

# STATE BOARD OF LAND COMMISSIONERS

September 20, 2022

Regular Agenda

## Subject

Reinvestment of the Agricultural College Endowment Land Bank Funds

## Question Presented

Shall the Land Board authorize the use of the Agricultural College Land Bank funds for the purchase of land and the construction of a milking parlor for the CAFE project?

## Background

The Idaho Department of Lands (Department) has worked with the Agricultural College since 2017 to sell 282 acres of Agricultural College endowment land (Caldwell Property) located in the city of Caldwell that was no longer used for experimental farming. The Department requested approval to sell the property at the March 2021 State Board of Land Commissioners (Land Board) meeting (Attachment 1). The Land Board approved the request, and the Caldwell Property was sold at a public auction in November of 2021 for \$23,250,000. Pursuant to Idaho Code § 58-133, the auction proceeds were placed in the "land bank fund" to be used for the acquisition of real property or moved to the Endowment Fund Investment Board (EFIB) at the discretion of the Land Board.

## Discussion

The College of Agricultural and Life Sciences (CALs), as the beneficiary of the Agricultural College endowment, is requesting that the proceeds from the sale of the Caldwell Property be used to acquire 638.11 acres of farmland (Attachment 2) located 13 miles north of Rupert in Minidoka County (Minidoka Property). In addition to purchasing the land, CALs is requesting that the remaining balance of land bank funds be used to construct a milking parlor on the Minidoka Property.

The Land Board has three options for the proceeds from the Caldwell Property disposition:

- Transfer the associated amount from the land bank to the permanent fund (analyzed by the Department, details under Option 1 below)
- Leave the funds in the land bank for potential reinvestment in timberland
- Use the proceeds to acquire the Minidoka Property and construct a milking parlor for the CAFE project (recommended by the Department, details under option 2 below).

For the Land Board's consideration, the Department analyzed the transfer to the permanent fund or investment in the CAFE project options.

**Option 1 – Transfer the Proceeds to the Permanent Fund**

The Land Board has the option to move the land bank funds to the permanent fund to be managed by EFIB. This option would result in a financial benefit to the beneficiary that would be equal to an annual 5% distribution based on a 3-year rolling average of the permanent endowment fund. The Department modeled the Net Present Value (NPV) of the distribution proceeds to the beneficiary using a 4% discount rate, 5.8% appreciation of the fund, and a 5% annual distribution to determine an 8, 25, and 50-year NPV. The results of the analysis are below.

8 Years NPV of Distribution	\$5,922,696.10
25 Years NPV of Distribution	\$20,017,257.66
50 Years NPV of Distribution	\$30,303,558.44

**Option 2 – Acquire Minidoka Property and Fund Construction of Milking Parlor**

The Land Board's second option is to acquire the Minidoka Property and fund the construction of a milking parlor. This option results in Agricultural College endowment ownership of real assets including farmland and essential dairy facilities. The endowment can expect to benefit from land appreciation and ongoing ownership of well-maintained dairy facilities that may be leasable or salable for the planned use or for other types of use upon termination of the agreement. This option also results in many benefits to CALS, including increased enrollment, a research dairy that will generate revenue through milk sales, and ongoing revenue from research grants and gifts. The revenue from grants and gifts can only be forecasted for eight years but would likely continue after that time.

Working with the University of Idaho, the Department forecasted these benefits for eight years based on the information provided. The model included a 4% discount rate, a conservative 3% appreciation of the land, and discounted those numbers back to the present value.

8 years NPV of land appreciation	\$1,338,903.17
8 years NPV of Cafe grant revenues	\$11,631,960.48
8 years NPV of Cafe research trials revenues	\$9,887,166.41
8 years NPV of Cafe enrollment revenues	\$2,180,992.59

These benefits result in a sum NPV of \$25,039,022. The endowment would benefit from the land appreciation while CALS, the beneficiary, would receive the other financial benefits. The NPV of the other financial benefits may ultimately be higher but for this analysis is limited to the eight-year period for which data was available.

If approved by the Land Board, the Department will work with the Office of the Attorney General to finalize the Draft Purchase and Sale Agreement (Attachment 3) and the Draft Operating Agreement (Attachment 4). Once finalized, the purchase and sale agreement will be routed for signature and the closing for the land will be held on or before December 22, 2022.

### **Investment Subcommittee**

The Department presented both options as mentioned above in the memorandum to the Investment Subcommittee on September 19, 2022. The committee recommended using the Caldwell property proceeds to acquire the Minidoka Property and funding the construction of the milking parlor.

### **Recommendation**

Given the authority granted in Morrill Act, the value to the endowment and the direct benefits to CALS as the endowment beneficiary, the Department recommends that the Land Board approve the acquisition of the Minidoka Property for \$6,000,000 and distribute the remaining balance of \$17,250,000 to fund construction of the milking parlor.

### **Board Action**

### **Attachments**

1. March 16, 2021 Approved Memo – Approving the Sale of the Caldwell Assemblage
2. Map of Minidoka Property
3. Draft Purchase and Sale Agreement
4. Draft Operating Agreement

## STATE BOARD OF LAND COMMISSIONERS

March 16, 2021

Regular Agenda

### Subject

Approval to offer for auction Agricultural College endowment (Agricultural Endowment) land, known as the Caldwell Area Property Assemblage (Property), located at East Homedale Road and South 10th Avenue, Caldwell, Idaho

### Question Presented

Shall the Land Board direct the Department to dispose of the Property?

### Background

In September 2016, the Idaho Department of Lands (Department) met with representatives from the University of Idaho (University) seeking consideration from the Department and eventually, the State Board of Land Commissioners (Land Board), to dispose of the Property.

The Property considered for disposition is approximately 282 acres, divided into two separate legal lots of 161.73 and 120.25 acres, located in Canyon County (Attachment 1). The land came into state endowment ownership through the "in-lieu" land process. The State of Idaho and the General Land Office (federal land office) worked together to identify these lands for addition to the Agricultural Endowment portfolio. The Property was subsequently transferred into State of Idaho ownership with Clear List AC018BOI (Attachment 2) on January 31, 1908.

On land adjacent to the Property, the University built and maintained a veterinarian training facility commonly known as the Caine Veterinary Teaching Facility (CVTF). In addition, the University housed staff in structures on the Property and allowed the Idaho Department of Fish and Game to use a portion for storage and big game studies.

