

MORTGAGE

THIS MORTGAGE, made this ____ day of _____, 20____, between _____ and _____, whose post office address is _____

(individually, collectively, jointly, and severally, "**Mortgagor**"), and United States Fire Insurance Company, a Delaware Corporation, whose post office address is 157 Main Street, Greenville, PA 16125 ("**Mortgagee**").

This Mortgage is for the purpose of securing performance of each agreement of Mortgagor herein contained and securing payment to Mortgagee of (a) all monies due to Mortgagee pursuant to the Defendant Bail Bond Application and Agreement and the Indemnitor Application and Agreement, executed and delivered by Mortgagor on or about the date of this Mortgage (individually or collectively, the "**Agreements**"), (b) all losses, damages, attorneys' fees, investigation fees, forfeitures, judgments, court assessments, and liabilities suffered, sustained, or incurred by Mortgagee arising out of or relating to one or more bail bonds posted on behalf of defendant _____ in the amount of \$_____ in the case of _____ v. _____ ("**Action**"), Power Number(s) (if known) _____, and (c) on account of or related to the execution of any other bail bond executed or posted by or for Mortgagee in connection with or related to the Action or Agreements (all of the foregoing items described in clauses (a) through (c) above sometimes referred to collectively in this Mortgage as the "**Obligations**").

1. **Mortgagor does hereby mortgage** and confirm unto Mortgagee the hereinafter described land and appurtenances situated, lying and being in the County of _____, State of Montana(collectively, "**Property**"):

a. Legal Description ("Land")

b. Leases, Rents and Other Privileges. Upon (a) the expiration of any applicable notice of default as set forth in this Mortgage and (b) the filing of a civil action for the appointment of a receiver or to otherwise foreclose this Mortgage in any court of competent jurisdiction, Mortgagee shall be deemed to have assigned all rents, issues, revenues, and profits, including present and future leases for oil, gas, mineral rights, and otherwise in and to the foregoing property.

c. Leases, Permits and Licenses. All right, title, and interest of Mortgagor to all buildings, structures, fences, pumps, pumping equipment, pipes, pipe lines, wells, tanks, dams, reservoirs, and other improvements and fixtures of whatever nature and description now or hereafter located on the lands covered by this Mortgage or any leases thereof, including all water and water rights located thereon or appurtenant thereto.

d. Other Property.

i. All rights in and to easements, common areas and access or use rights over roads or rights-of-way or utility easements on adjacent properties heretofore granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues, and alleys adjoining the Land to the extent any of these rights are appurtenant to the Land.

ii. All judgments, awards of damages, settlements, and other compensation hereafter made resulting from condemnation proceedings or the taking of the Land or any part thereof under power of eminent domain. Mortgagee is hereby authorized, on behalf and in the name of

Mortgagor, to execute and deliver valid releases from and to appeal from any such judgments or awards. Mortgagee may apply all such sums or any part thereof so received, on the Obligations secured hereby in such manner as it elects, notwithstanding the fact that the amount owing thereon may not then be due and payable or that such indebtedness is otherwise adequately secured, or, at Mortgagee's sole option, the entire amount or any part thereof so received may be released to Mortgagor.

iii. All rights of Mortgagor to water for irrigation, including, but not limited to, Mortgagor's decree rights to surface and subsurface water of the Land or for other uses on the Land, including but not limited to Mortgagor's riparian rights (if any), rights to subsurface water, rights now or in the future obtained in water available through irrigation projects whether public or private

2. **Covenants.** Mortgagor represents to and covenants with Mortgagee and its heirs, personal representatives, and assigns that they will warrant and defend the Property against the lawful claims of all persons whomsoever and Mortgagor hereby covenants with the Mortgagee that they are lawfully "seized" and in possession of the Property and the same is free from all encumbrances except for existing easements of record encumbering the Land and except for this Mortgage that is given as security for the payment and performance of the Obligations.

3. **Protective Advances.** If Mortgagor shall fail to comply with any or all of the conditions of this Mortgage, then all of the monies secured hereby shall become due and collectible, and all rents and profits of the Property shall then immediately accrue to the benefit of Mortgagee. In such case, this Mortgage may be foreclosed for the full amount, together with costs, taxes, insurance, cost of title insurance, attorneys' fees, and any other sums advanced or expense incurred on account of Mortgagor. Any advances shall draw interest at the lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by applicable law, and shall be liens under this Mortgage.

