

RECEIVED

APR 28 2016

Department of Water Resources
Eastern RegionSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**Notice of Security Interest in a Water Right**
and a request to be notified of a change in ownership or any proposed
or final action to amend, transfer, or otherwise modify the water right(s)

Attach pages with additional information. Incomplete forms will be returned.

1.	Water Right/Claim No.	Water Right/Claim No.	Water Right/Claim No.	Water Right/Claim No.
	34-7B <i>OK</i>			
	34-8B <i>OK</i>			
	34-9B <i>OK</i>			
	34-4003 <i>OK</i>			

2. The following **REQUIRED** information must be submitted with this form:A) Evidence of the security interest. This may be a copy of a **DEED of TRUST, MORTGAGE, CONTRACT OF SALE** or other legal document indicating your interest in the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**B) A **FEE** of **\$25.00** per water right or adjudication claim.

3. Name and Mailing Address of Person or Company Holding Security Interest

CAPITAL FARM CREDIT, FLCA3000 Briarcrest Drive, Suite 601Bryan, TX 77802Attn: Ben R. NovosadPhone (979)822-3018Email paul.noak@capitalfarmcredit.com

4. Name of Water Right Owner/Claimant(s)

Pass Creek Ranch, LLC

5. Expiration Date of Notification Period

03/01/2031

6. Is this a Renewal of Request for Notification?

☐ YES ☒ NO

7. Signature(s) of Security Interest Holder(s)



Title, if applicable

Ashley Wood, Branch Manager, Capital Farm Credit FLCA

For Office Use Only

Received by *JB*Date 4/28/2016Receipt No. E042048Fee \$100.-

Processed by AJ

Date

WR *JB*Date 5/20/2016SUPPORT DATA
IN FILE # 34-7B

Instrument # 251660
CHALLIS, CUSTER, IDAHO
03-28-2016 03:42:31 No. of Pages: 26
Recorded for: FIRST AMERICAN TITLE - KETCHUM
Lura H. Baker Fee: \$85.00
Ex-Officio Recorder Deputy: CAC

#573566

WHEN RECORDED RETURN TO:
Capital Farm Credit, FLCA
P.O. Box 1809
Alpine, TX 79831

Loan No. 933844
Richard B. Negley
Capital Farm Credit, FLCA (Alpine)

**MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND FIXTURE FILING
(Closed End)**

**THIS MORTGAGE IS ALSO INTENDED TO BE A SECURITY AGREEMENT AND A
FIXTURE FILING.**

**[NOTICE: THIS MORTGAGE SECURES ALL OTHER INDEBTEDNESS EVIDENCED BY
THE SECURED OBLIGATIONS OR OTHERWISE CREATED IN CONNECTION WITH
THIS MORTGAGE, WHICH INDEBTEDNESS IS POTENTIALLY UNLIMITED.
NOTICE: THE OBLIGATIONS SECURED BY THIS MORTGAGE PROVIDE FOR A
VARIABLE INTEREST RATE.]**

This Mortgage, Assignment of Rents, Security Agreement and Fixture Filing ("Mortgage"), dated as of 3-15-2016, is executed by PASS CREEK RANCH, LLC, AN IDAHO LIMITED LIABILITY COMPANY, ACTING BY AND THROUGH MARSHALL V. DAVIDSON, JR., AS MANAGER, as Mortgagor, whose address is 4040 Broadway, Suite 501, San Antonio, Texas 78209; RICHARD B. NEGLEY, AND LEITH ASKINS NEGLEY, whose address is 101 Aylesbury Hill St, San Antonio, Texas 78209, (referred herein collectively as "Mortgagor"), in favor of and for the benefit of CAPITAL FARM CREDIT, FLCA, a corporation organized and existing under the laws of the United States ("Mortgagee"), as Mortgagee, whose address is 3000 Briarcrest Drive, Suite 601, Bryan, Texas 77806. Each capitalized term used and not otherwise defined in this Mortgage shall have the meaning given such term in the Note and Approval Notice and Loan Agreement (the "Agreement") executed by Mortgagor/Borrower (as defined herein) on or around even date. "Loan Documents" as used herein means all documents and instruments signed in connection with the Loan(s) (as defined herein) and other Loans made by Mortgagee to Mortgagor or an affiliate of Mortgagor and any extensions, renewals, amendments, substitutions and replacements thereto.

Pursuant to the terms and conditions of the Agreement, Mortgagor has agreed to grant this Mortgage in favor of Mortgagee to provide security for Mortgagor's obligations under the Note(s) described herein, the Agreement and the related Loan Documents and any and all other documents entered into pursuant thereto.

MORTGAGE (Closed End) - 1

41387.0001.7967090.2

NO. 0053635
RECORDED

MAR 28 2016

A.M. 4:24 P.M.
DUTTE COUNTY RECORDER
Richard B. Negley

#573566

WHEN RECORDED RETURN TO:
Capital Farm Credit, FLCA
P.O. Box 1809
Alpine, TX 79831

RECORDED ELECTRONICALLY
ID 2516660 County Luster
Date 3-28-2016 Time 3:42:21
simplifile www.simplifile.com 800-160-8657

Loan No. 933844
Richard B. Negley
Capital Farm Credit, FLCA (Alpine)

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MORTGAGE (Closed End) - 1

48387.0001.7967090.2

ARTICLE 1
GRANT OF SECURITY

1.1 Grant of Security. Mortgagor, in consideration of the indebtedness secured by this Mortgage, irrevocably bargains, sells, grants, transfers, mortgages, conveys, assigns and warrants to Mortgagee, for the benefit and security of Mortgagee, all Mortgagor's existing and future rights, titles, interests, estates, powers and privileges in or to the following (collectively the "Property"):

- a. That certain real property located in Butte and Custer County(ies), State of Idaho, more particularly described on Exhibit A attached hereto and incorporated herein;
- b. The real property described on Exhibit A is hereinafter described as the "Land";
- c. All buildings, wells and other improvements now or hereafter located on the Land, including, but not limited to, the Fixtures (as defined herein), and all other equipment, machinery, appliances and other articles attached to such buildings, irrigation equipment, and other improvements (collectively the "Improvements");
- d. All fixtures (including without limitation, goods that are or become so related to the Land or Improvements that an interest in them arises under the real estate law) and any additions or replacements (collectively the "Fixtures") now or hereafter located on, attached to, installed in or used in connection with the Land and the Improvements;
- e. All personal property, appliances, equipment and goods now or hereafter owned or possessed by Mortgagor or Borrower located upon, in, or about or used in connection with said Land or Improvements, including the maintenance thereof, together with all increases, substitutes, replacements, proceeds and products thereof and additions and accessions thereto;
- f. All rights, rights-of-way, easements, licenses, profits, claims, demands, privileges, grazing privileges, tenements, hereditaments and appurtenances now owned or hereafter acquired by Mortgagor and used in connection with the Land or the Improvements or as a means of access to either or both, including without limitation, all rights over the property of third persons which are related thereto, and all unaccrued trespass and surface damage claims appurtenant thereto, and all written operations plans and all permits and approvals related to the Land or Improvements;
- g. All of Mortgagor's right, title and interest in and to any land within any right-of-way of any open or proposed street adjoining the Land, and any and all sidewalks, alleys, strips and gores of land adjacent to or used in connection with the Land and Improvements;
- h. All of Mortgagor's existing and future rights in easements, appurtenances, royalties, leasehold, surface, subsurface and/or mineral rights now owned or after-acquired, oil

