

## NOVATION AGREEMENT

This NOVATION AGREEMENT, entered into by and between the State of Colorado Department of Natural Resources, Colorado Water Conservation Board, 1313 Sherman St., Room 718, Denver CO 80203 ("CWCB"), and Ordway Feedyard, LLC, 19424 Colorado Hwy 96, Ordway CO 81063 ("Borrower"), and Ordway Cattle Feeders, LP, 19424 Colorado Hwy 96, Ordway CO 81063 ("Limited Partnership").

### Recitals

A. CWCB and Borrower have entered into a Loan Contract, effective May 14, 2013 (Contract No. C150349) ("Contract"), and as amended on April 11, 2014, ("Amendment"). Copies of the Contract and Amendment are attached hereto as Exhibit A and Exhibit B, respectively;

B. As part of the Contract, the Borrower executed: (1) a Promissory Note attached to the Contract (Exhibit A, Appendix 2) ("Promissory Note"); (2) a Security Agreement, attached to the Contract (Exhibit A, Appendix 4) ("Security Agreement"); and (3) a Deed of Trust, attached to the Contract (Exhibit A, Appendix 5) ("Deed of Trust");

C. As part of the Amendment, the Borrower executed: (1) an Amendment to Promissory Note attached to the Amendment (Exhibit B, Appendix A) ("Amended Promissory Note"); (2) an Amendment to Security Agreement, attached to the Amendment (Exhibit B, Appendix B) ("Amended Security Agreement"); and (3) an Amendment to Deed of Trust, attached to the Amendment (Exhibit B, Appendix C) ("Amended Deed of Trust");

D. CWCB and Borrower are assigning to the Limited Partnership the Contract, Promissory Note, Security Agreement, Deed of Trust and Amendment, Amended Promissory Note, Amended Security Agreement, Amended Deed of Trust. The Limited Partnership agrees to accept and assume all of Borrower's right, title and interest in and to, and duties and obligations under the Contract, Promissory Note, Security Agreement, Deed of Trust and Amendment, Amended Promissory Note, Amended Security Agreement, and Amended Deed of Trust.

E. The Limited Partnership's written acceptance of these obligations is acknowledged by: (1) the Purchase Agreement incorporated herein as Exhibit C; (2) Resolution of the General Partner of the Limited Partnership, incorporated herein as Exhibit D; (3) Revised Promissory Note, incorporated herein as Exhibit E; (4) Revised Security Agreement, incorporated herein as Exhibit F; and (5) Revised Deed of Trust, incorporated herein as Exhibit G.

### Agreements

NOW THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CWCB, Borrower and Limited Partnership agree as follows:

1. Assignment of Contract and Amendment. CWCB grants, transfers and conveys unto the Limited Partnership, and the Limited Partnership accepts and assumes, effective as of the Effective Date as set forth in this Agreement, all of CWCB's and Borrower's rights and interests in, and duties and obligations under the Contract and Amendment.

2. Waiver of Rights Against Borrower. CWCB hereby waives any and all rights it may have against the Borrower, effective as of the Effective Date set forth in this agreement.
3. The Borrower recognizes the Limited Partnership as CWCB's successor in interest and to the Contract and Amendment. The Limited Partnership, by this Agreement, becomes entitled to all rights and interests, and assumes all duties, obligations, and liabilities, of the Borrower in and to the Contract and Amendment as if the Limited Partnership were the original party to the Contract and Amendment.
4. All payments and reimbursements previously made by the Borrower to CWCB, and all other previous actions taken by the Borrower under the Contract and Amendment, shall be considered to have discharged those Borrower's obligations under the Contract and Amendment. All payments and reimbursements made by the Borrower after the date of this Agreement in the name of or to CWCB shall have the same force and effect as if made to the Limited Partnership, and shall constitute a complete discharge of the Borrower's obligations under the Contract and Amendment, to the extent of the amount paid or reimbursed.
5. In the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Agreement and any of the provisions of the Contract and Amendment, the provisions of this Agreement shall in all respects supersede, govern and control. The representations in the Contract and Amendment concerning the absence of bribery or corrupt influences and personal interest of State employees are presently reaffirmed by the Limited Partnership.
6. In accordance with §24-30-202, C.R.S., this Novation Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

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**SIGNATURE PAGE****THE PARTIES HERETO HAVE EXECUTED THIS NOVATION AGREEMENT**

Each person signing this Novation Agreement represents and warrants that the signer is duly authorized to execute this Novation Agreement and to bind the Party authorizing such signature.

|                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>BORROWER</b><br/>Ordway Feedyard, LLC</p> <p>By: <u>[Signature]</u><br/>(Signature)</p> <p>Name: <u>Mike Larson</u></p> <p>Title: <u>GM</u></p> <p>Date: <u>6-7-19</u></p>                                                                                                                                                                                       | <p><b>STATE OF COLORADO</b><br/>Jared Polis, Governor<br/>Colorado Department of Natural Resources<br/>Colorado Water Conservation Board (CWCB)</p> <p>By: <u>[Signature]</u><br/>(Signature)</p> <p>Name: Kirk Russell, P.E., Section Chief<br/>CWCB Finance Section</p> <p>Date: <u>11/22/19</u></p> |
| <p><b>LIMITED PARTNERSHIP</b><br/>Ordway Cattle Feeders, LP</p> <p><u>[Signature]</u><br/>(Signature)</p> <p>Name: <u>Gung Kee Jim</u></p> <p>Title: <u>General Partner</u></p> <p>Date: <u>Oct 25 2019</u></p>                                                                                                                                                        | <p><b>LEGAL REVIEW</b><br/>Phil Weiser, Attorney General</p> <p>By: <u>N/A</u><br/>Assistant Attorney General</p> <p>Date: _____</p>                                                                                                                                                                   |
| <p>In accordance with §24-30-202, C.R.S., this Novation Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b><br/>Robert Jaros, CPA, MBA, JD</p> <p>By: <u>[Signature]</u></p> <p>Name: <u>CLARK M BOLSER</u></p> <p>Title: <u>DELEGATE</u></p> <p>Effective Date: <u>12/13/19</u></p> |                                                                                                                                                                                                                                                                                                        |

**EXHIBIT A**

Original Loan Contract

BORROWER: ORDWAY FEEDYARD, LLC  
CONTRACT NO. C150349  
PROJECT AMOUNT \$2,500,000  
LOAN SERVICE FEE \$25,000  
LOAN AMOUNT \$2,525,000

AGENCY NAME: Water Conservation Board  
AGENCY NUMBER: PDA  
CWCB CMS #55869

## LOAN CONTRACT

(STANDARD CONTRACT – WAIVER #160 – APPROVED NOVEMBER 10, 2003)

THIS CONTRACT, made between the State of Colorado for the use and benefit of The Department of Natural Resources, Colorado Water Conservation Board ("CWCB" or "STATE"), and Ordway Feedyard, LLC, 19424 Colorado Hwy 96, Ordway, CO 81063 ("BORROWER"), a Colorado limited liability company.

### FACTUAL RECITALS

1. Authority exists in the law, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this CONTRACT under: Contract Encumbrance No. C150349 Fund Number 424, Appropriation Code M13, Organization YYYY, GBL 0349, Program WTRC, Object Code 5882, Reporting Category 0349; and
2. Required approval, clearance, and coordination have been accomplished from and with appropriate agencies; and
3. On March 19, 2013 the CWCB approved a loan request from the BORROWER for the Ordway Feedyard Raw Water Line Extension Project ("PROJECT") to complete a raw water system that will provide a consistent, viable water supply enabling the BORROWER to sustain its operations and provide economic stability within Crowley County, Colorado. The total cost of the PROJECT is estimated to be \$3,381,500. The BORROWER requested a CWCB loan for \$2,500,000; and
4. The **PROJECT SUMMARY** attached as **APPENDIX 1** and incorporated herein, contains BORROWER Information (Section 1), the Project Description (Section 2), CWCB's authority for making this loan (Section 3), and CWCB Approval and Legislative Authorization which identifies the amount of the loan and the terms of repayment (Section 4); and
5. The CWCB now desires, by this CONTRACT, to loan money to the BORROWER for this PROJECT upon mutually agreeable terms and conditions.

THEREFORE, in consideration of the mutual and dependent covenants contained herein, the parties agree as follows:

### A. LOAN PROVISIONS

1. **Loan Service Fee.** The amount of the loan (LOAN AMOUNT) shall include (1) the amount of the funds loaned by the CWCB to the BORROWER for the PROJECT and (2) a service fee of one percent (1%) of the PROJECT amount. In the event that the BORROWER does not use the LOAN AMOUNT authorized, the parties shall amend this

**Loan Contract C150349**

CONTRACT to revise the LOAN AMOUNT including adjustment of the service fee to reflect 1% of the actual LOAN AMOUNT disbursed to the BORROWER.

2. **Contract Amendment Service Fees.** Under certain circumstances, the BORROWER shall be assessed a fee for amending the CONTRACT.
  - a. A service fee shall be imposed on the BORROWER for amendments processed for the benefit of the BORROWER and necessary for the BORROWER's course of business but not necessary for the CWCB, including, but not limited to, a change in BORROWER name, assignment of contract, substitution of collateral, loan payment deferrals in excess of 3 per loan, and loan consolidation. Amendments in the course of CWCB business, including, but not limited to, loan payment deferrals (up to 3 per loan), changes in terms of loan repayment and amendments to adjust the interest rate pursuant to Paragraph A.c. , herein, will be processed at no additional charge to the BORROWER.
  - b. The amount charged shall be in accordance with the fee rate structure set forth in the CWCB Loan Service Charge Policy in effect at the time the BORROWER shall request an amendment. The current fee for an amendment is \$1,000.
  - c. The BORROWER shall remit the service fee to the CWCB prior to initiation of the amendment. Any service fee remitted to the CWCB cannot be refunded
3. **Promissory Note Provisions.** The CWCB agrees to loan to the BORROWER an amount not to exceed the LOAN AMOUNT and the BORROWER agrees to repay the loan in accordance with the terms as set forth in the **PROMISSORY NOTE**, attached hereto as **APPENDIX 2** and incorporated herein. The PROMISSORY NOTE shall identify the LOAN AMOUNT. If the amount of loan funds disbursed by the CWCB to the BORROWER differs from the LOAN AMOUNT, the parties agree to amend this CONTRACT, including its appendices where necessary, to revise the LOAN AMOUNT.
4. **Interest Prior to PROJECT Completion.** As the loan funds are disbursed by the CWCB to the BORROWER, interest shall accrue at the rate set by the CWCB for this loan. The CWCB shall calculate the amount of the interest that accrued prior to PROJECT's substantial completion (as determined by the CWCB) and notify BORROWER of such amount. The BORROWER shall repay that amount to the CWCB either within ten (10) days from the date of notification from the CWCB, or, at the CWCB's discretion, said interest shall be deducted from the final disbursement of loan funds that the CWCB makes to the BORROWER.
5. **Return of Unused Loan Funds.** Any loan funds disbursed but not expended for the PROJECT in accordance with the terms of this CONTRACT shall be remitted to the CWCB within 30 calendar days from notification from the CWCB of either (1) completion of the PROJECT or (2) determination by the CWCB that the PROJECT will not be completed.
6. **BORROWER's Authority To Contract.** The BORROWER warrants that it has full power and authority to enter into this CONTRACT. The execution and delivery of this CONTRACT and the performance and observation of its terms, conditions and obligations have been duly authorized by all necessary actions of the BORROWER. The **BORROWER's**

**AUTHORIZING RESOLUTION** is attached as **APPENDIX 3** and incorporated herein.

7. **Attorney's Opinion Letter.** Prior to the execution of this CONTRACT by the CWCB, the BORROWER shall submit to the CWCB a letter from its attorney stating that it is the attorney's opinion that
  - a. the CONTRACT has been duly executed by the GENERAL MANAGER of the Ordway Feedyard, LLC, who is duly authorized to execute the CONTRACT and to bind the BORROWER;
  - b. the resolution authorizing the execution and delivery of the CONTRACT was duly adopted by the GENERAL MANAGER of the Ordway Feedyard, LLC;
  - c. there are no provisions in the Articles of Operation for the Ordway Feedyard, LLC or any state or local law that prevent this CONTRACT from binding the BORROWER; and
  - d. there are no provisions in any if the Ordway, Feedyard, LLC member's formation and governing documents that would invalidate the members' approval of this loan; and
  - e. the CONTRACT will be valid and binding against the BORROWER if entered into by the CWCB.
8. **PLEDGE OF PROPERTY.** The BORROWER irrevocably pledges to the CWCB for purposes of repayment of this loan: (1) revenues from assessments levied for that purpose as authorized by the BORROWER's resolution(s) and (2) all of the BORROWER's rights to receive said assessment revenues, hereinafter collectively referred to as the "PLEDGED PROPERTY".
  - a. **Segregation of Pledged Revenues.** The BORROWER shall set aside and keep the pledged revenues in an account separate from other BORROWER revenues and warrants that these revenues will not be used for any other purpose.
  - b. **Establish Security Interest.** The BORROWER has duly executed a **SECURITY AGREEMENT**, attached hereto as **APPENDIX 4** and incorporated herein, to provide a security interest to the CWCB in the PLEDGED PROPERTY. The CWCB shall have priority over all other competing claims for said PLEDGED PROPERTY, except for the liens of the BORROWER's existing loans as listed in Section 5 (Schedule of Existing Debt) of the PROJECT SUMMARY, which sets forth the position of the lien created by this CONTRACT in relation to any existing lien(s).
  - c. **Revenue Assessments.** Pursuant to its statutory authority, articles of incorporation and bylaws, the BORROWER shall take all necessary actions consistent therewith during the term of this CONTRACT to levy assessments sufficient to pay this loan as required by the terms of this CONTRACT and the PROMISSORY NOTE, to cover all expenditures for operation and maintenance and emergency repair services, and to maintain adequate debt service reserves. In the event the assessments levied by the BORROWER become insufficient to assure such repayment to the CWCB, the BORROWER shall immediately take all necessary action consistent with its statutory authority, its articles of incorporation and bylaws including, but not limited to, levying additional assessments to raise sufficient revenue to assure repayment of this loan.

- d. **Debt Service Reserve Account.** To establish and maintain the debt service reserve account, the BORROWER shall deposit an amount equal to one-tenth of an annual payment into its debt service reserve fund on the due date of its first annual loan payment and annually thereafter for the first ten years of repayment of this loan. In the event that the BORROWER applies funds from this account to repayment of the loan, the BORROWER shall replenish the account within ninety (90) days of withdrawal of the funds.
9. **Collateral.** The COLLATERAL for this loan is described in Section 6 (COLLATERAL) of the PROJECT SUMMARY, and secured by the SECURITY INSTRUMENT(S), including the SECURITY AGREEMENT (APPENDIX 4), and the DEED OF TRUST (APPENDIX 5).
10. **Collateral During Loan Repayment.** The BORROWER shall not sell, convey, assign, grant, transfer, mortgage, pledge, encumber, or otherwise dispose of the COLLATERAL or the PLEDGED PROPERTY so long as any of the principal, accrued interest, and late charges, if any, on this loan remain unpaid, without the prior written concurrence of the CWCB. In the event of any such sale, transfer or encumbrance without the CWCB's written concurrence, the CWCB may at any time thereafter declare all outstanding principal, interest, and late charges, if any, on this loan immediately due and payable.
11. **Release After Loan Is Repaid.** Upon complete repayment to the CWCB of the entire principal, all accrued interest, and late charges, if any, as specified in the PROMISSORY NOTE, the CWCB agrees to release and terminate any and all of the CWCB's right, title, and interest in and to the COLLATERAL and the PLEDGED PROPERTY.
12. **Warranties.**
- a. The BORROWER warrants that, by acceptance of the loan under this CONTRACT and by its representations herein, the BORROWER shall be estopped from asserting for any reason that it is not authorized or obligated to repay the loan to the CWCB as required by this CONTRACT.
  - b. The BORROWER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the BORROWER, to solicit or secure this CONTRACT and has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this CONTRACT.
  - c. The BORROWER warrants that the PLEDGED PROPERTY and COLLATERAL for this loan are not encumbered by any other deeds of trust or liens of any party other than the CWCB or in any other manner, except for any existing lien(s) identified in Section 5 (Schedule of Existing Debt) of the PROJECT SUMMARY, which sets forth the position of the lien created by this CONTRACT in relation to any existing lien(s). Documentation establishing the relative priorities of said liens, if necessary, is attached to the PROJECT SUMMARY and incorporated herein.
13. **Change of Ownership of Water Shares During Term of Contract.** If the interest



rate for this loan is based on the CWCB's agricultural or blended agricultural and municipal and/or commercial and/or industrial rates, the BORROWER agrees to notify the CWCB of any change of the ownership of the water rights represented by its shares from irrigation to municipal or commercial or industrial use. The interest rate shall be revised when said change in ownership would increase the original interest rate by 0.5% or more. The parties shall amend this CONTRACT, including a revised PROMISSORY NOTE, to effect said change in interest rate.

14. **Remedies For Default.** Upon default in the payments to be made by the BORROWER under this CONTRACT, or default in the performance of any covenant or agreement contained herein, the CWCB, at its option, may:
- a. suspend this CONTRACT and withhold further loan disbursements pending corrective action by the BORROWER, and if the BORROWER does not cure the default as provided for below, permanently cease loan disbursements and deem the PROJECT substantially complete;
  - b. declare the entire principal amount, accrued interest, and late charges, if any, then outstanding immediately due and payable;
  - c. exercise its rights under any appendices to this CONTRACT, including, but not limited to, the PROMISSORY NOTE, SECURITY AGREEMENT, DEED OF TRUST and/or any instrument securing COLLATERAL; and/or
  - d. take any other appropriate action.

The CWCB shall provide written notice to the BORROWER of any such default and shall give the BORROWER an opportunity to cure within thirty (30) days of receipt of such notice. All remedies described herein may be simultaneously or selectively and successively enforced. The CWCB may enforce the provisions of this CONTRACT at its option without regard to prior waivers of previous defaults by the BORROWER, through judicial proceedings to require specific performance of this CONTRACT, or by such other proceedings in law or equity as may be deemed necessary by the CWCB to ensure compliance with provisions of this CONTRACT and the laws and regulations under which this CONTRACT is executed. The CWCB's exercise of any or all of the remedies described herein shall not relieve the BORROWER of any of its duties and obligations under this CONTRACT.

15. **Operation of PROJECT.** The BORROWER shall, without expense or legal liability to the CWCB, manage, operate, and maintain the PROJECT continuously in an efficient and economical manner.

16. **BORROWER's Liability Insurance.**

- a. Upon execution of this CONTRACT and continuing until complete repayment of the loan is made to the CWCB, the BORROWER shall maintain commercial general liability insurance, with a company that is satisfactory to the CWCB, with minimum limits of \$1,000,000 combined single limit for each occurrence and \$2,000,000 general aggregate, including products/completed operations and personal injury.

- b. Prior to the disbursement of any loan funds, the BORROWER shall provide the CWCB with an Acord Form 25 evidencing said insurance and shall provide the CWCB with documentation of renewals of said insurance.

17. **Additional Contract Requirements.** Any additional contract requirements are set forth in Additional Contract Requirement (Section 7) of the PROJECT SUMMARY.

## **B. PROJECT PROVISIONS**

1. **Construction Fund Program Procedures.** During the completion of the PROJECT, the BORROWER shall adhere to the CWCB Construction Fund Program Procedures (Section 8), of the PROJECT SUMMARY.
2. **Eligible Expenses.** The PROJECT expenses for which the BORROWER is eligible for loan disbursements are listed in Eligible Expenses (Section 9) of the PROJECT SUMMARY.
3. **Loan Disbursements.** The CWCB shall disburse loan funds in accordance with the Disbursement Schedule (Section 10) of the PROJECT SUMMARY.
4. **Time for Performance.** The BORROWER recognizes that time is of the essence in the performance of all of its obligations under this CONTRACT. Therefore, the BORROWER shall complete the PROJECT within the time specified in Time for Performance (Section 11) of the PROJECT SUMMARY.
5. **Indemnification By The Construction Firm.** The BORROWER shall require all construction firms and their subcontractors to indemnify the STATE and the BORROWER against all liability and loss, and against all claims and actions based upon or arising out of damage or injury, including death, to persons or property, caused by any acts or omissions of those parties or sustained in connection with the performance of any contract related to the PROJECT or by conditions created thereby, or based upon any violation of any statute, ordinance, or regulation, and the defense of any such claims or actions.
6. **Liability Insurance During Construction.** During construction of the PROJECT, the BORROWER shall require the construction firm(s) and any subcontractors to maintain the following insurance coverage in the limits shown during the term of their contracts for the construction of the PROJECT. The BORROWER shall provide the CWCB with an Acord Form 25 evidencing said insurance prior to commencement of construction, maintained until construction is complete, and shall provide the CWCB with documentation of renewals of said insurance. No payments shall be made to the BORROWER unless all insurance certificates are current.
  - a. Worker's compensation and employer's liability insurance in the required statutory amounts.
  - b. Automobile liability insurance that includes coverage for all owned, non-owned and hired vehicles with minimum limits of \$1,000,000 combined single limit for bodily injury and property damage.
  - c. Commercial general liability insurance with minimum limits of \$1,000,000 combined

single limit for each occurrence and \$2,000,000 general aggregate. This insurance coverage shall include products/completed operations and bodily injury/property damage.

### **C. GENERAL PROVISIONS**

1. **Periodic Inspections.** Throughout the term of this CONTRACT, the BORROWER shall permit a designated representative of the CWCB to make periodic inspections of the PROJECT. Such inspections shall cover the condition of the PROJECT, operating records, maintenance records, and financial records. These inspections are solely for the purpose of verifying compliance with the terms and conditions of this CONTRACT and shall not be construed nor interpreted as an approval of the actual design, construction or operation of any element of the PROJECT facilities.
2. **Applicable Laws.** The BORROWER shall strictly adhere to all applicable federal, state, and local laws and regulations that are in effect or may hereafter be established throughout the term of this CONTRACT.
3. **Designated Agent Of The CWCB.** The CWCB's employees are designated as the agents of the CWCB for the purpose of this CONTRACT.
4. **Assignment.** The BORROWER may not assign this CONTRACT except with the prior written approval of the CWCB.
5. **Contract Relationship.** The parties to this CONTRACT intend that the relationship between them under this CONTRACT is that of lender-borrower, not employer-employee. No agent, employee, or servant of the BORROWER shall be, or shall be deemed to be, an employee, agent, or servant of the CWCB. The BORROWER shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants, engineering firms, construction firms, and subcontractors during the term of this CONTRACT.
6. **Integration of Terms.** This CONTRACT is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to STATE fiscal rules, unless expressly provided for herein.
7. **Controlling Terms.** In the event of conflicts or inconsistencies between the terms of this CONTRACT and conditions as set forth in any of the appendices, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) Colorado Special Provisions, provided that the parties hereby agree that, for the purposes of such Special Provisions, (a) "Contractor" shall mean BORROWER (2) the remainder of this CONTRACT, and (3) the Appendices.
8. **Casualty and Eminent Domain.** If, at any time, during the term of this CONTRACT, (a) the BORROWER'S PROJECT facilities, including buildings or any portion thereof, are damaged or destroyed, in whole or in part, by fire or other casualty, or (b) title to or use

of the PROJECT facilities or any part thereof shall be taken under the exercise of the power of eminent domain, the BORROWER shall cause the net proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair and restoration of the PROJECT facilities or any portion thereof, or to repayment of this loan. Any net proceeds remaining after such work has been completed or this loan has been repaid, shall be retained by the BORROWER. If the net insurance proceeds are insufficient to pay the full cost of the replacement, repair and restoration, the BORROWER shall complete the work and pay any cost in excess of the net proceeds. In the event BORROWER chooses to repay the loan, BORROWER shall remain responsible for the full loan amount outstanding regardless of the amount of such insurance proceeds or condemnation award.

9. **Captions.** The captions and headings contained in this CONTRACT are for convenience and reference only and shall not be construed so as to define or limit the terms or provisions contracted herein.
10. **CWCB's Approval.** This CONTRACT requires review and approval of plans, specifications, and various other technical and legal documents. The CWCB's review of these documents is only for the purpose of verifying BORROWER's compliance with this CONTRACT and shall not be construed or interpreted as a technical review or approval of the actual design or construction of the PROJECT. Notwithstanding any consents or approvals given to the BORROWER by the CWCB on any such documents, BORROWER and any of its consultants, by preparing any such documents, shall be solely responsible for the accuracy and completeness of any of said documents.
11. **Waiver.** The waiver of any breach of a term of this CONTRACT shall not be construed as a waiver of any other term, or of any subsequent breach of the same term.
12. **CORA Disclosure.** To the extent not prohibited by federal law, this Contract and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.
13. **Addresses for mailing.** All notices, correspondence, or other documents required by this CONTRACT shall be delivered or mailed to the addresses shown in the Section 1 (BORROWER Information) of the PROJECT SUMMARY, for the BORROWER and to the address below for the CWCB:

Colorado Water Conservation Board  
Attn: Construction Fund Section  
1313 Sherman Street, Room 721  
Denver, CO 80203

### Special Provisions

The Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. **PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
12. **PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

SPs Effective  
1/1/09

[END OF SPECIAL PROVISIONS]

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT.

