

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Notice of Security Interest in a Water Right

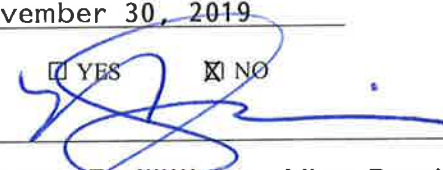
And Request for Notification of a Change in Ownership or Any Proposed
Or Final Action to Amend, Transfer, or Otherwise Modify a Water Right

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

RECEIVED

JAN 06 2005

WATER RESOURCES
WESTERN REGION

1. Water Right No(s): 63-10666C, 63-10666D, 63-10780
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
Sterling Savings Bank c/o Michael E. Williams
621 SW Morrison, Suite 550
Portland, OR 97205
4. Name of Water Right Owner/Claimant(s) Turf Company, Inc./Darwin McKay
5. Expiration Date of Notification Period November 30, 2019
6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO
7. Signature(s) (and title if applicable)

Michael E. Williams, Vice President

For Office Use Only

Received by <u></u>	Date <u>1-6-05</u>	Fee <u>\$75.00</u>
Receipted by <u></u>	Date <u>1-6-05</u>	Receipt No. <u>2032503</u>
Processed by _____	AJ Date _____	WR _____ Date _____

SCANNED
JAN 17 2005

SUPPORT DATA
IN FILE # 63-10666D

12/27/05

AFTER RECORDING RETURN TO:

Jody M. McCormick
Witherspoon, Kelley, Davenport
& Toole, P.S.
422 W. Riverside Avenue
Suite 1100
Spokane, Washington 99201

0400026163KS

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF LEASE AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT, ("MORTGAGE"), is made effective as of December 23, 2004, by and between THE TURF COMPANY, LLC, an Idaho limited liability company, and DARWIN McKAY (collectively, "Mortgagor"), whose address is 6100 Eagle Road, Meridian, Idaho 83642, and STERLING SAVINGS BANK ("Mortgagee"), whose address is 111 North Wall, Spokane, Washington 99201.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited, the receipt of which is hereby acknowledged, Mortgagor hereby irrevocably grants, transfers, mortgages, conveys and assigns to Mortgagee, under and subject to the terms and conditions hereinafter set forth, all of the Mortgagor's current and future interest and estate in the real property, located in the Ada County, State of Idaho, described in abbreviated form as follows and more fully on Exhibit "A" attached hereto and by this reference incorporates herein (the "Property"):

Abbreviated Legal: Ptn. S ½ SW ¼ SW ¼, Sec. 33, T3N, R1E, Boise Meridian,
Ada County, Idaho., Ptn. E1/2 W1/2 SE1/4, Sec. 33, T3N, R1E,
Boise Meridian, Ada County, Idaho.
Tax Parcel No.: 240 S1133336210
Part of 240S1133417820

TOGETHER WITH, all rents, issues, profits, royalties, income and other benefits derived from the Property (collectively the "Rents"), subject to the right, power, and authority of Mortgagor to collect and apply such Rents for so long as no event of default occurs as herein provided;

TOGETHER WITH, all present and future right, title, and interest of Mortgagor in and to the same and all: (a) appurtenant easements, licenses, and rights-of-way and agreements therefore; (b) buildings and improvements now and hereafter located thereon; (c) adjacent lands within enclosures or occupied by building now or hereafter partly located thereon; (d) riparian,

MORTGAGE . . . - PAGE 1

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appropriate and other water and water rights and water wells and shares of stock pertaining to water and water rights therefor; (e) oil, gas, steam, gravel, minerals and other natural or cultivated products thereof; and (g) all other fixtures, improvements and appurtenances thereto and whether now or hereafter existing and howsoever affixed or attached thereto;

TOGETHER WITH, all interests, estate or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Property;

TOGETHER WITH, all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water, water rights, minerals, mineral rights and patents, licenses and permits evidencing the same;

TOGETHER WITH, all right, title, and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining or upon the Property, and any and all strips and gores of land adjacent to or used in connection with the Property;

TOGETHER WITH, any and all buildings and improvements now or hereafter erected thereon, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery and other articles attached to said buildings and improvements which are or will become fixtures together with the following specifically described property: all personal property described on Exhibit "C" attached hereto and by this reference incorporated herein, and all substitutions, additions and accessions thereof and thereto (the "Improvements or Personal Property"); and

TOGETHER WITH, all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Estate, including without limitation any awards resulting from a change of grade of streets and awards for severance damages.

The Property, Rents, Improvements, Personal Property and all other property and interest hereby conveyed to Mortgagee may hereafter be referred to as the "Mortgaged Estate."

FOR THE PURPOSE OF SECURING:

a. Payment of indebtedness evidenced by (i) that certain promissory note of even date herewith and executed by Mortgagor, The Turf Corporation, an Idaho corporation, Pleasure Turf L.L.C., an Idaho limited liability company, Turfco Transportation, Inc., an Idaho corporation, The Turf Company of Nevada, Inc., a Nevada corporation (collectively, "Borrowers") in the principal amount of Five Hundred Eighty-One Thousand Seven Hundred Fifty Dollars (\$581,750.00), bearing interest at a variable rate; and (ii) that certain promissory note of even date herewith and executed by

Borrowers in the original principal amount of One Million Six Hundred Sixty-Eight Thousand Two Hundred Fifty Dollars (\$1,668,250.00), bearing interest at a variable rate; (iii) that certain promissory note of even date herewith and executed by Borrowers in the original principal amount of Two Million Dollars (\$2,000,000.00), bearing interest at a variable rate; (iv) that certain promissory note of even date herewith and executed by Borrowers in the original principal amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00), bearing interest at a variable rate (collectively, the "Note") including all modification, amendments, replacements or supplements of the Note. It is the intent of the Mortgagor and Mortgagee that this Mortgage secure all obligations of Borrowers to Mortgagee under the Loan Instruments (as defined below). Therefore, all references hereunder to Mortgagor's obligations under the Note and the Loan Documents shall be deemed to include Borrowers' obligations under the same.

b. In addition to the Note, all obligations, debts and liabilities, plus interest thereon, of Mortgagor to Mortgagee, as well as all claims against Mortgagee, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Mortgagor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise.

