

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

AUG 24 2004

WATER RESOURCES
WESTERN REGION

Notice of Security Interest in a Water Right

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

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

1. Water Right No(s): 61-7172F and ⁶¹61-7439
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
Idaho Capital, an Idaho Limited Liability Company
c/o Diane Barker
P. O. Box 4607, Ketchum ID 83340
Telephone: 208-726-1515
4. Name of Water Right Owner/Claimant(s)
Jerry W. Anderson and Laura Anderson
5. Expiration Date of Notification Period August 23, 2005 subject to extensions to
August 23, 2006
6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO
7. Signature(s) (and title if applicable)
Diane Barker
Diane Barker, Member
Idaho Capital, an Idaho Limited Liability Co.

For Office Use Only

Received by <u>DB</u>	Date <u>8-24-04</u>	Fee _____
Receipted by _____	Date _____	Receipt No. _____
Processed by _____ AJ	Date _____	WR _____ Date _____

EXHIBIT C — to Mortgage

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage") effective as of **August 23, 2004**, by **JERRY W. ANDERSON and LAURA J. ANDERSON**, as mortgagor (the "Borrower"), whose address is P. O. Box 87, Mountain Home, ID 83647, and **IDAHO CAPITAL**, an Idaho Limited Liability Company, its successors and assigns, whose address is P. O. Box 4607, Ketchum, ID 83340, as mortgagee (the "Lender").

RECITALS

A. Borrower is indebted to Lender in the original principal sum of **Four Hundred Sixty-Five Thousand Dollars (\$465,000)** with interest thereon, which indebtedness is evidenced and represented by that certain Mortgage Note of even date from Borrower to Lender, with final payment due and payable on **August 23, 2005** (the Mortgage Note together with all substitutions, consolidations, modifications, replacements, restatements, increases, renewals, and extensions thereof, in whole or in part, shall collectively be referred to as the "Note").

B. Lender, as a condition precedent to the extension of credit and the making of the loan evidenced by the Note, has required that Borrower provide Lender with security for the repayment of the indebtedness evidenced by the Note as well as for the performance, observance and discharge by Borrower of various covenants, conditions and agreements made by Borrower to, with, in favor of, and for the benefit of, Lender with respect to such indebtedness and security.

1. Grants of Security.

1.1 Property Granted. In consideration of and in order to secure the repayment of the indebtedness evidenced and represented by the Note, together with interest on such indebtedness, as well as the payment of all sums advanced pursuant to this Mortgage to protect and preserve the Property and the lien and security interest created hereby and all other sums of money secured hereby, as provided below; and to secure the observance, performance and discharge by Borrower of all covenants, conditions and agreements set forth in the Note, this Mortgage and in all other documents and instruments executed and delivered by Borrower to and in favor of Lender for the purpose of further securing the repayment of the indebtedness evidenced and represented by the Note (all of the forgoing obligations are referred to as the "Secured Obligations"), Borrower mortgages, grants, bargains, sells, aliens, remises, releases, conveys, assigns, transfers, pledges, delivers, sets over, hypothecates, warrants, and confirms to Lender, subject to the terms and conditions of this Mortgage, all estate, right, title and interest which Borrower now has or may later acquire in and to the following described properties, rights and interests and all replacements of, substitutions for, and additions thereto (all of which are referred to below as the "Property"):

1.1.1 Real Property. The real property in Elmore County, Idaho, described in *Exhibit A* attached hereto and made a part hereof (the "Real Property").

1.1.2 Improvements. All buildings, structures and other improvements of any kind, nature or description now or hereafter erected, constructed, placed or located upon the Real Property (the "Improvements").

1.1.3 Appurtenances (including water rights). All tenements, hereditaments, strips and gores of land, rights-of-way, easements, privileges and other appurtenances now or hereafter belonging or in any way appertaining to the Real Property, including, without limitation, all right, title and interest of the Borrower in any after-acquired right, title, interest, remainder or reversion, in and to the beds of any ways, streets, avenues, roads, alleys, passages and public places, open or proposed, in front of, running through, adjoining or adjacent to the Real Property; all minerals, royalties, gas rights, water, water rights, water stock, flowers, shrubs, lawn plants, crops, trees, timber and other emblements now or hereafter located on, under, or above all or any part of the Real Property (the "Appurtenances") including the water rights described in **Exhibit B** attached hereto.

1.1.4 Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of all or any part of the Real Property or the Improvements heretofore or hereafter entered into whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"), as the same may be amended from time to time (the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Real Property and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Secured Obligations (defined **below**).

1.1.5 Condemnation Awards. Any and all awards, payments or settlements, including interest thereon, and the right to receive the same, as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, and (c) any other injury, damage or casualty to, taking of, or decrease in the value of, the Property, to the extent of all amounts that may be secured by this Mortgage at the date of any such award or payment, including but not limited to Reasonable Attorneys' Fees (as defined below), costs, and disbursements incurred by Lender in connection with the collection of such award or payment.

1.1.6 Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Real Property or the Improvements, or appurtenant thereto, and used in connection with the present or future operation and occupancy of the Real Property and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Real Property and the Improvements, or appurtenant

thereto, or used in connection with the present or future operation and occupancy of the Real Property and the Improvements (together referred to as the "Fixtures and Personal Property," which term expressly excludes any toxic waste or substance deemed hazardous under federal, regional, state, or local laws).

