

**LOAN AGREEMENT**

This Loan Agreement (the "***Agreement***") is entered into as of June 18, 2013 by and between **DRAPER IRRIGATION COMPANY**, A Utah non-profit corporation ("***Borrower***"), and **AMERICANWEST BANK**, a Washington state bank ("***Lender***").

**RECITALS**

Borrower has requested that Lender make a term loan to Borrower as described below, and Lender has agreed to provide such credit to Borrower on the terms and conditions contained herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Borrower hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

SECTION 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings:

***"Agreement"*** has the meaning given in the introductory paragraph hereto.

***"Applicable Law"*** means, collectively, all applicable Federal, state, and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Government Authority.

***"Bankruptcy Code"*** means the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time.

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**"Borrower"** has the meaning given in the introductory paragraph hereto.

**"Closing Date"** means the first date on which all the conditions precedent in Article IV are satisfied.

**"Collateral"** means the real and personal property encumbered by the Loan Documents, including without limitation the Property and the Water Rights, encumbered by the Trust Deed, the Water Trust Deed, and the other Loan Documents. Collateral shall also include all Financial Contracts.

**"Debt Service Coverage Ratio"** means the ratio that is calculated by dividing (a) EBITDA by (b) the sum of the current portion of long term debt plus interest expense.

**"Default"** means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

**"EBITDA"** means, for the applicable period of time, Borrower's earnings for such period plus, to the extent deducted in computing said earnings for such period, the sum (without duplication) of (a) interest expense, (b) tax expense, (c) depreciation expense, and (d) amortization expense (as determined in accordance with GAAP).

**"Environmental Indemnity"** means the Environmental Indemnity Agreement dated as of the date of this Agreement and executed by Borrower and Guarantor in favor of Lender.

**"Environmental Laws"** means any and all Federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions related to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

**"Environmental Liability"** means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Obligor directly or

indirectly resulting from or based on (a) a violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) the release or threatened release of any Hazardous Materials into the environment, or (d) any contract, agreement or other consensual arrangement pursuant to which any such liability is assumed.

**"ERISA"** means the Employee Retirement Income Security Act of 1974 as amended from time to time and the rules and regulations with respect thereto.

**"Event of Default"** has the meaning given in Section 7.1.

**"Financial Contract"** means (1) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap, bond option, interest rate option, foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing) entered into in connection with the Loan; or (2) any combination of the foregoing.

**"Government Authority"** means the government of the United States or of any political subdivision thereof, whether state or local, or any agency, authority, court or other entity exercising executive, judicial, taxing, regulatory or administrative powers.

**"Guaranty"** means the Continuing and Unconditional Guaranty executed by Guarantor in favor of Lender.

**"Guarantor"** means WaterPro, Inc., a Utah corporation.

**"Hazardous Materials"** means all hazardous or toxic substances, wastes or other pollutants regulated pursuant to any Environmental Law.

**"Interest Rate Derivative Documentation"** means each trade confirmation, and the International Swaps and Derivative Association (ISDA) master and schedule agreement executed in connection with the Loan Documents.

**"Lender"** has the meaning given in the introductory paragraph hereto.

**"Loan"** means the Term Loan made to Borrower in the stated principal amount of **\$8,552,878.00**.

**"Loan Documents"** means this Agreement, the Note, the Trust Deed, the Water Trust Deed, all Financial Contracts, all Interest Rate Derivative Documentation, all other documentation executed in connection with the Loan, and each other agreement, instrument or other document to be delivered in connection with this Agreement or the Loan made hereunder.

**"Material Adverse Effect"** means a material adverse effect on (a) the ability of an Obligor to perform that Obligor's payment or other obligations under the Loan Documents, (b) the legality, validity, binding effect or enforceability of the Loan Documents, (c) the perfection or priority of any lien granted to Lender under the Loan Documents, or (d) the operations, business, properties or financial condition or business of Borrower taken as a whole.

**"Note"** means the Term Promissory Note, in a form provided by Lender, dated on or about the date hereof and made by Borrower in favor of Lender, evidencing the Loan.

**"Obligations" or "Borrower's Obligations"** means all advances to, and debts, liabilities and other monetary obligations of Borrower under any Loan Document or otherwise with respect to any Loan (including without limitation the Note, all Financial Contracts and all Interest Rate Derivative Documentation), whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

**"Obligor"** means Borrower or Guarantor, and **"Obligors"** means Borrower and Guarantor.

**"Permitted Liens"** means (i) liens in favor of Lender; (ii) liens existing as of the date hereof, disclosed by Borrower to Lender in writing, and which Lender has approved in writing; (iii) liens for taxes not at the time delinquent or thereafter payable without penalty or being contested in good faith, provided provision is made to the reasonable satisfaction of Lender for the eventual payment thereof if subsequently found payable; (iv) deposits under workmen's compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations or surety or appeal bonds, or to secure indemnity, performance or other similar bonds in the ordinary course of business; (v) liens which arise by operation of law incurred in the ordinary course of business (for sums not constituting borrowed money) that are not overdue for a period of more than 30 days or are being contested in good faith, provided provision is made to the reasonable satisfaction of Lender for the eventual payment thereof if subsequently found payable; (vi) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of real property that do not secure monetary obligations; (vii) purchase money security interests on equipment of Borrower securing capital leases or purchase money indebtedness; (viii) statutory liens of landlords, carriers, warehousemen, mechanics, materialmen and similar liens arising by operation of law in the ordinary course of business for amounts not yet due or which being contested in good faith, provided provision is made to the reasonable satisfaction of Lender for the eventual payment thereof if subsequently found payable; (ix) liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction; (x) liens of any depositary bank in connection with statutory, common law and contractual rights of set-off and recoupment with respect to any deposit account of Borrower; (xi) possessory liens which occur in the ordinary course of business and secure normal trade debt which is not yet due and payable; (xii) licenses, sublicenses, leases or subleases granted to third parties in the ordinary course of business not interfering with the business of Borrower (xiii) undetermined or inchoate liens, arising or potentially arising under statutory provisions which have not at the time been filed or registered in accordance with applicable laws or of which written notice has been duly given in accordance with applicable law or which, although filed or registered, relate to obligations not yet due or delinquent; (xiv) the rights reserved to or vested in municipalities or governmental or other public authorities or agencies by statutory provisions or by the terms of leases, licenses, franchises, grants or permits, which affect any land to terminate any such leases, licenses, franchises, grants or permits or to require annual or other payments as a condition to the continuance thereof; (xv) deposits with public utilities or to any municipalities or governmental or other public authorities when required by the utility, municipality, governmental or other public authority in connection with the supply of services or utilities to Borrower.

**"Plan"** means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) and subject to ERISA that is or, within the preceding five years, has been established or maintained or to which contributions have been made or required by Borrower or, any ERISA affiliate or with respect to which Borrower or any ERISA affiliate may have liability.

**"Property"** means the real property located in Salt Lake County, Utah and described in the Trust Deed.

**"Responsible Officer"** means the chief executive officer, president, manager, chief financial officer, treasurer, assistant treasurer or controller of Borrower and solely, for purposes of Section 2.1, any other officer or employee of Borrower designated by any of the foregoing officers in a written notice to Lender.

**"Taxes"** means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Government Authority, including any interest, additions to tax, or penalties applicable thereto.

**"Term Loan"** means a loan that is repaid in increments of principal with no right to reborrow.

**"Trust Deed"** means the Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement dated on or about the date hereof and executed by Borrower in favor of Lender and granting to Lender a trust deed lien in the Property.

**"Water Rights"** means the water rights described in the Water Trust Deed.

**"Water Trust"** means the Water Trust Deed dated on or about the date hereof and executed by Borrower in favor of Lender and granting to Lender a lien on the Water Rights.

## ARTICLE II

### CREDIT TERMS

SECTION 2.1 COMMITMENT. Subject to the terms and conditions of this Agreement, Lender hereby agrees to make the Loan to Borrower, the proceeds of which shall be used by Borrower to refinance existing debt encumbering the Property, and for working capital. Borrower's obligation to repay the Loan shall be further evidenced by the Note. Advances on the Loan shall be made pursuant to documentation or correspondence required by Lender that is signed or otherwise submitted by a Responsible Officer, and Lender reserves the right to require documentation evidencing the use of Loan proceeds for the foregoing purpose.

### SECTION 2.2 INTEREST/PAYMENTS; FEES.

(a) Interest on Loan. The outstanding principal balance of the Loan shall bear interest at the rate or rates of interest set forth in the Note.

(b) Computation and Payment; Automatic Payments. Interest shall be computed on the basis of a 360-day year and actual days elapsed. Interest and principal shall be payable at the times and place set forth in the Note. Borrower agrees that payments on the Note shall be made by an automatic debit against Borrower's operating account at Lender, Account No. 5900605204, or against such other account as may be designated by Lender.

(c) Statements. At the option of Lender, Lender will send to Borrower one or more statements with respect to the Loan. Each such statement shall be deemed correct and accepted by Borrower and shall be binding on Borrower unless Borrower notifies Lender in writing of any discrepancy within thirty (30) days of such statement being sent, absent manifest error.

(d) Fees. Borrower shall pay to Lender on the Closing date a loan fee of \$85,528.78.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Borrower makes the following representations and warranties to Lender, which representations and warranties shall survive the execution of this Agreement, and Borrower further covenants that all such representations and warranties shall remain true and correct until the full and final payment, and satisfaction and discharge, of all Obligations:

SECTION 3.1 LEGAL STATUS. Borrower is duly organized and existing and in good standing under the laws of its incorporation or organization, and is qualified or licensed to do business (and is in good standing as a foreign entity, if applicable) in all jurisdictions in which such qualification or licensing is required or in which the failure to so qualify or to be so licensed could reasonably be expected to have a Material Adverse Effect.

SECTION 3.2. AUTHORIZATION AND VALIDITY. The Loan Documents have been duly authorized, and upon their execution and delivery will constitute legal, valid and binding agreements and obligations of Borrower, as applicable, enforceable in accordance with their respective terms except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally.

SECTION 3.3. NO VIOLATION. The execution, delivery and performance by Borrower of each of the Loan Documents do not violate any Applicable Law, or contravene any provision of the organizational documents of Borrower or result in any breach of or default under any contract, obligation, indenture or other instrument to which Borrower is a party or by which Borrower may be bound that could reasonably be expected to have a Material Adverse Effect.

SECTION 3.4. LITIGATION. There are no pending, or, to the best of Borrower's knowledge, threatened, actions, claims, investigations, suits or proceedings by or before any Government Authority that could reasonably be expected to have a Material Adverse Effect other than those disclosed by Borrower to Lender in writing prior to the date hereof.

SECTION 3.5. CORRECTNESS OF FINANCIAL STATEMENTS. The most recent financial statements of Borrower provided to Lender (a) are complete and correct and present accurately and



fairly in all material respects the financial condition of Borrower as of the dates of such financial statements, (b) disclose all liabilities of Borrower that are required to be reflected or reserved against, whether liquidated or unliquidated, fixed or contingent, and (c) have been prepared under the tax method of accounting as allowed or required under the Internal Revenue Code, with such method consistently applied or as Lender may otherwise accept. Since the date of such financial statements there has been no material adverse change in the financial condition of Borrower, nor has Borrower mortgaged, pledged, granted a security interest in or otherwise encumbered any of the Collateral except for Permitted Liens.

SECTION 3.6. PERMITS, FRANCHISES. Borrower possesses and will hereafter possess all permits, consents, approvals, franchises and licenses required by Government Authorities to enable Borrower to conduct the business in which it is now engaged in material compliance with Applicable Law.

SECTION 3.7. ERISA. Borrower is in compliance in all material respects with all applicable provisions of ERISA; Borrower has not violated any provision of any Plan; no "Reportable Event" as defined in ERISA has occurred and is continuing with respect to any Plan initiated by Borrower; Borrower has met its minimum funding requirements under ERISA with respect to each Plan; and each Plan will be able to fulfill its benefit obligations as they come due in accordance with the Plan documents and under generally accepted accounting principles.

SECTION 3.8. OTHER OBLIGATIONS. Borrower is not in default on any Tax obligation or any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation except such (a) as Borrower may in good faith contest or as to which a bona fide dispute may arise, and (b) for which Borrower has made provision for eventual payment thereof in the event Borrower is obligated to make such payment.

SECTION 3.9. ENVIRONMENTAL MATTERS. Borrower is in compliance in all material respects with all Environmental Laws. None of the operations of Borrower is the subject of any Government Authority investigation evaluating Borrower's compliance with Environmental Laws or whether any remedial action under Environmental Laws involving a material expenditure is needed with respect to Borrower's operations.

SECTION 3.10. ANTI-MONEY LAUNDERING. Borrower is in compliance, in all material respects, with the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)). No part

of the proceeds of the Loan will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

#### ARTICLE IV

#### CONDITIONS

SECTION 4.1.        CONDITIONS OF ADVANCE ON LOAN. The obligation of Lender to fund the Loan is subject to the fulfillment to Lender's satisfaction of all of the following conditions precedent:

(a)    Approval of Lender Counsel. All legal matters incidental to the extension of credit by Lender shall be reasonably satisfactory to Lender's counsel.

