Form 222 10/07

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 74563

RECEIVED
FEB 20 2008
WATER RESOURCES
WESTERN REGION

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Please direct all inquiries to Ed Squires at 342-8369

Name of Applicant Nagel Beverage Company, Inc. Phone (208) 342-8369 E. Squires

Mailing address 8925 Birch Lane East, Nampa, Idaho 83687 Email ed@hydrologicinc.net

A. PURPOSE OF TRANSFER

1. X Change point of diversion ☐ Add diversion point(s) X Change place of use

X Change nature of use X Change period of use ☐ Other _____

Describe the reason for the proposed changes Applicant has purchased twenty-five and one-half acres of this water right. Intent of transfer is to move the right to Applicant's property for year round industrial use related to a soft-drink manufacturing plant. Water will be diverted from an existing well on Applicant's property.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
63-3066	Nov. 9, 1955	0.51 cfs/ 74.5 ac-ft	Industrial	1 to 12/31
				to
				to
				to

2. Total amount of water being transferred 0.51 cubic feet per second and/or 74.5 acre-feet per annum.
3. Source of water GROUNDWATER tributary to N/A
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion
		NW	SW	10	3N	2W	Canyon	Nagel Beverage Co. Well

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	2W	10										I							

REJECTED

Transfer No. 74563
Total Acres _____

PART 1

6. General Information:

a. Description of diversion system One 12-inch diameter X 425-foot deep well with a deep-well turbine pump, discharging into the existing facility's water distribution system.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
X Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
The land will no longer be irrigated.

d. Remarks:
Intended uses include: industrial uses in the manufacturing of soft drinks and bottled water, dust abatement, and wash-down water. Volume conversion calculations are based upon a duty of water of 2.92 acre-feet per acre of historical consumptive irrigation use on turf grass.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And the said application is hereby _____, subject to the following conditions:

Witness my hand this _____ day of _____, 20 _____.

_____
For the Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2
(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right as evidenced by: Please see attached SRBA Recommendation of Water Right No. 63-3066.
   a. Decree No. _____ Decreed to _____
      in case of _____ vs. _____
      dated _____ in _____ county of _____
   b. License No. _____ issued by the Idaho Department of Water Resources.
   c. Claim No. _____ on file with the Idaho Department of Water Resources.
   d. Transfer No. _____ which produced this right.
2. Attach copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

   ☐ Tax Notice ☐ Warranty Deed ☒ Other Purchase and Sale Agreement

2. Source of water _____ tributary to _____
3. Date or priority _____
4. Water is used for the following purposes:

   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)
5. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.
6. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

7. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres _____

9. Describe any other water rights used for the same purpose as described above _____

PART 2

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

NO If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount .51 cfs /114.75 ac-ft for Irrigation purposes from 03/01 to 11/15
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion
		NW	SW	31	3N	2W	Canyon	16 inch Well

3. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	2W	31									25.5								25.5

Total Acres 25.5

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

3. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres _____

Transfer No. 74563

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

Please see attached USGS Topographic Series quadrangle map and aerial photograph.

A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for the rights described in part 1. Clearly depict the land by section, township and range number.

SEE ATTACHMENT B

Scale: 2 inches equal 1 mile. Draw plan in ink.

Transfer No. 74563

PART 3

B. CHANGES IN NATURE OF USE

1. New Nature of Use	Amount (cfs/ac-ft	Hours/days/year	Period of Use
Industrial	74.50 AF	24 hrs / day 365 days / year	1 / 1 to 12 / 31
			to
			to

2. Quantity and quality of return flows of discharge:

All industrial use is entirely consumptive with no return flows.

3. Describe effects on other water uses resulting from the proposed change:

No impacts are expected. Please refer to attached cover letter for discussion.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

DEANN ROBB NOTARY PUBLIC STATE OF IDAHO

V.P.
(Signature of Applicant)

Subscribed and sworn to before me this 8th day of August, 2007

DeAnn Robb
(Notary Public)

