory if signing on behalf of a company or organization or with power of attorney














**LANCE FUNK - WSB LEASE 2012**  
**WR 35-7788A, 35-7788B, 35-14056, 35-14058**  
**NAIP 2011 AERIAL**

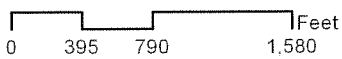
0 395 790 1,580 Feet

BROCKWAY ENGINEERING, PLLC.  
 ALR - MAY 7, 2012

**Legend**

- |  |  |   |   |
|--|--|---|---|
|  first  |  WR_POB             |  WR_TO_WSB__2012 |  35, 7788, B |
|  twshp  |  35-7788A, 35-7788B |  35, 14056,      |  35, 14058,  |
|  ladesc |  35-14056, 35-14058 |  35, 7788, A     |   |





**LANCE FUNK - WSB LEASE 2012**  
**WR 35-7788A, 35-7788B, 35-14056, 35-14058**  
**NAIP 2011 AERIAL**

BROCKWAY ENGINEERING, PLLC.  
ALR - MAY 7, 2012

**Legend**

first	WR_POD	35, 7788, B
twnshp	35-7788A, 35-7788B	35, 14058
ladesec	35-14056, 35-14058	35, 7788, A



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JUN 06 2012

DEPARTMENT OF  
WATER RESOURCES

Water Supply Bank No. \_\_\_\_\_  
(for Department use only)

STATE OF IDAHO  
WATER RESOURCE BOARD

APPLICATION TO RENT WATER  
FROM THE WATER SUPPLY BANK

Name of Renter Lance and/or Lisa Funk Phone 208-226-5551

Mailing address 2960 Cedar Ln American Falls, Idaho 83211 Email \_\_\_\_\_

**A. DESCRIPTION OF WATER SOUGHT FOR RENT**

1. <u>Maximum Flow Rate (cfs)</u>	<u>Maximum Volume (ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>	
<u>2.6</u>	<u>520.4</u>	<u>Irrigation</u>	<u>5/01</u>	to <u>10/31</u>
_____	_____	_____	_____	to _____
_____	_____	_____	_____	to _____
Total: <u>2.6</u>	<u>520.4</u>			

2. Source of water Ground Water tributary to \_\_\_\_\_

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
04S	31E	16		SE	NE	SW	Power County

4. Lands to be irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
04S	31E	16																		130.1

If the use is for irrigation, show total number of acres proposed through rental. **Total Acres** 130.1

**B. OWNERSHIP**

1. Do you own the land at the proposed point of diversion?  
 Yes \_\_\_\_\_ No X **If no**, list owner, contact information, and provide documentation of the authority to use the proposed point of diversion. Reed Stewart 3100 W 1000 S Aberdeen, Id 83210 208-220-8000

2. Do you own the land at the proposed place of use?  
 Yes \_\_\_\_\_ No X **If no**, list owner, contact information, and provide documentation of the authority to use the proposed place of use. \_\_\_\_\_

**C. MAP**

Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described by this application in section A. Include legal description labels.

**D. GENERAL INFORMATION**

1. Please provide a description of the proposed diversion system. Existing well, pump, main lines, and delivery system

---

2. Describe any other water rights diverted through the same point(s) of diversion or used for the same purpose(s) as described above. These water rights are currently leased to the Idaho water supply bank 35-13609, 35-7246M, 35-7632A

---

3. Will the proposed place of use receive water from any other source?  
No  Yes \_\_\_\_\_ If yes, describe. \_\_\_\_\_

---

4. If the proposed use is not for irrigation, please provide a detailed description of the proposed use and how you determined the amount of water required. Attach additional sheets if needed. N/A

---

5. Are there any other applications pending before the Department, such as an application for permit or transfer, for the same use(s) proposed by this rental?  
No  Yes \_\_\_\_\_ If yes, describe. \_\_\_\_\_

---

6. Was this rental application submitted in response to a Notice of Violation or a pending Notice of Violation?  
No \_\_\_\_\_ Yes  If yes, describe. May 4, 2012 letter to Reed Stewart from Robert Whitney.

