

# ORIGINAL

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*Attorneys for Bank of the West*

## IN THE UNITED STATES BANKRUPTCY COURT

## FOR THE DISTRICT OF IDAHO

IN RE:

DAN L. JOHNSON

and

NANCY J. JOHNSON

Case No. 00-3091

### **MOTION TO ALLOW AMENDED PROOF OF CLAIM AND FOR SURRENDER OF CASH COLLATERAL**

Secured Creditor Bank of the West (the "Bank") hereby moves the court for an order allowing the Bank to amend its proof of claim and an order requiring the Chapter 7 Trustee (the "Trustee") to surrender the Bank's cash collateral now in the Trustee's possession.

#### A. STATEMENT OF FACTS

##### 1. General Background

Dan and Nancy Johnson (the "Debtors") operated a dairy in Ontario, Oregon before filing for Chapter 7 relief on December 6, 2000. The Bank was a creditor with a secured interest in the dairy herd and other assets. At the time of the filing, there were immediate issues concerning the health of the dairy herd.

Given the urgent situation, the Trustee, the Debtor and the Bank filed with the Court a request for ex parte relief and a Stay Relief Stipulation on December 12, 2000. The Stay Relief Stipulation fully sets forth the nature and extent of the Bank's claim. In addition, the Stipulation includes all the substantive documentation of the Bank's claim, including the Agricultural Security Agreement and UCC financing statements.

2. Liquidation and Representations about Collateral

After receiving relief from the automatic stay, the Bank with the cooperation of the Debtors and the Trustee, liquidated what it thought was all of its collateral. The last proceeds from that liquidation were applied to the obligation on February 16, 2001, leaving a remaining balance of \$98,297.47. At that time, the Bank was not aware of any remaining collateral in the possession of the Debtor or the Trustee. Neither the Debtor nor the Trustee disclosed any further assets subject to the Bank's lien. The Bank was left to believe that in fact all its collateral had been liquidated.

Additionally, the Debtors and the Trustee represented to the Bank that there were no additional assets subject to the Bank's lien. At no time did the Debtors or the Trustee contact the Bank to correct these representations. The Bank relied on the representations of the Debtors and Trustee and discontinued its search for assets.

3. Failure to Disclose Cash Collateral

The original schedules filed by the Debtors did not disclose the existence of a Dairy Market Loss payment by the United States Department of Agriculture<sup>1</sup>, in the amount of \$15,563.95 (the "Cash Collateral"). Shortly after filing the petition, the Debtors amended Schedule D to indicate that the Bank of the West had an interest in cattle, which the Debtors

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<sup>1</sup> The check was issued by the Commodity Credit Corporation of the Farm Services Agency under the US Department of Agriculture.

intended to surrender. The amended schedule does not indicate the existence of the Cash Collateral.

Five months after the petition was filed, on May 7, 2001, the Trustee filed a one page interim report. This interim report indicates that the remaining estate consists of uncollected preferences in the amount of \$15,000 and "Receipts since last report" of \$15,563. Nowhere does the interim report disclose the nature of the "Receipts" listed. There is apparently no disclosure in the record of the nature of the receipts. In hindsight, the "Receipts" reference presumably relates to the Cash Collateral.

#### 4. Notice of Dividends and Final Accounting

Shortly after the Interim report was filed, the Clerk sent out Notice of Possible Dividends to Creditors which set forth a deadline for filing a proof of claim. Again, this Notice was one page long and does not contain any information about the source of the dividends to be distributed. After its receipt of this document, the Bank filed a proof of its claim. Believing at that time that all the Bank collateral had been liquidated, the Bank indicated that its remaining claim was unsecured.

More than two years after the expiration of the proof of claim deadline, the Trustee served a Notice of Final Accounting. The Notice of Final Accounting does not indicate the source of the dividend to be distributed. The only place in the court record that indicates the source of the funds is the Trustee's Final Report, dated in September of 2003, which was not served but was available on the internet or by request to the Trustee's office. The relevant information is contained in an attachment, as a line item, several pages into the report.

B. ARGUMENT

1. The Bank Has a Valid Property Perfected Lien

The Agricultural Security Agreement between the Bank and the Debtors defines Collateral as including among other things:

"All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease or other disposition of any of the property described in this Collateral section or appurtenant to any of the lands or operations of Grantor, or held in gross, cash, farm products, or otherwise, and whether from or through any federal or state government agency or program or otherwise, including without limitation, all assessments, points, rights of storage, hauling and grazing, and irrigation and water rights; all entitlements, rights in payment and payments in whatever form received, including but not limited to, payments under any governmental agricultural diversion programs, governmental agricultural assistance programs, the Farm Service Agency Wheat Feed Grain Program, and any other such program of the United States Department of Agriculture, ware house receipts, chemicals and fertilizers, documents, letters of entitlement, and deficiency, conservation reserve, and diversion and storage payments."

*See,* Exhibit 1 to this Motion, also Exhibit E to the Stipulation for Stay Relief, Docket #6, Agricultural Security Agreement. The Bank properly perfected its interest in the collateral, including the Cash Collateral by filing UCC forms with the Idaho Secretary of State. *See,* Exhibit 2 to this Motion, also Exhibit F to the Stipulation for Stay Relief, Docket #6, UCC filings.

A secured interest in an agricultural assistance program payment from the government can be recognized in bankruptcy if the right to that payment existed pre-petition. *In re Schmitz*, 270 F. 3d 1254 (9<sup>th</sup> Cir. 2001) (holding that security interest was not valid because government program giving rise to payment did not exist pre-petition). The Cash Collateral in this case arose under a government program where the final USDA Rule was enacted in May of 1999. 64 Fed. Reg. 24, 933-24, 936. The Debtors filed their petition on December 7, 2000, after the final USDA Rule was in effect, and therefore, the Bank's interest in the payment is valid. Note that

the payment would likely also be classified as collateral under the Bank's interest in general intangibles and contract rights.

In addition, the Cash Collateral is a result of pre-petition operations. The Debtor filed its Chapter 7 Petition on December 6, 2000, at which time the herd was not being cared for and literally starving. The herd was stabilized and sold immediately thereafter. The Debtor did not operate between the filing of the petition and the sale of the herd.

For the foregoing reasons, the Bank has a valid and perfected secured interest in the Cash Collateral.

## 2. The Bank Is Entitled To Amend Its Proof of Claim and Assert Its Secured Interest

Under appropriate circumstances, the bankruptcy court may allow late amendment to a proof of claim. *US v. Johnston* 267 B.R. 717 (N.D. Tex. 2001) *affirmed* 48 Fed.Appx. 917, 2002 WL 31115118 (5<sup>th</sup> Cir. Tex.). Amendment is appropriate to change a claim previously characterized as unsecured to secured where the nature of the collateral was never specifically disclosed by the debtor. *Id.* at 722. The Bankruptcy Court has the authority to allow the amendment both under Federal Rules of Bankruptcy Procedure 7015 and under Section 105 of the Bankruptcy Code. *Id.*

In *U.S. v. Johnston*, the US District Court for Texas found that the Bankruptcy Court abused its discretion by not allowing the IRS to amend its proof of claim post-confirmation. The IRS had filed a proof of claim that valued its lien according to the existing real estate assets about which the IRS was aware. In fact, the Debtor had an additional interest in real estate that was only ambiguously listed in the schedules as a 1/3 interest in her deceased father's estate and was not listed in Schedule A for real property. The schedules and subsequent pleadings did not disclose any further information about what assets were included within that listing.