My commission expires 2012

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 3 attachments

Received by DB Date 2-20-08 Protest filed by

Prelim. Check by AR Fee $250-

Receipted by DB / W036154 Date 2-20-08

Published in Copies of protest forwarded by

Pub. Dates Hearing held by Date

Watermaster recommendation requested on Recommended for ☐ approval ☐ denial

rec'd. by

Copy of transfer sent to lien holder

SRBA
DIRECTORS REPORT 63-03066

Return to SRBA Home Page

IWT072 IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 63-03066

****
* *
* THIS DIRECTORS REPORT HAS BEEN AMENDED SINCE *
* IT WAS 1ST FILED. *
* *
****

Name and Address: HUNTERS POINT GOLF COMMUNITY
LLC
504 BAYHILL DR
NAMPA, ID 83686

Source: GROUND WATER

Quantity: 1.40 CFS
315.00 AFY

Priority Date: 11-09-1955

Diversion Point: T03N R02W S31 NWSW Within Canyon County

Purpose and Period of Use:

Purpose of Use	Period of Use	Quantity
Irrigation	03-01 TO 11-15	1.40 CFS
		315.00 AFY

Place of Use: Irrigation — Within Canyon County

T03N R02W S31	NESW 5		NWSW 41
	SWSW 22		SESW 2

70 Acres Total

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - License

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ATTACHMENT A

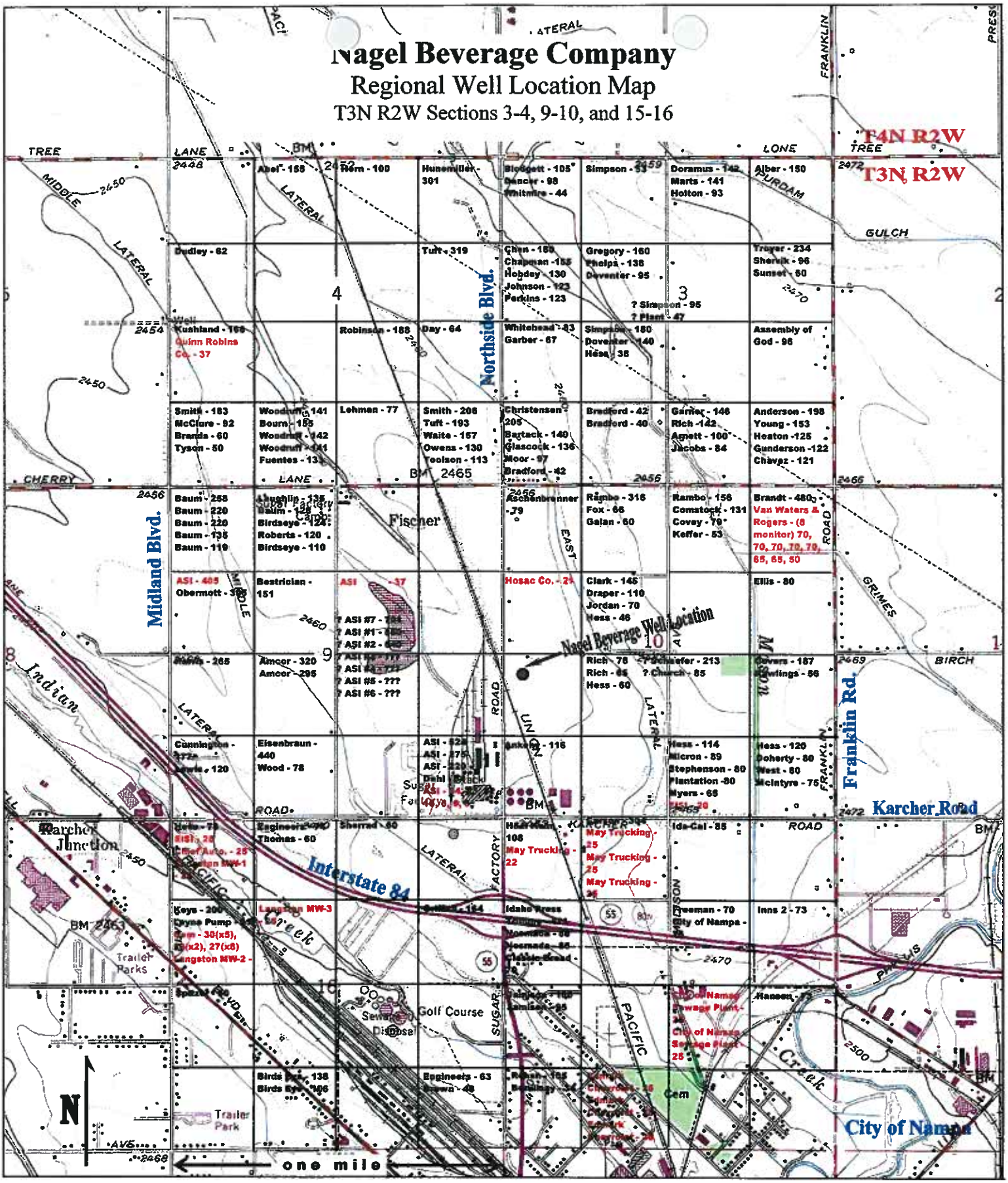

Figure 1. Location map of wells in T3N R2W Sections 3-4, 9-10, and 15-16. Wells are plotted to the nearest ¼, ¼ section by name followed by total depth of the well. Owing to space consideration, the five deepest wells are plotted in each ¼, ¼ section. If less than 5 wells exist in a 40-acre tract, then all well records are plotted. Wells in red are monitoring wells and wells in center of section are of unknown location. Some well logs may be missing and others may be mis-located on well log. Map is a 1:24,000 scale USGS 7 ½ - minute map.

Hydro Logic, Inc.

ATTACHMENT B (2 PGS)

Midland Boulevard
Karcher Connector
55
Westwood Boulevard
Westwood Boulevard
10 Lane
Northside Boulevard
83
East Karcher Road
Nagel #1 Supply
Madison Road
Cherry Lane
East Cherry Lane
Franklin Road
East Cherry Lane/Cherry Lane
East Industrial Avenue
Industrial Road
Shilo Drive
North 20th Street
Google

B2

WATER RIGHT PURCHASE AND SALE AGREEMENT

WATER RIGHT PURCHASE AND SALE AGREEMENT ("Agreement") is entered into effective this _____ day of July 2007 (the "Effective Date") by and between Hunter's Point Golf Community, LLC, an Idaho limited liability Company, whose address is 504 Bayhill Drive, Nampa, Idaho 83686 (the "Seller") and Nagel Beverage Co., an Idaho corporation, whose address is 8925 Birch Lane East, Nampa, ID 83687 (the "Buyer").

RECITALS