In 2020 the University sold the CVTF facility and the approximately 40 acres of land it owned adjacent to the Property. The University determined that the Property no longer serves the best interest of the University and would like to dispose of the Property.

The University requested and was granted an easement (Attachment 3) for the Property in 1947 to use as an "experimental farm and improvements thereon" for \$1. As part of the disposition process, the Department will require the easement to be released or terminated before the Property's marketing begins.

## Discussion

As part of the due diligence process, the Department sought guidance from CenturyPacific LLLP (CenturyPacific), the Land Board's real estate advisor, to determine if it is in the best interest of the Agricultural Endowment to divest of the Property. CenturyPacific completed a business plan (Attachment 4) that recommends "the Property should be aggressively marketed and sold pursuant to a sale process that is consistent with the State of Idaho constitution."

Over the past five years, the Department completed the necessary due diligence to prepare the Property for disposition which included appraisals, review appraisals, title commitment, ALTA survey, conceptual land-use plan, and an environmental site assessment. Upon Land Board approval, the Department will begin the process of hiring a real estate broker to market and facilitate the auction. The broker will post all due diligence materials for interested parties, including property-specific appraisals, review appraisals, environmental assessments, and preliminary title commitments. After the marketing period, the Department will offer the property for sale at auction in one or more parcels with the combined auction price beginning at the appraised value of \$5,726,000. The Department will follow the statutory requirements for the disposition of endowment land as provided in Idaho Code § 58-313 *et seq.*

The proposed schedule:

- Create a Property Information Portal for due diligence: 3/16/21
- Contract a real estate broker: 3/18/21 – 5/1/21
- Release or termination of easement executed
- Market the Property for a minimum of 60 days
- Advertise the legal notice for the public auction in the Idaho Statesman for five weeks prior to the auction
- Auction held between 7/15/21 – 8/30/21
- Closing to be held within 60 days of the auction

The terms of the sale will include:

- Live public auction held in Ada or Canyon County
- Starting bid not less than appraised value
- Bidders required to post a nonrefundable bid deposit equal to the greater of 3% of the appraised value or \$10,000, unless otherwise approved by the Department
- A buyer's premium of 3% added to the successful bid price
- No contingencies
- Buyer responsible for all closing costs and title insurance
- Closing within 60 days after close of auction

## Recommendation

Direct the Department to offer the Caldwell Area Property Assemblage for sale at auction in Ada or Canyon County upon confirmation of the University of Idaho's relinquishment of the 1947 easement.

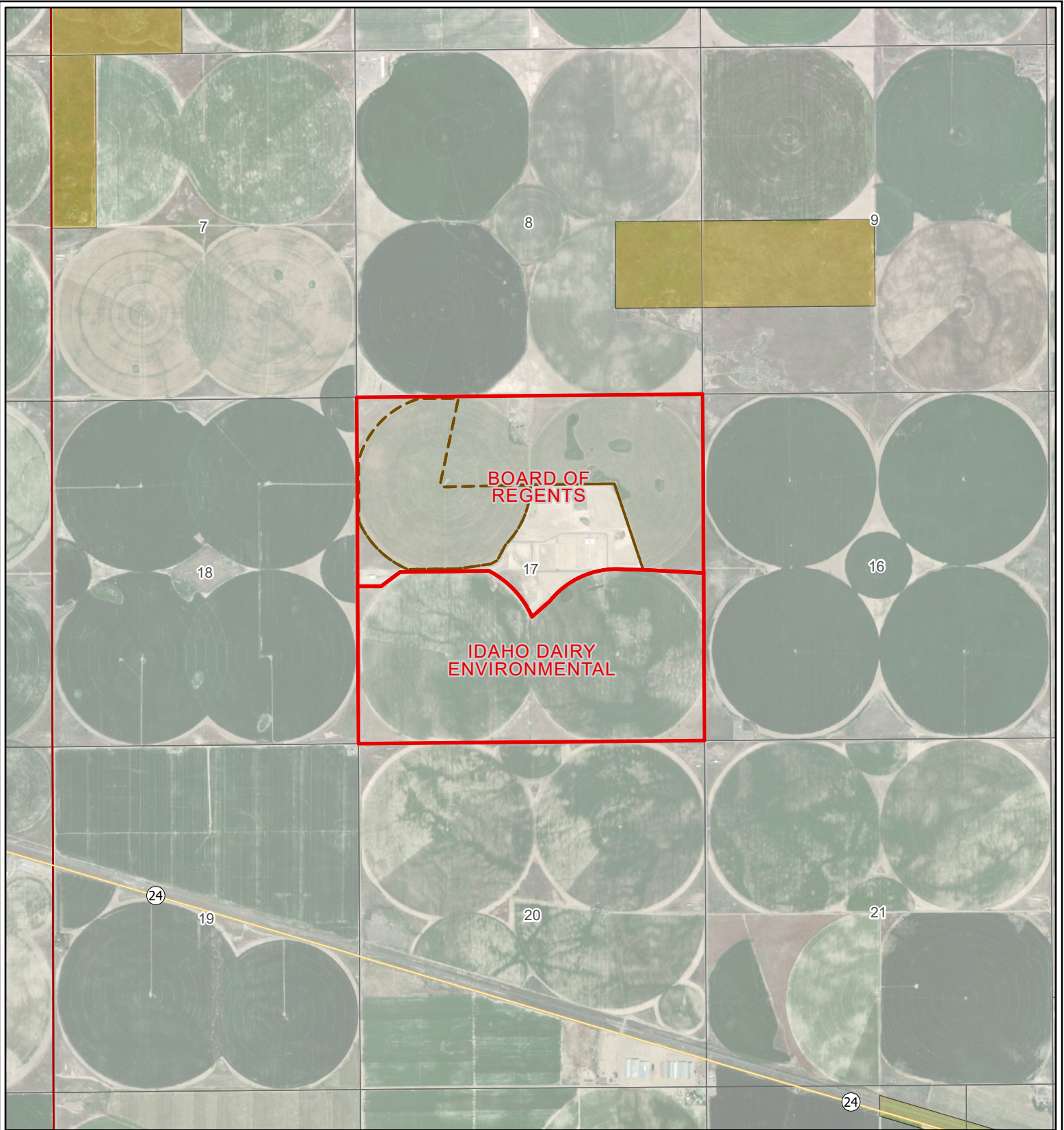
## Board Action

A motion was made by Attorney General Wasden that the Land Board direct the Department to offer the Caldwell Area Property Assemblage for sale at auction in Ada or Canyon County upon confirmation of the University of Idaho's relinquishment of the 1947 easement. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

