

Pn72264-E

INSTRUMENT NO.

200308143

Property No.

Send Tax Statements to:

Tax Admin. - 22nd Fl.

South Temple Street

Salt Lake City, UT 84150-3620

City No. 581-0272

r recording, return to:

Church Real Estate - 12th Fl East

1st North Temple Street

Salt Lake City, UT 84150

WARRANTY DEED

FOR VALUE RECEIVED JOHN C. KINGHORN and MYRTICE J. KINGHORN, as Co-Trustees of THE JOHN & MYRTICE KINGHORN TRUST under Trust Agreement dated February 16, 1993

the Grantors, do hereby grant, bargain, sell and convey unto THE CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole

the Grantee, whose address is 50 East North Temple, Salt Lake City, UT 84150

the following described premises, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE:

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances; except for general taxes and assessments for the year 2003 and subsequent years, covenants, conditions, restrictions and easements of record; and that they will warrant and defend the same from all lawful claims whatsoever.

DATED: January 28, 2003

THE JOHN & MYRTICE KINGHORN TRUST

BY:

John C. Kinghorn

BY:

Myrtice J. Kinghorn

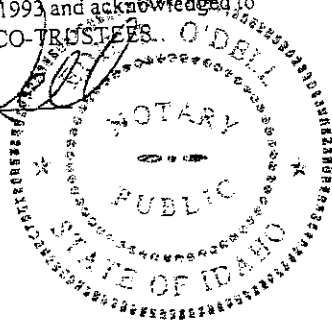
CO-TRUSTEE

CO-TRUSTEE

STATE OF IDAHO
COUNTY OF CANYON

On this 1st day of FEB. 2003, before me, a notary public, personally appeared JOHN C. KINGHORN AND MYRTICE J. KINGHORN, known to me to be the person(s) whose name(s) is/are subscribed to the within instrument as CO-TRUSTEES of THE JOHN & MYRTICE KINGHORN TRUST UNDER TRUST AGREEMENT DATED FEBRUARY 16, 1993, and acknowledged to me that they executed the same as such CO-TRUSTEES.

Edith A. O'Dell
Notary Public
Residing at Nampa, Idaho
My commission expires: 4/17/2003



REQUEST PIONEER-NAMPA
TYPE FEE 601

NOEL HALE
CANYON COUNTY RECORDER
BY *Joelle H. Hales*

2003 FEB 10 PM 4 28

RECORDED

200308143

PIONEER TITLE COMPANY
OF CANYON COUNTY

100 10TH AVE SOUTH
NAMPA, IDAHO 83651

423 SOUTH KIMBALL
CALDWELL, ID 83605

gfk
M.H.

Exhibit "A"

A parcel of land located in the Northeast Quarter of the Southeast Quarter of Section 33, Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, described as follows:

BEGINNING at the East Quarter corner of said Section 33 and running thence
South $0^{\circ} 33' 10''$ East 375.00 feet along the East line of said section; thence
South $89^{\circ} 45' 10''$ West 497.84 feet; thence
North $00^{\circ} 33' 10''$ West 375.00 feet to the East-West centerline of said section;
thence
North $89^{\circ} 45' 10''$ East 497.84 feet along said East-West centerline to the POINT OF
BEGINNING.

WATER RIGHT PURCHASE AND SALE AGREEMENT

THIS WATER RIGHT PURCHASE AND SALE AGREEMENT ("Agreement") is entered into effective this 21st day of April 2004 by and between Renata L. Ham, d/b/a Stonecreek Turf, a sole proprietorship (the "Seller"), whose address is 5125 Morninggale Dr., Boise, ID 83713, and Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole (the "Buyer"), whose address is 50 East North Temple, Salt Lake City, Utah 84150-6321. In consideration of the sums to be paid by Buyer to Seller, and the mutual covenants herein contained, the parties hereby agree as follows:

