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U.S. COURTS

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JAN 27 1996

Attorney for Debtors

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re:

HIPWELL, TERRY,  
Debtor.

Case No. 96-02095

DEBTOR'S MEMORANDUM IN  
SUPPORT OF HIS OBJECTION TO  
CLAIM, MOTION FOR TURNOVER

STATEMENT OF FACTS

In 1994 and again in 1995 two separate loans were made by Amalgamated Sugar (hereinafter "TASCO") to the Debtor, Terry Hipwell (hereinafter "Hipwell"). Those loans are denominated as the Owyhee County (hereinafter "Murphy") loan and the Payette County (hereinafter "Parma") loan. Both of these extensions of credit were for the purpose of allowing the Debtor to grow sugar beets at those two locations (e.g. Murphy and Parma). Each of the contracts for each of the years of the parties association as well as the delivery of the sugar beets from those two sites were treated by all parties as separate transactions. The beets from the Parma operation were delivered to TASCO's Nyssa plant for processing and the beets from the Murphy site were delivered to the Nampa plant for processing. Separate contracts with distinct terms governed the relationship from signing, to product delivery, to grower accounting, to payment or setoff.

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FOR TURNOVER - 1

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TASCO in its claim filed in September of 1996 has claimed a lien on the sugar beets from both the Murphy and Parma locations as well as the proceeds, and in particular in issue are its claim of setoff of \$8,788.01 from the Parma beets and \$25,293.24 from the Owyhee beets.

TASCO, however, has failed to file the appropriate UCC-1F to secure its position regarding the Murphy beets (see attached UCC-1F listing 1995 sugar beets only for county 38, Payette, Exhibit "A" hereto) with no similar filing for Owyhee County. Thus, TASCO's claim as to either the product or the proceeds of the Owyhee County sugar beets is inappropriate and to the extent the claim filed by TASCO includes a secured claim for the proceeds of these beets should be denied.

TASCO further claims a right of setoff or recoupment as to the beet product from these two sites. In that regard, the beets were delivered to the Nyssa or Nampa processing site in October or November of 1995. Thereafter TASCO issued a series of checks and payment for the Owyhee sugar beets in March and June of 1996 which sums have been turned over to the trustee and deposited in his account.

The Debtor filed for relief under Chapter 12 on August 23, 1996. On October 25, 1996, TASCO made a final determination of proceeds that are due to the Debtor from his 1995 crop. As is evidenced in Exhibit "B", a letter dated October 25, 1996, as the accompanying grower's account statement as well as the statement for the succeeding month, it is clear that TASCO has attempted to setoff the proceeds of the Parma sugar beets in the sum of \$8,788.01, then leaving a balance due of \$105,867.62 which is the amount of its claim filed in September. At this date, there has been no similar entry or

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offset by TASCOCO of the Owyhee beets in the sum of \$25,293.24.

### **ISSUES PRESENTED**

1. **May a creditor setoff post-petition a pre-petition obligation owed to it by the Debtor.**
2. **Does a creditor waive a right to claim an offset unless its files a proof of claim asserting that right of offset.**
3. **Where the expenses the creditor attempts to recoup arose in regard to different crops, different contracts and different years, does the creditor meet the same transaction test?**

### **ARGUMENTS**

1. **May a creditor setoff post-petition a pre-petition obligation owed to it by the Debtor.**

Because TASCOCO neither ascertained or actually setoffed "any" of the contested funds until the October 25, 1996, (see Exhibit "B", letter explaining setoff and growers statements with particular reference to the October 25, 1996 statement containing the Parma beet setoff in the sum of \$8,788.01) and likewise because still no setoff has occurred regarding the Owyhee beets in the sum of \$25,293.24, the facts clearly show that setoff has occurred post-petition against pre-petition debts. Setoff is not a "state of mind" of a creditor but rather is a fact determinative by act, date and time.

Setoff after the filing of a bankruptcy petition requires court action. The filing of a petition operates as a stay, applicable to all entities, of 'the setoff of any debt owing the debtor that arose before the commencement of the case under this title against any claim of the debtor'. Failure to exercise a right of setoff prior to the filing automatically stays the exercise of the right. Colliers on Bankruptcy, 15th ed. Vol. 4, Sec. 553.05, Page 553-35. See

United States v. Reynolds, 764 F.2d 1004, 1005, 1007, 13 C.B.C. 2d 239, 241 (4th Cir. 1995). Lee v. Schweiker, 739 F.2d 870, 876, 11 C.B.C. 2nd 834, 841 (3rd Cir. 1994), IRS v. Norton, 717 F.2d 767, 773 (3rd Cir. 1993). (emphasis added).

The creditors remedy when it has failed to setoff prior to the filing of the bankruptcy which is the case before the court, is to request adequate protection under 11 U.S.C. §361, §362.

A creditor stayed from exercising a valid offset right must be granted 'adequate protection' under §361. Colliers on Bankruptcy, 15th ed. Vol. 4, Sec. 533.05, Pages 553-35, 36.

The creditors position as understood by the Debtor is that because the beets were delivered a year prior to the Parma setoff in October of 1995, although final settlement of the sums and issue here did not occur until a year later in October of 1996, all of the debt obligation relates back to the October, 1995 time frame and "really" that is when setoff occurred. The creditor maintains this position even though none of the paper work or evidence of the actual setoff itself occurred within the documents prepared by the creditor, see Exhibit 'B', until October of 1996. Such attempt to "relate back" has been rejected by the court.

In a case where the creditor and debtor entered into a settlement agreement post-petition in a contract action, the court in Cooper-Jarrett, Inc. v. Central Transportation, Inc., 726 F.2d 93 (3rd Cir. 1994), held that the post-petition settlement did not relate back to the pre-petition transaction and could not be setoff. This position finds additional authority when the Internal Revenue Service has attempted to relate back and setoff a pre-petition tax refund due the Debtor against its post-petition claim. See Wilson v. I.R.S., 29 BR 54 (B.Ct. W.D. Ark. 1982) Rochelle v. United States, 521 F.2d 844 (5th Cir. 1975) Rehearing granted 526 F.2d 405 (5th Cir.), certiorari denied 426 US 948 (1976). Similarly, the Department of Labor has been barred from setting off post-petition disability benefits against pre-petition overpayments to a debtor. In re Princess Baking Corporation, 2 C.B.C. 2d 1071 (B.Ct. S.D. Ca. 1980).

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In Idaho regarding this subject, Judge Hagan in In re Frank C. Unquera, Jr., 87 I.C.B.R. 225, 227, held that until those vested with the authority to do so made a determination of the amount due and that the distribution under an electric cooperative's by-laws was authorized by its board the debt was "not due and owing" and therefore no setoff occurred. In that case, the Debtor had a capital account with the cooperative of \$15,147.71 but owed by the cooperative \$4,2048.77 at the time of filing. The cooperative asserted the right of setoff against the Debtor's claim as to the funds that it held in the Debtor's capital account. But no determination had been made consistent with the cooperative's by-laws that distribution or payment could be made without causing hardship to the cooperative and Judge Hagan found the debt not to be due and owing and thus the requirement of mutuality as requisite under §553 missing.

However the capital credit is not due and payable in cash to the Debtors, therefore the requirement of mutuality of debt is not met. Again, such interest becomes vested when the board of directors determines payment could be made in cash without causing hardship to the cooperative. The capital credit is not a debt, due and owing, and thus is not subject to setoff. Page 227, In re Frank C. Unquera, Jr., supra.

It is clear that some "vesting" (e.g. some authorized act) must have occurred not that it "might have" or "could have" at some previous pre-petition time, but did it occur before setoff is a reality. If the "act" occurs post-petition surely it is post-petition setoff. It is quite clear that some act had to be done by the board of directors. In Unquera, supra, this court found that before the debt was due and owing and thus the requirement of mutuality under §533 was met, it had to be ascertained and due. In this case it is quite clear that a determination of the amount to be paid (e.g. the amount due and owing) did not occur until October of 1996 when the grower's account statement and accompanying letter

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was issued, Exhibit "B". At that juncture, some 60 days plus after the filing of the bankruptcy petition TASC0 determined for the first time to setoff from the Parma beets \$8,788.01 for the first time was then determined "due and owing" to the Debtor. Until that determination was made, under the authority of Unquera (1987), no debt existed and no right of offset existed pre-petition. Even more remarkable to this date, no such determination or offset has occurred as to the Owyhee beets and any such claim would clearly be post-petition.

Citing with approval Cooper-Jarrett, Inc. v. Central Transportation, Inc., supra, Judge Hagan in In re Industrial Hydraulic Sales, Inc. 84 I.B.C.R. 124 sets forth the requirement that in order to qualify for setoff a mutual debt under §553, must have arisen pre-petition.

The creditor may 'offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case,' subject to specific exceptions. 11 U.S.C. 553(a). Absent of showing that both mutual debts arose before the commencement of the case, no setoff will be allowed. See Cooper-Jarrett, Inc. v. Central Transportation, Inc., 726 F.2d 93, 11 B.C.D. 919 (3rd. Cir. 1994).

This court has likewise addressed this issue in In re Thorvund-Statland, 93 I.B.C.R. 219. In this case, the court was faced with a debtor who filed tax returns for the years 1989, 1990 and 1991 after filing for relief under the Bankruptcy Code on June 6, 1992. The debtor then resisted the I.R.S.'s attempt to offset refunds due the debtor as evidenced from those returns against the obligations owed to the I.R.S. The court analyzed competing views of the issue as announced in In re Harbaugh, 99 B.R. 671 (B.Ct. W.D. Penn. 1989), reversed Harbaugh v. United States, I.R.S. 1989, U.S. Dist. Lexis 16506, 89-

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2 USTC paragraph 9608 (W.D. Penn. 1989), aff'd with op. Harbaugh v. United States, I.R.S., 902 F.2d 1560 (3rd Cir. 1990). With the view In re Conti, 50 BR. 142 (B.Ct. E.D. Va. 1985). This court in agreeing that a right of setoff existed even though the debts sought to be setoff were post-petition versus pre-petition found facts which distinguished this case from the rule set forth In re Industrial Hydraulic Sales, Inc. In effect, the court found that it was the debtor, by her unilateral decision to file tax returns after filing her bankruptcy petition determined whether the debt was pre or post petition.

To accept the trustee's reasoning that the government's liability to the debtor until she filed the relevant tax returns effectively places the rights of the I.R.S. as a secured creditor in the bankruptcy case completely within the control of the debtor without any apparent justification. Creditors, including the I.R.S., should be able to measure their rights in bankruptcy based upon the objective facts existing on the date of filing of the petition. If the trustee is correct, a debtor therefore possesses the unilateral ability to defeat the I.R.S.'s right to offset refunds simply by choice in the time of the filing of the bankruptcy petition in relation to the tax returns, a result in which the court can find no support in the code. Page 220.

Unlike the debtor's position in Thorvund-Statland above, the case at bar has no unilateral power vested in the debtor. Quite to the contrast the absolute power and ability to determine payment and when that payment is due was totally vested in the creditor, TASC0. It must be remembered that the Debtor here delivered all of his beet product to the creditor in October of 1995 and the growers statement, Exhibit "B" reflects the first of the contested setoffs occurring in October 1996. Thus, here it is the creditor and not the debtor who controlled when the sums became due.

**2. Does a creditor waive a right to claim an offset unless its files a proof of claim asserting that right of offset.**

Attached hereto as Exhibit "C" is the front sheet of TASC0's's claim dated on

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September 24, 1996. At first glance it appears that an assertion of the right of setoff or recoupment is contained within the claim but on closer examination reading the creditor has simply stated that the entire \$105,561.09 it claimed as setoff or recoupment against the debtor's claims in the lender liability action pending in state court against this creditor. No mention is made of the sugar beet sums or any right to setoff those specific sums.

If a creditor files a proof of claim without asserting any right of setoff accruing to him, he would generally be deemed to have waived it. Collier on Bankruptcy, 15th Ed. Vol. 4 Sec. 553.07, Page 553-43. See also Tabormina v. ITT Commercial Finance Corporation, (In re Aqua Sport, Inc., 115 B.R. 720, 721, 722, (Bankr. S.D. Fla. 1990). See also Fisher v. The Outlet Company, (In re Denby Stores, Inc.) 86 B.R. 768, 777 (Bankr. S.D. N.Y. 1988).

The creditor has filed no claim for setoff or recoupment of these funds and setoff should therefore not be allowed.

**3. Where the expenses the creditor attempts to recoup arose in regard to different crops, different contracts and different years, does the creditor meet the same transaction test?**

First and foremost, it must be recognized that any claim of recoupment operates in distinction and in great contrast to the basic principles of bankruptcy. Those principles bar a reduction of debts owed pre-petition with funds received post-petition; requires all creditors equally situated to be treated equally; and, further, provides that upon the filing of a petition an automatic stay goes into effect and any obligation arising pre-petition is then subject to that stay.

Recoupment operates contrary to those concepts. Judge Russell dissenting in Newberry Electric v. MCI Constructors, Inc., 145 B.R. 998, Lexis 1745 (9th Cir. BAP

opinion (October 1992) articulates these standards: "As the majority recognizes recoupment operates as an exception to the rule that pre-petition debts cannot be satisfied out of post-petition transactions." Further, Judge Russell points out, most recoupment cases exist as an adjustment when funds have been advanced or overpayment has been made. See Waldschmidt v. CBS, Inc., 14 Bankr. 309, (M.D. Tenn. 1991); Yonkers Hamilton Sanitarium, Inc., 22 Bankr. 427 (Bankr. S.D.N.Y. 1982), aff'd, 34 Bankr. 385 (S.D.N.Y. 1983); In re Midwest Service and Supply Co., Inc., 44 Bankr. 262 (D. Utah 1983); In re American Central Airlines, Inc., 60 Bankr. 587 (Bankr. N.D. Iowa 1986); In re B&L Oil Co., 782 F.2d 155 (10th Cir. 1986).