When the IRS learned about the Debtors interest in additional real estate she inherited from her father, it filed an amended proof of claim that increased the value of its secured interest and decreased the value of its unsecured interest. The total amount of the IRS claim was not increased in the amended proof of claim. The Bankruptcy Court held that the debtor's disclosure in the schedules was sufficient to put the IRS on notice of the interest and did not allow the amendment.

The US District Court for Texas overturned the Bankruptcy Court and allowed the IRS amendment. Specifically, the District Court found that the debtor has an affirmative obligation to make full disclosure of its assets:

In light of the debtor's disclosure obligations, it simply is unreasonable to conclude that a creditor is adequately apprised of the fact that the debtor has an interest in real property when it is not disclosed on the Schedule A nor otherwise specifically identified in any other filings. And, the bankruptcy court's suggestion that the IRS was at fault by failing to adequately investigate the nature of Johnston's interest incorrectly allocated the burden. It was Johnston's burden to correctly schedule her property; the IRS should have been able to rely on the accuracy of those schedules.

*Id.* at 723. Similarly, the Bank has no obligation to investigate receipts the source of which the trustee did not disclose, yet implicitly characterized as property of the estate. The asset is listed on the preliminary report as simply a receipt. The only other reference on that report is to a potential preferential transfer, something apparently not subject to the Bank's interest. It is the obligation of the debtor to make full disclosure of the nature of the asset and this it failed to do. Therefore, the Bank should be allowed to amend its proof of claim to recover the Cash Collateral.

### 3. The Estate will Suffer No Undue Prejudice

The Bank is not asserting a new claim in this case. *See, Johnston* at 722 ("... 'the principal concern of claims amendment, that no new claim be tardily asserted, is absent.'")

*Citation omitted*). In fact, the Bank made a full disclosure of the nature and extent of its claim in the Stay Relief Stipulation signed by the Trustee. The Trustee and the Debtor worked cooperatively with the Bank in the liquidation of assets and therefore, were well aware of the Bank's secured interest. Despite this, the Debtor and the Trustee knowingly allowed the Bank to believe that all its collateral had been liquidated and did not tell the Bank about the existence of the Cash Collateral.

Further, this is not a case where anyone acted in reliance on any action or omission made by the Bank. The omission was made by the Trustee in failing to make a full disclosure of the nature of the assets. The Bank relied upon the representations of the Debtors and the Trustee that all its collateral had been sold. The Bank further relied upon the Trustee's implied assertion in pleadings that the receipts were unencumbered property of the estate.

The Trustee and the Estate should not be allowed to mislead secured creditors to their prejudice to reap a windfall for the estate. *See, Johnston at 722.* ("Johnston's other creditors were not unduly prejudiced by the amendment, 'for they . . . achieved an undeserved windfall from a denial of the amendment.' *Citation omitted*).

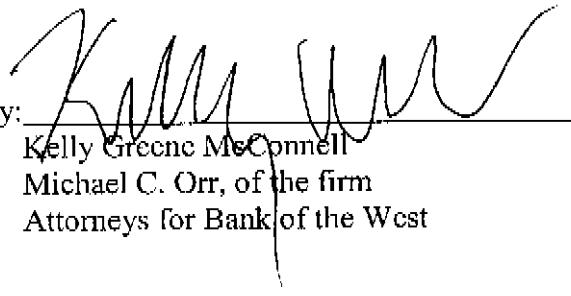
C. CONCLUSION

For the foregoing reasons, the Bank requests that the Court allow its amended proof of claim, require the Trustee to turn over the Cash Collateral together with all interest earned thereon to the Bank, and for such other relief as the Court deems equitable.

DATED this 14 day of November, 2003.

GIVENS PURSLEY LLP

By:

  
Kelly Greene McConnell  
Michael C. Orr, of the firm  
Attorneys for Bank of the West

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11 day of November, 2003, a true and correct copy of the foregoing document was served on the parties in the manner set forth below:

Richard E. Crawford  
Trustee  
410 S. Orchard St.  
Boise, ID 83705

- U.S. Mail  
 By hand  
 Overnight  
 Facsimile

Dan Leroy Johnson  
3783 Vista Dr.  
Ontario, OR 97914

- U.S. Mail  
 By hand  
 Overnight  
 Facsimile

Nancy June Johnson  
3783 Vista Dr.  
Ontario, OR 97914

- U.S. Mail  
 By hand  
 Overnight  
 Facsimile

Cyrus J. Roedel  
355 W. Myrtle St., #102  
Boise, ID 83702-7607

- U.S. Mail  
 By hand  
 Overnight  
 Facsimile

Jerry V. Jensen  
P.O. Box 1906  
Twin Falls, ID 83303-1906

- U.S. Mail  
 By hand  
 Overnight  
 Facsimile

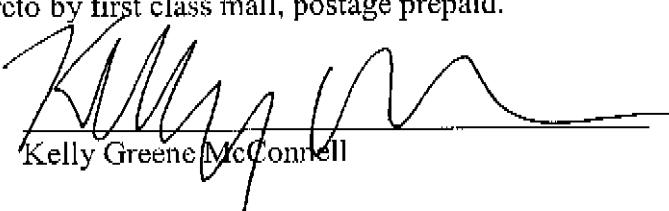
Warren S. Derbridge  
P.O. Box 32  
Boise, ID 83702-0032

- U.S. Mail  
 By hand  
 Overnight  
 Facsimile

Office of the United States Trustee  
304 North 8<sup>th</sup> Street Suite 347  
Boise, ID 83701

- U.S. Mail  
 By hand  
 Overnight  
 Facsimile

Additional Creditors Listed on Exhibit "A" hereto by first class mail, postage prepaid.



