

Ticor Title Insurance AS#22169-2  
Western Title #w5572t1 HUMBOLDT FEEDING, INC.--PERSHING COUNTY  
INSURED

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

The Prudential Insurance Company  
of America  
Four Embarcadero Center, Suite 2700  
San Francisco, California 94111

Attention: Regional Counsel

185009

BOOK 251 PAGE 57

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE  
FILING WITH ASSIGNMENT OF RENTS

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING WITH ASSIGNMENT OF RENTS (this "Deed of Trust") is made as of APR 18, 1991 by HUMBOLDT FEEDING, INC., a Delaware corporation, (the "Trustor"), TICOR TITLE INSURANCE COMPANY OF CALIFORNIA, having offices at 330 Tres Pinos, Hollister, California 95023 ("Trustee"), and The Prudential Insurance Company of America, a New Jersey corporation, having offices at 2868 Prospect Park Drive, Suite 650, Rancho Cordova, California 95670 ("Beneficiary").

WITNESSETH:

Trustor HEREBY IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO Trustee, IN TRUST, WITH POWER OF SALE all of Trustor's right, title and interest now owned or hereafter acquired in and to the following property, together with the Personalty (as hereinafter defined), all of which is hereinafter collectively defined as the "Property":

- A. That certain real property (the "Land") located in the County of Pershing, and more particularly described in Exhibit A attached hereto;
- B. All improvements (as hereinafter defined) and all appurtenances, easements, rights and privileges thereof, including all minerals, oil, gas and other hydrocarbon substances thereon or therein, air rights, water and water rights (whether riparian, appropriative or otherwise and whether or not appurtenant) in or hereafter relating to or used in connection with the Land, all development rights, and any land lying in the streets, roads or avenues adjoining the Land or any part thereof;

THIS IS ONE OF FOUR DEEDS OF TRUST SECURING THE SAME PROMISSORY NOTE OF EVEN DATE HERewith EXECUTED BY LAS AGUILAS CORPORATION, NELSON ROBERTS & ASSOCIATES, INC. AND HUMBOLDT FEEDING, INC. THE DEEDS OF TRUST ARE BEING RECORDED CONTEMPORANEOUSLY IN MERCED AND SAN BENITO COUNTIES, CALIFORNIA, AND PERSHING COUNTY, NEVADA.

- C. All Fixtures (as hereinafter defined), whether now or hereafter installed, being hereby declared to be for all purposes of this Deed of Trust a part of the Land; and
- D. the rents, issues and profits of or from the Land, Improvements and Fixtures.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may determine: (i) payment of the Indebtedness (as hereinafter defined); and (ii) payment (with interest as provided) and performance by Trustor of the Obligations (as hereinafter defined). Notwithstanding the foregoing, or any other term contained herein or in the Loan Documents, none of Trustor's obligations under or pursuant to the Hazardous Substances Remediation and Indemnification Agreement of even date herewith executed by Trustor in favor of Beneficiary ("Hazardous Substances Agreement") shall be secured by the lien of this Deed of Trust.

#### ARTICLE 1 Definitions

Certain Defined Terms: As used in this Deed of Trust the following terms shall have the following meanings:

- 1.1 Affected Party: As defined in Paragraph 6.B. hereof.
- 1.2 Application: The Application, dated January 31, 1991, executed by Trustor (referred to as "Applicant" therein), which Application includes the mortgage loan conditions attached thereto.
- 1.3 Collateral: As defined in Paragraph 7.1 hereof.
- 1.4 [Intentionally Omitted.]
- 1.5 [Intentionally Omitted.]
- 1.6 Event of Default: As defined in Paragraph 6.1 hereof.
- 1.7 Fixtures: All fixtures located upon or within the Improvements or now or hereafter installed in, or used in connection with any of the Improvements, whether or not permanently affixed to the Land or the Improvements.
- 1.8 Hazardous Substances Agreement: As defined in the "Securing" paragraph of this Deed of Trust.
- 1.9 Impositions: All real estate and personal property and other taxes and assessments, and any and all

other charges, expenses, payments, claims, mechanics' or material suppliers' liens or assessments of any nature that at any time prior to or after the execution of the Loan Documents may be assessed, levied, imposed, or become a lien upon the Property or the rent or income received therefrom, or any use or occupancy thereof.

- 1.10 Impound Account: The account that Trustor may be required to maintain pursuant to Paragraph 3.4 hereof.
- 1.11 Improvements: All buildings, structures, wells, casings, fences, corrals, roads, bridges, canals, ditches, dams, dikes, paved areas, storage areas, air strips, reservoirs, trees, vines, stakes, wires, endposts, irrigation systems, pipeline drainage systems, feed lots, and other improvements and appurtenances located on the Land, or at any time hereafter constructed or placed upon the Land and all additions to, modifications of and replacements thereof.
- 1.12 Indebtedness: The indebtedness evidenced by the Note (including, without limitation, any prepayment charges due thereunder) and all other amounts due from Trustor to Beneficiary evidenced or secured by the Loan Documents, plus interest on all such amounts as provided in the Loan Documents.
- 1.13 Inventory: The personal property inventory certified by Trustor by Affidavit dated and delivered to Beneficiary in connection with the Loan.
- 1.14 [Intentionally Omitted.]
- 1.15 Laws and Restrictions: All laws, regulations, orders, codes, ordinances, rules, statutes and policies, restrictive covenants and other title encumbrances, permits and approvals, leases and other rental agreements, relating to the development, occupancy, ownership, management, use, and/or operation of the Property or otherwise affecting the Property or Trustor.
- 1.16 Leases: Any and all leasehold interests now or hereafter affecting or covering any part of the Property.
- 1.17 [Intentionally Omitted.]

- 1.18 Loan: The loan from Beneficiary to Trustor evidenced by the Note.
- 1.19 Loan Documents: The Note, this Deed of Trust, the Assignment of Lessor's Interest in Leases executed by Trustor in connection with the Loan (the "Assignment of Leases"), and all other documents (with the exception of the Hazardous Substances Agreement), including all documents executed by Nelson Roberts & Associates, Inc. and Las Aguilas Corporation, evidencing, securing or relating to the Loan, the payment of the Indebtedness or the performance of the Obligations.
- 1.20 [Intentionally Omitted.]
- 1.21 [Intentionally Omitted.]
- 1.22 Material Adverse Change: Any adverse change in (i) the financial condition of the Trustor materially affecting the ability of Trustor to repay the Loan or (ii) the condition or operation of the Property materially affecting the value of the Property.
- 1.23 [Intentionally Omitted.]
- 1.24 Note: The Promissory Note of even date herewith executed by Trustor and Las Aguilas Corporation and Nelson Roberts & Associates, Inc. in the original principal amount of Twelve Million Five Hundred Thousand Dollars (\$12,500,000), payable to Beneficiary or its order, and all modifications, renewals or extensions thereof.
- 1.25 Obligations: Any and all of the covenants, promises and other obligations (including the Indebtedness) made or owing by Trustor to or due to Beneficiary as provided in the Loan Documents and all of the material covenants, promises and other obligations made or owing by Trustor to any other Person relating to the Property.
- 1.26 Permitted Exceptions: All of those title exceptions set forth in the title insurance policy in favor of the Beneficiary that insures the priority of this Deed of Trust.
- 1.27 Person: Any natural person, corporation, firm, association, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

- 1.28 Personalty: Trustor's right, title and interest in all personal property (other than Fixtures) now or hereafter located in, upon or about or collected or used in connection with the Property, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor, and the cash and noncash proceeds thereof, including all property listed in the Inventory, the Impound Account, all drawings, plans and specifications, and all accounts, contract rights and general intangibles (including any insurance proceeds and condemnation awards or compensation) arising out of or incident to the ownership, development or operation of the Property owned by or in which Trustor has an interest.
- 1.29 Property: As defined in the above "Granting" paragraph of this Deed of Trust.
- 1.30 Receiver: Any trustee, receiver, custodian, fiscal agent, liquidator or similar officer.
- 1.31 Reclamation Law. The Reclamation Act of 1902, the Omnibus Adjustment Act of 1926, the Reclamation Reform Act of 1982 and any act or law supplementary thereto, or any rule or regulation promulgated thereunder.
- 1.32 Reclamation Property. Any portion of the Land that is subject to the Reclamation Law.
- 1.33 Reclamation Water. Irrigation water applied to Reclamation Property that is subject to the Reclamation Law.
- 1.34 Rents: All rents, royalties, revenues, issues, profits, proceeds and other income from the Property.
- 1.35 Secondary Interest Rate: As defined in the Note.
- 1.36 Transfer: The occurrence of (a) any sale, conveyance, assignment, transfer, alienation, mortgage, conveyance of security title, encumbrance or other disposition of the Property, of any kind, or any other transaction the result of which is, directly or indirectly, to divest Trustor of any portion of its title to the Property, voluntarily or involuntarily; (b) any merger, consolidation or dissolution involving, or the sale or transfer of all or substantially all of the assets of, Trustor or any general partner of Trustor, unless a majority of the outstanding shares of the capital stock of the surviving corporation in such merger or consolidation or the entity which acquires all or substantially all of the assets of Trustor are beneficially