(b)    Documentation. Lender shall have received, in form and substance satisfactory to Lender, each of the following, duly executed:

- (i)    This Agreement.
- (ii)   The Note.
- (iii)   The Trust Deed.
- (iv)   The Water Trust Deed.
- (v)    The Environmental Indemnity.
- (vi)   The Guaranty.
- (vii) A certificate for Borrower and Guarantor in a form acceptable to Lender certifying as to any required attachments thereto and to the resolutions and other proceedings relating to the authorization, execution and delivery of each Loan Document to which Borrower (or Guarantor) is a party.
- (viii) Organizational documents and good standing certificates for Borrower and Guarantor.

- (ix) An ALTA extended coverage lenders policy(ies) insuring the first lien priority of the Trust Deed and the Water Trust Deed containing such exceptions and endorsements as Lender deems acceptable or necessary.
  - (x) Certified Uniform Commercial Code searches indicating that the security interests of Lender in the Collateral described in the Trust Deed and Water Trust Deed and the financing statements with respect thereto are in a first priority position.
  - (xi) Such other documents and filings as Lender deems necessary to document and perfect its security interests in the Collateral.
  - (xii) A loan participation agreement with First Utah Bank in a form acceptable to Lender and First Utah Bank (together with assurances that all requirements of First Utah Bank have been met).
  - (xiii) Such other documents as Lender may reasonably require under any other section of this Agreement or as contemplated by the other Loan Documents.
- (c) Financial Condition. There shall have been no Material Adverse Change, as determined by Lender, in the financial condition or business of Borrower.
- (d) Fees. Any fees required to be paid on or before the Closing Date shall have been paid.
- (e) Reimbursements. Borrower shall have reimbursed Lender for all reasonable out-of-pocket costs and expenses incurred in connection with the preparation and negotiation of the Loan Documents and the closing of the Loan, including without limitation title expenses, search fees, filing fees, appraisal fees, environmental audits, and reasonable attorneys' fees.

SECTION 4.2 CONDITIONS TO ALL ADVANCES ON LOAN. The obligation of Lender to fund the Loan is subject also to the following conditions precedent:

- (a) Representations and Warranties. The representations and warranties of Borrower and each other Obligor contained in this Agreement or the other Loan Documents shall be true and correct in all material respects on and as of the date of such advance, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respect as of such earlier date.

(b) No Default. No Default shall exist, or would result from such proposed advance on the Loan or from the application of the proceeds thereof.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Borrower agrees to the following so long as any Obligation remains outstanding and unpaid:

SECTION 5.1. PUNCTUAL PAYMENTS. Borrower shall pay all Obligations when due at the times and place and in the manner specified therein.

SECTION 5.2. ACCOUNTING RECORDS. Borrower shall maintain adequate books and records in accordance with the tax method of accounting as allowed under the Internal Revenue Code, consistently applied, and permit any representative of Lender, at Lender's costs and expense, during business hours and after reasonable notice, to inspect, audit and examine such books and records and to make copies of the same.

SECTION 5.3. COMPLIANCE. Borrower shall maintain all licenses, permits, governmental approvals, rights, privileges and franchises necessary for the conduct of its business; and comply with the provisions of all documents pursuant to which Borrower is organized and/or which govern Borrower's continued existence and with the requirements of all Applicable Laws of any Government Authority applicable to Borrower or its business.

SECTION 5.4. INSURANCE. Borrower shall maintain and keep in force insurance of the types and in amounts customarily carried in lines of business similar to that of Borrower, including but not limited to fire, extended coverage, public liability, property damage and workers' compensation, and such other insurance as may be required by the other Loan Documents. All insurance shall be with insurers rated A-X or better by A.M. Best Company, Inc.

SECTION 5.5. TAXES AND OTHER LIABILITIES. Borrower shall pay and discharge when due any and all Taxes, except such (a) as Borrower may in good faith contest or as to which a bona fide

dispute may arise, and (b) for which Borrower has made provision for eventual payment thereof in the event Borrower is obligated to make such payment.

SECTION 5.6. NOTICE TO LENDER. Borrower shall promptly give written notice to Lender in reasonable detail of any Default.

SECTION 5.7. FINANCIAL COVENANTS. Borrower shall comply with the following covenant:

- a. Borrower and Guarantor shall maintain as measured on a consolidated basis a Debt Service Coverage Ratio of no less than 1.25 to 1.00, measured as of the end of each fiscal year with the audited financial statements to be provided to Lender.

SECTION 5.8. FINANCIAL INFORMATION. Borrower shall provide to Lender the following financial statements and information:

- a. Annual, CPA audited financial statements for Borrower and Guarantor (on a consolidated basis), including without limitation information sufficient to determine compliance with the financial covenant described in Section 5.7, due within one-hundred twenty (120) days after each fiscal year-end;
- b. Copies of annual tax returns for Borrower due within fifteen (15) days of filing;
- c. Copies of annual tax returns for Guarantor due within fifteen (15) days of filing; and
- d. Such budgets, forecasts, and other financial information as Lender may reasonably request.

SECTION 5.9. COLLATERAL INSPECTION. Upon reasonable advanced notice, Borrower shall permit an inspection by Lender of the Collateral; provided, unless an Event of Default has occurred and is continuing, any such inspection shall be at Lender's sole cost and expense.

## ARTICLE VI

### NEGATIVE COVENANTS

Borrower agrees to the following so long as any Obligation remains outstanding and unpaid:

SECTION 6.1. USE OF LOAN. Borrower shall use proceeds from the Loan for the purposes stated in Section 2.1. Borrower will not use the Loan proceeds for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the board of governors of the Federal Reserve System of the United States), or for the purpose of extending credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose. Borrower will not use the Loan proceeds for the purpose of funding a dividend or distribution to Borrower's equity holders.

SECTION 6.2. MERGER, CONSOLIDATION. Borrower shall not merge into or consolidate with any other entity; make any substantial change in the nature of Borrower's business as conducted as of the date hereof; nor permit the transfer of a controlling interest in Borrower.

SECTION 6.3 LOANS. Borrower shall not make any loans or advances to any individual, partnership, corporation, limited liability company, trust, or other organization or person, including without limitation its officers and employees; provided, however, that Borrower may make advances to its employees, including its officers, with respect to expenses incurred or to be incurred by such employees in the ordinary course of business which expenses are reimbursable by Borrower; and provided further, however, that Borrower may extend credit in the ordinary course of business in accordance with customary trade practices.

SECTION 6.4 SALE OF ASSETS. Borrower shall not sell, lease or otherwise dispose of any of its assets, except in the ordinary course of business.

SECTION 6.5 INVESTMENTS. Borrower shall not make investments in, or advances to, any individual, partnership, corporation, limited liability company, trust or other organization or person other than as previously specifically consented to in writing by the Lender.

SECTION 6.6. NEGATIVE PLEDGE. Borrower shall not create, assume or permit to exist any security interest, encumbrance, mortgage, deed of trust, or other lien (including, but not limited to, a lien of attachment, judgment or execution) affecting any of the Collateral, or execute or allow to be filed

any financing statement or continuation thereof affecting any of such properties, except for Permitted Liens or as otherwise provided in this Agreement.

SECTION 6.7. INDEBTEDNESS. Borrower shall not incur any indebtedness outside the ordinary course of business without the prior written consent of Lender.

## ARTICLE VII

### EVENTS OF DEFAULT

SECTION 7.1. EVENTS OF DEFAULT. The occurrence of any of the following shall constitute an "*Event of Default*" under this Agreement and the other Loan Documents:

- (a) Borrower shall fail to pay any Obligation when due.
- (b) Borrower shall default in compliance with Section 5.7.
- (c) Any financial statement or certificate furnished to Lender in connection with, or any representation or warranty made by Borrower or any other Obligor in any Loan Document, shall prove to be incorrect, false or misleading in any material respect when furnished or made.
- (d) Any default in the performance of or compliance with any obligation, agreement or other provision contained in any other Loan Document (other than those referred to in subsections (a), (b), and (c) above), and with respect to any such default which by its nature can be cured, such default shall continue for a period of thirty (30) days after Lender gives notice to Borrower of such nonperformance or noncompliance or such additional time as may be required to cure such default, not to exceed ninety (90) days from the date of such notice, provided Borrower has commenced the cure of such default and is diligently prosecuting the same to completion.
- (e) A default or event of default occurs under any other credit transaction between an Obligor and Lender permitting Lender to accelerate or otherwise exercise remedies with respect to that other credit transaction.

(f) A default or event of default occurs under any other credit transaction or contract obligation between an Obligor and a creditor other than Lender, permitting that creditor to accelerate or otherwise exercise remedies with respect to that other credit transaction or contract obligation and the amount sought exceeds \$250,000.00.

(g) Any judgment in an amount that exceeds \$250,000.00 not covered by insurance shall be obtained against an Obligor which shall remain unvacated, unbonded or unstayed for a period of thirty (30) days following the date of entry thereof; provided that a judgment shall not be deemed "covered by insurance" for the purposes of this Agreement in the event that the insurer providing primary or secondary coverage potentially applicable to such judgment shall have issued a reservation of rights notice, letter or statement to the Obligor or shall be contesting the applicability of its insurance coverage to such judgment.

(h) An Obligor shall become insolvent, or shall suffer or consent to or apply for the appointment of a receiver, trustee, custodian or liquidator for the Obligor or any of the Obligor's property, or shall generally fail to pay debts as they become due, or shall make a general assignment for the benefit of creditors; an Obligor shall file a voluntary petition in bankruptcy, or seeking reorganization, in order to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Code, or under any Applicable Law granting relief to debtors, whether now or hereafter in effect; or any involuntary petition or proceeding pursuant to the Bankruptcy Code or any other Applicable Law relating to bankruptcy, reorganization or other relief for debtors is filed or commenced against an Obligor and such involuntary petition or proceeding is not dismissed within ninety (90) days of filing, or an Obligor shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition; or an order for relief shall be entered against an Obligor by any court of competent jurisdiction under the Bankruptcy Code or any other Applicable Law relating to bankruptcy, reorganization or other relief for debtors.

SECTION 7.2. REMEDIES. Upon the occurrence and during the continuance of an Event of Default: (a) Lender may declare all Obligations immediately due and payable in full without presentment, demand, protest or notice to Borrower, all of which are hereby expressly waived by Borrower and (b) Lender shall have all rights, powers and remedies available under each of the Loan Documents or accorded by Applicable Law. Such acceleration and termination shall occur automatically upon the occurrence of an Event of Default described in Section 7.1(h). All rights, powers and remedies of Lender may be exercised at any time by Lender and from time to time after the occurrence and during the continuance of an Event of Default and are cumulative.



## ARTICLE VIII

### MISCELLANEOUS

SECTION 8.1. DEPOSIT ACCOUNTS. As security for the Obligations, Borrower hereby grants to Lender a security interest in all deposit accounts (as that term is defined in Chapter 9a of the Utah Uniform Commercial Code) held by Borrower at Lender (including without limitation the account identified in Section 2.2). In addition to that security interest, Lender shall have all rights of setoff provided by Applicable Law with respect to such deposit accounts of Borrower. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right to apply immediately all funds in those deposit accounts against the outstanding Obligations without notice to Borrower.

#### SECTION 8.2 [RESERVED]

SECTION 8.3. NO WAIVER. No delay, failure or discontinuance of Lender in exercising any right, power or remedy under any of the Loan Documents shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, forbearance, consent or approval of any kind by Lender with respect to any Event of Default must be in a writing signed by Lender and shall be effective only to the extent set forth in such writing.

SECTION 8.4. NOTICES. All notices, requests and demands which any party is required or may desire to give to any other party under the Loan Documents must be in writing delivered to each party at the following address:

BORROWER: Draper Irrigation Company  
12421 South 800 East  
Draper, Utah 84020  
Attn: Darrin Jensen

LENDER: AmericanWest Bank  
10757 South River Front Parkway, Suite 150  
Salt Lake City, Utah 84095  
Attn: Joseph Trunzo

or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (a) if sent by hand delivery, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or two days after deposit in the U.S. mail, first class and postage prepaid; and (c) if sent by overnight delivery service, one day after the date it is given to the service.

SECTION 8.5. COSTS, EXPENSES AND ATTORNEYS' FEES. Borrower shall pay to Lender immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees expended or incurred by Lender in connection with (a) the enforcement of Lender's rights in the collection of any amounts which become due to Lender under any of the Loan Documents, (b) any workout negotiations and measures (with Lender having no obligation to undertake such negotiations, and measures), and (c) the prosecution or defense of any action in any way related to any of the Loan Documents, including without limitation, any action for declaratory relief, whether incurred at the trial or appellate level, and including any of the foregoing incurred in connection with any bankruptcy or insolvency proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Lender or any other person) relating to Borrower or any other person or entity.