MORTGAGE (Closed End) - 2

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and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and other mineral rights in or relating to the Land;

i. All water, water rights and riparian rights, wells, well rights, ditches, ditch rights, canal, canal rights, reservoirs, reservoir rights, drainage rights, and water stock, including but not limited to all shares of stock in any water, ditch, canal or reservoir company, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the Land or relating to the Land. Notwithstanding any other provision, reservation or exceptions contained herein or on any exhibit hereto, the lien created hereby shall cover all Mortgagor's water rights, including but not limited to, rights to surface water, ground water, underground water, percolating waters, tributaries and non-tributaries, rights to any water from lakes, streams or other bodies of water, adjudicated, licensed, or permitted water and water rights, appropriated or unappropriated water and water rights, decreed or undecreed water and water rights, riparian and other water rights which are now owned or which are hereafter acquired by Mortgagor whether or not expressly excepted from the description of the Property, including but not limited to Idaho Department of Water Resources, Water Right Nos. 34-7B, 34-8B, 34-9B, and 34-4003;

j. All existing and future leases and subleases relating to the Land and Improvements or any interest in them, including without limitation, all deposits, advance rentals and other similar payments, but not including the Rents, as defined and separately assigned in Article 5;

k. All options to purchase, exchange or lease the Property or any interest in them (and any greater estate in the Property and acquired by exercise of such options);

l. All Mortgagor's other existing or future estates, homestead or other claims or demands, both in law and in equity in the Land and Improvements, including without limitation, (i) all awards made for the partial or complete taking by eminent domain, or by any proceeding or purchase in lieu of eminent domain, of the Property, and (ii) all proceeds, including general intangibles and payment intangibles, of any insurance covering the Property; and

m. All cash or non-cash proceeds of the sale, lease, license, exchange or other disposition of the Property or general intangibles, including payment intangibles, arising therefrom. Proceeds include all subsidy payments, in cash or in kind, which may be made to Mortgagor by any person, entity or governmental agency, including but not limited to, payments and entitlements from state and federal farm programs, as well as any type of Property insurance; and any rights arising out of Property, collections and distributions on Property.

1.2 Grant of Security Interest in Collateral: Fixture Filing. As further security for the payment, performance and observance of the Secured Obligations, Mortgagor, as debtor, hereby grants to Mortgagee, as secured party, a secured interest in all of Mortgagor's existing and future right, title and interest in, to and under the following (collectively the "Collateral"): all (a) Fixtures; (b) furniture, furnishings, equipment, machinery, materials, irrigation equipment and

irrigation property, and other personal property now or hereafter situated in or upon the Land and Improvements and used in the operation of the Property; (c) contracts and policies of insurance and proceeds thereof which may insure all or any portion of the Land, Fixtures, Improvements or Collateral against casualties and theft; (d) condemnation proceeds for all or any portion of the Land, any Fixtures, the Improvements or Collateral; (e) all water rights and riparian rights, wells, well rights, ditches, ditch rights, canal, canal rights, reservoirs, reservoir rights, drainage rights, and water stock, including but not limited to all shares of stock in any water, ditch, canal or reservoir company, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the Land, and all of Borrower's water rights, including but not limited to, rights to surface water, ground water, underground water, percolating waters, tributaries and non-tributaries, rights to any water from lakes, streams or other bodies of water, adjudicated, licensed, or permitted water and water rights, appropriated or unappropriated water and water rights, decreed or undecreed water and water rights, riparian and other water rights which are now owned or which are hereafter acquired by Mortgagor whether or not expressly excepted from the description of the Land, including but not limited to Idaho Department of Water Resources, Water Right Nos. 34-7B, 34-8B, 34-9B, and 34-4003; (f) rights, easements, appurtenances, royalties, surface, subsurface and/or mineral rights now owned or after acquired, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers; and (g) cash or non-cash proceeds of the Collateral (including but not limited to, general intangibles, including payment intangibles, and all proceeds which constitute property of the types described in clauses (a) through (e) of this Paragraph) and all right of Mortgagor to receive proceeds of any insurance, indemnity, warranty or guaranty payable by reason of loss of or damage to any of the Collateral. This Mortgage constitutes a security agreement for all purposes under the Uniform Commercial Code in effect in the State(s) where the Collateral described herein is located. This Mortgage shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all portions of the Collateral which are, or are to become, Fixtures. In addition to all other rights and remedies provided for in this Mortgage, Mortgagee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code in effect in the states where the Collateral is located. Mortgagor agrees that at least 10-days' notice to Mortgagor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification with respect to the Collateral. If Mortgagee shall so require, Mortgagor upon the occurrence of an Event of Default, will make the Collateral (excluding Fixtures) available to Mortgagee at a place designated by Mortgagee which is reasonably convenient to both Mortgagor and Mortgagee, Mortgagor shall execute such instruments and documents as Mortgagee reasonably may require from time to time to further evidence, implement or perfect any of Mortgagee's rights, remedies and security interests.

1.3 Fixture Filing. The personal property in which Mortgagee has a security interest includes goods which are or are to become fixtures on the Property. This Mortgage is intended to serve as a fixture filing pursuant to the terms of the applicable Uniform Commercial Code. This filing is to be recorded in the real estate records of the County(ies) in which the Property is located. In that regard, the following information is provided:

Name of Mortgagor, as Debtor: Pass Creek Ranch, LLC
Attn: Marshall V. Davidson, Jr., Manager

Address of Mortgagor: 4040 Broadway, Suite 501
San Antonio, TX 78209

Name of Mortgagee, as Secured Party: Capital Farm Credit, FLCA
Attn: Ben R. Novosad

Address of Mortgagee: 3000 Briarcrest Drive, Suite 601
Bryan, TX 77806

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties. Mortgagor represents and warrants to Mortgagee as follows:

a. Mortgagor hereby authorizes Mortgagee to file, at anytime, one or more financing statements and any amendments and continuations thereof, describing any personal property or fixtures described herein, without further signature of Mortgagor. Mortgagor hereby represents and warrants that Mortgagor's chief executive office is located in the State of Texas; Mortgagor's State of formation is the State of Idaho; Mortgagor's state of residence is the State of Texas, and Mortgagor's exact legal name is as set forth herein.

b. Mortgagor is the sole legal and equitable owner of the Property;

c. Without thereby limiting the generality of the foregoing, and except as otherwise previously disclosed to Mortgagee, Mortgagor has not assigned or granted any harvest or access rights or interests, or sold or leased any part of the Land or the Improvements, if any, to any other person (individual, organization or governmental unit);

d. There are no claims, liens, encumbrances (including judgments, levies and the like), or security interest ("Liens") covering the Property or any part or item thereof except easements and reservations of record which are listed on the title policy delivered by Mortgagor;

e. To the best of Mortgagor's knowledge, and other than have been disclosed to Mortgagee, there are no federal, state or local laws, regulations, rules or standards ("Laws"), or permits, orders, injunctions, citations, notices of civil penalty, restraining orders, judgments or

the like issued by any governmental unit ("Orders") which are now in effect and which would restrict any material use of the Property;

f. Mortgagor has taken all actions necessary and has been duly authorized to execute, acknowledge and deliver this Mortgage and the Loan Documents and to perform the Secured Obligations;

g. This Mortgage has been executed, acknowledged and delivered on behalf of Mortgagor by partners, members, representatives or officers, as applicable, of Mortgagor duly authorized to perform such acts;

h. This Mortgage is the legally valid and binding contract of Mortgagor, and is enforceable against Mortgagor in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the rights and remedies of creditors generally and by general principals of equity, whether applied by a court of law or equity;

i. The loan issued under the Note(s) is intended for commercial purposes and Mortgagor represents that the Land is income producing property and not the personal residence of Mortgagor or any Mortgagor Property;

j. To the best of Mortgagor's knowledge, neither the execution of this Mortgage nor the payment and performance of the Secured Obligations will materially violate any Laws or Orders affecting Mortgagor or its Property or constitute a breach or Event of Default by Mortgagor under any agreement, contract, loan indenture, lease, instrument or like document ("Contract") to which Mortgagor is a party or its Property is bound.