Kelly Greene McConnell

## **EXHIBIT A**

Ray Belnap and Jean Belnap  
4137 Kochmeier Rd  
Vale, OR 97918

William Johnson  
4220 331<sup>st</sup> Avenue  
Carnation, WA 98014

Shane Meacham  
1503 Whitley Lane  
Vale, OR 97918

Chase Visa  
P.O. Box 52108  
Phoenix, AZ 85072-2108

Caine Veterinary Teaching Center  
University of Idaho  
1020 E Homedale Rd  
Caldwell, ID 83607

Halpins Dairy Supply  
3783 Vista Dr  
Ontario, OR 97914

Farmers Supply CO OP  
514 SW 4th Ave  
Ontario, OR 97914

Ironhead Construction  
240 Clark Street South  
Vale, OR 97918

Farm Service Agency  
7620 SW Mohawk  
Tualatin, OR 97062

Treasure Valley Animal Clinic  
2075 Park Avenue  
Nyssa, OR 97913

Discover Financial Service  
POB 8003  
Hilliard, OH 43026

Vale Veterinary Clinic  
1590 John Day Highway  
Vale, OR 97918

Malheur County Tax Collector  
251 B Street Wcst  
Vale, OR 97918

Halpin Dairy Supply  
15 East Bowen  
Meridian, ID 83642

Malheur Federal Credit Union  
P.O. Box 520  
Ontario, OR 97914

MBNA America Bank, NA  
P.O. Box 15168  
Wilmington, DE 19850

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GIVENS MURSLEY LLP

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EXHIBIT

# Pacific One Bank

## AGRICULTURAL SECURITY AGREEMENT

**Principal Office Address:** 8200 SW HARRISON, PORTLAND, OREGON 97219  
Balances in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

**Borrower:** DAN L. JOHNSON  
NANCY J. JOHNSON  
3733 VISTA DR.  
ONTARIO, OR 97361

**Lender:** PACIFIC ONE BANK  
ONTARIO BRANCH  
c/o LOAN OPERATIONS CENTER  
PO BOX 40108  
PORTLAND, OR 97240-40108

**THIS AGRICULTURAL SECURITY AGREEMENT** is entered into between DAN L. JOHNSON and NANCY J. JOHNSON (referred to below as "Grantor") and PACIFIC ONE BANK (referred to below as "Lender"). For valuable consideration, Grantor grants to Lender a security interest in Collateral, in addition to all other rights which Lender may have by law.

**DEFINITIONS.** The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Agreement.** The word "Agreement" means this Agricultural Security Agreement, as this Agricultural Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Agricultural Security Agreement from time to time. The word "Collateral" means the following described property of Grantor, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

All inventory, chattel paper, documents, general intangibles, farm products, livestock and farm equipment, together with the following specifically described property:  
All farm equipment and machinery whether now owned or hereafter acquired;  
All dairy livestock and progeny thereof whether now owned or hereafter acquired;  
All food-crops growing to be grown, harvested, in inventory or to be purchased;  
All milk proceeds.

In addition, the word "Collateral" includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (a) All attachments, accretions, accessories, tools, parts, supplies, increases, and additions to and all replacements of and substitutions for any property described above.
- (b) All products and produce of any of the property described in this Collateral section.
- (c) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, or other disposition of any of the property described in this Collateral section or appurtenant to any of the lands or operations of Grantor, or held in trust, whether in cash, farm products, or otherwise, and whether from or through any federal or state government agency or program or otherwise, including without limitation, all accounts, rents, rights of storage, mailing and grading, and irrigation and water rights; all entitlements, rights to payment, and payments, in whatever form received, including but not limited to, payments under any governmental agricultural diversion programs, governmental agricultural assistance programs, the Penn Services Agency Wheat Feed Grain Program, and any other such program of the United States Department of Agriculture, warehouse receipts, chemicals and fertilizers, documents, letters of entitlement and deficiency, conservation reserve, and diversion and storage payments.
- (d) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section.
- (e) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.
- (f) All livestock, including without limitation all poultry, cattle, horses, pigs, sheep, and other farm animals, of every kind and description, together with their natural increase and including castrated but unborn livestock, plus all additioins to, substitutions for, and replacements of, any livestock, together with all proceeds and products thereof, and all farm products and supplies, including without limitation all feed, grain, hay, forage, fodder, feed additives and supplements, and medicines and veterinary supplies.

Some or all of the Collateral may be located on the following described real estate:

ACREAGE LOCATED IN THE SE 1/4 NW 1/4 OF SECTION 7, TOWNSHIP 18 SOUTH, RANGE 45 EAST OF THE WILLAMETTE MERIDIAN IN MALHEUR COUNTY, STATE OF OREGON, LEARED BY THE DEBTORS FROM DAVID AND HELEN PATCHETT.

**Event of Default.** The words "Event of Default" mean and include without limitation any of the Events of Default set forth below in the Section titled "Events of Default".

**Grantor.** The word "Grantor" means DAN L. JOHNSON and NANCY J. JOHNSON.

**Guarantor.** The word "Guarantor" means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the indebtedness.

**Indebtedness.** The word "Indebtedness" means the Indebtedness evidenced by the Note, including all principal and interest, together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. In addition, the word "Indebtedness" includes all other obligations, debts and liabilities, plus interest thereon, of Grantor, of any one or more of them, to Lender, as well as all claims by Lender against Grantor, or any one or more of them, whether existing now or later; whether they are voluntary or involuntary, due or not due, direct or indirect, absolute or contingent, liquidated or unliquidated; whether Grantor may be liable individually or jointly with others; whether Grantor may be obligated as guarantor, surety, accommodation party or otherwise; whether recovery upon such Indebtedness may be or hereafter may become barred by any statute of limitations; and whether such Indebtedness may be or hereafter may become otherwise unenforceable.

**Lender.** The word "Lender" means PACIFIC ONE BANK, its successors and assigns.

**Note.** The word "Note" means the note or credit agreement dated May 18, 1998, in the principal amount of \$209,311.07 from DAN L. JOHNSON and NANCY J. JOHNSON to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for the note or credit agreement.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

**RIGHT OF SETOFF.** Grantor hereby grants Lender a contractual security interest in and hereby assigns, conveys, delivers, pledges, and transfers all of Grantor's right, title and interest in and to Grantor's accounts with Lender (whether checking, savings, or some other account), including all accounts held jointly with someone else and all accounts Grantor may open in the future, including, however, all IRA and Keogh accounts, and all trust accounts for which the grant of a security interest would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all indebtedness against any and all such accounts.

**OBLIGATIONS OF GRANTOR.** Grantor warrants and covenants to Lender as follows:

**Perfection of Security Interest.** Grantor agrees to execute such financing statements and to take whatever other actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper if not delivered to Lender for possession by Lender. Grantor, hereby appoints Lender as its irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect or to continue the security interest granted in this Agreement. Lender may at any time, and without further authorization from Grantor, make a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a

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**financing statement.** Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral. Grantor promptly will notify Lender before any change in Grantor's name including any change to the assumed business names of Grantor. This is a continuing Security Agreement and will continue in effect even though all or any part of the indebtedness is paid in full and even though for a period of time Grantor may not be indebted to Lender.

No Violation. The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party.