The case authority is in agreement that the threshold requirement for a party asserting the right for recoupment is that the claims of the Debtor and the creditor must arise out of the "same transaction." See In re California Cannery and Growers, 62 Bankr. 18, 19 (9th Cir. Bap. 1986); In re Papercraft Corporation, 127 Bankr. 346, 350, (W. Pa. 1991). See also In re Holford, 896 F.2d 176, (5th Cir. App. 1990); In re U.S. Abatement Corp., 79 F.3d 393, (1996); In re University medical Center v. Sullivan, 122 Bankr. 919 (E.D. Pa. 1990).

In the case at bar, the claimed obligations of the creditor and the Debtor do not arise out of the same transaction. It is not enough that the parties happen to be the same or the general subject matter that gave rise to the claims appear to be the same.

The fact that the same two parties are involved and similar subject matter gave rise to both claims, however, does not mean that the two arose from the 'same transaction.'" Lee v. Schweiker, 739 F.2d 870, 875 (3rd Cir. 1984).

And likewise more than some mutuality of the obligation needs to exist

before the right of recoupment can be asserted. "More than mutuality of obligation is required" University Medical Center v. Sullivan, 122 Bankr. 919, 928 (E.D. Pa. 1990), aff'd, F.2d, (3d Cir. 1992).

It is not enough that the creditor asserts that because it and the Debtor are the same parties even though there exists separate contracts and separate obligations stretching over 3 crop years (e.g. 94-96) that there is somehow a generalized and liberally defined mutuality of transaction. Because the right of recoupment is an exception to the general principles of bankruptcy it should be construed narrowly. Here TASCOS claim of \$105,561 arises from debts that carried over from the 1994 crop year and included advances for the 1995 and fall work for the 1996 crop years. The \$105,561 results after the October 1996 "offset" of \$8,788.01 from the Parma beets. The beets grown in Parma and the beets grown in Murphy were subject to:

1. Entirely separate, written contracts (see agreements attached as Exhibit "D", Owyhee and "E" Payette).

2. A) The Owyhee contract ("D") was signed April 15, 1995, provided credit at \$460.00 per acre to a maximum of \$218,500 with no obligation to make cash advances after December 31, 1995.

The security interest was in 475 acres of sugar beets grown in Owyhee County to be delivered upon harvest to TASCOS Nampa plant.

- B) The Payette contract ("E") was signed March 28, 1994, provided credit at \$500 per acre to a maximum of \$153,000 with no obligation to make cash advances beyond October 1, 1994. The security interest was in 307.00 acres of sugar beets grown in Payette County to be delivered upon harvest to TASCOS Nyssa plant.

A review of Exhibit "B", the growers statements for 1995-96 clearly reflects credits from the beet production against advances dating as far back as June 7, 1994 and as far forward as August 28, 1996.

This separate transaction or contract distinction was respected by TASCOCO even to the extent of issuing three checks (Exhibit "F"): March 22, 1996 for \$4,680.20; June 27, 1996 for \$1,850.66 and June 29, 1996 for \$4,625.05. These checks were issued by TASCOCO to the debtor from the Murphy beets because Mr. Hipwell had delivered sufficient beets to TASCOCO from Murphy to entirely pay off that contract.

Because that contract had been paid in full, the debtor was entitled to the excess. The \$25,293.24 TASCOCO now attempts to recoup, its attempt to recoup against the Parma contracts for 1994 and 1995, clearly proceeds from a different contract and not the same transaction, by even the most tortured definition.

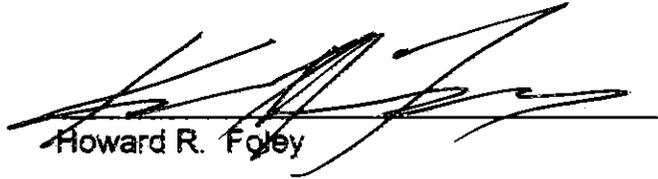
#### CONCLUSION

1. No right of setoff exists because of the creditor attempts to setoff post-petition and pre-petition obligations and therefore lacks mutuality under 11 U.S.C. §533(a).
2. That the creditor is not entitled to pursue a right of setoff as they have failed to include the same in their claim and §362 bars that assertion.
3. That because of the facts surrounding the claims by both parties do not meet the narrow definition necessary to claim a right of recoupment as the same did not arise out of the same transaction and recoupment does not lie for this creditor.
4. That the Debtor's motion for return of proceeds from the Owyhee beets in the amount of \$25,293.24 and the Payette beets in the sum of \$8,788.01 to the trustee's trust

account should be ordered by the court.

5. The creditor's claim of security in the amount of \$25,293.24 arising from the Owyhee beets should be determined as unfounded as the creditor failed to perfect by property filing of the UCC-1F against the Owyhee County beet crop of the Debtor.

DATED this 27<sup>th</sup> day of February, 1997.

  
Howard R. Foley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27 day of February, 1997, I caused to be served a true and correct copy of the foregoing Memorandum by the method indicated below, and addressed to the following:

Office of the U.S. Trustee  
P.O. Box 110  
Boise, ID 83707

Mailed  
 FAXED  
 Hand-delivered

United States Trustee  
Ronald D. Schoen  
P.O. Box 216  
Payette, ID 83661

Mailed  
 FAXED  
 Hand-Delivered

Richard C. Boardman  
P.O. Box 199  
Boise, ID 83701

Mailed  
 FAXED  
 Hand-delivered

  
Howard R. Foley

STATE OF IDAHO - FARM PRODUCTS FINANCING  
STATEMENT - FORM UCC-1F

PREPARED BY SECRETARY  
REGISTERED NUMBER

See instructions, fee schedule and tables of codes on reverse.

Form prepared by Part I, Sections 1-10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

Debtor #1 (Last name, first, middle, title & mailing address)	SSN or TIN	Debtor #3
Hipwell, Terry 30932 Shelton Rd. Parma, Idaho 83660	519-86-2600	
Debtor #2		Debtor #4

Name and Address of Secured Party	Assignee and address
The Amalgamated Sugar Company P.O. Box 1766 Nyasa, Oregon 97913	
Mailing Address for acknowledgment, if not Secured Party	Filing office use only

Item No.	Product Code	Product Name (optional)	County Code(s)	Crop Year(s), if Less than A2	Amount, if Necessary	Unit	Add. Info
1	060	Sugarbeets	28	95			
2							
3							
4							
5							
6							
7							
8							
9							

Signature(s) of Debtor(s):

*Terry L Hipwell*

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Secured Party Signature The Amalgamated Sugar Company

By: *Gilbert J. Keller*

TERMINATION STATEMENT: The Secured Party no longer claims a security interest under the financing statement.

Filing Office Use Only

IDAHO SECRETARY OF STATE  
19950503 0900 96076  
CX #: 808620 CUST# 6246  
UCC1F FILE  
10 10.00= 10.00

# : F 48366

Revised 8/91

Exhibit "A"

PRODUCT CODE TABLE

Product Code	Product	Product Code	Product	Product Code	Product
010	wheat	160	grass for seed	500	beef cattle & calves
011	buckwheat	161	alfalfa for seed	501	beefalo
020	barley	162	other hay legumes for seed	502	bison
021	rye (including triticale)	163	garden vegetable & flower seeds	510	sheep and lambs
022	oats	170	green peas	511	wool
023	sorghum grain	171	tomatoes	512	goats
024	flaxseed	172	lettuce	513	llamas
025	safflower	173	cucumbers	520	hogs
026	rape	174	broccoli	530	dairy cattle
027	field corn	175	cauliflower	531	milk
030	hay	176	lima beans	540	horses
040	ensilage	177	green beans	541	mules
050	potatoes	178	melons	542	donkeys and burros
060	sugar beets	179	carrots	550	chickens
070	dry beans	180	turnips	551	eggs
080	dry peas	181	asparagus	560	turkeys
081	lentils	182	spinach and collards	561	ducks
082	garbanzos (chick peas)	183	pumpkin and squash	562	geese
090	sweet corn	190	apples	563	game birds
100	onions	191	apricots	570	mink & pelts
110	mint	192	cherries	571	rabbits
120	hops	193	nectarines	572	fox and pelts
130	popcorn	194	peaches	580	bees
131	sunflower seeds	195	pears	581	honey
140	soybeans	196	plums	582	bees wax
150	rice	200	strawberries	590	fish and other aquaculture
		201	raspberries	600	big game animals (deer & elk)
		210	sod	610	worms
		211	nursery stock (trees & shrubs)	620	cattle semen
		212	christmas trees	621	horse semen
		213	flowers and potted plants		
		220	mushrooms		
		230	grapes		

COUNTY CODES

01 — Ada	21 — Franklin	41 — Teton
02 — Adams	22 — Fremont	42 — Twin Falls
03 — Bannock	23 — Gem	43 — Valley
04 — Bear Lake	24 — Gooding	44 — Washington
05 — Benewah	25 — Idaho	45 — Asotin, WA
06 — Bingham	26 — Jefferson	46 — Garfield, WA
07 — Blaine	27 — Jerome	47 — Pend Oreille, WA
08 — Boise	28 — Kootenai	48 — Spokane, WA
09 — Bonner	29 — Latah	49 — Whitman, WA
10 — Bonneville	30 — Lemhi	50 — Malheur, OR
11 — Boundary	31 — Lewis	51 — Elko, NV
12 — Butte	32 — Lincoln	52 — Box Elder, UT
13 — Camas	33 — Madison	53 — Cache, UT
14 — Canyon	34 — Minidoka	54 — Rich, UT
15 — Caribou	35 — Nez Perce	55 — Lincoln, WY
16 — Cassia	36 — Oneida	56 — Teton, WY
17 — Clark	37 — Owyhee	57 — Beaverhead, MT
18 — Clearwater	38 — Payette	58 — Lincoln, MT
19 — Custer	39 — Power	59 — Sanders, MT
20 — Elmore	40 — Shoshone	99 — Not in table

UNIT CODES

A — acres
B — bushels
C — hundred weight
E — cases
F — flats
G — gallons
H — head
L — pounds
N — bins
S — sacks
W — lugs
X — boxes
Z — stubs

Unless otherwise indicated, counties are in Idaho.

GROWERS ACCOUNTING STATEMENT

GROWER NAME: TERRY RITWELL  
 20721 SHELTON RD  
 PARMA OH 43466

GROWER NUMBER B-93-8601  
 STATEMENT DATE 10/31/95

INTERESTED PARTIES: WEST ONE BANK

LANDVIER FERTILIZER

GROWER DELIVERY RECORD FOR PERIOD 09/01/95 TO 10/21/95

DATE	DELIVERED S/A FLD	GROSS-WT POUNDS	LIGHT-WT POUNDS	1ST-NEI-WT POUNDS	2ND-NEI-WT POUNDS	C/M DIRT POUNDS	PRELIM TOLNS	NO. OF TOLNS	FINAL NET WT TOLNS	YTD WTE AVE/TON	PAYMENT AMOUNT
10/11/95	01	80,570	12,433	37,997	19,7	20	15.04	2	16,786	7.34	125.87
10/12/95	01	72,610	12,433	37,997	19,7	20	15.04	2	16,786	7.34	125.87
10/13/95	01	72,610	12,433	37,997	19,7	20	15.04	2	16,786	7.34	125.87
10/14/95	01	72,610	12,433	37,997	19,7	20	15.04	2	16,786	7.34	125.87
10/15/95	01	72,610	12,433	37,997	19,7	20	15.04	2	16,786	7.34	125.87
10/16/95	01	72,610	12,433	37,997	19,7	20	15.04	2	16,786	7.34	125.87
10/17/95	01	72,610	12,433	37,997	19,7	20	15.04	2	16,786	7.34	125.87
10/18/95	01	72,610	12,433	37,997	19,7	20	15.04	2	16,786	7.34	125.87
10/19/95	01	72,610	12,433	37,997	19,7	20	15.04	2	16,786	7.34	125.87
10/20/95	01	72,610	12,433	37,997	19,7	20	15.04	2	16,786	7.34	125.87
10/21/95	01	1,431,070	880,101	849,511	8,1	15	16.12	2	354,7820	7.88	1,174.22
<b>PAYMENT TOTAL</b>											<b>16,545.99</b>

10/27/95

THE DISCLOSURES HEREIN ARE MADE IN CONFORMANCE WITH THE FEDERAL TRUTH IN LENDING LAWS  
 A NOTE: THE FINANCE CHARGE FOR THE BILLING CYCLE IS DETERMINED ON EACH TRANSACTION BY MULTIPLYING THE AVERAGE DAILY BALANCE BY  
 THE NUMBER OF DAYS SUCH BALANCE IS OUTSTANDING DURING THE BILLING CYCLE, AND THE PERCENTAGE RATE IS APPLIED TO THE PRODUCT THEREOF.