The foregoing representations and warranties will survive and not be merged or otherwise eliminated by any conveyance, voluntarily or through foreclosure, of the Property to Mortgagee or its nominee. Mortgagor hereby agrees to indemnify, defend and hold harmless Mortgagee from and against any and all claims, loss, liability, damages, liens, penalties, costs and expenses of any nature or kind whatsoever arising from or related to any misstatement of any material fact in the foregoing representations and warranties or the omission therein to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

ARTICLE 3 SECURED OBLIGATIONS

3.1 **Secured Obligations.** This Mortgage, and the lien it creates, is made for the purpose of securing the following obligations (collectively the "Secured Obligations"):

a. The full and punctual payment of the indebtedness evidenced by that certain Note in favor of Mortgagee ("Note") dated on or around even date, made by Pass Creek Ranch, LLC,

MORTGAGE (Closed End) - 6

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Richard B. Negley and spouse, Leith Askins Negley (collectively "Borrower") to the order of Mortgagee in the principal face amount of ONE HUNDRED EIGHTY-EIGHT THOUSAND FIVE HUNDRED AND NO/100's DOLLARS (\$188,500.00), with interest thereon at the rates therein provided which interest rate and payment terms may be adjusted as provided in the Note and Loan Documents, together with any and all renewals, modifications, consolidations and extensions of the indebtedness evidenced by the Note, as well as any prepayment fees or penalties as provided for in the Note or as it may be amended to provide for such prepayment fees or penalties;

b. Payment and performance of Borrower's and Mortgagor's obligations under the Note(s) and Agreement and under any and all other present and future agreements executed by Mortgagor and relating to the Note(s);

c. Payment and performance of Borrower's and Mortgagor's obligations under all indemnities contained in the Loan Documents;

d. Payment of such additional sums with interest thereon as may be due to Mortgagee under any provisions of this Mortgage;

e. Payment of all indebtedness and performance of all other obligations which the then record owner of the Property may agree to pay and perform for the benefit of Mortgagee (including future advances to Mortgagor), and which are contained in a document which recites that it is secured by this Mortgage;

f. Payment by Mortgagor of all amounts advanced by (or on behalf of) Mortgagee to improve, protect or preserve the Property or the security of this Mortgage, with interest on such amounts as provided in this Mortgage;

g. Payment and performance of all amendments, modifications, extensions, renewals and replacements of any of the foregoing, including without limitation, (i) amendments or modifications of the required principal or interest payment dates accelerating or deferring any such payment dates, or (ii) amendments, modifications, extensions or renewals at a different rate of interest, whether or not evidenced by a new or additional notes or other document; and

h. Payment of charges as allowed by law, when such charges are made for any Mortgagee statement or other statement regarding the Secured Obligations.

3.2 Notice. Notice is hereby given that the interest rate, payment terms or balance due on the Notes(s) may be indexed, adjusted, renewed or renegotiated.

ARTICLE 4 COVENANTS

4.1 Payment of Secured Obligations. Mortgagor and Borrower shall pay the Secured Obligations when due.

4.2 Maintenance, Repair, Alterations.

4.2.1 Maintenance, Repair, and Alterations: Affirmative Covenants. Mortgagor shall:

- a. Keep the Property in good condition and repair;
- b. Complete promptly and in a good and workmanlike manner, any Improvement which may be constructed on the Land, and promptly restore in like manner any Improvement which may be damaged or destroyed, and pay when due all claims for labor performed and materials furnished for such construction or restoration;
- c. Comply with all statutes, laws, ordinances, regulations, Orders, rulings, rules, consents, permits, licenses, conditions of approval and authorizations of any court or governmental or regulatory body having jurisdiction over Mortgagor, the property or Improvements ("Laws and Ordinances");
- d. Comply with any condominium or other plan, declaration of covenants, conditions and restrictions, reciprocal easement agreements to which the Property is subject ("CC&Rs"), any owners' association articles and bylaws affecting the Property, and such exceptions to title acceptable to Mortgagee ("Permitted Exceptions");
- e. Keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good, neat order and repair;
- f. Comply with the provisions of any leases constituting part of the Property;
- g. Obtain and maintain in full force and effect all permits necessary for the use, occupancy and operation of the Property; and
- h. Do any and all other acts, except as otherwise prohibited or restricted by the Loan Documents, which may be reasonably necessary to protect or preserve the value of the Property and the rights of Mortgagee in it.

4.2.2 Maintenance, Repair and Alterations: Negative Covenants. Mortgagor shall not, except upon the prior written consent of Mortgagee:

- a. Remove, demolish or materially alter any of the Improvements, other than to make non-structural repairs in the ordinary course of business which preserve or increase the value of the Property;

b. Commit, suffer or permit any act to be done in, upon or to any part of the Property in violation of any Laws and ordinances, CC&Rs, or Permitted Exceptions now or hereafter affecting the Property;

c. Commit or permit any waste or deterioration of the Property;

d. Take (or fail to take) any action, which would increase the risk of fire or other hazard occurring to or affecting the Property or which otherwise would impair the security of Mortgagee in the Property;

e. Abandon all or any part of the Property or leave the Property unprotected, unguarded, vacant or deserted; or

f. Initiate, join in or consent to any change in any zoning ordinance, general plan, specific plan, private restrictive covenant or other public or private restriction limiting the uses which may be made of the Property or Improvements by Mortgagor without the prior written consent of Mortgagee.

4.3 Insurance.

4.3.1 Policies Required. Mortgagor shall at all times maintain in full force and effect, at Mortgagor's sole cost and expense, with insurers reasonably satisfactory to Mortgagee, the following policies of insurance in form, substance and amounts reasonably satisfactory to Mortgagee:

a. Public liability insurance in amounts required by Mortgagee from time to time;

b. Course of construction, fire and hazard "all risk" insurance covering 100 percent of the replacement cost of the Improvements and the Fixtures located on the Land in the event of (i) fire, lightning, windstorm, earthquake, vandalism or malicious mischief, (ii) all other risks normally covered by "all risk" coverage policies in the area where the Property is located, and (iii) loss by flood if the Property is in an area designated as subject to the danger of flood;

c. Worker's compensation insurance and any other insurance required by law in connection with the Property;

d. Property damage insurance in amounts required by Mortgagee from time to time;

e. All rental loss insurance and business interruption insurance that Mortgagee requires (including insurance against income loss during a period of restoration); and

- f. All other insurance required by Mortgagee from time to time.

No less than 30 days prior to the expiration of each policy, Mortgagor shall deliver to Mortgagee evidence reasonably satisfactory to Mortgagee of renewal or replacement of such policy.

4.3.2 Required Policy Provisions. Each policy of insurance required under this Agreement shall:

- a. Provide that it shall not be cancelled or materially changed without at least 30-days' prior written notice to Mortgagee;
- b. Be primary insurance without right of contribution;
- c. (For casualty insurance) include a "Lender's Loss Payable Endorsement" in form and substance satisfactory to Mortgagee, showing Mortgagee as "Lender," or (for liability insurance) shall name Mortgagee as an additional insured;
- d. Include only deductible amounts to which Mortgagee has previously consented in writing;
- e. Contain an agreed value clause sufficient to eliminate any risk of coinsurance, if it is insured against damage to the Improvements;
- f. Be in form, substance, amount and issued by companies (which must be rated Class A V11 or better by Best's Insurance Reports) reasonably approved by Mortgagee; and
- g. Meet such other requirements as Mortgagee requires.

