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APR 16 2003

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APR 14 2003

Department of Water Resources

Department of Water Resources
Southern RegionSTATE 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 RightPlease 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): A43-02576C, A4304014C, A4304014E, A43-04012A, A43-04013A, A43-02342, A43-02346A,
* A43-02476B, A43-02351, A43-02346D and A43-02342

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

Travelers Insurance Company
c/o Citigroup Investments
242 Trumbull Street - 7TS
Hartford, CT 06115

4. Name of Water Right Owner/Claimant(s) Daniel Moss and Jann Moss

5. Expiration Date of Notification Period October 01, 2012

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

7. Signature(s) (and title if applicable) *B. J. Moss*
Vice President

citigroup
 global investments

Lynn D. Longo
 Assistant Vice President
 Real Estate Investments Agency
 Citigroup Investments Inc.
 242 Trumbull Street
 P.O. Box 150449
 Hartford, CT 06115-0449
 Tel 860 308 8470
 Fax 860 308 8542
 lynn.d.longo@citigroup.com

For Office Use Only

Received by [Signature] Date 4/14/03 Fee 275.00
 Receipted by [Signature] Date 4/14/03 Receipt No. 5025706
 Processed by AJ Date WR Date

* 43-4012A - Decree disallowed
 * 43-2476B - split into 43-13268/43-13269
 * 43-2346A - split into 43-2346H, J, K

SUPPORT DATA
IN FILE # 43-2342

STATE OF IDAHO)

:ss

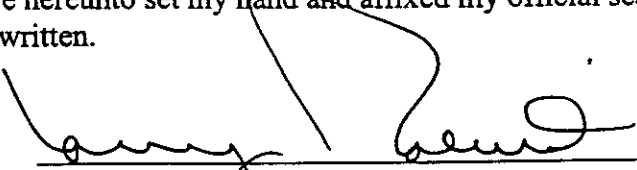
County of Cassia)

On this 18th day of February, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared RYAN MOSS and SHABREE MOSS, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

(seal)

Larry Roberts
Notary Public
State of Idaho


NOTARY PUBLIC FOR IDAHO

Residing at: Berley, Idaho

My Commission Expires: 6-30-03

267516

267516

3699

RECORDING REQUESTED BY:

The Travelers Insurance Company
6715 N. Palm Avenue
Suite 212
Fresno, CA 93704
Loan Nos. 206651-0 and 207214-0

AND WHEN RECORDED MAIL TO:

Land Title and Escrow, Inc.
ATTN: Larry Roberts
P.O. Box 177
211 West 13th Street
Burley, Idaho 83318

SID. COUNTY, IDAHO
DARRELL M. ROSKELLEY
RECORDER
FEE 108.00 DEPUTY *[Signature]*

'00 FEB 22 AM 11 51

RECORDED AT THE REQUEST OF
LAND TITLE & ESCROW

(For Recorder's use only)

**SUPPLEMENTAL REAL ESTATE MORTGAGE AND ASSIGNMENT OF
RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

**THIS REAL ESTATE MORTGAGE AND ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**, (hereinafter the "Mortgage"), made
this 18 day of February, 1999, by and between DANIEL D. MOSS and JANN MOSS,
husband and wife, and RYAN MOSS and SHABREE MOSS, husband and wife, of 850 East 450
South, Declo, Cassia County, State of Idaho, hereinafter the MORTGAGOR, and THE
TRAVELERS INSURANCE COMPANY, a corporation organized and existing under the laws
of the State of Connecticut, having its office at One Tower Square -9PB, Hartford, CT 06183-
2030, ATTN: Agri-finance, hereinafter the MORTGAGEE,

WITNESSETH: FOR GOOD AND VALUABLE CONSIDERATION, including
the indebtedness herein recited and the lien herein created, the receipt of which is hereby
acknowledged, MORTGAGOR hereby irrevocably mortgages, grants, bargains, sells, transfers
and conveys to MORTGAGEE, all of MORTGAGOR'S right, title, and interest now owned or
hereafter acquired in and to the following described real estate situate in the County of Cassia,
and the State of Idaho, to wit:

See Exhibit "A" attached hereto consisting of three pages.

TOGETHER WITH, all rents, issues, profits, royalties, income and other benefits
derived from the real property; all leases or subleases covering the real property or any portion
thereof, now or hereafter existing or entered into, and all right, title and interest of

MORTGAGOR thereunder; all interests, estates or other claims, both in law and in equity, which MORTGAGOR now has or may hereafter acquire in the real property; all easements, rights-of-way, tenements, hereditaments and appurtenances thereof and thereto. This Mortgage is in addition to and supplemental to the Mortgage of Mortgagor to Mortgagee recorded May 5, 1997 as Instrument No. 248810 on Film No. 286, records of Cassia County, Idaho. In the event of a conflict between the terms of this supplemental Mortgage and the terms of Mortgage Instrument No. 248810, the terms of this supplemental Mortgage shall govern.

TOGETHER WITH all right, title and interest of MORTGAGOR in all leases, permits, allotments, licenses, and privileges pertaining to the real property, whether or not appurtenant, from the United States or the State of Idaho or any department or other agency of either for the purpose of grazing, pasturing or feeding livestock on any of the public lands of the United States or the State of Idaho;

TOGETHER WITH all oil, gas and mineral rights and profits pertaining to the real property; all Water Rights (as such term is defined in Paragraph 10); all cotton histories, all acreage rice allotments, corn allotments, wheat or barley allotments pertaining to the real property presently held or hereafter acquired by MORTGAGOR; and all rights of MORTGAGOR under Conservation Reserve Contracts (CRP) now existing or hereafter made that affect the real property; all right, title and interest of MORTGAGOR, now owned or hereafter acquired, in and to any land lying within the right-of-way of any road, street, or highway adjoining the real property; any and all buildings, fixtures, improvements, and appurtenances now or hereafter erected thereon or belonging thereto (herein referred to as "Improvement" or "Improvements");

TOGETHER WITH all right, title and interest of MORTGAGOR in and to all water production, distribution, irrigation and drainage equipment, and facilities, all frost protection equipment and facilities, all crop storage equipment and facilities, all livestock handling facilities, including gates, panels, chutes and fences, and including all pumps, pumping stations, motors, panels, switchboxes, gearheads, booster pumps, transformers, engines, machinery, tanks, reservoirs, sumps, pivots, hoses, drip hoses, underground pipeline, fan jets, pipes, sprinklers, flumes, wheel lines, drip irrigation lines, wind machines, grain bins, grain augers and elevators and other machinery and equipment now or hereafter affixed (whether actually or constructively) to the real property, or used for the production of water on said real property or for the irrigation or drainage thereof, and all additions thereto and replacements thereof; all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the real property as between the parties hereto;

TO HAVE AND TO HOLD all of the foregoing property (herein collectively referred to as the "Property") unto the MORTGAGEE, its successors and assigns.

This MORTGAGE is given to secure:

ONE: Payment of the indebtedness (the "Loan") evidenced by a certain promissory note

dated May 2, 1997 in the principal sum of Nine Hundred Seventy Five Thousand and No/100 Dollars (\$975,000.00) and a certain Promissory Note dated February 18, 2000 in the principal sum of One Million Sixty Thousand and No/100 Dollars (\$1,060,000.00), both Notes with a final maturity of October 1, 2012, (hereinafter referred to as the "Notes") and interest thereon according to the terms of the Notes with any and all extensions, renewals, modifications or substitutions thereof and each and every debt, liability and obligation of every type and description, including guarantees or accommodations, which MORTGAGOR may now or at any time hereafter, owe or be obligated to MORTGAGEE, whether such debt, liability or obligation now exists, is direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several, when evidenced by a promissory note or other document reciting that such obligation is secured by this MORTGAGE.

TWO: Payment of all other moneys herein agreed or provided to be paid by MORTGAGOR, including sums advanced or expended by MORTGAGEE, and interest thereon, pursuant to the provisions hereof, and including sums advanced or expended by MORTGAGEE for the protection of the Property or for the protection of the interest of MORTGAGEE in the Property.

THREE: Performance and discharge of each and every obligation, promise and agreement of MORTGAGOR herein contained or incorporated herein by reference, including each and every obligation, promise and agreement of MORTGAGOR contained in any and all loan applications, commitment letters, security agreements, supplemental agreements, assignments of lessor's interest in leases, or other instruments of security executed by MORTGAGOR as of even date herewith or at any time subsequent to the date hereof for the purpose of further securing any indebtedness hereby secured, or any part thereof, or any further advancements or further or additional loans of any sums hereafter made by MORTGAGEE during the continuance of this MORTGAGE and secured hereby, or for the purpose of supplementing or amending this MORTGAGE or any instrument secured hereby (hereinafter collectively referred to, together with the Notes and this MORTGAGE, as the "Loan Documents").

The Notes and all such debts, liabilities, and obligations referred to in Paragraphs One, Two and Three above, are all collectively hereinafter referred to as the "Obligations".

MORTGAGOR warrants, covenants and agrees as follows:

1. **PAYMENT AND PERFORMANCE:** MORTGAGOR shall pay and perform the Obligations when due.

2. **WARRANTY OF TITLE:** MORTGAGOR is lawfully seized and possessed of good and indefeasible title to the Property, and MORTGAGOR hereby warrants the Property to be free and clear of all liens and encumbrances not set out herein; MORTGAGOR will defend the title against any claims by any party at any time during the term of this MORTGAGE; and MORTGAGOR has good, right and lawful authority to grant to MORTGAGEE the rights in the

Property covered by this MORTGAGE. If MORTGAGEE is made a party defendant to any litigation concerning this MORTGAGE or the Property or any part thereof or interest therein, or the occupancy thereof by MORTGAGOR, then MORTGAGOR shall indemnify, defend and hold MORTGAGEE harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by MORTGAGEE in any such litigation, whether or not any such litigation is prosecuted to judgment.

