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Attorneys for The Amalgamated Sugar Company

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re:

HIPWELL, TERRY,

Debtor.

Case No. 96-02095

**TASCO'S MEMORANDUM IN  
OPPOSITION TO DEBTOR'S  
MOTION FOR TURNOVER  
AND OBJECTION TO CLAIM**

**STATEMENT OF FACTS**

TASCO is a secured creditor of the Debtor's estate in the amount of \$105,561.09, plus interest, pursuant to its Proof of Claim filed September 24, 1996.

On February 8, 1997, the Debtor filed a Motion for Turnover and Objection to Claim against TASCO.

1.) Motion for Turnover

Hipwell's Motion for Turnover is directed to a pre-petition setoff made by TASCO. TASCO's setoff resulted from the fact that Hipwell had been growing operations in several different counties. Hipwell's operations were financed by TASCO under two sets of agreements.

**TASCO'S MEMORANDUM IN OPPOSITION TO DEBTOR'S MOTION FOR  
TURNOVER AND OBJECTION TO CLAIM - 1**

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Copies of the Loan Agreement and Disclosure Statement, and Security Agreement covering farm products relating to Hipwell's Owyhee County, Idaho (Murphy) farming operations, negotiated through TASCOS's Nampa facility are attached. Likewise, copies of the nearly identical agreements related to Hipwell's Payette County, Idaho (Parma) operations, negotiated through TASCOS's Nyssa, Oregon facility and a copy of the Memorandum of Agreement between Hipwell and TASCOS which evidences the contract for purchase of sugar beets are also attached.

The debt of \$105,561.09 owed to TASCOS arose from default of Hipwell's Payette County contract. On the Owyhee County contract, a deferred final payment of \$25,293.24 was due from TASCOS to Hipwell in October 1996. However, in October, 1995, the Owyhee County payment was setoff against the Payette County debt, pursuant to the express terms of the agreements between the parties.

The Security Agreement dated 4-13-95 relating to the Owyhee County contract and Loan Agreement includes the following provisions:

6. Remedies. All obligations secured hereby shall be immediately due and payable upon default hereunder, and Secured Party [TASCOS] 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:

\* \* \*

- e. Secured Party shall have the right immediately and without further action by it, to set off 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.

Paragraph 6 of the Loan Agreement and Disclosure Statement relating to the Payette County contract provides, in part, as follows:

**TASCOS'S MEMORANDUM IN OPPOSITION TO DEBTOR'S MOTION FOR  
TURNOVER AND OBJECTION TO CLAIM - 2**

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 harvests the crop of sugar beets, such cash advances, FINANCE CHARGES, and other charges shall become due upon the date of Amalgamated's initial beet payment to Debtor.

Furthermore, paragraph 11 provides that "[u]pon default of the condition 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 due upon the date of Amalgamated's initial beet payment to Debtor."

Based upon these provisions, Mr. Hipwell's repayment obligation became due at the time of Amalgamated's initial beet payment in October 1995. Pursuant to paragraph 6(e) of the Security Agreement, upon Mr. Hipwell's default, setoff of beet payments owing by the company occurred at that time and is therefore a pre-petition setoff pursuant to § 553(a) of the Bankruptcy Code. The delay in calculating the amount of the "final payment" until October 1996 is a function of the formula for determining the amount of beet payments which is described in the Memorandum of Agreement. In essence, this formula accounts for several variables including fluctuations in sugar prices. Paragraph 6(e) also acknowledges the delay in final calculation wherein it provides for immediate setoff at the time of default "even though such charge is made or entered on the books of Secured Party subsequent thereto."

By motion, the Debtor now claims that the \$25,293.24 payment should be turned over to the estate on the grounds "that setoff is not available to this creditor as the creditor attempts to setoff a pre-petition debt with a post-petition obligation owed by it to the Debtor." However, based on the authority cited below and the plain language of the agreements, both obligations arose pre-petition and therefor setoff is proper and appropriate.

2.) Objection to Claim

In the same moving papers, Debtor also files an "Objection to Claims" on the stated grounds "that the amount of the secured claim of the Creditor TASCOS is too high."