c. Payment of all sums which may become due from Mortgagor or advances by Mortgagee or its successor, with interest thereon at the Note rate, which include but are not limited to, fire and other hazard insurance and taxes upon the real property herein described, according to the terms of this Mortgage; to the extent permitted in paragraph 4.08, payment by the Mortgagor of all reasonable attorneys' fees and statutory costs incurred by the Mortgagee in foreclosing this Mortgage or realizing upon any of the collateral for the obligations which this Mortgage secures; to the extent permitted in paragraph 4.08, payment by Mortgagor of all reasonable attorneys' fees and statutory costs incurred by Mortgagee in defending the priority or validity of this Mortgage or the title to the Property; payment by Mortgagor of all sums advanced by Mortgagee to or on behalf of Mortgagor for the purpose of clearing encumbrances or defects from the title to the Property described in this Mortgage where Mortgagee, in good faith, believes such encumbrances to be superior to the lien of the Mortgage, including, without limitation, payment of ad valorem taxes and mechanics' or materialmen's liens which may have gained priority over the lien of costs incurred by Mortgagee in any bankruptcy proceedings or any reorganization or arrangement proceeding under the Bankruptcy Act affecting Mortgagor, this Mortgage, or the covenant of Mortgagor herein contained or incorporated herein by reference and payment of all other sums advanced by Mortgagee to protect the Mortgaged Estate, with interest thereon at the Note rate.

d. All obligations, debts and liabilities, plus interest thereon, of Mortgagor or Mortgagee, as well as all claims by Mortgagee against Mortgagor, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Mortgagor may be liable individually or jointly with others, may

be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

This Mortgage, the Note, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to as the "Loan Instruments."

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

COVENANTS AND AGREEMENTS OF MORTGAGOR

1.01 Payment of Secured Obligations. To pay or cause to be paid when due, the principal of, and the interest on, the indebtedness evidenced by the Loan Instruments, and all charges, fees and all other sums as provided in the Loan Instruments.

1.02 Maintenance, Repair, Alterations. To keep the Mortgaged Estate in good condition and repair, not to remove, demolish or substantially alter (except such alterations as are in the ordinary course of business or may be required by laws, ordinances or regulations) any of the buildings, structures and improvements comprising a part thereof; to complete promptly and in good and workmanlike manner any building, structure or other improvement which may be constructed on the Property and promptly restore in a like manner any of the buildings, structures and improvements thereon which may be damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions now or hereafter affecting the Property or any part thereof or requiring any alterations or improvements; not to commit or permit any waste or deterioration of the Property; to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; not to commit, suffer or permit any act to be done in or upon the Property in violation of any law, ordinance or regulation, to perform all covenants and agreements contained in any lease, insofar as necessary to avoid any loss of such leasehold interest, and to pay all sums required to keep such leasehold interest in full force and effect prior to such time as such leasehold interest could be terminated for nonpayment of such sums, and to furnish to Mortgagee not less than ten (10) days prior to the date after which nonpayment of such payments could result in a loss of such leasehold interest by Mortgagee, receipts or other evidence satisfactory to Mortgagee evidencing the payment thereof.

1.03 Required Insurance. At all times to provide, maintain, and keep in force, or cause to be provided, maintained, and kept in force, the following policies of insurance:

- a. Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type now known as "fire and extended coverage," in

an amount not less than the original amount of the Note or one hundred percent (100%) of the full replacement cost of the Improvements (exclusive of the cost of excavations, foundations, and footings below the lowest basement floor), whichever is greater. The policies of insurance carried in accordance with this subparagraph (a) shall contain the "Replacement Cost Endorsement";

b. Insurance against loss or damage to the Personal Property by fire and other risks covered by insurance of the type now known as "fire and extended coverage";

c. Such other insurance and in such amounts as may, from time to time, be required by Mortgagee against the same or other hazards; and

d. All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim, or deductions against Mortgagor.

1.04 Delivery of Policies; Payment of Premiums. That all policies of insurance shall be issued by companies and in amounts in each company reasonably satisfactory to Mortgagee. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee. Mortgagor shall furnish Mortgagee with an original policy of all policies of required insurance. If Mortgagee consents to Mortgagor providing any of the required insurance through blanket policies carried by Mortgagor and covering more than one (1) location, then Mortgagor shall furnish Mortgagee with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date. At least thirty (30) days prior to the expiration of each such policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of premium and the re-issuance of a policy continuing insurance in force as required by this Mortgage. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage without at least thirty (30) days' prior written notice to Mortgagee. In the event Mortgagor fails to provide, maintain, keep in force, or deliver and furnish to Mortgagee the policies of insurance required by this section, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee and, until such payment is made by Mortgagor, the amount of all such premiums, together with interest thereon at the Note rate, shall be secured by this Mortgage. At the request of the Mortgagee, Mortgagee may require Mortgagor to deposit with Mortgagee in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage. In such event, Mortgagor further agrees, upon Mortgagee's request, to cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements, or other documents and

providing Mortgagor has deposited sufficient funds with Mortgagee pursuant to this Section 1.04, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with such Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Mortgagor and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 1.04. Mortgagee may commingle said reserve with its own funds and Mortgagor shall be entitled to no interest thereon.

1.05 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Estate in extinguishment, in whole or in part, of the debt secured hereby, all right, title, and interest of Mortgagor in and to all policies of insurance required by Section 1.03 shall inure to the benefit of and pass to the successor in interest to Mortgagor or the purchaser or grantee of the Mortgaged Estate.

1.06 Indemnification; Subrogation; Waiver of Offset.

a. If Mortgagee is made a party defendant to any litigation concerning this Mortgage or the Mortgaged Estate or any part thereof or interest therein, or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify, defend, and hold Mortgagee harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Mortgagee in any such litigation, whether or not any such litigation is prosecuted to judgment. If Mortgagee commences an action against Mortgagor to enforce any of the terms hereof or because of the breach by Mortgagor of any of the terms hereof or for the recovery of any sum secured hereby, Mortgagor shall pay to Mortgagee reasonable attorneys' fees and expenses, and such fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder and in the event of such employment following any breach by Mortgagor, Mortgagor shall pay Mortgagee reasonable attorneys' fees and expenses incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor by reason of such breach.

b. Mortgagor waives any and all rights to claim or recover against Mortgagee, its officers, employees, agents, and representatives, for loss of or damage to Mortgagor, the Mortgaged Estate, Mortgagor's property, or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

c. Except as provided in the representations and warranties from Mortgagee to Mortgagor set forth in the Assignment of Loan Documents dated March 19, 2001, all

sums payable by Mortgagor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction; and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Estate or any part hereof by third-persons; (iii) any, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; (iv) any claim which Mortgagor has or might have against Mortgagee; (v) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (vi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing and whether or not Mortgagor shall have notice or knowledge of any of the foregoing.

1.07 Insurance Proceeds. That after the happening of any casualty of the Mortgaged Estate or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.

a. In the event of any damage or destruction of the Improvements, Mortgagee shall have the option in its sole discretion of applying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Mortgagee may determine; (ii) to the restoration of the Improvements; or (iii) to Mortgagor. Notwithstanding the foregoing, Mortgagor shall be entitled to apply all or part of the insurance proceeds to replace and/or restore Improvements which shall remain or become subject to this Mortgage provided Mortgagee's collateral position will not be adversely affected or depleted.