owned by the persons who are the existing stockholders of Trustor or their immediate family members as of the date of this Deed of Trust; (c) the transfer (at one time or over any period of time) of a majority of the voting stock of (i) a corporate Trustor, provided, however, that the following shall not be deemed to constitute a transfer within the meaning of this clause (c)(i): (1) an intervivos transfer to an existing stockholder of Trustor, a spouse or child of such existing stockholder or to one or more trusts for the benefit of such existing stockholder, spouse or child, or (2) a transfer upon death pursuant to a will or the laws of descent and distribution to an existing stockholder of Trustor, a spouse or child of such deceased stockholder or to one or more trusts for the benefit of such existing stockholder, spouse or child, (ii) any corporate general partner of Trustor or (iii) any corporation which is the direct or indirect owner of ten percent (10%) or more of the voting stock of Trustor or any general partner of Trustor; (d) the transfer of any general partnership interest in Trustor or in any partnership which is a direct or indirect general partner of Trustor; or (e) the conversion of any such general partnership interest to a limited partnership interest.

#### ARTICLE 2 Representations and Warranties

Trustor hereby represents and warrants to Beneficiary and Trustee that as of the date of this Deed of Trust:

- 2.1 Title, Authorization and Organization. Trustor (i) is the lawful owner of the Property and holds good and marketable title to the Property free and clear of all defects, liens, encumbrances, easements, exceptions and assessments, except the Permitted Exceptions; (ii) has the power and authority to grant the Property as provided in and by this Deed of Trust and to own and operate the Property; (iii) is duly organized, validly existing and in good standing under the laws of the State of its organization and is duly qualified to do business in the State in which the Land is located; and (iv) is in compliance with all Laws and Restrictions.
- 2.2 Validity of Loan Documents. The execution, delivery and performance by Trustor of the Loan Documents and the borrowings evidenced by the Note (i) are within the power of Trustor, (ii) have been authorized by all requisite action and (iii) will not violate any Laws and Restrictions or any agreement or other instrument. Each of the Loan Documents when executed and delivered to Beneficiary, will

constitute a legal, valid and binding obligation enforceable in accordance with its terms.

- 2.3 Financial Statements and Other Information. All financial statements and other reports, papers, data and information given to Beneficiary with respect to the Property or the Trustor are true, accurate, complete and correct in all material respects and except as expressly noted to the contrary therein, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby. There has been no Material Adverse Change since the date of the most recent financial statement given to Beneficiary.
- 2.4 Litigation. There is not now pending against or affecting Trustor or the Property, nor to the best of Trustor's knowledge is there threatened, any action, suit or proceeding that might result in a Material Adverse Change or that is not shown as a Permitted Exception.
- 2.5 Additional Representations and Warranties. (i) The Property is used solely for agricultural, ranching or grazing purposes and/or for purposes incidental thereto; (ii) all costs for labor, materials, supplies and equipment for the construction of the Improvements have been paid in full; (iii) Trustor is not aware of any assessment for public improvements which is pending and which could become a lien upon the Property; (iv) no event has occurred which with the giving of notice or the passage of time, or both, would constitute an Event of Default under any of the Loan Documents; (v) Trustor is not in default under any material agreement or instrument to which it is a party which default would have a material and adverse effect on the Property or Trustor's ability to timely perform the Obligations; (vi) neither the Property, nor any part thereof, has sustained, incurred or suffered any material damage or destruction; (vii) subject to the Permitted Exceptions, the Personality and the Fixtures are owned by Trustor free and clear of any liens, encumbrances, mortgages, security interests, claims and rights of others; (viii) the Property and the current use thereof complies with all Laws and Restrictions; (ix) Trustor has received no notices of violations of any Laws and Restrictions; and (x) there are no occupants or tenants in possession of the Property, or any part thereof, and there are no written or oral arrangements or agreements regarding occupancy or tenancy of the Property or any part thereof other than any expressly identified in Paragraph 6.C.(6) of the Application.

- 2.6 Bankruptcy. No petition in bankruptcy, petition or answer seeking assignment for the benefit of creditors or appointment of a Receiver or similar proceeding with respect to any Affected Party (as defined in Paragraph 6.1(B) hereof) has occurred or is contemplated.
- 2.7 FIRPTA Certification. Trustor declares and certifies, under penalty of perjury, that: (i) Trustor's U.S. Taxpayer I.D. Number is 13-3514519; (ii) the business address of Trustor is c/o Doug White, San Benito Cattle Co., P.O. Box 1298, Hollister, California 95024; (iii) Trustor is not a "foreign person" within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended (the "Code"); and (iv) Trustor understands that the information and certification contained in this Paragraph 2.7 may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor agrees to provide Beneficiary with a new certification containing the provisions of this Paragraph 2.7 immediately upon any change in such information.

ARTICLE 3 Affirmative Covenants

Trustor hereby covenants and agrees as follows:

- 3.1 Obligations of Trustor. Trustor will timely perform, or cause to be timely performed, all the Obligations.
- 3.2 Insurance.
- A. Trustor, at its sole cost and expense, will keep and maintain for the mutual benefit of Trustor and Beneficiary: (i) insurance against loss or damage to the Property by fire and other risks covered by insurance commonly known as the broad form of extended coverage, including losses sustained by reason of riot and civil commotion, vandalism, malicious mischief, burglary, theft and mysterious disappearance, and against such other risks or hazards as Beneficiary from time to time reasonably may designate in an amount equal to one hundred percent (100%) of the then-current "full replacement cost" of the Improvements, the Fixtures, and the Personalty, without deduction for physical depreciation; (ii) Comprehensive General Liability insurance including broad form property damage, contractual liability and personal injury or death coverage, with a combined single limit in such amounts as are reasonably approved by Beneficiary; (iii)

"Builders Risk" insurance during any material construction, repair, replacement, renovation or alteration of the Improvements, in such amounts as are reasonably approved by Beneficiary; (iv) boiler and machinery insurance covering boilers and other pressure vessels, the air conditioning system, high pressure piping and other machinery and equipment required for the operation of the Property; and (v) such other insurance, and in such amounts, as may from time to time be reasonably required by Beneficiary.

- B. All policies of insurance required by this Deed of Trust (i) shall be prepaid annually and otherwise satisfactory in form, substance and amount to Beneficiary and written with companies satisfactory to Beneficiary, (ii) shall name Beneficiary as an additional insured as its interest may appear, (iii) shall contain a Standard Lender's Loss Payable endorsement and other non-contributory standard mortgagee protection clauses acceptable to Beneficiary, and at Beneficiary's option, a waiver of subrogation rights by the insurer, (iv) shall contain an agreement by the insurer that such policy shall not be amended or cancelled without at least thirty (30) days' prior written notice to Beneficiary, and (v) shall contain such other provisions as Beneficiary deems reasonably necessary or desirable to protect its interests. Any policies containing a coinsurance clause shall include a replacement cost endorsement adequate to ensure that the coinsurance clause is rendered inoperative.
- C. In the event a blanket policy is submitted to satisfy Trustor's obligations under this Paragraph 3.2, in addition to such other requirements set forth herein, Trustor shall deliver to Beneficiary a certificate from such insurer indicating that Beneficiary is an insured under such policy and designating the amount of such insurance applicable to the Property.
- D. Trustor shall furnish evidence, satisfactory to Beneficiary, that (i) all insurance requirements (including provisions for waivers of subrogation) set forth in the Leases or any other agreements affecting the Property shall have been satisfied by each party thereto; and (ii) Trustor's insurance coverage is sufficient (assuming the total destruction of the Property) to permit Trustor to rebuild the Improvements and to replace the Fixtures and Personalty in such a manner as to enable the Property to be operable and rentable as it is currently rented and operated.

- E. Self-insurance (other than the applicable deductibles approved by Beneficiary) shall not satisfy the requirements of this Paragraph 3.2.
- F. All of Trustor's right, title and interest in and to all policies of property insurance are hereby assigned (to the fullest extent assignable) to Beneficiary who shall have the right, but not the obligation, to assign the same to any purchaser of the Property at any foreclosure sale.
- G. Not less than thirty (30) days prior to the expiration date of any policy furnished pursuant to this Paragraph 3.2, Trustor shall provide Beneficiary with duplicate originals or certified copies of renewal policies together with evidence satisfactory to Beneficiary of Trustor's payment of the applicable premiums.

