

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

SEP 03 2004

Department of Water Resources
Southern Region

RECEIVED

SEP 08 2004

DEPARTMENT OF
WATER RESOURCES

Notice of Security Interest in a Water Right

And Request for Notification of a Change in Ownership or Any Proposed
Or Final Action to Amend, Transfer, or Otherwise Modify a Water Right

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right No(s): 36-10288, 36-10414, 36-10475, 36-10768, 36-07319, 36-07454
36-10761A, 36-10767B and 36-10769
Adjudication Claim No(s): _____

2. The following **REQUIRED** information must be submitted with this form:

A) Evidence of the security interest. This may be a copy of a **DEED of TRUST, MORTGAGE, CONTRACT OF SALE** or other legal document indicating your interest in the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**

B) A **FEE** of \$25.00 per water right or adjudication claim.

3. Name and Mailing Address of Person or Company holding Security Interest

Farm Credit West, FLCA

P.O. Box 1208

Hamford, CA 93230

Phone: 559-584-2681

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

Van Dyk & Sons

5. Expiration Date of Notification Period

Sept. 1, 2024

6. Is this a Renewal of Request for Notification?

☐ YES

☒ NO

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

Pete Hansen, Senior Loan Officer
Pete Hansen 8/30/04

For Office Use Only

Received by [Signature]

Date 9-3-04

Fee \$225.

Receipted by [Signature]

Date 9-3-04

Receipt No. 5027018

Processed by _____

AJ

Date _____

WR _____

Date _____

SUPPORT DATA

IN FILE # 36-1319

Recording Requested by:

WHEN RECORDED MAIL TO:

Farm Credit West, FLCA
Attn: Loan Certification
P.O. Box 6070
Ventura, CA 93006-6070

I hereby certify that this is a true
and exact copy of the original.
GOODING TITLE & ESCROW

By: *Sheryl Shearn*

G040451

Space Above This Line For Recorder's Use

Loan Number: 3794920

REAL ESTATE MORTGAGE, ASSIGNMENT OF RENTS and FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF RENTS and FIXTURE FILING ("Mortgage"), is made this 14th day of July, 2004 between **Van Dyk & Sons, a General Partnership**, who acquired title as **Van Dyk and Sons Dairy**, as "Mortgagor", and Farm Credit West, FLCA, as "Mortgagee", a corporation organized and existing under the laws of the United States of America, with its office at 1111 W. Lacey Blvd., Hanford, CA 93230.

1. Mortgagor does hereby grant, convey, warrant, transfer and assign to Mortgagee a Mortgage and security interest in the property described below in Sections 1.1 through 1.5 inclusive (collectively, the "**Property**"), together with all improvements, privileges and appurtenances thereunto belonging and all rights of homestead exemption; together with all ditch and water rights of every nature, however evidenced, used on the Property or belonging to the same or Mortgagor. Mortgagor does hereby warrant the title to the Property and water rights against all persons, and agrees to defend the same.

1.1 The real property (the "**Real Property**") situated in the County of Gooding, State of Idaho, described as follows: See Exhibit "A" attached hereto and made a part hereof.

Together with water rights as follows:

Domestic Rights-decree # 36-10288, 36-10474, 36-10475, and 36-10768;

Irrigation Rights-decree # 36-07319; and 36-07454;

Stockwater/Commercial Rights- decree #36-10767A, 36-10767B, and 36-10769, as reflected in 1.4 (a); and

Together with 236.82 shares of North Side Canal Company Stock, as reflected in 1.4 (b).

1.2. **BUILDINGS, FIXTURES, AND OTHER IMPROVEMENTS.** All buildings, structures, equipment, fixtures (including, but not limited to, trees, vines and shrubs) and improvements of every kind and description now or hereafter constructed or placed on the Property; all standing timber and timber to be cut located on the Real Property; and all plumbing, lighting, heating, cooling, ventilating, elevating, irrigating apparatus, pumping plants, electrical generators, wind machines, fencing, storage tanks, dairy, barn and milking equipment, now or hereafter used in connection with the Property, all of which are hereby declared to be fixtures. Without limiting the generality of the foregoing, a description of some fixtures may also be included with the description of the Real Property set forth above or in an exhibit hereto.

1.3. **LEASES AND OTHER RIGHTS.** All existing and future leases, subleases, licenses, permits, agreements, permits and concessions relating to the use or enjoyment of the Real Property, including all grazing rights,

leases, permits and licenses; all oil, gas, and mineral leases, permits and rights used with the Real Property; and all tenements, hereditaments, easements, rights-of-way and appurtenances to the Property.