SECTION 8.6. SUCCESSORS, ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties; provided however, that Borrower may not assign or transfer its rights and obligations hereunder without Lender's prior written consent. Lender reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Lender's rights and benefits under each of the Loan Documents. In connection therewith, Lender may disclose all documents and information which Lender now has or may hereafter acquire relating to the Loan, the Loan Documents, any Obligor, or its respective business, provided that such other party agrees with Lender to keep such matters confidential. Without limiting the foregoing, Borrower acknowledges that a participating interest in the Loan will be sold and assigned by Lender to First Utah Bank, a Utah state-chartered bank.

SECTION 8.7. ENTIRE AGREEMENT; AMENDMENT. This Agreement and the other Loan Documents constitute the entire agreement between Borrower and Lender with respect to each credit subject hereto and supersede all prior negotiations, communications, discussions and correspondence concerning the subject matter hereof. This Agreement may be amended or modified only in writing signed by each party hereto.

SECTION 8.8. NO THIRD PARTY BENEFICIARIES. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their respective permitted successors and assigns, and no other person or entity shall be a third party beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any other of the Loan Documents to which it is not a party.

SECTION 8.9. INDEMNIFICATION. Except for all losses, costs, damages, claims and expenses arising from Lender's gross negligence or willful misconduct, or Lender's breach of applicable law or the Loan Documents, as determined in a final order issued by a court of competent jurisdiction, Borrower hereby indemnifies and agrees to defend and hold Lender, its directors, officers, employees, and agents harmless from any and all losses, costs, damages, claims and expenses of any kind (whether based on contract, intentional tort, negligence, or otherwise) suffered by or asserted against one or more of such indemnitees related to claims by third parties arising out of the financing provided under the Loan Documents. This indemnification and hold harmless provision will survive the termination of the Loan Documents and repayment of the Obligations.

SECTION 8.10. JURISDICTION. Any suit, action or proceeding with respect to the Loan Documents must be brought in (a) the courts of Salt Lake or Utah County, State of Utah, or (b) the United States District Court for the District of Utah, and Borrower hereby submits to any such suit, action, proceeding or judgment and waives any other preferential jurisdiction by reason of domicile. Borrower hereby consents to the service of process in any suit, action or proceeding in the above specified courts by the mailing thereof by Lender registered or certified mail, postage prepaid, to Borrower at the address specified in this Agreement. Borrower waives any objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to the Loan Documents brought in the courts identified above and also irrevocably waives any claim that any such suit, action or proceeding brought in any of those courts has been brought in an inconvenient forum.

SECTION 8.11. WAIVER OF JURY TRIAL. BORROWER AND LENDER HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO

ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS THEREUNDER, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. BORROWER AND LENDER EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

SECTION 8.12. TIME. Time is of the essence of each and every provision of this Agreement and each other of the Loan Documents.

SECTION 8.13. SEVERABILITY OF PROVISIONS. If any provision of this Agreement shall be prohibited by or invalid under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Agreement.

SECTION 8.14. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same Agreement.

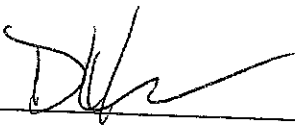
SECTION 8.15. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without reference to conflict of law rules.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

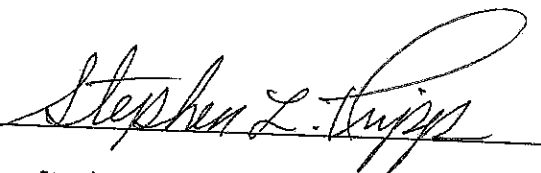
**"Borrower"**

DRAPER IRRIGATION COMPANY

By: 

Name: Darrin L. Jensen

Title: CEO and General Manager

By: 

Name: Stephen L. Tripp

Title: President

**"Lender"**

AMERICANWEST BANK

By: 

Name: Mark D. Howell

Title: President - Intermountain

## ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (the "*Agreement*") made as of June 18, 2013 by Draper Irrigation Company, a Utah non-profit corporation ("*Borrower*"), and WaterPro, Inc., a Utah corporation (with that corporation referred to herein along with Borrower as "*Indemnitor*"), in favor of AmericanWest Bank, a Washington state bank ("*Lender*") (Lender, and its affiliates and their respective officers, directors, attorneys, agents and representatives shall each be referred to as an "*Indemnified Person*").

### RECITALS

A. Lender has agreed to make a term loan (the "*Loan*") to Borrower pursuant to the terms of a Loan Agreement of even date herewith (the "*Loan Agreement*") and related promissory note (the "*Note*").

B. Borrower has fee title ownership of the following described real property (said real property, together with any real property hereafter encumbered by the lien of the Mortgage (defined below), being herein collectively referred to as the "*Land*"; the Land, together with all structures, buildings and improvements now or hereafter located on the Land, being collectively referred to as the "*Property*");

See Exhibit A attached hereto.

C. Lender is prepared to make the Loan to Borrower pursuant to the Loan Agreement and the Note, together with all extensions, renewals, modifications, substitutions and amendments thereof, and secured by, among other things, a certain Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement given by Borrower to Lender (the "*Mortgage*"), which will encumber the Property.

D. Lender is unwilling to make the Loan unless Indemnitor agrees to provide the indemnification, representations, warranties, and covenants and other matters described in this Agreement for the benefit of each Indemnified Person.

### AGREEMENT

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitor, jointly and severally, hereby represents, warrants, covenants and agrees for the benefit of each Indemnified Person as follows:

### ARTICLE 1

#### DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

"*Environmental Law*" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection

of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or future danger to human health or the environment or relating to any wrongful death, personal injury or property damage that is caused by or related to the presence, growth, proliferation, reproduction, dispersal, or contact with any biological organism or portion thereof, including molds or other fungi, bacteria or other microorganisms or any etiologic agents or materials. The term "**Environmental Law**" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground Storage Tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term "**Environmental Law**" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or the presence of biological or etiologic agents or materials or use, management, or maintenance of the Property.

"**Hazardous Substances**" includes but is not limited to any and all substances, biological and etiologic agents or materials (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials ("**ACM**"), polychlorinated biphenyls ("**PCBs**"), lead, lead-based paints, radon, radioactive materials, flammables and explosives, and any biological organism or portion thereof (living or dead), including molds or other fungi, bacteria or other microorganisms, or any etiologic agents or materials.

"**Legal Action**" means any claim, suit or proceeding, whether administrative or judicial in nature.

"**Losses**" includes any claims, suits, liabilities (including but not limited to strict liabilities), administrative or judicial actions or proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, costs of Remediation (whether or not performed voluntarily), costs of assessing damages or losses, judgments, awards, amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, attorneys' fees, engineers' fees, environmental consultants' fees, and investigation costs (including but not limited to costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of



whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings.

**"Release"** with respect to any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing, or growth, proliferation, reproduction, or dispersal or other movement or production of Hazardous Substances.

**"Remediation"** includes but is not limited to any response, remedial, removal, or corrective action; any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance; any actions to prevent, cure or mitigate any Release of any Hazardous Substance; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances.

**"Storage Tanks"** includes any underground or aboveground storage tanks, whether filled, empty, or partially filled with any substance.

Section 1.2 Other Defined Terms. Any capitalized term utilized herein shall have the meaning as specified in the Loan Agreement, unless such term is otherwise specifically defined herein.

## ARTICLE 2

### ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES

Indemnitor represents and warrants to its knowledge that:

Section 2.1 Hazardous Substances. There are no Hazardous Substances or Storage Tanks in, on, above, or under the Property, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto, and (ii) fully disclosed to Lender in writing pursuant to the written report(s) resulting from the environmental assessment(s) of the Property delivered to Lender (collectively referred to herein as the **"Environmental Report"**).

Section 2.2 No Releases. There are no past, present or threatened Releases of Hazardous Substances in, on, above, under, from or migrating to the Property, except as described in the Environmental Report.

Section 2.3 No Violations. There is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property, except as described in the Environmental Report.

Section 2.4 No Notice. Indemnitor does not know of, and Indemnitor has not received, any written or oral notice or other communication from any person or entity (including but not limited to a governmental entity) relating to Hazardous Substances or Remediation thereof, of possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing.

Section 2.5 Authorizations. All notices, permits, licenses, registrations, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Property, including, without limitation, the existence of any Storage Tanks at the Property or the past or present generation, treatment, storage, disposal, or release of a Hazardous Substance into the environment, have been duly obtained or filed and have been duly renewed or maintained.

### ARTICLE 3

#### ENVIRONMENTAL COVENANTS

Indemnitor covenants and agrees that:

Section 3.1 Compliance. All uses and operations on or of the Property, whether by an Indemnitor or any other person or entity, shall be in compliance with all Environmental Laws and permits issued pursuant thereto.

Section 3.2 No Hazardous Substances. Other than as used in normal operations of the Property and in accordance with all applicable laws, there shall be no Hazardous Substances in, on, above or under the Property, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto, and (ii) fully disclosed to Lender in writing.

Section 3.3 Investigation. If an Event of Default exists, or if Lender reasonably believes that Hazardous Substances exist on the Property in violation of Environmental Laws, Indemnitor shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written requests of Lender (including but not limited to sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and each Indemnified Person shall be entitled to rely on such reports and other results thereof.

Section 3.4 Remediation. Indemnitor shall, at its sole cost and expense, comply with all written requests of Lender to (i) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, above, under or from the Property in violation of Environmental Laws; (ii) comply with any Environmental Law; and (iii) comply with any directive from any governmental authority.

Section 3.5 Prohibited Activities. Indemnitor shall not do or allow any tenant or other user of the Property to do any act or thing that would constitute a violation of any Environmental Law, materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property.

Section 3.6 Notice of Release. Indemnitor shall immediately notify Lender in writing of (a) any presence or Releases or future Releases of Hazardous Substances in, on, above, under, from or migrating towards the Property in violation of Environmental Laws; (b) any non-compliance with any Environmental Laws related in any way to the Property; (c) any required Remediation of environmental conditions relating to the Property; and (d) any written or oral notice or other communication of which any Indemnitor becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Substances or Remediation thereof, possible liability of any

person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Agreement.

#### ARTICLE 4

##### INDEMNIFIED PERSON'S RIGHTS; COOPERATION AND ACCESS

If an Event of Default exists, or if Lender reasonably believes that Hazardous Substances exist on the Property in violation of Environmental Laws, Lender and any other person or entity designated by Lender (including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant) shall have the right but not the obligation, to enter upon the Property at all reasonable times, and upon reasonable notice, to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's reasonable discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing, all of which shall be performed at times and in a manner to minimize, to the extent reasonably possible, any disruption to the business conducted on the Property, and shall be at the sole cost and expense of Indemnitor. Indemnitor shall cooperate with and provide access to Lender and any such person or entity designated by Lender.

#### ARTICLE 5

##### INDEMNIFICATION

Section 5.1 Indemnity. Indemnitor covenants and agrees at its sole cost and expense, to protect, defend, indemnify, release and hold harmless each Indemnified Person from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Person (other than those arising solely from a state of facts that first came into existence after an Indemnified Person acquired title to the Property through foreclosure or a deed in lieu thereof) and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any presence of any Hazardous Substances in, on, above, or under the Property; (b) any past, present or future Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by an Indemnitor, any person or entity affiliated with an Indemnitor, and any tenant or other user of the Property in connection with any actual, proposed or future use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by an Indemnitor, any person or entity affiliated with an Indemnitor, and any tenant or other user of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (e) any past, present or future non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including but not limited to any failure by an Indemnitor, any person or entity affiliated with an Indemnitor, and any tenant or other user of the Property to comply with any order of any governmental authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the future imposition, recording or filing of any lien arising under Environmental Laws encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Agreement; (h) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations

pursuant to this Agreement; and (i) any diminution in value of the Property in any way connected with any occurrence or other matter referred to in this Agreement.

## ARTICLE 6

### DUTY TO DEFEND AND ATTORNEYS AND OTHER FEES AND EXPENSES

Upon written request by any Indemnified Person, Indemnitor shall defend the same (if requested by an Indemnified Person, in the name of the Indemnified Person) by attorneys and other professionals approved by the Indemnified Person. Notwithstanding the foregoing, any Indemnified Person may, in its sole and absolute discretion, but at its sole cost and expense, engage its own attorneys and other professionals to defend or assist it.

## ARTICLE 7

### ENFORCEMENT

Each Indemnified Person may enforce the obligations of Indemnitor without first resorting to or exhausting any security or collateral or without first having recourse to the Note, the Mortgage, or any other Loan Documents or any of the Property, through foreclosure proceedings or otherwise; provided, however, that nothing herein shall inhibit or prevent any Indemnified Person from suing on the Note, foreclosing, or exercising any power of sale under, the Mortgage, or exercising any other rights and remedies thereunder. This Agreement and Indemnitor's obligations hereunder, shall be deemed and construed as unsecured obligations and shall not be secured by the Mortgage. Further, this Agreement is not collateral or security for the debt of Indemnitor pursuant to the Loan. It is not necessary for an event of default to have occurred pursuant to the Mortgage for an Indemnified Person to exercise its rights pursuant to this Agreement. Indemnitor is fully and personally liable for such obligations, and its liability is not limited to the original or amortized principal balance of the Loans or the value of the Property.

