

12711i.

LEASE AND OPTION TO PURCHASE REAL PROPERTY

This Lease and Option to Purchase Real Property made this 24th day of April, 1989 by and between EVERETT PHELPS and JEAN PHELPS, Lessor/Optionor, and JAMES L. MOYLE and M. JANE MOYLE, Lessee/Optionee, is as follows:

REAL PROPERTY

1. That Lessee/Optionees (MOYLES), shall lease the (PHELPS) real property located in Diamond Valley consisting of 320 acres of land commonly described as the South 1/2 of Section 20, T23N, R54E, Eureka County, Nevada with option to purchase for \$118,000.00 within the lease period of five (5) years beginning April 1, 1989 and ending April 1, 1994.

2. The lease shall include the 320 acres M/L described above, the well pump, motor and panel, well, all existing fencing, and underground pipelines presently in place on the date of signing this lease agreement. Together with all buildings and improvements situate thereon together with all wells, pumps and other personal property located or used in connection therewith. Together with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders rents, issues and profits thereof. Together with all water, water rights, stock watering rights, water permits, wells and other privileges connected with, belonging to, appurtenant or incidental to or used in connection with all or any part of the above described premises, as well as all dams, ditches and the use thereof, including but not limited thereto: Pertaining to the South 1/2 of

Section 20, T23N, R54E, MDB&M: Nevada State Division of water
Resources Permits Numbers ^{29557 HJA} 43397 (as applicable to the S1/2 of
Section 20 as above described). Except as noted below.

3. The lease shall not include the fenced in one (1) acre located in the South-East corner of the 320 acres M/L with the cabin, domestic well and well equipment, which shall be retained by EVERETT PHELPS; and, if the option is exercised within the option period, EVERETT PHELPS shall retain the use of the one (1) acre, cabin and well, for his lifetime and upon his death to the PHELPS family, for their use, for a period of one year thereafter. Said retention of the one (1) acre, cabin, well and equipment by EVERETT PHELPS or the PHELPS family, shall be without costs to them. EVERETT PHELPS AND JEAN PHELPS shall maintain their personal tools, and equipment, on the one (1) acre parcel, without interference with or to Lessees interest in the remaining 320 acres M/L.

LEASE TERMS

1. The lease payments shall be as follows: On April 1, 1989, the Phelps received \$500.00 as a deposit and portion of the lease/option payment. The MOYLES shall, thereafter, make the following payments, in order: on November 1, 1989 the sum of \$3000.00, on November 1, 1990, the sum of \$4000.00, and on each November 1, thereafter, the sum of \$4000.00, with the lease and option automatically terminating on April 1, 1994 if the purchase option is not exercised on or before that date.

2. The PHELPS agree to pay the 1988-1989 property taxes of approximately \$256.49 based on the assessed valuation date of December

20, 1988 (\$15,041.00), and each year thereafter, at that valuation, with any increases above that amount to be paid by the Lessees. In the event the Lessees exercise their option to purchase under this agreement, the PHELPS shall no longer be liable for payment of property taxes. Any improvements made to the real property leased herein, shall be made at the expense of the lessees, and any taxes arising out of making those improvements shall be borne by them. Lessees to assume all other costs involved with the maintenance of the property including, but not limited to, electrical, water, etc.

3. Lessees to notify Lessors one (1) day prior to any Air Spraying of Chemicals on the property.

OPTION TO PURCHASE AGREEMENT

1. During the Lease period, the Lessees shall have the right to purchase the real property described herein for the purchase price of \$118,000. This option agreement applies only to the MOYLES named herein or their heirs or to the managing directors of J-J MOYLE, INCORPORATED, a personally held corporation, and on the following terms: down payment of 20% of the purchase price in cash, the balance payable in annual installments of \$14,068.43, at 8% interest per annum, due April 1, of each year, with all interest and principal due and payable 10 years from date the Option Agreement is exercised.

