

DE

RECEIVED

APR 17 2009

RECEIVED

APR 15 2009

WATER RESOURCES
WESTERN REGIONDEPT. OF WATER RESOURCES
SOUTHERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**Notice of Security Interest in a Water Right****And Request for Notification of a Change in Ownership or Any Proposed
Or Final Action to Amend, Transfer, or Otherwise Modify a Water Right**

Please print or type. Attach pages with additional information. Instructions are on the back of this page.

Incomplete forms will be returned.

47-2382, 47-17504, 47-17505, 47-17506, 47-17507, 51-7373, 51-7374,

1. Water Right No(s): 51-13051, and 51-13053

Adjudication Claim No(s):

2. The following **REQUIRED** information must be submitted with this form:A) Evidence of the security interest. This may be a copy of a **DEED of TRUST, MORTGAGE, CONTRACT OF SALE** or other legal document indicating your interest in the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**B) A **FEE of \$25.00 per water right** or adjudication claim.

3. Name and Mailing Address of Person or Company holding Security Interest

McFinney Agri-Finance, LLC

P.O. Box 1598

Twin Falls, ID 83303-1598

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

High Plains Dairy, LLC

5. Expiration Date of Notification Period May 1, 2029

6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO7. Signature(s) of Security Interest holder(s) McFinney Agri-Finance, LLC
(and title if applicable)

By:

Hiram Finney, Member

For Office Use Only

Received by

Date

4-15-09

Fee

\$225

Received by

Date

4/16/09

Receipt No.

SC 30821

Processed by

AJ

Date

WR

Date

4-20-09

SUPPORT DATA

IN FILE # 47-2382

RECORDING REQUESTED BY)
AND WHEN RECORDED RETURN TO:)
McFinney Agri-Finance, LLC)
P.O. Box 1598)
Twin Falls, ID 83303-1598)

TWIN FALLS COUNTY
Recorded For
TULLEFACI
4:10:25 pm 04-14-2009
2009-008182
No. Pages: 29 Fee: \$ 87.00
KRISTINA GLASCOCK
County Clerk
Deputy: RUTH

5:43:30 am

**FIRST MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS**

This First Mortgage, Security Agreement and Assignment of Rents (the "Mortgage") is made as of this ____ day of April, 2009 by HIGH PLAINS DAIRY, L.L.C., an Idaho limited liability company whose address is P.O. Box 780, Castleford, ID 83321 (the "Company") and DAVID GANDOLFO and JAYME GANDOLFO, husband and wife whose address is P.O. Box 780, Castleford, ID 83321 (collectively, "Gandolfo," and together with the Company, the "Mortgagor") to MCFINNEY AGRI-FINANCE, LLC, an Idaho limited liability company whose address is 409 Shoshone St. South, Suite 25, Twin Falls, Idaho 83301 (the "Mortgagee");

WITNESSETH:

Mortgagor, for valuable consideration, the receipt of which is hereby acknowledged, and in consideration of and to secure repayment in accordance with the terms of (i) the First Mortgage Promissory Facility Note of the Company, Hugh Charles Gandolfo and Beatrice Ann Gandolfo, as trustees of the GANDOLFO FAMILY TRUST dated April 22, 1999, a trust whose address is P.O. Box 780, Castleford, ID 83321 (the "Trust") and Gandolfo (together with the Company and the Trust, the "Borrower") dated the date hereof in the principal amount of Three Million Nine Hundred Fifty Thousand and No/100ths Dollars (\$3,950,000.00) (the "Facility Note") and (ii) the First Mortgage Promissory Construction Note of the Borrower dated the date hereof in the principal amount of up to Seven Hundred Fifty Thousand and No/100ths Dollars (\$750,000.00) (the "Construction Note," and together with the Facility Note, the "Notes") does hereby irrevocably, GRANT, BARGAIN, SELL, CONVEY, MORTGAGE, ASSIGN, PLEDGE, TRANSFER AND SET OVER unto Mortgagee and to its successors and assigns, (a) all the real property, water, water rights, ditches, ditch rights, storage rights, permits, licenses, certificates and shares of stock described in Exhibit "A" attached hereto and by this reference incorporated herein; and (b) all the property, permits and rights described in Exhibit "B" and Exhibit "C" attached hereto and by this reference incorporated herein, whether now owned or hereafter acquired; (collectively, the "Property");

TOGETHER WITH all leasehold estate, right, title and interest of Mortgagor in, to or under all leases (including grazing permits, leases and oil and gas leases) or subleases covering the Property or any portion thereof during the period in which this Mortgage is in effect, whether

now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto; and all water, water rights, water appropriations, irrigation works, lines, pivots, drip lines, hand lines, wheel lines, pumps, motors, equipment and electric panels of every kind and nature, ditches, canals, wells, franchises upon, leading to or connected with said property, in addition to any replacements, substitutions and additions thereto, and all other rights and privileges now or hereafter owned by Mortgagor, or belonging to, with, leading to, connected with, or usually had or enjoyed in connection with the Property or appurtenant thereto, whether represented by shares of capital stock in any ditch company, irrigation company, irrigation district or water association, by voting or other rights or interests with respect thereto or by actual individual ownership, or which may hereafter be acquired by Mortgagor, during the existence of this Mortgage;

TOGETHER WITH all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any road adjoining the Property

TOGETHER WITH any and all buildings, structures, fences, pipelines, pipes, tanks, dams, reservoirs, pumps, pumping equipment and all other improvements and fixtures now located or hereafter erected thereon or used in connection therewith, including, but not limited to, the fixtures, attachments, equipment, machinery, and other articles attached to said buildings and improvements, including all livestock fixtures and other non-rolling stock necessary to run a dairy (collectively, the "Improvements"), but not including farm machinery and vehicles;

TOGETHER WITH, all the estate, interest, right, title, 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 any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Property; and

TOGETHER WITH all accounts arising out of, or in connection with, (a) milk, cream or dairy product proceeds, whether pursuant to payment from milk agreements with Magic Valley Quality Milk Producers, Inc., other milk producers or otherwise and (b) the Property (including all leases, bonuses, royalties, subleases, franchises, rents, issues, profits and income in connection with the Property, and all the estate, right, title and interest of every nature whatsoever of the Mortgagor in and to the same), whether now owned or hereafter acquired. Mortgagor will execute such assignments as Mortgagee may from time to time reasonably request, which shall include, but not be limited to, assignments of milk, cream and dairy product proceeds, and assignments of rents, issues and profits in reasonable form acceptable to Mortgagee. Mortgagor shall pay the cost of recording any such assignments. Mortgagee is authorized to notify any or all lessees, tenants or occupants of all or part of said Property of the assignment of rents, issues or profits made hereunder or under any such special assignments. Mortgagee shall have no personal liability and shall not be responsible for the performance of Mortgagor's covenants under any of said leases or rentals. Mortgagee shall not be liable to

Mortgagor for any action taken or omitted in connection with any such leases or rentals or the operation of said Property. Until the occurrence of a default as hereinafter provided, Mortgagor may use and occupy the Property and receive all rents, issues and profits thereof.

