



Document 2015 3362

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LISA SMITH, COUNTY RECORDER  
MADISON COUNTY IOWA

CHEK

Space above this line for Recorder's Use

THIS INSTRUMENT PREPARED BY: Kara M. Sinnard, Whitfield & Eddy, P.L.C., 317 Sixth Avenue, Suite 1200, Des Moines, IA 50309-4195; (515) 288-6041

RECORDING REQUESTED BY, AND WHEN RECORDED MAIL TO: Metropolitan Life Insurance Company, 10801 Mastin Blvd., Ste 930, Overland Park, KS 66210-2101, Attn: Loan Manager, Central Region

TAXPAYER NAME AND ADDRESS: Benshoof Farms Partnership, 1931 Quail Ridge Avenue, Winterset, IA 50273

LEGAL DESCRIPTION OF LAND: See EXHIBIT A and EXHIBIT B attached

**MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT,  
AND FIXTURE FILING**

FOR THE PURPOSE OF FACILITATING THE RECORD HEREOF, THIS MORTGAGE HAS BEEN EXECUTED IN TWO COUNTERPARTS, EACH OF WHICH SHALL BE TAKEN TO BE AN ORIGINAL, AND ALL OF WHICH TOGETHER OR ANY ONE THEREOF SHALL BE DEEMED TO CONSTITUTE BUT ONE AND THE SAME INSTRUMENT.

NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF \$4,884,000.00. LOANS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS.

THIS MORTGAGE ALSO CONSTITUTES A FINANCING STATEMENT FILED AS A FIXTURE FILING UNDER THE UCC

SEE ARTICLE 9 FOR ADDRESS OF GRANTOR AND MORTGAGEE

This mortgage is dated as of November 13, 2015, and is by BENSHOOF FARMS PARTNERSHIP a/k/a BENSHOFF FARMS PARTNERSHIP, an Iowa general partnership ("**Grantor**"), to and in favor of METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation ("**Mortgagee**").

Mortgagee has agreed to make a loan in the original principal sum of \$2,442,000.00 to Grantor, ROBERT HOWARD BENSHOOF ("**R. Benshoof**"), TED ALAN BENSHOOF ("**Ted Alan**"), STEVEN ARTHUR BENSHOOF ("**S. Benshoof**"), TED ARTHUR BENSHOOF ("**Ted Arthur**"), and BENSHOOF FAMILY FARMS, LLC, an Iowa limited liability company ("**Benshoof Family**") (Grantor, R. Benshoof, Ted Alan, S. Benshoof, Ted Arthur, and Benshoof Family are individually and collectively, "**Borrower**") under the terms and conditions of the Loan Agreement between Borrower and Mortgagee dated as of the date of this mortgage (the "**Loan Agreement**").

Each capitalized term used in this mortgage that is defined in the Loan Agreement and not defined in this mortgage will have the meaning specified in the Loan Agreement. This mortgage will be interpreted in accordance with the Drafting Conventions.

**ARTICLE 1 – GRANT**

To secure repayment of the indebtedness evidenced by the Note (defined herein) and payment and performance of all other Secured Obligations (defined herein), Grantor irrevocably and unconditionally mortgages,

warrants, grants, bargains, sells, and conveys to Mortgagee, all of Grantor's estate, right, title and interest which Grantor now has or may later acquire in the following, wherever located, and whether constituting real estate or personal property (individually and collectively, the "**Property**"):

- (1) the real estate and any interest in the real estate located in Madison County, Iowa, and described in EXHIBIT A and Warren County, Iowa, and described in EXHIBIT B (the "**Land**");
- (2) buildings, structures, improvements, and fixtures now or hereafter erected on, affixed or attached to the Land, including all farm products storage and handling units and equipment, and fences, gates and loading chutes (the "**Improvements**");
- (3) to the extent not included within the definition of "Improvements," all equipment now or hereafter affixed or installed in any manner on the Land or the Improvements or used in connection with the operation of the Property (other than rolling stock and implements customarily towed) (the "**Equipment**");
- (4) easements, rights-of-way, and other rights and entitlements appurtenant to the Land or used in connection with the Land or as a means of access thereto (the "**Easements**");
- (5) other tenements, hereditaments and appurtenances to the Land;
- (6) coal, oil, gas, and other hydrocarbon substances, geothermal resources, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and estates in, under or produced from the Land and other coal, oil, gas, geothermal, and mineral interests with which any of the foregoing interests or estates are pooled or unitized and other "as-extracted collateral" (the "**Mineral Rights**");
- (7) timber now or hereafter standing on or cut from the Land;
- (8) leases, subleases, licenses, occupancy agreements, concessions and other agreements, granting a possessory interest in and to, or the right to extract, mine, reside in, sell, or use the Property, (individually and collectively, the "**Leases**");
- (9) working drawings, instructional manuals, and rights in processes directly related to the operation of the Property;
- (10) contracts involving and warranties covering the Property;
- (11) permits and licenses relating or pertaining to the use or enjoyment of the Property;
- (12) proceeds of and any unearned premiums on any insurance policies covering the Property, including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property (the "**Insurance Claims**");
- (13) all awards made for the taking by condemnation or the power of eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Land or Improvements (the "**Condemnation Awards**");
- (14) the right, in the name and on behalf of Grantor, upon notice to Grantor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee in the Property;
- (15) accessions, attachments and other additions to, substitutes or replacements for, all proceeds and products of, the Property; and
- (16) books, records and files relating to the Property, including computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data.

## ARTICLE 2 - ASSIGNMENT OF RENTS

**2.01 Assignment.** Grantor irrevocably and unconditionally assigns Mortgagee all rents and other benefits derived from the Leases, and all other issues, profits, royalties, bonuses, income and other proceeds of the Property, whether now due, past due or to become due, including all prepaid rents, security deposits and other supporting obligations (collectively, the "Rents").

**2.02 Grant of License.** Notwithstanding the provisions of Section 2.01, Mortgagee confers upon Grantor a revocable license to collect and retain the Rents as they become due and payable, so long as there is no Event of Default (the "License"). If an Event of Default has occurred, Mortgagee may terminate the License without notice to or demand upon Grantor.

**2.03 Collection and Application of Rents.** Subject to the License granted to Grantor under Section 2.02, Mortgagee has the right, power and authority to collect any and all Rents. Mortgagee, by its acceptance of this mortgage does not assume any duty or obligation under the Leases.

**2.04 Notice.** All lessees under any and all Leases are hereby irrevocably authorized and notified by Grantor to rely upon and to comply with (and are fully protected in so doing) any notice or demand by Mortgagee for the payment to Mortgagee of Rents, or for the performance of any of lessees' undertakings under the Leases, and lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. Subject to the License, Mortgagee may notify any person that the leases have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee, whether or not Mortgagee has commenced or completed foreclosure of or taken possession of the Property.

**2.05 Proceeds.** Mortgagee may apply all amounts received by it pursuant to this assignment to pay any of the following in such amounts and in such order as Mortgagee deems appropriate: (a) any and all Secured Obligations; (b) all expenses of leasing, operating, maintaining and managing the Property, including without limitation, the salaries, fees, commissions and wages of a managing agent and such other employees, agents or independent contractors as Mortgagee deems necessary or desirable; (c) all taxes, charges, claims, assessments, any other liens, and premiums for all insurance Mortgagee deems necessary or desirable; (d) the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property.

**2.06 Mineral Rights.** Without limitation of the foregoing, Grantor irrevocably and unconditionally assigns and transfers to Mortgagee, all bonuses, delay rentals, royalties, production payments, and other sums payable or benefits accruing to Grantor under any and all oil, gas, coal, or other minerals leases now existing or hereafter entered into with respect to the Land. So long as there is no Event of Default, all such sums may continue to be paid to Grantor. Upon an Event of Default, Mortgagee may demand and receive all such sums to apply to pay Secured Obligations, expenses of leasing, operating, maintaining and managing the Property, taxes, charges, claims, assessments, any other liens, and premiums for insurance, in such amounts and in such order as Mortgagee deems appropriate. Grantor has not and will not grant any consent required of the owner of the Property for mining or other surface disturbance on the Property by the terms of any patent, deed, statute, law or otherwise, without the prior written consent of Mortgagee. This paragraph shall not obligate or require Mortgagee to subordinate its interests under this mortgage to any oil, gas, coal, or other mineral lease or agreement.