4. **Release.** A release of this Mortgage is to be made at the expense of Mortgagor upon full payment and performance of the Obligations secured hereby.

5. **Waste.** Mortgagor agrees that it will permit no waste on the Property and to keep all improvements on the Land in as good repair as they are on the date of execution of this Mortgage, reasonable wear and tear excepted. Mortgagor shall not do or permit to be done to the Property anything that may in any way impair or weaken the security under this Mortgage.

6. **Due on Sale or Encumbrance.** If Mortgagor, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, shall sell, convey, transfer, alienate, mortgage, sell on installment contract or encumber the Property or any part thereof, or any interest therein or shall be divested of its title, or any interest therein in any manner or way, whether voluntary or involuntary, or in the event of any merger, consolidation or dissolution affecting Mortgagor, or in the event of the transfer or other disposition of any interest in Mortgagor or any entity in Mortgagor's chain of ownership, whereby control of the management and operation of the Property is no longer in Mortgagor, then in any of such events at the sole option of Mortgagee, Mortgagee may declare a default under this Mortgage, whereupon Mortgagee shall have all of the rights and remedies set forth in this Mortgage. This provision shall not apply to transfers of title or interest under any Will or Testament or applicable law of descent nor shall it apply to any contribution to any limited liability company, limited partnership or other business entity in which Mortgagor retains direct or indirect control, but Mortgagor shall remain liable on this Mortgage in all respects in accordance with the Agreement and this Mortgage.

7. **Collection of Rents/Appointment of Receiver.** Upon the later of the expiration of any notice of default required under this Mortgage and the filing of any civil action or to otherwise foreclose this Mortgage in any court of competent jurisdiction, with respect to rents, issues, and profits herein assigned, Mortgagor does hereby appoint Mortgagee its attorney-in-fact (which power is coupled with an interest given for security and is

irrevocable) to receive, collect, and receipt for all sums due and owing for such use, rents, and occupations as the same may accrue and out of the amount so collected to pay and discharge all sums delinquent under the terms of this Mortgage. For the purpose aforesaid, Mortgagee may enter upon and take possession of the Property and manage and operate the same and take any action that, in Mortgagee's sole judgment, is necessary or proper to conserve the value of the same. Mortgagee may also take possession of and, for these purposes, use any and all of the Property used by Mortgagor in the operation, rental, or leasing thereof or any part thereof. The expense, including any receiver's fees incurred pursuant to the powers herein contained, shall be secured by this Mortgage. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually collected by Mortgagee. In any foreclosure action, Mortgagor shall be entitled to appointment of a receiver.

8. **Compliance with Law; Hazardous Materials.** Mortgagor covenants it has not released any toxic, hazardous or dangerous chemicals, substances or materials on the Land as of the date of the grant of this Mortgage. Mortgagor will at all times comply and will cause all tenants/occupants of the Property to comply with all present and future laws and requirements of any governmental body relevant to the Property and Mortgagor's ownership and operation of the Property including, without limitation, all laws and regulations regarding the use, discharge, generation, removal, transportation, storage, disposal or handling of any insecticides, pesticides, herbicides and other toxic, hazardous or dangerous chemicals, substances and materials, or the containers in which they are shipped, handled, or stored, on or about the Property. Any breach of this provision by Mortgagor will be deemed a default under this Mortgage and Mortgagee will be entitled to exercise all rights granted by this Mortgage in the event of a default by Mortgagor or otherwise available at law or in equity including, without limitation,, the foreclosure of its lien on all or some of the Property, expressly reserving the right to exclude from such foreclosure any portions thereof that are, have or may become contaminated by or with toxic/hazardous materials or substances.

Mortgagor will not license, authorize, permit, agree or consent to the dumping or disposal on the Land of any products, materials, chemicals, substances or by-products, of any nature whatsoever, by any third party during the term of this Mortgage.

Commencing on the date after Mortgagor's acquisition of title, Mortgagor will indemnify and hold Mortgagee harmless from and against any or all loss, cost, damage, expense, or liability it may suffer or incur (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of claims) as a result of or in connection with the assertion of any claim relating to the presence or removal of any hazardous waste or substance resulting from a breach of this section by Mortgagor, with respect to the Property. The indemnities described in this section shall survive any termination, satisfaction or foreclosure of this Mortgage.