4.3.3 Claims. Mortgagor shall give Mortgagee immediate notice of any casualty to any portion of the Property in excess of \$25,000.00, whether or not covered by insurance. If covered, Mortgagor authorizes Mortgagee, if Mortgagee so elects, to make proof of loss, and to commence, to appear in, defend and prosecute any claim or action arising from any applicable policy and to settle, adjust or compromise any claim under any such policy. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact for all such purposes. Neither Mortgagee nor Mortgagor shall settle, adjust or compromise any such claim without the prior written approval of the other, which approval shall not be unreasonably withheld or delayed.

4.3.4 Delivery of Proceeds to Mortgagee. If, regardless of any "Lender's Loss Payable Endorsement" requirement set forth above, the proceeds of any casualty insurance policy described above are paid to Mortgagor, Mortgagor shall deliver such proceeds to Mortgagee immediately upon receipt.

4.3.5 Application of Casualty Insurance Proceeds. Any proceeds collected (the "Proceeds") under any casualty insurance policy described in this Mortgage shall be applied as provided below:

Mortgagor shall deliver the Proceeds to Mortgagee, and Mortgagee shall hold the Proceeds in an account to be used for repair or reconstruction of the Improvements, subject to the conditions set forth below and Mortgagee's customary disbursement procedures. However, if (a) the Mortgagee's security has been impaired, or (b) if there is an uncured Event of Default, regardless of whether Mortgagee's security has been impaired, then Mortgagee, in its sole discretion, can apply the Proceeds against the Secured Obligations. If Mortgagee elects to have the funds used for repair or reconstruction, Mortgagee will not be obligated to make any disbursements of such proceeds until all of the following conditions are satisfied, as determined by Mortgagee in its sole reasonable discretion:

a. Within 60 days of such damage, destruction or taking, Mortgagor presents to Mortgagee a restoration plan satisfactory to Mortgagee in its reasonable discretion which includes cost estimates and schedules; and

b. Within 3 months of such damage, destruction or taking, Mortgagor and a contractor satisfactory to Mortgagee enter into a fixed price or guaranteed maximum price contract satisfactory to Mortgagee in its reasonable discretion, providing for complete restoration in accordance with such restoration plan; and

c. To the extent the proceeds are insufficient to accomplish the restoration, Mortgagor shall deliver to Mortgagee funds in the amount of such shortfall, which funds shall be assigned to Mortgagee as security for Mortgagor's obligations under this Mortgage and held and disbursed in the same manner as the proceeds; and

d. The (i) Proceeds (exclusive of rental loss insurance proceeds) for such damage or destruction, that are received by Mortgagee, plus (ii) additional funds provided to Mortgagee by Mortgagor for restoration purposes, are at least equal to such fixed price or guaranteed maximum price.

If Mortgagor complies with this Paragraph, Mortgagee shall disburse to such contractor(s), on Mortgagor's request, in accordance with the restoration contract and Mortgagee's customary disbursement procedures. Nothing herein shall be deemed to excuse in any manner Mortgagor's obligation to make any payments with respect to the Secured Obligations when due under any Loan Document.

4.3.6 Assignment of Policies. If this Mortgage is foreclosed or other transfer of title or assignment of the Property is made in satisfaction of all or part of the Secured Obligations, then all right, title and interest of Mortgagor in and to all policies of insurance required by Section 4.3.1 above and all unearned premiums paid on them shall, without further act, pass to the purchaser or grantee of the Property.

4.3.7 Waiver of Subrogation. Mortgagor waives all right to recover against Mortgagee (or any officer, employee, agent or representative of Mortgagee) for any loss incurred by Mortgagor from any cause insured against or required by any Loan Document to be insured against, provided however, that this waiver of subrogation shall not apply to any insurance policy if such policy's coverage would be materially reduced or impaired as a result. Mortgagor shall obtain only policies which permit this waiver of subrogation.

4.4 Condemnation and Other Awards. Upon learning of the actual or threatened condemnation or other taking for public or quasi-public use of all or any part of the Property, Mortgagor shall immediately notify Mortgagee. Mortgagor shall take all actions reasonably required by Mortgagee in connection with such condemnation or other taking to defend and protect the interests of Mortgagor, Mortgagee in the Property. At Mortgagee's option, Mortgagee may be the named party in such proceeding. Regardless of the adequacy of its security, Mortgagee shall be entitled to participate in, control and be represented by counsel of its choice in such proceeding. All condemnation proceeds shall first be applied to reimburse Mortgagee for all their reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection of such award or settlement. The balance of such award or settlement shall be applied by Mortgagee against the Secured Obligations in such order as Mortgagee may determine.

4.5 Taxes and Impositions (Impounds). Mortgagor shall pay, prior to delinquency, all of the following (collectively the "Impositions"):

- a. All general and special real property taxes and assessments imposed on the Property; and
- b. All other taxes and assessments and charges assessed on the Property (or on the owner and or operator of the Property) which create or may create a lien on the Property (or on any personal property or fixture used in connection with the Property); including, without limitation, non-governmental levies and assessments under applicable CC&Rs; and
- c. All business taxes; and
- d. All license fees, taxes and assessments imposed on Mortgagee (other than Mortgagee's income or franchise taxes) which are measured by or based upon (in whole or in part) the amount of the Secured Obligations.

If permitted by law, Mortgagor may pay the Imposition in installments (together with any accrued interest). Upon demand by Mortgagee from time to time, Mortgagor shall deliver to Mortgagee, within 30 days following the due date of any Imposition, evidence of payment reasonably satisfactory to Mortgagee. In addition, upon demand by Mortgagee, at Mortgagor's expense, from time to time, Mortgagor shall furnish to Mortgagee a tax reporting service for the Property of a type and duration, and with a company reasonably satisfactory to Mortgagee.

4.5.1 Reserves on Impositions (Impounds). If Mortgagee requires following the occurrence of an Event of Default, Mortgagor, at the time of making each installment payment on the Note, or at such other intervals as Mortgagee reasonably designates, shall deposit with Mortgagee such sum as Mortgagee reasonably estimates to be necessary to pay installments of Impositions and insurance policies next becoming due upon any of the Land, Fixtures and Improvements. All such sums may be held by Mortgagee and applied in such order as Mortgagee may elect for payment of Impositions or other sums secured by this Mortgage at Mortgagee's election. Such sums shall constitute additional collateral for the Secured Obligations. Except as otherwise provided by law, Mortgagee shall have no obligation regarding such sums other than to account to Mortgagor for their receipt and application. Upon any transfer by Mortgagee of its rights or interests in the Secured Obligations or of this Mortgage, Mortgagor may turn over to the transferee such of those sums as Mortgagee then holds, and Mortgagee's responsibilities with respect to them shall terminate. Upon any transfer by Mortgagor of the Land or Improvements, Mortgagor's interest in any such sums shall be deemed automatically transferred to such transferee.

4.6 Utilities. Mortgagor shall promptly pay all gas, irrigation, electricity, water, sewer and other utility charges incurred for the benefit of the Property or which may become a lien against the Property; and all other similar public or private assessments and charges relating to the Property, regardless of whether or not any such charge is or may become a lien on the Property.

