DE ✓

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 with be returned

1. Water Right No(s).: 35-8096 WR

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:

   The Bank of Commerce
   c/o Western AgCredit
   406 W. South Jordan Parkway, Suite #500
   P.O. Box 95850
   South Jordan, UT 84095-0850.

4. Name of Water Right Owner/Claimant(s):

   SHUMWAY BROTHERS DAIRY, an Idaho General Partnership; CHARLES BRENT SHUMWAY; JANET SHUMWAY; KIRT HART SHUMWAY and JULIE R. SHUMWAY

5. Expiration Date of Notification Period: June 1, 2027

6. Is this a Renewal of Request for Notification ( ) YES (X) NO

   The Bank of Commerce
   By: Western AgCredit, FLCA, Servicing Agent

7. Signature(s) (and title if applicable): By: _____
   David G. Brown
   Vice President – Credit Services

For Office Use Only

Received by _____ Date _____ Fee $25-
Receipted by JC Date 6-6-07 Receipt No. E032972
Processed by _____ Date _____ WR _____ Date _____

RECEIVED
JUN 0 6 2007
Department of Water Resources
Eastern Region

INSTRUCTIONS

This for has been prepared to assist persons having a security interest in a water right to request notification from the Department of Water Resources (IDWR) regarding any change in ownership of the water rights or of any proposed or final action to amend, transfer or otherwise modify the water as provided in Section 42-248(6), **Idaho Code.** The filing of a request for notification is a voluntary action by the holder of the security interest and is not required by law.

1. Please enter the water right or adjudication claim number(s) at **Item 1**. If you believe there are water rights for the property but the numbers are unknown, you may wish to contact IDWR for assistance in identifying the water rights for the property in question. If claims for the rights are required, and have not been filed, IDWR will so advise you.

2. The information described at **Item 2** is required, since IDWR can not process the request without documentation of a security interest. Common types of documentation are shown.

3. The name, mailing address, and telephone number of the person or company desiring notification is entered at **Item 3**.

4. At **Item 4**, please provide the name of the owner/claimant of the water right(s) listed.

5. At **Item 5**, please enter expiration date of the security interest or other date defining the end of the period for which notification is requested. The notification period can be renewed by completing a new form with the appropriate fees as shown below. If the security interest is terminated prior to the expiration date requested, the holder must notify IDWR within 60 days of termination.

6. At **Item 6**, please indicate if this is a renewal of a prior notice.

7. The person(s) desiring notification must sign the form in the space(s) provided at Item 7. For corporations or other organizations, the person signing must be an officer of the corporation or otherwise have authority to sign for the organization and must include their title with the signature.

8. Include the appropriate filing fee. There is a fee of $25.00 per water right or adjudication claim. Renewals, if necessary, are also $25.00 per water right or adjudication claim.

9. When complete you should retain a copy and return the completed original form to the IDWR office nearest you:

IDWR Western Region
2735 Airport Way
Boise, ID 83705-5082
(208) 334-2190

IDWR Northern Region
1910 Northwest Blvd., Suite 210
Coeur d'Alene, ID 83814-2615
(208)769-1450

IDWR Southern Region
1341 Fillmore Street, Suite 200
Twin Falls, ID 8331-3380
(208) 736-3033

IDWR Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, ID 834202-1718
(208) 525-7161

RECEIVED
JUN 0 6 2007
Department of Water Resources
Eastern Region

Recording Requested by:

WHEN RECORDED MAIL TO:

The Bank of Commerce
1730 West Broadway
P.O. Box 1887
Idaho Falls, Idaho 83403

Instrument # 581282
BINGHAM COUNTY
2007-05-29 04:11:50 No. of Pages: 13
Recorded for : FIRST AMERICAN TITLE COMPANY
SARA J. STAUB Fee: 39.00
Ex-Officio Recorder Deputy

COPY

Space Above This Line For Recorder's Use

Loan Number(s): 4100600-851 and 4100600-852

REAL ESTATE MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT

THIS MORTGAGE is made this **8th day of May, 2007**, between **SHUMWAY BROTHERS DAIRY, an Idaho General Partnership (Parcels 1, 2 and 3); and CHARLES BRENT SHUMWAY and JANET SHUMWAY, husband and wife, as to an undivided one half interest and KIRT HART SHUMWAY and JULIE R. SHUMWAY, husband and wife, as to an undivided one half interest (Parcels 4, 5 and 6)** hereinafter called "**Mortgagor**", and **The Bank of Commerce** hereinafter called "**Mortgagee**", having its principal place of business in **Idaho Falls, Idaho.**

WITNESSETH: That Mortgagor IRREVOCABLY GRANTS, BARGAINS, SELLS, CONVEYS AND ASSIGNS unto Mortgagee together with right of entry and possession the following described real property situated in the County of **Bingham**, State of **Idaho**, described in **Exhibit "A"**.

