



STATE OF IDAHO

DEPARTMENT OF AGRICULTURE

C.L. "BUTCH" OTTER
Governor
CELIA R. GOULD
Director

September 12, 2007

Idaho Department Water Resources
Eastern Region Office
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-6105

RECEIVED

SEP 17 2007

Department of Water Resources
Eastern Region

*OK to
remove
security
interest
JC
9-17-07*

Re: Release of Security Interest in a Water Right

To Whom It May Concern:

The purpose of this correspondence is to provide notice that the Idaho State Department of Agriculture ("ISDA") has released the Mortgage and Fixture Filing on the land to which the following water rights are appurtenant:

35-02190B ✓
35-2474B
35-08834A ✓
35-1106B ✓
35-13452 ✓

A copy of the Release of Mortgage and Fixture Filing, along with a copy of the original Mortgage and Fixture Filing, are enclosed with this correspondence. Please let me know if you have any questions.

Sincerely,

Celia R. Gould, Director
Idaho State Department of Agriculture

cc: Gary Cooper

My Commission Expires: 10/22/07

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Moffatt Thomas Barrett Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701-0829
Attn: C. Clayton Gill

575222

BING COUNTY RECORDER
BOISE, IDAHO
FEE 51-000#185399
DEP C

2006 DEC 14 AM 10:25

RECORDED AT THE REQUEST OF
Moffatt, Thomas, Barrett, Rock
& Fields
PO Box 829
Boise ID 83701-0829

(Space Above For Recorder's Use)

MORTGAGE AND FIXTURE FILING

MORTGAGOR: THE FARMERS MERCHANT, INC.

MORTGAGEE: IDAHO STATE DEPARTMENT OF AGRICULTURE

DATE: ^{BU}
NOVEMBER 6
October __, 2006

MORTGAGE AND FIXTURE FILING

BW

~~November~~ A. THIS MORTGAGE AND FIXTURE FILING (this "Mortgage") effective as of ~~October 6~~, 2006, by The Farmers Merchant, Inc., an Idaho corporation, whose address is 164 South 1900 West, Pingree, Idaho, 83262, as mortgagor (the "Mortgagor"), and the Idaho State Department of Agriculture, its successors and assigns, whose address is 2270 Old Penitentiary Road, Boise, Idaho 83712, as mortgagee (the "Mortgagee").

RECITALS

B. Mortgagor is indebted to Mortgagee in the original principal sum of Two Hundred Ninety-Five Thousand Four Hundred Eighteen Dollars and 08/100 (\$295,418.08) with interest thereon, which indebtedness is evidenced and represented by that certain Promissory Note of even date herein from Mortgagor to Mortgagee (the Promissory Note together with all substitutions, consolidations, modifications, replacements, restatements, increases, renewals, and extensions thereof, in whole or in part, shall collectively be referred to as the "Note").

C. Mortgagee, as a condition precedent to consenting to the terms and conditions of a Settlement Agreement (the "Agreement") with Mortgagor and others (TFM, LLC, Bruce Webb, Janet Webb, Kairos, Inc., Trevor Webb, and James Pulley, collectively referred to as the "Webbs"), by which Mortgagee and the Webbs finally and fully resolved all of their claims and counterclaims asserted in the case captioned *Idaho State Department of Agriculture, plaintiff, v. TFM, LLC, et al.*, Case No. CV-02-2136 pending in the District Court of the Seventh Judicial District, State of Idaho, in and for the County of Bingham, has required that Mortgagor provide Mortgagee with security for the repayment of the indebtedness evidenced by the Note. In addition, this Mortgage shall secure the Webbs' performance, observance and discharge by Mortgagor of the covenants contained herein and Webbs' covenants contained in the Agreement.