4.7 Liens: Non-Permitted Exceptions. Mortgagor shall not cause, incur or permit to exist any lien, encumbrance or charge ("Non-Permitted Exceptions") upon all or any part of the Property or any interest in the Property other than Permitted Exceptions. Mortgagor shall pay and promptly discharge, at Mortgagor's sole cost and expense, all such Non-Permitted Exceptions. If Mortgagor fails to do so, the Mortgagee may, but shall not be obligated to, discharge them, without notice to or demand on Mortgagor, and without inquiring into the validity of such Non-Permitted Exceptions or the existence of any defense or offset to them. Mortgagee may discharge Non-Permitted Exceptions either by (a) paying the amount claimed to be due, or (b) procuring their discharge by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or (c) in any other manner permitted or required by law. Mortgagor shall, immediately upon demand by Mortgagee, pay Mortgagee's reasonable costs and expenses incurred in connection with such discharge, together with interest on such costs from the date of such expenditure until paid at the default rate of interest described in the Note ("Default Rate").

4.8 Sale or Lease of Property: Due on Sale Clause. Mortgagor shall not sell, lease, sublease or otherwise transfer all or any part of the Property or any interest in it, without the prior written consent of Mortgagee, which consent may be granted or withheld in Mortgagee's sole and absolute discretion. All leases of any part of the Property must be submitted to Mortgagee for approval prior to execution, which consent may be granted or withheld in Mortgagee's sole and absolute discretion. Transfers requiring Mortgagee's prior written consent shall include, without limitation, the following:

- a. Involuntary transfers and transfers by operation of law;
- b. Liens, encumbrances and assignments as security for obligations, whether voluntary or involuntary; and
- c. The sale, issuance, disposition, encumbering or other transfer of all or any part of any class of the outstanding capital stock in Mortgagor, whether voluntary or involuntary.

No sale, lease or other transfer shall relieve Mortgagor from primary liability for its obligations under the Note and Loan Documents or relieve any guarantor from any liability under any guaranty. Upon any such transfer to which Mortgagee does not consent, Mortgagee at its option may, without prior notice, declare all Secured Obligations immediately due and payable without presentment, demand, protest or further notice of any kind, and may exercise all rights and remedies provided in this Mortgage.

4.9 Inspections. Mortgagor authorizes Mortgagee and its agents, representatives and employees, upon reasonable notice to Mortgagor, to enter at any time upon any part of the Property for the purpose of performing a Subsequent Valuation, inspecting the Property, taking soil or groundwater samples and conducting tests to investigate for the presence of hazardous materials, provided such entry shall cause as little disruption to the occupants of the Property as possible, and provided Mortgagee restores the Property to its pre-inspection condition if Mortgagee's inspection activities cause damage to the Property. Mortgagor agrees to pay the costs and expenses of Mortgagee incurred in such inspections and examinations, including without limitation, Mortgagee's attorneys' fees, if such inspection was made necessary because of an Event of Default, whether the services are provided by Mortgagee's employees, agents or independent contractors. Any inspection or review by Mortgagee is solely for Mortgagee's benefit to protect Mortgagee's security and preserve Mortgagee's rights under this Agreement. Mortgagee owes no duty of care to protect Mortgagor or any other party against, or to inform Mortgagor or any other party of, any adverse condition affecting the Property, including any defects in the design or construction of the Improvements. No inspection by Mortgagee shall constitute a waiver of any Event of Default.

4.10 Defense of Actions. Mortgagor shall notify Mortgagee of any action or proceeding purporting to affect (a) the security of this Mortgage, (b) any of the Loan Documents, (c) all or any part of the Property or any interest in it, (d) any additional or other security for the Secured Obligations, or (e) the interests, rights, powers or duties of Mortgagee under this Mortgage. Mortgagor, at no cost or expense to Mortgagee, shall appear in and defend the same. If Mortgagee elects to become or is made a party to such action or proceeding, Mortgagor shall indemnify, defend and hold Mortgagee harmless from all related liability, damage, cost and expense reasonably incurred by Mortgagee (including, without limitation, reasonable attorneys' fees and expenses consistent with Section 4.13 of this Mortgage), whether or not such action or proceeding is prosecuted to judgment or decision.

4.11 Protection of Security. If Mortgagor fails to make any payment or to do any act required by this Mortgage or any of the other Loan Documents, Mortgagee may do so. Mortgagee may decide to do so, each in its own discretion, without obligation to do so, without further notice or demand, and without releasing Mortgagor in such manner and to such extent as either may reasonably deem necessary to protect the security of this Mortgage. In connection with such actions, Mortgagee has the right, without limitation, but not the obligation: (a) to enter upon and take possession of the Property; (b) to make additions, alterations, repairs and improvements to the Property which in the judgment of either may be necessary or proper to keep the Property in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security of this Mortgage or the rights or powers of Mortgagee; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt (excepting Permitted Exceptions) which in the judgment of either may affect the security of this Mortgage or appear to be prior or superior to this Mortgage; and (e) in exercising such powers, to pay all necessary or appropriate costs and expenses and employ necessary or desirable consultants.

4.12 Mortgagee's Powers. If Mortgagor fails to pay any sum, other than principal and interest on the Secured Obligations, or to perform or comply with any other obligation required by any Loan Document, Mortgagee at its election may pay such sum or comply with such obligation. Without affecting the liability of Mortgagor or any other person liable for the payment of any Secured Obligation, and without affecting the lien or charge of this Mortgage, Mortgagee may, from time to time, do any of the following: (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such obligation (provided, however, that the consent of Mortgagor shall be required for extension or alteration of any unpaid obligation of Mortgagor to Mortgagee), (c) waive any provision of this Mortgage or grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed, at any time at Mortgagee's option, all or any part of the Property, (e) take or release any other or additional security for any Secured Obligation, or (f) make arrangements with Borrower in relation to the Secured Obligations. Waiver by Mortgagee of any right or remedy as to any transaction or occurrence shall not be deemed to be a waiver of any future transaction or occurrence. By accepting full or partial payment or performance of any Secured Obligation after due or after the filing of a notice of default and election to sell, Mortgagee shall not have thereby waived its right to (i) require prompt payment and performance in full, when due, of all other Secured Obligations, (ii) declare a default for failure to so pay or perform, or (iii) proceed with the sale under any notice of default and election to sell previously given by Mortgagee, or as to any unpaid balance of the indebtedness secured by this Mortgage.

4.13 Reimbursement of Costs, Fees and Expenses: Secured by Mortgage. Mortgagor shall pay, on demand, to the maximum allowable under applicable law, all reasonable costs, fees, expenses, advances, charges, losses and liabilities paid or incurred by Mortgagee in administering this Mortgage, the collection of the Secured Obligations, and Mortgagee's exercise of any right, power, privilege or remedy under this Mortgage. Such amounts include, without limitation (a) foreclosure fees and expenses, receiver's fees and expenses, (b) costs and fees paid or incurred by Mortgagee and or any receiver appointed under this Mortgage in connection with

the custody, operation, use, maintenance, management, protection, preservation, collection, appraisal, sale or other liquidation of the Property, (c) advances made by Mortgagee to complete or partially construct all or part of any Improvements which may have been commenced on the Land, or otherwise to protect the security of this Mortgage, (d) costs of evidence of title, costs of surveys and costs of appraisals, and costs resulting from Mortgagor's failure to perform any of the provisions of this Mortgage. Fees, costs and expenses of attorneys shall include the reasonable fees and disbursements of Mortgagee's outside and staff counsel and of any experts and agents (including fees of law clerks, paralegals, investigators and others not admitted to the bar but performing services under the supervision of an attorney), and including such fees incurred in the exercise of any remedy (with or without litigation), in any proceeding for the collection of the Secured Obligations, in any foreclosure on any of the Property, in protecting the lien or priority of the security, or in any litigation or controversy connected with the Secured Obligations, including any bankruptcy, receivership, injunction or other proceeding, or any appeal from or petition for review of any such proceeding. Reasonable counsel fees shall include fees incurred not only in enforcing the Secured Obligations in any bankruptcy or receivership proceeding, but also any fees incurred in participating in the bankruptcy or receivership proceedings generally. Such sums shall be secured by this Mortgage and shall bear interest from the date of expenditure until paid at the Default Rate.