\* Persons signing for BORROWER hereby swear and affirm that they are authorized to act on BORROWER's behalf and acknowledge that the State is relying on their representations to that effect.

BORROWER:

Ordway Feedyard, LLC  
a Colorado limited liability company

BY: [Signature]  
Signature

NAME: Joe Spitz

TITLE: Gen Manager

DATE: 4/25/13

STATE OF COLORADO

John W. Hickenlooper, Governor  
Department of Natural Resources  
Mike King, Executive Director

BY: [Signature]

For Jennifer L. Gimbel, Director  
Colorado Water Conservation Board

Name: Kirk Russell, P.E., Chief  
Finance & Administration Section  
Colorado Water Conservation Board

DATE: 4/25/13

NOTARY:

County of Crowley )  
State of Colorado ) ss

The foregoing instrument was acknowledged  
before me this 25 day of April, 2013, by  
Joe Spitz (Name and Title). Witness  
my hand and official seal.

[Signature] Notary Public

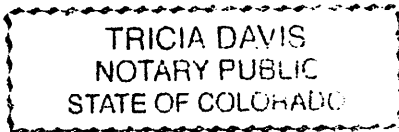
Pre-Approved Form Contract Reviewer

BY: [Signature]  
Linda Bassi, CWCB Contracts Reviewer

DATE: 4/25/13

My commission expires 2-22-2014

(SEAL)



ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid and there are no loan funds available until the State Controller, or such assistant as he may delegate, has signed it.

David J. McDermott, CPA, State Controller

By [Signature]  
Susan Borup, Controller, Department of Natural Resources

Effective Date 5/14/12

**Loan Contract C150349**

## **PROJECT SUMMARY – Ordway Feedyard, LLC - Contract No. C150349**

### **SECTION 1 –BORROWER INFORMATION**

Name: Ordway Feedyard, LLC.  
Address: 19424 Colorado Hwy 96, Ordway, CO 81063  
Contact: Tyler Karney, Resident Manager  
Phone Number: 719-267-3551  
E-mail address: tyler@ordwayfeedyard.com  
Type of Entity: Colorado limited liability company

### **Section 2 – Project Description**

- A. Description of PROJECT: The BORROWER applied to the CWCB for a loan to be used for the construction of the Ordway Feedyard Raw Water Line Extension, consisting of rehabilitation the existing ranch irrigation system and installing additional pipeline and a booster pump station to deliver well water from the River Ranch to the Feedyard, located in Crowley County, hereinafter referred to as the PROJECT, at an estimated total PROJECT cost of \$3,381,500.
- B. Description of Feasibility Study: The CWCB has reviewed a feasibility study report on the PROJECT entitled "Feasibility Study- Ordway Feedyard, LLC," dated January 2013, compiled by Elise M. Bergsten, from Balances Management Services Company, Colorado Springs, with support from Tyler Karney, Resident Manager for the Ordway Feedyard, which is incorporated herein by reference and based upon this feasibility report, the CWCB determined the PROJECT to be technically and financially feasible.

### **SECTION 3 – CWCB's AUTHORITY**

**Construction Fund:** This loan is made pursuant to the provisions of §§ 37-60-119 and 37-60-120, C.R.S., which authorize the CWCB to loan money for water projects from the CWCB Construction Fund for the benefit of the people of the state, provided that the borrower assures repayment of that money.

Section 37-60-122(1)(b), C.R.S., authorizes the CWCB to make loans of up to \$10,000,000 from the CWCB's Construction Fund and the State Severance Tax Trust Fund Perpetual Base Account Fund without prior approval from the General Assembly.

### **SECTION 4 - BOARD APPROVAL**

At its March 19, 2013 meeting, the CWCB approved a Small Project Loan from the Construction Fund to the BORROWER in an amount up to \$2,500,000 for PROJECT costs with \$25,000 for the loan origination fee of 1% of the cost of the PROJECT, resulting in a total loan amount of \$2,525,000 with an interest rate of 1.75% per annum for a repayment term of 30 years. This is in accordance with CWCB Policy No. 16.

### **SECTION 5 – SCHEDULE OF EXISTING DEBT**

None.

### **SECTION 6 - COLLATERAL**

The COLLATERAL provided for this loan, as evidenced by the executed DEED OF TRUST, in the form attached as **APPENDIX 5** and incorporated herein, shall be an undivided interest in real property as



more particularly described in the attached DEED OF TRUST ("COLLATERAL"). Said COLLATERAL shall be equal in value to 110% of the LOAN AMOUNT as verified by an appraisal.

#### **SECTION 7 – ADDITIONAL CONDITIONS & CONTRACT REQUIREMENTS**

No additional conditions or contract requirements

#### **SECTION 8 – CONSTRUCTION FUND PROGRAM PROCEDURES**

- A. The BORROWER shall employ an engineer, registered in the state of Colorado to prepare plans and specifications for the PROJECT.
- B. Engineering Contracts and the plans and specifications must be submitted to the CWCB staff for verification of compliance with the terms of this CONTRACT when available prior to bidding. Any modifications to the plans and specifications must be approved in writing by the CWCB staff.
- C. For plans and specifications for all jurisdictional dams and reservoirs, as defined by § 37-87-105 C.R.S., the BORROWER shall provide a letter of approval from the State Engineer's Office prior to construction.
- D. CWCB staff must be invited to bid opening and must approve the award of the construction contract.
- E. The BORROWER shall contract for the construction of the work with responsible and capable Construction Firms, which said Construction Firms shall be selected by the BORROWER and found acceptable by the CWCB staff.
- F. The BORROWER must provide a copy of the executed construction contract documents consisting of the contractor's proposal, construction contract, performance bond, payment bond, notice of award, notice to proceed, sample change order, and sample field order, as well as the advertisement for bid and bid bond at bidding. After the CWCB staff verifies that these documents comply with the terms of this CONTRACT, the BORROWER may issue the notice to proceed to the Construction Firms.
- G. The BORROWER shall conduct a pre-construction conference at which time the CWCB staff shall have the opportunity to review and approve the construction schedule.
- H. If the CWCB staff determines that the PROJECT requires a resident inspector during construction, the BORROWER shall employ an inspector who has been approved by the CWCB staff.
- I. The BORROWER shall construct the PROJECT in accordance with the approved plans and specifications.
- J. Upon completion of the PROJECT construction, the BORROWER shall provide as-built drawings of the PROJECT to the CWCB staff, or, if required by § 37-87-105, C.R.S., the BORROWER shall provide the as-built drawings to the State Engineer's Office for approval and filing.
- K. Upon completion of the PROJECT construction, the BORROWER shall arrange a final inspection for the CWCB staff.
- L. The BORROWER shall pay all of the expenses related to the PROJECT when such bills are due.

**SECTION 9 – ELIGIBLE EXPENSES.** The following items are eligible for loan disbursements.

- A. Preparing final designs and specifications for the PROJECT.
- B. Preparing bid and construction contract documents.
- C. Preparing environmental assessment or environmental impact statements, and otherwise complying with the Federal National Environmental Policy Act.
- D. Complying with all federal, state, and local regulatory requirements, including the obtaining of all required permits.
- E. Fish and wildlife mitigation measures required by federal, state, or local laws and regulations.
- F. Actual construction as called for in the design documents and in change orders approved by the CWCB and the BORROWER.
- G. Engineering services for construction management, including design and construction management for CWCB-approved change orders.
- H. Interest during completion of the PROJECT pursuant to Paragraph A.4 of the CONTRACT.
- I. Legal services for reviewing engineering services contracts, reviewing this CONTRACT, reviewing construction contract documents, and for complying with all federal, state, and local regulatory requirements.
- M. PROJECT-related expenses incurred prior to the Effective Date of this CONTRACT in accordance with the approval of this loan.

**10 – DISBURSEMENT SCHEDULE**

For Project costs: The BORROWER shall prepare a periodic progress report which contains a statement of the PROJECT costs expended for that period and shall forward said statement to the CWCB. After receipt of the periodic progress report from the BORROWER, and review and acceptance of the items therein as eligible expenses as described below, the CWCB will pay to the BORROWER the amount set forth in the report or such portion that has been approved by the CWCB. Such payment shall be made within thirty (30) days from the CWCB's approval of each progress report.

**SECTION 11 – TIME FOR PERFORMANCE**

PROJECT Beginning: Upon Effective Date of this CONTRACT (the date this CONTRACT is signed by the State Controller or his designee).

PROJECT Finish: Three (3) years from the Effective Date of this CONTRACT.

# PROMISSORY NOTE

Date: April 23, 2013  
Borrower: Ordway Feedyard, LLC  
Principal Amount: \$ 2,525,000  
Interest Rate: 1.75% per annum  
Term of Repayment: 30 years  
Loan Contract No.: C150349  
Loan Payment: \$ 108,902.63  
Payment Initiation Date\*: \_\_\_\_\_  
Maturity Date\*: \_\_\_\_\_

\* Payment Initiation Date and Maturity Date fields are filled in after the project has been substantially completed.

1. FOR VALUE RECEIVED, the BORROWER promises to pay the Colorado Water Conservation Board ("CWCB"), the Principal Amount plus Interest for the Term of Repayment, pursuant to the LOAN CONTRACT and this PROMISSORY NOTE.
2. Principal and interest shall be payable in equal Loan Payments, with the first payment due and payable one year from Payment Initiation Date (the date the CWCB determines that the project is substantially complete), and annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
3. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street, Room 721, Denver, Colorado 80203.
4. The CWCB may impose a late charge in the amount of 5% of the annual payment if the CWCB does not receive the annual payment within 15 calendar days of the due date.
5. This PROMISSORY NOTE may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
6. All payments received shall be applied first to late charges, if any, next to accrued interest and then to reduce the principal amount.
7. This PROMISSORY NOTE is issued pursuant to the LOAN CONTRACT between the CWCB and the BORROWER. The LOAN CONTRACT creates security interests in favor of the CWCB to secure the prompt payment of all amounts that may become due hereunder. Said security interests are evidenced by a Security Agreement(s), Deed(s) of Trust, and/or Assignment(s) ("Security Instruments") of even date and amount and cover certain revenues, real property, water rights and/or accounts of the BORROWER. The LOAN CONTRACT and Security Instruments grant additional rights to the CWCB, including the right to accelerate the maturity of this PROMISSORY NOTE in certain events.
8. If any annual payment is not paid when due or any default under the LOAN CONTRACT or the Security Instruments securing this PROMISSORY NOTE occurs, the CWCB may declare the entire outstanding

9. principal balance of the PROMISSORY NOTE, all accrued interest, and any outstanding late charges immediately due and payable, and the indebtedness shall bear interest at the rate of 7% per annum from the date of default. The CWCB shall give the BORROWER written notice of any alleged default and an opportunity to cure within thirty (30) days of receipt of such notice before the BORROWER shall be considered in default for purposes of this PROMISSORY NOTE.
10. The BORROWER and any co-signer or guarantor hereby agree that if this PROMISSORY NOTE or interest thereon is not paid when due or if suit is brought, then it shall pay all reasonable costs of collection, including reasonable attorney fees. In the event of any bankruptcy or similar proceedings, costs of collection shall include all costs and attorney fees incurred in connection with such proceedings, including the fees of counsel for attendance at meetings of creditors' committees or other committees.
11. This PROMISSORY NOTE shall be governed in all respects by the laws of the State of Colorado.

BORROWER: Orway Feedyard, LLC

(SEAL)

By [Signature]  
NAME: Joe Spitz  
TITLE: Gen Manager  
DATE: 4/25/13

NOTARY:

County of Crowley

State of Colorado

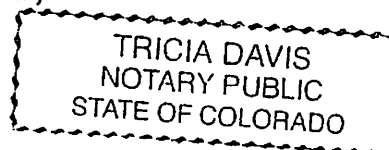
)  
) ss  
)

The foregoing instrument was acknowledged before me this 25 day of April 2013, by (Joe Spitz) Witness my hand and official seal.

[Signature] Notary Public

My commission expires 2-22-2014

(SEAL)



**RESOLUTIONS OF THE GENERAL MANAGER  
OF ORDWAY FEEDYARD, LLC.**

The General Manager of Ordway Feedyard, LLC (COMPANY), Joe Spitz (MANAGER), acting on behalf of the members of the COMPANY and pursuant to the COMPANY's Articles of Organization, has agreed to the following resolutions concerning a secured loan from the State of Colorado Water Conservation Board (CWCB), for the purpose of Ordway Feedyard Raw Water Line Extension Project in the amount of \$2,525,000 or such actual amount, more or less, as may be needed by the Company and available from the CWCB including the CWCB loan origination fee of 1% of the loan amount.

The MANAGER charges that these resolutions are irrevocable during the term of the LOAN CONTRACT and pursuant to the COMPANY'S Articles of Organization, authorizes the following:

1. to enter into and comply with the terms of a contract with the Colorado Water Conservation Board for a loan in the amount of \$2,525,000, or such actual amount, more or less, as needed to finance the project costs, including the CWCB loan origination fee of 1%, and
2. to levy and collect lease assessments and other legally available revenues an amount sufficient to pay the annual amounts due under the LOAN CONTRACT, and to pledge lease revenues and the Company's right to receive said revenues for repayment of the loan, and
3. to place said pledged revenues in a special account separate and apart from other COMPANY revenues, and
4. to make the annual payments required by the PROMISSORY NOTE and to make annual deposits to a debt service reserve fund, and
5. to pledge the lease revenues and other legally available revenues, and a combination of real property equal in value to 110% of the loan amount, as COLLATERAL for the loan, and execute all documents, including a SECURITY AGREEMENT and DEED OF TRUST, necessary to convey a security interest in said property to the CWCB,
6. to execute all documents as required by the LOAN CONTRACT, including, but not limited to, a PROMISSORY NOTE, SECURITY AGREEMENT, and DEED OF TRUST, and
7. to take such other actions and to execute such other documents as may be necessary to consummate and implement the loan.

**CERTIFICATION**

THE UNDERSIGNED MANAGER, OF ORDWAY FEEDYARD, LLC, HEREBY CERTIFIES THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE RESOLUTION AND THAT SAID RESOLUTION HAS NOT BEEN AMENDED OR RESCINDED.

(SEAL)

Ordway Feedyard, LLC

By Joe Spitz 4/25/13  
Joe Spitz, General Manager/Date

NOTARY:

County of Crowley

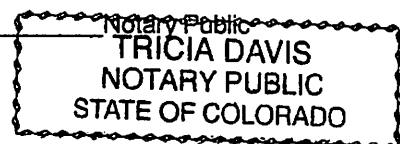
State of Colorado

)  
) ss  
)

The foregoing instrument was acknowledged before me this 25 day of April 2013 by (Joe Spitz)  
Witness my hand and official seal.

My commission expires 2.22.2014

(SEAL)



# SECURITY AGREEMENT

(PLEDGE OF REVENUES)

DATE: APRIL 23, 2013

DEBTOR: ORDWAY FEEDYARD, LLC

SECURED PARTY: COLORADO WATER CONSERVATION BOARD

PROMISSORY NOTE: \$2,525,000

TERMS OF REPAYMENT: 1.75% PER ANNUM FOR 30 YEARS

LOAN CONTRACT: C150349

COLLATERAL: All lease revenues and other legally available revenue and all of DEBTOR's right to receive said lease and other revenues to repay the loan as described in PLEDGED PROPERTY provisions of the LOAN CONTRACT and DEBTOR's Resolution, dated April 25, 2013.

To secure payment of the loan evidenced by the PROMISSORY NOTE payable in accordance with the TERMS OF REPAYMENT, or until all principal, interest, and late charges, if any, are paid in full, the DEBTOR grants to SECURED PARTY a security interest in the above described COLLATERAL.

## DEBTOR EXPRESSLY WARRANTS AND COVENANTS:

1. That except for the security interest granted hereby and any other security interests described in Section 5 of the LOAN CONTRACT PROJECT SUMMARY, DEBTOR is the owner of the COLLATERAL free from any adverse lien, security interest or encumbrances; and that DEBTOR will defend the COLLATERAL against all claims and demands of all persons at any time claiming the same or any interest therein.
2. That the execution and delivery of this agreement by DEBTOR will not violate any law or agreement governing DEBTOR or to which DEBTOR is a party.
3. To not permit or allow any adverse lien, security interest or encumbrance whatsoever upon the COLLATERAL and not to permit the same to be attached or replevined.
4. That by its acceptance of the loan money pursuant to the terms of the CONTRACT and by its representations herein, DEBTOR shall be estopped from asserting for any reason that it is not authorized to grant a security interest in the COLLATERAL pursuant to the terms of this agreement.
5. To pay all taxes and assessments of every nature which may be levied or assessed against the COLLATERAL.
6. That the DEBTOR's articles of incorporation and by-laws do not prohibit any term or condition of this agreement.

UNTIL DEFAULT DEBTOR may have possession of the COLLATERAL, provided that DEBTOR keeps the COLLATERAL in an account separate from other revenues of DEBTOR and does not use the COLLATERAL for any purpose not permitted by the CONTRACT. Upon default, SECURED PARTY shall have the immediate right to the possession of the COLLATERAL.

**DEBTOR SHALL BE IN DEFAULT under this agreement upon any of the following events or conditions:**

- a. default in the payment or performance of any obligation contained herein or in the PROMISSORY NOTE or LOAN CONTRACT;
- b. dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any

part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law of, by or against DEBTOR; or

- c. the making or furnishing of any warranty, representation or statement to SECURED PARTY by or on behalf of DEBTOR which proves to have been false in any material respect when made or furnished.

UPON SUCH DEFAULT and at any time thereafter, SECURED PARTY shall have the remedies of a secured party under Article 9 of the Colorado Uniform Commercial Code. SECURED PARTY may require DEBTOR to deliver or make the COLLATERAL available to SECURED PARTY at a place to be designated by SECURED PARTY, which is reasonably convenient to both parties. Expenses of retaking, holding, preparing for sale, selling or the like shall include SECURED PARTY's reasonable attorney's fees and legal expenses.

The SECURED PARTY shall give the DEBTOR written notice of any alleged default and an opportunity to cure within thirty (30) days of receipt of such notice before the DEBTOR shall be considered in default for purposes of this Security Agreement. No default shall be waived by SECURED PARTY except in writing, and no waiver by SECURED PARTY of any default shall operate as a waiver of any other default or of the same default on a future occasion. The taking of this security agreement shall not waive or impair any other security SECURED PARTY may have or hereafter acquire for the payment of the above indebtedness, nor shall the taking of any such additional security waive or impair this security agreement; but SECURED PARTY shall retain its rights of set-off against DEBTOR. In the event court action is deemed necessary to enforce the terms and conditions set forth herein, said action shall only be brought in the District Court for the City and County of Denver, State of Colorado, and DEBTOR consents to venue and personal jurisdiction in said Court.

All rights of SECURED PARTY hereunder shall inure to the benefit of its successors and assigns; and all promises and duties of DEBTOR shall bind its successors or assigns.

DEBTOR: Ordway Feedyard, LLC

(SEAL)

By

Signature

NAME:

TITLE:

DATE:

NOTARY:

County of Crowley

State of Colorado

)  
) ss  
)

The foregoing instrument was acknowledged before me this 25 day of April, 2013, by (Joe Spitz) Witness my hand and official seal.

Tricia Davis Notary Public

My commission expires 2.22.2014

(SEAL)

TRICIA DAVIS  
NOTARY PUBLIC  
STATE OF COLORADO

## Deed of Trust

DATE: April 23, 2013  
GRANTOR: ORDWAY FEEDYARD, LLC  
BENEFICIARY: COLORADO WATER CONSERVATION BOARD  
COUNTY: CROWLEY  
PRINCIPAL LOAN AMOUNT: 2,525,000  
LOAN CONTRACT: LOAN CONTRACT No. C150349  
TERMS OF REPAYMENT: 1.75% per annum for 30 years  
COLLATERAL: An undivided interest in certain real property described as the Ordway Feedyard located on 616.56 acres of land approximately one (1) mile east of Ordway, along the south side of the Missouri Pacific Railroad and State Highway 96, in Crowley County, Colorado. Legally described as:

372.35 acres of land out of Section 18, South of the Railroad, T21S, R56W, 6<sup>th</sup> P.M., Crowley County.

21.5 acres of land out of the E/2 of the E/2 of the E/2 of Section 24, T21S, R57W, 6<sup>th</sup> P.M., Crowley County.

155.71 acres of land out of the North Part of Section 19, T21S, R56W, 6<sup>th</sup> P.M., Crowley County.

67.0 acres of land out of E/2 of the E/2 of Section 13, South of the Railroad, T21S, R57W, 6<sup>th</sup> P.M., Crowley County, Colorado.

Included are the necessary rights of ingress and egress therefor, as contained in the deeds of the owners of lands bordering on said parcel, together with all easements and rights-of way appurtenant thereto and all improvements thereon.

This indenture is between the Grantor, and the Public Trustee of the above referenced COUNTY, State of Colorado ("PUBLIC TRUSTEE"),

### FACTUAL RECITALS

1. The GRANTOR has executed a PROMISSORY NOTE of even date and amount, set forth in the LOAN CONTRACT, for a loan in the PRINCIPAL LOAN AMOUNT to be repaid to the BENEFICIARY, with TERMS OF REPAYMENT and in accordance with the PROMISSORY NOTE or until loan is paid in full.
2. The GRANTOR is desirous of securing payment of the PRINCIPAL LOAN AMOUNT and interest of said PROMISSORY NOTE to the BENEFICIARY.

The GRANTOR, in consideration of the premises and for the purpose aforesaid, does hereby grant, bargain, sell and convey unto the said PUBLIC TRUSTEE in trust forever, the above described COLLATERAL.

To have and to hold the same, together with all appurtenances, in trust nevertheless, that in case of default in the payment of said PROMISSORY NOTE, or any part thereof, or the interest thereon, or in the performance of any covenants hereinafter set forth or in said PROMISSORY NOTE or LOAN CONTRACT, then upon the BENEFICIARY filing notice of election and demand for sale, said PUBLIC TRUSTEE, after advertising notice of said sale weekly for not less than four weeks in some newspaper of general circulation in said



COUNTY, shall sell said COLLATERAL in the manner provided by law in effect at the time of filing said notice and demand, at public auction for cash, at any proper place designated in the notice of sale. Out of the proceeds of said sale, the PUBLIC TRUSTEE shall retain or pay first all fees, charges and costs and all moneys advanced for taxes, insurance and assessments, or on any prior encumbrance, with interest thereon and pay the principal and interest due on said PROMISSORY NOTE, rendering the overplus, if any, unto the GRANTOR; and after the expiration of the time of redemption, the PUBLIC TRUSTEE shall execute and deliver to the purchaser a deed to the COLLATERAL sold. The BENEFICIARY may purchase said COLLATERAL or any part thereof at such sale.

The GRANTOR covenants that at the time of the delivery of these presents, it is well seized of the COLLATERAL in fee simple, and has full power and lawful authority to grant, bargain, sell and convey the same in the manner and form as aforesaid. The GRANTOR fully waives and releases all rights and claims it may have in or to said COLLATERAL as a Homestead Exemption or other exemption, now or hereafter provided by law. The GRANTOR further covenants that the COLLATERAL is free and clear of all liens and encumbrances whatever and that the GRANTOR shall warrant and forever defend the COLLATERAL in the quiet and peaceable possession of the PUBLIC TRUSTEE, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof.

Until payment in full of the indebtedness, the GRANTOR shall timely pay all taxes and assessments levied on the COLLATERAL; any and all amounts due on account of the principal and interest or other sums on any senior encumbrances, if any; and will keep the COLLATERAL insured in accordance with the requirements of the LOAN CONTRACT. In the event of the sale or transfer of the COLLATERAL, the BENEFICIARY, at its option, may declare the entire balance of the PROMISSORY NOTE immediately due and payable.

In case of default in any of said payments of the principal or interest, according to the terms of said PROMISSORY NOTE or LOAN CONTRACT, by the GRANTOR, its successors or assigns, then said principal sum hereby secured, and interest thereon, may at once, at the option of the BENEFICIARY, become due and payable, and the said COLLATERAL be sold in the manner and with the same effect as if said indebtedness had matured, and that if foreclosure be made by the PUBLIC TRUSTEE, an attorney's fee in a reasonable amount for services in the supervision of said foreclosure proceedings shall be allowed by the PUBLIC TRUSTEE as a part of the cost of foreclosure, and if foreclosure be made through the courts a reasonable attorney's fee shall be taxed by the court as a part of the cost of such foreclosure proceedings.