**2.07 Wind Development Agreements.** Without limitation of the foregoing, Grantor irrevocably and unconditionally assigns and transfers to Mortgagee, all bonuses, option payments, royalties, production payments, rents, payments, and other sums payable or benefits accruing to Grantor under any and all wind development agreements, easements, and leases now existing or hereafter entered into with respect to the Land. So long as there is no Event of Default, all such sums may continue to be paid to Grantor. Upon an Event of Default, Mortgagee may demand and receive all such sums to apply to pay Secured Obligations, expenses of leasing, operating, maintaining and managing the Property, taxes, charges, claims, assessments, any other liens, and premiums for insurance, in such amounts and in such order as Mortgagee deems appropriate. Grantor has not and will not grant any consent required of the owner of the Property for wind development on the Property by the

terms of any deed, statute, law or otherwise, without the prior written consent of Mortgagee. This paragraph shall not obligate or require Mortgagee to subordinate its interests under this mortgage to any wind development agreement, easement or lease.

### ARTICLE 3 – SECURITY AGREEMENT

**3.01 Grant of Security Interest.** Grantor grants Mortgagee a security interest in and pledges and assigns to Mortgagee all of Grantor's right, title and interest in all Property to the extent and which may be characterized as personal property (the "**Personalty**"), including the Improvements, Equipment. Grantor authorizes Mortgagee to file any UCC financing statements required by Mortgagee, from time to time, to perfect Mortgagee's security interest in the Property.

**3.02 Addresses of Debtor and Secured Party.** The address of Grantor adjacent to its signature below is the mailing address of Grantor as debtor under the UCC. The address for Mortgagee specified in Article 9 is the address for Mortgagee as secured party under the UCC.

**3.03 Fixture Filing.** This mortgage constitutes a financing statement filed as a fixture filing under the UCC, covering any Property which now is or later may become a fixture attached to the Land or any Improvement. For this purpose, the "debtor" is Grantor, the "Secured Party" is Mortgagee and the collateral is the Property.

### ARTICLE 4 – SECURED OBLIGATIONS

**4.01 Secured Obligations.** Subject to Section 4.05, Grantor makes the mortgage, grant, conveyance, transfer and assignment in Article 1, makes the irrevocable and absolute assignment in Article 2, and grants the security interest under Article 3 to secure payment and performance of the following obligations (the "**Secured Obligations**") in any order of priority that Mortgagee may choose:

- (1) all Obligations (defined in the Loan Agreement), including: (A) those evidenced by the Promissory Note dated as of the date of this mortgage, from Borrower to Mortgagee in the original principal amount of \$2,442,000.00 (the "**Note**") and (B) all other indebtedness, liabilities and obligations of Borrower to Mortgagee arising pursuant to any of the Loan Documents, whether now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several;
- (2) all obligations of Grantor under this mortgage;
- (3) all interest and any disbursements made for the payment of taxes, levies, or insurance on the Property, and the repair, maintenance or improvements of the Property pursuant to the Loan Documents, and all other protective advances, with interest on those disbursements;
- (4) all future advances and other obligations that Grantor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this mortgage;
- (5) all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations; and
- (6) any of the foregoing that arises after the filing of a petition by or against Grantor under an Insolvency Proceeding.

**4.02 Future Secured Obligations.** The Secured Obligations include future advances made by Mortgagee for any purpose, and all other future Secured Obligations. Those future advances and other future Secured Obligations, together with interest thereon, are secured by this mortgage to the same extent as if made or incurred on the date of the execution of this mortgage, and have priority as to third persons with or without actual notice from the time this mortgage is filed for record as provided by law. The total amount of indebtedness secured by this mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed the maximum principal amount of \$4,884,000.00 (the "**Maximum Amount**").

**Secured**"), plus interest and any disbursements made for the payment of taxes, levies or insurance on the Property, with interest on those disbursements, plus any increase in the principal balance as the result of negative amortization or deferred interest, or any other protective or other advances made by Mortgagee for the purposes of protecting its security hereunder. Grantor shall not file of record or serve Mortgagee with any notice limiting the maximum amount secured by this mortgage to an amount less than the Maximum Amount Secured, as specified in this mortgage, or if no such amount is specified, to any amount (a "**Maximum Amount Notice**"). Nothing in this Section 4.02 will constitute a commitment to make additional or future advances in any amount.

**4.03 Maturity Date.** The scheduled maturity date of the Note is April 15, 2046.

**4.04 Notice of Terms of Secured Obligation Documents.** All persons who have or acquire an interest in the Property will be deemed to have received notice of, and will be bound by, the terms of the Loan Agreement, the other Loan Documents, and each other agreement or instrument made or entered into in connection with each of the Secured Obligations (the Loan Agreement, the Loan Documents and those other agreements or instruments, the "**Secured Obligation Documents**"). These terms include any provisions in the Secured Obligation Documents which may permit or provide that the rate of interest on one or more of the Secured Obligations may vary from time to time. Without limitation, the Loan Agreement expressly provides that Lender may at its option change or adjust the interest rate as referenced therein.

**4.05 Unsecured Obligations.** This mortgage does not secure any indebtedness, liability or obligation that is expressly stated to be unsecured.

#### **ARTICLE 5 – WARRANTY OF TITLE**

**5.01 Warranty of Title.** Grantor represents and warrants that, other than the exceptions to title expressly listed on a schedule of exceptions to coverage in the final commitment for title insurance or pro forma policy of title insurance accepted by Mortgagee prior to the Closing (the "**Permitted Exceptions**"), Grantor lawfully possesses and holds fee simple title to all of the Land and Improvements; that Grantor has the right, power and authority to mortgage, grant, convey and assign the Property; and that the Property is unencumbered. Grantor especially agrees and declares that the separate estate of each of them, whether vested, contingent or in expectancy, is hereby conveyed and shall be bound for the payment and performance of the Secured Obligations.

**5.02 Defense and Notice of Claims and Actions.** At Grantor's sole expense, Grantor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this mortgage and the rights and powers of Mortgagee created under it, against all adverse claims. Grantor must give Mortgagee prompt notice in writing if any claim is asserted which does or could affect any of these matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

**5.03 Liens, Charges and Encumbrances.** Grantor shall immediately discharge any lien, charge or encumbrance on the Property other than Permitted Exceptions, to which Mortgagee has not consented in writing. Grantor must pay when due all claims for labor performed and material furnished to the Property and all other obligations secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether the lien, charge or encumbrance is or would be senior or subordinate to this mortgage.

#### **ARTICLE 6 - REPRESENTATIONS**

**6.01 Representations.** Grantor represents to Mortgagee that:

- (1) the Property does not represent the proceeds of unlawful activity under any state, federal or foreign law;
- (2) the Property includes all property and rights which may be reasonably necessary or desirable to enable Grantor to use, enjoy and operate the Land, the Improvements and the Equipment for the present uses thereof;
- (3) the Property is taxed and billed separately from real property not subject to this mortgage;

