

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

RECEIVED  
MAR 21 2006  
WATER RESOURCES  
WESTERN REGION

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).: 63-9295, 63-10018, 63-21030, 63-11505  
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  
America First Federal Credit Union  
4645 South 1500 West, Suite 130  
Riverdale, Utah 84405
4. Name of Water Right Owner/Claimant(s) Wallace & Eda Rae Connolly
5. Expiration Date of Notification Period March 31, 2009
6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO
7. Signature(s) (and title if applicable) [Signature]

### For Office Use Only

|                       |                     |                                 |
|-----------------------|---------------------|---------------------------------|
| Received by <u>sk</u> | Date <u>3-21-06</u> | Fee <u>25.00 x 4 = \$100.00</u> |
| Received by <u>sk</u> | Date <u>3-21-06</u> | Receipt No. <u>W033970</u>      |
| Processed by _____    | Date _____          | WR _____ Date _____             |

**SUPPORT DATA**  
**IN FILE #** 63-9295

**ASSIGNMENT FOR SECURITY OF OPTION  
TO PURCHASE REAL PROPERTY**  
(Loan No. 724748-9.1)

THIS ASSIGNMENT FOR SECURITY OF OPTION TO PURCHASE REAL PROPERTY (the "Assignment"), is made and executed as of the 10 day of March, 2006, by CULLEN W. CONNOLLY AND SIMONE CONNOLLY (jointly "Borrower") in favor of AMERICA FIRST FEDERAL CREDIT UNION, ("Lender") affecting real property owned by WALLACE R. CONNOLLY and EDARAE CONNOLLY ("Sellers" and/or "Connollys") and this Assignment is executed in connection with the following facts:

- A. Borrower has executed in Lender's favor a promissory note in the amount of Sixteen Million Dollars and No/100 (\$16,000,000.00) (the "Note").
- B. To secure the Note, Borrower has pledged various collateral and has executed a mortgage in favor of Lender on approximately 2,100 acres of real property commonly known as the Connolly Ranch located in Eagle, Idaho.
- C. On or about February 13, 2006, Borrower executed with Sellers an Option to Purchase Real Property (the "Option Agreement"), a copy of which is attached as Exhibit "A", wherein Connollys agreed that Borrowers have the option to purchase approximately six hundred fifty acres (650) of real property described in the attached Exhibit "B", under certain terms and conditions ("Optioned Property").
- D. To further secure the Note, Borrower has agreed to assign its rights under the Option Agreement to Lender.

NOW, THEREFORE, in consideration of the covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

- 1. Assignment for Security. Borrowers hereby assign and convey for security to Lender as security for repayment of the Note, all of Borrowers' rights, title and interest arising in and to the Option Agreement a copy of which is attached hereto as Exhibit "A" affecting the Optioned Property more particularly described on Exhibit "B" attached hereto.
- 2. No Assumption. Lender assumes no obligations of Borrowers pursuant to the Option Agreement and nothing contained herein shall obligate Lender, without its consent, to exercise the option granted in the Option Agreement. However, at the sole election of Lender, Lender shall have the rights, upon exercise of its remedies against the Borrowers or upon a default of Borrowers' obligations, to exercise any and all rights granted pursuant to the Option Agreement.

3. No Modification of Option Agreement without Lender's Consent. Borrowers and Sellers agree that they shall not alter, modify, terminate or otherwise change any of the terms of the Option Agreement without the prior written consent of the Lender. Connollys consent to the terms of this Assignment for Security and agree that they shall not terminate, modify or otherwise change the terms of the Option Agreement without the written consent of the Lender.

4. Notice of Default and Right to Cure. Connollys hereby agree that they shall notify Lender in writing of any alleged default in the Option Agreement and shall give to Lender a thirty (30) days right to cure any such default following receipt of such written notice.

5. Default hereunder Default in the Loan Documents. Any default pursuant to the terms of this Assignment by Borrowers or the Connollys shall constitute a default pursuant to the Note and other loan documents related to the Note. Lender is hereby granted the right to protect its interests in the Option Agreement and may elect to exercise the Option or take such other action as it in its sole discretion deems necessary to protect its rights hereunder whether or not a default in the Note, this Assignment or any of the other Loan Documents has occurred.

6. Memorandum of Option to Purchase and this Assignment to be Recorded. A Memorandum of the Option to Purchase and this Assignment shall be recorded with the Ada County Recorder, which memorandum shall reveal terms sufficient to put parties on notice of the rights granted in the Assignment and the Option to Purchase.

7. No Monetary encumbrances in Excess of Purchase Option Price. In no event shall Sellers encumber the Optioned Property with monetary encumbrances in excess of the purchase price to be paid in the event that the Borrower and/or the Lender exercises the Option Agreement.

8. No Transfer or Sale of Water Rights. In no event shall Sellers lease, transfer, or sell any water rights, water right permits, water right licenses, or water right permit applications which are appurtenant to the Option Property.

9. Lender Consent Required. Until the Note and Loan have been paid in full, Borrower shall not exercise the Option Agreement without the prior written consent of the Lender unless at the time of the exercise of the Option Agreement by the Borrower and the closing of the sale from Sellers to Borrower, Lender receives a first mortgage lien (or other lien acceptable to Lender) on the Optioned Property and any applicable water right permits or licenses to secure repayment of the Note.

10. Binding Effect. This Agreement shall be binding upon the Borrowers and the Connollys and shall inure to the benefit of the Lender and its respective heirs, successors and assigns.

11. Attorneys' Fees. If any action is brought to enforce or interpret any of the terms or provisions of this Agreement, the party prevailing in such action, whether in suit or

otherwise, shall be entitled to receive from the unsuccessful party, reasonable attorneys' fees and costs, including any incurred in connection with appeals and bankruptcy.

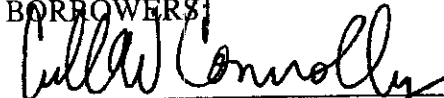
12. Counterparts. This Agreement may be executed in counterparts, and each such counterpart shall be deemed an original, but all of such counterparts taken together shall constitute one and the same agreement.