It is further understood and agreed, that if a release or a partial release of this DEED OF TRUST is required, the GRANTOR, its successors or assigns will pay the expense thereof; that all the covenants and agreements contained herein and in the PROMISSORY NOTE and LOAN CONTRACT shall extend to and be binding upon the successors or assigns of the respective parties hereto; and that the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

Executed the day and date first written above.

(SEAL)

Ordway Feedyard, LLC

By

Joe Spitz 4/25/13  
Joe Spitz, General Manager/Date

County of

Crowley

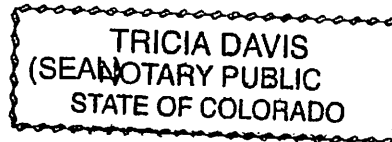
)  
) SS  
)

State of Colorado

The foregoing instrument was acknowledged before me this 25 day of April 2013, by Joe Spitz, as General Manager of Ordway Feedyard, LLC. Witness my hand and official seal.

Tricia Davis Notary Public

My commission expires 2.22.2014



Return recorded DEED OF TRUST to: CWCB Finance Section, Attn: Peg Mason, Contracts Manager, 1313 Sherman Street, Suite 721, Denver CO 80203 (Phone Number 303-866-3441 ext. 3227)

**EXHIBIT B**

Loan Contract Amendment No. 1

## CONTRACT AMENDMENT

|                 |                                                        |                         |
|-----------------|--------------------------------------------------------|-------------------------|
| Amendment No. 1 | Original Loan Contract No.<br>C150349<br>CMS No. 55869 | Amendment CMS No. 67331 |
|-----------------|--------------------------------------------------------|-------------------------|

### 1) PARTIES

This Amendment No. 1 (AMENDMENT) to the above-referenced ORIGINAL CONTRACT (hereinafter called the ORIGINAL CONTRACT) is entered into by and between the **Ordway Feedyard, LLC**, 19424 Colorado Hwy 96, Ordway, Colorado 81063, a Colorado nonprofit corporation (BORROWER), and the STATE OF COLORADO (hereinafter called the "STATE") acting by and through the Department of Natural Resources, Colorado Water Conservation Board, (hereinafter called "CWCB").

### 2) EFFECTIVE DATE AND ENFORCEABILITY

This AMENDMENT shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "EFFECTIVE DATE"), but shall be effective and enforceable thereafter in accordance with its provisions.

### 3) FACTUAL RECITALS

The Ordway Feedyard, LLC was approved for a loan, from the CWCB, totaling \$2,525,000 on March 19, 2013, to finance the Ordway Feedyard Raw Water Line Extension Project. The PROJECT was substantially completed as of April 1, 2014. The Parties agree to amend the contract to reduce the final loan amount. The total amount disbursed under this contract was \$2,116,564.05. An adjustment of \$408,435.95 will be made to the contract for the funds no longer needed.

### 4) CONSIDERATION

Consideration for this AMENDMENT to the ORIGINAL CONTRACT consists of the payments that shall be made pursuant to this AMENDMENT and ORIGINAL CONTRACT and the promises and agreements herein set forth.

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this AMENDMENT.

### 5) LIMITS OF EFFECT

This AMENDMENT is incorporated by reference into the ORIGINAL CONTRACT, and the ORIGINAL CONTRACT and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

### 6) MODIFICATIONS.

The ORIGINAL CONTRACT NO. C150349 and all prior amendments thereto, if any, are modified as follows:

- a) Amend the contract to reduce the final loan amount. The loan contract was substantially completed as of April 1, 2014. The total amount disbursed under this contract was \$2,116,564.05. A decrease of \$408,435.95 will be made to the contract amount for the funds no longer needed.
- b) The BORROWER agrees that it shall execute the following documents, all of which shall set forth the revised loan amount of \$2,116,564.05:
  - I. AMENDED PROMISSORY NOTE attached hereto as **APPENDIX A, AMENDMENT NO. 1 TO LOAN CONTRACT NO. C150349** in the amount of \$2,116,564.05 and incorporated herein, which shall replace and supersede the original PROMISSORY NOTE dated April 23, 2013 in the amount of \$2,525,000 attached to the ORIGINAL CONTRACT as Appendix 2.

- II. AMENDED SECURITY AGREEMENT attached hereto as **APPENDIX B, AMENDMENT NO. 1 TO LOAN CONTRACT NO. C150349** and incorporated herein, which shall supplement and operate in conjunction with the original SECURITY AGREEMENT dated April 23, 2013, attached to the ORIGINAL CONTRACT as Appendix 4.
- III. Amended DEED OF TRUST attached hereto as **ATTACHMENT C, AMENDMENT NO. 1 TO LOAN CONTRACT NO. C150349** and incorporated herein, which shall replace and supersede the DEED OF TRUST in the amount of \$2,525,000 dated April 23, 2013 (APPENDIX 5 to the ORIGINAL CONTRACT).

**7) EFFECTIVE DATE OF AMENDMENT**

The effective date hereof is upon approval of the State Controller or their delegate.

**8) ORDER OF PRECEDENCE**

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the ORIGINAL CONTRACT, the provisions of this AMENDMENT shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the ORIGINAL CONTRACT or any amendment shall always control other provisions in the ORIGINAL CONTRACT or any amendments.

**9) AVAILABLE FUNDS**

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

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**THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT**

\* Persons signing for Borrower hereby swear and affirm that they are authorized to act on Borrower's behalf and acknowledge that the State is relying on their representations to that effect.

**BORROWER**  
Ordway Feedyard, LLC

Name:

Title:

*Signature*  
**PATRICIA DAVIS**  
Date: 4/9/14  
**NOTARY PUBLIC**

**STATE OF COLORADO**

**(SEANDTARY ID 20064007219**

**MY COMMISSION EXPIRES 02/22/2018**

**Attest:**

Name:

Title:

*Signature*  
**\*Signature**

Date:

**STATE OF COLORADO**

John W. Hickenlooper, Governor

Department of Natural Resources

Mike King, Executive Director,

Colorado Water Conservation Board

By:

Name: Kirk Russell, P.E., Chief

Finance & Administration Section

DATE:

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid and the loan funds under this contract are not available until the State Controller, or such assistant as he may delegate, has signed it.

**STATE CONTROLLER**  
Robert Jaros, CPA, MBA, JD

By:

*Signature*  
**Susan Borup, Controller**  
Department of Natural Resources

Date:

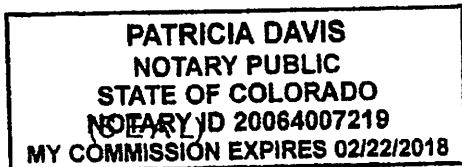
**APPENDIX A, AMENDMENT NO. 1 TO LOAN CONTRACT C150349**  
**AMENDMENT TO THE PROMISSORY NOTE**

Date: April 2, 2014  
Borrower: Ordway Feedyard, LLC  
Principal Amount: \$2,116,546.05  
Interest Rate: 1.75% per annum  
Term of Repayment: 30 years  
Loan Contract No.: C150349  
Loan Payment: \$91,286.89  
Payment Initiation Date\*:  
Maturity Date\*:

\* Payment Initiation Date and Maturity Date fields are filled in after the project has been substantially completed.

1. FOR VALUE RECEIVED, the BORROWER promises to pay the Colorado Water Conservation Board ("CWCB"), the Principal Amount plus Interest for the Term of Repayment, pursuant to the LOAN CONTRACT and this promissory note.
2. This Promissory Note replaces and supersedes the Promissory Note dated April 23, 2013, in the principal amount of \$2,525,000.
3. Principal and interest shall be payable in equal Loan Payments, with the first payment due and payable one year from Payment Initiation Date, and annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
4. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street, Room 721, Denver, Colorado 80203.
5. The CWCB may impose a late charge in the amount of 5% of the annual payment if the CWCB does not receive the annual payment within 15 calendar days of the due date.
6. This Note may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.
7. All payments received shall be applied first to late charges, if any, next to accrued interest and then to reduce the principal amount.

8. This Note is issued pursuant to the LOAN CONTRACT between the CWCB and the BORROWER. The LOAN CONTRACT creates security interests in favor of the CWCB to secure the prompt payment of all amounts that may become due hereunder. Said security interests are evidenced by a Security Agreement ("Security Instruments") of even date and amount and cover certain revenues, real property, water rights and/or accounts of the BORROWER. The LOAN CONTRACT and Security Instruments grant additional rights to the CWCB, including the right to accelerate the maturity of this Note in certain events.
9. If any annual payment is not paid when due or any default under the LOAN CONTRACT or the Security Instruments securing this Note occurs, the CWCB may declare the entire outstanding principal balance of the Note, all accrued interest, and any outstanding late charges immediately due and payable, and the indebtedness shall bear interest at the rate of 7% per annum from the date of default. The CWCB shall give the BORROWER written notice of any alleged default and an opportunity to cure within thirty (30) days of receipt of such notice before the BORROWER shall be considered in default for purposes of this Promissory Note.
10. The BORROWER and any co-signer or guarantor hereby agree that if this Note or interest thereon is not paid when due or if suit is brought, then it shall pay all reasonable costs of collection, including reasonable attorney fees. In the event of any bankruptcy or similar proceedings, costs of collection shall include all costs and attorney fees incurred in connection with such proceedings, including the fees of counsel for attendance at meetings of creditors' committees or other committees.
11. This Note shall be governed in all respects by the laws of the State of Colorado.



BORROWER: Ordway Feedyard, LLC

By [Signature] Gen Manager  
Signature/Title

Date 4/3/14

Attest:

By [Signature] Notary  
Signature/Title

Date 04.03.14

State of CO  
County of Garfield



**APPENDIX B, AMENDMENT NO. 1 TO LOAN CONTRACT C150349  
AMENDMENT TO THE SECURITY AGREEMENT**

DEBTOR: Ordway Feedyard, LLC

SECURED PARTY: Colorado Water Conservation Board

DATE OF ORIGINAL SECURITY AGREEMENT: April 23, 2013

ORIGINAL PROMISSORY NOTE: \$2,525,000 dated April 23, 2013, interest rate of 1.75% per annum with an annual payment of \$108,902.63 for a period of 30 years or until paid in full.

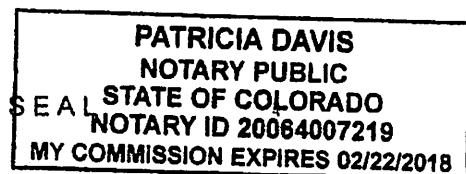
ORIGINAL LOAN CONTRACT: C150349, dated May 14, 2013

1. The Parties have amended the ORIGINAL LOAN CONTRACT and Promissory Note to decrease the loan amount from \$2,525,000.00 to \$2,116,564.05 and hereby amend the original Security Agreement to document the change of loan amount.
2. The Parties expressly agree that this Amendment is supplemental to the Security Agreement and all terms, conditions, and provisions thereof, unless specifically modified below, are to apply to this Amendment as though they were expressly rewritten, incorporated, and included herein.

Amended Loan Contract: Amendment No. 1 to Loan Contract No. C150349

Replacement Promissory Note: \$2,116,564.05, as of April 2014 the annual payment will be \$91,286.89 for thirty (30) years or until the loan is paid in full at an interest rate of 1.75%.

Date of Amended Security Agreement: April 2, 2014



DEBTOR: Ordway Feedyard, LLC

By [Signature] Signature/Title

Date 4/3/14

ATTEST:

By [Signature]  
Signature/Title

Date 04.03.14

*Notary, State of CO  
County of Crowley*

**APPENDIX C, AMENDMENT No.1 TO LOAN CONTRACT C150349  
AMENDMENT TO THE DEED OF TRUST**

Date: April 2, 2014  
Grantor (Borrower): Ordway Feedyard, LLC  
Beneficiary (Lender): Colorado Water Conservation Board  
Date of Deed of Trust: April 23, 2013  
Recording Date of Deed of Trust: May 24, 2013  
County of Recording ("County"): Crowley County  
Deed of Trust Recording Information: #169481 DT (3 pages)  
Loan Contract: C150349  
Promissory Note: \$2,116,564.05, 1.75%, 30 Years

This Amendment to the ORIGINAL DEED OF TRUST is between the Grantor and the Public Trustee of the County, State of Colorado.

The ORIGINAL DEED OF TRUST was recorded to secure repayment of the indebtedness evidenced by the LOAN CONTRACT and PROMISSORY NOTE between the Grantor and the Beneficiary.

Grantor and Beneficiary have agreed to amend the ORIGINAL DEED OF TRUST to reflect the revised term of repayment.

NOW THEREFORE, the CWCB and Grantor agree that:

1. This DEED OF TRUST, APPENDIX C, AMENDMENT 1 to CONTRACT C150349 dated April 2, 2014 shall supplement and operate in conjunction with the DEED OF TRUST dated April 23, 2013, attached to the ORIGINAL CONTRACT as APPENDIX 5 and incorporated herein by reference.
2. The Grantor executed a Promissory Note dated April 23, 2013, to secure the repayment of the indebtedness evidenced by Contract No. C150349 dated May 14, 2013, as amended with Amendment No. 1 to Loan Contract No. C150349. The amended Promissory Note, Appendix A, Amendment No. 1 to Loan Contract No. C150349, dated April 2, 2014, with an amended total amount of \$2,116,564.05 is to be repaid to the State of Colorado for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board ("CWCB") the beneficiary herein, whose address is 1313 Sherman Street, Room 721, Denver, CO 80203, payable in annual installments, in accordance with said amended Promissory Note, or until the loan is paid in full.
3. In the event of any conflict, inconsistency, variance, or contradiction between the provisions of this amendment and any of the provisions of the original deed of trust, the provisions of this amendment shall in all respects supersede, govern, and control.
4. Any provisions of the original deed of trust not expressly modified herein remain in full force and effect.

5. Executed on the date first written above.

(SEAL)

GRANTOR: Ordway Feedyard, LLC

By [Signature]  
Signature

Name Joe Spitz

Title Gen Manager

Date 4/3/14

ATTEST:

By [Signature]  
Signature

Name Paul Maestas Jr

Title \_\_\_\_\_

Date 4.3.2014

State of Colorado )  
County of Crowley ) ss.

The foregoing instrument was acknowledged before me on 04.03.2014, 2014, by  
Joe Spitz (Name) as General Manager (Title) and  
Paul Maestas Jr (Name) as Witness  
Joe Spitz (Name) as General Manager (Title) of the Ordway Feedyard,  
LLC. Witness my hand and official seal.

**PATRICIA DAVIS**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
**NOTARY ID 20064007219**  
**MY COMMISSION EXPIRES 02/22/2018**

[Signature]  
Notary Public

My commission expires 02.22.2018

Return recorded document to: CWCB Finance Section, Attn: Peg Mason Contracts Manager,  
1313 Sherman Street, Suite 721, Denver CO 80203 (Phone Number 303-866-3441 ext. 3227)

**EXHIBIT C**

**Purchase Agreement**

**AGREEMENT FOR THE  
PURCHASE AND SALE OF FEED YARD**

This Agreement for the Purchase and Sale of Feed Yard (this "Agreement") is entered into effective as of March 12, 2019 (the "Effective Date"), by and between ORDWAY FEEDYARD LTD. LIABILITY CO., a Colorado limited liability company ("Seller"), and ORDWAY CATTLE FEEDERS, L.P., a Colorado limited partnership ("Purchaser").

1. **PURCHASE AND SALE.**

(a) **Purchase and Sale.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, on the terms and conditions set forth herein, the business of Seller, which is a cattle feed yard (the "**Business**"), comprised of: (i) the fee interest of approximately 1,000.8 acres located in Crowley County, Colorado (the "**Land**"), as legally described on **Exhibit A** attached hereto and by this reference incorporated herein; (ii) all structures, buildings, pens, corrals, grain storage structures, other improvements and water systems and water storage tanks located upon or under the Land (the "**Improvements**"); (iii) all of the appurtenances to the Land, including all easements benefiting and/or burdening the Land (the "**Appurtenances**"); (iv) all of the rolling stock and equipment located on or used in connection with the business of Seller (the "**Equipment**") as described in **Exhibit B** attached hereto and by this reference incorporated herein; (v) to the extent assignable, all licenses, permits, franchises, certificates, approvals and authorizations necessary to own and operate the Business in the same manner as it has been operated prior to Closing (collectively, the "**Approvals**"); (vi) all books and records of Seller related to the operation of the Business (the "**Books & Records**"); and (vii) and all of the hay, corn and silage on hand, stored water, vaccines and medication, fuel, shop inventory, parts and oil, all present at Closing (the "**Inventory**").

The above listed items are herein collectively known hereafter as the "**Property.**"

(b) **Closing.** The "**Closing Date**" shall be the last day of the calendar month after which Seller has provided Purchaser with not less than ten (10) days written notice of acceptance of Purchaser's Lender Financing (as hereinafter defined); however, if Seller does not agree to Purchaser's Lender Financing on or before ninety (90) days after the Effective Date this Agreement shall be deemed terminated and void. The closing of the transaction contemplated in this Agreement is hereinafter referred to as the "**Closing.**"

2. **PURCHASE PRICE.** The purchase price for the Property ("**Purchase Price**") payable at the Closing is Seven Million Sixty-Three Thousand Five Hundred Dollars (\$7,063,500.00), plus an increase for the Inventory on hand as described below. Purchaser shall pay the Purchase Price for the Property in the manner described in Section 3 below.

3. PAYMENT OF PURCHASE PRICE. Purchaser shall pay the Purchase Price as follows:

(a) Cash Payments. At Closing, Purchaser shall pay Seller before any Closing adjustments the following subject to adjustment as provided below:

(i) One Million Dollars (\$1,000,000.00) for the value of the Land and Appurtenances;

(ii) Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000.00) for the value of the Improvements;

(iii) Eight Hundred Thirteen Thousand Five Hundred Dollars (\$813,500.00) for the Equipment; and

(iv) The value, at Seller's cost, based upon an inventory at Closing, of the Inventory on hand at the Property.

(b) Loan Assumption. At Closing, Purchaser shall assume from Seller the first deed of trust secured loan to the Colorado Water Conservation Board in the approximate principal amount of One Million Nine Hundred Thousand Dollars (\$1,900,000) (the "Pipeline Loan"). Seller's Purchase Price shall be increased by the amount by which the actual principal amount of the Pipeline Loan is less than \$1,900,000 at Closing.

(c) Credit Against Purchase Price for Investment in Purchaser. At Closing, Seller shall become a twenty-five percent (25%) limited partner in Purchaser and execute the Limited Partnership Agreement attached as Exhibit C hereto by this reference incorporated herein (the "LPA"). In exchange for Seller's 25% limited partnership interest, Seller shall receive a capital account in Purchaser equal to that of each of the other three limited partners of Purchaser making cash contributions in Purchaser. The amount of Seller's capital account shall reduce the cash portion of the Purchase Price paid to Seller.

(d) Cash Payment of Purchase Price. The cash portion of the Purchase Price, as adjusted for credits and prorations as set forth in this Agreement, shall be paid by Purchaser at Closing by wire-transferred funds as Seller shall direct.

4. TITLE COMMITMENT AND POLICY.

(a) Seller will deliver to Purchaser at Closing, at the expense of Seller, an ALTA title insurance policy from Stewart Title Guaranty Company issued by ABC Title & Closing Services (the "Title Company"), located at 300 Main Street, Ste. A, Ordway, CO 81063 (719) 267-5538, in the amount of the Purchase Price, less the value of the Equipment and the Cattle Feed.

5. INSPECTION WAIVED. Because the limited partners not affiliated with Seller have been using the cattle feeding operations of Seller and are intimately familiar with all

aspects of Seller's Business and of all aspects of the Property, Purchaser waives any inspection of the Property.

6. SELLER'S AFFIRMATIVE COVENANTS. Seller covenants and agrees as follows:

(a) New Encumbrances Against Property. Seller shall not cause any additional mortgage, deed of trust, lien, encumbrance, covenant, condition, restriction, assessment, easement, right-of-way, obligation, encroachment or liability ("**Title Defect**") whatsoever, to be placed of record, affect the title insurance to be given to Purchaser pursuant to this Agreement or otherwise exist, from the Effective Date to the later of the Closing Date or the date of termination of this Agreement, excepting, however, such other title exceptions as are specifically permitted under this Agreement and those which have been specifically requested or approved in writing by Purchaser. If any Title Defects are so placed of record, or otherwise exist contrary to the provisions hereof, the effect of which can be removed and/or eliminated by the payment of money, Seller shall without the obligation for Purchaser to object to same on or before the Closing, cause sufficient monies to be deposited with Title Company so as to enable Title Company to cause said title exception(s) to be eliminated and/or removed of record.

(b) Assessments. Any assessment, special or otherwise, imposed on the Property prior to the date of Closing shall be the obligation of Seller and shall be paid in full on or before Closing.

7. REPRESENTATIONS AND WARRANTIES.

(a) Seller's Warranties. Seller represents and warrants that, as of the date hereof and as of Closing Date, to Seller's actual knowledge:

(i) The execution and delivery by Seller of, and Seller's performance under this Agreement are within Seller's powers and have been duly authorized by all requisite action. This Agreement constitutes the legal, valid, binding and enforceable obligation of the Seller.

(ii) Except as would be shown on a current certificate of taxes due, Seller has received no written notice of any special assessments, levies or taxes imposed or to be imposed affecting the Property.

(iii) Seller is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and applicable regulations.

(iv) Seller has not granted to any Party, other than Purchaser hereunder, any superior or prior option, contract, or other agreement with respect to a purchase of, sale of, or any interest in or to the Property or any portion thereof or any interest therein.

(v) There are no pending or threatened (and unresolved) condemnation or similar proceedings affecting the Property (or any material

part thereof), and Seller has received no written notice that any such proceeding is contemplated by any Governmental Authority.

(vi) Seller has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Property in any manner which violates federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of Hazardous Material. Seller has received no notice that the Property has had Hazardous Materials used on it, or that it is in violation of any Hazardous Materials law. If Seller receives any such notice during the period of this Agreement, Seller shall immediately provide notice thereof to Purchaser. For purposes of this Agreement, "**Hazardous Materials**" includes, without limitation, any flammable materials, explosive, hazardous or toxic substance, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Sections 9601, et seq.), and in the regulations promulgated pursuant thereto, or any other federal, state, or local governmental law, ordinance, rule or regulation.

(vii) Seller has received no written notice that the Property or any portion thereof is not in material compliance with any applicable statute, ordinance, law or code governing the Property. In the event Seller receives any such notice during the period of this Agreement, Seller shall immediately provide notice to Purchaser of the same.

(viii) There is no litigation, mechanic's liens or claims pending or threatened against any portion of the Property or Seller.

The foregoing warranties and representations of Seller shall be true as of the date hereof and as of Closing.

(b) **Purchaser's Warranties.** Purchaser represents and warrants that, as of the date hereof and as of Closing Date:

(i) The execution and delivery by Purchaser of, and Purchaser's performance under this Agreement are within Purchaser's powers and have been duly authorized by all requisite action. This Agreement constitutes the legal, valid, binding and enforceable obligation of the Purchaser.

(ii) Neither the execution of this Agreement nor the consummation of the transactions contemplated herein will constitute a breach under any contract or agreement to which Purchaser is a party or by which Purchaser is bound or affected which affects the Property or any part thereof.

(iii) Purchaser is a limited partnership organized under the laws of the State of Colorado.



The foregoing warranties and representations of Purchaser shall be true as of the date hereof and as of the date of Closing.

8. AS-IS. EXCEPT FOR THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS MAY BE SET FORTH HEREIN, PURCHASER IS RELYING SOLELY UPON ITS OWN INSPECTION, INVESTIGATION AND ANALYSES IN ENTERING INTO THIS AGREEMENT AND, IN DOING SO, IS ASSUMING THE RISK OF SUCH PROPERTY CONDITIONS. PURCHASER WILL ACQUIRE THE PROPERTY, IF AT ALL, "AS-IS" "WHERE IS", IN ITS STATE AND CONDITION AS OF THE CLOSING, WITHOUT REPRESENTATION BY SELLER AS TO ANY MATTER EXCEPT AS EXPRESSLY SET FORTH HEREIN AND, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES OF ANY KIND OR CHARACTER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE OF, AS TO, COVERING OR WITH RESPECT TO THE PROPERTY, THE PROPERTY CONDITIONS OR ANY OTHER MATTER WHATSOEVER INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, GOOD AND WORKMANLIKE CONSTRUCTION OR FITNESS FOR A PARTICULAR PURPOSE.

9. SELLER'S CONDITIONS TO CLOSING. The following conditions are conditions precedent to Seller's obligation to proceed with the Closing ("**Seller's Conditions Precedent**"). If any of Seller's Conditions Precedent is not satisfied as and when described below, this Agreement shall be deemed terminated:

(a) The Colorado Water Conservation Board shall agree to allow Purchaser to assume the Pipeline Loan at Closing.