- (4) none of the Land or Improvements is subject to any Lien, offset or claim except any easements, restrictions, and Liens for taxes and assessments on the Land and Improvements, if any, which are not yet due and payable, which are expressly listed on a schedule of exceptions to coverage in the final commitment for title insurance or pro forma policy of title insurance received by Mortgagee prior to the Closing;
- (5) Grantor owns the Personalty free and clear of any security interests, reservations of title or conditional sales contracts, and there is no presently valid financing statement affecting the Personalty on file in any public office except as disclosed in writing to Mortgagee prior to the Closing;
- (6) Grantor has title to, or (in the case of leased property) valid leasehold interests in, all of their properties and assets, real and personal, including the properties and assets and leasehold interests reflected in the Financial Information (other than any properties or assets disposed of in the ordinary course of business);
- (7) the legal name of Grantor is as appears in this mortgage;
- (8) Grantor has not used any trade name, assumed name or other name except Grantor's name stated in this mortgage;
- (9) each Grantor who is a natural Person resides at the address adjacent to his or her signature below;
- (10) if Grantor is anything other than a natural Person, it has complied with all Applicable Laws concerning its organization, existence and the transaction of its business, and is in existence and good standing in its state of organization and each state in which it conducts its business;
- (11) the execution, delivery and performance by Grantor of this mortgage is within the powers and authority of Grantor and has been duly authorized;
- (12) to Grantor's knowledge, this mortgage does not conflict with any Applicable Law;
- (13) this mortgage is a legal, valid and binding agreement of Grantor, enforceable against Grantor in accordance with its terms, and any instrument or agreement required hereunder, when executed and delivered, will be similarly legal, valid, binding and enforceable;
- (14) there is no lawsuit, tax claim or other dispute pending or to Grantor's knowledge threatened against Grantor or the Property that, if determined adverse to Grantor, is reasonably likely to have a Material Adverse Effect;
- (15) Grantor is not the subject of any Judgment;
- (16) this mortgage does not conflict with, nor is Grantor in default on any loan agreement, indenture, purchase agreement, guaranty, capital lease, or other investment, agreement, or arrangement presently in effect providing for or relating to extensions of credit in respect of which Grantor is in any manner directly or contingently obligated;
- (17) Grantor has filed all tax returns (federal, state, and local) required to be filed and has paid all taxes, assessments, and governmental charges and levies thereon, including interest and penalties;
- (18) before signing this mortgage, Grantor researched, to the satisfaction of Grantor, and inquired into the previous uses and ownership of the Real Estate, and based on that due diligence, to the best of Grantor's knowledge, no Hazardous Substance has been disposed of or released or otherwise exists in, on, under or onto the Real Estate, except as Grantor has disclosed to Mortgagee in the Environmental Information;
- (19) Grantor has complied with all current laws, regulations and ordinances or other requirements of any governmental authority relating to or imposing liability or standards of conduct concerning protection of health or the environment or hazardous substances ("**Environmental Laws**");
- (20) Grantor has not received any notices of violations of any Applicable Laws (including Environmental Laws); and Grantor is in compliance with all Applicable Laws;

- (21) there are no claims, actions, proceedings or investigations pending or threatened against Grantor or affecting the Property with respect to any violations of Applicable Laws, including, without limitation, any Environmental Law;
- (22) Grantor's place of business, or its chief executive office, if it has more than one place of business, is located at the address opposite its signature below;
- (23) unless otherwise disclosed to Mortgagee, Grantor is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986; and
- (24) there is no Event of Default or event which, with notice or lapse of time would be an Event of Default.

#### **ARTICLE 7– COVENANTS**

**7.01 Performance of Secured Obligations.** Grantor shall promptly pay and perform each Secured Obligation in accordance with its terms.

**7.02 Maintenance and Preservation of Property.** Grantor shall:

- (1) immediately discharge any lien on the Property which Mortgagee has not consented to in writing, and shall also pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now or hereafter encumbers or appears to encumber all or part of the Property, whether the lien, charge or encumbrance is or would be senior or subordinate to this mortgage;
- (2) not alter, remove or demolish any portion of the Improvements, except as permitted or required by the Loan Agreement;
- (3) not permit any tangible Personalty (except for Equipment being repaired or restored) to be kept at any location other than on the Land;
- (4) if any Personalty is at any time in the possession of a bailee, Grantor shall promptly notify Mortgagee thereof and, at Mortgagee's request, shall promptly obtain an acknowledgement from the bailee, in form and substance reasonably satisfactory to Mortgagee, that the bailee holds the Personalty for the benefit of Mortgagee and such bailee's agreement to comply with any instructions received from Mortgagee;
- (5) maintain (or cause to be maintained) all policies of insurance required under the Loan Agreement and pay (or cause payment of) all premiums for that insurance on or prior to the date when due;
- (6) promptly and completely repair and/or restore any portion of the Property which becomes damaged or destroyed, in a good and workmanlike manner in accordance with sound building practices, whether or not Grantor has received the proceeds of any Insurance Claim;
- (7) not commit or allow any waste of the Property, nor do or suffer to be done any act whereby the value of any part of the Property may be lessened;
- (8) not initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement;
- (9) maintain any forest, agricultural or similar tax classification of the Land, and not allow any act or omission which would disqualify the Land for beneficial tax assessment;
- (10) complete appropriation and adjudication and all other requirements, if any, necessary to obtain the issuance of any license or water permit issued to Grantor, and take all other steps required or advisable for purposes of perfecting and maintaining in good status all other Water Rights;
- (11) not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Grantor on the Property or any part of it under this mortgage; and

- (12) perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and utility.

**7.03 Operations on Property.** Grantor shall keep the Property in good condition and repair; operate the Property, whether improved pastures, orchards, groves, grazing, timber, or crop lands, in a good and husband-like manner in accordance with accepted principles of sound agricultural and forestry practices in the area in which the Land is located; take all reasonable precautions to control wind and water erosion; fertilize improved pastures, if any, where necessary to maintain a good stand of desirable grasses; protect orchards and timber, if any, by reasonable precautions against loss or damage by fire including the maintenance of appropriate fire breaks; and neither to remove nor permit the removal of any oil, gas, mineral, stone, rock, clay, or gravel owned by Grantor, or any timber, buildings, top soil, or fertilizer, without the prior written consent of Mortgagee

**7.04 Compliance with Applicable Law** Grantor shall not commit or allow any act upon or use of the Property which would violate any Applicable Law, whether now existing or later to be enacted and whether foreseen or unforeseen, or any public or private covenant, condition, restriction or equitable servitude affecting the Property.

**7.05 Taxes and Assessments.** Grantor shall pay: (a) prior to delinquency all taxes, levies, charges and assessments imposed by Applicable Law or any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it (individually and collectively "**Impositions**"); (b) any and all intangible taxes and documentary stamp taxes determined at any time to be due on or as a result of the Secured Obligations, this mortgage or any other Loan Documents, together with any and all interest and penalties thereon; and (c) taxes, levies, charges and assessments on Mortgagee's or Secured Parties' interest therein or upon this mortgage or the Secured Obligations (individually and collectively, "**Mortgage Taxes**"); except that if the amount of Mortgage Taxes exceeds the Maximum Rate, Grantor will not be required to pay any such excess. If after the date of this mortgage, the State of Iowa passes any law deducting from the value of Land for the purpose of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by a mortgage for state or local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, then within 180 days after notice by Mortgagee to Grantor, Grantor shall pay all Secured Obligations. Notwithstanding the foregoing provisions of this Section 7.05, Grantor may, at its expense, contest the validity or application of any Imposition by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that: (a) Mortgagee is satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest; and (b) Grantor shall have posted a bond or furnished such other security required from time to time by Mortgagee.

**7.06 Damages and Insurance and Condemnation Proceeds.** Mortgagee may, at its option: (a) in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Property, and it may make any compromise or settlement of the action or proceeding; (b) participate in any action or proceeding relating to any Condemnation Award; and (c) join Grantor in adjusting any Insurance Claim. All insurance proceeds, Condemnation Awards, and proceeds of any other claim based on warranty, or for damage, injury or loss to the Property which Grantor may receive or be entitled to must be paid to Mortgagee. In each instance, Mortgagee may apply those proceeds first toward reimbursement of all of Mortgagee's costs and expenses of recovering the proceeds or Condemnation Award, including Legal Fees. The balance shall, at Mortgagee's option, be applied to pay or Prepay some or all of the Secured Obligations in such order and proportions as it may choose. GRANTOR HEREBY SPECIFICALLY, UNCONDITIONALLY AND IRREVOCABLY WAIVES ALL RIGHTS OF A PROPERTY OWNER WITH RESPECT TO ALLOCATION OF CONDEMNATION PROCEEDS BETWEEN A PROPERTY OWNER AND A LIENHOLDER.

**7.07 Site Visits, Observation and Testing.** Mortgagee and its agents and representatives may enter and visit the Property at any reasonable time for the purposes of observing it, performing appraisals, taking and removing soil or groundwater samples, and conducting tests on any part of it, as provided in the Loan Agreement, and otherwise to determine Grantor's compliance with this mortgage.