2. Closing costs, Escrow and other fees associated with exercise of the Option Agreement to Purchase shall be divided equally between the parties.

3. Optionees must notify Optionors of their intent to exercise the Option Agreement on or before 60 days prior to termination of the Lease/Option Agreement as stated herein.

4. Lessors and Lessees, by signing this agreement, acknowledge that none of the Lease payments shall be applied to and deducted from the Option Price of \$118,000.00.

5. Assignment, transfer, hypothecation, or disposition, of this Option Agreement, in any manner not specified in this Lease/Option Agreement, is absolutely prohibited, by the Optionors, and any attempts by the Optionees named herein to do so, constitutes a breach of the Option Agreement and automatically terminates the lease entitling Lessors/Optionors to damages, costs and attorney's fees as awarded.

SUBORDINATION

1. The Lease and Option to Purchase Agreement shall be subordinate and subject at all times to any mortgage or deed of trust covering the real property of which at any time hereinafter shall be made, or all advances made, or hereinafter to be made, upon security hereof.

PERMITTED USES

1. The real property described herein, is to be used solely for the purpose of farming and for no other purpose without prior consent of the Lessors.

PROHIBITED USES

1. Lessees shall not permit anything to be done on or about the property, nor bring, nor keep anything thereon which will in any way

adversely affect the land or improvements thereon, or which shall conflict with any law, ordinance, rule, or regulation affecting occupancy and use, which are or may hereafter be enacted or promulgated by any public authority or in any way obstruct or interfere with the rights of others in adjacent lands, nor allow the property to be used for any improper, immoral, unlawful, or objectionable purpose.

ASSIGNMENT

1. Lessees shall not assign, mortgage, or hypothecate this Lease Agreement except as provided for herein, or any interest therein, or permit the use of the property or any part thereof, without prior written consent of the Lessors. Any such assignment shall be void and shall, at the Option of Lessors terminate the Lease and Option to Purchase Agreement.

SURRENDER OF PROPERTY

1. Lessees agree to surrender the property at the termination of the tenancy herein created in the same condition as received, less reasonable use, wear and tear and damage by acts of God.

ABANDONMENT OR PROPERTY

1. Lessees shall not vacate or abandon the property at any time during the term of the lease, unless they have exercised the Option to Purchase Agreement, and if Lessees shall abandon or vacate the property, or it be disposed of by process of law, or otherwise any personal property belonging to the Lessees left on the property shall be deemed abandoned, at the Option of the Lessors.

TAXES

1. Lessors shall be responsible for payment of real property taxes for the year 1988-1989 in the amount of \$256.49 based on the assessed value on December 20, 1988 of \$15,041.00. Lessors will continue to make the annual property tax payments based on that valuation and any increased valuation causing a corresponding increase in property taxes shall be assumed by Lessees. Any personal property improvements made to the real property shall be at the expense of Lessees and they shall be responsible for payment of any taxes thereon.

UTILITIES

1. Lessees shall pay when due, and prior to delinquency, all charges levied or assessed for water, gas, heat, power, electricity, telephone, garbage removal, or any other utility services supplied or provided to said leasehold property or to Lessee during the term of the Lease, excluding any costs associated with the excluded one acre parcel and cabin.

IMPROVEMENTS AND REPAIRS

1. Lessees have examined and inspected and knows the condition of the property and every part thereof and has received the same in good condition and repair and accepts the same in their present condition. Lessees shall take good care of the property and they shall not make alterations, repairs or changes except in the usual course of operating the farm, and if not, must obtain the prior approval of Lessors. Unless otherwise provided, all alterations, improvements, and changes that may be required on the property shall be done in a workmanlike manner at the sole expense of the Lessees. Lessees shall,

at their expense, when surrendering the property to the Lessors, be allowed to remove the improvements made by them during the term of the Lease, 30 days prior to termination thereof, with all repairs, damages, and injury caused thereby to be paid by the Lessees to the Lessors.