- 1.4. **WATER ASSETS.** All right, title, and interest at any time of Mortgagor (or any of its bailees, agents, or instrumentalities), whether now existing or hereafter arising or acquired, whether direct or indirect, whether owned legally, of record, equitably or beneficially, whether constituting real or personal property (or subject to any other characterizations), whether created or authorized under existing or future laws or regulations, and however arising in, including without limitation, the water, water rights, ditches and conduits and rights of way therefor, and other assets and items described below in Sections 1.4(a) through 1.4(i) inclusive, which shall collectively be called "**Water Assets**". References to "water" and "water rights" are used herein in the broadest and most comprehensive sense of the term(s). The term "**water**" includes water rights and rights to water or whatever rights to money, proceeds, property or other benefits are exchanged or received for or on account of any Water Assets or any conservation or other nonuse of water, including whatever rights are achieved by depositing one's share of any Water Assets in any water bank or with any water authority, or any other water reallocation rights. Without limiting the generality of the foregoing, a description of some Water Assets may also be included with the description of the Property set forth above or in an exhibit hereto.
- (a) All water (including any water inventory in storage), water rights and entitlements, other rights to water and other rights to receive water or water rights of every kind or nature whatsoever including: (a) the groundwater on, under, pumped from or otherwise available to the Property, whether as the result of groundwater rights, contractual rights or otherwise; (b) Mortgagor's right to remove and extract any such groundwater including any permits, rights or licenses granted by any governmental authority or agency or any rights granted or created by any use, easement, covenant, agreement, or contract with any person or entity; (c) any rights to which the Property is entitled with respect to surface water, whether such right is appropriative, riparian, prescriptive, decreed or otherwise and whether or not pursuant to permit or other governmental authorization, or the right to store any such water; (d) any water, water right, water allocation, distribution right, delivery right, water storage right, or other water-related entitlement appurtenant or otherwise applicable to the Property by virtue of the Property being situated within the boundaries of any district, agency, or other governmental entity or within the boundaries of any private water company, mutual water company, or other non-governmental entity; (e) all water and existing and future water rights, however evidenced, to the use of water for irrigation, livestock and domestic purposes, including irrigation and watering equipment and systems, ditches, laterals, conduits, and rights-of-way used to convey such water or to drain the Property, all of which rights are or are hereby made appurtenant to the Property; (f) without limiting the generality of the foregoing, all rights of Mortgagee under water right decrees 36-10288, 36-10474, 36-10475, 36-10768, 36-07319, 36-07454, 36-10767A, 36-10767B, and 36-10769.
 - (b) All stock, interest or rights (including any water allocations, voting or decision rights) in any entity, together with any and all rights from any entity or other person to acquire, receive, exchange, sell, lease, or otherwise transfer any Water Assets, to store, deposit or otherwise create water credits in a water bank or similar or other arrangement for allocating water, to transport or deliver water, or otherwise to deal with any Water Asset. Without limiting the generality of the foregoing, stock as referred to herein shall include all shares of stock in the North Side Canal Company currently under certificate numbers 21459, 21901, 23847 and 23846.
 - (c) All licenses, permits, approvals, contracts, decrees, rights and interests to acquire or appropriate any Water Assets, water bank or other credits evidencing any right to Water Assets, to store, carry, transport or deliver Water Assets, to sell, lease, exchange, or otherwise transfer any Water Asset, or to change the point for diversion of water, the location of any Water Asset, the place of use of any Water Asset, or the purpose of the use of any Water Asset.
 - (d) All rights, claims, causes of action, judgments, awards, and other judicial, arbiter or administrative relief in any way relating to any Water Asset.

- (e) All storage and treatment rights for any Water Asset, whether on or off the Property or other property of Mortgagor, together with all storage tanks, and other equipment used or usable in connection with such storage and any water bank deposit credits, deposit accounts or other rights arising on account of the storage or nonuse of any Water Asset.
- (f) All rights to transport, carry, allocate or otherwise deliver Water Assets by any means wherever located.
- (g) All irrigation and watering equipment, including all pumps, pumping plants, storage tanks, pump motors, electrical generators (all of which are declared to be fixtures) and all systems, ditches, laterals, conduits, and rights-of-way used to convey such water or to drain the Property.
- (h) All guaranties, warranties, marketing, management or service contracts, indemnity agreements, and water right agreements, other water related contracts and water reallocation rights, all insurance policies regarding or relating to any Water Asset.
- (i) All rents, issues, profits, proceeds and other accounts, instruments, chattel paper, contract rights, general intangibles, deposit accounts, and other rights to payment arising from or on account of any use, nonuse, sale, lease, transfer or other disposition of any Water Asset.

1.5. ADDITIONS AND PROCEEDS. All additions, accretions substitutions and replacements of any of the Property; all proceeds of the Property, including all proceeds of present and future insurance policies; and all condemnation awards or payments now or later made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any misrepresentation, damage or injury to, or defect in, the Property.

2. ASSIGNMENT OF RENTS. MORTGAGOR ABSOLUTELY AND UNCONDITIONALLY ASSIGNS, transfers, conveys and sets over to Mortgagee all the rents, royalties, issues, profits, revenue, income and other benefits of the Property arising from the use, non-use, enjoyment, sale, transfer or other disposition of all or any portion thereof, including those set forth in Paragraph 1.3(i) above, or from any lease, mineral lease, or agreement pertaining to the Property (collectively the "**Rents**"); whether now existing or hereafter arising and whether now due, past due or to become due; SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Mortgagor by Paragraph 19 hereof. This assignment of the Rents shall be perfected automatically without appointment of a receiver.

3. OBLIGATIONS SECURED. Mortgagor makes the grant, conveyance, and assignment of the Property as described above for purposes of securing the following indebtedness and other obligations (collectively, "**Indebtedness**") in any order of priority that Mortgagee may choose:

- (a) payment of the indebtedness and performance of the obligations of Mortgagor evidenced by the following promissory note(s) (collectively "**Note**") and/ or the following continuing guaranty(s) (collectively "**Guaranty**"), and any other documents executed by Mortgagor in conjunction with the Note or Guaranty:
 - ☒ a Promissory Note or a Supplement to Master Loan Agreement dated as of **07/14/2004**, in the stated principal amount of **\$2,000,000.00**.
 - ☐ a Revolving Line of Credit Promissory Note or a Revolving Credit Supplement to a Master Loan Agreement dated as of _____, in the stated principal amount of _____.
 - ☐ a continuing guaranty dated as of (date) _____, executed by Mortgagor in favor of Mortgagee, guaranteeing the indebtedness of the borrowers as defined in the Guaranty.

