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Instr# 11
Delaware County Iowa
Delaware RECORDER
BK 2008 PG 11

2007-4094 & 4095

PREPARED BY/Return to: Marty L. Rowlet, SHUTTLEWORTH & INGERSOLL, P.L.C., P.O. Box 2107, Cedar Rapids, IA 52406-2107, (319) 365-9461

MORTGAGE

THIS MORTGAGE is made between Premier Grain, an Iowa general partnership, Matthew Ward, and Charles Ward ("Mortgagors") and R. Dverg Krantz, Karen E. Krantz, and Karen E. Krantz as Trustee of the Karen E. Krantz Revocable Trust dated March 30, 1996 (collectively the "Mortgagees").

1. **Grant of Mortgage and Security Interest.** Mortgagors hereby sell, convey and mortgage unto Mortgagee, and grant a security interest to Mortgagee in the following described property:

All of Mortgagors' right, title and interest in and to the following described real estate situated in Buchanan County, Iowa (the "Buchanan Land"):

> The Northwest ¼ of Section 13, except the East 31 acres of the Northeast ¼ of said Northwest 1/4; the West ½ of the Southwest ¼ of Section 13, except that part of the Southwest ¼ of the Southwest 1/4 described as: Commencing at the Southwest corner of said Section 13, thence East along the South line thereof 340 feet to the point of beginning; thence North 395 feet, thence East 630 feet, thence South 395 feet to the South line of said Section 13, thence West along said line 630 feet to the point of beginning; and the North ½ of the Northwest ¼ of Section 24, all in Township 89 North, Range 7 West of the 5th P.M., Buchanan County, Iowa

and all hereditaments, easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the land, estates and other rights and interest now or hereafter belonging to or in any way pertaining to the land.

AND All of Mortgagors' right, title and interest in and to the following described real estate situated in Delaware County, Iowa (the "Delaware Land"):

> The Northeast Quarter (NE ¼) except commencing one thousand seven hundred thirty two (1732.0) feet South of the Northeast corner of said

Northeast Quarter (NE ¼), and running thence West four hundred twenty eight (428.0) feet, thence South five hundred sixty (560.0) feet, thence East four hundred twenty eight (428.0) feet, thence North five hundred sixty (560.0) feet to the point of beginning, and the East one-half (E ½) of the Southeast Quarter (SE ¼) except commencing at the Southeast corner thereof and running thence West on thousand three hundred twenty (1320.0) feet, thence North three hundred sixty eight (368.0) feet, thence North 85°50' East one thousand three hundred twenty one and two-tenths (1321.2) feet to the East line of said Southeast Quarter (SE ¼), thence South four hundred sixty four (464.0) feet to the point of beginning, all in Section Thirty (30), Township Eighty Nine (89) North, Range Six (6), West of the Fifth P.M.

AND

The Northeast Quarter (NE ¼), except the South six hundred twenty (620.0) feet of the West four hundred twenty (420) feet thereof, in Section Thirty Three (33), Township Eighty Eight (88) North, Range Six (6), West of the Fifth P.M.

and hereditaments, easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the land, estates and other rights and interest now or hereafter belonging to or in any way pertaining to the land.

(collectively the "Real Estate").

TO HAVE AND TO HOLD the Real Estate (also called the "Mortgaged Property"), together with all privileges, hereditaments thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto Mortgagee, its successors and assigns.

2. **Obligations.** This Mortgage secures the following (hereinafter collectively referred to as the "Obligations"):

a. The obligation to Mortgagees evidenced by a Pledge Agreement dated December 20, 2007, in the total original principal amount of $525,000.00; and

b. All other obligations of Mortgagors to Mortgagees, now existing or hereafter arising, whether direct or indirect, contingent or absolute and whether as maker or surety, including, but not limited to, future advances and amounts advanced and expenses incurred by Mortgagee pursuant to this Mortgage and the Pledge Agreement.

3. **Representations and Warranties of Mortgagors.** Mortgagors represent, warrant and covenant to Mortgagees that (i) Mortgagors hold clear title to the Mortgaged Property and title in fee simple in the Real Estate (ii) Mortgagors have the right, power and authority to execute this

Mortgage and to mortgage, and grant a security interest in the Mortgaged Property; (iii) the Mortgaged Property is free and clear of all liens and encumbrances, except for a real estate mortgage in favor of Farmers State Bank, Marion, Iowa, in the total original principal amount of $3,163,120.00 and real estate taxes not yet delinquent and except as otherwise stated in paragraph 1 herein; and (iv) Mortgagors will warrant and defend title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons, whether now existing or hereafter arising.

4. **Payment and Performance of the Obligations.** Mortgagors will pay all amounts payable under the Obligations in accordance with the terms of the Obligations when and as due and will timely perform all other obligations of Mortgagors under the Obligations. The provisions of the Obligations are hereby incorporated by reference into this Mortgage as if fully set forth herein.

5. **Taxes.** Mortgagors shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Mortgaged Property before the same become delinquent, without notice or demand, and shall deliver to Mortgagee proof of such payment within fifteen (15) days after the date in which such tax or assessment becomes delinquent.