3.3 Maintenance, Waste and Repair. Trustor will (i) maintain the Property in good order and condition; (ii) promptly make all necessary structural and non-structural repairs to the Property; (iii) not diminish or materially alter the Improvements except in the ordinary course of farming or ranching the Property, nor erect any new buildings, structures or building additions on the Land, without the prior written consent of Beneficiary; (iv) not remove or permit to be removed any of the Fixtures or Personalty from the Property without the prior written consent of Beneficiary unless replaced by articles of equal suitability and value owned by Trustor free and clear of any lien or security interest; (v) engage in cattle ranching and other related activities employing standards and practices consistent with the prudent business management and operation of Trustor's business, and (vi) not permit any waste of the Property or make any change in the use thereof, nor do or permit to be done thereon anything, that may in any way impair the security of this Deed of Trust.

3.4 Impositions; Impounds. Trustor will pay when due all Impositions. Trustor will deliver to Beneficiary, within seven (7) days after demand therefor, receipts showing the payment of any Impositions. Upon an Event of Default, Trustor will pay monthly to Beneficiary an amount equal to one-twelfth (1/12th) of the annual cost of Impositions together with an amount equal to the estimated next premiums for hazard and other required insurance. These funds will be held by Beneficiary without interest unless required by law and will be released to Trustor for payment of Impositions and insurance premiums, or directly applied to such costs by Beneficiary, as Beneficiary may elect.

- 3.5 Compliance with Law. Trustor will promptly and faithfully comply with all present and future Laws and Restrictions.
- 3.6 Books and Records and Other Information.
- A. Trustor, without expense to Beneficiary, will maintain full and complete books of account and records reflecting the results of the operations of the Property in accordance with generally accepted accounting principles consistently applied. In any event, Trustor shall furnish to Beneficiary within ninety (90) days after the close of each fiscal year of Trustor an annual operating statement prepared by certified public accountants satisfactory to Beneficiary showing all elements of income and expenses for the operation of the Property. Beneficiary shall have the right to audit the books and records of Trustor after the occurrence of a Material Adverse Change or an Event of Default, and in any event, once during the term of the Loan. If such audit discloses a variance of three percent (3%) or more in income or expenses, the cost of such audit shall be paid by Trustor.
- B. Trustor will furnish to Beneficiary, within thirty (30) days after written request therefor, all information, including financial information, that Beneficiary may reasonably request concerning the Property, Trustor or the performance by Trustor of the Obligations.
- 3.7 Further Assurances. Trustor, at any time upon the reasonable request of Beneficiary, will at Trustor's expense, execute, acknowledge and deliver all such additional papers and instruments (including, without limitation, a declaration of no setoff) and perform all such further acts as may be reasonably necessary to perform the Obligations and, as Beneficiary deems necessary, to preserve the priority of the lien of this Deed of Trust and to carry out the purposes of the Loan Documents.
- 3.8 Litigation. Trustor will promptly give notice in writing to Beneficiary of any litigation or other event or occurrence which might result in a Material Adverse Change.
- 3.9 Inspection of Property. Trustor hereby grants to Beneficiary, its agents, employees, consultants and contractors, the right to enter upon the Property for the purpose of making any and all reasonable inspections, reports, tests, inquiries and reviews (collectively, the "Inspections") as Beneficiary (in its sole and absolute discretion) deems necessary to assess the then current condition of the Property, or for the purpose of performing

any of the other acts Beneficiary is authorized to perform hereunder or under the Hazardous Substances Agreement. Trustor shall cooperate with Beneficiary to facilitate such entry and the accomplishment of such purposes. All costs, fees and expenses (including those of Beneficiary's legal counsel and consultants) incurred by Beneficiary with respect to such Inspections shall be paid by Trustor to Beneficiary upon demand, shall accrue interest at the Secondary Interest Rate until paid, and shall be secured by this Deed of Trust; provided that, if there is not a Material Adverse Change disclosed by such Inspections, the expense and cost of such Inspections shall be paid by Beneficiary, unless such Inspections occur after an Event of Default, in which case the expense and cost of such Inspections shall be paid by Beneficiary regardless of whether a Material Adverse Change is disclosed by such Inspections.

- 3.10 Contest. Notwithstanding the provisions of Paragraphs 3.4 and 3.5, Trustor may, at its expense, contest the validity or application of any Impositions or Laws and Restrictions by appropriate legal proceedings promptly initiated and diligently conducted in good faith, provided that (i) Beneficiary is reasonably satisfied that the priority of this Deed of Trust shall be maintained and 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 (ii) Trustor shall have posted a bond or furnished such other security as may be reasonably required from time to time by Beneficiary.
- 3.11 Additional Information. Trustor will furnish to Beneficiary, within thirty (30) days after written request therefor, any and all information that Beneficiary may reasonably request concerning the Property or the performance by Trustor of the Obligations.
- 3.12 Prepayment. Trustor may prepay the Loan only on the terms and conditions set forth in the Note and Trustor shall pay Beneficiary prepayment charges in respect of any prepayment, whether voluntary or involuntary, as required by and on the terms and conditions set forth in the Note.
- 3.13 FIRPTA Certificate. In the event of any transfer by Trustor of its rights hereunder or of any interest in the Property otherwise permitted under this Deed of Trust, such transferee shall, as an additional condition to such transfer, under penalty of perjury, execute and deliver to Beneficiary a certificate concerning the non-foreign status of Trustor substantially in the form of Paragraph 2.7 hereof. Nothing in this paragraph shall be deemed a

modification or waiver of any other provision of any of the Loan Documents limiting, prohibiting or otherwise relating to any transfer of any interest in the Property or Trustor.

- 3.14 Tax Service Contract. Throughout the term of the Loan, at Trustor's sole expense, Beneficiary shall be furnished tax service contracts issued by a tax reporting agency satisfactory to Beneficiary.
- 3.15 Maintenance of Water Eligibility. Trustor will, during the existence of this Deed of Trust, timely take or cause to be taken such actions as shall be necessary to maintain the Reclamation Property at all times as non-excess land eligible to obtain water from sources subject to Reclamation Law and shall not decrease the number of acres of Reclamation Property presently eligible to receive Reclamation Water at a "non-full-cost rate" within the meaning of 43 CFR Section 426.4(v). Trustor shall comply or cause to be complied with all reporting and certification requirements of Reclamation Law, including, without limitation, the provisions of 43 CFR Section 426.10(b) through (g), inclusive.

#### ARTICLE 4 Negative Covenants

Trustor hereby covenants to and agrees as follows:

- 4.1 Restrictive Uses. Trustor will not initiate, join in, or consent to any change in the current use of the Property or in any zoning ordinance, private restrictive covenant, assessment proceedings or other public or private restriction limiting or restricting the uses that may be made of the Property or any part thereof or in any way change the boundaries of the Property, without the prior written consent of Beneficiary.
- 4.2 Prohibited Transfers. Subject to the provisions of the Assignment of Leases regarding leases of the Property, Trustor shall not, and shall not cause, allow or permit a Transfer without the prior written consent of Beneficiary, which consent may be withheld or conditioned in Beneficiary's absolute discretion. Any permitted transferee shall, as a condition of the effectiveness of any consent or waiver by Beneficiary hereunder, assume all of Trustor's obligations under the Loan Documents and the Hazardous Substances Agreement and agree to be bound thereby. Such assumption shall not, however, release Trustor from any liability under the Loan Documents or the Hazardous Substances Agreement. Consent to any such Transfer by Beneficiary shall not be deemed a waiver of

Beneficiary's right to require such consent to any further or future Transfers.

Notwithstanding the foregoing, if no Event of Default or event which with the passage of time or the giving of notice or both would constitute an Event of Default has occurred and is continuing, Beneficiary agrees to permit, after receiving prior written notice thereof, secondary encumbrances of the Property by Trustor solely for the purpose of financing the ranching operations conducted on the Property on such terms as Trustor in its sole discretion deems appropriate, so long as such secondary encumbrance and the documents executed in connection therewith shall not in any way affect the priority of the lien of this Deed of Trust or any right or remedy of Beneficiary under the Loan Documents or require Beneficiary to perform any act or incur any obligation whatsoever.