3. **FULL FORCE AND EFFECT:** The provisions of this MORTGAGE shall remain in full force and effect through any extension of time for payment of the Obligations, and until the Property is reconveyed or released.

4. To protect the Property, MORTGAGOR shall:

(a) **TAXES AND OTHER CHARGES:** Pay before the same become delinquent all taxes and assessments, and other charges against the Property including assessment's on Water Rights (as defined in Paragraph 10), all payments required to be made under the provisions of any leases, permits, allotments or licenses relating to grazing, pasturing, or feeding livestock on any public lands, the rights under which are covered hereby, and all other taxes and assessments of any kind or nature whatsoever that are assessed or imposed upon the Property or become due and payable, and that create a lien upon the Property or any part thereof, and in default thereof, MORTGAGEE may pay the same at the cost of MORTGAGOR. MORTGAGOR covenants to furnish to MORTGAGEE, upon request, official receipts of the appropriate taxing authority or other proof satisfactory to MORTGAGEE evidencing the payment thereof.

If MORTGAGEE so elects at any time, MORTGAGOR shall provide, at its expense, a tax service contract for the term of the Notes issued by a tax reporting agency acceptable to MORTGAGEE. If MORTGAGEE does not so elect, MORTGAGOR shall reimburse MORTGAGEE for the cost of making annual tax searches throughout the term of the Notes.

(b) **PRESERVATION, REPAIR AND USE OF PROPERTY:** Not commit waste, or authorize the repair, demolition, modification or removal of any of the structures, fixtures, or improvements on the Property, or do or permit any act that would result in the creation of a lien upon the Property or the structures, fixtures or improvements thereon without first obtaining prior written consent of MORTGAGEE, and otherwise to maintain the Property in as good condition as at present. Upon any failure to maintain, MORTGAGEE, at its option, may cause reasonable repair and maintenance work to be performed at the cost of MORTGAGOR, and MORTGAGEE, acting through its employees, agents or attorneys, by a receiver to be appointed by the court, or by an independent third party contractor retained by MORTGAGEE is hereby authorized at its option to enter upon and take possession of the Property for such

(c) **WATER RIGHTS:** Proceed with due diligence to perfect any existing or

future Water Rights (as defined in Paragraph 10). In the event MORTGAGOR fails to so proceed to perfect such Water Rights, MORTGAGEE may at its option (but shall not be required to) so perfect such Water Rights, or, at the election of MORTGAGEE, may require that the Obligations shall become immediately due and payable, or may do both. If MORTGAGOR is or becomes the owner of irrigable land subject to and in excess of the land limitation provisions of the Reclamation Act of 1902, the Omnibus Adjustment Act of 1926, the Reclamation Reform Act of 1982 or any act or law supplementary thereto or any rule or regulation promulgated thereunder and, pursuant to the provisions thereof, is required to designate part thereof as non-excess and part as excess lands, MORTGAGOR agrees to designate the irrigable lands on the Property, or so much thereof as may be so designated within said limitation provisions, as non-excess lands. MORTGAGOR also shall not encumber, sell, lease, assign, or otherwise transfer any Water Rights without the prior written consent of MORTGAGEE.

(d) **CROP HISTORY, ACREAGE ALLOTMENT AND CRP:** If the Property is now subject to a crop history, an acreage allotment, or a Conservation Reserve Contract (CRP), MORTGAGOR shall maintain the full history or allotment now or hereafter appertaining to the Property, and will plant and harvest the Property to said crop to the full extent required or permitted by law or governmental regulations to maintain said history or allotment including any increase in allotment which may, from time to time, be attributable to the Property, will stay in compliance with any such CRP contract and will not pledge, transfer, sell, lease or otherwise encumber, dispose or convey said history, allotment or CRP contract or any part thereof, without the prior written consent of MORTGAGEE, nor do any other act or fail to perform any requirement of any governmental rule or regulation required from time to time to maintain or improve the history or allotment on the Property or to stay in compliance with such CRP contracts now existing or hereafter made.

(e) **OBLIGATIONS OF MORTGAGOR:** Comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property, or requiring alterations or improvements to be made thereon, and MORTGAGOR shall not suffer nor permit any act to be done in or upon the Property in violation thereof. MORTGAGOR shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Property or that have been granted to or contracted for by MORTGAGOR in connection with any existing or presently contemplated use of the Property. MORTGAGOR represents and warrants that prior use of the Property has been in compliance with all applicable laws and regulations.

(f) **HAZARDOUS WASTE AND SUBSTANCES:** Warrant, and does hereby warrant that there has not been, since the date MORTGAGOR acquired title to the Property any release or discharge of any type whatsoever (including any "release" (as defined in 42 U.S.C. Section 9601(22)) or threat of any release or discharge (such a

alleged violation of any Environmental Regulation, (C) or of any environmental hazards or potential hazards, which are given by or on behalf of MORTGAGOR to any federal, state or local agencies or authorities or which are received by MORTGAGOR from any federal, state, or local agencies or authorities with respect to the Property. MORTGAGOR shall provide notice to MORTGAGEE if any person, party, or private or governmental agency or entity has given any notice of or asserted or threatened to assert any claim, cause of action, penalty, cost, or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, which results or allegedly results from any violation of any Environmental Regulation in connection with the Property. MORTGAGOR shall provide notice to MORTGAGEE of any actions, suits, proceedings, or damage settlements relating in any way to Hazardous Substances, in, upon, under, over, or from the Property or if the Property shall ever become listed in the United States Environmental Protection Agency's List of Hazardous Waste Sites or any other list of "hazardous substance" sites maintained by any federal, state or local governmental agency. Copies of any notices sent or received by MORTGAGOR shall be sent to MORTGAGEE promptly, but no later than ten (10) days, after their being mailed or delivered to the governmental agencies or authorities or other person and within ten (10) days after they are received by MORTGAGOR.

(ii) **NOTICE OF CHEMICAL DISCLOSURES:** MORTGAGOR agrees to provide MORTGAGEE with copies of all emergency and hazardous chemical inventory forms (hereinafter "Notices") previously given by MORTGAGOR with respect to the Property, as of the date hereof, to any federal, state or local governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11011 et. seq., and to provide MORTGAGEE with copies of all such Notices subsequently sent to any such governmental authority or agency with respect to the Property as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986. Such copies of subsequent Notices shall be sent to MORTGAGEE concurrently with their being mailed to any such governmental authority or agency.

(iii) **LIMITATIONS ON USE OF HAZARDOUS SUBSTANCES:** MORTGAGOR covenants and agrees that (A) it shall not permit the Property to be used for a mine, a landfill, a dump, or other disposal facility, (B) it shall not permit any underground storage tanks of any kind or character, whether empty or containing substances of any nature to be located on the Property, (C) it shall not locate, produce, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in violation of any Environmental Regulation in, upon, under, over or from the Property, (D) it shall not permit any Hazardous Substances to be located, produced, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of on the Property or to escape

release or threatened release being hereafter referred to as a "Release") of any "hazardous substances" (as defined in 42 U.S.C. Section 9601(14) or as defined as hazardous or toxic under any other federal, state, or local law), petroleum, including crude oil or any fraction thereof, or natural gas liquids, liquefied natural gas, or synthetic gas (all such items being hereafter referred to as "Hazardous Substances") on, upon or into the Property and, to MORTGAGOR'S knowledge, there has never been any Release on, upon or into the Property nor on, upon or into any real property adjoining or in the vicinity of the Property which could have come to be located upon the Property or the water or ground water thereon or thereunder. MORTGAGOR further warrants that: (a) to the best of MORTGAGOR'S knowledge, the Property has never been used for a mine, a landfill, a dump, or other disposal facility; (b) MORTGAGOR has no knowledge of any underground storage tanks of any kind or character, whether empty or containing substances of any nature, located or ever located in the past within the Property, and from the date of acquisition by MORTGAGOR, the Property and the use thereof has been and is in compliance with all applicable laws, statutes, ordinances, rules and regulations of all governmental and quasi-governmental authorities, specifically including all laws, statutes, ordinances, rules and regulations relating to environmental protection, toxic waste, underground storage tanks, and hazardous substance handling, treatment, storage and disposal (hereafter "Environmental Regulations"); (c) MORTGAGOR has received no notice of any violation or any alleged violation of any Environmental Regulation from any governmental entity or agency with respect to the Property, and there is not now nor has there ever been any other investigation or report involving the Property by any governmental entity or agency which in any way relates to Hazardous Substances; (d) to the best of MORTGAGOR'S knowledge, no person, party or private or governmental agency or entity has given any notice of or asserted or threatened to assert any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any violation of any Environmental Regulation in connection with the Property; (e) to the best of MORTGAGOR'S knowledge, there are not now, nor have there ever been, any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under, over or from the Property; (f) to the best of MORTGAGOR'S knowledge, the Property is not listed in the United States Environmental Protection Agency's List of Hazardous Waste Sites or any other list of "hazardous substance" sites maintained by any federal, state or local governmental agency. If MORTGAGOR becomes aware that any of the representations and warranties contained in this paragraph are untrue, but for the fact that such representations and warranties were qualified by any limitation based on MORTGAGOR'S knowledge, MORTGAGOR shall notify MORTGAGEE thereof within ten (10) days of MORTGAGOR'S becoming aware thereof MORTGAGOR further agrees as follows:

(i) NOTICE OF HAZARDOUS SUBSTANCES AND RELATED CLAIMS: MORTGAGOR shall provide MORTGAGEE with copies of any notifications of (A) Releases of Hazardous Substances, (B) any violation or any

therein, thereupon, thereunder, thereover or therefrom in violation of any Environmental Regulation, and (E) it shall comply with all Environmental Regulations which are applicable to the Property.