## Attachments

1. Caldwell Area Property Assemblage map
2. Clear List Deed
3. University of Idaho Easement
4. Property Business Plan by CenturyPacific





Subject Property

Parcels

**Ownership**

Bureau of Land Management

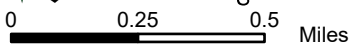
Bureau of Reclamation

Private

**CAFÉ Center Land**

Sec. 17 - T07S - R24E  
Minidoka County, Idaho

8/4/2022

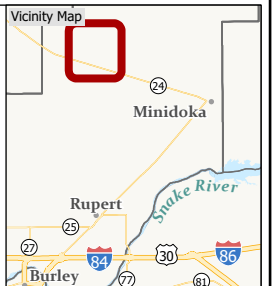


**Map Notes**

Projection: Idaho Transverse Mercator, NAD 83

Map Notes and Data Sources

Disclaimer:  
This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.





## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is entered into between the **BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO**, a state educational institution and body politic and corporate organized and existing under the Constitution and laws of the State of Idaho, whose mailing address is 875 Perimeter Drive MS 3168, Moscow, Idaho, 83843-3168 (“**Seller**”), and the **STATE OF IDAHO, STATE BOARD OF LAND COMMISSIONERS**, whose administrative agent is the **IDAHO DEPARTMENT OF LANDS**, whose mailing address is 300 North 6<sup>th</sup> Street, Suite 103, Boise, Idaho 83702, acting by and for the benefit of the **AGRICULTURAL COLLEGE ENDOWMENT** (“**Buyer**”) (Seller and Buyer collectively “**Parties**”). Seller’s College of Agriculture and Life Sciences is the beneficiary of that certain Constitutional Endowment Trust created by Article IX, Section 8 of the Idaho Constitution and the Idaho Admission Bill. Buyer is the Constitutional Trustee of endowment property and assets controlled and managed by Buyer for the benefit of the Agricultural College Endowment beneficiary.

### 1. **Purchase and Sale.**

Seller shall sell and Buyer shall purchase that certain real property located in the County of Minidoka, State of Idaho, and more particularly described in **Exhibit A**, which exhibit is attached and incorporated herein together with all easements, rights and appurtenances thereto, including, but not limited to, water rights, irrigation improvements, access, easements, and existing fixtures and improvements thereon (“**Property**”).



**2. License for Entry.**

Seller grants to Buyer a license to enter upon the Property for all purposes reasonably related to a full and adequate determination of its suitability, including, without limitation, the right to conduct surveys, soils tests, engineering studies, and environmental tests and audits.

**3. Purchase Price.**

The purchase price of the Property is Six Million Dollars (\$6,000,000) (“**Purchase Price**”).

**4. Conditions for Closing.**

Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to purchase the Property and Seller shall not be obligated to sell unless at or prior to closing each of the following conditions have been met or waived in writing. The parties agree to cooperate with one another to execute any documents which may be necessary or convenient to the performance of these conditions:

(a) **Buyer’s due diligence.** Seller makes no representations as to the title, or status of the Property other than as specifically set forth herein and Buyer shall have a due diligence period from the date of execution hereof until December 16, 2022, to perform such examination of the Property and the title thereto to satisfy Buyer, including but not limited to:

(i) Title Insurance. Buyer may obtain, at Buyer’s cost, from a title insurance company authorized to do business in the State of Idaho, a commitment for a policy of title insurance, including any endorsements reasonably required by Buyer in the full amount of the Purchase Price, insuring marketable fee simple title to the Property in Buyer.

(ii) Unrecorded Lease. The Property is currently subject to an unrecorded lease between Seller and Grant 4-D Farms, LLC, an Idaho limited liability company (“**Existing Farm Lease**”), which is attached and incorporated herein as **Exhibit B**. Buyer and Seller agree that prior to or concurrent with closing of this transaction, Seller shall assign its interest in the lease to Buyer. Seller shall not enter into any additional lease or occupancy agreement affecting the Property or any portion thereof unless first approved in writing by Buyer.

(iii) Boundary Survey and Environmental Hazards. Such surveys of the boundary and examination of environmental conditions of the Property deemed necessary by Buyer to determine the status of the Property with respect to property lines, hazardous materials and other relevant conditions which, in Buyer’s sole opinion, are acceptable for Buyer’s intended purposes for purchase.

(b) While Seller makes no representation or warranty with regard to the title or status of the Property, given the unique relationship between Buyer as trustee and Seller, acting on behalf of the beneficiary, the University of Idaho College of Agricultural and Life Sciences, and the fact that the Property will largely be managed by Seller for the operation of an experimental farm following Buyer’s acquisition in accordance with provisions of the Morrill Act and the Idaho Admission Bill; and, given that Seller has previously negotiated for and acquired the Property with the intention of using it as an experimental farm; Seller agrees to provide to Buyer copies of the following documents, instruments, and information that Buyer or its agents may possess related to Seller’s acquisition of the Property in order to assist Buyer in its due diligence review, including, but not limited to: copies of any and all acquisition documents; purchase and sale agreements;

exhibits; attachments; deeds; easements; contracts; studies; reports; private or otherwise; appraisals; title commitments; title policies; phase 1 studies as well as any other environmental studies or hazardous materials studies performed; surveys; soil tests/samples; etc., that Seller has conducted on the Property, either internally through any University of Idaho affiliate or affiliation, or that it had performed for Seller or on Seller's behalf and that Seller relied on in acquiring the Property.

(c) **Buyer's and Seller's Board Approval.** Neither Buyer nor Seller is obligated to close this transaction until the Board of Regents and the Land Board have specifically approved this Agreement in accordance with their respective policies and procedures and in the manner otherwise prescribed by the terms of this Agreement. The parties acknowledge that the execution and delivery of this Agreement is made prior to presentation of the proposed transaction and the terms hereof to either party's governing board for the foregoing required approval. Multiple appearances before the respective boards may be necessary in order for a board to reach a final determination or approval of the transaction. This Agreement permits both parties to complete appropriate due diligence prior to submitting the transaction for final approval to their respective governing boards. The determination of the Board of Regents and Land Board, respectively, whether to approve the transaction and permit closing to proceed is an independent decision of each board, and nothing herein shall be deemed to bind either board in favor of approval, or to limit its discretion in granting such approval.