## ARTICLE 8

### SURVIVAL

The obligations and liabilities of Indemnitor under this Agreement shall fully survive indefinitely notwithstanding any termination, satisfaction, assignment, entry of a judgment of foreclosure, exercise of any power of sale, or delivery of a deed in lieu of foreclosure of the Mortgage.

## ARTICLE 9

### JURY TRIAL WAIVER

INDEMNITOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR ANY ACTS OR OMISSIONS OF ANY INDEMNIFIED PERSON IN CONNECTION THEREWITH.

## ARTICLE 10

### SUBROGATION

Indemnitor shall take any and all reasonable actions, including institution of legal action against third parties, necessary or appropriate to obtain reimbursement, payment or compensation from such persons responsible for the presence of any Hazardous Substances at, in, on, under or near the Property or otherwise obligated by law to bear the cost. Each Indemnified Person shall be and hereby is subrogated to all of Indemnitor's rights now or hereafter in such claims.

## ARTICLE 11

### MISCELLANEOUS PROVISIONS

Section 11.1 No Third Party Beneficiary. The terms of this Agreement are for the sole and exclusive protection and use of each Indemnified Person. No party shall be a third party beneficiary hereunder, and no provision hereof shall operate or inure to the use and benefit of any such third party. It is agreed that those persons and entities included in the definition of Indemnified Person are not such excluded third party beneficiaries.

Section 11.2 Successors and Assigns. Each reference herein to Indemnitor and each Indemnified Person shall be deemed to include their respective successors and assigns. This Agreement shall inure to the benefit of each Indemnified Person and its successors and assigns and be binding on Indemnitor and its successors and assigns.

Section 11.3 Joint and Several Liability. The obligations and liabilities of Indemnitor hereunder are joint and several.

Section 11.4 Rights Cumulative. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies which each Indemnified Person has under the Note, the Mortgage, or the other Loan Documents or would otherwise have at law or in equity.

Section 11.5 Inapplicable Provisions. If any term, condition or covenant of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

Section 11.6 Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the applicable federal laws and laws of the state where the Property is located, without reference or giving effect to any choice of law doctrine. Indemnitor hereby irrevocably submits to the jurisdiction of any court of competent jurisdiction located in the state in which the Property is located in connection with any proceedings arising out of or relating to this Agreement.

\*\*The remainder of this page is left blank. The signature page follows.\*\*

IN WITNESS WHEREOF, this Agreement has been executed by Indemnitor and is effective as of the day and year first above written.

**"Indemnitor"**

Draper Irrigation Company, a Utah non-profit corporation

By: [Signature]  
Name: Darin L. Jensen  
Its: CEO and General Manager

By: [Signature]  
Name: Stephen L. Tripp  
Its: President

WaterPro, Inc., a Utah corporation

By: [Signature]  
Name: Darrin L. Jensen  
Its: CEO and General Manager

By: [Signature]  
Name: Stephen L. Tripp  
Its: President

1236854.03

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

The following located in Salt Lake County, Utah and described as:

**PARCEL 1:**

BEGINNING AT A POINT WHICH LIES 867.08 FEET NORTH AND 851.62 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE WEST 500.00 FEET; THENCE NORTH 451 FEET, MORE OR LESS TO THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER; THENCE EAST ALONG SAID NORTH LINE, 500.00 FEET; THENCE SOUTH 451 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING ALL THAT PORTION CONTAINED IN THAT CERTAIN WARRANTY DEED IN FAVOR OF JORDAN VALLEY WATER CONSERVANCY DISTRICT RECORDED JANUARY 9, 2003 AS ENTRY NO. 8487334 IN BOOK 8718 AT PAGE 3189 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT NORTH 00°03'43" WEST 1320.00 FEET AND SOUTH 89°54'15" WEST 1008.45 FEET FROM THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, SAID POINT BEING ON A CHAIN LINK FENCE (SAID FENCE REPRESENTS A BOUNDARY LINE AGREEMENT BETWEEN DRAPER IRRIGATION COMPANY AND JORDAN VALLEY WATER CONSERVANCY DISTRICT, FORMERLY SALT LAKE COUNTY WATER CONSERVANCY DISTRICT); THENCE SOUTH 218.68 FEET; THENCE WEST 194.50 FEET; THENCE NORTH 218.36 FEET TO SAID FENCE LINE; THENCE NORTH 89°54'15" EAST 194.50 FEET ALONG SAID FENCE LINE TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM ALL NON MINERAL BEARING SILICA, CLAY, SAND, COAL AND COAL BEARING ROCK AS DISCLOSED BY MESNE INSTRUMENTS OF RECORD INCLUDING, BUT NOT LIMITED TO, THAT CERTAIN WARRANTY DEED DATED NOVEMBER 23, 1942 AND RECORDED DECEMBER 4, 1942 AS ENTRY NO. 942189 IN BOOK 330 AT PAGE 172 OF THE OFFICIAL RECORDS.

**PARCEL 2:**

AN UNDIVIDED SEVEN-FIFTEENTHS (7/15ths) INTEREST IN AND TO THE FOLLOWING:

BEGINNING 867.08 FEET NORTH AND 851.62 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE MERIDIAN; AND RUNNING THENCE WEST 500 FEET; THENCE SOUTH 125 FEET, MORE OR LESS; AND RUNNING THENCE EAST 500 FEET; THENCE NORTH 125 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM ALL NON MINERAL BEARING SILICA, CLAY, SAND, COAL AND COAL BEARING ROCK AS DISCLOSED BY MESNE INSTRUMENTS OF RECORD INCLUDING, BUT NOT LIMITED TO, THAT CERTAIN WARRANTY DEED DATED NOVEMBER

23, 1942, AND RECORDED DECEMBER 4, 1942 AS ENTRY NO. 942189 IN BOOK 330 AT PAGE 172 OF THE OFFICIAL RECORDS.

PARCEL 3:

COMMENCING AT A POINT NORTH 0°90'47" WEST 663.534 FEET AND SOUTH 89°55'57" EAST 1271.143 FEET AND NORTH 40 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 41.152 FEET; THENCE EAST 360.64 FEET, MORE OR LESS, TO A POINT ON THE NORTHERLY LINE OF 11700 SOUTH STREET; THENCE SOUTHWESTERLY ALONG SAID LINE 385 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM ALL NON MINERAL BEARING SILICA, CLAY, SAND, COAL AND COAL BEARING ROCK AS DISCLOSED BY MESNE INSTRUMENTS OF RECORD INCLUDING, BUT NOT LIMITED TO, THAT CERTAIN WARRANTY DEED DATED NOVEMBER 23, 1942, AND RECORDED DECEMBER 4, 1942 AS ENTRY NO. 942189 IN BOOK 330 AT PAGE 172 OF THE OFFICIAL RECORDS.

PARCEL 4:

EASEMENT AND RIGHT-OF-WAY GRANT (i) RECORDED OCTOBER 14, 1968 AS ENTRY NO. 2263326 IN BOOK 2699 AT PAGE 42 OF OFFICIAL RECORDS; (ii) RECORDED OCTOBER 14, 1968 AS ENTRY NO. 2263327 IN BOOK 2699 AT PAGE 44 OF OFFICIAL RECORDS; AND (iii) RECORDED OCTOBER 14, 1968 AS ENTRY NO. 2263328 IN BOOK 2699 AT PAGE 46 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PERPETUAL EASEMENT TO CONSTRUCT, RECONSTRUCT, OPERATE, REPAIR, REPLACE AND MAINTAIN THE WATER LINE AND APPURTENANT STRUCTURES ON, OVER, ACROSS AND THROUGH A STRIP OF LAND 20 FEET WIDE, LYING 10 FEET ON EACH SIDE OF AND PARALLEL AND ADJACENT TO THE BELOW DESCRIBED CENTERLINE:

BEGINNING AT A POINT WHICH LIES 898.52 FEET NORTH AND 1351.62 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 88°40'20" WEST 519.68 FEET; THENCE NORTH 88°46'05" WEST 2549.43 FEET; THENCE SOUTH 64°22'35" WEST 665.57 FEET; THENCE SOUTH 87°47'55" WEST 248.64 FEET TO THE WEST LINE OF SAID SECTION 22.

PARCEL 4A:

EASEMENT FOR THE TRANSPORTATION OF RAW WATER THROUGH GRANTOR'S RAW WATER COLLECTION SYSTEM FOR THE SOUTHEAST REGIONAL WATER TREATMENT PLANT, AS PROVIDED BY THAT CERTAIN WATER TRANSPORTATION EASEMENT, RECORDED NOVEMBER 23, 1999 AS ENTRY NO. 7518837 IN BOOK 8324 AT PAGE 8488 OF OFFICIAL RECORDS.

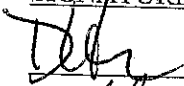
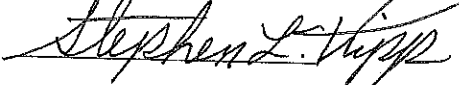


**CORPORATE RESOLUTION**  
(Draper Irrigation Company)

We, the undersigned of Draper Irrigation Company (the "**Corporation**"), hereby certify that the Corporation is organized and existing under and by virtue of the laws of the State of Utah.

WE FURTHER CERTIFY that at a meeting of the Directors of the Corporation, duly called and held on June 18, 2013 at which a quorum was present and voting, or by other duly authorized corporate action in lieu of a meeting, the following resolutions were adopted:

BE IT RESOLVED, that each of the following named officers of the Corporation, acting alone, whose respective signatures are shown below, is authorized:

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>
Darrin L. Jensen	CEO and General Manager	
Stephen L. Tripp	President	

To execute on behalf of the Corporation loan documents in favor of AmericanWest Bank ("**Lender**") on such terms as may be agreed upon between the Corporation and Lender, evidencing a \$8,552,878.00 term loan to be made by Lender to the Corporation, including without limitation a loan agreement, a promissory note, trust deeds, security agreements (covering all assets as may be required by Lender), and other collateral documents together with all increases, amendments, modifications and extensions related thereto.

To execute and deliver on behalf of the Corporation such other documents in favor of Lender contemplated by the revolving loan, which, in the officer's discretion, is deemed reasonably necessary or proper in connection herewith, including without limitation any agreement that is a rate swap agreement, basis swap, forward rate agreement, interest rate option, foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, or other similar agreement.

To do and perform such other acts and things and to execute and deliver such other documents and agreements as the officer deems reasonably necessary or proper in order to carry into effect the provisions of these resolutions.

BE IT FURTHER RESOLVED, that any and all acts authorized pursuant to these resolutions and performed prior to the passage of these resolutions are hereby ratified and approved.

WE FURTHER CERTIFY that the officers named above are duly elected and occupy the respective positions set opposite the respective names; that the foregoing resolutions now stand of record on the books of the Corporation; and that the resolutions are in full force and effect and have not been modified or revoked in any manner whatsoever.

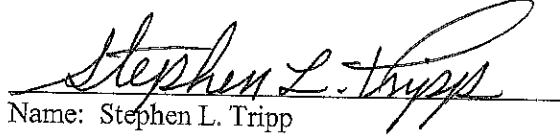
\*\*Signatures on following page\*\*

IN TESTIMONY WHEREOF, we have hereunto set our hand as of June 18, 2013, and attest that the signatures set opposite the name listed above are their genuine signatures.

CERTIFIED TO AND ATTESTED BY:



Name: Darrin L. Jensen  
Office: CEO and General Manager



Name: Stephen L. Tripp  
Office: President

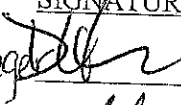
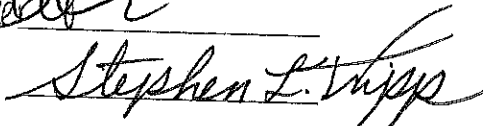
1236816.01

**GUARANTOR CORPORATE RESOLUTION**  
(WaterPro, Inc.)

We, the undersigned Darrin Jensen and Stephen Tripp of WaterPro, Inc. (the "**Corporation**"), hereby certify that the Corporation is organized and existing under and by virtue of the State of Utah.