- (b) the payment of such additional loans or advances, including advances under a revolving line of credit, with interest thereon, as hereafter may be made to or guaranteed by Mortgagor, or Mortgagor's successors or assigns, evidenced by a promissory note, guaranty, loan agreement or otherwise; PROVIDED HOWEVER, THAT, such additional loans or advances will be secured by this Mortgage only if the promissory note, guaranty, loan agreement or other document evidencing the obligations of Mortgagor relative to such loans or advances recites that it is to be secured by this Mortgage;
- (c) the payment and performance of the obligations set forth in any document evidencing an extension, renewal, modification, replacement, reamortization, conversion, or restatement of any Indebtedness secured by this Mortgage, including without limitation renewal and/or substitute notes, guaranties, and loan agreements.
- (d) the performance of every obligation and agreement of Mortgagor whether contained or incorporated by reference in this Mortgage, or contained in any loan agreement, loan document or guaranty executed by Mortgagor in favor of Mortgagee, with respect to any loan or advance secured by this Mortgage; and
- (e) the payment of all sums expended or advanced by Mortgagee under or pursuant to the terms of this Mortgage, together with interest thereon as herein provided.

The Notes referred to above are payable by Mortgagor and/or others to the Mortgagee at the times, in the manner and with interest as therein set forth. The Note and other documents evidencing the Indebtedness may contain variable or adjustable interest rate provisions and provisions evidencing revolving lines of credit.

The continuing validity and priority of this Mortgage as security for future loans or advances will not be impaired by the fact that at certain times hereafter there may be no outstanding loan or other indebtedness from Mortgagor to Mortgagee and/or no commitment to make loans or advances.

Notwithstanding the foregoing, this Mortgage does not secure any indebtedness or other obligation if the promissory note, guaranty, or any other document evidencing or pertaining to the indebtedness or obligation states that it is unsecured or not secured by real property.

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

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR AGREES TO EACH OF THE FOLLOWING:

5. USE OF PROCEEDS. To use loan proceeds solely for the purposes set forth in the loan application(s) or as otherwise required by Mortgagee.

6. CONDITION OF PROPERTY. To keep the Property in good condition, working order and repair; to care for the Property in accordance with standards of good husbandry and to keep all trees, vines and crops on said land properly cultivated, irrigated, fertilized, sprayed, and fumigated; not to sell, transfer, assign, encumber or convey any water or water right from the Property, or to enter into an agreement for the nonuse of water, without the prior written consent of Mortgagee; not to remove, destroy or suffer the removal or destruction of any building, fence, canal, well or other improvements or fixtures thereon; not to remove, replace or alter any horticultural or viticultural tree, vine or shrub planted thereon without the prior written consent of Mortgagee, except in the ordinary course of business; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting the Property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in

violation of law; to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general; to observe and perform all obligations of Mortgagor under any lease of the Property.

7. INSURANCE. To provide, maintain and deliver to Mortgagee, fire, extended coverage, flood, and all other types of insurance, in terms and amounts as may be required by law or Mortgagee, with loss payable endorsements (including lender loss payable endorsements) solely in favor of Mortgagee. In the event of loss, the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, to reduce the Indebtedness or restore or repair the property damaged. Failure to obtain, maintain or deliver to Mortgagee the insurance required shall constitute an event of default under this Mortgage.

At least thirty (30) days prior to the expiration of any such policy of insurance, Mortgagor will deliver a policy renewing or extending such expiring insurance and written evidence demonstrating payment of the premium for such insurance. If any such policy and evidence of payment (or copies of same, if originals cannot be delivered to Mortgagee) are not so delivered to Mortgagee, without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation under this Mortgage, Mortgagee may (but is not obligated to), at Mortgagor's expense, obtain insurance in such types, on such terms and in such amounts as Mortgagee in its sole discretion shall decide, through or from any insurance agency or company acceptable to it. Any insurance obtained by Mortgagee shall be for its sole benefit and to protect the security of this Mortgage. The expense and cost of such insurance shall, at Mortgagee's sole option, be payable on demand or added to the Indebtedness as provided herein. Neither Mortgagee nor Mortgagor shall be chargeable with or responsible for the procurement or maintenance of any such insurance, the collection of any proceeds from such insurance, or the insolvency of any insurance company or underwriter.