(d) **Termination Resulting from Dissatisfaction from Buyer's Due Diligence or Failure to Receive Board Approval.** At any time during the due diligence period, Buyer may elect to terminate this Agreement upon fifteen (15) days' prior written notice to Seller

and this Agreement shall terminate. In the event either Board of Regents or Land Board denies approval of this Agreement, or Buyer's approval is not obtained prior to the end of the due diligence period, this Agreement shall terminate, and each party shall be solely responsible for the costs and expenses incurred by each party to that point, including, but not limited to, due diligence and attorney fees. In the event of any such termination of this Agreement, both parties shall be released from any further obligations hereunder.

(e) **Experimental Farm Agreement.** The Parties agree that as a term of this Agreement, and as a condition precedent to closing, the Parties shall execute in substantially the same form attached and incorporated herein as **Exhibit C**, an "Agricultural College Endowment Experimental Farm Operations Agreement" (hereafter simply referred to as the "**Experimental Farm Agreement**") in which Seller shall commit to Buyer to utilize all Purchase Price proceeds received for the Property from Buyer for experimental farm purposes consistent with the Morrill Act and the Idaho Admission Bill. Seller shall use and manage the Property for the sole purpose of operating an experimental farm consistent with the Morrill Act and the Idaho Admission Bill.

## **5. Closing Agent.**

First American Title Company, 199 Country Lane Jerome, ID 83338, shall serve as the Closing Agent. Seller shall deliver to the Closing Agent on or before December 20, 2022, the following: i) a duly executed and acknowledged Special Warranty Deed ("**Deed**"), in substantially the form attached and incorporated herein as **Exhibit D**, conveying all of Seller's right, title and interest in the Property to Buyer, together with instructions to deliver and record Deed after Buyer deposits the Purchase Price with the Closing Agent. On or before December 10, 2022, Buyer shall notify Seller and Closing Agent, in writing that Buyer is satisfied with the conditions of transaction

closing as set forth in Section 4 of this Agreement. Upon acknowledgment that all conditions of transaction closing as set forth in Section 4 have been met by Buyer and Seller, Buyer shall deposit the Purchase Price prior to December 22, 2022, with the Closing Agent, with instructions to disburse the Purchase Price to Seller upon recordation of the Deed by Closing Agent.

**6. Closing.**

Once all conditions of transaction closing (as described in Section 4 of this Agreement) have been satisfied, the Deed is delivered, the Purchase Price is deposited, and the Experimental Farm Agreement is executed by both parties, the Closing Agent shall complete the transaction as prescribed by this Agreement (“**Closing**”). Upon Closing, possession of the Property shall pass to Buyer.

**7. Costs.**

Seller shall pay closing fees, which will be deducted from proceeds. Utilities shall remain in name of Seller and all expenses for utilities before and after closing shall remain the responsibility of Seller for so long as Buyer retains ownership of the Property and the Experimental Farm Agreement is in effect. The Property is exempt from property taxes while in the possession of Seller and will remain exempt upon transfer to Buyer.

**8. Commissions.**

Each party represents and warrants that it has not dealt with or contracted with any broker, agent, or finder to act in their behalf in connection with this transaction.

## **9. Seller's Representations and Warranties.**

(a) Seller represents and warrants that Seller has authority to enter into this Agreement (subject to the condition listed in Section 4 (b) herein) and to grant the license granted in Section 2.

(b) Seller represents and warrants that there are no pending or threatened condemnation proceedings that are known to affect all or any portion of the Property, or the performance by Seller of any of its obligations set forth in this Agreement.

(c) Seller represents and warrants that, to Seller's knowledge, there are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings contemplated by, or pending or threatened against, Seller that could prevent or delay the consummation of this transaction.

(d) Seller represents and warrants that execution, delivery and performance of this Agreement has been duly authorized and approved by all actions necessary by Seller, on the part of Seller, and that this Agreement (subject to the condition described by Section 4(b) herein) constitutes valid and binding agreement of Seller in accordance with its terms.

The representations and warranties set forth in this Section 9 shall constitute continuing representations and warranties and shall be deemed to be true and correct as of the date of closing of Buyer's purchase of the Property.

## **10. Condemnation.**

Should any entity having the power of condemnation bring an action or otherwise indicate an intent prior to the time of closing to acquire all or any portion of, or any interest in, the Property, Buyer or Seller, at either party's sole option, may elect to terminate this Agreement by giving

written notice to the other party at any time prior to the time of closing. If neither party chooses to terminate this Agreement as provided herein, then Buyer and Seller shall complete the purchase and sale as provided herein with Seller immediately appointing Buyer its attorney-in-fact to negotiate with said condemning entity as to its interest in the Property and assigning to Buyer all amounts to be awarded for the Property. Seller agrees to provide Buyer, within ten (10) days after Seller's receipt of same, but in no event later than the time of closing, written notice of any actual or threatened condemnation proceeding.

**11. Successors.**

This Agreement shall be binding on the successors and assigns of the parties hereto.

**12. Default.**

A party shall be deemed to be in default of this Agreement if that party is in material breach of any warranty, term, condition, covenant or obligation under this Agreement and fails to cure that breach within thirty (30) days written notice thereof.

**13. Notices.**

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below, and with a copy to said party to be sent via email as set forth below:

Seller: Board of Regents of the University of Idaho  
Vice President, Finance & Administration  
875 Perimeter Dr MS 3168  
Moscow ID 83844-3168  
Email: \_\_\_\_\_



Buyer: State Land Board  
c/o Idaho Department of Lands  
300 North 6<sup>th</sup> Street, Suite 103  
Boise, ID 83702  
Email: jelbin@idl.idaho.gov

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term “**receipt**” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt; (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above; or, (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery; (B) the date of the postmark on the return receipt; or, (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

**14. Captions and Headings.**

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

**15. Entire Agreement.**

This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

**16. Venue and Governing Law.**

Any legal proceeding instituted between the parties shall be in the courts of the County of Ada, State of Idaho, and each of the parties agrees to submit to the jurisdiction of such courts.

It is further agreed that this Agreement shall be governed by the laws of the State of Idaho.

