

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Notice of Security Interest in a Water Right

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

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

1. Water Right No(s): 37-11093
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
Bobby and Lillian Esterbrook
1355 Hwy 46
Gooding, ID 83330
4. Name of Water Right Owner/Claimant(s) Hatfield Properties, LLC
5. Expiration Date of Notification Period March 1, 2022
6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO
7. Signature(s) of Security Interest holder(s) Bobby Esterbrook
(and title if applicable) Lillian Esterbrook

For Office Use Only

Received by <u>AMB</u>	Date <u>3-21-07</u>	Fee <u>\$25.00</u>
Received by <u>AMB</u>	Date <u>3-21-07</u>	Receipt No. <u>C083625</u>
Processed by _____	AJ Date _____	WR _____ Date _____

Instrument # 220766

GOODING, GOODING, IDAHO

2007-03-19 03:40:24 No. of Pages: 26

Recorded for : LAND TITLE

DENISE M. GILL

Fee: 78.00

Ex-Officio Recorder Deputy

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Arkoosh Law Offices, Chartered
P.O. Box 32
301 Main St.
Gooding, Idaho 83330

(Space Above For Recorder's Use)

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

BORROWER: HATFIELD PROPERTIES, LLC

LENDER: ^{R. B.E.} BOBBY AND LILLIAN ESTERBROOK, husband and wife

DATE: MARCH 16, 2007

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING, (the "Mortgage") effective as of March 16, 2007, by Hatfield Properties, LLC, an Idaho Limited Liability Company, whose address is 1823 Shoestring Rd., Gooding, ID 83330, as mortgagor (the "Borrower"), and Bobby and Lillian Esterbrook, husband and wife, their successors and assigns, whose address is 1355 Hwy 46 Gooding, ID 83330, as mortgagee (the "Lender").

RECITALS

A. Borrower is indebted to Lender in the original principal sum of Five Hundred Twenty-Six Thousand Dollars (\$526,000.00) with interest thereon, which shall be paid in fifteen (15) annual installments of FIFTY FOUR THOUSAND ONE HUNDRED FIFTY EIGHT DOLLARS AND FORTY ONE CENTS (\$54,158.41), commencing on the 1st day of March, 2008, and continuing on the 1st day of March each consecutive year with the entire remaining unpaid balance of principal and interest due and payable on the 1st day of March, 2022 the (Due Date) which indebtedness is evidenced and represented by that certain Mortgage Note of even date from Borrower to Lender, (the Mortgage 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").

B. Lender, as a condition precedent to the extension of credit and the making of the loan evidenced by the Note, has required that Borrower provide Lender with security for the repayment of the indebtedness evidenced by the Note as well as for the performance, observance and discharge by Borrower of various covenants, conditions and agreements made by Borrower to, with, in favor of, and for the benefit of, Lender with respect to such indebtedness and security.

1. Grants of Security.

1.1 Property Granted. In consideration of and in order to secure the repayment, observance, performance and discharge by Borrower of the Secured Obligations (as defined in Section 1.4 below), Borrower grants, bargains, sells, aliens, remises, releases, conveys, assigns, transfers, pledges, delivers, sets over, hypothecates, warrants, and confirms to Trustee, in trust, with power of sale, for the benefit and security of Lender, as beneficiary hereunder, subject to the terms and conditions of this Mortgage, all estate, right, title and interest that Borrower 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"):

1.1.1 Real Property. The real property consists of approximately 273.81 acres in Gooding County, Idaho, described in *Exhibit A* attached hereto and made a part hereof (the "Real Property").

1.1.2 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").

1.1.3 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 Borrower 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, 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 (the "Appurtenances").

1.1.4 Leases and Rents. All 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 Borrower 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 Borrower, 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 Borrower 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 (defined below).

1.1.5 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 Lender in connection with the collection of such award or payment.

1.1.6 Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Real Property or the Improvements, or appurtenant thereto, and used in connection with the present or future operation and occupancy of the Real Property and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Real Property and the Improvements, or appurtenant thereto, or used in connection with the present or future operation and occupancy of the Real Property and the Improvements (together referred to as the "Fixtures and Personal Property," which term expressly excludes any toxic waste or substance deemed hazardous under federal, regional, state, or local laws).