(iv) **INDEMNITY:** MORTGAGOR hereby covenants and agrees to indemnify, protect and hold harmless MORTGAGEE from and against any and all claims, demands, liabilities and costs, including attorneys' fees, arising from (a) any Release, actual or alleged, of any Hazardous Substances upon or about the Property or respecting any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Property, or respecting any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Property, regardless of whether such Release or threat of Release or alleged Release or threat of Release has occurred prior to the date hereof or hereafter occurs and regardless of whether such Release occurs as the result of the negligence or misconduct of MORTGAGOR or any third party or otherwise, (b) any violation, actual or alleged, of or any other liability under or in connection with any Environmental Regulation, including the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Emergency Planning and Community Right-to-Know Act of 1986, as same may be amended, or any other environmental protection or toxic waste or hazardous substance handling, treatment, storage, or disposal laws, statutes, ordinances, rules or regulations, relating to the Property or respecting any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Property, regardless of whether such violation or alleged violation or other liability has occurred or arisen prior to the date hereof or hereafter occurs or arises and regardless of whether such violation or other liability occurs or arises as the result of the negligence or misconduct of MORTGAGOR or any third party or otherwise. Notwithstanding a provision in the MORTGAGE or any Loan Document, if any, that limits the liability of MORTGAGOR hereunder, this indemnity shall survive the extinguishment of the lien of this MORTGAGE by foreclosure or reconveyance or otherwise as to any such Release or any such violation, alleged violation or other liability occurring or arising prior to such foreclosure or reconveyance, and this covenant shall survive such extinguishment.

(v) **ENVIRONMENTAL AUDITS.** At any time after an Event of Default and from time to time thereafter, if MORTGAGEE so requests, MORTGAGOR shall have any environmental review, audit, assessment and/or report relating to the Property heretofore provided to MORTGAGEE updated, at MORTGAGOR'S sole cost and expense, by an engineer or scientist acceptable to MORTGAGEE, and shall promptly provide MORTGAGEE with a copy of all such audits. MORTGAGEE may also at its option and at MORTGAGOR'S sole expense, contract for a "Phase 1" environmental inspection report prepared and certified by an environmental consultant satisfactory to MORTGAGEE to

determine whether the Property complies with all Environmental Regulations. If, based on a Phase 1 environmental audit, MORTGAGEE determines that additional testing or investigation including a Phase II environmental audit, should be performed on the Property, MORTGAGEE may contract for such testing, which shall be performed at MORTGAGOR'S sole expense. MORTGAGOR shall cooperate in all reasonable ways with MORTGAGEE in connection with any such audits or tests.

In addition to the other rights and remedies provided hereunder, MORTGAGEE shall have the following rights and remedies: With or without notice (except for such notice as is required by applicable law), and without releasing MORTGAGOR from any obligation hereunder, MORTGAGEE may, but shall not be obligated to, cure any breach by MORTGAGOR of this Paragraph 4(f) and, in connection therewith, MORTGAGEE or its agents, acting by themselves or through a court-appointed receiver, or through an independent third party contractor, may enter upon the Property or any part thereof and perform such acts and things as MORTGAGEE deems necessary or desirable to inspect, investigate, assess, and protect the security hereof

5. DEPOSITS FOR TAXES AND INSURANCE PREMIUMS: MORTGAGEE may, at its option, which may be exercised at any time, require MORTGAGOR to deposit with MORTGAGEE on the first day of each month, in addition to making payments of regular installments of principal and interest, until the Notes are fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes, assessments and other similar charges and/or of the yearly premiums for all insurance as estimated by MORTGAGEE in order to accumulate with MORTGAGEE sufficient funds to pay such amounts thirty (30) days prior to their due dates. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of MORTGAGEE, and no interest shall be payable in respect thereof. Upon demand by MORTGAGEE, MORTGAGOR shall deliver to MORTGAGEE such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable MORTGAGEE to pay such premiums when due. In the event of a default under any of the terms, covenants and conditions of any of the Loan Documents, MORTGAGEE may apply such deposits in MORTGAGEE'S possession to the reduction of the sums secured hereby, in such order, priority and proportions as MORTGAGEE shall determine, in its sole and absolute discretion, and any amount under this paragraph remaining on account of such deposits and any return premium received from cancellation of any insurance policy by MORTGAGEE upon foreclosure of this MORTGAGE. Upon an assignment of this MORTGAGE by MORTGAGEE and upon assumption by the assignee thereof of the obligations of MORTGAGEE as escrow holder, MORTGAGEE shall have the right to pay over the balance of such deposits in its possession to the assignee. MORTGAGEE shall thereupon be completely released from all liability with respect to such deposits, and MORTGAGOR shall look solely to the assignee or transferee with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee. All deposits are hereby pledged as additional security for the Obligations and shall be held by MORTGAGEE and be applied for the purposes provided herein, and shall not be subject to the direction or control of MORTGAGOR. Notwithstanding anything herein to the

contrary, MORTGAGEE shall not be liable for any failure to apply the deposits unless MORTGAGOR shall have requested MORTGAGEE in writing to make application of such deposits on hand to the payment of the taxes or premiums for the payment of which such deposits were made, accompanied by the bills therefor.

6. **PROTECTION OF SECURITY:** MORTGAGEE, without obligation to do so and without notice to or demand upon MORTGAGOR and without releasing MORTGAGOR from any obligations or Events of Default hereunder, may appear in and defend any action or proceeding purporting to affect MORTGAGOR'S obligations and/or the Notes, the security hereof, or the rights or powers of MORTGAGEE, and MORTGAGOR shall pay all costs and expenses, including costs of evidence of title and reasonable attorney's fees, in such action or proceeding in which MORTGAGEE may appear.

7. **ABSOLUTE ASSIGNMENT OF RENTS AND PROFITS:** MORTGAGOR hereby absolutely, presently and unconditionally assigns all the present and future rents, income, issues and profits (the "Rents") to MORTGAGEE, and hereby gives to and confers upon MORTGAGEE the right, power and authority during the continuance of this MORTGAGE to collect the Rents of the Property and of any personal property located thereon with or without taking possession of the Property affected hereby. MORTGAGEE, however, hereby grants to MORTGAGOR a license for MORTGAGOR'S collection and retention of such Rents as they accrue and become payable (but no more than one month in advance) so long as MORTGAGOR is not, prior to or at such times, in default under any of the Loan Documents. This license will terminate immediately upon the occurrence of any Event of Default. This assignment of Rents is intended to be an absolute assignment from MORTGAGOR to MORTGAGEE and not merely the passing of a security interest.

Upon the occurrence of an Event of Default, MORTGAGEE may at any time, either in person, by agent, or by a receiver to be appointed by a court, or through a third party independent contractor, without notice and without regard to the adequacy of any security for the indebtedness secured hereby and without being deemed a mortgagee in possession:

- (a) enter upon and take possession of; manage and operate the Property or any part thereof, and either with or without taking possession of the Property, in its own name or in the name of MORTGAGOR sue for or otherwise collect such Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as MORTGAGEE may determine;
- (b) perform such acts of repair or protection as may be necessary or proper to conserve the value of the Property; and
- (c) make, cancel, enforce or modify leases, obtain and evict tenants, and fix or modify rents or do any acts which MORTGAGEE deems proper to protect the

security hereof.

Unless MORTGAGOR and MORTGAGEE agree otherwise in writing, any application of Rents to any indebtedness secured hereby shall not extend or postpone the due date of the installment payments as provided in said Notes or change the amount of such installments. The entering upon and taking possession of the Property, the collection of such Rents, or the application thereof as described herein, shall not waive or cure any Event of Default or notice of default hereunder, or invalidate any act done in response to such Event of Default or pursuant to such notice.

MORTGAGOR also assigns to MORTGAGEE, as further security for the performance of the Obligations secured hereby, all prepaid rents and all monies which may have been or may hereafter be deposited with MORTGAGOR by a lessee of the Property, to secure the payment of any rent, and upon the occurrence of an Event of Default, MORTGAGOR agrees to deliver such rents and deposits to the MORTGAGEE. Delivery of written notice of MORTGAGEE'S exercise of the rights granted herein, to any tenant occupying said premises shall be sufficient to require said tenant to pay said rent directly to MORTGAGEE until further notice.

8. CONDEMNATION; MINERAL PAYMENTS: If the Property, or any part thereof or interest therein, is taken or damaged permanently or temporarily by reason of any public improvement or condemnation proceeding, or by any proceeding or purchase in lieu thereof; including a change of grade of streets, or in any other manner, or if MORTGAGOR shall receive or be entitled to receive any compensation for any loss in value of or any damage to the Property from any person or entity holding any interest in mineral rights (including oil and gas) associated with the Property (such compensation, which shall not include contractual royalty or lease payments is hereafter referred to as "Minerals Payments") or should MORTGAGOR receive any notice or other information regarding such a matter or proceeding, MORTGAGOR shall give prompt written notice thereof to MORTGAGEE and will deliver to MORTGAGEE copies of any and all papers served in connection therewith. Any award of damages, severance damages, settlement, or compensation in connection with any eminent domain action for public use of or an injury to the Property or with any Minerals Payments, or any part thereof, is hereby assigned by MORTGAGOR to MORTGAGEE, and all money received by MORTGAGEE may, in MORTGAGEE'S sole discretion, be applied to the indebtedness secured by this MORTGAGE, or released by it in the same manner and with the same effect as herein provided for the disposition of the proceeds of insurance. Neither the application nor the release of any such sums shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice, nor shall anything in the section affect the liability of MORTGAGOR for payment of the entire balance of the Obligations secured hereby. MORTGAGEE, without obligation to do so, may appear in and prosecute in its own name any action or proceedings or to make any compromise or settlement in connection with such taking or damage.