Pursuant to agreements between the parties and filed UCC-1's, TASCOS has perfected security interests in numerous vehicles and equipment of the Debtor. If the Debtor wants TASCOS's claim reduced, then the burden is on the Debtor to show that the value of the collateral is less than TASCOS's secured claim. No such showing has been made by the Debtor. In fact, the Plan filed by the Debtor would appear to indicate exactly the contrary. The Amended Bankruptcy Plan filed by the Debtor admits that TASCOS holds the following priority liens:

		Fair Market Value
A.	Case IH 7140 Magnum Tractor Claims: 1st: Case Credit      \$32,700 2nd: TASCOS          \$ 5,300 3rd: Land View        -0-	\$ 50,000
***		
P.	1980 Ford 8000 /20' bed & hoist Claims: 1st: TASCOS	\$ 15,000
Q.	Tires and Rims: set of 14.9 x 38 Claims: 1st: TASCOS 2nd: Land View	\$ 450
R.	Tires and Rims: 2 sets of 14.9 x 38 Claims: 1st: TASCOS 2nd: Land View	\$ 800

		Fair Market Value
S.	986 IHC Tractor Claims: 1st: TASC0 2nd: Land View	\$ 800
T.	Tires: set of 14.9 x 38 duals Claims: 1st: TASC0 2nd: Land View	\$ 600
U.	12 row bedding bar w/markers Claims: 1st: TASC0 2nd: Land View	\$ 5,000
V.	Farmall H. Gas Tractor Claims: 1st: TASC0 2nd: Land View	\$ 800
W.	John Deere 4630 Tractor Claims: 1st: TASC0 2nd: Land View	\$ 16,000
X.	1973 GMC C-65 w/bed & hoist Claims: 1st: TASC0 2nd: Land View	\$ 9,000
Y.	Land Pride 2 pt. Terrace blade Claims: 1st: TASC0 2nd: Land View	\$ 2,000
Z.	1976 Fort 750 w/16' bed & hoist (rough) Claims: 1st: TASC0 2nd: Land View	\$ 5,800

**TASCO'S MEMORANDUM IN OPPOSITION TO DEBTOR'S MOTION FOR  
TURNOVER AND OBJECTION TO CLAIM - 5**

		Fair Market Value
AA.	12 row Milton Planter Claims: 1st: TASCO 2nd: Land View	\$ 3,600
BB.	J.D. 900 7 shank ripper Claims: 1st: TASCO 2nd: Land View	\$ 2,000
CC.	12 row Dammer Diker Claims: 1st: TASCO 2nd: Land View	\$ 10,000
DD.	Pipe trailer Claims: 1st: TASCO 2nd: Land View	\$ 500
EE.	2 sets of ACE saddle tanks Claims: 1st: TASCO 2nd: Land View	\$ 1,600
FF.	24 row band sprayer Claims: 1st: TASCO 2nd: Land View	\$ 2,000
GG.	IHC 140 plow Claims: 1st: TASCO 2nd: Land View	\$ 2,500
HH.	Air Compressor Claims: 1st: TASCO	\$ 100
II.	Fertilizer Pump Claims: 1st: TASCO	\$ 100

**TASCO'S MEMORANDUM IN OPPOSITION TO DEBTOR'S MOTION FOR  
TURNOVER AND OBJECTION TO CLAIM - 6**

		Fair Market Value
JJ.	24 row 3 pt. Sprayer Claims: 1st: TASC0 2nd: Land View	\$ 2,000
KK.	12 Row Cultivator bar w/tools Claims: 1st: TASC0 2nd: Land View	\$ 5,000

The analysis also shows TASC0 holding a second lien behind John Deere on two additional pieces of equipment:

		Fair Market Value
E.	IHC 1480 Combine Claims: 1st: John Deere 2nd: TASC0 3rd: Land View	\$ 22,500
***		
I.	12 Row Brillion cultivator Claims: 1st: John Deere 2nd: TASC0 3rd: Land View	\$ 7,500

Thus, according to the Debtor's own Plan, the fair market value of TASC0's collateral exceeds the amount of TASC0's claim.

Furthermore, as set forth in the argument below, case law in the Ninth Circuit requires that assets retained by the Debtor be valued at their fair market value without the deduction of any hypothetical sale cost.