1.1.7 Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and

apply the proceeds of any insurance judgments, or settlements made in lieu thereof, for damage to the Property.

1.1.8 Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Real Property and any part thereof and any Improvements or respecting any business or activity conducted on the Real Property and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right to receive and collect any sums payable to Borrower thereunder.

1.1.9 Intangibles. All trade names, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles specific to or used in connection with the operation of the Property.

1.2 Assignment of Leases and Rents. Borrower absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Mortgage, Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold a portion of the Rents sufficient to discharge all current sums due on the Note, for use in the payment of such sums.

1.3 Security Agreement. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Idaho Uniform Commercial Code. The Property includes all rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Mortgage, Borrower grants Lender, as security for the Secured Obligations, a security interest in the Property that is personal property (the "Personal Property") to the full extent that the Personal Property may be subject to the Idaho Uniform Commercial Code. This Mortgage shall operate as and constitute a financing statement filed as a fixture filing, covering any of the Property that now is or later becomes fixtures attached to the Real Property or the Improvements.

1.4 Secured Obligations. This Mortgage and the grants, assignments and transfers made herein are given for the purpose of securing all of the following, in such order of priority as Lender may determine in its sole discretion (the "Secured Obligations"):

1.4.1 The payment of the indebtedness evidenced by the Note in lawful money of the United States of America, including any amounts that may be repaid from time to time and made available for reborrowing to the extent authorized by the Note or the other Loan Documents (defined in Section 2.1 below).

1.4.2 The payment of interest, default interest, late charges and other sums, as provided in the Note, this Mortgage or the other Loan Documents.

1.4.3 The payment of all other monies agreed or provided to be paid by Borrower in the Note, this Mortgage or the other Loan Documents.

1.4.4 The payment of all sums advanced pursuant to this Mortgage to protect and preserve the Property and the lien and the security interest created hereby.

1.4.5 The payment of all sums advanced and costs and expenses incurred by Lender in connection with the Secured Obligations or any part thereof, any renewal, extension, modification, consolidation, change, substitution, replacement, restatement or increase of the Secured Obligations or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender.

1.4.6 The payment of all other sums that may hereafter be loaned or advanced by Lender to Borrower.

1.4.7 The performance of all other obligations of Borrower herein.

1.4.8 The performance of each obligation of Borrower in the Loan Documents in addition to the payment of the Note.

1.4.9 The performance of each obligation in the Loan Documents of any person guaranteeing the payment of the Note or any portion thereof or performance by Borrower of any terms of this Mortgage, if any.

1.4.10 The performance of each obligation of Borrower and any guarantor in any renewal, extension, modification, consolidation, change, substitution, replacement for, restatement or increase of all or any part of the Note, this Mortgage or the other Loan Documents.

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

2.1 Payment of Principal and Interest. Borrower 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, and to promptly and punctually pay all other sums required to be paid by Borrower pursuant to the terms of the Note, this Mortgage, the Assignment of Leases, Rents and Profits (the "Assignment") and all other documents and instruments executed as further evidence of, as additional security for, or executed in connection with, the indebtedness evidenced by the Note and secured by this Mortgage are collectively referred to as the "Loan Documents."

2.2 Performance of Other Obligations. Borrower 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 other Loan Documents 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.

2.3 Preservation and Maintenance of Property. Borrower 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, without the prior written consent of Lender. Borrower shall not initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Property or any part thereof, nor do or 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. Borrower shall effect such repairs as Lender 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.

2.4 Hazardous Waste.

2.4.1 Borrower at all times shall keep the Property and ground water of the Property free of Hazardous Materials (as defined below). Borrower shall not and shall not knowingly permit its tenants or any third party requiring the consent of Borrower 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"). Borrower shall give Lender 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. Borrower, through its professional engineers and at its cost, shall promptly and thoroughly investigate suspected Hazardous Materials contamination of the Property. Borrower 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 Borrower 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, Borrower shall not put any underground storage tanks on the Real Property.

2.4.2 Borrower shall indemnify Lender and hold Lender 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 Lender 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, Borrower.

