

RECEIVED

JAN 15 2026

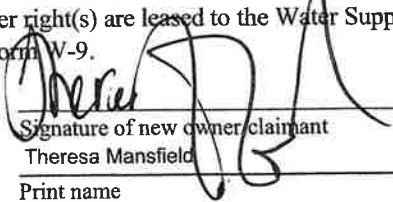
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESDEPT. OF WATER RESOURCES
EASTERN REGION

NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column. If the water right is leased to the Water Supply Bank, check "Yes". If you are not sure if the water right is leased to the Water Supply Bank, see #7 of the instructions.

Water Right/Claim No.	Split?	Leased to Water Supply Bank?	Water Right/Claim No.	Split?	Leased to Water Supply Bank?
29-11658 <i>OK</i>	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐

2. Previous Owner's Name: Hugh Selznick, Mary Selznick
Name of current water right holder/claimant
3. New Owner(s)/Claimant(s): MHC, LLC
New owner(s) as listed on the conveyance document Name connector ☐ and ☐ or
- 4605 W Buckskin Rd Pocatello ID 83201
Mailing address City State Zip
208-406-9523 mark@pcspocatello.com
Telephone Email
4. If the water rights and/or adjudication claims were split, how did the division occur?
☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.
5. Date you acquired the water rights and/or claims listed above: September 11, 2011
6. Do you own the land identified as the water right place of use? Yes ☒ No ☐
☐ If no, attach evidence that written notice of the change of water right ownership has been delivered to the landowner of record.
7. This form must be signed and submitted with the following **REQUIRED** items:
☒ A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
☒ Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
☒ Filing fee (see instructions for further explanation):
☐ \$25 per *undivided* water right.
☐ \$100 per *split* water right.
☐ No fee is required for pending adjudication claims.
☐ If water right(s) are leased to the Water Supply Bank AND there are multiple owners, a Lessor Designation form is required.
☐ If water right(s) are leased to the Water Supply Bank, the individual owner or designated lessor must complete, sign and submit an IRS Form W-9.

8. Signature:  Manager 01/06/2026
Signature of new owner/claimant Title, if applicable Date
Theresa Mansfield
Print name

Signature: _____ Title, if applicable _____ Date _____
Signature of new owner/claimant
Print name

For IDWR Office Use Only:

Received by MP Date 2/4/2026 Receipt No. E051422 Receipt Amt. \$25.-
Active in the Water Supply Bank? Yes ☐ No ☐ If yes, forward to the State Office for processing W-9 received? Yes ☐ No ☐
Name on W-9 _____ Approved by JB Processed by JB Date 4/2/2026

Full chain received. Do not see a home. POD on property owned another domestic right for Northern property.



0006553102

**STATE OF IDAHO***Office of the secretary of state, Phil McGrane***ANNUAL REPORT**

Idaho Secretary of State

PO Box 83720

Boise, ID 83720-0080

(208) 334-2301

Filing Fee: \$0.00

For Office Use Only

-FILED-

File #: 0006553102

Date Filed: 12/3/2025 11:56:15 AM

Entity Name and Mailing Address:

Entity Name:

MHC, L.L.C.

The file number of this entity on the records of the Idaho

0000097318

Secretary of State is:

Address

4605 W BUCKSKIN RD
POCATELLO, ID 83201-5085

Entity Details:

Entity Status

Active-Existing

This entity is organized under the laws of:

IDAHO

If applicable, the old file number of this entity on the records of
the Idaho Secretary of State was:

W28064

The registered agent on record is:

Registered Agent

THERESA MANSFIELD

Registered Agent

Physical Address

4605 W BUCKSKIN RD

POCATELLO, ID 83201

Mailing Address

Limited Liability Company Managers and Members

Name	Title	Business Address
Theresa Mansfield	Member	4605 WEST BUCKSKIN POCATELLO IDAHO 83201, ID 83201

The annual report must be signed by an authorized signer of the entity.

Job Title: manager

*Theresa Mansfield**12/03/2025*

Sign Here

Date

B1070-7771 12/03/2025 11:56 AM Received by Office of the Idaho Secretary of State



135 N. Arthur Ave. / Pocatello, Idaho 83204
(208) 233-9995

OFFICIAL RECORD BK# 847
BANNOCK COUNTY IDAHO

FEE 16.00 DEPUTY MEW
RECORDED AT REQUEST OF

Pioneer Title Pocatello

21114271

2011 Sep 26 AM 10:43:10

Electronically Recorded by Simplifile

Order No. 20101640 SC-LT

WARRANTY DEED

For Value Received

New Stream RE Funding 23, LLC, a Delaware limited liability company

hereinafter referred to as Grantor, does hereby grant, bargain, sell, warrant and convey unto
MHC, L.L.C.

hereinafter referred to as Grantee, whose current address is 4605 W. Buckskin Rd., Pocatello, ID 83201 the
following described premises, to-wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

To HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s)
his heirs and assigns forever. And the said Grantor(s) does (do) hereby covenant to and with the said Grantee(s), that
the Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances
EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the
Grantee(s); and subject to U.S. Patent reservations, restrictions, dedications, easements, rights of way and
agreements, (if any) of record, and current years taxes, levies, and assessments, includes irrigation and utility
assessments, (if any) which are not yet due and payable, and that Grantor(s) will warrant and defend the same from
all claims whatsoever.

Dated: September 20, 2011

New Stream RE Funding 23, LLC

By: [Signature]

Title: President

[Signature]
Ana Valderama

[Signature]
Marie Elena Greene
Marie Elena Greene

STATE OF Connecticut

COUNTY OF Fairfield Ridgefield

On this 23rd day of September, in the year of 2011, before me the undersigned, a notary public,
personally appeared Anthony Biddi, known or identified to be
President of the member(s)/manager(s) in a limited liability company, of New
Stream RE Funding 23, L.L.C., a Delaware limited liability company and the member(s)/manager(s) who
subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that
he/she/they executed the same in said limited liability company name.

* [Signature]
KIMA MORABITO
Notary Public of Connecticut
Residing at
Commission expires: 11-30-2013

EXHIBIT A

A parcel of land located in the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho, said parcel being more particularly described as follows:

Beginning at the Southwest corner of said Section 24, said corner being marked by a found Bannock County brass cap monument; thence North $0^{\circ}02'16''$ East along the West line of said Section 24, 151.25 feet to a point on the southerly right-of-way line of Buckskin Road; thence easterly along said southerly right-of-way line of Buckskin Road for the following five courses and distances;

North $85^{\circ}44'54''$ East, 454.60 feet to a point of tangency with a 1030.00 foot radius curve;
Thence easterly along a curve to the left, said curve having a central angle of $16^{\circ}35'05''$, a radius of 1030.00 feet and a chord bearing of North $77^{\circ}27'22''$ East, for an arc length of 298.14 feet to a point of tangency;
Thence North $69^{\circ}09'49''$ East, 216.29 feet to a point of tangency with a 970.00 foot radius curve;
Thence easterly along a curve to the right, said curve having a central angle of $4^{\circ}20'23''$, a radius of 970.00 feet and a chord bearing of North $71^{\circ}20'00''$ East, for an arc length of 73.47 feet to a point of tangency;
Thence North $73^{\circ}30'12''$ East, 315.07 feet to a point on the West $1/16^{\text{th}}$ line of said Section 24;

Thence South $0^{\circ}04'43''$ East along said West $1/16^{\text{th}}$ line, 431.63 feet to the West $1/16^{\text{th}}$ corner on the South line of said Section 24, said corner being marked by a found 5/8-inch diameter rebar with an aluminum cap stamped "LS 4430"; thence South $89^{\circ}39'46''$ West along the South line of said Section 24, 1317.90 feet to the True Point of Beginning.

X 

Unofficial

State of Idaho
Department of Water Resources

Water Right

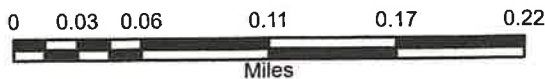
29-11658

STOCKWATER

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



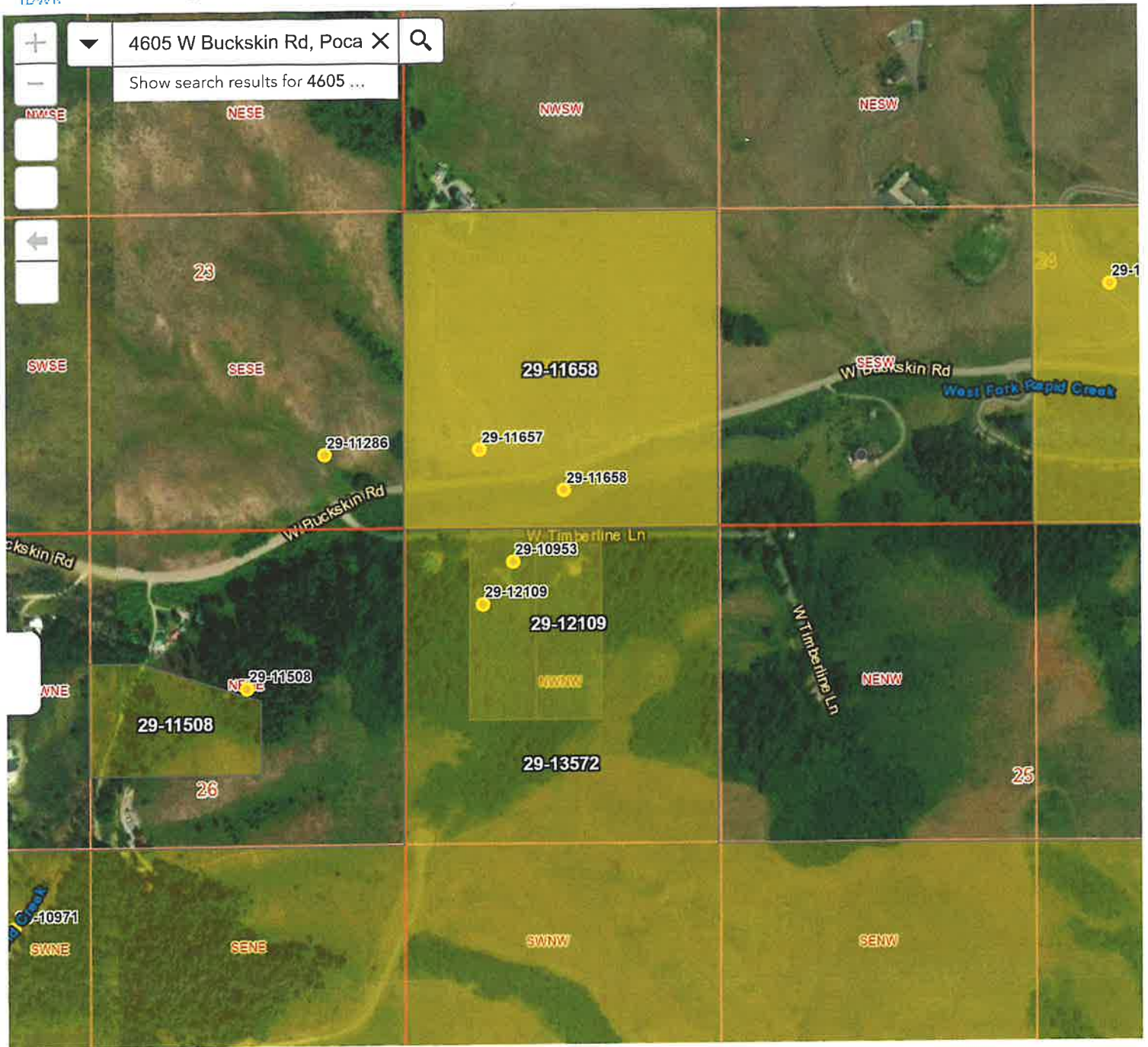
Date created: 11/26/2025



Legend

- Quarter Quarters
- PLS Sections
- Townships
- Place of Use Boundary
- Point of Diversion







PioneerTitleCo.
GOING BEYOND

135 N. Arthur Ave. / Pocatello, Idaho 83204
(208) 233-9595

OFFICIAL RECORD BK# 947
BANNOCK COUNTY IDAHO

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2011 Sep 26 AM 10:43:10

Electronically Recorded by Simplifile

Order No. 20101640 SC-LT

WARRANTY DEED

For Value Received
New Stream RE Funding 23, LLC, a Delaware limited liability company

hereinafter referred to as Grantor, does hereby grant, bargain, sell, warrant and convey unto
MHC, L.L.C.

hereinafter referred to as Grantee, whose current address is 4605 W. Buckskin Rd., Pocatello, ID 83201 the
following described premises, to-wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

To HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantor(s)
his heirs and assigns forever. And the said Grantor(s) does (do) hereby covenant to and with the said Grantee(s), that
the Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances
EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the
Grantee(s); and subject to U.S. Patent reservations, restrictions, dedications, easements, rights of way and
agreements, (if any) of record, and current years taxes, levies, and assessments, includes irrigation and utility
assessments, (if any) which are not yet due and payable, and that Grantor(s) will warrant and defend the same from
all claims whatsoever.

Dated: September 20, 2011

New Stream RE Funding 23, LLC

By: [Signature] Title: President

[Signature]
Title: President
[Signature]
Maria Elena Greene

STATE OF Connecticut
COUNTY OF Fairfield Ridgefield

On this 23rd day of September, in the year of 2011, before me the undersigned, a notary public,
personally appeared Anthony Bidoli, known or identified to be
President of the member(s)/manager(s) in a limited liability company, of New
Stream RE Funding 23, LLC, a Delaware limited liability company and the member(s)/manager(s) who
subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that
he/she/they executed the same in said limited liability company name.



* [Signature]
Kim M. Morabito
Notary Public of Connecticut
Residing at [Address]
Commission expires: 11-30-2013

EXHIBIT A

A parcel of land located in the South ½ of the Southwest ¼ of the Southwest ¼ of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho, said parcel being more particularly described as follows:

Beginning at the Southwest corner of said Section 24, said corner being marked by a found Bannock County brass cap monument; thence North 0°02'16" East along the West line of said Section 24, 151.25 feet to a point on the southerly right-of-way line of Buckskin Road; thence easterly along said southerly right-of-way line of Buckskin Road for the following five courses and distances;

North 85°44'54" East, 454.60 feet to a point of tangency with a 1030.00 foot radius curve;
Thence easterly along a curve to the left, said curve having a central angle of 16°35'05", a radius of 1030.00 feet and a chord bearing of North 77°27'22" East, for an arc length of 298.14 feet to a point of tangency;
Thence North 69°09'49" East, 216.29 feet to a point of tangency with a 970.00 foot radius curve;
Thence easterly along a curve to the right, said curve having a central angle of 4°20'23", a radius of 970.00 feet and a chord bearing of North 71°20'00" East, for an arc length of 73.47 feet to a point of tangency;
Thence North 73°30'12" East, 315.07 feet to a point on the West 1/16th line of said Section 24;

Thence South 0°04'43" East along said West 1/16th line, 431.63 feet to the West 1/16th corner on the South line of said Section 24, said corner being marked by a found 5/8-inch diameter rebar with an aluminum cap stamped "LS 4430"; thence South 89°39'46" West along the South line of said Section 24, 1317.90 feet to the True Point of Beginning.



Anthony J. Goff
President



135 N. Arbor Ave. / Pocatello, Idaho 83204
(208) 233-9595

OFFICIAL RECORD BK# 947
BANNOCK COUNTY IDAHO

FEE 16.00 DEPUTY MEW
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Pioneer Title Pocatello

21114271

2011 Sep 26 AM 10:43:10

Electronically Recorded by Simplifile

Order No. 20101640 SC-17

WARRANTY DEED

For Value Received
New Stream RE Funding 23, LLC, a Delaware limited liability company

hereinafter referred to as Grantor, does hereby grant, bargain, sell, warrant and convey unto
MHC, L.L.C.

hereinafter referred to as Grantee, whose current address is 4605 W. Buckskin Rd., Pocatello, ID 83201 the
following described premises, to-wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

To HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s)
his heirs and assigns forever. And the said Grantor(s) does (do) hereby covenant to and with the said Grantee(s), that
the Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances
EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the
Grantee(s); and subject to U.S. Patent reservations, restrictions, dedications, easements, rights of way and
agreements, (if any) of record, and current years taxes, levies, and assessments, includes irrigation and utility
assessments, (if any) which are not yet due and payable, and that Grantor(s) will warrant and defend the same from
all claims whatsoever.

Dated: September 20, 2011

New Stream RE Funding 23, LLC

By: [Signature] Title: PRESIDENT

[Signature]
Ana Valdesramo
[Signature]
Marie Elena Greene

STATE OF Connecticut
COUNTY OF Fairfield Ridgefield

On this 23rd day of September, in the year of 2011, before me the undersigned, a notary public,
personally appeared Anthony Biddi, known or identified to be
PRESIDENT of the member(s)/manager(s) in a limited liability company, of New
Stream RE Funding 23, LLC, a Delaware limited liability company and the member(s)/manager(s) who
subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that
he/she/they executed the same in said limited liability company name.

* [Signature]
Kima M. Morabito
Notary Public of Connecticut
Residing at _____
Commission expires: 11-30-2013

Unofficial Copy

EXHIBIT A

A parcel of land located in the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho, said parcel being more particularly described as follows:

Beginning at the Southwest corner of said Section 24, said corner being marked by a found Bannock County brass cap monument; thence North $0^{\circ}02'16''$ East along the West line of said Section 24, 151.25 feet to a point on the southerly right-of-way line of Buckskin Road; thence easterly along said southerly right-of-way line of Buckskin Road for the following five courses and distances;

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Thence North $69^{\circ}09'49''$ East, 216.29 feet to a point of tangency with a 970.00 foot radius curve;
Thence easterly along a curve to the right, said curve having a central angle of $4^{\circ}20'23''$, a radius of 970.00 feet and a chord bearing of North $71^{\circ}20'00''$ East, for an arc length of 73.47 feet to a point of tangency;
Thence North $73^{\circ}30'12''$ East, 315.07 feet to a point on the West $1/16^{\text{th}}$ line of said Section 24;

Thence South $0^{\circ}04'43''$ East along said West $1/16^{\text{th}}$ line, 431.63 feet to the West $1/16^{\text{th}}$ corner on the South line of said Section 24, said corner being marked by a found $5/8$ -inch diameter rebar with an aluminum cap stamped "LS 4430"; thence South $89^{\circ}39'46''$ West along the South line of said Section 24, 1317.90 feet to the True Point of Beginning.



Anthony J. Scott
President

Unofficial Copy

EXHIBIT A

A parcel of land located in the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho, said parcel being more particularly described as follows:

Beginning at the Southwest corner of said Section 24, said corner being marked by a found Bannock County brass cap monument; thence North $0^{\circ}02'16''$ East along the West line of said Section 24, 151.25 feet to a point on the southerly right-of-way line of Buckskin Road; thence easterly along said southerly right-of-way line of Buckskin Road for the following five courses and distances;

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Thence easterly along a curve to the right, said curve having a central angle of $4^{\circ}20'23''$, a radius of 970.00 feet and a chord bearing of North $71^{\circ}20'00''$ East, for an arc length of 73.47 feet to a point of tangency;

Thence North $73^{\circ}30'12''$ East, 315.07 feet to a point on the West $1/16^{\text{th}}$ line of said Section 24;

Thence South $0^{\circ}04'43''$ East along said West $1/16^{\text{th}}$ line, 431.63 feet to the West $1/16^{\text{th}}$ corner on the South line of said Section 24, said corner being marked by a found 5/8-inch diameter rebar with an aluminum cap stamped "LS 4430"; thence South $89^{\circ}39'46''$ West along the South line of said Section 24, 1317.90 feet to the True Point of Beginning.

ALLIANCE TITLE - POCATELLO

21001701

2010 FEB 01 PM 02:11:00

Electronically Recorded by Simplifile

Recording Requested By,
And After Recording, Return To:

Larry E. Prince
Holland & Hart LLP
P.O. Box 2527
Boise, ID 83701-2527

THIS INSTRUMENT FILED FOR RECORD BY
ALLIANCE TITLE AND ESCROW AS AN
ACCOMMODATION ONLY. IT HAS NOT BEEN
EXAMINED AS TO ITS EXECUTION OR AS TO ITS
EFFECTIVENESS.

WARRANTY DEED

Grantor: New Stream Real Estate, LLC (fka Charter Oak Real Estate Fund, LLC), a
Delaware limited liability company

Grantee: New Stream RE Funding 23, LLC, a Delaware limited liability company

Legal description:

The following described property ("Real Property") situated in Bannock County, Idaho,
and described as follows:

Southwest 1/4 of the Northwest 1/4 and the West 1/2 of the
Southwest 1/4 of Section 24, Township 6 South, Range 35 East,
Boise Meridian, Bannock County, Idaho.

Excepting Therefrom:

A parcel of land located in the West 1/2 of the Southwest 1/4 of
Section 24, Township 6 South, Range 35 East, Boise Meridian,
Bannock County, Idaho, more particularly described as follows:

BEGINNING at the South 1/16 Corner to the West line of said
Section 24, said corner being marked by a found 1/2-inch diameter
rebar with a yellow plastic cap stamped PE/LS 4440;

Thence North 0°02'16" East along the West line of said Section 24
a distance of 478.03 feet;

Thence South 46°00'44" East, 766.01 feet;

Thence South 45°53'49" West, 311.47 feet;

Thence North 65°43'41" West, 359.66 feet to a point on the West
line of said Section 24;

Thence North 0°02'16" East along the West line of said Section 24
a distance of 122.89 feet to the TRUE POINT OF BEGINNING.

THE GRANTOR, New Stream Real Estate, LLC, a Delaware limited liability company, whose address is 38-C Grove Street, Ridgefield, CT 06877 ("Grantor"), for good and valuable consideration received, hereby grants, bargains, sells, conveys, and releases to New Stream RE Funding 23, LLC, a Delaware limited liability company, whose address is 38-C Grove Street, Ridgefield, CT 06877 ("Grantee"), all of its right, title, and interest in and to the Real Property legally described above, situated in Bannock County, Idaho, together with all tangible and intangible property, singular improvements, hereditaments, and appurtenances thereon and thereunto belonging or in any way appertaining, including, but not limited to all water rights, permits, licenses, stock and memberships and all irrigation, ditch, and reservoir rights appurtenant thereto, all irrigation pumps and equipment affixed thereto or located or used thereon, and the reversion or reversions, remainders, rents, issues and profits thereof; and all the estate, title, interest, claim and demand whatsoever of Grantor, either at law or in equity, in and to the above-described real estate, with said improvements hereditaments and appurtenances (the "Property").

To have and to hold the Property unto the Grantee and its successors and assigns forever.

Grantor, for itself and its successors and assigns, does hereby covenant to and with the Grantee, and its successors and assigns, that Grantor is the sole owner in fee simple of the Property, that the Property is free and clear from all encumbrances except as set forth below, and that Grantor warrants and agrees to forever defend Grantee, and Grantee's successors and assigns, in the quiet and peaceful possession of said premises against all lawful claims whatsoever of any and all persons.

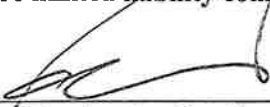
This conveyance is subject to the exceptions set forth on **Exhibit A** attached hereto.

[Signature and notary acknowledgment on following page]

DATED as of, and effective, the 29th day of December, 2009.

GRANTOR:

NEW STREAM REAL ESTATE, LLC,
a Delaware limited liability company

By: 
Dennis Diczok, Vice-President

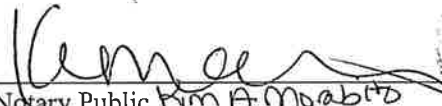
STATE OF CONNECTICUT)

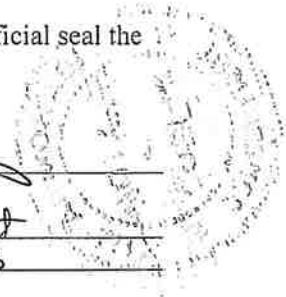
County of Fairfield)

ss: Ridgefield

On this 29th day of December before me, Kim Moabito, a Notary Public, personally appeared DENNIS DICZOK, known or identified to me to be the Vice-President of New Stream Real Estate, LLC, fka Charter Oak Real Estate Fund, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company 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 Kim A. Moabito
Residing at Connecticut
Comm. Expires 11-30-2013



WARRANTY DEED - 3

**EXHIBIT A
TO WARRANTY DEED**

Exceptions

1. Taxes including any assessments collected therewith, for the year 2008, for which the first installment is paid and the second installment is delinquent.
2. Taxes, including any assessments collected therewith, for the year 2009, which are payable but not delinquent.
3. Agreement and the terms and conditions contained therein
Between: County of Bannock and: J.R. Simplot Company
Recorded: November 11, 1990
Instrument No.: 90014615 of Official Records.
Re-recorded: November 20, 1990.
Instrument No.: 90014861 of Official Records.
4. A Mortgage to secure an indebtedness as shown below and any other obligations secured thereby:
Amount: \$2,400,000.00.
Mortgagor: Van Leeuwen Pocatello, LLC, a Delaware Limited Liability Company.
Mortgagee: Charter Oak Real Estate Fund, LLC, a Delaware Limited Liability.
Dated: December 22, 2005.
Recorded: December 29, 2005.
Instrument No.: 20528334 of Official Records.

An agreement to modify the terms and provisions of said Mortgage as therein provided:
Executed by: Van Leeuwen Pocatello, LLC, a Delaware limited liability company
Recorded: September 1, 2006
Instrument No.: 20619789 of Official Records.
5. Assignment of Leases and Rents:
Assignor: Van Leeuwen Pocatello, LLC, a Delaware Limited Liability Company.
Assignee: Charter Oak Real Estate Fund, LLC, a Delaware Limited Liability Company.
Recorded: December 29, 2005.
Instrument No.: 20528335 of Official Records.
6. General Assignment and Assignment of Warranties and Other Contract Rights:
Assignor: Van Leeuwen Pocatello, LLC, a Delaware Limited Liability Company
Assignee: Charter Oak Real Estate Fund, LLC, a Delaware Limited Liability Company.
Recorded: December 29, 2005.
Instrument No.: 20528336, of Official Records.

7. A pending court action as disclosed by a recorded notice:
Plaintiff: New Stream Real Estate, LLC, fca Charter Oak Real Estate Fund, LLC, a Delaware limited liability company.
Defendant: Michael J. Van Leeuwen, an individual, and Van Leeuwen Pocatello, LLC, a Delaware limited liability company; and A& E Engineering, Inc., an Idaho corporation.
Court: Sixth Judicial District Court of Bannock County, Idaho.
Case No.: CV 08 2849 OC.
Nature of Action: Foreclosure of Mortgage.
Recorded: July 16, 2008.
Instrument No.: 20815737 of Official Records.
8. A Financing Statement filed in the Office of the County Recorder showing:
Debtor: Van Leeuwen Pocatello, LLC.
Secured Party: Charter Oak Real Estate Fund, LLC.
Recorded: December 29, 2005.
Instrument No.: 20528337 of Official Records.
9. An easement for the purpose shown below and rights incidental thereto as set forth in a document.
Granted to: Michael J. VanLeeuwen, a married man.
Purpose: A 50 foot wide easement for ingress and egress.
Recorded: September 1, 2006.
Instrument No. 20619785 of Official Records.
10. The right of any interested party to sue or to petition to have set aside or modify or to contest the foreclosure sale and deed pursuant thereto or deed-in-lieu thereof, through which title to the land described herein is derived.

4711057_1.DOC

Larry E. Prince (ISB #1759)
Brad A. Goergen (ISB #6631)
HOLLAND & HART LLP
Suite 1400, U.S. Bank Plaza
101 South Capitol Boulevard
P.O. Box 2527
Boise, Idaho 83701-2527
Telephone: (208) 342-5000
Facsimile: (208) 343-8869

Attorneys For Plaintiff

OFFICIAL RECORD BK # 909
BANNOCK COUNTY IDAHO

20815737

RECORDED AT REQUEST OF
FEE DEPUTY

Holland & Hart.
20815737

2008 JUL 16 P 2:01

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

NEW STREAM REAL ESTATE, LLC, fka
CHARTER OAK REAL ESTATE FUND, LLC, a
Delaware limited liability company,

Plaintiff,

vs.

MICHAEL J. VAN LEEUWEN, an individual,
and VAN LEEUWEN POCATELLO, LLC, a
Delaware limited liability company; and A&E
ENGINEERING, INC., an Idaho corporation.

Defendants.

Case No. CV 08 2849 DC

LIS PENDENS

NOTICE IS HEREBY GIVEN that an action has been commenced in the District Court of the Sixth Judicial District of the State of Idaho, in and for Bannock County, by plaintiff New Stream Real Estate, LLC, f/k/a Charter Oak Real Estate Fund, LLC, which action is brought for, among other things, the foreclosure of a mortgage upon and against the land, premises, and property and, among other things, all improvements thereon and all easements, appurtenances, fixtures, and rights thereto, including, without limitation, all water rights, located in Bannock County, Idaho, and more particularly described as follows:

LIS PENDENS - 1

20815737

Southwest 1/4 of the Northwest 1/4 and the West 1/2 of the Southwest 1/4 of Section 24, Township to South, Range 35 East, Boise Meridian, Bannock County, Idaho.

Excepting Therefrom:

A parcel of land located in the West 1/2 of the Southwest 1/4 of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows:

BEGINNING at the South 1/16 Corner to the West line of said Section 24, said corner being marked by a found 1/2-inch diameter rebar with a yellow plastic cap stamped PE/LS 4440;

Thence North 0°02'16" East along the West line of said Section 24 a distance of 478.03 feet;

Thence South 46°00'44" East, 766.01 feet;

Thence South 45°53'49" West, 311.47 feet;

Thence North 65°43'41" West, 359.66 feet to a point on the West line of said Section 24;

Thence North 0°02'16" East along the West line of said Section 24 a distance of 122.89 feet to the TRUE POINT OF BEGINNING.

Dated this 14th day of July 2008.