## **7.08 Prohibited Transfers.**

(a) Grantor agrees that a material factor in Mortgagee's decision to enter into the Secured Obligation Documents is the expertise, financial status and other characteristics of Grantor. Grantor shall not make or permit any Prohibited Transfer. Upon any Prohibited Transfer Mortgagee may declare all Secured Obligations to be due and payable immediately. "**Prohibited Transfer**" means: (1) any sale, contract to sell, conveyance, encumbrance, pledge, mortgage, or lease of the Property not expressly permitted under this instrument or the other Secured Obligation Documents, or other transfer of all or any material part of the Property or any interest in it, including any transfer of Mineral Rights, Water Rights, or Water Stock, whether voluntary, involuntary, by operation of law or otherwise; provided, however, Grantor may sell or dispose of fixtures and equipment in the ordinary course of their business so long as such items are replaced with items of equal or greater value and utility; (2) if Grantor is a corporation, any transfer or transfers of shares of more than ten percent (or such other portion, if any, permitted under the Loan Agreement) of the voting power or the direct or indirect beneficial ownership of Grantor, on a cumulative basis, or any dissolution of the corporation; (3) if Grantor is a partnership, withdrawal or removal of any general partner, dissolution of the partnership under Applicable Law, or any transfer or transfers of more than ten percent (or such other portion, if any, permitted under the Loan Agreement) of the partnership interests, on a cumulative basis; (4) if Grantor is a limited liability company, withdrawal or removal of any manager or managing member, termination of the limited liability company or any transfer or transfers of more than ten percent (or such other portion, if any, permitted under the Loan Agreement) of the voting power or the ownership of the economic interest in the Grantor, on a cumulative basis; or (5) if Grantor is a trust, withdrawal or removal of any trustee or revocation of the trust.

(b) If there is a Prohibited Transfer, Mortgagee may, at Mortgagee's option, without limitation to any other rights or remedies available to Mortgagee upon an Event of Default, deem that the principal balance of the Loan and, to the extent permitted by Applicable Law, all other Obligations, will bear interest at the Contract Rate plus 2.00% per annum (the "**Prohibited Transfer Rate**"), retroactive to the date of the Prohibited Transfer (without regard to the date that Prohibited Transfer is discovered by Mortgagee) through the Maturity Date, and Grantor shall pay to Mortgagee, upon demand, the difference between the amount of interest calculated at the Contract Rate in effect at the time of the Prohibited Transfer and the amount of interest calculated at the Prohibited Transfer Rate from the date of the Prohibited Transfer to the date payment is received by Mortgagee (that amount, the "**Prohibited Transfer Rate Adjustment Amount**"). Mortgagee's rights under this Section 7.08(b) are an option available to Mortgagee, and unless elected by Mortgagee, a Prohibited Transfer will constitute an Event of Default and all Obligations will bear interest at the Default Rate.

**7.09 Compensation and Reimbursement of Costs and Expenses.** Grantor shall pay (1) fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Mortgagee when the law provides no maximum limit, for any services that Mortgagee may render in connection with this mortgage, including Mortgagee's providing a statement of the Secured Obligations; (2) all of Mortgagee's costs and expenses which may be incurred in rendering any such services; and (3) all costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this mortgage or protect the Property, including any rights or remedies afforded to Mortgagee under Section 8.02, whether any lawsuit is filed or not, including any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, or in defending any action or proceeding arising under or relating to this mortgage, including Legal Fees, costs of any Foreclosure Sale (defined in Section 8.02) and any cost of evidence of title. If Mortgagee chooses to dispose of Property through more than one Foreclosure Sale, Grantor must pay all costs, expenses or other advances that may be incurred or made by Mortgagee in each of those Foreclosure Sales.

**7.10 Indemnification.** GRANTOR SHALL INDEMNIFY MORTGAGEE AGAINST AND SHALL HOLD MORTGAGEE HARMLESS FROM ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, LEGAL FEES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER COSTS AND EXPENSES WHICH MORTGAGEE MAY SUFFER OR INCUR: (A) IN PERFORMING ANY ACT REQUIRED OR PERMITTED BY THIS MORTGAGE OR ANY OF THE OTHER SECURED OBLIGATION DOCUMENTS OR BY LAW; (B) BECAUSE OF ANY FAILURE OF GRANTOR TO PAY OR PERFORM ANY OF THE SECURED OBLIGATIONS; OR (C) BECAUSE OF ANY

ALLEGED OBLIGATION OF OR UNDERTAKING BY MORTGAGEE TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS IN ANY DOCUMENT RELATING TO THE PROPERTY (OTHER THAN SUCH WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS IN THE SECURED OBLIGATION DOCUMENTS). THIS AGREEMENT BY GRANTOR TO INDEMNIFY MORTGAGEE SURVIVES THE RELEASE AND CANCELLATION OF ANY OR ALL OF THE SECURED OBLIGATIONS AND THE FULL OR PARTIAL RELEASE OF THIS MORTGAGE.

**7.11 Payments Due Under This Mortgage.** Grantor must pay all obligations to pay money arising under this mortgage immediately upon demand by Mortgagee. Each such obligation shall bear interest from the date the obligation arises at the Default Rate.

## ARTICLE 8 – EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.** The following each shall be an event of default under this mortgage (an "Event of Default"):

- (1) an Event of Default as defined in the Loan Agreement;
- (2) a Prohibited Transfer;
- (3) the filing of a Maximum Amount Notice;
- (4) if Grantor is in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property, whether it be superior or junior in lien to this mortgage;
- (5) for more than ten days after notice from Mortgagee, Grantor is in default under any term, covenant or condition of this mortgage not previously described in this Section 8.01, which can be cured by the payment of a sum of money; or
- (6) for 30 days after notice from Mortgagee, Grantor is in default under any term, covenant or condition of this mortgage not previously described in this Section 8.01; provided that if: (A) it is reasonably certain that the default cannot be cured by Grantor within that 30 day period; and (B) Grantor has commenced curing that default within that 30 day period and thereafter diligently and expeditiously proceeds to cure that default, then that 30 day period shall be extended for so long as reasonably required by Grantor in the exercise of due diligence to cure that default, up to a maximum of 90 days after the notice to Grantor of the Event of Default.

**8.02 Remedies.** At any time after an Event of Default, Mortgagee may invoke any and all of the rights and remedies described below. All of such rights and remedies are cumulative, and the exercise of any one or more of them does not constitute an election of remedies:

(a) **Acceleration.** Mortgagee may declare any or all of the Secured Obligations to be due and payable immediately.

(b) **Receiver.** Mortgagee may, to the extent permitted by Applicable Law, make an ex parte application to any court of competent jurisdiction, and obtain appointment of, a receiver, trustee, liquidator or conservator of the Property, without notice, without giving bond, and without regard for the adequacy of the security for the Secured Obligations and without regard for the solvency of Borrower, any Guarantor, or of any Person liable for the payment of the Secured Obligations. GRANTOR HEREBY WAIVES NOTICE OF THE APPLICATION FOR, AND CONSENTS TO THE APPOINTMENT OF A RECEIVER, TRUSTEE, LIQUIDATOR OR CONSERVATOR OF THE PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION; AND AGREES TO NOT OPPOSE SUCH APPOINTMENT.

(c) **Entry.** To the greatest extent permitted by Applicable Law, Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Mortgagee may consider necessary and appropriate to protect the security of this mortgage. Such other things may include: taking and

possessing all of Grantor's or the then owner's books and records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying rents; collecting and receiving any payment of money owing to Grantor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Mortgagee so requests, Grantor will assemble all of the Property that has been removed from the Land and make all of it available to Mortgagee at the site of the Land. GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS MORTGAGEE AS GRANTOR'S ATTORNEY-IN-FACT TO PERFORM SUCH ACTS AND EXECUTE SUCH DOCUMENTS AS MORTGAGEE CONSIDERS APPROPRIATE IN CONNECTION WITH TAKING THESE MEASURES, INCLUDING ENDORSEMENT OF GRANTOR'S NAME ON ANY INSTRUMENTS. Regardless of any provision of this mortgage or the other Secured Obligation Documents, Mortgagee shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Grantor to Mortgagee, unless Mortgagee has given express written notice of its election of that remedy in accordance with the UCC.

(d) Cure; Protection of Security. Mortgagee may cure any breach or default of Grantor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and/or do any and all other things which it considers necessary or appropriate to protect the security of this mortgage. Such other things may include: (1) appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Mortgagee under, this mortgage; (2) paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Mortgagee's judgment is or may be senior in priority to this mortgage, such judgment of Mortgagee to be conclusive as among the parties to this mortgage; (3) obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; (4) otherwise caring for and protecting any and all of the Property; and/or (5) employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee. Mortgagee may take any of the actions permitted under this Section 8.02 either with or without giving notice to any person. Notwithstanding the foregoing, in no event will Mortgagee have any obligation to take any of the actions set forth in this subparagraph (d).