APPLICATIONS OF AMOUNTS OWED YASCO BY GROWER AGAINST PAYMENTS

DATE OF TRANSACTION	TYPE OF TRANSACTION	AMT-SUBJECT TO FINANCE CHANGES	APPL-18-FIN. INTEREST	ANNUAL PERCENTAGE RATE	BALANCE	CHANGES	APPL-COMMENT	PAYMENT
10/31/95	BEEF SEED	2,189.00	191.24	10.00%	2,189.00			2,189.00
10/01/95	BEEF SEED	16,500.00	6.00		16,500.00			6.00
09/27/95	PELTONS TEST	40.00	0.00		40.00			40.00
09/01/95	FILLING FEES	29.00	0.00		29.00			29.00
10/20/95	FERTILIZER	4,837.60	11.50		4,837.60			4,837.60
08/11/94	FERTILIZER	28,000.00	11.50		28,000.00			28,000.00
04/11/94	FERTILIZER	13,287.57	11.50		13,287.57			13,287.57
08/11/94	HELP EXPENSE	7,387.20	11.50		7,387.20			7,387.20
04/07/94	HEALTH AIDS	1,328.72	11.50		1,328.72			1,328.72
04/07/94	HEALTH AIDS	1,996.07	11.50		1,996.07			1,996.07
04/23/95	MODELING	16,545.99			16,545.99			

THE AMALGAMATED SUGAR COMPANY

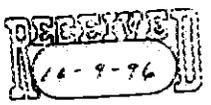


Exhibit "B"

# THE AMALGAMATED SUGAR COMPANY

REPORT NO. GPR590-01

DATE 11/30/95

PAGE 080389

## GROWERS ACCOUNTING STATEMENT

GROWER NAME: **TERREY NIPWELL**  
 27722 SHELTON RD.  
 PARMA ID 82460

GROWER NUMBER **6-99-8401**  
 STATEMENT DATE **11/30/95**

INTERESTED PARTIES: **NEST ONE BANK**

**LANDVIEM FERTILIZER**

### GROWER DELIVERY RECORD FOR PERIOD 09/01/95 TO 11/20/95

DATE	DELIVERED STA	FLO	GROSS-NET POUNDS	LIGHT-NET POUNDS	1ST-NET-NET POUNDS	STAGE %	C/M DIRT POUNDS	PRELIN. SUGAR %	WG. OF LOADS	FINAL NET WT. (TONS)	TOTAL RATE/TON	PAYMENT AMOUNT
10/23/95	93	C1	1,375,320	647,876	727,444	9.8	218	15.99	34	327.9680	16.90	5,545.23
10/24/95	93	C1	270,900	130,631	142,269	6.4	65	14.27	7	65.6139	14.99	984.12
SUB-TOTALS			1,646,220	778,507	869,713	9.3	283	15.76	41	393.5815	16.58	6,529.45
10/11/95 PAYMENT ADJUSTMENTS FOR PREVIOUSLY REPORTED TONNAGE											16.97	152.07
10/12/95											16.74	154.75
10/13/95											16.74	154.75
10/14/95											16.07	147.43
10/15/95											16.73	152.74
10/16/95											16.73	152.74
10/17/95											16.47	146.41
10/18/95											16.47	146.41
10/19/95											16.90	152.07
10/20/95											17.08	154.63
10/21/95												
PAYMENT TOTAL												25,072.47
THE DISTRICT AVERAGE REGULAR BEET CONDUCTIVITY FOR THE PRIOR TEN YEARS IS .8598. THIS YEAR'S DISTRICT AVERAGE IS .8297. RESULTING IN A CONDUCTIVITY QUALITY PAYMENT OF 0.1264 CENTS PER TON OF REGULAR BEETS. YOUR REGULAR BEET TOTAL IS 2,497,2240 TONS, WHICH RESULTS IN A PAYMENT OF												315.65
THE DISTRICT AVERAGE REGULAR BEET NITRATE FOR QUALIFYING CONTRACTS IS .352.87PPM. YOUR REGULAR BEET AVERAGE NITRATE FOR THIS CONTRACT IS .456.20PPM. RESULTING IN A PENALTY OF 17.5 CENTS PER 100 PPM PER TON OF BEETS. YOUR REGULAR BEET TOTAL IS 2,497,2240 TONS, WHICH RESULTS IN A PENALTY OF												424.22CR
SUB TOTAL												24,961.90

THE DISCLOSURES HEREIN ARE MADE IN CONFORMANCE WITH THE FEDERAL TRUTH IN LENDING LAWS

\* NOTE \* THE FINANCE CHARGE FOR THE BILLING CYCLE IS DETERMINED ON EACH TRANSACTION BY MULTIPLYING THE AVERAGE DAILY BALANCE BY THE NUMBER OF DAYS SUCH BALANCE IS OUTSTANDING, DURING THE BILLING CYCLE, AND THE PERIODIC RATE IS APPLIED TO THE PRODUCT THEREOF

### APPLICATIONS OF AMOUNTS OWED TASCO BY GROWER AGAINST PAYMENTS

DATE OF TRANSACTION	TYPE TRANSACTION	AMT-SUBJECT TO-FINANCE CHARGES	ADVANCES-NOT SUB-TO-FIN. CHARGES	ANNUAL INTEREST RATE	PREVIOUS BALANCE	CURRENT FINANCE CHARGES	PAYMENT APPLICATION
11/30/95	* ASSOCIATION DUES		33.31				33.31 ✓
10/23/95	* FILING FEES		20.00				20.00 ✓
06/07/94	FERTILIZER	4,837.60		11.50	4,837.60	46.34	4,883.94 ✓
05/16/94	FERTILIZER	12,887.85		11.50	12,887.85	104.71	12,992.56 ✓
05/11/94	HIRED-HELP EXPENSE	1,165.57		11.50	1,165.57	10.71	1,176.28 ✓
06/14/94	HOEING	251,000.00		11.50	251,000.00	2,008.00	253,008.00 ✓
06/14/94	FERTILIZER	645.22		11.50	645.22	5.26	650.48 ✓
06/14/94	HERBICIDES	7,382.20		11.50	7,382.20	70.74	7,452.94 ✓
06/07/94	HERBICIDES	7,057.15		11.50	7,057.15	67.63	7,124.78 ✓
06/01/94	* HERBICIDES EXPENSE	28,000.00		11.50	28,000.00	292.84	28,292.84 ✓
06/18/95	HOEING	11,000.00		11.50	11,000.00	115.20	11,115.20 ✓
11/01/95	* FUEL	2,280.00		13.00	2,280.00	57.60	2,337.60 ✓
11/01/95	* MAINT. & REPAIRS						
*** TOTALS ***						1,441.36	24,961.90

BALANCE DUE TASCO \$120,981.44











THE AMALGAMATED SUGAR COMPANY

P.O. BOX 1766

PHONE (541) 372-2277

NYSSA, OREGON 97913

October 25, 1996

Dear Grower:

Enclosed is a check and/or statement representing the final payment for your 1995 sugarbeet crop. This payment is based on your individual sugar content as related to the factory cossette test.

The final net receipts from the sale of sugar during the 1995 crop settlement year has been determined as 23.24849 per cwt. A certified copy of the audit of net receipts as prepared by KMPG Peat Markwick Certified Public Accountants, is being sent to the President of your Grower Association.

Sincerely,

A handwritten signature in cursive script that reads "Gilbert Wells".

Gilbert Wells  
Agricultural Manager

# THE AMALGAMATED SUGAR COMPANY

REPORT NO. GPR590-01

GROWERS ACCOUNTING STATEMENT

DATE 10/25/96

PAGE 080388

GROWER NAME: TERRY HIPWELL  
 30932 SHELTON RD.  
 PARMA ID 63660

GROWER NUMBER: 8-93-8601  
 STATEMENT DATE: 10/25/96

INTERESTED PARTIES: WEST ONE BANK      LANDVIEW FERTILIZER      INTERNAL REVENUE SERVICE

GROWER DELIVERY RECORD FOR PERIOD 09/01/95 TO 09/01/96

DATE	DELIVERED STA. ELD.	GROSS-WT POUNDS	LIGHT-WT POUNDS	EST-NET-WT POUNDS	TARE %	C/M DIRTY POUNDS	FINAL SUGAR %	NO. OF TONS	FINAL NET WT. TONS	TODATE RATE/TON	PAYMENT AMOUNT
10/11/95	PAYMENT									38.05	60.18
10/12/95										35.32	247.14
10/13/95										37.17	623.71
10/14/95										36.02	543.75
10/16/95										37.50	883.47
10/17/95										36.93	1,128.97
10/19/95										37.38	1,126.11
10/20/95										37.89	1,417.22
10/21/95										38.29	1,243.75
10/23/95										37.89	1,171.01
10/24/95										33.59	207.70
<b>PAYMENT TOTAL</b>											<b>8,788.01</b>

*Rec'd Terry Hipwell 11-6-96*

THE DISCLOSURES HEREIN ARE MADE IN CONFORMANCE WITH THE FEDERAL TRUTH IN LENDING ACT. THE FINANCE CHARGE, FOR THE BILLING CYCLE IS DETERMINED ON EACH MONTHLY BASIS. THE NUMBER OF DAYS SUCH BALANCE IS OUTSTANDING, DURING THE BILLING CYCLE.

ON BY MULTIPLYING THE AVERAGE DAILY BALANCE BY THE PERIODIC RATE IS APPLIED TO THE PRODUCT THEREOF.

### APPLICATIONS OF AMOUNTS OWED TASCOCO BY GROWER AGAINST PAYMENTS

DATE OF TRANSACTION	TRANSACTION TYPE	AMT-SUBJECT TO-FINANCE CHARGES	ADVANCES-NOT SUB-TO-FIN. CHARGES	ANNUAL INTEREST RATE	PREVIOUS BALANCE	CURRENT FINANCE CHARGES	NEW BALANCE
06/07/94	HERBICIDES	1,051.74		11.50	1,051.74	72.91	1,124.65
11/01/95	FUEL	11,000.00		13.00	11,417.09	447.50	11,864.59
01/24/96	EQUIPMENT RENTAL	10,501.88		13.00	10,877.32	488.73	11,366.05
08/28/96	EQUIPMENT RENTAL	1,500.00		13.00	1,500.00	234.38	1,734.38
11/01/95	MAINT. & REPAIRS	5,500.00		13.00	5,807.86	298.28	6,106.14
11/01/95	HIRED HELP EXPENSE	7,000.00		13.00	7,015.17	298.28	7,313.45
06/22/95	MODELING	36,500.00		13.00	38,102.16	1,555.32	39,657.48
06/06/96	EQUIPMENT RENTAL	23,000.00		13.00	23,329.22	99.43	23,428.65
05/18/95	PLANTING	23,000.00		13.00	23,133.07	980.06	24,113.13
11/29/95	HIRED HELP EXPENSE	1,027.69		13.00	1,085.22	43.79	1,129.01
11/29/95	HIRED HELP EXPENSE	456.75		13.00	482.32	19.46	501.78
11/29/95	HIRED HELP EXPENSE	3,194.60		13.00	3,373.41	136.13	3,509.54
11/29/95	HIRED HELP EXPENSE	896.97		13.00	949.18	38.22	987.40
11/29/95	HIRED HELP EXPENSE	357.24		13.00	377.23	15.22	392.45
11/29/95	HIRED HELP EXPENSE	1,700.63		13.00	1,795.83	72.47	1,868.30
11/29/95	HIRED HELP EXPENSE	1,044.37		13.00	1,102.83	44.50	1,147.33
<b>TOTALS</b>							

BALANCE DUE TASCOCO \$105,867.62

TOTAL CROP PAYMENT AT 15.5% FINAL AVERAGE SUGAR CONTENT



# THE AMALGAMATED SUGAR COMPANY

REPORT NO. GPR590-01

GROWERS ACCOUNTING STATEMENT

DATE 11/30/96

PAGE 080292

GROWER NAME: TERRY HIRBELL  
30832 SHELTON RD.  
PARMA ID 83660

GROWER NUMBER 8-93-8501  
STATEMENT DATE 11/30/96

THE DISCLOSURES HEREIN ARE MADE IN CONFORMANCE WITH THE FEDERAL TRUTH IN LENDING LAWS

\* NOTE \* THE FINANCE CHARGE, FOR THE BILLING CYCLE, IS DETERMINED ON EACH TRANSACTION BY MULTIPLYING THE AVERAGE DAILY BALANCE BY THE NUMBER OF DAYS SUCH BALANCE IS OUTSTANDING, DURING THE BILLING CYCLE, AND THE PERIODIC RATE IS APPLIED TO THE PRODUCT THEREOF.