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

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

10. FEES AND COSTS. In the event that Mortgagee or Mortgagor uses the services of attorneys, accountants, appraisers, consultants, or other professional or outside assistance, including the services of in-house counsel or any other attorney or professional who is an employee of Lender, the reasonable amount of fees, costs and expenses ("Expenses") incurred by Mortgagee or Mortgagor to use such persons in connection with any of the following shall be payable by Mortgagor on demand. Mortgagee or Mortgagor may, at its option, add the amount of such Expenses to any portion of the Indebtedness plus an appropriate amount of Mortgagee's stock or participation certificates required in connection with the loan (as required by federal law or regulation or Mortgagee's bylaws), and charge interest on such amount at the interest rate applicable to such portion of the Indebtedness. These Services include:

- (a) The preparation, modification or enforcement of this Mortgage, and any other agreement or document incident to the Indebtedness or to the Property;
- (b) Advising Mortgagee concerning its legal rights and obligations with regard to this Mortgage and any other agreement or document incident to the Indebtedness, or to the Property, including advising Mortgagee with regard to the extent of their rights, if any, under the provisions of the Farm Credit Act of 1971, as amended, ("Act"), Farm Credit Administration ("FCA") regulations, any policy or program of Mortgagee, or any other state or federal law;

- (c) Any litigation, dispute, proceeding, or action (whether or not dismissed, reduced to judgment, or otherwise resolved), and whether instituted by Mortgagee or Mortgagor or any other person, relating to the Indebtedness, the Property or Mortgagor's affairs;
- (d) The furtherance of Mortgagee's interest in any bankruptcy, insolvency, or reorganization case or proceeding instituted by or against Mortgagor, including any steps to (i) modify or terminate the automatic stay, (ii) prohibit or condition Mortgagor's use of cash collateral, (iii) object to any disclosure statement or plan, (iv) propose or confirm a plan, and (v) prosecute or defend adversary proceedings or contested matters, and take or defend examinations or discovery, whether or not related to any adversary proceeding or contested matter and whether or not dismissed, reduced to judgment, or otherwise resolved;
- (e) The inspection, verification, protection, collection, processing, sale, liquidation, or disposition of the Property; and
- (f) Any of the type of Expenses referred to in (a) through (e) above incurred by Mortgagee in connection with any guaranty of the Indebtedness.

The Expenses described herein and elsewhere in this Mortgage shall be in addition to those set forth in any Security Instrument or any other written agreement between Mortgagee and Mortgagor.

11. MORTGAGEE MAY ACT FOR MORTGAGOR. Should Mortgagor fail to make any payment or to do any act as herein provided, then Mortgagee, but without obligation to do so and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the Property, Mortgagee being authorized to enter upon the Property for such purposes; commence, appear in and litigate any action or proceeding purporting to affect the Property or the rights or powers of Mortgagee, including any bankruptcy proceeding affecting the Property; pay, purchase, contest; or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; pay such fees, charges, rents or other payments accruing under the grazing permits described in Section 14 below; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefore, including attorney's, accountant's, and appraisal fees, environmental fees and costs of securing evidence of title, and all amounts so expended shall be obligations of Mortgagor secured by this Mortgage. Nothing contained herein shall prohibit Mortgagee from entering the Property, at a reasonable time and upon reasonable notice to Mortgagor, without incurring or assuming any obligations or liabilities whatsoever, for the sole purpose of inspecting the Property.

12. SUMS EXPENDED BY MORTGAGEE. To pay immediately and without demand all sums expended by Mortgagee pursuant to the provisions hereof, with interest from date of expenditure at the same rate as is provided for in the note or notes secured by this Mortgage. All such sums shall be secured hereby.

13. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.

13.1. DEFINITIONS. Defined Terms as used in this Paragraph 13:

- (a) "**Environmental Laws**" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, industrial hygiene or protection of the environment.
- (b) "**Hazardous Substances**" shall mean any substance or material that is described, designated or regulated as a toxic or hazardous substance, waste or material or a pollutant or contaminant, or words of similar import, in any of the Environmental Laws.
- (c) "**Release**" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including continuing migration, of Hazardous Substances into, onto or through the soil, surface water or groundwater of the Property, whether or not caused by, contributed to, permitted by, acquiesced to or known to Mortgagor.

- (d) "User" means any person other than Mortgagor who occupies, uses or comes onto or has occupied, used or come onto the Property or any part thereof and any agent or contractor of such a person.

13.2 MORTGAGOR REPRESENTS AND WARRANTS. Mortgagor represents and warrants to Mortgagee that, as of the date of this Mortgage and to the best of Mortgagor's knowledge, based on due inquiry and investigation:

- (a) Except as previously disclosed in writing by Mortgagor to Mortgagee: (i) no Hazardous Substances in excess of permitted levels or reportable quantities under applicable Environmental Laws are present in, on or under the Property or any nearby real property which could migrate to the Property; (ii) no Release or threatened Release exists or has occurred; (iii) neither Mortgagor nor any User has ever used the Property or any part thereof for the production, manufacture, generation, treatment, handling, storage, transportation or disposal of Hazardous Substances; (iv) no underground, surface or elevated storage tanks of any kind, wells (except domestic water wells), septic tanks, pits, ponds or other impoundments ("Tanks") are or ever have been located in or on the Property; and (v) no investigation, claim, demand, action or proceeding of any kind relating to any Release or threatened Release or any past or present violation of any Environmental Laws relating to the Property has been made or commenced, or is pending, or is being threatened by any governmental authority or other person;
- (b) All operations and activities at, and the use and occupancy of, the Property comply with all applicable Environmental Laws;
- (c) Mortgagor and every User has, and is in strict compliance with, every permit, license and approval required by all applicable Environmental Laws for all activities and operations at, and the use and occupancy of, the Property;
- (d) Neither the Property, nor any portion thereof, nor any adjacent property or portion thereof, has been or is proposed to be listed under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), or any analogous state law; and
- (e) Any written disclosure submitted by or on behalf of Mortgagor to Mortgagee at Mortgagee's request concerning any Release or threatened Release, past or present compliance by Mortgagor, User or any other person of any environmental Laws applicable to the Property, the past and present use and occupancy of the Property, any environmental concerns relating to the Property and the like was true and complete when submitted.