AGREEMENT

1. Grants of Security.

a. **Property Granted.** In consideration of and in order to secure the repayment of the indebtedness evidenced and represented by the Note, together with interest on such indebtedness as well as all other amounts owing on the Note for attorneys' fees or expenses, as well as the payment of all sums advanced pursuant to this Mortgage to protect and preserve the Property and the lien and security interest created hereby and all other sums of money secured hereby, as provided below; and to secure the observance, performance and discharge by Mortgagor of all covenants, conditions and agreements set forth in the Note, this Mortgage and in all other documents and instruments executed and delivered by Mortgagor to and in favor of Mortgagee for the purpose of further securing the repayment of the indebtedness evidenced and represented by the Note (all of the forgoing obligations are referred to as the "Secured Obligations"), Mortgagor mortgages, grants, bargains, sells, aliens, remises, releases, conveys, assigns, transfers, pledges, delivers, sets over, hypothecates, warrants, and confirms to Mortgagee, subject to the terms and conditions of this Mortgage, all estate, right, title and

interest which Mortgagor now has or may later acquire in and to the following described properties, rights and interests and all replacements of, substitutions for, and additions thereto (all of which are referred to below as the "Property"):

BW
N/A i. **Real Property.** The 278 acres of real property located at _____ in Bingham County, Idaho, more particularly described in *Exhibit A* attached hereto and made a part hereof (the "Real Property").

ii. **Improvements.** All buildings, structures and other improvements of any kind, nature or description now or hereafter erected, constructed, placed or located upon the Real Property (the "Improvements").

iii. **Appurtenances.** All tenements, hereditaments, strips and gores of land, rights-of-way, easements, privileges and other appurtenances now or hereafter belonging or in any way appertaining to the Real Property, including, without limitation, all right, title and interest of the Mortgagor in any after-acquired right, title, interest, remainder or reversion, in and to the beds of any ways, streets, avenues, roads, alleys, passages and public places, open or proposed, in front of, running through, adjoining or adjacent to the Real Property; all minerals, royalties, gas rights, water, water rights, including without limitation, water right numbers 35-02190B, 35-02474B, 35-08834A, 35-11106B, 35-13452, water stock, flowers, shrubs, lawn plants, crops, trees, timber and other emblements now or hereafter located on, under, or above all or any part of the Real Property; and all other fixtures of every description located in or on, or used, or intended to be used in connection with the Real Property or any building now or hereafter located thereon (the "Appurtenances").

iv. **Condemnation Awards.** Any and all awards, payments or settlements, including interest thereon, and the right to receive the same, as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, and (c) any other injury, damage or casualty to, taking of, or decrease in the value of, the Property, to the extent of all amounts that may be secured by this Mortgage at the date of any such award or payment, including but not limited to Reasonable Attorneys' Fees (as defined below), costs, and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

b. **Assignment of Leases and Rents.** Mortgagor assigns to Mortgagee all current and future leases and other agreements affecting the use, enjoyment or occupancy of all or any part of the Real Property or the Improvements heretofore or hereafter entered into whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. 101, et seq. (the "Bankruptcy Code"), as the same may be amended from time to time (the "Leases") and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Real Property and the Improvements whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Secured Obligations. Nevertheless, subject to the terms of this Mortgage, Mortgagee grants to

Mortgagor a revocable license to collect and receive the Rents. Such license shall be revoked immediately upon the occurrence of an Event of Default on the part of the Mortgagor, as that term is hereinafter defined, whereupon Mortgagee shall be entitled to pursue those rights and remedies set forth in Section 7 of this Mortgage.