(b) Seller shall agree in writing along with each of the other limited partners of Purchaser to the terms of a definitive financing commitment from Rabo AgriFinance for a real estate term loan to provide for the balance of the cash portion of the Purchase Price not being paid by the limited partners of Purchaser, excluding Seller, and a revolving line of credit to finance feed inventories, feed receivables and working capital.

(c) At Closing, Purchaser's General Partner, OCF Management, LLC, a Colorado limited liability company, shall assign all of its membership interests and manager's duties to affiliates of Seller as Seller shall direct.

10. PURCHASER'S CONDITIONS TO CLOSING. The following conditions are precedent to Purchaser's obligation to proceed with the Closing ("**Purchaser's Conditions Precedent**"). If any of Purchaser's Conditions Precedent is not satisfied as and when described below (if not defined, then the Closing Date), Purchaser may elect, by written notice to Seller, in Purchaser's sole and absolute discretion, either to waive that Purchaser's Condition Precedent or to terminate this Agreement:

(a) Between the Effective Date and the date of the Closing, there shall have

been no material adverse changes in the condition, status or fitness of the Property that will be conveyed at Closing for Purchaser's intended use or in the facts or circumstances concerning the Property.

(b) As of the Closing Date, all of Seller's representations and warranties set forth in this Agreement shall be true and correct in all material respects.

(c) On or prior to the Closing Date, the Title Company shall have delivered an irrevocable commitment to issue the Owner's Title Policy for the Property as set forth in this Agreement.

11. CLOSING; CLOSING DOCUMENTS; CLOSING ADJUSTMENTS. The Closing shall occur on the date set forth in Section 1(a) above. The Closing shall occur at 10:00 a.m. Ordway, Colorado time, on the Closing Date at the offices of the Title Company in Ordway, Colorado, or such other place as Seller and Purchaser may agree prior to Closing. The following shall occur at Closing:

(a) Deed. Seller shall execute, acknowledge and deliver to Purchaser a special warranty deed conveying title to the Property subject only to the exceptions shown on the Title Commitment ("**Deed**").

(b) Bill of Sale. Seller shall execute, acknowledge and deliver to Purchaser a bill of sale conveying: (1) the Equipment; and (2) the Inventory which has been counted, measured and valued ("**Bill of Sale**").

(c) General Assignment. Seller shall execute, acknowledge and deliver to Purchaser a full assignment of all rights, interest and title to the Approvals and the Books & Records ("**Assignment**").

(d) LPA. Seller shall execute and deliver to Purchaser the LPA, which shall have been executed by all of the other partners set forth therein.

(e) Owner's Title Policy. The Title Company shall commit to deliver to Purchaser the Owner's Title Policy within thirty (30) days after Closing.

(f) Authorization Documents. Seller and Purchaser each shall deliver to the other party evidence reasonably satisfactory to the other party authorizing the execution, delivery and performance by it of this Agreement and the documents required to be delivered under this Agreement.

(g) Possession. Seller shall deliver to Purchaser possession of the Property subject only to the exceptions shown on the title commitment and other applicable provisions of this Agreement.

(h) Non-Foreign Affidavit. Seller shall deliver to Purchaser an affidavit stating that Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986.

(i) Other Documents. Each party shall deliver to the other and/or to the Title Company a settlement statement, affidavits as to mechanic's liens, a transfer declaration and such other documents and certificates as may be reasonably required pursuant to this Agreement or as may be necessary or customary to carry out its obligations under this Agreement and to close this transaction.

(j) Closing Adjustments. All real property taxes and real property assessments for the Property shall be prorated between Purchaser and Seller as of the Closing Date. All prorations provided for in this Section shall be final and not subject to redetermination. All real estate recording fees payable in connection with the conveyance Deed for the Property shall be paid by Seller. All real estate documentary fees payable in connection with the conveyance Deed for the Property shall be paid by Purchaser. All costs and expenses incurred for closing services, such as escrow, delivery and closing fees charged by the Title Company (but not the premium for the Owner's Title Policy), shall be paid in equal shares by Seller and Purchaser. The premium for the Owner's Title Policy shall be paid by Seller. All sales and use taxes payable in connection with any conveyance pursuant hereto shall be paid by Purchaser. Except as otherwise expressly provided in this Agreement, each party shall pay its own fees and expenses incurred in the preparation and performance of this Agreement. All other Closing costs shall be apportioned to the parties as is customary in Ordway, Colorado.

12. CONDEMNATION. If prior to Closing, the Property or any portion thereof is taken or threatened to be taken by any entity by condemnation or with the power of eminent domain (or is the subject of a pending taking which has not yet been consummated), Seller shall promptly provide written notice to Purchaser of such fact. In such event, Purchaser shall have the right, in Purchaser's sole discretion, to terminate this Agreement with respect to either: (a) all of the Property; or (b) only the portion of the Property that is the subject of the condemnation action or threat, upon written notice to Seller and the Title Company not later than ten (10) business days after receipt of the Seller's notice thereof. If such termination applies to all of the Property, the Deposit shall be returned to Purchaser and neither party shall have any further obligations or liabilities hereunder, except those which expressly survive termination. If such termination applies only to a portion of the Property that is the subject of the condemnation action or threat and not to other portions of the Property, then a prorata portion of the Deposit (allocated equally among the Property on a per square foot basis) shall be returned to Purchaser, and neither party shall have any obligations or liabilities hereunder with respect to the Property to which the termination applies, except those which expressly survive termination, but Seller and Purchaser shall continue to have all obligations and liabilities set forth in this Agreement with respect to the Property to which the termination does not apply. If Purchaser fails to deliver written notice of termination within such ten (10) business day period, Purchaser shall be deemed to have terminated this Agreement as to all of the Property. If, however, Purchaser provides Seller with notice of waiver of its right to terminate within such ten (10) business day period, then this Agreement shall remain in full force and effect and Purchaser shall proceed to consummate the transactions provided for

herein, in which event the Seller shall assign and turn over, and Purchaser shall be entitled to receive and keep, at Closing any and all awards made or to be made in connection with such condemnation or eminent domain with respect to the Property that Purchaser acquires at Closing, without any reduction in the Purchase Price.

13. DEFAULT AND TERMINATION.

(a) Purchaser's Default. If Purchaser commits a material default under this Agreement, Seller shall have the right, as its exclusive remedy except as otherwise expressly provided in this Agreement, to terminate this Agreement. Notwithstanding the foregoing: (i) except in the event of the failure to consummate the Closing (a "**Conveyance Default**") by Purchaser, before exercising any remedy provided for herein, Seller shall deliver written notice of the default to Purchaser and Purchaser shall have three (3) business days from receipt of such written notice to cure any default; and (ii) in the event of a Conveyance Default by Purchaser, before exercising any remedy provided for herein, Seller shall deliver written notice of the Conveyance Default to Purchaser and Purchaser shall have two (2) business days from receipt of such written notice to cure such Conveyance Default.

(b) Seller's Default. If Seller commits a material default under this Agreement, Purchaser shall have, as its exclusive remedies, the right: (x) to terminate this Agreement or (y) to enforce specific performance of Seller's obligation to convey title to the Property, in accordance with the terms and provisions of this Agreement. Notwithstanding the foregoing: (A) except in the event of a Conveyance Default by Seller, before exercising any remedy provided for herein, Purchaser shall deliver written notice of the default to Seller and Seller shall have three (3) business days from receipt of such written notice to cure any default; and (ii) in the event of a Conveyance Default by Seller, before exercising any remedy provided for herein, Purchaser shall deliver written notice of the Conveyance Default to Seller and Seller shall have two (2) business days from receipt of such written notice to cure such Conveyance Default.

(c) Waiver of Certain Remedies. Notwithstanding any contrary provision in this Section 13, neither party shall be entitled to receive, and each party expressly waives any right to seek, consequential, exemplary or punitive damages from the other party for a default under this Agreement.

14. CONFIDENTIALITY. Without the prior written consent of the other, neither Seller nor Purchaser shall disclose to any person or entity (other than persons or entities who have a need to know in connection with Seller's or Purchaser's business and who, except in the case of governmental authorities, agree to keep the information confidential) any of the terms or provisions of this Agreement. This restriction does not apply to information contained in public documents or recorded closing documents executed as part of this transaction or information either party is required to disclose by law.

15. BROKERS. Seller and Purchaser each represent and warrants that no broker or finder has been engaged by either of them in connection with this sale.

Each party further represents and warrants to the other that no person or entity claims or will claim any commission, finder's fee or other amounts by, through, under or as a result of any relationship with such party because of this transaction. Each party agrees to indemnify and hold the other party harmless from and against any and all costs, expenses, claims, losses or damages, including also reasonable attorney's fees, resulting from any breach of the representations and warranties contained in this provision.

16. ASSIGNABILITY.

(a) Purchaser's Assignability. Purchaser may not assign or otherwise transfer all or any portion of its rights and obligations under this Agreement without Seller's consent which shall be in Seller's sole discretion.

(b) Seller's Assignability. Seller may assign all of its rights and obligations under this Agreement, without the prior written consent of Purchaser, to any entity under the control of Seller; provided, however, that any such assignment shall not relieve Seller of its obligations under this Agreement. As used in this Section, "control" (including the terms "controlling," "controlled by," or "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such party, whether through ownership of voting securities, contract or otherwise.

17. NOTICES. Any notice required or permitted to be sent pursuant to this Agreement shall be in writing and shall be deemed given, sent, delivered and received upon the earlier of: (i) when personally or actually delivered (including via confirmed facsimile or email); or (ii) when delivered by U.S. Registered Mail, Restricted Delivery, addressed as follows:

If intended for Seller, to:  
Ordway Feedyard Ltd. Liability Co.  
19424 Highway 96  
Ordway, CO 81063  
Attn: Luke Larson

With a copy to:

Mark H. Boscoe  
Ryley Carlock & Applewhite  
1700 Lincoln Street  
Suite 3500  
Denver, CO 80203

If intended for Purchaser, to:  
Gung Kee Jim  
PO Box 1707  
Okotoks, AB T1S 1B6

With a copy to:

James A. Martell  
145 N. College Avenue, Unit E  
Fort Collins, CO 80524

Any address or other notice information fixed pursuant to the foregoing may be changed by the addressee by notice given pursuant to this Section 17.

18. MISCELLANEOUS.

(a) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and permitted assigns.

(b) Entire Agreement, Modification. This Agreement and the exhibits to it constitute the entire agreement between the parties with respect to the subject matter of this Agreement and may not be modified in any manner except by an instrument in writing signed by Seller and Purchaser. This Agreement supersedes and replaces all earlier agreements or understandings of the parties, whether written or oral.

(c) Section Headings. The section headings herein are inserted only for convenient reference and do not define, limit or prescribe the scope of this Agreement or any section.

(d) Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in any number of counterparts which together shall constitute a final Agreement. In that event, the parties agree to exchange originals so that each will have a fully executed original. The facsimile or electronic signature of any party on this Agreement shall be deemed an original for all purposes.

(e) Severability. If any provision of this Agreement shall be declared invalid, illegal or unenforceable by a court of competent jurisdiction, it shall not affect or impair the validity or enforceability of any other provision of this Agreement, and there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the invalid provision.

(f) Time of the Essence, Determination of Time Periods. Time is strictly of the essence. In calculating any period of time provided for in this Agreement, unless otherwise provided the number of days allowed shall refer to calendar and not business days. If any day scheduled for performance of any obligation falls on a weekend or holiday observed by national banks in the United States, the day for performance shall be extended to the next business day.

(g) Further Assurances. Each of the parties hereto undertakes and agrees to execute and deliver such documents, writings and further assurances as may be reasonably necessary to carry out the intent and purpose of this Agreement.

(h) No Waiver. No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by either party, of the same or any other provision.

(i) Construction of Agreement. Seller and Purchaser acknowledge each to the other that both they and their counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement or any amendments or exhibits to it.

(j) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to any principles of conflicts of laws.

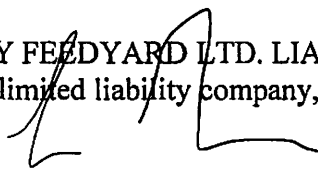
(k) Exhibits, Section References. All exhibits to this Agreement are a part of this Agreement and are incorporated into it by reference. References to Section numbers, unless otherwise stated, are to sections in this Agreement.

*[Signature page(s) follow.]*

*[Signature Page to Agreement for the Sale of Real Estate]*

SELLER:

ORDWAY FEEDYARD LTD. LIABILITY CO., a  
Colorado limited liability company,

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

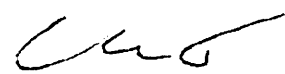
Name: Luke Larson

Title: Manager

PURCHASER:

ORDWAY CATTLE FEEDERS, L.P., a Colorado  
limited partnership,

By: OCF Management, LLC, a Colorado limited  
liability company

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

Name: Gung Kee Jim

Title: Manager



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

A tract of land lying in Crowley County, Colorado in Section 18 and in the N½ of Section 19, Township 21 South, Range 56 West of the 6th P.M., and in the E½E½NE¼ of Section 24, Township 21 South, Range 57 West of the 6th P.M. and more particularly described as follows: Beginning at the Southwest corner of said Section 18; and considering the West line of said Section 18, (as monumented by referenced 2½" dia. aluminum monuments), as being N. 0°11'55" E. with all other bearings contained herein relative thereto; thence N. 0°11'55" E., 2382.17 feet along the west line of said Sec. 18 to the Southerly Right-of-Way line of the Missouri Pacific Railroad; thence N. 76°23'42" E. along said Right-of-Way, 5540.49 feet to the East line of said Sec. 18; thence S. 0°35'09" W., 1011.15 feet to the Southeast corner of the NE¼ of said Section 18; thence continuing S. 0°35'09" W., 2656.12 feet to the Southeast corner of said Section 18; thence S. 89°48'13" W., 330.65 feet along the South line of said Section 18; thence S. 0°10'48" W., 220.70 feet; thence S. 89°36'26" E., 329.01 feet to the East line of said Section 19; thence S. 0°35'53" W., 1177.86 feet along the East line of said Section 19; thence S. 89°48'13" W., 5362.38 feet to the West line of said Section 19; thence N. 88°16'41" W., 668.03 feet to the West line of the E½E½NE¼ of said Section 24; thence N. 0°52'25" E., 1402.06 feet to the Northwest corner of said E½E½NE¼; thence S. 88°16'41" E., 667.86 feet to the point of beginning EXCEPT the NE¼NE¼NW¼ of said Sec. 19 described as beginning at the monumented Northeast corner of the NW¼ of said Section 19; thence S. 0°50'53" W., 665.31 feet; thence S. 89°44'52" W., 655.62 feet; thence N. 0°51'10" E., 665.95 feet; thence N. 89°48'13" E., 655.55 feet to the point of exception beginning.

EXCEPT a tract of land in the NE corner of the NE¼ NE¼ of said Section 19, described as follows: From a survey marker at the NE corner of the hereinabove mentioned Section 19, thence South 89°48'13" West 330.65 feet which is the point of beginning; thence West 150 feet to a point; thence South 440 feet to a point; thence East 479.01 feet to a point; thence North 219.30 feet to a point; thence West 329.01 feet to a point; thence North 220.70 feet to a point which is the point of beginning.

AND

All that part of the E½E½ of Section 13, Township 21 South, Range 57 West of the 6th P.M. lying South of the right-of-way of the Missouri Pacific Railroad Company; EXCEPT a tract of land conveyed by Warranty Deed to Valley View Drainage District, recorded in Book 89 at Page 89.

AND

The N1/2W1/2E1/2NE1/4 and N1/2W1/2NE1/4 of Section 24, Township 21 South, Range 57 West of the 6th P.M.

In Crowley County, Colorado.

**EXHIBIT B**

**EQUIPMENT INVENTORY**

Ordway Feedyard Equipment  
As of 2/28/19

| <u>Description</u>                          | <u>Year</u> | <u>Est. Price</u>    |
|---------------------------------------------|-------------|----------------------|
| Kenworth/Laird Delivery Box Feed truck      | 2014        | \$ 90,000.00         |
| International/Laird Delivery Box Feed Truck | 2009        | \$ 90,000.00         |
| Kenworth/Kuhn Mixer Feedtruck               | 2004        | \$ 25,000.00         |
| JD 770 B-H Road Grader                      | 1989        | \$ 25,000.00         |
| 950 H CAT Loader                            | 2008        | \$ 75,000.00         |
| 928 CAT Loader                              | 2008        | \$ 75,000.00         |
| JD 624 J Loader                             | 2004        | \$ 45,000.00         |
| 930 K CAT Loader                            | 2012        | \$ 100,000.00        |
| New Holland LX 865 Turbo Skidsteer          |             | \$ 12,000.00         |
| F-150 4 door 4X4                            | 2013        | \$ 20,000.00         |
| F-150 4 door 4X4                            | 2011        | \$ 10,000.00         |
| F-150 4 door 4X4                            | 2010        | \$ 15,000.00         |
| Dodge 2500 Flatbed Welding truck            | 1999        | \$ 8,500.00          |
| Chevy 2500 4 door 4X4                       | 2002        | \$ 4,500.00          |
| Chevy 2500 single cab                       | 2007        | \$ 2,500.00          |
| GMC 2500 White 4 door 4X4                   | 2006        | \$ 4,500.00          |
| Ford F-350 Flatbed                          | 2001        | \$ 2,500.00          |
| GMC 1500 white single cab                   | 1990        | \$ 1,500.00          |
| Ford F-150 Red Extended Cab                 | 1992        | \$ 500.00            |
| 1- 16' gooseneck Stock Trailer              | 2007        | \$ 5,000.00          |
| 1- 20' gooseneck stock Trailer              | 1980        | \$ 2,000.00          |
| 1 International 5240 Maxxum 100 hp tractor  | 1990        | \$ 10,000.00         |
| JD 7810 Tractor                             | 2001        | \$ 60,000.00         |
| 2 Hitchcock Bunk Blowers                    | 1995        | \$ 12,000.00         |
| 310D John Deere Backhoe                     | 1994        | \$ 15,000.00         |
| 3 portable Miller Bobcat Welders            | 2008        | \$ 9,500.00          |
| 5 Kubota RTV's                              | 2016        | \$ 62,500.00         |
| 6,000 gal water Wagon                       |             | \$ 12,000.00         |
| Bale Boss 2 Bale Processor                  | 2010        | \$ 10,000.00         |
| 16' Bumper bull flatbed trailer             |             | \$ 2,500.00          |
| Hydraulic tractor pulled box scraper        |             | \$ 2,500.00          |
| 8' bush hog mower                           |             | \$ 1,500.00          |
| <u>Skidsteer attachments- digger, forks</u> |             | <u>\$ 2,500.00</u>   |
|                                             |             | <b>\$ 813,500.00</b> |

**EXHIBIT C**  
**LIMITED PARTNERSHIP AGREEMENT**  
**OF**  
**ORDWAY CATTLE FEEDERS, L.P.**

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**AGREEMENT OF LIMITED PARTNERSHIP**

**OF**

**ORDWAY CATTLE FEEDERS, LP**

**(A Colorado Limited Partnership)**

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**AGREEMENT OF LIMITED PARTNERSHIP OF  
ORDWAY CATTLE FEEDERS LP**

|                                                                                                       |    |
|-------------------------------------------------------------------------------------------------------|----|
| SECTION 1 : ORGANIZATIONAL MATTERS .....                                                              | 1  |
| 1.1 Partnership Organization. ....                                                                    | 1  |
| 1.2 Commencement. ....                                                                                | 1  |
| 1.3 Partners. ....                                                                                    | 1  |
| 1.4 Partnership Formalities. ....                                                                     | 1  |
| SECTION 2 : PURPOSES.....                                                                             | 1  |
| 2.1 Purposes. ....                                                                                    | 1  |
| SECTION 3 : RIGHTS, POWERS, AND DUTIES OF THE PARTNERS.....                                           | 1  |
| 3.1 Rights, Powers, and Duties of the General Partner.....                                            | 1  |
| 3.2 Limitations on Authority of General Partner. ....                                                 | 2  |
| 3.3 Reimbursement of the General Partner.....                                                         | 2  |
| 3.4 Guaranteed Payments to the General Partner. ....                                                  | 2  |
| 3.5 Indemnification. ....                                                                             | 3  |
| 3.6 Waiver of Self-Dealing. ....                                                                      | 3  |
| 3.7 Confidentiality of Information. ....                                                              | 4  |
| SECTION 4 : CAPITAL CONTRIBUTIONS .....                                                               | 4  |
| 4.1 Initial Capital Contributions. ....                                                               | 4  |
| 4.2 Subsequent Capital Contributions.....                                                             | 5  |
| SECTION 5 : PARTICIPATION IN CATTLE FEEDING.....                                                      | 5  |
| 5.1 Use of Ordway Feed Yard. ....                                                                     | 5  |
| 5.2 Head Days and Capacity Head Days. ....                                                            | 5  |
| 5.3 Attributing Head Days. ....                                                                       | 5  |
| SECTION 6 : CURRENT DISTRIBUTIONS.....                                                                | 6  |
| 6.1 Distributions of Profits.....                                                                     | 6  |
| 6.2 Division Among Record Holders.....                                                                | 6  |
| 6.3 Other Distributions.....                                                                          | 6  |
| 6.4 Amounts Withheld.....                                                                             | 6  |
| SECTION 7 : ALLOCATIONS.....                                                                          | 6  |
| 7.1 Profit Allocations. ....                                                                          | 6  |
| 7.2 Loss Allocations.....                                                                             | 7  |
| 7.3 Special Allocations. ....                                                                         | 7  |
| 7.4 Other Allocation Rules. ....                                                                      | 9  |
| 7.5 Tax Allocations.....                                                                              | 10 |
| SECTION 8 : OTHER TAX MATTERS .....                                                                   | 10 |
| 8.1 Tax Status.....                                                                                   | 10 |
| 8.2 Tax Elections. ....                                                                               | 11 |
| 8.3 Tax Returns.....                                                                                  | 11 |
| 8.4 Tax Representative.....                                                                           | 11 |
| SECTION 9 : ADDING AND REMOVING PARTNERS FROM PARTNERSHIP AND<br>TRANSFERRING PARTNERSHIP UNITS ..... | 12 |
| 9.1 Removing General Partner.....                                                                     | 12 |
| 9.2 Conversion or Buy Out of General Partner's Interest.....                                          | 12 |
| 9.3 No Withdrawal.....                                                                                | 12 |
| SECTION 10 : RESTRICTIONS ON TRANSFER.....                                                            | 13 |
| 10.1 General Partner's Interest. ....                                                                 | 13 |
| 10.2 Restrictions on Transfer of Units.....                                                           | 13 |

|              |                                                                   |    |
|--------------|-------------------------------------------------------------------|----|
| 10.3         | Effect of Transfer.....                                           | 13 |
| SECTION 11 : | BUYOUT OPTIONS .....                                              | 14 |
| 11.1         | Buyout Events.....                                                | 14 |
| 11.2         | Procedure for Buyout Events.....                                  | 14 |
| 11.3         | Special Provision in the Case of 11.1(d).....                     | 15 |
| 11.4         | Determination and Payment of Purchase Price.....                  | 15 |
| 11.5         | Closing.....                                                      | 16 |
| SECTION 12 : | TERMINATION OF THE PARTNERSHIP .....                              | 16 |
| 12.1         | Liquidating Events.....                                           | 16 |
| 12.2         | No Other Events of Termination.....                               | 16 |
| 12.3         | Reconstitution After Termination Without a Liquidating Event..... | 16 |
| 12.4         | Interim Manager.....                                              | 17 |
| 12.5         | Winding Up and Liquidation.....                                   | 17 |
| 12.6         | Complying with the Tax Regulations.....                           | 18 |
| 12.7         | Deemed Distribution and Recontribution.....                       | 19 |
| 12.8         | No Right of Recourse.....                                         | 19 |
| SECTION 13 : | AMENDMENTS .....                                                  | 19 |
| 13.1         | Making Amendments.....                                            | 19 |
| 13.2         | Administrative Amendments Adoptable by the General Partner.....   | 20 |
| 13.3         | Documentation of Amendment.....                                   | 21 |
| SECTION 14 : | DEFINITIONS AND RULES OF CONSTRUCTION .....                       | 21 |
| 14.1         | Definitions.....                                                  | 21 |
| 14.2         | Titles, Captions, and Sections.....                               | 35 |
| 14.3         | Derivative Word.....                                              | 36 |
| 14.4         | Gender and Plurals.....                                           | 36 |
| SECTION 15 : | MISCELLANEOUS PROVISIONS.....                                     | 36 |
| 15.1         | Notices.....                                                      | 36 |
| 15.2         | Binding Effect.....                                               | 36 |
| 15.3         | Creditors.....                                                    | 36 |
| 15.4         | Integration.....                                                  | 36 |
| 15.5         | Waiver.....                                                       | 37 |
| 15.6         | Applicable Law.....                                               | 37 |
| 15.7         | Severability.....                                                 | 37 |
| 15.8         | Counterparts.....                                                 | 37 |
| 15.9         | Further Action.....                                               | 37 |

## **AGREEMENT OF LIMITED PARTNERSHIP**

### **OF**

## **ORDWAY CATTLE FEEDERS, LP**

### **A Colorado Limited Partnership**

#### **SECTION 1: ORGANIZATIONAL MATTERS**

**1.1 Partnership Organization.** The Partners enter into this Agreement of Limited Partnership to form the Partnership. Except to the extent modified by this Agreement, the Act governs the Partnership and the Partners. All capitalized terms used in this Agreement have the meanings given to them in Section 14.1.