13.3 MORTGAGOR AGREES THAT:

- (a) Except in the ordinary course of business, in a good and husbandlike manner and in strict compliance with all applicable Environmental Laws, Mortgagor promises that neither Mortgagor nor any User shall use, produce, manufacture, generate, treat, handle, store, transport, or dispose of any Hazardous Substances in, on or under the Property, or use the Property for any such purposes;
- (b) Mortgagor shall not cause, contribute to, permit or acquiesce to any Release or threatened Release;
- (c) Mortgagor shall comply fully, and shall cause every User to comply fully, with all Environmental Laws applicable to the Property, and all other laws, ordinances and regulations applicable to the use or occupancy thereof, or any operations or activities therein or thereon;
- (d) With respect to any Tanks disclosed in writing to Mortgagee, Mortgagor shall comply with all Environmental Laws and any requirements of city or county fire departments, applicable to the maintenance and use of such Tanks, including, without limitation, Title 40 of the Code of Federal Regulations part 112;

- (e) To facilitate performance of Mortgagor's obligations under Paragraph 13.3(a), (b), (c), (d) of this Mortgage, Mortgagor shall regularly inspect the Property, monitor the activities and operations of every User and confirm that every User has obtained and fully complies with all permits, licenses and approvals required by all applicable Environmental Laws;
- (f) Immediately after Mortgagor obtains any information indicating any Release or threatened Release, or that Hazardous Substances in, on or under any nearby property could migrate to the Property or a violation of any Environmental Laws may have occurred or could occur regarding the Property, Mortgagor shall give notice thereof to Mortgagee with a reasonably detailed description of the event, occurrence or condition in question;
- (g) If Mortgagee obtains any information that Mortgagee believes in good faith indicates a reasonable possibility of a Release or threatened Release, or that Hazardous Substances in, on or under any nearby real property could migrate to the Property or any violation of any Environmental Laws may have occurred or could occur regarding the Property, then Mortgagor shall, at the expense of Mortgagor, promptly after a request by Mortgagee, or Mortgagee may at Mortgagor's expense any time prior to completion of a judicial or nonjudicial foreclosure, engage a qualified environmental engineer to conduct a comprehensive environmental assessment of the Property and prepare and submit to Mortgagee a written report containing the findings and conclusions resulting from such investigation. Mortgagor shall, on demand, pay to Mortgagee all sums expended by Mortgagee in connection with any such comprehensive environmental assessment, together with interest thereon after such demand at the interest rate as set forth in the applicable promissory note(s) evidencing the Indebtedness;
- (h) Mortgagor shall permit, or cause any User to permit, Mortgagee or its agents or independent contractors to enter and inspect the Property (including the taking of building materials, soil and groundwater samples) at any reasonable time and after reasonable notice, except in an emergency, whether or not a default has occurred under this Mortgage, and including after the commencement of judicial or nonjudicial foreclosure proceedings, for purposes of determining, as Mortgagee deems necessary or desirable: the existence, location or nature of any Hazardous Substances into, onto, or spread beneath or from the Property, that is located or has been spilled, disposed of, discharged or released on, under or about the Property. Mortgagor acknowledges that all inspections and reviews undertaken by Mortgagee are solely for the benefit and protection of Mortgagee and agrees that Mortgagee shall have no duty to Mortgagor with respect to Hazardous Substances or Environmental Laws as a result of any such inspections, and such inspections shall not result in a waiver of any default by Mortgagor. If Mortgagor or any User fails to comply fully with the terms of this section, Mortgagee may obtain affirmative injunctive relief to compel such compliance; and
- (i) If any Release or threatened Release exists or occurs before this Mortgage is reconveyed or foreclosed upon, or if Mortgagor is in breach of any of its representations, warranties or covenants as set forth in this Section 13, Mortgagor shall immediately give notice of the condition to Mortgagee, and Mortgagor shall at its own expense cause any Hazardous Substances to be cleaned up and removed from the Property, and the Property shall be restored, in compliance with all applicable Environmental Laws and other laws, ordinances, rules and regulations (the "**Remediation Work**"). If requested by Mortgagee, Mortgagor shall submit to Mortgagee, for Mortgagee's prior approval, complete plans and specifications for all Remediation Work to be done before any Remediation Work is performed, except in an emergency. Alternatively, Mortgagee may cause such Remediation Work to be completed at Mortgagor's expense.

13.4 NOTICE TO GOVERNMENTAL AUTHORITIES. Mortgagee shall have the right, but not the obligation, to advise appropriate governmental authorities of any environmental condition on or affecting the Property that constitutes or may constitute a breach of Mortgagor's obligations hereunder.