13. Governing Law. The terms of this Agreement shall be governed and construed in accordance with Utah. Issues relating to the enforcement of remedies regarding real property and water rights located in the State of Idaho shall be governed by the laws of the State of Idaho.

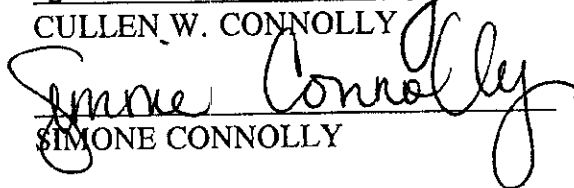
13. Indemnifications. Borrowers agree to indemnify, defend and hold Lender, Lender's officers, agents and members harmless from and against any and all claims, debts, demands, liabilities, damages, losses, costs and/or expenses (including reasonable attorneys' fees), and/or obligations incurred by Lender and arising from any failure by Borrowers to perform Borrowers' obligations pursuant to the Option Agreement and this Assignment.

IN WITNESS WHEREOF, Lender and Borrowers and Connollys (as limited herein), have caused this Assignment to be executed as of the day and year first set forth above.

BORROWERS:



CULLEN W. CONNOLLY



SIMONE CONNOLLY

SELLERS:



WALLACE R. CONNOLLY

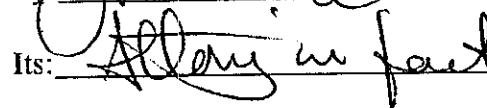


EDARAE CONNOLLY

LENDER:

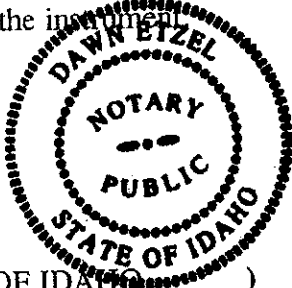
AMERICA FIRST FEDERAL CREDIT UNION

By: 

Its: 

STATE OF IDAHO )  
 )  
 :SS  
COUNTY OF ADA )

On this 10 day of March, 2006, before me, a notary public, personally appeared CULLEN W. CONNOLLY, known or identified to me to be CULLEN W. CONNOLLY who executed the instrument.

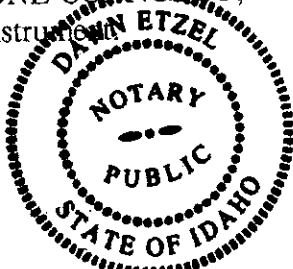


Dawn Etzel  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

**Dawn Etzel**  
**Residing: Eagle, ID**  
**Commission Expires: 9/30/11**

STATE OF IDAHO )  
 )  
 :SS  
COUNTY OF ADA )

On this 10 day of March, 2006, before me, a notary public, personally appeared SIMONE CONNOLLY, known or identified to me to be SIMONE CONNOLLY who executed the instrument.

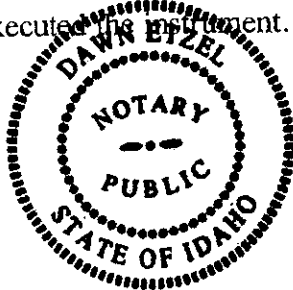


Dawn Etzel  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

**Dawn Etzel**  
**Residing: Eagle, ID**  
**Commission Expires: 9/30/11**

STATE OF IDAHO )  
 )  
 :SS  
COUNTY OF ADA )

On this 10 day of March, 2006, before me, a notary public, personally appeared WALLACE R. CONNOLLY, known or identified to me to be WALLACE R. CONNOLLY who executed the instrument.

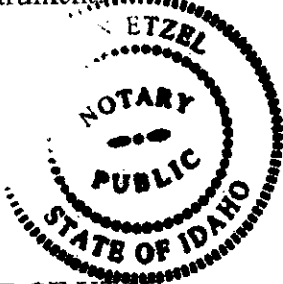


Dawn Etzel  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

**Dawn Etzel**  
**Residing: Eagle, ID**  
**Commission Expires: 9/30/11**

STATE OF IDAHO )  
 )  
 :SS  
COUNTY OF ADA )

On this 10 day of March, 2006, before me, a notary public, personally appeared EDARAE CONNOLLY, known or identified to me to be EDARAE CONNOLLY who executed the instrument.



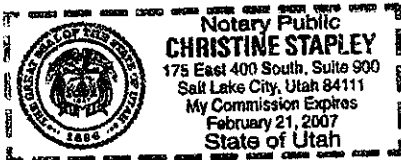
Dawn Etzel  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

Dawn Etzel  
Residing: Eagle, ID  
Commission Expires: 9/30/11

STATE OF UTAH )  
 )  
 : SS.  
COUNTY OF SALT LAKE )

On this 9<sup>th</sup> day of March, 2006, before me, a notary public, personally appeared Christine Stapley known or identified to me to be the Attorney in Fact of AMERICA FIRST FEDERAL CREDIT UNION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

Christine Stapley  
NOTARY PUBLIC  
Residing at: Salt Lake County



**OPTION TO PURCHASE REAL PROPERTY**

This Option to Purchase Real Property ("Option") is made as of the 23rd day of February, 2006, by and between Cullen W. Connolly ("Buyer") and Wallace R. and EdaRae Connolly, husband and wife ("Seller").

1. \*\*\* **Option:** In consideration of payment of \$5,000,000.00, Seller hereby grants to Buyer the exclusive option to purchase all of that certain real property located in the County of Ada, State of Idaho, consisting of real property more particularly described on *Schedule A*, attached hereto and incorporated herein by this reference, together with all easements, rights and appurtenances thereto ("Subject Property"), all in accordance with the terms and conditions hereinafter set forth.

2. **Exercise:** This Option may be exercised by deposit in the United States mail, postage prepaid, of written notice to Seller with a postmark prior to March 10, 2009, and if not exercised within that time, this Option shall terminate. The time period to exercise may be extended until March, 2012 by depositing \$5,000,000.00 with Seller prior to the time period set forth in the preceding sentence. The date of the postmark shall constitute the date of receipt and exercise under this Option.

