

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
JUN 14 2005
Department of Water Resources
Southern Region

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. RECEIVED JUN 15 2005
Incomplete forms will be returned.

1. Water Right No(s): 47-137A, 47-175, 47-176, 47-188, 47-2496A, 47-2496B, 47-2509, 47-7529, 47-4107B
Adjudication Claim No(s): 47-12300

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

Brent A. Funk and Chalet Funk

2786 Rock Creek Road

Hansen, ID 83334

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

Luis M. Bettencourt and Sharon Bettencourt
dba Bettencourt Dairy Southside

5. Expiration Date of Notification Period July 1, 2009

6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO

7. Signature(s) (and title if applicable)

MAGIC MILK DAIRY, INC.

By: X Brent A. Funk
Brent A. Funk, President

For Office Use Only

Received by <u>ff</u>	Date <u>7/14/05</u>	Fee <u>250.00</u>
Received by <u>ff</u>	Date <u>7/14/05</u>	Receipt No. <u>5027813</u>
Processed by <u>ff</u>	AJ Date _____	WR _____ Date _____

Twin Falls County, Idaho

Recorded for:
TITLE FACT INC

12:10pm Jul.02,2004

2004 - 014351

No. of Pages: 11 Fee: \$33.00

KRISTINA GLASCOCK

County Clerk

Deputy: KH

MORTGAGE AND SECURITY AGREEMENTTHIS MORTGAGE and SECURITY AGREEMENT is made by *LUIS M.*

BETTENCOURT and *SHARON BETTENCOURT*, husband and wife, d.b.a. *BETTENCOURT DAIRY SOUTHSIDE*, of P.O. Box 587, Jerome, Idaho 83338, (Mortgagor) to *MAGIC MILK DAIRY INC.*, an Idaho corporation, of 2786 B Rock Creek Road, Hansen, Idaho 83334, (Mortgagee).

WITNESSETH:

The Mortgagor, in consideration of the sum of Two Million Six Hundred Sixty Thousand Dollars (\$2,660,000.00), receipt of which is hereby acknowledged, hereby grants, bargains, sells, conveys, assigns, and mortgages unto the Mortgagee, and Mortgagee's successors and assigns, real estate described on Exhibit A located in Twin Falls County, State of Idaho, TOGETHER with all and singular the improvements thereon and all water and water rights, including but not limited to, those water rights described on Exhibit D, grazing rights, and all other rights and privileges owned by the Mortgagor or belonging to, or with, leading to, connected with or usually had or enjoyed in connection with the real estate or any part thereof, whether or not hereinabove expressly mentioned, described and all and singular the tenements, hereditaments, and appurtenances thereunto belonging in anywise appertaining and the rents, issues and profits thereof.

In addition, the Mortgagor grants a security interest in all dwellings and outbuildings described on Exhibit B, barn equipment described on Exhibit C, irrigation equipment described on Exhibit E, and the Twin Falls CAFO (LCO) Permit described on Exhibit F, including any and all its that may be a fixture on the real property described on Exhibit A, together with all additions, replacements, accessions, and repairs thereto.

This Mortgage shall include and apply to the real estate, improvements, and fixtures this Mortgage shall be recorded in the office of the County Recorder, County of Twin Falls, State of

FLETCHER LAW OFFICE
BURLEY, IDAHO

Idaho, as a fixture filing in such cases made and provided.

This Mortgage secures payment of a Promissory Note of the same date, in the principal sum of Two Million Six Hundred Sixty Thousand Dollars (\$2,660,000.00). The last installment on the note is due and payable on July 1, 2009.

If the Mortgagor pays all principal, interest and other sums required by the note and fully performs the terms of the note and this Mortgage, this conveyance shall be void. If the Mortgagor fails to pay any of the sums of money as specified or shall fail to comply with any of the terms of the promissory note or mortgage, the Mortgagee may declare the remaining principal balance together with unpaid interest and other sums owing to be immediately due and payable and proceed to foreclose this Mortgage. The Mortgagee shall also have all of the rights and remedies of a secured party upon default under the Uniform Commercial Code of the State of Idaho. The remedies shall be cumulative.

Mortgagor covenants, agrees, and represents as follows:

1. Mortgagor has valid and unencumbered title in fee simple to the real and personal property above described and they are the lawful owners and in possession of the property and the Mortgagor has the right to convey or mortgage all of the property; the Mortgagor will not suffer or permit the property to become subject to any lien or encumbrance that shall have precedence over this Mortgage; the Mortgagor warrants and will defend the title against all claims and demands of all persons whomsoever. Mortgagor will pay all taxes, assessments and other charges that may be levied or assessed against the property when due. Mortgagor will immediately reimburse Mortgagee for such obligations paid by Mortgagee with interest at the rate of ten percent (10%) per year. These obligations are secured by this Mortgage.

2. In the event an attorney is retained to enforce this Mortgage, the defaulting party shall pay all attorney fees and costs incurred by the non-defaulting party. If Mortgagee files a foreclosure action Mortgagee shall be entitled to recover all fees and costs incurred in protecting

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2 Mortgagee's position or enforcing Mortgagee's rights prior to, during or following the action, including
3 those incurred in other courts or tribunals, including bankruptcy court. The attorney's fees and costs
4 shall be secured by this Mortgage.