9. **Default.** Each of the following, at the option of Mortgagee, shall constitute an event of default ("**Default**") under this Mortgage:

- a. Failure of Mortgagor to pay any amounts secured by this Mortgage.
- b. Failure of Mortgagor to make any payment for taxes or to maintain insurance or any other payment necessary to prevent filing of or to effect discharge of any lien. Mortgagor shall have reasonable time to discharge or remove any lien, provided Mortgagor is diligent in pursuing discharge or removal.
- c. Failure of Mortgagor to comply with any other term, obligation, covenant, or condition contained in this Mortgage or the Agreements.

10. **RIGHTS AND REMEDIES UPON DEFAULT; NOTICES.** Upon the occurrence of a Default, Mortgagee shall notify Mortgagor in writing, specifying the Default and Mortgagor shall have 15 days to cure the Default. Rights

and remedies upon Default in the event any notice is given to Mortgagor, Mortgagee shall give written notice to Mortgagor at the address set forth on the first page of this Mortgage. Any notice of Default delivered to Mortgagor shall be sufficient if mailed by certified mail, return receipt requested. Notice shall be sufficient upon mailing. If Mortgagor fails to cure, the Mortgagee, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

- a. Mortgagee may declare any amounts secured hereby immediately due and payable.
- b. Mortgagee shall have the right, without notice to Mortgagor, upon filing an action for foreclosure of this Mortgage to retake possession of the Property and to collect debts, rents, and lease or other payments due Mortgagor, to be paid directly to Mortgagee, and apply those payments to the Obligations secured hereby.
- c. Upon filing an action for foreclosure of this Mortgage, Mortgagee shall have the option to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, and operate the Property pending foreclosure or sale, and to collect any debts, rents, or other payments due to Mortgagor relating to the Property and apply the proceeds against the Obligations secured hereby.
- d. Mortgagee may obtain a judicial decree foreclosing Mortgagor's interest in any or all of the Property.
- e. Mortgagee shall have all other rights and remedies available to it under applicable legal or equitable remedies.
- f. If Mortgagee institutes any suit or action to enforce any of the terms of this Mortgage or to foreclose this Mortgage, or to exercise any of the rights set forth above, Mortgagee shall be entitled to recover such sums expended, including reasonable attorneys' fees and expenses, to avail itself of the remedies set forth above and to protect Mortgagee's interest in the Property.

11. **Litigation, Collection, and Bankruptcy Fees and Expenses.** Mortgagee may appear in or defend any action or proceeding at law or in equity, purporting to affect the security hereof, and Mortgagor hereby agrees to pay to Mortgagee (to the full extent permitted by law) all costs, charges, and expenses, including costs of evidence of title and attorneys' fees, in a reasonable sum, incurred in any such action or proceeding in which Mortgagee may appear or defend. Upon the commencement of any proceedings to collect the indebtedness or disbursements secured hereby, or any part thereof, by foreclosure of this Mortgage or otherwise, there shall become due and Mortgagor agrees to pay (to the full extent permitted by law) all costs, fees, and expenses of such proceeding, including a reasonable sum as and for an attorneys' fee, as an additional indebtedness hereunder and it is agreed that this Mortgage may incur or pay for any abstract or continuation of abstract of title, certificate of insurance or title or other evidence of title, subsequent to this date, on any of the Property and this Mortgage shall secure payment thereof.

12. **Continuing Liability of Mortgagor.** Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for performance of any obligation

contained herein, and without affecting the rights of Mortgagee for any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of said Note, and without notice or consent,

(a) Release any person liable for payment of all or any part of the indebtedness or for performance of any obligation;

(b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof;

(c) Exercise or refrain from exercising or waive any right Mortgagee may have;

(d) Accept additional security of any kind; and

(e) Release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property herein described.

13. **Binding on Assigns; Venue.** The provisions of this mortgage shall be binding upon the heirs, assigns, personal representatives and successors in interest to Mortgagor and Mortgagee. This Mortgage shall be governed by the laws of the State of Montana and the venue for any action or proceeding shall be in the County in which the Land is located.

IN WITNESS WHEREOF, each Mortgagor has hereunto set their hands the day and year first above written.

Mortgagor(s):

Signature: _____

Signature _____

Print Name _____

Print Name _____

[if Mortgagor is married, husband and wife must sign]

STATE OF _____)

: ss.

COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____ as _____ of _____.

Notary Public for the State of Residing at: _____

My Commission Expires: _____

RETURN TO:

**United States Fire Insurance Company
C/O Bail USA
157 Main Street
Greenville, PA 16125**