---

**E. RENTAL TERM**

1. Do you wish to rent water from the Board's bank for more than one (1) year?  
No  Yes \_\_\_\_\_  
If yes, please specify the number of years desired through proposed rental. \_\_\_\_\_

**I hereby assert that the information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.**

If this application is approved, the applicant agrees to the following:

1. The use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code.
2. Renter shall comply with all applicable state and federal laws while using water under this agreement.
3. Renter shall hold the Board, the Director, and the state of Idaho harmless from all liability on account of negligent acts of the renter.
4. The Director may terminate diversion of water if the Director determines there is not a sufficient water supply for the priority of the right or portion thereof being rented.
5. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
6. Renter is not authorized to use water proposed by this application until the rental fees are paid in full and the renter receives an executed copy of the agreement signed by the Director.

\_\_\_\_\_  
Signature of Applicant

Carrie Furez  
Printed Name and Title\*

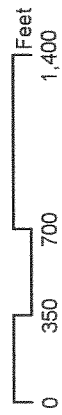
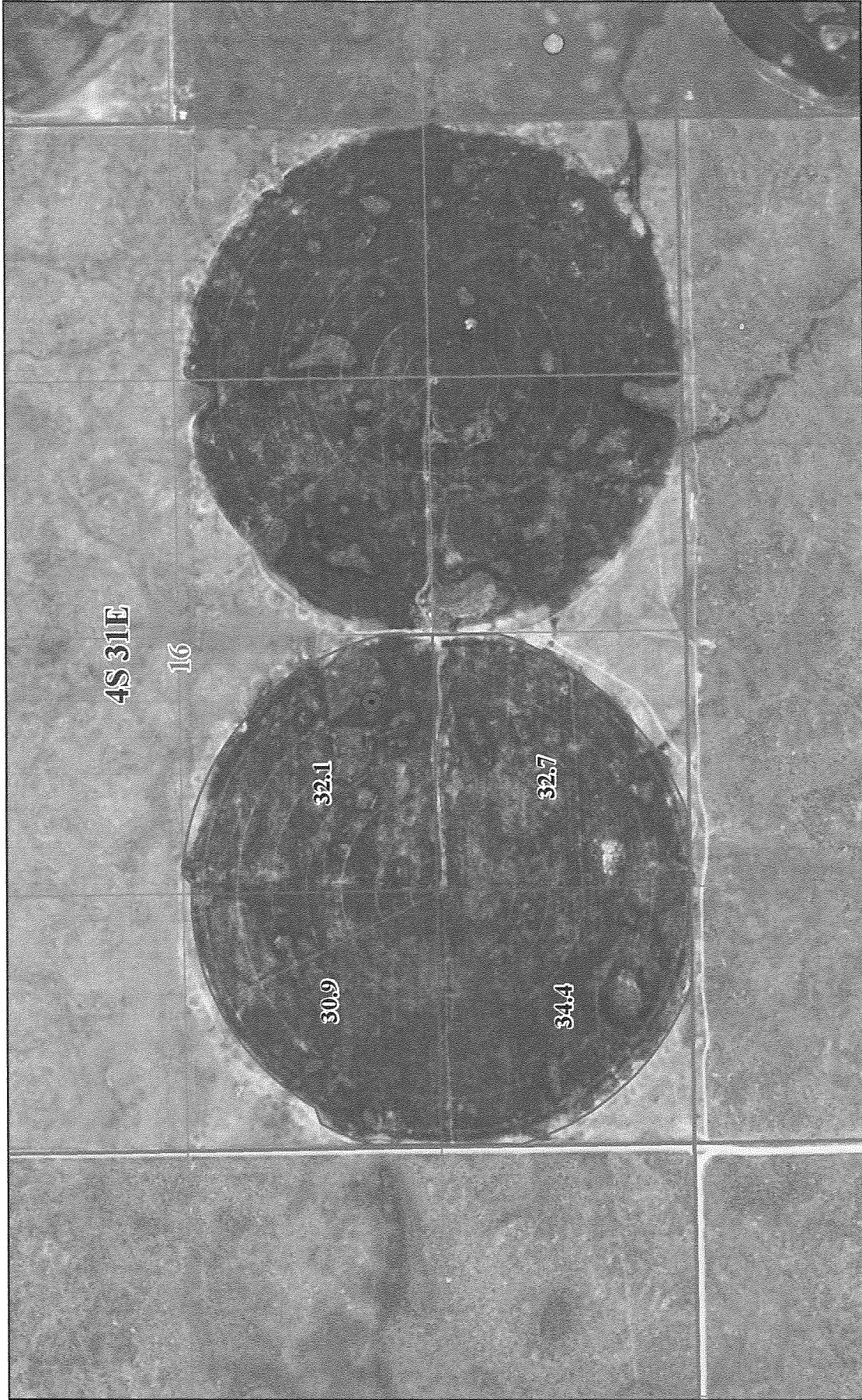
5-6-12  
Date