9. INSURANCE, CASUALTY, GENERAL LIABILITY AND RESTORATION. MORTGAGOR shall, at MORTGAGOR'S sole cost and expense, keep the

improvements, buildings and other fixtures upon the Property insured against such hazards and in such amounts and form as may be required by MORTGAGEE. After the happening of any casualty to the Property or any part thereof, MORTGAGOR shall give prompt written notice thereof to MORTGAGEE.

MORTGAGOR shall further maintain general liability insurance in an amount not less than \$1,000,000.00 per occurrence, acceptable to MORTGAGEE, with MORTGAGEE named as additional insured and with companies satisfactory to MORTGAGEE, with respect to damages or injuries arising from use or occupation of the Property and against such risks or hazards as MORTGAGEE from time to time reasonably may designate. MORTGAGOR shall observe and comply with the requirements of all policies of general liability, fire and other policies of insurance at any time in force with respect to the Property.

In the event of any damage to or destruction of the Improvements, MORTGAGEE shall have the option, in its sole discretion, of applying all or part of the insurance proceeds (a) to the Obligations, in such order, priority and proportions as MORTGAGEE may determine in its sole and absolute discretion; (b) to the restoration of the improvements; or (c) to MORTGAGOR.

In the event of such loss or damage, all proceeds of insurance shall be payable to MORTGAGEE, and MORTGAGOR hereby assigns said proceeds to MORTGAGEE and authorizes and directs any affected insurance company to make payment of such proceeds directly to MORTGAGEE. MORTGAGEE is hereby authorized and empowered by MORTGAGOR to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.

Except to the extent that insurance proceeds are received by MORTGAGEE and applied to the Obligations, nothing herein contained shall be deemed to excuse MORTGAGOR from repairing or maintaining the Property as provided in this MORTGAGE or restoring all damage or destruction to the Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by MORTGAGEE of any insurance proceeds shall not cure or waive any default or notice of default under this MORTGAGE or invalidate any act done pursuant to such notice.

All insurance policies required herein shall be written with companies satisfactory to MORTGAGEE, and shall have a rating of (A-) (VIII) or higher according to the most recent edition of Best's Insurance Guide, shall contain non-contributory standard mortgagee clauses, shall name MORTGAGEE as an additional insured or, at the option of MORTGAGEE, contain a lender's loss payable endorsement, shall be maintained throughout the term of the Notes without cost to MORTGAGEE, and shall contain such provisions as MORTGAGEE deems necessary or desirable to protect its interest including a provision for thirty (30) days prior written notice to MORTGAGEE of cancellation of the Policy or any changes in the risk or coverages insured. At least fifteen (15) days prior to the expiration of each policy of insurance, MORTGAGOR shall furnish MORTGAGEE with evidence satisfactory to MORTGAGEE of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this

MORTGAGE. In the event MORTGAGOR fails to provide, maintain, keep in force or deliver and furnish to MORTGAGEE the policies of insurance required by this paragraph, MORTGAGEE may procure such insurance for such risks covering MORTGAGEE'S interest, and MORTGAGOR shall pay all premiums thereon promptly upon demand by MORTGAGEE, and until such payment is made by MORTGAGOR, the amount of all such premiums, together with interest thereon at the default rate as defined in the Notes (the "Default Rate"), shall be secured by this MORTGAGE.

10. SECURITY INTEREST: MORTGAGOR hereby grants to MORTGAGEE a security interest in all of the personal property identified on page 2 of this MORTGAGE and in all of the following property, whether now owned or hereafter acquired, affixed to, located on or at the Property or used in connection with the operation of the Property or the Improvements, (hereinafter referred to collectively as the "Collateral").

All right, title and interest of MORTGAGOR in and to all water production, distribution, irrigation, and drainage equipment and facilities, all frost protection equipment and facilities, all crop storage equipment and facilities, all livestock handling facilities, including gates, panels, chutes and fences, and including all pumps, pumping stations, motors, panels, switchboxes, transformers, engines, gearheads, booster pumps, machinery, tanks, reservoirs, sumps, pivots, hoses, fan jets, pipes, sprinklers, flumes, wheel lines, drip irrigation lines, drip hose, underground pipeline, fences, gates, chutes, wind machines, grain bins, grain augers, and elevators, and other machinery, equipment and facilities now or hereafter installed on, affixed to (whether actually or constructively), placed upon, or used in connection with or for the benefit of the Property, including any such items not located on the property but used to deliver water to the Property, whether now owned or hereafter acquired, and all replacements, additions, and substitutions made thereto, and including all insurance proceeds on any of said collateral, including, but not limited to, those items described in Exhibit "B" consisting of one (1) page attached hereto and by this reference incorporated herein.

All Water Rights including, but not limited to, the ground water on, under, pumped from or otherwise available to the Property or any other water rights appurtenant to the Property, whether as a result of groundwater rights, contractual rights, or otherwise and whether riparian, appropriative, or otherwise; the right to remove or extract any such ground water including any permits, rights or licenses granted by any governmental authority or agency and any rights granted or created by any easement, covenant, agreement or contract with any person or entity; and any rights to which the Property is entitled with respect to surface water, whether such rights are appropriative, riparian, prescriptive or otherwise and whether or not pursuant to permit or other governmental authorization; the right to store any such water; any water right, water allocation for water not yet delivered, distribution right, delivery right, water storage right, or other water related entitlement appurtenant to or otherwise applicable to the Property by virtue of the Property being situated within the boundaries of any governmental water district or within the boundaries of any private water company, mutual water company, or other non-governmental entity; and any shares, or any rights under such shares, of any private water company, mutual water company or other non-governmental entity pursuant to which MORTGAGOR or the

Property may receive water; and including rights evidenced by Idaho Department of Water Resources Licenses Nos. A43-02576C, A43-04014C, A43-04014E, A43-04012A, A43-04013A, A43-02342, A43-02346A, A43-02476B, A43-02351, A43-02346D and A43-02342, (the property and rights referred to in the this paragraph are the "Water Rights").

Together with all substitutions and replacements for and products of any of the foregoing property and together with proceeds of any and all of the foregoing property and all improvements, accessions, additions to, accessories, attachments, parts, and repairs now or hereafter attached or affixed to or used in connection with any such property.

MORTGAGOR warrants, represents and covenants as follows:

- (a) The Collateral is not used or bought for personal, family or household purposes;
- (b) Except for the security interest granted hereby, MORTGAGOR is the owner of the Collateral free from any prior lien, security interest or encumbrance; and MORTGAGOR will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.
- (c) MORTGAGOR will maintain insurance on the Collateral in such amounts and of such types as may be requested by MORTGAGEE, and the type, terms and provisions of such insurance shall be governed by the terms of Paragraph 9, above.
- (d) All covenants and obligations of MORTGAGOR contained herein relating to the Property shall be deemed to apply to the Collateral whether or not expressly referred to herein.
- (e) MORTGAGOR maintains a place of business in the state where the real property is located and MORTGAGOR shall immediately notify MORTGAGEE in writing of any change in such place of business as set forth in this MORTGAGE.
- (f) MORTGAGOR shall obtain UCC searches on such parties as MORTGAGEE may require to confirm that the Collateral is owned by MORTGAGOR and is free from all liens and encumbrances.

This MORTGAGE constitutes a security agreement with respect to the Collateral in which MORTGAGEE is hereby granted a security interest, (and also constitutes a financing statement and a fixture filing) and MORTGAGEE shall have all of the rights and remedies of a secured party under the Idaho Commercial Code as well as all other rights and remedies available at law or in equity. MORTGAGOR hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints MORTGAGEE the attorney-in-fact of MORTGAGOR, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as

MORTGAGEE may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of any Event of Default hereunder (taking into account any applicable period of grace or to cure), MORTGAGEE shall have the right to cause any of the Collateral which is personal property to be sold at any one or more public or private sales as permitted by applicable law, and MORTGAGEE shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of MORTGAGEE. Any person, including both MORTGAGOR and MORTGAGEE, shall be eligible to purchase any part or all of such Collateral at any such disposition.

11. **COLLECTION RIGHTS - ACCOUNTS:** MORTGAGEE may, at any time (both before and after the occurrence of an Event of Default) notify any account debtor, or other person obligated to pay any amount due to MORTGAGOR, that such account, or other right to payment has been assigned or transferred to MORTGAGEE for security and shall be paid directly to MORTGAGEE. If MORTGAGEE requests at any time, MORTGAGOR will notify such account debtors and other obligors in writing and will indicate on all invoices to such account debtors or other obligors that the amount due is payable directly to MORTGAGEE. At any time after MORTGAGEE or MORTGAGOR gives such notice to an account debtor or other obligor, MORTGAGEE may (but need not), in its own name or in MORTGAGOR'S name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, or securing, any such chattel paper, account, or other right to payment; or grant any extension to, make any compromise or settlement with or otherwise agree to waive, modify, amend or change the obligations (including collateral obligations) of any such account debtor or other obligor.

12. **PARTIAL PAYMENT:** Acceptance by MORTGAGEE of any sum in payment or part payment of any portion of the Obligations after the same is due shall not constitute a waiver of MORTGAGEE'S right to require prompt payment when due of the remainder of the Obligations, nor shall such acceptance cure or waive any remaining default or waive any subsequent default or prejudice any of the rights of MORTGAGEE under this MORTGAGE.

13. **ACTIONS BY MORTGAGEE:** Without affecting the personal liability of any person, including MORTGAGOR (other than any person released pursuant hereto), for the payment of the Obligations, and without affecting the lien of this MORTGAGE for the full amount of the Obligations remaining unpaid upon any property not released pursuant hereto, MORTGAGEE is authorized and empowered as follows: MORTGAGEE may at any time and from time to time, either before or after the maturity of the Notes, and without notice: (a) release any person liable for the payment of any of the Obligations, (b) make any agreement extending the time or otherwise modifying the terms of payment of any of the Obligations, (c) accept additional security therefor of any kind or (d) without the prior consent of junior lienholders, release any part of the Property, real or personal, from the lien of this MORTGAGE.

