

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Notice of Security Interest in a Water Right

And Request for Notification of a Change in Ownership or Any Proposed Or Final Action to Amend, Transfer, or Otherwise Modify a Water Right

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right No(s): 35-2317A; 35-2317B; 35-7478; 35-7479A; 35-7479B; 35-8744
 Adjudication Claim No(s): _____
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

Gary R. Fielding
c/o John & John PLLC
PO Box 2124
Idaho Falls, ID 83403
4. Name of Water Right Owner/Claimant(s) Dennis or Kenea Leavitt
5. Expiration Date of Notification Period May 1, 2032
6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO
7. Signature(s) of Security Interest holder(s) Dennis Leavitt
 (and title if applicable) Kenea Leavitt

For Office Use Only

Received by JB
 Receipted by JB
 Processed by _____ AJ

Date 11/15/2012
 Date _____
 Date _____

Fee \$300.-
 Receipt No. EO38187
 WR JB

Date 11/19/2012

\$150.- for this app

SUPPORT DATA

IN FILE # 35-2317A

RECORDING REQUESTED BY:
Baker & Harris
266 W Bridge
Blackfoot, ID 83221

Instrument # 643792
BINGHAM COUNTY, IDAHO
2012-11-13 11:29:34 AM No. of Pages: 7
Recorded for: FIRST AMERICAN TITLE - BLACKFO
SARA J. STAUB Fee: \$28.00
Ex-Officio Recorder Deputy CMiles
Index To: MORTGAGE & FIXTURE FILING
Electronically Recorded by Simplifile
space above this line for Recording use only

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING, effective this 1st day of November, 2012, is made by Dennis Leavitt and Kenea Leavitt, husband and wife, of 220 N 740 W, Blackfoot, ID 83221, as Mortgagor, and Gary R. Fielding, of 4020 Canterbury Way, Idaho Falls, ID 83404, as Mortgagee.

Mortgagor, by a promissory note dated November 1, 2012, is indebted to Mortgagee in the sum of Four Million Eight Hundred Thousand (\$4,800,000) Dollars, with interest from November 1, 2012, at the rate of Three and one-half (3.5%) percent per annum until November 1, 2027, and thereafter at the United States Prime Rate as listed in the Eastern print edition of the Wall Street Journal on November 1st annually on the unpaid balance until paid, which shall be due in full on or before May 1, 2043. Principal and interest to be paid at John & John, PLLC, PO Box 2124, Idaho Falls, ID 83403, or at such other place as the holder may designate in writing, deliver or mailed to Mortgagor. The terms of such promissory note are incorporated herein by reference.

Mortgagor, in consideration of the above-stated obligation, hereby mortgages to mortgagee all of the following described property in the County of Bingham, State of Idaho:

Parcel 1

Township 1 South, Range 35 E.B.M., Bingham County, Idaho
Section 35: NE $\frac{1}{4}$; E $\frac{1}{2}$ SE $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$

Parcel 2

Township 1 South, Range 35 E.B.M., Bingham County, Idaho
Section 35: SW $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPTING that portion lying south of the New Lavaside Road.

ALSO EXCEPTING THEREFROM: Commencing at the SE corner of Section 35: thence North 89°46'00" West 1826.96 feet along the Section line; thence North 20°17'39" East 135.23 feet to the North Right of Way of a County Road, and the Point of Beginning: thence following said Right of Way the following six (6) courses (1) North 83°04'35" West 68.45 feet; thence (2) North 87°42'17" West 59.99 feet; thence (3) South 87°01'37" West 183.89 feet; thence (4) South 87°38'53" West 217.97 feet; thence (5) North 88°57'18" West 201.40

feet; thence (6) North 84°55'09" West 135.88 feet to the West line of the SE¼; thence North 00°25'20" West 240.67 feet along said West line; thence South 89°46'00" East 451.06 feet; thence North 40°37'39" East 361.55 feet; thence North 54°18'08" East 342.57 feet; thence South 59°09'25" East 161.96 feet; thence South 20°17'39" West 680.19 feet to the Point of Beginning.

SUBJECT TO a 50 foot Ingress/Egress Easement over the West 50 feet of above described parcel.

Parcel 3

Township 1 South Range 35 E.B.M., Bingham County, Idaho

Section 36: SW¼; S½SE¼SE¼; W½SE¼

LESS Part of the South½ of Section 36 T1S, R35, E.B.M. Bingham County, Idaho, described as:

Beginning at a point that is E 1710.50 feet along the section line from the SW corner of said Section 36 and running thence E 1466.27 feet along the section line; thence N 35°45' 07" W 946.01 feet; thence S 40°15' 33" W 746.95 feet; thence S 65°20'54" W 474.03 feet to the point of beginning.