## LEGAL ARGUMENT

- 1.) **Both the Debtor's obligation and TASCOCO's obligation arose pre-petition. Therefore, TASCOCO's setoff was proper.**

As noted above, the Debtor's motion challenges TASCOCO's right to set off payments due under the Owyhee County contract against moneys owed to TASCOCO under the Payette County contract. However, as detailed in the Statement of Facts above, Hipwell's payment obligation to TASCOCO became due at the time of TASCOCO's initial beet payment in October 1995. On that same date, pursuant to the terms of the agreements quoted above, TASCOCO set off all moneys due to Hipwell under the Owyhee County contract against the deficiency owed under the Payette County contract. No other result could pertain, given the clear provisions of the agreements between the parties. Consequently, a pre-petition setoff occurred, pursuant to § 553(a) of the Bankruptcy Code. The delay in calculating the exact amount of the "final payment" until October 1996 is a function of the calculation for determining the amount of beet payments which is described in the Memorandum of Agreement. In essence, this formula accounts for several variables, including fluctuations in sugar prices. Paragraph 6(e) also acknowledges the delay in final calculation wherein it provides for immediate setoff at the time of default "even though such charge is made or entered on the books of secured party subsequent thereto." Established case authority holds that pre-petition setoff of mutual debts is proper under § 553(a) even if the actual amounts of deficiency may not be ascertainable on the date the petition is filed.

*In Re Buckenmaier*, 127 B.R. 233 (9th Cir. B.A.P. 1991), acknowledged a creditor's right to setoff. The creditor, Camelback Hospital, had a contingent claim for contribution against the debtor in a pending tort claim action. The debtor contended that Camelback's claim was post-petition and could not be set off. The court held that setoff was proper under § 553(a) even though the claim for contribution was completely unliquidated and subject to numerous

contingencies. It was still eligible for setoff because it had arisen before the filing of the petition.

Code §553(a) requires Camelback to establish two elements before a setoff may be asserted: timing and mutuality. *In re Verco Industries*, 704 F.2d 1134, 1139 (9th Cir. 1983). It appears that both criteria have been satisfied.

The timing element requires that both claims arose pre-petition. Both Buckenmaier's tort claim against Camelback and Camelback's contribution claim are pre-petition claims. This conclusion derives from the Code's extremely expansive definitions of the terms "claim" and "debt." As the United States Supreme Court recently explained in *Pennsylvania Department of Public Welfare v. Davenport*, -- U.S. --, 110 S.Ct. 2126, 109 L.Ed.2d 588 (1990), the meanings of these two terms are "coextensive." *Id.* 110 S.Ct. at 2128. Code § 101(11) defines "debt" as a "liability on a claim." A "claim" is defined by the Code in § 101(4)(A) as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." This latter definition "reflects Congress' broad rather than restrictive view of the class of obligations that qualify as a 'claim' giving rise to a 'debt.'" *Davenport*, 110 S.Ct. at 2130.

While there is no dispute that Buckenmaier's negligence action should be classified as pre-petition, Buckenmaier argues that Camelback's contribution action is a post-petition claim. However, numerous cases have held that under the broad definition of the term "claim," contribution or indemnifications claims arise at the "time when the acts giving rise to the alleged liability were performed," and not when the claims technically accrue under state law. Here, the claim for contribution arises from the 1985 stabbing incident, and it is therefore a pre-petition claim, notwithstanding that the cause of action for contribution has not yet accrued. (Citations omitted.)

127 B.R. at p. 238. *Accord, Braniff Airways, Inc. v. Exxon Co., U.S.A.*, 814 F.2d 1030 (5th Cir. 1987); *Matter of Lundell Farms*, 86 B. R. 582 (Bkrtcy. W. Dist. Wis. 1988).

Herein, the same legal principle pertains. The fact that the Debtor's right to receive payments from TASCOCO arose pre-petition is dispositive. Setoff is appropriate.

**2.) The valuation of TASCOCO's security interest must be based on the fair market value of the collateral without any deduction for hypothetical sales costs.**

As noted above, Debtor has filed an "Objection to Claims" against TASCOCO on the grounds "that the amount of the secured claim of the Creditor TASCOCO is too high." The plain

language of the Debtor's pleading would appear to indicate that the Debtor is asserting a right to cram down the amount of TASCOS secured claim. However, as detailed above in the Statement of Facts, the proposed Amended Bankruptcy Plan filed by the Debtor admits that TASCOS has priority liens in collateral which as a "Fair Market Value" (Debtor's own words) exceeds the amount of TASCOS secured claim. In the proposed Amended Plan, the Debtor suggests that "Fair Market Value" must be discounted by 26 percent in hypothetical sales costs (Amended Plan, Article X at p. 13). This may be an appropriate discount for a liquidation analysis. However, hypothetical sales costs may not be subtracted from "Fair Market Value" for determining the secured claim of a creditor in property which, under a plan, is being retained by the Debtor.