The entire estate, property (both real and personal) and interest hereby conveyed to Mortgagee may hereafter collectively be referred to as the "Mortgaged Property." All property except the real property may hereinafter be referred to as the "Personal Property." Personal Property does not include farm machinery, vehicles, livestock, household furnishings, household appliances or unattached household fixtures, or any income therefrom.

FOR THE PURPOSE OF SECURING:

- (a) Payment of indebtedness in the total principal amount of Three Million Nine Hundred Fifty Thousand and No/100ths Dollars (\$3,950,000.00) under the Facility Note and in the total principal amount of up to Seven Hundred Fifty Thousand and No/100ths Dollars (\$750,000.00) under the Construction Note, together with interest on the unpaid balances thereof, from date of funding by the Mortgagee until paid, evidenced by that certain Facility Note and Construction Note of even date herewith with maturity dates of May 1, 2029, executed by Borrower, which have been delivered to and are payable to the order of Mortgagee, and which by this reference are hereby made a part hereof, together with any and all modifications, extensions and renewals thereof; both principal and interest and all other indebtedness accruing hereunder or thereunder being payable in lawful money of the United States which shall be legal tender for the payment of all debts and dues, public and private, at the time of payment, at the address set forth on the Notes with the following notations, or at such other place as may be designated in writing by the Mortgagee:

Lender: McFinney Agri-Finance, LLC

Borrower: High Plains Dairy, LLC, Gandolfo Family Trust dated April 22, 1999, David Gandolfo and Jayme Gandolfo

- (b) Performance of all obligations of Borrower and Mortgagor (and each of them) under any loan application, report, commitment letter, loan agreement, mortgage, deed of trust, security agreement, financing statement, assignment, assignment of bonuses, rentals and royalties, intercreditor agreement, subordination agreement, power of attorney (limited or otherwise), guaranty, or other agreement given as security for the Notes or entered into in connection with the transactions contemplated hereby (collectively, with the Notes, the Loan Agreement (as such term is defined below) and this Mortgage, the "Credit Documents").
- (c) Payment of all sums advanced by Mortgagee to protect the Mortgaged Property, with interest thereon at the rates set forth in the Notes.
- (d) Performance of all obligations of any guarantor of any of the obligations of Borrower or Mortgagor (or any of them) contained in the Credit Documents or

any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES:

ARTICLE I

COVENANTS AND AGREEMENTS OF MORTGAGOR

Mortgagor hereby represents, covenants and agrees:

- 1.01 Title. That at the time of delivery hereof, Mortgagor is the lawful owner of the property hereinabove granted, and is seized of good, marketable and indefeasible title in fee simple therein, free and clear of all encumbrances (other than encumbrances in favor of Wells Fargo Bank, National Association ("Wells Fargo") on milk products that are subject to an intercreditor agreement dated as of the date hereof by and between the Mortgagee and Wells Fargo (the "Intercreditor Agreement")), and that Mortgagor will warrant and defend the same in the quiet and peaceful possession of the Mortgagee, its successors and assigns, forever, against the claims of all persons whomsoever.
- 1.02 Payment of Secured Obligations. That Borrower has executed and delivered to Mortgagee the Notes; that the Borrower has executed and delivered to Mortgagee the Loan Agreement dated as of the date hereof by and among the Borrower and the Mortgagee (the "Loan Agreement"); that Mortgagor has executed and delivered to Mortgagee this Mortgage; that the Borrower agrees to pay when due the principal of, and the interest on, the indebtedness evidenced by the Notes, charges, fees and all other sums as provided in the Credit Documents, and the principal of, and interest on, any future advances secured by this Mortgage.
- 1.03 Maintenance, Repair, Alterations and Good Standing. To keep the Mortgaged Property in good condition and repair, not to remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Improvements; 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 therefore, to comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property or any part thereof; not to commit, suffer or permit any waste or deterioration of the Mortgaged Property; not to commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation; in the event the Mortgagor is a corporation, partnership, limited liability company, cooperative, business trust or other entity, to keep the Mortgagor in existence and in good standing.

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

- (a) If Mortgagor constructs or installs improvements on the Property that were not existing on the Property on the date of this Mortgage, then Mortgagee may require that Mortgagor keep and maintain in force with respect to said improvements such of the following policies of insurance ("insurance" or "policies of insurance") as may be reasonably requested. Insurance may, in the discretion of Mortgagor, be in the form of individual policies or blanket policies covering other improvements.
- (b) Physical hazard insurance covering the perils of fire, flood, tornado, lightning, and extended coverage in an amount equal to at least the full insurable value of the Mortgaged Property, and such additional coverage as Mortgagee may from time to time reasonably require.
- (c) Such other insurance, and in such amounts, as may from time to time reasonably be required by Mortgagee against the same or other hazards.
- (d) All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Mortgagor.

1.05 Delivery of Policies, Payment of Premiums. That all policies of insurance shall be issued by companies and in amounts in each company satisfactory 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 copies of all policies of required insurance. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Mortgagee. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Section, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor the amount of all such premiums together with interest thereon at the rate provided in the Notes shall be secured by this Mortgage.

1.06 Insurance Proceeds. That after the happening of any casualty to the Mortgaged Property or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.

- (a) In the event of any damage or destruction of the Improvements, Mortgagee shall have the option in its sole discretion of applying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Mortgagee may determine, (ii) to the restoration of the Improvements, provided the Improvements are restored to good working condition, or (iii) to Mortgagor; provided that at Mortgagor's election, the insurance proceeds shall be applied to restoration of the Improvements if Mortgagor has had a satisfactory credit record with Mortgagee, is not then in default under the Notes or the other Credit Documents, and establishes to Mortgagee's reasonable satisfaction that the insurance proceeds together with Mortgagor's other resources, if required, would be sufficient to restore the Improvements to a condition satisfactory for operation of Mortgagor's business.
- (b) In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee. After applying the proceeds to all indebtedness secured hereby, the balance of such proceeds, if any, shall be promptly paid to Mortgagor. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.
- (c) Except to the extent that insurance proceeds are received by Mortgagee and applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Property or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in an amount, and the application or release by Mortgagee, of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