(e) Uniform Commercial Code Remedies. Mortgagee may exercise any or all of the remedies granted to a secured party under the UCC. To the extent that Applicable Law imposes the duty on Mortgagee to exercise remedies in a commercially reasonable manner, Grantor acknowledges and agrees that it is not commercially unreasonable for Mortgagee to: (1) fail to incur expenses reasonably deemed significant by Mortgagee to prepare the Personalty for disposition or to fail to complete raw material or work in process into finished goods or other finished products for disposition; (2) fail to exercise collection remedies against account debtors or other persons obligated on the Personalty (directly or through the use of collection specialists), or to fail to remove liens, encumbrances or adverse claims against the Personalty; (3) advertise dispositions of the Personalty through publications or media of general circulation, whether or not the Personalty is of a specialized nature; (4) contact Persons for expressions of interest in acquiring all or any portion of the Personalty; (5) hire professional auctioneers to assist in the disposition of the Personalty, whether or not the Personalty is of a specialized nature; (6) dispose of the Personalty by utilizing Internet sites that provide for or are reasonably capable of the auction of assets of the types included in the Personalty; (7) dispose of the Personalty in wholesale rather than retail markets; (8) disclaim disposition warranties; (9) purchase insurance or credit enhancements to insure Mortgagee against risks of loss, collection or disposition of the Personalty or to provide to Mortgagee a guaranteed return from the collection or disposition of the Personalty; or (10) sell any Personalty jointly with any of the Property or to sell any Personalty in a sale separate from a sale of any of the Property. Grantor acknowledges that the purpose of this Section 8.02(e) is to provide a non-exhaustive indication of what actions or omissions by Mortgagee would fulfill Mortgagee's duties under the UCC in Mortgagee's exercise of remedies against the Personalty, and that other actions or omissions by Mortgagee shall not be deemed to fail to fulfill such duties solely on account of not being expressly included or indicated in this Section 8.02(e).

(f) Judicial Action. Mortgagee may bring an action in any court of competent jurisdiction to foreclose this mortgage in the manner provided under Applicable Law for the foreclosure of mortgages on real property or to obtain specific enforcement of any of the covenants or agreements of this mortgage.

(g) **Sales of Personal Property.** Mortgagee may elect to treat as Personalty any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Mortgagee may dispose of any Personalty separately from the sale of real property, in any manner permitted by Article 9 of the UCC, including any public or private sale, or in any manner permitted by any other Applicable Law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation.

(h) **Single or Multiple Foreclosure Sales.** If the Property consists of more than one lot, parcel or item of property, in connection with any sale of the Property described in or permitted under this Section 8.02, Mortgagee may: (1) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and (2) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Mortgagee may deem to be in its best interests (any such sale or disposition, a "**Foreclosure Sale**"). If it chooses to have more than one Foreclosure Sale, Mortgagee at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale will terminate or affect the liens of this mortgage on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

(i) **Additional Rights.** In addition to the rights and powers given to Mortgagee under this mortgage, Mortgagee shall have all such other rights both in law and equity for collection of the indebtedness secured hereby as it would have but for this mortgage.

**8.03 Credit Bids.** At any Foreclosure Sale, any person, including Grantor or Mortgagee, may bid for and acquire the Property or any part of it to the extent permitted by then Applicable Law. Instead of paying cash for that property, Mortgagee may settle for the purchase price by crediting the sales price of the property against the following obligations:

- (1) first, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Grantor is obligated to reimburse Mortgagee; and
- (2) second, all other Secured Obligations in any order and proportions as Mortgagee may choose.

**8.04 Application of Foreclosure Sale Proceeds, Rents and Other Sums.** Mortgagee shall apply the proceeds of any Foreclosure Sale to pay (or reimburse Mortgagee for payment of) the Secured Obligations in any order and proportions as Mortgagee may choose, with the surplus, if any, to be paid over to Grantor.

**8.05 No Liability for Funds Not Received.** Mortgagee has no liability for any funds which it does not actually receive.

**8.06 Waivers.**

(a) Grantor waives: (1) any right to require Mortgagee to proceed against Borrower, proceed against or exhaust any security held from Borrower, or pursue any other remedy in Mortgagee's power to pursue; (2) any defense based on any legal disability of Borrower, any discharge or limitation of the liability of Borrower to Mortgagee, whether consensual or arising by operation of law or any bankruptcy, reorganization, receivership, insolvency, or debtor-relief proceeding, or from any other cause, or any claim that Grantor's obligations exceed or are more burdensome than those of Borrower; (3) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this mortgage and of the existence, creation, or incurring of new or additional indebtedness of Borrower, and demands and notices of every kind; (4) any defense based on or arising out of any defense that Borrower may have to the payment or performance of the Secured Obligations or any part of it; and (5) until the Secured Obligations have been paid and performed in full, all rights of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under the Bankruptcy Code (Title 11 of the U.S. Code) or any successor statute, all rights to enforce any remedy that Mortgagee may have against

Borrower, and all rights to participate in any security now or later to be held by Mortgagee for the Secured Obligations.

(b) Grantor waives all rights and defenses that Grantor may have because the Secured Obligations may be secured by real property other than the Property hereby encumbered. This means, among other things: (1) Mortgagee may collect from Grantor (including enforcing this mortgage against Grantor) without first foreclosing on any real or personal property collateral securing the Secured Obligations; and (2) if Mortgagee forecloses on any real property collateral securing the Secured Obligations: (A) the amount of the Secured Obligations may be reduced only by the price for which that collateral is sold at the Foreclosure Sale, even if the collateral is worth more than the sale price, and (B) Mortgagee may collect from Grantor (including enforcing this mortgage against Grantor) even if Mortgagee, by foreclosing on the real property collateral, has destroyed any right Mortgagee may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Grantor may have because the Secured Obligations may be secured by real property other than the Property.

(c) Grantor waives any right or defense it may have at law or equity, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure of any real property other than the Property hereby encumbered.

(d) No provision or waiver in this mortgage shall be construed as limiting the generality of any other provision or waiver contained in this mortgage.

**8.07 Information.** Grantor is solely responsible for keeping informed of Borrower's financial condition and business operations and all other circumstances affecting Borrower's ability to pay and perform its obligations to Mortgagee, and agrees that Mortgagee will have no duty to disclose to Grantor any information which Mortgagee may receive about Borrower's financial condition, business operations, or any other circumstances bearing on its ability to perform.

**8.08 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article, the assignment of the Rents and Leases under Article 2, the security interests under Article 3, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Mortgagee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

#### ARTICLE 9 – NOTICES

All notices, approvals, consents, and other communications, under this mortgage ("**Notices**") must be in writing and mailed or delivered to the address specified herein. All Notices will be deemed to be given or made upon the earlier to occur of: (1) actual receipt by the intended recipient; or (2) (A) if delivered by hand or by courier, upon delivery; or (B) if delivered by mail, four Business Days after deposit in the U.S. mail, properly addressed, postage prepaid; except that notices and other communications to Lender will not be effective until actually received by Lender. All telephonic Notices to and other telephonic communications with Lender may be recorded by Lender, and each Party consents to such recording. Notices must be mailed or delivered, if to Grantor, to the address adjacent Grantor's signature below; if to Mortgagee, to Metropolitan Life Insurance Company, Agricultural Investments, 10801 Mastin Blvd., Ste 930, Overland Park, KS 66210, Attn: SSU Director, with a carbon copy to Metropolitan Life Insurance Company, Agricultural Investments, 10801 Mastin Blvd, Ste. 120, Overland Park, KS 66210, Attn: Director, CRO, with an additional carbon copy to Metropolitan Life Insurance Company, Agricultural Investments, 10801 Mastin Blvd, Ste. 930, Overland Park, KS 66210, Attn: Law Department.

#### ARTICLE 10 – RELEASE

When all Secured Obligations have been paid in full, Mortgagee shall execute and deliver to Grantor, a release of the Property from the Lien of this mortgage.

## ARTICLE 11 – MISCELLANEOUS

**11.01 Additional Provisions.** The Secured Obligation Documents state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this mortgage. The Secured Obligation Documents also grant further rights to Mortgagee and contain further agreements and affirmative and negative covenants by Grantor which apply to this mortgage and to the Property.

**11.02 Entire Agreement.** This mortgage and the other Secured Obligation Documents collectively: (a) represent the sum of the understandings and agreements between Mortgagee and Grantor concerning this credit; (b) replace any prior oral or written agreements between Mortgagee and Grantor concerning this credit; and (c) are intended by Mortgagee and Grantor as the final, complete and exclusive statement of the terms agreed to by them.