1.1.7 Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance judgments, or settlements made in lieu thereof, for damage to the Property.

1.1.8 Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Real Property and any part thereof and any Improvements or respecting any business or activity conducted on the Real Property and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right to receive and collect any sums payable to Borrower thereunder.

1.1.9 Intangibles. All trade names, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles specific to or used in connection with the operation of the Property.

1.2 Assignment of Leases and Rents. Borrower absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Mortgage, Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold a portion of the Rents sufficient to discharge all current sums due on the Note, for use in the payment of such sums.

1.3 Security Agreement. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Idaho Uniform Commercial Code. The Property includes all rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Mortgage, Borrower grants Lender, as security for the Secured Obligations, a security interest in the Property that is personal property including the water rights described in **Exhibit B** attached hereto (the "Personal Property") to the full extent that the Personal Property may be subject to the Idaho Uniform Commercial Code. This Mortgage shall operate as and constitute a financing statement filed as a fixture filing, covering any of the Property that now is or later becomes fixtures attached to the Real Property or the Improvements. With regard to said water rights a Notice of Security Interest in a Water Right shall be filed with the Idaho Department of Water Resources in the form as attached hereto as **Exhibit C**.

2. Borrower Covenants. Borrower covenants and agrees as follows:

2.1 Payment of Principal and Interest. Borrower shall pay the Note, together with all interest thereon, in accordance with the terms of the Note, promptly at the times, at the place and in the manner that said principal and interest shall become due, and to promptly and punctually pay all other sums required to be paid by Borrower pursuant to the terms of the Note, this Mortgage, the Assignment of Leases, Rents and Profits (the "Assignment") and all other documents and instruments executed as further evidence of, as additional security for, or executed in connection with, the indebtedness evidenced by the Note and secured by this Mortgage are collectively referred to as the "Loan Documents."

2.2 Performance of Other Obligations. Borrower shall perform, comply with, and abide by each and every one of the covenants, agreements and conditions contained and set forth in the Note, this Mortgage, and the other Loan Documents and shall comply with all laws, ordinances, rules, regulations and orders of any governmental authorities having jurisdiction over the Property that now or hereafter affect the Property or requires any alterations or improvements to be made thereon, and shall perform all of its obligations under any covenant, condition, restriction or agreement of record affecting the Property and shall insure that at all times the Property constitutes one or more legal lots capable of being conveyed without violation of any subdivision or platting laws, ordinances, rules or regulations, or other laws relating to the division or separation of real property.

2.3 Preservation and Maintenance of Property. Borrower shall keep all Improvements now existing or hereafter erected on the Real Property in good order and repair and shall not do or permit any waste, impairment or deterioration thereof or thereon, nor alter, remove, or demolish any of the Improvements or any Fixtures or Personal Property attached or appertaining thereto, without the prior written consent of Lender. Borrower shall not initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Property or any part thereof, nor do or permit any other act whereby the Property shall become less valuable, be used for purposes contrary to applicable law, or be used in any manner that will increase the premium for or result in a termination or cancellation of the insurance policies hereinafter required to be kept and maintained on the Property. Borrower shall effect such repairs as Lender may reasonably require, and from time to time make all needful and proper replacements so that the Improvements, Appurtenances, Fixtures and Personal Property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

2.4 Hazardous Waste.

2.4.1 Borrower at all times shall keep the Property and ground water of the Property free of Hazardous Materials (as defined below). Borrower shall not and shall not knowingly permit its tenants or any third party requiring the consent of Borrower to enter the Property, to use, generate, manufacture, treat, store, release, threaten release, or dispose of Hazardous Materials in, on, or about the Property or the ground water of the Property in violation of any federal, regional, state, or local

law, decision, statute, rule, ordinance or regulation currently in existence or hereinafter enacted or rendered (collectively the "Hazardous Waste Laws"). Borrower shall give Lender prompt written notice of any claim by any person, entity, or governmental agency that a significant release or disposal of Hazardous Materials has occurred in, on, or under the Property in excess of legal limits. Borrower, through its professional engineers and at its cost, shall promptly and thoroughly investigate suspected Hazardous Materials contamination of the Property. Borrower shall forthwith remove, repair, clean up, and/or detoxify any Hazardous Materials found on the Property or in the ground water of the Property if such actions are required by Hazardous Waste Laws, and whether or not Borrower was responsible for the existence of the Hazardous Materials in, on or about the Property or the ground water of the Property. Hazardous Materials shall include but not be limited to substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, by the Superfund Amendments and Reauthorization Act of 1986, The Hazardous Materials Transportation Act of 1994. The Resource Conservation and Recovery Act of 1976, as amended by The Used Oils Recycling Act of 1980, The Solid Waste Disposal Act amendment of 1984, The Toxic Substances Control Act, The Clean Air Act, The Clean Water Act, Idaho Environmental Protection and Health Act (Idaho Code §§ 39-101 to 39-130), Idaho Radiation and Nuclear Material Act (Idaho Code §§ 39-3001 to 39-3030), Idaho Water Quality Act (Idaho Code §§ 39-3601 to 39-3639), Idaho Hazardous Waste Management Act (Idaho Code §§ 39-4401 to 39-4432), Idaho Hazardous Substance Emergency Response Act (Idaho Code §§ 39-7101 to 39-7115), Idaho Petroleum Clean Water Trust Fund Act (Idaho Code §§ 41-4901 to 41-4948), Idaho Land Reclamation Act (Idaho Code §§ 39-7201 to 39-7210), Idaho Solid Waste Facilities Act (Idaho Code §§ 39-7401 to 39-7420), Idaho Sale and Disposal of Batteries Act (Idaho Code §§ 39-7001 to 39-7004), Idaho PCB Waste Disposal Act (Idaho Code §§ 39-6201 to 39-6216) or in any other Hazardous Waste Laws. In addition, Borrower shall not put any underground storage tanks on the Real Property.