APPLICATIONS OF AMOUNTS OWED TASCU BY GROWER AGAINST PAYMENTS

DATE OF TRANSACTION	TYPE TRANSACTION	AMT. SUBJECT TO FINANCE CHARGES	ADVANCES - NOT SUB. TO FIN. CHARGES	ANNUAL INTEREST RATE	PREVIOUS BALANCE	CURRENT FINANCE CHARGES	PAYMENT APPLICATION
11/01/95	HIRED HELP EXPENSE	7,000.00		13.00	7,015.17	91.00	
06/22/95	HOEING	38,500.00		13.00	38,102.16	474.50	
06/06/96	EQUIPMENT RENTAL	2,329.22		13.00	2,329.22	30.28	
01/24/96	EQUIPMENT RENTAL	10,501.88		13.00	10,877.32	138.52	
05/18/95	PLANTING	23,000.00		13.00	23,132.07	259.00	
11/01/95	MAINT. & REPAIRS	5,500.00		13.00	5,809.86	71.50	
11/01/95	FUEL	8,232.31		13.00	8,232.31	107.02	
08/28/96	EQUIPMENT RENTAL	1,207.49		13.00	1,207.49	15.70	
11/29/95	HIRED HELP EXPENSE	391.74		13.00	377.23	4.64	
11/29/95	HIRED HELP EXPENSE	456.75		13.00	465.32	5.36	
11/29/95	HIRED HELP EXPENSE	1,027.69		13.00	1,085.22	13.36	
11/29/95	HIRED HELP EXPENSE	1,700.63		13.00	1,799.83	22.11	
11/29/95	HIRED HELP EXPENSE	1,044.37		13.00	1,102.83	13.58	
11/29/95	HIRED HELP EXPENSE	3,194.80		13.00	3,379.41	41.53	
11/29/95	HIRED HELP EXPENSE	896.97		13.00	947.18	11.88	
TOTALS					1,338.34	00	

BALANCE DUE TASCU \$107,205.96

11-7-97

<p align="center"><b>UNITED STATES BANKRUPTCY COURT</b> District of District of Idaho (Boise)</p> <p><b>Instructions: Complete this form and mail to:</b> US Bankruptcy Court 550 West Fort MSC 042 Computerized Case Info (208) 334-9386 Boise, ID 83724</p>	<p align="center"><b>PROOF OF CLAIM</b> Chapter (please check the appropriate box)</p> <p align="center">7 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input checked="" type="checkbox"/> 13 <input type="checkbox"/></p> <p>Proof of Claim Form and Supporting Documents are to be filed in <b>DUPLICATE</b> on chapter 12 and 13 cases</p>	<p align="center">THIS SPACE IS FOR COURT USE ONLY</p> <p align="right"><i>File</i></p>
<p>In re (Name of Debtor) Terry Hipwell</p>	<p>Case Number: <b>96-02095 - jdp</b></p>	
<p>NAME AND MAILING ADDRESS OF CREDITOR (The person or other entity to whom the debtor owes money or property)</p> <p>The Amalgamated Sugar Company c/o Richard C. Boardman Penland Munther Boardman, CHTD. P.O. Box 199, Boise, ID 83701</p>	<p>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</p>	
<p>ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:</p>	<p>Check here if this claim <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed claim, dated _____</p>	
<p>1. BASIS FOR CLAIM: <input type="checkbox"/> Goods Sold <input type="checkbox"/> Services performed <input checked="" type="checkbox"/> Money Loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Assignment <input type="checkbox"/> Retiree Benefits as defined in 11 USC Sec 1114(a) <input type="checkbox"/> Wages, salaries, and compensation; Social Security # _____</p> <p>Unpaid compensation for services performed from _____ to _____ (date) (date)</p> <p>The entire amount of this claim is also claimed as a setoff or recoupment against claims asserted by the debtor against TASC0.</p>		
<p>2. DATE DEBT WAS INCURRED</p> <p>Various Dates during 1994, 95 and 96</p>	<p>3. IF COURT JUDGMENT, DATE OBTAINED</p>	
<p>4. CLASSIFICATION OF CLAIM: Under the Bankruptcy Code all claims are classified as one or more of the following: a. Secured, b. Unsecured nonpriority, c. Unsecured Priority It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES below that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED</p>		
<p><b>SECURED CLAIM \$105,561.09 plus interest</b></p> <p>Attach evidence of perfection of security interest. Brief Description of Collateral: <input type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other (Describe briefly) See Schedules to UCC-1 Amount of average and other charges of this claim included in secured claim above if any \$ _____</p>	<p><b>UNSECURED PRIORITY CLAIM \$ _____</b> Specify the priority of the claim.</p> <p><input type="checkbox"/> Wages, salaries, or commissions up to \$4000 earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier—11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan—11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$1,800 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use—11 U.S.C. § 507(a)(5) <input type="checkbox"/> Alimony, maintenance or support owed to a spouse, former spouse, or child—11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties of governmental units—11 U.S.C. § 507(a)(8) Other: Specify applicable paragraph of 11 U.S.C. § 507(a): _____</p>	
<p>5. TOTAL AMOUNT OF CLAIM AT THE TIME THE CASE WAS FILED \$ _____ (Unsecured) \$ <b>105,561.09 plus interest</b> (Priority) \$ _____ (Total) <input type="checkbox"/> Check this box if claim includes charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.</p>		
<p>6. CREDITS AND SETOFFS. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.</p>		
<p>7. SUPPORTING DOCUMENTS. Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests to original and each copy. If the documents are not available, explain. If the documents are voluminous, attach a summary</p>	<p>THIS SPACE FOR COURT USE ONLY</p>	
<p>DATE: <b>September 24, 1996</b></p>		
<p>Sign and print the name and title, if any, of the creditor or other person authorized to file this claim. (attach copy of power of attorney, if any) <b>Penland Munther Boardman CHTD, Attorneys for TASC0</b> Telephone No: (208) 344-45 _____</p>		

17

**RECEIVED**

Attachments consisting of 24 pages.

SEP 24 1996

Exhibit "C"

# Memorandum of Agreement

BETWEEN

DUPLICATE

SEASON OF 1995  
NYSSA-NAMPA DISTRICT  
ELWYHEE DISTRICT

**THE UNDERSIGNED GROWER**

(Hereinafter called the Grower)

AND

**THE AMALGAMATED SUGAR COMPANY**

(Hereinafter called the Company)

WITNESSETH, that for and in consideration of the mutual covenants and payments hereinafter set forth, the respective parties hereto mutually undertake and agree as follows to-wit:

1. The Grower shall grow, during the year 1995, the below designated number of acres of sugarbeets (hereinafter called beets) and shall sell and deliver the entire crop therefrom, to the Company, and the Company shall buy and pay for the same upon the terms and conditions hereinafter set forth, but in no event shall the Company be held liable in damages for any failure or partial failure of crop, or any damage to beets.

2. The Grower shall prepare and cultivate all sugarbeet lands and harvest the beets thereon consistent with generally-accepted agronomic practices. Such agronomic practices shall include, but not be limited to, crop rotation, soil sampling, prudent use of nitrogen fertilizers, irrigation, stand reduction, and the control of weeds, insects and disease. He furthermore agrees that he will not apply to any beets grown hereunder, any nitrogen fertilizer in any form after July 15. The Grower further agrees not to apply to the crop or land on which the crop is grown any pesticide chemical, as defined in the Federal Insecticide, Fungicide, and Fertilizer Act and the Federal Food, Drug and Cosmetic Act, as amended, unless a regulation shall then be in effect under Section 408 of said Act, exempting such chemical from the necessity of a tolerance, or establishing a tolerance for such chemical to which even such chemical shall be applied to the crop or land only at such time and in such manner and quantities as shall be within the tolerance specified for beets in such regulation. The Company will exercise its best efforts to arrange to have beet seed available for the planting of said land. The Grower agrees to plant only seed varieties which equal, or exceed, the criteria as established by the local joint (Grower, University, Company) Seed Evaluation Committee. The Company has the privilege at various times during the growing and harvesting season, to ascertain the quality of beets grown under this Contract by causing such beets to be sampled and polarized.

3. The Grower shall deliver said beets with tops squarely cut off at the base of the cluster or whorl of the green leaves. In addition, all other stems and leaves shall be removed from the beet. However, a distinct evidence of leaf scar shall be left on each beet after topping. All beets delivered hereunder shall be free from excess dirt, stones, trash, and foreign substances likely to interfere with work at the factory, and shall be subject to proper deductions for tare, such tare to be determined by the Company from tare samples which shall weigh approximately 20 pounds in uncleaned condition. That portion of the tare deduction which shall represent crown tare shall be determined by subjecting each beet of the tare sample to a top tare machine, the detailed blueprints of which will be on file at the Company's offices and with representatives of the Association which have approved this Contract. Crown taring shall be conducted in manners and ways as described in instructions on file at the Company's offices and with such Grower representatives. The Grower shall protect the beets from sun and frost after removal from the ground, and shall keep all livestock out of beet fields until after beets are harvested. The Grower may deliver all beets grown, at his own expense, subject to the approval of the Company and as directed by it, to and including October 20, 1995 (October 15, 1995 in Elwyhee District). If adverse climate or other conditions necessitate, the Company may, subject to the approval of the Board of Directors of the Nyssa-Nampa Beet Growers Association, extend the date of such controlled harvest at the Nyssa-Nampa District to and including October 25, 1995. Thereafter, the Grower may deliver, without further notice, at his own expense, all previously unharvested beets, provided, however, that the Company, at its option, may reject any *DISEASED, FROZEN, DAMAGED, OR IMPROPERLY TOPPED BEETS*, as well as beets not suitable for the manufacture of sugar, or which contain less than twelve percent (12%) sugar or less than eighty percent (80%) purity. Any beets not delivered by November 25, 1995 (November 15, 1995 in Elwyhee District), shall be delivered as directed by the Company. Any beets not delivered by November 15, 1995, in the Nyssa-Nampa Districts will be delivered as directed by the Company if such directive is approved by the respective director(s) of the Growers Associations. To minimize congestion, the Grower also agrees that deliveries to each receiving station will be in accordance with the beet harvest schedule established by the Company and the representative of the appropriate Beet Growers Association.

4. The Company will pay for all beets grown and delivered under this Contract at the rate per ton (2,000 pounds) set out in the following schedule based on the sugar content of the beets grown and delivered hereunder, as modified by Section 5 and on the average net return per one hundred (100) pounds received by the Company between September 25, 1995 and September 30, 1996, on all sales of sugar produced from beets grown in all its Districts.

The net return on sugar sold as aforesaid during said period shall be determined by deducting from the gross sales price, all such charges and expenditures as are regularly and customarily deducted from gross sales price of sugar, in accordance with the Company's system of accounting heretofore established, showing net receipts from sugar sold, after deducting proper storage charges (Agreement on file) and also all excise, sales, and other taxes either now or hereafter imposed directly or indirectly on or arising out of the possession, holding for sale, sale or shipment of such sugar or on all or any part of the proceeds of such sale. Gross sales price as used in determining net return on sugar sold shall be the gross sales price received by the Company beyond which no interest, title or claim in sugar sold is retained by the Company and no profit, compensation or advantage thereon accrues to the Company or its employees. The Grower will indicate by initialing Paragraph 20 of this Agreement, whether or not the determination of gross sales price shall include the net profit or loss incurred by hedging of certain transactions through the purchase and sale of sugar futures. The net profit or loss shall be determined after the deduction of all necessary expenses incurred in said hedging transactions, including commissions and interest (or interest credit). The Company will furnish for inspection of Growers a certified statement by a certified public accountant, not connected with the Company, of net receipts from sugar sold in accordance with this Contract.

Values for intermediate net returns and payments shall be in proportion. Payment for net returns at contents above or below the following schedule shall be increased or decreased in proportion by using the immediately succeeding or preceding interval as the basis for calculation.

Sugar Content	AVERAGE NET RETURN FOR SUGAR PER ONE HUNDRED POUNDS												
	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$17.00	\$18.00	\$19.00	\$20.00	\$21.00	\$22.00	\$23.00	\$24.00
12.00%	121.3823	123.2919	127.2912	129.1706	131.0200	132.9294	134.8388	136.7481	138.6576	140.5670	142.4763	144.3857	146.2950
17.00%	22.1880	24.4316	26.2749	28.1180	29.9611	31.8042	33.6473	35.4904	37.3336	39.1768	41.0198	42.8629	44.7061
17.00%	21.7949	23.7177	25.3488	27.1254	28.9623	30.7991	32.6359	34.4728	36.3097	38.1465	39.9834	41.8202	43.6571
14.00%	21.0810	22.7116	24.4222	26.1328	27.8434	29.5540	31.2646	32.9752	34.6858	36.3964	38.1070	39.8176	41.5282
14.00%	20.2872	21.8116	23.4979	25.1402	26.7843	28.4284	30.0725	31.7165	33.3606	35.0047	36.6488	38.2929	39.9370
15.00%	19.8100	21.4216	23.0027	24.6439	26.2851	27.9263	29.5675	31.2087	32.8499	34.4911	36.1323	37.7735	39.4147
15.00%	19.4134	20.9916	22.5902	24.1474	25.7237	27.3000	28.8762	30.4525	32.0287	33.6050	35.1812	36.7574	38.3337
15.00%	18.6196	20.1316	21.6432	23.1502	24.6558	26.1786	27.6984	29.2182	30.7380	32.2578	33.7776	35.2974	36.8172
14.00%	17.8257	19.2713	20.7168	22.1624	23.6079	25.0535	26.4990	27.9446	29.3901	30.8357	32.2812	33.7268	35.1723
14.00%	17.0320	18.4112	19.7905	21.1698	22.5491	23.9284	25.3077	26.6870	28.0662	29.4455	30.8248	32.2041	33.5834
14.00%	16.2383	17.5516	18.8649	20.1782	21.4915	22.8048	24.1181	25.4314	26.7447	28.0580	29.3713	30.6846	31.9979
13.00%	15.4446	16.6911	17.9376	19.1841	20.4306	21.6771	22.9236	24.1701	25.4166	26.6631	27.9096	29.1561	30.4026
13.00%	14.6509	15.8318	17.0127	18.1926	19.3725	20.5524	21.7323	22.9122	24.0921	25.2720	26.4519	27.6318	28.8117
13.00%	13.8572	14.9709	16.0845	17.1982	18.3119	19.4256	20.5393	21.6530	22.7667	23.8804	24.9941	26.1078	27.2215

Sugar Content	AVERAGE NET RETURN FOR SUGAR PER ONE HUNDRED POUNDS												
	\$25.00	\$26.00	\$27.00	\$28.00	\$29.00	\$30.00	\$31.00	\$32.00	\$33.00	\$34.00	\$35.00	\$36.00	\$37.00
12.00%	142.2044	149.1138	152.0232	153.9326	155.8420	157.7514	159.6608	161.5702	163.4796	165.3890	167.2984	169.2078	171.1172
17.00%	46.2492	48.2916	49.2340	49.2340	49.2340	49.2340	49.2340	49.2340	49.2340	49.2340	49.2340	49.2340	49.2340
17.00%	44.2046	46.2470	47.1894	47.1894	47.1894	47.1894	47.1894	47.1894	47.1894	47.1894	47.1894	47.1894	47.1894
16.00%	41.2385	43.2809	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233
16.00%	41.2385	43.2809	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233	44.2233
15.00%	39.2282	41.2706	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130
15.00%	39.2282	41.2706	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130	42.2130
14.00%	36.6178	38.6602	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026
14.00%	36.6178	38.6602	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026	39.6026
14.00%	34.9626	36.9050	37.8474	37.8474	37.8474	37.8474	37.8474	37.8474	37.8474	37.8474	37.8474	37.8474	37.8474
13.00%	31.2674	33.2098	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522
13.00%	31.2674	33.2098	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522	34.1522
12.00%	29.9969	31.9393	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817
12.00%	29.9969	31.9393	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817	32.8817

In order to minimize refined sugar inventory carryover and the costs associated therewith, the Grower and Company agree that it is prudent for the Company to make non-domestic sugar sales and agree that this Paragraph shall cover any such sales.