A. Seller owns a water right to divert ground water for irrigation purposes within the Boise River Basin (administrative Basin 63), which water right is represented by water right number 63-3066 in the records of the Idaho Department of Water Resources ("Department") and by claim number 63-3066 in the Snake River Basin Adjudication, and which water right authorizes diversion of ground water for irrigation uses on 70 acres of land in Ada County from March 15 through November 15 at a maximum rate of 0.02 cubic feet per second ("cfs") per irrigated acre, a maximum diversion of 1.40 cubic feet per second, and a total annual diversion volume of 4.5 acre-feet per acre per year. A copy of the recommendation of water right no. 63-3066 filed by the Idaho Department of Water Resources in the Snake River Basin Adjudication is included as part of Exhibit A to this Agreement.

B. Seller desires to sell a portion of water right no. 63-3066 that is appurtenant to 25.5 acres in the NE ¼ of the SW ¼ of Section 31, Township 03N, Range 02W, Boise Meridian (the "Property"). This 25.5-acre portion of licensed water right no. 63-3066 is referred to in this Agreement as the "Water Right." The Water Right includes a 0.51 cfs diversion rate and a 76.5 acre foot diversion volume.

C. Buyer desires to purchase the Water Right, and file an application to use it at Buyer's property in Canyon County.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions set forth below, Seller agrees to sell the Water Right to Buyer, and Buyer agrees to purchase it.

1. Purchase Price. The Purchase Price for the Water Right is
;, payable as follows:

a. Earnest Money Payment. Upon execution of this Agreement by Seller and Buyer, Buyer shall pay Seller as an earnest money payment ("Earnest Money").

b. Additional Earnest Money Payments. Within 6 months after the Effective Date, and every six months thereafter until the closing of this transaction (the "Closing"), Buyer shall make an additional Earnest Money payment of
(the "Additional Earnest Money Payments."

ATTACHMENT C (9 PGS)

c. Balance of Purchase Price. The balance of the Purchase Price, less the Earnest Money and the Additional Earnest Money Payments, shall be due and payable to Seller at Closing in immediately available funds.

d. Treatment of Earnest Money. The Earnest Money shall be refundable to Buyer if this Agreement is terminated pursuant to Section at any time prior to Closing and shall be applicable to the Purchase Price. The Additional Earnest Money Payments shall be non-refundable to Buyer but shall be applicable to the Purchase Price (see also Section 3 below).