2. Mortgagor Covenants. Mortgagor covenants and agrees as follows:

a. **Payment of Principal and Interest.** Mortgagor shall pay the Note, together with all interest thereon, in accordance with the terms of the Note, promptly at the times, at the place and in the manner that said principal and interest shall become due.

b. **Performance of Other Obligations.** Mortgagor shall perform, comply with, and abide by each and every one of the covenants, agreements and conditions contained and set forth in the Note, this Mortgage, and the Agreement, and shall comply with all laws, ordinances, rules, regulations and orders of any governmental authorities having jurisdiction over the Property that now or hereafter affect the Property or requires any alterations or improvements to be made thereon, and shall perform all of its obligations under any covenant, condition, restriction or agreement of record affecting the Property and shall insure that at all times the Property constitutes one or more legal lots capable of being conveyed without violation of any subdivision or platting laws, ordinances, rules or regulations, or other laws relating to the division or separation of real property.

c. **Preservation and Maintenance of Property.** Mortgagor shall keep all Improvements now existing or hereafter erected on the Real Property in good order and repair and shall not do or permit any waste, impairment or deterioration thereof or thereon, nor alter, remove, or demolish any of the Improvements or any Fixtures or Personal Property attached or appertaining thereto, including but not limited to all irrigation delivery systems, ditches, or canals, without the prior written consent of Mortgagee. Mortgagor shall not permit any other act whereby the Property shall become less valuable, be used for purposes contrary to applicable law, or be used in any manner that will increase the premium for or result in a termination or cancellation of the insurance policies hereinafter required to be kept and maintained on the Property. Mortgagor shall effect such repairs as Mortgagee may reasonably require, and from time to time make all needful and proper replacements so that the Improvements, Appurtenances, Fixtures and Personal Property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

d. **Hazardous Waste.**

i. Mortgagor at all times shall keep the Property and ground water of the Property free of Hazardous Materials (as defined below). Mortgagor shall not and shall not knowingly permit its tenants or any third party requiring the consent of Mortgagor to enter the Property, to use, generate, manufacture, treat, store, release, threaten release, or dispose of Hazardous Materials in, on, or about the Property or the ground water of the Property in violation of any federal, regional, state, or local law, decision, statute, rule, ordinance or regulation currently in existence or hereinafter enacted or rendered (collectively the "Hazardous Waste Laws"). Mortgagor shall give Mortgagee prompt written notice of any claim by any person, entity, or governmental agency that a significant release or disposal of Hazardous Materials has

occurred in, on, or under the Property in excess of legal limits. Mortgagor, through its professional engineers and at its cost, shall promptly and thoroughly investigate suspected Hazardous Materials contamination of the Property. Excepting only any Hazardous Materials existing on the Property as of the date of this Mortgage, Mortgagor shall forthwith remove, repair, clean up, and/or detoxify any Hazardous Materials found on the Property or in the ground water of the Property if such actions are required by Hazardous Waste Laws, and whether or not Mortgagor was responsible for the existence of the Hazardous Materials in, on or about the Property or the ground water of the Property. Hazardous Materials shall include but not be limited to substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, by the Superfund Amendments and Reauthorization Act of 1986, The Hazardous Materials Transportation Act of 1994. The Resource Conservation and Recovery Act of 1976, as amended by The Used Oils Recycling Act of 1980, The Solid Waste Disposal Act amendment of 1984, The Toxic Substances Control Act, The Clean Air Act, The Clean Water Act, Idaho Environmental Protection and Health Act (Idaho Code " 39-101 to 39-130), Idaho Radiation and Nuclear Material Act (Idaho Code " 39-3001 to 39-3030), Idaho Water Quality Act (Idaho Code " 39-3601 to 39-3639), Idaho Hazardous Waste Management Act (Idaho Code " 39-4401 to 39-4432), Idaho Hazardous Substance Emergency Response Act (Idaho Code " 39-7101 to 39-7115), Idaho Petroleum Clean Water Trust Fund Act (Idaho Code " 41-4901 to 41-4948), Idaho Land Reclamation Act (Idaho Code " 39-7201 to 39-7210), Idaho Solid Waste Facilities Act (Idaho Code " 39-7401 to 39-7420), Idaho Sale and Disposal of Batteries Act (Idaho Code " 39-7001 to 39-7004), Idaho PCB Waste Disposal Act (Idaho Code " 39-6201 to 39-6216) or in any other Hazardous Waste Laws. In addition, Mortgagor shall not put any underground storage tanks on the Real Property.