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

1.08 Indemnification; Subrogation; Waiver:

- (a) If Mortgagee or any of its members, officers, employees and agents (each in its capacity as an indemnified party, a "Mortgagee Indemnitee") is a party or is threatened to be made a party to any threatened, pending or

completed action, suit or proceeding, whether civil, criminal, administrative or investigative, concerning this Mortgage or the Mortgaged Property or any part thereof or interest therein or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify, defend, protect and hold harmless each Mortgagee Indemnatee from and against any and all claims, losses, liabilities, damages, assessments, adjustments, costs and expenses (including specifically, but without limitation, attorneys' fees and expenses of investigation) (collectively, "Damages") incurred by such Mortgage Indemnatee in connection with such suit or proceeding, unless such Damages arise as a direct result of the gross negligence or willful misconduct of the Mortgagee. 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 such secured hereby, Mortgagor shall pay to Mortgagee attorney's fees and expenses, and the right to such attorney's 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 Mortgagee attorney's 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 of claim or recovery against Mortgagee, its members, officers, employees and agents, for loss of or damage to Mortgagor, the Mortgaged Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.
- (c) All sums 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) by reason of:
 - (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property 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; (iv) subject to provisions of applicable law, 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; (v) any claim which

Mortgagor has or might have against Mortgagee or the Borrower; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor or the Borrower; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, and except as otherwise prohibited by applicable law, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

- (d) To the extent applicable and permitted by law, the Mortgagor waives all homestead exemption rights relating to the Mortgaged Property.
- (e) To the extent permitted by law, the Mortgagor expressly agrees that the Notes, or any payment thereunder, may be extended from time to time, or the terms of payment or interest may otherwise be varied by agreement with any person now or hereafter liable for payment of the Notes (including without limitation conversion of the Notes to another product in accordance with the terms and provisions thereof), without in any way affecting the obligations of the Mortgagor hereunder or the lien, encumbrance and security interest created hereby.

1.09 Taxes and Impositions.

- (a) Mortgagor agrees to pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation payments with respect to water rights (collectively, the "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 may 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) Mortgagor covenants to furnish Mortgagee within forty-five (45) days after the date upon which any such Imposition is due and payable by Mortgagor, official receipts of the appropriate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payments thereof.
- (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.

- 1.10 Power and Utilities. Mortgagor agrees to pay when due all power and utility charges which are incurred by Mortgagor for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property.
- 1.11 Actions by Mortgagee to Preserve Mortgaged Property. That should Mortgagor fail to make any payment or to do any act as and in the manner provided in any of the Credit Documents, 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 reasonably make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. Mortgagee shall, immediately upon demand therefore by Mortgagee, pay all reasonable 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 attorney's fees.

That in the event Mortgagee is called upon to pay any sums of money to protect this Mortgage and the Notes secured hereby as aforesaid, all monies advanced or due hereunder shall become immediately due and payable, together with interest at a rate as is set forth in the Notes for regular and default interest.

- 1.12 Survival of Warranties. To fully and faithfully satisfy and perform the obligations of Mortgagor contained in the Borrower's loan application and any of the Credit Documents. All representations, warranties and covenants of Mortgagor contained therein shall survive the close of escrow and funding of the loan evidenced by the Notes and shall remain continuing obligations, warranties and representations of Mortgagor during any time when any portion of the obligations secured by this Mortgage remain outstanding.
- 1.13 Eminent Domain. That should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Mortgagor receive any notice or other information regarding such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee.
- (a) Mortgagee shall be entitled to all compensation, awards and other payments or relief therefore, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Mortgagor (the "Proceeds") are hereby assigned to Mortgagee and Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require.
- (b) In the event any portion of the Mortgaged Property is so taken or damaged, Mortgagee shall have the option, in its sole and absolute discretion, to apply all such Proceeds, after deducting therefrom all costs

and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney's fees, incurred by it in connection with such Proceeds, upon any indebtedness secured hereby and in such order as Mortgagee may determine, or to apply all such Proceeds, after such deductions, to the restoration of the Mortgaged Property upon such conditions as Mortgagee may determine. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. After applying the Proceeds to the restoration of the Mortgaged Property, the balance of such Proceeds, if any, shall be promptly paid to Mortgagor.

- 1.14 Additional Security. That in the event Mortgagee at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.
- 1.15 Successors and Assigns. That this Mortgage applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Mortgagee" shall mean the owner and holder of the Notes, whether or not named as Mortgagee herein. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 1.16 Inspections. That Mortgagee, or its agents, representatives or workmen, upon giving reasonable notice to Mortgagor, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Property 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 any of the Credit Documents.
- 1.17 Liens. To pay and promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property, or any part thereof or interest therein. 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 more than one and one-half (150%) of the amount of the claim, and 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 any such lien, encumbrance or charge, 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.
- 1.18 Other Mortgages. That Mortgagor will not create, assume or suffer to exist in respect of the Mortgaged Property, or any part thereof, any mortgage or security agreement other than this Mortgage or another security agreement existing on the

date hereof in favor of Wells Fargo that is expressly subject to the Intercreditor Agreement. Mortgagor agrees to make all payments when due on indebtedness secured by the foregoing described security agreements.

- 1.19 Financial Statements. That Mortgagor will cause to be delivered to Mortgagee, without expense to Mortgagee, such financial records and information as are required by the Mortgagee from time to time.
- 1.20 Mortgagor's Waiver of Certain Rights. The Mortgagor waives to the extent not prohibited by applicable law that cannot be waived (a) the benefit of all laws now existing or hereafter enacted providing for any appraisal before sale of any portion of the Mortgaged Property, (b) the benefit of all laws now existing or hereafter enacted in any way extending the time for enforcement or collection of the obligations contained in the Credit Documents, (c) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, moratorium, or extension of time for payment, and (d) all notices of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Credit Documents or at law or in equity. To the extent it may lawfully do so, the Mortgagor agrees that it will not at any time insist upon, plead, claim or take the benefit or advantage of, any law now or hereafter in force providing for any appraisal, valuation, stay or extension, and the Mortgagor hereby waives and releases all rights of valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the obligations contained in the Credit Documents and marshaling in the event of foreclosure of the liens hereby created. To the extent permitted by applicable law, the Mortgagee shall not be required in connection with any foreclosure, pursuant to any power of sale herein granted, or in connection with any deed in lieu of foreclosure, to foreclose, to sell or to take a deed in lieu of foreclosure, covering all or any specific portion of the Mortgaged Property and the Mortgagee may elect to foreclose, to sell or to take a deed in lieu of foreclosure to all or any portion of the Mortgaged Property and the Mortgagee's rights in connection with any foreclosure, pursuant to the power of sale herein granted, or in connection with any deed in lieu of foreclosure hereunder granted by the Mortgagor, may be exercised in any combination with respect to some or all of the Mortgaged Property. To the extent permitted by applicable law, the Mortgagee shall not be required to marshal or sell the Mortgaged Property, the leases, rents, issues and profits assigned by the Mortgagor or any other security by which the obligations contained in the Credit Documents are secured in any particular order.