\_\_\_\_\_  
Signature of Applicant

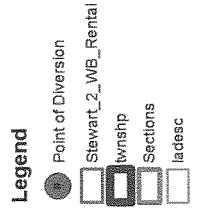
\_\_\_\_\_  
Printed Name and Title\*

\_\_\_\_\_  
Date

\*Please provide title of signatory if signing on behalf of a company or organization or with power of attorney



**FUNK - STEWART FARM 2  
WATER BANK RENTAL 2012  
NAIP 2011 AERIAL**



## Real Estate Lease

This Lease agreement (this "Lease") is dated October 21, 2008 by and between Superior LLC ("Landlord"), and Lance Funk Farms ("Tenant"). The parties agree as follows:

**Premises:** Landlord in consideration of the lease payments provided in this Lease leases to Tenant 305 acres of farmland (the "Premises") The Premises is located in Bingham County.

**Legal Description:** The legal description for the Premises is:

T4S R31E S1/2 S16

**Term:** The lease term will begin on October 1, 2008 and will terminate November 15, 2019.

**Lease Payments:** The grand total for the lease is [REDACTED] If Lance Funk Farms uses the pump and motor Lance Funk Farms agrees to pay Superior LLC an additional [REDACTED] per acre per year on the 264 irrigated acres. Lance Funk Farms will rent any additional water for [REDACTED] per acre per year. This total is to be paid in installments as described in Schedule A.

**Possession:** Tenant shall be entitled to possession on the first day of the term of the lease, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed to by both parties in writing. At expiration of the term, Tenant shall remove its goods and effects and peaceably yield up the Premises to Landlord in as good a condition as when delivered to Tenant, ordinary wear and tear excepted.

**Use of Premises:** Tenant may use the Premises only for the production of wheat, peas, corn, potatoes, sugar beets and barley. The Premises may be used for any other purpose only with prior written consent of Landlord which may not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises no later than the first day of the extended absence.

**Property Insurance:** Landlord and Tenant shall each maintain appropriate insurance for their respective interests in the Premises and property located on the Premises. Landlord shall be named as and additional insured in such policies. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force issued by companies reasonably satisfactory to Landlord. Landlord shall receive advance written notice from insurer prior to any termination of such insurance policies. Tenant shall also maintain any other insurance which Landlord may reasonably require for the protection of Landlord's interest in the Premises. Tenant is responsible for maintaining casualty insurance on its own property.

**Liability Insurance:** Tenant shall maintain liability insurance on the Premises in total aggregate sum of at least [REDACTED] Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force issued by companies reasonably satisfactory to Landlord. Landlord shall receive advance written notice from insurer prior to any termination of such insurance policies.

LF      RLS  
L.F.      R.S.

**Maintenance:**

Landlord's obligations for maintenance shall include:

- Landlord is responsible for pump, bowls, panel, and motor repairs under this lease

Tenant's obligations for maintenance shall include:

- the Tenant will repair or replace equipment or property that is damaged or destroyed by himself, his employees, invitees, guests, or agents
- the repair and upkeep of the sprinkler system
- all items of maintenance not specifically delegated to the Landlord under this lease
- Monitor and maintain the dripper oil on the irrigation system

**Utilities and Services:** Lessee shall be responsible for all utilities and services incurred in connection with the Premises.

**Taxes:** Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

Real Estate Taxes: Landlord shall pay all real estate taxes and assessments for the Premises.

**Defaults:** Tenant shall be in default of this lease if Tenant fails to fulfill any obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 5 days (or any other obligation within 10 days) after written notice of such default is provided by Landlord to Tenant, Landlord may immediately take possession of the Premises without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or no such sums or charges are designated as "additional rent." The rights provided by this paragraph are cumulative in nature and are in addition to any other rights afforded by law.