Parcel 4

Township 1 South, Range 35 E.B.M., Bingham County, Idaho

Section 36: NE¼; NE¼SE¼; N½SE¼SE¼

Parcel 5

Township 1 South, Range 35 E.B.M., Bingham County, Idaho

Section 36: NW¼

TOGETHER WITH water right numbers 35-2317A; 35-2317B; 35-7478; 35-7479A; 35-7479B; 35-8744, and all other water and water rights, ditches and ditch rights appertaining thereto, and SUBJECT to all easements and rights of way apparent thereon or of record, and all the estate and rights of the mortgagor in and to such premises.

This mortgage shall also be deemed to be a "fixture filing" and is intended to secure a lien on the water rights and fixtures involved in this sale.

Mortgagor covenants and agrees as follows:

**SECTION ONE
PAYMENT OF INDEBTEDNESS**

Mortgagor shall pay the indebtedness as hereinbefore provided.

**SECTION TWO
WARRANTY OF OWNERSHIP**

Mortgagor hereby warrants the title to said land and rights against all persons whomsoever and agrees to defend the same.

**SECTION THREE
MAINTENANCE OF INSURANCE**

Mortgagor shall keep the buildings on the premises insured for loss by fire for mortgagee's benefit; mortgagor shall assign and deliver the policies to mortgagee; and mortgagor shall reimburse mortgagee for any insurance premiums paid by mortgagee on mortgagor's default in so insuring the buildings or in so assigning and delivering the policies.

**SECTION FOUR
TAXES AND ASSESSMENTS**

Mortgagor shall pay all taxes and assessments. In default thereof, mortgagee may pay such taxes and assessments and mortgagor shall reimburse mortgagee therefor.

**SECTION FIVE
ACCELERATION OF PRINCIPAL AND INTEREST**

The full amount of the principal sum and interest shall become due at the option of mortgagee:

1. After default in the payment of any installment of principal or of interest for fifteen (15) days; or
2. After default in the payment of any tax or assessment for thirty (30) days after notice and demand; or
3. After default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or reimbursing mortgagee for premiums paid on such insurance, as provided above; or
4. After failure to furnish a statement of the amount due on the mortgage and of any offsets and/or defenses existing against the mortgaged debt, after such has been requested as provided below.

**SECTION SIX
APPOINTMENT OF RECEIVER**

The holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

**SECTION SEVEN
STATEMENT OF AMOUNT DUE**

Mortgagor, within ten (10) days when requested in person, or within twenty (20) days when requested by mail, shall furnish to mortgagee a duly acknowledged written statement of the amount due on the mortgage and whether any offsets and/or defenses exist against the mortgaged debt.

**SECTION EIGHT
SALE IN ONE PARCEL**

In case of a foreclosure sale, the premises, or so much thereof as may be affected by this mortgage, may be sold in one parcel.

**SECTION NINE
ASSIGNMENT OF RENTS, ISSUES, AND PROFITS**

Mortgagor hereby assigns to mortgagee the rents, issues, and profits of the premises as further security for the payment of the obligations secured hereby, and grants to mortgagee the right to enter on the premises to collect the same, to let the premises or any part thereof and to apply the moneys received therefrom, after payment of all necessary charges and expenses, to the obligations secured by this mortgage, on default under any of the covenants, conditions, or agreements contained herein. In the event of any such default, mortgagor shall to mortgagee or to any receiver appointed to collect the rents, issues, and profits of the premises, the fair and reasonable rental value for the use and occupation of the premises or of such part thereof as may be in mortgagor's possession; and on default in payment of such rental, to vacate and surrender possession of the premises, or that portion thereof occupied by mortgagor, to mortgagee or the receiver appointed to collect the same.

**SECTION TEN
PAYMENT OF EXPENSES**

If any action or proceeding is commenced, except an action to foreclose this mortgage or to collect the debt secured hereby, in which it is necessary to defend or assert the lien of this mortgage, whether or not the mortgagee is made or becomes a party to any such action or proceeding, all of mortgagee's expenses incurred in any such action or proceeding to prosecute or defend the rights and lien created by this mortgage, including reasonable attorney's fees, shall be paid by mortgagor, and if not so paid promptly on request, shall be added to the debts secured hereby and become a lien on the mortgage premises, and shall be deemed to be fully secured by this mortgage and to be prior and paramount to any right, title, interest, or claim to or on the premises accruing or attaching subsequent to the lien of this mortgage, and shall bear interest at the rate proved for the obligations secured

hereby. This covenant shall not govern or affect any action or proceeding to foreclose this mortgage or to recover or to collect the debt secured hereby, which action or proceeding shall be governed by the provisions of law respecting the recovery of costs, disbursements, and allowances in foreclosure actions.