- 4.3 No Cooperative or Condominium. Trustor shall not operate the Property or permit the Property to be operated as a cooperative or condominium or otherwise such that the tenants or occupants participate in ownership, control, or management of the Property.
- 4.4 Partnership Agreement. Trustor, if a partnership, will not terminate, alter, modify or amend or permit the termination, alteration, modification or amendment of its Partnership Agreement without Beneficiary's prior written consent.
- 4.5 Water Rights. Trustor shall not transfer, sell, assign or otherwise dispose of any water rights (whether riparian, appropriative or otherwise) in or hereafter relating to or used in connection with the Land without Beneficiary's prior written consent, which consent may be withheld in Beneficiary's sole discretion.

ARTICLE 5 Casualties and Condemnation

- 5.1 Insurance and Condemnation Proceeds.
  - A. Trustor shall notify Beneficiary in writing immediately upon the occurrence of any loss or damage by fire or other casualty to the Property or upon obtaining knowledge of the commencement of any proceedings for condemnation of any portion of the Property. Beneficiary shall be entitled to (i) participate in any such condemnation proceedings and Trustor from time to time will deliver to Beneficiary all instruments

reasonably necessary to permit such participation, and (ii) settle and adjust all insurance claims in excess of \$100,000 relative to any such damage or destruction, deducting from any insurance proceeds the amount of all expenses reasonably incurred by Beneficiary in connection with any such settlement or adjustment. Trustor shall have the sole responsibility for settling and adjusting all such claims of \$100,000 or less so long as Trustor keeps Beneficiary advised of the progress and amount of such settlement and adjustment. Notwithstanding anything to the contrary contained in any insurance policies, (x) subject to Paragraph 5.1.B, all proceeds paid to Trustor under any insurance policies required to be maintained by Trustor pursuant to Paragraph 3.2 or otherwise relating to the Property and any insurance proceeds received by Trustor under insurance policies maintained by tenants pursuant to a lease obligation shall immediately be delivered to Beneficiary and held by Beneficiary in an interest bearing special account, and (y) subject to Paragraph 5.2, all condemnation proceeds from the Property are hereby assigned to and shall be paid to the Beneficiary and held by Beneficiary in an interest bearing special account and the reasonable cost of any legal representation of Beneficiary in any such condemnation proceedings shall be borne by Trustor. All interest accrued on any funds in the special account shall accrue for the benefit of Trustor, but shall be subject to disbursement in accordance with the provisions of this Article 5. Trustor hereby unconditionally and irrevocably waives all rights of a property owner under Nevada law providing for the allocation of condemnation proceeds between a property owner and lienholder.

- B. If Beneficiary elects or is required hereunder to make insurance proceeds or condemnation awards available for repair or reconstruction, Beneficiary shall, through a disbursement procedure established by Beneficiary, make available to Trustor the net amount of all insurance proceeds or condemnation awards received by Beneficiary after deduction of Beneficiary's reasonable costs and expenses, if any, in collection of the same (the "Net Proceeds"). Beneficiary shall make the Net Proceeds available to Trustor for repair or reconstruction provided that (i) there shall then be no default under any Loan Document; (ii) Beneficiary shall be satisfied that the Property can and will be repaired or reconstructed within 18 months to the condition of the Property immediately prior to the damage, destruction or condemnation; and (iii) in Beneficiary's reasonable judgment, the security for the Loan has not been

materially impaired as a result of such damage, destruction or condemnation. In the event Beneficiary elects not, or is not required, to make the Net Proceeds available for repair or reconstruction, Beneficiary, at its sole option, may apply the Net Proceeds in payment of the Indebtedness or in satisfaction of any other Obligation in such order as Beneficiary may determine. Notwithstanding any provision of this Deed of Trust to the contrary, under no circumstance shall the Beneficiary be obligated to make any portion of the Net Proceeds available for repair or reconstruction unless at the time of the request for any disbursement it has determined in its reasonable discretion that the repair or reconstruction can be completed at a cost (which cost shall include all payments coming due under the terms of the Loan) which does not exceed the aggregate of the remaining Net Proceeds and any funds deposited with Beneficiary by Trustor.

- C. The Net Proceeds and any interest accrued thereon and any additional funds deposited by Trustor with Beneficiary, plus any loss of rental income insurance proceeds which have been deposited with Beneficiary or which the carrier has acknowledged to be payable, shall constitute additional security for the Loan. Trustor shall execute, deliver, file and/or record, at its own expense, such documents and instruments as Beneficiary requires to grant to Beneficiary a perfected, first priority security interest in the Net Proceeds and such additional funds.

5.2 Additional Provisions Relating to Condemnation. Trustor, immediately upon obtaining knowledge of the commencement of any proceedings for the condemnation of the entire Property or any material part thereof, will notify Trustee and the Beneficiary of the pendency of such proceedings. Trustee and Beneficiary may participate in any such proceedings and Trustor from time to time will deliver to Beneficiary all instruments requested by Beneficiary to permit such participation. In the event of such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to Beneficiary. Beneficiary shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. In any such condemnation proceedings the Beneficiary may be represented by counsel selected by the Beneficiary, the cost of such counsel to be borne by Trustor. The proceeds of any award or compensation so received shall, at the option of Beneficiary, either be applied to the prepayment of the Indebtedness or satisfaction of any Obligation or be paid

over to the Trustor for restoration of the Improvements in accordance with the provisions of Paragraph 5.1.B. Trustor hereby unconditionally and irrevocably waives all rights of a property owner under Nevada law providing for the allocation of condemnation proceeds between a property owner and a lien holder.

**ARTICLE 6      Events of Default and Remedies of Beneficiary**

**6.1      Events of Default.**

- A. It shall constitute an Event of Default hereunder if any of the following events shall occur and Beneficiary, by written notice delivered to Trustor, declares Trustor to be in default: (1) Trustor shall fail to pay within five (5) days of the date when due any part of the Indebtedness; (2) Trustor shall fail to timely observe, perform or discharge any Obligation, other than as described in Paragraphs 6.1.A.(1), (3), (4), (5), (6), (7 and (8)), and any such failure shall remain unremedied thirty (30) days or such lesser period as may be otherwise specified in the applicable Loan Document or agreement (the "Grace Period") after notice to Trustor of the occurrence of such failure; provided, however, that Beneficiary may extend the Grace Period up to ninety (90) days if (a) Beneficiary determines in good faith that (i) such default cannot be cured within the Grace Period but can be cured within ninety (90) days, (ii) no lien or security interest created by the Loan Documents shall be impaired prior to the completion of such cure, and (iii) Beneficiary's immediate exercise of any remedies provided hereunder or by law is not necessary for the protection or preservation of the Property or Beneficiary's security interest therein, and (b) Trustor shall immediately commence and diligently pursue the cure of such default; (3) Trustor, as lessor or sublessor, as the case may be, shall assign the Rents without first obtaining the written consent of Beneficiary; (4) default by Trustor after the expiration of all applicable grace or cure periods under any agreement to which Trustor is a party, other than the Loan Documents, which agreement relates to the borrowing of money by Trustor from any Person, and such default might give rise to a Material Adverse Change or adversely affect the security for the Loan; (5) any representation or warranty made by Trustor in, under or pursuant to the Loan Documents was false or misleading in any material respect as of the date on which such representation or warranty was made or deemed remade;

(6) any of the Loan Documents shall cease to be in full force and effect or be declared null and void, or shall cease to constitute valid and subsisting liens and/or valid and perfected security interests in and to the Property, or Trustor shall contest or deny in writing that it has any further liability or obligation under any of the Loan Documents; (7) Trustor or any successor-in-interest is estopped or denied from receiving irrigation water for use upon any portion of the Reclamation Property by reason of failure to comply, for any reason, with the Reclamation Law, or if there is an increase in the number of acres of Reclamation Property that are subject to the payment of Reclamation Water at a "full cost rate" within the meaning of Section 43 CFR Section 426.4(i), or if existing water permits or certificates or other water rights shall be otherwise revoked or suspended, and Beneficiary reasonably determines that such increase in full cost rate acreage, or loss or interruption of the right to receive irrigation water materially and adversely affects the value of the Reclamation Property; or (8) a default by either Las Aguilas Corporation or Nelson Roberts & Associates, Inc. after the expiration of all applicable grace periods under any Loan Document executed by either or both such entities.

- B. It shall constitute an Event of Default hereunder without the requirement of any notice if any of the following events shall occur: (i) the Trustor, any general partner of Trustor, any parent company of such partner, any owner of the Property, or any guarantor of Trustor's obligations under the Loan Documents (collectively, the "Affected Parties") shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall have made a general assignment for the benefit of creditors; (ii) any Affected Party shall commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking to have an order for relief entered against it as debtor, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property (collectively, a "Proceeding"); (iii) any Affected Party shall take any action to authorize any of the actions set forth above in clauses (i) or (ii); (iv) any Proceeding shall be commenced against any Affected Party, and such Proceeding (a) results in the entry of an order for relief against it which is not

fully stayed within seven (7) business days after the entry thereof or (b) remains undismissed for a period of forty-five (45) days or (v) failure to timely observe, perform or discharge any provision of Paragraph 4.2 hereof or the occurrence of a Transfer without Beneficiary's prior written consent.