**17. Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument, and shall be effective upon execution of one or more of such counterparts by each of the parties hereto.

**18. Survival.**

All of the representations and warranties set forth in this Agreement shall constitute continuing representations and warranties, shall be deemed to be true and correct as of the date of Closing, and shall survive Closing.

**19. No Third-Party Beneficiary Rights.**

This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto.

EXECUTED as of the date first above written.

**SELLER:**

Board of Regents of the University of Idaho

**BUYER:**

Idaho Department of Lands  
for and on behalf of State Land Board

\_\_\_\_\_  
Lee Espey  
Operations Officer, Finance and Admin  
University of Idaho

\_\_\_\_\_  
Dustin T. Miller  
Director of Idaho Department of Lands

Date \_\_\_\_\_

Date \_\_\_\_\_

DRAFT

**List of Exhibits and Schedule**

Exhibit A – Legal Description of the Property

Exhibit B – Existing Farm Lease

Exhibit C – Experimental Farm Agreement

Exhibit D - Special Warranty Deed

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**EXHIBIT A**  
**SUBJECT PROPERTY**

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**EXHIBIT B**  
**EXISTING FARM LEASE**

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**EXHIBT C**  
**EXPERIMENTAL FARM AGREEMENT**

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## EXHIBIT D

### SPECIAL WARRANTY DEED

#### SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (“Deed”), is made this \_\_\_ day of \_\_\_\_\_, 2022, by **BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO**, a state educational institution and body politic and corporate organized and existing under the Constitution and laws of the State of Idaho, whose mailing address is 875 Perimeter Drive MS 3020, Moscow, Idaho, 83843-3020 (“Grantor”), and the **STATE OF IDAHO, STATE BOARD OF LAND COMMISSIONERS**, whose administrative agent is the **IDAHO DEPARTMENT OF LANDS**, whose mailing address is 300 North 6<sup>th</sup> Street, Suite 103, Boise, Idaho 83702 (“Grantee”).

**WITNESSETH**, that Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) lawful money of the United States of America, and other good and valuable consideration, to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, and to Grantee's heirs and assigns forever, all of the following described real property located in Minidoka County, State of Idaho, which property is legally described as follows, to-wit:

[See Exhibit “A”, attached hereto and incorporated herein by reference]

**SUBJECT TO** all matters of record, and all existing easements or claims of easements, patent reservations, rights of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, encroachments, overlaps, boundary line disputes and other matters which would be disclosed by an accurate survey or inspection of the premises.

**TOGETHER WITH** the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, any remainders, rents, issues and profits therefrom; and all estate, right, title and interest in and to said property, as well in law as in equity, of Grantor.

**TO HAVE AND TO HOLD** the premises and the appurtenances unto Grantee, and to Grantee's heirs and assigns forever. Grantor covenants to Grantee only that Grantor has not conveyed the property or any right, title or interest therein to any other person than to Grantee, and that the property is free from encumbrances created or suffered by Grantor, excepting those as may be herein set forth.

In construing this Deed and where the context so requires, the singular includes the plural.

**IN WITNESS WHEREOF**, Grantor has executed the within instrument the day and year first above written.



**AGRICULTURAL COLLEGE ENDOWMENT  
EXPERIMENTAL FARM OPERATIONS AGREEMENT**

**THIS AGRICULTURAL COLLEGE ENDOWMENT EXPERIMENTAL FARM OPERATIONS AGREEMENT (“Experimental Farm Agreement”)** is entered into by and between the **STATE OF IDAHO, STATE BOARD OF LAND COMMISSIONERS**, acting through the **IDAHO DEPARTMENT OF LANDS**, whose mailing address is 300 North 6<sup>th</sup> Street, Suite 103, Boise, Idaho 83702, as trustee for the **AGRICULTURAL COLLEGE ENDOWMENT (“Landowner”)**, and the **BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO**, a state educational institution and body politic and corporate organized and existing under the Constitution and laws of the State of Idaho, whose mailing address is 875 Perimeter Drive MS 3168, Moscow, Idaho, 83843-3168, acting by and for the benefit of the **UNIVERSITY OF IDAHO (“Operator”)**.

**RECITALS:**

**WHEREAS**, Landowner serves as the constitutional trustee for state endowment lands obtained from the federal government at statehood, which lands are to be managed “in such manner as will secure the maximum long term financial return to the [endowment beneficiaries]” in accordance with Article IX, § 8 of the Idaho Constitution and the Idaho Admission Bill (26 Stat. 215, ch 656, am. 1998, P.L. 105-296), including an amendment to § 10 of the Idaho Admission Bill in 1997 (P.L. 110-77); and

**WHEREAS**, Landowner acquired two hundred eighty-two (282) acres of agricultural college endowment land in Caldwell, Idaho, in 1908 pursuant to the federal Morrill Act, 7 U.S.C. §§ 301, *et. seq.* (the “Original Morrill Act Land”); and

**WHEREAS**, on December \_\_\_, 2021, the Original Morrill Act Land sold for \$23,250,000 (the “Caldwell Proceeds”) and Landowner deposited the Caldwell Proceeds in the land bank fund pursuant to Idaho Code § 58-133(2); and

**WHEREAS**, the University of Idaho is Idaho’s land grant college and beneficiary of the agricultural college endowment, and Operator serves as the governing body for the University of Idaho. *See e.g.*, Idaho Code §§ 33-2813 and 33-2802, respectively; and

**WHEREAS**, the Morrill Act authorize Landowner to purchase land for sites and experimental farms whenever authorized by the state legislature. 7 U.S.C. §§ 304, 305; and

**WHEREAS**, the 2007 amendment to § 10 of the Idaho Admission Bill authorizes Landowner to use proceeds from the sale of agricultural college endowment land for the purchase, erection, preservation, or repair of buildings. P.L.110-77 (2007); and

**WHEREAS**, Landowner has determined that execution of this Experimental Farm Agreement will be consistent with its fiduciary obligations as set forth Article IX, § 8 of the Idaho Constitution, including the obligation to secure the maximum long term financial return to the endowment beneficiary; and

**WHEREAS**, the legislature has given its assent to all the provisions of the Morrill Act, and acts amendatory thereof and supplementary thereto. Idaho Code § 33-2901; and

**WHEREAS**, Landowner consents to Operator's request to operate an experimental farm or experimental farms on certain agricultural college endowment land as provided for in the Morrill Act and in accordance with the terms and conditions of this Experimental Farm Agreement; and

**WHEREAS**, Operator has the expertise and desire to operate an experimental farm or experimental farms on certain agricultural college endowment land as allowed and provided for in the Morrill Act;

**AGREEMENT:**

**NOW THEREFORE**, in consideration of the foregoing Recitals which are incorporated into the contractual provisions of this Experimental Farm Agreement, and for other good and valuable consideration, the parties further agree as follows:

**SECTION 1: Designation and Management of Experimental Farm.** Landowner hereby designates Operator as the manager, occupant and sole operator of that certain real property Landowner owns and which is described in **Exhibit A** (which is attached and incorporated herein, and which shall be known as "**Original Farm**"). Operator hereby agrees to manage and operate Original Farm and any existing or future facilities, structures and appurtenances located thereon or related thereto that are deemed necessary by Operator for the purpose of developing and operating experimental farm uses at this site.