**1.2 Commencement.** The Partnership's existence begins on the effective date of this Agreement or on the date the General Partner files the Partnership's Certificate of Limited Partnership in accord with the Act, whichever happens first.

**1.3 Partners.** Exhibit A to this Agreement contains the names, addresses or places of residence of, and the number of Units acquired by the General Partner and the Limited Partners. The General Partner must amend Exhibit A whenever notified of any valid changes to the information this Section 1.3 requires Exhibit A to contain, to reflect those changes.

**1.4 Partnership Formalities.** The General Partner must execute and file a Certificate of Limited Partnership for the Partnership in the office of the Secretary of State of Colorado in accord with the Act. The General Partner (and, where required, the Limited Partners) must continue to take any other actions reasonably necessary to perfect and maintain the Partnership as a limited partnership until the Partnership is terminated according to the terms of this Agreement. The General Partner must file, or cause to be filed, with the appropriate authorities, in accord with the Act, any necessary or appropriate amendment of the Partnership's Certificate of Limited Partnership to reflect valid changes in the Partnership or the Agreement. After the Partnership terminates, the Liquidator must execute and file a certificate or other necessary document canceling the Partnership's Certificate of Limited Partnership and any other documents required to effectuate the Partnership's termination.

#### **SECTION 2: PURPOSES**

**2.1 Purposes.** The Partnership is formed to engage in any lawful business the General Partner decides the Partnership should conduct.

#### **SECTION 3: RIGHTS, POWERS, AND DUTIES OF THE PARTNERS**

**3.1 Rights, Powers, and Duties of the General Partner.** The General Partner has the same rights, powers, authority, discretion, responsibilities, duties (including the duties of loyalty and care) and is subject to the same limitations and restrictions as those applicable to a partner in a partnership without limited partners and governed by the laws of the State of

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AGREEMENT OF LIMITED PARTNERSHIP- ORDWAY CATTLE FEEDERS, LP

PG. 1 OF 38

Colorado. Except as limited by Section 3.2, any business or activities described in Section 2.1 are within the ordinary course of the Partnership's business for the purposes of determining the scope of the General Partner's authority to act for the Partnership, even if the Partnership has not previously conducted that type of business or engaged in those types of activities. The General Partner must devote to the Partnership whatever time as is reasonably necessary to conduct the Partnership business and affairs in the best interest of the Partnership. The General Partner must calculate capital accounts annually and prepare and distribute annual financial statements, compilations, or similar financial information annually.

**3.2 Limitations on Authority of General Partner.** No General Partner has (nor does any Affiliate of any General Partner have) the authority to do any of the following:

(a) perform any act (other than an act required by this Agreement or any act taken in good faith reliance on counsel's opinion) that would, at the time the act occurred, subject any Limited Partner to liability as a general partner in any jurisdiction.

(b) distribute a major part of the Partnership Property in a single Distribution or series of Distributions before the Partnership terminates under Section 12.1 without the Majority Vote of the Partners.

(c) terminate the Partnership before the Partnership terminates in accordance with Section 12.1.

(d) elect for the Partnership to be governed by an amendment to or a successor of the Act when the amendment or successor law allows or requires the Partnership to elect to be governed by the amended or succeeding law without the Majority Vote of the Partners.

**3.3 Reimbursement of the General Partner.** To the extent possible, the General Partner must cause all the Partnership's expenses to be billed directly to and paid by the Partnership. The Partnership must reimburse a General Partner and its Affiliates for all actual expenses paid or incurred by them on behalf of the Partnership, including expenditures paid or incurred before the Partnership is formed. Reimbursable expenses include, without limitation, all expenses incurred by a General Partner incident to, in conjunction with, or arising out of, the process of the organization, syndication, and formation of the Partnership and the acquisition, development, ownership, start-up, and operation of the Partnership and the Partnership Properties. Reimbursable expenses may also include an allocable portion of a General Partner's administrative and overhead expenses (such as clerical and administrative assistants to the extent they perform services for the Partnership).

**3.4 Guaranteed Payments to the General Partner.**

(a) **Partnership Management Fee.** The Partnership may pay the General Partner a Partnership Management Fee for the services actually rendered by the General Partner to:

(1) comply with the duties imposed by this Agreement,



- (2) keep the Partnership's books and records and make required reports and filings, and
- (3) manage the Partnership's Property, business, and activities.

The General Partner may determine the amount of the Partnership Management Fee. The Partnership Management Fee may not, however, exceed a fair and reasonable amount for the services rendered, taking into account the actual amount of time the General Partner devotes to the Partnership's affairs and the Partnership's profitability attributable to those services. The General Partner may determine when to pay the Partnership Management Fee. The General Partner may not, however, pay any Partnership Management Fee if the amount is not yet earned or if the Partnership has insufficient funds to make the payment.

**3.5 Indemnification.** The Partnership and its receiver and its trustee, if any, may indemnify each then current or former General Partner (and any of its Affiliates) to the maximum extent allowed under the Act. The Partnership and its receiver and its trustee, if any, may advance expenses of defense for each then current or former General Partner (and any of its Affiliates) to the maximum extent allowed under the Act.

### **3.6 Waiver of Self-Dealing.**

(a) **Transactions with Interested Persons.** So long as the terms of the transaction are no less favorable than what the Partnership could obtain from an unrelated third-party, the General Partner may enter into transactions on the Partnership's behalf despite the fact that another party to the transaction may be any of the following:

- (1) a trust of which a Partner is a trustee or beneficiary.
- (2) an estate of which a Partner is a personal representative or beneficiary.
- (3) a business controlled by one or more Partners or a business of which any Partner is also an owner or a director, manager, officer, employee, or similar agent.
- (4) the General Partner's Affiliate, co-owner of a business venture with the General Partner, or other business associate of the General Partner.
- (5) a Partner acting in its own behalf.
- (6) a Partner's relative.

(b) **Other Activities not Partnership Opportunities.** Each Partner and its Affiliates may invest their own assets, real and personal, for their own account and conduct their own affairs, investments, and businesses without regard to whether they constitute a Partnership opportunity, except that no Partner or its Affiliates shall invest in any business that is prohibited under Subsection 3.7(c).

(c) **Competitive Activities.** Except for any investment by a Partner or its Affiliate in any feed yard in Crowley or Otero Counties, Colorado, which shall be prohibited without the written approval of all Partners, a Partner and its Affiliates may have business interests other than their Interest in this Partnership, which may be in conflict with the Partnership business, and each Partner is free to engage in other business activities, both alone and in conjunction with others, for itself and for the account of others. Neither the Partnership nor any other Partner has any right to the income or proceeds derived by a Partner or its Affiliates from any other business interests or activities. Even if directly competitive with or in conflict with the business of the Partnership, those business interests and activities are not wrongful or improper.

**3.7 Confidentiality of Information.** The Partners acknowledge that they may receive information regarding the Partnership in the nature of trade secrets, that is otherwise confidential, or the release of which may damage the Partnership or Persons with which it does business. Each Partner agrees to hold in strict confidence, and not disclose to any other Person other than another Partner, any information it receives regarding the Partnership that is identified as being confidential (and if that information is provided in writing, that is so marked), except for disclosures:

(a) compelled by law (in which event, the Partner agrees to notify the General Partner promptly of any request for that information, before disclosing it, if practicable);

(b) made to the Partner's advisers or representatives who have a legitimate need to know the information, but only after they have agreed to be bound by this Section 3.7; or

(c) of information the Partner has also received from a source independent of the Partnership that the Partner reasonably believes obtained the information without breach of any obligation of confidentiality.

Each Partner acknowledges that breach of the provisions of this Section 3.7 may cause irreparable injury to the Partnership and the Partners for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Partners agree that the Partnership or the Partners may enforce the provisions of this Section 3.7 by specific performance.

## **SECTION 4: CAPITAL CONTRIBUTIONS**

### **4.1 Initial Capital Contributions.**

(a) **General Partner.** The General Partner will not make a Capital Contribution to the Partnership and will not own any Units, as indicated on Exhibit A and Schedule A.

(b) **Limited Partners.** The Limited Partners agree to make an initial Capital Contribution of the property described in the books and records of the Partnership. In exchange, the Partnership has issued to each Limited Partner the number of Units indicated on the initial Exhibit A to this Agreement. The Partners agree that the property so contributed has a Book Value to the Partnership equal to that indicated in the books and records of the Partnership.

**4.2 Subsequent Capital Contributions.** Except to the extent this Agreement or the Act provides otherwise, no Person may require any Partner to make any additional Capital Contributions to the Partnership.

(a) **Additional Voluntary Limited Partner Contributions.** With the consent of the General Partner, a Limited Partner may make whatever additional Capital Contributions he desires. When a Limited Partner makes an additional Capital Contribution according to this Section 4.2(a), the General Partner must give all other Limited Partners notice of the additional Capital Contribution. Each other Limited Partner may then make whatever additional Capital Contribution may be necessary to maintain his proportionate Unit ownership.

## **SECTION 5: PARTICIPATION IN CATTLE FEEDING**

**5.1 Use of Ordway Feed Yard.** Each Limited Partner will feed and care for cattle owned by the Limited Partner. Each Limited Partner shall attempt to feed a sufficient number of cattle at a feed yard owned by the Partnership so that the Head Days attributable to the Limited Partner each Fiscal Year equal at least:

- (a) The Capacity Head Days multiplied by
- (b) the percentage of the issued and outstanding Units held by the Limited Partner.

To illustrate: if a Limited Partner owns 25% of the issued and outstanding Units, the Limited partner shall attempt to account for 25% of the Capacity Head Days. No penalty shall be incurred if a Limited Partner fails in any Fiscal Year to provide Capacity Head Days equal to its percentage of outstanding Units. No Limited Partner shall be entitled to provide more Capacity Head Days than its percentage of outstanding Units unless one or more other Limited Partner(s) is not providing its full share, in which case the General Partner shall determine the allocation of Capacity Head Days between any over-allotted and under-allotted Limited Partners. No Limited Partner's number or percentage of Units in the Partnership shall be reduced or increased at any time based upon the Head Days attributable to that Limited Partner in each Fiscal Year.

**5.2 Head Days and Capacity Head Days.** As used in this Agreement, "Head Days" means the number of days a head of cattle is on feed at a feed yard owned by the Partnership. For example, if a Limited Partner has 1,000 head of cattle on feed for 100 days, the Head Days would equal 100,000. As used in this Agreement, "Capacity Head Days" means total capacity of the feed yards owned by the Partnership, as determined by the General Partner in its sole and absolute discretion, multiplied by 365.

**5.3 Attributing Head Days.** The General Partner must attribute each Limited Partner Head Days for:

- (a) Head Days used by cattle owned by the Limited Partner, and
- (b) Head Days that result from a person being referred to the Partnership by the Limited Partner. For instance, if a Limited Partner directs his family or clients to use the

Partnership for cattle feeding service, the Limited Partner will be attributed any Head Days used by family or clients that were referred by the Limited Partner.

Decisions regarding attribution of Head Days are wholly in the discretion of the General Partner, and any decision of General Partner's regarding attribution of Head Days is binding on all Partners.

## **SECTION 6: CURRENT DISTRIBUTIONS**

**6.1 Distributions of Profits.** Except as limited by Section 3.2(b), within sixty (60) days following the end each Fiscal Year of the Partnership, the Partnership must Distribute an amount equal to the Profits of the Partnership for that prior year. Each such distribution shall be referred to as a "Profits Distribution."

**6.2 Division Among Record Holders.** All Profits Distributions must be divided among the Record Holders as follows:

(a) Profits Distribution must be distributed among the Record Holders in proportion to Head Days attributed to the Record Holders pursuant to SECTION 5.

**6.3 Other Distributions.** The Partnership may make other Distributions of cash or other Partnership Property upon the consent of the General Partner. However, the Partnership may make no Distributions under this SECTION 6 that would have the result of changing any Record Holder's Interest in the Partnership, nor may any Distribution that occurs under this SECTION 6 have the effect of changing any Record Holder's Interest in the Partnership.

**6.4 Amounts Withheld.** The Partnership and the Record Holders must treat all amounts withheld according to the Code or any state or local tax law on any payment or Distribution to the Record Holders as amounts Distributed to the Record Holders under this SECTION 6. The General Partner may allocate any of these amounts among the Record Holders in any manner that accords with applicable law.

## **SECTION 7: ALLOCATIONS**

**7.1 Profit Allocations.** After giving effect to the special allocations in Section 7.3, Profits for each Fiscal Year or other relevant period must be allocated in following order of priority:

(a) The Profits shall first be allocated to the Record Holders in proportion to Head Days attributed to the Record Holders pursuant to SECTION 5. The allocation provided for by this Section 7.1(a) shall apply to Profits up to the amount distributed to the Record Holders pursuant to Section 6.2(a).

(b) The remaining Profits, if any, must be allocated among the Record Holders in proportion to the Units held by each Record Holder on the last day of the period for which the Distribution is made.

**7.2 Loss Allocations.** After giving effect to the special allocations in Section 7.3, Losses for each Fiscal Year or other relevant period must be allocated:

(a) to the Record Holders in proportion to the Units held by each, except to the extent required by Section 7.2(b).

(b) The Losses allocated according to Section 7.2(a) and the items of deduction or expense specially allocated under Section 7.3 (other than the Regulatory Allocations) may not exceed the maximum amount of Losses that can be so allocated without causing any Record Holder who is not a General Partner to have an Adjusted Capital Account Deficit at the end of any Fiscal Year or other relevant period. If some but not all of the Record Holders who are not General Partners would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses according to Section 7.2(a) and the items of deduction or expense specially allocated under Section 7.3 (other than the Regulatory Allocations), the limitation contained in this Section 7.2(b) must be applied on a Record Holder by Record Holder basis so as to allocate the maximum permissible Loss or item of deduction or expense specially allocated under Section 7.3 (other than the Regulatory Allocations) to each Record Holder who is not a General Partner under Tax Regulation § 1.704-1(b)(2)(ii)(d). All Losses in excess of the limitation contained in this Section 7.2(b) must be allocated to the General Partner.

**7.3 Special Allocations.** The following special allocations must be made in the following order:

(a) **Minimum Gain Chargeback.** Except as otherwise provided in Tax Regulation § 1.704-2(i)(4), notwithstanding anything else in this SECTION 7, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, the Partnership must allocate to each Record Holder, items of Partnership income and gain for that period (and, if necessary, subsequent periods) in an amount equal to that Person's share of the net decrease in Partnership Minimum Gain (determined according to Tax Regulation § 1.704-2(g)). Allocations under the previous sentence must be made in proportion to the respective amounts required to be allocated to each Record Holder under that sentence. The items to be so allocated must be determined according to Tax Regulation §§ 1.704-2(f)(6) and 1.704-2(j)(2). The parties intend this Section 7.3(a) to comply with the minimum gain chargeback requirement in Tax Regulation § 1.704-2(f), which must govern its interpretation.

(b) **Partner Minimum Gain Chargeback.** Except as otherwise provided in Tax Regulation § 1.704-2(i)(4), notwithstanding anything else in this SECTION 7, if there is a net decrease in Partner Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, the Partnership must specially allocate to each Person who shares the Partner Minimum Gain attributable to that Partner Nonrecourse Debt (determined according to Tax Regulation § 1.704-2(i)(5)) items of Partnership income and gain for that relevant period (and, if necessary, subsequent relevant periods) in an amount equal to that Person's share of the net decrease in Partner Minimum Gain attributable to that Partner Nonrecourse Debt (determined according to Tax Regulation § 1.704-2(i)(4)). Allocations under the previous sentence must be made in proportion to the respective amounts required to be allocated to each Record Holder under that sentence. The items to be so allocated must be determined according to Tax Regulation §§ 1.704-2(i)(4) and 1.704-2(j)(2). The parties intend this Section 7.3(b) to comply

with the minimum gain chargeback requirement in Tax Regulation § 1.704-2(i)(4), which must govern its interpretation.

(c) **Qualified Income Offset.** If any Record Holder who is not a General Partner unexpectedly receives any adjustments, allocations, or Distributions described in Tax Regulation §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6), the Partnership must specially allocate items of Partnership income and gain to each of those Record Holders in an amount and manner sufficient to eliminate, to the extent required by the Tax Regulations, the Adjusted Capital Account Deficits of each of those Record Holders as quickly as possible. Notwithstanding, an allocation under this Section 7.3(c) must be made if and only to the extent that each of those Persons would have an Adjusted Capital Account Deficit after all other allocations in this SECTION 7 have been tentatively made as if this Section 7.3(c) were not in this Agreement.

(d) **Nonrecourse Deductions.** The Partnership must specially allocate any Nonrecourse Deductions for each Fiscal Year to the Record Holders in the same proportions they would have been allocated to them had the Partnership treated the Nonrecourse Deductions as any other items of Partnership loss or deduction, taken them into account in computing Profits or Losses for the Fiscal Year or other relevant period, and allocated them to the Record Holders as a part of Profits or Losses for the period.

(e) **Partner Nonrecourse Deductions.** The Partnership must specially allocate any Partner Nonrecourse Deductions for any Fiscal Year to the Record Holder holding the Interest of the Person who bears the economic risk of loss on the Partner Nonrecourse Debt to which those Partner Nonrecourse Deductions are attributable, determined according to Tax Regulation § 1.704-2(i)(1).

(f) **Code Section 754 Adjustments.** To the extent Tax Regulation § 1.704-1(b)(2)(iv)(m) requires the Partnership to take into account in determining Capital Accounts an adjustment to the adjusted tax basis of any Partnership asset under Code §§ 734(b) or 743(b) because of a distribution to a Record Holder in complete liquidation of the Record Holder's Interest, the amount of the adjustment to the Capital Accounts must be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases that basis). The amount of that gain or loss must be specially allocated to the Record Holders:

- (1) according to their interests in the Partnership if Tax Regulation § 1.704-1(b)(2)(iv)(m)(2) applies, and
- (2) to whom the distribution was made if Tax Regulation § 1.704-1(b)(2)(iv)(m)(4) applies.

(g) **Curative Allocations.** The parties to this Agreement have included the allocations contained in Sections 7.2(b), 7.3(a), 7.3(b), 7.3(c), 7.3(d), 7.3(e), and 7.3(f) (the "Regulatory Allocations") to comply with certain requirements of the Tax Regulations. The parties intend that, to the extent possible, all Regulatory Allocations will be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income,

gain, loss, or deduction according to this Section 7.3(g). Therefore, notwithstanding any other provision of this SECTION 7 (other than the Regulatory Allocations), the Partnership must make whatever offsetting special allocations of items of Partnership income, gain, loss, and deduction, in whatever manner the General Partner determines appropriate so that, after making the offsetting allocations, each Record Holder's Capital Account balance equals the Capital Account balance the Record Holder would have had if the Regulatory Allocations were not part of the Agreement. In exercising its discretion to determine the manner of making the offsetting allocations, the General Partner must take into account future Regulatory Allocations under Sections 7.3(a) and 7.3(b) that, although not yet made, will likely offset other Regulatory Allocations already made under Sections 7.3(d) and 7.3(e).

(h) **Allocation for Misclassified Guaranteed Payments.** If this Agreement has not properly characterized any part of the amounts described in Section 3.4 as payments under Code § 707(a)(1) or (c) (the "Guaranteed Payments"), then after giving effect to the preceding special allocations of this Section 7.3, the General Partner must be allocated items of Partnership income or gain equal to the Guaranteed Payments as quickly as possible.

#### **7.4 Other Allocation Rules.**

(a) **Pro Rata Allocations.** Unless otherwise specified, all Profits and Losses and all Partnership items of Partnership income, gain, loss, and deduction allocated to the Record Holders according to this SECTION 7 must be allocated among them in proportion to the Units held by each during the relevant period. If there is more than one General Partner, unless otherwise specified, all Profits and Losses and all Partnership items of Partnership income, gain, loss, and deduction allocated to the General Partner according to this SECTION 7 must be allocated among them in whatever manner they may agree, or, failing an agreement, in proportion to the Units held by each during the relevant period.

(b) **Unallocated Items.** All items of the Partnership's income, gain, and deduction, and any other allocations for which a specific division has not otherwise been provided must be divided among the Record Holders in the same proportions they are allocated Profits or Losses for the relevant period.

(c) **Allocation between Periods.** When determining the Profits, Losses or any other items allocable to any relevant period, Profits, Losses and any of those other items must be determined on a daily, monthly, or other basis, as determined by the General Partner using any permissible method under Code § 706 and the Tax Regulations under that Code Section.

(d) **Effect of Allocations Acknowledged.** The Partners are aware of the income tax consequences of the allocations made by this SECTION 7 and agree to be bound to the provisions of this SECTION 7 in reporting their shares of Partnership income and loss for income tax purposes.

(e) **Profit Allocation for Excess Nonrecourse Liabilities.** Solely to determine a Record Holder's proportionate share of the Partnership's "excess nonrecourse

liabilities” (within the meaning of Tax Regulation § 1.752-3(a)(3)), the Record Holders’ Interests in Partnership profits equal their allocable share of Profits under Section 7.1.

(f) **Distributions of Nonrecourse Proceeds.** To the extent permitted by Tax Regulation § 1.704-2(h)(3), the Partnership must endeavor to treat Distributions of Available Cash as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent those Distributions would cause or increase an Adjusted Capital Account Deficit for any Record Holder.

## **7.5 Tax Allocations.**

(a) **704(c) Allocations.** In accord with Code § 704(c) and its Tax Regulations, the Partnership must allocate (solely for tax purposes) income, gain, loss, and deduction relating to any Partnership Property contributed to the capital of the Partnership among the Record Holders so as to take account of any variation between the adjusted basis of that property to the Partnership for federal income tax purposes and its initial Book Value (computed according to Section 14.1(i)(1)).

(b) **Deemed 704(c) Allocations.** If the Book Value of any Partnership Property is adjusted according to Section 14.1(i)(2), the Partnership must subsequently allocate (solely for tax purposes) income, gain, loss, and deduction relating to that asset among the Record Holders so as to take account of any variation between the adjusted basis of that property to the Partnership for federal income tax purposes and its adjusted Book Value in the same manner as under Code § 704(c) and its Tax Regulations.

(c) **Method of Making 704(c) Allocations.** Regarding any Partnership Property acquired at the organization of the Partnership that has an adjusted basis different from its Book Value, the Partnership must allocate income, gain, loss, and deduction attributable to that Partnership Property among the Record Holders on a property by property basis according to the “traditional” method (applying the “ceiling” rule) described in Tax Regulation § 1.704-3(b). Regarding any other Partnership Property that has an adjusted basis different from its Book Value, the General Partner may determine the manner in which to allocate the income, gain, loss, and deduction attributable to that Partnership Property among the Record Holders, staying within the strictures of Code § 704(c) and the Tax Regulations promulgated under Code § 704(c).

(d) **General Partner Makes Tax Allocation Decisions.** The Partners delegate to the General Partner the discretion to make or fail to make any elections or other decisions concerning the allocations under this Section 7.5 in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations made under this Section 7.5 are made solely for federal, state, and local tax purposes and may not affect, or in any way be taken into account in computing, any Record Holder's Capital Account or share of Profits, Losses, other items, or Distributions under this Agreement.

## **SECTION 8: OTHER TAX MATTERS**

8.1 **Tax Status.** Each Partner acknowledges that Subchapter K of Chapter 1 of Subtitle A of the Code will apply to the Partnership and agrees that the Partnership should be treated as a partnership for federal income tax purposes. Each Partner agrees to execute and file,

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AGREEMENT OF LIMITED PARTNERSHIP- ORDWAY CATTLE FEEDERS, LP

PG. 10 OF 38



and delegates to the General Partner the right to execute and file on the Partner's behalf, any election forms or other documents required to cause the Partnership to be treated as a partnership for federal income tax purposes.

**8.2 Tax Elections.** Except as otherwise specifically provided in this Agreement, the Partners delegate to the General Partner the discretion to make or fail to make any elections regarding taxes to which the Partnership may be entitled. Notwithstanding, no change may be made in the Partnership's status as a partnership for federal income tax purposes nor may any election subsequent to the initial election described in Section 8.1 regarding the status of the Partnership as a partnership be made except by a Majority Vote of all Partners.