HOLLAND & HART LLP

By Larry E. Prince

Larry E. Prince, of the firm
Attorneys for Plaintiff

STATE OF IDAHO)

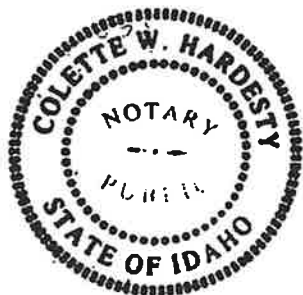
County of Ada)

ss:

On this 14th of July 2008, before me, Colette W. Hardesty, personally appeared Larry E. Prince, known or identified to me (or proved to me on the oath of Larry E. Prince) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he 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.

3896858_1.DOC



Colette W. Hardesty
Notary Public

Residing at Boise, Idaho

My Commission Expires on 3-13-2013

LIS PENDENS - 2

ALLIANCE TITLE - POCATELLO

20927056

2009 DEC 29 AM 11:26:51

Electronically Recorded by Simplifile

Recording Requested By,
And After Recording, Return To:

Larry E. Prince
Holland & Hart LLP
P.O. Box 2527
Boise, ID 83701-2527

3010917651

NONMERGER SPECIAL WARRANTY DEED

Grantor: Van Leeuwen Pocatello, LLC, a Delaware limited liability company

Grantee: New Stream Real Estate, LLC (fka Charter Oak Real Estate Fund, LLC), a Delaware limited liability company

Legal description:

The following described property ("Real Property") situated in Bannock County, Idaho, and described as follows:

Southwest 1/4 of the Northwest 1/4 and the West 1/2 of the Southwest 1/4 of Section 24, Township to South, Range 35 East, Boise Meridian, Bannock County, Idaho.

Excepting Therefrom:

A parcel of land located in the West 1/2 of the Southwest 1/4 of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows:

BEGINNING at the South 1/16 Corner to the West line of said Section 24, said corner being marked by a found 1/2-inch diameter rebar with a yellow plastic cap stamped PE/LS 4440;

Thence North 0°02'16" East along the West line of said Section 24 a distance of 478.03 feet;

Thence South 46°00'44" East, 766.01 feet;

Thence South 45°53'49" West, 311.47 feet;

Thence North 65°43'41" West, 359.66 feet to a point on the West line of said Section 24;

Thence North 0°02'16" East along the West line of said Section 24 a distance of 122.89 feet to the TRUE POINT OF BEGINNING.

THE GRANTOR, Van Leeuwen Pocatello, LLC, a Delaware limited liability company ("Grantor"), for good and valuable consideration received, hereby grants, bargains, sells, conveys, and releases to New Stream Capital, LLC, a Delaware limited liability company ("Grantee"), all of its right, title, and interest in and to the Real Property legally described above, situated in Bannock County, Idaho, together with all and tangible and intangible property, singular improvements, hereditaments, and appurtenances thereon and thereunto belonging or in any way appertaining, including, but not limited to all water rights, permits, licenses, stock and memberships and all irrigation, ditch, and reservoir rights appurtenant thereto, all irrigation pumps and equipment affixed thereto or located or used thereon, and the reversion or reversions, remainders, rents, issues and profits thereof; and all the estate, title, interest, claim and demand whatsoever of Grantor, either at law or in equity of, in and to the above-described real estate with said improvements hereditaments and appurtenances (the "Property").

To have and to hold the Property unto the Grantee and its successors and assigns forever.

The Grantee by accepting and recording this Deed does not intend a merger of its interest under that certain:

1. Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of December 23, 2005, executed by Grantor and recorded in the Office of the Recorder of Bannock County, Idaho, on December 29, 2005, as Instrument No. 20528334 of the Official Records;
2. The Assignment of Leases and Rents dated as of December 23, 2005, executed and delivered by Grantor and recorded in the Office of the Recorder of Bannock County, Idaho, on December 28, 2005, as Instrument No. 20528335 of the Official Records;
3. The General Assignment and Assignment of Warranties and other Contract Rights dated as of December 23, 2005, executed and delivered by Grantor and recorded in the Office of the Recorder of Bannock County, Idaho, on December 29, 2005, as Instrument No. 20528336 of the Official Records;
4. The First Amendment to Mortgage Assignment of Leases and Rents, Security Agreement, and Fixture Filing dated as of September 1, 2006, executed by Grantor and recorded in the Office of the Recorder of Bannock County, Idaho, on September 1, 2006, as Instrument No. 20619789 of the Official Records;
5. UCC-1 Financing Statement with Grantor as the debtor and Grantee as the secured party and recorded in the Office of the Recorder of Bannock County, Idaho, on

December 29, 2005, as Instrument No. 20528337 of the Official Records (the "Idaho UCC");

6. The Security Agreement dated as of December 23, 2005, executed by Grantor in favor of Grantee; and

7. The Amendment to Security Agreement dated as of September 1, 2006, executed by Grantor in favor of Grantee, with the fee title herein conveyed to take place.

It is the intention of the parties that the Property shall remain subject to the liens of the above described mortgage, assignments, and security agreements, which liens shall remain liens upon the Property.

Grantor declares that this conveyance is freely and fairly made, that Grantor is not acting under any misapprehension as to the legal effect of this deed, nor any undue duress, influence or other misrepresentation of Grantee, and that this is an absolute conveyance and not a conveyance for security purposes.

Grantor covenants with Grantee, its successors and assigns, that Grantor is now seized of the Property in fee simple absolute, and have good right, full power and lawful authority to grant, bargain, sell and convey the Property to Grantee.

Grantor shall and will warrant and forever defend the Property in the quiet and peaceable possession of Grantee, its successors and assigns, against all and every person lawfully claiming or to claim the whole or any part thereof by, through or under Grantor.

[Signature page to follow.]

DATED as of the 13th day of October, 2009.

GRANTOR:

VAN LEEUWEN POCATELLO, LLC

BY: VAN LEEUWEN MANAGEMENT, LLC,
Its Sole and Managing Member

By: Michael J. Van Leeuwen
Michael J. Van Leeuwen,
Sole and Managing Member

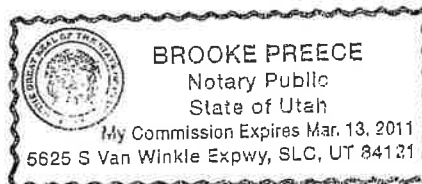
STATE OF Utah
County of Salt Lake) ss:

On this 13 day of October, 2009, before me, Brooke Preece, a Notary Public, personally appeared Michael J. Van Leeuwen, known or identified to me to be the sole and managing member of Van Leeuwen Management, LLC, the sole member of Van Leeuwen Pocatello, LLC, the person whose name is subscribed to the foregoing instrument in such capacity, and acknowledged to me that he executed the same on behalf of Van Leeuwen Management, LLC as sole and managing member of Van Leeuwen Pocatello, LLC, and acknowledged that Van Leeuwen Pocatello, LLC 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.

Brooke Preece
Notary Public
Residing at Salt Lake City, Utah
Comm. Expires 03-13-2011

3736863_2.DOC



NONMERGER SPECIAL WARRANTY DEED - 4

Larry E. Prince (ISB #1759)
Brad A. Goergen (ISB #6631)
HOLLAND & HART LLP
Suite 1400, U.S. Bank Plaza
101 South Capitol Boulevard
P.O. Box 2527
Boise, Idaho 83701-2527
Telephone: (208) 342-5000
Facsimile: (208) 343-8869

Attorneys For Plaintiff

OFFICIAL RECORD BK # 909
BANNOCK COUNTY IDAHO

20815737

20815737

RECORDED AT REQUEST OF
FEE DEPUTY

2008 JUL 16 P 2:01

Holland & Hart.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

NEW STREAM REAL ESTATE, LLC, fka
CHARTER OAK REAL ESTATE FUND, LLC, a
Delaware limited liability company,

Plaintiff,

vs.

MICHAEL J. VAN LEEUWEN, an individual,
and VAN LEEUWEN POCATELLO, LLC, a
Delaware limited liability company; and A&E
ENGINEERING, INC., an Idaho corporation,

Defendants.

Case No. CV 08 2849 DC

LIS PENDENS

NOTICE IS HEREBY GIVEN that an action has been commenced in the District Court of the Sixth Judicial District of the State of Idaho, in and for Bannock County, by plaintiff New Stream Real Estate, LLC, f/k/a Charter Oak Real Estate Fund, LLC, which action is brought for, among other things, the foreclosure of a mortgage upon and against the land, premises, and property and, among other things, all improvements thereon and all easements, appurtenances, fixtures, and rights thereto, including, without limitation, all water rights, located in Bannock County, Idaho, and more particularly described as follows:

20619786

QUITCLAIM DEED

ORDER NO.: 3010611742ER

FOR VALUE RECEIVED, Jackie Van Leeuwen wife of Michael J. Van Leeuwen

Do(es) hereby convey, release, remise and forever quit claim unto

Michael J. Van Leeuwen, a married person as sole and separate property

whose current address is: 3271 E. Walker Oaks Ct., Salt Lake City, UT 84121

the following described premises:

PARCEL 1: A parcel of land located in the West half of the Southwest 1/4 of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows:

Beginning at the South 1/16 Corner to the West line of said Section 24, said corner being marked by a found 1/2-inch diameter rebar with a yellow plastic cap stamped PE/LS 4440;
 Thence North 0°02'16" East along the West line of said Section 24 a distance of 478.03 feet;
 Thence South 46°00'44" East, 766.01 feet;
 Thence South 45°53'49" West, 311.47 feet;
 Thence North 65°43'41" West, 359.66 feet to a point on the West line of said Section 24;
 Thence North 0°02'16" East along the West line of said Section 24 a distance of 122.89 feet to the TRUE POINT OF BEGINNING.

PARCEL 2: A fifty-foot wide easement for ingress and egress running along the existing driveway from Buckskin Road to the residence at 4976 W. Buckskin Road, Poestello, Idaho.

TO HAVE AND TO HOLD the said premises, unto the said grantees, heirs and assigns forever.

May 26, 2006

State of Utah
 County of Salt Lake

On this 26th day of May, in the year 2006 before me, a Notary Public in and for said state, personally appeared Jackie Van Leeuwen or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

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



Notary Public for the State of Utah
 Residing at 1000 N. 1000 E.
 Commission Expires: 06-10-2007

20619786

ALLIANCE TITLE & ESCROW

RECORDED AT REQUEST OF

FEE 3 DEPUTY BP

JUN 1 PM 3 27

OFFICIAL RECORD BOOK # 887

RECORDED

BANNOCK COUNTY IDAHO

QUITCLAIM DEED 20619785

ORDER NO.: 3010611742ER

FOR VALUE RECEIVED, Van Leeuwen Pocatello, LLC, a Delaware Limited Liability Company

Do(es) hereby convey, release, remise and forever quit claim unto

Michael J. Van Leeuwen, a married man

whose current address is:: 3271 E. Walker Oaks Ct., Salt Lake City, UT 84121

the following described premises:

PARCEL 1: A parcel of land located in the West half of the Southwest ¼ of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows:

Beginning at the South 1/16 Corner to the West line of said Section 24, said corner being marked by a found ½-inch diameter rebar with a yellow plastic cap stamped PE/LS 4440; Thence North 0°02'16" East along the West line of said Section 24 a distance of 478.83 feet; Thence South 46°00'44" East, 766.01 feet; Thence South 45°53'49" West, 311.47 feet; Thence North 65°43'41" West, 359.66 feet to a point on the West line of said Section 24; Thence North 0°02'16" East along the West line of said Section 24 a distance of 122.89 feet to the TRUE POINT OF BEGINNING.

PARCEL 2: A fifty-foot wide easement for ingress and egress running along the existing driveway from Buckskin Road to the residence at 4976 W. Buckskin Road, Pocatello, Idaho.

TO HAVE AND TO HOLD the said premises, unto the said grantees, heirs and assigns forever.

May 26, 2006

Van Leeuwen Pocatello, LLC

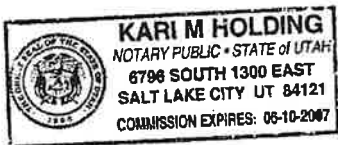
By: Michael J. Van Leeuwen, Member

State of Utah

County of Salt Lake

On this 26th day of May, 2006, before me, a Notary Public in and for said state, personally appeared Michael J. Van Leeuwen known or identified to me to be the Managing Member in the Limited Liability Company known as Van Leeuwen Pocatello LLC who executed the foregoing instrument, and acknowledged to me that he executed the same in said LLC name.

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 the State of Utah
Residing at: [Signature]
Commission Expires: 06-10-2007

20619785
ALLIANCE TITLE & ESCROW

RECORDED AT REQUEST OF

FEE \$3 DEPUTY BP

2006 MAY 1 PM 3 26

OFFICIAL RECORD BY 887

BY ORDER
BANNOCK COUNTY IDAHO

20528333

20528333

WARRANTY DEED

RECORDED AT REQUEST OF



Order No.: 3010511568ER

FEE 3.00 DEPUTY mw

FOR VALUE RECEIVED

ALLIANCE TITLE & ESCROW

Kent C. Bedingfield and Ann E. Bedingfield, husband and wife

DEC 29 PM 4 23

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

OFFICIAL RECORD BK# 878

Van Leeuwen Pocatello, LLC

RECORDER

BANNOCK COUNTY IDAHO

whose current address is

3271 E. Walker Oaks Court Salt Lake City, UT 84121

the grantee(s), the following described premises, in Bannock County, Idaho, TO WIT:

SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the W $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: 12/20/2005

Kent C. Bedingfield
Kent C. Bedingfield

Ann E. Bedingfield
Ann E. Bedingfield

State of Utah

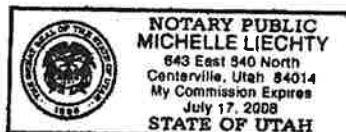
}

County of Salt Lake

} ss.

On this 21st day of December, in the year 2005 before me, a Notary Public in and for said state, personally appeared Kent C. Bedingfield and Ann E. Bedingfield known or identified to me to be the person whose name is 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 first above written.



Michelle Liechty
Notary Public for the State of Utah
Residing at: Centerville, Utah
Commission Expires: 07-17-2008

WHEN RECORDED, RETURN TO:
Kent C. Bedingfield
2287 West Williamsburg Circle
West Jordan, Utah 84088

20516469

SPECIAL WARRANTY DEED

Clark Real Estate Co., an Idaho corporation, whose address is P.O. Box G, Pocatello, ID 83205, Grantor, CONVEYS and WARRANTS against all claiming by, through or under Grantor to Kent C. Bedingfield, whose address is 2287 West Williamsburg Circle, West Jordan, Utah 84088, Grantee, for the sum of TEN DOLLARS and other valuable consideration, the following described real property situated in Bannock County, State of Idaho:

SW 1/4 NW 1/4 AND THE W 1/2 SW 1/4 OF SECTION 24, TOWNSHIP 6
SOUTH, RANGE 35 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO

Subject to any and all easements and rights-of-way of record, under or across such property, and other restrictions and reservations of record, enforceable in law and in equity.

WITNESS, the hand of said Grantor, this 8th day of August, 2005.

Clark Real Estate Co.,
an Idaho corporation

By: [Signature]

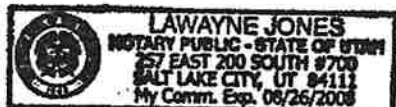
Its: [Signature]

STATE OF Utah)

: ss.

COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 8th day of August, 2005, by Rodney Clark Pres. of Clark Real Estate Co., an Idaho corporation, on behalf of said corporation.



[Signature]
NOTARY PUBLIC

20516469
Clark Real Estate
RECORDED AT REQUEST OF

FEE 3 DEPUTY BP

2005 AUG 11 PM 1 15

X71

FURNISHED BY First American Title Company, Inc.

20515173

WARRANTY DEED

20515173

FIRST AMERICAN TITLE
RECORDED AT REQUEST OF

For Value Received

Kent C. Bedingfield and Ann E. Bedingfield, husband and wife

FEE 3 DEPUTY DP

the grantor s, do hereby grant, bargain, sell, and convey unto Clark Real Estate Co., an Idaho Corporation

the grantee s, whose current address is P.O. Box G, Pocatello, Idaho, 83205

the following described premises, to-wit:

SW 1/4 NW 1/4 and the W 1/2 SW 1/4 of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho.

2005 JUL 27 PM 2 03

OFFICIAL RECORD BK# 870
RECORDER
BANNOCK COUNTY IDAHOINSTRUMENT FILED FOR RECORD
FIRST AMERICAN TITLE COMPANY AS AN
ACCOMMODATION ONLY AND HAS NOT BEEN
EXAMINED AS TO ITS EXECUTION OR AS
TO ITS EFFECT UPON THE TITLE.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee s, its heirs and assigns forever. And the said Grantor s do hereby covenant to and with the said Grantee s, that the y are the owner s in fee simple of said premises; that said premises are free from all incumbrances except as hereinabove set forth and that t he y will warrant and defend the same from all lawful claims whatsoever.

Dated: July 26, 2005

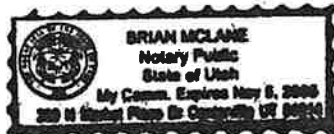
Kent C. Bedingfield
Kent C. Bedingfield
Ann E. Bedingfield
Ann E. Bedingfield

STATE OF ~~Idaho~~ Utah, COUNTY OF Salt Lake
On this 26th day of July, 2005
before me, a notary public in and for said State, personally
appeared Kent C. and Ann E. Bedingfield.

known to me to be the person who name
subscribed to the within instrument, and acknowledged to
me that executed the same.

Residing at West Valley
Comm. Expires NOV. 5, 2005

Notary Public



INSTRUMENT No.

20512496

20512496

RECORDED AT REQUEST OF *Kent C. Beedingfield*

FEE 3 DEPUTY BP

Its: Pres OFFICIAL RECORD BK# 868
RECORDER
BANNOCK COUNTY IDAHO

 **LAWAYNE JONES**
NOTARY PUBLIC - STATE OF UTAH
257 EAST 200 SOUTH #700
SALT LAKE CITY, UT 84111
My Comm. Exp. 08/26/2008

NOTARY PUBLIC

WARRANTY DEED

20421209

For Value Received Hugh Selznick and Mary K. Selznick, husband and wife

the grantors, do hereby grant, bargain, sell, and convey unto Clark Real Estate Co., an Idaho Corporation

the grantee, whose current address is P.O. Box G, Pocatello, Idaho 83205

the following described premises, to-wit:

SW 1/4 NW 1/4 and the W 1/2 SW 1/4 OF SECTION 24, TOWNSHIP 6 SOUTH, RANGE 35
EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee,
its heirs and assigns forever. And the said Grantors do hereby covenant to and
with the said Grantee, that they are the owners in fee simple of said premises; that said
premises are free from all incumbrances except as hereinabove set forth and that he will warrant and
defend the same from all lawful claims whatsoever.

Dated: August 26, 2004

Hugh Selznick

Hugh Selznick

Mary K. Selznick

Mary K. Selznick

STATE OF ~~Idaho~~ ^{Nevada} COUNTY OF ~~Bannock~~ ^{Clark}
On this ~~28~~ ²⁸ day of August, 2004
before me, a notary public in and for said State, personally
appeared

Hugh Selznick and Mary K. Selznick,
husband and wife

known to me to be the persons whose names are
subscribed to the within instrument, and acknowledged to
me that they have



Residing at
Comm. Expires 5-12-07

Pocatello, Idaho
Clark, Nevada

20421209
Clark Real Estate
RECORDED AT REQUEST OF
FEE 3 DEPUTY M)

2004 SEP 29 PM 1 51
OFFICIAL REC'D BK# 856
LIBRARY OF RECORDER
CLARK COUNTY IDAHO

INSTRUMENT No.

20619789

Space for Recorder's Use

AFTER RECORDING MAIL TO:

Linda B. Jones
Holland & Hart LLP
101 South Capitol Blvd, Ste 1400
Boise, Idaho 83702

20619789

ALLIANCE TITLE & ESCROW

RECEIVED AT REQUEST OF

FILE 18 DEPT. BP

SEP 1 1 PM 3 29

**FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, 887
SECURITY AGREEMENT AND FIXTURE FILING**

This FIRST AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Amendment") is made, granted, and given effective as of the 1st day of September 2006, by Van Leeuwen Pocatello, LLC, a Delaware limited liability company ("Mortgagor" and the "Debtor"), with an address at 4976 W. Buckskin Road, Pocatello, Idaho 83201 and c/o Michael J. Van Leeuwen 4547 South Abinadi Rd., Salt Lake City, UT 84124, to and with New Stream Real Estate, LLC (fka Charter Oak Real Estate Fund, LLC, a Delaware limited liability company ("Mortgagee" and the "Secured Party"), whose address is c/o New Stream Capital, LLC, 38C Grove Street, Ridgefield CT 06877.

This Instrument amends that certain Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing dated December 23, 2005 and recorded on December 29, 2005 as Instrument No. 20528334, referred to herein, as amended hereby, as the "Mortgage".

RECITALS

This Amendment is made with reference to the following facts and objectives:

A. Mortgagor and Mortgagee entered into a Security Agreement dated as of December 23, 2005 (the "Loan Agreement") pursuant to which the Mortgagee made a loan in the original principal amount of Two Million, Four Hundred Thousand and no/100 Dollars (\$2,400,000.00) (the "Loan") to Mortgagor, which Loan was evidenced by a Promissory Note dated December 23, 2005 ("Initial Note") and was made for the purpose of acquiring, subdividing, and developing that certain real property described in the Mortgage (the "Property").

B. Concurrently with the Loan, Mortgagee entered into a second Security Agreement (the "Utah Loan Agreement") with Michael J. Van Leeuwen ("Van

First Amendment to
Mortgage

Leeuwen"), pursuant to which Mortgagee made a loan, evidenced by a Promissory Note, in the amount of Two Million, Six Hundred Thousand and no/100 Dollars (\$2,600,000.00) (the "Utah Loan") to Van Leeuwen. Van Leeuwen guaranteed the Loan and Mortgagor guaranteed the Utah Loan. Van Leeuwen granted to Mortgagee a lien ("Utah Deed of Trust") on certain residential property located in Salt Lake City, Utah (the "Utah Property"). The liens of the Mortgage and the Utah Deed of Trust both secure the payment and performance under both the Loan and the Utah Loan

C. In accordance with Mortgagor's development plans, Mortgagor subdivided one five-acre lot upon which there is a house from the Property, which five-acre parcel ("House Parcel") has been sold and conveyed by Grant Deed recorded on the date hereof to Van Leeuwen and, by a Partial Release, has been or will be released from the lien of the Mortgage. The proceeds of the sale were applied toward the outstanding interest and indebtedness under the Loan and the Utah Loan.

D. To finance the acquisition of the House Parcel, Van Leeuwen obtained a loan ("Refinancing Loan") from another lender ("Other Lender") and Other Lender has recorded two deeds of trust (together, the "First Deed of Trust") on the House Parcel. Mortgagee also has recorded a Deed of Trust on the House Parcel ("Deed of Trust").

E. Mortgagor and Mortgagee have entered into an Amendment to Security Agreement, dated of even date herewith ("Amendment to Security Agreement"), pursuant to which Mortgagor has granted an additional revolving credit arrangement in the maximum principal amount of \$450,000.00 (the "Additional Advance"), evidenced by a Promissory Note in the principal amount of the Additional Advance ("Additional Note").

F. This Amendment is made to recognize the release of the House Parcel and to add to and include the Additional Advance, Additional Note, Amendment to Security Agreement, and Mortgagor's obligations under the Deed of Trust as part of the Secured Obligations under the Mortgage.

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated into the agreements below and are part thereof, the mutual covenants set forth in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor and Mortgagee do hereby amend the Mortgage as follows:

1. DEFINITIONS

1.1 Terms Defined. Except as expressly defined or modified by this Amendment, all terms defined in the Mortgage shall have the same definitions when used in this Amendment as in the Mortgage.

1.2 "Secured Obligations" shall include, in addition to and not as a substitution for or release of any of the Secured Obligations described in the Mortgage:

First Amendment to
Mortgage

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(a) The Additional Advance and the Amendment to Security Agreement between Mortgagor and Mortgagee and all of Mortgagor's indebtedness and obligations thereunder and including but not limited to all current and future advances made pursuant thereto, whenever made, whether evidenced by a promissory note or otherwise. For all purposes of the Mortgage, the terms "Security Agreement" and "Loan Agreement" shall mean such agreements as amended by the Amendment to Security Agreement.

(b) The Additional Note given by Mortgagor pursuant to the Amendment to Security Agreement and payment of all sums with interest thereon at the rate of interest provided in the Advance Note. For all purposes of the Mortgage, the term "Note" shall mean the Initial Note and the Additional Note.

(c) Due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement contained in the Loan Agreement, as amended by the Amendment to Security Agreement, the Initial Note, the Advance Note, the Mortgage, the Deed of Trust, and all other Loan Documents as defined in the Loan Agreement, as amended, including but not limited to documents, instruments, deeds of trust, mortgages, security agreements, and other agreements heretofore or hereafter executed by Mortgagor having reference to or arising out of or executed in connection with the indebtedness represented by the Loan Agreement (collectively, the "Loan Documents"), and any and all modifications, amendments, extensions or renewals thereof, whether hereafter evidenced by the Loan Documents or otherwise.

Without limiting any of the foregoing, the Secured Obligations include the principal indebtedness of \$5,450,000.00, being the principal indebtedness to Mortgagee under the Initial Note, Additional Note, and the Utah Note, with \$2,850,000.00 of the secured amount allocated to the Property under the Mortgage and the House Parcel under the Deed of Trust, and \$2,600,000.00 of the secured amount allocated to the Utah Property under the Utah Deed of Trust.

1.3 The "Land" under the Mortgage shall refer to the Land as defined and described in the Mortgage after excluding the House Parcel released by the Partial Release.

1.4 The "Maturity Date" shall mean December 22, 2006. The option to extend the Maturity Date under the Security Agreement has been deleted. There is no option to extend the Maturity Date.

1.5 An "Event of Default" under the Mortgage shall include, in addition to and not as a substitution for or waiver of any of the Events of Default defined in the Mortgage:

(a) The failure of Mortgagor to make any payment of interest under the Advance Note or the Amendment to Security Agreement, or to make any payment of an installment of principal when and as the same shall become due and payable, or the failure to make any other payments required thereunder, under this Amendment or any other Loan Document, when and as the same shall become due and payable, whether at First Amendment to Mortgage

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maturity or by acceleration or as part of any prepayment or otherwise, in each case, as is provided in the Advance Note or the Amendment to Security Agreement;

(b) Any default by Mortgagor in the due, prompt, and complete observance and performance of any non-monetary obligation, covenant, or term contained in this Amendment, the Advance Note, the Amendment to Security Agreement, under any other Loan Document, or under any other document, instrument, or agreement given as security for the Loan, that is not corrected in the grace or notice period, if any, applicable thereunder;

(c) any Event of Default as defined under the Deed of Trust; and

(d) any default by Van Leeuwen in the due, prompt, and complete observance and performance of any monetary or non-monetary obligation, covenant, or term under the First Deed of Trust or obligations secured thereby that is not corrected in the grace or notice period, if any, applicable thereunder, and, without limiting the foregoing, the commencement of any action by Other Lender to foreclose on the First Deed of Trust.

2. CONFIRMATION AND RATIFICATION OF MORTGAGE

Mortgagor hereby confirms and ratifies the grant, bargain, sale and conveyance of the Encumbered Property contained in the Mortgage, as amended by this Amendment, to Mortgagee, and its successors and assigns forever, to secure the Secured Obligations and reaffirms as of the date hereof each of the representations, warranties, and covenants made in the Mortgage.

3. CONTINUING EFFECT OF MORTGAGE

Except as expressly modified in this Amendment, the terms of the Mortgage shall remain unchanged and be in full force and effect. Consent by Mortgagee to this Amendment does not waive Mortgagee's right to require strict performance of the Mortgage, as modified by this Amendment, nor obligate Mortgagee to make any future modifications. Nothing in this Amendment shall constitute a satisfaction of any of the Secured Obligations, the Initial Note, the Additional Note, the Loan, or any other obligations, or any part thereof, secured by the Mortgage.

IN WITNESS WHEREOF, the undersigned have executed this Mortgage as of the date first above written.

[Signature Pages Follow]

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First Amendment to
Mortgage

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20619789

MORTGAGEE:

**NEW STREAM REAL ESTATE, LLC
fka CHARTER OAK REAL ESTATE FUND, LLC**

By: [Signature]
Robert Hebert, Managing Director

STATE OF CT
County of Fairfield : ss.

On this 30th day of August 2006, before me, Abbey Scott, a notary public in and for said State, personally appeared Robert Hebert, known or identified to me to be the Managing Director of New Stream Real Estate, LLC, the person who executed the instrument in said capacity for said limited liability company, and acknowledged to me that said limited liability company 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.

**ABBEY SCOTT
NOTARY PUBLIC
STATE OF CONNECTICUT
MY COMMISSION EXPIRES JULY 31, 2011**

[Signature]
Notary Public
Residing at: Connecticut
My Commission Expires: July 31, 2011

First Amendment to
Mortgage

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20619789

MORTGAGOR:

VAN LEEUWEN POCATELLO, LLC

BY: VAN LEEUWEN MANAGEMENT, LLC
Its Sole and Managing Member

By: Michael J. Van Leeuwen
Michael J. Van Leeuwen,
Sole and Managing Member

STATE OF Utah)
County of Salt Lake)ss.

On this 30 day of August 2006, before me, Kari M Holding, a Notary Public, personally appeared Michael J. Van Leeuwen, known or identified to me to be the sole and managing member of Van Leeuwen Management, LLC, the sole member of Van Leeuwen Pocatello, LLC, the person whose name is subscribed to the foregoing instrument in such capacity, and acknowledged to me that he executed the same on behalf of Van Leeuwen Management, LLC as sole and managing member of Van Leeuwen Pocatello, LLC, and acknowledged that Van Leeuwen Pocatello, LLC 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.