6.2 Remedies.

- A. Upon the occurrence of any Event of Default, subject to NRS 107.080, Beneficiary may at any time declare all of the Indebtedness to be due and payable and the same shall thereupon become immediately due and payable, together with all payments due in accordance with the terms of the Note, without any further presentment, demand, protest or notice of any kind. Beneficiary may, in its sole discretion, also do any of the following: (1) in person, by agent, or by a Receiver, without regard to the adequacy of security, the solvency of Trustor or the condition of the Property, without obligation so to do and without notice to or demand upon Trustor, enter upon and take possession of the Property, or any part thereof, in its own name or in the name of Trustee and do any acts which Beneficiary deems necessary to preserve the value or marketability of the Property and any crops growing thereon; sue for or otherwise collect the Rents, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, against the Obligations, all in such order as Beneficiary may determine; appear in and defend any action or proceeding purporting to affect, in any manner whatsoever, the Obligations, the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase or compromise any encumbrance, charge or lien that in the judgment of Beneficiary or Trustee is prior or superior hereto; and in exercising any such powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees; (2) as a matter of strict right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Property, apply ex parte to any court having jurisdiction to appoint a Receiver to enter upon and take possession of the Property, and Trustor hereby waives notice of any application therefor (except as required by any statute, rule or court order), provided a hearing to confirm such appointment with notice to Trustor is set within the time required by law (any such Receiver shall have all the powers and duties of Receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise

all such powers until the date of confirmation of sale, unless such Receivership is sooner terminated); (3) commence an action to foreclose this Deed of Trust in any manner provided hereunder or by law; (4) with respect to any Personalty, proceed as to both the real and personal property in accordance with Beneficiary's rights and remedies in respect of the Land, or proceed to sell said Personalty separately and without regard to the Land in accordance with Beneficiary's rights and remedies as to personal property; and/or (5) deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause the Property to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record.

- B. If Trustor shall at any time fail to perform or comply with any of the terms, covenants and conditions required on Trustor's part to be performed and complied with under any of the Loan Documents or any other agreement that, under the terms of this Deed of Trust, Trustor is required to perform, then Beneficiary may, in its sole discretion: (1) make any payments hereunder or thereunder payable by Trustor and take out, pay for and maintain any of the insurance policies provided for herein or therein; and/or (2) after the expiration of any applicable grace period and subject to Trustor's rights to contest certain obligations specifically granted hereby, perform any such other acts thereunder on the part of Trustor to be performed and enter upon the Property for such purpose.
- C. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require. Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such notice of default and notice of sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Property at the time and place of sale fixed by it in said notice of sale, either as a whole, or in separate lots or parcels or items as Beneficiary shall determine, and in such order as Beneficiary may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser

or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers. After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, all sums expended under the terms hereof, not then repaid, with accrued interest at the Secondary Interest Rate; (ii) second, all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto. Beneficiary may, in its sole discretion, designate the order in which the Property shall be offered for sale or sold through a single sale or through two or more successive sales, or in any other manner Beneficiary deems to be in its best interest. If Beneficiary elects more than one sale or other disposition of the Property, Beneficiary may at its option cause the same to be conducted simultaneously or successively, on the same day or at such different days or times and in such order as Beneficiary may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Deed of Trust on any part of the Property not then sold until all Indebtedness secured hereby has been fully paid. If Beneficiary elects to dispose of the Property through more than one sale, Trustor shall pay the costs and expenses of each such sale of its interest in the Property and of any proceedings where the same may be made. Trustee may postpone the sale of all or any part of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement, and without further notice make such sale at the time fixed by the last postponement; or Trustee may, in its discretion, give a new notice of sale. Beneficiary may rescind any such notice of default at any time before Trustee's sale by executing a notice of rescission and recording the same. The recordation of such notice shall constitute a cancellation of any prior declaration of default and demand for sale and of any acceleration of maturity of Indebtedness affected by any prior declaration or notice of default. The exercise by Beneficiary of the right of rescission shall not constitute a waiver of any

default then existing or subsequently occurring, or impair the right of Beneficiary to execute other declarations of default and demand for sale, or notices of default and of election to cause the Property to be sold, nor otherwise affect the Note or this Deed of Trust, or any of the rights, obligations or remedies of Beneficiary or Trustee hereunder.

- D. In the event of a sale of the Property, or any part thereof, and the execution of a deed therefor, the recital therein of default, and of recording notice of default and notice of sale, and of the elapse of the required time (if any) between the recording and the notice, and of the giving of notice of sale, and of a demand by Beneficiary, or its successors or assigns, that such sale should be made, shall be conclusive proof of such default, recording, election, elapse of time, and giving of such notice, and that the sale was regularly and validly made on due and proper demand by Beneficiary, its successors or assigns. Any such deed or deeds with such recitals therein shall be effective and conclusive against Trustor, its successors and assigns, and all other Persons. The receipt for the purchase money recited or contained in any deed executed to the purchaser as aforesaid shall be sufficient discharge to such purchaser from all obligations to see to the proper application of the purchase money.
- E. All remedies of Beneficiary provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided in the other Loan Documents or by law, including any right of offset. The exercise of any right or remedy by Beneficiary hereunder shall not in any way constitute a cure or waiver of default hereunder or under the Loan Documents, or invalidate any act done pursuant to any notice of default, or prejudice Beneficiary in the exercise of any of its rights hereunder or under the Loan Documents.
- F. All sums expended by Trustee or Beneficiary in the exercise of any of their rights or remedies under this Deed of Trust, and all reasonable costs and expenses incurred in connection therewith shall (i) be immediately due and payable on demand, (ii) accrue interest at the Secondary Loan Rate from the date of expenditure by Beneficiary, and (iii) be added to the Indebtedness and secured by the Loan Documents prior to any right, title or interest in or claim upon the Property attaching or accruing subsequent to the lien of this Deed of Trust.

- 6.3 Concurrency of Cure Periods. All notice and cure periods provided herein or in the Note shall run concurrently with any notice or cure periods provided by law. Without limiting the foregoing, Beneficiary or the Trustee shall be entitled to cause a notice of breach and election to sell to be recorded and mailed if any event occurs which, with the giving of notice and/or passage of time, would constitute a default hereunder or an event of default under the Note or would entitle Beneficiary to accelerate the Indebtedness and the recording and mailing to Trustor of such notice of breach and election to sell shall constitute notice of a failure to perform pursuant hereto or thereto.

**ARTICLE 7 Security Agreement and Fixture Filing**

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- 7.1 Grant of Security Interest. Trustor hereby grants to Beneficiary a security interest in and to all Trustor's right, title and interest now owned or hereafter acquired in and to the Personalty and the Fixtures (collectively, the "Collateral").
- 7.2 Remedies. This Deed of Trust constitutes a security agreement with respect to the Collateral in which Beneficiary is hereby granted a security interest. In addition to the rights and remedies provided under this Deed of Trust, Beneficiary shall have all of the rights and remedies of a secured party under the Nevada Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Trustor hereby agrees to execute and deliver on demand and irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to, at Trustor's expense, execute, deliver and, if appropriate, to file with the appropriate filing officer or office such instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of any Event of Default, Beneficiary shall have (i) the right to cause any of the Collateral which is personal property to be sold at any one or more public or private sales as permitted by applicable law and to apply the proceeds thereof to the Indebtedness or the satisfaction of any Obligation and (ii) the right to apply to the Indebtedness or the satisfaction of any Obligation any Collateral which is cash, negotiable documents or chattel paper. Any such disposition may be conducted by an employee or agent of Beneficiary or Trustee. Any Person, including both of Trustor and Beneficiary, shall be eligible to

purchase any part or all of such Personalty at any such disposition.