**Enforceability of Collateral.** To the extent the Collateral consists of accounts, chattel paper, or general intangibles, the Collateral is enforceable in accordance with its terms, is genuine, and complies with applicable laws concerning form, content and manner of preparation and execution. All persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. At the time any account becomes subject to a security interest in favor of Lender, the account shall be a good and valid account representing an undisputed, bona fide indebtedness incurred by the account debtor, for merchandise held subject to delivery instructions or otherwise shipped or delivered pursuant to a contract of sale, or for services therefor performed by Grantor with or for the account debtor; there shall be no setoff or counterclaims against any such account and no agreement under which any deductions or discounts may be claimed shall have been made with the account debtor except those disclosed to Lender in writing.

**Location of the Collateral.** Grantor, upon request of Lender, will deliver to Lender in form satisfactory to Lender a schedule of real properties by Grantor; (b) all real property being rented or leased by Grantor; (c) all storage facilities owned, rented, leased, or being used by Grantor; and holders of any encumbrances upon or by owners of such lands where Collateral is or will be located and Grantor consents to Lender's rights of business, Grantor shall not remove the Collateral from its existing locations without the prior written consent of Lender. Collateral consisting of livestock shall not be kept with a broker or similar party without Lender's prior written consent and shall be kept only at locations approved by Lender.

**Transactions Involving Collateral.** Except for inventory sold or accounts collected in the ordinary course of Grantor's business, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. While Grantor is not in default under this Agreement, Grantor may sell the ordinary course of Grantor's business does not include a lessee in part or total satisfaction of a debt or any bulk sale. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right reason shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

**Sale of Collateral.** The following provisions relate to any sale, consignment or transfer of crops, livestock, or other farm products included as all or a part of the Collateral:

(a) To induce Lender to extend the credit or other financial accommodations secured by this Agreement, Grantor represents and warrants to schedules delivered to Lender. Each schedule shall be in such form as Lender may require, including identification of each type of may be sold, consigned or transferred. All such schedules and notifications shall be in writing and shall be delivered to Lender not less than seven (7) days prior to any such sale, consignment or transfer of the Collateral.

(b) Grantor acknowledges that if the Collateral is sold, consigned, or transferred to any person not listed on a schedule delivered to Lender (10) days of the sale, consignment or transfer, then UNDER FEDERAL LAW, GRANTOR SHALL BE SUBJECT TO A FINE WHICH IS THE GREATER OF \$5,000 OR 15% OF THE VALUE OR BENEFIT RECEIVED FROM THE SALE, CONSIGNMENT OR TRANSFER TO AN UNLISTED BUYER, CONSIGNEE OR TRANSFEREE.

(c) All proceeds of any sale, consignment or transfer shall be made immediately available to Lender in a form jointly payable to Grantor and Lender. All chattel paper, documents, warehouse receipts, documents of title, or other evidences of ownership or obligations, whether issued by a dry-clip, grain elevator, or other warehouse or marketing entity, and all accounts receivable and other non-cash proceeds shall be endorsed, assigned and delivered immediately to Lender as security for the indebtedness. All the proceeds of any such disposition of the Collateral, when and if received by Lender, may at Lender's option be applied to the indebtedness. In addition, Lender may collect at any time the proceeds of any or all such accounts or other non-cash proceeds of any sale without notice to Grantor.

**Care and Preparation of Livestock.** Grantor shall: (a) At reasonable and proper times and in accordance with the best practices of good animal husbandry feed, care for, attend to, inoculate, water, and perform, or cause to be performed, all other acts appropriate or necessary to care for, maintain, preserve, and protect the livestock; (b) Milk, shear, and perform, or cause to be performed, such other acts as are related to the livestock or to the products of the livestock, including without limitation processing, preserving, protocols, and storing such products; (c) Not commit or suffer to be committed any damage to or destruction of the livestock; (d) Permit Lender and any of its employees and agents to enter upon the premises where the livestock is located at any reasonable time and from time to time for the purpose of examining and inspecting the livestock; and (e) Promptly give Lender written notice of any sickness or disease affecting, any damage to, any destruction of, or any depreciation in the value of the livestock or the products of the livestock.

**Title.** Grantor represents and warrants to Lender that it holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consenting. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

**Collateral Schedules and Locations.** As often as Lender shall require, and insofar as the Collateral consists of accounts and general intangibles, Grantor shall deliver to Lender schedules of such Collateral, including such information as Lender may require, including without limitation names and addresses of account debtors and types of accounts and general intangibles. Insofar as the Collateral consists of inventory, Grantor shall deliver to Lender, as often as Lender shall require, such lists, descriptions, and designations of such Collateral as Lender may require to identify the nature, extent, and location of such Collateral. Such information shall be submitted for Grantor and each of its subsidiaries or related companies.

**Maintenance and Inspection of Collateral.** Grantor shall maintain all tangible Collateral in good condition and repair. Grantor will not commit or permit damage to or destruction of the Collateral or any part of the Collateral. Lender and its designated representatives and agents shall have the right at all reasonable times to examine, inspect, and audit the Collateral wherever located. Grantor shall immediately notify Lender of all cases involving the return, rejection, recompensation, loss or damage of or to any Collateral; of any request for credit or adjustment or of any other dispute arising with respect to the Collateral; and generally of all happenings and events affecting the Collateral or the value or the amount of the Collateral.

**Taxes, Assessments and Liens.** Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any event, Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Compliance With Governmental Requirements.** Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

**Hazardous Substances.** Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains in effect, used for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any hazardous waste or substance, as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 6901, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing or intended to protect human health or the environment ("Environmental Laws"). The terms "hazardous waste" and "hazardous substance" shall also include

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without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for hazardous wastes and substances. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under Environmental Laws; and (b) agrees to indemnify and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement, or as a result of a violation of any Environmental Laws. This obligation to indemnify shall survive the payment of the indebtedness and the satisfaction of this Agreement.

**Maintenace of Casually Injuries.** Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and robbery reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if it so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

**Application of Insurance Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Collateral. Lender may make proof of thereon, shall be held by Lender as part of the Collateral. If proceeds of any insurance on the Collateral, including accrued proceeds Lender shall, upon satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay off all of the indebtedness, and shall pay the balance to Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the Indebtedness.

**Insurance Reserves.** Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. At fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may settle by payment of the insurance premiums required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

**Insurance Reports.** Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured; (e) the then current value on the basis of which insurance has been obtained and (f) the manner of determining that value; and (g) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however no more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

**GRANTOR'S RIGHT TO POSSESSION AND TO COLLECT ACCOUNTS.** Until default and except as otherwise provided below with respect to beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. Until otherwise notified by Lender, Grantor may collect any of the Collateral consisting of accounts. At any time and even though no Event of Default exists, Lender may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Lender for application to the indebtedness. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral. If Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the Indebtedness.

**EXPENDITURES BY LENDER.** If not discharged or paid when due, Lender may (but shall not be obligated to) discharge or pay any amounts required to be discharged or paid by Grantor under this Agreement, including without limitation all taxes, liens, security interests, encumbrances, and other claims, at any time levied or placed on the Collateral. Lender also may (but shall not be obligated to) pay all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses shall become a part of the Indebtedness and, at Lender's option, will: (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due (during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement and will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of an Event of Default.