- (a) The Company will make two separate net return calculations. One will be based solely on domestic sugar sales and the other will be based solely on non-domestic sugar sales. Payments to the Grower will include amounts based upon each net return calculation. The sum of all beet payments will be an amount that would be a beet paid if there was no distinction between domestic and non-domestic sugar sales.
- (b) The net return calculation for non-domestic sugar sales will be applied to a percentage of the sugar beets delivered under this Contract which will be the same as the percentage of non-domestic sugar sales is to all sugar sales for the settlement period.
- (c) The Grower recognizes and agrees that the net return for non-domestic sugar sales may result in payment for sugar beets at a level below the minimum price support level specified by the CCC. In such event, Grower waives any right to claim from the Company the minimum price support level for such sales. Grower also agrees not to make a demand and to waive any rights he may have against the CCC for any difference between the amount received from the Company for non-domestic sugar sales and the minimum price support level specified by the CCC.

5. Individual Grower sugar contracts will be used in the Nysaa-Nampa and Elwybee Districts as the basis for individual Grower payments.

The price per ton of beets as determined in Section 4 above, hereinafter called the District price per ton of beets, shall be modified for each Grower by multiplying each Grower's average sugar content by the adjustment factor to arrive at his adjusted sugar content. The average District cassette test shall be divided by the average of all individual Grower sugar contents to arrive at an adjustment factor. The average of all individual Grower sugar contents shall be determined by multiplying each Grower's average sugar content by his respective tonnage of beets delivered, and by then dividing the total of all such figures for all Growers by the total tonnages delivered in the Districts.

6. The amount of the initial payment will not be less than 90% of the minimum guaranteed price per ton of sugarbeets provided by the sugar price support regulations implementing the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990. Final settlement for beets delivered hereunder shall be made, in accordance with the terms of this Contract, not later than October 25, 1996. The initial payment schedule shall be one or the other of the following schedules as agreed to in paragraph 7. If sugar market conditions warrant, then the amount of the initial payment will be greater than 90% of the minimum guaranteed price per ton previously set out in this paragraph.

**SCHEDULE A**

(1) At least 25%, 52%, 80% of the initial payment will be cumulatively and respectively paid as follows:

Delivery Dates	Cumulative Payment	Payment Dates
Through Sept. 30, 1995	25%	Oct. 10, 1995
Through Oct. 21, 1995	25%	Oct. 31, 1995
Through Nov. 20, 1995	52%	Nov. 30, 1995
Through Dec. 21, 1995	80%	Dec. 31, 1995
Dec. 22 until completion	80%	Within a reasonable period

(2) The remaining balance of the initial payment will be paid no later than January 31, 1996.

(3) Interest on such balance of the total initial payment not paid by November 30, 1995 will be paid from December 7, 1995, until the balance is paid, on beets delivered through November 10, 1995, and from January 1, 1996, until the balance is paid, on beets delivered after November 10, 1995, but before December 22, 1995, at the then existing prime rate of the lead bank in the Company's borrowing bank group.

**SCHEDULE B**

(1) At least 80% of the initial payment will be paid as follows:

Delivery Dates	Payment Dates
Through December 21, 1995	Jan. 5, 1996
Dec. 22 until completion	Within a reasonable period

(2) The remaining balance of the initial payment will be paid no later than January 31, 1996.

(3) Interest on such balance of the total initial payment not paid on January 5, 1996, will be paid from January 6, 1996, until the balance is paid, on all beets delivered through December 21, 1995, at the then existing prime rate of the lead bank in the Company's borrowing bank group.

7. The Grower hereby authorizes the Company to deduct from any monies owing for beets delivered under this (1995 crop) Contract according to the 1994 crop detailed freight participation schedule on file with the Company offices and with representatives of the Grower Associations. Additionally, if the total freight for beets paid by the Company to contract rail and truck haulers, divided by the tons of beets hauled, decreases or increases per ton for the 1994 crop as compared to the 1993 crop, one half of that increase or decrease, rounded to the whole cent, will be subtracted from or added to the freight participation schedule amount aforementioned. The freight participation deductions will be made no earlier than the payment made as defined in Paragraph 6-(2) under Schedule A or B.

8. (a) If the weighted average conductivity of all beets, excluding "early" beets, delivered by all Growers under this (1995 crop) Contract in each District is less than the ten (10) year weighted average conductivity for the 1984, 1985, 1986, and the seven (7) highest of 1987, 1988, 1989, 1990, 1991, 1992, 1993 and 1994 crops collectively in such District, then a premium will be paid for all tons bought from such Districts as follows: For the first .01 that the weighted average conductivity of all Growers beets (1995 crop) in the respective District is below the aforementioned ten (10) year weighted average, then a 2 cent per ton quality premium will be paid. For the second .01 that the weighted average conductivity of all Growers' beets (1995 crop) in the respective District is further below the aforementioned ten (10) year weighted average, then an additional 3 cents per ton quality premium will be paid. For the third and all subsequent .01 that the weighted average conductivity of all Growers' beets (1995 crop) in the respective District is further below the aforementioned ten (10) year weighted average, then an additional 4 cents per ton quality premium will be paid. Payments for fractional values between the points will be proportional.

(b) A quality adjustment will be made for all beets grown under the Contract, excluding "early" beets as follows: For every 100 ppm of brei nitrate that beets grown by this Grower under this Contract is below the weighted average of all beets grown by all Growers in each District assigned; then 17.5 cents per ton is added to the payment for beets. Also, for every 100 ppm of brei nitrate that beets grown by this Grower under this Contract is above the weighted average of all beets grown by all Growers in each District assigned, then 17.5 cents per ton is deducted from the payment for beets. Additions or deductions for fractional values between points will be proportional. In each District, if the weighted average ppm of brei nitrate of all Growers beets is less than 400 ppm, then no Grower will receive a deduction who has brei nitrate levels below 400 ppm. Additionally, any Grower who has less than 200 ppm brei nitrate will receive the same premium per ton as a Grower receives in his District who has exactly 200 ppm brei nitrate. Additions and deductions will then be adjusted proportionately in each District to allow for these limits.

9. If all beets growing on September 1, 1996 under all beet Contracts collectively for the Nyssa, Nampa, Elwybee, Twin Falls and Mini-Cassia Districts are at the following levels, then there will be a deduction per ton on all beets delivered under this Contract for the 1995 crop for Growers who have voluntarily reduced their acreage growing in 1996 by 12 percent or more from 1995 under all such Contracts as follows:

BEEF ACREAGE GROWING ON SEPTEMBER 1, 1996	DEDUCTION PER TON
172,000	NONE
165,000	NONE
160,000	NONE
155,000	.20
150,000	.40
145,000	.60
140,000 AND BELOW	.80

For acreage between the intervals the deduction is equally interpolated and rounded to the nearest cent per ton.

The Company agrees to allot and contract no less than 176,000 acres collectively in the five Districts. If, because of average yield increases, the Company allots and contracts less than 176,000 acres, such proportion shall be applied to the acreage levels above.

To the extent that planted acres exceeded growing acres on September 1, 1996 by more than 1,500 acres, an adjustment for such excess over 1,500 acres shall be made to the above scale. Should severe drought or other acts of nature cause areas normally planted to not be planted, then appropriate adjustments will also be made. In the event that production or other volume restrictions imposed by the U.S. Government apply to the crop, then appropriate adjustments will be made.

10. Advances by the Company to the Grower, either in beet seed, money or otherwise, shall constitute part payment for beets grown and delivered under this Agreement, and any monies or other obligations payable from the Grower to the Company are and shall become, constitute, and remain a prior lien upon the crop of beets herein referred to, and shall be deducted from the initial or any subsequent payments to the Grower. If the Grower is a tenant, his check in payment for beets may be made jointly to the landlord and tenant, unless previously thereto the landlord has made proper release in writing to the Company. If the Grower abandons his beet acreage, any advances made by the Company, either in beet seed, fertilizer, or otherwise, shall immediately become due.

11. The Grower and/or Grower Association may, at his/his own expense have representatives (weighmen, taremen, and chemists) in scale houses, tare room and/or laboratory to inspect weights and work done. Such representatives should be knowledgeable in the line of work to be performed and acceptable to the Company.

12. The Company agrees to give the Grower priority of right in the purchase of pulp, for his own use until December 31, 1995, or until ten (10) days before end of campaign, whichever comes first.

13. The Grower hereby authorizes the Company to deduct from any monies owing for beets delivered under this Contract as service charges for the year 1995 the sum of nine cents (9c) per ton for the Nyssa-Nampa Beet Growers Association; and the sum of seven cents (7c) per ton for the Elwybee Beet Growers Association; and the Company agrees to pay such sum to said Association unless the Grower notifies the Company in writing at its office not to make such deduction and payment within thirty (30) days after the execution of the Memorandum of Agreement. The grower also authorizes the Company to deduct from any monies owing for beets delivered under this contract an amount per ton to cover the pro-rata share of the cost of return dirt removal from the receiving stations per agreements on file with the Grower Associations.

14. No agent of the Company is authorized to make any alterations, erasures, or additions to this printed Contract.

15. This Agreement shall be binding upon the Grower, his heirs, legal representatives, successors and assigns, and upon the Company, its successors and assigns, and shall not be transferable by the Grower without the written consent of the Company, its successors and assigns.

This Contract will be assigned to the Snake River Sugar Company upon completion of the purchase of The Amalgamated Sugar Company by the Snake River Sugar Company. The Grower will, if having agreed to the \$1 per acre check-off on the Grower's 1994 crop of beets, be given the opportunity to become an Owner-Grower of the Snake River Sugar Company, and to purchase an amount of its preferred shares (Series A) equal to at least the number of acres of beets herein contracted.

In order for this opportunity to be available to the Grower, the beet acreage herein contracted must be planted and growing at the time of the completion of the purchase of The Amalgamated Sugar Company by the Snake River Sugar Company, unless the beet acreage is not planted and growing because of acts of God, or other circumstances beyond the control of the Grower.

16. Fire, strikes, accidents, acts of God and of the public enemy which prevent the Grower from the performance of this Contract or the Company from utilizing the beets contracted for in the manufacture of sugar therefrom, shall excuse the respective parties hereto from the performance of this Contract, except for repayment to the Company of any advances made by the Company to the Grower, as provided in Section 10 hereof.

17. The parties to this Agreement agree to comply with the applicable provision of Title VII (Equal Employment Opportunity) of the Civil Rights Acts of 1964.

18. The Grower agrees to inform all parties having an interest in the sugarbeet crop of the terms of this Contract.

19. The Company and the Grower agree that if the Sugar Program, as defined in the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, and as regulated by the U.S. Department of Agriculture, is changed by any branch of the U.S. Government, and such changes significantly affect the intent and performance of this Agreement by either party, then both parties (Company and Growers through their respective Association) agree to integrate revisions in the Agreement, so that the resulting Agreement is consistent with the intent of the original Agreement.

THE AMALGAMATED SUGAR COMPANY  
SECURITY AGREEMENT COVERING FARM PRODUCTS

19-77-6976

DATE: 4-13-95

(Name of Grower) TERRY L. HIPWELL, A SINGLE MAN of  
(Address) 30952 SHELTON ROAD (City) PARMA  
(County) OWYHEE (State) IDAHO  
(hereinafter whether singular or plural called "Debtor") hereby grants to The Amalgamated Sugar Company (hereinafter called "Secured Party") a security interest in the collateral hereinafter described to secure payment of all money advanced to Debtor pursuant to Debtor's Loan Agreement(s) with Secured Party. This Security Agreement is subject to the terms and conditions of such Loan Agreement(s). This Security Agreement also secures the payment of any other money loaned by Secured Party to Debtor, now or in the future.

1. Collateral.

- a. Debtor grants to Secured Party a security interest in approximately 475.0 acres of sugarbeets or other crops, now sown and growing or to be sown or grown two years (five years in the State of Oregon) from the date of execution hereof, on the following described real property in OWYHEE County, State of IDAHO.

IN THAT PART OF: E2, SEC 17, TWP 3S, RG 1WBM  
N2 NW4, SEC 20, TWP 3S, RG 1WBN  
NW4, SEC 10, TWP 3S, RG 1WBM

- b. The name of the record owner of said real property is HULET MANAGEMENT COMPANY.
- c. Debtor also grants to Secured Party a security interest in all products and proceeds of the foregoing crops, including, but not limited to cash; contract rights, including insurance proceeds private or governmental; accounts receivable; and government disaster or similar payments.