14. **HUSBANDRY:** MORTGAGOR shall at all times work, prune, cultivate, fertilize, spray, dust, harvest, care for and maintain in a husbandlike manner according to the most current

approved methods and consistent with accepted industry standards any grove and orchard trees, vineyard, or crops now on the Property or hereafter planted thereon, and shall protect said grove and orchard trees, vineyard, and crops against loss or damage by fire, and where appropriate, by making and maintaining proper fire breaks in and around said grove and orchard trees, vineyard, or crops in a good and workmanlike manner, and if the property is improved with a dairy, MORTGAGOR shall at all times care for and maintain according to the most current approved methods any such dairy facilities, and shall protect such dairy facilities against loss or damage by fire as described above. If an Event of Default shall occur as a result of the breach of any of the provisions of this paragraph (or for any other reason), MORTGAGEE may without notice or demand ask for and obtain the appointment of a receiver for the protection and management of said security or may remedy such default, and carry out and perform all of the obligations of MORTGAGOR hereunder at the cost and expense of MORTGAGOR and pay the cost thereof, and MORTGAGOR hereby agrees immediately to repay to MORTGAGEE on demand any sums so paid, with interest thereon from the respective dates of such payments at the Default Rate as specified in the Notes secured hereby, and all sums paid by MORTGAGEE; with interest shall be a part of the indebtedness secured hereby and in default of immediate repayment thereof by MORTGAGOR the entire indebtedness secured hereby shall at the option of MORTGAGEE become due and payable forthwith without notice. MORTGAGEE shall be permitted to enter upon and inspect the Property for purposes of this paragraph at all reasonable times during the term of this MORTGAGE.

15. **FINANCIAL STATEMENTS:** MORTGAGOR shall furnish MORTGAGEE with financial statements within ninety (90) days of MORTGAGOR'S fiscal year end. Statements shall also include financial information on any and all related entities obligated under the Loan Documents and shall be in a format substantially similar to the statements submitted at the time of application for the Loan, or statements which have been prepared in accordance with generally accepted accounting principles. MORTGAGOR also agrees to submit any and all other financial information as may reasonably be requested by Beneficiary from time to time.

16. **FULL PAYMENT:** If upon MORTGAGOR'S payment in full of; all of the Obligations then this MORTGAGE and all the other Loan Documents shall be discharged and satisfied at the expense of the MORTGAGOR upon its written request.

17. **TRANSFER OF PROPERTY:** For the purpose of protecting MORTGAGEE'S security, keeping the Property free from subordinate financing liens, and/or allowing MORTGAGEE to raise the interest rate and to collect assumption fees, MORTGAGOR agrees that any sale, conveyance, further encumbrance, or other transfer of legal, equitable or beneficial title to the Property, or any interest therein (whether voluntarily or by operation of law), without MORTGAGEE'S prior written consent, shall be an Event of Default hereunder. In the event MORTGAGOR, without the prior written consent of MORTGAGEE, shall sell, convey, alienate, transfer, mortgage or encumber the Property described herein or any part thereof; or any interest therein, whether legal, equitable or beneficial, or shall be divested of its title or any interest therein, in any manner or way, whether voluntary or involuntary, the entire balance of the Obligations shall become immediately due and payable at the option of MORTGAGEE.

For the purpose of, and without limiting the generality of the foregoing, the occurrence at any time of any of the following events, without MORTGAGEE'S prior written consent, shall be deemed to be an unpermitted transfer of title of the Property and therefore an Event of Default hereunder:

(a) Any sale, conveyance, assignment, grant or other transfer of; or grant of a security interest in or lien upon, all or any part of a legal, equitable and/or beneficial interest in the Property;

(b) Any sale, conveyance, assignment, grant or other transfer of (including upon foreclosure of a security interest), any share of stock of MORTGAGOR affecting twenty-five percent (25%) or more of such stock, cumulatively since the date of the Notes;

(c) Any sale, conveyance, assignment, grant or other transfer of (including upon foreclosure of a security interest), any general partnership interest in MORTGAGOR;

(d) Any sale, conveyance, assignment, grant or other transfer (including upon foreclosure of a security interest) affecting twenty-five percent (25%) or more of all limited partnership interests in MORTGAGOR cumulatively since the date of the Notes; or

(e) Any sale, conveyance, assignment, grant or other transfer of the legal, equitable and/or beneficial title to the Property which occurs by operation of law, by trustees in bankruptcy, receivers or estate administrators, personal representatives or executors, or by or through a bankruptcy court.

(f) Any transfer, assignment, sale, exchange, gift, encumbrance, pledge, hypothecation, or other disposition of; directly, indirectly or in trust, voluntarily or involuntarily, by operation of law or otherwise, or the entry into a binding agreement to do any of the foregoing with respect to any Water Rights.

Without limiting the generality or effect of the foregoing, waiver by MORTGAGEE of its right to accelerate the Obligations upon any transfer or contract to transfer, or to require satisfaction of the conditions set forth above, shall not be deemed a waiver by MORTGAGEE of its right to accelerate the Obligations upon any other transfer or contract to transfer or its right upon such transfer or contract to transfer to require satisfaction of the conditions set forth above. Any consent by MORTGAGEE, or any waiver of any Event of Default under this paragraph, shall not constitute a consent to, or waiver of; any right, remedy or power of MORTGAGEE upon a subsequent event of default under this Paragraph.

18. ERISA: MORTGAGOR covenants and agrees that so long as any Obligations remain outstanding, unless MORTGAGEE shall have previously consented in writing, (a) it will

take no action which would cause it to become an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA"), or a "governmental plan" as defined in Section 3(32) of ERISA, or its assets to become "plan assets" as defined in 29 C.F.R. Section 2510.3-101, or "assets of a governmental plan" subject to regulation under state statutes, and (b) it will not sell, assign or transfer the Property, or any portion thereof or interest therein, to any transferee which does not execute and deliver to MORTGAGEE its written assumption of the obligations of this covenant. MORTGAGOR further covenants and agrees to protect, defend, indemnify and hold MORTGAGEE harmless from and against all loss, cost, damage and expense (including all attorney's fees and excise taxes, costs of correcting any prohibited transaction or obtaining an appropriate exemption) which MORTGAGEE may incur as a result of MORTGAGOR'S breach of this covenant. Notwithstanding a provision in the MORTGAGE or a Loan Document, if any, that limits the liability of MORTGAGOR hereunder, this indemnity shall survive the extinguishment of the lien of this MORTGAGE by foreclosure or reconveyance or otherwise.

19. **EVENTS OF DEFAULT:** Time is of the essence hereof and any of the following events shall be deemed an "Event of Default" hereunder:

(a) MORTGAGOR shall fail to pay any installment of principal or interest of the Obligations or any other sum secured hereby when due, after the expiration of any applicable cure or grace period as provided by the Notes;

(b) MORTGAGOR or any other party that may be liable upon the Obligations by guarantee or by execution of the Notes or any additional note(s), assumption, endorsement or otherwise, shall file any petition in bankruptcy (whether for liquidation or reorganization) or an order for relief shall be entered as to it under any bankruptcy or reorganization law; or MORTGAGOR or any such party shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or MORTGAGOR or any such party shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of MORTGAGOR or such other party or of all or any part of the Property or of any or all of the Rents, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due;

(c) MORTGAGOR or any other party that may be liable upon the Obligations by guarantee or by execution of the Note or any additional note(s), assumption, endorsement or otherwise, shall have filed against it any involuntary petition in bankruptcy (whether for liquidation or reorganization) or any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors and such petition or other matter shall not have been dismissed within sixty (60) days after having been filed or initiated;

(d) Any lien shall attach to the Property or any portion thereof or interest therein (other than liens for non-delinquent taxes and assessments) that is senior to the lien of this MORTGAGE; or any lien shall attach to the Property or any portion thereof or interest therein that is junior to the lien of this MORTGAGE, including any writ of execution or attachment or any similar process the entry of which against MORTGAGOR shall become a lien and such lien is not released, bonded, satisfied, vacated or stayed within thirty (30) days; provided that the thirty (30) day cure period shall be applicable only to involuntary liens and there is no cure period with respect to voluntary liens;

(e) There has occurred a breach of or default under any term, covenant, agreement, condition, or provision contained herein or in the Notes or in any of the other Loan Documents, any agreement relating to the Property, or any other agreement between MORTGAGEE and MORTGAGOR, other than those breaches or defaults covered by other subparagraphs of this Paragraph 19, including any event defined in this MORTGAGE as an Event of Default and not otherwise specifically referred to in this Paragraph 19;

(f) The assignment by MORTGAGOR, as lessor or sublessor, as the case may be, of the Rents or any part thereof (other than to MORTGAGEE) without the prior

(g) The failure of MORTGAGOR to notify MORTGAGEE in writing immediately after damage or loss to the Property by reason of fire or other casualty, and prior to the making of any repairs thereto, or MORTGAGOR'S refusal to permit MORTGAGEE to inspect such damage or loss prior to the making of any repairs thereto;

(h) There shall occur a breach of default under Paragraph 17 entitled "Transfer of Property";

(i) Any representation or warranty made by MORTGAGOR or others hereunder or in, under or pursuant to the Loan Documents or in the application for the loan evidenced by the Notes (or in the related documents) shall have been false or misleading in any material respect as of the date on which such representation or warranty was made;

(j) Any of the Loan Documents at any time after their respective execution and delivery and for any reason, shall cease to be in full force and effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by MORTGAGOR, or any stockholder or partner of MORTGAGOR, or MORTGAGOR shall deny that it has any further liability or obligation under any of the Loan Documents to which it is a party; or

(k) MORTGAGOR fails to perform any terms, conditions, covenants or agreements which are part of this MORTGAGE or any other document or agreement which secures all or any part of the Obligations.