5 3. Either party may apply to a court of competent jurisdiction for the appointment
6 of a receiver in the event foreclosure of the mortgage or security agreement has commenced. Upon
7 appointment, the receiver shall take, remain in possession of and control the mortgage property until
8 the final determination of such suit or proceeding.

9 4. Mortgagee may release any portion of the mortgaged property without impairin
10 or affecting Mortgagee's rights in the remaining property.

11 5. In the event of default the Mortgagor hereby assigns to Mortgagee all leases of
12 the mortgaged property. No such lease shall be assigned to any party other than the Mortgagee without
13 written consent of the Mortgagee.

14 6. In the event of default, the Mortgagor hereby irrevocably assigns and transfers t
15 Mortgagee all moneys, payments and proceeds and benefits due or to become due the Mortgagor from
16 or in connection with any government program.

17 7. The Mortgagor agrees to do all things necessary to perfect and file for water
18 rights on the property under the adjudication process now in effect in the State of Idaho. The
19 Mortgagor will give to the Mortgagee such assurances as may be reasonably required from time to time
20 during the term of this Mortgage that the water rights have been perfected and all acts have been done
21 as may be required by the adjudication process.

22 8. If any part of the mortgaged property is condemned or taken by any
23 governmental entity, any award shall be paid to the Mortgagee to be applied to the balance owing on
24 the secured obligation with the balance, if any, to be paid to Mortgagor.

25 9. The Mortgagor shall keep the mortgaged property free and clear of all liens and
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2 encumbrances unless Mortgagor receives the prior written consent of the Mortgagee.

3 10. Time is of the essence of this Mortgage.

4 11. This Mortgage shall be binding upon the Mortgagor, and the heirs, successors
5 and assigns of Mortgagor.

6 12. If Mortgagor transfers any interest in or to the property without the written
7 consent of the Mortgagee all sums owing shall immediately be due and payable.

8 13. The Mortgagor shall not allow any deposits to be made on the real estate of any
9 toxic waste substance or hazardous substance as the same are defined by law.

10 14. The Mortgagor agrees to file such further financing statements as may be
11 required from time to time during the term of this Mortgage.

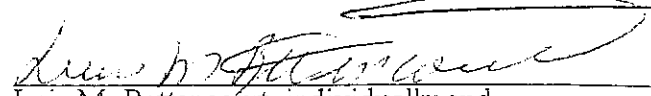
12 15. The interest rate, payment terms, or balance due on the note may be indexed,
13 adjusted, renewed or renegotiated without affecting the lien of this Mortgage or its priority in
14 accordance with Idaho Code § 45-116.

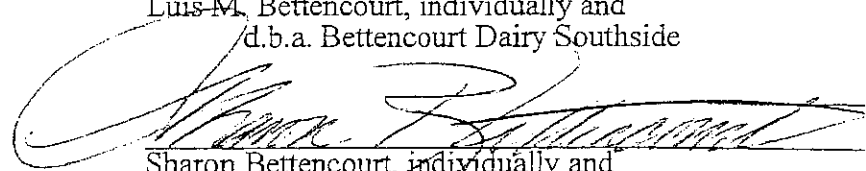
15 16. Mortgagor agrees to keep the structures and other improvements located on the
16 real estate insured with a reliable insurance company approved by Mortgagee against the risk of loss b
17 fire or other casualty in an amount not less than the replacement cost thereof. The policy shall be
18 endorsed to show the interest of Mortgagee. Proof of insurance shall be provided to Mortgagee not le:
19 than annually and at any time Mortgagee requests. The policy shall provide that is shall not be
20 cancelled without at least ten (10) days prior written notice to Mortgagee.

21 17. Mortgagees are relying upon the credit of the Mortgagors and Mortgagors' ability t
22 pay the debt and maintain the security, and therefore in the event that the Mortgagors sell, transfer,
23 assign, convey or otherwise hypothecate the security, the unpaid principal balance and all accrued
24 interest of the Note secured hereby shall at once, without notice, become immediately due and payable
25 even though the time of maturity has not arrived.
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18. Mortgagor authorizes Mortgagee to file UCC-1 financing statements, continuation statements, and such other filings as may be required in order to perfect the security interest of Mortgagee described herein.

DATED this 2nd day of July, 2004.

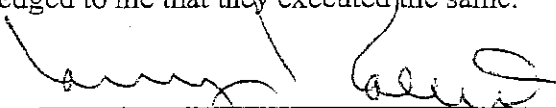

Luis M. Bettencourt, individually and
d.b.a. Bettencourt Dairy Southside


Sharon Bettencourt, individually and
d.b.a. Bettencourt Dairy Southside

STATE OF IDAHO)
County of Cassia) ss

On this 2nd day of July, in the year 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared **LUIS M. BETTENCOURT and SHARON BETTENCOURT**, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Larry Roberts
Notary Public
State of Idaho


Notary Public for Idaho
Residing at Burley, ID
My commission expires on 6-30-09

TOWNSHIP 11 SOUTH, RANGE 19 EAST, SECTION 31, EAST 1/2, TWIN FALLS COUNTY, IDAHO.