**SECTION 2: Term.** The term of this Experimental Farm Agreement and the designation of Original Farm by Landowner for exclusive occupancy and operation by Operator shall commence upon the acquisition of Original Farm by Landowner and shall continue until such time as Operator notifies Landowner in writing of its intent to terminate the Experimental Farm Agreement or as otherwise provided herein. Such termination shall be in accordance with the more specific provisions of Section 11 of this Experimental Farm Agreement.

**SECTION 3: CAFE Project Development.** Landowner and Operator hereby agree that Original Farm is to be developed and utilized by Operator as an experimental farm, and more particularly, it shall initially be developed and operated as a research dairy to be known at the time of commencement as the Center for Agriculture, Food, and the Environment ("**CAFE**"). As manager, occupant and sole operator of Original Farm, Operator hereby agrees to design, construct, and operate CAFE facilities as described in **Exhibit B** (which is attached and incorporated herein). Exhibit B identifies buildings and fixtures to real property ("**Improvements**") that will be owned by Landowner as well as those Improvements that will be owned by Operator as permitted by this Experimental Farm Agreement. In recognition that Landowner will not acquire more real property and Improvements than the value of the Caldwell Proceeds, and the Operator will retain all other real property improvements it constructs on the Original Farm, the parties mutually agree (if necessary upon the completion of construction) to amend Exhibit B in a manner that ensures the actual construction cost of listed real property Improvements to be owned

by Landowner approaches but does not exceed the value of the Caldwell Proceeds. In the event actual construction costs differ from the estimated costs reported in Exhibit B at the date of execution of this Experimental Farm Agreement, the parties will amend Exhibit B to identify the revised values and ownership assignment of those real property improvements.

The proposed development and construction upon Original Farm set forth Exhibit B may be conducted in phases by Operator directly or through the State of Idaho Division of Public Works (“DPW”). Attached hereto as **Exhibit \_\_\_** and incorporated herein by reference is a letter from DPW stating its assent to bill Landowner for any development and construction conducted by DPW.

Operator shall provide Landowner with the anticipated costs of construction of each phase prior to commencing or authorizing work on any phase, and shall provide Landowner with no less than \_\_\_ days to review and authorize said costs. Landowner shall pay all construction costs for those real property Improvements identified on Exhibit B as “Endowment Buildings/Improvements” as periodically billed by Operator or DPW during construction, provided that Landowner has authorized those costs and that the total costs submitted to Landowner do not exceed the Caldwell Proceeds.

During construction Operator is responsible for determining and directing satisfactory capital project completion of each Improvement funded with the Caldwell Proceeds. Landowner and Operator agree that upon Operator’s receipt of a State of Idaho Division of Occupational and Professional Licensing-issued “certificate of substantial completion”, the Improvement to which the certificate pertains shall be owned by Landowner.

**SECTION 4: Investment of Operator’s proceeds from Landowner’s purchase of Original Farm.** Operator hereby agrees to apply all proceeds from its sale of Original Farm to Landowner to the purchase and/or construction of real estate assets deemed necessary by Operator for the development of the CAFE project café on the Original Farm.

**SECTION 5: Existing Lease.** Upon acquisition of Original Farm by Landowner, the unrecorded lease between Operator and 4-D Farms, LLC (“**Existing Farm Lease**”), which is attached and incorporated herein as **Exhibit C**, will be assigned to Landowner as the lessor. Landowner hereby authorizes Operator to continue to manage the Existing Farm Lease on behalf of Landowner.

**SECTION 6: Water Rights and Irrigation Equipment.** Operator is the owner of the water rights listed in **Exhibit D**, which is attached and incorporated herein (“**Existing Water Rights**”). Landowner and Operator agree that they will be joint owners of the Existing Water Rights. Operator agrees that, simultaneous with closing, it will execute and file with the Idaho Department of Water Resources a “Notice of Change of Water Right Ownership,” listing Landowner and Operator as joint owners of the Existing Water Rights. Landowner agrees that Operator may continue to use the Existing Water Rights in connection with the CAFE. Operator is further authorized to use, manage and secure, jointly in Landowner and Operator’s name, any additional water rights that Operator may deem necessary for the convenient operation of the experimental farm purposes such as CAFE. Additionally, Operator may continue to use any and all real property irrigation improvements on Original Farm as well as retain ownership of any and all personal

property irrigation equipment described in **Exhibit E** (specifically identifies all such personal property irrigation equipment, and is attached and incorporated herein). Operator may continue Operator's use of those water rights and improvements as well as ownership of personal property irrigation equipment referred to herein until such time as Operator terminates this Experimental Farm Agreement as provided in Section 11.

In the event of a water delivery call, curtailment order, mitigation requirement, or any other circumstance requiring or resulting in Operator's inability to use the full quantity of water set forth in the water rights listed in **Exhibit D**, it shall be Operator's obligation to secure such additional water as may be necessary for the experimental farm and CAFE operation. Landowner shall have no obligation to secure additional water or water rights.

**SECTION 7: Authority to grant licenses, permits, leases and temporary easements.** Prior to entering into any new licenses, permits or temporary easements on the Original Farm, Operator shall first provide Landowner with notice of its intent to issue the license, permit or temporary easement, along with such details as Landowner shall deem necessary to facilitate its review of the proposed request. Upon Landowner's authorization, which shall not be unreasonably withheld, Operator may enter into new licenses, permits, and temporary easements reasonably related to Operator's practical operation of Original Farm for experimental farm purposes, such as CAFE as more specifically described above; provided however, that any such license, permit, or temporary easement shall not, under any circumstance, continue beyond the term of this Experimental Farm Agreement, but shall terminate automatically upon the termination of this Experimental Farm Agreement for any reason. Such authorization does not extend to any license, permit, or easement that does not directly facilitate some utility, service, or activity deemed reasonably consistent with experimental farm purposes. Operator is not authorized to grant any instrument which encumbers title to Original Farm.