ARTICLE II

SECURITY AGREEMENT

- 2.01 Creation of Security Interest. Mortgagor hereby grants to Mortgagee a security interest in the Personal Property described in the Credit Documents and in this Mortgage, including without limitation any and all property of similar type or kind hereafter located on or at the Property for the purpose of securing all obligations of Mortgagor contained in any of the Credit Documents.
- 2.02 Warranties, Representations and Covenants of Mortgagor. Mortgagor hereby warrants, represents and covenants as follows:
- (a) Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.
 - (b) Mortgagor will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor.
 - (c) The Personal Property will be kept on or at the Property and Mortgagor will not remove the Personal Property from the Property without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor. Mortgagor may replace any item of Personal Property in the ordinary course of business, without the prior consent of Mortgagee.
 - (d) Mortgagor maintains a place of business in the State of Idaho that is Mortgagor's chief executive office and Mortgagor will immediately notify Mortgagee in writing of any change in its place of business as set forth in the beginning of this Mortgage.
 - (e) At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable.
 - (f) All covenants and obligations of Mortgagor contained herein relating to the Mortgaged Property shall be deemed to apply to the Personal Property whether or not expressly referred to herein.
 - (g) Mortgagor understands and agrees that certain items of irrigation equipment and feedlot or dairy equipment (if any) hereinbefore described

or referred to as "personal property" actually and as a matter of law are fixtures and are deemed a part of the land covered by this Mortgage, and that said designation as "personal property" is for convenience only and shall be disregarded in the case of any fixtures described or referred to following such designation. The Mortgagor will not sell or dispose of any of said personal property, nor attempt to do so, nor part with possession of any of the same, nor remove the mortgaged personal property or any of the same, nor permit it to be removed, from the real property described on Exhibit "A", or from the adjoining or adjacent lands where said personal property may be located, while this Mortgage shall remain in force and affect, without the written consent of the Mortgagee; *provided, however*, that the language of this paragraph shall not prevent the Mortgagor from replacing or upgrading any personal property subject to this Mortgage in the ordinary course of business without the written consent of the Mortgagee. All upgrades or replacements shall become subject to this Mortgage and security interest herein provided for. All the mortgaged Personal Property shall at all times while this Mortgage remains in force and effect be kept and maintained by the Mortgagor, at Mortgagor's own cost and expense, in good working order, condition and repair, and the Mortgagor will from time to time make all replacements of such Personal Property which may reasonably be necessary for the irrigation and cultivation of the real property described on Exhibit "A" and Mortgagor will neither commit nor suffer any damages or waste on or to the mortgaged premises and said personal property nor do or permit to be done anything that may lessen or impair the value of the mortgaged property, real or personal, or the lien or security thereof.

- (h) This Mortgage constitutes a security agreement as that term is used in the Uniform Commercial Code of Idaho.

ARTICLE III

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

- 3.01 Assignment of Rents. Mortgagor hereby assigns and transfers to Mortgagee all accounts arising out of, or in connection with, leases, bonuses, royalties, subleases, franchises, rents, issues and profits arising out of, or in connection with, the Mortgaged Property (hereinafter collectively referred to as "rents"), and hereby gives to and confers upon Mortgagee the right, power and authority to collect such rents. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time from time to time, 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, and apply the same to the indebtedness secured hereby; *provided, however*, that Mortgagor shall have the right to collect such rents (but not more than thirty days in advance) prior to or at any time there is not an event of default under any of the Credit Documents.

- 3.02 Collection Upon Default. Upon any event of default under any of the Credit Documents, Mortgagee may, at any time without notice, enter upon and take possession of the Mortgaged Property, or at any part thereof, in its own name sue for or otherwise collect such accounts, rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorney's 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 Property, 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.
- 3.03 Restriction on Further Assignments, etc. Except as herein specifically provided, Mortgagor will not, without prior written consent of the Mortgagee, assign the accounts, rents, issues or profits, or any part thereof, from the Mortgaged Property; and will not consent to the modification, cancellation or surrender of any lease or sublease covering the Mortgaged Property, or any part thereof. Any action of Mortgagor in violation of the terms of this Section shall be void as against Mortgagee in addition to being a default under this Mortgage.

ARTICLE IV

REMEDIES UPON DEFAULT

- 4.01 Event of Default. The occurrence of any one or more of the following events shall constitute a default hereunder:
- a) the occurrence of an Event of Default under either of the Notes, including without limitation the sale, assignment, lease with the option of sale disposal or other transfer of the Mortgaged Property or any interest in the Mortgagor; or
 - b) failure to observe or perform any covenant, agreement, condition, term or provision of this Mortgage or any other Credit Document (other than an Event of Default described in clause (a) above).
- 4.02 Remedies. In the event of the occurrence and during the continuance of any default, the Mortgagee may at any time thereafter, subject to the provisions set forth in this Section 4.02, exercise any or all of the following remedies:
- a) all of the rights and remedies provided in the Notes, including declaring the entire amount of the indebtedness and obligations immediately due and payable, and the indebtedness and obligations thereupon shall become immediately due and payable without presentment, protest, notice of protest or further demand or notice of any kind, all of which are hereby expressly waived;

- b) all of the rights and remedies of a secured party under the Uniform Commercial Code in effect in the jurisdiction in which the Property is located;
- c) enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto, and if Mortgagor remains in possession of the Property during the continuance of an event of default without Mortgagee's written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor;
- d) to the greatest extent permitted by law, sell or offer for sale the Mortgaged Property in such portions, order and parcels as Mortgagee may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction, and the right of sale arising out of any event of default shall not be exhausted by one or more sales. Such sale shall be made in accordance with the laws of Idaho relating to the sale of real estate or by Article 9 of the UCC relating to the sale of other collateral after default by a debtor (as such laws now exist or may be hereafter amended or succeeded), or by any other present or subsequent articles or enactments relating to same;
- e) commence an action to foreclose this Mortgage;
- f) specifically enforce any of the covenants hereof;
- g) the right to appoint a receiver of the Mortgaged Property, which appointment, to the extent permitted by applicable law, may be made either before or after foreclosure sale, upon notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Property;
- h) such other actions or proceedings available to the Mortgagee under applicable law as it deems necessary or advisable to protect its interest in the Mortgaged Property and the indebtedness and obligations secured thereby; and
- i) the right to receive rent under Article III, including without limitation the right to receive payments under any assignment of bonuses, rentals and royalties, governmental subsidy or program referenced in Section 5.04 hereof.