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

c. Except to the extent that insurance proceeds are received by Mortgagee and applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Estate as provided in Section 1.02 hereof or restoring all damage or destruction to the Mortgaged Estate, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Mortgagee of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

1.08 Eminent Domain. In the event that any portion of the Mortgaged Estate is taken or damaged by act of Eminent Domain or purchase in lieu thereof, Mortgagee shall have the option, in its sole and absolute discretion, to apply all such proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney fees, incurred by it in connection with such proceeds, upon any indebtedness secured hereby, or to apply such proceeds, after such deductions, to the restoration of the Mortgaged Estate. Notwithstanding the foregoing, if Mortgagee's collateral position is not adversely affected or depleted, Mortgagee shall permit Mortgagor to: (a) apply all or part of such proceeds to acquire replacement collateral subject to this Mortgage or (b) retain all in part of said proceeds if Mortgagor provides Mortgagee satisfactory replacement collateral. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Notwithstanding the foregoing, in the event of condemnation at any time Mortgagor is not in default under any of the terms of the Loan Instruments, Mortgagor may take and apply all such portions of the proceeds specifically allocated for or in payment of restoration of the improvements to such restoration.

1.09 Taxes and Impositions.

a. To pay prior to delinquency all license fees, registration fees, taxes and assessments, including without limitation real property taxes and assessments, general and special, and all other charges, including without limitation nongovernmental levies or assessments, which may be levied upon or assessed against security interests, liens or other encumbrances on the ownership, operation, possession, maintenance or use of any portion of the Mortgaged Estate, or which create, may create or appear to create a lien upon the Mortgaged Estate, or any part thereof, provided, however, that Mortgagor shall not be required to comply with any such law, rule or regulation, or to pay any such tax or assessment or other charges the validity of which is being contested by Mortgagor in good faith by appropriate proceedings commenced and prosecuted with due diligence, so long as neither the value nor the title of any part of the Mortgaged Estate, nor the security interest of Mortgagee created hereby will be impaired by the failure of Mortgagor either to comply with any such law, rule or regulation, or to pay any such tax assessment or other charge, during the period of such contest; and provided further, that subject to the foregoing if, by law, any such tax, assessment or other charge is payable, or may at the option of Mortgagor be paid in installments, Mortgagor may pay the same, together with any accrued interest on the unpaid balance of such tax, assessment or other charge, in installments as the same become due and before any fine, penalty, additional interest or cost may be added thereto for the nonpayment of any such installment and interest.

b. Not to suffer, permit or initiate the joint assessment of the real property which is a portion of the Mortgaged Estate and any personal property used on or in connection with the real property, or any other procedures whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the real property as a single lien.

1.10 Additional Security. That in the event Mortgagee holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

1.11 Hazardous Waste

(a) Mortgagor represents and warrants to Mortgagee that to the best of Mortgagor's knowledge, no hazardous or toxic waste or substances are present on the Property or any adjacent property. Mortgagor agrees to provide written notice to Mortgagee immediately upon Mortgagor becoming aware that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Mortgagor will not cause nor permit any activities on the Property which directly or indirectly could result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Mortgage, the term "hazardous or toxic waste or substances" means any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect.

(b) Mortgagor will indemnify and hold Mortgagee harmless from and against any and all claims, demands, damages, costs, expenses, losses, liens, liabilities, penalties, fines and lawsuits and other proceeds, (including attorneys' fees), arising directly or indirectly from or out of, or in any way connected with (i) the inaccuracy of the certifications contained herein or in any other document executed by Mortgagor in connection with the loan evidenced by the Note, (ii) any activities on the Property which arose from releases of hazardous substances to the environment during Mortgagor's ownership, possession or control of the Property which directly or indirectly result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances, (iii) the discovery of hazardous or toxic waste or substances on the Property or other property which arose from releases of hazardous substances to the environment during Mortgagor's possession of the Property, or (iv) the clean-up of hazardous or toxic waste or substances from the Property or any other property which arose from releases of hazardous substances to the environment during Mortgagor's possession of the Property. Mortgagor acknowledges that it will be solely responsible for all costs and expenses relating to the clean-up of hazardous or toxic waste or substances from the Property or from any other property which become contaminated with hazardous or toxic waste or substances as a result of the contamination of or activities on the Property which arose from releases of hazardous substances to the environment during Mortgagor's possession of the Property.

1.12 Successors or Assigns. That this Mortgage applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

1.13 Additional Agreements and Warranties of Mortgagor. Mortgagor, The Turf Company, LLC, represents and warrants that it is the owner of the real property described herein and

has the right to mortgage the same. Mortgagor represents and warrants that Mortgagor is the owner of the water rights described herein and has the right to mortgage the same. Mortgagor shall warrant and defend the title to the real property against all claims and demands.

1.14 Sale or Contract for Sale. If all or any part of the real property interests owned by Mortgagor and identified herein, or any interest therein is sold or transferred or contracted to be sold or transferred, without Mortgagor's prior written consent and contrary to the terms of this Mortgage, Mortgagee may, at its option, require immediate payment of all sums secured hereby.

1.15 Security Agreement and Financing Statement. This Mortgage creates a security interest in all Improvements and Personal Property and all timber to be cut or removed from the above-described real property, and to the extent that such timber is not real property, this Mortgage constitutes a security agreement from the Mortgagor to the Mortgagee under the Uniform Commercial Code. The Mortgagor hereby agrees to execute and deliver on demand such financing statements or other instruments as the Mortgagee may request or require in order to perfect the security interest granted hereby or to continue the effectiveness of the same. This Mortgage shall further act as a Financing Statement itself, and shall be filed for record in the real estate records in the county in which the real property is located.

1.16 Protection of Mortgagee's Rights. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Mortgagee's rights in the property (such as a proceeding in bankruptcy, probate, for condemnation, or to enforce laws or regulations) Mortgagee may do and pay for whatever is necessary to protect the value of the property and Mortgagee's rights in the property. Mortgagee's actions may include paying any sums necessary for water assessments and fees, property taxes, severance taxes, or any other sums which may become a lien upon the subject property, and that Mortgagee may make repairs necessary to the property all for the protection of Mortgagee's interest in the Property. Although Mortgagee may take action under this paragraph, Mortgagee is not obligated to do so. Any amounts expended by Mortgagee under this paragraph shall become an additional debt of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the note rate and shall be payable, with interest, upon demand from Mortgagee to Mortgagor.