**EVENTS OF DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Default on Indebtedness.** Failure of Grantor to make any payment when due on the Indebtedness.

**Other Defaults.** Failure of Grantor to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or in any other agreement between Lender and Grantor.

**Default in Favor of Third Parties.** Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's or any Grantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the Related Documents.

**Falsie Statements.** Any warranty, representation or statement made or furnished to Lender by or on behalf of Grantor under this Agreement, the Note or the Related Document is false or misleading in any material respect, either now or at the time made or furnished.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The death of Grantor or the dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against the Collateral or any other collateral securing the Indebtedness. This includes garnishment of any of Grantor's deposit accounts with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or such Guarantor dies or becomes incompetent. Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guarantee in a manner satisfactory to Lender, and, in doing so, cure the Event of Default.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Incapacity.** Lender, in good faith, deems itself insecure.

**Right to Cure.** If any default, other than a Default on Indebtedness, is curable and if Grantor has not been given a prior notice of a breach or the same provision of this Agreement, it may be cured (and no Event of Default will have occurred) if Grantor, after Lender sends written notice demanding cure of such default, (a) cures the default within twenty (20) days; or (b), if the cure requires more than twenty (20) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the Oregon Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

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(Continued)

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**Accelerate Indebtedness.** Lender may declare the entire Indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice.

**Assemble Collateral.** Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and be designated by Lender. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

**Possession of the Livestock.** Lender may enter upon the premises where any Collateral consisting of livestock is located and, using any and all手段 (methods), devices, powers and authority, or cause to be performed, all other acts appropriate or necessary to care for, maintain, preserve, and other acts as are related to the livestock or to any products of the livestock, including without limitation processing, preserving, and protecting located; (d) Appraise, store, prepare for public or private sale, exhibit, market and sell the livestock and any products of the livestock; provided that Grantor hereby agrees that if Grantor is the owner of record of the premises upon which the livestock and any products of the livestock are located, Lender shall not be responsible or liable for returning the premises to their condition immediately preceding the use of the premises as provided herein or for doing such acts as may be necessary to permit future livestock to be maintained on the premises.

**Sell the Collateral.** Lender shall have full power to sell, lease, sublease, or otherwise deal with the Collateral or proceeds thereof in its own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline rapidly in value or is of a type customarily sold on a recognized market, Lender will give Grantor reasonable notice of the time after which any private sale or any intended disposition of the Collateral is to be made unless Grantor has signed, after an Event of Default occurs, a statement renouncing or before the time of the sale or disposition. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days retaking, holding, securing, preparing for sale and selling the Collateral, including without limitation the expenses of shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

**Appoint Receiver.** To the extent permitted by applicable law, Lender shall have the following rights and remedies regarding the appointment of a receiver: (a) Lender may have a receiver appointed as a matter of right; (b) the receiver may be an employee of Lender and may serve as payable on demand, with interest at the Note rate from date of expenditure until paid.

**Collect Revenues, Apply Accruals.** Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in its discretion transfer any Collateral into its own name or that of its nominees and receive the payments, order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, cause, receipt for, settle, compromise, adjust, sue for, foreclose, or benefit of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any addressee to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and bonds pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

**Obtain Deficiency.** If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

**Other Rights and Remedies.** Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

**Cumulative Remedies.** All of Lender's rights and remedies, whether evidenced by this Agreement or the Related Documents or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Satisfaction by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and to exercise its remedies.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Applicable Law.** This Agreement has been delivered to Lender and accepted by Lender in the State of Oregon. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Multnomah County, the State of Oregon. Lender and Grantor hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Grantor against the other. Subject to the provisions on arbitration, this Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

**Arbitration.** Lender and Grantor agree that all disputes, claims and controversies between them, whether individual, joint, or class in nature, arising from this Agreement or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association, upon request of either party. No act to take or dispose of any Collateral shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; foreclosing by notice and sale under any deed of trust or mortgage; obtaining writ of attachment or injunction of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Collateral, including any claim to rescind, reform, or otherwise modify any agreement relating to the Collateral, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Agreement shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, legal, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

**Attorneys' Fees and Expenses.** Grantor agrees to pay upon demand all of Lender's costs and expenses, including attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Multiple Parties.** All obligations of Grantor under this Agreement shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each of the persons signing below is responsible for all obligations to this Agreement.

**Notices.** All notices required to be given under this Agreement shall be given in writing, may be sent by facsimile (unless otherwise required by law), and shall be effective when actually delivered or when deposited with a nationally recognized overnight courier or deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. To the extent permitted by applicable law, if there is more than one Grantor, notice to any Grantor will constitute notice to all Grantors. For notice purposes, Grantor will keep Lender informed at all times of Grantor's current addresses.

**Power of Attorney.** Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevocable, with full power of substitution to do the following: (a) to demand, collect, receive, collect for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (b) to execute, sign and endorse any and all bills, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral; (c) to settle or compromise any and all claims arising under the Collateral, and, in the place and stead of Grantor, to execute and deliver its releases and settlements for the claim; and (d) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the Indebtedness, and the authority hereby conferred is and shall be irrevocable and

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GIVENS MURSLEY LLP

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P. 22

05-18-1998  
Loan No 09002

**AGRICULTURAL SECURITY AGREEMENT**  
(Continued)

Page

shall remain in full force and effect until renounced by Lender.

**Preference Payments.** Any monies Lender pays because of an asserted preference claim in Borrower's bankruptcy will become a part of its Indebtedness and, at Lender's option, shall be payable by Borrower as provided above in the "EXPENDITURES BY LENDER" paragraph.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects that remain valid and enforceable.

**Successor Interests.** Subject to the limitations set forth above on transfer of the Collateral, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**Waiver.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Waiver of Co-obligor's Rights.** If more than one person is obligated for the indebtedness, Borrower irrevocably waives, disclaims and relinquishes all claims against such other person which Borrower had or would otherwise have by virtue of payment of the indebtedness or any part thereof, specifically including but not limited to all rights of indemnity, contribution or subordination.

**EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGRICULTURAL SECURITY AGREEMENT, AND EACH GRANTOR AGREES TO ITS TERMS. THIS AGREEMENT IS DATED MAY 18, 1998.**

GRANTOR:

X   
DALE L. JOHNSON

X   
NANCY J. JOHNSON

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# **EXHIBIT 1**

## **EXHIBIT 2**

DEC. -11' 00 (MON) 17:27 GIVENS & SLEWELL LLP  
DEC-08-00 FRI 03:09 PM OI: J

TEL: 208-881300  
FAX NO. 151-6894730

P. 033/039

EXHIBIT

UCC-1

STATE OF OREGON  
Corporation Division - UCC  
255 Capitol Street NE, Suite 181  
Salem, OR 97310-1327  
(503) 988-2200 Facsimile (503) 373-1166

410284  
02/12/1998 2:02PM  
OR Sec. of State

**STATE FINANCING STATEMENT STANDARD FORM**

PLEASE TYPE OR WRITE LEGIBLY. READ INSTRUCTIONS BEFORE FILLING OUT FORM.