**11.03 Other Acts.** Grantor shall cooperate with Mortgagee for the purposes of, and perform all acts which may be necessary or advisable to perfect any Lien provided for in this mortgage or to carry out the intent of this mortgage. Promptly (but in no event more than ten days) after request by Mortgagee, Grantor will execute, acknowledge and deliver any document which Mortgagee deems necessary or advisable for these purposes, and will, on demand, pay any expenses incurred by Mortgagee in the preparation, execution and filing of any such documents.

**11.04 No Waiver or Cure.** Each waiver by Mortgagee must be in writing, and no waiver is to be construed as a continuing waiver. No waiver is to be implied from any delay or failure by Mortgagee to take action on account of any default of Grantor. Consent by Mortgagee to any act or omission by Grantor must not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Mortgagee's consent to be obtained in any future or other instance. The exercise by Mortgagee of any right or remedy under this mortgage or the other Secured Obligation Documents or under Applicable Law, shall not: cure or waive a breach, Event of Default or notice of default under this mortgage or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Secured Obligation Documents, have been cured); or impair the security of this mortgage; or prejudice Mortgagee or any receiver appointed in accordance with this mortgage, in the exercise of any right or remedy afforded any of them under this mortgage; or be construed as an affirmation by Mortgagee of any tenancy, lease or option, or a subordination of the lien of this mortgage.

**11.05 Merger.** No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property.

**11.06 Waiver of Dower, Homestead, and Distributive Share.** Grantor relinquishes all right of dower, if any, and waives all right of homestead exemption and distributive share in and to the Property. Grantor waives any right of exemption as to the Property.

**11.07 Waiver of Marshalling.** Grantor waives all rights, legal and equitable, it may now or hereafter have to require marshalling of assets or to require upon foreclosure sales of assets in a particular order. Each successor and assign of Grantor, including any holder of a lien subordinate to this mortgage, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

**11.08 Waiver of Certain Other Laws.** To the full extent Grantor may do so, Grantor agrees that Grantor 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 appraisal, valuation, stay, extension, equity or redemption, any statutory or common law right of redemption, and all other exemptions, and Grantor, for Grantor, and its representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption (including, without limitation, any common law or statutory right of redemption), and all other exceptions, as well as valuation, appraisal, stay of execution, or notice of election to mature or declare due the whole of the Secured Obligations in the event of foreclosure of the lien created by this mortgage. WITHOUT LIMITATION, IF THE UNDERSIGNED GRANTOR, OR ANY OF THEM, IS A CORPORATION, GRANTOR HEREBY RELEASES AND WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE

UNDER ANY JUDGMENT OF FORECLOSURE AND EACH OF THE ITEMS WAIVED AND RELEASED ABOVE, ON BEHALF OF GRANTOR, AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY, SUBSEQUENT TO THE DATE OF THIS MORTGAGE, AND ON BEHALF OF ALL OF THE PERSONS TO THE EXTENT PERMITTED BY APPLICABLE LAW OF THE STATE OF IOWA.

**11.09 Joint and Several Obligations.** If Grantor consists of more than one Person, each Grantor (a) acknowledges and undertakes, together with the other Grantors, joint and several liability for the indebtedness, liabilities and obligations of Grantor under this mortgage; (b) acknowledges that this mortgage is the independent and several obligation of each Grantor and may be enforced against each Grantor separately, whether or not enforcement of any right or remedy hereunder has been sought against any other Grantor; and (c) agrees that its liability hereunder and under any other Secured Obligation Document shall be absolute, unconditional, continuing and irrevocable. GRANTOR EXPRESSLY WAIVES ANY REQUIREMENT THAT MORTGAGEE EXHAUST ANY RIGHT, POWER OR REMEDY AND PROCEED AGAINST THE OTHER GRANTOR UNDER THIS MORTGAGE, OR ANY OTHER SECURED OBLIGATION DOCUMENTS, OR AGAINST ANY OTHER PERSON UNDER ANY GUARANTY OF, OR SECURITY FOR, ANY OF THE SECURED OBLIGATIONS.

**11.10 Authority to Bind Grantor.** If Grantor is comprised of multiple Persons, any Person comprising Grantor is hereby authorized to bind all parties comprising Grantor. Mortgagee may, at any time and without notice, waive any prior requirement that requests, authorizations, or other actions be taken only by a Designated Person.

**11.11 Binding Effect; Successors and Assigns.** The Secured Obligation Documents shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns; provided, that Grantor shall not assign its rights or obligations hereunder without Mortgagee's consent. However, this section does not waive the provisions of Section 7.08; and Grantor shall not assign its rights or obligations hereunder without Mortgagee's consent. Mortgagee may transfer all or any portion of its rights under the Secured Obligation Documents to any other Person. Mortgagee may disclose to any actual or proposed transferee any information that Grantor has delivered to Mortgagee in connection with the negotiation of this mortgage or pursuant to the Secured Obligation Documents; and Grantor shall cooperate fully with Mortgagee in providing that information to any actual or proposed transferee.

**11.12 Rights and Remedies Cumulative.** All rights and remedies under this mortgage and the Secured Obligation Documents are cumulative, and the exercise of any one or more of them does not constitute an election of remedies.

**11.13 Severability.** Any provision of any Secured Obligation Document which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of that Secured Obligation Document or affecting the validity or enforceability of that provision in any other jurisdiction; except that if such provision relates to the payment of any monetary sum, then Mortgagee may, at its option, declare all Secured Obligations immediately due and payable.

**11.14 Amendments in Writing.** This mortgage may not be amended, changed, modified, altered or terminated without the prior written consent of Mortgagee.

**11.15 Governing Law.** This mortgage shall be governed exclusively by the laws of the State of Iowa without regard or reference to its conflict of laws principles.

**11.16 Counterpart Execution.** This mortgage may be executed in counterparts, each of which will be an original and all of which together are deemed one and the same instrument.

**11.17 Necessary Action.** Mortgagee is authorized to execute any other documents or take any other actions necessary to effectuate this mortgage and the consummation of the transactions contemplated herein.

**11.18 Time of the Essence.** Time is of the essence of this mortgage.

**11.19 No Construction Against Drafter.** Each Party has participated in negotiating and drafting this mortgage, so if an ambiguity or a question of intent or interpretation arises, this mortgage is to be construed as if the parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this mortgage.

**ARTICLE 12– ADDITIONAL IOWA PROVISIONS**

In addition to and notwithstanding any provision to the contrary in this mortgage:

**12.01 Redemption.** Without limitation to Section 11.08 above, Grantor agrees that in the event of foreclosure of this mortgage, at the sole discretion of MORTGAGEE, MORTGAGEE may elect to reduce or extend the period of redemption for the sale of the Property to a period of time as may then be authorized under the circumstances and under any section of Iowa Code Chapter 628, or any other Iowa Code section, now in effect or as may be in effect at the time of foreclosure.

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[SIGNATURE PAGE TO MORTGAGE]

GRANTOR BY EXECUTION AND DELIVERY OF THIS MORTGAGE TO MORTGAGEE, AND MORTGAGEE, BY ACCEPTANCE HEREOF, TO THE EXTENT PERMITTED BY APPLICABLE LAW (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY IN ANY ACTION OR PROCEEDING FOR THE RESOLUTION OF ANY CONTROVERSY OR CLAIM THAT ARISES OUT OF OR RELATES TO: (I) THIS MORTGAGE; OR (II) ANY LOAN DOCUMENT, WHETHER ARISING IN CONTRACT, TORT OR BY STATUTE (INDIVIDUALLY AND COLLECTIVELY, A "CONTROVERSY OR CLAIM"); AND (B) WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY CONTROVERSY OR CLAIM TO THE EXTENT SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THE PROVISIONS OF THIS SECTION ARE GIVEN KNOWINGLY AND VOLUNTARILY; AND ARE A MATERIAL INDUCEMENT FOR MORTGAGEE ENTERING INTO THE LOAN AGREEMENT AND OTHER LOAN DOCUMENTS.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS MORTGAGE SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN MORTGAGE MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS MORTGAGE ONLY BY ANOTHER WRITTEN AGREEMENT SIGNED BY THE PARTY AGAINST WHOM IT IS TO BE ENFORCED.

Grantor is executing this mortgage effective as of the day and year first written above.