In the event of default hereunder, the interest rate shall be as is set forth in the Notes.

To the extent it may lawfully do so, the Mortgagor agrees that it will not (i) invoke or utilize any law now or hereafter in force which might prevent, cause a

delay in or otherwise impede the enforcement of the rights of the Mortgagor in the Mortgaged Property or (ii) protest the appointment of a receiver of the Property pursuant to Section 4.02(g) hereof.

Prior to exercising any remedy with respect to an Event of Default under Sections 4(a) or 4(b) of the Facility Note or Sections 6(a) or 6(b) of the Construction Note, the Mortgagor shall have ten (10) days to effect a full and complete cure of such Event of Default by paying all amounts due and payable in accordance with the terms thereof.

Prior to exercising any remedy with respect to any such default (other than an Event of Default under Sections 4(a), 4(b) or 4(j) of the Facility Note or Sections 6(a), 6(b) or 6(j) of the Construction Note), the Mortgagee shall first give written notice to the Mortgagor at the address set forth in Section 5.02 via registered mail, which notice shall specify in writing each and every claimed default. The Mortgagor shall have twenty (20) days from the receipt of such notice to effect a cure of each and every claimed default. If any claimed default remains uncured after such twenty (20) day period, the Mortgagee may then proceed to exercise any of the remedies to which it may be entitled, including those set forth in this Section 4.02, without the obligation to provide further notice to the Mortgagor.

- 4.03 Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any Credit Document or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, 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 is 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 remedy herein or by law provided or permitted, but each shall be cumulative 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 by any of the Credit Documents to Mortgagee or to which it may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

ARTICLE V

MISCELLANEOUS

5.01 Interpretation; Governing Law; etc. Time is (and shall be) of the essence in this Mortgage and the other Credit Documents. All covenants, agreements, representations and warranties made in this Mortgage or any other Credit Document or in certificates delivered pursuant hereto or thereto shall be deemed to have been relied on by the Mortgagee, notwithstanding any investigation made by the Mortgagee on its behalf, and shall survive the execution and delivery to the Mortgagee hereof and thereof. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision hereof, and any invalid or unenforceable provision shall be modified so as to be enforced to the maximum extent of its validity or enforceability. The headings in this Mortgage are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. This Mortgage and the other Credit Documents constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous understandings and agreements, whether written or oral. This Mortgage may be executed in any number of counterparts which together shall constitute one instrument. This Mortgage, and any issue, claim or proceeding arising out of or relating to this Mortgage or the conduct of the parties hereto, whether now existing or hereafter arising and whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws (other than the conflict of laws rules) of the State of Idaho, provided that the laws of the state in which the Mortgaged Property is located shall govern lien perfection, lien priority and validity of this Mortgage and the procedures with respect to the enforcement hereof.

5.02 Notices. Except as otherwise specified in this Mortgage or any other Credit Document, any notice required to be given pursuant to this Mortgage or any other Credit Document shall be given in writing. Any notice, consent, approval, demand or other communication in connection with this Mortgage or any other Credit Document shall be deemed to be given if given in writing addressed as provided below (or to the addressee at such other address as the addressee shall have specified by notice actually received by the addressor), and if either (a) actually delivered in fully legible form to such address or (b) in the case of a letter, unless actual receipt of the notice is required by any Credit Document, five days shall have elapsed after the same shall have been deposited in the United States mails, with first-class postage prepaid and registered or certified.

a) If to the Mortgagor, to it at the addresses listed on the signature page hereto.

5.03 Joint and Several Obligations; Heirs and Assigns. In the event the Mortgagor consists of more than one individual or entity, the covenants, agreements, conditions, provisions, representations, warranties or obligations of each hereunder or under any Credit Document shall apply to each and shall be joint and several. A default hereunder shall also apply with respect to the act or omission of any one or more individuals or entities comprising the Mortgagor. This Mortgage and the other Credit Documents shall bind the heirs, personal representatives, successors and assigns of each of the Mortgagor; *provided,*

however, that neither this Mortgage nor any other Credit Document be assigned without the express written consent of the Mortgagee.

5.04 Subsidy and Payment in Kind Compensation.

- a) Mortgagor shall not register the Property, or any portion thereof, with any federal, state or local government office for the purpose of obtaining subsidy or payment-in-kind compensation without first obtaining Mortgagee's prior written consent. Mortgagor hereby grants to Mortgagee a security interest in any such subsidy or payment-in-kind compensation whether or not Mortgagee gives its written consent to Mortgagor to register the Property, or any portion thereof, for such compensation. Mortgagor, upon the written request of Mortgagee, shall execute any documents necessary to further perfect Mortgagee's security interest in such compensation. Any such document is to be in form and substance acceptable to Mortgagee. Mortgagor hereby appoints Mortgagee its attorney-in-fact to execute such documents in Mortgagor's name and behalf. Upon Mortgagee's request, Mortgagor shall deliver to Mortgagee any document of title Mortgagee desires to hold to secure Mortgagee's interest in any such government compensation.
- b) Upon any event of default under any of the Credit Documents, Mortgagee may, at any time without notice, take possession of any such subsidy or payment-in-kind compensation, or at any part thereof, in its own name sue for or otherwise collect such subsidy or payment-in-kind compensation, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorney's fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such government compensation or the entering upon and taking possession of any subsidy or payment-in-kind compensation, 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.

5.05 Habendum Clause. Upon payment in full of the indebtedness secured hereby and the performance by Mortgagor of all of the obligations imposed on Mortgagor herein and in the Loan Agreement and the Notes, these presents shall be null and void, and Mortgagee shall release this Mortgage and the lien hereof by proper instrument executed in recordable form.

5.06 Hazardous Substances. Mortgagor represents and warrants that to the best of its knowledge (1) the Property (including, without limitation, the subsurface soil and the ground water thereunder) does not contain any "hazardous or toxic substances" (as hereinafter defined); (2) Mortgagor has no knowledge of any generation, transportation, storage, treatment or disposal of any hazardous or toxic substances on the Property, or within one-half mile thereof, now or in the past; (3) Mortgagor is not aware of any pending or threatened litigation or proceedings

before any court or administrative agency in which any person or entity alleges, or threatens to allege, the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment, or disposal at the Property, of any hazardous substance; (4) Mortgagor has not received any notice of and has no knowledge that any governmental authority or any employee or agent thereof has determined or alleged, or is investigating the possibility, that there is a presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment, or disposal at the Property, of any hazardous or toxic substance; (5) to Mortgagor's knowledge, there have been no communications or agreements with any governmental authority or agency (federal, state or local) or any private person or entity (including, without limitation, any prior owner of the Property) relating in any way to the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property, of any hazardous or toxic substance.