20. **ACCELERATION, REMEDIES:** Upon an Event of default by MORTGAGOR, as defined herein, MORTGAGEE may declare all Obligations immediately due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, MORTGAGEE may:

(a) In person or by agent or by a receiver appointed by a court, with or without bringing any action or proceeding and without regard to the adequacy of its security, the solvency of MORTGAGOR or the existence of waste, enter upon and take possession of the Property, or any part thereof; in its own name, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or part thereof or interest therein, to increase the income therefrom or to protect the security hereof; and, with or without taking possession of the Property, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys' fees, upon any obligation secured by this MORTGAGE, all in such order as MORTGAGEE may determine. The entering upon and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Property or the collection, receipt and application of Rents, MORTGAGEE shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default.

(b) At MORTGAGOR'S sole expense, contract for a "Phase 1" environmental inspection report prepared and certified by an environmental consultant satisfactory to MORTGAGEE to determine whether the Property complies with all Environmental Regulations. If, based on the Phase 1 environmental audit, MORTGAGEE determines that additional testing or investigation should be performed on the Property, such testing shall be performed at MORTGAGOR'S sole expense;

(c) Commence an action to foreclose this MORTGAGE, appoint a receiver, or specifically enforce any of the covenants hereof;

(d) Proceed as to both the real and personal property in accordance with MORTGAGEE'S rights and remedies with respect to the Property or proceed to sell any personal property separately and without regard to the Property in accordance with MORTGAGEE'S rights and remedies.

In the event an action to foreclose this MORTGAGE, MORTGAGEE shall be entitled to immediate possession of the Property, as a matter of right and without notice to MORTGAGOR or anyone claiming under MORTGAGOR, and without regard to the then value of the Property or the interest of MORTGAGOR herein, shall have the right to apply to any court having

jurisdiction to appoint a receiver or receivers of the Property, and MORTGAGOR hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the powers and duties available to receivers under law and all the powers and duties of MORTGAGEE in case of entry as provided above and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property unless such receivership is sooner terminated.

Should this MORTGAGE be foreclosed, the Property described in the Judgment or Decree of Foreclosure entered in such action may be ordered sold en masse or in lots and parcels at the sole option of MORTGAGEE.

21. **PREPAYMENT:** Upon any Event of Default hereunder and the acceleration of maturity in the manner allowed herein, any tender of payment of the amount necessary to satisfy the debt evidenced by the Notes made by MORTGAGOR, MORTGAGOR'S successors or assigns, or by anyone on behalf of MORTGAGOR, or on behalf of MORTGAGOR'S successors or assigns, or by any holder of a subordinate or superior interest in the Property shall constitute a "prepayment" as that term is used in the Notes, and shall be deemed a voluntary prepayment hereunder. In the event of any prepayment as described herein or as otherwise defined in the Notes, the amount due shall include the premium which is thereupon due under the prepayment privilege provisions of the Notes.

22. **REMEDIES NONEXCLUSIVE:** No remedy herein conferred upon or reserved to MORTGAGEE is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to MORTGAGEE, or to which MORTGAGEE may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by MORTGAGEE and MORTGAGEE may pursue inconsistent remedies.

23. **NO IMPLIED WAIVER:** The failure of MORTGAGEE promptly to exercise any right, power or remedy provided herein or at law or in equity shall not constitute a waiver of the same, nor shall MORTGAGEE be estopped from later exercising such right, power or remedy.

24. **NOTICE:** Whenever MORTGAGEE or MORTGAGOR shall desire or is required to give or serve any notice, demand, request or other communication with respect to this MORTGAGE, each such notice, demand, request or other communication shall be in writing and shall be deemed to have been given, sent, served and received, upon the following dates in the following manner: (i) in person with receipt acknowledged on the date of receipt; or (ii) by facsimile transmission, with receipt electronically confirmed during normal business hours of recipient, on the date of transmission, provided that no later than one (1) business day following such transmission, a copy of such facsimile shall be mailed by first class mail, postage prepaid; or (iii) by overnight delivery service on the next business day following delivery to such

overnight delivery service, in each case addressed as set forth below, or at such other address or facsimile transmission number as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice.

MORTGAGOR:

Daniel D. Moss and Jann Moss
Ryan and Shabree Moss
850 East 450 South
Declo, Idaho 83323

MORTGAGEE:

The Travelers Insurance Co.
One Tower Square 9PB
Hartford, CT. 06183-2030
Attn: AgriFinance
Loans #206651-0 and #207214-0

With copies to:

The Travelers Insurance Co.
6715 North Palm Avenue, Suite 212
Fresno, California 93704
Loans #206651-0 and #207214-0

25. PRESERVATION, REPAIR AND USE OF PROPERTY: MORTGAGOR shall constantly maintain and shall not diminish the value of any of the Property during the existence of the MORTGAGE. MORTGAGOR shall not destroy, remove, or sell any buildings, or Improvements, irrigation or dairy equipment. MORTGAGOR shall constantly maintain or cause to be maintained the Improvements in accordance with standards customary in the area and standards of similar ranches or farms.

26. FEES: If MORTGAGOR shall at any time request any consent or waiver from MORTGAGEE or request MORTGAGEE to execute or approve any documents or any action by MORTGAGOR or request MORTGAGEE to take any steps, MORTGAGEE shall have the right to charge to MORTGAGOR a fee determined by MORTGAGEE as a condition to MORTGAGEE'S providing such waiver, consent, document, or approval. MORTGAGOR shall pay such fee to MORTGAGEE at the time of and as a condition of obtaining such waiver, consent, document, or approval.

27. SALE OF PROPERTY: MORTGAGEE shall have the right, in the sole

discretion of MORTGAGEE, to direct how any sale of the Property hereunder is conducted, and to direct whether said Property be offered for sale in parcels, in one block or both.

28. **INSPECTION:** MORTGAGOR agrees to permit MORTGAGEE and/or its agents, representatives or employees, or independent third party contractors retained by MORTGAGEE at reasonable time and intervals, to inspect the Property described herein for the purpose of determining whether MORTGAGOR is in compliance with the provisions of the Notes and of this MORTGAGE and the other Loan Documents. Any costs or expenses incurred in connection with this inspection shall be paid by MORTGAGOR to MORTGAGEE upon demand therefor by MORTGAGEE. Without notice to MORTGAGOR, MORTGAGEE may either add such costs and expenses to the principal to accrue interest at the Default Rate until maturity of the Notes or bill MORTGAGOR for such costs and expenses plus interest at the Default Rate from the date of advancement until repaid.

29. **ATTORNEY'S FEES:** If MORTGAGEE shall employ the services of legal counsel in connection with (i) any request made by MORTGAGOR to MORTGAGEE for a modification, amendment, waiver, or consent in connection with the Loan Documents, (ii) defending or protecting MORTGAGEE'S interests in any Loan Document or any Property from and against any claim or assertion made by any third party, (iii) rendering advice or other legal services to MORTGAGEE in connection with any Loan Document, (iv) rendering advice to MORTGAGEE, enforcing MORTGAGEE'S legal rights, or performing other legal services for MORTGAGEE upon the occurrence of an Event of Default, (v) representing the interests of MORTGAGEE in any lawsuit arising out of or in connection with the Loan Documents or MORTGAGEE'S position as secured party under any Loan Document, or (vi) any other judicial or nonjudicial action, suit or proceeding instituted by MORTGAGEE or any other person connected with or related to or with reference to the Loan or to reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve or enforce MORTGAGEE'S interest in this Notes or the MORTGAGE or any other Loan Document (including proceedings under federal bankruptcy law, in eminent domain, under probate proceedings, or in connection with any state or federal tax lien), then in such event MORTGAGOR promises to pay reasonable attorney's fees and reasonable costs and expenses incurred by MORTGAGEE and/or its attorney in connection with the above-mentioned events including title company litigation reports or reports covering the Property. Without notice to MORTGAGOR, MORTGAGEE may either add such payments and expenses to the principal to accrue interest at the Default Rate until maturity of the Notes or bill MORTGAGOR for such payments and expenses plus interest at the Default Rate from the date of advancement until repaid.

30. **ACTIONS BY MORTGAGEE TO PRESERVE THE PROPERTY:** If MORTGAGOR fails to make any payment, whether of real estate taxes, insurance premiums, attorney's fees, or otherwise, or fails to pay, purchase or compromise any encumbrance, charge or lien that in the judgment of MORTGAGEE is prior or superior hereto, or fails to do any act as may be required hereunder, MORTGAGEE may, at the discretion of MORTGAGEE, without obligation so to do and without releasing MORTGAGOR from any obligation, make or do the

same in such manner and to such extent as MORTGAGEE shall deem necessary to protect the Property. Without notice to MORTGAGOR, MORTGAGEE may either add such payments and expenses ("advancements") to the principal to accrue interest at the Default Rate until maturity of the Notes or bill MORTGAGOR for such advancements plus interest at the Default Rate from the date of advancement until repaid.