**SECTION 8: Revenue Generation from Original Farm/CAFE operations.** Landowner acknowledges that the operations and production of this experimental farm, and CAFE in particular, may result in revenue generation to Operator as CAFE operator and that any such revenue shall be the sole property of Operator and is not deemed a revenue source for Landowner so long as any such revenue is used by Operator for the purchase and/or construction, maintenance and repair, of real estate assets, fixtures and improvements deemed necessary by Operator for the development of an experimental farm, including, but not limited to, CAFE, or for operational expenses directly attributable to the use, development, or management of an experimental farm, including to or for CAFE. No later than August 31 of each year, Operator shall provide a report to Landowner detailing the production and financial results of operations for the fiscal year ending on July 31 of that year. The annual report shall also specify how the operating revenue generated (if any) was expended in accordance with this Section 8.

**SECTION 9: CAFE Expansion and Conveyance of Additional Farm Property to Landowner.** Subject to approval from Landowner in advance of construction by Operator, additional real property improvements (beyond those already anticipated for conveyance to Landowner as provided by Section 3 and described in Exhibit B of this Experimental Farm Agreement), may subsequently be constructed or operated by Operator on Original Farm and shall remain the property of Operator unless and until this Experimental Farm Agreement is terminated

as provided herein. Landowner agrees to make reasonable effort to review building plans or diagrams submitted by Operator within thirty days of receipt by Landowner. In the event any additional land or real property improvements beyond the Original Farm and those real property improvements identified in Exhibit B are proposed by Operator for conveyance to Landowner, such conveyance shall be subject to an approval from Landowner that is separate from and not consented to by this Experimental Farm Agreement. If separately approved by Landowner as required by this section, each subsequent conveyance of land or real property improvement from Operator to Landowner shall be referred to herein as "Additional Farm Property". Additional Farm Property shall be subject to the terms of development, occupancy, operation, and termination as established by this Experimental Farm Agreement for Original Farm.

**SECTION 10: Costs of Operation, Maintenance, and Improvements.** Operator agrees to pay all costs of operation, maintenance and improvements related to or resulting from Operator's use, occupancy and operation of Original Farm and Additional Farm Property, including but not limited to employment-related taxes and benefits.

**SECTION 11: Termination of Experimental Farm Operations. O**

In the event Operator is unable to continue the experimental farm operations that are the subject of this Agreement, or Operator determines that discontinuing such operations is in the best interest of Operator, Operator shall provide not less than one hundred eighty (180) days' written notice of Operator's intention to close operations to Landowner. Upon receipt of notice of intention to close operations, and consistent with its fiduciary responsibilities to the Agricultural College Endowment, Landowner may evaluate Original Farm, Additional Farm Property and any buildings, improvements and fixtures located thereon, whether owned by Landowner or Operator (collectively, "Real Property and Related Assets"), and determine the highest and best use of the Real Property and Related Assets as that use may exist at the time of operation closure, or in the future. Following evaluation, Landowner may determine whether disposal, retention, or any other action allowed by law is in the best interest of and will fulfill Landowner's fiduciary obligations to the Agricultural College Endowment. Operator shall cooperate with such evaluation as requested by Landowner.

In the event Landowner determines that a sale of the Real Property and Related Assets is necessary to meet Landowner's fiduciary responsibilities as trustee, the Real Property and Related Assets will be appraised pursuant to Landowner's procedures for sale of endowment property. Buildings, improvements and fixtures which remain under Operator's ownership ("Operator Assets") will be included in the appraisal and will be separately valued. If Operator Assets or any of such Operator Assets are determined not to add value to the highest and best use of the Real Property and Related Assets or be detrimental thereto, then Operator shall remove any such Operator Assets at Operator's sole cost and expense upon demand by Landowner. Upon sale, the purchaser, if other than Operator, will pay to Operator the appraised value, if any, of the Operator Assets. Operator will cooperate with the sale, including any transfer of any property rights, whether real or personal, necessary for a complete transfer at the time of sale.

In the event Landowner determines that leasing of the Real Property and Related Assets is necessary to meet Landowner's fiduciary responsibilities as trustee, the Real Property and



Related Assets will be appraised pursuant to Landowner's procedures for leasing real property (including determination of fair rental value). Operator Assets will be included in the appraisal and separately valued. If Operator Assets or any of such Operator Assets are determined not to add value to the highest and best use of the Real Property and Related Assets or be detrimental thereto, then Operator shall remove any such Operator Assets at Operator's sole cost and expense upon demand by Landowner. Upon lease, the lessee, if other than Operator, will pay to Operator the appraised value, if any, of the Operator Assets. Operator will cooperate with the lease process, as necessary for a complete lease. Rent payments under the lease will be paid to IDL as trustee for the Agricultural College Endowment, and placed in the earnings reserve fund.

The parties acknowledge that circumstances surrounding the closure of operations by Operator and the evaluation, as of the time of closure, of the Real Property and Related Assets may require revisions to this Section 11 in order to satisfy Landowner's fiduciary duties to the Agricultural College Endowment. The parties agree to confer and negotiate in good faith for any necessary revisions while remaining within the framework of the Landowner's fiduciary responsibilities including fair compensation to Operator for the value of Operator's buildings and improvements.

Nothing contained in this Section 11 shall be construed as preventing or prohibiting Landowner from making reasonable inspection of the Real Property and Related Assets at any time.