2. Warranties. Debtor hereby warrants and covenants:

- a. Debtor is now the owner of the Collateral free from any adverse lien, security interest, or encumbrance and that no financing statement pertaining to any portion of the Collateral is on file in any public office, except as set forth below:

pm1 04-09-95

WEST ONE BANK  
LANDVIEW FERTILIZER

- b. The Collateral shall not be removed from the above real property without the prior written consent of Secured Party, except for the sale of the Collateral to Secured Party.
- c. Debtor shall keep the Collateral in good condition. Debtor shall not waste or destroy the Collateral or any part thereof, and shall plant, cultivate, and harvest the crops in a good and farmerlike manner.
- d. Debtor agrees to execute and file financing statements and do whatever may be necessary under applicable law to perfect and continue Secured Party's security interest.
3. Sale of Collateral Prohibited. It is understood between the parties that the Collateral consisting of sugarbeets is to be sold only to Secured Party. Sale of the crop of sugarbeets, or any other crop from the above described real property, to any other person, firm, or corporation is expressly prohibited without the written consent of Secured Party and upon terms and conditions approved by Secured Party.
4. Payment of Expenses by Secured Party. Debtor shall promptly pay any and all taxes, liens, or other expenses or obligations relating to the Collateral. If any such tax, lien, or other expense or obligation relating to the Collateral is not paid by Debtor promptly when due, Secured Party, at its option, may pay any such indebtedness. Debtor shall promptly reimburse Secured Party on demand for any such payments.
5. Defaults. Debtor shall be in default under this Security Agreement on the happening of any one of the following events or conditions or any combination thereof:
- a. Failure to make any payment or perform any obligation under Debtor's Loan Agreement with Secured Party, including the exercise by Secured Party of its right to refuse any cash advance because the Collateral does not justify such advance.
- b. The falsity in any material respect of any warranty, representation, or statement made or furnished to Secured Party in connection with Debtor's Loan Agreement with Secured Party or this Security Agreement;
- c. Any event which results in the acceleration of the maturity of the indebtedness of Debtor to others under any agreement or understanding;
- d. The damage, destruction, sale, or encumbrance of any of the Collateral, or the making of any levy on or seizure or attachment of, the Collateral;

- e. Commencement of voluntary or involuntary proceeding under the bankruptcy or any state insolvency law; the death, insolvency or business failure of Debtor; the appointment of a receiver for any part of the property of Debtor; or assignment for the benefit of Creditors by Debtor;
  - f. The failure of Debtor as determined by Secured Party in its sole judgement, to plant or cultivate the crops referred to herein, in due season, and in a good and farmerlike manner, or to properly care for or protect any Collateral;
  - g. The failure of Debtor to harvest the crops referred to herein in a timely manner. In the event Secured Party in its sole judgement, determines that the Collateral is subject to possible loss or reduction if not harvested within a certain period, the failure of Debtor to so harvest shall be a default.
6. Remedies. All obligations secured hereby shall be immediately due and payable upon default hereunder, and Secured Party shall have all of the remedies under the Uniform Commercial Code, or other applicable law, of the State where the above real property is located, including:
- a. Upon demand, Debtor shall give possession of the Collateral to Secured Party and assemble the Collateral at a reasonably convenient place. Secured Party is authorized to enter any premises where the Collateral is located and to take such actions, including cultivating and harvesting, as necessary, to protect the Collateral;
  - b. Debtor hereby agrees that a period of five (5) days from the time notice is sent, by first-class mail or otherwise, shall be a reasonable period of notification of a sale or other disposition of the Collateral;
  - c. Debtor agrees to pay all expenses incurred by Secured Party in protecting the Collateral and in cultivating, harvesting, relaking, holding, preparing for sale, selling, and other expenses reasonably incurred in enforcing any remedy available to Secured Party, including reasonable attorney's fees and other legal expenses of Secured Party, and payment of all said sums shall be secured hereby;
  - d. After any disposition of the Collateral, Debtor agrees to pay any deficiency remaining after application of the net proceeds to any indebtedness secured hereby;
  - e. Secured Party shall have the right immediately and without further action by it, to setoff against the obligations of Debtor all money owed by Secured Party in any capacity to Debtor, whether or not due, and Secured Party shall be deemed to have exercised such right of setoff and to have made a charge against any such money immediately upon occurrence of such default even though such charge is made or entered on the books of Secured Party subsequent thereto.
7. Successors. This Agreement shall be binding upon the successors, heirs, assigns, and representative of the parties hereto.

IN WITNESS WHEREOF, Debtor has caused this Security Agreement to be executed the day and year first written above.

X Terry L. Ripwell DEBTOR THE AMALGAMATED SUGAR COMPANY  
 TERRY L. RIPWELL DEBTOR By: Steve Thomas

WAIVER AND SUBORDINATION AGREEMENT

Debtor, named in the foregoing Security Agreement has sought a loan to enable the production of a crop on certain real property (the "land") described in said Agreement and The Amalgamated Sugar Company ("Amalgamated") has agreed to make said loan upon certain terms and conditions.

The undersigned claims an interest, legal or equitable, in the crop on the land, whether as owner, mortgagee, trust deed beneficiary, prior mortgagee, sharecropper, landlord, lienor, land sales contract, or any interest of any kind or character.

In consideration of and in order to induce Amalgamated to loan money to Debtor, the undersigned hereby subordinates and waives any and all rights, claims, liens, or interest which the undersigned now have or may hereafter acquire, in any manner whatsoever, in or to the said crop, or other crop grown on the land, and the proceeds from the sale thereof, to the extent of \$ 460.00 per acre, plus interest, plus any expenses incurred by Amalgamated in growing, cultivating, harvesting, and delivering the Collateral as provided below, which is the interest of Amalgamated in the Collateral and specifically agrees that enforcement of any and all rights of the undersigned shall be deferred until such time as Amalgamated's interest is fully paid, satisfied, and discharged.

The undersigned consents to Amalgamated exercising its remedies under the foregoing Security Agreement upon default of Debtor, including, but not limited to growing, cultivating, harvesting, and delivering the Collateral and in incurring expenses related thereto.

Signed	Date
X <u>RULET MANAGEMENT COMPANY</u>	
X <u>Landmark Bank, N.A. / First One Bank</u>	<u>4/13/95</u>
X <u>LANDSLOW FERTILIZER</u>	<u>4/17/95</u>

CASH LEASE WAIVER

The undersigned has leased the real property described in the foregoing Security Agreement to Debtor for a cash rental and claims no interest, legal or equitable, in the crop on said land. The undersigned further claims no interest in Amalgamated's sugarbeet payments to Debtor and agrees such payment may be made solely to Debtor.

Signed: Mark H. Hancock By: Joe Hill DATE: April 14, 1995

## LOAN AGREEMENT AND DISCLOSURE STATEMENT

The Amalgamated Sugar Company (hereinafter called "Amalgamated") and  
 TERRY L. HIPWELL, A SINGLE MAN (hereinafter  
 whether singular or plural, called "Debtor") hereby enter into this Loan Agreement and agree as follows:

1. Amalgamated shall establish an open end loan account in Debtor's name with a maximum credit limit of \$-460.00- per acre of sugarbeets sown and growing as of the date of the request for cash advance, or to be sown or grown, but in no event to exceed \$-218,500.00- Amalgamated shall have no obligation to make any cash advance pursuant to this Loan Agreement beyond DEC 31, 199 5.
2. Debtor may request cash advances from the loan account from time to time as needed to assist Debtor with the specialized production costs of sugarbeets, and dues or charges of labor sponsoring associations. Amalgamated shall have the absolute right to refuse any request for a cash advance if, in the sole judgement of Amalgamated, the condition of the Collateral does not justify the requested cash advance.
3. Each request, however made, for a cash advance which is granted by Amalgamated shall be deemed an extension of credit under this Loan Agreement by Amalgamated to Debtor.
4. A FINANCE CHARGE will be imposed on the unpaid balance of each cash advance made to Debtor from the date of each cash advance. The balance subject to FINANCE CHARGE will be the amount of all cash advances less payments and credits.
5. The amount of the FINANCE CHARGE will be determined by applying the ANNUAL PERCENTAGE RATE in effect on the date of each advance to the amount of such advance. The current ANNUAL PERCENTAGE RATE is 13 %, which rate is subject to increase or decrease as the established Amalgamated interest rate changes to reflect changes in the prime interest rate.
6. Debtor shall pay to Amalgamated the total amount of all cash advances, FINANCE CHARGES, and other charges hereunder as they become due to Amalgamated. In the event Debtor does not or has not planted sugarbeets on or before June 1, 199 5, such cash advances, FINANCE CHARGES, and other charges shall become due on such date and in the event Debtor abandons all or a substantial part of the crop of sugarbeets, such cash advance, FINANCE CHARGES, and other charges shall become due upon such abandonment. In the event Debtor harvests the crop of sugarbeets, such cash advances, FINANCE CHARGES, and other charges shall become due upon the date of Amalgamated's initial beet payment to Debtor. Debtor hereby consents to any extension of time of payment which may be granted by Amalgamated.
7. An additional charge will be imposed for fees paid to public officials for the recording and releasing of any security interest given by Debtor as security for this loan account.
8. Debtor shall receive no cash advances in excess of the maximum credit limit established in Paragraph 1 hereof.
9. Debtor agrees that all cash advances made hereunder shall be used solely and exclusively for the specialized production cost, as specified above, of sugarbeets which have been contracted to be sold to Amalgamated.
10. Debtor agrees to execute a Security Agreement covering farm products which grants Amalgamated a security interest in Debtor's crops to secure this Loan Agreement and all cash advances made pursuant to this Agreement. Perfection of said Security Agreement and Debtor obtaining all subordinations or waivers so that Amalgamated's security interest has priority sufficient to secure all cash advances contemplated by this Agreement are conditions precedent to the making of any cash advances. The falsity in any material respect of any warranty, representation, or statement made or furnished to Amalgamated in connection with the Security Agreement or this Loan Agreement shall be a default of this Loan Agreement.
11. Upon default of the conditions of this Loan Agreement, or upon any failure to pay as agreed, the entire unpaid balance of such loan account, FINANCE CHARGES, and other charges shall become immediately due and the Debtor will be charged all costs of collection, including a reasonable attorney's fee.
12. This Agreement is binding upon Debtor's heirs, representatives, successors, and assigns.

X DATED this 13 day of April, 19 95

Terry L. Hipwell  
 TERRY L. HIPWELL DEBTOR

THE AMALGAMATED SUGAR COMPANY

DEBTOR

By: Maie Shuman

## PERSONAL GUARANTEE OF CORPORATE LOAN

For value received, I, we, or either of us, hereby agree to the terms and conditions of all of the obligations entered into by Debtor in the foregoing Loan Agreement and hereby guarantee the performance of all such obligations, and also agree to pay reasonable attorney's fee if suit is brought hereon.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

# Memorandum of Agreement

ORIGINAL

BETWEEN

THE UNDERSIGNED GROWER  
(Hereinafter called the Grower)

SEASON OF 1994  
NYSSA-NAMPA DISTRICT  
ELWYHEE DISTRICT

AND

THE AMALGAMATED SUGAR COMPANY  
(Hereinafter called the Company)

WITNESSETH, that for and in consideration of the mutual covenants and payments hereinafter set forth, the respective parties hereto mutually undertake and agree as follows to-wit:

1. The Grower shall grow, during the year 1994, the below designated number of acres of sugarbeets (hereinafter called beets) and shall sell and deliver the entire crop therefrom, to the Company, and the Company shall buy and pay for the same upon the terms and conditions hereinafter set forth, but in no event shall the Company be held liable in damages for any failure or partial failure of crop, or any damage to beets.

2. The Grower shall prepare and cultivate all sugarbeet lands and harvest the beets thereon consistent with generally-accepted agronomic practices. Such agronomic practices shall include, but not be limited to, crop rotation, soil sampling, prudent use of nitrogen fertilizers, irrigation, stand reduction, and the control of weeds, insects and disease. He furthermore agrees that he will not apply to any beets grown hereunder, any nitrogen fertilizer in any form after July 15. The Grower further agrees not to apply to the crop or land on which the crop is grown any pesticide chemical, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (the Federal Food, Drug and Cosmetic Act, as amended, unless a regulation shall then be in effect under Section 406 of said Act, exempting such chemical from the necessity of a tolerance, or establishing a tolerance for such chemical in which event such chemical shall be applied to the crop or land only at such time and in such manner and quantities as shall be within the tolerance specified for beets in such regulation. The Company will exercise its best efforts to arrange to have beet seed available for the planting of said land. The Grower agrees to plant only seed varieties which equal, or exceed, the criteria as established by the local joint (Grower, University, Company) Seed Evaluation Committee. The Company has the privilege at various times during the growing and harvesting season, to ascertain the quality of beets grown under this contract, by causing such beets to be sampled and polarized.