ii. Excepting only any Hazardous Materials existing on the Property as of the date of this Mortgage, Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Mortgagee for, with respect to, or as a direct or indirect result of, the presence in, on, or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, the Property of any Hazardous Materials (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Hazardous Waste Laws), regardless of the source of origination and whether or not caused by, or within the control of, Mortgagor.

iii. Liability under this Section 2.d. and similar provisions in this Mortgage and the other Loan Documents concerning Hazardous Materials shall survive repayment of the Note and satisfaction of this Mortgage; provided, however, Mortgagor shall have no liability under this Section 2.d. regarding Hazardous Materials if (i) the Property becomes contaminated subsequent to Mortgagee's acquisition of the Property by foreclosure, acceptance by Mortgagee of a deed in lieu thereof, or subsequent to any transfer of ownership of the Property that was approved or authorized by Mortgagee in writing, pursuant to this Mortgage, provided that such transferee assumes in writing all of the obligations of Mortgagor under the Loan Documents with respect to Hazardous Materials, or (ii) at such time Mortgagor provides Mortgagee with an environmental assessment report acceptable to Mortgagee, in its sole discretion, showing the Property to be free of Hazardous Materials and not in violation of any Hazardous Waste Laws. The burden of proof under this Section with regard to establishing the date upon which any

Hazardous Material was placed or appeared in, on, or under the Property shall be upon Mortgagor.

e. **Use of Property.** The Property shall be used only for farming operations and for no other use without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's discretion.

f. **Payment of Taxes, Assessments and Other Charges.** Mortgagor shall pay all taxes, assessments, and other charges that are or may be hereafter levied or assessed upon or against the Property, when the same shall become due and payable according to law, before the same become delinquent, and before any interest or penalty shall attach thereto. Mortgagor shall have the right to contest, in good faith, the proposed assessment of ad valorem taxes or special assessments by governmental authorities having jurisdiction over the Property; provided, however, Mortgagor shall give written notice thereof to Mortgagee and Mortgagee may, in its sole discretion, require Mortgagor to post a bond or other collateral satisfactory to Mortgagee in connection with any such action by Mortgagor.

g. **Payment of Liens, Charges and Encumbrances.** Mortgagor shall immediately pay and discharge from time to time when the same shall become due all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a lien, charge or encumbrance upon the Property or any part thereof, or on the rents, issues, income, revenues, profits and proceeds arising therefrom and, in general, to do or cause to be done everything necessary so that the lien of this Mortgage shall be fully preserved, at the cost of Mortgagor, without expense to Mortgagee. Mortgagor shall have the right to contest, in good faith and in accordance with applicable laws and procedures, mechanics' and materialmens' liens filed against the Property; provided however, that Mortgagor shall give written notice thereof to Mortgagee, and Mortgagee may, in its sole discretion, require Mortgagor to post a bond or other collateral satisfactory to Mortgagee in connection with any such action by Mortgagor.

h. **Payment of Junior Encumbrances.** Mortgagor shall not permit default or delinquency under any lien, imposition, charge or encumbrance against the Property, even though junior and inferior to the lien of this Mortgage; provided however, the foregoing shall not be construed to permit any other lien or encumbrance against the Property.

i. **Payment of Mortgage Taxes.** Mortgagor shall pay any and all taxes that may be levied or assessed directly or indirectly upon the Note and/or this Mortgage (except for income taxes payable by Mortgagee) or the debt secured hereby, without regard to any law that may be hereafter enacted imposing payment of the whole or any part thereof upon Mortgagee, its successors or assigns.

j. **Insurance.**

i. Mortgagor shall obtain and maintain, or cause to be maintained, insurance for Mortgagor and the Property providing at least the following coverages:

(a) **Liability Insurance.** Commercial general liability insurance, including bodily injury, death and property damage liability insurance, against any and all

claims, including all legal liability to the extent insurable and imposed upon Mortgagee and all court costs and attorneys' fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Property in such amounts as are generally available at commercially reasonable premiums and are generally required by agricultural Mortgagees for properties comparable to the Property but in no event for a combined single limit of less than \$1,000,000.