2.4.3 Liability under this Section 2.4 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, Borrower shall have no liability under this Section 2.4 regarding Hazardous Materials if (i) the Property becomes contaminated subsequent to Lender's acquisition of the Property by foreclosure, acceptance by Lender of a deed in lieu thereof, or subsequent to any transfer of ownership of the Property that was approved or authorized by Lender in writing, pursuant to this Mortgage, provided that such transferee assumes in writing all of the obligations of Borrower under the Loan Documents with respect to Hazardous Materials, or (ii) at such time Borrower provides Lender with an environmental assessment report acceptable to Lender, 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 Borrower.

2.5 Accessibility.

2.5.1 Borrower at all times shall maintain the Property in full compliance with all existing and hereafter enacted federal, state, county, regional or local laws, ordinances, rules and regulations governing accessibility for the disabled, including but not limited to The Architectural Barriers Act of 1968, The Rehabilitation Act of 1973, The Fair Housing Act of 1988, and The Americans with Disabilities Act (the “Accessibility Laws”).

2.5.2 Borrower shall indemnify Lender and hold Lender 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 Lender for, with respect to, or as a direct or indirect result of, the non-compliance of the Property with the Accessibility Laws whether or not caused by, or within the control of, Borrower.

2.5.3 Liability under this Section 2.5 and similar provisions in this Mortgage and the other Loan Documents concerning Accessibility Laws shall survive repayment of the Note and satisfaction of this Mortgage; provided, however, Borrower shall not be liable under this Section 2.5 for compliance with any Accessibility Laws if such Accessibility Laws first become effective, or such violations result from alterations or improvements to the Property that are performed subsequent to Lender's acquisition of the Property by foreclosure or acceptance of

a deed in lieu thereof or subsequent to any transfer that was approved or authorized by Lender pursuant to this Mortgage, provided that such transferee assumes in writing all obligations pertaining to Accessibility Laws pursuant to this Mortgage and the other Loan Documents.

2.6 Payment of Taxes, Assessments and Other Charges. Borrower 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. Borrower shall deliver official receipts evidencing the payment of the same to Lender not later than ten (10) days following payment. Borrower 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, Borrower shall give written notice thereof to Lender and Lender may, in its sole discretion, require Borrower to post a bond or other collateral satisfactory to Lender in connection with any such action by Borrower.

2.7 Payment of Liens, Charges and Encumbrances. Borrower 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 that, 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 Borrower, without expense to Lender. Borrower shall have the right to contest, in good faith and in accordance with applicable laws and procedures, mechanics' and materialmen's liens filed against the Property; provided however, that Borrower shall give written notice thereof to Lender, and Lender may, in its sole discretion, require Borrower to post a bond or other collateral satisfactory to Lender (and acceptable to the title insurance company insuring this Mortgage) in connection with any such action by Borrower.

2.8 Payment of Junior Encumbrances. Borrower 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.

2.9 Payment of Mortgage Taxes. Borrower 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 Lender) 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 Lender, its successors or assigns.

2.10 Insurance.

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

(a) **Liability Insurance.** Commercial general liability insurance, covering the Borrower, Lender, and Property, 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 Lender 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 institutional lenders for properties comparable to the Property, but in any event such limits shall not be less than \$500,000 for personal injury and death, \$250,000 for property damage, and \$250,000 for hazard insurance on any improvements made to the Property.

(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 institutional lenders for properties comparable to the Property.

2.10.2 All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Borrower.

2.10.3 Borrower 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 Borrower on or with respect to any part of the Property pursuant to this Section.

2.10.4 If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and provided that Borrower shall have received the Net Proceeds (defined below), Borrower shall promptly commence and diligently prosecute the completion of the repair and restoration of the property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be approved by Lender (the "Restoration") and otherwise in accordance with Section 2.12 of this Mortgage.

2.10.5 The insurance coverage required under Subsection 2.10 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; provided that any such blanket policy shall specify, except in the case of public liability insurance, the portion of the total coverage of such policy that is allocated to the Property, and any sublimit in such blanket policy applicable to the Property, and shall in any case comply in all other respects with the requirements of this Section.

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

2.10.7 All policies shall have attached thereto a Lender's loss payable endorsement for the benefit of Lender in a form satisfactory to Lender. After the happening of

any casualty to the Property or any part thereof, Borrower shall give prompt written notice thereof to Lender.

