

RECEIVED

JUN 29 2010

Department of Water Resources
Eastern RegionSTATE 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): 74-22, 74-15767
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 **SUPPORT DATA**
IN FILE # 74-22
NANCY LIEBRECHT
CHARLES LIEBRECHT
282 N. 2ND WEST
RIGBY, ID 83442
4. Name of Water Right Owner/Claimant(s) RAY KAGEL, JR.
5. Expiration Date of Notification Period AUG. 15, 2013
6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO
7. Signature(s) of Security Interest holder(s) Nancy Liebrecht **MORTGAGE**
(and title if applicable) HOLDER

For Office Use OnlyReceived by M HOLLIDAYDate 6/29/2010Fee \$ 50Received by MWADate 6/29/2010Receipt No. E035926

Processed by _____

AJ

Date _____

WR _____

Date _____

RECEIVED
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Department of Water Resources
Eastern Region

280454

REAL ESTATE MORTGAGE

THIS MORTGAGE, Made by RAY L. KAGEL as MORTGAGOR, whose current address is: 3879 E 200 N, Rigby, ID 83442, and NANCY J. LIEBRECHT, fka NANCY J. KAGEL and CHARLES E. LIEBRECHT, whose address is 552 Caribou Street, Apt. B, Rigby, ID 83442, MORTGAGEE.

WITNESSETH, That the said MORTGAGOR, for good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said MORTGAGEE, their heirs and assigns forever, the following real estate: Sentinel Rock Ranch, located east of Leadore in the Hawley Creek area of southeastern Lemhi County, Idaho (the "Property"). The Property is approximately 115.4 acres in size, and is more particularly described as:

H. E. Survey No. 543, in Section Thirty-six (36), Township Sixteen North, Range Twenty-seven East, and Section Thirty-one (31), Township Sixteen North, Range Twenty-eight East of the Boise Meridian, County of Lemhi, State of Idaho, more particularly described as follows, to-wit:

Beginning at Corner No. 1, from which the South corner to Township Sixteen North, Range Twenty-seven and Twenty-eight East of the Boise Meridian, bears S. 27° 17' E., 41.74 Chains distant; thence N. 42° 20' W., 17.0 Chains to Corner No. 2; thence N. 69° 37' E., 66.54 Chains to Corner No. 3; thence S. 30° 56' E., 20.31 Chains to Corner No. 4; thence S. 73° 21' W., 64.01 Chains to Corner No. 1, the place of beginning.

TOGETHER WITH all the improvements, privileges and appurtenances thereunto belonging and all rights of homestead exemption, together with all ditch and water rights of every nature, however evidenced, used on the said land or belonging to the same or said MORTGAGOR, which may be hereafter acquired or used upon said land. Said MORTGAGOR does hereby warrant the title to said land and water rights against all persons whomsoever, and agree to defend the same.

THIS CONVEYANCE is intended as a mortgage to secure the payment of the principal sum of **Three Hundred Fifty Thousand Dollars (\$350,000.00)**, together with interest as reflected in the Promissory Note of even date, lawful money of the United States of America, evidenced by a promissory note executed and delivered by MORTGAGOR herein, dated August 1, 2009, with final payment due **August 1, 2013**.

TOGETHER WITH interest, costs, and expenses, as therein provided, payable to the order of the MORTGAGEE at the times and in the manner and with interest as therein set forth, together with any extensions, renewals, modifications and future advances thereof or thereunder; the performance of each agreement of MORTGAGOR herein contained; and the payment of all sums expended or advanced by MORTGAGEE under or pursuant to the terms of this Mortgage and/or the note(s), together with interest thereon as provided therein.

To Protect the Security of the Mortgage, Mortgagor Covenants and Agrees:

1. To keep said property in good order and condition as it now is and not commit or permit any waste thereof;

2. To promptly make all repairs, replacements, additions, improvements and alternations thereto, interior and exterior, structural and nonstructural, which are necessary or appropriate to keep the same in as good order and condition as it now is;

3. To complete or restore promptly and in a good and workmanlike manner any building or other improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor;

4. To not remove or demolish any building or other improvement thereof now or hereafter existing on the property; excepting the existing corrals that may pose a safety or a fire hazard;

5. To comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting said property;

6. To not: 1) allow changes in the use of the property from the date of this Mortgage; excepting that Mortgagor may petition for a zoning change for residential purposes and/or sale all or a portion of the property for the present uses of the property or for residential purposes; 2) maintain, operate or occupy the property or allow the property to be used, maintained, operated or occupied in any manner which violates any laws, safeguarded as required by law, which constitutes a public or private nuisance, or such makes void, voidable, or cancellable or increases the premiums of any insurance required to be maintained under this Mortgage; or 3) initiate or acquiesce in a change in the zoning classification of the property; unless required by applicable law or unless MORTGAGEE had given its prior written consent.