This Financing Statement is presented to filing officer pursuant to the Uniform Commercial Code. This financing statement remains effective for a period of five years from the date of filing, unless extended for additional periods as provided for by CRS Chapter 70. A carbon, photographic or other reproduction of this form, financing statement or security agreement may be filed as a financing statement under CRS Chapter 70.

**A. DEBTOR NAME(S) (if individual or business firm)**

1. JOHNSON, DAN L.

2. JOHNSON, NANCY J.

3. \_\_\_\_\_

**DEBTOR MAILING ADDRESS:**

1881 HIGHWAY 20  
VALE, OR 97018

**F. DESCRIBE THE COLLATERAL  
(OBC 79.4030).**

PRODUCTS of collateral are and several.  
See Attached Exhibit

**B. SECURED PARTY(IES) NAME AND ADDRESS**

PACIFIC ONE BANK  
c/o LOAN OPERATIONS CENTER  
PO BOX 40108  
PORTLAND, OR 97240-0108

Contact Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_

**C. ATTORNEY(S) NAME AND ADDRESS (if any)**

Contact Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_

**D. DEBTOR SIGNATURE(S) (if required)**

By: Dan L Johnson \_\_\_\_\_  
By: Nancy J. Johnson \_\_\_\_\_

**E. DEBTOR SIGNATURE(S) NOT REQUIRED. If applicable, check the appropriate box below to file without debtor signature(s). This statement is filed without the debtor signature(s) to perfect a security interest in collateral. Secured Party must sign, when Debtor signature(s) is not required. See instructions for further information.**

- Collateral already subject to a security interest in another jurisdiction.
- Which is proceeds of the described original collateral which was perfected.
- Collateral as to which the filing has lapsed.
- Collateral acquired after a change of name, identity or corporate structure of debtor.

By:

Secured Party signature

By:

Secured Party signature

**RETURN-ACKNOWLEDGMENT LETTER TO:** (Include name, address, and identifier for the debtor listed above. Limit the identifier to eight characters. REFER TO INSTRUCTION NUMBER 10.) Please do not type or print outside of bracketed areas.

PACIFIC ONE BANK  
LOAN OPERATIONS CENTER  
PO BOX 40108  
PORTLAND, OR 97240-0108

**FEES**

Make checks for \$10.00 payable  
to "Corporation Division."

NOTE: Filing fees may be paid with VISA or MasterCard.  
The card number and expiration date should be submitted on  
a separate sheet typed or printed.

DO NOT SUBMIT DUPLICATES OF THIS FILING AND/OR ATTACHMENTS.

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GIVENS MURSLEY LLP

DEU-08-UU FRI 03:10 PM ON

TEL: 208-881300

FAX NO. 15 3394730

P. 034/039

P. 25

## EXHIBIT TO UCC-1 FINANCING STATEMENT

### DEBTORS

JOHNSON, DAN L. SSN / Tax ID # 541-52-8213  
JOHNSON, NANCY J. SSN / Tax ID # 543-50-4201

410284  
02/12/1999 2432782, 1998  
OR Sec. of State

### MAILING ADDRESS:

1881 HIGHWAY 20, VALE, OR 97918

### COLLATERAL DESCRIPTION:

All inventory, Charter Paper, Accounts, General Intangibles, Crops, Farm Products, Livestock (including all increases and supplies) and Farm Equipment whether any of the foregoing is owned now or acquired later; whether any of the foregoing is now existing or hereafter born, raised or grown; all easements, additions, replacements, payments for entitlements, rights to payment, and payments in whatever form received, including but not limited to, payments under any governmental agricultural diversion programs, governmental agricultural assistance programs, the Farm Services Agency Wheat Feed Grain Program, and any other such program of the United States Department of Agriculture, or any other general intangibles or programs); all records of any kind relating to any of the foregoing; all proceeds relating thereto; All farm equipment and machinery whether now owned or hereafter acquired; All dairy cattle and progeny thereof whether now owned or hereafter acquired; All feed crops and milk proceeds.

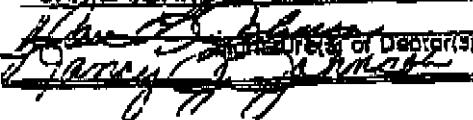
See attached Exhibit "A" for further definition of equipment which by reference is incorporated herein and made a part hereeto.

Some or all of the collateral is located on the following described real estate: ACREAGE LOCATED IN THE SOUTHEAST 1/4 NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 18 SOUTH, RANGE 48 EAST OF THE WILLAMETTE MERIDIAN IN MALHEUR COUNTY, STATE OF OREGON LEASED BY THE DEBTOR FROM DAVID AND HELEN PATCHETT.

This Exhibit is executed on the same date as the UCC-1 Financing Statement by PACIFIC ONE BANK and the undersigned.

DAN L. JOHNSON and NANCY J. JOHNSON

PACIFIC ONE BANK

  
Handwritten signatures of Debtor(s)

E/S: \_\_\_\_\_ Signature(s) of Secured Party (es) \_\_\_\_\_

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DEC-08-00 FRI 03:10 PM

GIVENS & SRSLEY LLP

TEL: 206-381300

P. 035/039

FAX NO. 15-3894730

P. 26

EXHIBIT "A" FOR EQUIPMENT

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02/12/1998 2:02PM  
OR Sec. of State

Borrower:	DAN L. JOHNSON HAROLD A. JOHNSON 1491 HOMERAY RD VALLE, OR 97348	Lender:	PACIFIC ONE BANK ONTARIO BRANCH LOAN OPERATIONS CENTER P.O. BOX 6155 PORTLAND, OR 97244-6155
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This EXHIBIT "A" FOR EQUIPMENT is attached to and by this reference is made a part of such Security Agreement, dated January 22, 1998, and witnessed in connection with a loan or other financial accommodation between PACIFIC ONE BANK and DAN L. JOHNSON and HAROLD A. JOHNSON.

(PURCHASE MONEY SECURITY AGREEMENT)

Mueller Milk Tank  
Mueller Milk Tank Clogger #A553  
Surge Station Control  
Century AC Motor #634852404  
SCB-30 3D-8192  
Stedman Silencer 3(3) #94-730X & #94-730X  
Fly Guard System  
EPA Reg. No 1021-1091  
EPA Est. No. 1021-225-1  
Surge Pneumatic Between Milk Pump Lever Panel  
10 Amps Model 27822 115/130 VAC 3 Wire  
Liquid Measuring Wand, #B-121-937 #104303838  
Milking 10 Gloves  
20 Panels - Minotaur/Powder River  
5 Lockdown Steerates  
Electric Gate Cattle Crowder  
(3) Gas Tank Islands  
(2) 200 Gallon Fuel Tanks  
Anilox Emulsifier/Raylage  
Pasture Digger  
Cattle Chute  
3" x 40' (15) Sprinkler Pipes  
1985 Duramaster Model 2L150 Wheel Loader w/3 rd Bucket #S161  
Feed Truck Ford F-600  
Feed Truck Ford -F400 Bath with Marsh Feeder/Gutter Boxes

THIS EXHIBIT "A" FOR EQUIPMENT IS DATED ON JANUARY 22, 1998.