For the purpose of this paragraph, "hazardous or toxic substance" shall mean and include (1) a "hazardous substance" as defined in 42 U.S.C. § 9601(14) and as hereafter amended from time to time, or as defined under applicable state health, safety and water codes, and (2) any other material, gas or substance known or suspected to be toxic or hazardous (including, without limitation, any radioactive substance, methane gas,¹ volatile hydrocarbons, industrial solvents and asbestos) or which could cause a material detriment to, or materially impair the beneficial use of the Property, or constitute a material health, safety or environmental risk to tenants, occupants or patrons of the Property. The term "hazardous substance" shall not include water containing nutrients from livestock waste lawfully stored or applied to the real property of the Mortgagor or third parties.

- 5.07 Milk Proceeds. The Mortgagor covenants and agrees that it will make no further or future assignments of the milk, cream or dairy product proceeds of the Mortgagor or the Company which would alter or eliminate the Mortgagee's right to receive from such milk, cream or dairy product proceeds a sum sufficient to satisfy the monthly payments due under the Notes. A breach of this covenant shall constitute a default under this Mortgage at the option of the Mortgagee.
- 5.08 Legal Compliance. The Mortgagor shall furnish evidence satisfactory to the Mortgagee confirming the issuance on terms and conditions satisfactory to the Mortgagee, by the appropriate federal, state, county, regional or local authorities (including authorities whose jurisdiction involves environmental protection), of all licenses, approvals or permits necessary in connection with (a) the operation of the Mortgagor's business and the lawful occupancy thereof for the purpose for which such project was created (including the issuance by any federal, state, county, regional or local authorities of such licenses, approvals or permits where jurisdiction involves environmental protection), and (b) the possession of all

¹ Methane gas generated by animal manure is not included so long as Mortgagor is in full compliance with any and all codes and regulations governing animal manure and its by-products.

Property in connection therewith. The Mortgagor covenants to continue to maintain compliance with all such licenses, approvals or permits as well as any applicable federal, state, county, regional or local laws and regulations, including without limitation its Nutrient Management Plan approved by the Idaho State Department of Agriculture.

- 5.09 INTEREST RATE ADJUSTMENTS. THE NOTES SECURED HEREBY EXPRESSLY PROVIDE FOR INTEREST RATE ADJUSTMENTS AS SET FORTH THEREIN.
- 5.10 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest: (i) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee reasonably deems appropriate to protect Mortgagee's interest in the Mortgaged Property if Mortgagor shall fail to do so within three (3) days after written request by Mortgagee, (ii) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery (and acceptance by Mortgagee) of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to leases, rents and the other Mortgaged Property in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, and (iii) upon the occurrence of an event of default, to perform any duty or obligation of Mortgagor under this Mortgage or under any of the other Credit Documents (including payment of taxes and insurance premiums); *provided, however*, that: (1) Mortgagee shall not under any circumstances be obligated to perform any duty or obligation of Mortgagor; (2) Mortgagor shall reimburse Mortgagee for all sums expended in such performance plus interest at any applicable default rate; (3) Mortgagee, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person for any failure to take any action which it is empowered to take under this Section 5.10.
- 5.11 Amendment. This Mortgage may not be amended, modified or restated without the express written consent of the Mortgagor and the Mortgagee.

[The remainder of this page has been left intentionally blank.]

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

MORTGAGOR

P.O. Box 780
Castleford, ID 83321

HIGH PLAINS DAIRY, L.L.C.

By: Gandolfo Family Trust dated April 22,
1999, Member

By:

Hugh Charles Gandolfo
Hugh Charles Gandolfo, Trustee

By:

Beatrice Ann Gandolfo
Beatrice Ann Gandolfo, Trustee

By:

David Gandolfo
David Gandolfo, Member

P.O. Box 780
Castleford, ID 83321

David Gandolfo
David Gandolfo

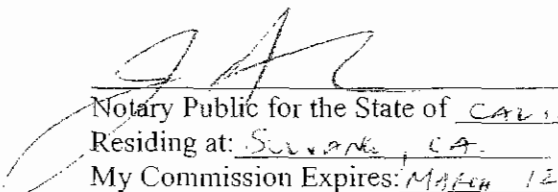
Jayne Gandolfo
Jayne Gandolfo

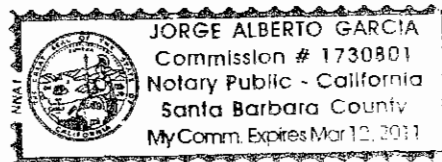
STATE OF CALIFORNIA)

: ss.

County of SANTA BARBARA

On this 11th day of April, in the year 2009, before me, a notary public for the State of CALIFORNIA, personally appeared **Hugh Charles Gandolfo**, known or identified to me to be the person listed above and a trustee of the Gandolfo Family Trust dated April 22, 1999, itself a member of **High Plains Dairy, L.L.C.**, and acknowledged to me on this day under oath, that, being informed of the contents of this document, he/she executed the same on behalf of such entities as his/her free and voluntary act and deed.


Notary Public for the State of CALIFORNIA
Residing at: SOLVANA, CA.
My Commission Expires: MARCH 12, 2011

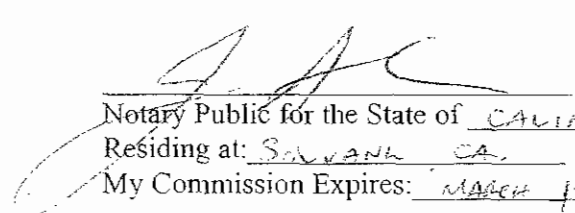


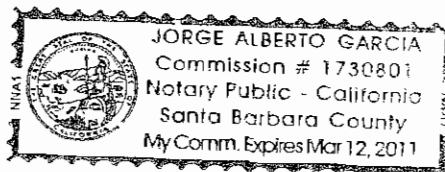
STATE OF CALIFORNIA)

: ss.

County of SANTA BARBARA

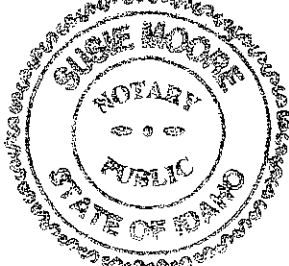
On this 11th day of April, in the year 2009, before me, a notary public for the State of CALIFORNIA, personally appeared **Beatrice Ann Gandolfo**, known or identified to me to be the person listed above and a trustee of the Gandolfo Family Trust dated April 22, 1999, itself a member of **High Plains Dairy, L.L.C.**, and acknowledged to me on this day under oath, that, being informed of the contents of this document, he/she executed the same on behalf of such entities as his/her free and voluntary act and deed.