3. **License for Entry:** Buyer is hereby granted a license to enter upon the Subject Property for all purposes reasonably related to a full and adequate determination of the suitability of the Subject Property for such purposes, including, without limitation, the right to conduct surveys, soils tests, engineering studies, and environmental tests and audits.

Buyer agrees to indemnify, defend and hold harmless Seller from any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action of any kind whatsoever arising out of Buyer's exercise of the license granted herein, unless caused by the willful or negligent act or omission of Seller, its agents, contractors, or employees.

4. **Purchase Consideration:** The purchase consideration for the Subject Property shall be \$25,000.00 per acre, based upon net acreage excluding rights-of-way for irrigation works and other rights-of-way.

\*\*\* All option payments will go toward final purchase price.

**EXHIBIT "A"**

12. **Warranty:** Buy signing hereunder Seller, and the party signing on Seller's behalf, represent and warrant that Seller owns the Subject Property and the party signing has authority to do so.

13. **Notices:**

a. All notices given pursuant to this Option shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below:

Seller: Wallace R. Connolly  
EdaRae Connolly

BUYER: Cullen W. Connolly

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Option shall be deemed given upon receipt.

EXECUTED as of the date first above written.

**SELLER:**

Seller

Wallace R. Connolly  
(husband) Wallace R. CONNOLLY

**BUYER**

Cullen W. Connolly

Seller

EdaRae Connolly  
(wife) EdaRae Connolly

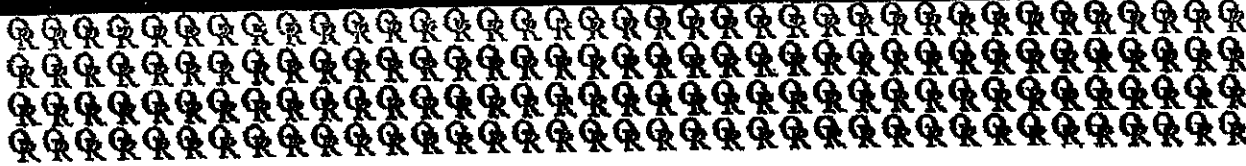
FROM :CWC&amp;ASSOC

FAX NO. :2089396433

Feb. 24 2006 12:32PM P4

## Schedule A

### COMMITMENT

**PARCEL V**

The West half of the Northwest quarter of Section 26, Township 5 North, Range 1 East of Boise Meridian in Ada County, Idaho.

**PARCEL VI**

The Northeast quarter and the North half of the Northwest quarter and the Southeast quarter of the Northwest quarter and the West half of the Southwest quarter and the Southeast quarter all in Section 27, Township 5 North, Range 1 East of Boise Meridian in Ada County, Idaho.

**PARCEL IX**

A tract of land situated in a portion of the Northeast one quarter of Section 34, Township 5 North, Range 1 East, Boise Meridian, Ada County, Idaho, being a strip of land 50 feet in width lying 25 feet either side of the following described center line.

Commencing at a found steel pin monumenting the Northwest corner of Lot 5, Block 1 of Connolly Estates (a recorded subdivision on file in Book 59 of Plats, at Pages 5792 and 5793, records of Ada County, Idaho).

Thence Easterly along the Northerly line of said Lot 5 South 88 degrees 57'20" East (formerly South 89 degrees 39'05" East) a distance of 506.04 feet to the Northeast corner of said Lot 5.

Thence Westerly along said Northerly line North 88 degrees 57'20" West (formerly North 89 degrees 39'05" West) a distance of 25.00 feet to the point of beginning.

Thence leaving said Northerly line and along said centerline the following courses:

North 00 degrees 16'29" East a distance of 516.63 feet to a point;

Thence North 01 degrees 06'27" West a distance of 79.10 feet to a point;

Thence 505.67 feet along the arc of a circular curve to the left, said curve having a radius of 800.00 feet, a central angle of 36 degrees 12'58", a chord bearing of North 19 degrees 12'55" West and a chord distance of 497.30 feet to a point;

Thence North 37 degrees 19'24" West a distance of 523.41 feet to a point;

**Schedule A**

(continued)



Thence North 27 degrees 42'55" West a distance of 50.94 feet to a point on the Northerly line of said Section 34 and the point of terminus, from which the Northwest corner of said Section 34 bears South 89 degrees 19'22" East a distance of 1822.15 feet.

The addition of said description shall be lengthened or shortened as necessary to extend a closed figure and to terminate on the Northerly line of said Lot 3 and the Northerly line of said Section 34.

## EXHIBIT "B"

The following real property is located in Ada County, Idaho:

### PARCEL V

The West half of the Northwest quarter of Section 26, Township 5 North, Range 1 East of Boise Meridian in Ada County, Idaho.

### PARCEL VI

The Northeast quarter and the North half of the Northwest quarter and the Southeast quarter of the Northwest quarter and the West half of the Southwest quarter and the Southeast quarter all in Section 27, Township 5 North, Range 1 East of Boise Meridian in Ada County, Idaho.

### PARCEL IX

A tract of land situated in a portion of the Northeast one quarter of Section 34, Township 5 North, Range 1 East, Boise Meridian, Ada County Idaho, being a strip of land 50 feet in width lying 25 feet either side of the following described center line.

Commencing at a found steel pin monumenting the Northwest corner of Lot 5, Block 1 of Connolly Estates (a recorded subdivision on file in Book 59 of Plats, at Pages 5792 and 5793, records of Ada County, Idaho),

Thence Easterly along the Northerly line of said Lot 5 South 88°57'20" East (formerly South 89°39'05" East) a distance of 506.04 feet to the Northeast corner of said Lot 5,

Thence Westerly along said Northerly line North 88°57'20" West (formerly North 89°39'05" West) a distance of 25.00 feet to the point of beginning.