2.4.2 Borrower shall indemnify Lender and hold Lender harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Lender for, with respect to, or as a direct or indirect result of, the presence in, on, or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, the Property of any Hazardous Materials (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Hazardous Waste Laws), regardless of the source of origination and whether or not caused by, or within the control of, Borrower.

2.4.3 Liability under this Section 2.4 and similar provisions in this Mortgage and the other Loan Documents concerning Hazardous Materials shall survive repayment of the Note and satisfaction of this Mortgage; provided, however, Borrower shall have no liability under this Section 2.4 regarding Hazardous Materials if (i) the Property becomes contaminated subsequent to Lender's acquisition of the Property by foreclosure, acceptance by Lender of a deed in lieu thereof, or subsequent to any transfer of ownership of the Property that was approved or authorized by Lender in writing, pursuant to this Mortgage, provided that such transferee assumes in writing all of the obligations of Borrower under the Loan Documents with respect to Hazardous Materials, or

(ii) at such time Borrower provides Lender with an environmental assessment report acceptable to Lender, in its sole discretion, showing the Property to be free of Hazardous Materials and not in violation of any Hazardous Waste Laws. The burden of proof under this section with regard to establishing the date upon which any Hazardous Material was placed or appeared in, on, or under the Property shall be upon Borrower.

2.5 Accessibility.

2.5.1 Borrower at all times shall maintain the Property in full compliance with all existing and hereafter enacted federal, state, county, regional or local laws, ordinances, rules and regulations governing accessibility for the disabled, including but not limited to The Architectural Barriers Act of 1968, The Rehabilitation Act of 1973, The Fair Housing Act of 1988, and The Americans with Disabilities Act (the "Accessibility Laws").

2.5.2 Borrower shall indemnify Lender and hold Lender harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Lender for, with respect to, or as a direct or indirect result of, the non-compliance of the Property with the Accessibility Laws whether or not caused by, or within the control of, Borrower.

2.5.3 Liability under this Section 2.5 and similar provisions in this Mortgage and the other Loan Documents concerning Accessibility Laws shall survive repayment of the Note and satisfaction of this Mortgage; provided, however, Borrower shall not be liable under this Section 2.5 for compliance with any Accessibility Laws if such Accessibility Laws first become effective, or such violations result from alterations or improvements to the Property that are performed subsequent to Lender's acquisition of the Property by foreclosure or acceptance of a deed in lieu thereof or subsequent to any transfer which was approved or authorized by Lender pursuant to this Mortgage, provided that such transferee assumes in writing all obligations pertaining to Accessibility Laws pursuant to this Mortgage and the other Loan Documents.

2.6 Use of Property. The Property shall be used only for farming and the subdivision and sale of residential lots within such subdivision and for no other use without the prior written consent of Lender, which consent may be withheld in Lender's discretion.

2.7 Payment of Taxes, Assessments and Other Charges. Borrower shall pay all taxes, assessments, and other charges that are or may be hereafter levied or assessed upon or against the Property, when the same shall become due and payable according to law, before the same become delinquent, and before any interest or penalty shall attach thereto. Borrower shall deliver official receipts evidencing the payment of the same to Lender not later than thirty (30) days following payment. Borrower shall have the right to contest, in good faith, the proposed assessment of ad valorem taxes or special assessments by governmental authorities having jurisdiction over the Property; provided, however, Borrower shall give written notice thereof to Lender and Lender may, in its sole discretion, require Borrower to post a bond or other collateral satisfactory to Lender in connection with any such action by Borrower.

2.8 Payment of Liens, Charges and Encumbrances. Borrower shall immediately pay and discharge from time to time when the same shall become due all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a lien, charge or encumbrance upon the Property or any part thereof, or on the rents, issues, income, revenues, profits and proceeds arising therefrom and, in general, to do or cause to be done everything necessary so that the lien of this Mortgage shall be fully preserved, at the cost of Borrower, without expense to Lender. Borrower shall have the right to contest, in good faith and in accordance with applicable laws and procedures, mechanics' and materialmen's liens filed against the Property; provided however, that Borrower shall give written notice thereof to Lender, and Lender may, in its sole discretion, require Borrower to post a bond or other collateral satisfactory to Lender (and acceptable to the title insurance company insuring this Mortgage) in connection with any such action by Borrower.