Kari M Holding
Notary Public
Residing at Salt Lake
Comm. Expires 6-10-2007



First Amendment to
Mortgage

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20528337

20528337

RECORDED AT REQUEST OF

FEE 33⁰⁰ DEPUTY mw

ALLIANCE TITLE & ESCROW

2005 DEC 29 PM 4 25

OFFICIAL RECORD BK# 878

RECORDER

BANNOCK COUNTY IDAHO

301-05-11568-ER

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional):

Lynn Consentino

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

942 Chestnut Ridge Road

Millbrook, NY 12545

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

Van Leeuwen Pocatello, LLC

OR 1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

4547 South Abinadi Rd.

CITY

Salt Lake City

STATE

UT

POSTAL CODE

84124

COUNTRY

USA

1d. TAX ID #: SSN OR EIN

ADD'L INFO RE
ORGANIZATION
DEBTOR

1e. TYPE OF ORGANIZATION

LLC

1f. JURISDICTION OF ORGANIZATION

Delaware

1g. ORGANIZATIONAL ID #, if any

4076883

☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. TAX ID #: SSN OR EIN

ADD'L INFO RE
ORGANIZATION
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE

3. SECURED PARTY'S NAME (IN NAME OF TOTAL ASSIGNEE or ASSIGNOR SET) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

Charter Oak Real Estate Fund, LLC

OR 3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

38C Grove Street

CITY

Ridgefield

STATE

CT

POSTAL CODE

06877

COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

Please see Exhibit A attached hereto and by this reference incorporated herein.

5. ALTERNATIVE DESIGNATION (if applicable): LESSOR/LESSOR ☐ CONSIGNEE/CONSIGNEE ☐ BAILEE/BAILO ☐ SELLER/BUYER ☐ AS LIEN ☐ NON-ADJ FILING6. ☒ THE FINANCING STATEMENT IS TO BE FILED FOR RECORD (or record) in the REAL ESTATE RECORDS. Attach Acknowledgment (if applicable): 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s): ☐ As Debtor ☐ Debtor 1 ☐ Debtor 2 (Additional Fee) (optional)

8. OPTIONAL FILER REFERENCE DATA

Bannock County, ID Real Property Records

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20528337

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

1a. ORGANIZATION'S NAME Van Leeuwen Pocatello, LLC		
OR	1b. INDIVIDUAL'S LAST NAME	FIRST NAME
		MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME			
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME
			SUFFIX
11c. MAILING ADDRESS		CITY	STATE
		POSTAL CODE	COUNTRY
11d. TAX ID #, SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION
			11g. ORGANIZATIONAL ID #, if any
			☐ NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME			
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME
			SUFFIX
12c. MAILING ADDRESS		CITY	STATE
		POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers ☒ tangible to the debt or ☐ all-extracted collateral, or is filed as a ☐ future filing
14. Description of real estate

Please see Exhibit B attached hereto and by this reference incorporated herein.

15. Additional collateral description.

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

- ☐ Debtor is a TRANSMITTING UTILITY
- ☐ Filed in connection with a Manufactured Home Transaction — effective 30 years
- ☐ Filed in connection with a Public Finance Transaction — effective 30 years

EXHIBIT A

To UCC-1 Financing Statement

Debtor: Van Leeuwen Pocatello, LLC

Secured Party: Charter Oak Real Estate Fund, LLC

All with respect to the above Debtor and the real property described in Exhibit B hereto ("Land"), and securing the indebtedness of Debtor under a certain Security Agreement and Note in favor of Secured Party (collectively the "Encumbered Property"):

1. All and singular the easements, rights-of-way, water and water rights of every kind and nature (including but not limited to claims, decrees, applications, permits, licenses, storage rights, ditches and ditch rights, riparian and littoral rights, and all shares of stock and memberships in any canal or irrigation company), rights to timber to-be-cut, minerals and mineral rights (including oil and gas rights) and other as-extracted collateral, geothermal rights, rights of development, use or occupancy, privileges, franchises, tenements, appendages, hereditaments and appurtenances and all other rights belonging or in any way appertaining to the Land, and all right, title, and interest of Debtor in and to all streets, roads, railways and public places, opened or postponed, and all easements and rights-of-way, public or private, now or hereafter used in connection with, or belonging or appertaining to the Land, and all of the estate, right, title, interest, claim, and demand whatsoever of Debtor in and to the Land, either at law or in equity, in possession or in expectancy, now or hereafter acquired (collectively, the "Real Property");

2. All structures, buildings, and improvements of every kind and description now or at any time hereafter located on the Real Property including but not limited to houses, fences, garages, sheds, irrigation systems including, without limitation, equipment, pumps, wells, and additions to, substitutions for, changes in or replacements of the whole or any part thereof, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof (hereinafter referred to as the "Improvements"), including, without limitation, all equipment, apparatus, machinery, fixtures, fittings and appliances, and any additions to, substitutions for, changes in, or replacements of the whole or any part thereof, including such of the foregoing as may be used in connection with the generating or distributing of air, water, heat, electricity, light, fuel or refrigeration or for ventilating or sanitary purposes or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the use, enjoyment, occupancy, or operation of the Land or any portion thereof;

3. All fixtures, chattels, business machinery, appliances, equipment and articles of personal property of every kind and nature whatsoever and any additions to, substitutions for, changes in or replacements of the whole or any part thereof (hereinafter referred to as the "Personal Property") including, without limitation, all wall-safes, built-in furniture and installations, shelving, partitions, door-stops, vaults, elevators, dumb-waiters, awnings, window shades, blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm systems, drapery rods and

brackets, screens, linoleum, carpets, plumbing, refrigerators, coolers, freezers, racks, heating units, stoves, ovens, water heaters, incinerators, furniture and furnishings, desks, shelving, tables, chairs, wall decorations, communication systems, security systems, and computer systems (including embedded software), printers, photocopy and facsimile machines, registers, irrigation equipment (including but not limited to pipes and piping, hand lines, drip lines, pivots, sprinklers, and all ancillary equipment), all specifically designed installations and furnishings and all said articles of property, the specific enumerations herein not excluding the general, now or at any time hereafter affixed to or attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy, development, construction or operation of the Real Property or the Improvements or any portion thereof and owned by Debtor or in which Debtor now has or hereafter acquires an interest, and all building materials, supplies, equipment, and personal property described above now or hereafter delivered to the Real Property and intended to be installed or placed in or about the Improvements;

4. All of the rents (whether denoted as base rent, advance rent, minimum rent, percentage rent, additional rent or otherwise), issues, income, royalties, profits, revenues, proceeds, bonuses, deposits (whether denoted as security deposits or otherwise), termination fees, rejection damages, buy-out fees and any other fees made or to be made in lieu of rent to the Debtor, any award made hereafter to the Debtor in any court proceeding involving any tenant, lessee, licensee or concessionaire under any of the Leases (defined below) in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and all other payments, rights and benefits of whatever nature from time to time due to the Debtor under the Leases or arising out of the Real Property, including, without limitation, (i) rights to payment earned under the Leases, (ii) any payments or rights to payment with respect to parking facilities or other facilities in any way contained within or associated with the Real Property, and (iii) all other income, consideration, issues, accounts, profits or benefits of any nature arising from the possession, use and operation of the Real Property; ("Rents");

5. All leases, subleases, contracts to lease, license agreements, occupancy agreements, operating agreements or concessions relating to the use or occupancy of or otherwise affecting the Real Property and all guarantees, supplements, amendments, modifications, extensions, renewals and replacements thereof and all additional remainders, reversions and other rights and estates appurtenant thereto, rental contracts, written or verbal, as such may be modified, extended and renewed, leases (collectively called "Leases"), and all right, title and interest of Debtor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligation thereunder, whether such cash or securities are to be held until the expiration of the terms of said leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of said terms ("Deposits");

6. All present and future right, title and interest of Debtor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC), and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in accounts for

Debtor, all deposits or wire transfers made to accounts, agreements, obligations, rights and written materials, in each case whether existing now or in the future, relating to or otherwise arising in connection with or derived from the Real Property or Improvements or any other part of the Encumbered Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the Real Property or Improvements or any other part of the Encumbered Property, including, without limitation: (i) permits, approvals and other governmental authorizations, including without limitation zoning approvals, building permits, plat approvals, development approvals and agreements, and other agreements, (ii) agreements with suppliers, project managers, supervisors, contractors, architects, engineers, sales agents, leasing agents, consultants, property managers and governmental authorities, and all of Debtor's rights, title and interest in and to plats and surveys as recorded and as may be recorded pursuant to law or agreement; (iii) takeout refinancing and permanent loan commitments, (iv) warranties, guaranties, indemnities and insurance policies, together with insurance payments, insurance proceeds, and unearned insurance premiums, (v) claims, demands, awards, settlements and other payments arising or resulting from or otherwise relating to any insurance (whether or not Secured Party is named as a loss payee of such insurance) or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Real Property, (vi) license agreements, lease agreements, easement and access agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits, purchase deposits and other amounts paid to or deposited with Debtor or placed into escrow pursuant to any such agreements, (vii) reserves, deposits, security deposits, bonds, performance bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, (viii) membership agreements and related dues, fees, assessments, and deposits and other revenues relating to parking or other facilities, (ix) all contracts for the sale of portions of the Real Property or Improvements, existing and to be entered into in the future, (x) all trade names, trademarks, logos, copyrights, goodwill and books and records relating to or used in connection with the operation of the Encumbered Property or the equipment or any part thereof and all general intangibles related to the operation of the Improvements now existing or hereafter arising; and (xi) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (collectively, the "Intangibles");

7. All accounts, accounts receivable, deposit accounts, chattel paper (whether electronic or tangible), instruments, promissory notes, documents, general intangibles, payment intangibles, letter of credit rights, insurance receivables and other rights to payment (collectively called "Rights to Payment"), now existing or at any time hereafter, and prior to the termination hereof, arising (whether they arise from the sale, lease or other disposition of property or inventory or from performance of contracts for service, manufacture, construction, repair or otherwise or from any other source whatsoever), including all securities, guaranties, warranties, indemnity agreements, insurance policies, supporting obligations and other agreements pertaining to the same or the property described therein, and in all property and goods returned by or repossessed from Debtor's customers;

8. All inventory, goods held for sale or lease or to be furnished under contracts for service, goods so leased or furnished, raw materials, component parts and embedded software, work in process or materials used or consumed in Debtor's business and all warehouse receipts, bills of lading and other documents evidencing goods owned or acquired by Debtor, and all goods covered thereby, now or at any time hereafter, and prior to the termination hereof, owned or acquired by Debtor, wherever located, and all products thereof (collectively called "Inventory"), whether in the possession of Debtor, warehousemen, bailees or any other person, or in process of delivery, and whether located at Debtor's places of business or elsewhere (with all Rights to Payment and Inventory referred to herein collectively as the "Payments Collateral"), together with whatever is receivable or received when any of the Payments Collateral or proceeds thereof are sold, leased, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation, all Rights to Payment, including returned premiums, with respect to any insurance relating to any of the foregoing, and all Rights to Payment with respect to any claim, cause of action, lien (including, but not limited to, materialmen's liens) and other rights affecting or relating to any of the foregoing;

9. Any and all monies now or subsequently on deposit for the payment of real estate taxes or special assessments against the Encumbered Property or for the payment of premiums on insurance policies covering the foregoing property or otherwise on deposit with or held by Secured Party as provided in this Instrument; all capital, operating, reserve or similar accounts held by or on behalf of Debtor and related to the operation of the Encumbered Property, whether now existing or hereafter arising and all monies held in any of the foregoing accounts and any certificates or instruments related to or evidencing such accounts;

10. All proceeds (including claims and demands therefor) with respect to the conversion, voluntary or involuntary, of the Real Property or any of the Encumbered Property into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards;

11. All contracts, permits, licenses, security deposits, payment and performance bonds pertaining to the development of the Real Property, including but not limited to engineering, architectural, and construction contracts and all variances, development rights or credits, air rights, and transfer development rights, zoning and subdivision rights, and development agreements relating to the Real Property;

12. All interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or the Encumbered Property;

13. All contracts of sale with other parties now or hereafter entered into in connection with the Encumbered Property or any part thereof and all right, title and interest of Debtor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance of buyers of their obligations thereunder and also including the right upon the happening of an event of default thereunder to enforce the

obligations of such buyers and to receive and collect the amounts deposited thereunder and any and all further amounts which may be due under such contracts of sale or due upon the consummation of such contracts of sale; all agreements, or contracts with other parties now or hereafter entered into for the sale, leasing, brokerage, development, management, maintenance, sale and/or operation of the Encumbered Property or any part thereof, including all moneys due and to become due thereunder, and all permits, licenses, approvals, bonds, insurance policies, agreements, contracts, consents, and plans, specifications designs and drawings relative to the construction, rehabilitation, refurbishing and/or operation of the Improvements;

14. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Real Property as a result of tax certiorari or any applications or proceedings for assessment and/or tax reduction relating to the Real Property;

15. All of Debtor's claims and rights to the payment of damages arising from any rejection of any Lease under or pursuant to the Bankruptcy Code, 11 U.S.C. §101 et seq.;

16. All of Debtor's interest in all claims and causes of action relating directly or indirectly to the Encumbered Property or any part thereof, whether such claims or causes of action arise in Debtor's name or are acquired by Debtor, directly or indirectly, by subrogation or otherwise;

17. All oil and gas or other mineral royalties and bonuses, and any other consideration of whatever form or nature received by or paid to or for the account of or benefit of Debtor or its agents or its employees from any and all sources arising from or attributable to Real Property;

18. All right, title and interest of Debtor to all trademarks, copyrights, and rights to any trade names used in connection with the operation of the Encumbered Property; and

19. All proceeds, products, replacement, additions, substitutions, renewals and accessions of and to any of the Encumbered Property and all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims.

In addition, to the extent not covered above: all right, title and interest of Debtor to all contracts, permits, licenses, security deposits, payment and performance bonds pertaining to the Encumbered Property and including but not limited to engineering, architectural, and construction contracts with respect to the Encumbered Property; all right, title and interest of Debtor to all air rights or transfer development rights, zoning and subdivision rights and development agreements pertaining to the Encumbered Property; accounts designated with Secured Party or within a third-party financial institution to maintain real estate tax and insurance premium escrow payments, and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or

occupancy (or their equivalent), contracts, applications and approvals issued by any governmental authority or agency, security deposits, and payment and performance bonds relating to the construction, ownership, operation and/or use of the Encumbered Property, whether now existing or hereafter arising; and to the extent not covered above, all Proceeds (as defined in the Uniform Commercial Code of the applicable jurisdiction) of any or all of the foregoing; and

All cash, negotiable instruments, documents of title, chattel paper, securities, certificates of deposit, deposit accounts, other cash equivalents and other assets of Debtor in transit to, or in the possession or control of Secured Party, or any agent or bailee of Secured Party.

held in such accounts from time to time including, without limitation, all deposits or wire transfers made to such accounts; all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing; all "UCC Collateral" and "Personal Property" (as those terms are defined in any loan or security agreement between Debtor and Secured Party) and including but not limited to all machinery, apparatus, equipment, fittings, fixtures and other property of every kind and nature whatsoever, including, without limitation, all boilers, furnaces and other heating fixtures, all refrigerating, air conditioning, heating, plumbing, and ventilation systems, all elevators, escalators, vacuum cleaning systems, switchboards, sprinkler systems, fire prevention and extinguishing apparatus, all pumps, tanks, pipes, ducts, motors, engines, compressors, generators, gas, steam, electrical and lighting fittings, all vertical and horizontal communication interconnections (including, but not limited to, those via conduit, wave guide or ceramic duct), all furniture, furnishings, appliances, ovens, dishwashers, refrigerators, and all other kitchen equipment, window shades, draperies, and carpeting, all operating supplies and all building materials, equipment and goods now or hereafter delivered to the Encumbered Property intended to be installed therein, together with all replacements and substitutions thereof and additions and accessions thereto in which Debtor now has, or at any time hereafter acquires, an interest and which are now or hereafter located or situated in or upon, or affixed or attached to, or used in connection with the enjoyment, occupancy and/or operation of, all or any portion of the Encumbered Property; rights under easements, rights-of-way or use, air rights, development rights, water, water rights and powers, water courses, sewer rights, and other rights, privileges and appurtenances to the Encumbered Property now or hereafter belonging or in anyway appertaining thereto, including, without limitation, any such right, title, interest, claim and demand in, to and under any agreement granting, conveying or creating, for the benefit of the Encumbered Property, any easement, right or license in any way affecting other property and in, to and under any streets, ways, alleys, passages, vaults, gores or strips of land adjoining the Encumbered Property, or any parcel thereof, and all land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Encumbered Property, to the center line thereof; all Insurance Proceeds (as such term is defined or used in any loan or security agreement between Debtor and Secured Party) and all other proceeds of and any unearned premiums on any insurance policies covering the Encumbered 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 Encumbered Property or any part thereof; all Condemnation Awards (as such term is defined or used in any loan or security agreement between Debtor and Secured Party) and other awards heretofore made or hereafter to be made for the taking by eminent domain of the whole or any part of the Encumbered Property, or any estate or easement therein, including any awards for change of grade of streets, and all rights to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor and to apply such awards; all contracts of sale with other parties now or hereafter entered into in connection with the Encumbered Property or any part thereof and all right, title and interest of Debtor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance of buyers of their obligations

thereunder and also including the right upon the happening of an event of default thereunder to enforce the obligations of such buyers and to receive and collect the amounts deposited thereunder and any and all further amounts which may be due under such contracts of sale or due upon the consummation of such contracts of sale; all right, title and interest of Debtor in and to all agreements, or contracts with other parties now or hereafter entered into for the sale, leasing, brokerage, development, management, maintenance, sale and/or operation of the Encumbered Property (or any part thereof), including all moneys due and to become due thereunder, and all permits, licenses, approvals, bonds, insurance policies, agreements, contracts, consents, and plans, specifications designs and drawings relative to the construction, rehabilitation, refurbishing and/or operation of the Improvements; all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Encumbered Property as a result of tax certiorari or any applications or proceedings for assessment and/or tax reduction relating to the Encumbered Property; all claims and rights to the payment of damages arising from any rejection of any Lease under or pursuant to the Bankruptcy Code, 11 U.S.C. §101 et seq.; all claims and causes of action relating directly or indirectly to the Encumbered Property, whether such claims or causes of action arise in Debtor's name or are acquired by Debtor, directly or indirectly, by subrogation or otherwise; all of Debtor's interest in all proceeds, products, replacement, additions, substitutions, renewals and accessions of and to the collateral described above; all oil and gas or other mineral royalties and bonuses, leases, and any other consideration of whatever form or nature received by or paid to or for the account of or benefit of Debtor or its agents or its employees from any and all sources arising from or attributable to Encumbered Property; all trademarks, copyrights, and rights to any trade names used in connection with the operation of the Encumbered Property; all accounts receivable, income, revenues, earnings, rents, maintenance payments, tolls, issues, awards, products and profits derived from or originating from the Encumbered Property; all tenements, hereditaments and rights of dower and courtesy, property, possession, claim or demand, either in law or in equity, of, in, and to, the Encumbered Property; and any other property and rights and assets which are, by the provisions of any agreement between Debtor and Secured Party required to be subject to the lien hereof; all the estate, right, title, interest and claim whatsoever, at law and in equity, which Debtor now has or may hereafter acquire in and to the aforementioned property and every part thereof, and any additional property and rights that may from time to time hereafter by installation in the Encumbered Property, or by writing of any kind, or otherwise, be subjected to the lien hereof by Debtor or by anyone on its behalf; the right, in the name of and on behalf of Debtor, to appear in and defend any action or proceeding to protect the interest of Secured Party in the Encumbered Property; all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and Condemnation Awards, and all right, title and interest of Debtor in and to all unearned premiums accrued, accruing and to accrue under any or all insurance policies obtained by Debtor; any and all warranties and guaranties relating to the Encumbered Property or any fixtures, equipment or personal property owned by Debtor and located on and/or used in connection with the Encumbered Property, whether now existing or hereafter arising; any and all permits, licenses, certificates of use and

EXHIBIT B

To UCC-1 Financing Statement

Debtor: Van Leeuwen Pocatello, LLC

Secured Party: Charter Oak Real Estate Fund, LLC

Legal Description of Real Property:

SW1/4NW1/4 and the W1/2SW1/4 of Section 24, Township 6 South, Range 35 East,
Boise Meridian, Bannock County, Idaho.

The address of said land is: 4976 W. Buckskin Road, Pocatello, Idaho 83201.

When Recorded return to:
Lynn Consentino
Attorney at Law
942 Chestnut Ridge Road
Millbrook, New York 12545

15-1

20528336

2A

**GENERAL ASSIGNMENT AND ASSIGNMENT OF WARRANTIES AND OTHER
CONTRACT RIGHTS**

THIS GENERAL ASSIGNMENT AND ASSIGNMENT OF WARRANTIES AND OTHER CONTRACT RIGHTS ("Assignment") made as of the 23rd day of December, 2005, is by VAN LEEUWEN POCATELLO, LLC a Delaware limited liability company ("Borrower"), whose address is 4976 W Buckskin Road, Pocatello ID 83201-9123, in favor CHARTER OAK REAL ESTATE FUND, LLC, a Delaware limited liability company ("Lender"), whose address is c/o Porter Capital Management, 38C Grove Street, Ridgefield, CT 06877.

WITNESSETH:

WHEREAS, Borrower has executed and delivered to Lender a Promissory Note dated of even date herewith (the "Note"), payable to the order of Lender, which Note evidences a loan made by Lender to Borrower; and

WHEREAS, the Note is secured by that certain Mortgage dated of even date herewith (the "Security Instrument"), from Borrower as mortgagor to Lender, as mortgagee, encumbering that certain property situated at 4976 W Buckskin Road, County of Bannock and State of Idaho as more particularly described on Exhibit A attached to the Security Instrument (the "Mortgaged Property"); and

WHEREAS, Lender and Borrower have entered into an Assignment of Leases and Rents dated the date hereof (the "Assignment of Leases") pursuant to which Borrower has granted to Lender a security interest in all of Borrower's right, title and interest in, to and under the Rents from the Mortgaged Property; and

WHEREAS, Borrower is desirous of further securing to Lender the repayment of the indebtedness evidenced by the Note and the performance of the other terms, covenants and agreements contained herein and in the Note, the Security Instrument, the Security Agreement (defined herein) and each other document evidencing, securing, guaranteeing and/or relating to the indebtedness evidenced by the Note (the Security Agreement and such other documents, as each of the foregoing may from time be amended or replaced, are herein sometimes collectively referred to as the "Loan Documents"); and

WHEREAS, pursuant to the terms of the Security Agreement ("Security Agreement"), Borrower is required to grant Lender a security interest in the Collateral (as hereinafter defined) to secure the obligations of Borrower under the Security Agreement and the other Loan Documents.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, Borrower agrees as follows:

1. Assignment and Grant of Security Interest. Borrower, in consideration of Security Agreement and in connection with the Mortgaged Property, and in order to secure payment and performance of the Obligations (as hereinafter defined), hereby assigns, gives, grants, bargains and transfers to Lender, grants a security interest in, and pledges to Lender, upon the terms and conditions of this Agreement, all of the following described property, rights and interests whether now owned or hereafter acquired (all of which are collectively referred to herein as the "Collateral"):

(a) all right, title and interest of Borrower to all contracts, permits, licenses, security deposits, payment and performance bonds pertaining to the Mortgaged Property, including but not limited to engineering, architectural, and construction contracts with respect to the Mortgaged Property,

(b) intentionally omitted;

(c) intentionally omitted;

(d) all right, title and interest of Borrower to all air rights or transfer development rights, zoning and subdivision rights and development agreements pertaining to the Mortgaged Property;

(e) (i) the Accounts and all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in the Accounts from time to time including, without limitation, all deposits or wire transfers made to the Accounts;

(ii) intentionally omitted;

(iii) all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing;

(f) All of Borrower's right, title and interest in and to the Mortgaged Property, including, without limitation, all Improvements (as such term is defined in the Security Agreement) and all fixtures and building materials of every kind and nature now or hereafter situated in, on, under, or about, or affixed or attached to the Land (as such term is defined in the Security Agreement) or such Improvements (as defined in the Security Agreement and which are not the property of any Lessee, utility or independent contractor), all additional lands and estates hereinafter acquired by Borrower for use in connection with the Land and the Improvements, and all lands and estates that may, from time to time, by supplemental mortgage or additional agreement be made subject to the lien of this Agreement and the reversion or reversions, remainder or remainders, in and to the Mortgaged Property, and all claims or demands either in law or in equity, in possession or expectancy, of, in and to the Mortgaged Property,

(g) All right, title and interest of Borrower to the "UCC Collateral" and Personal Property (as those terms are defined in the Security Agreement), including but

not limited to all machinery, apparatus, equipment, fittings, fixtures and other property of every kind and nature whatsoever, including, without limitation, all boilers, furnaces and other heating fixtures, all refrigerating, air conditioning, heating, plumbing, and ventilation systems, all elevators, escalators, vacuum cleaning systems, switchboards, sprinkler systems, fire prevention and extinguishing apparatus, all pumps, tanks, pipes, ducts, motors, engines, compressors, generators, gas, steam, electrical and lighting fittings, all vertical and horizontal communication interconnections (including, but not limited to, those via conduit, wave guide or ceramic duct), all furniture, furnishings, appliances, ovens, dishwashers, refrigerators, and all other kitchen equipment, window shades, draperies, and carpeting, all operating supplies and all building materials, equipment and goods now or hereafter delivered to the Mortgaged Property intended to be installed therein, together with all replacements and substitutions thereof and additions and accessions thereto in which Borrower now has, or at any time hereafter acquires, an interest and which are now or hereafter located or situated in or upon, or affixed or attached to, or used in connection with the enjoyment, occupancy and/or operation of, all or any portion of the Mortgaged Property,

(h) All Leases (as such term is defined in the Security Agreement) and the Rents (as such term is defined in the Security Agreement) thereunder (it being intended by Borrower that the assignment of the Leases and Rents herein and contained in the Assignment of Leases and Rents constitutes a present, absolute assignment and not an assignment for additional security only, provided that, subject to the terms of the Assignment of Leases and Rents, Borrower shall have a revocable license to (i) modify the Leases and exercise or refrain from exercising rights of landlord subject to the terms and conditions of the Security Agreement and the other Loan Documents, and (ii) collect and receive the Rents), and all right, title and interest of Borrower to all other present and future leases, subleases and licenses and any guarantees thereof, rents, issues and profits and additional rents now or at any time hereafter covering or affecting the use or occupancy of, or the conduct of any activity upon or in all or any portion of the Mortgaged Property, including any amendments, modifications, extensions or renewals thereof

(i) All of Borrower's right, title and interest in and to all and singular, easements, rights-of-way or use, air rights, development rights, water, water rights and powers, water courses, sewer rights, and other rights, privileges and appurtenances to the Mortgaged Property now or hereafter belonging or in anyway appertaining thereto, including, without limitation, any such right, title, interest, claim and demand in, to and under any agreement granting, conveying or creating, for the benefit of the Mortgaged Property, any easement, right or license in any way affecting other property and in, to and under any streets, ways, alleys, passages, vaults, gores or strips of land adjoining the Mortgaged Property, or any parcel thereof, and all land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Mortgaged Property, to the center line thereof,

(j) All Insurance Proceeds (as such term is defined in the Security Agreement) and all other proceeds of and any unearned premiums on any insurance

policies covering the Mortgaged 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 Mortgaged Property or any part thereof subject to and in accordance with the terms of the Security Agreement;

(k) All Condemnation Awards (as such term is defined in the Security Agreement) and other awards heretofore made or hereafter to be made for the taking by eminent domain of the whole or any part of the Mortgaged Property, or any estate or easement therein, including any awards for change of grade of streets, and all rights to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor and to apply such awards subject to and in accordance with the terms of the Security Agreement;

(l) All contracts of sale with other parties now or hereafter entered into in connection with the Mortgaged Property or any part thereof and all right, title and interest of Borrower thereunder, including, without limitation, cash or securities deposited thereunder to secure performance of buyers of their obligations thereunder and also including the right upon the happening of an event of default thereunder to enforce the obligations of such buyers and to receive and collect the amounts deposited thereunder and any and all further amounts which may be due under such contracts of sale or due upon the consummation of such contracts of sale;

(m) All right, title and interest of Borrower in and to all agreements, or contracts with other parties (such other parties referred to in this paragraph and in paragraph 1(l) collectively hereinafter referred to as the "Contracting Parties"), now or hereafter entered into for the sale, leasing, brokerage, development, management, maintenance, sale and/or operation of the Mortgaged Property (or any part thereof), including all moneys due and to become due thereunder, and all permits, licenses, approvals, bonds, insurance policies, agreements, contracts, consents, and plans, specifications designs and drawings relative to the construction, rehabilitation, refurbishing and/or operation of the Improvements (collectively, with the contracts described in Section 1(l), the "Contracts");

(n) All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Mortgaged Property as a result of tax certiorari or any applications or proceedings for assessment and/or tax reduction relating to the Mortgaged Property;

(o) All of Borrower's claims and rights to the payment of damages arising from any rejection of any Lease under or pursuant to the Bankruptcy Code, 11 U.S.C. §101 et seq;

(p) All of Borrower's interest in all claims and causes of action relating directly or indirectly to the Mortgaged Property, whether such claims or causes of action arise in Borrower's name or are acquired by Borrower, directly or indirectly, by subrogation or otherwise;

(q) All of Borrower's interest in all proceeds, products, replacement, additions, substitutions, renewals and accessions of and to the Collateral described in the preceding clauses (a) through (p);

(r) All oil and gas or other mineral royalties and bonuses, and any other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or its employees from any and all sources arising from or attributable to Mortgaged Property, all right, title and interest of Borrower to all trademarks, copyrights, and rights to any trade names used in connection with the operation of the Mortgaged Property, all accounts receivable, income, revenues, earnings, rents, maintenance payments, tolls, issues, awards, products and profits derived from or originating from the Mortgaged Property, all tenements, hereditaments and rights of dower and courtesy, property, possession, claim or demand, either in law or in equity, of, in, and to, the Mortgaged Property, and any other property and rights which are, by the provisions of any other Loan Document, required to be subject to the lien hereof, and all the estate, right, title, interest and claim whatsoever, at law and in equity, which Borrower now has or may hereafter acquire in and to the aforementioned property and every part thereof, and any additional property and rights that may from time to time hereafter by installation in the Mortgaged Property, or by writing of any kind, or otherwise, be subjected to the lien hereof by Borrower or by anyone on its behalf; and

(s) The right, in the name of and on behalf of Borrower, to appear in and defend any action or proceeding to protect the interest of Lender in the Mortgaged Property;

(t) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and Condemnation Awards, and all right, title and interest of Borrower in and to all unearned premiums accrued, accruing and to accrue under any or all insurance policies obtained by Borrower;

(u) any and all warranties and guaranties relating to the Mortgaged Property or any fixtures, equipment or personal property owned by Borrower and located on and/or used in connection with the Mortgaged Property, whether now existing or hereafter arising;

(v) any and all permits, licenses, certificates of use and occupancy (or their equivalent), contracts, applications and approvals issued by any governmental authority or agency, security deposits, and payment and performance bonds relating to the construction, ownership, operation and/or use of the Mortgaged Property, whether now existing or hereafter arising, and

(ii)

(w) To the extent not covered by subparagraphs (a) through (t) above, all Proceeds (as defined in the Uniform Commercial Code of the applicable jurisdiction ("UCC")) of any or all of the foregoing.