**Late Payments:** Payments not paid within 3 days of its due date shall bear interest at 18% per annum until paid beginning with the day after the due date.

**Cumulative Rights:** The rights of the parties under this lease are cumulative, and shall not be constructed as exclusive unless otherwise required by law.

**Non-sufficient Funds:** Tenant shall be charged [REDACTED] for each check that is returned to Landlord for lack of sufficient funds.

**Access by Landlord to Premises:** Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the Premises to prospective buyers, mortgagees, tenant, or workers. However, Landlord does not assume any liability for the care or supervision of Premises. As provided by law, in case of an emergency, Landlord may enter the Premises without Tenant's

CF      RSJ  
L.F.      R.S.

consent. During the last three months of the Lease, or any extension of the Lease, Landlord shall be allowed to display the usual "To Let" signs and show the Premises to prospective tenants.

**Indemnity Regarding Use of Premises:** To the extent permitted by law, Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees if any, which Landlord may suffer or incur in connection with Tenant's possession, use or misuse of the Premises, except Landlord's act or negligence.

**Compliance with Regulations:** Tenant shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters.

**Arbitration:** Any controversy or claim relating to this Lease, including the construction or application of this Lease, will be settled by binding arbitration under the rules of the American Arbitration Association, and any judgment granted by the arbitrator(s) may be enforced in any court of proper jurisdiction.

**Notice:** Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

Landlord:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tenants:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Such addresses may be changed from time to time by either party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after posting.

**Governing Law:** This Lease shall be construed in accordance with the laws of the State of Idaho.

**Entire Agreement/Amendment:** This Lease Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

**Severability:** If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provisions, it

LF   
L.F. R.S.

would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**Waiver:** The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limited of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

**Binding Effect:** The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

**Landlord:**

Reid S. Reid Date 3-16-09

**Tenant:**

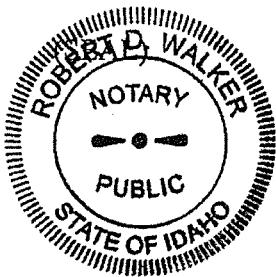
Reid S. Reid Date 3-16-09

Reid will continue to collect the CRP amount on the 41 acres of the corners throughout the lease.

STATE OF IDAHO )  
                          ) ss.  
County of Power )

On this 16<sup>th</sup> day of March, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared, known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

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



Robert D. Walker  
Notary Public for Idaho  
Residing at: IDAHO FALLS ID  
Commission expires: 10-29-2011

L.F. R.S.  
L.F. R.S.

**Schedule A**

3 years up front  
10 year lease

264 wet  
41.1 corners

Month/Day	Year	Amount Due	Crop Year
November 15	2008	██████████	2009, 2010, 2011
October 15	2009	██████████	2012
October 15	2010	██████████	2013
October 15	2011	██████████	2014
October 15	2012	██████████	2015
October 15	2013	██████████	2016
October 15	2014	██████████	2017
October 15	2015	██████████	2018
October 15	2016	No payment - Prepaid November 2008	
October 15	2017	No payment - Prepaid November 2008	
October 15	2018	No payment - Prepaid November 2008	
Total		██████████	

+ \$200 for pump.

If Lance uses the pump and motor he agrees to pay Reid an additional ██████████ per acre per year on the 264 irrigated acres. Lance will rent any additional water for ██████████ per acre per year. If due the additional payment will be paid October 15 of the year it was used.

If property taxes increase, <sup>+ assessments</sup> Funk Farms agrees to pay the difference between the current rate and the new rate. *CF*

*CF*      *RS*  
\_\_\_\_\_  
L.F.      R.S.

## Real Estate Lease

This Lease agreement (this "Lease") is dated July 15, 2008 by and between Superior LLC ("Landlord"), and Lance Funk Farms ("Tenant"). The parties agree as follows:

**Premises:** Landlord in consideration of the lease payments provided in this Lease leases to Tenant 468 acres of farmland (the "Premises") and 264 acres of water permits. The Premises and water permits are located in Bingham County.