2. Transfer or Permit Application.

a. Buyer to File Transfer. Within 30 days after this Agreement is signed and at Buyer's expense, Buyer shall prepare and file an application to the Idaho Department of Water Resources ("Department") to either: a) change or transfer the Water Right to Buyer's place of use, proposed nature or time of use, and point of diversion; or b) obtain a new ground water permit in which the retirement of the Water Right will serve a mitigation or similar purpose (both options are referred to herein collectively as the "Transfer"). Buyer shall file the Transfer with the Department and diligently pursue it at Buyer's sole cost.

b. Seller Cooperation. At any time prior to the final disposition of the Transfer by the Department, Seller shall provide Buyer with any information Seller has concerning the Water Right that Buyer may reasonably request in pursuit of the Transfer. If responding to such request will require Seller to incur attorney or consultant fees or costs, the following conditions shall apply:

i. Seller shall provide Buyer a written estimate of such fees and costs and shall not be obligated to provide a response until Seller receives from Buyer a written approval of such fees and costs and a commitment from Buyer to pay them directly or reimburse Seller for Seller's payment of them. Once Seller has received such approval, Seller shall provide the response to the extent of the fees and costs covered in the approval.

ii. Seller shall forward to Buyer all bills for such fees and costs within thirty days after Seller receives invoices for such expenses from a consultant or attorney, and shall inform Buyer whether Seller has paid these invoices or, in the alternative, is forwarding them to Buyer for payment. Within thirty days after Buyer receives them, Buyer shall either pay such invoices directly or reimburse Seller for Seller's payment of them.

3. Termination. Buyer may terminate this Agreement at any time prior to Closing. Upon termination, Seller shall be entitled to return of the Earnest Money, but shall forfeit all Additional Earnest Money Payments made to Seller. If Buyer terminates this Agreement, it shall immediately withdraw the Transfer and execute any documents necessary to confirm the Water Right is unencumbered by this Agreement.

4. Closing. The Closing shall occur 10 days after the final, unappealable approval of the Transfer. At the Closing:

a. Seller shall deliver to Buyer: i) an executed and acknowledged Water Right Grant Deed and Assignment ("Deed") in the form attached to this Agreement as Exhibit B; and

ii) such other documents as Buyer may reasonably request within thirty days prior to closing to confirm Buyer's ownership of the Water Right or its transferability.

b. Buyer shall deliver to Seller the balance of the Purchase Price by means of a cashier's check or other means of payment acceptable to Seller. Buyer shall have responsibility for recording or filing the Deed with the county recorder and any notices of change of ownership with the Department or any other entities Buyer deems appropriate.

5. Remedies for Breach. In the event either party breaches this Agreement, the other party may seek specific performance of the Agreement and/or monetary damages. If either party commences litigation for the judicial interpretation, enforcement or rescission of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs.

6. Hopkins Mortgage. Buyer understands that Hopkins Financial (or a related entity) hold a mortgage on the property to which the Water Right is appurtenant. Seller believes it can obtain the appropriate release to allow the Transfer. The parties agree that if this release cannot be obtained within 2 months following the Effective Date, either party may terminate this Agreement, in which case the Earnest Money shall be returned to Buyer.

7. Representations and Warranties.

a. Seller hereby represents and warrants that:

i. Seller no longer irrigates using the Water Right;
ii. Seller is the owner of the Water Right and has not conveyed, mortgaged, or pledged the Water Right to any other person or entity except as noted above;
iii. Seller has not engaged or dealt with any broker or finder in connection with the sale of the Water Right; and
iv. Seller has the legal power, right and authority to enter into this Agreement and to perform Seller's obligations hereunder;

b. Buyer hereby represents and warrants that:

i. Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder;
ii. Buyer has not engaged any broker or finder in connection with the purchase of the Water Right; and
iii. Buyer understands and agrees that the approval of the Transfer may impose new conditions on the use of the Water Right and may reduce the amount of water available for diversion of the Water Right.

c. All representations and warranties contained herein shall survive the closing and delivery of Seller's Water Right Grant Deed and Assignment.