**8.3 Tax Returns.** The Partnership must prepare, at Partnership expense, all required tax forms and returns for the Partnership and timely file them with the appropriate authorities.

**8.4 Tax Representative.**

Designation of Tax Representative. For purposes of this Section 8.4, unless otherwise specified, all references to provisions of the Code shall be to such provisions as in effect following the effective date of its amendment by Section 1101 of H.R. 1314, the "Bipartisan Budget Act of 2015", and the Consolidated Appropriations Act, 2018, as such provisions may subsequently be modified. Luke Larson or other qualified person appointed from time to time by the General Partner shall be the Partnership's designated "partnership representative" within the meaning of Code Section 6223 of the Code (the "Tax Representative") with authority (subject to the provisions of this Section 8.4) to act on behalf of the Partnership for purposes of Subchapter C of Chapter 63 of the Code and any comparable provisions of state or local income tax laws. If the Partnership is eligible to elect pursuant to Code Section 6221(b) (or successor provision) to have Subchapter C of Chapter 63 of the Code not apply to any federal income tax audits and other proceedings for any taxable year the Tax Representative may cause the Partnership to make such election. If any partnership adjustment (as defined in Code Section 6241(2)) is determined with respect to the Partnership, the Tax Representative shall promptly notify the Partners upon the receipt of a notice of proposed partnership adjustment, and shall take such actions as it may reasonably determine to be in the best interests of the Partnership and the Partners, including filing a petition in the Tax Court, causing the Partnership to pay the amount of any such adjustment under Code Section 6225, or making an election under Code Section 6226. If any such partnership adjustment is finally determined with respect to the Partnership and the Tax Representative has not caused the Partnership to make the election under Code Section 6226, then (A) the Partners (including former Partners) shall take such actions as may be reasonably requested by the Tax Representative, including filing amended tax returns and paying any tax due in accordance with Code Section 6225(c)(2), (B) the Tax Representative shall use commercially reasonable efforts to make any modifications available under Code Sections 6225(c)(3), (4) and (5), and (C) any imputed underpayment (as determined in

accordance with Code Section 6225) or partnership adjustment that does not result in an imputed underpayment shall be apportioned among the Partners for the taxable year in which the adjustment is finalized in such manner as may be necessary so that, to the maximum extent possible, the tax and economic consequences of the partnership adjustment and any associated interest and penalties are borne by the Partners based upon their Interests in the Partnership (or the Interests in the Partnership of their predecessor Partners) for the “reviewed year” (as defined in Code Section 6225(d)).

## **SECTION 9: ADDING AND REMOVING PARTNERS FROM PARTNERSHIP AND TRANSFERRING PARTNERSHIP UNITS**

**9.1 Removing General Partner.** A Majority of the Limited Partners may remove the General Partner or any Successor General Partner for demonstrated good cause. “Good cause” for the purpose of this Section 9.1 means any of the following:

- (a) any Transfer or attempted Transfer of all of the General Partner’s rights as a general partner or of any interest in the General Partner.
- (b) any withdrawal or attempted withdrawal from the Partnership.
- (c) demonstrated fraud, gross negligence, self-dealing, or willful misconduct which is injurious to the Partnership.
- (d) a breach of a material covenant or agreement of the General Partner contained in this Agreement.
- (e) a cessation by the General Partner of the performance of its duties to manage the Partnership and its affairs for whatever reason, including but not limited to, the management of the General Partner becoming disabled or unable to make rational decisions with reasonable skill and prudence regarding the Partnership’s affairs.

**9.2 Conversion or Buy Out of General Partner’s Interest.** If a General Partner is removed under Section 9.1 or withdraws in violation of this Agreement in an event described in Section 7-62-402 of the Act, that General Partner becomes a “Terminated General Partner” and the Terminated General Partner’s Interest is subject to the following provisions:.

- (a) **Payment to General Partner.** The amount paid to the Terminated General Partner will be zero, as the Terminated General Partner’s Interest has no economic value.
- (b) **Option to Purchase by Successor General Partner.** The Successor General Partner may purchase 100% of the Terminated General Partner’s Interest. The purchase price of the Terminated General Partner’s Interest equals \$1.

**9.3 No Withdrawal.** No General Partner has the right to withdraw from the Partnership and any event of withdrawal described in Section 7-62-402 of the Act before an event described in Section 12.1 occurs constitutes a withdrawal in violation of the Agreement.

## **SECTION 10: RESTRICTIONS ON TRANSFER.**

**10.1 General Partner's Interest.** Notwithstanding any other provision of this Agreement (including the provisions of Section 10.2), (i) except with the Majority Vote of the Limited Partners consenting to the Transfer, no General Partner may Transfer any portion of its Interest and (ii) except with the consent of the General Partner and the Majority Vote of the Limited Partners consenting to the Transfer, no Limited Partner may Transfer any portion of its interest.

**10.2 Restrictions on Transfer of Units.** This Partnership is formed by a closely held group who know and trust one another, who will have surrendered certain management rights (in exchange for limited liability in the case of a Limited Partner) or assumed sole management responsibility and risk (in the case of a General Partner) based upon their relationship and trust. Capital is also material to the business and investment objectives of the Partnership and its federal tax status. An unauthorized Transfer of a Partner's Interest could create a substantial hardship to the Partnership and its Partners, jeopardize its capital base, or adversely affect its tax structure. Therefore, no Person may:

- (a) make, attempt, or purport to make a Transfer to a Person who is not an Eligible Person,
- (b) make, attempt, or purport to make an Involuntary Transfer.

These restrictions on Transfers are not intended as a penalty, but as a method to protect and preserve existing relationships arising out of mutual trust, and the Partnership's capital and its financial ability to continue.

### **10.3 Effect of Transfer.**

(a) **Restrictions Run with Interest.** When a Transfer occurs, the restrictions of Section 10.2 continue to apply to subsequent Transfers of the Transferred Interest regardless of whether the Assignee becomes a Substituted Limited Partner regarding the Transferred Interest.

(b) **Death, Disability, or Dissolution.** If a Limited Partner dies or becomes legally incompetent (or, in the case of a Limited Partner that is a corporation, partnership, limited liability company, or trust, if the Limited Partner dissolves), the personal representative, guardian or other successor(s) in interest of that Limited Partner has all the rights of a Limited Partner for the purpose of settling the estate or business of that Limited Partner pending a distribution of the Limited Partner's Interest to the Limited Partner's successor. The estate or successor in interest of a Limited Partner is liable for his obligations as a Limited Partner. Notwithstanding the foregoing, if a Limited Partner dies or becomes legally incompetent (or, in the case of a Limited Partner that is a corporation, partnership, limited liability company, or trust, if the Limited Partner dissolves), that Limited Partner's Units are subject to the buyout option provided for in SECTION 11.

(c) **No Relief From Obligations.** No Transfer of an Interest by a Partner, including a Transfer of less than all his rights under this Agreement or the Transfer of all his

rights under this Agreement to more than one Person, relieves that Partner of his obligations under this Agreement arising before that Transfer or, unless and until the Assignee becomes a Substituted Limited Partner or a Successor General Partner, arising after that Transfer.

(d) **Assignments in Bankruptcy.** Any Person to whom an Interest is Transferred or assigned according to Bankruptcy Code, 11 U.S.C. §§ 101 *et. seq.*, is deemed without further act to have assumed all of the obligations of his transferor or assignor according to this Agreement on or after the date of that Transfer. On demand, that Person must execute and deliver to each other party to this Agreement an instrument confirming that assumption. Failing to deliver that instrument constitutes a default under this Agreement by that Person and a violation of the restrictions on Transfer contained in this Agreement.

(e) **Treating Assignees as Partners for Tax Purposes.** The Partnership may treat an Assignee as a Partner solely for tax purposes. Accordingly, the Partnership may deliver to any Assignee the income tax reports distributable to the Partner through whom the Assignee claims an Interest (such as K-1's and any state equivalents); and the Assignee must report all the income and loss so reported on his individual tax return as required by the Code.

## **SECTION 11: BUYOUT OPTIONS**

**11.1 Buyout Events.** This SECTION 11 applies to any of the following events (each a "Buyout Event") that may occur to a Partner (the "Affected Partner") or the Affected Partner's Interest:

(a) A Partner's Interest is subjected to foreclosure or a sale and the Transfer occurring as a result of that foreclosure or sale is effective in spite of the Transfer restrictions of SECTION 10 so that the Partnership is required by law (and by order of a court) to recognize the validity of the Transfer, in addition to any redemption rights the Partner whose Interest was Transferred, the Partnership, and the other Partners might have under the Act or otherwise;

(b) A Partner dies or becomes Disabled;

(c) A Partner Dissolves, becomes Bankrupt, makes a Transfer in violation of SECTION 10 or makes an Involuntary Transfer; or

(d) A Termination of Community Property Interest occurs.

### **11.2 Procedure for Buyout Events.**

(a) Upon the occurrence of a Buyout Event, the Affected Partner or the Affected Partner's Assignee, as applicable, must promptly give notice (the "Buyout Notice") to the Partnership and the General Partner.

(b) The Partnership shall have the exclusive option to acquire the Units of the Affected Partner or the Affected Partner's Assignee, as applicable, by exercising its option within the later of 1) 60 Days of the Partnership's receipt of the Buyout Notice, and 2) 75 days after the occurrence of the Buyout Event. To validly exercise its option, the Partnership must

give written notice (the “Partnership’s Exercise Notice”) of the Partnership’s exercise of its option to the Affected Partner or the Affected Partner’s Assignee, as applicable, and then offer to tender the Purchase Price at Closing. If the Partnership fails to validly exercise its option, it shall be deemed to have waived its right to acquire the Affected Partner’s Units or the Affected Partner’s Assignee’s Units, as applicable.

**11.3 Special Provision in the Case of 11.1(c).** Notwithstanding the foregoing, if the Buyout Event is the Termination of Community Property Interest, then the Affected Partner is not required to sell any Units the Affected Partner still owns following the Termination of Community Property Interest.

**11.4 Determination and Payment of Purchase Price.** The Purchase Price is the Fair Market Value of the Partnership multiplied by the percentage of the issued and outstanding Units held by the Affected Partner Units or the Affected Partner’s Assignee, as applicable, minus a discount in accordance with the below table. The Fair Market of the Partnership is initially as set forth on the Closing Statement for the purchase of the Partnership Property by the Partnership from Ordway Feedyard Ltd.Liability Co. However, the Fair Market Value of the Partnership may be changed by a Majority Vote of the Partners, and the Partners intend to annually determine the Fair Market Value of the Partnership by a Majority Vote of the Partners.

(b) At the Closing, the Partnership shall pay the Affected Partner or the Affected Partner’s Assignee, as applicable, a portion of the Purchase Price equal to the Purchase Price multiplied by the percentage shown for such Buyout Event in the “Closing Percent” column in the below table, and if the applicable Closing Percent is less than 100%, then the remainder of the Purchase Price (the “Deferred Amount”) shall accrue interest from the date of Closing at the rate per annum shown for such Buyout Event in the “Interest Rate” column (not to exceed the maximum rate permitted by Laws); any amount of the Purchase Price not paid at Closing, together with accrued interest thereon, shall be paid by the Buyers in equal cash installments over the term shown for such Buyout Event in the “Term” column and at the payment frequency shown for such Buyout Event in the “Payment Frequency” column, with the amount of the cash installments being calculated to amortize fully the Deferred Amount (and accrued interest thereon) over the applicable Term. If the applicable Payment Frequency is annually, then the installments shall be paid on each anniversary of the closing during the applicable Term. If the applicable Payment Frequency is monthly, then the installments shall be paid in the on the first Day of each month during the applicable Term, with appropriate adjustments to the first or last payments to reflect a closing that does not occur on the first Day of a month or quarter (as applicable).

| Buyout Event | Discount | Closing Percent | Interest Rate | Term       | Payment Frequency |
|--------------|----------|-----------------|---------------|------------|-------------------|
| 11.1(a)      | 25%      | 0%              | Prime         | 120 months | monthly           |
| 11.1(b)      | 0%       | 25%             | Prime         | 60 months  | monthly           |
| 11.1(c)      | 25%      | 0%              | Prime         | 120 months | monthly           |
| 11.1(d)      | 25%      | 0%              | Prime         | 120 months | monthly           |

### 11.5 Closing.

(a) If an option to purchase is exercised in accordance with the other provisions of this SECTION 11, the closing of such purchase ("Closing") shall occur at the principal place of business of the Partnership on the 30th Day after the Partnership's Exercise Notice is given, unless the parties to such Closing agree upon a different place or date.

(b) At the Closing, the Affected Partner or the Affected Partner's Assignee, as applicable shall execute and deliver to the Partnership: an assignment of the Units being purchased, in form and substance reasonably acceptable to the General Partner, containing a general warranty of title as to such Units and any other instruments reasonably requested by the Partnership to give effect to the purchase.

(c) At the Closing, the Partnership shall execute and deliver to the Affected Partner or the Affected Partner's Assignee, as applicable, the portion of the Purchase Price required to be paid at the Closing, in immediately available funds, and one or more unsecured promissory notes reflecting the payment terms established in Section 11.4.

(d) As of the Closing, neither the Affected Partner, the Affected Partner's Assignee, nor anyone claiming by, through or under the Affected Partner or the Affected Partner's Assignee, shall have any further rights or claims to the Partnership whatsoever.

## SECTION 12: TERMINATION OF THE PARTNERSHIP

**12.1 Liquidating Events.** The Partners agree that the Partnership must continue to exist until one of the following occurs, when it must liquidate and begin to wind up and terminate:

(a) the Partners, by Majority Vote, cause the Partnership to wind up and terminate.

(b) the Partnership has only one Partner.

**12.2 No Other Events of Termination.** To the extent legally permitted, the Partnership may not terminate before one of the liquidating events listed in Section 12.1 occurs.

**12.3 Reconstitution After Termination Without a Liquidating Event.** If a termination occurs by operation of law or a court of competent jurisdiction determines that the Partnership has terminated before one of the liquidating events listed in Section 12.1 occurs because of an event of withdrawal of a General Partner (as defined in Section 7-62-402 of the Act), the Partnership must reconstitute and continue its activities without a winding up or liquidation if one of the following occurs:

(a) at least one General Partner remains and the remaining General Partners agree to continue the Partnership.

(b) no General Partner remains but any Limited Partner within 1 year from that event appoints, effective as of the date of the withdrawal, a Successor General Partner. If the Limited Partners attempt to appoint more than one Successor General Partner in this fashion, a Successor General Partner will be appointed, by Majority Vote, from the Persons appointed by the Limited Partners. If no appointee receives a Majority Vote, the appointee receiving the written consent of Limited Partners owning a plurality of the number of Units owned by all Limited Partners giving their written consent to any appointee will be the Successor General Partner. Any ties will be resolved through the drawing of lots. The Successor General Partner so appointed must acquire its Interest in the Partnership according to Section 9.2.

If a termination occurs for any other reason not listed in Section 12.1, the Partners agree to continue the business of the Partnership without a winding up or termination.

**12.4 Interim Manager.** If the Partnership terminates because of an event of withdrawal of a General Partner (as defined in Section 7-62-402 of the Act), the Limited Partners, by Majority Vote, may appoint an interim manager of the Partnership. An interim manager has and may exercise the General Partner's rights, powers, and duties to the extent necessary to preserve the Partnership assets until:

(a) a Successor General Partner is elected (if the Partnership is continued),  
or

(b) a Liquidator is appointed under Section 14.1(x) (if the Partnership is not continued).

The interim manager is not liable as a General Partner to the Limited Partners and, while acting as interim manager, is entitled to indemnification.

**12.5 Winding Up and Liquidation.** If the Partnership terminates and is to be wound up, liquidated and terminated and not reconstituted and continued, the Liquidator must commence to wind up the affairs of the Partnership and to liquidate and sell its assets as soon as reasonably practicable.

(a) **Partnership Continues.** Until the Partnership's business terminates, this Agreement and the Act continue to govern the Partners' relationship. And, the Partnership continues for federal income tax purposes until it has finally wound up its affairs and liquidated. No Partner may take any action that is inconsistent with, or not necessary to or appropriate for, winding up the Partnership's business and affairs.

(b) **Sale of Partnership Property.** As part of winding up, liquidating, and terminating the business and affairs of the Partnership, the Liquidator must sell the Partnership Property (other than the Partnership Property to be distributed in kind). The Liquidator has full right and unlimited discretion to determine the time, manner, and terms of any sale or sales of Partnership Property during liquidation, having due regard to the activity and condition of the relevant market and general financial and economic conditions so that the Partnership may obtain the fair market value for the Partnership Property.

(c) **Application of Liquidation Proceeds.** The Liquidator must apply and distribute on any reasonable basis selected by it, to the extent sufficient, and in the following order, the cash proceeds of liquidation, any other funds, and any remaining assets of the Partnership:

- (1) first, to satisfy (by payment, discharge, or establishing reserves) all Partnership debts and liabilities to the Partnership's creditors (including Partners who are creditors for debts and liabilities other than Distributions).
- (2) the balance, if any, to the Record Holders, in accordance with their Capital Accounts as of the date of that Distribution, after giving effect to all Capital Contributions, Distributions, and allocations for all periods.

(d) **Offsetting Amounts Owed by Partners.** If any Partner owes the Partnership, until the Partner pays the amounts owed, the Liquidator must not pay any amounts on account of that Partner's Interest otherwise payable under this Section 12.5. Instead, the Liquidator must retain those amounts and apply them to the amount the Partner owes the Partnership. The Liquidator must pay the Partner or Record Holder any balance of the amount payable under this Section 12.5 remaining after fully satisfying any amount the Partner owes the Partnership.

(e) **Liquidator's Discretion on Distributions.** The Liquidator, in making or preparing to make a partial or final liquidating Distribution, has the authority to do any of the following:

- (1) partition any asset or class of assets and deliver divided and segregated interests to Record Holders subject to any indebtedness which may be secured by the property.
- (2) sell any asset or class of assets (whether or not susceptible to partition in kind) and deliver to the Record Holders a divided interest in the proceeds of sale and/or divided or undivided interests in any note and security arrangement taken as part of the purchase price.
- (3) deliver undivided interests in an asset or class of assets to the Record Holders subject to any indebtedness which may be secured by the property.

**12.6 Complying with the Tax Regulations.** Whenever the Partnership is "liquidated" (within the meaning of Tax Regulation § 1.704-1(b)(2)(ii)(g)), the Partnership must make any required Distributions according to this SECTION 12 to the Record Holders who have positive Capital Accounts (as required by Tax Regulation § 1.704-1(b)(2)(ii)(b)(2)). If a Record Holder other than a General Partner has a negative balance in his Capital Account (after giving effect to all Capital Contributions, Distributions, and allocations for all periods, including the period during which the liquidation occurs), the Record Holder is not required to make any

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AGREEMENT OF LIMITED PARTNERSHIP- ORDWAY CATTLE FEEDERS, LP

Pg. 18 OF 38



Capital Contribution, and the negative balance of that Record Holder's Capital Account is not considered a debt owed by the Record Holder to the Partnership or any other Person for any purpose (unless otherwise required to be so treated).

In the discretion of the Liquidator, a pro rata portion of the Distributions that the Partnership would otherwise make to the Record Holders under this Section 12.6 may be:

(a) distributed to a trust established for the benefit of the Record Holders to liquidate Partnership assets, collect amounts owed to the Partnership, and pay any contingent or unforeseen liabilities or obligations of the Partnership (or of any General Partner that arose because of the Partnership's operations or existence). Any liquidating trust must distribute its assets to the Record Holders from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed by the Partnership to that trust would otherwise have been distributed to the Record Holders according to this Agreement; or

(b) withheld to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership. Notwithstanding, any withheld amounts must be distributed to the Record Holders as soon as practicable.

**12.7 Deemed Distribution and Recontribution.** Notwithstanding any other provision of this SECTION 12, if the Partnership is liquidated within the meaning of Tax Regulation § 1.704-1(b)(2)(ii)(g) but no liquidating event described in Section 12.1 has occurred, and the Partnership's activities are to be continued in accordance with this Agreement, the Partnership Property will not be liquidated, the Partnership's liabilities will not be paid or discharged, and the Partnership's affairs will not be wound up. Instead, the Partnership will be deemed to have contributed all of its assets and liabilities to a new partnership (which will become the Partnership) in exchange for an interest in the new partnership. Immediately afterwards, the old, terminated Partnership will be deemed to have distributed the interests in the new partnership to the Record Holders in proportion to their respective interests in the old, terminated Partnership in liquidation of the old, terminated Partnership.

**12.8 No Right of Recourse.** No Partner has the right to receive a Distribution of income or a return of any Capital Contributions from the Partnership before the Partnership terminates under this SECTION 12. Each Record Holder may look only to the Partnership's assets for any return of his investment. Consequently, if, after the Partners have satisfied all the requirements of this Agreement, the Partnership has insufficient assets remaining after paying its debts and liabilities to return any Record Holder's investment, the Record Holder has no recourse or further right or claim against any General Partner or Affiliate of a General Partner or against any other Limited Partner or Record Holder.

## **SECTION 13: AMENDMENTS**

**13.1 Making Amendments.** Except as this Agreement otherwise specifically provides, the Partnership's Certificate of Limited Partnership or this Agreement may be amended only by the Majority Vote of the Partners.

**13.2 Administrative Amendments Adoptable by the General Partner.** The Limited Partners agree that the General Partner, without the approval of any Limited Partner, may amend any provision of the Partnership's Certificate of Limited Partnership or this Agreement (including Exhibit A to this Agreement and Schedules A and B to this Agreement), from time to time, to accomplish any of the following:

(a) change the name of the Partnership, the location of the Partnership's principal office where its records are to be kept or made available under Section 7-62-105 of the Act, the name of the Partnership's registered agent, or the location of the Partnership's registered office.

(b) admit, substitute, terminate, or reflect withdrawal of, Partners in accordance with this Agreement.

(c) reflect:

(1) the increase in Capital Accounts from the contribution of additional capital by the Partners or a revaluation of Partnership Property in accordance with the terms of this Agreement.

(2) the reduction of Capital Accounts on the return of capital to Partners.

(3) any other permissible changes in the Partnership.

(d) add to the representations, duties, services or obligations of any General Partner or its Affiliates.

(e) surrender any right or power granted to a General Partner or its Affiliates for the benefit of the Limited Partners.

(f) reflect a change that is:

(1) necessary or desirable to cure an ambiguity, to correct or supplement any provisions of this Agreement that may be inconsistent with any other provision, to add any other provision concerning matters or questions arising under this Agreement not inconsistent with the provisions of this Agreement, or to make any ministerial amendments to this Agreement which do not have a materially adverse impact on any Partner.

(2) required or contemplated by this Agreement.

(g) reflect a change in any provision of this Agreement which requires any action to be taken by or on behalf of any General Partner or the Partnership under any applicable state law if the applicable state law is amended, modified, or revoked so that the taking of that action is no longer required.

- (h) reflect any other similar amendments.

**13.3 Documentation of Amendment.** If the Agreement is amended, the General Partner must:

- (a) record that amendment in the Partnership's records as appropriate and may restate or otherwise reflect that amendment in a writing attached to or otherwise becoming a part of this Agreement,

- (b) execute, swear to, acknowledge, deliver, file, and record all documents required to otherwise effectuate or record that amendment, and

- (c) take any related action the General Partner deems desirable or appropriate.

#### **SECTION 14: DEFINITIONS AND RULES OF CONSTRUCTION**

**14.1 Definitions.** The capitalized terms used in this Agreement have the following meanings:

- (a) **Act.** The term "Act" means the Colorado Uniform Limited Partnership Act of 1981 and, to the extent applicable, the Colorado Uniform Partnership Act of 1997, as amended and in effect from time to time, and any successor to that statute. Notwithstanding the preceding sentence, reference to the "Act" does not include amendments to the Act or succeeding or successor statutes to the Act, if:

- (1) any amendment to the Act, or any succeeding or successor law, applies to the Partnership only if the Partnership or the Partners elect to be governed by the Act as so amended or by such succeeding or successor law, and the Partnership or Partners do not so adopt the provisions of the amendments or succeeding or successor statutes, or
- (2) the new statutory provisions adopted by the amendment to the Act, or the succeeding or successor law, are provisions that may be altered by the agreement of the Partners, and the Partners do not amend this Agreement to adopt the default provisions contained in the amended Act or the succeeding or successor statutes.