1.17 Inspections. That Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Instruments.

1.18 Farming Practices. Mortgagor shall operate the Mortgaged Estate or cause the Mortgaged Estate to be operated as a farming operation consistent with reasonable and prudent farming, husbandry and agricultural standards then prevailing in the market place.

ARTICLE II

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

2.01 Assignment of Rents. Mortgagor hereby assigns and transfers to Mortgagee all the rents, issues and profits of the Mortgaged Estate, and hereby gives to and confers upon Mortgagee the right, power and authority to collect such rents, issues and profits. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all such rents, issues and profits and apply the same to the indebtedness secured hereby; provided, however, that Mortgagor shall have the right to collect such rents, issues and profits (but not more than thirty (30) days in advance) prior to or at any time there is not an event of default under any of the Loan Instruments. The assignment of the rents, issues and profits of the Mortgaged Estate in this Article II is intended to be an absolute assignment from Mortgagor to Mortgagee and not merely the passing of a security interest. The rents, issues and profits are hereby assigned absolutely by Mortgagor to Mortgagee contingent only upon the occurrence of an event of default under any of the Loan Instruments.

2.02 Collection Upon Default. Upon any event of default under any of the Loan Instruments, Mortgagee may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Mortgaged Estate, or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Mortgaged Estate, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

ARTICLE III

REMEDIES UPON DEFAULT

3.01 Events of Default. Any of the following events shall be deemed an event of default hereunder:

- a. Default shall be made in the payment of any installment of principal or interest on the Note or any other sum secured hereby when due; or
- b. Mortgagor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation,

dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or of all or any part of the Mortgaged Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

c. A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Mortgagor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Mortgagor or of all or any part of the Mortgaged Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Mortgagor and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

d. A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Estate, or any judgment involving monetary damages shall be entered against Mortgagor which shall become a lien on the Mortgaged Estate or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy; or

e. There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan Instruments or any part thereof, not referred to in this Section 3.01.

3.02 Acceleration Upon Default, Additional Remedies. In the event of any event of default, Mortgagee may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Mortgagee may:

a. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Estate, or any part thereof, in its own name and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Estate sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and

expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, all in such order as Mortgagee may determine. The entering upon and taking possession of the Mortgaged Estate, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Estate of the collection, receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in any of the Loan Instruments or by law upon occurrence of any event of default;

b. Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

c. Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code, including, but not limited to:

(1) Either personally or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Mortgagor and all others claiming under Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Mortgagor in respect to the Personal Property or any part thereof. In the event Mortgagee demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Instruments, Mortgagor promises and agrees to promptly turn over and deliver complete possession thereof to Mortgagee;

(2) Without notice to or demand upon Mortgagor, make such payments and do such acts as Mortgagee may deem necessary to protect its security interest in the Personal Property, including without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith;

(3) Require Mortgagor to assemble the Personal Property or any portion thereof, at a place designated by Mortgagee and reasonably convenient to both parties, and promptly to deliver such Personal Property to Mortgagee, or an agent or representative designated by it. Mortgagee, and its agents and representatives shall have the right to enter upon any or all of Mortgagor's premises and property to exercise Mortgagee's rights hereunder;

(4) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon

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DEC 27 2008

such terms and in such manner as Mortgagee may determine. Mortgagee may be a purchaser at any such sale;

(5) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be mailed to Mortgagor at the address set forth at the beginning of this Mortgage.

3.03 Appointment of Receiver. If any event of default described in Section 3.01 of this Mortgage shall have occurred to be continuing, Mortgagee, as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Mortgaged Estate or the interest of Mortgagor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Estate, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided in Section 3.02a and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Estate unless such receivership is sooner terminated.

3.04 Mortgagee in Possession. Upon acceleration pursuant to this article, or abandonment of the property, Mortgagee, in person, by agent, or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the property and to collect all rents, issues, profits, royalties, income, and other benefits derived from the property. All sums collected by Mortgagee or the receiver shall be applied first to payment of the costs of management of the property and collection of sums, including but not limited to, receiver's fees, premiums on bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage.

3.05 Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Instruments to Mortgagee or to which

either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee and either of them may pursue inconsistent remedies.

ARTICLE IV

MISCELLANEOUS

4.01 Governing Law. The remedies provided by this Mortgage shall be exercised in accordance with and governed by the laws of the state in which the real property is located. In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflicts shall not affect other provisions of this Mortgage are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, charge, discharge or termination is sought.

4.02 Statements by Mortgagee. Upon payment of a sum not in excess of the maximum amount permitted by law. Mortgagee, within thirty (30) days after being given notice by mail, will furnish to Mortgagor a written statement stating the unpaid principal of and stating whether to the knowledge of Mortgagee any offset or defense exists against such principal and interest.

4.03 Reconveyance by Mortgagee. Upon payment of all sums secured hereby, and upon cancellation of the Note, Mortgagee shall discharge and release this Mortgage.

4.04 Notices. Whenever Mortgagor or Mortgagee shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered mail, postage prepaid, return receipt requested, addressed to the address set forth in the beginning of this Mortgage. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

4.05 Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Mortgage.

4.06 Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid in and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage.

4.07 No Merger. If both the Lessor and Lessee's estates under any lease, or any portion

thereof, which constitutes a part of the Mortgaged Estate shall at any time become vested in one owner, this Mortgage and the lien created by this Mortgage on the Mortgaged Estate pursuant to the provisions hereof, any leases or subleases then existing and created by Mortgagor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Mortgagee or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any lease or sublease unless Mortgagee or such purchaser shall give written notice thereof to such tenant or subtenant.

4.08 Attorney's Fees. In the event of a payment default under the Note (whether litigation is commenced or not) or if any litigation or other dispute resolution proceeding is commenced between parties to this Mortgage to enforce or determine the rights or responsibilities of the parties, the prevailing party or parties in the proceeding will be entitled to receive, in addition to any other relief granted, its reasonable attorneys' fees, and statutory costs. For purposes of this section, the phrase "litigation or other dispute resolution" shall be deemed to include any proceeding commenced in any court of general or limited jurisdiction, any arbitration or mediation, any proceeding commenced in the bankruptcy courts of the United States, and any appeal from any of the foregoing.

UNDER IDAHO LAW, A PROMISE OR COMMITMENT TO LEND MONEY OR TO GRANT OR EXTEND CREDIT IN AN ORIGINAL PRINCIPAL AMOUNT OF FIFTY THOUSAND DOLLARS (\$50,000.00) OR MORE, MADE BY A PERSON OR ENTITY ENGAGED IN THE BUSINESS OF LENDING MONEY OR EXTENDING CREDIT, SUCH AS LENDER, MUST BE WRITING AND SIGNED BY LENDER TO BE ENFORCEABLE.