TOGETHER WITH: all buildings, structures, equipment, fixtures (including trees, vines and shrubs) and improvements of every kind and description now or hereafter constructed or placed thereon; all standing timber and timber to be cut located thereon; all existing and future water rights, however evidenced, including irrigation and watering equipment and systems, ditches, laterals, conduits, and rights-of-way used to convey such water or to drain the above-described property, all of which rights are hereby made appurtenant to the property, and all pumping plants, electrical generators, wind machines, and fencing and storage tanks, now or hereafter used in connection with the property, all of which are hereby declared to be fixtures; all existing and future grazing rights, leases, permits and licenses; all oil, gas, and mineral leases, permits and rights used with the property; all tenements, hereditaments, easements, rights-of-way and appurtenances to the property; and all right, title, and interest at any time of Mortgagor (or any of its bailees, agents, or instrumentalities), whether now existing or hereafter arising or acquired, whether direct or indirect, whether owned legally, of record, equitably or beneficially, whether constituting real or personal property (or subject to any other characterizations), whether created or authorized under existing or future laws or regulations, and however arising in, including without limitation, the water, water rights and other assets and items described below in subparagraphs (a) through (h) which shall collectively be called "**Water Assets**" (hereafter collectively referred to as the "**Property**"). References to "**Water**" and "**Water Rights**" are used herein in the broadest and most comprehensive sense of the term(s). The term "**Water**" includes water rights and right to water or whatever rights to money, proceeds, property or other benefits are exchanged or received for or on account of any Water Assets or any conservation or other nonuse of water, including whatever rights are achieved by depositing one's shares of any Water Assets in any water bank or with any water authority, or any other water reallocation rights:

a. All water (including any water inventory in storage), water rights and entitlements, other rights to water and other rights to receive water or water rights of every kind or nature whatsoever including (i) the groundwater on, under, pumped from or otherwise available to the Property, whether as the result of groundwater rights, contractual rights or otherwise, (ii) Mortgagor's right to remove and extract any such groundwater including any permits, rights or licenses granted by any governmental authority or agency or any rights granted or created by any use, easements, covenant, agreement or contract with any person or entity, (iii) any rights to which the Property is entitled with respect to surface water, whether such right is appropriative, riparian, prescriptive, decreed or otherwise and whether or not pursuant to permit or other governmental authorization, or the right to store any such water, (iv) any water, water right, water allocation, distribution right, delivery right, water storage right, or other water-related entitlement appurtenant or otherwise applicable to the Property by virtue of the Property being situated within the boundaries of any district, agency, or other governmental entity or within the boundaries of any private water company, mutual water company, or other non-governmental entity;

b. All stock, interest or rights (including any water allocations, voting or decision rights) in any entity, together with any and all rights from any entity or other person to acquire, receive, exchange, sell, lease, or otherwise transfer any water or other Water Assets, to store, deposit or otherwise create water credits in a water bank or similar or other arrangement for allocating water, to transport or deliver water, or otherwise to deal with any Water Asset;

c. All licenses, permits, approvals, contracts decrees, rights and interest to acquire or appropriate any water or other Water Assets, water bank or other credits evidencing any right to water or other Water Assets, to store, carry, transport or deliver water or other Water Assets, to sell, lease, exchange, or otherwise transfer any water or other Water Asset, or to change the point for diversion of water, the location of any water or Water Asset, the place of use of any water or Water Asset, or the purpose of the use of any water or Water Asset;

d. All rights, claims, causes of action, judgments, awards, and other judicial, arbiter or administrative relief in any way relating to any water or Water Asset;

e. All storage and treatment rights for any water or any other Water Asset, whether on or off the Property or other property of Mortgagor, together with all storage tanks, and other equipment used or usable in connection with such storage and any water bank deposit credits, deposit accounts or other rights arising on account of the storage or nonuse of any water or any water or any other Water Asset;

f. All rights to transport, carry, allocate or otherwise deliver water or other Water Assets by any means wherever located;

g. All guaranties, warranties, marketing, management or service contracts, indemnity agreements, and water right agreements, other water related contracts and water reallocation rights, all insurance policies regarding or relating to any Water Asset;

h. All rents, issues, profits, proceeds and other accounts, instruments, chattel paper, contract rights, general intangibles, deposit accounts, and other rights to payment arising from or on account of any use, nonuse, sale, lease, transfer or other disposition of any Water Asset.

Absolute Assignment of All Revenue From Water Assets - Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all proceeds, rents, issues and profits from any use (apart from watering plants on the Property or other ordinary use on the Property), nonuse, sale, lease, transfer or disposition of any kind of any water or any other Water Asset subject to a lien in favor of Mortgagee. That assignment shall be perfected automatically without appointment of a receiver or Mortgagee becoming a mortgagee in possession and Mortgagee shall have the right, before or after the occurrence of any default or event of default, to notify any account debtor to pay all amounts owing with respect to those proceeds, rents, issues and profits directly to Mortgagee. Except as otherwise agreed in writing by Mortgagee, Mortgagee may apply any such collection (and any rents, issues, profits and proceeds) to any indebtedness owed to Mortgagee in any order, priority or manner desired by Mortgagee.