Thence leaving said Northerly line and along said centerline the following courses:

North 00°16'29" East a distance of 516.63 feet to a point;

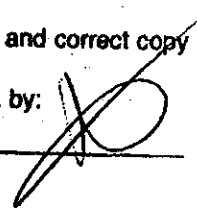
Thence North 01°06'27" West a distance of 79.10 feet to a point;

Thence 505.67 feet along the arc of a circular curve to the left, said curve having a radius of 800.00 feet, a central angle of 36°12'58", a chord bearing of North 19°12'55" West and a chord distance of 497.30 feet to a point;

Thence North 37 degrees 19'24" West a distance of 523.41 feet to a point.

RECORDATION REQUESTED BY:

J. Randall Call, Esq.  
City Centre I, Suite 900  
175 East 400 South  
Salt Lake City, Utah 84111

Certified to be a true and correct copy  
of the original.  
TitleOne Corporation, by: 

WHEN RECORDED MAIL TO:

J. Randall Call, Esq.  
City Centre I, Suite 900  
175 East 400 South  
Salt Lake City, Utah 84111  
A0652927 JG/KF

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS**  
**AND FIXTURE FILING**  
(Loan No. 724748-9.1)

**THIS MORTGAGE SECURES FUTURE ADVANCES  
WHICH MAY BE MADE BY THE LENDER DURING  
THE TERM OF THE LOAN SECURED HEREBY**

THIS MORTGAGE IS DATED effective March 10, 2006, and executed March 10, 2006, between CULLEN W. CONNOLLY and SIMONE CONNOLLY, whose address is 2579 East Margat Court, Eagle, ID 83616 (referred to below jointly as "Mortgagor," "Borrower" and/or "Grantor"); and AMERICA FIRST FEDERAL CREDIT UNION, whose address is 4646 South 1500 West, Riverdale, Utah 84405 (referred to below as "Mortgagee" and/or "Lender").

**GRANT OF MORTGAGE.** For valuable consideration, Mortgagor and Grantor mortgages, grants, bargains, sells and conveys to Lender all of Mortgagor's and Grantor's right, title, and interest in and to the following described real property:

SEE ATTACHED EXHIBIT "A"

together with all existing or subsequently erected or affixed buildings, improvements and fixtures, including without limitation those described on Exhibit "B" attached hereto; all easements, rights of way, and appurtenances; government subsidies, all bonuses, all water, water rights, water licenses, adjudicated rights, water permits, well rights, water right permit applications, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights), including without limitation those described on Exhibit "C" attached hereto; and all other rights, royalties, and profits relating to the real property, including without limitation

all minerals, oil, gas, geothermal and similar matters, located in Ada County, State of Idaho (the "Real Property"):

The Real Property or its address is commonly known as various parcels of farm properties.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all leases of the Real Property and all Rents from the Real Property. In addition; Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**DEFINITIONS.** The following words shall have the following meanings when used in this Mortgage. Terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**BORROWER.** The word "Borrower" means each and every person or entity signing the Note, including without limitation CULLEN CONNOLLY and SIMONE CONNOLLY.

**GRANTOR.** The word "Grantor" means any and all persons and entities executing this Mortgage, including without limitation all Grantors named above. The Grantor is the mortgagor under this Mortgage. Any Grantor who signs this Mortgage, but does not sign the Note, is signing this Mortgage only to grant and convey that Grantors interest in the Real Property and to grant a security interest in Grantor's interest in the Rents and Personal Property to Lender and is not personally liable under the Note except as otherwise provided by contract or law.

**GUARANTOR.** The word "Guarantor" means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the Indebtedness, if any.

**IMPROVEMENTS.** The word "Improvements" means and includes without limitation all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**INDEBTEDNESS.** The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Lender to enforce obligations of Grantor under this Mortgage, together with interest on such amounts as provided in this Mortgage. In addition to the Note, the word "Indebtedness" includes all obligations, debts and liabilities, plus interest thereon, of Borrower to Lender, or any one or more of them, as well as all claims by Lender against

Borrower, or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, absolute or contingent, liquidated or unliquidated and whether Borrower may be liable individually or jointly with others, whether obligated as guarantor or otherwise, and whether recovery upon such Indebtedness may be or hereafter may become barred by any statute of limitations, and whether such indebtedness may be or hereafter may become otherwise unenforceable.

**LENDER.** The word "Lender" means AMERICA FIRST FEDERAL CREDIT UNION, its successors and assigns. The Lender is the mortgagee under this Mortgage.

**MORTGAGE.** The word "Mortgage" means this Mortgage between Grantor and Lender, and includes without limitation all assignments and security interest provisions relating to the Personal Property and Rents.

**NOTE.** The word "Note" means the promissory note or credit agreement made March 10, 2006, in the original principal amount of \$16,000,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of the Note secured by this Mortgage is March 31, 2009. **NOTICE TO GRANTOR: THIS NOTE CONTAINS A VARIABLE INTEREST RATE.**

**PERSONAL PROPERTY.** The words "Personal Property" mean all equipment, water rights, water permits or applications for water permits, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**PROPERTY.** The word "Property" means collectively the Real Property and the Personal Property, which includes the water and water rights, licenses and/or permits described on Exhibit "C" attached hereto.

**REAL PROPERTY.** The words "Real Property" mean the property, interests and rights described above in the "Grant of Mortgage" section, including water rights, water licenses and decreed water rights.

**RELATED DOCUMENTS.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements,

environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**RENTS.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ALL OBLIGATIONS OF GRANTOR UNDER THIS MORTGAGE AND THE RELATED DOCUMENTS. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**GRANTOR'S WAIVERS.** Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that (a) this Mortgage is executed at Borrower's request and not at the request of Lender, (b) Grantor has the full power, right, and authority to enter into this Mortgage and to hypothecate the Property; (c) the provisions of this Mortgage do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Mortgage, Borrower shall pay to Lender all Indebtedness secured by this Mortgage as it becomes due, and Borrower and Grantor shall strictly perform all their respective obligations under this Mortgage.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor and Borrower agree that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until in default; Grantor may remain in possession and control of and operate and manage the Property and collect the Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or Federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Grantor represents and warrants to Lender that: (a) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, about or from the Property; (b) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance on, under, about or from the Property by any prior owners or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) Except as previously disclosed to and acknowledged by Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, about or from the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for hazardous waste and hazardous substances. Grantor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims, losses,

liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the properties. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Notwithstanding the foregoing, the Grantor shall be allowed to store petroleum products for use in their ranching operations provided the storage of such petroleum products shall comply with all applicable laws, rules and regulations. Failure to comply with such laws and regulations shall be a default hereunder.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

**Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without the prior written consent of Lender. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

**Lender's Right to Enter.** Lender and its agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's Interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**Water Rights.** Grantor shall not sell, lease, transfer, or otherwise remove or cause to be removed any water rights, water licenses, water permits, water permit applications, ditch rights, or shares or stock in an irrigation company without the prior express written consent of Lender.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest therein; whether it be beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years; lease-option contract or buy sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of real property interest. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Idaho law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are a part of this Mortgage.