The recently decided case of *In Re Taffi*, 96 F.3d 1190 (9th Cir. 1996), sets the standard for this circuit in determining the fair market value of collateral under a plan where the debtor proposes to retain possession of the collateral. Under that standard, the collateral is valued at fair market value without the deduction of any hypothetical sale cost. Under this standard, there is nothing before the Court which would indicate that the claim of TASCOS is not secured by adequate collateral. The amount of TASCOS secured claim is not too high.

#### CONCLUSION

For the foregoing reasons, the Debtor's Motion and Objection should be denied.

DATED this 26th day of February, 1997.

PENLAND MUNTHEK BOARDMAN, CHARTERED

  
Richard C. Boardman, Of the Firm  
Attorneys for The Amalgamated Sugar Company

### CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 26th day of February, 1997, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method indicated below, in accordance with the rules of procedure, to the following persons:

Howard R. Foley  
Foley & Freeman, Chartered  
77 East Idaho Street  
P.O. Box 10  
Meridian, ID 83680

Hand Delivery \_\_\_\_\_  
U.S. Mail \_\_\_\_\_  
Facsimile   X    
Overnight Mail \_\_\_\_\_

Office of the U.S. Trustee  
304 North Eighth Street, Ste. 347  
P.O. Box 110  
Boise, ID 83701

Hand Delivery \_\_\_\_\_  
U.S. Mail   X    
Facsimile \_\_\_\_\_  
Overnight Mail \_\_\_\_\_

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

Hand Delivery \_\_\_\_\_  
U.S. Mail \_\_\_\_\_  
Facsimile   X    
Overnight Mail \_\_\_\_\_

  
Richard C. Boardman

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 1/2%, 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 DEBTOR

THE AMALGAMATED SUGAR COMPANY

DEBTOR

By: Max Shorn

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 \_\_\_\_\_.

## SECURITY AGREEMENT COVERING FARM PRODUCTS

DATE: 4-13-95

(Name of Grower) TERRY L. HIPWELL, A SINGLE MAN of  
 (Address) 30932 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 IWBH  
 N2 NW4, SEC 20, TWP 3S, RG IWBH  
 NW4, SEC 10, TWP 3S, RG IWBH

- b. The name of the record owner of said real property is RULET 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:

pml 04-05-95

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 any voluntary or involuntary proceeding under the bankruptcy or any state insolvency laws against Debtor; 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, retaking, 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. Hipwell DEBTOR THE AMALGAMATED SUGAR COMPANY  
 TERRY L. HIPWELL DEBTOR By: \_\_\_\_\_

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 \$ 400.00 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>ROBERT MANAGEMENT COMPANY</u>	X
X	<u>WELLS FARGO BANK</u>	X <u>4/13/95</u>
X	<u>LANE FERTILIZER</u>	X <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: Robert M. C. By John Hubel Date: April 14, 95

- e. Commencement of any voluntary or involuntary proceeding under the bankruptcy or any state insolvency law against Debtor; 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, retaking, 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. Hipwell DEBTOR THE AMALGAMATED SUGAR COMPANY  
 TERRY L. HIPWELL  
 DEBTOR By: Marie 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 \$ 400.00 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>ROBEI MANAGEMENT COMPANY</u>	X _____
X <u>WELLS FARGO BANK</u>	X <u>4/13/95</u>
X <u>LANDING FERTILIZER</u>	X <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: H. B. Thomas Co. By Gary Hubel Date: April 14, 95

LOAN AGREEMENT AND DISCLOSURE STATEMENT

The Amalgamated Sugar Company (hereinafter called "Amalgamated") and Terry Ripwell (93-8601) (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 \$500.00 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 \$137,500.00. Amalgamated shall have no obligation to make any cash advance pursuant to this Loan Agreement beyond <sup>6, 1995</sup> ~~October 1, 1995~~ over.
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 11.0%, 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, 1995, 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 1st day of May, 1995.

Terry L. Ripwell DEBTOR

THE AMALGAMATED SUGAR COMPANY

\_\_\_\_\_  
DEBTOR

By: Gilbert J. Wells

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\_\_\_\_.

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

(Name of Grower) Terry Binweil (93-8601) of  
(Address) 30932 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 275.0 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:

West One Bank and 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 any voluntary or involuntary proceeding under the bankrupt or any state insolvency laws against Debtor; 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, retaking, 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.

T. L. Howell DEBTOR THE AMALGAMATED SUGAR COMPANY  
 DEBTOR By: Gilbert V. Shell

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 \$500.00 + 363.397.70 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 West One Bank Date 5/2/95  
Bankview Fertilizer 5/2/95

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.