MORTGAGOR ABSOLUTELY AND UNCONDITIONALLY ASSIGNS, transfers, conveys and sets over to Mortgagee all the rents, royalties, issues, profits, revenue, income and other benefits of the property arising from the use or enjoyment of all or any portion thereof or from any lease, mineral lease, or agreement pertaining thereto (collectively the "**Rents**"); SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Mortgagor by Paragraph B.3 hereof.

PERSONAL PROPERTY SECURITY AGREEMENT: All of the Property will be considered to the fullest extent of the law to be real property for purposes of this Mortgage. To the extent that any of the Property, (including without limitation any Water Assets or fixtures), is deemed to constitute, is adjudicated to be, or declared to be personal property, this Mortgage shall also be deemed to be a security agreement. Mortgagor does hereby create and grant to Mortgagee a security interest in all such personal property described herein; and further, grants to Mortgagee all of the rights and remedies of a secured party under the Uniform Commercial Code and other applicable state law, which rights are cumulative.

FIXTURE FILING: This Mortgage shall also be deemed to be a fixture filing under the Uniform Commercial Code and is to be recorded in the county real estate records.

FOR THE PURPOSE OF SECURING: (1) payment of the indebtedness or obligations evidenced by the following promissory note(s) and/or guaranties executed by Mortgagor and/or others to the Mortgagee at the times, in the manner and with interest as therein set forth **(notes may contain variable or adjustable rate provisions)**:

[**X**] a Promissory Note or a Supplement to Master Loan Agreement dated as of **May 8, 2007**, in the stated principal amount of **$222,000.00**.

[**X**] a Revolving Line of Credit Promissory Note or a Revolving Credit Supplement to Master Loan Agreement dated as of **May 8, 2007**, in the stated principal amount of **$191,000.00**.

(2) The payment of such additional loans or advances, including advances under a revolving line of credit, with interest thereon, as hereafter may be made to Mortgagor, or Mortgagor's successors or assigns, and/or to parties whose obligation Mortgagor is guaranteeing, evidenced by a promissory note or otherwise and any obligations evidenced by any guaranties executed by Mortgagor in favor of Mortgagee; PROVIDED HOWEVER, THAT, such additional loans advances guaranty obligations shall be secured by this Mortgage only if the promissory note, guaranty, or other document evidencing such loans or advances shall recite that it is to be secured by this Mortgage; (3) the payment of any substitute notes, renewals, reamortizations, and extensions of all indebtedness secured by this Mortgage; (4) the performance of every obligation and agreement of Mortgagor whether contained or incorporated by reference in this Mortgage, or contained in any loan document or guaranty executed by Mortgagor in favor of Mortgagee, with respect to any loan, advance, or guaranty secured by this Mortgage; and (5) the payment of all sums expended or advanced by Mortgagee under or pursuant to the terms of this Mortgage, together with interest thereon as herein provided. The continuing validity and priority of this Mortgage as security for future loans, advances, or guaranties shall not be impaired by the fact that at certain times hereafter there may exist no outstanding indebtedness from Mortgagor to Mortgagee or no commitment to make loans or advances.

A. **TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR AGREES**:

1. To use loan proceeds solely for the purposes set forth in the loan application(s) or agreements.

2. To keep the Property in good condition, working order and repair; care for the Property in accordance with standards of good husbandry and to keep all trees, vines and crops on said land properly cultivated, irrigated, fertilized, sprayed, and fumigated; not to remove, destroy or suffer the removal or destruction of any building, fence, canal, well or other improvements or fixtures thereon; not to remove, replace or alter any horticultural or viticultural tree, vine or shrub planted thereon without the prior written consent of Mortgagee, except in the ordinary course of business; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions

affecting the Property; not to commit or permit waste thereof'; not to commit, suffer or permit any act upon the Property in violation of law; to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general; to observe and perform all obligations of Mortgagor under any lease of the Property.

3. To provide, maintain and deliver to Mortgagee fire and all other types of insurance of the type and in amounts as Mortgagee may require, with loss payable clauses solely in favor of Mortgagee. In the event of loss, the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event that the Mortgagor shall fail to provide satisfactory hazard insurance, Mortgagee may procure, on Mortgagor's behalf, insurance in favor of Mortgagee alone. If insurance cannot be secured by Mortgagor to provide the required coverage, such inability shall constitute an event of default hereunder.

4. To appear in and litigate any action or proceeding purporting to affect the security hereof, the title to the Property, or the rights or powers of Mortgagee; Mortgagee may appear in and litigate any such action or proceedings, including any bankruptcy, partition or condemnation proceeding, affecting the Property, or Mortgagee's interest therein, in which event Mortgagor agrees to pay all costs and expenses thereof, including attorney's fees and costs of securing evidence of title.

5. To pay on or before the due date all taxes and assessments affecting the Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property; to pay, when due, all encumbrances, charges, and liens, on the Property or any part thereof, which at any time appear to be prior or superior hereto.