- 7.3 Expenses. Expenses of retaking, holding, preparing for sale, selling or the like pertaining to the Collateral shall be borne by Trustor and shall include Beneficiary's and Trustee's reasonable attorneys' fees and legal expenses. Trustor, after default and upon demand of Beneficiary shall assemble the Collateral and make it available to Beneficiary on the Property, at a place designated by Beneficiary which is hereby deemed reasonably convenient to Trustor. Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of the Collateral or of the time after which any private sale or any other intended disposition is to be made. Any such notice sent to Trustor in the manner provided for the mailing of notices herein is hereby deemed to be reasonable notice to Trustor.
- 7.4 Fixture Filing. This Deed of Trust covers certain goods which are or are to become fixtures related to the Land and constitutes a fixture filing with respect such goods executed by Trustor as debtor in favor of Beneficiary as secured party.
- 7.5 Waivers. Trustor waives (a) any right to require Beneficiary to (i) proceed against any Person, (ii) proceed against or exhaust any Collateral or (iii) pursue any other remedy in its power; and (b) any defense arising by reason of any disability or other defense of Trustor or any other Person, or by reason of the cessation from any cause whatsoever of the liability of Trustor or any other Person. Until the Indebtedness shall have been paid in full, Trustor shall not have any right to subrogation, and Trustor waives any right to enforce any remedy which Beneficiary now has or may hereafter have against Trustor or against any other Person and waives any benefit of and any right to participate in any Collateral or security whatsoever now or hereafter held by Beneficiary.

#### ARTICLE 8 Assignment of Rents and Agreements

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- 8.1 Assignment of Rents. Trustor absolutely and unconditionally assigns and transfers the Rents to Beneficiary, whether now due, past due or to become due, and gives to and confers upon Beneficiary the right, power and authority to collect such Rents, and apply the same to the Indebtedness or the satisfaction of any Obligation. Trustor irrevocably

appoints Beneficiary its agent to, at any time, demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in the name of Trustor or in the name of Beneficiary, for all such Rents. Neither the foregoing assignment of Rents to Beneficiary or the exercise by Beneficiary of any of its rights or remedies under this Deed of Trust shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part thereof, unless and until Beneficiary, in person or by its own agent, assumes actual possession thereof, nor shall appointment of a Receiver for the Property by any court at the request of Beneficiary or by agreement with Trustor or the entering into possession of the Property by such Receiver be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation thereof. Concurrently with the execution of this Deed of Trust, Trustor has executed, delivered and recorded the Assignment of Leases in favor of Beneficiary. In the event of any inconsistency between the terms and provisions of this Article 8 and the terms and provisions of the Assignment of Leases, the latter shall control.

- 8.2 Assignment of Agreements. Trustor hereby sells, assigns, transfers, sets over and delivers to Beneficiary all of Trustor's right, title and interest in and to any and all agreements, contracts, reports, surveys, plans, drawings, operating permits, water permits, licenses and governmental approvals whatsoever pertaining to the operation of the Property or to the construction of the Improvements, as the same may be amended or otherwise modified from time to time (collectively, the "Agreements"). The foregoing assignment encompasses the right of Trustor to (i) terminate any of the Agreements, (ii) perform or compel performance and otherwise exercise all remedies under the Agreements, and (iii) collect and receive all sums which may become due Trustor or which Trustor may now or shall hereafter become entitled to demand or claim, under the Agreements.
- 8.3 Revocable License. Notwithstanding anything to the contrary contained herein or in the Note, so long as no Event of Default shall have occurred, Trustor shall have a license to collect all Rents and all other sums which may become payable to Trustor under the Agreements, and apply the same to the payment or performance of the Obligations as and when due. Upon the occurrence of an Event of Default, Beneficiary shall have the right, on written notice to

Trustor, to terminate and revoke the license herein granted to Trustor and shall have the right and authority then or thereafter to exercise and enforce any and all of its rights and remedies provided in this Article 8 or by law or at equity.

- 8.4 Nonresponsibility. The acceptance by Beneficiary of the assignments with all the rights, powers, privileges and authority so granted shall not obligate Beneficiary to assume any obligations in respect of the Rents or under the Agreements or take any action thereunder or to expend any money or incur any expense or perform or discharge any obligation, duty or liability in respect of the Rents or under the Agreements or to assume any obligation or responsibility for the nonperformance of the provisions thereof by Trustor.

**ARTICLE 9    Miscellaneous**

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- 9.1 Successor Trustee. Beneficiary may remove Trustee or any successor trustee at any time or times and appoint a successor trustee by recording a written substitution in the county or counties where the Property is located, or in any other manner permitted by law.
- 9.2 No Waiver. No failure by Beneficiary to insist upon strict, full and complete (i) payment when due of any portion of the Indebtedness or (ii) performance of any Obligation, nor failure to exercise any right or remedy hereunder, shall constitute a waiver of any such failure to pay or breach of any such Obligation, or of the later exercise of such right or remedy.
- 9.3 Abandonment. Subject to any obligations imposed by law upon Beneficiary to make commercially reasonable efforts to sell or otherwise realize the value of the Personalty, any and all Personalty that upon foreclosure of the Property is owned by Trustor and is used in connection with the operation of the Property shall be deemed at the option of Beneficiary to have become on such date a part of the Property and abandoned to Beneficiary in its then condition.

9.4 Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged, (ii) one business day after having been deposited for overnight delivery with Federal Express or another comparable overnight courier service, or (iii) three business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows:

If to Trustor: c/o Doug White  
San Benito Cattle Co.  
P.O. Box 1298  
Hollister, California 95024

with a copy to: Joseph W. Diehl, Jr.  
Diehl & Rodewald  
P.O. Box 1207  
San Luis Obispo, CA 94306

and

Robert H. M. Ferguson, Esq.  
Patterson, Belknap, Webb & Tyler  
30 Rockefeller Plaza  
New York, NY 10112

If to Trustee: Ticor Title Insurance Company  
330 Tres Pinos  
Hollister, California 95023  
Attention: Escrow # 0022169, 0037498

If to  
Beneficiary: The Prudential Insurance Company of America  
2868 Prospect Park Drive, Suite 650  
Rancho Cordova, California 95670  
Attention: Vice President, Agricultural  
Realty Group

The Prudential Insurance Company of America  
Four Embarcadero Center, Suite 2700  
San Francisco, California 94111  
Attention: Regional Counsel

or addressed as such party may from time to time designate by written notice to the other parties.

- 9.5 **Severability.** If any provision hereof should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare the Indebtedness immediately due and payable.
- 9.6 **Joinder of Foreclosure.** Should Beneficiary hold any other or additional security for the performance of the Obligations, its sale or foreclosure, upon any default in such performance, in the sole discretion of Beneficiary, may be prior to, subsequent to, or joined or otherwise contemporaneous with any sale or foreclosure hereunder.
- 9.7 **Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the state in which the Land is located.
- 9.8 **Subordination.** At the option of Beneficiary, this Deed of Trust shall become subject and subordinate in whole or in part (but not with respect to priority of entitlement to any insurance proceeds, damages, awards, or compensation resulting from damage to the Property or condemnation or exercise of power of eminent domain), to any and all contracts of sale and/or any and all Leases upon the execution by Beneficiary and recording thereof in the Official Records of the county where the Land is located of a unilateral declaration to that effect. Beneficiary may require the issuance of such title insurance endorsements to the title policy in connection with any such subordination as Beneficiary, in its reasonable judgment, shall determine are appropriate, and Trustor shall pay any cost or expense incurred in connection with the issuance thereof.
- 9.9 **Waiver of Statute of Limitations and Rights to Trial by Jury.** Trustor hereby waives, to the full extent allowed by law, the right to plead any statute of limitations as a defense to any obligation secured by this Deed of Trust and the right to a jury trial in any action under or relating to the Loan Documents.
- 9.10 **Entire Agreement.** The Loan Documents and the Hazardous Substances Agreement set forth the entire understanding between Trustor and Beneficiary relative to the Loan and the same shall not be amended except by a written instrument duly executed by each of Trustor and Beneficiary. The foregoing notwithstanding, the terms and the conditions of the Application shall survive the funding of the Loan but

in the event of any conflict between the provisions of the Application and any of the other Loan Documents or the Hazardous Substances Agreement, except as otherwise specifically provided herein, the terms of such other Loan Documents and Hazardous Substances Agreement shall control.