PAYETTE \$63,397.70 (94 Crop Carryover)  
 TERBY HIRWELL

# Memorandum of Agreement

DUPLICATE

BETWEEN

**THE UNDERSIGNED GROWER**

(Hereinafter called the Grower)

SEASON OF 1995  
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 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 Rodenticide 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 in 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 sugar contents shall be in proportion. Payment for net returns shall be based on the sugar 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
18.00%	\$23,3825	\$25,2915	\$27,2012	\$29,1106	\$31,0200	\$32,9294	\$34,8388	\$36,7481	\$38,6576	\$40,5670	\$42,4763	\$44,3857	\$46,2950
17.50%	22,5886	24,4318	26,2749	28,1180	29,9611	31,8042	33,6473	35,4904	37,3335	39,1766	41,0198	42,8630	44,7061
17.00%	21,7948	23,5717	25,3486	27,1254	28,9023	30,6791	32,4559	34,2328	36,0097	37,7867	39,5634	41,3403	43,1171
16.50%	21,0010	22,7124	24,4238	26,1352	27,8466	29,5580	31,2694	32,9808	34,6922	36,4036	38,1150	39,8264	41,5378
16.00%	20,2072	21,8516	23,4959	25,1402	26,7845	28,4288	30,0732	31,7175	33,3619	35,0063	36,6505	38,2949	39,9392
15.50%	19,4134	20,9914	22,5695	24,1476	25,7257	27,3038	28,8819	30,4600	32,0382	33,6163	35,1944	36,7725	38,3506
15.00%	18,6196	20,1314	21,6432	23,1550	24,6668	26,1786	27,6904	29,2022	30,7140	32,2259	33,7377	35,2495	36,7613
14.50%	17,8257	19,2712	20,7168	22,1624	23,6079	25,0535	26,4990	27,9446	29,3901	30,8358	32,2812	33,7268	35,1723
14.00%	17,0320	18,4112	19,7905	21,1698	22,5491	23,9284	25,3077	26,6869	28,0662	29,4455	30,8247	32,2041	33,5833
13.50%	16,2382	17,5511	18,8640	20,1772	21,4902	22,8032	24,1163	25,4293	26,7423	28,0554	29,3684	30,6813	31,9944
13.00%	15,4443	16,6913	17,9378	19,1844	20,4314	21,6781	22,9248	24,1716	25,4182	26,6649	27,9117	29,1584	30,4051
12.50%	14,6505	15,8310	17,0115	18,1920	19,3725	20,5530	21,7335	22,9140	24,0944	25,2750	26,4554	27,6359	28,8164
12.00%	13,8567	14,9709	16,0851	17,1992	18,3134	19,4275	20,5417	21,6558	22,7700	23,8842	24,9983	26,1125	27,2267

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
18.00%	\$46,2044	\$50,1138	\$54,0232	\$57,9326	\$61,8420	\$65,7513	\$69,6607	\$73,5701	\$77,4795	\$81,3889	\$85,2983	\$89,2076	\$93,1170
17.50%	44,5492	48,3922	52,2354	56,0786	59,9217	63,7648	67,6079	71,4510	75,2942	79,1373	82,9804	86,8235	90,6666
17.00%	42,8940	46,6708	50,4477	54,2245	58,0014	61,7782	65,5551	69,3320	73,1088	76,8857	80,6626	84,4394	88,2163
16.50%	41,2388	44,9492	48,6599	52,3705	56,0811	59,7917	63,5023	67,2129	70,9235	74,6341	78,3447	82,0553	85,7659
16.00%	39,5836	43,2278	46,8722	50,5165	54,1608	57,8051	61,4494	65,0937	68,7380	72,3823	76,0266	79,6709	83,3152
15.50%	37,9284	41,5064	45,0844	48,6625	52,2405	55,8186	59,3967	62,9747	66,5528	70,1309	73,7090	77,2870	80,8651
15.00%	36,2732	39,7849	43,2966	46,8083	50,3200	53,8317	57,3434	60,8551	64,3668	67,8785	71,3902	74,9019	78,4136
14.50%	34,6180	38,0634	41,5089	44,9543	48,4000	51,8455	55,2910	58,7365	62,1820	65,6275	69,0730	72,5185	75,9640
14.00%	32,9628	36,3419	39,7212	43,1004	46,4797	49,8590	53,2382	56,6175	59,9968	63,3761	66,7554	70,1347	73,5140
13.50%	31,3076	34,6204	37,9332	41,2460	44,5588	47,8716	51,1844	54,4972	57,8100	61,1228	64,4356	67,7484	71,0612
13.00%	29,6524	32,8989	36,1454	39,3924	42,6394	45,8864	49,1334	52,3804	55,6274	58,8744	62,1214	65,3684	68,6154
12.50%	27,9972	31,1774	34,3576	37,5378	40,7180	43,8982	47,0784	50,2586	53,4388	56,6190	59,7992	62,9794	66,1596
12.00%	26,3420	29,4559	32,5701	35,6844	38,7986	41,9128	45,0270	48,1412	51,2554	54,3697	57,4840	60,5982	63,7125

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.