WE FURTHER CERTIFY that at a meeting of the Directors of the Corporation, duly called and held on June 18, 2013 at which a quorum was present and voting, or by other duly authorized corporate action in lieu of a meeting, the following resolutions were adopted:

BE IT RESOLVED, that each of the following named officers of the Corporation, acting alone, whose respective signatures are shown below, is authorized:

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>
Darrin L. Jensen	<u>CEO and General Manager</u>	
Stephen L. Tripp	<u>President</u>	

To execute on behalf of the Corporation unconditional and continuing guaranties in favor of AmericanWest Bank ("**Lender**") on such terms as may be agreed upon between the Corporation and Lender, by which the Corporation guarantees unconditionally the obligations of Draper Irrigation Company, a Utah non-profit corporation ("**Borrower**"), to Lender under a \$8,552,878.00 term loan to be made by Lender to Borrower, evidenced by a loan agreement, promissory notes and collateral documents, together with all increases, amendments, modifications and extensions related thereto, and together with any related rate swap agreement, basis swap, forward rate agreement, interest rate option, foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, or other similar agreement.

To execute and deliver on behalf of the Corporation such other documents in favor of Lender contemplated by the guaranties and other loan documents, which, in the officer's discretion, is deemed reasonably necessary or proper in connection herewith.

To consent on behalf of the Corporation to the jurisdiction of the state and federal courts in the State of Utah in any action to enforce the guaranties or other related documents and to designate a Utah agent for service of process.

To do and perform such other acts and things and to execute and deliver such other documents and agreements as the officer deems reasonably necessary or proper in order to carry into effect the provisions of these resolutions.

BE IT FURTHER RESOLVED, that any and all acts authorized pursuant to these resolutions and performed prior to the passage of these resolutions are hereby ratified and approved.

WE FURTHER CERTIFY that the officers named above are duly elected and occupy the respective positions set opposite the respective names; that the foregoing resolutions now stand of record on the books of the Corporation; and that the resolutions are in full force and effect and have not been modified or revoked in any manner whatsoever.


IN TESTIMONY WHEREOF, we have hereunto set our hand as of June 18, 2013, and attest that the signatures set opposite the name listed above are their genuine signatures.

CERTIFIED TO AND ATTESTED BY:



Name: Darrin L. Jensen

Office: CEO and General Manager



Name: Stephen L. Tripp

Office: President

1236817.02

Loan No. 990010185  
Salt Lake City, Utah  
June 18, 2013

**TERM PROMISSORY NOTE**

FOR VALUE RECEIVED, the undersigned ("**Borrower**") promises to pay to the order of AmericanWest Bank ("**Lender**") at its office located at 10757 South River Front Parkway, Suite 150, Salt Lake City, Utah 84095 or at such other location as designated by Lender, in lawful money of the United States of America, the principal amount of **Eight Million Five Hundred Fifty-Two Thousand Eight Hundred Seventy-Eight and no/100 Dollars (\$8,552,878.00)**, or such portion thereof as from time to time may be outstanding on June 28, 2028 (the "**Maturity Date**"), and to also pay interest thereon at said location, in like money, from the date hereof on the unpaid principal amount hereof until such amount shall be paid in full.

This Term Promissory Note (the "**Note**") is the Note referred to in a Loan Agreement (the "**Agreement**") of even date herewith between Borrower and Lender and is entitled to the benefits thereof and is secured by a Trust Deed, a Water Trust Deed, and other Loan Documents executed in connection with the Agreement. Capitalized terms used herein shall have the meaning specified in the Agreement unless otherwise stated.

Interest on the outstanding principal balance shall accrue at an annual variable rate equal to 2.50% ~~2.50%~~ plus the one (1) month London Inter-Bank Offer Rate (LIBOR) as published in the Wall Street Journal and rounded to the nearest 1/1000th of a percent, to be adjusted on the first (1<sup>st</sup>) day of each month (the "**Reset Date**"), beginning with July 1, 2012 (*i.e.*, the interest rate change will occur on each payment date described below). Lender's internal records of applicable interest rates shall be determinative in the absence of manifest error. In the event that such reporting source becomes unavailable, Lender shall use such other reporting source as Lender deems acceptable.

The actual interest to be charged under this Note shall be calculated on a year of three hundred sixty (360) on a daily basis for the actual number of days the unpaid principal balance hereof is outstanding.

Upon the occurrence of an Event of Default, the applicable rate of interest shall increase by an amount equal to four percent (4%) per annum.

Monthly payments of principal in the amount of Forty-Seven Thousand Five Hundred Fifteen and no/100 Dollars (\$47,515.00) plus accrued interest shall be made on the fifteenth (15th) day of each month, beginning with July 15, 2013, and continuing on the fifteenth (15th) day of each month thereafter.

On the Maturity Date, the entire outstanding principal balance, all remaining accrued and unpaid interest and all other amounts outstanding under this Note or the Agreement shall be due and payable in full.

If there shall occur any adoption or implementation of, or change to, any regulation, or interpretation or administration thereof, which shall have the effect of imposing on Lender (or Lender's holding company) any increase or expansion of or any new tax (excluding taxes on its overall income and franchise taxes), charge, fee, assessment or deduction of any kind whatsoever, or reserve, capital adequacy, special deposits or similar requirements against credit extended by, assets of, or deposits with or for the account of Lender or other conditions affecting the extensions of credit evidenced by this Note; then Borrower shall pay to Lender such additional amount as Lender deems necessary to compensate

Lender for any increased cost to Lender attributable to the extension(s) of credit evidenced by this Note and/or for any reduction in the rate of return on Lender's capital and/or Lender's revenue attributable to such extension(s) of credit. Lender's determination of the additional amount(s) due under this paragraph shall be binding in the absence of manifest error, and such amount(s) shall be payable within fifteen (15) days of demand and, if recurring, as otherwise billed by Lender.

In addition to the accrual of interest at the default rate, in the event a payment due under this Note is more than fifteen (15) days past due (other than a payment due on acceleration of the Loan or the final payment on the maturity date), Borrower shall pay to Lender a late fee equal to five percent (5%) of the missed payment or \$100.00, whichever is greater.

Any Reset Date that occurs on, or any payment on this Note which becomes due and payable on, a Saturday, Sunday or a federal holiday shall be extended to the next succeeding business day and interest hereon shall be payable at the then applicable rate during such extension.

All payments received by Lender on this Note shall be applied as follows and in the order indicated, at the option of Lender: (1) to the payment of Lender's attorneys' fees and other expenses as provided in the Agreement and herein, (2) to late fees, (3) to accrued interest and (4) to the reduction of principal.

Should Borrower pay all or a portion of the amount owed earlier than it is due, Borrower shall also pay any liabilities associated with any related Financial Contract which may include a break-up fee or amounts necessary to modify such a Financial Contract.

Upon the occurrence of an Event of Default, it shall be optional with the holder of this Note to declare the entire principal and interest sum hereof due and payable in full, and proceedings may at once be instituted for the enforcement and collection of the same by law.

Borrower agrees to pay all out-of-pocket reasonable attorneys' fees and other out-of-pocket expenses incurred by Lender in the enforcement of any of its rights hereunder whether the default is ultimately cured or whether Lender is obligated to pursue its legal remedies, including such expenses incurred prior to the institution of legal action, during the pendency of such legal action, during any bankruptcy or insolvency proceeding and continuing to include all such expenses incurred in connection with any appeal to higher courts arising out of legal proceedings to enforce Borrower's obligations hereunder.

The makers, sureties, guarantors and endorsers of this Note jointly and severally waive presentment for payment, protest, notice of protest and of nonpayment of this Note. Borrower agrees that failure of Lender or any holder of this Note to exercise its rights hereunder shall not constitute a waiver of the right to exercise the same in the event of a later default.

This Note shall be construed according to the laws of the State of Utah.

***"Borrower"***

DRAPER IRRIGATION COMPANY,  
a Utah non-profit corporation

By: 

Name: Darrin L. Jensen

Title: CEO and General Manager

By: 

Name: Stephen L. Tripp

Title: President

1236516.03

**CONTINUING AND UNCONDITIONAL GUARANTY**  
**(WaterPro, Inc.)**

1. Pursuant to a Loan Agreement (the "***Loan Agreement***") of even date herewith between Draper Irrigation Company, a Utah non-profit corporation ("***Borrower***"), and AmericanWest Bank ("***Lender***"), Lender has made a loan to Borrower in the aggregate principal amount of \$8,552,878.00 (collectively the "***Loan***"). The Loan is also evidenced by a Term Promissory Note of even date herewith executed by Borrower in that aggregate amount (the "***Note***"). Capitalized terms not otherwise defined shall have the meanings given in the Loan Agreement.
2. For good and valuable consideration, the undersigned ("***Guarantor***"), jointly and severally, absolutely and unconditionally, guarantees and promises to pay to Lender or to its order, on demand, any and all of the Borrower's Obligations.
3. Guarantor understands that the term "***Borrower's Obligations***" includes all principal outstanding under the Loan Agreement, the Note and the Loan and all other documents executed in connection therewith (including all "***Loan Documents***" as defined in the Loan Agreement), all accrued and accruing interest thereon and all related fees, attorneys' fees, costs and expenses for which Borrower is obligated to Lender; any and all future advances with respect to the Loan, even if such advances exceed the principal amount stated above; all other payment and performance obligations owed by Borrower to Lender under the Loan Agreement and the Note; and all accommodations made by Lender with respect to the Loan, whether such indebtedness is voluntary or involuntary, due or not due, contingent or absolute, liquidated or unliquidated, determined or undetermined. Guarantor guarantees and promises to pay and perform the Borrower's Obligations according to the terms thereof or according to law, including all renewals, extensions of time, or modifications of such indebtedness, including without limitation an increase in the principal amount of the Loan, for which increase Guarantor shall be obligated and liable pursuant to the terms of this guaranty. Guarantor agrees to pay such Borrower's Obligations whether Borrower may be liable individually or jointly with others, or whether recovery of such indebtedness may be or hereafter become barred by any statute of limitations, or whether such indebtedness may be or hereafter become otherwise unenforceable.
4. It is agreed and understood by Guarantor that the Loan was agreed to and extended by Lender to Borrower or for its account in reliance upon this guaranty, and that Guarantor will notify Lender in writing in the event of any material change in Guarantor's financial statements. Guarantor acknowledges that the extension of credit by Lender to Borrower and the execution of this guaranty has or will result in a receipt by Guarantor of reasonably equivalent value.
5. The liabilities of Guarantor shall remain at all times undiminished, unreleased and undischarged to any extent until payment in full of all of the Borrower's Obligations guaranteed by this guaranty. Any payment by Guarantor shall not reduce Guarantor's maximum obligations under this guaranty unless Lender agrees in writing. The obligations of Guarantor under this guaranty shall be in addition to any other obligations that Guarantor may have to Lender under any other contracts, including guaranties, whether such guaranties are for the indebtedness of Borrower or any other persons.
6. This guaranty is a guaranty of payment and not of collection. Guarantor agrees that upon the occurrence of an "***Event of Default***" (as defined in the Loan Agreement) with respect to the Borrower's Obligations, Lender may, at its option, proceed directly and at once against Guarantor to collect and recover the full amount of the liability hereunder, or any portion of such liability. The obligations of Guarantor under this guaranty are joint and several, and independent of the obligations of Borrower, and a separate action or actions may be brought and prosecuted against Guarantor whether action is brought against Borrower or whether Borrower be joined in any such action. No delay or omission by Lender in exercising



any right shall operate as a waiver of such right or any other right. Guarantor agrees to assume the responsibility for being and keeping informed of the financial condition of Borrower and of all other circumstances bearing upon the risk of nonpayment of the Borrower's Obligations, which diligent inquiry would reveal, and Lender shall have no duty to advise them of information known to it regarding the Borrower's Obligations or Borrower's financial condition.

7. Guarantor authorizes Lender, without notice to or further consent by Guarantor, and without affecting Guarantor's liability under this guaranty, from time to time in whole or in part to: (a) alter, compromise, renew, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of, the Borrower's Obligations, or any part thereof, or any conditions to an advance thereunder, including without limitation an increase in the principal amount of the Borrower's Obligations or an increase in the rate of interest on such indebtedness; (b) take and hold security for the payment of this guaranty or the Borrower's Obligations guaranteed, and exchange, surrender, compromise, release, enforce, waive, fail to perfect, or deal with such security in any manner Lender deems necessary, whether this security was provided by Borrower or Guarantor, or any one of them; (c) apply such security and direct the order or manner of sale as Lender in its discretion may determine; (d) release or substitute any one or more of the endorsers or other guarantors, or Borrower; and (e) determine how, when and what application of payments shall be made on Borrower's Obligations.

8. Guarantor represents and warrants to Lender that (a) no representations or agreements of any kind have been made to Guarantor that would limit or qualify the terms of this guaranty; (b) this guaranty is executed at Borrower's request and not at the request of Lender; and (c) Lender has made no representation to Guarantor as to the credit worthiness of Borrower.