SECTION ELEVEN FIXTURES AND PERSONAL PROPERTY

Mortgagor hereby grants to Mortgagee a purchase money security interest to secure the obligations set forth herein in all irrigation equipment, fixtures and other property of every kind and nature (referred to as the "Fixtures and Personal Property"), whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the real property subject to this mortgage and used in connection with the present or future operation and occupancy of said property.

SECTION TWELVE CONDEMNATION OF PREMISES

If the premises or any part thereof shall be condemned and taken under the power of eminent domain, or if any award for any change of grade of streets affecting the premises shall be made, all damages and awards for the property so taken or damages shall be paid to the holder of this mortgage, up to the amount then unpaid on the indebtedness hereby secured, without regard to whether or not the balance remaining unpaid on the indebtedness may then be due and payable; and the amount so paid shall be credited against the indebtedness and, if it is insufficient to pay the entire amount thereof, it may, at the option of the holder of this mortgage, be applied to the last maturing installments. The balance of such damages and awards, if any, shall be paid to mortgagor. Mortgagee and subsequent holders of this mortgage are hereby given full power, right, and authority to receive and receipt for all such damages and awards.

SECTION THIRTEEN BANKRUPTCY

If mortgagor or any obligor on the promissory note secured hereby: (1) files a voluntary petition in bankruptcy under the Bankruptcy Act of the United States, or (2) is adjudicated a bankrupt under such act, or (3) is the subject of a petition filed in federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or (4) makes a general assignment for the benefit of creditors, then and on the occurrence of any of such conditions, at the option of mortgagee, the

entire balance of the principal sum secured hereby, together with all accrued interest thereon, shall become immediately due and payable.

**SECTION FOURTEEN
WASTE**

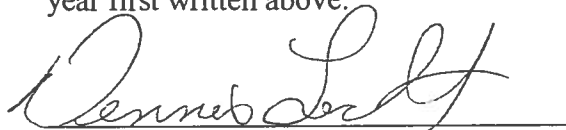
Mortgagor shall not commit, suffer, or permit any waste, impairment, or deterioration of the premises or of any improvement thereon and shall maintain the premiss and all improvements thereon in good condition and repair. If mortgagor fails or neglects to make any necessary repair or replacement in any improvement for thirty (30) days after notice to do so from mortgagee, mortgagee may effect such repair or replacement and the cost thereof shall be added to the debt secured hereby, shall bear interest at the rate provided in the promissory note secured hereby, and shall be covered by this mortgage and the lien hereof.

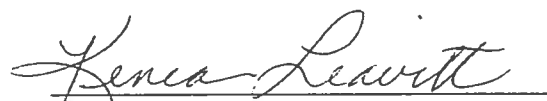
**SECTION FIFTEEN
COMPLIANCE WITH LAWS AND REGULATIONS**

Mortgagor shall comply with all statutes, ordinances, and governmental requirements that affect the premises. If mortgagor neglects or refuses to so comply and such failure or refusal continues for thirty (30) days, then, at mortgagee's option, the entire balance of the principal sum secured hereby, together with all accrued interest, shall become immediately due and payable.

Wherever the sense of this mortgage so requires, the word "mortgagor" shall be construed as if it read "mortgagors" and the "mortgagee" shall be construed as if it read "mortgagees". The word "holder" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. Unless otherwise provided, any notice and demand or request specified in this mortgage may be made in writing and demand or request specified in this mortgage may be made in writing and may be served in person or by mail.

IN WITNESS WHEREOF, this mortgage has been duly executed by mortgagor the day and year first written above.

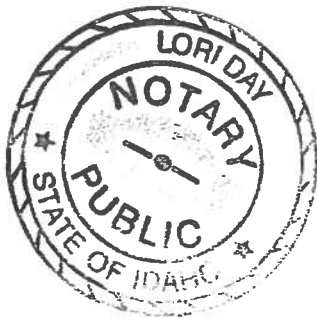

Dennis Leavitt

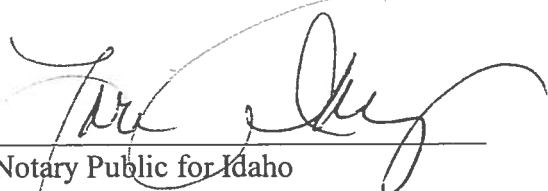

Kenea Leavitt

STATE OF IDAHO)
) ss:
County of Bingham)

On this 9th day of November, 2012, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Dennis Leavitt and Kenea Leavitt, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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





Notary Public for Idaho
Residing at Blackfoot
My Commission Expires 11/27/2015