ARTICLE 5 ASSIGNMENT OF RENTS, ISSUES AND PROFITS

5.1 Assignment of Rents, Issues and Profits. Mortgagor absolutely, unconditionally and irrevocably assigns and transfers to Mortgagee all of its right, title and interest in and to all rents, issues, profits, royalties, income and other proceeds and similar benefits derived from the Property (collectively the "Rents"), and gives to Mortgagee the right, power and authority to collect such Rents. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and or sue, in its name or in Mortgagor's name, for all Rents, and to apply them to the Secured Obligations. However, Mortgagor shall have a license to collect and retain Rents (but not more than one month in advance unless the written approval of Mortgagee has first been obtained) so long as an Event of Default shall not have occurred and be continuing. The assignment of the Rents in this Article 5 is intended to be an absolute assignment from Mortgagor to Mortgagee and not merely the passing of a security interest.

5.2 Collection Upon Default. Upon the occurrence of an Event of Default, Mortgagor's license to collect the Rents shall automatically terminate. Upon such termination, Mortgagee may, at any time, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, do any of the following: (a) enter upon and take possession of all or any part of the Property; (b) with or without taking possession of the Property in its own name, sue for or otherwise collect Rents (including those past due and unpaid, and all prepaid Rents and all other security or other deposits paid by tenants to Mortgagor); and (c) apply the Rents (less costs and expenses of operation and collection,

including, without limitation, attorneys' fees, whether or not suit is brought or prosecuted to judgment) to any Secured Obligation, and in such order as Mortgagee may determine, even if payment or performance of said Secured Obligation may not then be due. Mortgagor agrees that, upon the occurrence of any Event of Default, Mortgagor shall promptly deliver all Rents and security deposits to Mortgagee. The collection of Rents, or the entering and taking possession of the Property, or the application of Rents as provided above, shall not (i) cure or waive any Event of Default or notice of default under this Mortgage, (ii) invalidate any act performed in response to such Event of Default or pursuant to such notice of default, or (iii) cause Mortgagee to be deemed a mortgagee-in-possession of all or any part of the Property.

5.3 Assigned Leases. Mortgagor agrees, with respect to each lease and sublease (collectively the "Assigned Leases") any portion of which has been assigned to Mortgagee under this Mortgage, as follows:

5.3.1 Mortgagor shall promptly perform all of Mortgagor's obligations as landlord under each Assigned Lease and shall immediately notify Mortgagee in writing of any notice of default received by Mortgagor from the tenant. At Mortgagee's request, Mortgagor will have tenant execute estoppel certificates and subordination agreements acceptable to Mortgagee.

5.3.2 Mortgagor shall diligently enforce the performance of all of the obligations of the tenant under each Assigned Lease; shall not waive any default or waive, release or discharge any such tenant of or from any such obligation; and shall not cancel, terminate or modify any Assigned Lease without Mortgagee's prior written consent.

5.3.3 Mortgagor hereby represents and warrants to Mortgagee, with respect to each Assigned Lease that is presently in effect (collectively the "Current Assigned Leases"), (a) that Mortgagor has delivered to Mortgagee a true and complete copy of each Current Assigned Lease, together with all amendments, modifications and supplements thereto; (b) that Mortgagor has not accepted any payment of Rent (or other charge) under any Current Assigned Lease more than one month in advance; and (c) that, to the best of each Mortgagor's knowledge, no material default by Mortgagor or any other person under any Current Assigned Lease remains uncured.

5.4 Further Assignments. Upon Mortgagee's demand from time to time, Mortgagor shall execute and deliver to Mortgagee recordable assignments of Mortgagor's interest in any and all leases, subleases, contracts, rights, licenses and permits now or hereafter affecting all or any part of the Property. Such assignments shall be made by instruments in form and substance satisfactory to Mortgagee; provided, however, that no such assignment shall be construed as imposing upon Mortgagee any obligation with respect thereto. Mortgagee may, at its option, exercise its rights under this Mortgage or any such specific assignment and such exercise shall not constitute a waiver of any right under this Mortgage or any such specific assignment.

ARTICLE 6 REMEDIES UPON DEFAULT

6.1 Events of Default. The occurrence of any of the following events or conditions shall constitute an event of default ("Event of Default") under this Mortgage:

6.1.1 Mortgagor fails to pay any amount owing under this Mortgage when due; or

6.1.2 Mortgagor fails to pay any taxes, insurance premiums, assessments or rents required under this Mortgage; or

6.1.3 Mortgagor fails to observe or perform any other obligation contained in this Mortgage; or

6.1.4 The occurrence of an Event of Default under the Notes, Agreement or any other Loan Documents; or

6.1.5 All or any portion of the Improvements are destroyed by fire or other casualty and Mortgagor fails to satisfy all of the restoration conditions within the time periods specified in Section 4.3 of this Mortgage; or

6.1.6 All or any material part of the Property is condemned, taken in eminent domain, seized or appropriated by any governmental or quasi-governmental agency or entity; or

6.1.7 A default under the Environmental Indemnity Agreement executed by Mortgagor and or any other party, in connection with the Notes evidenced by the Agreement.

6.2 Acceleration Upon Default: Additional Remedies. Upon the occurrence of an Event of Default, Mortgagee may, at its option, exercise all of the applicable rights and remedies set forth in the Note(s) and Agreement and, in addition, declare all Secured Obligations to be immediately due and payable without any presentment, demand, protest or further notice of any kind; and whether or not Mortgagee exercises any said right or remedy, Mortgagee may:

6.2.1 Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security;

a. Enter upon and take possession of all or part of the Property, in its own name;

b. Conduct environmental assessments and surveys and do any other acts which it deems necessary or desirable to preserve the value, marketability or rentability of all or part of the Property or interest in the Property or increase the Property's income, or protect the security of this Mortgage;

c. With or without taking possession of the Property, sue for or otherwise collect the Rents, including those past due and unpaid; and

d. Apply the Rents (less costs and expenses of operation and collection including attorneys' fees) to any Secured Obligations, all in such order as Mortgagee may determine;

The entering and taking possession of the Property, the collection of such Rents and their application shall not cure or waive any Event of Default or notice of default or invalidate any act done in response to them. Regardless of whether possession of the property or the collection, receipt and application of any of the Rents is by Mortgagee or a receiver, the Mortgagee shall be entitled to exercise every right provided for in the Loan Documents or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

6.2.2 Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants contained in this Mortgage;

6.2.3 Exercise all of the rights and remedies available to a secured party under the applicable Uniform Commercial Code in such order and in such manner as Mortgagee, in its sole discretion, may determine (including without limitation, requiring Mortgagor to assemble the Collateral and make the Collateral available to Mortgagee at a reasonably convenient location), it being understood and acknowledged that this Mortgage is intended to be a security agreement pursuant to the applicable Uniform Commercial Code for (a) all Fixtures, and (b) any and all items of personal property specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the applicable Commercial Code and which are not herein effectively made part of the real property. The expenses of retaking, holding, preparing for sale or the like shall include reasonable attorneys' fees and other expenses of Mortgagee and shall be additionally secured by this Mortgage; and

6.2.4 Exercise all other rights and remedies provided in this Mortgage, in any Loan Document or other document or agreement now or hereafter securing all or any portion of the Secured Obligations, or provided by law or in equity.