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Mortgage, except for the lien of taxes and assessments not due, and except as otherwise provided in the following paragraph or except as previously disclosed to Lender.

**Right To Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within thirty (30) days after the lien arises or, if a lien is filed, within thirty (30) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a

sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Mortgage.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any co-insurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as an additional insured in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property at any time become located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance for the full

unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within thirty (30) days of the casualty. Whether or not Lender's security is impaired; Lender may, at its election, apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor.

**Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Mortgage at any sale or other sale held under the provisions of this Mortgage, or at any foreclosure sale of such Property.

**Grantor's Report on insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (a) the name of the Insurer, (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property, and the manner of determining that value; and (e) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**EXPENDITURES BY LENDER.** If Grantor fails to comply with any provision of this Mortgage, or if any action or proceeding is commenced that would materially affect Lender's interests in the Property, Lender on Grantor's behalf may, but shall not be required to, take any action that Lender deems appropriate. Any amount that Lender expends in so doing will bear interest at the rate provided for in the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses, at Lender's option, will (a) be payable on demand, (b) be added to the balance of the Note and be apportioned among and be payable

with any installment payments to become due during either (i) the term of any applicable insurance policy or (ii) the remaining term of the Note, or (c) be treated as a balloon payment which will be due and payable at the Note's maturity. This Mortgage also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of the default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Mortgage.

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**CONDEMNATION.** The following provisions relating to condemnation of the Property are a part of this Mortgage.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

**Taxes.** The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (b) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (c) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default (as defined below), and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (a) pays the tax before it becomes delinquent, or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage.

**Security Agreement.** This instrument shall constitute a security agreement to the extent any of the Property constitutes fixtures or other personal property, and

Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall assemble the Personal Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party), from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code), are as stated on the first page of this Mortgage. Grantor is the "Record Owner" of the Real Property.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage.

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, re-filed, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Grantor and Borrower under the Note, this Mortgage, and the Related Documents, and (b) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or agreed to the contrary by Lender in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender

as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Borrower pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

**DEFAULT.** Each of the following, at the option of Lender, shall constitute an event of default ("Event of Default") under this Mortgage:

**Default on Indebtedness.** Failure of Borrower to make any payment when due on the Indebtedness.

**Default on Other Payments.** Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**Compliance Default.** Failure of Grantor or Borrower to comply with any other term, obligation, covenant or condition contained in this Mortgage, the Note or in any of the Related Documents.

**Default in Favor of Third Parties.** Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Grantor's property or Borrower's ability to repay the Note or Borrower's or Grantor's ability to perform their respective obligations under this Mortgage or any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender for or on behalf of Grantor or Borrower under this Mortgage, the Note or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

**Defective Collateralization.** This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The death of Grantor or Borrower or the dissolution or termination of Grantor or Borrower's existence as a going business, the insolvency of Grantor or Borrower, the appointment of a receiver for any part of Grantor or Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor or Borrower.

**Foreclosure, Forfeiture, etc.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any of the Property. However, this subsection shall not apply in the event of a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the foreclosure or forfeiture proceeding, provided that Grantor gives Lender written notice of such claim and furnishes reserves or a surety bond for the claim satisfactory to Lender.

**Breach of Other Agreement.** Any breach by Grantor or Borrower under the terms of any other agreement between Grantor or Borrower and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor or Borrower to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure the Event of Default.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith deems itself insecure.

**Right to Cure.** If such a failure is curable and if Grantor or Borrower has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Grantor or Borrower, after Lender sends written notice demanding cure of such failure: (a) cures the failure within thirty (30) days; or (b) if the cure requires more than thirty (30) days, immediately initiates steps sufficient to cure the

failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter but subject to any limitation in the Note or any limitation in this Mortgage, Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Borrower to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor or Borrower, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after

application of all amounts received from the exercise of the rights provided in this section.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (a) pay a reasonable rental for the use of the Property, or (b) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

**Sale of the Property.** To the extent permitted by applicable law, Grantor or Borrower hereby waive any and all right to have the property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Notice of Sale.** Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

**Waiver; Election of Remedies.** A waiver by any party of a breach of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor or Borrower under this Mortgage after failure of Grantor or Borrower to perform shall not affect Lender's right to declare a default and exercise its remedies under this Mortgage.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as reasonable attorneys' fees at trial and on any appeal. Whether or not any court action is involved, all reasonable expenses incurred by Lender that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the rate provided for in the Note. Expenses covered by this paragraph include,

without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, and title insurance, to the extent permitted by applicable law. Borrower also will pay any court costs, in addition to all other sums provided by law.

**NOTICES TO GRANTOR AND OTHER PARTIES.** Any notice under this Mortgage, including without limitation any notice of default and any notice of sale to Grantor, shall be in writing, may be sent by telefacsimile (unless otherwise required by law), and shall be effective when actually delivered, or when deposited with a nationally recognized overnight courier, or, if mailed, shall be deemed effective when deposited in the United States mail first class, certified or registered mail, postage prepaid, directed to the addresses shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lenders address, as shown near the beginning of this Mortgage. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Mortgage:

**Amendments.** This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Applicable Law.** This Mortgage has been delivered to Lender and accepted by Lender in the State of Idaho. Subject to the provisions on arbitration, this Mortgage

shall be governed by and construed in accordance with the laws of the State of Idaho.