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

THE TURF COMPANY, LLC, an Idaho
limited liability company

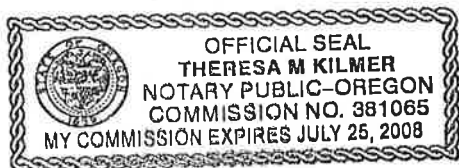
By Darwin McKay
Darwin McKay, Manager and Sole Member

Darwin McKay
DARWIN MCKAY

STATE OF Oregon)
) ss.
County of Multnomah)

I certify that I know or have satisfactory evidence that Darwin McKay personally appeared before me, and on oath stated that he was authorized to execute the instrument and acknowledged it, as Manager and Sole Member of The Turf Company, LLC, to be the free and voluntary act of such corporation, for the uses and purposes mentioned in the instrument.

DATED: December 23, 2004.

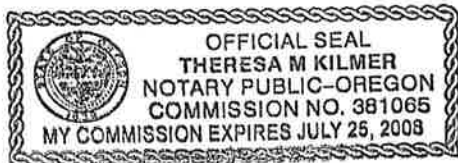


Theresa M Kilmer
NOTARY PUBLIC in and for the State of
Oregon, residing at Gresham
My appointment expires: 7/25/08

STATE OF Oregon)
) ss.
County of Multnomah)

I certify that I know or have satisfactory evidence that Darwin McKay is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: December 23, 2004.



Theresa M Kilmer
NOTARY PUBLIC in and for the State of
Oregon, residing at Gresham
My appointment expires: 7/25/08

EXHIBIT "A"

PARCEL A

A parcel of land situated in a portion of the South half of the Southwest quarter of the Southwest quarter of Section 33, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho, as shown on Record of Survey No. 4531, recorded February 2, 1999 as Instrument No. 99010162 for L. Darwin McKay as Parcel A described as follows:

Beginning at the Southwest corner of Section 33; thence
North 00°00'00" East 1338.06 feet to a 5/8 inch rebar marking the South 1/16 corner common to Sections 32 and 33; thence
along the Northerly line of said South half of the Southwest quarter
North 89°54'18" East 992.43 feet to a point marking the centerline of the Ten Mile Creek; thence
along said centerline the following courses:
South 58°58'00" East 431.55 feet to a point; thence
South 45°13'00" East 744.00 feet to a point; thence
South 12°08'30" East 389.70 feet to a 1/2 inch rebar; thence
leaving said centerline and along the Southerly line of the said Southwest quarter;
South 89°42'48" West 1669.75 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM the following described land as shown as Parcel B on said Record of Survey.

Beginning at the Southwest corner of Section 33, thence
along the Westerly line of the said Southwest quarter
North 00°00'00" East 326.06 feet to a 1/2 inch rebar; thence
South 48°49'33" East 170.96 feet to a 1/2 inch rebar; thence
North 89°42'48" East 139.97 feet to a 1/2 inch rebar; thence
North 00°00'00" East 128.01 feet to a 1/2 inch rebar; thence
North 89°42'48" East 449.84 feet to a 1/2 inch rebar; thence
South 00°00'00" East 340.87 feet to a 1/2 inch rebar; thence
along the Southerly line of the said Southwest quarter
South 89°42'48" West 718.50 feet to the POINT OF BEGINNING.

EXCEPT any portions of Parcels I, II and III lying within the right of way of West Lake Hazel Road or South Eagle Road.

TURFCO REMAINDER OF SKYLINE OPTIONED PROPERTY

A parcel located in the East half of the West half of the Southeast quarter of Section 33, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

Beginning at a 5/8 inch diameter iron pin marking the Southeasterly corner of said East half of the West half of the Southeast quarter from which a brass cap monument marking the Southeasterly corner of the Southeast quarter of said Section 33 bears
North 89°20'44" East a distance of 1325.69 feet; thence
North 0°11'06" West along the Easterly boundary of said East half of the West half of the Southeast quarter a distance of 1514.17 feet to a point; thence
(Continued)

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DEC 27 2006

EXHIBIT "A" CONTINUED

leaving said Easterly boundary
North 63°53'11" West a distance of 31.32 feet to a point; thence
South 85°07'25" West a distance of 59.66 feet to a point; thence
a distance of 70.94 feet along the arc of a 372.44 foot radius non-tangent curve
right, said curve having a central angle of 10°54'46" and a long chord bearing North
31°02'58" East a distance of 70.83 feet to a point; thence
North 36°30'21" East a distance of 49.08 feet to a point; thence
South 89°47'25" West a distance of 642.00 feet to a point on the Westerly boundary
of said East half of the West half of the Southeast quarter; thence
South 0°12'35" East along said Westerly boundary a distance of 1628.23 feet to a 5/8
inch diameter pin marking the Southwesterly corner of said East half of the West
half of the Southeast quarter; thence
North 89°20'44" East along the Southerly boundary of said East half of the West half
of the Southeast quarter a distance of 662.81 feet to the POINT OF BEGINNING.

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DEC 27 2006

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Notice of Security Interest in a Water Right

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

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

RECEIVED
MAY 28 2004
WATER RESOURCES
WESTERN REGION

RECEIVED
JUN 02 2004

Department of Water Resources

1. Water Right No(s): 63-1066D and 63-10780
Adjudication Claim No(s): 63-10666D
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

Wells Fargo Bank, National Association
299 South Main Street, 6th Floor, MAC U1228-062
Salt Lake City, UT 84111
4. Name of Water Right Owner/Claimant(s) L. Darwin McKay (aka Darwin McKay)
and Patricia E. McKay (aka Patricia McKay)
5. Expiration Date of Notification Period Upon payment in full of indebtedness to secured party. 9-30-2009
6. Is this a Renewal of Request for Notification? ☐ YES ☒ NO
7. Signature(s) (and title if applicable) Emi Rumpke, Wells Fargo Bank, VP.