- 9.11 Copies. Trustor will promptly give to Beneficiary copies of all (i) notices of violation relating to the Property that Trustor receives from any governmental agency or authority, and (ii) notices of default that Trustor shall give or receive under any agreement that Trustor covenants to perform hereunder.
- 9.12 Personalty Security Instruments. If Beneficiary at any time holds additional security for any obligations secured hereby, it may enforce the terms thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder, and may apply the proceeds upon the Indebtedness without affecting the status or of waiving any right to exhaust all or any other security, including the security hereunder, and without waiving any breach or default or any right or power whether exercised hereunder or contained herein or in any such other security.
- 9.13 Suits to Protect Property. Trustor shall appear in and defend any action or proceeding purporting to affect the security of the Deed of Trust, or of any additional or other security for the Obligations, the interest of Beneficiary or the rights, powers and duties of Trustee hereunder; and shall pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees, in any action or term, covenant or condition proceeding in which Beneficiary and/or Trustee may appear or be made a party, including foreclosure or other proceeding commenced by those claiming a right to any part of the Property in any action to partition or condemn all or part of the Property, whether or not pursued to final judgment, and in any exercise of the power of sale contained herein, whether or not the sale is actually consummated. In any such action or proceeding in which Beneficiary is made a party, Beneficiary may at its option defend such action, and all costs of such defense, including all court costs and reasonable attorneys' fees, shall be borne and paid by Trustor.
- 9.14 Charges for Statements. Trustor agrees to pay Beneficiary's charge, up to the maximum amount permitted by law, for any statement regarding the Obligations requested by Trustor or in its behalf.

- 9.15 Usury. In the event that Beneficiary determines that any charge, fee or interest paid or agreed to be paid in connection with the Loan may, under the applicable usury laws, cause the interest rate on the Loan to exceed the maximum permitted by law, then such charges, fees or interest shall be reduced and any amounts actually paid in excess of the maximum interest permitted by such laws shall be applied by Beneficiary to reduce the outstanding principal balance of the Loan. The parties intend that Trustor shall not be required to pay, and Beneficiary shall not be entitled to collect, interest in excess of the maximum legal rate permitted under the applicable usury laws.
- 9.16 Publicity. Trustor hereby agrees that Beneficiary, at its expense, may publicize the financing of the Property.
- 9.17 Information Reporting Under IRS Section 6045(e). Any information returns or certifications that must be filed with the Internal Revenue Service and/or provided to other parties pursuant to Internal Revenue Code Section 6045(e) shall be prepared, filed by and sent to the appropriate parties by Trustor. To the extent permitted by law, Beneficiary shall have no responsibility to perform such services; provided however, that upon demand Trustor shall reimburse Beneficiary for any costs incurred by Beneficiary in doing so and shall also pay such fee as Beneficiary may reasonably and lawfully request. Beneficiary shall, where requested by Trustor, promptly supply Trustor with all information pertaining to Beneficiary reasonably required by Trustor to prepare and file any such return or certification.
- 9.18 ERISA.
- A. Beneficiary represents and warrants to Trustor that, as of the date of this Deed of Trust and throughout the term of the Loan, the source of funds from which Beneficiary extends the Loan is its General Account, which is subject to the claims of its general creditors under state law.
- B. Trustor represents and warrants to Beneficiary that, as of the date of this Deed of Trust and covenants that, throughout the term of the Loan, (i) Trustor is not and will not become an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA, and (ii) the assets of Trustor do not and will not constitute "plan assets" of

one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

- C. Trustor represents and warrants to Beneficiary that, as of the date of this Deed of Trust (i) Trustor is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (ii) transactions by or with Trustor are not subject to state statutes regulating investment of and fiduciary obligations with respect to governmental plans.
- D. Trustor covenants and agrees to deliver to Beneficiary such certifications or other evidence from time to time throughout the term of the Loan, as requested by Beneficiary in its sole discretion, that (i) Trustor is not an "employee benefit plan" or a "governmental plan"; and (ii) Trustor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true: (1) equity interests in Trustor are publicly offered securities, within the meaning of 29 C.F.R. Section 251.3-101(b)(2); (2) less than twenty-five percent (25%) of all equity interests in Trustor are held by "benefit plan investors" within the meaning of 29 C.F.R. Section 2510.3-101(f)(2); (3) Trustor qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. Section 2510.3-101(c) or (e); or (4) no equity interest in Trustor is held directly or indirectly by an employee benefit plan subject to ERISA.
- E. Any of the following shall constitute an Event of Default entitling Beneficiary to exercise any and all remedies to which it may be entitled under the Loan Documents: (i) the failure of any representation or warranty made by Trustor under this Paragraph 9.18 to be true and correct in all respects, (ii) the failure of Trustor to provide Beneficiary with the written certifications and evidence referred to above, or (iii) the consummation by Trustor of a transaction which would cause the Deed of Trust or any exercise of Beneficiary's rights under the Loan Documents to constitute a non-exempt prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, subjecting Beneficiary to liability for violation of ERISA of such state statute.
- F. Trustor shall indemnify, protect and defend and hold Beneficiary harmless from and against all loss, cost, damage and expense (including attorneys' fees and costs incurred in the investigation, defense and settlement

of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Beneficiary's sole discretion) that Beneficiary may incur, directly or indirectly, as a result of a default under Paragraph 9.18(E). This indemnity shall survive any termination, satisfaction or foreclosure of the Deed of Trust.

9.19 Indemnification and Defense.

- A. Trustor will indemnify, defend, and hold Beneficiary and its agents harmless from and against all liability, loss, claims, damage, cost or expense (including reasonable attorneys' fees) that Beneficiary might incur in connection with the making or administering of the Loan, the enforcement of any of Beneficiary's rights or remedies under the Loan Documents, by reason of any failure of any representation or warranty made by Trustor or the failure of Trustor to perform any Obligation or by reason or in defense of any and all claims and demands whatsoever that may be asserted against Beneficiary by a third party, whether governmental, private or otherwise, arising out of or in connection with the Property or the Loan.
- B. Whenever, under any Loan Document, Trustor is obligated to indemnify and/or defend Beneficiary, or Trustor is obligated to defend or prosecute any action or proceeding, then Beneficiary shall have the right to participate in such prosecution or defense using counsel of Beneficiary's choice, and all costs and expenses incurred by Beneficiary in connection with such participation (including reasonable attorneys' fees) shall be reimbursed by Trustor to Beneficiary. In addition, Beneficiary shall have the right to approve any counsel retained by Trustor in connection with the prosecution or defense of any such action or proceeding by Trustor, provided that Beneficiary has not participated in such action using counsel of its own choice. Trustor shall give notice to Beneficiary of the initiation of all proceedings prosecuted or required to be defended by Trustor, or which are subject to Trustor's indemnity obligations, under this Deed of Trust, promptly after the receipt by Trustor of notice of the existence of any such proceeding, but in no event later than five (5) days thereafter.
- C. Should Beneficiary incur any liability, loss, claim, damage, cost or expense required to be reimbursed by

Trustor to Beneficiary hereunder, the amount thereof with interest thereon at the Secondary Interest Rate shall constitute part of the Indebtedness, shall be payable by Trustor upon demand and shall be secured by this Deed of Trust.

- 9.20 Destruction of Note. Trustor shall, if the Note is mutilated or destroyed by any cause whatsoever, or otherwise lost or stolen and regardless of whether due to the act or neglect of Beneficiary or Trustee, execute and deliver to Beneficiary in substitution therefor a duplicate promissory note containing the same terms and conditions as the Note, within ten (10) days after Beneficiary notifies Trustor of any such mutilation, destruction, loss or theft of the Note. If Beneficiary receives a duplicate note pursuant to this Paragraph 9.20, Beneficiary shall indemnify and hold Trustor harmless from any and all claims, costs, expenses and reasonable attorneys' fees which may arise or be related to any claim asserted by third parties as against Trustor by reason of the loss of the original promissory note.
- 9.21 Heirs and Assigns. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.
- 9.22 Interpretation. When the identity of the parties or other circumstances make it appropriate, the masculine gender shall include the feminine and/or neuter, and the singular number shall include the plural. Specific enumeration of rights, powers and remedies of Trustee and Beneficiary and of acts which they may do and of acts Trustor must do or not do shall not exclude or limit the general. The headings of each Article and Paragraph are for convenience and do not limit or construe the contents of any provision hereof. The provisions of the Loan Documents and the Hazardous Substances Agreement shall be construed as a whole according to their common meaning, not strictly for or against any party and consistent with the provisions herein contained, in order to achieve the objectives and purposes of such documents. Each party and its counsel has reviewed and revised the Loan Documents and the Hazardous Substances Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of such document. The use in the Loan Documents and the Hazardous Substances Agreement of the words "including", "such as", or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether or not language of

non-limitation such as "without limitation" or "but not limited to", or words of similar import are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. The term "Trustor" shall be deemed to refer to the original Trustor, and its successors and assigns (whether or not such assign assumed the Obligations hereunder); the term "Beneficiary" includes the Beneficiary named herein or any future owner or holder, including pledgee and participants, of the Note, or any other instrument secured hereby, or any participation therein; and the term "Trustee" includes the original Trustee and its successors and assigns. The references to the "Property" shall be deemed to refer to all or any portion of the Property and any interest therein. References to "foreclosure" and related phrases shall be deemed references to the appropriate procedure in connection with Trustee's private power of sale as well as any judicial foreclosure proceeding or a conveyance in lieu of foreclosure.