GRANTOR

Address for notices:  
1931 Quail Ridge Avenue  
Winterset, Iowa 50273

**BENSHOOF FARMS PARTNERSHIP**, an Iowa general partnership

By: Robert Howard Benshoof Partner  
ROBERT HOWARD BENSHOOF  
Partner

By: Ted Alan Benshoof Partner  
TED ALAN BENSHOOF  
Partner

By: Steven Arthur Benshoof Partner  
STEVEN ARTHUR BENSHOOF  
Partner

By: Ted Arthur Benshoof  
TED ARTHUR BENSHOOF  
Partner

By: Cheryl Jean Howell Partner  
CHERYL JEAN HOWELL  
Partner

[ACKNOWLEDGEMENTS OF MORTGAGE ON FOLLOWING PAGE]

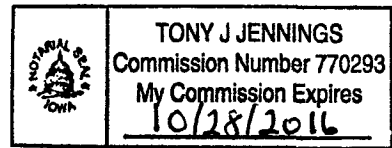
[ACKNOWLEDGEMENTS OF MORTGAGE]

STATE OF IOWA )  
 ) SS  
COUNTY OF Madison )

This instrument was acknowledged before me on November 13 2015 by ROBERT HOWARD BENSHOOF, as Partner of BENSHOOF FARMS PARTNERSHIP, an Iowa general partnership.

[SEAL]

Tony J Jennings  
Signature of person taking Acknowledgment  
Director  
Title or Rank

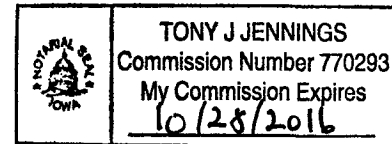


STATE OF IOWA )  
 ) SS  
COUNTY OF Madison )

This instrument was acknowledged before me on November 13, 2015 by TED ALAN BENSHOOF, as Partner of BENSHOOF FARMS PARTNERSHIP, an Iowa general partnership.

[SEAL]

Tony J Jennings  
Signature of person taking Acknowledgment  
Director  
Title or Rank

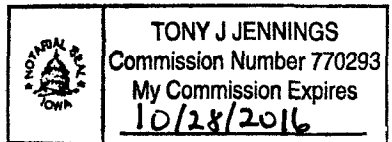


STATE OF IOWA )  
 ) SS  
COUNTY OF Madison )

This instrument was acknowledged before me on November 13, 2015 by STEVEN ARTHUR BENSHOOF, as Partner of BENSHOOF FARMS PARTNERSHIP, an Iowa general partnership.

[SEAL]

Tony J Jennings  
Signature of person taking Acknowledgment  
Director  
Title or Rank

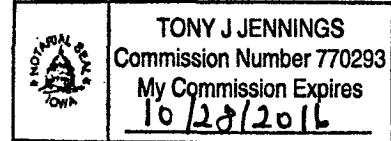


STATE OF IOWA )  
 ) SS  
COUNTY OF Madison )

This instrument was acknowledged before me on November 13, 2015 by TED ARTHUR BENSHOOF, as Partner of BENSHOOF FARMS PARTNERSHIP, an Iowa general partnership.

[SEAL]

Tony J Jennings  
Signature of person taking Acknowledgment  
Director  
Title or Rank

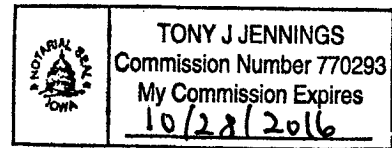


STATE OF IOWA )  
 ) SS  
COUNTY OF Madison )

This instrument was acknowledged before me on November 13, 2015 by CHERYL JEAN HOWELL, as Partner of BENSHOOF FARMS PARTNERSHIP, an Iowa general partnership.

[SEAL]

Tony J Jennings  
Signature of person taking Acknowledgment  
Director  
Title or Rank



**JOINDER AND SUBORDINATION**

The undersigned own an interest in or are an affiliate or subsidiary of the Grantor under the above and foregoing Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing (the "**Mortgage**"), and will benefit from the making of the Loan by Mortgagee under the terms and conditions of the Loan Agreement (defined in the Mortgage; and each capitalized term used in this joinder and subordination which is defined in the Mortgage or the Loan Agreement and not defined in this joinder and subordination will have the meaning specified in the Mortgage or Loan Agreement, respectively. This joinder and subordination will be interpreted in accordance with the Drafting Conventions.

In consideration of Mortgagee's entering into the Loan Agreement, the undersigned hereby consent to and join in the Mortgage, for the purpose of subordinating AND DO HEREBY SUBORDINATE, IN FAVOR OF MORTGAGEE, ANY AND ALL RIGHTS, TITLE AND INTEREST WHICH THE UNDERSIGNED NOW HAS OR HEREAFTER MAY HAVE IN THE PROPERTY TO THE LIEN AND SECURITY INTERESTS CREATED IN FAVOR OF MORTGAGEE UNDER THE MORTGAGE, AS THOUGH ANY SUCH RIGHTS, TITLE AND INTEREST, IF ANY, HAD BEEN ACQUIRED SUBSEQUENT TO THE FILING OF THE MORTGAGE IN THE OFFICIAL REAL ESTATE RECORDS OF THE COUNTY OR COUNTIES WHERE THE LAND IS LOCATED.


[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURE PAGE TO JOINDER AND SUBORDINATION]

The undersigned is executing this joinder and subordination effective as of the date of the Mortgage.

Address for notices:

1931 Quail Ridge Avenue  
Winterset, Iowa 50273

  
TED ARTHUR BENSHOOF

[ACKNOWLEDGEMENTS OF JOINDER AND SUBORDINATION ON FOLLOWING PAGE]



WAIVER OF HOMESTEAD RIGHTS

I/WE UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS MORTGAGE, I/WE VOLUNTARILY GIVE UP OUR RIGHT TO THIS PROTECTION FOR THIS MORTGAGED PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS MORTGAGE.

11-13-15  
Dated

Ted Arthur Benshoof  
TED ARTHUR BENSHOOF

[ACKNOWLEDGEMENTS OF WAIVER OF HOMESTEAD RIGHTS ON FOLLOWING PAGE]



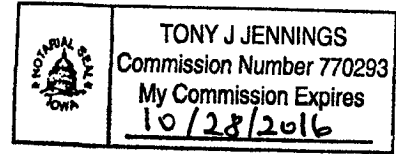
[ACKNOWLEDGEMENTS OF WAIVER OF HOMESTEAD RIGHTS]

STATE OF IOWA )  
 ) SS  
COUNTY OF Madison )

This instrument was acknowledged before me on November 13, 2015 by TED ARTHUR BENSHOOF, a single person.

[SEAL]

Tony Jennings  
Signature of person taking Acknowledgment  
Director  
Title or Rank



**EXHIBIT A**

**MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT,  
AND FIXTURE FILING**

**Legal Description of Real Estate**

**MADISON COUNTY**

**TRACT 2A**

The East Half of the Southwest Quarter of Section 20, and the Northeast Quarter of the Northwest Quarter of Section 29, all in Township 76 North, Range 26 West of the 5<sup>th</sup> P.M., Madison County, Iowa, EXCEPT the following described tracts: 1) Parcel "A" located in the Southeast Quarter of the Southwest Quarter of said Section 20, containing 11.812 acres, as shown in Plat of Survey filed in Book 2009, Page 1268 on April 29, 2009, in the office of the Recorder of Madison County, Iowa; 2) All that part of Parcel "Z" located in the Southeast Quarter of the Southwest Quarter of said Section 20, containing 2.78 acres, as shown in Plat of Survey filed in Book 2009, Page 1485 on May 13, 2009, in the Office of the Recorder of Madison County, Iowa; 3) 13 acres out of the Southwest Corner of the Northeast Quarter of the Northwest Quarter of said Section 29 described as follows: Commencing at the Southwest Corner thereof and running thence East 35 rods; thence North 59 rods and 10½ links, thence West 35 rods, thence South 59 rods and 10½ links to place of beginning.

**TRACT 2B**

The Northwest Quarter of the Southwest Quarter of Section 20, Township 76 North, Range 26 West of the 5<sup>th</sup> P.M., Madison County, Iowa.

**TRACT 3**

Parcel "D" located in the Northeast Quarter of the Southwest Quarter and in the Southeast Quarter of the Northwest Quarter of Section 29, Township 76 North, Range 26 West of the 5<sup>th</sup> P.M., City of Patterson, Madison County, Iowa, containing 28.48 acres, as shown in Plat of Survey filed in Book 2008, Page 2059 on June 27, 2008, in the Office of the Recorder of Madison County, Iowa.