13.5 INDEMNITY OF MORTGAGEE. Mortgagor and its successors and assigns shall indemnify, defend, protect, and hold harmless Mortgagee, its directors, officers, employees, agents, shareholders, successors and assigns and their officers, employees or agents, from and against any and all claims, suits, damages, foreseeable and unforeseeable consequential damages, liens, losses, liabilities, interest, judgments, cleanup costs, demands, actions, causes of action, injuries, administrative proceedings and orders, consent agreements and orders,

penalties, costs and expenses (including any fees and expenses incurred in enforcing this indemnity, any out-of-pocket litigation costs, sums paid in settlement of claims, and all consultant, expert and the reasonable fees and expenses of counsel, including in-house legal services) of any kind whatsoever ("**Claims**") paid, incurred or suffered by, or asserted against Mortgagee, including but not limited to Claims arising out of loss of life, injury to persons, trespass or damage to or contamination of property or natural resources, or injury to business, in connection with or arising out of the activities of Mortgagor on the Property, Mortgagor's predecessors in interest, third parties who have been invited, permitted or trespassed on the Property, or parties in a contractual relationship with Mortgagor, or any of them, or which directly or indirectly arise out of or result from or in any way connected with the Property, whether or not caused by Mortgagor or within the control of Mortgagor, including without limitation: (a) the presence, use, generation, treatment, storage, disposal, Release, threatened Release, or discharge of any Hazardous Material or Contaminant at or from said Property and/or the cleanup of Hazardous Materials or Contaminants within, on or under said Property; (b) Mortgagor's breach of any of the representations, warranties and covenants contained herein; and (c) Mortgagor's violation or alleged violation of any applicable Environmental Law, regulation or ordinance.

13.6 SURVIVAL. NOTWITHSTANDING ANY OTHER PROVISION OF THIS MORTGAGE, THE NOTE OR ANY LOAN DOCUMENTS, MORTGAGOR'S REPRESENTATIONS, WARRANTIES, COVENANTS AND INDEMNITIES CONTAINED IN THIS SECTION 13 SHALL SURVIVE THE OCCURRENCE OF ANY EVENT WHATSOEVER, INCLUDING WITHOUT LIMITATION THE PAYOFF OF THE PROMISSORY NOTE SECURED HEREBY, THE RECONVEYANCE OR FORECLOSURE OF THIS MORTGAGE, THE ACCEPTANCE BY MORTGAGEE OF A DEED IN LIEU OF FORECLOSURE, OR ANY TRANSFER OR ABANDONMENT OF THE PROPERTY.

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

- (a) Said grazing permits or other rights are in good standing and have not been modified, reduced or limited in any other respect, except as fully disclosed in writing to Mortgagee;
- (b) Mortgagor will perform all obligations imposed as a requirement of exercise of said grazing permits or other rights and will comply with all laws, rules and regulations applicable thereto;
- (c) Mortgagor will take such timely action as may be required to cause the renewal or reissuance of said grazing permits or other rights from time to time as they expire during the term thereof Mortgagor agrees and acknowledges that the failure to renew or cause the reissuance of any said permits for any reason, whether the result of an act or omission of Mortgagor or for reasons beyond Mortgagor's control, is an event of default hereunder and Mortgagee shall have the right to exercise the rights set forth in this Mortgage; and
- (d) Mortgagor agrees to pay all fees, charges, rents or other payments accruing under said permits or any renewals thereof prior to delinquency. In the event Mortgagor fails to pay any such payment, the amount unpaid shall become a part of the Indebtedness and shall be immediately due and payable.

15. WATER TRANSFERS. Mortgagor represents that Mortgagor is not in the business of transferring water and, therefore, any sale or transfer of any water or water rights is not a transfer of goods in the ordinary course of business. Mortgagor further agrees that in no event will any water or water rights be goods identified to a contract. Mortgagor hereby acknowledges that the availability of the water and the other Water Assets to the Property was a significant factor in Mortgagee's decision to extend credit to Mortgagor and any other persons obligated on the Indebtedness, and that any severance of water or water rights or any other Water Asset from the Property would materially harm the Property.

16. FINANCIAL INFORMATION. At Mortgagee's request, Mortgagor shall provide to Mortgagee financial information in a form acceptable to Mortgagee, including, when so required, a current balance sheet and profit and

loss statement. In the case of multiple Mortgagors, financial information must be provided for each Mortgagor or otherwise as requested by Mortgagee. Financial information shall be provided at such times during the term of this Mortgage as Mortgagee may request.

IT IS MUTUALLY AGREED THAT:

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

18. MORTGAGEE ACTIONS. At any time, without affecting the liability of any person for the payment of the Indebtedness, and without otherwise affecting the security hereof, Mortgagee may: (a) consent to or join in the making of any map or plat of the Property; (b) grant any easement or create any restriction thereof; (c) subordinate this Mortgage; (d) extend or modify the term of the loan or loans secured hereby; and (e) reconvey without warranty, all or any part of the Property. Mortgagor agrees to pay reasonable Mortgagee's fees for any of the foregoing services.

19. COLLECTION OF RENTS. Prior to any default by Mortgagor in the payment, observance, performance and discharge of any condition, obligation, covenant, or agreement of Mortgagor contained herein, Mortgagor may, as the agent and fiduciary representative of Mortgagee for collection and distribution purposes only, collect and receive the Rents as they come due and payable; the Rents are to be applied by Mortgagor to the payment of the principal and interest and all other sums due or payable on any promissory note or guaranty secured by this Mortgage and to the payment of all other sums payable under this Mortgage and, thereafter, so long as aforesaid has occurred, the balance shall be distributed to the account of Mortgagor. However, Mortgagee shall have the right before or after the occurrence of any default to notify any account debtor to pay all amounts owing with respect to Rents directly to Mortgagee. Upon any such default, Mortgagee may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the Indebtedness, enter upon and take possession of the Property or any part thereof, in its own name, 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, and in such order as Mortgagee may determine; also perform such acts of repair, cultivation, irrigation or protection, as may be necessary or proper to conserve the value of the Property; also lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate; also prepare for harvest, remove, and sell any crops that may be growing upon the Property, and apply the proceeds thereof upon the Indebtedness.