- 9.23 Information to Third Persons. If, at any time, Beneficiary desires to sell or transfer, or grant a participation interest in, all or any portion of, or any interest in, the Note or any other Loan Document to any Person, Trustor shall furnish in a timely manner any and all financial information concerning the Property and Leases, and concerning Trustor's financial condition, requested by Beneficiary or such person in connection with any such sale or transfer.
- 9.24 Commingling of Funds. Any and all sums collected or retained by Beneficiary hereunder (including insurance and condemnation proceeds and any amounts paid by Trustor to Beneficiary under Paragraph 3.4 hereof), shall not be deemed to be held in trust, and Beneficiary may commingle such funds or proceeds with its general assets and shall not be liable for the payment of any interest or other return thereon, except to the extent otherwise required by law.
- 9.25 Certain Obligations Unsecured. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the following obligations (the "Unsecured Obligations"): (i) any obligations evidenced by or arising under the Hazardous Substances Agreement, and (ii) any other obligations in this Deed of Trust or in any of the other Loan Documents to the extent that such other obligations relate specifically to the presence on the Property of Hazardous Materials (as defined in the Hazardous Substances Agreement) and are the same or have the same effect as any of the obligations evidenced by or arising under the Hazardous Substances

CAT. NO. NN00737  
TO 1945 CA (8-84)  
(Corporation)

 TICOR TITLE INSURANCE

STATE OF CALIFORNIA  
COUNTY OF San Benito } SS.

↑ STAPLE HERE ↓

On April 8, 1991 before me, the undersigned, a Notary Public in and for said State, personally appeared Douglas M. White personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the President, and Mark Bauman personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the ASST. Secretary of the Corporation that executed the within instrument and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature Christine Scaglione



(This area for official notarial seal)

Agreement. Any breach or default with respect to the Unsecured Obligations shall constitute an Event of Default hereunder, notwithstanding the fact that such Unsecured Obligations are not secured by this Deed of Trust. Nothing in this section shall, in itself, impair or limit Beneficiary's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all obligations that are secured by this Deed of Trust following foreclosure.

- 9.26 Certain Expenses. Notwithstanding anything to the contrary herein contained, as to each and every fee chargeable to Trustor by Beneficiary and payable on demand at the Secondary Interest Rate, interest shall not accrue until fifteen (15) business days after demand has been made therefor and Trustor's failure to pay. This limitation shall not, however, apply to any fee, charge or expense incurred as a result of a failure to pay interest and/or principal when due, or any fee, charge or expense incurred by Beneficiary to protect any security interest granted to Beneficiary under the Loan Documents.
- 9.27 Statutory Covenants. Where not inconsistent with anything contained herein, the following covenants are hereby adopted and made a part of this Deed of Trust: Nos. 1; 2 (Full Replacement Value); 3; 4(Secondary Loan Rate); 5; 6; 7(a reasonable percentage); 8 and 9 of NRS 107.030.

IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be executed as of the day and year first above written.

Trustor:

HUMBOLDT FEEDING, INC., a Delaware corporation

By *Douglas M. White*  
Name: DOUGLAS M. WHITE  
Title: Pres

By *Mark Bauman*  
Name: MARK BAUMAN  
Title: asst Sec.

All that certain real property situates, lying and being in the County of Pershing, State of Nevada and more particularly described as follows:

**PARCEL I**

Parcel "B" of that certain Parcel Map for MCDUGAL LIVESTOCK COMPANY being a portion of Section 15, T.27N., R.31E., M.D.B.&M., Pershing County, Nevada recorded in the Office of the Pershing County Recorder on May 9, 1989 under File No. 173839.

TOGETHER WITH a perpetual non-exclusive right of way for utility easement as conveyed in the Grant of Utility Easement recorded in Book 230, Page 536, Pershing County, Nevada.

**PARCEL II**

A perpetual non-exclusive easement of ingress, egress, and right of way over, through, and across the portion of the following described property:

A strip of land 40 feet in width depicted as the "access road" on that certain Parcel Map for MCDUGAL LIVESTOCK COMPANY being a portion of Section 15, T.27N., R.31E., M.D.B.&M., recorded in the Office of the Pershing County Recorder on May 9, 1989 as File No. 173839, Pershing County, Nevada, said access road being located on a portion of Parcel D of said Parcel Map.

**PARCEL III**

Parcel "A" of that certain Parcel Map for MCDUGAL LIVESTOCK COMPANY lying within the NW 1/4 of Section 22, T.27N., R.31E., M.D.B.&M., filed in the Office of the Pershing County Recorder on July 2, 1984 under File No. 137735, Pershing County, Nevada.

**PARCEL IV**

Parcel "A" of that certain Parcel Map for MCDUGAL LIVESTOCK COMPANY being a portion of Section 15, T.27N., R.31E., M.D.B.&M., filed in the Office of the Pershing County Recorder on May 9, 1989 under File No. 173839, Pershing County, Nevada.

**PARCEL V**

Parcel "C" of that certain Parcel Map for MCDUGAL LIVESTOCK COMPANY lying within Section 15, T.27N., R.31E., M.D.B.&M., recorded in the Office of the Pershing County Recorder on February 15, 1990, under File No. 179585, Pershing County, Nevada.

TOGETHER WITH an access easement 35 feet in width along the northerly portion of the above described Parcel "C" and a strip of land 40 feet in width depicted as the "access road" on that certain Parcel Map for MCDUGAL LIVESTOCK COMPANY recorded May 9, 1989 under File No. 173839, Pershing County, Nevada.

(continued)

LEGAL DESCRIPTION (continued)

PARCEL VI

TOWNSHIP 27 NORTH, RANGE 31 EAST, M.D.B.&M.

Section 3: All

EXCEPTING THEREFROM the East 30 feet of the SE 1/4 and the East 30 feet of NE 1/4 described in Deeds to Humboldt County recorded in Book 41, Page 353, 382 and 384, Deed Records of Humboldt County, Nevada.

Section 4: E 1/2

Section 9: All

Section 10: SW 1/4 EXCEPTING THEREFROM a strip of land 50 feet wide 25 feet on each side of the center line of a drain ditch owned by John G. Taylor.

Section 10: All that portion of the N 1/2 lying North of the Old Channel Ditch, excepting the East 30 feet of NE 1/4 described in Deed to Humboldt County recorded in Book 41, Page 353, Deed Records of Humboldt County, Nevada.

Parcel "A" of that certain Parcel Map for McDougal Livestock Company being a portion of Section 15, Township 27 North, Range 31 East, M.D.B. & M. filed in the Office of the Pershing County Recorder on February 15, 1990 under File No. 179585.

Parcel "B" of that certain Parcel Map for McDougal Livestock Company being a portion of Section 15, Township 27 North, Range 31 East, M.D.B. & M. filed in the Office of the Pershing County Recorder on February 15, 1990 under File No. 179585, Pershing County, Nevada.

Parcel "A" of that certain Division into Large Parcels for McDougal Livestock Company being a portion of Section 16, Township 27 North, Range 31 East, M.D.B.&M. filed in the Office of the Pershing County Recorder on November 8, 1990 under File No. 183781, Pershing County, Nevada.

Parcel "C" of that certain Parcel Map for McDougal Livestock Company being a portion of Section 15, Township 27 North, Range 31 East, M.D.B.&M. filed in the Office of the Pershing County Recorder on May 9, 1989 under File No. 173839, Pershing County, Nevada.

(Continued)

LEGAL DESCRIPTION (continued)

TOWNSHIP 28 NORTH, RANGE 31 EAST, M.D.B.&M.

Section 33: E 1/2 NE 1/4; SE 1/4  
Section 34: All

EXCEPTING THEREFROM a tract of land 60 feet in width by 745 feet 8 inches in length extending at right angle of North 45° East through the SE 1/4 SE 1/4 and a tract of land 30 feet in width by 4723 feet in length comprising a part of the East 30 feet of Section 34 described in Deeds to Humboldt County and recorded in Book 41, Pages 383, 384 and 386, Deed Records of Humboldt County.

CERTIFIED COPY

THE FOREGOING DOCUMENT IS A FULL, TRUE AND CORRECT COPY OF THE RECORD IN BOOK 254 PAGE 57 IN THE OFFICE OF COUNTY RECORDER PERSHING COUNTY, NEVADA, WITNESS MY HAND AND SEAL THIS

1st DAY OF July 1991

JOHN LACA, COUNTY RECORDER

BY B. Cerini DEPUTY

INDEXED

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