**Caption Headings.** Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

**Merger.** There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Multiple Parties.** All obligations of Grantor and Borrower under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each of the persons signing below is responsible for all obligations in this Mortgage.

**Severability.** If a court of competent jurisdiction finds any provision of this Mortgage to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Mortgage in all other respects shall remain valid and enforceable.

**Successors and Assigns.** Subject to the limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

**Time Is of the Essence.** Time is of the essence in the performance of this Mortgage.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Idaho as to all Indebtedness secured by this Mortgage.

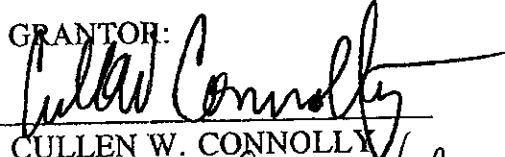
**Waivers and Consents.** Lender shall not be deemed to have waived any rights under this Mortgage (or under the Related Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any

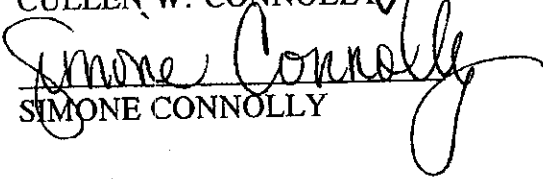
party of a provision of this Mortgage shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Grantor or Borrower, shall constitute a waiver of any of Lender's rights or any of Grantor or Borrower's obligations as to any future transactions. Whenever consent by Lender is required in this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

**WAIVER OF JURY TRIAL.** The Parties hereto hereby WAIVE THEIR RIGHT TO A JURY TRIAL WITH RESPECT TO ANY AND ALL CAUSES OF ACTION OR CONTROVERSIES ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT. In the event that this waiver of jury trial is deemed by a court of competent jurisdiction to be unenforceable, then in that event, any claim or controversy between or among the Parties shall be resolved by binding arbitration in Boise, Idaho, in accordance with the applicable arbitration rules of the American Arbitration Association. The arbitrator(s) shall award recovery of all attorneys' fees and costs, arbitration administration fees and costs, and arbitrator(s)' fees. Judgment on the arbitrator(s)' award may be entered in any court having jurisdiction thereof.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

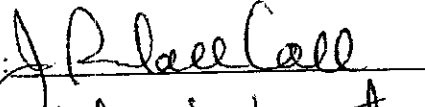
GRANTOR:

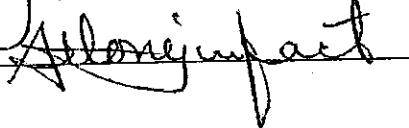
  
CULLEN W. CONNOLLY

  
SIMONE CONNOLLY

LENDER:

AMERICA FIRST FEDERAL CREDIT UNION

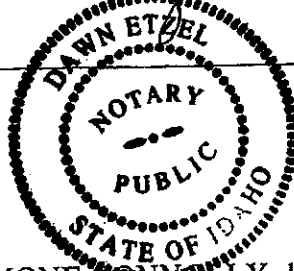
By: 

Its: 

STATE OF IDAHO )  
 )  
 :SS.  
COUNTY OF ADA )

On this 10<sup>th</sup> day of March, 2006, personally appeared CULLEN W. CONNOLLY, known, or identified to me, to be the person who executed the instrument on behalf of said CULLEN W. CONNOLLY and acknowledged to me that he executed the same.

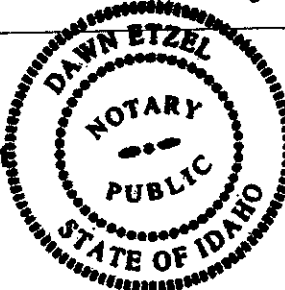
Dawn Etzel  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_



STATE OF IDAHO )  
 )  
 :SS. Dawn Etzel  
COUNTY OF ADA ) Residing: Eagle, ID  
 Commission Expires: 9/30/11

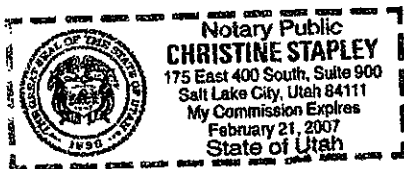
On this 10<sup>th</sup> day of March, 2006, personally appeared SIMONE CONNOLLY, known, or identified to me, to be the person who executed the instrument on behalf of said SIMONE CONNOLLY and acknowledged to me that she executed the same.

Dawn Etzel  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_



STATE OF UTAH )  
 )  
 :SS. Dawn Etzel  
COUNTY OF SALT LAKE ) Residing: Eagle, ID  
 Commission Expires: 9/30/11

On the 9<sup>th</sup> day of March, 2006, personally appeared before me J. Randolph  
Call, who being by me duly sworn, did say that he/she is the Attorney in fact of  
AMERICA FIRST FEDERAL CREDIT UNION, and acknowledged to me that the foregoing  
instrument was signed on behalf of said AMERICA FIRST FEDERAL CREDIT UNION and  
that AMERICA FIRST FEDERAL CREDIT UNION executed the same.



Christine Stapley  
NOTARY PUBLIC  
Residing at: Salt Lake County

EXHIBIT "A"

The following real property is located in Ada County, Idaho:

PARCEL I

A parcel of land being all of Section 23, and portions of Sections 13, 14, 15, 21, 22, 24, and 28, Township 5 North, Range 1 East, Boise Meridian, Ada County, Idaho; more particularly described as follows:

Beginning at a brass cap marking the section corner common to Sections 20, 21, 28 and 29, Township 5 North, Range 1 East, Boise Meridian, also being the REAL POINT OF BEGINNING; thence along the section line common to said Sections 28 and 29

South 0°11'37" East 1,340.07 feet to a brass cap marking the North 1/16 corner common to said Sections 28 and 29; thence leaving said section line, and along the North 1/16 section line of said Section 28

North 89°43'53" East 2,657.30 feet to a brass cap marking the Center-North 1/16 corner of said Section 28; thence leaving said North 1/16 section line, and along the North-South center quarter section line of said Section 28