2.9 Payment of Junior Encumbrances. Borrower shall not permit default or delinquency under any lien, imposition, charge or encumbrance against the Property, even though junior and inferior to the lien of this Mortgage; provided however, the foregoing shall not be construed to permit any other lien or encumbrance against the Property.

2.10 Payment of Mortgage Taxes. Borrower shall pay any and all taxes that may be levied or assessed directly or indirectly upon the Note and/or this Mortgage (except for income taxes payable by Lender) or the debt secured hereby, without regard to any law that may be hereafter enacted imposing payment of the whole or any part thereof upon Lender, its successors or assigns.

2.11 Insurance.

2.11.1 Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(a) Property Insurance. Insurance with respect to the Improvements and building equipment insuring against any peril included within the classification "All Risks of Physical Loss," in an amount equal to amounts at all times sufficient to prevent Lender from becoming a co-insurer within the terms of the applicable policies and under applicable law, but in any event such insurance shall be maintained in an amount equal to the full insurable value of the Improvements and building equipment on the Property. The term "full insurable value" means the actual replacement cost of the Improvements and building equipment (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping, and paving) determined annually by an insurer, a recognized independent insurance broker, or an independent appraiser selected and paid by Borrower with Lender's approval. If requested by Lender, the property insurance shall include earthquake coverage.

(b) Liability Insurance. Comprehensive general liability insurance, including bodily injury, death and property damage liability insurance, against any and all claims, including all legal liability to the extent insurable and imposed upon Lender and all court costs and attorneys' fees and expenses, arising out of or connected with the possession, use, leasing, operation,

maintenance or condition of the Property in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property but in no event for a combined single limit of less than \$1,000,000.

(c) Other Insurance. Such other insurance with respect to the Property against loss or damage of the kinds from time to time customarily insured against and in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property.

2.11.2 All insurance provided for in Subsection 2.11.1 shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), and shall be issued by one or more domestic primary insurer(s) having (i) an investment grade rating or claims paying ability assigned by one or more credit rating agencies approved by Lender (a "Rating Agency") and (ii) a general policy rating of A or better and a financial class of VI or better by A.M. Best Company, Inc. (each such insurer shall be referred to below as a "Qualified Insurer"). All insurers providing insurance required by this Mortgage shall be authorized to issue insurance in the state in which the Property is located. The Policy referred to in Paragraph (b) above shall name Lender as an additional named insured and the Policy referred to in Paragraphs (a), (c), (d), and (e) above shall provide that all proceeds be payable to Lender as set forth in this Mortgage. The Policies referred to in Paragraphs (a), (d), and (e) shall also contain: (i) a standard "non-contributory mortgagee" endorsement or its equivalent (such as the Lender's Loss Payable endorsement 438 BFU, in long form) relating, *inter alia*, to recovery by Lender notwithstanding the negligent or willful acts or omission of Borrower; (ii) to the extent available at commercially reasonable rates, a waiver of subrogation endorsement as to Lender; and (iii) an endorsement providing for a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of similar properties in the general vicinity of the Property, but in no event in excess of an amount approved by Lender. All Policies described in Subsection 2.11.1 shall contain (i) a provision that such policies shall not be canceled or terminated, nor shall they expire, without at least thirty (30) days' prior written notice to Lender in each instance; and (ii) include effective waivers by the insurer of all claims for Insurance Premiums (defined below) against any loss payees, additional insureds and named insureds (other than Borrower). Certificates of insurance with respect to all renewal and replacement Policies shall be delivered to Lender not less than thirty (30) days prior to the expiration date of any of the Policies required to be maintained hereunder which certificates shall bear notations evidencing payment of applicable premiums (the "Insurance Premiums"). Originals or certificates of such replacement Policies shall be delivered to Lender promptly after Borrower's receipt thereof but in any case within thirty (30) days after the effective date thereof. If Borrower fails to maintain and deliver to Lender the original Policies or certificates of insurance required by this Mortgage, Lender may procure such insurance at Borrower's sole cost and expense.

2.11.3 Borrower shall comply with all insurance requirements and shall not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon that would be prohibited by an insurance requirement, or would invalidate the insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to this Section.

2.11.4 If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and provided that Borrower shall have received the Net Proceeds (defined **below**), Borrower shall promptly commence and diligently prosecute the completion of the repair and restoration of the property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be approved by Lender (the "Restoration") and otherwise in accordance with Section 2.13 of this Mortgage.

2.11.5 The insurance coverage required under Subsection 2.11.1 may be effected under a blanket policy or policies covering the Property and other properties and assets not constituting a part of the security hereunder; provided that any such blanket policy shall specify, except in the case of public liability insurance, the portion of the total coverage of such policy that is allocated to the Property, and any sublimit in such blanket policy applicable to the Property, and shall in any case comply in all other respects with the requirements of this Section.

2.11.6 Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, by way of subrogation or otherwise, for any loss sustained by Borrower, or any loss or damage to the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

2.12 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings to the extent permitted by law. Upon an Event of Default, Borrower shall deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Secured Obligations at the time and in the manner provided for its payment in the Note and in this Mortgage and the Secured Obligations shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of such obligations. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. If the property or any portion thereof is taken by the power of eminent domain, Borrower shall promptly commence and diligently prosecute the Restoration of the Property in accordance with this Mortgage. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Secured Obligations.