- (b) **Adjusted Capital Account Deficit.** The term "Adjusted Capital Account Deficit" means the deficit balance, if any, in each Record Holder's Capital Account as of the end of the relevant Fiscal Year or other period after being adjusted as follows:

- (1) crediting the Capital Account with:
  - (A) any amount which that Person is obligated to restore under Tax Regulation § 1.704-1(b)(2)(ii)(c), and

- (B) any amounts which that Person is deemed to be obligated to restore by the penultimate sentence of Tax Regulation § 1.704-2(g)(1) or the penultimate sentence of Tax Regulation § 1.704-2(i)(5); and
- (2) debiting the Capital Account by that Person's share of the items described in Tax Regulation §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

The amount of a Person's Adjusted Capital Account Deficit is intended to serve as a regulator on the amount of the debits that may be allocated to a Person's Capital Account in order to comply with the provisions of Tax Regulations § 1.704-1(b)(2)(ii)(d) and must be interpreted accordingly.

(c) **Affiliate.** The term "Affiliate" means each of the following:

- (1) any Person directly or indirectly controlling, controlled by, or under common control with another Person.
- (2) any Person owning or controlling 10% or more of the outstanding voting securities of that other Person.
- (3) any officer, director, or partner of that other Person.
- (4) if that other Person is an officer, director, or partner, any company for which that Person acts in any similar capacity.

(d) **Agreement.** The term "Agreement" means this limited partnership agreement, as amended, modified, supplemented, or restated from time to time, as the context requires.

(e) **Assignee.** The term "Assignee" means a Person who, following an Assignment, holds legal title to the Interest Assigned, but who becomes neither a Successor General Partner, a Substituted Limited Partner, nor an Assignee of Record. An Assignee does not have the right to become an Assignee of Record or a Substituted Limited Partner unless another part of this Agreement gives him that right. If an Assignee does not become an Assignee of Record or a Substituted Limited Partner:

- (1) the Assignee has no rights in the Interest Assigned (such as the right to vote, receive information, and inspect books and records) that the Partnership must recognize, and
- (2) the Partnership need not make any Distributions to the Assignee on any Interest attempted or purported to have been Assigned to that Person.

Notwithstanding anything in this Agreement to the contrary, the Partnership may continue to treat the assignor of an Assignee as the absolute owner of the Assignee's Interest in all respects,

and will incur no liability for in good faith allocating Profits, Losses or Distributions or transmitting the reports and notices required to be given to Partners to an assignor until and unless the assignor's Assignee has validly become an Assignee of Record or a Substituted Limited Partner.

(f) **Assignee of Record.**

(1) The term "Assignee of Record" means an Assignee that satisfies each of the following conditions:

- (A) This Agreement does not preclude the Assignee from becoming an Assignee of Record.
- (B) The Assignee becomes an Assignee under a valid written Assignment.
- (C) The Assignee has paid to the Partnership all costs the Partnership incurred in the Assignment.

(2) This Agreement specifically precludes a Person that becomes an Assignee in one of the following Assignments from becoming an Assignee of Record:

- (A) The Assignment would result in a termination of the Partnership under the Code. A termination is deemed not to occur if
  - (i) in the opinion of counsel for the Partnership, the Assignment would not cause a termination, or
  - (ii) the Partnership and the Assigning Partner, at his expense, receive a ruling by the Internal Revenue Service that the proposed Assignment would not cause a termination.
- (B) The Assignment would, in the opinion of counsel for the Partnership, violate any of the then applicable laws or the rules of any other then applicable governmental authority including the registration and suitability provisions of the applicable state and federal securities laws.
- (C) The Assignment would violate the Transfer restriction contained in Section 10.2.
- (D) The Assignment would, in the opinion of counsel for the Partnership, result in "public trading" as defined in Code § 7704(b)(1) or (2).

- (E) The Assignment would be to a minor (except in trust or custodianship) or incompetent (except in trust), unless it occurs by will or intestate succession.

(3) An Assignee becomes an Assignee of Record on the last day of the calendar month following the calendar month during which the last of the following occurs:

- (A) All of the requirements of Section 14.1(f)(1) have been satisfied.
- (B) The Partnership receives the Assignment and records it on its books.
- (C) The effective date of the Assignment passes.

(4) An Assignee of Record is entitled to receive allocations of Profits, Losses, other items of Partnership income, gain, loss, deduction, credit, or similar traits, and Distributions from the Partnership and the information the Partnership must provide according to the Act. An Assignee of Record does not, in any event, have the right to:

- (A) interfere in the management or the administration of the Partnership's business or affairs,
- (B) cause a liquidation or termination of the Partnership,
- (C) vote any of the Units over which the Assignee of Record acquired a beneficial interest, or
- (D) to act as a Partner.

(g) **Assignment.** The term "Assignment" means any Transfer affecting an Interest and any change in the Person or Persons who have the right to act, regarding the Interest, on behalf of the Partner in Partnership affairs, such as the Person with the right to vote on the Partner's behalf.

(h) **Bankruptcy or Bankrupt.** A Person is Bankrupt and a Bankruptcy occurs when (a) such Person (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for such Person a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Laws; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person in a proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of such Person's or of all or any substantial part of such Person's properties; or (b) a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Laws has been commenced against the Person and 120 Days have expired without dismissal thereof or with respect to which, without such Person's consent or acquiescence, a

trustee, receiver, or liquidator of such Person or of all or any substantial part of such Person's properties has been appointed and 90 Days have expired without the appointment's having been vacated or stayed, or 90 Days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

(i) **Book Value.** The term "Book Value" means, for any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

- (1) The initial Book Value of any asset contributed to the Partnership by a Partner is the gross fair market value of that asset, as determined by the contributing Partners and General Partner, acting in good faith on behalf of the Partnership. Notwithstanding, if the contributing Partner is the General Partner and the asset does not have a readily ascertainable fair market value (e.g., cash or securities actively traded on an established securities market), the General Partner's determination of the fair market value must be ratified by the Majority Vote of the Limited Partners.
- (2) All Partnership assets must have their Book Value adjusted to equal their respective gross fair market values, as determined by the General Partner, at the following times:
  - (A) the acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a de minimis Capital Contribution or the acquisition of an additional interest in the Partnership (other than a de minimus interest) as consideration for any new or existing Partner providing services to or for the benefit of the Partnership;
  - (B) the making of a Distribution by the Partnership to a Record Holder of more than a de minimis amount as consideration for an Interest in the Partnership;
  - (C) when called for under generally accepted accounting principles, so long as substantially all of the Partnership Property (excluding money) consists of stock, securities, commodities, options, warrants, futures, or similar instruments that are readily tradable on an established securities market; and
  - (D) the liquidation of the Partnership within the meaning of Tax Regulation § 1.704-1(b)(2)(ii)(g).

Notwithstanding, the adjustments provided in Sections 14.1(i)(2)(A), 14.1(i)(2)(B), and 14.1(i)(2)(C) may be made only if the General Partner reasonably determines that an adjustment is

necessary or appropriate to reflect the relative economic interest of the Record Holders in the Partnership.

- (3) The Book Value of any Partnership asset Distributed to any Record Holder is the gross fair market value of that asset on the date of Distribution as determined by the distributee and the General Partner. For assets that have a readily ascertainable fair market value (e.g., cash or securities actively traded on an established securities market), that value must be used. Otherwise, if the distributee is the General Partner, the General Partner's determination of the fair market value must be ratified by the Majority Vote of the Limited Partners.
- (4) Partnership assets must have their Book Values increased (or decreased) to reflect any adjustment to the adjusted basis of those assets according to Code § 734(b) or Code § 743(b), but only to the extent that those adjustments are taken into account in determining Capital Accounts according to Tax Regulation § 1.704-1(b)(2)(iv)(m) and Sections 14.1(jj)(7) and 7.3(f). However, Book Values must not be adjusted according to this Section 14.1(i)(4) to the extent the General Partner determines that an adjustment under Section 14.1(i)(2) is necessary or appropriate for the transaction.
- (5) Partnership assets must have their Book Values decreased by the amount of Depreciation computed on the asset for the Fiscal Year or other period rather than the amount of depreciation, depletion, or other cost recovery deductions calculated for federal income tax purposes.

(j) **Capital Account.** The term "Capital Account" means the account pertaining to each Partner or Record Holder maintained for that Person in accordance with the following provisions:

- (1) Each Person's Capital Account must be credited with each of the following:
  - (A) that Person's Capital Contributions.
  - (B) that Person's distributive share of Profits and any items in the nature of income or gain specially allocated to that Person under Section 7.3.
  - (C) the amount of any Partnership liabilities assumed by that Person or secured by any Partnership Property Distributed to that Person.



- (2) Each Person's Capital Account must be debited by each of the following:
  - (A) the amount of cash and the Book Value of any Partnership Property Distributed to that Person according to this Agreement.
  - (B) that Person's distributive share of Losses and any items in the nature of expenses or losses specially allocated to that Person under Section 7.3.
  - (C) the amount of any liability of that Person assumed by the Partnership or secured by any property contributed by that Person to the Partnership.
- (3) In the event any Interest in the Partnership is Transferred in a transaction that does not violate the terms of this Agreement, the Assignee must succeed to the Capital Account of the assignor to the extent it relates to the Transferred Interest.

In determining the amount of any liability for purposes of Sections 14.1(j)(1) and 14.1(j)(2), Code § 752(c) and any other applicable provisions of the Code and Tax Regulations must be taken into account.

The provisions of this Section 14.1(j) and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Tax Regulation § 1.704-1(b), and must be interpreted and applied in a manner consistent with that Tax Regulation. If the General Partner determines that it is prudent to modify the manner in which the Capital Accounts or any debits or credits to the Capital Accounts (including debits or credits relating to liabilities that are secured by contributed or Distributed property or that are assumed by the Partnership or the Record Holders) are computed in order to comply with that Tax Regulation, the General Partner may make a modification, provided that it is not likely to have a material effect on the amounts Distributable to any Record Holder. The General Partner must:

- (A) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and Record Holders and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Tax Regulation § 1.704-1(b)(2)(iv)(q), and
- (B) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Tax Regulation § 1.704-1(b).

(k) **Capital Contribution.** The term "Capital Contribution" means, for any Partner or Record Holder, the amount of money and the initial Book Value of any property

(other than money) contributed to the Partnership regarding the Interest then held by that Partner or Record Holder. The principal amount of a promissory note which is not readily traded on an established securities market and which the maker of the note contributed to the Partnership does not increase the Capital Account of any Person until the Partnership makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Tax Regulation § 1.704-1(b)(2)(iv)(d)(2).

(l) **Code.** The term “Code” means the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent, superseding federal revenue laws.

(m) **Depreciation.** The term “Depreciation” means, for each Fiscal Year or other relevant period:

- (1) an amount equal to the depreciation, amortization, or other cost recovery deduction allowable on an asset for the period, or
- (2) if the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of the period, an amount which bears the same ratio to that beginning Book Value as the federal income tax depreciation, amortization, or other cost recovery deduction for that period bears to that beginning adjusted tax basis.

Notwithstanding, if the federal income tax depreciation, amortization, or other cost recovery deduction for a year is zero, the General Partner must determine Depreciation by reference to that beginning Book Value using any reasonable method selected by this Agreement.

(n) **Distribution.** The term “Distribution” means any cash or other property distributed to any Partners or Record Holders on their Interests in the Partnership, not including any payments to the General Partner made according to SECTION 3.

(o) **Eligible Person.** The term “Eligible Person” means each Person:

- (1) who is eligible to become a qualified Record Holder under any federal or state tax statute the Partnership has adopted (for example, Subchapter S status under the Code), and who agrees in writing to file any consents necessary to continue that status and to take no action that terminates the qualification without the written consent of the General Partner or according to this Agreement; and
- (2) whose ownership of an Interest will not cause the Partnership to owe a personal holding company tax or similar federal or state penalty tax.

(p) **Fair Market Value.** Fair Market Value has the meaning ascribed to it in Section 11.4(a).

(q) **Fiscal Year.** The term “Fiscal Year” means:

- (1) the period beginning on the effective date of this Agreement and ending on the following December 31,
- (2) any subsequent 12 month period which begins on the first day of January of each calendar year and ends on December 31 next following, or
- (3) any portion of the periods described in Sections 14.1(q)(1) or 14.1(q)(2) for which the Partnership is required to allocate Profits, Losses, and other items of Partnership income, gain, loss, or deduction according to SECTION 7.

(r) **General Partner.** The term “General Partner” means any of those Persons who execute a counterpart of this Agreement and are admitted as general partners to the Partnership or become Successor General Partners, so long as they have not ceased to be a General Partner according to this Agreement. Unless the context indicates otherwise, reference to the “General Partner” or “General Partners” is to all of those Persons. The names and addresses of the General Partners are, and must continue to be, set out on Exhibit “A” to this Agreement, as it may be amended from time to time.

(s) **Guaranteed Payments.** The term “Guaranteed Payments” has the same meaning as that ascribed to it in Section 7.3(h).

(t) **Incompetent.** The term “Incompetent” means a Partner regarding whom the General Partner has made a good faith determination that the Partner is not capable of making rational decisions with reasonable skill and prudence regarding Partnership affairs.

(u) **Interest.** The term “Interest” means the interest in the capital, income, gain, losses, deductions, expenses, and management of the Partnership granted to any Person by this Agreement.

(v) **Involuntary Transfer.** The term “Involuntary Transfer” means any Transfer that occurs without a voluntary act of the Partner holding any of the affected Interest. It includes, without limitation, Transfers occurring as a result of any one or more of the following:

- (1) any court-ordered sale, partition, or other disposition.
- (2) any foreclosure, levy, execution, trustee’s or other involuntary sale.
- (3) filing any involuntary:
  - (A) bankruptcy, insolvency, or receivership petition,
  - (B) assignment for the benefit of creditors,
  - (C) attachment or other legal or equitable interest on an Interest,

where the involuntary petition, assignment, or attachment is not discharged within 30 days after its effective date.

(4) a settlement agreement.

(w) **Limited Partner.** The term “Limited Partner” means any of those Persons:

- (1) who execute a counterpart of this Agreement and are admitted as limited partners to the Partnership or become Substituted Limited Partners, and
- (2) who hold Units.

Reference to the “Limited Partners” is to all of those Persons. The names and addresses of the Limited Partners are, and must continue to be, set out on Exhibit “A” to this Agreement, as it may be amended from time to time.

(x) **Liquidator.** The term “Liquidator” means:

- (1) any General Partner, unless it has become a Terminated General Partner,
- (2) any Person or committee of Persons appointed by the General Partner, unless it has become a Terminated General Partner,
- (3) any Person or committee of Persons selected by the Majority Vote of the Limited Partners, if the General Partner does not appoint a Liquidator and no General Partner serves as Liquidator.

No General Partner may, however, receive any additional compensation for any services it performs as Liquidator under SECTION 12.

The Liquidator has full authority to wind up the affairs of the Partnership and make final Distributions according to this Agreement. The Liquidator (if other than a General Partner) must have sufficient business expertise and competence to wind up and terminate the Partnership and to cause the Partnership to perform any contracts the Partnership has or may enter into. No Person who is a creditor of the Partnership, a creditor of any Partner or a trustee in a bankruptcy or similar proceeding involving any Partner or the Partnership may serve as Liquidator or on a committee making up the Liquidator.

(y) **Majority Vote.** The term “Majority Vote” means the written consent of Partners who own more than 50% of all of the then total issued and outstanding Units held by Partners entitled to vote.

(z) **Nonrecourse Deductions.** The term “Nonrecourse Deductions” has the same meaning as that ascribed to it in Tax Regulation § 1.704-2(b)(1).

(aa) **Nonrecourse Liability.** The term “Nonrecourse Liability” has the same meaning as that ascribed to it in Tax Regulation § 1.704-2(b)(3).

(bb) **Partner Minimum Gain.** The term “Partner Minimum Gain” means an amount, relating to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if that Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined according to Tax Regulation § 1.704-2(i)(3).

(cc) **Partner Nonrecourse Debt.** The term “Partner Nonrecourse Debt” has the meaning ascribed to it in Tax Regulation § 1.704-2(b)(4).

(dd) **Partner Nonrecourse Deductions.** The term “Partner Nonrecourse Deductions” has the meaning ascribed to it in Tax Regulation §§ 1.704-2(i)(1) and 1.704-2(i)(2).

(ee) **Partners.** The term “Partners” means all General Partners and all Limited Partners, collectively, where no distinction is required by the context in which the term is used herein. Reference to a “Partner” is to any one of the Partners where no distinction is required by the context in which the term is used.

(ff) **Partnership.** The term “Partnership” means the limited partnership created by this Agreement and the Act and any partnership continuing the business of the Partnership after any termination of this Partnership.

(gg) **Partnership Minimum Gain.** The term “Partnership Minimum Gain” has the same meaning as that ascribed to it in Tax Regulation §§ 1.704-2(b)(2) and 1.704-2(d).

(hh) **Partnership Property.** The term “Partnership Property” means all real and personal property acquired by the Partnership, and any improvements, including both tangible and intangible property.

(ii) **Person.** The term “Person” means any natural person or legal entity. It includes individuals, fiduciaries, receivers, trustees, trusts, corporations, partnerships, limited partnerships, professional associations, professional corporations, trusts, and all other forms of business organizations which may exist under the laws of Colorado or any other state, or the United States or a relevant foreign country.

(jj) **Profits and Losses.** The terms “Profits” and “Losses” means, for each Fiscal Year or other period, an amount equal to the Partnership’s taxable income or loss, respectively, for that period, determined according to Code § 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately under Code § 703(a)(1) must be included in taxable income or loss), with the following adjustments:

- (1) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses according to this Section 14.1(jj) must be added to that taxable income or loss.

- (2) Any expenditures of the Partnership described in Code § 705(a)(2)(B) or treated as Code § 705(a)(2)(B) expenditures according to Tax Regulation § 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profits and Losses according to this Section 14.1(jj) must be subtracted from that taxable income or loss.
- (3) If any Partnership Property has its Book Value adjusted according to Section 14.1(i)(2) or Section 14.1(i)(3), and that adjustment is not otherwise taken into account in computing Profits and Losses, there must be added to or subtracted from taxable income or loss the amount of the aggregate net adjustment made under Section 14.1(i)(2) or Section 14.1(i)(3).
- (4) Gain or loss resulting from any disposition of Partnership Property regarding which gain or loss is recognized for federal income tax purposes must be computed by reference to the Book Value of the Partnership Property disposed of, notwithstanding that the adjusted tax basis of the Partnership Property differs from its Book Value.
- (5) To the extent not already taken into account under this Section 14.1(jj) or specially allocated under Section 7.3, there must be subtracted from taxable income or loss, the amount of each of the fees paid to the General Partner pursuant to Section 3.4.
- (6) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing taxable income or loss, there must be taken into account Depreciation on all Partnership Property for the period.
- (7) To the extent Tax Regulation § 1.704-1(b)(2)(iv)(m)(4) requires any adjustments under Code §§ 734(b) or 743(b) to the adjusted tax basis of any Partnership asset to be taken into account in determining Capital Accounts as a result of a Distribution other than in complete liquidation of a Record Holder's Interest, the amount of that adjustment must be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and taken into account for purposes of computing Profits and Losses.
- (8) Notwithstanding any other parts of this Section 14.1(jj), any items which are specially allocated under Section 7.3 must not be taken into account in computing Profits or Losses.

The amounts of the items of Partnership income, gain, loss, or deduction available for special allocation under Section 7.3 must be determined using rules analogous to those contained in the previous part of this Section 14.1(jj).

(kk) **Purchase Price.** The term “Purchase Price” has the same meaning as that ascribed to it in Section 11.4.

(ll) **Record Holders.** The term “Record Holders” means the Persons shown by the Partnership’s records to be Partners or Assignees of Record and “Record Holder” means any one of the Record Holders.

(mm) **Regulatory Allocations.** The term “Regulatory Allocations” has the same meaning as that ascribed to it in Section 7.3(g).

(nn) **Substituted Limited Partner.** The term “Substituted Limited Partner” means an Assignee of Record who:

- (1) obtains the prior written consent of the General Partner (who has absolute discretion to grant or deny consent free of duress and of its free will, even if unreasonable to do so), and
- (2) obtains the prior approval of the Partners by Majority Vote (who each have absolute discretion to grant or deny consent free of duress and of each’s free will, even if unreasonable to do so), and
- (3) agrees to be bound by this Agreement, as it may be amended.

(oo) **Successor General Partner.** The term “Successor General Partner” means a Person that becomes a General Partner according to Section 12.3(b) or by law. A Successor General Partner has all the applicable rights, duties, powers, and obligations of a General Partner named at the inception of the Partnership in this Agreement.

(pp) **Tax Regulations.** The term “Tax Regulations” means the Income Tax Regulations, promulgated under the Code, as those regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

(qq) **Tax Representative.** The term “Tax Representative” has the same meaning as that ascribed to it in Section 8.4.

(rr) **Terminated General Partner.** The term “Terminated General Partner” has the same meaning as that ascribed to it in Section 9.2.

(ss) **Termination of Community Property Interest.** A Termination of Community Property Interest occurs if:

- (1) the Interest of a Record Holder is held as community property with the Record Holder’s Spouse,

- (2) any event occurs which terminates or divides (or purports to terminate or divide) their community property interest in any part of the Interest (e.g., the Spouse's death, divorce from the Record Holder, or other Transfer of her interest in the Interest), and
- (3) the Record Holder does not at the conclusion of the event acquire his Spouse's interest in the Interest.

(tt) **Transfer.** The term "Transfer" means any change in any portion of the direct or indirect ownership of a legal or beneficial interest in an Interest. It includes, without limitation, any one or more of the following:

- (1) any sale, conveyance, assignment, or partition of any Interest.
- (2) any gift of any Interest other than for estate planning purposes to an entity in which the Partner remains in control.
- (3) any Involuntary Transfer.
- (4) any
  - (A) transfer of ownership of any Interest to a bankruptcy estate or receivership, or
  - (B) change in legal, beneficial, or equitable ownership of any Interest
 caused by filing:
  - (C) a voluntary petition under any bankruptcy or insolvency law, or
  - (D) a petition to appoint a receiver.
- (5) any assignment for the benefit of creditors.
- (6) any encumbrance, pledge, mortgage, hypothecation of any Interest.
- (7) any change in any portion of the direct or indirect legal or beneficial ownership of a partnership, limited liability company, corporation, or other Person that is directly or indirectly a Partner which results from the sale or other transfer of more than 50% of the legal or beneficial ownership of such Partner, excluding any such transfer done for estate planning purposes..
- (8) any other disposition of any direct or indirect interest in an Interest.

A Person indirectly owns an Interest if he owns any interest in another Person that directly or indirectly owns an Interest. Thus, indirect ownership occurs regardless of the number of



intervening Persons owning direct or indirect interests in an Interest. It includes, for example, any ownership interest in any Person that in turn owns any ownership interest in another Person that owns an Interest.

When used in this Section 14.1(tt), “interest” in an Interest includes any right to receive Distributions or to exercise any voting or management privileges.

(uu) **Unit.** The term “Unit” means the Interest in the Partnership issued to each Partner. Unless this Agreement specifies otherwise, each Unit gives each Partner equal voting rights on matters over which Partners have voting rights. When determining Units owned by a Partner for voting purposes:

- (1) Units owned by a Partner do not include Units in which the Partner has Transferred any beneficial interest in the Interest represented by the Units even if the Assignee or Assignee of Record regarding those Units does not become a Partner.
- (2) Units owned by a Partner do not include Units held by a Partner during the time the Partner is Incompetent.

Units that are not included as owned by a Partner are not counted as Units issued and outstanding or held by a Partner entitled to vote.

Except for differences between voting rights and liability of General Partners and Limited Partners (and Assignees of Record), all Units are of the same class within the meaning of Code § 2701 and cannot change due to the occurrence or nonoccurrence of an event that could be construed as a “lapse” under Code §§ 2701 or 2704, and this Agreement must be interpreted accordingly.

Units may be issued for whatever consideration the General Partner determines. In the absence of fraud in the transaction, the General Partner’s judgment regarding the value and sufficiency of the consideration received for Units is conclusive. Notwithstanding, in determining the number of Units to be issued, the General Partner must issue Units such that the number of Units held by each Partner and Record Holder immediately following the issuance of additional Units causes each Record Holder to hold the number of Units they would have held if the entire amount of the Record Holders’ adjusted Capital Account balances were their initial Capital Contributions.

Units may be divided into percentages of one Unit either at issuance or by Transfer or other subdivision made in accordance with the Transfer restrictions contained elsewhere in this Agreement or other agreements of the Partners. The Interest in the Partnership represented by any fractional Unit must be appropriately adjusted to reflect the fact that the Unit is fractional, not whole, and the rights and duties attributable to the Interest represented by that fractional Unit must likewise be adjusted.

**14.2 Titles, Captions, and Sections.** All section titles or captions in this Agreement have been inserted for convenience only. They must not be construed in interpreting this Agreement, as they do not in any way define, limit, extend, or describe the scope or intent of any provisions of this Agreement. Unless otherwise provided, references to “SECTIONS” and

“Sections” are to sections of this Agreement and references to Exhibits or Schedules are to Exhibits and Schedules attached to the Agreement.