**Legal Description:** The legal description for the Premises is:

A portion of T4S R30E Sec 23 & Sec 26 as described in Schedule B

Water Permit Nos: 35-7246M (205 acres); 35-7632A (2 acres); 35-13609 (57 acres)


**Term:** The lease term will begin on October 1, 2008 and will terminate November 1, 2019.

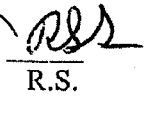
**Lease Payments:** The grand total for the lease is [REDACTED]. The land portion is [REDACTED] and the water portion is [REDACTED]. This total is to be paid in installments as described in Schedule A.

**Possession:** Tenant shall be entitled to possession on the first day of the term of the lease, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed to by both parties in writing. At expiration of the term, Tenant shall remove its goods and effects and peaceably yield up the Premises to Landlord in as good a condition as when delivered to Tenant, ordinary wear and tear excepted.

*Tenant responsible for return of water rights. R.S.*  
**Use of Premises:** Tenant may use the Premises only for the production of wheat, peas, corn, potatoes, sugar beets and barley. The Premises may be used for any other purpose only with prior written consent of Landlord which may not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises no later than the first day of the extended absence.

**Property Insurance:** Landlord and Tenant shall each maintain appropriate insurance for their respective interests in the Premises and property located on the Premises. Landlord shall be named as and additional insured in such policies. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force issued by companies reasonably satisfactory to Landlord. Landlord shall receive advance written notice from insurer prior to any termination of such insurance policies. Tenant shall also maintain any other insurance which Landlord may reasonably require for the protection of Landlord's interest in the Premises. Tenant is responsible for maintaining casualty insurance on its own property.

  
L.F.

  
R.S.

**Liability Insurance:** Tenant shall maintain liability insurance on the Premises in total aggregate sum of at least [REDACTED] Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force issued by companies reasonably satisfactory to Landlord. Landlord shall receive advance written notice from insurer prior to any termination of such insurance policies.

**Maintenance:**

Landlord's obligations for maintenance shall include:

- Landlord is responsible for pump, bowls, panel, and motor repairs under this lease

Tenant's obligations for maintenance shall include:

- the Tenant will repair or replace equipment or property that is damaged or destroyed by himself, his employees, invitees, guests, or agents
- the repair and upkeep of all minor items up to [REDACTED] per item of the sprinkler system
- all items of maintenance not specifically delegated to the Landlord under this lease
- Monitor and maintain the dripper oil on the irrigation system

**Utilities and Services:** Lessee shall be responsible for all utilities and services incurred in connection with the Premises. Landlord shall only pay AF -Aberdeen groundwater user association up to [REDACTED] per acre. Tenant shall be responsible for fees exceeding the [REDACTED] per acre.

**Taxes:** Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

Real Estate Taxes: Landlord shall pay all real estate taxes and assessments for the Premises.

**Defaults:** Tenant shall be in default of this lease if Tenant fails to fulfill any obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 5 days (or any other obligation within 10 days) after written notice of such default is provided by Landlord to Tenant, Landlord may immediately take possession of the Premises without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or no such sums or charges are designated as "additional rent." The rights provided by this paragraph are cumulative in nature and are in addition to any other rights afforded by law.

**Late Payments:** Payments not paid within 3 days of its due date shall bear interest at 18% per annum until paid beginning with the day after the due date.

  
L.F.

  
R.S.

**Cumulative Rights:** The rights of the parties under this lease are cumulative, and shall not be constructed as exclusive unless otherwise required by law.

**Non-sufficient Funds:** Tenant shall be charged [REDACTED] for each check that is returned to Landlord for lack of sufficient funds.

**Access by Landlord to Premises:** Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the Premises to prospective buyers, mortgagees, tenant, or workers. However, Landlord does not assume any liability for the care or supervision of Premises. As provided by law, in case of an emergency, Landlord may enter the Premises without Tenant's consent. During the last three months of the Lease, or any extension of the Lease, Landlord shall be allowed to display the usual "To Let" signs and show the Premises to prospective tenants.

**Indemnity Regarding Use of Premises:** To the extent permitted by law, Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses' claims, liabilities, and expenses, including reasonable attorney fees if any, which Landlord may suffer or incur in connection with Tenant's possession, use or misuse of the Premises, except Landlord's act or negligence.