MECHANIC'S LIEN

1. Lessees shall not suffer or permit any mechanic's or materialman's lien to be filed against the fee of the property, nor against the Lessee's leasehold interest therein. Lessors shall have the right at all reasonable times to post and keep posted on the property any notices which they deem necessary for the protection from such liens. If any such liens are so filed, Lessors, at their election, may pay and satisfy the same, and in such event, the sums so paid by Lessors, with interest at the rate of 10% per annum from the date of payment, shall be deemed to be additional rent due and payable by Lessees at once without notice or demand.

CONDEMNATION

1. If the whole or any part of the property shall be taken or condemned by any competent authority under power of eminent domain for a public or quasi public use or purpose, then, at Lessors option to be exercised by written notice to be given by Lessors to Lessees, the term hereby granted shall cease from the time when possession of the part so taken shall be required for such public or quasi-public use or purpose, and without an apportionment of the award, Lessees hereby assign to Lessors all right and claim to the award. The current rent, however, in such case shall be apportioned and the Option to Purchase, if not exercised by Lessees prior thereto, shall be cancelled.

NO LIABILITY OF LESSORS

1. Lessors shall not be liable to the Lessees for any injury or damage that may result to any person or property by or from any cause whatsoever, and without limiting the generality of the foregoing.

INSURANCE

1. Lessees agree to maintain in full force and effect at all times during the terms of the lease public liability and property damage insurance covering the property so leased as described herein. Lessees shall furnish to Lessors copies of such policies or certificates issued showing that said policies are in force and effect. The policies shall be in the amount of \$100,000.00 and \$300,000.00 for injury to or death of persons, and \$50,000.00 for injury or loss to property.

INDEMNIFICATION OF LESSORS

1. Lessees agree to hold harmless from and to defend Lessors against any and all claims or liability for any injury or damage to any person or property whatsoever, when such injury or damage shall be caused in part or in whole by the act, negligence or fault of, or omission of any duty with respect to the same by Lessees, their agents, servants, or employees.

DEFAULT

1. Any or all of the following acts shall constitute a default of this lease and breach of Option to Purchase:

a. Use of the property for any purpose other than as authorized in this lease; or

b. Default in the payment of rent or any other sums owing when due; or

c. Abandonment or vacation of the Lessees from the property; or

d. Assignment of the Lease or Option to Purchase Agreement by Lessees, except as hereinunder provided, either voluntarily or by operation of law whether by judgment, execution, death, or any other means, without the consent of Lessors; or

e. The filing by Lessees or any other person of a voluntary or involuntary petition in bankruptcy or any arrangement by or against Lessees; the adjudication of Lessees as bankrupt or insolvent; the appointment of a receiver of the business or of the assets of the Lessees, except a receiver appointed at the instance or request of the Lessors; the general or any other assignment by Lessees for the benefit of creditors; or

f. A default in the performance of any of the terms, covenants, and conditions herein contained; or

g. The inability of Lessees to pay the rent herein specified or to perform any of the terms, covenants, or conditions herein to be kept or performed by them.

REMEDIES FOR DEFAULT

1. In the event of a default of their lease, or Option to Purchase, and in addition to all other rights and remedies Lessors may have at law, Lessors shall have the option to do any or all of the forgoing:

a. Immediately reenter and remove all persons and property from the "Property", store said personal property of Lessees in a public warehouse or elsewhere at the cost of Lessees. In such instance, the Lease shall be terminated, and Lessors shall be entitled otherwise to recover all damages allowable under the law or this Lease.

b. To collect by suit or otherwise each installment of rent or other sums as they become due hereunder, or to enforce by suit or otherwise any other term or provision hereof on the part of the Lessees required to be kept or performed, it being specifically agreed that all unpaid installments of rent or other sums shall bear interest at the highest rate permitted by law from the due date thereof until paid.