(b) **Other Insurance.** Such other insurance with respect to the Property against loss or damage of the kinds from time to time customarily insured against and in such amounts as are generally available at commercially reasonable premiums and are generally required by agricultural Mortgagees for properties comparable to the Property.

ii. All insurance provided for in Section 2.j.i. shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), and shall be issued by one or more domestic primary insurer(s) having (i) an investment grade rating or claims paying ability assigned by one or more credit rating agencies approved by Mortgagee (a "Rating Agency") and (ii) a general policy rating of A or better and a financial class of VI or better by A.M. Best Company, Inc. (each such insurer shall be referred to below as a "Qualified Insurer"). All insurers providing insurance required by this Mortgage shall be authorized to issue insurance in the state of Idaho. The Policy referred to in Paragraph (a) above shall name Mortgagee as an additional named insured and shall also contain: (i) a standard "non-contributory mortgagee" endorsement or its equivalent (such as the Mortgagee's Loss Payable endorsement 438 BFU, in long form) relating, *inter alia*, to recovery by Mortgagee notwithstanding the negligent or willful acts or omission of Mortgagor; (ii) to the extent available at commercially reasonable rates, a waiver of subrogation endorsement as to Mortgagee; and (iii) an endorsement providing for a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of similar properties in the general vicinity of the Property, but in no event in excess of an amount approved by Mortgagee. All Policies described in Section 2.j.i. shall contain (i) a provision that such policies shall not be canceled or terminated, nor shall they expire, without at least thirty (30) days' prior written notice to Mortgagee in each instance; and (ii) include effective waivers by the insurer of all claims for Insurance Premiums (defined below) against any loss payees, additional insureds and named insureds (other than Mortgagor). Certificates of insurance with respect to all renewal and replacement Policies shall be delivered to Mortgagee not less than thirty (30) days prior to the expiration date of any of the Policies required to be maintained hereunder which certificates shall bear notations evidencing payment of applicable premiums (the "Insurance Premiums"). Originals or certificates of such replacement Policies shall be delivered to Mortgagee promptly after Mortgagor's receipt thereof but in any case within thirty (30) days after the effective date thereof. If Mortgagor fails to maintain and deliver to Mortgagee the original Policies or certificates of insurance required by this Mortgage, Mortgagee may procure such insurance at Mortgagor's sole cost and expense.

iii. Mortgagor shall comply with all insurance requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon that would be prohibited by an insurance requirement, or would invalidate the insurance coverage required hereunder to be maintained by Mortgagor on or with respect to any part of the Property pursuant to this Section.

iv. The insurance coverage required under Section 2.j.i. may be effected under a blanket policy or policies covering the Property and other properties and assets not constituting a part of the security hereunder.

v. Mortgagor waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives, by way of subrogation or otherwise, for any loss sustained by Mortgagor, or any loss or damage to the Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

k. **Condemnation.** Mortgagor shall promptly give Mortgagee notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Mortgagee may participate in any such proceedings to the extent permitted by law. Upon an Event of Default, Mortgagor shall deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Mortgagee, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Secured Obligations at the time and in the manner provided for its payment in the Note and in this Mortgage and the Secured Obligations shall not be reduced until any award or payment therefor shall have been actually received and applied by Mortgagee, after the deduction of expenses of collection, to the reduction or discharge of such obligations. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of the award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Secured Obligations.

l. **Compliance with Laws.** Mortgagor shall observe, abide by, and comply with all statutes, ordinances, laws, orders, requirements or decrees relating to the Property enacted, promulgated or issued by any federal, state, county or local governmental authority or any agency or subdivision thereof having jurisdiction over Mortgagor or the Property. Mortgagor shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning, variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Property or that have been granted to or contracted for by Mortgagor in connection with any existing, presently contemplated or future use of the Property.