For purposes of this Agreement, the terms (i) "Obligations" shall mean all indebtedness, obligations and liabilities of Borrower arising under the Note, the Security Agreement and any renewals, extensions, amendments or modifications thereof, including, without limitation, all breakage costs and indemnification obligations under the Note, or any other Loan Document and any and all reasonable fees, costs or expenses incurred by Lender, pursuant to the Security Agreement and other Loan Documents, including without limitation, reasonable fees, costs and expenses incurred in connection with the administration (other than salaries of Lender's employees and other overhead expenses) and the enforcement of the Security Agreement and other Loan Documents and in connection with the collection of the Loan, whether prior to or after the institution of any action against Borrower and (ii) "Accounts" shall mean accounts designated with Lender or within a third-party financial institution to maintain real estate tax and insurance premium escrow payments.

2. Security for Obligations. This Assignment is given for the purpose of securing the payment and performance by Borrower of the Obligations.

3. Absolute Assignment. For the purposes of and subject to the terms set forth herein, this Assignment is an absolute, unconditional and presently effective assignment from Borrower to Lender of all of Borrower's rights under, in and to the Collateral, subject to the terms of the Security Agreement and other Loan Documents.

4. Borrower's Representations and Warranties. Borrower represents, warrants and covenants to and with Lender that (a) Borrower shall not make any changes in or amendments to any of the Collateral without the prior written consent of Lender; (b) Borrower shall not tender or accept a surrender or cancellation of any of the Collateral without the prior written consent of Lender where such surrender or cancellation would materially or adversely affect the Mortgaged Property or Lender's interest therein or Lender's security or where such surrender or cancellation would violate the terms of any Loan Document; (c) Borrower shall promptly provide to Lender copies of all changes in or amendments to the Contracts, and Borrower shall promptly notify Lender in writing of any surrender or cancellation of a Contracts; (d) except as otherwise expressly permitted by the terms of the Security Agreement, Borrower has not assigned or granted and will not assign or grant a security interest in any of the Collateral to anyone other than Lender which has not been heretofore released; (e) Borrower's interest in the Collateral is not subject to any claim, setoff, lien, deduction or encumbrance of any nature (other than the encumbrance created hereby, the encumbrance created by the Security Agreement, and those subordinate encumbrances, if any, created in connection with any junior encumbrances on the Mortgaged Property expressly permitted by the terms of the Security Agreement); (f) Borrower has full power and authority to make this Assignment; (g) Borrower shall make all required payments and otherwise perform its obligations under the Collateral; (h) Borrower shall give immediate notice to Lender of any notice of default served upon Borrower with respect to its obligations under any of the Collateral and, at the sole cost and expense of Borrower, shall enforce or secure the performance of each and every material obligation of any

Contracting Party to be kept or performed under the Contracts; and (i) there are no defaults, or events which with the giving of notice or passage of time, or both, would constitute a default, hereunder, under the Security Agreement or any other Loan Document.

5. Rights of Secured Party. Lender, shall have with respect to the Collateral, in addition to the rights and remedies herein set forth, all of the rights and remedies available to a secured party under the UCC, as if such rights and remedies were fully set forth herein.

6. Financing Statement, Further Assurances. Simultaneously herewith, Borrower shall execute and deliver to Lender for filing a financing statement or statements, control agreement, or such other instruments and agreements as Lender may require, in connection with the Collateral, all in the form required by Lender to properly perfect Lender's security interest therein, and Borrower hereby authorizes Lender to prepare such financing statements from time to time without further authorization by Borrower to perfect and maintain perfection of the security interests granted herein, and Borrower hereby authorizes Lender to prepare such financing statements from time to time without further authorization by Borrower to perfect and maintain perfection of the security interests granted herein. Borrower agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby (including, without limitation, any security interest in and to any Permitted Investments) or to enable Lender to exercise and enforce its rights and remedies hereunder with respect to any Collateral.

7. Borrower's Duties. Neither this Assignment nor any action or actions on the part of Lender (including, without limitation, any assumption by Lender of the rights and obligations under the Collateral pursuant to the provisions of Paragraph 8 hereof) shall relieve Borrower of any obligation under the Collateral, and Borrower shall continue to be primarily liable for all obligations thereunder. Borrower hereby agreeing to perform each and all of its obligations under the Collateral. Borrower hereby protects, defends, indemnifies and holds Lender free and harmless from and against any and all loss, cost, liability, or expense (including, but not limited to, reasonable attorneys' fees and accountants' fees) resulting from any failure of Borrower to so perform under the Collateral.

8. Default. It shall be an Event of Default hereunder upon any failure by Borrower in the performance or observance of any covenant or condition hereof and the continuance of such failure for thirty (30) days (or such shorter period of time provided under any other Loan Document) after notice of such default from Lender (provided that no such notice shall be required if not required under any other Loan Document) within which to cure the same. Upon an Event of Default hereunder, the Security Agreement or under any of the other Loan Documents, Lender may, but shall not be obligated to, assume any or all of the obligations of Borrower under any or all of the Contracts and/or exercise the rights, benefits and privileges of Borrower under any or all of the Collateral.

9. Remedies Upon Default. (i) Upon the occurrence of an Event of Default, Lender, may:

(a) without notice to Borrower, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Collateral or the Utah Collateral (as defined herein) against the Obligations or any part thereof,

(b) in its sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under this Agreement, and/or the Utah General Assignment (as defined herein), and/or as a secured party under the UCC;

(c) demand, collect, take possession of, receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Collateral or the Utah Collateral (or any portion thereof) as Lender may determine in its sole discretion; and

(d) take any other action under the Security Instrument or the Utah Security Agreement (as defined herein) or any of the other Loan Documents or the Utah Loan Documents or under any applicable law.

(f) give notice to any or all of the Contracting Parties, either requiring the Contracting Party to continue performance under its Contract or, alternatively, terminating the Contract. This Assignment shall constitute a direction to and full authority to the Contracting Parties under the Contracts to act at Lender's written direction and otherwise perform on Lender's behalf under the Contracts, without proof of the event of default relied upon. The Contracting Parties shall be entitled to rely upon written notice from Lender that Lender has assumed all of the rights and obligations of Borrower under the applicable Contract without any inquiry into whether Borrower is in default hereunder or under the Security Agreement or any of the other Loan Documents. Such assumption of a Contract by Lender shall be evidenced by written notice from Lender to the applicable Contracting Party. Under no circumstances shall Lender be deemed by any party to have assumed Borrower's rights and obligations under a Contract unless and until such written notice is delivered to the Contracting Party in accordance with the foregoing provision.

(ii) Lender shall have the right at any time, but shall have no obligation, to take in its name or in the name of Borrower, or otherwise, such action as Lender may at any time or from time to time determine to be reasonably necessary to cure any default under the Collateral or the Utah Collateral or to protect the rights of Borrower or Lender thereunder. Lender shall incur no liability to Borrower if any action taken by Lender or in Lender's behalf in good faith pursuant to this Assignment shall prove to be in whole or in part inadequate or invalid. Borrower hereby protects, defends, indemnifies and holds Lender and its affiliated entities and each of their directors, members, shareholders, officers, employees, agents, representatives, consultants, and any other party with authority to act on behalf of Lender or its affiliated entities and any of their heirs, representatives, successors and/or assigns, free and harmless from and against any and all loss, cost, liability, or expense (including, but not limited to, attorneys fees and accountants' fees) to which Lender may be exposed, or that Lender may incur, in exercising any of its rights under this Assignment, unless caused by the intentional misconduct or gross negligence of Lender.

10. Power of Attorney. Borrower hereby irrevocably constitutes and appoints Lender its true and lawful attorney-in-fact in Borrower's name or in Lender's name, or otherwise, to, from and after the occurrence of an Event of Default by Borrower hereunder or under the Security Agreement or any of the other Loan Documents to enforce all of the rights of Borrower under the Collateral. It is hereby recognized that the power of attorney herein granted is coupled with an interest and shall not be revocable so long as any sums are outstanding under the loan evidenced by the Note.

11. Contracts. (i) Borrower shall deliver to Lender a true, correct and complete copy of each Contract promptly after it has been executed and delivered by the parties thereto.

(ii) Notwithstanding anything to the contrary contained herein, Lender shall have no right under this Assignment to assume any Contract or to exercise any rights, benefits or privileges of Borrower under any of the other Collateral until Borrower shall be in default under the terms of this Assignment or the terms of the Security Agreement or any of the other Loan Documents and such default shall not have been cured within any applicable grace or cure period.

(iii) Borrower shall promptly obtain and deliver to Lender consents to the terms of this Assignment, in forms acceptable to Lender, from such Contracting Parties as Lender may request from time to time.

12. Rights and Duties of Lender. (i) Borrower agrees that Lender shall not have any duty as to any Collateral in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any person or otherwise with respect thereto. Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which Lender accords its own property, it being understood that Lender shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in value thereof, by reason of the act or omission of Lender or any of its affiliates, agents, employees or bailees, except that Lender shall be liable to the extent that such loss or damage results from Lender's gross negligence or willful misconduct. Lender shall not have any liability for any loss resulting from the investment of funds in Permitted Investments in accordance with the terms and conditions of this Agreement.

(ii) Lender shall be responsible for the performance only of such duties as are specifically set forth herein, and no duty or covenant shall be implied from any provision hereof. Lender shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Borrower shall indemnify and hold Lender and its employees and officers harmless from and against any loss, liability, claims, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) arising out of or incurred Lender in connection with the transactions contemplated hereby, except for Lender's liability to the extent that such loss or damage results from Lender's gross negligence or willful misconduct. The provisions of this Section 12 shall survive the termination of this Agreement.

13. Successors and Assigns. This Agreement shall be binding upon the Borrower and its successors and assigns and shall inure to the benefit of Lender and its successors and assigns and any purchaser of any interest of Lender in the Security Agreement and the other Loan Documents.

14. Further Assurances. Borrower covenants and agrees to make, execute and deliver all such further or additional instruments as may be necessary to satisfy the intents and purposes hereof and to perfect the assignment made hereby.

15. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of Idaho, without regard to principles of conflict of laws.

16. Consent to Jurisdiction. Borrower hereby irrevocably submits to the jurisdiction of any Idaho State or Federal court sitting in the City and County of Bannock over any suit, action or proceeding arising out of or relating to this Agreement, the Security Agreement or any other Loan Documents. Borrower hereby irrevocably waives, to the fullest extent permitted or not prohibited by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby agrees that a final judgment in any such suit, action or proceeding brought in such a court, after all appropriate appeals, shall be conclusive and binding upon it.

17. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery to the intended addressee at its address set forth on the first page of this Agreement or at such other address as may be designated by such party as herein provided, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth on the first page of this Agreement or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America. All notices to Lender shall also be sent pursuant to the provisions of this paragraph to: Lynn P. Consentino, Attorney at Law, 942 Chestnut Ridge Road, Millbrook, New York 12545. All Notices to Borrower shall also be sent pursuant to this paragraph to Paracorp 5481 Kendall Street, Boise Idaho, 83706.

18. Severability. Remedies Cumulative. Every provision of this Agreement is intended to be severable, and if any term or provision thereof shall be invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions thereof shall not be affected or impaired thereby, and any invalidity, illegality or unenforceability in any jurisdiction shall, at the option of Lender, not affect the validity, legality or enforceability of any such term or provision in any other jurisdiction. Each and every right, remedy and power granted to Lender or allowed to Lender by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Lender at any time and from time to time.

19. Sale of Loan. Lender may sell, transfer and deliver the Security Agreement and the other Loan Documents to one or more investors in the secondary mortgage market. In connection with such sale, Lender may retain or assign responsibility for servicing the loan evidenced by the Note or may delegate some or all of such responsibility and/or obligations to a servicer, including, but not limited to, any subservicer or master servicer, on behalf of the investors. All references to Lender herein shall refer to and include, without limitation, any such servicer, to the extent applicable.

20. No Waiver. The obligations of Borrower are in addition to, and not in diminution of, the obligations of the Borrower under the Security Agreement and any other Loan Document. No failure on the part of Lender to exercise, and no delay in exercising, any right, remedy or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise by Lender of any right, remedy or power hereunder or under any other Loan Document preclude any other or future exercise thereof or the exercise of any other right, remedy or power. The liability of the Borrower under this Agreement shall not be limited or impaired by reason of any amendment, waiver or modification of the provisions of any Loan Document, the release or substitution of any collateral securing the Loans, any transfer of the Mortgage Property or any part thereof to Lender or its nominee, any failure on the part of Lender to record or otherwise perfect any lien or security interest in any such collateral, any sale or transfer of the Mortgaged Property or any part thereof or any determination that any Loan Document is illegal or unenforceable.

21. Assignment. The rights and powers under this Agreement may be assigned by Lender in its sole and absolute discretion.

22. WAIVER OF TRIAL BY JURY. BORROWER HEREBY KNOWINGLY, UNCONDITIONALLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY, TO THE FULLEST EXTENT PERMITTED BY LAW, WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY HERETO. FURTHER, BORROWER CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF LENDER, OR COUNSEL TO LENDER, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE

EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. BORROWER HEREBY ACKNOWLEDGES THAT LENDER HAS BEEN INDUCED TO ACCEPT THIS AGREEMENT BY, INTER ALIA, THE PROVISIONS OF THIS SECTION.

23. Appointment of Agent of Service of Process. Borrower hereby designates Michael J. Van Leeuwen ("Designee") as its Agent and attorney-in-fact to accept service of process in any action or proceeding arising under or in connection with this Agreement, the Security Agreement and the other Loan Documents. The foregoing designation is irrevocable and coupled with an interest. Borrower agrees that service made upon Designee in any lawful manner shall constitute proper and lawful service upon Borrower. Nothing in the Security Agreement or in any of the other Loan Documents or any modification, waiver, or amendment thereto, shall affect the right of Lender to serve process in any manner permitted by law or limit the right of the parties to bring proceedings against each other in the courts of any jurisdiction or jurisdictions.

24. Amendments. This Agreement may not be amended, and compliance with its terms may not be waived, orally or by course of dealing, but only by a writing signed by an officer of Lender and Borrower.

25. Entire Agreement. This Agreement contains the entire agreement and understanding between Lender and Borrower with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof.

26. Expenses. If any suit or proceeding is instituted by Lender for the enforcement of any of the provisions of this Agreement, Borrower shall pay to Lender on demand all reasonable expenses of Lender (including reasonable attorneys fees and disbursements) in connection with such suit or proceeding, and until such expenses are paid, the same shall accrue interest at the Post-Default Rate (as such term is defined in the Note). The obligations of Borrower under this paragraph shall survive any termination of the Borrower's other obligations under this Agreement.

27. Counterparts. This Agreement, if executed by more than one party, may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. It shall not be necessary in making proof of any such counterpart to produce or account for more than one counterpart signed by the party to be charged. Any such counterpart and any amendment, modification, consent or waiver in respect thereof transmitted by fax shall be deemed to be an originally executed counterpart. Notwithstanding the foregoing in the event of a final judicial determination is made that Lender acted unreasonably or unreasonably delayed actions in any case, the Borrower shall not be obligated to pay Lender's attorneys' fees and expenses.

28. Cross Default/Cross Collateral.

A. Notwithstanding anything to the contrary set forth herein or in any of the other Loan Documents or in any of the Utah Loan Documents, (i) a Default, or an event, which with

the giving of notice, the passage of time, or both, would constitute an Event of Default, under this Assignment or any of the other Loan Documents shall be and be deemed to be a Default under the Idaho Loan Documents, (ii) an Event of Default under this Assignment or any of the other Loan Documents shall be and be deemed to be an Event of Default under the Idaho Loan Documents, (iii) a Default, or an event, which with the giving of notice, the passage of time, or both, would constitute an Event of Default, under any of the Utah Loan Documents shall be and be deemed to be an Event of Default under this Assignment and the other Loan Documents, and (iv) an Event of Default under any of the Utah Loan Documents shall be and be deemed to be an Event of Default under this Assignment and the other Loan Documents.

B. Upon the occurrence of Default or an Event of Default under this Assignment, the Assignee shall have the right, at its sole election, to exercise any and all rights under this Assignment, the Loan Documents, and/or the Utah Loan Documents, or any of the same, either individually, together or in any order, as determined by the Assignee in its sole discretion.

29. Recourse.

All of the terms and provisions of this Assignment are recourse obligations of the Borrower and not restricted by any limitation on personal liability provided in any of the other Loan Documents or limited to any collateral securing any of the obligations under this Assignment, it being the intent of the Lender to create separate obligations of the Borrower hereunder which can be enforced against the Borrower without regard to the existence of the other Loan Documents or the liens or security interests created therein.

30. Conflicts.

In case of a conflict between any provision of this Assignment, the Security Agreement and any provision of the other Loan Documents, the provision set forth in the Security Agreement shall prevail and be controlling.

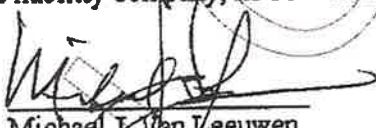
*** SIGNATURES ON FOLLOWING PAGE***

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

BORROWER:

VAN LEEUWEN POCATELLO, LLC, a Delaware limited liability company

By: Van Leeuwen Management, LLC, a Delaware limited liability company, its sole and managing member

By: 
Michael J. Van Leeuwen
Managing Member

STATE OF Utah
County of Salt Lake

On this 23rd day of December 2005, before me, Michelle Liechty, a Notary Public, personally appeared Michael J. Van Leeuwen, known or identified to me to be the sole member of Van Leeuwen Management, LLC, the sole member of Van Leeuwen Pocatello, LLC, the person whose name is subscribed to the foregoing instrument in such capacity, and acknowledged to me that he executed the same on behalf of Van Leeuwen Management, LLC as sole member of Van Leeuwen Pocatello, LLC, and acknowledged that Van Leeuwen Pocatello, LLC 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
Residing at
Comm. Expires


Centerville, Utah
07-17-2008

15-15

20528336

**EXHIBIT A
LEGAL DESCRIPTION**

SW1/4NW1/4 and the W1/2SW1/4 of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho.

The address of said land is: 4976 W. Buckskin Road, Pocatello, Idaho 83201.

20528336

RECORDED AT REQUEST OF

FEE 45⁰⁰ DEPUTY mw
ALLIANCE TITLE & ESCROW

2005 DEC 29 PM 4 25

OFFICIAL RECORD BK# 878
RECORDER
BANNOCK COUNTY IDAHO

461
20528334

20528334

**Recording Requested By and
When Recorded Mail To:**

Lynn Consentino
Attorney at Law
942 Chestnut Ridge Road
Millbrook, New York 12545

RECORDED AT REQUEST OF

FEE 138⁰⁰ DEPUTY mw

ALLIANCE TITLE & ESCROW

2005 DEC 29 PM 4 24

OFFICIAL RECORD BK# 878

RECORDER

BANNOCK COUNTY IDAHO

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Date: December 23, 2005

**MORTGAGE,
Assignment of Leases and Rents,
Security Agreement and Fixture Filing**

made by

VAN LEEUWEN POCATELLO, LLC,

hereinafter referred to as "Mortgagor"

to

CHARTER OAK REAL ESTATE FUND, LLC

hereinafter referred to as "Mortgagee"

Principal Amount Secured: \$5,000,000.00

Maturity Date: December 22, 2006

**THIS MORTGAGE IS INTENDED ALSO TO BE A FIXTURES, TIMBER AND AS-EXTRACTED COLLATERAL
FILING AND IS TO BE INDEXED AS SUCH IN THE REAL ESTATE RECORDS.**

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THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Instrument") is made, granted, and given effective as of the 22nd day of December 2005, by Van Leeuwen Pocatello, LLC, a Delaware limited liability company ("Mortgagor" and the "Debtor"), with an address at 4976 W. Buckskin Road, Pocatello, Idaho 83201, to Charter Oak Real Estate Fund, LLC, a Delaware limited liability company ("Mortgagee" and the "Secured Party"), whose address is c/o Porter Capital Management, 38C Grove Street, Ridgefield CT 06877.

WITNESSETH:

Mortgagor and Mortgagee have entered into a certain Security Agreement dated of even date herewith ("Loan Agreement"), pursuant to which Mortgagee has made a loan to Mortgagor in the principal amount of **Two Million, Four Hundred Thousand and no/100 Dollars (\$2,400,000.00)** (the "Loan"), which Loan is being made for the purpose of acquiring and developing the Land (defined below);

There is one house existing on the Land, which is intended to be divided with ten acres from the remaining acreage (the "House Parcel") and sold to Michael J. Van Leeuwen ("Van Leeuwen") within ninety (90) days from the date hereof. The remaining Land will be further subdivided into eighteen (18) additional residential lots of approximately five acres each ("Lots");

Concurrently with the Loan, Mortgagee has entered into a second Security Agreement (the "Utah Loan Agreement"), pursuant to which Mortgagee has made a second loan in the amount of **Two Million, Six Hundred Thousand and no/100 Dollars (\$2,600,000.00)** (the "Utah Loan") to Van Leeuwen, an individual. Van Leeuwen is a principal of Mortgagor;

Van Leeuwen is a guarantor of the Loan and Mortgagor is a guarantor of the Utah Loan;

As a condition to making the Loan, Mortgagee has required, in addition to other security, that Mortgagor grant to Mortgagee a lien on the Land and improvements located and to be located thereon and that Van Leeuwen grant to Mortgagee a second lien on certain real property located in Salt Lake City, Utah (the "Utah Property"), both of which mortgage liens will secure the payment and performance under both the Loan and the Utah Loan;

NOW THEREFORE, in consideration of the Recitals, which are incorporated herein, the indebtedness herein recited and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby irrevocably MORTGAGES, GRANTS, BARGAINS, SELLS AND CONVEYS unto Mortgagee, its successors and assigns forever, all of Mortgagor's rights, title and interest in and to, and hereby assigns and transfers unto Mortgagee, with a right of entry, all of the following described property (collectively referred to as the "Encumbered Property"):

A. The land more particularly described on **Exhibit A** attached hereto and incorporated into this Instrument by reference ("Land");

B. All and singular the easements, rights-of-way, water and water rights of every kind and nature (including but not limited to claims, decrees, applications, permits, licenses, storage rights, ditches and ditch rights, riparian and littoral rights, and all shares of stock and memberships in any canal or irrigation company), rights to timber to-be-cut, minerals and mineral rights (including oil and gas rights) and other as-extracted collateral, geothermal rights, rights of development, use or occupancy, privileges, franchises, tenements, appendages, hereditaments and appurtenances and all other rights belonging or in any way appertaining to the Land, and all right, title, and interest of Mortgagor in and to all streets, roads, railways and public places, opened or postponed, and all easements and rights-of-way, public or private, now or hereafter used in connection with, or belonging or appertaining to the Land, and all of the estate, right, title, interest, claim, and demand whatsoever of Mortgagor in and to the Land and all of the foregoing described interests and rights, either at law or in equity, in possession or in expectancy, now or hereafter acquired (collectively, the **"Real Property"**);

C. All structures, buildings, and improvements of every kind and description now or at any time hereafter located on the Real Property including but not limited to houses, fences, garages, sheds, irrigation systems including, without limitation, equipment, pumps, wells, and additions to, substitutions for, changes in or replacements of the whole or any part thereof, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof (hereinafter referred to as the **"Improvements"**), including, without limitation, all equipment, apparatus, machinery, fixtures, fittings and appliances, and any additions to, substitutions for, changes in, or replacements of the whole or any part thereof, including such of the foregoing as may be used in connection with the generating or distributing of air, water, heat, electricity, light, fuel or refrigeration or for ventilating or sanitary purposes or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the use, enjoyment, occupancy, or operation of the Land or Improvements or any portion thereof;

D. All fixtures, chattels, business machinery, appliances, equipment and articles of personal property of every kind and nature whatsoever and any additions to, substitutions for, changes in or replacements of the whole or any part thereof (hereinafter referred to as the **"Personal Property"**) including, without limitation, all wall-safes, built-in furniture and installations, shelving, partitions, door-stops, vaults, elevators, dumb-waiters, awnings, window shades, blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm systems, drapery rods and brackets, screens, linoleum, carpets, plumbing, refrigerators, coolers, freezers, racks, heating units, stoves, ovens, water heaters, incinerators, furniture and furnishings, desks, shelving, tables, chairs, wall decorations, communication systems, security systems, and computer systems (including embedded software), printers, photocopy and facsimile machines, registers, irrigation equipment (including but not limited to pipes and piping, hand lines, drip lines, pivots, sprinklers, and all ancillary equipment), all specifically designed installations and furnishings and all said articles of property, the specific enumerations herein not excluding the general, now or at any time hereafter affixed to or attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy, development, construction or operation of the

Real Property or the Improvements or any portion thereof and owned by Mortgagor or in which Mortgagor now has or hereafter acquires an interest, and all building materials, supplies, equipment, and personal property described above now or hereafter delivered to the Real Property and intended to be installed or placed in or about the Real Property or Improvements;

E. All of the Rents (as defined in the Loan Agreement), and including rents, royalties, issues, profits, revenue, income and other benefits of the Encumbered Property, or arising from the use or enjoyment of all or of any part thereof or from any lease, contract or agreement pertaining thereto ("Rents"), and all right, title and interest of Mortgagor in and to all Leases (as defined in the Loan Agreement), and including all leases and rental contracts, written or verbal, subleases, occupancy agreements, license agreements, operating agreements or concessions affecting any of the Encumbered Property which Mortgagor may at any time enter into with respect to the Real Property or Improvements, as such Leases may be modified, extended and renewed (collectively called "Leases"), and all right, title and interest of Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligation thereunder, whether such cash or securities are to be held until the expiration of the terms of said leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of said terms ("Deposits");

F. All present and future right, title and interest of Mortgagor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC), and all Collateral and Contracts (as such terms are defined in the Loan Agreement) and including agreements, obligations, rights and written materials, in each case whether existing now or in the future, relating to or otherwise arising in connection with or derived from the Real Property or Improvements or any other part of the Encumbered Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the Real Property or Improvements or any other part of the Encumbered Property, including, without limitation: (i) permits, approvals and other authorizations of Governmental Authorities (as defined in Section 1.18 hereof), zoning approvals, building permits, plat approvals, development approvals and agreements, and other agreements, (ii) agreements with suppliers, project managers, supervisors, contractors, architects, engineers, sales agents, leasing agents, consultants, and property managers, and all of Mortgagor's rights, title and interest in and to Plats and Surveys as recorded and as may be recorded pursuant to law or agreement; (iii) takeout refinancing and permanent loan commitments, (iv) warranties, guaranties, indemnities and insurance policies (whether or not required to be carried by Mortgagor pursuant to the terms hereof), together with insurance payments and unearned insurance premiums, (v) claims, demands, awards, settlements and other payments arising or resulting from or otherwise relating to any insurance (whether or not Mortgagee is named as a loss payee of such insurance) or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Real Property, (vi) license agreements, lease agreements, easement and access agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits, purchase deposits and other amounts paid to or deposited

with Mortgagor or placed into escrow pursuant to any such agreements, (vii) reserves, deposits, security deposits, bonds, performance bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, (viii) membership agreements and related dues, fees, assessments, and deposits and other revenues relating to parking or other facilities, (ix) contracts for the sale of portions of the Real Property or Improvements, existing and to be entered into in the future; (x) all trade names, trademarks, logos, copyrights, goodwill and books and records relating to or used in connection with the operation of the Encumbered Property or the equipment or any part thereof, (xi) all general intangibles related to the operation of the Improvements now existing or hereafter arising, and (xii) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (collectively, the "Intangibles");

G. All accounts, accounts receivable, deposit accounts, chattel paper (whether electronic or tangible), instruments, promissory notes, documents, general intangibles, payment intangibles, letter of credit rights, insurance receivables and other rights to payment (collectively called "Rights to Payment"), now existing or at any time hereafter, and prior to the termination hereof, arising (whether they arise from the sale, lease or other disposition of property or inventory or from performance of contracts for service, manufacture, construction, repair or otherwise or from any other source whatsoever), including all securities, guaranties, warranties, indemnity agreements, insurance policies, supporting obligations and other agreements pertaining to the same or the property described therein, and in all property and goods returned by or repossessed from Mortgagor's customers;

H. All inventory, goods held for sale or lease or to be furnished under contracts for service, goods so leased or furnished, raw materials, component parts and embedded software, work in process or materials used or consumed in Mortgagor's business and all warehouse receipts, bills of lading and other documents evidencing goods owned or acquired by Mortgagor, and all goods covered thereby, now or at any time hereafter, and prior to the termination hereof, owned or acquired by Mortgagor, wherever located, and all products thereof (collectively called "Inventory"), whether in the possession of Mortgagor, warehousemen, bailees or any other person, or in process of delivery, and whether located at Mortgagor's places of business or elsewhere (with all Rights to Payment and Inventory referred to herein collectively as the "Payments Collateral"), together with whatever is receivable or received when any of the Payments Collateral or proceeds thereof are sold, leased, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation, all Rights to Payment, including returned premiums, with respect to any insurance relating to any of the foregoing, and all Rights to Payment with respect to any claim, cause of action, Lien (including, but not limited to, materialmen's liens) and other rights affecting or relating to any of the foregoing;

I. Any and all monies now or subsequently on deposit for the payment of real estate taxes or special assessments against the Encumbered Property or for the payment of premiums on insurance policies covering the foregoing property or otherwise on deposit with or held by Mortgagee as provided in this Instrument; all capital, operating, reserve or similar accounts held

by or on behalf of Mortgagor and related to the operation of the Encumbered Property, whether now existing or hereafter arising and all monies held in any of the foregoing accounts and any certificates or instruments related to or evidencing such accounts;

J. All proceeds (including claims and demands therefor) with respect to the conversion, voluntary or involuntary, of the Real Property or any of the Encumbered Property into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

K. All variances, licenses and permits for operation of any business on the Real Property, development rights or credits, air rights, and all other intangible property and rights relating to the Real Property;

AND MORTGAGOR FURTHER GRANTS to Mortgagee a security interest in and to the items of Encumbered Property in which security interests may be granted under the Uniform Commercial Code, as such may be amended from time to time, as in effect in the State of Idaho (the "UCC" and such personal property, the "UCC Collateral"),

FOR THE PURPOSE OF SECURING, in such order of priority as Mortgagee may elect, all Loan Obligations as defined in the Loan Agreement, and all of the following (hereinafter referred to as the "Secured Obligations"):

1. The Loan Agreement between Mortgagor and Mortgagee and all of Mortgagor's indebtedness and obligations thereunder and including but not limited to all current and future advances made pursuant thereto, whenever made, whether evidenced by a promissory note or otherwise;

2. That certain Promissory Note given by Mortgagor pursuant to the Loan Agreement, in the principal amount of Two Million Four Hundred Thousand Dollars (\$2,400,000.00) (the "Note") and payment of all sums with interest thereon at the rate of interest provided in the Note;

3. Due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement contained in the Loan Agreement, the Note, this Instrument, and all other Loan Documents as defined in the Loan Agreement, including but not limited to documents, instruments, deeds of trust, mortgages, security agreements, and other agreements heretofore or hereafter executed by Mortgagor having reference to or arising out of or executed in connection with the indebtedness represented by the Loan Agreement (collectively, the "Loan Documents"), and any and all modifications, amendments, extensions or renewals thereof, whether hereafter evidenced by the Loan Documents or otherwise;

4. That certain Promissory Note given by Van Leeuwen to Mortgagee in the principal amount of Two Million Six Hundred Thousand Dollars (\$2,600,000.00) (the "Utah Note") and payment of all sums with interest thereon at the rate of interest provided in the Utah Note;

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5. Due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement contained in the Utah Loan Agreement, the Utah Note, and all other documents, instruments, deeds of trust, mortgages, security agreements, and other agreements heretofore or hereafter executed by Van Leeuwen having reference to or arising out of or executed in connection with the indebtedness represented by the Utah Loan Agreement, (collectively, the "Utah Loan Documents") and any and all modifications, amendments, extensions or renewals thereof, whether hereafter evidenced by the Utah Loan Documents or otherwise; and

6. Due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement of Mortgagor contained herein.

Without limiting any of the foregoing, the Secured Obligations include the principal indebtedness of \$5,000,000.00, being the principal indebtedness to Mortgagee under the Note and Utah Note, with \$2,400,000.00 of the secured amount allocated to the Property and \$2,600,000.00 of the secured amount allocated to the Utah Property.