2.13 Paragraph 2.13 Deleted.

2.14 Compliance with Laws. Borrower shall observe, abide by, and comply with all statutes, ordinances, laws, orders, requirements or decrees relating to the Property enacted, promulgated or issued by any federal, state, county or local governmental authority or any agency or subdivision thereof having jurisdiction over Borrower or the Property. Borrower shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, 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 Borrower in connection with any existing, presently contemplated or future use of the Property.

2.15 Maintenance of Permits. Borrower shall obtain, keep, and constantly maintain in full force and effect during the entire term of this Mortgage all certificates, licenses and permits necessary to keep the Property operating as set forth in paragraph 2.6, above. Except as specifically provided for in this Mortgage, Borrower shall not assign, transfer or in any manner change such certificates, licenses or permits without first receiving the written consent of Lender.

2.16 Obligations of Borrower as Lessor. Borrower shall perform every obligation of Borrower (as the lessor) and enforce every obligation of the lessee in each lease or other lease agreement of the Property or any part thereof (the "Leases"). Borrower shall not modify, alter, waive, or cancel any Lease or any part thereof, without the prior written consent of Lender. Borrower shall not collect for more than **one year** in advance any rents that may be collectible under any Lease and, except as provided for in this Mortgage, shall not assign any Lease or any rents to any party other than Lender, without the prior written consent of Lender. In the event of default under any Lease by reason of failure of the Borrower to keep or perform one or more of the covenants, agreements or conditions thereof, Lender is authorized and empowered, and may, at its sole option, remedy, remove or cure any such default, and further, Lender may, at its sole option and in its sole discretion, but without obligation to do so, pay any sum of money deemed necessary by it for the performance of said covenants, agreements and conditions, or for the curing or removal of any such default, and incur all expenses and obligations which it may consider necessary or reasonable in connection therewith, and Borrower shall repay on demand all such sums so paid or advanced by Lender together with interest thereon until paid at the then applicable interest rate of the. All such sums, if unpaid, shall be added to and become part of the indebtedness secured hereby. All Leases hereafter made shall be subject to the approval of Lender and (a) shall be at competitive market rental rates then prevailing in the geographic area for property comparable to the Property, and (b) at Lender's option, shall be superior or subordinate in all respects to the lien of this Mortgage.

2.17. Paragraphs 2.17 and 2.18 Deleted.

3. Representations and Warranties. Borrower represents and warrants to Lender that:

3.1 Warranty of Title. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that

Borrower possesses an unencumbered fee simple absolute estate in the Real Property and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for real property taxes for years subsequent to 2004 (which are not yet due and payable) and those matters set forth in the Lender's Policy of Title Insurance insuring the first priority lien of this Mortgage (the "Permitted Exceptions"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

3.2 Status of Property.

3.2.1 Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

3.2.2 All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

3.2.3 The Property complies with the Americans With Disabilities Act and any regulations promulgated thereunder.

3.2.4 No part of the Real Property consists of or is classified as wetlands, tidelands, or swamp and overflow lands.

3.3 Leases. (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified rent roll delivered to and approved by Lender; (c) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated (except to Lender); (d) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (e) the Leases are valid and enforceable against Borrower and the tenants set forth therein; (f) no person or entity has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; and (g) each Lease (other than a residential Lease) is subordinate to this Security Interest, either pursuant to its terms or a recorded subordination agreement.

3.4 Taxes. Borrower has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by it and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by it. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

4. Further Assurances.

4.1 Inspection by Lender. Lender, and/or its agents, shall have the right and shall be permitted, but shall not be required, at all reasonable times, to enter upon and inspect the Property to insure compliance with the covenants, agreements, and conditions set forth in this Mortgage.

4.2 Execution of Additional Documents. Borrower shall, at the cost of Borrower, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers, assurances and other instruments, including security agreements and financing statements, as Lender shall from time to time require for the purpose of better assuring, conveying, assigning, transferring and confirming unto Lender the Property and rights hereby encumbered, created, conveyed, assigned or intended now or hereafter so to be encumbered, created, conveyed or assigned or that Borrower may now be or may hereafter become bound to encumber, create, convey, or assign to Lender, or for the purpose of carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering, or recording this Mortgage, and to pay all filing, registration, or recording fees and all taxes, costs and other expenses, including Reasonable Attorneys' Fees, incident to the preparation, execution, acknowledgment, delivery, and recordation of any of the same.