2.11 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings to the extent permitted by law. Upon an Event of Default, Borrower shall deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, 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), Borrower 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 Lender, after the deduction of expenses of collection, to the reduction or discharge of such obligations. Lender 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 or any portion thereof is taken by the power of eminent domain, Borrower shall promptly commence and diligently prosecute the Restoration of the Property in accordance with this Mortgage. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender 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.

2.12 Restoration After Casualty or Condemnation.

In the event of a casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration of the Property:

2.12.1 If (i) the Net Proceeds (defined below) do not exceed \$812,376.15 ("Casualty Amount"); (ii) the costs of completing the Restoration as reasonably estimated by Borrower shall be less than or equal to the Casualty Amount; (iii) no Event of Default shall have occurred and be continuing under the Note, this Mortgage or any of the other Loan Documents; (iv) the Property and the use thereof after the Restoration will be in compliance with, and permitted under, all applicable zoning laws, ordinances, rules and regulations; and (v) such fire or other casualty or taking, as applicable, does not materially impair access to the Property or the Improvements, then the Net Proceeds will be disbursed directly to Borrower and Borrower shall commence and diligently prosecute to completion, the Restoration of the Property to as nearly as possible the condition it was in immediately prior to such fire or other casualty or such taking. Except upon the occurrence and continuance of an Event of Default, Borrower shall settle any insurance claims with respect to the Net Proceeds which in the aggregate are less than or equal to the Casualty Amount. Lender shall have the right to participate in and reasonably approve any settlement for insurance claims with respect to the Net Proceeds that in the aggregate are equal to or greater than the Casualty Amount. If an Event of Default shall have occurred and be continuing, Borrower irrevocably empowers Lender, in the name of Borrower as its true and

lawful attorney-in-fact, to file and prosecute such claim and to collect and to make receipt for any such payment. If the Net Proceeds are received by Borrower, such Net Proceeds shall, until the completion of the related work, be held in trust for Lender and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof.

2.12.2 If the Net Proceeds are greater than the Casualty Amount, such Net Proceeds shall be paid to Lender to be held by Lender to be made available to Borrower for the Restoration in accordance with the provisions of this Subsection. Borrower shall commence and diligently prosecute to completion the Restoration (in the case of a taking, to the extent the Property is capable of being restored). The term "Net Proceeds" for purposes of this Section shall mean: (i) the net amount of all insurance proceeds under the Policies carried pursuant to Paragraphs 2.11.1(a), (d), (e), and (f) of this Mortgage as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to reasonable counsel fees), if any, in collecting the same, or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 2.12 of this Mortgage, after deduction of its reasonable costs and expenses (including, but not limited to reasonable counsel fees), if any, in collecting the same, whichever the case may be.

(a) The Net Proceeds shall be made available to Borrower for payment of, or reimbursement of Borrower's expenses in connection with, the Restoration, subject to the following conditions:

(i) No Event of Default shall have occurred and be continuing under the Note, this Mortgage or any of the other Loan Documents;

(ii) Lender shall, within a reasonable period of time prior to request for initial disbursement, be furnished with an estimate of the cost of the Restoration accompanied by an architect's certification as to such costs and appropriate plans and specifications for the Restoration;

(iii) The Net Proceeds, together with any cash or cash equivalent deposited by Borrower with Lender, are sufficient to cover the cost of the Restoration as such costs are certified by the architect;

(iv) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower;

(v) The Property and the use thereof after the Restoration will be in compliance with, and permitted under, all applicable zoning laws, ordinances, rules and regulations; and

(vi) Such fire or other casualty or taking, as applicable, does not materially impair access to the Property or the Improvements.

(b) The Net Proceeds shall be held by Lender and, until disbursed in accordance with the provisions of this Subsection, shall constitute additional security for the Secured Obligations. The Net Proceeds other than the Net Proceeds paid under the Policy described in Paragraph 2.11.1(c) shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be directly paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title insurance company insuring the lien of this Mortgage.

(c) Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Lender and an independent consulting engineer selected by Lender (the "Casualty Consultant"), such acceptance not to be unreasonably withheld or delayed. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(d) Lender shall not be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant.