20. MORTGAGEE'S EXERCISE OF REMEDIES IS NO CURE OF DEFAULT. The entering upon and taking possession of the Property, the collection of such Rents, or the proceeds of fire and other insurance policies, or compensation or awards for any taking of or damage to the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

21. REMEDIES. Upon default by Mortgagor in payment of all or a portion of the Indebtedness or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Mortgagee and in accordance with applicable state law, and those remedies hereunder, under any of the Notes and/or permitted by applicable law regarding Mortgages may be invoked. The exercise of such rights and remedies granted under this Mortgage or by law and equity, shall be cumulative and not exclusive.

If allowed under applicable state law, Mortgagee may sell the Property either as a whole or in separate parcels, and in such order as it may determine. The purchase price shall be payable in lawful money of the United States at the time of the sale.

Mortgagee may resort to and realize upon the security hereunder and any other real or personal property security now or hereafter held by Mortgagee for the obligations secured hereby in such order and manner as Mortgagee may, in its sole discretion, determine; or may resort to any or all such security may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawful nonjudicial proceedings, or both. If the Indebtedness is also secured by personal property, fixtures or crops, Mortgagee may enforce its security interest in the personal property, fixtures and crops and its lien under this Mortgage in any manner and in any order or sequence permitted by applicable law.

All remedies are cumulative and none are exclusive; no election by Mortgagee to pursue one remedy or item of collateral shall be deemed to be a release or waiver of any other item of collateral or a release or modification of the liability of Mortgagor or any guarantor to pay all Indebtedness or perform in full all obligations to Mortgagee. The procedures governing the enforcement by Mortgagee of its foreclosure and provisional remedies against Mortgagor shall be governed by the laws of the state in which the Property is located. Nothing contained herein shall be construed to provide that the substantive law of the state in which the Property is located shall apply to the Mortgagee's rights and the Mortgagor's obligations hereunder or under the promissory note(s), which are and shall continue to be governed by the substantive law of the state in which the promissory note was executed.

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

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

24. SUBSTITUTE MORTGAGEE. Mortgagee may, from time to time or at any time, substitute a Mortgagee or Mortgagees, and when any such substitution has been filed for record in the office of the Recorder of the county in which the Property herein described is situated, it shall be conclusive evidence of the appointment of such Mortgagee or Mortgagees, and such new Mortgagee or Mortgagees shall succeed to all of the powers and duties of the Mortgagee or Mortgagees named herein.

25. DUE ON SALE OR TRANSFER.

25.1 In the event the herein-described Property, (including any existing or subsequently acquired or created Water Asset), or any part thereof, or any interest therein, is transferred or agreed to be transferred, without Mortgagee's prior written consent, all Indebtedness, irrespective of the maturity dates, at the option of the holder hereof, and without demand or notice, shall immediately become due and payable. As used herein, "transferred" means sold, conveyed, alienated, exchanged, transferred by gift, further encumbered, pledged, hypothecated, made subject to an option to purchase, or otherwise disposed of, directly or indirectly, or in trust, voluntarily or involuntarily, by Mortgagor or by operation of law or otherwise. Failure to exercise such option shall not constitute a waiver of the right to exercise this option in the event of subsequent transfer or subsequent agreement to transfer.

25.2 If Mortgagor is an entity other than a natural person (such as a corporation or other organization), then all Indebtedness, irrespective of the maturity date, at the option of Mortgagee, and without demand or notice, shall become immediately due and payable if: (a) a beneficial interest in Mortgagor is transferred; (b) there is a withdrawal or removal of a general partner of a partnership or a manager of a limited liability company; (c) there is a transfer in the aggregate of more than 25% of the voting stock of Mortgagor if Mortgagor is a corporation, or there is a transfer in the aggregate of more than 25% of the partnership interests or membership

interests if Mortgagor is a partnership, limited liability company or similar entity; or (d) Mortgagor is dissolved or its existence as a legal entity is terminated.

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

27. NOTICES TO MORTGAGOR. The undersigned Mortgagor agrees that he/she is entitled only to those notices required by applicable law and requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Mortgagor at the address set forth below.

28. EXHIBITS. All exhibits to this Mortgage are considered to be incorporated into and made a part of this Mortgage.

29. JOINT AND SEVERAL LIABILITY AND LEGAL ENTITY WARRANTY AND CERTIFICATION. If Mortgagor consists of more than one person, each will be jointly and severally liable for the faithful performance of all of Mortgagor's obligations under this Mortgage. If Mortgagor is a legal entity, Mortgagor (and any person signing this Mortgage in a representative capacity on behalf of Mortgagor) represents, warrants and certifies that Mortgagor is duly constituted under applicable laws and in good standing; that Mortgagor has the power, authority, and appropriate authorization to execute this Mortgage and enter into the transactions described herein and that, when executed, this Mortgage, and any document executed by Mortgagor in connection herewith, shall be valid and legally binding on Mortgagor. If Mortgagor is a trust, each trustee executing this Mortgage on behalf of the trust also represents, warrants and certifies that this Mortgage and any document executed in connection herewith is being executed by all the currently acting trustees of the trust and that the trust has not been revoked, modified, or amended in any manner which would cause any of the foregoing to be incorrect.