The Note and all obligations hereunder are full recourse obligations of Mortgagor. The Note and indebtedness thereunder, and the payment terms, balance due and maturity date thereof, may be indexed, adjusted, modified, renewed, extended, or renegotiated. The initial maturity date under the Note is December 22, 2006, and may be extended on the terms and conditions contained in the Loan Agreement.

Notwithstanding any other provision in this Instrument, this Instrument shall not secure any guaranty given by Mortgagor or by Van Leeuwen or any third party of the Secured Obligations or any separate environmental indemnity agreement given by Mortgagor or Van Leeuwen or any other person in favor of Mortgagee. Mortgagor's rights and remedies under any such guarantees and environmental indemnities may be exercised separately from and regardless of whether an action is also taken by Mortgagor pursuant to this Instrument or any other Secured Obligation and shall survive any foreclosure of this Instrument.

ARTICLE I. COVENANTS AND REPRESENTATIONS OF MORTGAGOR

Mortgagor hereby represents, warrants, covenants and agrees as follows:

1.1 **Performance of Secured Obligations.** Mortgagor shall promptly pay, when due all sums payable by Mortgagor under the Note, the Loan Agreement and other Loan Documents and shall further pay and perform fully and in a timely manner all Secured Obligations. All sums payable by Mortgagor pursuant to the Loan Documents shall be paid without demand, counterclaim, offset, deduction or defense. Mortgagor waives all rights now or hereinafter conferred by statute or otherwise to any such demand, counterclaim, setoff, deduction or defense.

Mortgagor will not cause, permit, or suffer any Event of Default as defined hereunder or under any of the other Loan Documents.

1.2 Status of Real Property.

(a) Mortgagor has good and marketable title to the Encumbered Property subject to no Lien (as defined in the Loan Agreement) or any other charge or encumbrance except for Mortgagee's Liens, Permitted Liens (as defined in the Loan Agreement) and this Instrument is and will remain a valid and enforceable first position lien on the Encumbered Property. All Impositions, taxes and other assessments of every kind and nature owing on the Encumbered Property have been paid in full and are current. Mortgagor has full power and lawful authority to grant, assign, transfer, and mortgage its interest in the Encumbered Property in the manner and form hereby done or intended. Mortgagor's execution of this Instrument shall not violate any contract, order, judgment or decree by which Mortgagor or its property is bound. It is not necessary for Mortgagor to seek or obtain the approval of any person, court, Governmental Authority, or entity whatsoever before executing this Instrument or pledging the Encumbered Property to Mortgagee as provided for herein. Mortgagor will preserve its interest in and title to the Encumbered Property and will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Mortgagor shall promptly and completely observe, perform, and discharge each and every obligation, covenant, and agreement affecting the Encumbered Property, whether the same is prior and superior or subject and subordinate hereto. As used herein, the term "Mortgagee's Liens" shall mean the Liens created by this Instrument, any other Loan Document, and any other document or instrument that serves directly or indirectly to secure the obligations of Mortgagor to Mortgagee.

(b) Except for approval of a subdivision plat by the Bannock County Planning and Zoning officials ("County Zoning"), Mortgagor holds, or there are available to the Land, all rights necessary or required to subdivide the Land into the Lots of approximately five acres for residential development, and to develop houses thereon, including but not limited to adequate water rights, fire protection services, access or access rights, utilities and easements for utilities, septic system availability, roads, and other systems and infrastructure required for the development of the Land as contemplated. There is no reason why Mortgagor should not be able to obtain all required Governmental Approvals under Applicable Laws (as such terms are defined in the Loan Agreement) to subdivide the Land as aforesaid within six (6) months from the date hereof.

(c) Mortgagor represents and warrants that the slurry pipeline and easement to J.R. Simplot Company will not interfere with the subdivision or development of the Land as contemplated.

(d) Mortgagor represents and warrants that there are no persons in possession or occupancy or with a right to possess or occupy, through a lease, license, option, purchase contract, or other agreement or instrument, oral or written, the Land or the Improvements thereon, except for the contemplated sale of the House Parcel to Van Leeuwen and the occupancy by the temporary caretaker. The caretaker is required to vacate the Land and Improvements no later than January 31, 2006. Should the caretaker fail to vacate the Land and Improvements as required, Mortgagor shall take all lawful actions to evict and remove the caretaker from the Land and Improvements within thirty (30) days from said date. Any failure of Mortgagor to remove the caretaker shall be an Event of Default hereunder unless Mortgagor has prior to said date conveyed the House Parcel (as defined in Section 6.2) to Van Leeuwen and released the House Parcel from the lien hereof. Mortgagor shall indemnify and hold Mortgagee harmless from and against any and all damages, losses, claims and liabilities, of all kinds and nature, caused by or arising out of the caretaker's occupancy and use of the House Parcel or any other part of the Encumbered Property.

(e) Except for approval of a minor split by the Bannock County Planning and Zoning Officials, Mortgagor represents that there is no reason why the House Parcel cannot be divided and sold separately from the remaining Land within ninety (90) days of the date hereof.

(f) There are no third party rights to lease or develop minerals, oil and gas, geothermal resources, wind or timber resources on the Land.

1.3 Further Acts.

(a) Mortgagor will, at its own cost and without expense to Mortgagee, do, execute, acknowledge, and deliver all and every such further acts, deeds, transfers, and assurances as Mortgagee shall from time to time reasonably require for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Instrument, or for filing, registering, or recording this Instrument and, on demand, Mortgagor will execute and deliver, and hereby authorizes Mortgagee to execute in the name of Mortgagor to the extent Mortgagor may lawfully so do, or to file without signatures to the extent allowed by law, one or more notices, control agreements, financing statements, chattel mortgages, or comparable security instruments to evidence more effectively the lien hereof upon the UCC Collateral or other Encumbered Property.

(b) Mortgagor forthwith upon the execution and delivery of this Instrument, and thereafter from time to time, will cause this Instrument and any security instrument creating a Lien or evidencing the lien hereof upon the Encumbered Property and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of, and fully to protect the lien

hereof upon, the title of Mortgagor to, and the security interest of Mortgagee in, the UCC Collateral or Encumbered Property.

(c) Mortgagor will pay all filing, registration, and recording fees, and all expenses incident to the execution and acknowledgement of this Instrument, any mortgage or deed of trust supplemental hereto, any security instrument with respect to the UCC Collateral or other Personal Property or Intangibles and any instrument of further assurance, and all duties, imposts, assessments, and charges arising out of or incurred in connection with the execution and delivery of the Note or this Instrument, any mortgage or deed of trust supplemental hereto, any security instrument with respect to the UCC Collateral or other Personal Property or Intangibles or any instrument of further assurance.

1.4 **Insurance.** Mortgagor shall maintain insurance in the types and amounts required under the Loan Agreement, and, without limiting the foregoing, shall keep the Encumbered Property insured against all loss or damage by fire with extended coverage and against any other risks or hazards which, in Mortgagee's sole, absolute, and unreviewable discretion, should be insured against, in an amount not less than the full insurable value thereof on a replacement cost basis, with a company or companies and in such form and with such endorsements may be approved or required by Mortgagee in Mortgagee's sole, absolute, and unreviewable discretion. All losses under said insurance shall be payable to Mortgagee and shall be applied in the manner provided in Section 1.5 hereof. Mortgagor shall also carry public liability insurance (the amount of which insurance shall be no less than Five Million U.S. Dollars (U.S. \$5,000,000, and \$3,000,000 per occurrence) with Mortgagee included thereon as a named insured), workmen's compensation insurance, and business or rental interruption insurance in such form and amounts and with such companies as are satisfactory to Mortgagee. All hazard and business or rental interruption insurance policies shall be endorsed with a standard noncontributory mortgagee clause in favor of Mortgagee and in a form acceptable to Mortgagee and may be canceled or modified only upon not less than ten (10) days' prior written notice to Mortgagee. All of the above-mentioned insurance policies or certificates of such insurance satisfactory to Mortgagee, together with receipts for the payment of premiums thereon, shall be delivered to and held by Mortgagee. All renewal and replacement policies shall be delivered to Mortgagee at least thirty (30) days before the expiration of the expiring policies. Mortgagee shall not, by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

1.5 **Condemnation and Insurance Proceeds.**

(a) The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Encumbered Property, or any part thereof, or for conveyance in lieu of condemnation, are hereby assigned to and shall be paid to Mortgagee. In addition, all causes of action relating to the foregoing,

whether accrued before or after the date of this Instrument, or in connection with any transaction or obligation secured hereby, including without limitation causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, are hereby assigned to Mortgagee as additional security and the proceeds shall be paid to Mortgagee. Mortgagee may at its option appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings relating to condemnation or other taking of or damage or injury to the Encumbered Property or any portion thereof, or knowledge of any casualty damage to the Encumbered Property or damage in any other manner, will immediately notify Mortgagee in writing. Mortgagee may participate in any such proceedings and may join Mortgagor in adjusting any loss covered by insurance. All actions taken by Mortgagee under this paragraph shall be at Mortgagor's sole cost and expense and all sums expended by Mortgagee in the exercise of its rights hereunder shall be added to and become part of the Secured Obligations hereunder.

(b) All compensation, awards, proceeds, damage claims, insurance recoveries, rights of action and payments which Mortgagor may receive or to which Mortgagor may become entitled with respect to the Encumbered Property or any part thereof shall be paid over to Mortgagee and shall be applied, unless required to be applied otherwise under the Loan Agreement, in which case the Loan Agreement shall govern, first toward reimbursement of all costs and expenses of Mortgagee in connection with recovery of the same, and then shall be applied, in the sole and absolute discretion of Mortgagee and without regard to the adequacy of its security hereunder, (a) to the payment or prepayment (without premium) of any indebtedness secured hereby in such order as Mortgagee may determine in Mortgagee's sole, absolute, and unreviewable discretion, or (b) to the reimbursement of Mortgagor for expenses incurred by it in the restoration of the Encumbered Property. Any application of such amounts or any portion thereof to any indebtedness secured hereby shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice. In the event Mortgagee elects to make any monies available to Mortgagor to restore the Encumbered Property, Mortgagor shall proceed forthwith with the completion of construction of the improvements, including the necessary work of restoration in accordance with plans, specifications and drawings submitted to and approved by Mortgagee; and any monies which Mortgagee so elects to make available for restoration shall be disbursed in accordance with standard construction lending practice or in any other manner approved by Mortgagee. The foregoing notwithstanding, if the amounts received by Mortgagee hereunder, after reimbursement of all of Mortgagee's costs and expenses, are sufficient to completely restore the Encumbered Property without materially jeopardizing or adversely affecting Mortgagee's interest in the Encumbered Property, Mortgagee agrees to apply such amounts to restoration.

1.6 Taxes, Liens and Other Items.

(a) Mortgagor shall pay all Impositions, taxes, bonds, assessments, fees, Liens (including, without limitation, lawful claims and demands of mechanics, materialmen, laborers, and others that, if unpaid, might result in or permit the creation of a Lien on the Encumbered

Property), charges, fines, impositions and any and all other items which are attributable to or affect the Encumbered Property and which may attain a priority over this Instrument by making payment prior to delinquency directly to the payee thereof, unless Mortgagor shall be required to make payment to Mortgagee on account of such items pursuant to Section 1.7 hereof or the Loan Agreement. Mortgagor shall promptly discharge any such Lien which has or may attain priority over this Instrument. Provided, however, that Mortgagor may delay such payments if Mortgagor is actively contesting such items in good faith in a then ongoing administrative or legal proceeding.

(b) Mortgagor shall certify to Mortgagee annually, at the close of Mortgagor's fiscal year, that all payments under Section 1.6 (a) which were due and payable during the prior year have been paid in full. At Mortgagee's request, Mortgagor shall furnish to Mortgagee receipts or other verification of such payments. Such certification and verification shall be made to Mortgagee at its address listed above.

1.7 Funds for Taxes. Mortgagee may, at its option to be exercised upon thirty (30) days' written notice to Mortgagor or otherwise as provided in the Loan Agreement, require the deposit by Mortgagor, at the time of each payment of an installment of interest or principal under the Note or at any other interval which Mortgagee may specify, but in no event more frequently than monthly, of an additional amount sufficient to discharge the obligations of Mortgagor under Section 1.6 hereof as and when they become due. The determination of the amount payable and of the fractional part thereof to be deposited with Mortgagee shall be made by Mortgagee in Mortgagee's sole, absolute, and unreviewable discretion. Said amounts shall be held by Mortgagee not in trust and not as agent of Mortgagor and shall not bear interest, and shall be applied to the payment of the obligations in respect to which the amounts were deposited or, at the option of Mortgagee, to the payment of said obligations in such order or priority as Mortgagee shall determine in Mortgagee's sole, absolute, and unreviewable discretion. If at any time within thirty (30) days prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, Mortgagor shall, within ten (10) days after demand, deposit the amount of the deficiency with Mortgagee. If the amounts deposited are in excess of the actual obligations for which they were deposited, Mortgagee may refund any such excess, or, at its option, may hold the same in a reserve account, not in trust and not bearing interest, and reduce proportionately the required monthly deposits for the ensuing year. Nothing herein contained shall be deemed to affect any right or remedy of Mortgagee under any other provision of this Instrument or under any statute or rule of law to pay any such amount and to add the amount so paid to the indebtedness hereby secured.

All amounts deposited shall be held by Mortgagee as additional security for the obligations and sums secured by this Instrument and upon the occurrence of an Event of Default hereunder, Mortgagee may, in Mortgagee's sole, absolute, and unreviewable discretion and without regard to the adequacy of its security hereunder, apply such amounts or any portion thereof to any part of the indebtedness secured hereby. Any such application of said amounts or any portion thereof to

any indebtedness secured hereby shall not be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

If Mortgagee requires deposits to be made pursuant to this Section, Mortgagor shall deliver to Mortgagee all tax bills, bond and assessment statements, and statements for any other obligations referred to above as soon as the same are received by Mortgagor.

If Mortgagee sells or assigns this Instrument, Mortgagee shall have the right to transfer all amounts deposited under this Section to the purchaser or assignee, and Mortgagee shall thereupon be released and have no further liability hereunder for the application of such deposits, and Mortgagor shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

1.8 Further Encumbrances or Sales. Mortgagor shall not without the prior written consent of Mortgagee being first had and obtained, execute or deliver any pledge, security agreement, mortgage, deed of trust or other instrument or hypothecation, covering all or any portion of the Encumbered Property or any interest therein, nor sell, contract to sell, lease with option to purchase, convey, alienate, transfer, abandon, or otherwise dispose of all or any portion of the Encumbered Property or any interest therein, whether voluntarily or involuntarily, by operation of law or otherwise.

1.9 Continued Existence. Unless the prior written approval of Mortgagee shall first have been obtained:

(a) Mortgagor shall maintain its existence as presently constituted. No additional memberships, shares, units or equity interests of any character as applicable will be issued or created by Mortgagor and the Articles or Certificate of Incorporation or Organization of Mortgagor and the Operating Agreement of Mortgagor will not be amended, and Mortgagor will not change its state of organization;

(b) Mortgagor shall not make any distributions to its any of its members, shareholders or unitholders or holders of any equity interests of any character as the case may be;

(c) Mortgagor shall not be a party to any merger or consolidation, nor shall Mortgagor sell or dispose of all or any substantial portion of its assets other than in the ordinary course of the business of Mortgagor, nor shall Mortgagor acquire all or any portion of the assets of any other entity if such acquisition would thereupon represent a substantial portion of Mortgagor's assets;

(d) In order to safeguard the interest of Mortgagee, Mortgagor shall devote its best efforts to its business as presently constituted, and shall not pursue any other substantial business endeavors, whether or not related to Mortgagor's business as presently constituted;

(e) Mortgagor shall not create, incur, assume or otherwise have outstanding any debt except the debt created by the Note, this Instrument, debts already in existence as of the date of

this Instrument, and debts which constitute notes payable or accounts payable arising in the normal course of Mortgagor's business. In addition, Mortgagor shall not, directly or indirectly, retire any debt or make any prepayment of any debt except as permitted or required under this Instrument or according to the terms of such other debt;

(f) Mortgagor shall not create or suffer to exist any assignments, mortgages, pledges, security interests, Liens, charges, or encumbrances of any kind upon any of its property, assets, or rights to receive moneys in the future except those Liens which are created by this Instrument or pursuant to Loan Agreement; those Liens which are in existence as of the date of this Instrument and disclosed to Mortgagee, as Permitted Liens under the Loan Agreement; purchase money liens, but only to the extent that said Liens extend to the property or assets being purchased;

(g) Mortgagor shall make no loans or other advances to its members, managers, directors, officers, employees, or any other person or party, nor shall Mortgagor make any loans to or investments in any other business or firm, whether related or unrelated to Mortgagor, nor will Mortgagor make any advance payment, other than in the normal course of business, for goods or services to be received at a later date. No rent payable to an affiliate or insider shall be increased so long as any amount remains outstanding hereunder. Mortgagor shall not guarantee in whole or in part, directly or indirectly, any obligations of any person, business, or organization, except for Mortgagor's guaranty of the Utah Loan; or

(h) Except where required by the terms of a collective bargaining agreement or any other employment agreement which pre-dates this Instrument, Mortgagor shall not increase the salaries, fees, or bonuses of Mortgagor's officers or members while any amount remains outstanding hereunder.

1.10 Financial Statements/Governmental Reports and Approvals. Mortgagor shall deliver to Mortgagee as soon as available, and in any event within one hundred twenty (120) days after the end of Mortgagor's fiscal year, a complete reviewed financial statement for Mortgagor's business and shall deliver to Mortgagee as soon as available all Governmental Approvals and all permits, reports and approvals required hereunder and under the Loan Documents.

1.11 Indemnity - Hazardous Waste.

(a) Mortgagor represents and covenants that (i) Mortgagor has not caused or suffered to occur, and Mortgagor will not hereafter cause or suffer to occur, a Release (as defined in the Loan Agreement), discharge, spillage, uncontrolled loss, seepage or filtration (hereinafter a "Spill") of oil or petroleum or chemical liquids or solids, liquid or gaseous products or Hazardous Substance (as such term is defined below), at, upon, under or within the Real Property or any contiguous real estate; (ii) neither Mortgagor nor any other party has been, is or will be involved in operations at or near the Real Property which could lead to the imposition on Mortgagor or any other owner of the Real Property of liability or the creation of an Environmental Lien or other Lien on the Real Property, under Environmental Laws; and (iii) Mortgagor has not permitted and will not permit any tenant or occupant of the Real Property to engage in any activity that could lead to the imposition of liability on such tenant or occupant, Mortgagor or any other owner of

any of the Real Property, or the creation of an Environmental Lien or other Lien on the Real Property, under any Environmental Laws.

(b) Mortgagor shall comply strictly and in all respects with the requirements of all applicable Environmental Laws, including but not limited to performing all required Remediation (as defined in the Loan Agreement) required by and shall notify Mortgagee promptly in the event of any Spill or Hazardous Substance upon the Real Property and shall promptly forward to Mortgagee copies of all orders, notices, permits, applications, or other communications and reports in connection with any such Spill or any other matters relating to Environmental Laws as they may affect the Real Property.

(c) Whenever Mortgagee shall have cause to do so, Mortgagor, promptly upon the written request of Mortgagee from time to time, shall provide Mortgagee with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content satisfactory to Mortgagee.

(d) Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from and against all Environmental Claims, Environmental Losses, Releases, Remediation, and against all Environmental Liens (as such terms are defined in the Loan Agreement) and any other loss, liability, damage and expense, including without limitation, attorney's fees suffered or incurred by Mortgagee, whether as holder of this Instrument, as mortgagee-in-possession or as successor in interest to Mortgagor as owner of the Real Property by virtue of foreclosure or acceptance of a deed in lieu of foreclosure (i) under or on account of any Environmental Law, including the assertion of any lien thereunder, (ii) with respect to any Spill or Hazardous Substance affecting the Real Property whether or not the same originates or emanates from the Real Property or any contiguous real estate, including any loss of value of the Real Property as a result of a Spill or Hazardous Substance; and (iii) with respect to any other matter affecting the Real Property within the jurisdiction of any Governmental Authority.

(e) In the event of any Spill or Hazardous Substance affecting the Real Property, whether or not the same originates or emanates from the Real Property or any contiguous real estate, and/or if Mortgagor shall fail to comply with any of the requirements of the applicable Environmental Laws, Mortgagee may, at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Real Property and/or take any and all other actions as Mortgagee shall deem, in Mortgagee's sole, absolute, and unreviewable discretion, necessary or advisable in order to remedy said Spill or Hazardous Substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate as defined in the Loan Agreement from the date of payment by Mortgagee, shall be immediately due and payable by the Mortgagor to Mortgagee and until paid shall be added to and become a part of the Secured Obligations and shall have the benefit of the lien hereby created as a part hereof.

(f) As used herein, the term "Hazardous Substance" means any substance, material, or waste which is or becomes regulated as a pollutant or as hazardous, toxic, acutely hazardous, acutely toxic, or deleterious by any Governmental Authority or under any Environmental Law.

The term Hazardous Substance includes, without limitation, any material or substance that is (i) defined as a hazardous or toxic substance or as a pollutant under any city, county, state or federal law, regulation or ordinance, (ii) oil and petroleum, and products or byproducts thereof, (iii) asbestos and asbestos containing materials, (iv) radioactive, explosive or flammable, (v) polychlorinated biphenyls, (vi) mold or similar fungal growth (of such types and amounts sufficient to create a health risk to humans); (vii) designated as a "hazardous substance" pursuant to § 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1321), (viii) defined as a "hazardous waste" pursuant to § 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), (ix) defined as a "hazardous substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. § 6991, et seq.); (x) defined as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), or (xi) regulated under the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), as such laws, regulations and ordinances may be amended from time to time and including all regulations promulgated pursuant thereto, and includes all such substances regulated under State analogs of the foregoing laws, and includes any other substance defined as a Hazardous Substance under the Loan Agreement or any other Loan Document. The term "Environmental Law(s)" as used herein shall include, without limitation, any and all present and future local, State, and Federal laws, rules, regulations, and ordinances, common law duties, and Legal Requirements and Applicable Laws (as such terms are defined herein) that now or hereafter regulate or pertain to Hazardous Substances, or any Spill, disposal, or management thereof, or pertaining to human health, natural resources or the environment, including but not limited to the statutes listed above in this subsection (f), and the Emergency Planning and Community-Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Endangered Species Act (16 U.S.C. § 1531 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), and laws relating to Lead Based Paint, and includes the regulations promulgated pursuant to said laws, all as amended from time to time, relating to or affecting the Property, whether or not caused by or within the control of Mortgagor, and includes any other such law defined as an Environmental Law under the Loan Agreement or any other Loan Document.

The representations, warranties, covenants, agreements and indemnities in this Instrument concerning Hazardous Substances and Environmental Laws are in addition to and not in lieu of any representations, warranties, covenants, agreements and indemnities as to such matters under the Loan Agreement or under any separate environmental indemnity agreement given by Mortgagor or any other person in favor of Mortgagee.

1.12 Preservation and Maintenance of Encumbered Property. Mortgagor shall keep the Encumbered Property and every part thereof in good condition and repair, ordinary wear and tear excepted and shall not permit or commit any waste, impairment, or deterioration of the Encumbered Property, nor commit, suffer or permit any action upon or use of the Encumbered Property in violation of law or applicable order of any Governmental Authority, whether now existing or hereafter enacted and whether foreseen or unforeseen, or in violation of any covenants, conditions or restrictions affecting the Encumbered Property, or bring or keep any article upon

any of the Encumbered Property or cause or permit any condition to exist thereon which would be prohibited by or could invalidate any insurance coverage maintained, or required hereunder to be maintained, by Mortgagor on or with respect to any part of the Encumbered Property, and Mortgagor further shall do all other acts which from the character or use of the Encumbered Property may be reasonably necessary to protect the security hereof, the specific enumerations herein not excluding the general. Mortgagor shall not remove or demolish any building or structure on the Encumbered Property. Mortgagor shall complete or restore and repair promptly and in a good workmanlike manner any building, structure or improvement which may be constructed, damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefor, whether or not insurance or other proceeds are available to cover in whole or in part the costs of any such completion, restoration or repair; provided, however, unless provided otherwise in the Loan Agreement, Mortgagor shall not, to the extent the costs are in excess of Ten Thousand Dollars (\$10,000), demolish, remove, expand or extend any building, structure or improvement on the Encumbered Property, nor construct, restore, add to or alter any such building, structure or improvement, nor consent to or permit any of the foregoing to be done, without in each case obtaining the prior written consent of Mortgagee thereto. Mortgagor shall notify Mortgagee immediately in writing of any damage to the Encumbered Property in excess of Twenty-Five Thousand Dollars (\$25,000).

Unless required by applicable law or unless Mortgagee has otherwise first agreed in writing, and excluding the subdivisions with respect to the House Parcel and Lots, Mortgagor shall not make or allow any changes to be made in the nature of the occupancy or use of the Encumbered Property or any part thereof for which the Encumbered Property or such part was intended at the time this Instrument was delivered. Mortgagor shall not initiate or acquiesce in any change in any zoning or other land use classification now or hereafter in effect and affecting the Encumbered Property or any part thereof without, in each case, obtaining Mortgagee's prior written consent thereto.

1.13 Offset Certificates. Mortgagor, within three (3) days upon request in person or within five (5) days upon request by mail, shall furnish a written statement duly acknowledged, stating whether any offsets or defenses exist against any indebtedness or obligations secured hereby and covering such other matters with respect to any such indebtedness as Mortgagee may reasonably require.

1.14 Mortgagee's Costs and Expenses; Governmental Charges. Mortgagor shall pay all costs, fees and expenses of Mortgagee, its agents and counsel in connection with the performance of its duties hereunder, including without limitation the cost of any foreclosure sale, guaranty, or title insurance coverage ordered in connection with any foreclosure proceedings hereunder, and shall pay all Impositions (as defined in the Loan Agreement) and other taxes (except federal and state income taxes) or other governmental charges or impositions imposed by any Governmental Authority on Mortgagee by reason of its interest in the Loan Documents or this Instrument.