**14.3 Derivative Word.** When the context requires, derivatives of terms defined elsewhere in this Agreement have been used. When a derivative of a defined term is used, the derivative term’s meaning must be determined by reference to the defined term from which it derives.

**14.4 Gender and Plurals.** Simply for ease in drafting, this Agreement uses the masculine gender when referring to a Person other than the Partnership. The use of a gender must not be construed as precluding the other genders when interpreting this Agreement. Thus, whenever the context may require, any pronoun used in this Agreement includes the corresponding masculine, feminine, or neuter forms. Similarly, whenever the context may require, the singular form of nouns, pronouns and verbs includes the plural, and vice versa.

## **SECTION 15: MISCELLANEOUS PROVISIONS**

**15.1 Notices.** Whenever this Agreement or law requires or permits a Person to give to another any consent, approval, notice, request, or demand, that Person must give the consent, approval, notice, request, or demand in writing (including, without limitation, fax, telex, email, or other telegraphic communications) to be effective. The parties to this Agreement must deem any consent, approval, notice, request or demand to have been given on the earlier of

(a) Receipt,

(b) The end of the business day after it is sent by fax, telex, email, or other telegraphic communication, properly transmitted to the recipient party’s telegraphic or electronic address, or

(c) The third business day after it is enclosed in an envelope, addressed to the party to be notified at the address indicated in this Agreement, properly stamped, sealed, and deposited in the United States mail, certified, return receipt requested.

A Person may change the Person to whom notices or requests must be given and the address at which those notices or requests may be given by providing written notice to that effect to each other party to this Agreement.

**15.2 Binding Effect.** This Agreement binds and inures to the benefit of the parties to this Agreement and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

**15.3 Creditors.** None of the creditors of the parties to this Agreement may benefit from or enforce any provisions of this Agreement.

**15.4 Integration.** This Agreement constitutes the entire agreement among the parties to this Agreement pertaining to its subject matter. The parties to this Agreement have not made any representations, agreements, or arrangements, or have any understandings, oral or written, pertaining to the subject matter of this Agreement that they have not fully expressed in

this Agreement. This Agreement supersedes any pertinent prior agreements and understandings whether written or oral not contained in this Agreement.

15.5 **Waiver.** A party to this Agreement does not waive any term, covenant, or condition of this Agreement by failing to insist on strict compliance with any of its terms, covenants, or conditions. Nor does a party to this Agreement that waives or relinquishes any right or power at any one time or times waive or relinquish the right or power for all or any other times.

15.6 **Applicable Law.** This Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Colorado, without regard to the principles of conflicts of law.

15.7 **Severability.** The invalidity or unenforceability of any term or provision or any clause of this Agreement in no way impairs or affects the validity or enforceability of any other part of this Agreement, which remain in full force and effect.

15.8 **Counterparts.** This Agreement may be executed in counterparts. All counterparts together constitute one agreement binding on all the parties to this Agreement even if not all the parties to this Agreement have signed the original or the same counterparts.

15.9 **Further Action.** The parties to this Agreement and their heirs, executors, administrators, successors, legal representatives, and permitted assigns must execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

[Signature Page Follows]

The parties to this Agreement have executed it as of March 19, 2019.

**General Partner:**

OCF Management, LLC, a Colorado limited liability company

By:   
Gung Kee Jim, its Manager

**Limited Partners:**

  
Gung Kee Jim

**Ordway Feedyard Ltd. Liability Co.**

By: \_\_\_\_\_  
Luke Larson, Manager

**NFL Holdings, Inc**

By: \_\_\_\_\_  
Glen Thomson, Manager

**Adams Cattle Incorporated**

By: \_\_\_\_\_  
Trent Adams, Manager

The invalidity or unenforceability of any term or provision or any clause of this Agreement in no way impairs or affects the validity or enforceability of any other part of this Agreement, which remain in full force and effect.

**15.8 Counterparts.**

This Agreement may be executed in counterparts. All counterparts together constitute one agreement binding on all the parties to this Agreement even if not all the parties to this Agreement have signed the original or the same counterparts.

**15.9 Further Action.**

The parties to this Agreement and their heirs, executors, administrators, successors, legal representatives, and permitted assigns must execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

[Signature Page Follows]

The parties to this Agreement have executed it as of March 19, 2019.

**General Partner:** OCF Management, LLC, a Colorado limited liability company

By:

Gung Kee Jim, its Manager

**Limited Partners:**

Gung Kee Jim

**Ordway Feedyard Ltd. Liability Co.**

By:

Luke Larson, Manager

**NFL Holdings, Inc**

By:

Glen Thomson, Manager

**Adams Cattle Incorporated**

The parties to this Agreement have executed it as of \_\_\_\_\_, 2019.

**General Partner:**

OCF Management, LLC, a Colorado limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_, Manager

**Limited Partners:**

\_\_\_\_\_  
Gung Kee Jim

**Ordway Feedyard Ltd. Liability Co.**

By: \_\_\_\_\_  
Luke Larson, Manager

**NFL Holdings, Inc**

By: \_\_\_\_\_  
Glen Thomson, Manager

**Adams Cattle Incorporated**

By: \_\_\_\_\_  
Trent Adams, Manager

The parties to this Agreement have executed it as of \_\_\_\_\_, 2019.

**General Partner:**

OCF Management, LLC, a Colorado limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_, Manager

**Limited Partners:**

\_\_\_\_\_  
Gung Kee Jim

**Ordway Feedyard Ltd. Liability Co.**

By: \_\_\_\_\_  
Luke Larson, Manager

**NFL Holdings, Inc**

By: \_\_\_\_\_  
Glen Thomson, Manager

**Adams Cattle Incorporated**

By: \_\_\_\_\_  
Trent Adams, Manager

## EXHIBIT A

| <u>Name and Address</u>                                                     | <u>Date Acquired</u> | <u>Units</u> |
|-----------------------------------------------------------------------------|----------------------|--------------|
| <b>General Partner:</b>                                                     |                      |              |
| OCF Management, LLC                                                         | 3/19/2019            | 0            |
| <b>Limited Partners:</b>                                                    |                      |              |
| Gung Kee Jim<br>PO Box 1707<br>Okotoks, AB T1S 1B6                          | 3/19/ 2019           | 25           |
| NFL Holdings, Inc<br>PO Box 142<br>Iron Springs, AB T0K 2G0                 | 3/19/2019            | 25           |
| Ordway Feedyard Ltd. Liability Co.<br>19424 HWY 96<br>Ordway, CO 81063      | 3/19/2019            | 25           |
| Adams Cattle Incorporated<br>6-55 Wheatland Trail<br>Strathmore, AB T1P 1R7 | 3/19/2019            | 25           |



**SCHEDULE A**  
**DESCRIPTION AND BOOK VALUE OF PROPERTY**  
**CONTRIBUTED BY THE GENERAL PARTNER**

The General Partner is not obligated to contribute  
any assets to the Partnership

## **SCHEDULE B**

### **DESCRIPTION AND BOOK VALUE OF PROPERTY**

#### **CONTRIBUTED BY THE LIMITED PARTNERS**

No Limited Partner shall be required to contribute any capital or assets to the Partnership until and unless the Partnership acquires title to the Ordway Feed Yard described in that Agreement for the Purchase and Sale of Feed Yard dated as of March 12, 2019 by and between Ordway Feedyard Ltd. Liability Co. and the Partnership.

**EXHIBIT D**

Resolution of the General Partner of the Limited  
Partnership

## RESOLUTIONS OF ORDWAY CATTLE FEEDERS, LP

The General Partner of Ordway Cattle Feeders, LP (Partnership), Gung Kee Jim (General Partner), acting on behalf of the members of the Partnership and pursuant to the Partnership Agreement, has agreed to the following resolutions concerning a secured loan from the State of Colorado Water Conservation Board (CWCB).

The General Partner charges that these resolutions are irrevocable during the term of the Loan Contract and pursuant to the Partnership Agreement, authorizes the following:

1. to enter into and comply with the terms of a contract with the Colorado Water Conservation Board for the loan, and
2. to make annual deposits to a debt service reserve fund separate and apart from other revenues, and
3. to make the annual payments required by the Promissory Note, and
4. To pledge the revenues in such amount as is necessary to make each annual payment due under this Loan Contract with a combination of real property, and
5. to execute all documents as required by the LOAN CONTRACT, including, but not limited to, a Revised Promissory Note, Revised Security Agreement, and Revised Deed of Trust, and
6. to take such other actions and to execute such other documents as may be necessary to consummate and implement the loan.

### CERTIFICATION

THE UNDERSIGNED GENERAL PARTNER, OF THE ORDWAY CATTLE FEEDERS, LIMITED LIABILITY LIMITED PARTNERSHIP HEREBY CERTIFIES THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE RESOLUTION AND THAT SAID RESOLUTION HAS NOT BEEN AMENDED OR RESCINDED.

ORDWAY CATTLE FEEDERS, LP  
A LIMITED PARTNERSHIP

By: CKJ

Name: Gung Kee Jim

Title: \_\_\_\_\_

Date: Oct 25 / 2019

Commissioner  
~~NOTARY~~

Province County of Alberta  
State of Colorado

The foregoing instrument was acknowledged before me this 25 day of Oct 2019, by  
Gung Kee Jim. Witness my hand and official seal.

Paige Oancia  
Notary Public

Commissioner of Oaths  
(SEAL)

My commission expires April 18, 2022

Commissioner of Oaths  
in and for Alberta  
Paige Oancia  
Expires: April 18, 20 22

**EXHIBIT E**

Revised Promissory Note

**EXHIBIT E**  
**REVISED PROMISSORY NOTE**

Date: November 18, 2019

Limited Partnership: Ordway Cattle Feeders, LP

Principal Amount: \$1,921,597.87

Interest Rate: 1.75% per annum

Term of Repayment: 30 years

Loan Number.: Original Contract No. C150349, Novation No. CT2019-3425

Loan Payment: \$91,286.89

Payment Initiation Date: April 1, 2014

Maturity Date: April 1, 2044

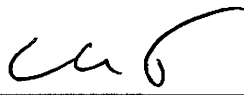
1. The Parties have executed a Novation and this Revised Promissory Note ("Note") for the purpose of written acceptance of the obligations of CWCB Loan Contract No. C150349 ("Contract") and Loan Contract Amendment No. 1 ("Amendment"), by Ordway Cattle Feeders, LP.
2. Ordway Cattle Feeders, LP, promises to pay the Colorado Water Conservation Board ("CWCB"), the Principal Amount plus Interest for the Term of Repayment, pursuant to the Contract, Amendment, Novation and this Promissory Note.
3. This Note replaces and supersedes the Promissory Note dated April 23, 2013, in the principal amount of \$2,525,000 in the entity name of Ordway Feedyard, LLC and the Amendment to Promissory Note dated April 2, 2014 in the principal amount of \$2,116,546.05 in the name of Ordway Feedyard, LLC.
4. Principal and interest shall be payable in equal Loan Payments, starting with the first payment, which was due and paid on April 1, 2015, and subsequent payments due annually thereafter. All principal, interest, and late charges, if any, then remaining unpaid shall be due and payable on or before the Maturity Date.
5. Payments shall be made to the Colorado Water Conservation Board at 1313 Sherman Street, Room 721, Denver, Colorado 80203.
6. The CWCB may impose a late charge in the amount of five percent (5%) of the annual payment if the CWCB does not receive the annual payment within sixty (60) calendar days of the due date.
7. This Note may be prepaid in whole or in part at any time without premium or penalty. Any partial prepayment shall not postpone the due date of any subsequent payments or change the amount of such payments.

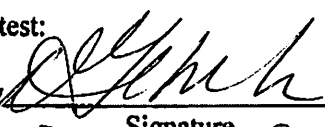
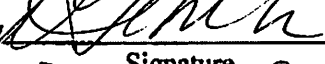
Security Agreement and the Revised Deed of Trust, in favor of the CWCB to secure the prompt payment of all amounts that may become due hereunder. The Contract, Amendment, Novation Agreement and Security Instruments grant additional rights to the CWCB, including the right to accelerate the maturity of this Note in certain events.

10. If any annual payment is not paid when due or any default under the Contract, Amendment, Novation Agreement or the Security Instruments securing this Note occurs, the CWCB may declare the entire outstanding principal balance of the Note, all accrued interest, and any outstanding late charges immediately due and payable, and the indebtedness shall bear interest at the rate of seven percent (7%) per annum from the date of default. The CWCB shall give the Limited Partnership written notice of any alleged default and an opportunity to cure within sixty (60) days of receipt of such notice before the Limited Partnership shall be considered in default for purposes of this Note.
11. The Limited Partnership hereby agrees that if this Note or interest thereon is not paid when due or if suit is brought, then it shall pay all reasonable costs of collection, including reasonable attorney fees. In the event of any bankruptcy or similar proceedings, costs of collection shall include all costs and attorney fees incurred in connection with such proceedings, including the fees of counsel for attendance at meetings of creditors' committees or other committees.
12. This Note shall be governed in all respects by the laws of the State of Colorado.

Ordway Cattle Feeders, LP

(S E A L)

By   
Signature  
Name Gung Kee Jim  
Title General Partner  
Date Nov 18/2019

Attest:   
By   
Signature  
Name Darlene Gehrke  
Title CPA  
Date Nov 18/2019

**EXHIBIT F**

Revised Security Agreement



**EXHIBIT F**  
**REVISED SECURITY AGREEMENT**

Date: November 18, 2019

Limited Partnership: Ordway Cattle Feeders, LP

Secured Party: Colorado Water Conservation Board

Promissory Note: \$1,921,597.87

Terms of Repayment: 1.75% per annum interest for 30 years or until loan is paid in full

Loan Contract Number: C150349, Novation Number CT2019-3737

Pledged Revenues: All legally available revenues in such an amount as is necessary to make each annual payment, due under this Loan Contract, to repay the Loan.

This Revised Security Agreement replaces and supersedes the Original Security Agreement dated April 25, 2013, in the entity name of Ordway Feedyard, LLC and the Amendment to Promissory Note dated April 3, 2014 in the name of Ordway Feedyard, LLC.

The Parties have executed a Novation and this Revised Security Agreement for the purpose of written acceptance of the obligations of CWCB Loan Contract No. C150349 ("Contract") and Loan Contract Amendment No. 1 ("Amendment"), by Ordway Cattle Feeders, LP.

To secure payment of the loan evidenced by the Promissory Note payable in accordance with the terms of repayment, or until all principal, interest, and late charges, if any, are paid in full, the Limited Partnership grants to Secured Party a security interest in the above described Pledged Revenues.

**THE LIMITED PARTNERSHIP EXPRESSLY WARRANTS AND COVENANTS:**

1. The Limited Partnership is the owner of the Pledged Revenues free from any adverse lien, security interest or encumbrances; and that the Limited Partnership will defend the Pledged Revenues against all claims and demands of all persons at any time claiming the same or any interest therein.
2. That the execution and delivery of this agreement by the Limited Partnership will not violate any law or agreement governing the Limited Partnership or to which the Limited Partnership is a party.
3. To not permit or allow any adverse lien, security interest or encumbrance whatsoever upon the Pledged Revenues and not to permit the same to be attached or replevined.
4. That by its acceptance of the loan money pursuant to the terms of the Loan Contract, Contract Amendment, Novation and by its representations herein, the Limited Partnership shall be estopped from asserting for any reason that it is not authorized to grant a security interest in the Pledged Revenues pursuant to the terms of this agreement.
5. To pay all taxes and assessments of every nature that may be levied or assessed against the Pledged Revenues.
6. That the Limited Partnership Agreement does not prohibit any term or condition of this agreement.

UNTIL DEFAULT the Limited Partnership may have possession of the Pledged Revenues, provided that the Limited Partnership keeps the Pledged Revenues in an account separate from other revenues of the Limited Partnership and does not use Pledged Revenues for any purpose not permitted by the Contract. Upon default, Secured Party shall have the immediate right to the possession of the Pledged Revenues.

**THE LIMITED PARTNERSHIP SHALL BE IN DEFAULT under this agreement upon any of the**

following events or conditions:

- a. default in the payment or performance of any obligation contained herein or in the Promissory Note or Contract; or
- b. dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency law of, by or against the Limited Partnership; or
- c. the making or furnishing of any warranty, representation or statement to Secured Party by or on behalf of the Limited Partnership which proves to have been false in any material respect when made or furnished.

Upon such default and at any time thereafter, Secured Party shall have the remedies of a secured party under Article 9 of the Colorado Uniform Commercial Code. Secured Party may require the Limited Partnership to deliver or make the Pledged Revenues available to Secured Party at a place to be designated by Secured Party, which is reasonably convenient to both parties. Expenses of retaking, holding, preparing for sale, selling or the like shall include Secured Party's reasonable attorney's fees and legal expenses.

The Secured Party shall give the Limited Partnership written notice of any alleged default and an opportunity to cure within sixty (60) business days of receipt of such notice before the Limited Partnership shall be considered in default for purposes of this Security Agreement. No default shall be waived by Secured Party except in writing, and no waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on a future occasion. The taking of this Security Agreement shall not waive or impair any other security Secured Party may have or hereafter acquire for the payment of the above indebtedness, nor shall the taking of any such additional security waive or impair this Security Agreement; but Secured Party shall retain its rights of set-off against the Limited Partnership. In the event court action is deemed necessary to enforce the terms and conditions set forth herein, said action shall only be brought in the District Court for the City and County of Denver, State of Colorado, and the Limited Partnership consents to venue and personal jurisdiction in said Court.

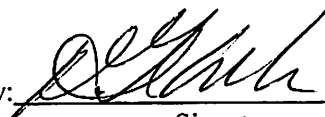
All rights of Secured Party hereunder shall inure to the benefit of its successors and assigns; and all promises and duties of the Limited Partnership shall bind its successors or assigns.

Ordway Cattle Feeders, LP

By:   
Signature

Attest:

Name: Gung Kee Jim  
Title: General Partner  
Date: Nov 18/2019

By:   
Signature

Name: Darlene Gehrke

Title: CPA

Date: Nov 18/2019

**EXHIBIT G**

Revised Deed of Trust

## **EXHIBIT G**

### **REVISED DEED OF TRUST**

Date: November 18, 2019  
Grantor (Partnership): Ordway Cattle Feeders, LP  
Beneficiary (Lender): Colorado Water Conservation Board  
Recorded Date of Deed of Trust: Original 05/24/13, Amendment 04/29/14  
County of Recording ("County"): Crowley  
Deed of Trust Recording Number: Original No.169481, Amendment No. 170195  
Loan Contract: C150349, Novation No. CT2019-3425  
Promissory Note: \$1,921,597.87, 1.75%, 30 Years  
Pledged Property ("Collateral"): An undivided interest in certain real property and structures described as 616.56 acres of land approximately one (1) mile east of Ordway, along the south side of the Missouri Pacific Railroad and State Highway 96, in Crowley County, Colorado. Legally described as:  
  
372.35 acres of land out of Section 18, South of the Railroad, T21S, R56W, 6<sup>th</sup> P.M., Crowley County.  
  
21.5 acres of land out of the E/2 of the E/2 of the E/2 of Section 24, T21S, R57W, 6<sup>th</sup> P.M., Crowley County.  
  
155.71 acres of land out of the North Part of Section 19, T21S, R56W, 6<sup>th</sup> P.M., Crowley County.  
  
67.0 acres of land out of E/2 of the E/2 of Section 13, South of the Railroad, T21S, R57W, 6<sup>th</sup> P.M., Crowley County, Colorado.  
  
Included are the necessary rights of ingress and egress therefor, as contained in the deeds of the owners of lands bordering on said parcel, together with all easements and rights-of way appurtenant thereto and all improvements thereon.

This Revised Deed of Trust is between the Grantor and the Public Trustee of Crowley County, State of Colorado.

The Deed of Trust is recorded to secure repayment of the indebtedness evidenced by the Loan Contract and Promissory Note, the Loan Contract Amendment and Amendment to Promissory Note, and Novation between the Grantor and the Beneficiary.

This Deed of Trust, Appendix G, replaces and supersedes the Original Deed of Trust dated April 25, 2013, recorded on May 24, 2013 Recording Number 169481, in the entity name of Ordway Feedyard, LLC, and the Amendment to Deed of Trust dated April 3, 2014, recorded on April 29, 2014, Recording Number 170195, in the entity name of Ordway Feedyard, LLC.

The Parties have executed a Novation and this Revised Deed of Trust for the purpose of written acceptance of the obligations of CWCB Loan Contract No. C150349 ("Contract") and Loan Contract Amendment No. 1 ("Amendment"), by Ordway Cattle Feeders, LP.

The Grantor has executed a Promissory Note of even date and amount, set forth in the Novation, for a loan in the Loan Amount to be repaid to the Beneficiary, with Terms of Repayment and in accordance with the Promissory Note or until loan is paid in full.

The Grantor is desirous of securing payment of the Loan Amount and interest of said Promissory Note to the Beneficiary.

The Grantor, in consideration of the premises and for the purpose aforesaid, does hereby grant, bargain, sell and convey unto the said Public Trustee in trust forever, the above described Collateral.

To have and to hold the same, together with all appurtenances, in trust nevertheless, that in case of default in the payment of said Promissory Note, or any part thereof, or the interest thereon, or in the performance of any covenants hereinafter set forth or in said Promissory Note, Loan Contract, Amendment or Novation Agreement, then upon the Beneficiary filing notice of election and demand for sale, said Public Trustee, after advertising notice of said sale weekly for not less than four weeks in some newspaper of general circulation in said County, shall sell said Collateral in the manner provided by law in effect at the time of filing said notice and demand, at public auction for cash, at any proper place designated in the notice of sale. Out of the proceeds of said sale, the Public Trustee shall retain or pay first all fees, charges and costs and all moneys advanced for taxes, insurance and assessments, or on any prior encumbrance, with interest thereon and pay the principal and interest due on said Promissory Note, rendering the overplus, if any, unto the Grantor; and after the expiration of the time of redemption, the Public Trustee shall execute and deliver to the purchaser a deed to the Collateral sold. The Beneficiary may purchase said Collateral or any part thereof at such sale.

The Grantor covenants that at the time of the delivery of these presents, it is well seized of the Collateral in fee simple, and has full power and lawful authority to grant, bargain, sell and convey the same in the manner and form as aforesaid. The Grantor fully waives and releases all rights and claims it may have in or to said Collateral as a Homestead Exemption or other exemption, now or hereafter provided by law. The Grantor further covenants that the Collateral is free and clear of all liens and encumbrances whatever and that the Grantor shall warrant and forever defend the Collateral in the quiet and peaceable possession of the Public Trustee, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof.

Until payment in full of the indebtedness, the Grantor shall timely pay all taxes and assessments levied on the Collateral; any and all amounts due on account of the principal and interest or other sums on any senior encumbrances, if any; and will keep the Collateral insured in accordance with the requirements of the Loan Contract. In the event of the sale or transfer of the Collateral, the Beneficiary, at its option, may declare the entire balance of the note immediately due and payable.

In case of default in any of said payments of the principal or interest, according to the terms of said Promissory Note, Loan Contract, Amendment or Novation Agreement, by the Grantor, its successors or assigns, then said principal sum hereby secured, and interest thereon, may at once, at the option of the Beneficiary, become due and payable, and the said Collateral be sold in the manner and with the same effect as if said indebtedness had matured, and that if foreclosure be made by the Public Trustee, an attorney's fee in a reasonable amount for services in the supervision of said foreclosure proceedings shall be allowed by the Public Trustee as a part of the cost of foreclosure, and if foreclosure be made through the courts a reasonable attorney's fee shall be taxed by the court as a part of the cost of such foreclosure proceedings.

It is further understood and agreed, that if a release or a partial release of this Deed of Trust is required, the Grantor, its successors or assigns will pay the expense thereof; that all the covenants and agreements contained herein and in the Promissory Note, Loan Contract, Amendment or Novation Agreement, shall extend to and be binding upon the successors or assigns of the respective parties hereto; and that the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

Executed the day and date first written above.

Ordway Cattle Feeders, LP

By: Cu G  
Signature

Name: Gung Kee Jim

Title: General Partner

Date: Nov 18 / 2019

Attest:

By: [Signature]  
Signature

Name: Darlene Gehrke

Title: CPA

Date: Nov 18 / 2019

**Notary Required**

Province of Alberta  
~~State of Colorado~~ )  
County of                      ) ss.

The foregoing instrument was acknowledged before me on Nov 18, 2019, by

Gung Kee Jim (Name) as General Partner (Title) and

\_\_\_\_\_ (Name) as \_\_\_\_\_ (Title) of the Ordway Cattle Feeders, LP

Witness my hand and official seal.

[Signature]  
Notary Public Signature

My commission expires April 18, 2022 (SEAL)

Commissioner of Oaths  
In and for Alberta  
Palge Oancia  
Expires: April 18, 20 22

(Colorado Water Conservation Board will record Amendment to Deed of Trust with the County.)