RECITALS

1. Seller owns a water right to divert ground water for irrigation purposes within the Boise River Basin (administrative Basin 63), which water right is represented by license number 63-9972 in the records of the Idaho Department of Water Resources ("Department"), and which water right authorizes diversion of ground water for irrigation uses on certain lands in Ada County during the irrigation season at a rate of 0.02 cubic feet per second ("cfs") per irrigated acre and a total annual diversion volume of 4.5 acre-feet per acre per year, such lands being located in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, section 31, T4N, R1E, Boise Meridian in Ada County (the "Property"). A copy of the water right license is attached as Exhibit A to this Agreement. The Property is more particularly described on Exhibit B.
2. Seller desires to sell the approximately 1.67 percent (0.5/30) portion of water right no. 63-9972 that is appurtenant to 0.5 acres within the Property (this portion of licensed water right no. 63-9972 hereinafter referred to as the "Water Right").
3. Buyer desires to purchase the Water Right and transfer its point of diversion and place of use to Buyer's property in Canyon County, or, in the alternative, use the Water Right as mitigation for a new ground water permit in which the retirement of the Water Right will serve a mitigation or similar purpose.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions set forth below, Seller agrees to sell the Water Right to Buyer, and Buyer agrees to purchase it.

4. Purchase Price. The Purchase Price for the Water Right is [REDACTED] payable as follows:

a. Non-refundable Earnest Money payment. Upon execution of this Agreement by Seller and Buyer, Buyer shall pay Seller [REDACTED] as a non-refundable earnest money payment ("Earnest Money"). As more particularly described below, the Earnest Money shall be applied toward the Purchase Price at Closing, but shall

be retained by Seller and not refunded to Buyer if, for any reason other than Seller's refusal to close, the purchase and sale does not close.

b. Balance of purchase price [REDACTED], being the Purchase Price less the Earnest Money, shall be due and payable to Seller at Closing.

5. Buyer responsible for water right transfer. Within thirty days after this Agreement is signed, Buyer shall file, with the Idaho Department of Water Resources ("Department"), either an application to change or transfer the Water Right to Buyer's place of use, proposed nature or time of use, and point of diversion or, in the alternative, an application for a new ground water permit in which the retirement of the Water Right will serve a mitigation or similar purpose (collectively, "Transfer"), and thereafter shall diligently pursue the Transfer at Buyer's sole cost. Upon filing the Transfer, Buyer shall provide a copy of the Transfer to Seller. Upon Seller's receipt of a copy of the Transfer, the Water Right no longer will be diverted from the well on Seller's property or placed to beneficial use by Seller unless Buyer agrees in writing that it can be so used on an interim basis during the pendency of the Transfer.

6. Seller to cooperate with Buyer's Transfer efforts. Seller shall cooperate with the Buyer in pursuit of the Transfer and, at Buyer's request, Seller shall provide Buyer with any information Seller has concerning the Water Right that Buyer may reasonably request in pursuit of the Transfer; provided, that if responding to such request will require Seller to incur attorney or consultant fees or costs, the following conditions shall apply:

a. Seller shall provide Buyer a written estimate of such fees and costs and shall not be obligated to provide a response until Seller receives from Buyer a written approval of such fees and costs and a commitment from Buyer to pay them directly or reimburse Seller for Seller's payment of them. Once Seller has received such approval, Seller shall provide the response to the extent of the fees and costs covered in the approval.

b. Seller shall forward to Buyer all bills for such fees and costs within thirty days after Seller receives invoices for such expenses from a consultant or attorney, and shall inform Buyer whether Seller has paid these invoices or, in the alternative, is forwarding them to Buyer for payment.

c. Within thirty days after Buyer receives them, Buyer shall either pay such invoices directly or reimburse Seller for Seller's payment of them.

7. Closing. Closing shall occur no later than the earlier of: a) ten days after the final, unappealable approval of the Transfer ("Transfer approval"), or b) the one-year anniversary date of this Agreement. At the Closing:

a. Seller shall deliver to Buyer: i) an executed and acknowledged Water Right Grant Deed and Assignment ("Deed") in the form of the specimen attached to this Agreement as Exhibit C; ii) all documentation, including appropriate deeds, leases, and

assignments, confirming Seller's ownership of the Water Right and its entitlement to convey it to Buyer; iii) an executed and acknowledged Notice of Change of Ownership confirming Buyer's ownership of the Water Right and the assignment of the appropriate portion of the Snake River Basin Adjudication Claim for the Water Right; and iv) such other documents as Buyer may reasonably request within thirty days prior to Closing to confirm Buyer's ownership of the Water Right or its transferability. Seller shall make best efforts to provide all documents referenced in item ii of this paragraph within 10 days after the date of this Agreement.

b. Buyer shall deliver to Seller the balance of the Purchase Price by means of a cashier's check or other means of payment acceptable to Seller. Buyer shall have responsibility for recording or filing the Deed and Notice of Change of Ownership and other documents with the county recorder, the Department, the SRBA Court, or any other entities Buyer deems appropriate.