1.15 Protection of Security; Costs and Expenses. Mortgagor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee, and shall pay all costs and expenses, including, without limitation, cost of evidence of title and attorney's fees, in any such action or proceeding in which Mortgagee may appear, and in any suit brought by Mortgagee to foreclose this Instrument or to enforce or establish any other rights or remedies of Mortgagee hereunder. If Mortgagor fails to perform any of the covenants or agreements contained in this Instrument, or if any action or proceeding is commenced which affects Mortgagee's interest in the Encumbered Property or any part thereof, including, but not limited to, eminent domain, code enforcement, or proceedings of any nature whatsoever under any federal or state law, whether existing or hereafter enacted or amended, relating to bankruptcy, insolvency, management, reorganization or other form of debtor relief, or to a decedent, then Mortgagee may, but without obligation to do so and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereunder, make such appearances, disburse such sums and take such action as Mortgagee deems necessary or appropriate to protect Mortgagee's interest, including, but not limited to, disbursement of attorney's fees, entry upon the Encumbered Property to make repairs or otherwise protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or Lien which in the judgment of Mortgagee appears to be prior or superior hereto. Mortgagor hereby irrevocably appoints, effective upon Mortgagor's failure to perform any of the covenants or agreements contained in this Instrument or upon the commencement of any action or proceeding which affects Mortgagee's interest in the Encumbered Property or any part thereof, Mortgagee as its attorney-in-fact to do (but Mortgagee shall not be obligated to do, and shall incur no liability to Mortgagor or any third party for failure so to do) any act which Mortgagor is obligated by this Instrument to do and to exercise such rights and powers as Mortgagor might exercise with respect to the Encumbered Property. Mortgagor further agrees to pay all expenses of Mortgagee (including fees and disbursements of counsel) incident to the protection of the rights of Mortgagee hereunder, and enforcement or collection of payment under the Note, or any sums due under any other Loan Documents related to the Note, whether by judicial or non-judicial proceedings, or in connection with any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding of Mortgagor, or otherwise. Any amounts disbursed by Mortgagee pursuant to this Section shall be additional indebtedness of Mortgagor secured by this Instrument, and shall bear interest at the Default Rate from time of advancement by Mortgagee until paid. All such amounts shall be payable by Mortgagor immediately without demand. Nothing contained in this Section shall be construed to require Mortgagee to incur any expense, make any appearance, or take any other action.

1.16 Additions to Encumbered Property. All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of and all additions and appurtenances to the Encumbered Property hereafter acquired by or released to Mortgagor or constructed, assembled or placed by Mortgagor on the Real Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further deed of trust, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Instrument as fully and completely and with the same effect as

ARTICLE II. SECURITY AGREEMENT

2.1 **Security Agreement.** This Instrument is intended to be a security agreement pursuant to the UCC covering all of the UCC Collateral, and Mortgagor hereby grants to Mortgagee a continuing security interest in the UCC Collateral and in all additions thereto, substitutions therefor and proceeds thereof, for the purpose of securing the Secured Obligations and other obligations now or hereafter secured by this Instrument. Mortgagor agrees to execute and deliver financing and continuation statements, control agreements, notices and other documents or instruments covering said property covering said property from time to time and in such form as Mortgagee may be required to perfect and continue the perfection of Mortgagee's lien or security interest with respect to said property, and hereby authorizes Mortgagee to do the same without further authorization or signature of Mortgagor to the extent allowed by law. Mortgagor shall pay all costs of filing such statements and renewals and releases thereof and shall pay all costs and expenses of any record searches for financing statements Mortgagee may reasonably require. Mortgagor shall not, without the prior written consent of Mortgagee, create or suffer to be created any other security interest in the UCC Collateral or any replacements and additions thereto. Mortgagor shall not change its name, change its state of origin, or change the location of its principal place of business without prior written notice to Mortgagee at least thirty (30) days prior to such change.

ARTICLE III. ASSIGNMENT OF LEASES AND RENTS

3.1 **Assignment of Leases.** Upon the terms and conditions set forth herein, Mortgagor hereby absolutely and unconditionally conveys, transfers, and assigns unto Mortgagee, its successors and assigns, all of the rights, interests, and privileges which Mortgagor as lessor has and may have in and to all Leases, together with all Rents due or to become due therefrom. Upon the terms and conditions set forth below, Mortgagor will, on request of Mortgagee, execute confirmatory assignments of any future Leases affecting any part of the Real Property of Improvements. Upon the terms and conditions set forth below, Mortgagor further assigns to Mortgagee any award made hereafter to it in any court proceeding involving any of the lessees in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and any and all payments made by lessees in lieu of rent, and hereby appoints Mortgagee as its irrevocable attorney-in-fact upon the occurrence of the Event of Default (as hereinafter defined) to appear in any action and/or to collect any such award or payment.

3.2 **Mortgagor's Warranties Regarding Leases.** Mortgagor covenants and represents that Mortgagor has full right and title to assign the Leases and the Rents due or to become due thereunder; that the terms of the Leases have not been changed from the terms in the copies of said Leases submitted to Mortgagee for approval; that no other outstanding and effective assignment of any interest therein has been made except as may exist under this Instrument; that there are no existing defaults under the provisions of the Leases; that none of the lessees under the Leases has made or attempted to make any prepayment of rents owing under the

though now owned by Mortgagor and specifically described in the granting clause hereof, and at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurances, deeds of trust, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Instrument.

1.17 **Records and Books.** Mortgagor will keep at the address set forth herein for notice to Mortgagor, good records and books of account in accordance with generally accepted accounting principles and will permit Mortgagee, or its agents, accountants and attorneys, to visit and inspect the Encumbered Property and examine, copy and otherwise review or cause to be reviewed, Mortgagor's records and books of account and to discuss Mortgagor's affairs, finances and accounts with Mortgagor or its members or managers, or agents associated with Mortgagor at such times as may be requested by Mortgagee.

1.18 **Compliance with Laws.** Mortgagor shall promptly comply with, or cause to be complied with, and conform to all present and future Legal Requirements of all Governmental Authorities. "Governmental Authority" shall mean and include the United States of America, the State of Idaho, and all State agencies, departments, bureaus, boards, commissions or other instrumentalities thereof, and all municipalities, local governments or other political subdivisions thereof, and all courts and administrative and judicial tribunals now existing or subsequently created, with jurisdiction over the Encumbered Property or Mortgagor or Mortgagor's businesses. "Legal Requirements" shall mean and include all present and future Applicable Laws (as defined in the Loan Agreement) and all other laws, rules, regulations, ordinances, orders, decrees, permits, licenses, approvals, authorizations and other requirements of every Governmental Authority and all covenants, restrictions and conditions now or later of record which may be applicable to any of the Encumbered Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of any of the Encumbered Property.

1.19 **Periodic and Partial Releases.** Without affecting the liability of Mortgagor or of any other person who is or shall become bound by the terms of this Instrument or who is or shall become liable for the performance of any obligation secured hereby, Mortgagee may, in such manner, upon such terms, and at such times as it deems best, and without notice or demand, release any party now or hereafter liable for the performance of any such obligation, extend the time for such performance, accept additional security therefor, and alter, substitute, or release any property securing such performance. Without limiting the foregoing or any other provision hereof, Mortgagee may release parts or items of the Encumbered Property without affecting or limiting the lien of this Instrument on the remaining parts or items of Encumbered Property and no such partial release shall be or be construed as satisfaction of the Secured Obligations. No exercise or non-exercise by Mortgagee of any of its rights under this Instrument, no dealing by Mortgagee with any person, firm, or corporation, and no change, impairment, loss, or suspension of any right or remedy of Mortgagee shall in any way affect any of the obligations of Mortgagor hereunder, or any security furnished by Mortgagor, or give Mortgagor any recourse against Mortgagee.

Leases; and that Mortgagor will not hereafter cancel, surrender or terminate (except for default of tenant) any of the Leases, exercise any option which might lead to such termination, or change, alter, amend or modify them, or consent to the release of any party liable thereunder or to the assignment of the lessees' interest in them, without the prior written consent of Mortgagee.

3.3 Mortgagor's Covenants.

(a) Mortgagor shall not amend or terminate the Leases or any one of them on any part of the Encumbered Property unless expressly approved in writing by Mortgagee, and shall at all times fully perform the obligations of lessor under all such leases. Whenever requested by Mortgagee, Mortgagor shall furnish to Mortgagee a certificate of Mortgagor setting forth the names of all lessees under any leases, the terms of their respective leases, the spaces occupied, and the rents payable thereunder.

(b) Without the prior written consent of Mortgagee, Mortgagor shall not (i) accept prepayments of rent exceeding one month under any of the Leases or (ii) take any action under or with respect to any of the Leases which would materially decrease either the obligations of the lessee thereunder or the rights or remedies of the lessor or owner, or (iii) modify or amend any of the Leases or cancel or terminate the same or accept a surrender of the leased premises, or (iv) consent to the assignment of the whole or any portion of any lessee's interest under any of the Leases; or (v) create or permit any Lien or encumbrance which, upon foreclosure, would be superior to any of the Leases, or (vi) in any other manner impair Mortgagee's rights and interest with respect to the Rents. Mortgagor will perform all covenants of the lessor under the Leases. Upon Mortgagee's request, Mortgagor will execute and deliver to Mortgagee for recordation an assignment of Leases, or any one of them, on Mortgagee's form.

(c) If required by Mortgagee, each lease, sublease, occupancy agreement, license agreement, operating agreement or concession entered into by Mortgagor as a lessor and affecting any of the Encumbered Property must provide, in manner approved by Mortgagee, that the tenant will recognize as its lessor Mortgagee or any person succeeding to the interest of Mortgagor upon any foreclosure of this Instrument.

3.4 Mortgagor's Collection of Rents. Although this is an absolute assignment and not merely the passing of a security interest, prior to the occurrence of any Event of Default, as set forth in Article IV hereof, Mortgagor shall have a revocable license to collect and receive all Rents from the Leases, and any other awards of payments hereby assigned, and to retain, use and enjoy the same; provided, however, that even before any Event of Default occurs, no rent under the terms of any of the Leases shall be collected or accepted by Mortgagor prior to the time that such rent is due and owing without the prior written consent of Mortgagee.

3.5 Mortgagee Not Obligated. Mortgagee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Mortgagor under any of the Leases. Mortgagor hereby agrees to indemnify Mortgagee against, and to save it harmless from, any and all liability arising from any of the Leases or from the assignment thereof. Without limiting the generality of the foregoing, any assignment hereunder shall not place responsibility for

the control, care, management, or repair of the leased premises upon Mortgagee, or make Mortgagee responsible or liable for any negligence in the management, operation, upkeep, repair or control of the leased premises, resulting in loss, injury, or death to any tenant, licensee, employee, or stranger, or make Mortgagee liable for any security, rental, or other deposits of tenants held by Mortgagor.

3.6 Authorization to Give Notice. Mortgagor hereby authorizes Mortgagee to give notice in writing of this assignment at any time to any tenant under any of the Leases. Mortgagor shall execute such notice, if requested to do so by Mortgagee. Payment to Mortgagee of Rents due under any of the Leases shall constitute full acquittance to the party making payment for the amount of such payment.

ARTICLE IV. EVENTS OF DEFAULT

Each of the following shall constitute an event of default ("Event of Default") hereunder:

4.1 The failure to make any payment of interest under the Note or the Loan Agreement, or to make any payment of an installment of principal when and as the same shall become due and payable, or the failure to make any other payments required thereunder, under this Instrument, the Loan Agreement or any other Loan Document, when and as the same shall become due and payable, whether at maturity or by acceleration or as part of any prepayment or otherwise, in each case, as is provided in the Note or the Loan Agreement, this Instrument, or any other Loan Document, including, without limitation, the failure to make the payment of any insurance premium or tax required herein.

4.2 Any default by Mortgagor in the due, prompt, and complete observance and performance of any non-monetary obligation, covenant, or term contained in this Instrument, the Note, the Loan Agreement, under any other Loan Document, or under any other document, instrument, or agreement given as security for the Loan, that is not corrected in the grace or notice period, if any, applicable thereunder.

4.3 A default by Van Leeuwen in the due, prompt, and complete observance and performance of any monetary or non-monetary obligation, covenant, or term contained in the Utah Note, Utah Loan Agreement, or under any other Utah Loan Document that is not corrected in the grace or notice period, if any, applicable thereunder.

4.4 The appointment pursuant to an order of a court of competent jurisdiction, of a trustee, receiver or liquidator of the Encumbered Property or any part thereof, or any attachment, execution or other judicial seizure of all or any substantial portion of the Encumbered Property which attachment, execution or seizure is not discharged within thirty (30) days.

4.5 The filing by Mortgagor of a petition in bankruptcy or a petition for an arrangement or a reorganization pursuant to the United States Bankruptcy Code or any similar law, federal or state, or the entry of an order for relief or the adjudication of Mortgagor as bankrupt or as

insolvent by a decree of a court of competent jurisdiction, or the making of an assignment for the benefit of creditors, or the admission by Mortgagor in writing of the inability to pay its debts generally as they become due, or the giving of consent by Mortgagor to the appointment of a receiver or receivers of all or any part of its property.

4.6 The filing by any of the creditors of Mortgagor of a petition in bankruptcy against Mortgagor or a petition for reorganization of Mortgagor pursuant to the United States Bankruptcy Code or any similar law, federal or state, if the same is not discharged within sixty (60) days after the date of filing thereof.

4.7 The occurrence of any of the events of default set forth in the Loan Documents with regard to any person who has executed a guaranty in favor of Mortgagee of Mortgagor's obligations to Mortgagee (a "Guarantor").

4.8 The imposition of a tax, other than a state or federal income or franchise tax, on or payable by Mortgagee by reason of its ownership of the Note or this Instrument, and Mortgagor has not paid said tax, or it would be illegal for Mortgagor to pay said tax, or if the payment of said tax by Mortgagor would result in the violation of the usury laws of the governing jurisdiction.

4.9 Except as otherwise provided herein, the sale, exchange, conveyance, transfer, disposition, assignment, lease, sublease or further encumbering of the Encumbered Property, or any part thereof, or any interest therein, either voluntarily, involuntarily, or otherwise, or agreement so to do, without the prior written consent of Mortgagee. A "sale or transfer" means, without limitation, a conveyance of the Encumbered Property, or any right, title or interest therein; whether legal or equitable; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest, or by any other method of conveyance of any real property interest.

4.10 If any of the Encumbered Property is damaged or destroyed by an uninsured casualty and Mortgagor does not immediately provide funds for the restoration of the damage caused by such casualty, as provided hereunder.

4.11 Any representation or disclosure made to Mortgagee by Mortgagor in connection with or as an inducement to the making of the Loan evidenced by the Note or in connection with or as an inducement to the making of this Instrument, shall prove to be false or misleading in any material aspect as of the time the same was made, whether or not any such representation or disclosure appears as part of this Instrument.

4.12 The dissolution or other termination of Mortgagor's existence as a limited liability company whether voluntarily or involuntarily by operation of law, the transfer of any membership interests in Mortgagor or its Parent without the prior written consent of Mortgagee, and the failure of Van Leeuwen to own 100% of the membership interests in Mortgagor's Parent.

4.13 The failure of Mortgagor to have split off, sold and conveyed the House Parcel as required by Section 6.2 hereof and the Loan Agreement, or Mortgagor's failure to make either of the partial payments of principal as required by Section 6.3 hereof.

4.14 The failure of Mortgagor to have received final approval and recordation of a subdivision plat for the Land (less the House Parcel), dividing the Land into eighteen (18) Lots, as required by Section 6.2 hereof and the Loan Agreement.

4.15 The failure of Mortgagor or its Managing Member to strictly abide by the covenants and restrictions set forth in Article VIII of this Instrument.

4.16 Any Default or Event of Default as defined under the Loan Agreement, the Note or other Loan Documents, or under the Utah Note, the Utah Loan Agreement, or any other Utah Loan Document.

4.17 **Cross Default:** *Without limiting any other Event of Default hereunder or under any other Loan Document, it is expressly intended that a Default or an Event of Default under the Note, this Instrument, the Loan Agreement, or any other Loan Document shall also constitute and shall be a Default and an Event of Default under the Utah Note, the Deed of Trust given therewith, and the other Utah Loan Documents and that a Default or an Event of Default under the Utah Note, said Deed of Trust, or any other Utah Loan Document also shall constitute and shall be a Default and an Event of Default under the Note, the Loan Agreement, this Instrument, and the other Loan Documents. Wherever an action or provision in this Instrument is conditioned upon there being no Event of Default hereunder, such condition shall mean that no Event of Default shall have occurred and exist under any of the Loan Documents or under any of the Utah Loan Documents.*

ARTICLE V. REMEDIES

Upon the occurrence of any Event of Default, Mortgagee shall have the following rights and remedies:

5.1 **Acceleration.** Mortgagee may declare the entire principal amount due under the Note (if not then due and payable) and accrued and unpaid interest thereon, and all other sums or payments required hereunder, under the Note, under the Loan Agreement, or under any other Loan Document, to be due and payable immediately, and, notwithstanding the stated maturity in the Note, the principal amount of the Note, and the accrued and unpaid interest thereon, and all other sums or payments required thereunder or any other Loan Documents shall thereupon become and be immediately due and payable.

5.2 **Entry.** Irrespective of whether Mortgagee exercises the right provided in Section 5.1 above, Mortgagee in person or by agent may, without any obligation so to do and without notice or demand upon Mortgagor and without releasing Mortgagor from any obligation

hereunder, (a) make any payment or do any act which Mortgagor has failed to make or do; (b) enter upon and take possession of the Encumbered Property, or any part thereof; or (c) assume or enforce, or, if the same be subject to modification or cancellation, modify or cancel any Leases of the Encumbered Property or any part thereof, upon such terms or conditions as provided in such Leases. Notwithstanding continuance in possession of the Encumbered Property, or any part thereof, by Mortgagee or a receiver, and the collection, receipt, and application of Rents, royalties, issues, profits, revenue, income, or other benefits, Mortgagee shall be entitled to exercise every right provided for in this Instrument or by law upon or after the occurrence of an Event of Default. Any of the actions referred to in this Section may be taken by Mortgagee, either in person or by agent, with or without bringing any action or proceeding, or by receiver appointed by a court, and any such action may also be taken irrespective of whether any notice of default or election to sell has been given hereunder and without regard to the adequacy of the security for the indebtedness hereby secured. Further, Mortgagee, at the expense of Mortgagor, either by purchase, repair, or construction, may from time to time maintain and restore the Encumbered Property or any part thereof and complete construction of any Improvements uncompleted, and in the course of such completion may make such changes in the contemplated Improvements as Mortgagee may deem desirable. Upon request of Mortgagee, Mortgagor shall assemble and make available to Mortgagee at the site of the Real Property any of the Encumbered Property which has been removed therefrom. The entering upon and taking possession of the Encumbered Property, or any part thereof, the collection of any Rents and the application thereof as aforesaid shall not cure or waive any default theretofore or thereafter occurring or affect any notice or default hereunder or invalidate any act done pursuant to any such default or notice. Any of the actions referred to in this Section may be taken by Mortgagee irrespective of whether any notice of default or election to sell has been given hereunder and without regard to the adequacy of the security for the indebtedness or obligations hereby secured. Mortgagor shall indemnify and hold harmless Mortgagee and each of its affiliates, and the respective directors, officers, agents and employees of Mortgagee and each of its affiliates from and against all claims, damages, losses and liabilities (including, without limitation, attorneys' fees and expenses) arising out of or based upon any matter related to this Instrument, the Encumbered Property or the occupancy, ownership, maintenance or management of the Encumbered Property by Mortgagee in the exercise of its remedies under this Instrument, except for acts of gross negligence and/or willful misconduct on the part of the indemnitee, and such indemnification shall include, without limitation, any claims based on the alleged acts or omissions of any employee or agent of Mortgagee.

5.3 Collection of Rents. Upon the occurrence of an Event of Default, the revocable license granted in Article III hereof shall, at the option of Mortgagee, immediately terminate. Mortgagor authorizes Mortgagee, at its option, to enter and take possession of the Encumbered Property, to manage and operate the same, to collect all or any Rents accruing therefrom and from the Leases, to let or re-let the leased premises or any part thereof, to cancel and modify the Leases, to evict tenants, so long as Mortgagee acts in accordance with the law and does not breach any existing contract. Mortgagor authorizes Mortgagee to bring or defend any suits in connection with the possession of the leased premises in Mortgagee's own name, and to make such repairs as Mortgagee deems appropriate, and to perform such other acts in connection with

the management and operation of the leased premises as Mortgagee, in its discretion, any reasonably deem proper. Mortgagee may, at its election, employ agents and independent contractors in connection with the exercise of Mortgagee's rights hereunder. The net proceeds collected by Mortgagee under the terms hereof and the assignment hereunder shall be applied in reduction of the entire indebtedness from time to time outstanding and secured by this Instrument. The receipt by Mortgagee of any Rents, issues, or profits pursuant hereto, whether before or after the institution of foreclosure proceedings, shall not cure such default nor affect such proceedings or any sale pursuant thereto. All actions taken by Mortgagee under this paragraph shall be at Mortgagor's sole cost and expense and all sums expended by Mortgagee in the exercise of its rights hereunder shall be added to and become part of the Secured Obligations hereunder.

5.4 Judicial Action. Mortgagee may bring an action in any court of competent jurisdiction to foreclose by judicial foreclosure, or similar means, this instrument or to enforce any of the covenants and agreements hereof.

5.5 UCC Remedies. Upon the occurrence of any Event of Default of Mortgagor hereunder, Mortgagee shall have the rights and remedies of a secured party under the UCC as well as all other rights and remedies available at law or in equity, and, at Mortgagee's option, Mortgagee may also invoke the remedies provided in this Article V of this Instrument as to any UCC Collateral. Mortgagor hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor to execute and deliver, and file with the appropriate filing officer or office, at Mortgagor's sole cost and expense, such security agreements, financing statements, or other instruments as Mortgagee may reasonably request or require in order to impose or perfect the lien or security interests hereof.

5.6 Power of Sale. To the extent permitted by law, Mortgagee may elect to cause the Encumbered Property, or any part thereof, to be sold as follows:

(a) Mortgagee may proceed as if all of the Encumbered Property were real property in accordance with Section 5.4 above, or Mortgagee may elect to treat any of the Encumbered Property that consists of a right in action or is property that can be severed from the premises or the improvements without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with subsection (c) below, separate and apart from the sale of real property, the remainder of the Encumbered Property being treated as real property.

(b) Mortgagee may cause any such sale or other disposition to be conducted immediately following the occurrence of an Event of Default (or immediately upon the expiration of any redemption or reinstatement period, if any, required by law) or Mortgagee may delay any such sale or other disposition for such period of time as Mortgagee deems to be in its best interest. Should Mortgagee desire that more than one (1) such sale or other disposition be conducted, Mortgagee may, at its option, cause the same to be conducted simultaneously, or successively, on the same day or on such different days or at such other times, and in such order, as Mortgagee may deem to be in its best interests.

(c) Should Mortgagee elect to cause any of the Encumbered Property to be disposed of as personal property as permitted by subsection (a) above, it may dispose of any part thereof in any manner now or hereafter permitted by the UCC, or in accordance with any other remedy provided by law. Any such disposition may be conducted by an employee or agent of Mortgagee. Mortgagor and Mortgagee shall be eligible to purchase any part or all of such property at any such disposition. Any such disposition may be either public or private as Mortgagee may elect, subject to the provisions of the UCC. Mortgagee shall have all of the rights and remedies of a "secured party" under the UCC. Expenses of retaking, holding, preparing for sale, selling or the like shall include, without limitation, Mortgagee's attorneys' fees and legal expenses, and upon such default, Mortgagor, upon demand of Mortgagee, shall assemble such personal property and make it available to Mortgagee at the premises or a place which is deemed convenient to Mortgagee and Mortgagor. If required by law, Mortgagee shall give Mortgagor at least three (3) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Mortgagor, in the manner provided for the mailing of notices herein, it shall constitute notice to Mortgagor.

(d) Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Article V, Mortgagee or any officer of any court empowered so to do, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning, and transferring all estate, right, title, and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor in its name and stead to make all necessary conveyances, assignments, transfers, and deliveries of the Encumbered Property, or any part thereof, and the rights so sold, and for that purpose they may execute all necessary instruments of conveyance, assignment, and transfer, and may substitute one or more persons with like power with Mortgagor hereby ratifying and confirming all that their said attorney or any substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Mortgagor, if so requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee, or to such purchaser or purchasers, all such instruments as may be advisable in the judgment of Mortgagee, for the purpose as may be designated in such request. Any such sale or sales made under or by virtue of power of sale, judicial proceedings, or of a judgment or decree of foreclosure and sale shall operate to divest all of the estate, right, title, interest, claim, and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar, both at law and in equity, against Mortgagor and any and all persons claiming or who may claim the same or any part thereof from, through, or under Mortgagor.

(e) Mortgagor hereby expressly waives any right that it may have to direct the order in which any of the Encumbered Property shall be sold, in the event of any sale or sales pursuant hereto.

5.7 **Receiver.** Mortgagee shall be entitled, without notice and to the full extent provided by law, to the appointment by a court having jurisdiction of a receiver to take possession

of and protect the Encumbered Property, or any part thereof, and operate the same and collect the rents and profits with respect thereto.

5.8 **Settlement.** Upon any sale or sales made under or by virtue of this Article V, whether or not made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Encumbered Property, or any part thereof, and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness or other sums secured by this Instrument the net sales price, after deducting therefrom the expenses of sale and the costs of the judicial proceedings, if any, with interest thereon at the Default Rate and any other sums which Mortgagee is authorized to deduct under the Note or this Instrument.

5.9 **Possession and Control.** Notwithstanding the appointment of any receiver, liquidator, or trustee of Mortgagor, or of any of its property, or of the Encumbered Property or any part thereof, Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Instrument, including, but not limited to, the Rents.

5.10 **Remedies Cumulative.** No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy here or under any other Loan Document or by law provided, 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. No delay or omission of Mortgagee in exercising any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any Event of Default or any acquiescence therein, and every power and remedy given by this Instrument to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. If there exists additional security for the performance of the obligations secured hereby, Mortgagee, at its sole option, and without limiting or affecting any of the rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled under any of the Note or any other Loan Documents, either concurrently with whatever rights it may have in connection with such other security or in such order as it may determine.

5.11 **Application of Proceeds.** Mortgagor hereby agrees that, in exercising its rights under this Instrument, any of the Loan Documents, or any other document or agreement between Mortgagor and Mortgagee, Mortgagee may apply the proceeds of the Encumbered Property or any other collateral, at its election, to any indebtedness of Mortgagor to Mortgagee.

5.12 **Change in Ownership.** In the event ownership of the Encumbered Property, or any portion thereof, becomes vested in a person other than Mortgagor herein named, Mortgagee may, without notice to Mortgagor herein named, whether or not Mortgagee has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Instrument and the indebtedness secured hereby, and in the same manner as with Mortgagor herein named, without in any way vitiating, discharging, or waiving Mortgagor's liability hereunder for the indebtedness hereby secured. Nothing in this Section 5.12 shall limit Mortgagor's covenants or restrictions under this Instrument and shall not and shall not be

construed to be a consent by Mortgagee to any assignment or assumption of this Instrument by Mortgagor.

5.13 **Tenancy.** In the event of a foreclosure hereunder and if at the time Mortgagor, or any successors or assigns, are occupying the Encumbered Property, or any part thereof so sold, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at will of either tenant or landlord, at a rental per day based upon the value of the Encumbered Property such rental to be due daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of said Encumbered Property, and this Instrument and the deed for such property shall constitute a lease and agreement under which any such tenant's possession arose and continued.

5.14 **Waiver of Marshaling.** Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of Liens junior to the lien of this Instrument, hereby expressly waives and releases all rights to direct the order in which any of the Encumbered Property shall be sold in the event by any sale or sales pursuant hereto and to have any of the Encumbered Property and/or any other property now or hereafter constituting security for any of the indebtedness or obligations secured hereby marshaled upon any foreclosure of this Instrument or of any other security or any of said indebtedness or obligations.

5.15 **Development Consultant.** In an Event of Default under Section 4.13 or 4.14 hereof, in addition to all other remedies Mortgagee may have hereunder or at law and regardless of whether Mortgagee has exercised any other remedy, and at Mortgagee's option, Mortgagee shall have the right to engage, at Mortgagor's cost and expense, a development consultant, engineer, and other consultants and agents, selected by Mortgagee in its sole discretion, as may be necessary, in Mortgagee's sole judgment, to finalize the division of the Land into the House Parcel and Lots and sell the House Parcel and Lots. All consultant and engineering fees and other costs incurred by Mortgagee in exercising this remedy shall accrue interest at the rate provided in the Note and shall be and become part of the Secured Obligations secured by this Instrument.

ARTICLE VI.

ADDITIONAL COLLATERAL/PARTIAL RELEASE OF COLLATERAL

6.1 **Additional Collateral.**

(a) Mortgagor acknowledges and agrees that the Secured Obligations are secured by the Encumbered Property and other collateral given by Mortgagor, and by a deed of trust on the Utah Property and other collateral given by Van Leeuwen, all described in the Loan Documents and Utah Loan Documents. Mortgagor specifically acknowledges and agrees that the Encumbered Property, in and of itself, if foreclosed or realized upon would not be sufficient to satisfy the outstanding amount of the Secured Obligations. Accordingly, Mortgagor acknowledges that, to the fullest extent permitted by applicable law, it is in Mortgagor's contemplation that the other collateral pledged to

secure the Secured Obligations may be pursued by Mortgagee in separate proceedings in other states where such collateral may be located and additionally that Mortgagor and other parties liable for payment of or guarantying the Secured Obligations will remain liable for any deficiency judgments in addition to any amounts Mortgagee may realize on sales of other property or any other collateral given as security for the Secured Obligations except as otherwise set forth in this Instrument. Specifically, and without limitation of the foregoing, it is agreed that it is the intent of Mortgagor, Van Leeuwen and Mortgagee that in any foreclosure on the Encumbered Property or the Utah Property, unless the Secured Obligations are satisfied in full by the proceeds thereof, the Secured Obligations shall not be deemed merged into any judgment of foreclosure, but rather shall remain outstanding. It is the further intent and understanding of the parties that Mortgagee, following an Event of Default, may, to the fullest extent permitted by applicable law, pursue all of its remedies and realize on any and all collateral securing the Secured Obligations notwithstanding any judgment of foreclosure or any other judgment which Mortgagor may obtain on any part thereof.