BORROWER:

Dan L. Johnson  
DAN L. JOHNSON

Harold A. Johnson  
HAROLD A. JOHNSON

UNDER:

PACIFIC ONE BANK

John G. Johnson

CONFIDENTIAL DOCUMENT. NOT TO BE COPIED OR REPRODUCED. THIS DOCUMENT CONTAINS TRADE SECRETS OF LENDER.

DEC. -11' 00(MON) 17:28 GIVENS BURSLEY LLP  
DEC-08-00 FRI 03:11 PM ON'

TEL: 204-881300  
FAX NO. 15 534730

P. 036/039  
P. 27

EFS-1

STATE OF OREGON  
Corporation Division - UCC  
255 Capitol Street NE, Suite 151  
Salem, OR 97310-1327  
(503) 986-2200 Facsimile (503) 373-1166

395078  
10/17/1997 1:23PM  
OR Sec. of State

**FARM PRODUCTS FINANCING STATEMENT STANDARD FORM**

**PLEASE TYPE OR WRITE LEGIBLY. READ INSTRUCTIONS BEFORE FILLING OUT FORM.**

THE FARM PRODUCTS FINANCING STATEMENT IS PREPARED FOR THE USE OF FARMERS TO ORS CHAPTER 78,820 IN FILING. THIS STATEMENT REMAINS EFFECTIVE FOR A PERIOD OF ONE YEAR FROM THE DATE OF FILING, SUBJECT TO NOTIFICATION FOR TERMINATION PROVIDED FOR BY ORS CHAPTER 78.

A. DEBTOR NAME(S) \_\_\_\_\_ Social Security No. or TIN \_\_\_\_\_  
1. JOHNSON, DAN L. 541-62-5218

2. JOHNSON, NANCY J. 543-50-4201

3. \_\_\_\_\_

DEBTOR MAILING ADDRESS:  
1861 HIGHWAY 20  
VALE, OR 97918

B. SECURED PARTY(IES) NAME AND ADDRESS

PACIFIC ONE BANK  
c/o LOAN OPERATIONS CENTER, PO BOX 40108  
PORTLAND, OR 97240-0108

Contact Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_

C. ATTACHED(ES) NAME AND ADDRESS (if any)

Contact Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_

D. FARM PRODUCT CODE COUNTY CODE CROP YEAR AMOUNT  
(if applicable) (if applicable)

1006 — 23 — —

1001 — 23 — —

0204 — 23 — —

0201 — 23 — —

— — — —

— — — —

— — — —

— — — —

— — — —

— — — —

— — — —

E. SIGNATURE(S). SIGNATURE(S) OF DEBTOR AND SECURED PARTY(IES) IS REQUIRED.

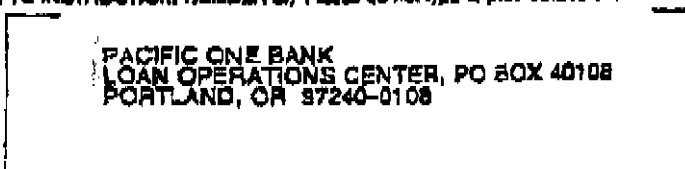
By: *Dan L. Johnson*

By: *Nancy J. Johnson*

By: *Nancy J. Johnson*

By: *Secured Party Signature(s)*

RETURN ACKNOWLEDGMENT LETTER TO: (Indicate name, address, and identifier for the debtor listed above. Limit the identifier to eight characters. REFER TO INSTRUCTION NUMBER 5.) Please do not type or print outside of bracketed area.



GUAR (Rev. 3/98)

PACIFIC ONE BANK  
LOAN OPERATIONS CENTER, PO BOX 40108  
PORTLAND, OR 97240-0108

**FEES**

Make check for \$10.00 payable  
to "Oregon State Director."

NOTE: Filing fee may be paid with VISA or MasterCard.  
The card number and expiration date should be submitted  
on a separate cover page for your protection.

DO NOT SUBMIT DUPLICATES OR THIS FORM AND/OR ATTACHMENTS.

DEC. -11' 00 (MON) 17:28

GIVENS MURRAY LLP

DEC-08-00 FRI, 03:11 PM CDT.

TEL: 205-881300

P. 037/039

FAX NO. 154-394730

P. 29

**UCC-1**

STATE OF OREGON  
 Corporation Division - UCC  
 255 Capitol Street NE, Suite 151  
 Salem, OR 97310-1287  
 (503) 986-2210 Facsimile (503) 373-1168

**395076**  
 10/17/1997 1:23PM  
 OR Sec. of State

### STATE FINANCING STATEMENT STANDARD FORM

PLEASE TYPE OR WRITE LEGIBLY. READ INSTRUCTIONS BEFORE FILLING OUT FORM.

This Financing Statement is presented to filing officer pursuant to the Uniform Commercial Code. This financing statement remains effective for a period of five years from the date of filing, unless extended for additional periods as provided for by ORS Chapter 78. A carbon, photographic or other reproduction of this form, financing statement or security agreement may be filed as a financing statement under ORS Chapter 78.

A. DEBTOR NAME(S) (In individual last name first)

1. JOHNSON, DAN L.

2. JOHNSON, NANCY J.

3. \_\_\_\_\_

DEBTOR MAILING ADDRESS:

1861 HIGHWAY 20  
 VALE, OR 97918

B. SECURED PARTY(IES) NAME AND ADDRESS

PACIFIC ONE BANK  
 c/o LOAN OPERATIONS CENTER  
 PO BOX 40108  
 PORTLAND, OR 97240-0108

Contact Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_

C. ASSIGNEE(S) NAME AND ADDRESS (if any)

Contact Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_

D. DEBTOR SIGNATURE(S) & COLLATERAL

By: Dan L. Johnson By: Nancy J. Johnson

By: \_\_\_\_\_ By: \_\_\_\_\_

E. DEBTOR SIGNATURE(S) NOT REQUIRED: If applicable, check the appropriate box below to file without debtor signature(s). This statement is filed without the debtor signature(s) to perfect a security interest in collateral. Secured Party must sign when Debtor signature(s) is not required. See instructions for further information.

- Collateral already subject to a security interest in another jurisdiction.
- Which is proceeds of the described original collateral which was perfected.
- Collateral as to which the filing has lapsed.
- Collateral acquired after a change of name, identity or corporate structure of debtor.

By: [Signature]  
 Secured Party signature

By: \_\_\_\_\_  
 Secured Party signature

RETURN ACKNOWLEDGMENT LETTER TO: (Include name, address, and identifier for the debtor listed above. Limit the identifier to eight characters. REFER TO INSTRUCTION NUMBER 4.) Please do not type or print outside of bracketed areas.