Notary Public for the State of CALIFORNIA
Residing at: SOLVANA, CA.
My Commission Expires: MARCH 12, 2011



STATE OF IDAHO)
 : ss.
County of Twin Falls)

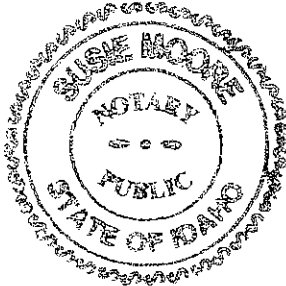
On this 14th day of April, in the year 2009, before me, a notary public for the State of Idaho, personally appeared **David Gandolfo**, known or identified to me to be the person listed above and a member of **High Plains Dairy, L.L.C.**, and acknowledged to me on this day under oath, that, being informed of the contents of this document, he/she executed the same in his/her personal capacity and on behalf of such entity as his/her free and voluntary act and deed.



Susie Moore
Notary Public for the State of Idaho
Residing at: Twin Falls
My Commission Expires: 11-28, 2014

STATE OF IDAHO)
 : ss.
County of Twin Falls)

On this 14th day of April, in the year 2009, before me, a notary public for the State of Idaho, personally appeared **Jayne Gandolfo**, known or identified to me to be the person listed above, and acknowledged to me on this day under oath, that, being informed of the contents of this document, he/she executed the same in his/her personal capacity as his/her free and voluntary act and deed.



Susie Moore
Notary Public for the State of Idaho
Residing at: Twin Falls
My Commission Expires: 11-28, 2014

PARCEL NO. 1

Township 9 South, Range 13 East, Boise Meridian, Twin Falls County, Idaho
Section 17: SW¼SW¼
SUBJECT TO Highway District right of way.

PARCEL NO. 2

Township 9 South, Range 13 East, Boise Meridian, Twin Falls County, Idaho
Section 18: E½SW¼; SE¼
SUBJECT TO Highway District right of way.

PARCEL NO. 3

Township 10 South, Range 12 East, Boise Meridian, Twin Falls County, Idaho,
Section 1: A tract of land being more particularly described as follows:
BEGINNING at the Southeast corner of said Section 1;
THENCE South 88°46'06" West a distance of 1331.84 feet along the southerly boundary of said
Section 1 to the TRUE POINT OF BEGINNING;
THENCE South 88°46'06" West a distance of 1301.47 feet along the southerly boundary of said
Section 1 to the South quarter corner of said Section 1;
THENCE South 88°46'06" West a distance of 638.61 feet along the southerly boundary of said
Section 1;
THENCE North 01°58'04" West a distance of 94.62 feet;
THENCE North 50°25'19" West a distance of 163.07 feet;
THENCE South 89°34'22" West a distance of 61.92 feet;
THENCE South 00°31'21" East a distance of 202.08 feet to the southerly boundary of said
Section 1;
THENCE South 88°46'06" West a distance of 129.06 feet along the southerly boundary of said
Section 1 to a point 10.00 feet easterly from the east edge of a farm road;
THENCE along a line parallel with and 10.00 feet easterly from the east edge of said farm road
the following courses and distances: North 21°24'32" West a distance of 518.43 feet;
THENCE North 16°32'06" West a distance of 450.55 feet;
THENCE North 13°11'58" West a distance of 93.48 feet;
THENCE North 06°13'48" West a distance of 79.73 feet;
THENCE North 00°36'25" East a distance of 1483.77 feet;
THENCE North 00°49'34" West a distance of 1571.95 feet;
THENCE North 01°23'53" West a distance of 143.87 feet;
THENCE North 02°07'38" East a distance of 83.38 feet to a point approximately 10.00 feet
northerly from the north edge of a farm road;
THENCE Easterly and Southerly approximately parallel with and 10.00 feet northerly from said
farm road the following courses and distances: North 72°36'37" East a distance of 29.31
feet;
THENCE South 82°19'23" East a distance of 35.81 feet;

THENCE South 44°07'29" East a distance of 34.66 feet;
THENCE South 50°53'58" East a distance of 59.92 feet;
THENCE South 55°17'47" East a distance of 273.43 feet;
THENCE South 62°27'49" East a distance of 136.10 feet;
THENCE South 75°44'26" East a distance of 53.78 feet;
THENCE South 87°14'34" East a distance of 174.40 feet;
THENCE North 86°09'57" East a distance of 83.36 feet;
THENCE North 77°22'58" East a distance of 62.99 feet;
THENCE North 66°18'04" East a distance of 60.06 feet;
THENCE North 53°16'23" East a distance of 38.15 feet;
THENCE South 71°53'34" East a distance of 41.76 feet;
THENCE South 56°21'03" East a distance of 57.09 feet;
THENCE South 77°02'22" East a distance of 87.58 feet;
THENCE South 64°08'42" East a distance of 93.78 feet;
THENCE South 60°30'20" East a distance of 132.48 feet;
THENCE South 80°16'46" East a distance of 47.76 feet;
THENCE South 73°26'32" East a distance of 53.46 feet;
THENCE South 66°05'15" East a distance of 62.62 feet;
THENCE South 58°20'31" East a distance of 201.49 feet;
THENCE South 54°19'29" East a distance of 193.48 feet;
THENCE South 36°14'20" East a distance of 67.86 feet;
THENCE South 09°02'44" East a distance of 51.26 feet;
THENCE South 11°08'27" West a distance of 67.88 feet;
THENCE South 16°47'30" East a distance of 46.81 feet;
THENCE South 05°43'04" East a distance of 98.77 feet;
THENCE South 08°53'12" East a distance of 57.26 feet;
THENCE South 15°41'54" East a distance of 52.00 feet;
THENCE South 23°45'12" East a distance of 159.42 feet;
THENCE South 17°55'27" East a distance of 58.81 feet;
THENCE South 02°03'14" West a distance of 432.26 feet;
THENCE South 03°01'38" East a distance of 49.46 feet;
THENCE South 10°55'07" East a distance of 98.37 feet;
THENCE South 16°47'02" East a distance of 125.90 feet;
THENCE South 15°54'54" East a distance of 413.77 feet;
THENCE South 19°47'20" East a distance of 108.97 feet;
THENCE South 25°19'59" East a distance of 78.29 feet;
THENCE South 21°16'57" East a distance of 69.92 feet;
THENCE South 12°21'12" East a distance of 74.88 feet;
THENCE South 04°27'10" East a distance of 135.57 feet;
THENCE South 10°56'02" East a distance of 510.22 feet;
THENCE South 01°21'36" East a distance of 200.21 feet;
THENCE South 05°15'49" East a distance of 69.52 feet;
THENCE South 11°02'55" East a distance of 126.76 feet;
THENCE South 20°20'22" East a distance of 298.89 feet;

THENCE South 24°52'04" East a distance of 338.33 feet to the TRUE POINT OF BEGINNING.