9. Guarantor expressly waives any right or claim of right: (a) to notice of action or nonaction on the part of Borrower or Lender; (b) to notice of acceptance of this guaranty; (c) to any notice of the creation, renewal, extension or accruals of any of the Borrower's Obligations; (d) to any notice of default or nonpayment and notice of dishonor to or upon Borrower or any other party liable for any of the Borrower's Obligations; (e) to notice of the sale, exchange, compromise or other disposition of any and all collateral; (f) to all other notices to which Guarantor might otherwise be entitled in connection with this guaranty or any indebtedness or obligations hereby guaranteed; (g) to seek any indemnification, subrogation, contribution or reimbursement claims or any such similar claims against Borrower or any other persons or entities liable for all or any part of the Borrower's Obligations until the Borrower's Obligations are paid in full; (h) to cause a marshalling of any or all of Borrower's assets or to cause Lender to proceed against any security and/or Borrower before proceeding against Guarantor; and (i) to exercise any suretyship defense that may be available to Guarantor under applicable law.

10. Guarantor also expressly waives to the extent permitted by law any right or claim of right: (a) to make any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation from any cause whatsoever of the liability of Borrower; (b) to participate in any security now or hereafter held by Lender; and (c) to make any defense arising by reason of any statute or rule of law limiting the amount of any deficiency judgment that may be entered against Borrower after foreclosure or other disposition of any real or personal property that secures the Borrower's Obligations.

11. If any of the payments of money or transfers of property made to Lender by Borrower or Guarantor in payment of Borrower's Obligations or otherwise should for any reason be declared to be fraudulent, preferential or voidable within the meaning of any state or federal law relating to fraudulent conveyances or preferential transfers, or otherwise become voidable or recoverable under the Bankruptcy Code or any other federal or state law, in whole or in part, for any reason (hereinafter collectively called "*Voidable Transfers*") and Lender is required to repay or restore any such Voidable Transfers, or any

portion thereof, then, as to any such Voidable Transfer or the amount repaid or restored (including all costs, expenses and attorneys' fees of Lender related thereto), the liability of Guarantor and all security interests and liens, if any, granted specifically as security for this guaranty, shall automatically be revived, reinstated and restored as though such Voidable Transfer had never been made to Lender. Nothing herein is an admission by any party that any such Voidable Transfer has occurred and all parties believe that no such Voidable Transfer exists.

12. Where Borrower is a corporation, partnership, limited liability company, or a trustee, it is not necessary for Lender to inquire into the powers of Borrower or the officers, directors, partners, managers, members or agents acting or purporting to act in its behalf, and any Borrower's Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

13. Guarantor agrees to pay reasonable out-of-pocket attorneys' fees, paralegals' fees, and other out-of-pocket expenses incurred by Lender in the enforcement of its rights hereunder, including such expenses incurred before legal action, during the pendency of any such legal action, during the enforcement of Lender's rights in any bankruptcy or insolvency proceedings, and continuing to all such expenses in connection with any appeal to higher courts arising out of matters associated herewith.

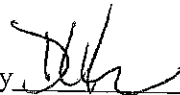
14. Guarantor agrees and acknowledges that this guaranty shall be binding upon the undersigned, the legal representatives, successors and assigns of the undersigned, and that this guaranty has been negotiated, approved by Lender, delivered at and shall be deemed to have been made at Salt Lake City, Utah, and this guaranty shall be governed by, and construed and interpreted, and the rights and liabilities of the Guarantor determined, in accordance with the laws of the State of Utah without regard to the choice of law provisions of Utah law. If Guarantor is not a resident of the State of Utah, Guarantor hereby consents to the jurisdiction of the courts of the State of Utah to enforce this guaranty.


15. This guaranty is assignable in connection with the assignment of Borrower's Obligations, and when so assigned, Guarantor shall be bound as above to transferees.

16. There are no prior or contemporaneous modifications, verbal or written, to this guaranty, which may not be modified except by written document executed by all the parties to be bound. The provisions of this guaranty are severable, and in the event that any provision shall be held to be invalid or unenforceable, the remaining provisions shall continue to be in full force and effect.

Dated as of June 18, 2013.

WATERPRO, INC., a Utah corporation

By:   
Name: Darrin L. Jensen  
Its: CEO/GM

By:   
Name: Stephen L. Tripp  
Its: President

When recorded, mail to:

AmericanWest Bank  
10757 South River Front Parkway, Suite 150  
South Jordan, UT 84095  
Attn: Joseph Trunzo

**DEED OF TRUST,  
ASSIGNMENT OF RENTS, SECURITY AGREEMENT  
AND FINANCING STATEMENT**

---

*Draper Irrigation Company  
(Salt Lake County, Utah Property)*

THIS DEED OF TRUST SECURES A PROMISSORY NOTE, THE INTEREST RATE UNDER WHICH MAY VARY ACCORDING TO CHANGES IN AN INDEX RATE OF INTEREST IN ACCORDANCE WITH THE PROMISSORY NOTE GIVEN TO BENEFICIARY.

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR."

THIS DEED OF TRUST IS INTENDED ALSO TO BE A FIXTURE FILING TO BE RECORDED IN THE REAL ESTATE RECORDS OF THE APPLICABLE COUNTY AND IS TO BE INDEXED NOT ONLY AS A DEED OF TRUST BUT ALSO AS A FIXTURE FILING.

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (this "*Deed of Trust*") is made as of the 18th day of June, 2013, among Draper Irrigation Company, a Utah non-profit corporation, whose address is 12421 South 800 East, Draper, Utah 84020, as trustor ("*Trustor*"), First American Title Insurance Company, whose address is 560 East 300 South, Salt Lake City, Utah 84111, as trustee ("*Trustee*"), and AmericanWest Bank, a Washington State Bank, whose address is 10757 South River Front Parkway, Suite 150, South Jordan, Utah 84095, as beneficiary ("*Beneficiary*").

WITNESSETH:

For good and valuable consideration, including the indebtedness herein recited, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, conveys, transfers, warrants, pledges and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit of Beneficiary and, in addition thereto, hereby grants to Beneficiary a security interest in all of Trustor's present and future right, title and interest in and to all of the following property (severally and collectively, the "*Property*");

- (a) All of that certain real property located in Salt Lake County, Utah, and more particularly described on **Exhibit A** hereto (the "*Real Property*");
- (b) All present and future tenements, hereditaments, easements, plats, subdivisions, declarations, bylaws, rights, leases, guaranties of leases, subleases, licenses, benefits, privileges, permits, water, water rights, grandfathered water rights, irrigation rights, ditch rights, shares of stock in or evidencing water rights, all other contractual rights to water, rights of way, pipes, ditches, fences and appurtenances belonging or in any way appurtenant to, and all oil, gas and other hydrocarbons and other minerals produced from or underlying, the Real Property or any portion thereof, or any improvements or development thereon, and all reversions, remainders, rents, issues, and profits thereof;
- (c) All buildings and improvements now or hereafter erected on the Real Property or any portion thereof, and all goods, equipment, inventory and fixtures now or hereafter attached to or located on or used in connection with the Real Property;
- (d) All of the beneficial interest of Trustor in any trust, if title or any interest of Trustor in the Real Property is vested in or held by a trustee;
- (e) All present and future licenses, permits, approvals and agreements from or with any governmental or quasi-governmental agency or entity or any other person relevant to the zoning, subdivision, division, development, improvement, use, lease, sale or other disposition of the Real Property or any portion thereof, or any buildings or improvements now or hereafter erected, placed or located on the Real Property or any portion thereof;
- (f) All present and future plans, specifications, drawings, analyses, surveys, reports and other design products, relating to all present and future buildings and other improvements (including landscaping) constructed on the Real Property or any portion thereof, and all rights in and to all architectural and engineering contracts, surety bonds, warranties, land use plans, studies, building contracts, soils reports, appraisals, feasibility and market studies, management agreements, operating agreements, franchise agreements, service contracts, development contracts, design contracts, sign design contracts, space planning contracts and any other agreements with respect to planning, designing, developing, or inspecting construction on, the Real Property or any portion thereof and any buildings or improvements thereon, together with any deposit accounts and funds maintained under, pursuant to, or in connection with any such contracts and agreements;
- (g) All present and future water service and wastewater agreements relating to the Real Property or any portion thereof, all buildings and other improvements or personal property now or hereafter placed, erected or located on the Real Property;
- (h) All present and future rights under or with respect to: (i) any declarations of restrictions governing or imposing rights or responsibilities on or with respect to any subdivisions, horizontal property regimes, condominiums, planned area developments, planned unit developments or master plans which are partially or wholly located on or affect the Real Property; (ii) any design review or architectural review committee and any property owners', condominium association, or similar association described in or created by the documents referred to in the foregoing clause (i), together with any voting rights therein; and (iii) any and all other documents and instruments and any amendments relating to the operation, organization, control or development of the Real Property;

(i) All adjacent streets (open or proposed), roads, sidewalks, alleys, public places, parking areas, and strips and gores of land now or hereafter appurtenant to or used or useful in connection with the Real Property or any portion thereof, or any buildings or other improvements now or hereafter erected, placed or located on the Real Property or any portion thereof;

(j) All rights in and to any present or future contracts, agreements, commitments, options, revenues, deposits (including deposits with any public or private utility with respect to utility services furnished to the Real Property), refunds, credits, retentions, or other rights or considerations that in any way relate to or arise out of any development, use, improvement, sale or disposition of the Real Property or any portion thereof, or any buildings or other improvements or personal property now or hereafter erected, placed or located on the Real Property or any portion thereof, or any business now or hereafter conducted on the Real Property;

(k) All rights in and to all present and future agreements or commitments for the purpose of financing, refinancing, selling or otherwise disposing of any interest in the Real Property or any portion thereof, and any buildings and other improvements now or hereafter located on the Real Property or any portion thereof;

(l) All rights to the use of any trade name, trademark or service mark by which the Real Property or any portion thereof, or any improvements or development thereon, are known;

(m) All rights under any policy or policies of insurance (including premium refunds and credits and insurance proceeds) insuring against damage or loss with respect to any portion of the Property, including all fire, casualty, business interruption, rent loss and flood insurance, whether or not such insurance is required by this Deed of Trust or Beneficiary;

(n) All rights in and to any present and future deposit accounts, investment accounts or other accounts maintained with Beneficiary or with another institution into which disbursements of the loan secured hereby have been deposited;

(o) All goods, materials, supplies, fixtures, machinery, furniture and furnishings, appliances, attachments, equipment, inventory, general intangibles, accounts, chattel paper, instruments, notes, drafts, letters of credit, documents and other personal property (to the extent that any of the foregoing constitute personal property under applicable law) that directly or indirectly relate to or are used or intended for use on or in connection with the use, leasing, development, design, financing, construction and/or sale of the Real Property or any portion thereof, or any buildings or improvements located thereon or any easements, appurtenances, hereditaments or privileges appurtenant or incident thereto; and

(p) All (i) replacements and substitutions for, (ii) additions to, (iii) proceeds and products of (including all insurance proceeds and condemnation awards (or proceeds of any purchase in lieu thereof) which are or may become payable with respect thereto), and (iv) books, records and files relating to, all or any portion of the items described in the preceding paragraphs.

The foregoing descriptions of items constituting the Property shall be construed as cumulative and not limiting, and the term "including", when used in those descriptions, shall mean without limitation by reason of enumeration. Unless the context clearly indicates otherwise, the terms "goods," "equipment," "inventory," "accounts," "instruments," "chattel paper," "general intangibles," "proceeds" and "products" shall have the meanings provided for those terms in the Utah Uniform Commercial Code as may be amended.

This Deed of Trust is given in consideration of and as security for: (i) the payment of a loan by Beneficiary to Trustor evidenced by that certain Promissory Note (the "*Note*") of approximately even date herewith executed by Trustor and payable to the order of Beneficiary in the stated principal amount of \$8,552,878.00, together with interest thereon and charges with respect thereto, and any and all advances now or hereafter made by Beneficiary under the terms and conditions of the Note, the Loan Agreement by and between Trustor and Beneficiary executed in connection with the Note (the "*Loan Agreement*") or this Deed of Trust, and any and all renewals, replacements, amendments, modifications or extensions of the Note, the Loan Agreement or this Deed of Trust; (ii) all of the terms, conditions, agreements, stipulations, covenants, and provisions of this Deed of Trust, the Loan Agreement and any other agreement, document or instrument (and any and all renewals, replacements, amendments, modifications or extensions thereof) executed by Trustor in connection with the Note or the Loan Agreement, but excluding any environmental or hazardous substance indemnity, which shall remain unsecured obligations (collectively the "*Loan Documents*"); (iii) all late charges, default interest, prepayment charges or premiums, loan fees, commitment fees and extension fees described in the Note or the Loan Agreement and all costs of collecting the indebtedness or other amounts evidenced by the Note or described in this Deed of Trust or the Loan Agreement, including any and all costs and expenditures of a receiver in possession and reasonable attorneys' fees; (iv) all obligations owed to Beneficiary or any of its affiliates under any and all interest rate protection agreements (swaps, collars, caps and other hedges) executed by Trustor in connection with the Loan Documents, whether now existing or hereafter arising; (v) payment of all sums advanced by Beneficiary to protect the Property, with interest thereon equal to the default rate as provided by the Note; (vi) Trustor's compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Property is bound or may be affected; and (vii) all modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (a) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (b) modifications, extensions or renewals at a different rate of interest whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note. This Deed of Trust shall also secure the payment and performance of any additional loans that may hereafter be made by Beneficiary to Trustor which are evidenced by a promissory note or notes or other writings stating that they are secured by this Deed of Trust. All of the foregoing payments and performances secured by this Deed of Trust are sometimes hereinafter referred to as the "*Obligations*."