For Office Use Only

Received by <u>KG</u>	Date <u>5/28/04</u>	Fee <u>5020</u>
Received by <u>KI</u>	Date <u>5/28/04</u>	Receipt No. <u>W031771</u>
Processed by <u>AJ</u>	Date <u>5/28/04</u>	WR <u> </u> Date <u> </u>

SCANNED
MAY 28 2004

COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT
COVERING WATER RIGHTS

TO: WELLS FARGO BANK, NATIONAL ASSOCIATION

1. **ASSIGNMENT AND GRANT OF SECURITY INTEREST.** For valuable consideration, the undersigned, L. Darwin McKay (aka Darwin McKay) and Patricia E. McKay (aka Patricia McKay), husband and wife, both jointly and either of them individually, the "McKays" and "Assignor," hereby assign, transfer to and pledge unto WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank" and "Secured Party"), and grant to Bank a security interest in, as security for the Indebtedness (as defined below), all of their right, title and interest in and to all water rights of every kind and nature in surface or ground water, plus all shares, stock or other rights in any irrigation, canal, ditch or reservoir district or company, owned by them, in which they have an interest, and/or which are held in their name in the records of the Idaho Department of Water Resources and/or claimed by them or in their name in the Snake River Basin Adjudication ("SRBA"), including but not limited to water rights numbers **63-1066D and 63-10780** as described on Attachment 1 hereto, used by Assignor on real properties owned or leased by them or companies of which they are principals for irrigation of crops grown on said real properties (such water rights collectively being called the "Water Rights" and "Collateral"), together with whatever is receivable or received when any of the Collateral or proceeds thereof are sold, collected, transferred, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation, (a) all rights to payment relating to any of the foregoing, (b) all rights to payment with respect to any claim or cause of action affecting or relating to any of the foregoing, and (c) all interests of any kind which Assignor is or may hereafter be entitled to receive (hereinafter called "Proceeds"), and in the event that Assignor receives any such Proceeds, Assignor will hold the same in trust on behalf of and for the benefit of Bank and will immediately deliver all such Proceeds to Bank in the exact form received, with the endorsement of Assignor if necessary, to be held by Bank as part of the Collateral, subject to all terms hereof.

2. **OBLIGATIONS SECURED.** The obligations secured hereby are the payment and performance of: (a) all present and future indebtedness of THE TURF CORPORATION, THE TURF COMPANY OF NEVADA, INC., TURFCO TRANSPORTATION, INC., THE TURF COMPANY, LLC and PLEASURE TURF, L.L.C. (each individually, a "Borrower" and collectively, the "Borrowers") to Bank under that certain Credit Agreement ("Credit Agreement") dated as of April 27, 2001, as it has been and may be from time to time amended (the "Indebtedness"); (b) all obligations of Assignor under the Continuing Guaranties given by Assignor to guaranty the payment of the Borrowers' Indebtedness to Bank; and (c) all obligations of Assignor under this Assignment. The words "Indebtedness" and "obligations" are used herein in their most comprehensive sense and include, respectively any and all advances, debts, obligations and liabilities of Borrowers or Assignor, or any of them, or heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Borrowers or Debtor may be liable individually or jointly with others, or whether recovery upon such Indebtedness may be or hereafter becomes unenforceable.

3. **TERMINATION.** This Agreement will terminate upon the performance of all obligations of Borrowers and Assignor to Bank, including without limitation, the payment of all Indebtedness of Borrowers to Bank, and the termination of all commitments of Bank to extend

credit to Borrowers, under the Credit Agreement and/or the termination of Assignor's obligations under the Continuing Guaranties given by them to guaranty Borrowers Indebtedness under the Credit Agreement.

2. EXERCISE OF ASSIGNMENT. The Water Rights are hereby assigned absolutely by Assignor to Bank during the term of this Agreement, provided, that so long as no Event of Default has occurred hereunder or under the Credit Agreement, as amended, or any other document executed in connection therewith (the "Loan Documents"), Bank shall forbear from exercising its rights under this Assignment. Bank does not and shall not assume any obligations for the use or validity of the Water Rights, which obligations shall remain obligations of Assignor. Assignor hereby agrees that, upon the occurrence of an Event of Default under any of the Loan Documents, without further notice, Bank may exercise any and all of its rights under this Assignment. Notwithstanding the foregoing.

4. OBLIGATIONS OF BANK.

(a) Bank has no obligation to make any loans hereunder. Any money received by Bank in respect of the Collateral may be deposited, at Bank's option, into a non-interest bearing account over which Assignor shall have no control, and the same shall, for all purposes, be deemed Collateral hereunder.

(b) Bank's obligation with respect to Collateral shall be strictly limited to the duty to exercise reasonable care in the custody and preservation of such Collateral and any Proceeds, and such duty shall not include any obligation to ascertain or to initiate any action with respect to or to inform Assignor of any matter relating to the Collateral, notwithstanding Bank's knowledge of the same. Bank shall have no duty to take any steps necessary to preserve the rights of Assignor against third parties, or to initiate any action to protect the Collateral in the Snake River Basin Adjudication or otherwise, as concerns the Collateral. Bank shall not be obligated to take any action with respect to the Collateral requested by Assignor unless such request is made in writing and Bank determines, in its sole discretion, that the requested action would not unreasonably jeopardize the value of the Collateral as security for the Indebtedness and Obligations secured hereby. Bank may at any time deliver evidence of ownership or possession to the Collateral or Proceeds, or any part thereof, to Assignor, and the receipt thereof by Assignor shall be a complete and full acquittance for the Collateral and Proceeds so delivered, and Bank shall thereafter be discharged from any liability or responsibility therefor.

5. REPRESENTATIONS AND WARRANTIES. Assignor represents and warrants to Bank that: (a) Assignor's legal names are exactly as set forth on the first page of this Agreement; (b) Assignor has rights in the Collateral and Proceeds and that the Water Rights listed on Attachment 1 hereto constitute all of the Water Rights currently held of record in Assignor's name(s) alone or with affiliated companies; and (c) Assignor has not pledged, assigned or granted any security interests in the Water Rights to any other person or entity, except as such interests are listed on Attachment 1 hereto.

6. COVENANTS OF ASSIGNOR.

(a) Assignor agrees: (i) to perform its obligations hereunder when due; (ii) to pay all costs and expenses, including reasonable attorneys' fees, incurred by Bank in the perfection of the Bank's interest in the Collateral, to prevent forfeiture or to avoid an adverse claim in the Collateral if Assignor fails to do so in accordance with the terms hereof, and in the realization, enforcement and exercise of Bank's rights, powers and remedies hereunder; (iii) to execute and

deliver such documents as Bank deems necessary to create, perfect and continue the security interests contemplated hereby; (iv) not to change their names or principal residence without giving Bank prior written notice thereof; (v) not to apply for, seek or implement any change in the ownership or elements of the Collateral without giving Bank prior written notice; (vi) not to sell, hypothecate or otherwise dispose of or permit the transfer of or abandon water right 63-10780 or any interest therein without prior written consent of the Bank; (vii) not to sell, hypothecate or otherwise dispose of or permit the transfer of or abandon water right 63-10666D or any interest therein without prior written consent of the Bank, unless required by the Idaho Department of Water Resources (IDWR)", and then without prior written notice to the Bank; (viii) to do any acts which may be necessary to keep all Collateral and Proceeds free and clear of all adverse claims and defenses, liens and encumbrances; and (ix) to cooperate with Bank in maintaining and perfecting all security interests granted herein and in obtaining such agreements from third parties or governmental agencies as Bank deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder. Without limiting the foregoing, Assignor agrees that Bank may record this Assignment in the county(ies) in which the real property upon which the Water Rights, or any part of them, are being used, with legal descriptions of said properties attached, and further agrees to execute for recordation or filing with the Department of Water Resources or other governmental agencies, such other assignments, mortgages, security agreements or other agreements as requested by Bank. Upon termination of this Agreement, Bank agrees to record or file notices of termination of this Agreement in said county(ies) and with the IDWR; provided however, if Bank fails to so file or record a notice of termination, Assignor shall provide notice of such failure to Bank and Bank shall have 20 days to file or record said notices.