Together with any and all water, water rights, ditches and ditch rights, storage rights and permits, licenses, certificates or shares of stock belonging or in any way appurtenant to the real property described in this Exhibit A, whether now owned or hereafter acquired, whether now existing or hereafter arising, and all proceeds from the sale or other disposition of any such property. Such water rights shall include, without limitation, the following:

Idaho Department of Water Resources

Number	Priority Date	Source	Diversion Rate	Use
47-2382	12/13/1963	Ground Water	1.34 CFS	Irrigation
47-17504	11/21/1960	Ground Water	0.13 CFS	Stockwater
47-17505	10/25/1951	Ground Water	0.13 CFS	Stockwater
47-17506	11/21/1960	Ground Water	0.59 CFS	Irrigation
47-17507	10/25/1951	Ground Water	0.69 CFS	Irrigation
51-7373	10/25/1951	Ground Water	0.57 CFS	Stockwater (0.57 CFS) and Commercial (0.57 CFS)
51-7374	11/21/1960	Ground Water	0.47 CFS	Stockwater (0.47 CFS) and Commercial (0.47 CFS)
51-13047	*			
51-13048	**			
51-13049	***			
51-13050	****			
51-13051	11/21/1960	Ground Water	0.74 CFS	Irrigation
51-13053	10/25/1951	Ground Water	0.73 CFS	Irrigation

*Water Right No. 51-13047 - a "parent right" of Water Right No. 47-17504

**Water Right No. 51-13048 - a "parent right" of Water Right Nos. 51-13051 and 47-17506

***Water Right No. 51-13049 - a "parent right" of Water Right No. 47-17505

****Water Right No. 51-13050 - a "parent right" of Water Right Nos. 51-13053 and 47-17507

Exhibit B

Any and all as-extracted collateral (including, without limitation, oil, gas and other minerals); fixtures (including, without limitation, trade fixtures and windmills); equipment (excluding farm machinery, rolling stock and vehicles, but including, without limitation, all livestock handling equipment, milk tanks, compressors, pumps, stanchions, milking units and other milking equipment, equipment relating to power generation, irrigation equipment, pivots, pumps, motors, sprinkler systems, mainlines, hand lines, wheel lines, siphon tubes, gated pipe and all other irrigation equipment used for the production or transportation of water on the real property described in the attached Exhibit A or for the irrigation or drainage thereof); embedded software relating to the foregoing; permits, licenses, agreements and documents necessary to own or operate the real property described in the attached Exhibit A; supplies; and accounts generated from the real property described in the attached Exhibit A (including, without limitation, all leases, royalties, subleases, franchises, rents, issues, profits and incomes arising therefrom and all the estate, right, title and interest of every nature in and to the same); whether now owned or hereafter acquired, whether now existing or hereafter arising, and all accessions, parts, additions, replacements and substitutions for any of such property, and all proceeds (including, without limitation, insurance proceeds) from the sale or other disposition of any such property. The foregoing shall include, without limitation, the following:

- 1- 5 Tower Irrigation Pivot
- 1- 7 Tower LT Irrigation Pivot
- Wheel Lines
- 1- 4 Tower Reinke Irrigation Pivot (to be constructed)
- 1- 3 Tower Reinke Irrigation Pivot (to be constructed)

- Double 30 milking parlor
- 5- 50' x 280' shades
- 3- 50' x 320' shades
- 2- 50' x 180' shades
- DeLaval milking equipment with automatic detachers
- Blue Diamond Cabinets and Stanchions
- 8,000 Gallon Walker Stainless Steel Milk Silo, SN SPG-20870
- 10,000 Gallon Walker Stainless Steel Milk Silo, SN WED-71653
- 10,000 Gallon Water Tank
- Alfa-Laval Plate Cooler, SN 30109-71311
- Ingersoll Rand Air Drier/Compressor, SN PX318QU04111
- DeLaval Yukon Snap Compressors, SN 041106
- LPG Hot Water Heater, SN WJ081462I
- Alfa-Laval Vacuum Pump
- Usher HRS Auto Crowd Gate
- Scale and Scale House
- 25 hp Balder Pump, SN 39K062X103
- Berkeley Pump, SN M13359
- 10 hp Balder Pump, SN 37F696T002

Berkeley Pump, SN M13299
90 Gallon Flexlite Pressure Tank, SN FL3004364
180 Kva Generator

Milking equipment shall include without limitation scales, milk silos, motors, hoppers, augers, pipelines, couplers, compressors, feed drops, cow lockups, corral shades, stalls, stands, tubes, pumps, tanks, valves, washers, milk receivers, dispensers, controls, filters, take-offs, pulsators, pulsations controllers, claws, automatic detachers, chillers, mounting material, in ground wash heads, runner parlor mats, power generators and sanitation equipment.

Irrigation equipment shall include without limitation above and under ground pipeline, main lines, hand lines, wheel lines, pivots, pumps, motors and all allied equipment such as switch panels, pivot controls, wiring, shafting, openers, tubing, bowls, suction pipe, cones, valve openers, reducers, end plugs, risers, stems, sprinkler heads, hoses and nozzles

Livestock handling equipment shall include without limitation all corrals, cow stands, lockups, feed alleys, water troughs, waste water management systems, loading chutes and windbreaks.

Exhibit C

Any and all milk, cream and dairy products and accounts generated therefrom, including, without limitation, milk, cream and dairy product proceeds, whether pursuant to payments from agreements with Magic Valley Quality Milk Producers, Inc., other milk, cream or dairy product purchasers or otherwise; whether now owned or hereafter acquired; whether now existing or hereafter arising; and all accessions, additions, replacements and substitutions for any of such property, and all proceeds (including, without limitation, insurance proceeds) from the sale or other disposition of any such property.

RECEIVED

APR 17 2009

WATER RESOURCES
WESTERN REGION

CERTIFICATE OF SERVICE

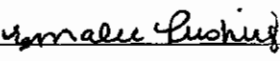
I hereby certify that on March 20, 2009 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the persons listed below:

RE: TRANSFER NO. 75087

**WATER RIGHTS NOS. 51-13048 (split and renumbered to 47-17506 and 51-13051),
51-13050 (split and renumbered to 47-17507 and 51-13053),
and 47-2382**

**HIGH PLAINS DAIRY LLC
PO BOX 780
CASTLEFORD ID 83321**

**CHARLES G BROCKWAY PE
BROCKWAY ENGINEERING PLLC
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301**



**Emalee Rushing
Office Services Supervisor**

*Current Owner will be updated
(H)*