4.3 Estoppel Certification by Borrower. Borrower, upon Lender's request, shall certify in writing to Lender (or any party designated by Lender) in form satisfactory to Lender the amount of principal and interest then outstanding under the terms of the Note and any other sums due and owing under this Mortgage or any of the other Loan Documents and whether any offsets or defenses exist against the Secured Obligations. Such certification shall be made by Borrower within **thirty (30)** days of Lender's request. Borrower shall deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more lessees (provided the Property is not a residential multifamily property) as required by Lender attesting to such facts regarding the Lease as Lender may require, including, but not limited to attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that none of the Rents have been paid more than one month in advance, except as security, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

5. Further Encumbrance Prohibited. Borrower shall not, without the prior written consent of Lender, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section shall be deemed to include, but not limited to (a) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (b) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (c) if Borrower or any general partner or managing member (or if no managing member, any member) of Borrower is a corporation, the voluntary or involuntary sale, conveyance, transfer or

pledge of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than 49% of such corporation's stock shall be vested in a party or parties who are not now owners of more than 49% of such corporation's stock; and (d) if Borrower or any general partner or managing member (or if no managing member, any member) of Borrower is a limited or general partnership or joint venture, the change, removal or resignation of a general partner or the transfer or pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, and (e) if Borrower or any general partner or member of Borrower is a limited liability company, the change, removal or resignation of a managing member (or if no managing member, any member) or the transfer of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest. Notwithstanding the foregoing, the following transfers shall not be deemed to be a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment or transfer within the meaning of this Section: (a) transfer by devise or descent or by operation of law upon the death of a member, general partner or stockholder of Borrower or any member or general partner thereof, and (b) a sale, transfer or hypothecation of a membership, partnership or shareholder interest in Borrower, whichever the case may be, by a current member, general partner or shareholder, as applicable, to an immediate family member (i.e., parents, spouses, siblings, children or grandchildren) of such member, general partner or shareholder, or to a trust for the benefit of an immediate family member of such member, general partner or shareholder.

6. Default. The occurrence of any one or more of the following events shall constitute an "Event of Default":

6.1 Failure to make any payment of (i) interest or principal when due, (ii) any other amount of the Secured Obligations when due, or (iii) the entire amount of the Secured Obligations on or before the Maturity Date.

6.2 If any representation or warranty of Borrower or any Guarantor, or any member, general partner, principal or beneficial owner of any of the foregoing, made herein, or in any other Loan Document, or in any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made.

6.3 If Borrower or any Guarantor shall make an assignment for the benefit of creditors or if Borrower shall generally not be paying its debts as they become due.

6.4 If (i) Borrower or any Guarantor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the

Borrower or any Guarantor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower or any Guarantor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against the Borrower or any Guarantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) the Borrower or any Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower or any Guarantor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

6.5 Except for the specific defaults set forth in this Section, any other default under any Loan Document by Borrower, which default is not cured within thirty (30) days after written notice from Lender to Borrower; provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days, unless, only in the case of cures that require construction or remedial work, such cure cannot with diligence be completed within such one hundred twenty (120) day period, in which case such period shall be extended for an additional one hundred twenty (120) days.

7. Rights and Remedies.

7.1 Remedies. Upon the occurrence of any Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to the following actions, each of which may, to the extent permitted by applicable law, be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

7.1.1 Declare the entire unpaid Secured Obligations to be immediately due and payable.

7.1.2 Institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner.

7.1.3 Institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents.

7.1.4 Apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Secured Obligations and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Secured Obligations.

7.1.5 Subject to any applicable law, the license granted to Borrower under Subsection 1.2 shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect, and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Secured Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees.

7.1.6 Exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower.

7.1.7 Apply the undisbursed balance of any Net Proceeds or any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Secured Obligations in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

7.1.8 Pursue such other remedies as Lender may have under applicable law.

Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Subsection 6.4(i) or (ii) shall occur, the entire unpaid Secured Obligations shall be automatically due and payable, without any further notice, demand or other action by Lender.

7.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Lender to the payment of the Secured Obligations in such priority and proportions as Lender in its discretion shall deem proper, subject to any applicable law.

7.3 Right to Cure Defaults. Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, cure the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Secured Obligations, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section, shall constitute a portion of the Secured Obligations and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the default rate specified in the Note (the "Default Rate"), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Secured Obligations and be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

7.4 Examination of Books and Records. Lender, its agents, accountants and attorneys shall have the right upon prior written notice to examine the records, books, management and other papers of Borrower and its affiliates that reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower, its affiliates or any guarantor where the books and records are located. Lender and its agents shall have the right upon notice to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower and its affiliates or of any guarantor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower, its affiliates or any guarantor where the books and records are located.

7.5 Other Rights.

7.5.1 The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of

Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Secured Obligations or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

7.5.2 The risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

7.5.3 Lender may resort for the payment of the Secured Obligations to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Secured Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Mortgage. The rights of Lender under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

7.6 Lender's Powers. Lender may release or reconvey any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release or reconveyance, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a lien and security interest in the remaining portion of the Property. Without affecting the liability of any other person liable for the payment and/or performance of the Obligations and without in any way impairing or affecting the lien or priority of this Mortgage, Lender may, from time to time and without notice (i) release any person so liable; (ii) extend the maturity or alter any of the terms of any Secured Obligation; (iii) grant other indulgences; or (iv) make compositions or other arrangements with debtors in relation thereto.

7.7 Right of Entry. Lender and its agents shall have the right upon prior written notice to enter and inspect the Property at all reasonable times upon notice to Borrower.