6. In case of any suit to foreclose this Mortgage or to collect any charge arising out of the debt hereby secured, or of any suit which the Mortgagee may deem necessary to prosecute or defend to effect or protect the lien herein, including any proceeding in bankruptcy, or if Mortgagee retains an attorney to advise Mortgagee in connection with this Mortgage or any other agreement related to the indebtedness secured by this Mortgage, Mortgagor agrees to pay a reasonable sum as attorney's fees and all costs and legal expenses in connection with said suit, and further agrees to pay the reasonable costs of searching the records and abstracting or insuring the title, and such sums, costs and expenses shall be secured hereby and shall be included in any decree of foreclosure. The fees and costs described herein and elsewhere in this Mortgage shall be in addition to those set forth in the loan agreement or any other written agreement between Mortgagor and Mortgagee.

7. Should Mortgagor fail to make any payment or to do any act as provided for in this Mortgage, then Mortgagee, but without obligation to do so and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the Property, Mortgagee being authorized to enter upon the Property for such purposes; commence, appear in and litigate any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee, including any bankruptcy proceeding affecting the Property; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefore, including attorney's, accountant's, and appraisal fees, environmental fees, and costs of securing evidence of title, and all amounts so expended shall be obligations of Mortgagor secured by this Mortgage. Nothing contained herein shall prohibit Mortgagee from entering the Property, at a reasonable time and upon reasonable notice to Mortgagor, without incurring or assuming any obligations or liabilities whatsoever, for the sole purpose of inspecting the Property.

8. To pay immediately and without demand all sums expended by Mortgagee pursuant to the provisions hereof, with interest from date of expenditure at the same rate as is provided for in the note or notes secured by this Mortgage. In the event that such sums are not immediately paid, they shall be added, along with the appropriate amount of capital stock or participation certificates, to the principal balance of the indebtedness secured hereby and shall accrue interest as herein set forth. All such sums shall be secured hereby.

9. Environmental Representations, Warranties and Covenants.

(a) Except as disclosed in writing to Mortgagee, or except as otherwise provided in any loan agreement between Mortgagee and Mortgagor which specifically refers to the Property, to the best knowledge of Mortgagor after due inquiry, Mortgagor hereby further represents, warrants and covenants as follows:

(i) No pollutants, contaminants (including oil or other petroleum products), toxic or hazardous substances, or solid or hazardous wastes, as such terms are defined under any federal, state or local Environmental Law, regulation or ordinance (hereinafter "**Contaminants**") have been, are being or will be generated, manufactured, produced, stored, disposed of, discharged, released threatened to be released, or otherwise allowed to migrate or escape on, under or from the Property in such quantities or concentrations as would violate any federal, state or local Environmental Law, regulation or ordinance or as would require Mortgagor to report such condition to any governmental authority or to undertake removal or remedial action to clean up such contaminants;

(ii) No Contaminants are located on, in or under any property located adjacent to the Property in such quantities or concentrations as would constitute a violation of any Environmental Law or as would require the owner of the adjacent property to report such condition to any governmental authority or to undertake removal or remedial action to clean up such Contaminants;

(iii) Neither the Property, nor any portion thereof, nor any adjacent property or portion thereof, has been or is proposed to be listed under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), or any analogous state law. Mortgagor shall immediately notify Mortgagee if Mortgagor acquires any information concerning the listing or proposed listing of the Property or any adjacent property and shall provide Mortgagee with any documents in Mortgagor's possession relative thereto;

(iv) No hazardous wastes, as defined under the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), or any analogous state law ("**Hazardous Wastes**"), have been, are being or will be stored or treated in surface impoundments or other structures or facilities located on the Property that are partially or entirely below the ground surface;

(v) No litigation, investigation, administrative "**Action**") has previously been brought, is now pending, or to the best knowledge of Mortgagor threatened against or anticipated by Mortgagor, with respect to Mortgagor's use or management of Hazardous Materials or Hazardous Wastes or the environmental condition of the Property, including any underlying groundwater. Upon learning thereof, Mortgagor shall immediately notify Mortgagee of any such Action or threatened Action and provide Mortgagee with copies of all documentation relative thereto; and

(vi) Except as disclosed in writing to Mortgagee, no underground tanks, wells (except domestic water wells), septic tanks, ponds, pits or any other storage tanks ("**Tanks**") (whether currently in use or abandoned) are or were located on or under the Property and no Tanks are or were serving the Property described herein. With respect to any Tanks disclosed in writing

to Mortgagee, Mortgagor shall comply with all federal, state and local laws, regulations and ordinances and any requirements of city or county fire departments, applicable to the maintenance and use of such Tanks, including, without limitation, Title 40 of the Code of Federal Regulations Part 112.

(b) Nothing herein shall be deemed to prohibit Mortgagor from (i) using, handling or storing hazardous materials or substances, as defined under any federal, state or local law, regulation or ordinance ("**Hazardous Materials**") or (ii) storing or treating non-hazardous wastes, so long as such activities are carried out (a) in a good and husbandlike manner in the ordinary course of business, and (b) in compliance with all applicable environmental laws, regulations, permits, orders or other requirements.