**SECTION 12: Damage, Destruction and Condemnation.** In the event of any damage, destruction, or condemnation of Original Farm and/or Additional Farm Property, or any part thereof, the net proceeds of any insurance or condemnation awards with respect to Original Farm and/or Additional Farm Property shall be used and applied to repair, restore, rebuild, or replace Original Farm and Additional Farm Property; provided however, that in the event of total or substantial destruction or condemnation, or in the event that the aforesaid insurance proceeds or condemnation awards are not sufficient to repair, restore, rebuild, or replace Original Farm and Additional Farm Property, then Landowner, upon consultation with Operator, may elect not to repair, restore, rebuild, or replace, in which case the net proceeds of all insurance and condemnation awards, together with all other available funds, shall be applied by Landowner as it deems appropriate in the best interest of the endowment beneficiary. Any such repair, restoration, rebuilding, or replacement may be in accordance with such different design, plans, and specifications approved by Operator and Landowner as will or may provide facilities of the same or different nature or use, but still held and used for the purpose of experimental farms, and so long as any such change therein or thereof shall not reduce or otherwise adversely affect the value and purpose of Original Farm and/or Additional Farm Property.

**SECTION 13: Relationship of the Parties and Responsibility for Management.** Operator will control the operations and management of the Original Farm and any Additional Farm Property, including the day-to-day operations and contracting with any party with whom Operator chooses to contract for the use or purposes of operating an experimental farm or CAFE.

**SECTION 14: General Provisions.**

A. **Insurance.** Landowner and Operator are both agencies of the State of Idaho and are provided a comprehensive liability plan through the Risk Management Program established under Idaho Code § 67-5773 *et seq.*, funded and in effect subject to limitation on liability of the Tort Claims Act, Idaho Code § 6-901 *et seq.*

1. Apportionment of Liability. Landowner and Operator shall be responsible only for the acts, omissions or negligence of such party's own employees. The term "employee" is defined for the purposes of this section as set forth in Idaho Code § 6-902. The parties acknowledge that both Landowner and Operator participate in the State of Idaho Risk Management Program comprehensive liability plan utilizing the Retained Risk Account ("Risk Program"). Each of the parties is obligated to notify the Division of Risk Management and the other party upon receipt of notice or in the event it has knowledge of any claim or damage arising out of this Agreement.

2. Nothing in this Experimental Farm Agreement shall extend the tort responsibility or liability of either Landowner or Operator beyond that required by the Idaho Tort Claims Act, Idaho Code § 6-901 *et seq.* Any covered third-party tort liability claim, suit or loss arising from this Experimental Farm Agreement shall be allocated to one or both parties by the Division of Risk Management for purposes of the respective loss experiences and subsequent allocation of self-insurance assessments.

3. Landowner and Operator shall each be responsible for damage to property of the other party caused by its employees in the performance of this Experimental Farm Agreement. If any property damage arises in the performance of this Experimental Farm Agreement and is covered by the Risk Program, the Division of Risk Management shall charge the damage or loss to the responsible party's loss history, and the responsible party shall pay the deductible, if any.

4. If a claim or damage is not covered by the Risk Program, the responsible party shall pay the costs arising from any such claim or damage. If a claim or damage arises from both parties' performance of this Experimental Farm Agreement or is not allocable to either party individually, then each party shall pay the costs to such party arising from the claim or damage.

B. **Hazardous Materials.** Operator shall not, nor shall it allow others to, accumulate, use, or store on Original Farm or any Additional Farm Property any materials classified as hazardous, biomedical or toxic waste except in compliance with all applicable environmental laws and other applicable state, federal, or local laws, ordinances, rules or regulations. Operator shall comply and require any and all authorized users of Original Farm and any Additional Farm Property, including, but not limited to, licensees, permittees, lessees, temporary easement holders, contractors, and subcontractors to comply with such environmental laws and to comply with any lawful order by any entity with authority to regulate the use, accumulation, storage or disposal of hazardous waste. As used herein, the term "environmental laws" shall mean the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (CERCLA) the Resource Conservation Recovery Act, as amended (RCRA), the Federal Water Pollution Control Act, the Clean Air

Act and any applicable local, state or federal law, rule, ordinance or regulation. As used herein, the term “hazardous materials” shall mean any hazardous substance, pollutants, contaminants, or other hazardous waste or toxic substances defined in any environmental laws including, without limitation, petroleum and petroleum products, asbestos and asbestos containing materials, PCBs and urea-formaldehyde. In the event Operator or any authorized user of Original Farm or Additional Farm Property, including, but not limited to, licensees, permittees, lessees, temporary easement holders, contractors or subcontractors place hazardous materials in violation of any environmental laws on Original Farm or Additional Farm Property, Operator shall, at Operator’s sole cost and expense, cause such testing to be performed and shall cause any such hazardous materials to be removed, remediated or abated in compliance with all applicable environmental laws.

C. **Notice.** Any notice under this Experimental Farm Agreement shall be in writing and be delivered in person or by public or private courier service (including US Postal Service Express Mail and Federal Express) or registered or certified mail or by email. Any notice given by registered or certified mail shall be sent with return receipt requested. Any notice of default given by email shall be accompanied by a phone call to the alleged defaulting party if such party has designated a specific personal contact and telephone number and email address to the other party. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing.

If to Landowner: State Land Board  
c/o Idaho Department of Lands  
300 North 6<sup>th</sup> Street, Suite 103  
Boise, ID 83702  
Email: \_\_\_\_\_

If to Operator: Regents of the University of Idaho  
Vice President, Finance and Administration  
875 Perimeter Dr MS 3168  
Moscow ID 83844-3168  
Email: \_\_\_\_\_

Either party hereto may, by proper notice to the other, designate any other address (including email) for the giving of notice. Any notice shall be deemed to have been given on (a) actual delivery or refusal, (b) the day of mailing by registered or certified mail, or (c) the day of email delivery “sent”.

D. Reserved.

E. **Officials Not Personally Liable.** In no event shall any official officer, employee or agent of the State of Idaho or Operator or Landowner be liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with this Experimental Farm Agreement.

F. **No Third-Party Beneficiary Rights.** Nothing in this Experimental Farm Agreement shall be construed as creating or giving rise to any rights in any third parties or any persons other than the express parties hereto.

G. **Severability.** In case any one or more of the provisions of this Experimental Farm Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions, and this Experimental Farm Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

H. **Governing Law and Venue.** This Experimental Farm Agreement shall be governed by and construed under the laws of the State of Idaho and the parties hereto consent to the jurisdiction of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to this Experimental Farm Agreement.

I. **Written Modification.** This Experimental Farm Agreement may be modified or amended only by an agreement in writing signed by a duly authorized representative of the Landowner and Operator.

IN WITNESS WHEREOF, the parties have executed this Experimental Farm Agreement to be effective as provided herein.

**LANDOWNER:**

**OPERATOR:**