7. To not alter the property, excepting the corrals referred to above in ¶ 4 and not, except as is necessary to maintain the property in a state of good condition and repair, make or permit to be made any alterations or additions to the property of a material nature without the prior written consent of MORTGAGEE.

8. To keep the buildings, improvements, fixtures, equipment, machinery, and appliances of the above described property, or to be hereafter constructed or placed thereon, insured against loss by fire in the sum of \$50,000.00 for the benefit of the MORTGAGEE, with Loss payable to Mortgagor to replace or restore any damaged or destroyed improvements or structure and if any overage to Mortgagee; Neither destruction of the property in whole or in part nor the application of insurance proceeds to reconstruct the premises or to reduce the indebtedness secured by this Mortgage shall cause suspension, extension or abatement of payments under the note, serviced hereby unless the entire indebtedness is paid by the application of said insurance proceeds;

9. To pay in full immediately and discharge before delinquent all encumbrances, taxes and assessments, charges, liens and other impositions, with interest and penalties, on said property or any part thereof, including, and to pay in full immediately and discharge before delinquent, all dues or assessments upon said ditch or water rights or water stock.

MORTGAGOR shall pay, when due, all claims of all persons supplying labor or materials to or in connection with the property when due.

10. To pay all costs, fees, and expenses, of this Mortgage, including, but not limited to, cost of search and evidence of title and advertising expense and attorneys' fees incurred in enforcing any of the provisions of this Mortgage, or in exercising any remedies hereunder, whether the same be incurred pursuant to limitations, any form of bankruptcy proceedings or otherwise, which sums shall also be secured by this Mortgage. Nothing in this paragraph shall limit any provision of any statute which requires MORTGAGOR to pay more attorneys' fees than as provided in this paragraph.

It is Mutually Agreed that:

11. Should the property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, MORTGAGEE shall be entitled to all compensation, awards and other payments or relief thereof, and shall be entitled at their option to commence, appear in and prosecute in their own names, any action or proceedings or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights or action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to MORTGAGEE, who may after deducting therefrom all of its expenses, including attorneys' fees, release any moneys so received by it or apply the same on any indebtedness secured hereby. MORTGAGOR agrees to promptly notify MORTGAGEE of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the property, or part thereof, and MORTGAGOR shall appear in and prosecute any such action or proceeding unless otherwise directed in writing by MORTGAGEE. MORTGAGOR authorizes MORTGAGEE, at MORTGAGEE'S option, as attorney-in-fact for MORTGAGOR, to commence, appear in, and prosecute, in MORTGAGEE'S or MORTGAGOR'S name, any action or proceedings relating to any condemnation or taking of the property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or taking. MORTGAGOR agrees to execute such further evidence of assignment of awards, proceeds, damages, or claims arising in connection with such condemnation as MORTGAGEE may require. Unless said indebtedness is paid in full by the application of said awards, no such award or application thereof shall constitute a reduction in or abatement of any payments required by the Note.

12. MORTGAGOR shall pay the indebtedness, secured by this Mortgage as and when called for in the documents evidencing the same and will fully and promptly perform all of the obligations under the Note and this Mortgage as such performance becomes due.

13. The term "Event of Default," as used in this Mortgage, shall mean the occurrence or happening, at any time and from time to time, or any one or more of the following:

(a) If MORTGAGOR shall fail to pay, in full, any payment or any portion of the indebtedness secured by this Mortgage, when the same shall become due and payable, whether at the due date thereof stipulated in the Note and this Mortgage, or by acceleration or otherwise; or

(b) If MORTGAGOR shall fail, refuse or neglect to perform and discharge fully and timely any of the other obligations of MORTGAGOR under the Note and/or this Mortgage; or

(c) If the property is materially demolished, destroyed or substantially damaged and suitable arrangements are not made with MORTGAGEE by MORTGAGOR to reconstruct the same or if the same cannot be repaired within 120 days from the date of destruction.

14. Upon the occurrence of any Event of Default, as that term is defined above, MORTGAGEE, at MORTGAGEE'S option, may declare all of the indebtedness and other sums secured by this Mortgage to be immediately due and payable without further demand, and those remedies hereunder, under any of the Note and/or permitted by applicable law regarding Mortgages may be invoked.