31. REPRESENTATIONS AND WARRANTIES OF MORTGAGOR:
MORTGAGOR hereby represents and warrants to MORTGAGEE that:

- (a) If MORTGAGOR is a partnership or corporation, it is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business in the State of Idaho;
- (b) MORTGAGOR has the requisite power and authority to own and manage its properties, to carry on its business as now being conducted and to own, develop and operate the Property;
- (c) MORTGAGOR is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to MORTGAGOR;
- (d) The execution, delivery and performance by MORTGAGOR of the Loan Documents (i) are within the power of MORTGAGOR; (ii) have been duly authorized by all requisite corporate or partnership action, as appropriate; (iii) have received all necessary governmental approval; and (iv) will not violate any provision of law, any order of any court or agency of government, the charter documents of MORTGAGOR, or any indenture, agreement or any other instrument to which MORTGAGOR is a party or by which MORTGAGOR or any of its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon MORTGAGOR'S property or assets, except as contemplated by the provisions of the Loan Documents;
- (e) Each of the Loan Documents, when executed and delivered to MORTGAGEE, will constitute a legal, valid and binding obligation enforceable in accordance with its terms;
- (f) All financial data that has been given to MORTGAGEE with respect to MORTGAGOR: (i) is complete and correct in all material respects; (ii) accurately presents the financial condition of MORTGAGOR on each date as of which, and the results of MORTGAGOR'S operations for the periods for which, the same have been furnished; and (iii) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods

covered thereby;

(g) There has been no adverse change in the financial condition or operations of MORTGAGOR since the date of the most recent of each such financial statement given to MORTGAGEE other than changes in the ordinary course of business, none of which changes has been materially adverse individually or in the aggregate;

(h) MORTGAGOR is not in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions set forth in any agreement or instrument to which MORTGAGOR is a party;

(i) All other reports, papers, data and information given to MORTGAGEE with respect to MORTGAGOR and the Property are accurate and correct in all material respects;

(j) There is not now pending against or affecting MORTGAGOR, nor to the knowledge of MORTGAGOR is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency that, if adversely determined, would materially impair or affect the financial condition of MORTGAGOR or the Property or operation thereof;

(k) MORTGAGOR has filed all federal, state, county and municipal income tax returns required to have been filed by MORTGAGOR and has paid all taxes that have become due pursuant to such returns or pursuant to any assessments received by MORTGAGOR, and MORTGAGOR knows of no basis for any additional assessment against it in respect of such taxes; and

(l) The Property is used principally or primarily for agricultural purposes.

(m) No portion of the Property is within a water district that has been deemed subject to federal reclamation law or, if any such portion shall be, MORTGAGOR shall have provided a "Non-Excess" letter from the Bureau of Reclamation with respect thereto.

32. ENTIRE AGREEMENT: This instrument, together with the Notes and other Loan Documents, constitutes and sets forth the entire understanding and agreement between the parties, and no party hereto has relied upon any representations, agreements or understandings, verbal or written, not set forth herein or in the Notes and such other Loan Documents, whether made by any party hereto or by any agent, employee or representative of any party hereto. Specifically, without limiting the generality of the foregoing, the parties agree that MORTGAGEE has made no agreement to extend or renew any of the Obligations, and no such agreement will be binding upon MORTGAGEE unless made in writing, subsequent to the date hereof, and executed by a duly authorized representative of MORTGAGEE.

33. **BINDING AGREEMENT:** This MORTGAGE inures to the benefit of, and binds all parties hereto, their heirs, legal representatives, successors and assigns. The term MORTGAGEE shall mean the owner and holder of the Notes described above, whether or not named as MORTGAGEE herein.

34. **MORTGAGOR NOT RELEASED:** Extension of the time for payment or modification of amortization of the sums secured by this MORTGAGE granted by MORTGAGEE to any successor in interest of MORTGAGOR shall not operate to release, in any manner, the liability of the original MORTGAGOR or MORTGAGOR'S successor in interest. MORTGAGEE shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this MORTGAGE by reason of any demand made by the original MORTGAGOR and MORTGAGOR'S successors in interest.

35. **GOVERNING LAW:** This MORTGAGE and each instrument securing it shall be governed by and construed according to the laws of the State of Idaho.

36. **SEVERABILITY:** In the event any one or more of the provisions contained in this MORTGAGE, or the Notes or any other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of MORTGAGEE, not affect any other provision of this MORTGAGE, but this MORTGAGE shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein. If the lien of this MORTGAGE is invalid or unenforceable as to any part of the Obligations, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Obligations which is not secured or not fully secured by the lien of this MORTGAGE.

37. **CONSENT BY MORTGAGEE:** Any consent by MORTGAGEE in any single instance shall not be deemed or construed to be MORTGAGEE'S consent in any like matter arising at a subsequent date and the failure of MORTGAGEE to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall MORTGAGEE be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by MORTGAGEE pursuant hereto shall be narrowly construed to be applicable only to MORTGAGOR and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof; and any such consent or approval shall not be deemed to constitute MORTGAGEE a venturer or partner with MORTGAGOR nor shall privity of contract be presumed to have been established with any such third party. If MORTGAGEE deems it to be in its best interest to retain the assistance of persons, firms or corporations (including attorneys,

appraisers, engineers, consultants and surveyors) with respect to a request for consent or approval, MORTGAGOR shall reimburse MORTGAGEE for all costs incurred in connection with the employment of such persons, firms or corporations. Without notice to MORTGAGOR, MORTGAGEE may either add such costs to the principal to accrue interest at the Default Rate until maturity of the Notes or bill MORTGAGOR for such costs plus interest at the Default Rate from the date of advancement until repaid.

38. **FURTHER ASSURANCES:** MORTGAGOR, at any time upon the reasonable request of MORTGAGEE, shall at MORTGAGOR'S expense execute, acknowledge and deliver all such additional papers and instruments and all such further assurances of title, and will do or cause to be done all further acts and things, as may be proper or reasonably necessary to carry out the purpose hereof and of the Loan Documents and to subject to the liens thereof any property intended by the terms thereof to be covered thereby and any renewals, additions, substitutions, replacements or betterments thereto.

39. **MORTGAGOR'S WAIVER OF RIGHTS:** All sums payable by MORTGAGOR hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense, and the obligations and liabilities of MORTGAGOR hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or any part thereof by title, paramount or otherwise; (iv) any claim MORTGAGOR has or might have against MORTGAGEE; (v) any default or failure on the part of MORTGAGEE to perform or comply with any of the terms hereof or of any other agreement with MORTGAGOR; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not MORTGAGOR shall have notice or knowledge of any of the foregoing. To the fullest extent that MORTGAGOR may do so, MORTGAGOR agrees that MORTGAGOR will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any redemption, valuation, appraisal, stay of execution or extension, and MORTGAGOR, for MORTGAGOR, MORTGAGOR'S heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, extension, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created.

40. **LIMITATION OF INTEREST:** It is the intent of MORTGAGOR and MORTGAGEE in the execution of this MORTGAGE and all other Loan Documents to contract in strict compliance with the usury laws of the State of Idaho governing the loan evidenced by the Notes. In furtherance thereof, MORTGAGEE and MORTGAGOR stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of

Idaho governing the loan evidenced by the Notes. MORTGAGOR or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Notes shall never be liable for unearned interest on the Notes and shall never be required to pay interest on the Notes at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of Idaho, and the provisions of this Paragraph shall control over all other provisions of the Notes and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Notes shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Notes to a rate in excess of that permitted to be charged by the laws of the State of Idaho, all such sums deemed to constitute interest in excess of the legal rate shall be applied to the reduction of the unpaid principal balance and not to the payment of interest, or as otherwise provided for in the Notes, at the discretion of MORTGAGEE.

41. **SUBROGATION:** To the extent that proceeds of the Notes are used, directly or indirectly, to pay off, satisfy or discharge, in whole or in part, any outstanding lien, charge or prior encumbrance against the Property or any part thereof; then as additional security hereunder MORTGAGEE shall be subrogated to any and all rights, superior titles and liens owned or claimed by any owner or holder of such outstanding liens, charges and prior encumbrances, however remote and irrespective of whether said liens, charges or encumbrances have been released of record by the holder thereof upon payment.

42. **HEADINGS; INTERPRETATION:** Headings are for convenience only and are not intended as a limitation on the content of the paragraph following nor as an aid to the construction thereof. Use of the word "including" shall not be construed as a limitation and the word "including" shall be deemed to mean "including, but not limited to."

43. **AGRI-FORFEITURE:** MORTGAGOR hereby represents and warrants to MORTGAGEE that there has not been committed by MORTGAGOR or any other person in occupancy of or involved with the operation or use of the Property any act or omission affording any governmental authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of MORTGAGOR'S obligations under the Notes or under any of the other Loan Documents. MORTGAGOR hereby covenants and agrees not to commit, permit, or suffer to exist any act or omission affording such right of forfeiture. In furtherance thereof; MORTGAGOR hereby indemnifies MORTGAGEE and agrees to defend and hold MORTGAGEE harmless from and against any loss, damage, or injury by reason of the breach of the covenants and agreements or damage or injury by reason of the breach of the covenants and agreements or the warranties and representations set forth in this Paragraph 43. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against MORTGAGOR, MORTGAGEE, or all or any part of the Property under any federal or state law for which forfeiture of the Property or any part thereof or of any monies required to be paid to MORTGAGEE, or to be used in performance of MORTGAGOR'S obligations under the Loan Documents, is a potential result, shall, at the election of MORTGAGEE, constitute an Event of Default if MORTGAGOR shall not have caused such charges or proceedings to be dismissed within ninety (90) days of the filing thereof; provided that if such charges or

proceedings have been filed as a result of criminal proceedings against MORTGAGOR or any officer or general partner or trustee thereof; the filing of such charges or proceedings shall constitute an Event of Default without notice or opportunity to cure. During the 90-day period referred to in the previous sentence, MORTGAGEE shall, upon prior notice to MORTGAGOR and at MORTGAGOR'S cost and expense but without having to obtain MORTGAGOR'S consent, be entitled to appear with respect to such charges or proceedings and to take whatever steps MORTGAGEE shall deem appropriate to protect its interests.