(c) In the event that Mortgagor is in breach of any of its representations, warranties or covenants as set forth above, Mortgagor, at its sole expense, shall take all action required, including environmental cleanup of the Property, to comply with the representations, warranties and covenants herein or applicable legal requirements and, in any event, shall take all action deemed necessary by appropriate governmental authorities. Mortgagee shall have the right, but not the obligation, to advise appropriate governmental authorities of any environmental condition on or affecting the Property that constitutes or may constitute a breach of Mortgagor's obligations hereunder.

(d) Mortgagor and its successors and assigns shall indemnify, defend, protect, and hold harmless Mortgagee, its directors, officers, employees, agents, shareholders, successors and assigns and their officers, employees or agents, from and against any and all claims, suits, damages, liens, losses, liabilities, interest, judgments, response and cleanup costs, demands, actions, causes of action, injuries, administrative proceedings and orders, consent agreements and orders, penalties, costs and expenses (including any fees and expenses incurred in enforcing this indemnity, any out-of-pocket litigation costs and the reasonable fees and expenses of counsel) of any kind whatsoever ("**Claims**") paid, incurred or suffered by, or asserted against Mortgagee, including but not limited to Claims arising out of loss of life, injury to persons, trespass or damages to or contamination of property or natural resources, or injury to business, in connection with or arising out of the activities of Mortgagor on the Property, Mortgagor's predecessors in interest, third parties who have been invited, permitted or trespassed on the Property, or parties in a contractual relationship with Mortgagor, or any of them, or which directly or indirectly arise out of or result from or in any way connected with the Property, whether or not caused by Mortgagor or within the control of Mortgagor, including without limitation: (i) the presence, use, generation, treatment, storage, disposal, release, threatened release, or discharge of any Hazardous Material or Contaminant at or from the Property and/or the cleanup of Hazardous Materials or Contaminants within, on or under the Property; (ii) Mortgagor's breach of any of the representations, warranties and covenants contained herein; and (iii) Mortgagor's violation or alleged violation of any applicable Environmental Law, regulation or ordinance.

(e) Mortgagor's representations, warranties, covenants and indemnities contained herein shall survive the occurrence of any event whatsoever, including without limitation the payoff of any promissory note(s) secured hereby, the release or foreclosure of this Mortgage, the acceptance by Mortgagee of a deed in lieu of foreclosure, or any transfer or abandonment of the Property.

(f) The term "**Environmental Law**" shall mean any federal, state or local law, statute, ordinance, or regulation, now in effect or hereinafter enacted, pertaining to health, industrial hygiene, or the environmental conditions on, under or about the Property, including but not limited to enactments requiring the removal or containment of asbestos-containing materials in private buildings.

(g) Mortgagor shall permit, or cause any tenant of Mortgagor to permit, Mortgagee or its agents, or independent contractors to enter and inspect the Property at any reasonable time for purposes of determining, as Mortgagee deems necessary or desirable: (i) the existence, location and nature of

any Hazardous Materials or Hazardous Wastes on, under or about the Property, (ii) the existence, location, nature, magnitude and spread of any Hazardous Materials or Hazardous Waste that has been spilled, disposed of, discharged or released on, under or about the Property, or (iii) whether or not Mortgagor and any tenant of Mortgagor is in compliance with applicable Environmental Law. If Mortgagor or its tenants fail to comply fully with the terms of this subdivision (g), Mortgagee may obtain affirmative injunctive relief to compel such compliance.

10. Grazing Rights. If any portion of the Property described in this Mortgage is used by Mortgagor as the basis for obtaining grazing permits or other grazing rights issued by any governmental agency, including without limitations the Forest Service, U.S. Department of Agriculture or the Bureau of Land Management, U.S. Department of Interior, Mortgagor covenants and agrees as follows:

(a) Said grazing permits or other rights are in good standing and have not been modified, reduced or limited in any other respect, except as fully disclosed in writing to Mortgagee;

(b) Mortgagor will perform all obligations imposed as a requirement of exercise of said grazing permits or other rights and will comply with all laws, rules and regulations applicable thereto;

(c) Mortgagor will take such timely action as may be required to cause the renewal or reissuance of said grazing permits or other rights from time to time as they expire during the term thereof. Mortgagor agrees and acknowledges that the failure to renew or cause the reissuance of any said permits for any reason, whether the result of an act or omission of Mortgagor or for reasons beyond Mortgagor's control, is an event of default hereunder and Mortgagee shall have the right to exercise the rights hereinafter set forth in this Mortgage; and

(d) Mortgagor agrees to pay all fees, charges, rents or other payments accruing under said permits or any renewals thereof prior to delinquency. In the event Mortgagor fails to pay any such payment, the amount unpaid shall become a part of the indebtedness secured by this Mortgage and shall be immediately due and payable.

B. **IT IS MUTUALLY AGREED THAT:**

1. Any award of damages in connection with any taking or condemnation or injury to the Property by reason of public use, or for damages resulting from private trespass or injury to the Property, is absolutely and unconditionally assigned and shall be paid to Mortgagee, under the terms and conditions of this Mortgage pertaining to Rents. Upon receipt of such money Mortgagee may apply the same on the indebtedness secured hereby. Mortgagor agrees to execute such further documents as may be required to effect the assignments herein made as Mortgagee may require.