SUBJECT TO:

Highway District right of way.

Power Line Easement from Garnett Kidd and Alice Kidd, husband and wife, to the Idaho Power Company dated December 17, 1976, recorded February 16, 1977, as Instrument No. 710139, records of Twin Falls County, Idaho.

Power Line Easement from Garnett Kidd and Alice Kidd, and Dean Kidd and Rita Kidd, to the Idaho Power Company dated April 26, 1977, recorded September 14, 1977, as Instrument No. 722222, records of Twin Falls County, Idaho.

Underground Power Line Easement from Brent Funk, to the Idaho Power Company dated September 15, 1993, recorded August 15, 1994, as Instrument No. 1994-014529, records of Twin Falls County, Idaho.

Grant of Easement and Joint Use Agreement between Magic Milk Company, a partnership and Brent and Chalet Funk, recorded May 16, 1996, as Instrument No. 1996-008472, records of Twin Falls County, Idaho.

DWELLINGS

TYPE	PHYSICAL ADDRESS	DESCRIPTION	SQ FOOTAGE
MOBLE HOME	2913 N 4000 E HANSEN	1994 BROADMORE w/o Foundation	66 X 14
MOBLE HOME	2915 N 4000 E HANSEN	1994 FLEETWOOD w/o Foundation	48 X 14
DBL WIDE MOBILE	2921 N 4000 E HANSEN	1993 MARO On a Foundation	66 X 28
DWELLING	2951 N 4000 E HANSEN	BRICK/FRAME WORKERS HOME	1500 + BASE

OUTBUILDINGS

BUILDING	CONSTRUCTION	SQ FTAGE
CALF BARN	STEEL	8424
CALF SHED	FRAME - FEED STORAGE	200
CORRALS	PIPE AND CABLE	
SHADES	(11) STEEL	
DAIRY COMPLEX	CONCRETE	11040
SUPPLY SHED	FRAME/METAL	256
IMPLEMENT SHED	FRAME/METAL	1920
IMPLEMENT SHED	FRAME/METAL	1920
SHOP	QUONSET METAL	3648

BARN EQUIPMENT

QTY	ITEM	PURCHASE DATE
60	MILKING UNITS	1999
60	3" PIPELINE	1992
2	MILK PUMP RECEIVE SYS	1992
2	8000 GAL BULK TANKS	1992
2	VACUUM RESERVE TANKS	1992
1	20HP MOTOR	1992
1	25HP MOTOR	1992
15	WASH MANIFOLD SYSTEM	1992
30	MILKING PARLOR UNITS	1992
1	CROWD GATE	1992
1	30HP AIR COMPRESSOR	2001
2	97 GAL HOT WATER HTR	1992
1	100 GAL HOT WATER HTR	1999
1	150 KW GENERATOR W/DETROIT ENG	2001
1	13500 GAL WATER TANK	2001
1	50' LIGHT TOWER W/6 HIGH POWER LIGHTS	2001
30	MILKING PARLOR UNITS	1999

IRRIGATION PERSONAL PROPERTY

2	VALLEY FULL PIVOTS
128	JOINTS OF HAND LINES
1	75HP PUMP ON WELL BY PEN 3
1	50HP PUMP ON WELL BY PEN 1
1	75HP PUMP BEHIND SHOP AREA
1	50HP PUMP BEHIND SHOP AREA

WR	#	TYPE	AMOUNT	BASIS	PRIORITY DATE	USE
• 47	2496 A	WELL	69.5 IN	LICENSE	12/13/1943	IRRIGATION
• 47	2509	WELL	26 IN	LICENSE	5/31/1947	IRRIGATION
• 47	7529	ROCK CRK	199 IN	LICENSE	12/1/1967	IRRIGATION
• 47	188	ROCK CRK	58.5 IN	DECREE	11/29/1918	IRRIGATION
• 47	137 A	ROCK CRK	60 IN	DECREE	4/20/1880	IRRIGATION
• 47	176	ROCK CRK	80 IN	DECREE	9/23/1929	IRRIGATION
• 47	175	ROCK CRK	20 IN	DECREE	1/1/1918	IRRIGATION
• 47	2496 B	WELL	13.5 IN	LICENSE	12/13/1943	DAIRY
• 47	12300	WELL	2 IN	DECREE	12/31/1940	DOMESTIC
• 47	4107 B	WELL	95** IN	CLAIM	6/1/1948	IRRIGATION

** THIS CLAIM IS IN QUESTION SINCE STILL IN THE NAME OF GARNET KIDD.
IDWR IS STILL RESEARCHING THIS.

AND ANY OTHER WATER RIGHT APPURTENANT TO THE REAL PROPERTY DESCRIBED
ON EXHIBIT A.



Map of 31 11 19 E1/2

400 0 400 800 1200 1600 Feet



Map Printed: Jun 8, 2005