**TRACT 4**

The East Half of the Northeast Quarter and the Southwest Quarter of the Northeast Quarter and the Southeast Quarter of the Northwest Quarter and the Northwest Quarter of the Southeast Quarter and the North Half of the Northeast Quarter of the Southwest Quarter of Section 23, in Township 76 North, Range 27 West of the 5<sup>th</sup> P.M., Madison County, Iowa.

**TRACT 5**

The West 45 acres of the East 55 acres of the South Half of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter and 1/2 acre off the East side of the Southeast Quarter of the Southeast Quarter being the East 16 ½ feet of said 40 acre tract, ALL in Section 24, Township 76 North, Range 27 West of the 5<sup>th</sup> P.M., Madison County, Iowa, AND the West 33 feet off the West end of the South Fractional Half of the South Fractional Half of Section 19, Township 76 North, Range 26 West of the 5<sup>th</sup> P.M., Madison County, Iowa.

AND, all of Grantor's right, title and interest in that certain Easement Agreement for purposes of access dated March 3, 2003, by and between Mina I. Speer, Earnest B. Speer, and Ted Benshoof recorded March 3, 2003, in Book 2003, Page 1164 in the Recorder's Office of Madison County, Iowa.

#### TRACT 6

Parcel "B" located in the Southeast Quarter of the Southeast Quarter of Section 24, Township 76 North, Range 27 West of the 5th P.M., Madison County, Iowa, containing 20.061 acres, as shown in Plat of Survey filed in Book 3, Page 661 on December 20, 2000, in the Office of the Recorder of Madison County, Iowa, AND Parcel "A" located in the Southeast Quarter of the Southeast Quarter of Section 24, Township 76 North, Range 27 West of the 5th P.M., Madison County, Iowa containing 20.129 acres, as shown in Plat of Survey filed in Book 3, Page 662 on December 20, 2000, in the Office of the Recorder of Madison County, Iowa.

AND, all of Grantor's right, title and interest in that certain Easement Agreement for purposes of access dated March 3, 2003, by and between Mina I. Speer, Earnest B. Speer, and Ted Benshoof recorded March 3, 2003, in Book 2003, Page 1164 in the Recorder's Office of Madison County, Iowa.

#### TRACT 7

Lot Two (2) of the Southwest Quarter (1/4) of the Southwest Quarter (1/4), Lot Two (2) of the Southeast Quarter (1/4) of the Southwest Quarter (1/4), and Lot Two (2) of the Southwest Quarter (1/4) of the Southeast Quarter (1/4) of Section Twenty-three (23), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5th P.M., Madison County, Iowa, **EXCEPT** all that part of the Southeast Quarter (1/4) of the Southwest Quarter (1/4) of said Section Twenty-three (23) lying North of the center of the channel of Cedar Creek, **AND EXCEPT** any part that lies within the following described real estate: Commencing at a point 58 rods and 40 feet South and 69 rods East of the Northwest corner of the West Half (1/2) of the Southwest Quarter (1/4) of said Section Twenty-Three (23) and running thence South 40 rods, thence West 69 rods, thence South to the center of Cedar Creek, thence following the meanderings of said Cedar Creek to a point where it crosses the East line of said West Half (1/2) of the Southwest Quarter (1/4), thence North to a point 58 rods and 40 feet South of the Northeast corner of said 80-acre tract, thence West to the place of beginning,

AND

All that part of the Northwest Quarter (1/4) of the Northwest Quarter (1/4), the East Half (1/2) of the Northwest Quarter (1/4), and the North Half (1/2) of the Northeast Quarter (1/4) which lies North of the following described line: Commencing at the Northwest corner of Section 26, Township 76 North, Range 27 West of the 5th P.M., thence South 00°00'00" East 920.01 feet to the point of beginning; thence South 89°48'06" East 1315.64 feet, thence South 00°05'06" West 890.70 feet, thence South 89°48'06" East 1314.32 feet, thence North 00°10'11" East 1336.39 feet, thence South 89°48'06" East 2099.66 feet, (said line being the North property line of Parcel "A" as shown in Amended Plat of Survey filed on February 13, 1997 in Book 2, Page 753), **EXCEPT** Parcel "G" located in the Northwest Quarter (1/4) of the Northwest Quarter (1/4) of said Section Twenty-six (26), as shown in Plat of Survey filed in Book 2008, Page 948, on March 21, 2008 in the Office of the Recorder of Madison County, Iowa; **AND EXCEPT** Parcel "E" located in the Northwest Quarter (1/4) of the Northwest Quarter (1/4) of said Section Twenty-six (26), as shown in Plat of Survey filed in Book 3, Page 291, on July 9, 1998 in the Office of the Recorder of Madison County, Iowa; **AND EXCEPT** that part of the following described parcel that lies therein: Commencing at the Northeast corner of the Northeast Quarter (1/4) of the Northeast Quarter (1/4) of said Section Twenty-six (26), running thence South 89°04' West 1107.6 feet, thence South 62°48' East 106.8 feet along the centerline of a county road, thence South 74°42' East 469.3 feet along said centerline, thence South 57°22' East 68.1 feet along said centerline, thence South 1115.6 feet to the South right-of-way line of Iowa Highway 92, thence North 75°07' East along said South right-of-way line 406.7 feet, thence Northeasterly 137.5 feet along a 1399.4 foot radius curve

concave Southeasterly to the East line of said Section Twenty-six (26), thence North 1190.6 feet to the point of beginning.

#### TRACT 8

The North Half of the Northwest Quarter; the Southeast Quarter of the Northwest Quarter; and the West Half of the Northeast Quarter of Section 33, in Township 76 North, Range 27 West of the 5<sup>th</sup> P.M., Madison County, Iowa, EXCEPTING therefrom the following 3 tracts, to wit: 1) All that part conveyed or used as public highways. 2) All that part of the following described real estate which lies within the West Half of the Northwest Quarter of said Section 33; Commencing 396.66 feet East of the North Quarter Corner of Section 32, running thence East along the north section lines to a point 192 feet East of the Northwest Corner of said Section 33, thence South 01°20' East 1,083 feet, thence East 63 feet, thence South 01°25' East 437 feet, thence South 89°00' West 273 feet to the West line of said Section 33, thence North 00°48' West 200 feet to the Southeast corner of the Northeast Quarter of the Northeast Quarter of Section 32, thence West to the West line of the Northeast Quarter of said Section 32, thence North to a point 660.04 feet South of the North Quarter Corner of said Section 32, thence Northeasterly along a 2,060 foot radius curve concave southeasterly and tangent to a line bearing North 56°50' East 441.92 feet, thence North 00°59' West 459.92 feet to the point of beginning. 3) All that part of Parcel "D" that lies therein, as shown in Plat of Survey filed in book 2002, Page 5961 on December 6, 2002, in the Office of the Recorder of Madison County, Iowa.

**EXHIBIT B**

**MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT,  
AND FIXTURE FILING**

Legal Description of Real Estate

**WARREN COUNTY**

**TRACT 1**

The Southwest Quarter of the Northwest Quarter of Section 20, Township 76 North, Range 25 West of the 5<sup>th</sup> P.M., Warren County, Iowa, EXCEPT that part of Parcel "C", that lies within the above caption, of the survey of the South Half of the Northwest Quarter and the North Half of the Southwest Quarter of Section 20, Township 76 North, Range 25 West of the 5<sup>th</sup> P.M., Warren County, Iowa, as shown in Irregular Plat Book 14, Page 2 of 76-25 in the office of the Warren County Recorder.

AND

The North Half of the Southwest Quarter of Section 20 in Township 76 North, Range 25 West of the 5<sup>th</sup> P.M., Warren County, Iowa, EXCEPT that part of Parcel "C", that lies within the above description, of the survey of the South Half of the Northwest Quarter and the North Half of the Southwest Quarter of Section 20, Township 76 North, Range 25 West of the 5<sup>th</sup> P.M., Warren County, Iowa, as shown in Irregular Plat Book 14, Page 2 of 76-25 in the office of the Warren County Recorder.

AND

The Southeast Quarter of the Northwest Quarter of Section 20, Township 76 North, Range 25 West of the 5<sup>th</sup> P.M., Warren County, Iowa.