8. General Provisions.

a. This Agreement contains the entire agreement between the parties related to the purchase and sale of the Water Right, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

b. No modification, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by both parties.

c. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, representatives, successors and assigns.

d. All notices to be given to the parties shall be in writing, delivered in hand, or by U.S. Mail, postage pre-paid directed to such parties address as stated above unless such party shall have directed in writing that notice be sent to a different address. Notice shall be deemed given upon receipt if hand-delivered or upon deposit into the U.S. Mail if provided by mail.

e. This Agreement may be executed in counterparts.

f. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day.

IN WITNESS WHEREOF, this Agreement has been executed by the parties, in the State of Idaho, as of the date set forth above.

SELLER:	BUYER:
_____	_____
Greg Bullock	Vance Miller
Hunters Point Golf Community, LLC	Vice President, Nagel Beverage Co.

a. This Agreement contains the entire agreement between the parties related to the purchase and sale of the Water Right, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

b. No modification, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by both parties.

c. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, representatives, successors and assigns.

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f. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or legal holiday, such time for performance shall be extended to the next business day.

IN WITNESS WHEREOF, this Agreement has been executed by the parties, in the State of Idaho, as of the date set forth above.

SELLER:

Greg Bullock
Hunters Point Golf Community, LLC

BUYER:

Vance Miller
Vice President, Nagel Beverage Co.

EXHIBIT A - WATER RIGHT DESCRIPTION

Co

SRBA
DIRECTORS REPORT 63-03066

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IWT072 IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 63-03066

Name and Address: ARMENTA D NELSON
RT 1
11727 IOWA
NAMPA, ID 83686

L S NELSON
11727 IOWA
NAMPA, ID 83686

Source: GROUND WATER

Quantity: 1.40 CFS
315.00 AFY

Priority Date: 11-09-1955

Diversion Point: T03N R02W S31 NWSW Within Canyon County

Purpose and Period of Use:

Purpose of Use	Period of Use	Quantity
Irrigation	03-01 TO 11-15	1.40 CFS
		315.00 AFY

Place of Use: Irrigation Within Canyon County
T03N R02W S31 NESW 5 NWSW 41
SWSW 22 SESW 2
70 Acres Total

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - License

Return to SRBA Home Page

G

EXHIBIT B - WATER RIGHT GRANT DEED AND ASSIGNMNET

When recorded, return to:
GIVENS PURSLEY LLP
Attn: John M. Marshall
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720

WATER RIGHT GRANT DEED AND ASSIGNMENT

FOR VALUE RECEIVED, Grantor HUNTER'S POINT GOLF COMMUNITY, LLC. hereby grants, bargains, sells, and conveys unto Grantee, NAGEL BEVERAGE CO., all of Grantor's right, title, and interest in and to the following portion of water right no. 63-3066:

> The portion of water right no. 63-30665 that is appurtenant to a total of 25.5 acres in the NE ¼ of the SW ¼ of Section 31, Township 03N, Range 02W, Boise Meridian (the "Property"). This 25.5-acre portion of licensed water right no. 63-3066 is referred to in this Agreement as the "Water Right."

Grantor hereby further conveys and assigns to Grantee all of Grantor's right, title, and interest in and to the Water Right, together with a like portion of Grantor's right, title, and interest in and to any claim or decree for the Water Right filed in or issued by the Snake River Basin Adjudication, Fifth Judicial District, in the State of Idaho, in and for the County of Twin Falls, Case No. 39576.

Grantor hereby covenants to Grantee that Grantor has ceased to divert and use the Water Right on the above-described acres or otherwise and that Grantor has not conveyed, mortgaged, or pledged the Water Right to any other person or entity. Grantor makes no other guarantees or warranties as to the Water Right, its transferability, or its yield upon transfer, change, exchange, or use in a mitigation plan.

[End of Text]

TO HAVE AND TO HOLD the Water Right unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor has caused her name to be subscribed to this Water Right Grant Deed and Assignment effective this ___ day of _____ 2007.

GRANTOR: HUNTER'S POINT GOLF COMMUNITY, LLC.

DRAFT
Greg Bullock

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____ 2007, before me, a Notary Public in and for the State of Idaho, personally appeared Greg Bullock, known or identified to me to be the person who executed the above Water Right Grant Deed and Assignment and acknowledged to me that he executed the same on behalf of Hunter's Point Golf Community, LLC.

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:_____
My commission expires:_____