(b) Mortgagor acknowledges and agrees that the Encumbered Property and the other collateral which may from time to time be encumbered by the Loan Documents or Utah Loan Documents may be located in more than one state and therefore Mortgagor, to the fullest extent permitted by applicable law, waives and relinquishes any and all rights it may have, whether at law or equity, to require Mortgagee to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents or Utah Loan Documents in any particular manner, in any particular order, or in any particular state or other jurisdiction. Furthermore, Mortgagor acknowledges and agrees, to the fullest extent permitted by applicable law, that Mortgagee shall be allowed to enforce payment and performance of the Secured Obligations and to exercise all rights and powers provided under this Instrument, or the other Loan Documents, or the Utah Loan Documents, or under any provision of law, by one or more proceedings, (whether contemporaneous, consecutive or both) in any one or more states in which the security is located. To the fullest extent permitted by applicable law, the acceptance of this Instrument or any Loan Document, or the acceptance of any of the Utah Loan Documents, or the enforcement in one state, whether by court action, power of sale, or otherwise, shall not prejudice or in any way limit or preclude enforcement of such documents through one or more additional proceedings, in that state or in any other state.

(c) To the fullest extent permitted by applicable law, Mortgagor further agrees that any particular remedy or proceeding, including, without limitation, foreclosure through court action (in a state or federal court) or power of sale, may be brought and prosecuted in the local or federal courts of any one or more states as to all or any part of the Encumbered Property or the collateral encumbered by the Loan Documents or the Utah Loan Documents, wherever located, without regard to the fact that any one or more prior or contemporaneous proceedings have been situated elsewhere with respect

to the same or any other part of the Encumbered Property and the other collateral encumbered by the Loan Documents or the Utah Loan Documents.

(d) To the fullest extent permitted by applicable law, Mortgagee may resort to any other security held by Mortgagee for the payment of the Secured Obligations in such order and manner as Mortgagee may elect.

(e) To the fullest extent permitted by applicable law, notwithstanding anything contained herein to the contrary, Mortgagee shall be under no duty to Mortgagor or others, including, without limitation, the holder of any junior, senior or subordinate deed of trust or mortgage on the Encumbered Property or any part thereof or on any other security held by Mortgagee, to exercise or exhaust all or any of the rights, powers and remedies available to Mortgagee.

6.2 Partial Release of House Parcel and Lots. Mortgagee agrees (i) to release from the lien of this Instrument, upon Mortgagor's request during the term of the Loan, the House Parcel (the existing house and approximately ten (10) acres surrounding the house), and (ii) to release from the lien of this Instrument, upon the closing of the sale of each subdivided five-acre Lot (the House Parcel and sold Lots being referred to as the "**Release Parcel**"), upon the terms and conditions set forth in the Loan Agreement and the following conditions:

(a) There shall not exist as of the time of release of the Release Parcel any default or Event of Default under this Instrument or any of the other Loan Documents;

(b) Mortgagor shall deliver to Mortgagee a survey and legal description of the Release Parcel and a survey and legal description of the Encumbered Property less the Release Parcel (the "**Remaining Tract**") that show and provide for a common property line between the Remaining Tract and the Release Parcel in a location acceptable to Mortgagee in its sole discretion;

(c) Mortgagee shall be provided with such evidence as Mortgagee's counsel may require in order to verify that no violation of zoning, parking or subdivision requirements with respect to the Release Parcel or the Remaining Tract shall exist upon closing of the release;

(d) Mortgagee shall be provided with evidence satisfactory to it or Mortgagee's counsel that any and all necessary approvals of Governmental Authorities of the subdivision and platting of the Release Parcel and the Remaining Tract have been obtained;

(e) Mortgagee shall receive an endorsement to its loan Title Policy with respect to the Remaining Tract in form and substance satisfactory to Mortgagee in its sole discretion insuring that the Remaining Tract has access to the same publicly

dedicated streets as prior to the release of the Release Parcel and amending the legal description to include only the Remaining Tract;

(f) Mortgagor shall pay all costs, fees, and expenses incurred in connection with the release, including, without limitation, recording fees, title charges and Mortgagee's attorney's fees;

(g) Mortgagor shall have created easements for utilities, signage, drainage, parking, ingress and egress and other appropriate purposes in, on and over the Release Parcel for the benefit of the Remaining Tract to the extent required by Mortgagee and such easements shall be insured as appurtenances in Mortgagee's loan Title Policy via the endorsement required in subsection (e) above. The required easements shall include, without limitation, parking sufficient to meet all tenant lease requirements for tenants of the Remaining Tract, if any;

(h) Mortgagor and any guarantor of the Loan shall reaffirm their respective obligations pursuant to a ratification agreement in form and substance satisfactory to Mortgagee;

(i) The release shall not affect any obligations of Mortgagor or guarantor under the Loan Documents;

(j) Mortgagor must obtain separate tax parcel numbers for the Release Parcel and the Remaining Tract before Mortgagee will agree to any reduction in any tax escrow and prior to the release closing; and

(k) Mortgagor shall pay to Mortgagee the "Release Price" for the House Parcel and each Lot. The Release Price for the House Parcel shall be \$1,750,000.00. The Release Price for each Lot shall be the greater of \$100,000 or the Net Proceeds (as defined in the Loan Agreement) of the sale. The Release of the House Parcel and any Lot shall be conditioned on the satisfaction of the conditions precedent set forth in this Section, as well as any conditions set forth in the Loan Agreement.

6.3 Payments if House Not Sold. Mortgagor represents that the House Parcel shall be sold to and purchased by Van Leeuwen within ninety (90) days from the date hereof (the "First Purchase Date"). If the House Parcel has not been purchased by Van Leeuwen by the First Purchase Date, Mortgagor shall make a prepayment of principal under the Note in the amount of \$450,000.00, in accordance with the terms of the Loan Agreement. If the House Parcel has not been purchased by Van Leeuwen within the ninety (90) days following the First Purchase Date (180 days from the date hereof, the "Second Purchase Date"), Mortgagor shall make a second prepayment of principal under the Note in the amount of \$450,000.00, in accordance with the terms of the Loan Agreement. The principal payments made as aforesaid shall be credited toward the Release Price for the House Parcel if Van Leeuwen acquires the House Parcel in accordance with the terms hereof. The sale and payment of the balance of the Release

Price for the House Parcel shall be made no later than thirty (30) days after the Second Purchase Date. The failure of Mortgagor to abide by the requirements of this Section 6.3 shall be an Event of Default hereunder. In such Event of Default, Mortgagee shall be entitled to retain the above required prepayments as applied to the indebtedness under the Loan and, in addition, shall be entitled to exercise all remedies Mortgagee may have hereunder and at law, including but not limited to the right to foreclose on the House Parcel and sell same to a third party for the full Release Price. The Release Price for the House Parcel shall be applied in accordance with this Instrument and the Loan Agreement.

ARTICLE VII. MISCELLANEOUS

7.1 Severability.

(a) In the event any one or more of the provisions contained in this Instrument shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Instrument, but this Instrument shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(b) If the lien of this Instrument is invalid or unenforceable as to any part of the obligations, secured hereby or if the lien is invalid or unenforceable as to any part of the Encumbered Property, the unsecured or partially secured portion of Mortgagor's obligations shall be completely paid prior to the payment of the remaining and secured portion of the obligations secured hereby, and all payments made on Mortgagor's obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of Mortgagor's obligations which are not secured or fully secured by the lien of this Instrument.

7.2 Anti-Merger. There shall be no merger of the lien created by this Instrument (or the lien created by any other mortgage, deed of trust, or assignment under which Mortgagee is a Mortgagee) with the fee or leasehold estate or easement interest or lien interests (including any lien under such other mortgage or deed of trust) in the Encumbered Property, or any interest therein or portion thereof, by reason of the fact that the same person or entity may own or file (1) the lien created by this Instrument or any such other mortgage or deed of trust, or any interest therein, and (2) the fee or leasehold estate or easement interests or lien interests (including under such mortgage or deed of trust) in the Encumbered Property, or any interest therein or portion thereof; and no merger shall occur unless and until Mortgagee shall join in a written instrument effecting such merger and shall duly record the same.

7.3 Fixture Financing. This Instrument constitutes a financing statement filed as a fixtures, timber, minerals and as-extracted collateral filing in the Real Estate Records of Bannock County, State of Idaho with respect to any and all such collateral and fixtures included within the

term "Encumbered Property" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

7.4 **Notices.** All notices expressly provided hereunder to be given by Mortgagee to Mortgagor and all notices and demands of any kind or nature whatsoever which Mortgagor may be required or may desire to give to or serve on Mortgagee shall be in writing and shall be served by delivery by certified mail or overnight courier to the addresses listed above. A copy of all notices provided to Mortgagor shall be sent to Michael J. Van Leeuwen, 4547 South Abinadi Road, Salt Lake City, UT 84124. Any such notice or demand served by certified mail shall be deposited in the United States mail, with postage thereon fully prepaid, and addressed to the party so to be served at its address provided herein or at such other address of which said party shall have theretofore notified in writing, as provided above, the party giving such notice.

7.5 **Mortgagor Not Released.** Extension of the time for payment indebtedness or obligations or modification of the terms of payment or performance of any indebtedness or obligation secured by this Instrument granted by Mortgagee shall not operate to release, in any manner, the liability of Mortgagor for such indebtedness or obligations.

7.6 **Inspection.** Mortgagee may at any time or times make or cause to be made entry upon and inspections of the Encumbered Property or any part thereof in person or by agent.

7.7 **Release.** Upon the payment in full of all indebtedness and other sums and performance in full of all obligations secured by this Instrument, Mortgagee shall cause to be recorded in the Real Estate Records of Bannock County, Idaho a release of this Instrument. Any partial release of any part or item of the Encumbered Property prior to payment in full of all indebtedness and other sums and full performance of all obligations secured by this Instrument shall not release the lien of this Instrument on any other Encumbered Property.

7.8 **Interpretation.** Wherever used in this Instrument, unless the context otherwise indicates a contrary intent, or unless otherwise specifically provided herein, the word "Mortgagor" shall mean and include both Mortgagor and any subsequent owner or owners of the Encumbered Property, and the word "Mortgagee" shall mean and include not only the original Mortgagee hereunder but also any future owner and holder, including pledges, of the Note secured hereby. In this Instrument, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the neuter includes the feminine and/or masculine, and the singular number includes the plural and conversely. In this Instrument, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not non-limiting language (such as "without limitation" or "but not limited" or words of similar import) is used with reference thereto. The captions and pleadings of the Articles and Sections of this Instrument are for convenience only and are not to be used to interpret, define or limit the provisions hereof. Any capitalized term used herein and not defined herein shall have the meaning given such term under the Loan Agreement.

7.9 **Consent; Delegation of Sub-Agents.** The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the

right to require consent to future or successive transactions. Wherever a power of attorney is conferred upon Mortgagee hereunder, it is understood and agreed that such power is coupled with an interest, is irrevocable, and is conferred with full power of substitution, and Mortgagee may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof, to one or more sub-agents.

7.10 **Successors and Assigns.** Without limiting any restriction or prohibition on assignments or conveyances herein or under the Loan Agreement, all of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the heirs, administrators, executors, legal representatives, successors and assigns of Mortgagor and the endorsees, transferees, successors and assigns of Mortgagee. In the event Mortgagor is composed of more than one party, the obligations, covenants, agreements and warranties contained herein, as well as the obligations arising therefrom, are and shall be joint and several as to each such party.

7.11 **Governing Law.** This Instrument shall be covered under, by, and construed under the laws of the State of Idaho.

7.12 **Counterparts.** This Instrument may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

7.13 **Modification.** This Instrument may not be changed or terminated orally. Any attempt to change or terminate this Instrument orally shall be considered void and of no effect. Any agreement made by Mortgagor and Mortgagee after the date of this Instrument relating to this Instrument shall be superior to the rights of the holder of any intervening or subordinate deed of trust, Lien or encumbrance.

7.14 **Mortgagor's Payments.**

(a) Mortgagor shall pay or reimburse Mortgagee for all expenses incurred by Mortgagee before and after the date of this Instrument with respect to any and all transactions contemplated by this Instrument including, without limitation, the preparation of any document reasonably required hereunder or any amendment, modification, restatement or supplement to this Instrument, the delivery of any consent, non-disturbance agreement or similar document in connection with this Instrument or the enforcement of any of Mortgagee's rights. Such expenses shall include, without limitation, all title and conveyancing charges, recording and filing fees and taxes, mortgage taxes, intangible personal property taxes, escrow fees, revenue and tax stamp expenses, insurance premiums (including title insurance premiums), title search and title rundown charges, brokerage commissions, finders' fees, placement fees, court costs, surveyors', photographers', appraisers', architects', engineers', consulting professionals', accountants' and attorneys' fees and disbursements. Mortgagor acknowledges that from time to time Mortgagor may receive statements for such expenses, including, without limitation, attorneys' fees and disbursements. Mortgagor shall pay such statements promptly upon receipt.

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Without limiting any other provisions herein, Mortgagor also shall pay to Mortgagee and reimburse Mortgagee for any and all costs and expenses paid and incurred by Mortgagee in Mortgagee's exercise of its rights under this Instrument, including but not limited to Mortgagee's actions taken with respect to this Instrument, with respect to the Encumbered Property, and actions taken on behalf of Mortgagor, whether by power of attorney or not and whether in Mortgagor's name or Mortgagee's name, all of which actions taken by Mortgagee shall be at Mortgagor's sole cost and expense and all such costs and expenses incurred by and sums owing to Mortgagee shall be and become part of the Secured Obligations.

(b) If (i) any sale (or any prerequisite to a sale), action or proceeding shall be commenced by Mortgagee (including, but not limited to, any sale of the Encumbered Property, or any action to foreclose this Instrument or to collect the amounts owed by Mortgagor to Mortgagee secured hereby) or any action or proceeding is commenced to which Mortgagee is made a party, or in which it becomes necessary to defend or uphold the rights granted by this Instrument (including, without limitation, any proceeding or other action relating to the bankruptcy, insolvency or reorganization of Mortgagor, or in which Mortgagee is served with any legal process, discovery notice or subpoena) and (ii) in each of the foregoing instances, such action or proceeding in any manner relates to or arises out of this Instrument or Mortgagee's lending to Mortgagor or acceptance of a guaranty from a Guarantor of the amounts owed by Mortgagor to Mortgagee secured hereby or of any of the obligations or any of the transactions contemplated by this Instrument, then Mortgagor will immediately reimburse or pay to Mortgagee all of the expenses which have been or may be incurred by Mortgagee with respect to the foregoing (including counsel fees and disbursements), together with interest thereon at the Default Rate, and any such sum and the interest thereon shall be included in the indebtedness secured by this Instrument and have the full benefit of this Instrument, prior to any right, or title to, interest in or claim upon the Encumbered Property attaching or accruing to this Instrument, and shall be deemed to be secured by this Instrument. In any action or proceeding to sell the Encumbered Property, to foreclose this Instrument, or to recover or collect the indebtedness secured by this Instrument, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

(c) Mortgagor shall indemnify and hold harmless Mortgagee and each of its affiliates, and the respective directors, officers, agents and employees of Mortgagee and each of its affiliates from and against all claims, damages, losses and liabilities (including, without limitation, attorneys' fees and expenses) arising out of or based upon any matter, including at any time during or after foreclosure or while Mortgagee is or is deemed a mortgagee in possession, related to this Instrument, the Encumbered Property or the occupancy, ownership, maintenance or management of the Encumbered Property by Mortgagor, except for acts of gross negligence and/or willful misconduct, including, without limitation, any claims based on the alleged acts or omissions of any employee or agent of Mortgagor. This indemnification shall be in addition to, and shall not alter, reduce or supersede, any other liability or duty to indemnify which Mortgagor may otherwise have to Mortgagee. This indemnification obligation and all other indemnification

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obligations of Mortgagor hereunder and under any Loan Document or separate agreement shall survive the payment of the Secured Obligations and any foreclosure of this Instrument.

7.15 **Certain Waivers.** In addition to the waivers of Mortgagee set forth in the Loan Agreement and other Loan Documents, and without limiting any such waivers, MORTGAGOR AND MORTGAGEE EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY ACTION, CLAIM, SUIT OR PROCEEDING RELATING TO THIS INSTRUMENT AND FOR ANY COUNTERCLAIM BROUGHT THEREIN. Mortgagor hereby waives all rights to interpose any counterclaim in any suit brought by Mortgagee hereunder and all rights to have any such suit consolidated with any separate suit, action or proceeding.

7.16 **Full Recourse.** All of the terms and provisions of this Instrument are full recourse obligations of Mortgagor and are not restricted by any limitation on personal liability provided in any of the other Loan Documents or the Utah Loan Documents or limited to any other collateral securing any of the Secured Obligations under this Instrument or the Utah Loan Documents, it being the intent of Mortgagee to create separate obligations of Mortgagor hereunder which can be enforced against Mortgagor without regard to the existence of other Loan Documents or other Utah Loan Documents or the liens or security interests created therein.

ARTICLE VIII MORTGAGOR'S ADDITIONAL (SPE) COVENANTS

Excepting the cross-collateralization of the Loan with the Utah Loan and the cross-guarantees (Mortgagor's guaranty of the Utah Loan and Utah Note and Van Leeuwen's guaranty of the Loan and Note), Mortgagor hereby covenants and agrees as follows:

8.1 The sole purpose of Mortgagor is to (a) acquire, own, hold, maintain, and develop the Encumbered Property, (b) enter into and perform the Security Obligations, and (c) engage such other lawful activities as may be necessary or advisable in connection with the ownership of the Encumbered Property. Mortgagor covenants not to engage in any business, and it shall have no purpose, unrelated to the Encumbered Property and shall not acquire any real property or own assets other than those related to the Encumbered Property or otherwise in furtherance of the purposes of Mortgagor. Mortgagor shall have all powers necessary or convenient to the conduct, promotion, or attainment of the business or purposes set forth herein.

8.2 The Managing Member, and any additional or substitute managing member of Mortgagor, may not be an individual and shall at all times have as its sole purpose to act as the Managing Member of Mortgagor, and shall be engaged in no other business or have any other purpose. Additionally, any additional or substitute managing member of Mortgagor shall have Organizational Documents which conform in all material respects to the Organizational Documents of the Managing Member.

8.3 Notwithstanding any other provisions herein or in the Organizational Documents of Mortgagor, and so long as any Secured Obligations remain outstanding and not discharged in full, Mortgagor shall not and the Managing Member of Mortgagor shall have no authority on behalf of Mortgagor to:

(a) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation, other than the Secured Obligations), except unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Encumbered Property in such amounts as are normal and under the circumstances, provided that such debt is not evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any one time one percent (1%) of the outstanding indebtedness under the Note;

(b) seek the dissolution or winding up, in whole or in part, of Mortgagor;

(c) merge into or consolidate with or acquire substantially all the assets of any person or entity or dissolve, terminate or liquidate, in whole or in part, or change its legal structure;

(d) except as permitted by the Lender in writing, sell, encumber (except with respect to Mortgagee) or otherwise dispose of all or substantially all of the properties and assets of Mortgagor (a sale or disposition will be deemed to be "all or substantially all of the properties of Mortgagor" if the sale or disposition includes the Encumbered Property or if the total value of the properties sold or disposed of in such transaction and during the twelve months preceding such transaction is 66-2/3% or more in value of Mortgagor's total assets as of the end of the most recently completed fiscal year);

(e) change the nature of the business conducted by Mortgagor;

(f) transfer Mortgagor's assets outside the ordinary course of Mortgagor's business;

(g) file a voluntary petition or otherwise initiate proceedings to have Mortgagor adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against Mortgagor, or file a petition seeking or consenting to reorganization or relief of Mortgagor as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to Mortgagor; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of Mortgagor or of all or any substantial part of the properties and assets of Mortgagor, or make any general assignment for the benefit of creditors of Mortgagor, or admit in writing the inability of Mortgagor to pay its debts generally as they become due or declare or effect a moratorium on Mortgagor debt or take any action in furtherance of any such action;

- (h) amend, modify or alter Mortgagor's Articles of Organization;
- (i) to perform any act in respect of Mortgagor in violation of any (i) Applicable Laws or regulations or (ii) any agreement between Mortgagor and Mortgagee or its successors or assigns;
- (j) to demand or receive (a) any cash or property of Mortgagor in return of the Managing Member's Capital Contribution or in respect of the Managing Member's Interest until the dissolution of Mortgagor or (b) any distribution from Mortgagor in any form other than cash.

Notwithstanding the foregoing and so long as any Secured Obligation remains outstanding and not discharged in full, the Managing Member shall have no authority to take any action in items (i) through (vii) above unless such action has been approved by a unanimous vote of the Managing Member's governing body as defined in the Managing Member's Articles of Incorporation and has been approved by the written consent of Mortgagee. So long as any Secured Obligation remains outstanding and not discharged in full, Mortgagor's Managing Member shall have the foregoing provisions in its articles of incorporation.

8.4 All Encumbered Property shall be owned by Mortgagor and, insofar as permitted by applicable law, no member shall have any ownership interest in any Encumbered Property in its individual name or right, and each member's interest in Mortgagor shall be personal property for all purposes.

8.5 Mortgagor has not and shall not, except to the extent required by Mortgagee or the Loan Documents:

- (a) acquire or own any material asset other than (i) the Encumbered Property, and (ii) such incidental personal property as may be necessary for the operation of the Encumbered Property;
- (b) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Mortgagee, amend, modify, terminate or fail to comply with the provisions of its organizational documents and the provisions set forth in this Article VIII;
- (c) own any subsidiary or make any investment in or acquire the obligations or securities of any other person or entity without the consent of Mortgagee;
- (d) commingle its assets with the assets of any of its principal(s), affiliates, or of any other person or entity or transfer any assets to any such person or entity other than distributions on account of equity interests in Mortgagor permitted by the Loan Documents and properly accounted for;

(e) allow any person or entity to pay its debts and liabilities or fail to pay its debts and liabilities solely from its own assets;

(f) fail to maintain its records (including computer records), books of account and bank accounts separate and apart from those of the members, principals and affiliates of Mortgagor, the affiliates of any member of Mortgagor and any other person or entity or fail to prepare and maintain its own financial statements in accordance with generally accepted accounting principles and susceptible to audit, or if such financial statements are consolidated fail to cause such financial statements to contain footnotes disclosing that the Encumbered Property is actually owned by Mortgagor;

(g) enter into any contract or agreement with any member, principal or affiliate of Mortgagor or any guarantor of all or a portion of the obligations secured by the Mortgage or any member, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, principal or affiliate of Mortgagor, as the case may be, any guarantor or any partner, member, principal or affiliate thereof;

(h) fail to correct any known misunderstandings regarding the separate identity of Mortgagor;

(i) hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another person or entity or allow any person or entity to hold itself out to be responsible or pledge its assets or credit worthiness for the debts of Mortgagor;

(j) make any loans or advances to any third party, including any member, principal or affiliate of Mortgagor, or any partner, member, principal or affiliate thereof;

(k) fail to file its own tax returns or to use separate contracts, purchase orders, stationary, invoices and checks;

(l) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Mortgagor is responsible for the debts of any third party (including any partner, member, principal or affiliate of Mortgagor or any partner, member, principal or affiliate thereof);

(m) fail to allocate fairly and reasonably between Mortgagor and any third party (including, without limitation, any guarantor) any overhead for common employees, shared office space or other overhead and administrative expenses;

(n) allow any person or entity to pay the salaries of its own employees or fail to maintain a sufficient number of employees for its contemplated business operations;

(o) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(p) share any common logo with or hold itself out as or be considered as a department or division of (i) any partner, principal, member or affiliate of Mortgagor, (ii) any affiliate of a partner, principal, member or affiliate of Mortgagor or (iii) any other person or entity or allow any person or entity to identify Mortgagor as a department or division of that person or entity;

(q) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of Mortgagor or the creditors of any other person or entity;

(r) fail to conduct its business so that the assumptions made with respect to Mortgagor and the Managing Member in any "substantive non-consolidation" opinion letter delivered in connection with the origination of financing secured by this Instrument shall be true and correct in all respect;

(s) fail to maintain its principal executive office and telephone and facsimile numbers separate from that of any Affiliate and to conspicuously identify such office and numbers as its own, and use its own separate stationary, invoices and checks which reflects its separate address, telephone number and facsimile number, as appropriate;

(t) fail to maintain its own separate bank accounts, payroll and correct, complete and separate books of account;

(u) fail to observe all customary formalities regarding the existence of Mortgagor, including holding meetings and maintaining current and accurate minute books separate from those of any Affiliate;

(v) fail to act solely in its own name and through its own duly authorized officers and agents with no Affiliate being appointed or acting as agent of Mortgagor;

(w) fail to make investments in the name of Mortgagor directly by Mortgagor or on its behalf by brokers engaged and paid by Mortgagor or its agents;

(x) guarantee or assume or hold itself out or permit itself to be held out as having guaranteed or assumed any liabilities or obligations of any Member or any Affiliate, nor shall it make any loan;

(y) fail to be solvent and pay its own liabilities, indebtedness and obligations of any kind, including all administrative expenses, from its own separate assets;

(z) fail to separately identify, maintain and segregate the assets of Mortgagor;

(aa) fail to have all data and records (including computer records) used by Mortgagor or any Affiliate in the collection and administration of any loan reflect Mortgagor's ownership interest therein; or

(bb) buy or hold evidence of indebtedness issued by any other Person (other than cash and investment-grade securities), or acquire the obligations of its Affiliates or owners, or hold out its credit as being available to satisfy the obligations of any other Person.

8.6 The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a member shall not cause the termination or dissolution of Mortgagor and the business of Mortgagor shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such member shall have all the rights of such member for the purpose of settling or managing its estate or Encumbered Property, subject to satisfying conditions precedent to the admission of such assignee as a substitute member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any Mortgagor interest shall be subject to all of the restrictions hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent member.

8.7 Any indemnification claim against Mortgagor arising under Mortgagor's Organizational Documents or the laws of the state of organization of Mortgagor shall be fully subordinate to any obligations of Mortgagor arising under the Loan Agreement or other Loan Documents, and shall only constitute a claim against Mortgagor to the extent of, and shall be paid by Mortgagor in monthly installments only from, the excess of net operating income for any month over all amounts then due under the Loan Agreement, this Instrument and the other Loan Documents.

8.8 All funds of Mortgagor shall be deposited in such checking accounts, savings accounts, time deposits, or certificates of deposit in Mortgagor's name or shall be invested in Mortgagor's name, in such manner as shall be designated by the Managing Member from time to time. Mortgagor funds shall not be commingled with those of any other person or entity. Mortgagor funds shall be used by the Managing Member only for the business of Mortgagor.

8.9 Title to Mortgagor's assets shall be held in Mortgagor's name.

8.10 Mortgagor shall not institute proceedings to be adjudicated bankrupt or insolvent; or consent to the institution of bankruptcy or insolvency proceedings against it; or file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy; or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of Mortgagor or the Encumbered Property or a substantial part of its property; or make any assignment for

the benefit of creditors; or admit in writing its inability to pay its debts generally as they become due; or take any action in furtherance of any such action.

8.11 Mortgagor shall not terminate solely as a consequence of the bankruptcy, insolvency, appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of a member of Mortgagor or a substantial part of such member's property, or assignment for the benefit of its creditors, or an admission in writing of the inability to pay its debts generally as they become due, or any similar action, of one or more of the members, so long as there remains a solvent manager of Mortgagor.

8.12 For purposes of this Article, Affiliate means any person or entity which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with Mortgagor or a Member of Mortgagor. For purposes hereof, the terms "control", "controlled", or "controlling" shall include, without limitation, (i) the ownership, control or power to vote ten percent (10%) or more of (x) the members or (y) Mortgagor or beneficial interests of any such person or entity, as the case may be, directly or indirectly, or acting through one or more persons or entities, (ii) the control in any manner over the managing member(s) or the election of more than one director or trustee (or persons exercising similar functions) of such person or entity, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such person or entity.

8.13 The Managing Member may transfer its interest in whole or in part and Mortgagor may admit any other Person as a member at any time; provided, that, so long as any of the Secured Obligations remain outstanding: (a) Mortgagor shall at all times have one and only one member; (b) no transfer of any direct interest in Mortgagor may be made unless (i) a reasonably acceptable non-consolidation opinion is delivered to Mortgagee concerning, as applicable, Mortgagor, the new transferee and/or their respective owners, and (b) except as permitted by this Instrument, no transfer of indirect ownership interest in Mortgagor may be made, such that the transferee owns, in the aggregate with the ownership interests of its affiliates and family members, more than a 49% direct or indirect interest in Mortgagor, unless a reasonably acceptable non-consolidation opinion is delivered to Mortgagee concerning, as applicable, Mortgagor, the new transferee and/or their respective owners.

8.14 The covenants, obligations, and rights set forth in this Article are not intended to benefit any creditor of Mortgagor, the Managing Member, or any other Person, except (a) the provisions in favor of Mortgagee hereof shall be for the benefit of Mortgagee and its successors and assigns, and (b) the indemnification provisions of this Instrument shall be for the benefit of any indemnitee. Except for the foregoing, no creditor or other third Person shall have any right, under any circumstances, to compel any actions or payments by the Managing Member or, by reason of any provision contained herein, be entitled to make any claim in respect of any debt, liability, obligation, or otherwise against Mortgagor or the Managing Member.

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IN WITNESS WHEREOF, the undersigned has executed this Instrument the day and year first hereinabove written.

MORTGAGOR:

VAN LEEUWEN POCATELLO, LLC

BY: VAN LEEUWEN MANAGEMENT, LLC
Its Sole and Managing Member

By



Michael J. Van Leeuwen
Its Sole and Managing Member

MORTGAGE

- 44 -

STATE OF Utah)
 County of Salt Lake)ss.

On this 23rd day of December 2005, before me, Michelle Liechty, a Notary Public, personally appeared Michael J. Van Leeuwen, known or identified to me to be the sole and managing member of Van Leeuwen Management, LLC, the sole member of Van Leeuwen Pocatello, LLC, the person whose name is subscribed to the foregoing instrument in such capacity, and acknowledged to me that he executed the same on behalf of Van Leeuwen Management, LLC as sole and managing member of Van Leeuwen Pocatello, LLC, and acknowledged that Van Leeuwen Pocatello, LLC 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.



Michelle Liechty
 Notary Public
 Residing at Centerville, Utah
 Comm. Expires 07-17-2008

**EXHIBIT A
LEGAL DESCRIPTION**

SW1/4NW1/4 and the W1/2SW1/4 of Section 24, Township 6 South, Range 35 East,
Boise Meridian, Bannock County, Idaho.

The address of said land is: 4976 W. Buckskin Road, Pocatello, Idaho 83201.