c. Terminate this Lease, in which event Lessees agree to immediately surrender possession of the property and to pay Lessors, in addition to any other remedy Lessors may have, all damages Lessors may incur by reason of their default, including the cost of recovering the property.

d. The damages Lessors may recover include the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for the same period that Lessees prove could be reasonably avoided.

e. Lessees hereby irrevocably appoints Lessors, *James J. [Signature]* agents and attorney-in-fact of Lessees, to enter the property, in the event of default by Lessees in the payment of any rent herein reserved, or in

the performance of any term, covenant, or condition herein contained to be kept or performed by Lessees, and to remove any and all personal property whatsoever situated upon the property and to place such property in storage for the account of and at the expense of Lessees. Lessors may, after 90 days of storage sell any or all of such personal property of Lessees, at public or private auction, in such manner and at such time and place as Lessors in their sole discretion may deem proper, without notice to Lessees or any demand upon Lessees for payment of any part of such charges or the removal of any of such property, and shall apply the proceeds of such sale first to the costs and expense of such sale, including reasonable attorney's fees and costs of suit; second, to the payment of the costs and charges for storage; third, to payment of any sums of money due Lessors from Lessees under the terms of the lease; and fourth, the balance to Lessees.

WAIVER OF DAMAGES

1. Lessees hereby waive all claim for damages that may be caused by Lessors reentering and taking possession of the property by reason of default or removing and storing lessees personal property, as herein provided, and will save lessors harmless for loss, costs, or damages occasioned thereby, and no such reentry shall be considered or construed to be a forcible entry as defined in the Nevada State Law.

DEMAND FOR RENT

1. In the event that Lessees shall be in default in the payment for any rent provided for in the Lease, lessees waive the making by

Lessor of any demand for rent prior to commencement of any action in ejectment or obtaining possession of the property.

2. Upon 10 days prior written notice to Lessees by Lessors, it is agreed that the Lessees may cure any default by them hereunder.

INSPECTION OF THE PROPERTY

1. Lessees shall permit Lessors and their agents to enter upon the property at all reasonable times for the purpose of inspecting the same, or for the purpose of protecting Lessors reversionary interest.

COVENANTS

1. It is mutually agreed that the letting hereunder is made upon and subject to the terms, covenants and conditions of this Lease and that Lessees covenant is a material part of the consideration for this Lease, to keep and perform each and all of said terms, covenants and conditions by them to be kept or performed, and that this Lease is made upon the condition of such performance.

TIME OF THE ESSENCE

1. Time is of the essence in the performance of each provision of this Lease.

INVALIDITY

1. If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

AGENCY

1. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party or person to create the relationship or principal and agent or of partnership or of joint venture or of any other association other than Lessee and Lessor, and Optionee and Optionor.

ATTORNEY'S FEES AND COSTS

1. In the event that suit is brought for the recovery of any rent due hereunder, or to enforce any term of provision in the Option to Purchase Contract herein, or for the recovery of possession of said property, or for breach of any terms, conditions and covenants stated in this agreement, the prevailing party shall receive from the other a reasonable sum as and for attorney's fees and costs of suit.

ENTIRE AGREEMENT

1. The foregoing agreement constitutes the entire agreement between the parties and may be modified only by written consent of all of the parties to this agreement.

DATED: 4-15-89


Everett Phelps
EVERETT PHELPS, LESSOR

Jean E. Phelps
JEAN PHELPS, LESSOR

DATED:
4-22-89

James L. Moyle
JAMES L. MOYLE, LESSEE

M. Jane Moyle
M. JANE MOYLE, LESSEE


GLADY GOICOECHEA
Notary Public State of Nevada
Esmeralda County, Nevada
My appointment expires Oct 28 1990
Gladys Goicoechea

RECORDED AT THE REQUEST OF
BOOK 196 PAGE 325
Everett Phelps
APR 25 1934

OFFICE OF THE
CLERK OF THE DISTRICT COURT
MINN. PI. 127116
FILE NO. 127116 1800

BOOK 196 PAGE 338