3. Representations and Warranties. Mortgagor represents and warrants to Mortgagee that:

a. **Warranty of Title.** Mortgagor has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Mortgagor possesses the fee simple absolute estate in the Real Property and the Improvements

and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for Real Property taxes for years subsequent to 2005 (which are not yet due and payable). Mortgagor shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

b. **Taxes.** Mortgagor has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by it and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by it. Mortgagor does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

4. Further Assurances.

a. **Inspection by Mortgagee.** Upon Mortgagee providing Mortgagor with not less than 48 hours' prior written notice, Mortgagee, and/or its agents, shall have the right and shall be permitted, but shall not be required, at all reasonable times, to enter upon and inspect the Property to insure compliance with the covenants, agreements, and conditions set forth in this Mortgage.

b. **Execution of Additional Documents.** Mortgagor shall, at the cost of Mortgagor, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, assurances and other instruments, including security agreements and financing statements, as Mortgagee shall from time to time require for the purpose of better assuring, conveying, assigning, transferring and confirming unto Mortgagee the Property and rights hereby encumbered, created, conveyed, assigned or intended now or hereafter so to be encumbered, created, conveyed or assigned or that Mortgagor may now be or may hereafter become bound to encumber, create, convey, or assign to Mortgagee, or for the purpose of carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering, or recording this Mortgage.

c. **Estoppel Certification by Mortgagor.** Mortgagor, upon Mortgagee's request, shall certify in writing to Mortgagee (or any party designated by Mortgagee) in form satisfactory to Mortgagee the amount of principal and interest then outstanding under the terms of the Note and any other sums due and owing under this Mortgage or any of the other Loan Documents and whether any offsets or defenses exist against the Secured Obligations. Such certification shall be made by Mortgagor within ten (10) days of Mortgagee's request.

5. Further Encumbrance Prohibited. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred. Provided, however, the Mortgagee hereby consents and permits the Mortgagor to place a second mortgage lien upon the Property in favor of United Fire & Casualty Company to secure an obligation having an original principal balance of \$15,000. Such second mortgage in favor of United Fire & Casualty Company shall be subordinated and inferior to this Mortgage, it being the intent of these parties to make this Mortgage a first priority lien against the Property.

6. **Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default":

a. The failure to make any payment of (i) interest or principal when due on the Note, (ii) any other amount of the Secured Obligations when due, or (iii) the entire amount of the Secured Obligations on or before the Final Maturity Date.

b. If any representation or warranty of Mortgagor in this Mortgage, or any representation or warranty of Bruce Webb, Janet Webb, Trevor Webb, James Pulley, or The Farmers Merchant, Inc., in the Note, Corporate Resolution, or Agreement dated July 21, 2006 shall have been false or misleading in any material respect when made.

c. Except for the specific defaults set forth in this Section, any other default under any Loan Document by Mortgagor, which default is not cured within thirty (30) days after written notice from Mortgagee to Mortgagor; provided that if such default cannot reasonably be cured within such thirty (30) day period and Mortgagor shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Mortgagor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days, unless, only in the case of cures that require construction or remedial work, such cure cannot with diligence be completed within such one hundred twenty (120) day period, in which case such period shall be extended for an additional one hundred twenty (120) days.

7. **Rights and Remedies.**

a. **Remedies.** Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to the following actions, each of which may, to the extent permitted by applicable law, be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

i. Declare the entire unpaid Secured Obligations to be immediately due and payable.

ii. Institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner.

iii. Institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents.

iv. Apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the

Secured Obligations and without regard for the solvency of Mortgagor or of any person, firm or other entity liable for the payment of the Secured Obligations.

v. Subject to any applicable law, the Mortgagee may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating to the Property and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business therein; (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect, and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Secured Obligations, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees.

vi. Pursue such other remedies as Mortgagee may have under applicable law.

Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Section 6.4(i) or (ii) shall occur, the entire unpaid Secured Obligations shall be automatically due and payable, without any further notice, demand or other action by Mortgagee.

b. **Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property pursuant to this Section 7, or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Mortgagee to the payment of the Secured Obligations in such priority and proportions as Mortgagee in its discretion shall deem proper, subject to any applicable law.

c. **Right to Cure Defaults.** Upon the occurrence of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, cure the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage

or collect the Secured Obligations, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section, shall constitute a portion of the Secured Obligations and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the rate specified in the Note, for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee together with interest thereon shall be deemed to constitute a portion of the Secured Obligations and be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

d. Other Rights.

i. The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Mortgagee to comply with any request of Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Secured Obligations or any portion thereof, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

ii. The risk of loss or damage to the Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Mortgagee's possession.

iii. Mortgagee may resort for the payment of the Secured Obligations to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Secured Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

e. **Mortgagee's Powers.** Mortgagee may release or reconvey any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release or reconveyance, and may accept by assignment, pledge

or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a lien and security interest in the remaining portion of the Property. Without affecting the liability of any other person liable for the payment and/or performance of the Obligations and without in any way impairing or affecting the lien or priority of this Mortgage, Mortgagee may, from time to time and without notice (i) release any person so liable; (ii) extend the maturity or alter any of the terms of any Secured Obligation; (iii) grant other indulgences; or (iv) make compositions or other arrangements with debtors in relation thereto.

8. Indemnification. If Mortgagee shall become a party, either as plaintiff or as defendant, in any action, suit, appeal or legal proceeding (including, without limitation, foreclosure, condemnation, bankruptcy, administrative proceedings or any proceeding wherein proof of claim is by law required to be filed), hearing, motion or application before any court or administrative body in relation to the Property or the lien and security interest granted or created hereby or herein, or for the recovery or protection of said indebtedness or the Property, or for the foreclosure of this Mortgage, Mortgagor shall save and hold Mortgagee harmless from and against any and all costs and expenses incurred by Mortgagee on account thereof, including, but not limited to, Reasonable Attorneys' Fees, title searches and abstract and survey charges, at all trial and appellate levels, and Mortgagor shall repay, on demand, all such costs and expenses, together with interest thereon until paid at the then applicable rate of interest of the Note; all of which sums, if unpaid, shall be added to and become a part of the indebtedness secured hereby.

9. Usury Savings Clause. Notwithstanding any provisions in the Note or in this Mortgage to the contrary, the total liability for payments in the nature of interest including but not limited to default interest and late payment charges shall not exceed the limits imposed by the laws of the State of Idaho or, if controlling, the United States relating to maximum allowable charges of interest. Mortgagee shall not be entitled to receive, collect or apply, as interest on the indebtedness evidenced by the Note, any amount in excess of the maximum lawful rate of interest permitted to be charged by applicable law. If Mortgagee ever receives, collects or applies as interest any such excess, such amount that would be excessive interest shall be applied to reduce the unpaid principal balance of the indebtedness evidenced by the Note. If the unpaid principal balance of such indebtedness has been paid in full, any remaining excess shall be paid to Mortgagor.

10. Security Agreement; Financing Statements. This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and Mortgagee shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

a. **Security Interest.** Upon request by Mortgagee, Mortgagor shall take whatever action is requested by Mortgagee to perfect and continue Mortgagee's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Mortgagee may, at any time and without further authorization from Mortgagor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement.

b. **Addresses.** The mailing addresses of Mortgagor (debtor) and Mortgagee (secured party), from which information concerning the security interest granted by this

Mortgage may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Mortgage.

11. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (b) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Mortgagor: The Farmers Merchant, Inc.
 164 South 1900 West
 Pingree, Idaho 83262
 Attention: Bruce Webb

With a copy to: Cooper & Larsen
 PO Box 4229
 Pocatello, Idaho 83205-4229
 Attention: Gary Cooper
 Facsimile No.: (208) 235-1182

If to Mortgagee: Idaho State Department of Agriculture
 2270 Old Penitentiary Road
 Boise, Idaho 83712
 Attention: Director, Director's Designee
 Facsimile No.: (208) 334-2170

With a copy to: Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
 101 S. Capitol Blvd. 10th Floor
 PO Box 829
 Boise, Idaho 83701-0829
 Attention: C. Clayton Gill
 Facsimile No.: (208) 385-5384

or addressed as such party may from time to time designate by written notice to the other parties. Either party by written notice to the other may designate additional or different addresses for subsequent notices or communications.

12. Governing Law. This Mortgage is to be governed by and construed in accordance with the laws of the state of Idaho and shall be binding upon Mortgagor, its heirs, personal representatives, successors and assigns and shall inure to the benefit of Mortgagee, its successors and assigns.

13. **Miscellaneous.**

a. **Assignment.** The Mortgage and the Note may not be assigned to anyone without the express written permission of the ISDA.

b. **Successors and Assigns: Terminology.** The provisions hereof shall be binding upon Mortgagor and the heirs, personal representatives, successors and assigns of Mortgagor, and shall inure to the benefit of Mortgagee, its successors and assigns. Where more than one Mortgagor is named herein, the obligations and liabilities of said Mortgagor shall be joint and several. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean Mortgagor and/or any subsequent owner or owners of the Property, the word "Mortgagee" shall mean Mortgagee or any subsequent holder or holders of this Mortgage, the word "Note" shall mean Note(s) secured by this Mortgage, and the word "person" shall mean an individual, trustee, trust, corporation, partnership or unincorporated association. As used herein, the phrase "Reasonable Attorneys' Fees" shall mean fees charged by attorneys selected by Mortgagee based upon such attorneys' then prevailing hourly rates as opposed to any statutory presumption specified by any statute then in effect in the State of Idaho.

c. **Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Law.

d. **Inapplicable Provision.** If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

e. **Attorney's Fees for Enforcement.** Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorney's fees, incurred or paid by Mortgagee in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon from the date paid or incurred by Mortgagee until such expenses are paid by Mortgagor.

f. **Modifications.** This Mortgage cannot be changed, altered, amended or modified except by an agreement in writing and in recordable form, executed by both Mortgagor and Mortgagee.

g. **Captions.** The captions set forth at the beginning of the various sections of this Mortgage are for convenience only and shall not be used to interpret or construe the provisions of this Mortgage.

h. **Liability.** If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

EXHIBIT A

PARCEL III:

Township 3 South, Range 32 E.B.M., Bingham County, Idaho
Section 11: N 1/2, EXCEPTING: The South 715 feet of SW1/4NW1/4. ALSO EXCEPTING:
Beginning at the NE corner of said section and thence going W. along the N. Section Line 702
feet, more or less; thence S. 1304 feet; thence E. 364 feet; thence S. 710 feet; thence E. 338 feet
to the E. Section Line; thence N. along the Section Line to the Place of Beginning. ALSO
EXCEPTING: Part of Section 11 Township 3 South Range 32 E.B.M., Bingham County, Idaho
described as: Beginning at a point that is S. 00°00'01" E. 1043.66 feet from the Northeast corner
of said Section 11, and running thence N. 89°45'24" W. 631.11 feet; thence S. 00°12'55" W.
283.00 feet; thence S. 89°48'29" E. 259.70 feet; thence S. 00°58'18" E. 706.16 feet; thence N.
88°40'24" E. 360.60 feet, thence N. 00°00'01" W. 978.91 feet along the Section Line to the Point
of Beginning.

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