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MORTGAGE

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RECORDED AT REQUEST OF

FEE 36.00 DEPUTY mw

ALLIANCE TITLE & ESCROW

2005 DEC 29 PM 4 24

CHARTER OAK REAL ESTATE FUND, LLC

30105-11568-ER

OFFICIAL RECORD BK# 878

RECORDER

BANNOCK COUNTY IDAHO

ASSIGNMENT OF LEASES AND RENTS

Date: December 23, 2005

Mortgaged Property:
4976 W Buckskin Road
Pocatello, Idaho 83201-9123

PREPARED BY AND UPON RECORDATION RETURN TO:

Lynn P. Consentino, Attorney At Law PLLC

942 Chestnut Ridge Road,
Millbrook, New York 12545

This ASSIGNMENT OF LEASES AND RENTS ("Assignment") made as of December 23, 2005 by VAN LEEUWEN POCATELLO, LLC, a Delaware Limited Liability Company, with an address at 4976 W Buckskin Road, Pocatello, Idaho 83201-9123 and c/o Michael J. Van Leeuwen at 4547 South Abinadi Rd., Salt Lake City, UT 84124 ("Assignor"), in favor of CHARTER OAK REAL ESTATE FUND, LLC, a Delaware limited liability company ("Assignee"), whose address is c/o Porter Capital Management, 38C Grove Street, Ridgefield, CT 06877.

Assignor owns the real property and the improvements described on Exhibit A ("Property") and has delivered to Assignee a Promissory Note ("Note" in the amount of \$2,400,000.00 ("Loan"), a Mortgage ("Mortgage") securing the Loan, and a Security Agreement (the "Security Agreement"). The Note, the Mortgage, the Security Agreement, and all other instruments evidencing, securing or relating thereto, hereinafter referred to collectively as the "Loan Documents." Any defined terms used but not otherwise defined herein shall have the meanings set forth in the Security Agreement. One of the conditions to the Assignee's obligations under the Security Agreement is the execution and delivery of this Assignment of Leases and Rents to the Assignee.

1. **Assignment.** To further secure Assignor's obligations under the Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Assignor, in order to induce Assignee to enter into the Security Agreement, does irrevocably, absolutely and unconditionally transfer, assign, sell, convey, set over, deliver, and pledge to Assignee all of Assignor's right, title and interest in and to:

(i) any and all leases, subleases, contracts to lease, licenses, concessions and other agreements relating to the use or occupancy of the Property now or hereafter affecting all or part of the Property and all guarantees, supplements, amendments, modifications, extensions, renewals and replacements thereof and all additional remainders, reversions and other rights and estates appurtenant thereto (collectively, "Leases") the persons entitled to the possession, use or occupancy of all or any part of the Property under the Leases are sometimes herein collectively referred to as "Lessees"); and

(ii) all deposits (whether for security or otherwise), rents (whether denoted as base rent, advance rent, minimum rent, percentage rent, additional rent, or otherwise), issues, income, royalties, proceeds, escrows, revenue, profits, bonuses, termination fees, rejection damages, buy-out fees, receipts, products, proceeds, condemnation awards, insurance proceeds, indemnities, judgments, damages, settlements, causes of action, interest, and any other fees or payments made or to be made in lieu of rent and of every nature of and from and relating to the Property now due or payable or which may hereafter become due or payable or to which Assignor may now or shall hereafter become entitled or have the right to demand or claim, arising from or in any way relating to the Leases, including, without limitation, (a) any other payment Assignor may become entitled to receive with respect to any of the Leases, Lessees, licensees, and concessionaires pursuant to any bankruptcy, insolvency or reorganization or similar proceedings in any state or federal court, (b) rights to payment earned under the Leases, (c) any payments or rights to payment with respect to parking facilities or other facilities in any

way contained within or associated with the Property, and (d) all other income, consideration, issues, accounts, profits, or benefits of any nature arising from the possession, use, and operation of the Property (collectively, "Rents"), together with the immediate right to collect and retain the Rents now or hereafter becoming due, and together with all rights that Assignor may have against any tenant, lessee or licensee under the Leases or against any other occupant of the Property (such tenants, lessees, licensees or other occupants, "Tenants");

together with (a) the sole right, power or authority to alter or modify the Leases, (b) the sole right to exercise or to refrain from exercising any option or election at any time available to Assignor under the Leases and (c) the right to collect Rents, either with or without entry upon the Property.

2. **License.** While this instrument is a present and absolute assignment of the Rents, the Leases and the powers granted to Assignee, Assignor is granted a revocable license ("License") to retain possession of and otherwise deal with the Leases and to collect and retain the Rents until an occurrence of an Event of Default (as defined in the Security Agreement). Upon an Event of Default, the License shall automatically terminate and the provisions of Paragraph 3(E) hereof shall govern.

3. **Representations and Covenants.** (A) Assignor represents and warrants to Assignee that: (i) Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or Rents, (ii) attached hereto as Exhibit B is a true, correct and complete schedule of all Leases existing as of the date hereof, (iii) the copies of the Leases heretofore delivered to Assignee are true, correct and complete copies of such documents as in effect on the date hereof, (iv) the Rents due for any period subsequent to the month in which this Lease Assignment is dated have not been collected, (v) payment of any Rent in accordance with the relevant Lease has not been waived, released, discounted, set-off, discharged or compromised, (vi) no Lessee is in default of any of its obligations under any of the Leases, (vii) Assignor is not in default of any of its obligations under any of the Leases, (viii) all of the Leases are in effect and are fully enforceable in accordance with their terms, (ix) no tenant under any Lease has the right to cancel or terminate its Lease except as stated therein, (x) all work, if any, to be performed by Assignor under any Lease or on behalf of any tenant has been heretofore completed to the full satisfaction of the tenant, all payments, if any, to be made by Assignor to any tenant in lieu of any such work have been heretofore made, and all tenants under the Leases are in actual occupancy, (xi) all of the Leases are subject and subordinate to the Mortgage, and (xii) none of the Leases grants to the tenant thereunder or any other person, and no such tenant or other person has, the option, right of first refusal or other right to purchase the Property or any part thereof or interest therein, or any other right, except as tenant only.

(B) Assignor covenants and agrees with Assignee: (i) not to grant any lease, license, concession or right of possession, use or occupancy of the Property or any part thereof without the prior written consent of Assignee, (ii) to observe, perform and discharge, duly and punctually, all the obligations, terms, covenants, conditions and warranties under the Leases on the part of the Assignor to be kept, observed and performed, (iii) to promptly notify each

Lessee that Assignor's rights in and to the relevant Lease have been hereby assigned to Assignee, and to unconditionally and irrevocably direct each such Lessee to render performance under the relevant Lease to Assignee, and to make rent payments and other payments under the relevant Lease to Assignee at the address set forth in the notification or as otherwise directed by Assignee from time to time, notwithstanding any conflicting directions from any other party, including Assignor (and, if Assignor shall not so notify any Lessee, Assignee is hereby authorized to provide such notification), (iv) at Assignor's sole cost and expense, to enforce and secure in behalf of Assignee the performance of each and every obligation, term, covenant, condition and agreement in each of the Leases by each Lessee to be performed, (v) to give immediate written notice to Assignee of each notice of default received by Assignor under any Lease, together with a complete copy of such notice of default, and (vi) to appear in and properly prosecute, or as the case may be, defend, with counsel satisfactory to Assignee, any and all actions or proceedings arising under, occurring out of, or in any manner relating to each of the Lease, or the respective obligations, duties or liabilities of Assignor or of any Lessee thereunder, and, upon request by Assignee, to do so in the name and on behalf of Assignee but at the expense of Assignor, and to pay all costs and expenses of Assignee, including without limitation, attorneys' fees.

(C) Assignor covenants and agrees with Assignee: (i) not to receive or collect any Rents from any Lessee for a period of more than one month in advance, except for a security deposit equivalent to not more than two months' rent under the relevant Lease, (ii) not to pledge, transfer, mortgage or otherwise encumber or assign the Leases or Rents, (iii) not to waive, excuse, condone, discount, set-off, compromise, or in any manner release or discharge any Lessee from any obligation, covenant, condition or agreement by such Lessee to be kept, observed or performed, including without limitation the obligation to pay Rent in the manner and at the place and time specified in the respective Lease, (iv) not to cancel, terminate or consent to any surrender of any Lease, (v) not to modify, or in any way alter the terms of or terminate any Lease, (vi) not to renew or extend the term of any Lease, unless an option therefor was originally granted to the Lessee in the Lease for a fixed term, and (vii) not to consent to any subletting of any portion of the Property, or to any assignment of any Lease by any Lessee thereunder, without, in each instance mentioned in this paragraph, the prior written consent of Assignee. Any such consent granted by Assignee shall not constitute a continuing consent, and each subsequent act or omission of Assignor which is referred to in this paragraph shall require a separate written consent by Assignee.

(D) Assignee may give notice in writing, either in Assignor's name or Assignee's name, of this assignment at any time and from time to time to any or all of the Lessees, all as Assignee may from time to time elect. Assignor agrees that any demand made by Assignee on any Lessee or any guarantor of any Lease ("Lease Guarantor") for payment of Rents shall be sufficient warrant and authority for said Lessee or Lease Guarantor, as the case may be, to make payments of Rents to Assignee without the necessity for further consent by Assignor.

(E) So long as no default exists by Assignor hereunder or under any of the Loan Documents and without limiting the rights granted above, the Rents shall be collected and utilized by Assignor in accordance with the Security Agreement. Upon or at any time after default hereunder or under any of the Loan Documents (as defined in the Mortgage), in addition to and cumulative of the other remedies granted herein, Assignee, at its option but without being obligated to do so, and with or without bringing any action or proceeding, shall have the complete right, power and authority, and without releasing Assignor from any obligation hereof, to exercise and enforce any or all of the following rights and remedies in such manner and to such extent as Assignee may deem necessary to protect the security hereof: (a) without taking possession of the Property (unless Assignee elects otherwise), in Assignee's own name or in the name of Assignor if Assignee so elects, to demand, collect, receive, sue for, attach and levy the Rents, and after deducting all costs and expenses, including without limitation attorneys' fees, of collection and of exercising any and all other remedies, to apply the net proceeds of the collected Rents against the Obligations (as defined in the Mortgage) secured hereby, in such order and manner as Assignee may determine, (b) to make, modify, enforce, cancel, or accept surrender of any and all Leases or to discharge any obligation of Assignor under any Lease, (c) to remove and evict any and all Lessees, (d) appear in and defend any proceeding purporting to affect the security hereof or the rights of Assignee, (e) to manage the property, and (f) to otherwise do any and all acts and incur any and all costs and expenses as Assignee shall deem proper to protect the security for the Obligations, including, but not limited to, paying all related costs and employing counsel. Assignor grants to Assignee its irrevocable power of attorney, coupled with an interest, to take any and all of the above described actions and any or all other actions designated by Assignee for the proper management and preservation of the Property.

(F) The acceptance by Assignee of this Lease Assignment, with all of the rights, powers, privileges, and authority hereby created, shall not be deemed to constitute Assignee a mortgagee in possession or a creditor in possession of the Property, or at any time or in any event obligate Assignee to appear in or prosecute or defend any action or proceeding relating to any of the Leases, or the Property, or to take any action hereunder, or to expend any money or to incur any expense or to perform or discharge any obligation, duty or liability under the Leases, or to assume any obligation or responsibility for any of the security deposits or other deposits delivered to Assignor by any Lessee or Lease Guarantor. Assignee shall not be liable to Assignor or any of the Lessees, lease guarantors, or other persons in any way for the development, construction, management, operation, use, occupancy, repair, control or maintenance of the Property, for any destruction of or damage to the Property or any other property, or any part thereof, or for any death, injury or property damage sustained by any person or persons in or about the Property. No liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor. Assignor hereby agrees to defend, with counsel satisfactory to Assignee, indemnify and hold Assignee harmless from any and all liabilities, losses, damages, costs and expenses (including without limitation counsel fees) which Assignee may incur under any Lease or under or by reason of this assignment, and of and from any and all claims and demands whatsoever which may be asserted

against Assignee by reason of any alleged obligation or undertaking on Assignee's part to perform or discharge any of the covenants, obligations, and conditions of any Lease. If Assignee should incur any such liability, loss, damage, cost, or expense under any Lease or under or by reason of this assignment, or in defense against any such claim or demand, the amount thereof, together with interest thereon at the Default Rate (as defined in the Note), shall be payable by Assignor to Assignee immediately upon Assignee's demand.

(G) If Assignor shall be in default hereunder or under any of the Loan Documents, then upon Assignee's demand (which demand may be made from time to time and at any time following such default), Assignor shall provide Assignee with the original, executed counterparts of all the Leases, or such of the Leases as Assignee may specify. Any delivery by Assignor of Leases or copies thereof to Assignee pursuant to the foregoing shall constitute Assignor's warranty and representation to Assignee that same are true, correct and complete counterparts of the then existing Leases.

(H) At Assignor's sole cost and expense, Assignor shall appear in and prosecute, or as the case may be, defend, with counsel satisfactory to Assignee, any and all actions, suits and proceedings growing out of, or in any manner connected with, the Leases, or Rents or the obligations or liabilities of Assignor thereunder.

(I) If Assignor shall fail to make any payment or to perform or observe any covenant, obligation or condition as in any Lease provided, then Assignee, at its option and without notice or demand and without releasing Assignor from any obligation or liability hereunder or under such Lease, may make such payment or perform or fulfill such covenant, obligation or condition, including, without limitation, appearing in and prosecuting, or, as the case may be, defending any action, suit or proceeding purporting to affect such Lease, the security or enforceability of this assignment or the rights or powers of Assignee hereunder, and performing any obligation of Assignor under such Lease. In exercising any such power hereunder, Assignor may pay all necessary costs and expenses, employ counsel and incur and pay counsel fees. All of the foregoing may be done, at Assignee's election, in the name of Assignee or in the name of Assignor. Assignor shall reimburse Assignee immediately upon demand for all sums expended by Assignee in exercising any of its rights and remedies hereunder, together with interest thereon at the Default Rate.

(J) Assignee shall have the exclusive right, effective upon the occurrence of any default, to do the following, at Assignee's option, in the name and on behalf of Assignee, but and at the expense of Assignor, and Assignor shall fully cooperate with Assignee in connection therewith: (a) make, execute and deliver to any Lessee consents, approvals, applications for renewal and all other documents and communications deemed by Assignee appropriate in connection with any such Lease, (b) modify and amend any Lease, (c) make such payments to any Lessee as Assignee shall consider appropriate, (d) file such claims, take such actions and institute all proceedings which Assignee may deem appropriate in connection with any Lease, and (e) generally do, execute, and perform all other acts, matters and things whatsoever that, in the opinion of Assignee, ought to be done, executed, and performed in connection with each Lease.

4. This Assignment does not make Assignee responsible for (a) managing or repairing the Property, (b) performing the terms of the Leases, or (c) any loss sustained by Assignor resulting from any act or omission of Assignor in managing the Property, or make Assignee a mortgagee in possession, unless Assignee does in fact become such a mortgagee in possession.

5. Assignor shall indemnify and hold Assignee harmless from and against any and

all liability, loss, claims, or damage prior to Assignee becoming a mortgagee in possession and prior to foreclosure ("Loss") which Assignee may incur under the Leases and/or by reason of this Assignment as a result of any act, negligence, or omission of Assignor, including, without limitation, any asserted by Tenants under the Leases. If Assignee incurs any Loss, including sums advanced pursuant to Paragraph 3 above or in defense of any claim, the amount thereof, including costs and attorneys' fees, together with interest at the Default Rate (as defined in the Note) from the date incurred by Assignee until repaid by Assignor, shall be immediately due and payable to Assignee by Assignor upon demand and shall be secured by the Loan Documents.

6. Assignor hereby authorizes Assignee to perform any act which Assignee may perform by virtue of this Assignment. Except as otherwise provided in the Mortgage, Assignor shall not, without the prior written consent of Assignee, further pledge or otherwise encumber or assign the Leases or Rents.

7. At any time, Assignee may, at its option, notify any Tenants of the existence of this Assignment. Assignor specifically authorizes and directs all Tenants to pay all Rents to Assignee upon receipt of demand from Assignee and agrees that each such present and future Tenant may rely upon written demand from Assignee to so pay said Rents without further inquiry.

8. (a) Assignee's acceptance of this Assignment is without prejudice to Assignee. Assignee's exercise of or failure to exercise the rights granted it herein, and collecting and applying Rents as herein provided, is without prejudice and not a waiver by Assignee of any Event of Default and does not prevent foreclosure of any liens on the Property or make (prior to Assignee becoming a mortgagee in possession and prior to foreclosure) Assignee liable under any of the Leases, Assignee expressly reserving all of its rights and privileges under the Loan Documents as though this Assignment had not been entered into. In addition to any other rights hereunder, Assignee may institute suit and obtain a mandatory injunction against Assignor to prevent a breach or Event of Default.

(b) All rights and obligations of the parties hereunder shall inure to the benefit of and be binding upon each party's successors and assigns.

(c) If any provision of this Assignment shall be invalid, such invalidity shall not affect the validity and enforceability of the remaining provisions. This Assignment may not be amended except by a written instrument duly executed by Assignor and Assignee and shall be in full force and effect continuously from the date hereof to and until the Mortgage shall be released.

(d) All notices or other communications to be sent by one party to the other shall be given and effective as provided in the Mortgage. This Assignment shall be governed by and construed in accordance with the laws of the state in which the Property is situated without regard to its conflicts of law rules.

9. WAIVER OF TRIAL BY JURY: ASSIGNOR AND ASSINGEE HEREBY KNOWINGLY, UNCONDITIONALLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY, TO THE FULLEST EXTENT PERMITTED BY LAW, WAIVE ANY RIGHT

ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN REPECT OF ANY ACTION, PROCEEDING, OR COUNTERCLAIM BASED ON THIS ASSIGNMENT OF LEASES AND RENTS OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS ASSIGNMENT OF LEASES AND RENTS OR ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS ASSIGNMENT OF LEASES AND RENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. FURTHER, ASSIGNOR CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF ASSIGNOR, OR COUNSEL TO ASSIGNOR, HAS PRESENTED, EXPRESSLY OR OTHERWISE, THAT THE ASSIGNOR WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION, ASSIGNOR HEREBY ACKNOWLEDGES THAT ASSIGNEE HAS BEEN INDUCED TO ACCEPT THIS AGREEMENT BY, INTER ALIA, THE PROVISION OF THIS SECTION.

10. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of Idaho, without regard to principles of conflict of laws.

11. Cross Default. A. Notwithstanding anything to the contrary set forth herein in any of the Loan Documents or in any of the Utah Loan Documents (as defined in the Security Agreement), (i) a Default, or an event, which with the giving of notice, the passage of time, or both, would constitute an Event of Default, under this Assignment or any of the other Loan Documents shall be and be deemed to be a Default under the Utah Loan Documents, (ii) an Event of Default under this Assignment or any of the other Loan Documents shall be and be deemed to be an Event of Default under the Utah Loan Documents, (iii) a Default, or an event, which with the giving of notice, the passage of time, or both, would constitute an Event of Default, under any of the Utah Loan Documents shall be and be deemed to be an Event of Default under this Assignment and the other Loan Documents, and (iv) an Event of Default under any of the Utah Loan Documents shall be and be deemed to be an Event of Default under this Assignment and the other Loan Documents. Any inaccuracies in any representation or covenant set forth herein and the failure of Assignor to meet any of its obligations hereunder shall be deemed an Event of Default.

B. Upon the occurrence of Default or an Event of Default under this Assignment, the Lender shall have the right, at its sole election, to exercise any and all rights under this Assignment, the Loan Documents, and/or the Utah Loan Documents, or any of the same, either individually, together or in any order, as determined by the Lender in its sole discretion.

12. Recourse. All of the terms and provisions of this Assignment are recourse obligations of the Assignor and not restricted by any limitation on personal liability provided in any of the other Loan Documents or limited to any collateral securing any of the obligations under the Note, it being the intent of the Lender to create separate obligations of the Assignor hereunder which can be enforced against the Assignor without regard to the existence of the other Loan Documents or the liens or security interests created therein.

****SIGNATURES ON NEXT PAGE*****

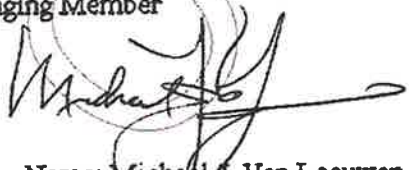
Unofficial Copy

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year above.

ASSIGNOR:

VAN LEEUWEN POCATELLO, LLC, a Delaware limited liability company

By: VAN LEEUWEN MANAGEMENT, LLC, a Delaware limited liability company, its Managing Member

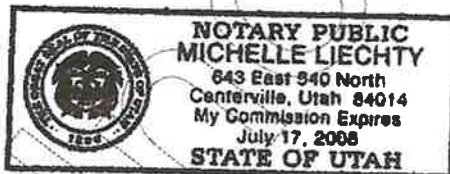
By: 

Name: Michael J. Van Leeuwen
Title: Sole Member

STATE OF Utah
County of Salt Lake

On this 23rd day of December 2005, before me, Michelle Liechty, a Notary Public, personally appeared Michael J. Van Leeuwen, known or identified to me to be the sole and managing member of Van Leeuwen Management, LLC, the sole member of Van Leeuwen Pocatello, LLC, the person whose name is subscribed to the foregoing instrument in such capacity, and acknowledged to me that he executed the same on behalf of Van Leeuwen Management, LLC as sole and managing member of Van Leeuwen Pocatello, LLC, and acknowledged that Van Leeuwen Pocatello, LLC 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
Residing at
Comm. Expires

Michelle Liechty
Centerville, Utah
07-17-2008

12-12

20528335

**EXHIBIT A
LEGAL DESCRIPTION**

SW1/4NW1/4 and the W1/2SW1/4 of Section 24, Township 6 South, Range 35 East, Boise Meridian, Bannock County, Idaho.

The address of said land is: 4976 W. Buckskin Road, Pocatello, Idaho 83201.

Unofficial Copy



IDAHO DEPARTMENT OF
WATER RESOURCES

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls, ID 83402-1718

Phone: 208-525-7161 • Fax: 208-525-7177 • Email: easterninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

April 02, 2026

MHC LLC
4605 W BUCKSKIN RD
POCATELLO ID 83201-5085

Re: Change in Ownership for Water Right No(s): 29-11658

Dear Water Right Holder(s):

The Department of Water Resources (Department) acknowledges the receipt of correspondence changing ownership of the above referenced water right(s) to you. The Department has modified its records and has enclosed a computer-generated report for you.

Updating the ownership record for a water right does not reconfirm the validity of the right. When processing a Notice of Change in Water Right Ownership, the Department does not review the history of water use to determine if the right has been forfeited or deliberately abandoned through five years or more of non-use. To read more about water right forfeiture, including how to protect a water right from forfeiture, please see Idaho Code §§ 42-222 and 42-223.

Please note, water right owners are required to report any change of water right ownership and any change of mailing address to the Department within 120 days of the change. Reporting forms are available from any office of the Department, or from the Department's website.

If you have any questions concerning the enclosed information, please contact me at 208-497-3787.

Sincerely,

Jonie Baily
Technical Records Specialist 1

Enclosure(s)

cc: WATER DISTRICT 29D

Baily, Jonie

OK to data
enter

From: Mark Mansfield <mark@pcspocatello.com>
Sent: Thursday, April 2, 2026 1:12 PM
To: Baily, Jonie
Subject: Re: Ownership

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Mrs. Baily

I am trying to amass the water rights for future use that is going to start this spring.

The 1943 home is on my personal property which is contiguous to the MHC, LLC property.

I am acquiring the water rights that I bought from the seller with the priority date of 8/9/43.

I hope this answers your questions so that I can move forward.

Regards,

Theresa Mansfield
MHC, LLC President

From: Baily, Jonie <Jonie.Baily@idwr.idaho.gov>
Sent: Tuesday, March 31, 2026 2:38 PM
To: Mark Mansfield <mark@pcspocatello.com>
Subject: RE: Ownership

Thank you for your response. This water right is for domestic use for parcel number R3851022301, which is no longer valid, the priority date is 8/9/1943, with the domestic use it would have been attached to a home that it was meant to be used for and originally filed on. Is there still a 1943 home? I just need verify the original home is not located on someone else's property that is associated with this water right. Do you know where the original home was located? We may need to see what the original parcel covered and how it was split in order to verify there are no other parcels entitled to a portion of this water right.

From: Mark Mansfield <mark@pcspocatello.com>
Sent: Tuesday, March 31, 2026 1:55 PM
To: Baily, Jonie <Jonie.Baily@idwr.idaho.gov>
Subject: Re: Ownership

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Dear Mrs. Baily,

Thank you for your email. I apologize for the delay in response, Mitchell Melton is an employee of MHC, LLC and I had not seen the email to him. The email mark@pcspocatello.com is perfect, please use that email instead, thank you.

This water right is for both domestic and stockwater use.

With regard to water use for domestic purposes will be for the following:

1. My daughter plans on building a home on the property, next to my home which is on the adjacent property. The design plans are not yet complete.
2. I plan on building a garage with pickleball court and other amenities on the property which will require the use of water. The design plans are not yet complete.
3. This spring, we plan on being self sustainable, gardening and growing our own food.
 - a. Garden.
 - b. Beef.
 - c. Basic irrigation of household plants and trees.

With regard to water use for stockwater purposes will be for the following:

1. MHC, LLC has been buying, training and selling horses for over 20 years. The design plans are not yet complete but we plan on installing a barn with stalls, etc.

Thank you for your time and effort.

Regards,

Theresa Mansfield
MHC, LLC President

From: Baily, Jonie <Jonie.Baily@idwr.idaho.gov>

Sent: Thursday, March 26, 2026 3:49 PM

To: bummerexperience@gmail.com <bummerexperience@gmail.com>; Mark Mansfield <mark@pcspocatello.com>

Subject: FW: Ownership

Our department received a request for an update on an ownership change 29-11658. I sent this email as a reply, but I have not heard back. I will send this both the email the request came from and the email on the application.

I have this ownership change on my desk, it is awaiting data entry and needing additional review. I believe we have all the documentation required. I do have question this water right is for domestic and stockwater is there a home or domestic use on the property? The original owner owned additional land so we are trying to determine the location of the domestic portion of the water right because there does not appear to be home on this parcel. Please feel free to reply to this email or call me at the number listed below. Thank you.



Jonie Baily | Technical Records Specialist

900 N Skyline Drive Ste. A, Idaho Falls, ID 83402

Phone number: (208) 525-7161

Fax number: (208) 525-7177

Email: jonie.baily@idwr.idaho.gov

Website: www.idwr.idaho.gov

From: Baily, Jonie
Sent: Wednesday, March 11, 2026 9:32 AM
To: bummerexperience@gmail.com
Subject: RE: Ownership

Mitchell:

I have this ownership change on my desk, it is awaiting data entry and needing additional review. I believe we have all the documentation required. I do have question this water right is for domestic and stockwater is there a home or domestic use on the property?

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

I work with Theresa Mansfield and looking to find out if there are any issues with 29-11658 email is bummerexperience@gmail.com or 208-530-8190

Thanks

Mitchell Melton



IDAHO DEPARTMENT OF
WATER RESOURCES

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Phone: 208-525-7161 • Fax: 208-525-7177 • Email: easterninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

January 21, 2026

MHC LLC
4605 W BUCKSKIN RD
POCATELLO ID 83201

RE: Change in Ownership Water Right No. 29-11658

Dear Sir/Madam:

The Department of Water Resources acknowledges receipt of your Notice of Change in Water Right Ownership.

Our review of your notice indicates that additional information is required before we can process the change. The information required is indicated below:

**** **Evidence of Ownership/Filing Fee:** The current owner of the water right listed above is Hugh Selznick and Mary Selznick. The deed received with your application is from New Stream RE Funding 23 LLC. Please supply a full chain of title from Hugh Selznick and Mary Selznick to New Stream RE Funding 23 LLC. Also, in order to update the ownership of a water right a filing fee is required. The filing for a non split ownership change is \$25.00 per water right. The filing fee for an ownership change resulting in a split is \$100.00 per water right. Please provide the required filing fee. Please review the proof report attached. According to our records this water right is for domestic and stockwater, on your parcel described in instrument number 21114271, I do not see a home (domestic). The parcel number originally reflected on the water right is R3851022301 you may be required to determine how that parcel was split in order for the department to determine if this water right is appurtenant to your property.

Because the Department cannot process the ownership change without proper documentation/fees, we will hold any action on your notice pending receipt of the necessary information/fees. If we do not receive the necessary information/fees within 30 days we will return your notice and all attachments and your notice will not be processed.

Please note that Section 42-248, Idaho Code, requires you or the owner of this water right to maintain current ownership and address records on file with the department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any department office, or at the department's website at: www.idwr.idaho.gov.

Please feel free to contact the Department if you have any questions.

Sincerely,

Jonie Bailly
Technical Records Specialist

SCANNED
JAN 21 2026

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

1/21/2026

Water Right 29-11658

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MARY SELZNICK 4976 W BUCKSKIN RD POCATELLO, ID 83201 (208) 233-2100
Current Owner	HUGH SELZNICK 4976 W BUCKSKIN RD POCATELLO, ID 83201 (208) 233-2100

Priority Date: 8/9/1943

Basis: Decreed

Status: Active

Source
WEST FORK RAPID CREEK

Tributary
RAPID CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
STOCKWATER	01/01	12/31	0.030 CFS	
DOMESTIC	01/01	12/31	0.040 CFS	
<u>Total Diversion</u>			0.070 CFS	

Source and Point(s) of Diversion:

WEST FORK RAPID CREEK SWSW Sec. 24, Twp 06S, Rge 35E, BANNOCK County

Place Of Use:

DOMESTIC within BANNOCK County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
06S	35E	24																	X

STOCKWATER within BANNOCK County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
06S	35E	24																	X

Conditions of Approval:

- | | | |
|----|-----|---|
| 1. | | STOCKWATER: 100 HEAD |
| 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. | X01 | Domestic use is for 1 home. |
| 4. | N13 | THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY. |
| 5. | N11 | THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE. |
| 6. | | PARCEL NO. R3851022301 |