2. At any time, without affecting the liability of any person for the payment of the indebtedness secured hereby, and without otherwise affecting the security hereof, Mortgagee may (a) consent to or join in the making of any map or plat of the Property; (b) grant any easement or create any restriction thereof; (c) subordinate this Mortgage; (d) extend or modify the term of the loan or loans secured hereby; and (e) release without warranty, all or any part of the Property.

3. Prior to any default by Mortgagor in the payment, observance, performance and discharge of any condition, obligation, covenant, or agreement of Mortgagor contained herein, Mortgagor may, for collection and distribution purposes only, collect and receive the Rents as they come due and payable; the Rents are to be applied by Mortgagor to the payment of the principal and interest and all other sums due or payable on any promissory note or guaranty secured by this Mortgage and to the payment of all other sums payable under this Mortgage and, thereafter, so long as the aforesaid has occurred, the balance shall be distributed to the account of Mortgagor. Upon any such default, Mortgagee may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in his own name, sue for or otherwise collect such rents, issues and profits, including those past due and unpaid,

and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine; also perform such acts of repair, cultivation, irrigation or protection, as may be necessary or proper to conserve the value of the Property; also lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate; also prepare for harvest, remove, and sell any crops that may be growing upon the Property, and apply the proceeds thereof upon the indebtedness secured hereby.

4. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking of or damage to the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. Upon default by Mortgagor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Mortgagee and in accordance with applicable state law. In the event of default, Mortgagee may employ counsel to enforce payment of the obligations secured hereby, may foreclose and, if applicable, sell the Property by advertisement and sale, and in accordance with other applicable state law, and may exercise such other rights and remedies granted by law and equity, which rights and remedies shall be cumulative and not exclusive. Mortgagee may resort to and realize upon the security hereunder and any other real or personal property security now or hereafter held by Mortgagee for the obligations secured hereby in such order and manner as Mortgagee may, in its sole discretion, determine. Resort to any or all such security may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawful nonjudicial proceedings, or both. If the obligation secured by this Mortgage is also secured by personal property, fixtures or crops, Mortgagee may enforce its security interest in the personal property, fixtures and crops and its lien under this Mortgage in any manner and in any order or sequence permitted by applicable law. All remedies are cumulative and none are exclusive; no election by Mortgagee to pursue one remedy or item of collateral shall be deemed to be a release or waiver of any other item of collateral or a release or modification of the liability of Mortgagor or any guarantor to pay and perform in full all obligations to Mortgagee. The procedures governing the enforcement by Mortgagee of its foreclosure and provisional remedies against Mortgagor shall be governed by the laws of the state in which the Property is located. Nothing contained herein shall be construed to provide that the substantive law of the state in which the Property is located shall apply to Mortgagee's rights and Mortgagor's obligations hereunder or under the promissory note(s) or guaranties described herein, which are and shall continue to be governed by the substantive law of the state in which the promissory note(s) or guaranties were executed.

6. The failure on the part of the Mortgagee to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Mortgagee of any default shall not constitute a waiver of any other subsequent defaults. Subsequent acceptance of any payment by the holder hereof shall not be deemed a waiver of any default by Mortgagor, or of Mortgagee's rights hereunder as the result of any sale, agreement to sell, conveyance, or alienation, regardless of holder's knowledge of such default, sale, agreement to sell, conveyance, or alienation at the time of acceptance of such payment.

7. This Mortgage applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Mortgagee shall mean the holder and owner of any note secured hereby; or, if the note has been pledged, the pledgee thereof. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Mortgagor hereunder are joint and several.

8. (a) In the event the herein-described Property, or any part thereof, or any interest therein, is sold, agreed to be sold, conveyed, alienated or transferred, including any water transfer as defined in subsection (b) below, by Mortgagor, or by operation of law or otherwise, except by inheritance, without Mortgagee's prior written consent, all obligations secured hereby, irrespective of the maturity dates, at the option of the holder hereof, and without demand or notice, shall immediately become due and payable. Failure to exercise such option shall not constitute a waiver of the right to exercise this option in the event of subsequent sale, agreement to sell, conveyance or alienation.

a. A water transfer is any transfer, assignment, sale, exchange, gift, encumbrance, pledge, hypothecation, alienation, grant of option to purchase, or other disposition of, directly, indirectly or in trust, voluntarily or involuntarily, by operation of law or otherwise, or the entry into a binding agreement to do any of the foregoing with respect to all or any part of (i) the groundwater on, under, pumped from or otherwise available to the Property, (ii) Mortgagor's right to remove and extract any such groundwater including any permits, rights or licenses granted by any governmental authority or agency and any rights granted or created by any easement, covenant, agreement or contract with any person or entity, (iii) any rights to which the Property is entitled with respect to surface water, whether such right is appropriative, riparian, prescriptive or otherwise and whether or not pursuant to permit or other governmental authorization, or the right to store any such water, (iv) any water, water right, water allocation, distribution right, delivery right, water storage right, water allocation, or other water-related entitlement appurtenant or otherwise applicable to the Property by virtue of the Property's being situated within the boundaries of any district, agency, or other governmental entity or within the boundaries of any private water company, mutual water company, or other non-governmental entity, or (v) any shares (or any rights under such shares) of any private water company, mutual water company, or other non-governmental entity pursuant to which Mortgagor or the Property may receive any rights.