- 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 have been paid if there was no distinction between domestic and non-domestic sugar sales.
- 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 to all sugar sales for the settlement period.
- 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 content tests will be used in the Nyssa-Nampa and Elwybee Districts as the basis for individual Grower payments.

The price per ton of beets as indicated 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, 1996. The initial payment schedule shall be one or the other of the following schedules as agreed to in paragraph 7 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 indicated 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:

(1) At least 80% of the initial payment will be 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

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.

(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 1, 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.

(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, Elwyhee, 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:

BEE T 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/its 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 (9¢) per ton for the Nyssa-Nampa Beet Growers Association; and the sum of seven cents (7¢) per ton for the Elwyhee 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.

20. (a) The undersigned Grower *does* desire to participate in the profit or loss incurred by hedging as set forth in Paragraph 4, by initialing here T.H.  
 (b) The undersigned Grower *does not* desire to participate in the profit or loss incurred by hedging as set forth in Paragraph 4, by initialing here T.H.
21. The undersigned Grower shall be paid in accordance with Schedule A (initials) is Paragraph 6.
22. THE UNDERSIGNED GROWER HAS READ PARAGRAPH 15 REGARDING THE POSSIBLE PURCHASE OF THE COMPANY AND THE CONVERSION TO AN AGRICULTURAL COOPERATIVE. T.H. (Initials).

There are 22 paragraphs and one schedule that comprise the terms and conditions of this Contract.

Acres contracted 475.0 for delivery of beets at Murphy Receiving Station.  
 Executed in duplicate originals this 2 day of March 1995  
 By Larry Dean AGENT Terry L. Hipwell GROWER

APPROVED BY THE NYSSA-NAMPA BEET GROWERS ASSOCIATION  
 APPROVED BY THE ELWYHEE BEET GROWERS ASSOCIATION

1995  
 Grower No. 4976  
 Acres Contracted 475.0  
 Station 77  
 County 37 State Ill  
 Farmman 93  
 THE AMALGAMATED SUGAR COMPANY  
 ONE YEAR BEET CONTRACT WITH:

Grower Name Terry L. Hipwell  
 Fed ID Number 519-86-2600  
 Address 30932 Skelters Rd  
 City Parsons State Ill Zip 63660  
 Landowner Name Habet Mtg. Co.

Address Murphy State Ill Zip 63650  
 Agent's Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Legal Description E2 Sec. 17  
 Twp. 35 No. 1  
N2 N1/4 Sec 20 T10P 35 R6 1  
 Twp. 35 Sec. 10  
 Rtg. 35 Rtg. 1

Map Rent   
 Cash Rent   
 Wife's First Name \_\_\_\_\_  
 Schedule A  B   
 Hedge Y  N

CONTRACT FIELD #	ACRES
011	475.0
TOTAL	475.0

LOCATION  
 1 EARLY ACRES  
 2 REGULAR ACRES  
 3 CONTRACT NO.  
 4 TAX ID. NO.  
 5 GROWER TYPE

FIRST NAME  
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MIDDLE INITIAL  
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LAST NAME  
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STREET  
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CITY  
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CONTRACT NO. \_\_\_\_\_  
 TAX ID. NO. \_\_\_\_\_  
 GROWER TYPE \_\_\_\_\_

CREDIT LIMIT \_\_\_\_\_  
 HEDGING \_\_\_\_\_  
 PAYMENT \_\_\_\_\_  
 FELLOMAN \_\_\_\_\_  
 COUNTY \_\_\_\_\_  
 STATE \_\_\_\_\_  
 GROWER ASSOC. NO. \_\_\_\_\_  
 GROWER ASSOC. RATE \_\_\_\_\_  
 VALID DELIVERY STATION \_\_\_\_\_

LAND DESCRIPTION  
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LANDOWNER - FIRST NAME  
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LANDOWNER - LAST NAME  
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INT. PARTY 2  
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INT. PARTY 4  
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SECOND GROWER