30. NON-MERGER. No merger will occur as a result of Mortgagee acquiring any other estate in or any other lien on the Property, unless Mortgagee consents to a merger in writing.

31. MISCELLANEOUS. As used herein, the word "including" means "including without limitation" and/or "including but not limited to". The captions used in this Mortgage are for convenience only and do not define or limit any terms or provisions. No listing of any specific collateral, items, instances or other matters in any way limits the scope or generality of any language of this Mortgage.

Signatures appear on the following page

ADDRESSES WHERE NOTICES TO MORTGAGOR ARE TO BE SENT:

Van Dyk & Sons, a General Partnership-3604 Houston Avenue, Hanford, CA 93230

Signature(s):

Van Dyk & Sons, a General Partnership

By: The Gary and Susan Van Dyk Living Trust dated
February 4, 1999, Partner

By: Gary Van Dyk
Gary Van Dyk, Trustee

By: Susan Van Dyk
Susan Van Dyk, Trustee

By: the Van Dyk Trust under Declaration of Trust
dated September 19, 1988, Partner

By: Henry W Van Dyk
Henry W. Van Dyk, Trustee

By: Johanna H. Van Dyk
Johanna H. Van Dyk, Trustee

By: R. M. R.
Ryan Van Dyk, Partner

By: Cory Van Dyk
Cory Van Dyk, Partner

State of Idaho }

} ss

County of Gooding }

On August 5th, 2004 before me, Gwen A. Sherman, Notary Public personally appeared Gary Van Dyk and Susan Van Dyk personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which persons acted, executed the instrument.

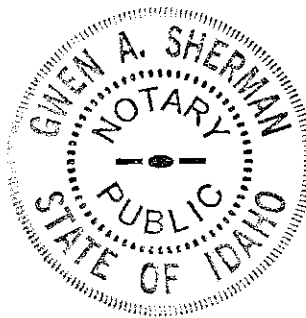
WITNESS my hand and official seal.

Signature

Gwen A. Sherman
Gwen A. Sherman
Notary Public

Buhl Id

3-27-06

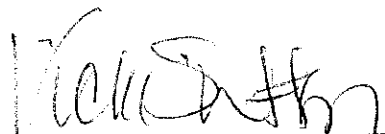


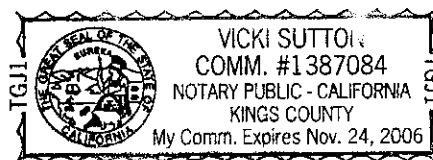
State of California,)
) ss.
County of Kings)

On August 3, 2004 before me, Vicki Sutton, Notary Public personally appeared Henry W. Van Dyk, Johanna H. Van Dyk, Ryan Van Dyk and Cory Van Dyk personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature


Vicki Sutton
Notary Public



(Seal)

EXHIBIT A
G040451

PARCEL NO. 1

Township 8 South, Range 14 East of the Boise Meridian, Gooding County, Idaho

Section 35: S1/2S1/2N1/2SW1/4; S1/2SW1/4;

EXCEPTING THEREFROM that portion of the W1/2SW1/4 deeded to West Point Highway District No. 4 for public road as set forth in Deeds recorded April 16, 1951 in Book 42 Page 228 as Instrument No. 115119 and in Book 44 Page 304 as Instrument No. 115120, Gooding County records.

PARCEL NO. 2

Township 9 South, Range 14 East of the Boise Meridian, Gooding County, Idaho

Section 2: Lots 3 and 4; S1/2NW1/4 and SW1/4NE1/4;

EXCEPT tract in the SW1/4NE1/4, described as follows:

Beginning at a lava stone at the Northeast corner of said Section 2 which is marked with five notches on the West side and one notch on the East side and from which a lava stone located at the Northwest corner Section 2, and marked with four notches on the West side and two notches on the East side bears North 89°45' West as shown by the official survey and plat of Township 9 South, Range 14, East of the Boise Meridian on file in the office of the United States Surveyor General at Boise, Idaho, and thence from a line produced through said two section corner stone turning an angle of 89°57' through the Southeast quadrant to a course South 0°12' West and measuring on said course a distance of 1970 feet to a stone;

THENCE South 81°47' West, 1336 feet to a stone;

THENCE South 0°12' West, 110 feet to a stone which is The Real Place of Beginning;

THENCE South 84°12' West, 550 feet to a stone;

THENCE South 326.8 feet to a point on the South line of said SW1/4NE1/4 of said Section 2, from which point a lava witness stone bears South 16.2 feet, and from which said witness stone a lava stone set at the center of said Section 2 by one J. Koets, Esquire, Surveyor for Lincoln County, Idaho, bears North 87°12' West, 807 feet;

THENCE from said point on said South line of said SW1/4NE1/4 of said Section 2 Easterly 547 feet, more or less to the Southeast corner of said SW1/4NE1/4 of said Section 2;

THENCE Northerly 382.4 feet, more or less, to The Place of Beginning.

PARCEL NO. 3

Township 8 South, Range 14 East of the Boise Meridian, Gooding County, Idaho

Section 35: N1/2N1/2SW1/4; N1/2S1/2N1/2SW1/4;

EXCEPT a 41 foot public road across the W1/2SW1/4 as set forth in Book 42 Deeds Page 228, Gooding County records.