9. In the event any one or more of the provisions contained in this Mortgage or in any promissory note(s) hereby secured shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage or said promissory note(s), but this Mortgage and said promissory note(s) shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Signature(s):

SHUMWAY BROTHERS DAIRY, an Idaho General Partnership

By: C Brent Shumway
C. BRENT SHUMWAY, Partner

By:
KIRT H. SHUMWAY, Partner

Charles Brent Shumway
CHARLES BRENT SHUMWAY

Janet Shumway
JANET SHUMWAY

Kirt Hart Shumway
KIRT HART SHUMWAY

Julie R Shumway
JULIE R. SHUMWAY

Notary Acknowledgment(s):

STATE OF Idaho)
COUNTY OF Bingham) ss.

On this 29 day of May, 2007, before me, the undersigned Notary Public in and for said County and State, personally appeared C. BRENT SHUMWAY [( ) personally known to me] [( ) proved to me on the basis of satisfactory evidence] to be the person(s) who executed the within instrument as PARTNER of the partnership therein named, on behalf of the partnership, and acknowledged to me that the partnership executed it.

VIKI D. BAUER
NOTARY PUBLIC
STATE OF IDAHO

WITNESS my hand and official seal

Viki D Bauer
Notary Public in and for said County and State
Comm Expires: 3/29/08

STATE OF Idaho)
COUNTY OF Bingham) ss.

On this 29 day of May, 2007, before me, the undersigned Notary Public in and for said County and State, personally appeared KIRT H. SHUMWAY [( ) personally known to me] [( ) proved to me on the basis of satisfactory evidence] to be the person(s) who executed the within instrument as PARTNER of the partnership therein named, on behalf of the partnership, and acknowledged to me that the partnership executed it.

VIKI D. BAUER
NOTARY PUBLIC
STATE OF IDAHO

WITNESS my hand and official seal

Viki D Bauer
Notary Public in and for said County and State
Comm Expires: 3/29/08

STATE OF Idaho)
COUNTY OF Bingham) ss.

On this 29 day of May, 2007, before me, the undersigned Notary Public in and for said County and State, personally appeared CHARLES BRENT SHUMWAY [( ) personally known to me] [( ) proved to me on the basis of satisfactory evidence] to be the person(s) whose name(s) is/are subscribed to this instrument and acknowledged to me that he executed it.

VIKI D. BAUER
NOTARY PUBLIC
STATE OF IDAHO

WITNESS my hand and official seal

Viki D Bauer
Notary Public in and for said County and State
Comm Expires: 3/29/08

STATE OF Idaho)
COUNTY OF Bingham)ss.

On this 29 day of May, 2007, before me, the undersigned Notary Public in and for said County and State, personally appeared JANET SHUMWAY [( ) personally known to me] [(✓) proved to me on the basis of satisfactory evidence] to be the person(s) whose name(s) is/are subscribed to this instrument and acknowledged to me that she executed it.

VIKI D. BAUER
NOTARY PUBLIC
STATE OF IDAHO

WITNESS my hand and official seal

Viki D Bauer
Notary Public in and for said County and State
Comm Expires: 3/29/08

STATE OF Idaho)
COUNTY OF Bingham)ss.

On this 29 day of May, 2007, before me, the undersigned Notary Public in and for said County and State, personally appeared KIRT HART SHUMWAY [( ) personally known to me] [( ) proved to me on the basis of satisfactory evidence] to be the person(s) whose name(s) is/are subscribed to this instrument and acknowledged to me that he executed it.

VIKI D. BAUER
NOTARY PUBLIC
STATE OF IDAHO

WITNESS my hand and official seal

Viki D Bauer
Notary Public in and for said County and State
Comm Expires: 3/29/08

STATE OF Idaho)
COUNTY OF Bingham)ss.

On this 29 day of May, 2007 before me, the undersigned Notary Public in and for said County and State, personally appeared JULIE R. SHUMWAY [( ) personally known to me] [( ) proved to me on the basis of satisfactory evidence] to be the person(s) whose name(s) is/are subscribed to this instrument and acknowledged to me that she executed it.

VIKI D. BAUER
NOTARY PUBLIC
STATE OF IDAHO

WITNESS my hand and official seal

Viki D Bauer
Notary Public in and for said County and State
Comm Expires: 3/29/08

EXHIBIT "A"

Parcel 1:
A portion of Lot 5 of Section 18, Township 1 North, Range 37 E.B.M., Bingham County, Idaho, described as: Beginning at a point on the East bank of the Woodville Canal, said point of beginning being N. 89°51' E. 2002 feet from the SW corner of said Section 18, thence N. 3°50' E. along said East bank of said canal 418 feet; thence N. 6°30' E. along the East bank of said canal 780 feet; thence N. 16°15' W. along the East bank of said canal 133.49 feet; thence N. 89°51' E. 225.10 feet; thence S. 54 feet; thence S. 5°50' W. 921.42 feet; thence S. 3°50' W. 350.43 feet; thence S. 89°51' W. 187 feet to the point of beginning, EXCEPT the right-of-way of the Woodville Canal.