**TRUSTOR, TO PROTECT THE PROPERTY AND SECURITY GIVEN BY THIS DEED OF TRUST, HEREBY WARRANTS, COVENANTS AND AGREES AS FOLLOWS:**

1. **Warranty of Title.** Trustor warrants that it is the sole owner of good and marketable unencumbered fee title to the Property, and Trustor will forever defend the same against all claims and persons whomsoever, unto Beneficiary, its successors and assigns, subject only to the matters approved by Beneficiary as acceptable exceptions to title pursuant to written instructions to the title insurance company insuring the lien of this Deed of Trust. All of Trustor's present and future right, title and interest in the Property shall be subject to the lien and other terms and provisions of this Deed of Trust regardless of the time that any such right, title and interest is created, obtained by or conveyed, transferred or assigned to Trustor.

2. **Obligation to Maintain Property; Repairs; Inspection by Beneficiary.**

(a) Trustor shall care for and keep and maintain the Property in good order, condition and repair, and will at all times make such repairs, maintenance, renewals, and replacements as shall be necessary to maintain the Property and abutting grounds, sidewalks,

roads, parking and landscape areas in good condition and repair, all to the same extent as a prudent owner would make. Trustor shall not substantially alter the Property, except as may be contemplated by the Loan Agreement and except for normal clearing, grading and construction activities, and as may be required by applicable laws (including the Americans With Disabilities Act (42 U.S.C. §§ 12101-12213 and 47 U.S.C. §§ 225 and 611)), ordinances, orders, decrees, rules, regulations or requirements of any governmental authority, including applicable subdivision laws, regulations and ordinances, and any requirements, terms or conditions contained in any restrictions, restrictive covenants, easements, licenses or leases, building codes, flood protection laws and ordinances, zoning ordinances or stipulations, subdivision plats, master plans, development plans, or other instruments or documents now or in the future affecting any portion of the Real Property or any improvements thereon (collectively, "**Legal Requirements**"). Trustor will promptly replace carpets and window treatments, and will repaint the Property, when needed. All replacements of items of the Property will be of a value equal to or greater than the value of the item or items replaced. Trustor shall not commit, or permit to occur, any waste upon the Property. Trustor shall keep the Property free of termites, dry rot, fungus and all harmful or destructive insects and shall keep the landscaping of the Property in good condition, watered and free from weeds, and all plants, trees, and shrubs pruned and in good condition. Subject to normal clearing, grading and construction activities, Trustor shall keep the Property free of rubbish and unsightly, unsafe and unhealthful conditions.

(b) In connection with any construction contemplated by the Loan Agreement or permitted or required by this Deed of Trust, Trustor shall comply in all material respects with all Legal Requirements now or in the future affecting the Property. To Trustor's knowledge, the building plans and specifications for the improvements on the Property comply with all zoning and building laws, ordinances, codes, rules and regulations and other laws and regulations applicable thereto and such plans and specifications and improvements have been, or will be, approved by all appropriate authorities. No notice of any violations of ordinances, codes, rules, regulations, orders, restrictive covenants or statutes applicable to the Property has been received, nor have any governmental authorities or insurance underwriters required any changes to any plans and specifications as submitted to Beneficiary. All appropriate governmental authorities will have issued, as and when required, all required permits for the construction of the improvements on the basis of the plans and specifications so approved. To the best of Trustor's knowledge, after due inquiry and investigation, the Property, any improvements thereon and their use fully comply and shall continue to comply with environmental, air quality, zoning, planning, building and other governmental laws, ordinances, rules, regulations and requirements and Trustor has received no notice to the contrary. Without Beneficiary's prior written consent, Trustor will not (i) initiate any zoning reclassification of the Property, (ii) seek any variance under existing zoning ordinances applicable to the Property, (iii) use or permit the use of the Property in a manner than would result in such use becoming a nonconforming use under applicable zoning ordinances or other applicable laws, rules or regulations, or (iv) impose any restrictive covenants upon the Property. As of the date hereof, no action or proceeding is pending before any court, quasi-judicial body or administrative agency relating thereto. The zoning designation of the Real Property is based on no real property or rights appurtenant thereto, other than the Real Property.

(c) In the event of any loss, damage or destruction to the Property, Trustor shall, to the extent that insurance proceeds are available for rebuilding under **Section 3(g)** below, or if an applicable Lease (defined in **Section 7** below) requires rebuilding in the absence of available insurance proceeds, promptly and in a good and workmanlike manner repair, rebuild and restore such loss, damage or destruction to its original condition, pay when due all costs incurred, and keep the Property free from all claims, charges, claims of liens, or encumbrances for work

performed or materials furnished, whether superior or subordinate to the lien of this Deed of Trust. Trustor may contest in good faith the validity or amount of any claim, charge, lien or encumbrance by appropriate proceedings provided by law, including payment of the claim, charge, lien or encumbrance under protest, if required, provided that: (i) Trustor promptly pays any sums found to be due upon a final determination of the contested claim, charge, lien or encumbrance; and (ii) prior to any such contest, Trustor shall furnish Beneficiary a cash deposit, bond or other security, in amount and form satisfactory to Beneficiary, to protect Beneficiary against the sale or forfeiture of, or creation of a lien against, the Property.

(d) Beneficiary shall have the right at its sole risk to enter upon the Property at any and all reasonable times and to inspect the same to ascertain whether Trustor is in compliance with the terms and provisions of this Deed of Trust.

### 3. Insurance.

(a) Trustor shall keep the Property insured to 100% of its full insurable replacement cost value (including the cost of debris removal) against loss by fire and such other hazards, casualties, and contingencies as are customarily insured against by persons owning similar properties in the locality of the Property or customarily required by prudent institutional lenders making loans secured by such properties for such periods, covering against such additional risks and in such amounts as Beneficiary requires in the Loan Agreement or may otherwise require from time to time but in no event less than the amount of the total indebtedness secured hereby. At a minimum, such hazard insurance shall be an all risk policy and shall include an agreed value or agreed amount endorsement suspending the application of any co-insurance clause that might otherwise be applicable.

(b) Hazards insured against shall include flood damage, in an amount equal to the lesser of the amount of the loan secured hereby or the maximum amount available under the Flood Disaster Protection Act of 1973 and regulations issued pursuant thereto, as amended from time to time, in form complying with the "insurance purchase requirement" of said Act, if the Real Property, or any part thereof, lies within a "special flood hazard area" as designated on maps prepared by the Department of Housing and Urban Development or Federal Emergency Management Agency.

(c) Beneficiary may also require business interruption and rental loss insurance in an amount equal to not less than twelve (12) months (or such longer period of time as would be required to rebuild and restore the Property in the event of a total loss) income or rentals, which insurance shall increase in coverage in the event additional portions of the Property are leased.

(d) Trustor agrees to provide comprehensive general liability coverage (including blanket contractual liability coverage insuring indemnity liability) in a combined single limit amount acceptable to Beneficiary, insuring against loss arising from or caused directly or indirectly by the condition, use or ownership of the Property and the abutting streets, sidewalks and passageways, in amounts and with deductibles acceptable to Beneficiary.

(e) During the course of any construction or repair of improvements on the Property, Trustor agrees to provide (i) general comprehensive liability and workers' compensation insurance for all employees of Trustor and any contractor engaged on or about the Property, (ii) professional liability coverage for errors and omissions of architects and engineers, and (iii) builder's all-risk insurance covering Trustor and any contractor against all risks of physical loss, including collapse and transit coverage, during construction of the improvements, with



deductibles in amounts satisfactory to Beneficiary, covering the total value of work performed and equipment, supplies and materials furnished.

(f) Trustor shall provide all other insurance as required by the Loan Agreement.

(g) Trustor shall deliver to Beneficiary whenever requested certificate(s) of insurance in form and substance acceptable to Beneficiary or as required by the Loan Agreement with respect to the foregoing policies stating without limitation (i) that Beneficiary is the sole party named as mortgagee under a standard mortgagee endorsement with such endorsement referenced in and attached to the certificate, (ii) that Beneficiary has been named through endorsement as an additional insured under all liability policies with a copy of that endorsement referenced in and attached to the certificate (including coverage for Beneficiary's sole negligence and for completed operations and stating that Beneficiary's status as an additional insured shall be primary and non-contributory), (iii) that Trustor has been permitted by endorsement to enter into a waiver of subrogation with a copy of that endorsement referenced in and attached to the certificate, and (iv) that the insurer has agreed by endorsement to send to Beneficiary thirty (30) days' notice of cancellation for any reason, with a copy of that endorsement referenced in and attached to the certificate. All policies shall be issued by companies approved by Beneficiary and having an A-X or better rating from Alfred M. Best Company, Inc.; all policies and renewals thereof are hereby assigned to Beneficiary. Upon request of Beneficiary, Trustor shall provide certified copies of any and all of the foregoing policies. Acceptance of policies tendered by Trustor shall not preclude Beneficiary from requiring other or additional insurance against the same or other hazards.

(h) Trustor will give immediate written notice to Beneficiary of any loss or claim, and Beneficiary may make proof of loss if not made promptly by Trustor. Each insurance company is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor. Insurance proceeds or any part thereof may be applied by Beneficiary, at its option, either to the reduction or payment of the Obligations or to the repair, rebuilding and restoration of the Property lost, damaged or destroyed, but Beneficiary shall not be obligated to ensure the proper application of any amount paid over to Trustor. Irrespective of the dollar amount of the loss or claim, Trustor shall provide Beneficiary with sufficient documentation and information necessary or required by Beneficiary to verify and confirm the exact nature and extent of the damage or destruction to the Property and the amount of funds required to repair or rebuild the Property, together with a budget (which shall be subject to Beneficiary's approval) describing the repair or restoration work to be performed and the costs of labor and material for each stage of repair or restoration work. In the event that proceeds are used for the repair, rebuilding and restoration of the Property, insurance proceeds shall be placed in a segregated account with Beneficiary and used for the repair, rebuilding and restoration of the insured loss, through such procedures and with such safeguards for release of such proceeds and payment of construction and related expenses as Beneficiary customarily imposes for advances of construction loan funds, which may include requirements that: (i) Trustor first expend or deposit into the escrow account any difference between the total cost of repair, rebuilding and restoration and the amount of such proceeds; (ii) Trustor, at its expense, promptly prepare and submit to Beneficiary all plans and specifications necessary for the restoration and repair of the damaged Property, together with evidence acceptable to Beneficiary setting forth the total expenditure needed for the restoration and repair based upon a fixed price contract with a reputable builder; (iii) the plans and specifications and all other aspects of the proposed restoration and repair be subject to Beneficiary's approval in the exercise of its reasonable discretion; (iv) Trustor commence restoration and repair of the damaged Property only after Beneficiary shall have notified Trustor in writing that the use of proceeds for restoration and repair is allowable under

this **Section 3**, that the required safeguards, procedures and assignments described in this **Section 3** are in place and that the plans and specifications and all other aspects of the proposed restoration have been approved by Beneficiary, and Trustor shall thereafter proceed diligently with the restoration and repair until completed; (v) disbursements be made from the escrow account for the restoration and repair in accordance with a disbursement schedule; and (vi) all funds held in the escrow account be assigned to Beneficiary as further security for the Obligations. Any insurance proceeds not used for repair or restoration of the Property shall be applied to the last maturing installment of principal due and owing under the Note. The Property as rebuilt or restored shall be of at least equal value and substantially identical character as prior to the damage or destruction.

(i) Upon (i) Beneficiary's receipt of a trustee's deed or sheriff's deed to any portion of the Real Property, (ii) the taking by Beneficiary (or a receiver) of possession of the Property, or (iii) a conveyance in lieu of foreclosure if permitted by Beneficiary, all right, title and interest of Trustor in and to any property damage and casualty insurance policies then in force, including any right to unearned premiums, shall inure to the benefit of and pass to Beneficiary (or the receiver, as appropriate) and, upon sale, to the purchaser of the Property. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns as its duly constituted attorneys-in-fact, with full power of substitution, to transfer and assign such policies upon the occurrence of any of such events.