**Compliance with Regulations:** Tenant shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters.

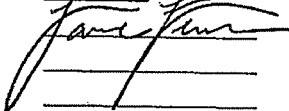
**Arbitration:** Any controversy or claim relating to this Lease, including the construction or application of this Lease, will be settled by binding arbitration under the rules of the American Arbitration Association, and any judgment granted by the arbitrator(s) may be enforced in any court of proper jurisdiction.

**Notice:** Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

Landlord:

Superior LTL LLC  
3100 W 1000 S  
Aberdeen, ID 83210

Tenants:

  
\_\_\_\_\_  
\_\_\_\_\_

   
L.F. R.S.

Such addresses may be changed from time to time by either party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after posting.

**Governing Law:** This Lease shall be construed in accordance with the laws of the State of Idaho.

**Entire Agreement/Amendment:** This Lease Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

**Severability:** If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provisions, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**Waiver:** The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limited of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

**Binding Effect:** The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

**Other:** If more irrigated and dryland acres are added on tract 3779 and tract 3780, the acres will be paid at the dry and irrigated rate listed in this lease which is [redacted] per irrigated acre and [redacted] per dryland acre as listed in Schedule B.

**Landlord:**

*Superior LFL LLC*  
*by [redacted] mgr*

Date 7-23-08

**Tenant:**

*[Signature]*

Date \_\_\_\_\_

*[Signature]* *[Signature]*  
L.F. R.S.

**Schedule A**

Leasee to pay 1/3 in fall by Sept 1 and 2/3 in spring by March 15.

Total Irrigated [REDACTED]  
 Total Dry Farm [REDACTED]  
 Grand Total [REDACTED]

Year	Payment Date	Land Rent Portion	Water Payment Portion *Leasee to pay the X Amount	For Crop Year
2008	07/17	[REDACTED]	over paid 2017	2009
2008	09/01	[REDACTED]	Water Bank + X = [REDACTED] due by 01/31/09	2009
2009	03/15	[REDACTED]	idaho wa [REDACTED] bank \$6,720	2009
2009	09/01	[REDACTED]	Water Bank + X = [REDACTED] due by 01/31/10	2010
2010	03/15	[REDACTED]		2010
2010	09/01	[REDACTED]	Water Bank + X = [REDACTED] due by 01/31/11	2011
2011	03/15	[REDACTED]		2011
2011	09/01	[REDACTED]	Water Bank + X = [REDACTED] due by 01/31/12	2012
2012	03/15	[REDACTED]		2012
2012	09/01	[REDACTED]	Water Bank + X = [REDACTED] due by 01/31/13	2013
2013	03/15	[REDACTED]		2013
2013	09/01	[REDACTED]	Water Bank + X = [REDACTED] due by 01/31/14	2014
2014	03/15	[REDACTED]		2014
2014	09/01	[REDACTED]	Water Bank + X = [REDACTED] due by 01/31/15	2015
2015	03/15	[REDACTED]		2015
2015	09/01	[REDACTED]	Water Bank + X = [REDACTED] due by 01/31/16	2016
2016	03/15	[REDACTED]		2016
2016	09/01	[REDACTED]	Water Bank + X = [REDACTED] due by 01/31/17	2017
2017	03/15	[REDACTED]		2017
2017	09/01	[REDACTED]	Water Bank + X = [REDACTED] due by 01/31/18	2018
2018	03/15	[REDACTED]		2018
2018	09/01	[REDACTED]	Water Bank + X = [REDACTED] due by 01/31/19	2019
2019	03/15	[REDACTED]		2019

 L.F.  R.S.

check # 24623 was for 2008 water for 19,177<sup>47</sup> and overage of 2017<sup>47</sup> will be credited later.

\* On the 264 ac permit no 35-7246M, 35-7632A, 35-13609 leasee will pay [REDACTED] per acre per year  
[REDACTED] Superior LLC will be paid through the Idaho Water Bank and Lance Funk  
Farms will pay the difference

### Schedule B

#### Irrigated Fields and Acres

Field	Acres
2	92.3
3,7	41.3
4	34.4
5	121.6
9	44.8
Total	334.4

335 Irrigated acres x [REDACTED]

#### Dryland Fields and Acres

Field	Acres
1	42.6
6	84.0
10	30.8
1	51.3
4	9.3
7	8.3
8	7.3
Total	233.6

233.6 less 100ac of 6 & 10 = 133 acres

133 Dryland Acres x [REDACTED]

 L.F.  
 R.S.