8. Partial Release of Lots and Water Rights. Provided Borrower is not in default under the terms and conditions of this Mortgage and the Mortgage Note secured hereby, at the request of the Borrower, partial reconveyances from the lien or charge of this Mortgage shall be granted by the

Lender for individual lots shown on a final subdivision map to be recorded in Elmore County, Idaho. Lender shall release subdivided residential lots upon the closing of the sale of any such lots upon the payment of 80 percent of the net sale price of such lot. For purposes of this provision, "net sales price" shall be the purchase price less commissions and escrow costs pertaining to the sale of said lot, and sale price shall be not less than 90 percent of the fair market value of said lot.

In addition, Lender shall release from the lien of its Mortgage any water rights under IDWR Water Right No. 61-7439 sold by Borrower upon closing of the escrow regarding sale of such rights upon payment of 100 percent of the net sales price for said water rights but in no event less than \$1,000 per 0.02 cfs of said water right transferred.

9. Indemnification. If Lender shall become a party either as plaintiff or as defendant, in any action, suit, appeal or legal proceeding (including, without limitation, foreclosure, condemnation, bankruptcy, administrative proceedings or any proceeding wherein proof of claim is by law required to be filed), hearing, motion or application before any court or administrative body in relation to the Property or the lien and security interest granted or created hereby or herein, or for the recovery or protection of said indebtedness or the Property, or for the foreclosure of this Mortgage, Borrower shall save and hold Lender harmless from and against any and all costs and expenses incurred by Lender on account thereof, including, but not limited to, Reasonable Attorneys' Fees, title searches and abstract and survey charges, at all trial and appellate levels, and Borrower shall repay, on demand, all such costs and expenses, together with interest thereon until paid at the then applicable rate of interest of the Note plus two (2) basis points; all of which sums, if unpaid, shall be added to and become a part of the indebtedness secured hereby.

10. Usury Savings Clause. Notwithstanding any provisions in the Note or in this Mortgage to the contrary, the total liability for payments in the nature of interest including but not limited to default interest and late payment charges shall not exceed the limits imposed by the laws of the State of Idaho or, if controlling, the United States relating to maximum allowable charges of interest. Lender shall not be entitled to receive, collect or apply, as interest on the indebtedness evidenced by the Note, any amount in excess of the maximum lawful rate of interest permitted to be charged by applicable law. If Lender ever receives, collects or applies as interest any such excess, such amount that would be excessive interest shall be applied to reduce the unpaid principal balance of the indebtedness evidenced by the Note. If the unpaid principal balance of such indebtedness has been paid in full, any remaining excess shall be paid to Borrower.

11. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (b) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower: **Jerry W. Anderson and Laura Anderson**
4635 Buckboard
Boise, ID 83713
Telephone No. _____

If to Lender: **Idaho Capital, c/o Diane Barker**
P.O. Box 4607
Ketchum, ID 83340
208/726-1515

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

12. Governing Law. This Mortgage is to be governed by and construed in accordance with the laws of the state where the Property is located and, if controlling, by the laws of the United States and shall be binding upon Borrower, its heirs, personal representatives, successors and assigns and shall inure to the benefit of Lender, its successors and assigns.

13. Miscellaneous.

13.1. Successors and Assigns: Terminology. The provisions hereof shall be binding upon Borrower and the heirs, personal representatives, successors and assigns of Borrower, and shall inure to the benefit of Lender, its successors and assigns. Where more than one Borrower is named herein, the obligations and liabilities of said Borrower shall be joint and several. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Borrower" shall mean Borrower and/or any subsequent owner or owners of the Property, the word "Lender" shall mean Lender or any subsequent holder or holders of this Mortgage, the word "Note" shall mean Note(s) secured by this Mortgage, and the word "person" shall mean an individual, trustee, trust, corporation, partnership or unincorporated association. As used herein, the phrase "Reasonable Attorneys' Fees" shall mean fees charged by attorneys selected by Lender based upon such attorneys' then prevailing hourly rates as opposed to any statutory presumption specified by any statute then in effect in the State of Idaho.

13.2 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Law.

13.3 Inapplicable Provision. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

13.4 Attorney's Fees for Enforcement. Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorney's fees, incurred or paid by Lender in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

13.5 Modifications. This Mortgage cannot be changed, altered, amended or modified except by an agreement in writing and in recordable form, executed by both Borrower and Lender.

13.6 Captions. The captions set forth at the beginning of the various sections of this Mortgage are for convenience only and shall not be used to interpret or construe the provisions of this Mortgage.

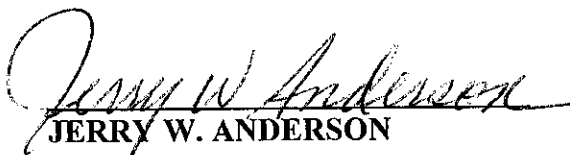
13.7 Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

13.8 Duplicate Originals; Counterparts. This Mortgage may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Mortgage may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Mortgage. The failure of any party hereto to execute this Mortgage, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

13.9 Entire Agreement. The Note, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Secured Obligations and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto.

IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the day and year first written above.

BORROWER


JERRY W. ANDERSON


LAURA J. ANDERSON

IDAHO CAPITAL, an Idaho
Limited Liability Company

By

Diane Barker, Member

On this 18 day of August, 2004, before me, Douglas A. Webb, a Notary Public in and for said State, personally appeared DIANE BARKER known or identified to me to be the person whose name is subscribed to the within instrument as a Member of Idaho Capital, an Idaho Limited Liability Company, and acknowledged to me that she executed the same as such a Member of the Company.