(e) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Paragraph shall constitute additional security for the Secured Obligations.

(g) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section, and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Mortgage or any of the other Loan Documents.

2.13 Compliance with Laws. Borrower 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 Borrower or the Property. Borrower 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 Borrower in connection with any existing, presently contemplated or future use of the Property.

2.14 Maintenance of Permits. Borrower shall obtain, keep, and constantly maintain in full force and effect during the entire term of this Mortgage all certificates, licenses and permits necessary to keep the Property operating as a farm. Except as specifically provided for in this Mortgage, Borrower shall not assign, transfer or in any manner change such certificates, licenses or permits without first receiving the written consent of Lender.

2.15 Examination of Borrower's Records. Borrower shall maintain complete and accurate books and records showing in detail the income and expenses of the Property, and shall permit Lender and its representatives to examine such books and records and all supporting vouchers and data during normal business hours and from time to time upon request by Lender, in such place as such books and records are customarily kept, and shall furnish to Lender, within thirty (30) days after the close of each fiscal year of Borrower, annual statements (income statements and a balance sheet) for the Borrower and the Property in a form acceptable to Lender and shall be prepared in accordance with generally accepted accounting principles, and shall include a rent roll, certified as true and correct by Borrower and showing in detail all income derived from and expenses incurred in connection with the ownership of the Property. Upon the occurrence of an Event of Default, Lender shall have the right to require that the financial statements be audited and certified by a certified public accountant acceptable to Lender, at the sole cost and expense of Borrower.

3. Representations and Warranties. Borrower represents and warrants to Lender that:

3.1 Warranty of Title. Borrower 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 Borrower possesses an unencumbered 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 2007 (which are not yet due and payable) and those matters set forth in the Lender's Policy of Title Insurance insuring the first priority lien of this Mortgage (the "Permitted Exceptions"). Borrower 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 Lender against the claims of all persons whomsoever.

3.2 Status of Property.

3.2.1 Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other

similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

3.2.2 All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

3.2.3 The Property complies with the Americans with Disabilities Act and any regulations promulgated thereunder.

3.2.4 No part of the Real Property consists of or is classified as wetlands, tidelands, or swamp and overflow lands.

3.3 Taxes. Borrower 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. Borrower 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.

4.1 Inspection by Lender. Lender, 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.

4.2 Execution of Additional Documents. Borrower shall, at the cost of Borrower, 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 Lender shall from time to time require for the purpose of better assuring, conveying, assigning, transferring and confirming unto Lender the Property and rights hereby encumbered, created, conveyed, assigned or intended now or hereafter so to be encumbered, created, conveyed or assigned or that Borrower may now be or may hereafter become bound to encumber, create, convey, or assign to Lender, 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, and to pay all filing, registration, or recording fees and all taxes, costs and other expenses, including Reasonable Attorneys' Fees, incident to the preparation, execution, acknowledgment, delivery, and recordation of any of the same.

5. Further Encumbrance Prohibited. Borrower shall not, without the prior written consent of Lender, 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. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section shall be deemed to include, but not limited to (a) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (b) an agreement by Borrower leasing all or a substantial part

of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (c) if Borrower or any general partner or managing member (or if no managing member, any member) of Borrower is a corporation, the voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than 49% of such corporation's stock shall be vested in a party or parties who are not now owners of more than 49% of such corporation's stock; and (d) if Borrower or any general partner or managing member (or if no managing member, any member) of Borrower is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or the transfer or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, and (e) if Borrower or any general partner or member of Borrower is a limited liability company, the change, removal or resignation of a managing member (or if no managing member, any member) or the transfer of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest. Notwithstanding the foregoing, the following transfers shall not be deemed to be a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment or transfer within the meaning of this Section: (a) transfer by devise or descent or by operation of law upon the death of a member, general partner or stockholder of Borrower or any member or general partner thereof, and (b) a sale, transfer or hypothecation of a membership, partnership or shareholder interest in Borrower, whichever the case may be, by a current member, general partner or shareholder, as applicable, to an immediate family member (i.e., parents, spouses, siblings, children or grandchildren) of such member, general partner or shareholder, or to a trust for the benefit of an immediate family member of such member, general partner or shareholder.