3. The Grower shall deliver said beets with tops squarely cut off at the base of the cluster or whorl of the green leaves. In addition, all other stems and leaves shall be removed from the beet. However, a distinct evidence of leave scar shall be left on each beet after topping. All beets delivered hereunder shall be free from excess dirt, stones, trash, and foreign substances likely to interfere with work at the factory, and shall be subject to proper deductions for tare, such tare to be determined by the Company from tare samples which shall weigh approximately 20 pounds in uncleaned condition. That portion of the tare deduction which shall represent crown tare shall be determined by subjecting each beet of the tare sample to a top tare machine, the detailed blueprints of which will be on file at the Company's offices and with representatives of the Association which have approved this contract. Crown taring shall be conducted in manners and ways as described in instructions on file at the Company's offices and with such Grower representatives. The Grower shall protect the beets from sun and frost after removal from the ground, and shall keep all livestock out of beet fields until after beets are harvested. The Grower may deliver all beets grown, at his own expense, subject to the approval of the Company and as directed by it, to and including October 20, 1994 (October 15, 1994 in Elwyhee District). If adverse climate or other conditions necessitate, the Company may, subject to the approval of the Board of Directors of the Nyssa-Nampa Beet Growers Association, extend the date of such controlled harvest at the Nyssa-Nampa District to and including October 25, 1994. Thereafter, the Grower may deliver, without further notice, at his own expense, all previously unharvested beets, provided, however, that the Company, at its option, may reject any **DISEASED, FROZEN, DAMAGED, OR IMPROPERLY TOPPED BEETS**, as well as beets not suitable for the manufacture of sugar, or which contain less than twelve percent (12%) sugar or less than eighty percent (80%) purity. Any beets not delivered by November 25, 1994 (November 15, 1994 in Elwyhee District), shall be delivered as directed by the Company. Any beets not delivered by November 15, 1994, in the Nyssa-Nampa Districts will be delivered as directed by the Company if such directive is approved by the respective director(s) of the Growers Associations. To minimize congestion, the Grower also agrees that deliveries to each receiving station will be in accordance with the beet harvest schedule established by the Company and the representative of the appropriate Beet Growers Association.

4. The Company will pay for all beets grown and delivered under this contract at the rate per ton (2,000 pounds) set out in the following schedule based on the sugar content of the beets grown and delivered hereunder, as modified by Section 5 and on the average net return per one hundred (100) pounds received by the Company between September 26, 1994 and September 25, 1995, on all sales of sugar produced from beets grown in all its Districts.

Sugar Content	AVERAGE NET RETURN FOR SUGAR PER ONE HUNDRED POUNDS												
	\$16.00	\$17.00	\$18.00	\$19.00	\$20.00	\$21.00	\$22.00	\$23.00	\$24.00	\$25.00	\$26.00	\$27.00	\$28.00
18.00%	\$31.0200	\$32.9254	\$34.8385	\$36.7481	\$38.6576	\$40.5670	\$42.4763	\$44.3857	\$46.2950	\$48.2044	\$50.1138	\$52.0232	\$53.9326
17.50%	28.9611	30.8642	32.7673	34.6704	36.5735	38.4766	40.3797	42.2828	44.1859	46.0890	47.9921	49.8952	51.7983
17.00%	26.9023	28.8054	30.7085	32.6116	34.5147	36.4178	38.3209	40.2240	42.1271	44.0302	45.9333	47.8364	49.7395
16.50%	24.8434	26.7465	28.6496	30.5527	32.4558	34.3589	36.2620	38.1651	40.0682	41.9713	43.8744	45.7775	47.6806
16.00%	22.7845	24.6876	26.5907	28.4938	30.3969	32.2999	34.2030	36.1061	38.0092	39.9123	41.8154	43.7185	45.6216
15.50%	20.7256	22.6287	24.5318	26.4349	28.3380	30.2411	32.1442	34.0473	35.9504	37.8535	39.7566	41.6597	43.5628
15.00%	18.6667	20.5698	22.4729	24.3760	26.2791	28.1822	30.0853	31.9884	33.8915	35.7946	37.6977	39.6008	41.5039
14.50%	16.6078	18.5109	20.4140	22.3171	24.2202	26.1233	28.0264	29.9295	31.8326	33.7357	35.6388	37.5419	39.4450
14.00%	14.5489	16.4520	18.3551	20.2582	22.1613	24.0644	25.9675	27.8706	29.7737	31.6768	33.5799	35.4830	37.3861
13.50%	12.4900	14.3931	16.2962	18.2003	20.1034	22.0065	23.9096	25.8127	27.7158	29.6189	31.5220	33.4251	35.3282
13.00%	10.4311	12.3342	14.2373	16.1404	18.0435	19.9466	21.8497	23.7528	25.6559	27.5590	29.4621	31.3652	33.2683
12.50%	8.3722	10.2753	12.1784	14.0815	15.9846	17.8877	19.7908	21.6939	23.5970	25.5001	27.4032	29.3063	31.2094
12.00%	6.3133	8.2164	10.1195	12.0226	13.9257	15.8288	17.7319	19.6350	21.5381	23.4412	25.3443	27.2474	29.1505

Sugar Content	AVERAGE NET RETURN FOR SUGAR PER ONE HUNDRED POUNDS												
	\$29.00	\$30.00	\$31.00	\$32.00	\$33.00	\$34.00	\$35.00	\$36.00	\$37.00	\$38.00	\$39.00	\$40.00	\$41.00
18.00%	\$55.8420	\$57.7451	\$59.6482	\$61.5513	\$63.4544	\$65.3575	\$67.2606	\$69.1637	\$71.0668	\$72.9699	\$74.8730	\$76.7761	\$78.6792
17.50%	53.7831	55.6862	57.5893	59.4924	61.3955	63.2986	65.2017	67.1048	69.0079	70.9110	72.8141	74.7172	76.6203
17.00%	51.7242	53.6273	55.5304	57.4335	59.3366	61.2397	63.1428	65.0459	66.9490	68.8521	70.7552	72.6583	74.5614
16.50%	49.6653	51.5684	53.4715	55.3746	57.2777	59.1808	61.0839	62.9870	64.8901	66.7932	68.6963	70.5994	72.5025
16.00%	47.6064	49.5095	51.4126	53.3157	55.2188	57.1219	59.0250	60.9281	62.8312	64.7343	66.6374	68.5405	70.4436
15.50%	45.5475	47.4506	49.3537	51.2568	53.1599	55.0630	56.9661	58.8692	60.7723	62.6754	64.5785	66.4816	68.3847
15.00%	43.4886	45.3917	47.2948	49.1979	51.1010	53.0041	54.9072	56.8103	58.7134	60.6165	62.5196	64.4227	66.3258
14.50%	41.4297	43.3328	45.2359	47.1390	49.0421	50.9452	52.8483	54.7514	56.6545	58.5576	60.4607	62.3638	64.2669
14.00%	39.3708	41.2739	43.1770	45.0801	46.9832	48.8863	50.7894	52.6925	54.5956	56.4987	58.4018	60.3049	62.2080
13.50%	37.3119	39.2150	41.1181	43.0212	44.9243	46.8274	48.7305	50.6336	52.5367	54.4398	56.3429	58.2460	60.1491
13.00%	35.2530	37.1561	39.0592	40.9623	42.8654	44.7685	46.6716	48.5747	50.4778	52.3809	54.2840	56.1871	58.0902
12.50%	33.1941	35.0972	36.9993	38.9024	40.8055	42.7086	44.6117	46.5148	48.4179	50.3210	52.2241	54.1272	56.0303
12.00%	31.1352	33.0383	34.9414	36.8445	38.7476	40.6507	42.5538	44.4569	46.3600	48.2631	50.1662	52.0693	53.9724

Values for intermediate net returns and sugar contents shall be in proportion. Payment for net returns and sugar contents above or below the foregoing schedule shall be increased or decreased in proportion by using the immediately succeeding or preceding interval as the basis for calculation.

The net return on sugar sold as aforesaid during said period shall be determined by deducting from the gross sales price, all such charges and expenditures as are regularly and customarily deducted from gross sales price of sugar, in accordance with the Company's system of accounting heretofore established, showing net receipts from sugar sold, after deducting proper storage charges (Agreement on file) and also all excise, sales, and other taxes either now or hereafter imposed directly or indirectly on or arising from the possession, holding for sale, sale or shipment of such sugar or on all or any part of the proceeds of such sale. Gross sales price as herein used in determining net return on sugar sold shall be the gross sales price received by the Company beyond which no interest, title or claim in sugar sold is retained by the Company and no profit, compensation or advantage thereon accrues to the Company or its employees. The Grower will indicate by initialing Paragraph 20 of this Agreement, whether or not the determination of gross sales price shall include the net profit or loss incurred by hedging of certain transactions through the purchase and sale of sugar futures. The net profit or loss shall be determined after the deduction of all necessary expenses incurred in said hedging transactions, including commissions and interest (or interest credit). The Company will furnish for inspection of Growers a certified statement by a certified public accountant, not connected with the Company, of net receipts from sugar sold in accordance with this contract.

5. Individual Grower sugar content tests will be used in the Nysse-Nampa and Elwyhee Districts as the basis for individual Grower payments.

The price per ton of beets as calculated in Section 4 above, hereinafter called the district price per ton of beets, shall be modified for each Grower by multiplying each Grower's average sugar content by the adjustment factor to arrive at his adjusted sugar content. The average district cossette test shall be divided by the average of all individual Grower sugar contents to arrive at an adjustment factor. The average of all individual Grower sugar contents shall be determined by multiplying each Grower's average sugar content by his respective tonnage of beets delivered, and by then dividing the total of all such figures for all Growers by the total tonnages delivered in the districts.

6. The amount of the initial payment will not be less than 90% of the minimum guaranteed price per ton of sugarbeets provided by the sugar price support regulations implementing the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990. Final settlement for beets delivered hereunder shall be made, in accordance with the terms of this Contract, not later than October 25, 1995. The initial payment schedule shall be one or the other of the following schedules as agreed to in Paragraph 21 below. If sugar market conditions warrant, then the amount of the initial payment will be greater than 90% of the minimum guaranteed price per ton previously referred to in this paragraph.

**SCHEDULE A**

**SCHEDULE B**

(1) At least 25%, 52%, 80% of the initial payment will be cumulatively and respectively paid as follows:

Delivery Dates	Cumulative Payment	Payment Dates
Through Sept. 30, 1994	25%	Oct. 10, 1994
Through Oct. 31, 1994	52%	Oct. 31, 1994
Through Nov. 20, 1994	52%	Nov. 30, 1994
Through Dec. 21, 1994	80%	Dec. 31, 1994
Dec. 22 until completion	80%	Within a reasonable period

(2) The remaining balance of the initial payment will be paid no later than January 31, 1995.

Interest on such balance of the total initial payment not paid by November 30, 1994 will be paid from December 7, 1994, until the balance is paid, on beets delivered through November 10, 1994, and from January 1, 1995, until the balance is paid, on beets delivered after November 10, 1994, but before December 22, 1994, at the then existing prime rate of the lead bank in the Company's borrowing bank group.

(1) At least 80% of the initial payment will be paid as follows:

Delivery Dates	Payment Dates
Through December 21, 1994	Jan. 5, 1995
Dec. 22 until completion	Within a reasonable period

(2) The remaining balance of the initial payment will be paid no later than January 31, 1995.

(3) Interest on such balance of the total initial payment not paid on January 5, 1995 will be paid from January 6, 1995 until the balance is paid, on all beets delivered through December 21, 1994, at the then existing prime rate of the lead bank in the Company's borrowing bank group.

7. The Grower hereby authorizes the Company to deduct from any monies owing for beets delivered under this (1993 crop) contract according to the 1993 crop detailed freight participation schedule on file at the Company's offices and with representatives of the Grower associations. Additionally, if the total freight for beets paid by the Company to contract rail and truck haulers, divided by the tons of beets hauled, decreases or increases per ton for the 1993 crop as compared to the 1992 crop, one half of that increase or decrease, rounded to the whole cent, will be subtracted from or added to the freight participation schedule amount aforementioned. The freight participation deductions will be made no earlier than the payment made as defined in Paragraph 6-(2) under Schedule A or B.

(a) If the weighted averaged conductivity of all beets, excluding "early" beets, delivered by all Growers under this (1994 crop) contract in each district is less than the nine (9) year weighted average conductivity for the 1984, 1985, 1986, and the six (6) highest of 1987, 1988, 1989, 1990, 1991, 1992 and 1993 crops collectively in such district, then a premium will be paid for all tons bought from such districts as follows: For the first .01 that the weighted average conductivity of all Growers beets (1994) in the respective district is below the aforementioned nine (9) year weighted average, then a 2 cent per ton quality premium will be paid. For the second .01 that the weighted average conductivity of all Growers beets (1994) in the respective district is further below the aforementioned nine (9) year weighted average, then an additional 3 cents per ton quality premium will be paid. For the third and all subsequent .01 that the weighted average conductivity of all growers' beets (1994 crop) in the respective district is further below the aforementioned nine (9) year weighted average, then an additional 4 cents per ton quality premium will be paid. Payments for fractional values between the points will be proportional.

(b) A quality adjustment will be made for all beets grown under the contract, excluding "early" beets as follows: For every 100 ppm of brei nitrate that beets grown by this Grower under this contract is below the weighted average of all beets grown by all Growers in each district assigned, then 17.5 cents per ton is added to the payment for beets. Also for every 100 ppm of brei nitrate that beets grown by this Grower under this contract is above the weighted average of all beets grown by all Growers in each district assigned, then 17.5 cents per ton is deducted from the payment for beets. Additions or deductions for fractional values between points will be proportional. In each District, if the weighted average ppm of brei nitrate of all Growers beets is less than 400 ppm, then no Grower will receive a deduction who has brei nitrate levels below 400 ppm. Additionally, any grower who has less than 200 ppm brei nitrate will receive the same premium per ton as a grower receives in his District who has exactly 200 ppm brei nitrate. Additions and deductions will then be adjusted proportionately in each District to allow for these limits.