15. In addition to the foregoing, MORTGAGEE'S rights in the Event of Default shall include, but shall not be limited to, the right of MORTGAGEE to:

(a) Take possession and hold, occupy, operate, and use the property, together with the personality, without liability or obligation on its part, and to do all acts affecting said property as MORTGAGEE may deem necessary to keep the property in good condition and repair and to conserve the value thereof;

(b) To the extent permitted by law, bring an action to collect any installment which is due or past due and payable without affecting or losing the security of this Mortgage or waiving any other right or remedy allowed by law;

(c) Foreclose this Mortgage in the manner provided by law for the foreclosure of mortgages on real property, bring an action for damages, or exercise such other remedy or combination of remedies as MORTGAGEE may have under law or equity.

(d) Apply to a Court of competent jurisdiction for the appointment of a receiver to take charge of the property and, with or without the appointment of a receiver: 1) collect the rents, issues and profits therefrom; 2) care for and repair the same, and improve the same when necessary or desirable; 3) lease and rent the property or portions thereof (including leases existing beyond the term or receivership); and 4) otherwise use and utilize the property, and have such other powers as may be fixed by any Court of competent jurisdiction. MORTGAGOR specifically agrees that the receiver may be appointed without any notice to MORTGAGOR whatsoever, and the Court may appoint the receiver without reference to the adequacy or inadequacy of the security, or the solvency or insolvency of MORTGAGOR, and without reference to other matters normally taken into account by courts in the discretionary appointment of receivers, it being the intention of MORTGAGOR to hereby authorize the appointment of a receiver when MORTGAGOR is in default and MORTGAGEE has requested the appointment of a receiver. MORTGAGOR hereby agrees and consents to the appointment as receiver the person or firm designated by MORTGAGEE and hereby waive its rights to suggest or nominate any such person or firm in opposition to MORTGAGEE.

No remedy herein provided shall be exclusive of any other remedy which now exists or such may hereafter exist under the Note in favor of MORTGAGEE or by law. Every power or remedy given to MORTGAGEE or to which they may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and they may pursue inconsistent remedies. If MORTGAGEE holds any additional security or any obligation secured hereby it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and in the event of any default of MORTGAGOR, MORTGAGEE may, at its option, offset against any indebtedness secured hereby. Should it become necessary for MORTGAGEE, by its election, to pursue any of the remedies herein above described, either personally or through its agents, to enter upon and take possession of the property or any part thereof, and collect the rents, issues and profits therefrom, MORTGAGEE shall be entitled to receive as compensation for its management fee an amount customarily charged for such services by reputable management firms.

The purchasers at any foreclosure sale hereunder may disaffirm any easement or right-of-way granted or rental or lease contract made after the execution of this Mortgage may take immediate possession of the property free from, and despite the terms of, such grant and/or rental and/or lease contract.

MORTGAGEE shall have all rights, remedies and recourses granted in the Note and this Mortgage available at law or equity and the same (a) shall be cumulative and concurrent, (b) may be pursued against MORTGAGOR, at the sole discretion of MORTGAGEE, (c) may be exercised as often as occasion therefore shall arise, it being agreed by MORTGAGOR that the exercise or failure to exercise any of the same shall in no event be constructed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, non-exclusive.

If all or any part of the property of interest therein is sold or transferred by MORTGAGOR including, but not limited to, (1) the execution by MORTGAGOR of a contract sale with respect to the property, (2) the grant of a leasehold estate in the property or any part thereof for a period of greater than five (5) years, (3) the transfer or sale of the property by a creditor or judgment holder with respect to MORTGAGOR or (4) the transfer of a leasehold estate in the property or any part thereof containing an option to purchase without MORTGAGEE'S prior written consent, excluding the grant of any leasehold estate in the property of five (5) years or less not containing an option to purchase, MORTGAGEE may, at MORTGAGEE'S option, declare all of the indebtedness to be immediately due and payable. MORTGAGEE shall waive such option to accelerate if, prior to the sale or transfer, MORTGAGEE, MORTGAGOR and the person or entity to whom the property is to be sold or transferred reach an agreement in writing otherwise.

If MORTGAGEE exercises such option to accelerate, MORTGAGEE shall give MORTGAGOR notice of acceleration. Said notice shall provide a period of not less than ninety (90) days from the date of the notice is mailed in which MORTGAGOR may pay the sums declared due. If MORTGAGOR shall fail to pay such sums prior to the expiration of such period, MORTGAGEE may, without further notice of demand on MORTGAGOR, consider this

Mortgage in a state of default and exercise the remedies set forth herein with respect to an Event of Default occurring under this Mortgage.

A consent by MORTGAGEE to one or more sales or above transfers of the property shall not constitute a waiver of the provisions, nor shall it constitute a consent to or for any future sales or transfers by MORTGAGOR, their successors or assigns, and any further sale or transfer of the property by MORTGAGOR, their successors or assigns, or any of them, shall give MORTGAGEE the acceleration rights provided above.