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

6.1 Failure to make any payment of (i) interest or principal when due, (ii) any other amount of the Secured Obligations when due, or (iii) the entire amount of the Secured Obligations on or before the Maturity Date.

6.2 If any representation or warranty of Borrower or any Guarantor, or any member, general partner, principal or beneficial owner of any of the foregoing, made herein, or in any other Loan Document, or in any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made.

6.3 If Borrower or any Guarantor shall make an assignment for the benefit of creditors or if Borrower shall generally not be paying its debts as they become due.

6.4 If (i) Borrower or any Guarantor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or

seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower or any Guarantor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any Guarantor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against the Borrower or any Guarantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) the Borrower or any Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower or any Guarantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

6.5 Except for the specific defaults set forth in this Section, any other default under any Loan Document by Borrower, which default is not cured within thirty (30) days after written notice from Lender to Borrower; provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower 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 Borrower 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.

7.1 **Remedies.** Upon the occurrence of any Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower 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 Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

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

7.1.2 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.

7.1.3 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.

7.1.4 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 Borrower or of any person, firm or other entity liable for the payment of the Secured Obligations.

7.1.5 Subject to any applicable law, the license granted to Borrower under Subsection 1.2 shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender 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 thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower 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 Borrower to pay monthly in advance to Lender, 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 Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower 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 Lender 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 Lender, its counsel, agents and employees.

7.1.6 Exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower.

7.1.7 Apply the undisbursed balance of any Net Proceeds or any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Secured Obligations in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

7.1.8 Pursue such other remedies as Lender may have under applicable law.

Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Subsection 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 Lender.

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

7.3 Right to Cure Defaults. Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, cure the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender 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 Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the default rate specified in the Note (the "Default Rate"), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate 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 Lender therefor.

7.4 Examination of Books and Records. Lender, its agents, accountants and attorneys shall have the right upon prior written notice to examine the records, books, management and other papers of Borrower and its affiliates that reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower, its affiliates or any guarantor where the books and records are located. Lender and its agents shall have the right upon notice to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower and its affiliates or of any guarantor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower, its affiliates or any guarantor where the books and records are located.

7.5 Other Rights.

7.5.1 The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower 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 Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

7.5.2 The risk of loss or damage to the Property is on Borrower, and Lender 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 Lender 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 Lender's possession.

7.5.3 Lender may resort for the payment of the Secured Obligations to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Secured Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Mortgage. The rights of Lender under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender 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.

7.6 Lender's Powers. Lender may release or reconvey any portion of the Property for such consideration as Lender 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 Lender for such release or reconveyance, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender 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, Lender 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.

7.7 Right of Entry. Lender and its agents shall have the right upon prior written notice to enter and inspect the Property at all reasonable times upon notice to Borrower.

8. **Indemnification.** If Lender 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, Borrower shall save and hold Lender harmless from and against any and all costs and expenses incurred by Lender 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 Borrower 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 plus six (6) basis points; 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. Lender 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 Lender 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 Borrower.

10. **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 Lender: Bobby and Lillian Esterbrook
1355 Hwy 46 Gooding, ID 83330

With a copy to: Arkoosh Law Offices, Chtd.
P.O. Box 32
301 Main St.
Gooding, Idaho 83330

If to Borrower: Hatfield Properties, LLC
1823 Shoestring Rd., Gooding, ID 83330

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

11. Governing Law. This Mortgage is to be governed by and construed in accordance with the laws of the state of Idaho and, if controlling, by the laws of the United States and shall be binding upon Borrower, its heirs, personal representatives, successors and assigns and shall inure to the benefit of Lender, its successors and assigns.

12. Miscellaneous.

12.1 Successors and Assigns: Terminology. The provisions hereof shall be binding upon Borrower and the heirs, personal representatives, successors and assigns of Borrower, and shall inure to the benefit of Lender, its successors and assigns. Where more than one Borrower is named herein, the obligations and liabilities of said Borrower 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 "Borrower" shall mean Borrower and/or any subsequent owner or owners of the Property, the word "Lender" shall mean Lender 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 Lender 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.

12.2 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.

12.3 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.