9. If all beets growing on September 1, 1995 under all beet contracts collectively for the Nyssa, Nampa, Elwhye, Twin Falls and Mini-Cassia Districts are at the following levels, then there will be a deduction per ton on all beets delivered under this contract for the 1994 crop for Growers who have voluntarily reduced their acreage growing in 1995 by 12 percent or more from 1994 under all such contracts as follows:

BEEET ACREAGE GROWING ON SEPTEMBER 1, 1995	DEDUCTION PER TON
171,000	None
165,000	None
160,000	None
155,000	.20
150,000	.40
145,000	.60
140,000 and below	.80

For acreage between the intervals the deduction is equally interpolated and rounded to the nearest cent per ton.

The Company agrees to allot and contract no less than 176,000 acres collectively in the five districts. If, because of average yield increases, the Company allots and contracts less than 176,000 acres, such proportion shall be applied to the acreage levels above.

To the extent that planted acres exceeded growing acres on September 1, 1995 by more than 1,500 acres, an adjustment for such excess over 1,500 acres shall be made to the above scale. Should severe drought or other acts of nature cause areas normally planted to not be planted, then appropriate adjustments will also be made. In the event that production or other volume restrictions imposed by the U.S. Government apply to the crop, then appropriate adjustments will be made.

10. Advances by the Company to the Grower, either in beet seed, money or otherwise, shall constitute part payment for beets grown and delivered under this Agreement, and any monies or other obligations payable from the Grower to the Company are and shall become, constitute, and remain a prior lien upon the crop of beets herein referred to, and shall be deducted from the initial or any subsequent payments to the Grower. If the Grower is a tenant, his check in payment for beets may be made jointly to the landlord and tenant, unless previously thereto the landlord has made proper release in writing to the Company. If the Grower abandons his beet acreage, any advances made by the Company, either in beet seed, fertilizer, or otherwise, shall immediately become due.

11. The Grower and/or Grower Association may, at his/its own expense have representatives (weighmen, tarenmen, and chemists) in scale houses, tare room and/or laboratory to inspect weights and work done. Such representatives should be knowledgeable in the line of work to be performed and acceptable to the Company.

12. The Company agrees to give the Grower priority of right in the purchase of pulp, for his own use until December 31, 1994, or until ten (10) days before end of campaign, whichever comes first.

13. The Grower hereby authorizes the Company to deduct from any monies owing for beets delivered under this contract as service charges for the year 1994 the sum of nine cents (9c) per ton for the Nyssa-Nampa Beet Growers Association, and the sum of nine cents (9c) per ton for the Elwhye Beet Growers Association; and the Company agrees to pay such sum to said Association unless the Grower notifies the Company in writing at its office not to make such deduction and payment within thirty (30) days after the execution of the Memorandum of Agreement. The grower also authorizes the Company to deduct from any monies owing for beets delivered under this contract an amount per ton to cover the pro-rata share of the cost of return dirt removal from the receiving stations per agreements on file with the Grower Associations.

14. No agent of the Company is authorized to make any alterations, erasures, or additions to this printed contract.

15. This Agreement shall be binding upon the Grower, his heirs, legal representatives, successors and assigns, and upon the Company, its successors and assigns, and shall not be transferable by the Grower without the written consent of the Company, its successors and assigns.

16. Fire, strikes, accidents, acts of God and of the public enemy which prevent the Grower from the performance of this contract or the Company from utilizing the beets set for in the manufacture of sugar therefrom, shall excuse the respective parties hereto from the performance of this contract, except for repayment to the Company of any advances made by the Company to the Grower, as provided in Section 10 hereof.

17. The parties to this Agreement agree to comply with the applicable provision of Title VII (Equal Employment Opportunity) of the Civil Rights Act of 1964.

18. The Grower agrees to inform all parties having an interest in the sugarbeet crop of the terms of this contract.

LOAN AGREEMENT AND DISCLOSURE STATEMENT

The Amalgamated Sugar Company (hereinafter called "Amalgamated") and Terry Hipwell (93-860) (hereinafter whether singular or plural, called "Debtor") hereby enter into this Loan Agreement and agree as follows:

1. Amalgamated shall establish an open end loan account in Debtor's name with a maximum credit limit of \$ 300.00 per acre of sugarbeets sown and growing as of the date of the request for cash advance, or to be sown or grown, but in no event to exceed \$153,500.00. Amalgamated shall have no obligation to make any cash advance pursuant to this Loan Agreement beyond October 1, 1994.
2. Debtor may request cash advances from the loan account from time to time as needed to assist Debtor with the specialized production costs of sugarbeets, and dues or charges of labor sponsoring associations. Amalgamated shall have the absolute right to refuse any request for a cash advance if, in the sole judgement of Amalgamated, the condition of the Collateral does not justify the requested cash advance.
3. Each request, however made, for a cash advance which is granted by Amalgamated shall be deemed an extension of credit under this Loan Agreement by Amalgamated to Debtor.
4. A FINANCE CHARGE will be imposed on the unpaid balance of each cash advance made to Debtor from the date of each cash advance. The balance subject to FINANCE CHARGE will be the amount of all cash advances less payments and credits.
5. The amount of the FINANCE CHARGE will be determined by applying the ANNUAL PERCENTAGE RATE in effect on the date of each advance to the amount of such advance. The current ANNUAL PERCENTAGE RATE is 10.5%, which rate is subject to increase or decrease as the established Amalgamated interest rate changes to reflect changes in the prime interest rate.
6. Debtor shall pay to Amalgamated the total amount of all cash advances, FINANCE CHARGES, and other charges hereunder as they become due to Amalgamated. In the event Debtor does not or has not planted sugarbeets on or before June 1, 1994, such cash advances, FINANCE CHARGES, and other charges shall become due on such date and in the event Debtor abandons all or a substantial part of the crop of sugarbeets, such cash advance, FINANCE CHARGES, and other charges shall become due upon such abandonment. In the event Debtor harvests the crop of sugarbeets, such cash advances, FINANCE CHARGES, and other charges shall become due upon the date of Amalgamated's initial beet payment to Debtor. Debtor hereby consents to any extension of time of payment which may be granted by Amalgamated.
7. An additional charge will be imposed for fees paid to public officials for the recording and releasing of any security interest given by Debtor as security for this loan account.
8. Debtor shall receive no cash advances in excess of the maximum credit limit established in Paragraph 1 hereof.
9. Debtor agrees that all cash advances made hereunder shall be used solely and exclusively for the specialized production cost, as specified above, of sugarbeets which have been contracted to be sold to Amalgamated.
10. Debtor agrees to execute a Security Agreement covering farm products which grants Amalgamated a security interest in Debtor's crops to secure this Loan Agreement and all cash advances made pursuant to this Agreement. Perfection of said Security Agreement and Debtor obtaining all subordinations or waivers so that Amalgamated's security interest has priority sufficient to secure all cash advances contemplated by this Agreement are conditions precedent to the making of any cash advances. The falsity in any material respect of any warranty, representation, or statement made or furnished to Amalgamated in connection with the Security Agreement or this Loan Agreement shall be a default of this Loan Agreement.
11. Upon default of the conditions of this Loan Agreement, or upon any failure to pay as agreed, the entire unpaid balance of such loan account, FINANCE CHARGES, and other charges shall become immediately due and the Debtor will be charged all costs of collection, including a reasonable attorney's fee.
12. This Agreement is binding upon Debtor's heirs, representatives, successors, and assigns.

DATED this 28<sup>th</sup> day of February, 1994

Terry L. Hipwell DEBTOR

THE AMALGAMATED SUGAR COMPANY

DEBTOR

By: Robert Walker

PERSONAL GUARANTEE OF CORPORATE LOAN

For value received, I, we, or either of us, hereby agree to the terms and conditions of all of the obligations entered into by Debtor in the foregoing Loan Agreement and hereby guarantee the performance of all such obligations, and also agree to pay reasonable attorney's fee if suit is brought hereon.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

APR 11 1994

DATE: \_\_\_\_\_

(Name of Grower) Terry Hipwell 93-8601 of \_\_\_\_\_  
 (Address) 30992 Shelton Rd. (City) Parma  
 (County) Payette (State) Idaho

(hereinafter whether singular or plural called "Debtor") hereby grants to The Amalgamated Sugar Company (hereinafter called "Secured Party") a security interest in the collateral hereinafter described to secure payment of all money advanced to Debtor pursuant to Debtor's Loan Agreement(s) with Secured Party. This Security Agreement is subject to the terms and conditions of such Loan Agreement(s). This Security Agreement also secures the payment of any other money loaned by Secured Party to Debtor, now or in the future.

1. Collateral.

a. Debtor grants to Secured Party a security interest in approximately 307.0 acres of sugarbeets or other crops, now sown and growing or to be sown or grown two years (five years in the State of Oregon) from the date of execution hereof, on the following described real property in Payette County, State of Idaho

S $\frac{1}{2}$  NE $\frac{1}{4}$ ; SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 26, Twp. 6, Rg. 5

b. The name of the record owner of said real property is Same

c. Debtor also grants to Secured Party a security interest in all products and proceeds of the foregoing crops, including, but not limited to cash; contract rights, including insurance proceeds private or governmental; accounts receivable; and government disaster or similar payments.

2. Warranties. Debtor hereby warrants and covenants:

a. Debtor is now the owner of the Collateral free from any adverse lien, security interest, or encumbrance and that no financing statement pertaining to any portion of the Collateral is on file in any public office, except as set forth below:

Crop Production Services and West One Bank

b. The Collateral shall not be removed from the above real property without the prior written consent of Secured Party, except for the sale of the Collateral to Secured Party.

c. Debtor shall keep the Collateral in good condition. Debtor shall not waste or destroy the Collateral or any part thereof, and shall plant, cultivate, and harvest the crops in a good and farmerlike manner.

d. Debtor agrees to execute and file financing statements and do whatever may be necessary under applicable law to perfect and continue Secured Party's security interest.

3. Sale of Collateral Prohibited. It is understood between the parties that the Collateral consisting of sugarbeets is to be sold only to Secured Party. Sale of the crop of sugarbeets, or any other crop from the above described real property, to any other person, firm, or corporation is expressly prohibited without the written consent of Secured Party and upon terms and conditions approved by Secured Party.

4. Payment of Expenses by Secured Party. Debtor shall promptly pay any and all taxes, liens, or other expenses or obligations relating to the Collateral. If any such tax, lien, or other expense or obligation relating to the Collateral is not paid by Debtor promptly when due, Secured Party, at its option, may pay any such indebtedness. Debtor shall promptly reimburse Secured Party on demand for any such payments.

5. Defaults. Debtor shall be in default under this Security Agreement on the happening of any one of the following events or conditions or any combination thereof:

a. Failure to make any payment or perform any obligation under Debtor's Loan Agreement with Secured Party, including the exercise by Secured Party of its right to refuse any cash advance because the Collateral does not justify such advance.

b. The falsity in any material respect of any warranty, representation, or statement made or furnished to Secured Party in connection with Debtor's Loan Agreement with Secured Party or this Security Agreement;

c. Any event which results in the acceleration of the maturity of the indebtedness of Debtor to others under any agreement or understanding;

d. The damage, destruction, sale, or encumbrance of any of the Collateral, or the making of any levy on or seizure or attachment of the Collateral;



Nº 708373

DATE JUNE 27, 1996

PAY

WHITE SATIN SUGAR 1855 AND 66 CTS

\$ --1,850.66--

TO THE ORDER OF

LAND VIEW FERTILIZER AND  
HULET MANAGEMENT CO. AND

THE AMALGAMATED SUGAR COMPANY

TERRY L. HIPWELL  
30932 SHELTON ROAD  
PARMA, IDAHO 83660

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

Amounts over \$10,000 require two signatures

⑈ 708373⑈ ⑆ 031100380⑆ 00574207⑈

FOR BEETS PURCHASED



9 77 4976 THE AMALGAMATED SUGAR COMPANY

62-47/311

0804

2427 LINCOLN AVE - BOX 1520 OGDEN, UTAH 84402

08042

PAYABLE AT: WILMINGTON TRUST COMPANY  
MILFORD, DELAWARE 19963

DATE 03/22/96

AMOUNT \$\*\*\*\*\*4,680.20

\*\*\*\*\* FOUR, SIX EIGHT ZERO DOLLARS AND TWO ZERO CENT

TO THE ORDER OF:

INTERNAL REVENUE SERVICE  
LAND VIEW FERTILIZER  
HULET MANAGEMENT CO.

AND TERRY L HIPWELL  
30932 SHELTON ROAD  
PARMA, ID 83660

AUTHORIZED SIGNATURE

⑈ 080428⑈ ⑆ 031100474⑆ 1900 1423⑈

FOR BEETS PURCHASED



9 77 4976 THE AMALGAMATED SUGAR COMPANY

62-47/311

08371

2427 LINCOLN AVE - BOX 1520 OGDEN, UTAH 84402

083712

PAYABLE AT: WILMINGTON TRUST COMPANY  
MILFORD, DELAWARE 19963

DATE 06/29/96

AMOUNT \$\*\*\*\*\*4,625.05

\*\*\*\*\* FOUR, SIX TWO FIVE DOLLARS AND ZERO FIVE CENTS

TO THE ORDER OF:

INTERNAL REVENUE SERVICE  
LAND VIEW FERTILIZER  
HULET MANAGEMENT CO.

AND TERRY L HIPWELL  
30932 SHELTON ROAD  
PARMA, ID 83660

AUTHORIZED SIGNATURE

⑈ 083712⑈ ⑆ 031100474⑆ 1900 1423⑈