North 0°11'26" West 1,335.05 feet to a brass cap marking the quarter corner common to said Sections 21 and 28; thence leaving said North-South center quarter section line, and along the North-South center quarter section line of said Section 21

North 0°38'58" West 1,321.37 feet to a brass cap marking the Center-South 1/16 corner of said Section 21; thence leaving said North-South center quarter section line, and along the South 1/16 section line of said Section 21

North 89°52'31" East 2,653.95 feet to a brass cap marking the South 1/16 corner common to said Sections 21 and 22; thence leaving said South 1/16 section line, and along the South 1/16 section line of said Section 22

North 89°43'57" East 2,638.85 feet to a brass cap marking the Center-South 1/16 corner of said Section 22; thence continuing along said South 1/16 section line

North 89°39'53" East 2,638.69 feet to a brass cap marking the South 1/16 section corner common to said Sections 22 and 23; thence leaving said South 1/16 section line, and along the section line common to said Sections 22 and 23

South 0°15'01" East 1,314.82 feet to a brass cap marking the section corner common to Sections 22, 23, 26 and 27; thence leaving said section line, and along the section line common to said Sections 23 and 28

South 89°40'39" East 5,290.98 feet to a brass cap marking the section corner common to Sections 23, 24, 25 and 26; thence leaving said section line, and along the section line common to said Sections 23 and 24

North 0°03'31" East 2,656.50 feet to a brass cap marking the quarter corner common to said Sections 23 and 24; thence leaving said section line, and along the East-West center quarter section line of said Section 24

South 89°04'04" East 1,335.34 feet to a brass cap marking the Center-West 1/16 corner of said Section 24; thence leaving said East-West center quarter section line, and along the West 1/16 section line of said Section 24

North 0°06'20" East 2,658.48 feet to a brass cap marking the West 1/16 corner common to Sections 13 and 24; thence leaving said West 1/16 section line, and along the West 1/16 section line of said Section 13

North 0°39'02" West 1,317.19 feet to a brass cap marking the Southwest 1/16 corner of said Section 13; thence leaving said West 1/16 section line, and along the South 1/16 section line of said Section 13

North 89°14'13" West 1,341.31 feet to a brass cap marking the South 1/16 corner common to Sections 13 and 14; thence leaving said South 1/16 section line, and along the section line common to said Sections 13 and 14

North 0°53'21" West 2,630.32 feet to a brass cap marking the North 1/16 corner common to said Sections 13 and 14; thence leaving said section line, and along the North 1/16 section line of said Section 14

South 89°02'19" West 2,654.09 feet to a brass cap marking the Center-North 1/16 corner of said Section 14; thence continuing along said North 1/16 section line

South 89°00'31" West 2,653.36 feet to a brass cap marking the North 1/16 corner common to Sections 14 and 15; thence leaving said North 1/16 section line, and along the section line common to said Sections 14 and 15

South 0°41'39" East 1,293.02 feet to a brass cap marking the quarter corner common to said Sections 14 and 15; thence leaving said section line, and along the East-West center quarter section line of said Section 15

North 89°35'47" West 2,636.99 feet to a brass cap marking the center quarter corner of said Section 15; thence

leaving said East-West center quarter section line, and along the North-South center quarter section line of said Section 15

South 0°18'19" East 2,612.00 feet to a brass cap marking the quarter corner common to Sections 15 and 22; thence leaving said North-South center quarter section line, and along the section line common to said Sections 15 and 22

South 89°50'15" West 1,327.17 feet to a brass cap marking the West 1/16 corner common to said Sections 15 and 22; thence leaving said section line, and along the West 1/16 section line of said Section 22

South 0°35'21" East 1,318.05 feet to a brass cap marking the Northwest 1/16 corner of said Section 22; thence leaving said West 1/16 section line, and along the North 1/16 section line of said Section 22

South 89°47'29" West 1,324.59 feet to a brass cap marking the North 1/16 corner of said Sections 21 and 22; thence leaving said North 1/16 section line, and along the North 1/16 section line of said Section 21

South 89°44'24" West 1,326.19 feet to a brass cap marking the Northeast 1/16 corner of said Section 21; thence leaving said North 1/16 section line, and along the East 1/16 section line of said Section 21

South 0°41'13" East 1,318.30 feet to a brass cap marking the Center-East 1/16 corner of said Section 21; thence leaving said East 1/16 section line, and along the East-West center quarter section line of said Section 21

South 89°46'34" West 1,326.52 feet to a brass cap marking the center quarter corner of said Section 21; thence continuing along said East-West center quarter section line

South 89°47'25" West 1,327.14 feet to a brass cap marking the Center-West 1/16 corner of said Section 21; thence leaving said East-West center quarter section line, and along the West 1/16 section line of said Section 21

South 0°36'21" East 1,312.87 feet to a brass cap marking the Southwest 1/16 corner of said Section 21; thence leaving said West 1/16 section line, and along the South 1/16 section line of said Section 21

South 89°36'15" West 1,327.12 feet to a brass cap marking the South 1/16 corner common to said Sections 20 and 21; thence leaving said South 1/16 section line, and along the section line common to said Sections 20 and 21

South 0°36'00" East 1,316.44 feet to the REAL POINT OF BEGINNING.

EXCEPT the Northeast Quarter of the Southwest Quarter of Section 14, Township 5 North, Range 1 East, Boise Meridian, more particularly described as follows:

Beginning at a brass cap marking the center quarter corner of Section 14, Township 5 North, Range 1 East, Boise Meridian, also being the REAL POINT OF BEGINNING; thence along the North-South center quarter section line of said Section 14

South 0°47'52" East 1,304.09 feet to a brass cap marking the Center-South 1/16 corner of said Section 14; thence leaving said North-South center quarter section line, and along the South 1/16 section line of said Section 14

South 89°30'04" West 1,329.03 feet to a brass cap marking the Southwest 1/16 corner of said Section 14; thence leaving said South 1/16 section line, and along the West 1/16 section line of said Section 14

North 0°44'46" West 1,298.56 feet to a brass cap marking the Center-West 1/16 corner of said Section 14; thence leaving said West 1/16 section line, and along the East-West center quarter section line of said Section 14.