8. Failure to close; Buyer's and Seller's elections. If the Transfer approval does not occur on or before the anniversary of this Agreement, Buyer at its option may either proceed to closing within 20 days after such anniversary deadline or terminate this Agreement by written notice and forfeit its Earnest Money. If Buyer fails to close the transaction within such 20 days after the anniversary deadline or otherwise breaches this Agreement, in addition to any other remedies Seller might have, Seller at its option may terminate this Agreement and retain the Earnest Money. If this Agreement is terminated by whatever means, Buyer, at its cost, shall forthwith withdraw and cancel the Transfer and take any steps necessary to ensure that the Department cancels, reverses or otherwise nullifies the Transfer application process and any Transfer approval, and such obligations shall survive the termination.

9. Representations and Warranties.

a. Seller hereby represents and warrants that:

- i. The Water Right has been beneficially used as the sole water source to irrigate the Property;
- ii. The Property no longer will be irrigated by the Water Right after the date of this Agreement, subject to the provision for interim use in paragraph 5, above;
- iii. Seller is the owner of the Water Right and has not conveyed, mortgaged, or pledged the Water Right to any other person or entity;
- iv. Seller has not engaged or dealt with any broker or finder in connection with the sale of the Water Right;

- v. Seller has the legal power, right and authority to enter into this Agreement and to perform Seller's obligations hereunder;
- vi. A claim for the Water Right has been filed in the Snake River Basin Adjudication, but Seller makes no representation or warranty regarding the outcome of that proceeding as it might affect the Water Right;
- vii. The Water Right has been placed to continual beneficial use on the Property, and Seller has no knowledge of any continuous five-year period of nonuse of the Water Right; and
- viii. Seller makes no other guarantees or warranties as to the Water Right, its yield upon transfer, or its transferability. Buyer understands and agrees that the purchase price set forth above will remain the same regardless of the amount of water Buyer ultimately is allowed to divert and place to beneficial use under the Transfer; that the amount of water could be less than the face value of the Water Right; and that, should it approve the Transfer, the Department may impose conditions on the use of the Water Right.

b. Buyer hereby represents and warrants that:

- i. Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder; and
- ii. Buyer has not engaged any broker or finder in connection with the purchase of the Water Right.

10. Remedies on Default. If either party breaches this Agreement, the non-breaching party shall be entitled to all remedies available at law or in equity.

11. Notices:

Seller: Renata L. Ham
5125 Morninggale Drive
Boise, ID 83713

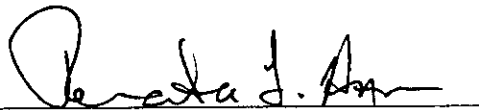
Buyer: LDS Church Natural Resources
Attn: Grant Cooper
50 East North Temple, 12th Floor
Salt Lake City, UT 84150-6321

12. General Provisions.

- a. This Agreement contains the entire agreement between the parties related to the purchase and sale of the Water Right, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.
- b. No modification, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by both parties.
- c. If either party commences litigation for the judicial interpretation, enforcement or rescission of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs.
- d. Time is of the essence to this Agreement. In particular, the requirement that Closing must occur within 12 months of the date of this Agreement is a central and material term, and either party's failure to close within that time period, subject to the provisions of paragraph 8, above, shall be a breach of this Agreement.
- e. All obligations referred to herein that reasonably are to be performed, or may be performed, after Closing, and all representations and warranties contained herein, shall survive the Closing and delivery of Seller's Water Right Grant Deed and Assignment.
- f. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, representatives, successors and assigns.
- g. All notices to be given to the parties shall be in writing, delivered in hand, or by U.S. Mail, postage pre-paid directed to such parties address as stated above unless such party shall have directed in writing that notice be sent to a different address.
- h. This Agreement may be executed in counterparts.