(b) Assignor agrees with regard to the Collateral and Proceeds, unless Bank agrees otherwise in writing: (i) that Bank is authorized to take whatever steps are necessary in the name of Assignor to perfect Bank's security interest in and pledge of the Collateral and Proceeds; (ii) to permit Bank to exercise its powers; (iii) to cooperate with Bank in any future proceeding involving the Collateral before any applicable water court, including giving testimony in court or in deposition regarding the historical use of the Collateral during Assignor's ownership of the Collateral and not opposing any such water court proceeding; and (iv) not to take any action which would impair Bank's interests in the Collateral and Proceeds or be inconsistent with or violate any provisions of this Agreement.

7. POWERS OF BANK. Assignor appoints Bank its true attorney in fact to perform any of the following powers, which are coupled with an interest, are irrevocable until termination of this Agreement and may be exercised from time to time by Bank's officers and employees, or any of them, whether or not Assignor is in default except as stated below: (a) to perform any obligation of Assignor hereunder in Assignor's name or otherwise; (b) to notify any person of Bank's rights hereunder; (c) after an Event of Default, to make any compromise or settlement Bank deems desirable or proper in respect of the Collateral and Proceeds; (d) to preserve the Collateral and Proceeds if Assignor fails to do so, excepting any required abandonment of water right 63-10666D; (e) after an Event of Default, to exercise all rights, powers and remedies which Assignor would have, but for this Agreement, with respect to all Collateral and Proceeds subject hereto; and (f) to do all acts and things and execute all documents in the name of Assignor or otherwise, deemed by Bank as necessary, proper and convenient in connection with the perfection of Bank's interests in the Collateral or the enforcement of its rights hereunder. To effect the purposes of this Agreement or otherwise upon instructions of Assignor, or any of them, Bank may cause any Collateral and/or Proceeds to be transferred to Bank's name or the name of Bank's nominee. If an Event of Default has occurred and is continuing, any or all Collateral may be transferred, without notice, to the name of Bank or its nominee, and thereafter

Bank or its nominee may exercise, without notice, all rights pertaining to such Collateral and/or Proceeds, all as if it were the absolute owner thereof. All of the foregoing rights, privileges or options may be exercised without liability on the part of Bank or its nominee. Bank shall have no duty to exercise any of the foregoing, or any other rights, privileges or options with respect to the Collateral or Proceeds and shall not be responsible for any failure to do so or delay in so doing.

8. **PAYMENT OF ASSESSMENTS.** Assignor agrees to pay, prior to delinquency, all assessments against the Collateral, and upon the failure of Assignor to do so, Bank at its option may pay any of them and shall be the sole judge of the legality or validity thereof and the amount necessary to discharge the same. Any such payments made by Bank shall be obligations of Assignor to Bank, due and payable immediately upon demand, together with interest at a rate determined in accordance with the provisions of Section 15 hereof, and shall be secured by the Collateral and Proceeds, subject to all terms and conditions of this Agreement.

9. **EVENTS OF DEFAULT.** The occurrence of any of the following shall constitute an "Event of Default" under this Agreement: (a) any default in the payment or performance of any obligation, or any defined event of default, under (i) any contract or instrument evidencing any Indebtedness of Borrowers to Bank, or (ii) any other agreement between Assignor and Bank, including without limitation any Continuing Guaranty or any Third Party Security Agreement; (b) any representation or warranty made by Assignor herein shall prove to be incorrect, false or misleading in any material respect when made; (c) Assignor shall fail to observe or perform any obligation or agreement contained herein; and (d) any impairment in the rights of Bank in any Collateral.

10. **REMEDIES.** Upon the occurrence of any Event of Default, Bank shall have all rights, powers, privileges and remedies provided by law, including without limitation, the right to file a Notice of Change in Ownership of Water Right, an Application for Transfer of Water Rights, and to use, transfer, lease, license or otherwise dispose of and to transfer any or all Collateral. All rights, powers, privileges and remedies of Bank shall be cumulative. No delay, failure or discontinuance of Bank in exercising any right, power, privilege or remedy hereunder shall affect or operate as a waiver of such right, power, privilege or remedy; nor shall any single or partial exercise of any such right, power, privilege or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. Any waiver, permit, consent or approval of any kind by Bank of any default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing.

11. **DISPOSITION OF COLLATERAL.** In disposing of Collateral hereunder, Bank may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Collateral or Proceeds, or any part thereof, may be applied by Bank to the payment of expenses incurred by Bank in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by Bank toward the payment of the Indebtedness in such order of application as Bank may from time to time elect.

12. **STATUTE OF LIMITATIONS.** Until all Indebtedness shall have been paid in full and all commitments by Bank to extend credit to Borrowers have been terminated, all rights, powers, privileges and remedies granted to Bank hereunder shall continue to exist and may be exercised by Bank at any time and from time to time irrespective of the fact that the Indebtedness or any part thereof may have become barred by any statute of limitations, or that

the personal liability of Borrowers may have ceased, unless such liability shall have ceased due to the payment in full of all Indebtedness secured hereunder.

13. MISCELLANEOUS. When there is more than one Assignor named herein: (a) the word "Assignor" shall mean all or any one or more of them as the context requires; (b) the obligations of each Assignor hereunder are joint and several; and (c) until all Indebtedness shall have been paid in full, no Assignor shall have any right of subrogation or contribution, and each Assignor hereby waives any benefit of or right to participate in any of the Collateral or Proceeds or any other security now or hereafter held by Bank. Assignor hereby waives any right to require Bank to (i) proceed against Assignor, Borrowers, or any other person, (ii) proceed against or exhaust any security from Assignor, Borrowers or any other person, (iii) perform any obligation of Assignor with respect to any Collateral or Proceeds, and (d) make any presentment or demand, or give any notice of nonpayment or nonperformance, protest, notice of protest or notice of dishonor.

14. NOTICES. All notices, requests and demands required under this Agreement must be in writing, addressed to Bank at the address specified in any other loan documents entered into between Assignor and Bank and to Assignor at the address of its chief executive office (or principal residence, if applicable) specified below or to such other address as any party may designate by written notice to each other party, and shall be deemed to have been given or made as follows: (a) if personally delivered, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (c) if sent by telecopy, upon receipt.