6. **Liens.** Mortgagors shall not create, incur or suffer to exist any lien, encumbrance, security interest or charge on the Mortgaged Property or any part thereof which might or could be held to be equal or prior to the lien of this Mortgage, other than a lien in favor of Farmers State Bank, Marion, Iowa, in the total original principal amount of $3,163,120.00 and the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Mortgagors shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

7. **Compliance with Laws.** Mortgagors shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof.

8. **Permitted Contests.** Mortgagors shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 5 hereof, (ii) discharge or remove any lien, encumbrance or charge referred to in paragraph 6 hereof, or (iii) comply with any statute, law, rule, regulation or ordinance referred to in paragraph 7 hereof, so long as Mortgagors shall contest, in good faith, the existence, amount or the validity thereof, the amount of damages caused thereby or the extent of Mortgagors' liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or the realization upon the tax, assessment, charge or lien, encumbrances or charge so contested, (B) the sale, forfeiture or loss of the Mortgaged Property or any part thereof, and (C) any interference with the use of occupancy of the Mortgaged Property or any part thereof. Mortgagors shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph 8.

9. **Protection of Mortgagees' Security.** Subject to the rights of Mortgagors under paragraph 8 hereof, if Mortgagors fail to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects the Mortgaged Property or the interest of the Mortgagee therein, or the title thereto, then Mortgagees, at Mortgagees' option, may perform such covenants and agreements, defend against or investigate such action or proceeding, and take such other action as Mortgagees deems necessary to protect Mortgagees' interest. Any amounts or expenses disbursed or incurred by Mortgagees in good faith pursuant to this paragraph 9 with interest thereon at the rate of 9.00% per annum, shall become an Obligation of Mortgagors secured by this Mortgage. Such amounts advanced or disbursed by Mortgagees hereunder shall be immediately due and payable by Mortgagors unless Mortgagors and Mortgagees agree in writing to other terms of repayment. Mortgagees shall, at their option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Obligations or by Mortgagees under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph shall require Mortgagees to incur any expense or do any act hereunder, and Mortgagees shall not be liable to Mortgagors for any damage or claims arising out of action taken by Mortgagees pursuant to this paragraph.

10. **Condemnation.** Mortgagors shall give Mortgagees prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assign, transfer and set over to Mortgagees the entire proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation. Mortgagees are hereby authorized to intervene in any such action in the names of Mortgagors, to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by Mortgagees in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Mortgagees first out of the proceeds. The remaining proceeds or any part thereof shall be applied to reduction of that portion of the Obligations then most remotely to be paid, where due or not, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagees.

11. **Events of Default.** Each of the following occurrences shall constitute an event of default hereunder ("Event of Default"):

a. Mortgagors shall default in the due observance or performance of or breach its agreement contained in paragraph 4 hereof or shall default in that due observance or performance of or breach any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Mortgage.

b. Mortgagors shall make an assignment for the benefit of its creditors, or a petition shall be filed by or against Mortgagors under the United States Bankruptcy Code or Mortgagors shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Mortgaged Property or shall not,

within thirty (30) days after the appointment of a trustee, receiver or liquidator of any material part of its properties or of the Mortgaged Property, have such appointment vacated.

c. A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against the Mortgaged Property or any part thereof which is not released, vacated or fully bonded within thirty (30) days after its entry, issue or levy.

d. An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the Mortgaged Property or any part thereof.

12. **Acceleration; Foreclosure.** Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Mortgagees may, at their option, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

a. Mortgagees may declare immediately due and payable all Obligations secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice of demand.

b. Mortgagees may (and are hereby authorized and empowered to) foreclose this Mortgage in accordance with the laws of the State of Iowa, and at any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall at the request of Mortgagees appoint a receiver to take immediate possession of the Mortgaged Property and of the Revenues and Income accruing therefrom, and to rent or cultivate the same as he may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Mortgagors only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the Obligations.

13. **Attorneys' Fees.** Mortgagors shall pay on demand all costs and expenses incurred by Mortgagees in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorneys' fees and legal expenses.

14. **Forbearance not a Waiver, Rights and Remedies Cumulative.** No delay by Mortgagees in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by Mortgagees of any particular provisions of this Mortgage shall be deemed effective unless in writing signed by Mortgagees. All such rights and remedies provided for herein or which Mortgagees or the holder of the Obligations may have otherwise, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises.

15. **Severability.** In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.

16. **Successors and Assigns Bound; Number; Gender; Agents; Captions.** The rights, covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties. Words and phrases contained herein, including acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the contexts. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

17. **Governing Law.** This Mortgage shall be governed by and construed in accordance with the laws of the State of Iowa.

Dated: December 28, 2007.

MORTGAGORS:

PREMIER GRAIN, an Iowa general partnership

By: _____
Mathew Ward, partner

By: _____
Charles Ward, partner

_____
Mathew Ward, individually

_____
Charles Ward, individually

STATE OF IOWA)
) ss.
COUNTY OF Linn)

On this 28th day of December, 2007, before me, the undersigned, a Notary Public, personally appeared Mathew Ward and Charles Ward, as partners of Premier Grain, an Iowa general partnership and individually, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Marty Rowlet
Notary Public