12.4 Attorney's Fees for Enforcement. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorney's fees, incurred or paid by Lender 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 at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

12.5 Modifications. This Mortgage cannot be changed, altered, amended or modified except by an agreement in writing and in recordable form, executed by both Borrower and Lender.

12.6 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.

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

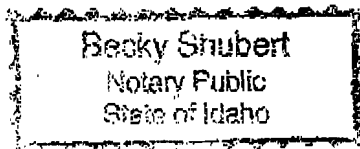
12.8 Duplicate Originals; Counterparts. This Mortgage may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Mortgage may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Mortgage. The failure of any party hereto to execute this Mortgage, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

12.9 Entire Agreement. The Note, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Secured Obligations and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto.

[SIGNATURE PAGE TO FOLLOW]

STATE OF IDAHO)
) ss.
COUNTY OF Gooding)

On this 19th day of March, 2007, before me, the undersigned, a Notary Public, personally appeared David W. Hatfield, Jason M. Hatfield, and John B. Hatfield known or identified to me (or proved on the oath of) to be (the manager, the managers, a member, the members) of Hatfield Properties, LLC the limited liability company that executed the foregoing instrument, and acknowledged to me that such limited liability company executed the same.



Becky Shubert
Notary Public
Residing at: Gooding ID
My Commission Expires: 02-23-2011

EXHIBIT A**PARCEL NO. 1:**

TOWNSHIP 5 SOUTH, RANGE 15, EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 7: That part of Lots 1 and 2, described as follows:

Commencing at the Northwest corner of said Lot 1;
Thence South 883.84 feet along the Westerly boundary of said Lot 1 to THE TRUE POINT
OF BEGINNING;
Thence South 488.71 feet along the Westerly boundary of said Lots 1 and 2 to the center of
Robertson Ditch;
Thence along the center of said Robertson Ditch the following courses and distances:
South 83° E00'21" East, 217.81 feet;
Thence South 74° E50'39" East, 181.25 feet;
Thence South 85° E57'30" East, 269.50 feet;
Thence South 43° E35'04" East, 192.30 feet;
Thence leaving the center of said Robertson Ditch, North 0° E19'41" West, 502.14 feet;
Thence North 55° E56'09" West, 131.09 feet;
Thence North 74° E27'42" West, 309.81 feet;
Thence South 87° E17'45" West, 73.16 feet;
Thence North 2° E16'00" East, 62.06 feet;
Thence North 89° E18'13" West, 311.97 feet to THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

TOWNSHIP 5 SOUTH, RANGE 15, EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 7: E $\frac{1}{4}$ NW $\frac{1}{4}$; Lots 1 and 2, EXCEPTING THEREFROM the following described parcel of land:

Commencing at the Northwest corner of said Lot 1;
Thence South 883.84 feet along the Westerly boundary of said Lot 1 to THE TRUE POINT
OF BEGINNING;
Thence South 488.71 feet along the Westerly boundary of said Lots 1 and 2 to the center of
Robertson Ditch;
Thence along the center of said Robertson Ditch the
following courses and distances:
South 83° E00'21" East, 217.81 feet;
Thence South 74° E50'39" East, 181.25 feet;
Thence South 85° E57'30" East, 269.50 feet;
Thence South 43° E35'04" East, 192.30 feet;
Thence leaving the center of said Robertson Ditch, North 0° E19'41" West, 502.14 feet;
Thence North 55° E56'09" West, 131.09 feet;
Thence North 74° E27'42" West, 309.81 feet;

Thence South 87° E17'45" West, 73.16 feet;
Thence North 2° E16'00" East, 62.06 feet;
Thence North 89° E18'13" West, 311.97 feet to THE TRUE POINT OF BEGINNING.

PARCEL NO. 3:

TOWNSHIP 5 SOUTH, RANGE 15 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 6: NW¼SE¼; NE¼SW¼; Lot 7

TOGETHER WITH 158.81 shares of stock in Big Wood Canal Company (American Falls
Reservoir District No. 2) appurtenant thereto under Certificate Numbers 10128 (7 shares),
10126 (129 shares) and 10717 (22.81 shares);

TOGETHER WITH Water Right Nos. 37-11093 and 37-11095.