ALSO: Beginning at a point that is N. 89°51' E. 2189.00 feet and N. 3°50' E. 200.00 feet from the SW corner of said Section 18, and running thence N. 3°50' E. 150.43 feet; thence N. 89°51' E. 211.5 feet; thence South 150.43 feet; thence S. 89°51' W. 211.5 feet to the point of beginning.

Parcel 2:
Commencing at a point 208 feet due North the SW corner of Lot 5 of Section 18, Township 1 North, Range 37 E.B.M., Bingham County, Idaho; land running thence due E. 688 feet to the Westerly right-of-way line of the Woodville Canal; thence North along said right-of-way 500 feet; thence W. 688 feet to the West line of Lot 5; thence S. 500 feet to the Point of Beginning.

Parcel 3:
Commencing at a point 640 feet E. of the SW corner of Lot 5 of Section 18, Township 1 North, Range 37 E.B.M., Bingham County, Idaho; and running thence N. 208 feet; thence E. 48 feet; thence S. 208 feet; thence W. 48 feet to the Point of Beginning.

Parcel 4:
That portion of the SE¼NE¼SW¼ of Section 18, Township 1 North, Range 37 E.B.M., Bingham County, Idaho lying S. and E. of Interstate 15 right-of-way and W. of the existing Woodville Canal right-of-way.

Parcel 5:
All of Lots 3, and 4, also described as the W½ of the SW¼ of Section 18, Township 1 North, Range 37 E.B.M., Bingham County, Idaho; and ALSO commencing at the SW corner of Lot 5 (SE¼SW¼) of Section 18, and running thence due E. 208 feet; thence due N. 208 feet; thence due W. 208 feet; thence due S. 208 feet to the Point of Beginning. EXCEPTING road.

Parcel 6:
All of that part of Lot 5, Section 18, Township 1 North, Range 37 E.B.M., Bingham County, Idaho lying W. of the Woodville Canal, EXCEPTING the following tract: commencing at the SW corner of Lot 5 (SE¼SW¼) of Section 18, and running thence due E. 208 feet; thence due N. 208 feet; thence due W. 208 feet; thence due S. 208 feet to the Point of Beginning ALSO EXCEPTING from the above the following parcels:

A: Part of the SW¼ of Section 18, Township 1 North, Range 37 E.B.M., Bingham County, Idaho described as: Beginning at a point that is S. 89°43'00" E. 1126.21 feet along the section line and N. 05°23'54" E. 36.23 feet to a point on the Northerly right-of-way of Interstate Project I-15-2(8) 104 of Grade Separation No. 7 from the SW corner of said Section 18 and running thence N. 05°23'54" E. 125.79 feet; thence S. 88°00'10" E. 177.69 feet; thence S. 00°33'51" W. 126.06 feet to the Northerly right-of-way of a county road; thence N. 89°43'00" W. 144.44 feet along said Northerly right-of-way of Project I-15-2(8) 104 Grade Separation No. 7; thence N. 81°48'20" W. 44.19 feet along said right-of-way to

the Point of Beginning.

B: Part of the SW¼ of Section 18, Township 1 North, Range 37 E.B.M., Bingham County, Idaho described as: Beginning at a point that is S. 89°43'00" E. 1522.03 feet along the section line from the SW corner of said Section 18 and running thence N. 04°12'03" E. 213.43 feet; thence N. 89°31'46" E. 169.53 feet; thence S. 04°32'12" W. 215.76 feet to the section line; thence N. 89°43'00" W. 167.97 feet along the section line to the Point of Beginning.

C: Commencing at a point 208 feet due N. of the SW corner of Lot 5, Section 18, Township 1 North, Range 37 E.B.M., Bingham County, Idaho; and running thence due E. 688 feet to the Westerly right-of-way line of the Woodville Canal; thence N. along said right-of-way 500 feet; thence W. 688 feet to the W. line of Lot 5; thence S. 500 feet to the Point of Beginning.

D: Commencing at a point 640 feet E. of the SW corner of Lot 5, Section 18, Township 1 North, Range 37 E.B.M., Bingham County, Idaho; and running thence N. 208 feet; thence E. 48 feet; thence S. 208 feet; thence W. 48 feet to the Point of Beginning.

ALSO EXCEPTING from all Parcels that portion conveyed to the State of Idaho by Deed recorded April 18, 1960, as Instrument No. 73420.

TOGETHER WITH 171.29 SHARES of water stock in the THE WOODVILLE CANAL COMPANY.

ALSO TOGETHER with the following water rights registered with the State of Idaho Department of Water Resources: Water Right Number(s): 35-8096.