North 89°15'45" East 1,327.84 feet to the REAL POINT OF BEGINNING.

## PARCEL II

A perpetual, non-exclusive easement, appurtenant to Parcel I, for the purposes of constructing and maintaining a public or private road, ingress and egress, including but not limited to, movement of livestock, and installation and maintenance of utility lines and services as set forth in Joint Deed of Easement and Encroachment Agreement recorded December 9, 1994 as Instrument No. 94107486, records of Ada County, Idaho, over the following described parcels:

Located in the Northeast Quarter of the Northeast Quarter of Section 29, Township 5 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Beginning at a brass cap marking the North 1/16 corner common to Sections 28 and 29, Township 5 North, Range 1 East, Boise Meridian; thence along the section line common to said Sections 28 and 29 North 0°11'37" East 261.53 feet to an iron pin being the Real Point of Beginning of a permanent ingress and egress easement; thence leaving said section line and running West along the Northerly boundary line of Lot 12 in Block 1 of STILLWELL ESTATES NO. 2, being the same as South 86°52'10" West 661.82 feet, more or less, to the East right-of-way line of Willow Creek Road; thence along said East right-of-way line North 0°11'37" West 40.00 feet; thence leaving said East right-of-way line of Willow Creek Road parallel to the Northerly boundary line of Lot 12 in Block 1 of Stillwell Estates No. 2, being the same as North 88°52'10" East 661.82 feet, more or less, to an iron pin on the section line common to said Sections 28 and 29; thence along said section line South 0°11'37" East 40.00 feet to the REAL POINT OF BEGINNING. Said easement also being subject to any other easements or right-of-ways, of record or in use.

AND an easement along the Northerly 10 feet of Lot 12 in Block 1 of Stillwell Estates No. 2, Ada County, Idaho.

#### PARCEL III

Lot 12 in Block 1 of STILLWELL ESTATES NO. 2, according to the official plat thereof, filed in Book 33 of Plats at Pages 2038 and 2039, records of Ada County, Idaho.

## EXHIBIT "B"

Any and all existing irrigation equipment, fixture, improvements, solid set line, homes, sheds, out buildings, pumps, storage facilities and any other improvements.

March 6, 2006

| Number   | Basin   | Priority Date | Maximum Diversion Rate (cfs) | Water Use        | Acres Irrigated | Volume Limit (AFY) | Season of Use | Source       | SRBA Claim Filed? | Status                                  | Remarks                                                 |
|----------|---------|---------------|------------------------------|------------------|-----------------|--------------------|---------------|--------------|-------------------|-----------------------------------------|---------------------------------------------------------|
| 63-9295  | License | 12/6/1979     | 0.65                         | Irrigation       | 80              | 315.9              | 3/15-11/15    | Ground water | yes               | Director's Report Filed, Decree Pending | Wallace R. & Eda Rae Connolly                           |
| 63-10018 | License | 4/14/1983     | 0.18                         | Fish Propagation | n/a             | 53.5               | 1/1-12/31     | Ground water | yes               | Director's Report Filed, Decree Pending | Wallace R. & Eda Rae Connolly                           |
| 63-9327  | License | 12/31/1979    | 0.18                         | Irrigation       | 20              | 87                 | 3/15-11/15    | Ground water | no                | not claimed in SRBA                     | Edward J Connolly Jr                                    |
| 63-2163  | License | 4/17/1911     | 2.5                          | Irrigation       | 125             | n/a                | none listed   | Springs      | no                | not claimed in SRBA                     | James B. Taylor                                         |
| 63-21030 | Decreed | 3/1/1987      | 0.04                         | Domestic         | n/a             | n/a                | 1/1-12/31     | Ground water | yes               | Decreed 2000                            | Wallace R. & Eda Rae Connolly<br>Ada Parcel S0227111001 |
|          |         |               | 0.04                         | Stockwater       | n/a             | n/a                | 1/1-12/31     | Ground water | no                | SRBA claim unnecessary                  | Wallace R. & Eda Rae Connolly                           |
| 63-11505 | License | 4/1/1991      | 0.02                         | Domestic         | n/a             | 0.6                | 1/1-12/31     | Ground water | no                | SRBA claim unnecessary                  | Wallace R. & Eda Rae Connolly                           |
|          |         |               |                              | Hearing          | n/a             | 8.1                | 1/1-12/31     | Ground water | yes               | Decreed 2000                            | Wallace R. & Eda Rae Connolly                           |
| 63-21031 | Decreed | 1/1/1989      | 0.04                         | Domestic         | n/a             | n/a                | 1/1-12/31     | Ground water | yes               | Decreed 2000                            | Wallace R. & Eda Rae Connolly                           |
|          |         |               |                              | Stockwater       | n/a             | n/a                | 1/1-12/31     | Ground water | no                | SRBA claim unnecessary                  | Wallace R. & Eda Rae Connolly                           |
| 63-22183 | Decreed | 11/19/1968    | 0.04                         | Domestic         | n/a             | 0.6                | 1/1-12/31     | Ground water | yes               | Decreed 2000                            | Wallace R. & Eda Rae Connolly                           |
|          |         |               |                              | Stockwater       | n/a             | 8.1                | 1/1-12/31     | Ground water | no                | SRBA claim unnecessary                  | Wallace R. & Eda Rae Connolly                           |

Table 1: Summary of Water Rights appurtenant to The Property.

EXHIBIT C

March 6, 2006

cc: Dave Christensen

Attachment A: Water Right Search Results

Attachment B: Water Right Report, IDWR recommendation, and Place of Use map for 63-9295

Attachment C: Water Right Report and IDWR recommendation for 63-16081

Attachment D: Water Right Report for 63-9327

Attachment E: Water Right Report for 63-2163

Attachment F: Water Right Report for 63-21030

Attachment G: Water Right Report for 63-11505

Attachment H: Water Right Report for 63-21031

Attachment I: Water Right Report for 63-22183

Attachment J: Well Driller's Reports

Attachment K: Property Legal Description

File: 387.0030