15. COSTS, EXPENSES AND ATTORNEYS' FEES. Assignor shall pay to Bank immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of Bank's in-house counsel), expended or incurred by Bank in exercising any right, power, privilege or remedy conferred by this Agreement or in the enforcement thereof, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Bank's ability to exercise any of its rights or remedies. All of the foregoing shall be paid by Assignor with interest from the date of demand until paid in full at a rate per annum equal to the greater of ten percent (10%) or Bank's Prime Rate in effect from time to time.

16. SUCCESSORS; ASSIGNS; AMENDMENT. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties, and may be amended or modified only in writing signed by Bank and Assignor.

17. OBLIGATIONS OF MARRIED PERSONS. Any married person who signs this Agreement as Assignor hereby expressly agrees that this Agreement covers his or her separate property and community property interests in the Collateral and Proceeds.

18. SEVERABILITY OF PROVISIONS. If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or any remaining provisions of this Agreement.

19. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

Assignors warrant that their principal residence is located at 25 Horizon Drive
Boise, ID 83702.

IN WITNESS WHEREOF, this Agreement has been duly executed as of May 26, 2004.

L. Darwin McKay Pres.
L. Darwin McKay

Patricia E McKay
Patricia E. McKay

STATE OF IDAHO)
 : ss.
County of)

On this 26th day of May, 2004, before me, Jacqueline K. Shepherd, a notary public in and for said State, personally appeared L. Darwin McKay and Patricia E. McKay, known or identified to me to be the persons who executed the 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.



Jacqueline K. Shepherd
Notary Public
Residing at: Boise Idaho
My Commission Expires: 04/04/2009

ATTACHMENT 1
PROFILES OF WATER RIGHTS

[Close](#)

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

05/25/2004

WATER RIGHT NO. 63-10780

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	DARWIN L MC KAY 3220 E LAKE HAZEL RD MERIDIAN, ID 83642 (208)888-3760

Priority Date: 04/05/1989

Basis: License

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>Volume</u>
IRRIGATION	3/15	11/15	0.79 CFS	211.5 AFA
Total Diversion			0.79 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NESE	Sec. 32	Township 03N	Range 01E	ADA County
GROUND WATER	SWSW	Sec. 33	Township 03N	Range 01E	ADA County
GROUND WATER	SWSE	Sec. 33	Township 03N	Range 01E	ADA County

Place(s) of use:

SCANNED
MAY 28 2004

Place of Use Legal Description: IRRIGATION ADA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
03N	01E	32		SESE	10									
		33		SWSW	34		SESW	3						

Total Acres: 47

Conditions of Approval:

1.	046	Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2.	R32	This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.5 afa per acre for irrigation of the lands above.
3.	T08	Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
4.	T09	Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

Dates:

Licensed Date: 10/27/1992

Decreed Date:

Permit Proof Due Date: 10/1/1991

Permit Proof Made Date: 1/24/1990

Permit Approved Date: 9/20/1989

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 04/05/1989

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

SCANNED
MAY 28 2004

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

SCANNED
MAY 28 2004

[Close](#)IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

05/25/2004

WATER RIGHT NO. 63-10666D

Owner Type	Name and Address
Current Owner	TURF CO INC
Current Owner	L DARWIN MC KAY
	6100 S EAGLE RD
	MERIDIAN, ID 83642
	(208)888-3760

Priority Date: 07/22/1988

Basis: License

Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	03/15	11/15	0.13 CFS	45 AFA
Total Diversion			0.13 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NENWSW	Sec. 04	Township 02N	Range 01E	ADA County
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Licensed Diversion Capacity: 0.84

Place(s) of use:

SCANNED
MAY 28 2004

Place of Use Legal Description: IRRIGATION ADA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
02N	01E	4		NESW	15		NWSW	40						

Total Acres: 55

Conditions of Approval:

1.	01Q	After specific notification by the department, the right holder shall measure the diversion or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the Department.
2.	065	The right holder shall use the full allotment of appurtenant surface water rights in conjunction with groundwater diverted under this right and shall only divert groundwater under this right when water from the appurtenant surface water rights cannot be delivered to the right holder.
3.	104	If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
4.	R19	The right holder shall maintain a totalizing measuring device of a type approved by the Department as a part of the diverting works.
5.	R65	This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
6.	T07	The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
7.	T08	Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8.	X61	The period of use for the irrigation described in this approval may be extended to a beginning date of 3/1 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 3/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.

Dates:

Licensed Date: 08/23/1995

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

SCANNED

MAY 28 2004

Other Information:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

SCANNED
MAY 28 2004

ATTACHMENT 2

LEGAL DESCRIPTION OF REAL PROPERTY WHERE PLEDGED WATER RIGHTS MAY BE USED

A Parcel of land situated in a portion of the South half of the Southwest quarter of the Southwest quarter of Section 33, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho, as shown on record of Survey Number 4531, recorded February 2, 1999, as Instrument No. 99010162, for L. Darwin McKay as Parcel A and described as follows:

Beginning at the Southwest corner of Section 33; thence
North 00 degree 00'00" East 1338.06 feet to a 5/8 inch rebar marking the South 1/16 corner common to Sections 32 and 33; thence along the Northerly line of said South half of the Southwest quarter
North 89 degrees 54'18" East 992.43 feet to a point marking the centerline of the Ten Mile Creek; thence along said centerline the following courses:
South 58 degrees 58'00" East 431.55 feet to a point; thence
South 45 degrees 13'00" East 744.00 feet to a point; thence
south 12 degrees 08'30" East 389.70 feet to a half inch rebar; thence leaving said centerline and along the Southerly line of the said Southwest quarter
South 89 degrees 42'48" West 1669.75 feet to the point of beginning.

Excepting therefrom the following described land as shown as Parcel B on said record of survey:

Beginning at the Southwest corner of Section 33; thence along the Westerly line of the said Southwest quarter
North 00 degree 00'00" East 326.06 feet to a half inch rebar; thence
South 48 degrees 49'33" East 170.96 feet to a half inch rebar; thence
North 89 degrees 42'48" East 139.97 feet to a half inch rebar; thence
North 00 degree 00'00" East 128.01 feet to a half inch rebar; thence
North 89 degrees 42'48" East 449.84 feet to a half inch rebar; thence
South 00 degree 00'00" East 340.87 feet to a half inch rebar; thence along the Southerly line of the said Southwest quarter
South 89 degrees 42'48" West 718.50 feet to the point of beginning.

Except any portions of Parcels I, II and III lying within the right of way of West Lake Hazel Road or South Eagle Road.

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