16. Except for any notice required under applicable law to be given in another manner;

(a) Any notice to MORTGAGOR provided for in the Mortgage shall be given by personal delivery or by mailing such notice addressed to MORTGAGOR as the following current address: --- or at such other address as MORTGAGOR may designate by notice to MORTGAGEE as provided herein, and shall be deemed given, upon such personal delivery or deposit in the United States mail, first class postage fully prepaid;

(b) Any notice to MORTGAGEE shall be given by personal delivery or by first class United States mail to --- or to such other address as MORTGAGEE may designate by notice to MORTGAGOR as provided herein, and shall be effective upon such personal delivery or deposit in such mail, postage fully prepaid.

17. This Mortgage shall be governed by the laws of the State of Idaho. In the event that any provision or clause of the Note, or this Mortgage, conflicts with applicable law, such conflict shall not affect other provisions of the Note or this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of the Note and this Mortgage are declared to be severable.

18. It is hereby expressly stipulated and agreed to be the intent of MORTGAGOR, and MORTGAGEE at all times to comply with the usury, and all other laws relating to the Mortgage and the Note. If, at any time, the applicable law renders usurious any amount called for in any of this Mortgage, and/or the Note, then it is MORTGAGOR'S and MORTGAGEE'S express intent that such document be immediately deemed reformed and the amounts collectible reduced, without the necessity of the execution of any new documents, so as to comply with the then applicable law but so as to permit the recovery of the fullest amount otherwise called for in this Mortgage and the Note and any amounts previously collected in excess of the amount permitted under applicable usury laws shall be either applied as a credit against the unpaid indebtedness due under the Note, or be refunded to MORTGAGOR, at MORTGAGEE'S sole option.

19. **BORROWER AND ANY ENDORSERS, SURETIES, AND GUARANTORS IRREVOCABLY WAIVES ANY RIGHT TO REDEEM THE PROPERTY SUBSEQUENT TO SALE PURSUANT TO, WITHOUT LIMITATION, IDAHO CODE § 11-310, ET SEQ. AND IDAHO CODE § 11-401 ET SEQ., OR ANY OTHER RELEVANT CODE PROVISION OR COMMON LAW RIGHT. IN PARTICULAR, BORROWER**

AGREES TO WAIVE, AND SHALL NOT EXERCISE, THAT RIGHT IN IDAHO CODE § 11-402, WHICH PROVIDES: "THE JUDGMENT DEBTOR OR REDEMPTIONER MAY REDEEM THE PROPERTY FROM THE PURCHASER WITHIN ONE (1) YEAR AFTER THE SALE, IF THE REAL PROPERTY SOLD CONSISTED OF A TRACT OF LAND OF MORE THAN TWENTY (20) ACRES . . . " BORROWER AGREES THAT SUCH WAIVER AND AGREEMENT NOT TO EXERCISE REDEMPTION RIGHTS MAY BE RECITED IN ANY APPROPRIATE JUDGMENT OF FORECLOSURE OR OTHER ORDER OF THE COURT. BORROWER EXPRESSLY AGREES TO PROVIDE BORROWER'S WRITTEN ASSURANCE THAT HE HAS WAIVED AND WILL NOT EXERCISE HIS REDEMPTION RIGHTS TO A THIRD-PARTY UPON REQUEST OF LENDER. BUYER PROVIDES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND HAS HAD THE OPPORTUNITY TO HAVE THIS PROVISION FULLY EXPLAINED TO HIM BY COUNSEL OF HIS CHOICE. Borrower's Initials:

RK

IN WITNESS WHEREOF, the said Mortgagor hereunto subscribe their name(s)

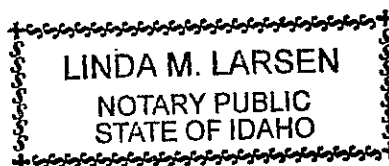
BORROWER:

Ray L. Kagel
RAY L. KAGEL

STATE OF IDAHO)
County of *Bonneville*) : ss

On this ^{29th} day of *July*, 2009, before me, a Notary Public in and for said State, personally appeared, RAY L. KAGEL, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

Linda M. Larsen
Notary Public for Idaho
Residing at: *Kocatello*
Commission Expires: *2-12-2010*



State of Idaho) SS No. *280 454*
County of Lemhi)
This instrument was filed for record at the request
of *Nancy J. Siebrecht*
at *2:00* o'clock *p.m.* *8-5* *2009*
and duly filed and indexed in the records of Lemhi
County
By *Terri J. Morton* Ex-Officio Recorder
Fee *21*
Return to *552 Caribou St. Apt B.*
Rexburg Id 83442