PACIFIC ONE BANK  
 LOAN OPERATIONS CENTER  
 PO BOX 40108  
 PORTLAND, OR 97240-0108

#### FEES

Make check for \$10.00 payable  
 to "Corporation Division."

NOTE: Filing fees may be paid with VISA or MasterCard.  
 The card number and expiration date should be submitted on  
 a separate sheet of paper for your protection.

DO NOT SUBMIT DUPLICATES OF THIS FILING AND/OR ATTACHMENTS.

DEC. -11'00 (MON) 17:28 GIVENS MURSLEY LLP  
DEC-08-00 FRI 03:12 PM ONT

TEL: 208-881300  
FAX NO. 154-284730

P. 038/039

F. 29

## EXHIBIT TO UCC-1 FINANCING STATEMENT

### DEBTORS

JOHNSON, DAN L. SSN / Tax ID # 541-52-5213  
JOHNSON, NANCY J. SSN / Tax ID # 543-50-4201

395076  
10/17/1999 09:08:19, 1997  
OR Sec. of State

### MAILING ADDRESS:

1861 HIGHWAY 20, VALE, OR 97918

### COLLATERAL DESCRIPTION:

All Inventory, Chattel Paper, Accounts, General Intangibles, Crops, Farm Products, Livestock (including all increased and supplies) and Farm Equipment; whether any of the foregoing is owned now or acquired later; whether any of the foregoing is now existing or hereafter born, raised or grown; all accretions, additions, replacements, payments for participation in any state or federal farm programs, and substitutions relating to any of the foregoing (including all entitlements, rights to payment, and payments, in whatever form received, including but not limited to, payments under any governmental agricultural diversion programs, governmental agricultural assistance programs, the Farm Services Agency Wheat Feed Grain Program, and any other such program of the United States Department of Agriculture, or any other general intangibles or programs); all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance and accounts proceeds), together with the following specifically described property:

All farm equipment and machinery whether now owned or hereafter acquired;

All dairy cattle and progeny thereof whether now owned or hereafter acquired;

All feed crops and milk proceeds.

Some or all of the collateral is located on the following described real estate: ACREAGE LOCATED IN THE SOUTHEAST 1/4 NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 14 SOUTH, RANGE 46 EAST OF THE WILLAMETTE MERIDIAN IN MALHEUR COUNTY, STATE OF OREGON LEASED BY THE DEBTOR FROM DAVID AND HELEN PATCHETT.

This Exhibit is executed on the same date as the UCC-1 Financing Statement by PACIFIC ONE BANK and the undersigned.

DAN L. JOHNSON and NANCY J. JOHNSON



Signature(s) of Debtor(s)



PACIFIC ONE BANK



Signature(s) of Secured Party (es)

DEC.-11-00(MON) 17:29

GIVENS BURSLEY LLP

TEL: 503-881300

P. 039/039

DEC-08-00 FRI 03:09 PM ON...

FAX NO. 503-8894730

P. 23

**UCC-3**

STATE OF OREGON  
 Corporation Division - UCC  
 255 Capitol Street NE, Suite 151  
 Salem, Oregon 97310-1327  
 (503) 988-3200 Facsimile (503) 973-1188  
[www.sos.state.or.us/corporation/corpchp.htm](http://www.sos.state.or.us/corporation/corpchp.htm)

**STATEMENT OF TERMINATION, CONTINUATION, ASSIGNMENT, RELEASE, AMENDMENT**  
**PLEASE TYPE OR PRINT LEGIBLY. READ INSTRUCTIONS BEFORE FILLING OUT FORM.**

This Financing Statement is presented to filing office pursuant to the Uniform Commercial Code. This financing statement remains effective for a period of five years from the date of filing, unless extended for additional periods as provided for by ORS Chapter 79. A carbon, photographic, or other reproduction of this form, financing statement, or security agreement may be filed as a financing statement under ORS Chapter 79.

**A. THIS STATEMENT REFERS TO ORIGINAL FINANCING STATEMENT**

395076

10/17/99

Debtor Number:

Date Filed:

**G. AMENDMENT INFORMATION**

Use this area to list collateral to be released. Amendment description, and other information.

We are doing a partial release on the following:

All farm equipment and machinery whether now owned or hereafter acquired.

**B. TYPE OF AMENDMENT (Check ALL BOXES THAT APPLY).**

- TERMINATION (NO FEE) The Secured Party certifies that they no longer claim interest under the financing statement bearing the file number shown in SECTION A.
- CONTINUATION. Submitted within six months prior to expiration date.
- ASSIGNMENT. The Secured Party assigns to the Assignee whose name and address is shown in SECTION E and bearing the file number shown in SECTION A.  
Choose one:  Full Assignment  Partial Assignment
- RELEASE. RELEASE DOES NOT TERMINATE DEBT. From the collateral described in the financing statement bearing the file number shown in SECTION A, the Secured Party releases the following (described in SECTION G).  
Choose one:  Release of all Collateral  Partial Release
- AMENDMENT: Financing statement bearing file number shown in SECTION A is amended as described in SECTION G. Signature of Debtor Required in most cases

**C. DEBTOR NAME(S) (If individual, list last name first.)**

Johnson, Dan L.  
 Johnson, Nancy J.

**DEBTOR MAILING ADDRESS:**

1861 Hwy. 20  
 Vale, OR. 97918

**D. SECURED PARTY(IES) NAME AND ADDRESS**

Pacific One Bank aka Bank of the West  
 1463 West Park Plaza  
 Ontario, OR. 97914

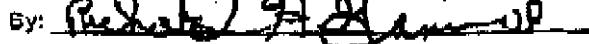
Contact Name: J. Guerricagoitia Phone No: 541-889-7231

**E. ASSIGNEE(S) NAME AND ADDRESS (If any)**

Contact Name:

Phone No:

F. SIGNATURES. In accordance with ORS Chapter 79, ALL SECURED PARTIES must sign UCC-3 Filings.

By: 

By: \_\_\_\_\_

By:

Secured Party(ies) Signature

By:

Debtor Signature(s) if required

RETURN ACKNOWLEDGMENT LETTER TO: (Include name, address, and identifier for the debtor listed above. Limit the identifier to eight characters. REFER TO INSTRUCTION NUMBER 7.) Please do not type or print outside of bracketed area.

Bank of the West  
 1463 West Park Plaza  
 Ontario, OR. 97914

**FEES**  
 Make check for \$10.00 payable to "Corporation Division."

No fee for Termination.

Note: Filing fees may be paid with VISA or MasterCard.  
 The card number and expiration date should be submitted on a separate sheet of paper for your protection.  
 DO NOT SUBMIT DUPLICATES OF THIS FORM AND/OR ATTACHMENTS.

G-1403 (Rev. 7-98)

\*Partial release to allow PSA to fund online