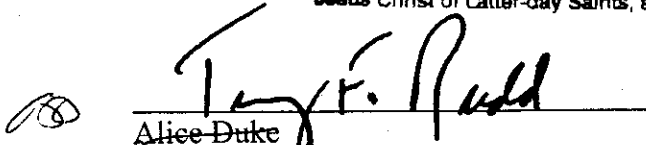
IN WITNESS WHEREOF, this Agreement has been executed by the parties, in the State of Idaho, as of the date set forth above.

SELLER:



Renata L. Ham
Stonecreek Turf

BUYER: Corporation of the Presiding Bishop of The Church of
Jesus Christ of Latter-day Saints, a Utah corporation sole.


Alice Duke
LDS Church Natural Resources

AUTHORIZED AGENT

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 63-09972

Priority: December 9, 1983

Maximum Diversion Rate: 0.60 CFS
Maximum Diversion Volume:¹ 135.0 AF

This is to certify, that FRANK N. HAM
WYOMA HAM

4415 N. LOCUST GROVE
MERIDIAN, ID 83642

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated January 21, 1983; and has submitted Proof of Beneficial Use on January 17, 1989. An examination indicates that the works have a diversion capacity of 2.490 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/15 to 11/15	0.60 CFS	135.0 AF

LOCATION OF POINT(S) OF DIVERSION:

NWNE , Sec. 31, Township 04N, Range 01E
ADA County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
04N	01E	31	SWNE	30		30

Total number of acres irrigated: 30

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.5 afa per acre for the lands above.

MICROFILMED

SEP 18 1990 EXHIBIT

A

imagery - Summer 2000

WATER RIGHT NO. 63-9972
VanEss (2.2) LDS Church (3)
Arbor Ridge (2) LDS Church (2.4)
Touchmark (2.2) LDS Church (0.5)
Boren (3) VanLith (14.7)

T04N R01E
T03N R01E

EXHIBIT

B

GIVENS PURSLEY LLP
Attn: Jeffrey C. Fereday
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

WATER RIGHT GRANT DEED AND ASSIGNMENT

FOR VALUE RECEIVED, Grantor Renata L. Ham, on her own behalf and as owner and proprietor of Stonecreek Turf of Meridian, Idaho, hereby grants, bargains, sells, and conveys unto Grantee, Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole, all of Grantor's right, title, and interest in and to the following portion of licensed irrigation ground water right no. 63-9972:

The 1.67 percent (0.5/30) portion of water right no. 63-9972 that is appurtenant to a total of 0.5 acres in the SW¼ of the NE¼, section 31, T4N, R1E, Boise Meridian in Ada County, which 0.5 acres are generally depicted on Exhibit A, attached hereto. This 0.5-acre portion of ground water right no. 63-9972 is referred to herein as the "Water Right."

Grantor hereby further assigns to Grantee all of Grantor's right, title, and interest in and to the above-described 0.5-acre portion of the license for ground water right no. 63-9972 issued by the Idaho Department of Water Resources, a copy of which is attached hereto as Exhibit A, together with a like portion of Grantor's right, title, and interest in and to any claim for the Water Right filed in the Snake River Basin Adjudication ("SRBA"), Fifth Judicial District, in the State of Idaho, in and for the County of Twin Falls, Case No. 39576. The Water Right conveyed by this Deed is subject to all conditions and limitations specified on such license or that may be imposed by the SRBA Court.

Grantor hereby covenants to Grantee that Grantor has ceased to divert and use the Water Right on the above-described acres or otherwise. Grantor makes no other guarantees or warranties as to the Water Right, its transferability, or its yield upon transfer, change, exchange, or use in a mitigation plan.

[End of Text]

TO HAVE AND TO HOLD the Water Right unto Grantee, its successors and assigns,
forever.

IN WITNESS WHEREOF, Grantor has caused her name to be subscribed to this Water
Right Grant Deed and Assignment effective this _____ day of February 2004.

GRANTOR:

RENATA L. HAM and
STONECREEK TURF, a sole proprietorship

Renata L. Ham

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of February 2004, before me, a notary public in and for the State of
Idaho, personally appeared Renata L. Ham, known or identified to me to be the person who
executed the above Water Right Grant Deed and Assignment, and acknowledged to me that she
executed the same on her own behalf and on behalf of Stonecreek Turf Farm.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year first above written.

NOTARY PUBLIC FOR IDAHO

Residing at: _____

My commission expires: _____

EXHIBIT A

Description of the Water Right