6.3 Appointment of Receiver. Upon the occurrence of an Event of Default under this Mortgage, Mortgagee, without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Property or the interest of Mortgagor in it, shall have the right to enter the Property in person or to apply to any court having jurisdiction to appoint a receiver or receivers of the Property. Mortgagor irrevocably consents to such appointment and waives notice of any such application. The actions that Mortgagee or such receiver may take in connection with such entry may include, but are not limited to (a) modifying, compromising obligations under, terminating and implementing remedies with respect to the Assigned Leases, and (b) entering into, modifying or terminating any contractual arrangements, subject to Mortgagee's right at any time to discontinue any of the same without liability. Mortgagee is further authorized by this provision to request the court to appoint a general receiver and to empower the receiver to (i) sell or lease all or any portion of the Property, (ii) collect and apply to the outstanding balances of the Notes all sales or lease proceeds, or hold the proceeds pending a court order approving the receiver's final report and account, and (iii) hold the collections as

cash collateral pending such court order or foreclosure sale. Any such receiver(s) shall also have all the usual powers and duties of receivers in similar cases and all the powers and duties of Mortgagee in case of entry as provided in this Mortgage, and shall continue to exercise all such powers until the date of confirmation of sale of the Property, unless such receivership is sooner terminated. If Mortgagee elects to enter or take possession of the Property, it will not assume any liability to Mortgagor or any other person for operation or maintenance of the Property, and Mortgagor expressly waives any such Mortgagee liability.

6.4 Application of Funds After Default. Except as otherwise provided in this Mortgage, upon the occurrence of an Event of Default, Mortgagee may at any time, with notice to Mortgagor if providing such notice will not adversely delay the exercise of Mortgagee's rights or remedies, apply to any Secured Obligation, in such manner and order as Mortgagee may elect, even if such Secured Obligation may not yet be due, any amounts received and held by Mortgagee to pay insurance premium or impositions or as Rents, or as insurance or condemnation proceeds, and all other amounts received by Mortgagee from or on account of Mortgagor or the Property, or otherwise. The receipt, use or application of any such amounts shall not affect the maturity of any indebtedness secured by this Mortgage, any of the rights or powers of Mortgagee under the terms of any Loan Document, or any of the obligations of Mortgagor or any guarantor under the Agreement or any other Loan document; or cure or waive any Event of Default or notice of default under the Note(s) and Agreement or any other Loan Document; or invalidate any act of Mortgagee.

6.5 Remedies Not Exclusive. Mortgagee shall each be entitled to enforce payment and performance of any Secured Obligation and to exercise all rights and powers under this Mortgage or any other Loan Document or other agreement or any law, even if some or all of the Secured Obligations may be otherwise secured, whether by guaranty, mortgage, Mortgage, pledge, lien, assignment or otherwise. Neither the acceptance nor enforcement (whether by court action or pursuant to the power of sale or other powers herein contained) of this Mortgage shall impair Mortgagee's right to realize upon or enforce any other security held by Mortgagee. Mortgagee shall each be entitled to enforce this Mortgage and any other security for the Secured Obligations held by Mortgagee in such order and manner as they may in their absolute discretion determine. No remedy conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy in this Mortgage, and other agreement, or at law, but each shall be cumulative and in addition to every other remedy available to Mortgagee. Every power or remedy given by any of the Loan Documents to the Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Mortgagee, and it may pursue inconsistent remedies. Mortgagor may be joined in any action brought by Mortgagee to foreclose under or otherwise enforce this Mortgage.

6.6 Request for Notice. Mortgagor requests that a copy of any notice of default and that a copy of any notice of sale under this Mortgage be mailed to it at the address set forth in the first paragraph of this Mortgage.

ARTICLE 7

MISCELLANEOUS

7.1 Amendments. This instrument cannot be waived, modified, discharged or terminated except in writing signed by the party against whom enforcement of such changes is sought.

7.2 Waivers. Mortgagor waives, to the extent permitted by law, (a) the benefit of all laws (whenever enacted) providing for any appraisal before sale of any portion of the Property, (b) all rights of valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Secured Obligations and marshaling in the event of foreclosure of this Mortgage, and (c) all rights and remedies which Mortgagor may have under the laws of the State of Idaho regarding the rights and remedies of sureties.

7.3 Statements By Mortgagor. Mortgagor shall, within 10 days after notice from Mortgagee, deliver to Mortgagee a written statement setting forth the amounts then unpaid and secured by this Mortgage and stating whether Mortgagor has any knowledge that any offset or defense exists against such amounts.

7.4 Statements By Mortgagee. For any statement or accounting requested by Mortgagor or any other entitled person pursuant to applicable law, or for any other document or instrument furnished to Mortgagor by Mortgagee, Mortgagee may charge: (a) the maximum amount permitted by law at the time of the request, (b) if no such maximum, then the greater of Mortgagee's customary charges or the actual cost to Mortgagee.

7.5 Notices. All notices, demands, approvals and other communications provided for in this Mortgage shall be in writing and shall be personally delivered or mailed by United States first class mail, certified or registered, return receipt requested, postage prepaid, to the appropriate party at the address set forth in the first paragraph of this Mortgage. Addressee for notice may be changed from time to time by written notice to all other parties. All communications shall be deemed given (a) on the date of mailing if deposited in the United States Mail in the city where the address of the addressee is situated, or otherwise (b) on the second Business Day after mailed. "Business Day" means any day other than a Saturday, Sunday, or a day on which Mortgagee is closed for business. Nonreceipt of any communication as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

7.6 Headings. Article and section headings are included in this Mortgage for convenience of reference only and shall not be used in construing this Mortgage.

7.7 Severability. Every provision of this Mortgage is intended to be severable. The illegality, invalidity or unenforceability of any provision of this Mortgage shall not in any way affect or impair the remaining provisions of this Mortgage, which provisions shall remain binding and enforceable.

7.8 **Subrogation.** To the extent that proceeds of the Note(s) are used, either directly or indirectly, to pay any outstanding lien, charge or prior encumbrance against the Property, Mortgagee shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, regardless of whether such liens, charges or encumbrances are released.

7.9 **No Merger of Lease.** Foreclosure of the lien created by this Mortgage on the Property shall not destroy or terminate the Lease, any Assigned Lease or other lease or sublease then existing and affecting all or any portion of the Property, unless the Mortgagee or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall terminate any Assigned Lease or other lease or sublease unless a Mortgagee or such purchaser shall give written notice of termination to such tenant or subtenant. If both the lessor's and lessee's estate under any lease which constitutes a part of the Property shall become vested in one owner, this Mortgage and its lien shall not be destroyed or terminated by application of the doctrine of merger unless Mortgagee so elects, as evidenced by recording a written declaration so stating. Until Mortgagee so elects, Mortgagee shall continue to have and enjoy all of the rights, powers and privileges of Mortgagee under this Mortgage as to the separate estates.

7.10 **Governing Law.** This Mortgage shall be governed by, and construed in accordance with, the substantive laws of the State of Idaho except where the location of the Land may require the application of the laws of another state or where federal laws, including the Farm Credit Act of 1971, as amended, may be applicable.

7.11 **Statute of Limitations.** Mortgagor hereby waives, to the fullest extent permitted by law, the right to plead, use or assert any statute of limitations as a plea, defense or bar to any Secured Obligation, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Mortgage or any rights under it.