NOTARY PUBLIC
STATE OF IDAHO
DOUGLAS A. WERTH

NOTARY PUBLIC, FOR

Residing at

My commission Expires

On this 21st day of August, 2004, before me Sheryl A. Reymont, personally appeared JERRY W. ANDERSON and LAURA J. ANDERSON, 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.

NOTARY PUBLIC FOR IDAHO

Residing at

My Commission Expires

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING - 21

BOI_MT1:222089.2

CASE NO.: 04-898

EXHIBIT A to Mortgage

LEGAL DESCRIPTION

JWA LJC

TRACT I

Lots 16 and 18, both in Block 1, Beverly Hills Subdivision to Elmore County, Idaho, as the same appear upon the official plat thereof on file and of record in the office of the County Recorder of Elmore County, Idaho.

The West 1/2 of the Northeast 1/4, the Southeast 1/4 of the Northwest 1/4, the South 1/2 of the Northeast 1/4 of the Northwest 1/4, the Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4, and the West 1/2 of the Northwest 1/4 of Section 13, Township 4 South, Range 6 East, Boise Meridian, in Elmore County, Idaho,

SAVING AND EXCEPTING AND EXCLUDING THEREFROM the following described property, to-wit:

Commencing at the Northeast corner of the Northwest 1/4 of the Northwest 1/4 of Section 13, Township 4 South, Range 6 East, Boise Meridian, in Elmore County, Idaho;
thence South 423 feet
thence North 89°52' West 515 feet;
thence North 423 feet;
thence South 89°52' East 515 feet to the point of beginning.

TRACT II

Lot 17, Block 1, Beverly Hills Subdivision, Elmore County, Idaho, according to the official plat thereof on file and of record in the office of the County Recorder of Elmore County, Idaho.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 61-7172F

WATER RIGHT NUMBER: 61-7172F

WAT LGA

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	TIMOTHY L CORDER SR 5325 S 14TH E MOUNTAIN HOME, ID 83647 (208)587-5871
Current Owner	LA VONNE CORDER 5325 S 14TH E MOUNTAIN HOME, ID 83647 (208)587-5871
Original Owner	HENRY L LEYDET C/O RON LEYDET PO BOX 521 MOUNTAIN HOME, ID 83647 (208)587-3758
Original Owner	JULIO J SILLONIS 315 S 2ND E MOUNTAIN HOME, ID 83647 (208)587-3836

Priority Date: 11/19/1973

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER	1/01 to 12/31	0.030 CFS	1.30 AF
IRRIGATION	3/15 to 10/15	2.810 CFS	884.00 AF
	<u>Total Diversion:</u>	2.810 CFS	885.30 AF

Location of Point(s) of Diversion

GROUND WATER	NE1/4NW1/4NE1/4	Sec. 13, Twp 04S, Rge 06E, B.M.
ELMORE County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04S	06E	13		39.0	37.0		30.0	35.0	40.0	40.0									221.0

Total Acres: 221

STOCKWATER same as IRRIGATION

Conditions of Approval:

EXHIBIT B to Mortgage

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 61-7172F

1. C15 THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN BASIN 61: WATER RIGHT NO. SOURCE NONE NONE THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN THE SNAKE RIVER BASIN: WATER RIGHT NO. SOURCE NONE NONE ALL WATER RIGHTS WITHIN BASIN 61 ARE FROM CONNECTED SOURCES OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED CONJUNCTIVELY.
2. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
3. N05 THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.
4. N08 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

Remarks:

1. Purpose of Use THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER AFTER OCTOBER 15 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.
2. General THE REMAINDER OF THIS RIGHT WAS FORFEITED FOR NON-USE FROM 1987 TO 1994.
3. Explanatory STOCKWATER, 100 HEAD CATTLE.

Comments:

1. AJU10-JS 11/21/1998 AJU10 CONDITION UPDATE

Comment: CONDITION CODE(S) C15 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 61-7439

WATER RIGHT NUMBER: 61-7439

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	LEONARD D HOFFMAN 340 E 15TH N MOUNTAIN HOME, ID 83647
Current Owner	TIMOTHY L CORDER 5325 S 14TH E MOUNTAIN HOME, ID 83647 (208)587-5871

Priority Date: 06/10/1981

Basis: License

Status: Active

SourceTributary

GROUND WATER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 10/31	3.140 CFS	628.00 AF
	<u>Total Diversion:</u>	3.140 CFS	628.00 AF

Location of Point(s) of Diversion

GROUND WATER

ELMORE County

NE1/4SW1/4

Sec. 13, Twp 04S, Rge 06E, B.M.

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE					
04S	06E	13									39.0	39.0	40.0	39.0					157.0

Total Acres: 157

Conditions of Approval:

1. R31 This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for irrigation of the lands above.

Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 61-7439

Comments:

1. VAULT 11/25/1991 Proof of Beneficial Use Rcvd

Comment: Proof of Beneficial Use Rcvd

2. GUSTAFSO 11/26/1991

Comment: 15 day call up - believe proof has wrong permit no. proof has been made on this permit. correspondence sent to person/filed