44. **COVENANTS RUNNING WITH THE LAND:** All covenants contained in the Loan Documents shall run with the Property and be binding on MORTGAGOR and any successor owners of the Property; provided, however, that any limitation of liability contained in this MORTGAGE or in any Loan Document, shall not inure to the benefit of any successor owner of the Property unless the prior written consent of MORTGAGEE to the transfer of Property to such owner shall have been obtained in accordance with Paragraph 17 (Transfer of Property). If the ownership of the Property or any portion thereof becomes vested in a person or persons other than MORTGAGOR, MORTGAGEE may, without notice to MORTGAGOR, deal with such successor or successors in interest of MORTGAGOR with reference to this MORTGAGE and the Obligations in the same manner as with MORTGAGOR without in any way releasing or discharging MORTGAGOR from its obligations hereunder. By accepting title to all or any portion of the Property, any such successor to MORTGAGOR shall be deemed to have assumed, without the need for executing further documentation, MORTGAGOR'S obligations hereunder and under the other Loan Documents, and such successor shall, at the request of MORTGAGEE, execute such additional documents, certificates, affidavits, and instruments as MORTGAGEE deems necessary and appropriate to evidence such successor's assumption of MORTGAGOR'S obligations hereunder and under the other Loan Documents. MORTGAGOR will give immediate written notice to MORTGAGEE of any conveyance, transfer or change of ownership of the Property or any portion thereof or interest therein and any transfer, whether or not prohibited, described by Paragraph 17 (Transfer of Property), but nothing in this Paragraph shall vary or negate the effect of the provisions of Paragraph 17 (Transfer of Property).

45. **Year 2000 Compliance:** MORTGAGOR is Year 2000 Compliant. Compliance shall include, without limitation, performing a comprehensive review and assessment of all of MORTGAGOR'S machinery, equipment, computer systems and other date sensitive technology, as well as ascertaining that MORTGAGOR'S customers, suppliers and vendors that are material to the operation of MORTGAGOR'S business are year 2000 Compliant.

"Year 2000 Compliant" means, in regard to MORTGAGOR, that all equipment, machinery, software, hardware, or other date sensitive technology systems, utilized by and material to the business operations or financial condition of such entity, perform date sensitive functions, during and after the year 2000."

46. **SUCCESSORS AND ASSIGNS:** Subject to the provisions of Paragraph 17 (Transfer of Property), all of the terms and covenants and conditions contained herein or in any

EXHIBIT "A"

PARCEL NO. 1:

TOWNSHIP 11 SOUTH, RANGE 26 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 11: All of Section 11, lying West of Interstate 84 North Right-of-Way.

PARCEL NO. 2:

TOWNSHIP 11 SOUTH, RANGE 26 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 10: E½, EXCEPTING THEREFROM that portion deeded to the State of Idaho for highway purposes.

PARCEL NO. 3:

TOWNSHIP 11 SOUTH, RANGE 27 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 20: E½,

SAVE AND EXCEPT that portion of the following described tract lying in said Section 20:

Part of the SE¼SE¼ of Section 20 and part of the SW¼SW¼ of Section 21 all in Township 11 South, Range 27 East of the Boise Meridian, described as follows:

Beginning at the Southeast corner of said Section 20, which shall be the Point of Beginning;
Thence South 89°54' West along section line for 41.85 feet to an iron pin;
Thence North 0°11'20" East for 71.08 feet to an iron pin;
Thence South 89°54' West for 36.60 feet to an iron pin;
Thence South 0°11'20" West for 71.80 feet to an iron pin on the section line;
Thence South 89°54' West along said section line for 193.20 feet to an iron pin;
Thence North 0°05'48" West for 580.36 feet to an iron pin;
Thence North 89°55'56" East for 452.34 feet to an iron pin;
Thence South 0°01'42" East for 580.34 feet to an iron pin on the South line of Section 21;
Thence South 89°58'18" West along section line for 180.00 feet to the Point of Beginning.

-Continued-

EXHIBIT "A"

PARCEL NO. 4:

Part of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 and part of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 all in Township 11 South, Range 27 East of the Boise Meridian, Cassia County, Idaho, more particularly described as follows;

Beginning at the Southeast corner of said Section 20, which shall be the Point of Beginning;
Thence South 89°54' West along section line for 41.85 feet to an iron pin;
Thence North 0°11'20" East for 71.08 feet to an iron pin;
Thence South 89°54' West for 36.60 feet to an iron pin;
Thence South 0°11'20" West for 71.80 feet to an iron pin on the section line;
Thence South 89°54' West along said section line for 193.20 feet to an iron pin;
Thence North 0°05'48" West for 580.36 feet to an iron pin;
Thence North 89°55'56" East for 452.34 feet to an iron pin;
Thence South 0°01'42" East for 580.34 feet to an iron pin on the South line of Section 21;
Thence South 89°58'18" West along section line for 180.00 feet to the Point of Beginning.

PARCEL NO. 5:

TOWNSHIP 11 SOUTH, RANGE 27 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 21: ALL,

SAVE AND EXCEPT that portion of the following described tract lying in said Section 21:

Part of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20 and part of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 all in Township 11 South, Range 27 East of the Boise Meridian, described as follows:

Beginning at the Southeast corner of said Section 20, which shall be the Point of Beginning;
Thence South 89°54' West along section line for 41.85 feet to an iron pin;
Thence North 0°11'20" East for 71.08 feet to an iron pin;
Thence South 89°54' West for 36.60 feet to an iron pin;
Thence South 0°11'20" West for 71.80 feet to an iron pin on the section line;
Thence South 89°54' West along said section line for 193.20 feet to an iron pin;
Thence North 0°05'48" West for 580.36 feet to an iron pin;
Thence North 89°55'56" East for 452.34 feet to an iron pin;
Thence South 0°01'42" East for 580.34 feet to an iron pin on the South line of Section 21;
Thence South 89°58'18" West along section line for 180.00 feet to the Point of Beginning.

-Continued-

EXHIBIT "A"

PARCEL NO. 6:

TOWNSHIP 11 SOUTH, RANGE 27 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 28: ALL, EXCEPT

Beginning at the Southwest corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 28 which point shall be the True Point of Beginning;
Thence North 89°57' West for 8.32 feet along section line to a point;
Thence North 0°28' West for 400.92 feet to a point;
Thence South 89°57' East for 217.30 feet to a point;
Thence South 0°28' East for 400.92 feet to a point on section line;
Thence North 89°57' West for 208.98 feet along the section line to the True Point of Beginning.

Section 29: NE $\frac{1}{4}$.

Section 33: E $\frac{1}{2}$

PARCEL NO. 7:

TOWNSHIP 11 SOUTH, RANGE 27 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 28: Part of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and part of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, more particularly described as follows:

Beginning at the SW corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 28 which point shall be the True Point of Beginning;
Thence North 89°57' West for 8.32 feet along section line to a point;
Thence North 0°28' West for 400.92 feet to a point;
Thence South 89°57' East for 217.30 feet to a point;
Thence South 0°28' East for 400.92 feet to a point on section line;
Thence North 89°57' West for 208.98 feet along the section line to the True Point of Beginning.

EXHIBIT "B"

U.S. Pump Serial #155279, 75 h.p. motor Serial #885067
Three Magnetic Panels
Pearce Pivot Sprinkler 1320 feet, Serial #11008004458
60 h.p. Booster, Serial #B.A.-96583-S24-Z

Situated on the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, Township 11 South, Range 27, EBM and known as
PUMP SITE #1

U.S. Pump Serial #19621, 125 h.p. motor Serial #1148168
One Magnetic Panel
50 h.p. Booster, Serial #1215065
Gifford Hill Pivot Sprinkler 1320 feet
Booster Pump Serial #305960

Situated on the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33, Township 11 South, Range 27, EBM and known as
PUMP SITE #16

Layne & Bowler Pump Serial #28589, 100 h.p. motor Serial #HJJS22155
Three Magnetic Panels
Gifford Hill Pivot Sprinkler 1320 feet
60 h.p. Booster, Serial #BA96483-S24-3

Situated on the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, Township 11 South, Range 27, EBM and known as
PUMP SITE #10

Fairbanks Morse pump, Serial #P.M. 251, 100 h.p. motor Serial #E.F.J. 513148
One Magnetic Panel

Situated on the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, Township 11 South, Range 27, EBM and known as
PUMP SITE #17

U.S. Pump Serial #23241, 125 h.p. motor Serial #HC1030554 One Magnetic Panel

Situated on the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, Township 11 South, Range 27, EBM, and known as
PUMP SITE #18

U.S. Pump Serial #17440, 125 h.p., motor Serial #HC1023447
One Magnetic Panel

Situated on the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 11 South, Range 27, EBM and known as
PUMP SITE #13

U.S. Pump ial #18496, 50 h.p., motor Serial # 87386
One ment Start Panel

Situated on the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 11 South, Range 27 E., B.M.

General Electric 350 HP Motor # KKJ1002011, Layne and Bowler Turbine Pump # 44129,
General Electric 350 HP Motor # GKJ731014, Verti-Shaft Turbine Pump # 378-70190, General
Electric 150 HP Motor # JNJ907112, Peabody Flowway Turbine Pump # None, U.S. Electric
200 HP Motor # C1516-01-807, Layne and Bowler Turbine Pump # None, Lincoln 125 HP
Booster Motor # 12173, Poco Centrifugal Booster Motor # 99C-1643, Valley Model 8000 Pivot
73942, 73973 and 77966, Olsen Model 103P Pivots # 3993, 3994, 4014 and 3992, Valley
Model 5171 Pivots 32718 and 32719, Valley Model 6000 Pivot # 71308, 22000 feet of steel
buried main line, 6520 feet of aluminum portable main line and 7920 feet of four inch (4") hand
move aluminum laterals, shop and 3-20,000 bu. grain bins, steel construction includes auger and
sweeps.