7.12 **Interpretation.** In this Mortgage the singular shall include the plural and the masculine shall include the feminine and the neuter and vice versa, if the context so requires; and the word "person" shall include corporation, partnership or other form of association. Any reference in this Mortgage to any document, instrument or agreement creating or evidencing an obligation secured hereby shall include such document, instrument or agreement both as originally executed and as it may from time to time be modified.

7.13 **Further Assurances.** Mortgagor agrees to do or cause to be done such further acts and things and to execute and deliver or to cause to be executed and delivered such additional assignments, agreements, powers and instruments as Mortgagee may reasonably require to: (a) correct any defect, error or omission in this Mortgage or the execution or acknowledgment of this Mortgage, (b) subject to the lien of this Mortgage any of Mortgagor's properties covered or intended to be covered by this Mortgage, (c) perfect, maintain and keep valid and effective such lien, (d) carry into effect the purposes of this Mortgage, or (e) better assure and confirm to Mortgagee their respective rights, powers and remedies under this Mortgage.

7.14 Successors and Assigns. Subject to Section 4.8 above, this Mortgage applies to, inures to the benefit of and binds all parties to this Mortgage, their heirs, legatees, devisees, administrators, executors, successors and assigns.

7.15 Appraisal and Property Valuation Costs. Mortgagor acknowledges that Mortgagee has a legitimate business need to remain apprised of the current value of the Property, and Mortgagee from time to time after recordation of this Mortgage may order a valuation ("Subsequent Valuation") of the Property. Mortgagor shall cooperate in allowing Mortgagee or its agents reasonable access to the Property for the purpose of performing any such Subsequent Valuation, whether it is in the form of an appraisal or any other method of valuing the Property. Mortgagor shall pay promptly to Mortgagee, on demand, the costs of any such Subsequent Valuation, whether performed by employees, agents, or independent contractors of Mortgagee.

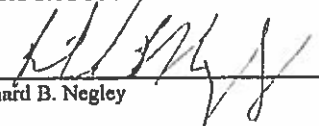
7.16 Waiver of Marshalling Rights. Mortgagor for itself and for all parties claiming through or under Mortgagor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and or any other property which is now or later may be security for any Secured Obligation ("Other Property") marshaled upon any foreclosure of this Mortgage or on a foreclosure of any other security for any of the Secured Obligations. Mortgagee shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of the Property and any or all of the Other Property, as a whole or in separate parcels, in any order Mortgagee may designate.

7.17 WAIVER OF JURY TRIAL. MORTGAGOR HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS LOAN DOCUMENT OR ANY OTHER LOAN DOCUMENTS AND ANY FUTURE MODIFICATIONS, AMENDMENTS, EXTENSIONS, RESTATEMENTS AND SERVICING ACTIONS RELATING TO THIS LOAN DOCUMENT AND ANY OTHER LOAN DOCUMENTS. THE PARTIES INTEND THAT THIS JURY WAIVER WILL BE ENFORCED TO THE MAXIMUM EXTENT ALLOWED BY LAW.

7.18 This document to be executed in multiple originals and filed for record in Butte and Custer Counties, Idaho.

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage as of the date first above written.

MORTGAGOR:


Richard B. Negley

MORTGAGE (Closed End) - 23

48387.0001.7967090.2

Leith Askins Negley
Leith Askins Negley

PASS CREEK RANCH, LLC

By: Marshall V. Davidson, Jr.
Marshall V. Davidson, Jr., Manager

(acknowledgments)

STATE OF TX §
§
COUNTY OF BEXAR §

ON this 18 day of March, 2016, before me, DUSTY MAXWELL, a Notary Public in and for said State, personally appeared Richard B. Negley, known or identified to me to be person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Dusty Maxwell
NOTARY PUBLIC FOR TX
Residing at: 1106 NW Loop 410 Ste 207
My Comm. Exp.: 7/20/17

STATE OF TX §
§
COUNTY OF BEXAR §

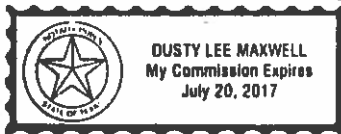
ON this 18 day of March, 2016, before me, DUSTY MAXWELL, a Notary Public in and for said State, personally appeared Leith Askins Negley, known or identified to me to be person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

MORTGAGE (Closed End) - 24

48387.0001.7967090.2

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

WITNESS MY HAND AND SEAL



Dusty Maxwell
NOTARY PUBLIC FOR TX
Residing at: 1100 NW Loop W 516 201
My Comm. Exp.: 7/20/17

STATE OF TX §
COUNTY OF Bexar §

ON this 18 day of March, 2016, before me, Dusty Maxwell, a Notary Public in and for said State, personally appeared Marshall V. Davidson, Jr., known or identified to me to be the Manager of Pass Creek Ranch, LLC, or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

WITNESS MY HAND AND SEAL



Dusty Maxwell
NOTARY PUBLIC FOR TX
Residing at: 1100 NW Loop W 516 201
My Comm. Exp.: 7/20/17

**EXHIBIT A
PROPERTY DESCRIPTION**

LEGAL DESCRIPTION:

TRACT A:

That portion of Lot 4 of Section 24, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 23, Township 7 North, Range 25 E.B.M., lying and being in Butte County, Idaho.

Township 7 North, Range 25 E.B.M., Butte County, Idaho

Section 23: S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$; S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$
Section 24: S $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$

TRACT B:

That portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$, Section 23, Township 7 North, Range 25 E.B.M., W. of Pass Creek in Custer County, Idaho.

Mortgage_Assignment of Rents_Security Agreement and Fixture Filing.dot



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N Skyline Dr., Ste A, Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

May 23, 2016

Capital Farm Credit FLCA
3000 Briarcrest Dr Ste 601
Bryan TX 77802

RE: Notice of Security Interest in a Water Right 34-7B, 34-8B, 34-9B & 34-4003

Dear Water Right Holder(s):

The department acknowledges receipt of correspondence adding a security interest to the above referenced water right(s) to you. The department has modified its records to reflect the security interest and has enclosed a computer-generated report for your records.

Updating the security interest record for a water right does not reconfirm the validity of the right. When processing an security interest notice, the department does not review the history of water use to determine if the right has been deliberately abandoned or forfeited through five years or more of non-use. To read more about water right forfeiture, including how to protect a water right from forfeiture, please see Sections 42-222 and 42-223, Idaho Code.

Please feel free to contact this office if you have any questions regarding this matter.

Sincerely,

Jonie Barg
Technical Records Specialist

Enclosure

cc: Pass Creek Ranch LLC
Hawley Troxell Ennis & Hawley LLP



ATTORNEYS AND COUNSELORS

Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701-1617
208.344.6000
www.hawleytroxell.com

CHRISTINE GREEN
PARALEGAL
EMAIL: CGREEN@HAWLEYTROXELL.COM
DIRECT DIAL: 208.388.4847
DIRECT FAX: 208.954.5221

RECEIVED

APR 28 2016

Department of Water Resources
Eastern Region

April 26, 2016

VIA U.S. MAIL

Idaho Department of Water Resources
IDWR Eastern Region
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

Re: *Capital Farm Credit, FLCA*
Notice of Security Interest in a Water Right
Water Rights 34-7B, 34-8B, 34-9B, 34-4003

Dear Sir or Madam:

Enclosed for filing please find:

1. Original and one copy of Notice of Security Interest in a Water Right;
2. Copy of Mortgage recorded March 28, 2016 as Instrument No. 251660, records of Custer County, Idaho; and
3. Check in the amount of \$100.00 for your filing fee.

After filing, please conform the copy of the Notice of Security Interest in a Water Right and return the conformed copy to me in the enclosed self-addressed and stamped envelope.

If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP

Christine Green
Paralegal

Enclosures