4. **Payment of Taxes, Assessments and Other Liens or Charges.** At least ten (10) days prior to delinquency, Trustor shall pay or cause to be paid to the proper officials or persons all taxes and assessments, general or special, of every nature and description (including assessments, dues, use fees and charges for water) that shall have been levied or assessed on the Property and, upon Beneficiary's request, shall deliver to Beneficiary receipts evidencing such payments. If the Real Property or any lot or parcel thereof is part of a larger tax or assessment parcel, Trustor shall, as soon after recordation of this Deed of Trust as is reasonably possible, cause the tax or assessment parcel to be split or amended so that its boundaries correspond to the boundaries of the Real Property and its lots or parcels. Trustor may contest in good faith the validity or amount of any tax, assessment or governmental charge by appropriate proceedings provided by law, including payment of the tax, assessment or charge under protest, if required, provided that: (a) Trustor promptly pays any sums found to be due upon a final determination of the contested tax, assessment or governmental charge; and (b) prior to any such contest, Trustor shall furnish Beneficiary a cash deposit, bond or other security, in amount and form satisfactory to Beneficiary, to protect Beneficiary against the sale or forfeiture of, or creation of a lien against, the Property. Trustor shall not consent to, or vote in favor of, the inclusion of any portion of the Real Property in a special improvement, assessment, community facilities or similar district without Beneficiary's prior written consent. Trustor shall provide Beneficiary with prompt notice of any notification that Trustor may receive from any governmental authority or other person of any intent or proposal to form such a district that may include any portion of the Real Property, and Beneficiary shall have the right to object to the same, and to otherwise appear and participate in hearings and other proceedings, in its own name or in Trustor's name. Trustor shall pay or cause to be paid when due all charges for water, water delivery, gas, electric power and light, telephone, cable, satellite, sewer, waste removal, bills for repairs, and all other claims, encumbrances and expenses incident to the ownership and occupancy of the Property.

5. **Impounds.**

(a) At any time requested by Beneficiary, Trustor shall deposit with Beneficiary, in monthly installments, sufficient funds (as determined by Beneficiary) to enable Beneficiary to pay one month before delinquency all taxes, assessments and insurance premiums due with respect to the Property. Each such installment shall be equal to the amount of estimated taxes and

assessments, and premiums for such insurance, next due (as estimated by Beneficiary), less all installments already paid therefor, divided by the number of months that will elapse before one month prior to the date when such taxes and assessments or premiums shall become delinquent. If amounts paid to Beneficiary under provisions of this **Section 5** are insufficient to discharge the obligation of Trustor for such taxes, assessments or premiums as the same become due, Trustor shall pay to Beneficiary upon demand such additional sums as may be required to fully pay and discharge those items.

(b) To the extent deposits are received by Beneficiary and used to pay taxes, assessments and premiums pursuant to this **Section 5**, such payments shall satisfy Trustor's obligations to pay such taxes, assessments and premiums pursuant to **Sections 3 and 4** hereof. Any excess funds remaining after payment of all items before delinquency may be remitted to Trustor, or, if an Event of Default then exists, credited on the Obligations.

(c) Nothing in this **Section 5** shall release Trustor from, or shift to Beneficiary, the obligation to pay taxes, assessments and insurance premiums as the same become due and payable, or be construed to cause Beneficiary to become a trustee of amounts deposited with Beneficiary; provided, however, Trustor shall not be in default of its obligations under this Deed of Trust to the extent Beneficiary fails to timely release funds from such impounds for the payment of the subject taxes, assessments and insurance premiums and Trustor fails to timely pay the same. Deposits made under this **Section 5** may be commingled with Beneficiary's general corporate funds, and Beneficiary shall hold those deposits without the payment of interest. All amounts paid and deposited hereunder are hereby assigned to Beneficiary as additional security for the Obligations. If any Event of Default occurs, Beneficiary may, at its sole option, apply all or any portion of such deposits to the cure or partial cure of the Event of Default without waiver of or prejudice to the rights of Beneficiary arising by virtue of such Event of Default, or to the payment of principal and interest on the Obligations, in lieu of applying such deposits for any other purposes.

(d) At Beneficiary's request, Trustor shall cause to be furnished to Beneficiary a tax reporting service contract satisfactory in nature and duration, and with a company, satisfactory to Beneficiary, with respect to the Real Property.

6. **Eminent Domain.** Any award or payment of damages or compensation in connection with any private trespass or injury to the Property, exercise of the right of eminent domain or any condemnation proceeding for public use of or injury to the Property or any part thereof, or any right or interest therein, is hereby assigned and payable to Beneficiary, which may apply or release all or any portion of such award, compensation or damages received by it (net of the costs and expenses incurred by Beneficiary in collecting such amounts) in the same manner, upon the same conditions and with the same effect as provided in **Section 3(g)** of this Deed of Trust for the disposition of proceeds of fire or other insurance, as if references in **Section 3(g)** above to insurance proceeds instead referred to condemnation awards (or amounts paid in lieu thereof) and references to damage and casualty loss instead referred to the taking by condemnation or power of eminent domain (or conveyance in lieu thereof); provided that: (a) any award or compensation attributable to land or to improvements that will *not* be reconstructed shall be applied to the Obligations; and (b) if any condemnation or taking renders the remaining portions of the Property unsuitable, in the judgment of an independent architect acceptable to Beneficiary and engaged by Trustor, for further development in accordance with the plans and specifications submitted to and approved by Beneficiary as described in **Section 3(g)** above, the entire award or compensation shall be applied to the Obligations. Beneficiary shall be entitled to join and participate in any eminent domain or condemnation proceedings, including the negotiation and adjudication of any damages, award or settlement, and no stipulation or agreement shall be entered into by Trustor without the prior consent and

approval of Beneficiary. Trustor shall pay or reimburse to Beneficiary the legal expenses, appraisal and expert witness fees incurred by Beneficiary and any other direct and out-of-pocket costs incurred by Beneficiary because of such eminent domain and condemnation proceedings. If a cash bond or deposit is to be received by Trustor for the immediate possession of the Property, all sums paid shall be applied by Trustor to the Obligations, unless otherwise agreed by Beneficiary. Notwithstanding any application of sums paid, only Trustor shall be the withdrawing party of sums paid for the purpose of determining any liability for return of any such cash bond or deposit, and Trustor shall promptly satisfy any claim with respect to any such liability and shall save and hold Beneficiary harmless from any claim for return of such cash bond or deposit, including any claim asserted after the release and reconveyance of this Deed of Trust. Any condemnation proceeds not used for repair or restoration of the Property shall be applied to the last maturing installment of principal due and owing under the Note.

7. **Assignment of Rents, Profits and Leases.**

(a) Trustor represents and warrants to Beneficiary (and to any title insurance company which insures the lien of this Deed of Trust) that, as of the time of recordation of this Deed of Trust, except for the leases described in the subordination, nondisturbance and attornment agreements recorded concurrently herewith or leases otherwise approved by Beneficiary in writing, no recorded or unrecorded lease or rental agreement exists that affects any portion of the Property.

(b) All existing and future rents, revenues, income, receipts, issues and profits of the Property and now or hereafter arising out of any Leases (hereinafter defined) (collectively, "**Rents**") and the entire right, title and interest of Trustor (including the right to exercise any landlord's liens and any and all other rights and remedies to which Trustor would be entitled under any Lease or by law) in and under all present and future rental agreements, leases, subleases, licenses and all other agreements for the use and occupancy of all or any portion of the Property (including rights in any security deposits and advance rentals held for the benefit of Trustor), including those described in Section 7(a) above, together with any extensions, renewals and modifications thereof (collectively, "**Leases**"), are hereby absolutely assigned and transferred to Beneficiary. Beneficiary is authorized to give notice of this assignment, and Trustor agrees to execute, and to cause its property managers and affiliates to execute, any and all further instruments that Beneficiary may require to perfect this assignment. Any provision hereof notwithstanding, so long as no Event of Default exists, Trustor shall have a license to collect assigned Rents as the same shall fall due. However, upon the occurrence of any Event of Default, all right of Trustor to collect or receive such Rents (including those past due and unpaid) shall terminate, whereupon Beneficiary shall be entitled to demand and receive the payment of such Rents (including those past due and unpaid), and to proceed against any lessee or tenant (or its property) and/or any guarantors of the obligations of any lessee or tenant. In such event, Trustor directs and authorizes the lessees and tenants of the Property and any guarantors to make to Beneficiary all payments required under the applicable Leases; Trustor hereby relieves any and all lessees and tenants from any liability to Trustor that Trustor might otherwise assert by reason of the lessee/tenant's making such payment to Beneficiary. All Rents collected by Beneficiary may be applied for the following purposes in any manner and order that Beneficiary deems advisable:

(i) To the payment of all taxes and assessments levied against the Property if provision for paying those items has not otherwise been made;

(ii) To the payment of construction and development and current operating costs and expenses (including management fees, sales taxes, repairs, maintenance and

necessary acquisitions of property and expenditures for capital improvements) arising in connection with the Property;

(iii) To the payment of any amounts due and owing to Beneficiary under the terms of the Obligations;

(iv) To the payment of any lease payments under any ground lease or amounts secured by any other mortgage or deed of trust on the Property approved by Beneficiary; and

(v) Any remainder to Trustor or its designee or other assignee.

Receipt by Beneficiary of Rents shall not constitute a waiver of any other right that Beneficiary may have under this Deed of Trust or the laws of Utah, nor shall the receipt and application thereof cure any Event of Default or affect any foreclosure proceeding or any sale authorized by this Deed of Trust or the laws of Utah.

(c) Except as expressly permitted by the Loan Agreement or this Deed of Trust, Trustor shall not, without Beneficiary's prior written consent: (i) assign any of the Rents; (ii) collect any unreasonably large security deposits or any rent for more than one month in advance; (iii) change the general nature of the occupancy; (iv) initiate or acquiesce in any zoning reclassification; (v) terminate or accept a surrender of any Lease (except in the ordinary course of business in the exercise of Trustor's sound business judgment); (vi) amend or modify any Lease to reduce (or effectively reduce by means of rent concessions, rent-free occupancy periods or the granting of tenant improvement allowances) the rent, or to grant any options to purchase or renew or any rights of first refusal; (vii) subordinate, or permit the subordination of, any Lease to the lien of a mortgage or deed of trust that is junior to this Deed of Trust; or (viii) take, fail to take or suffer any action that would impair the security for the Obligations or Beneficiary's interest in the Property or the Rents. Any action taken in violation of the foregoing sentence shall be null and void. Trustor shall fully and timely perform all of the obligations of the landlord under all Leases of any portion of the Property and shall enforce, short of termination, the performance by all lessees and tenants of all of their obligations under the Leases.

(d) Beneficiary shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any Lease, and Trustor hereby agrees to indemnify and hold Beneficiary harmless from any and all liability arising from any of the Leases or from the assignment contained in this **Section 7**. Unless Beneficiary exercises its rights pursuant to **Section 18** and, as a result, applicable law imposes such an obligation upon Beneficiary, this **Section 7** shall not obligate Beneficiary to manage, care for or repair the Property or make Beneficiary liable for any loss or damage to any tenant, invitee, employee, licensee or any other person resulting from the failure to properly manage, care for or repair the Property.

(e) In the event that Beneficiary exercises its rights to possess and exclude Trustor from the Property pursuant to **Section 18** of this Deed of Trust, Beneficiary shall have full power and authority to employ such measures as it may deem necessary or advisable, in its sole discretion, to enforce the payment or security of the Rents, including actions for the recovery of rent, actions in forcible detainer and in distress for rent, and with full power: (i) to cancel or terminate any Lease for any reason that would entitle Trustor to cancel or terminate the same; (ii) to disaffirm any Lease which is subordinate to the lien of this Deed of Trust (except such Leases that are subordinate pursuant to a subordination, nondisturbance and attornment

agreement, as described in **Section 29** hereof); (iii) to extend or modify any then existing Lease and to enter into new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date of issuance of a deed(s) to a purchaser(s) at a judicial or nonjudicial foreclosure sale, Trustor agreeing that any such Leases, and the options or other such provisions contained therein, shall be binding upon Trustor and all persons whose interests in the Property are subject to the lien of this Deed of Trust and upon the purchaser(s) at any foreclosure sale, notwithstanding any redemption, discharge or satisfaction of the Obligations or any judgment in foreclosure rendered thereon, or issuance of any certificate of sale or deed to any purchaser(s); (iv) to undertake and complete all repairs, decorating, renewals, replacements, alterations, additions and improvements to the Property as Beneficiary may deem necessary or advisable; (v) to insure the Property and all risks incidental to Beneficiary's possession, operation and management thereof; and (vi) to receive all of the Rents.

#### **8. Security Agreement.**

(a) Creation of Security Interest. This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Utah Uniform Commercial Code. With respect to personal property comprising the Property ("**Personal Property**"), whether now owned or existing or hereafter acquired or arising, wherever located and whether in Trustor's possession and control or in the possession and control of a third party, Beneficiary is granted a security interest hereunder, and shall be entitled to all the rights and remedies of a "secured party" under the Utah Uniform Commercial Code.

(b) Representations, Warranties and Covenants of Trustor. Trustor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Trustor to Beneficiary and any extension of credit thereunder) as follows:

(1) The Personal Property is not used or bought for personal, family or household purposes.

(2) The tangible portion of the Personal Property will be kept on or at the Real Property or any improvements and Trustor will not, without the prior written consent of Beneficiary, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with similar items of greater value.

(3) Trustor hereby authorizes Beneficiary to prepare and file one or more financing statements and fixture filings pursuant to the Uniform Commercial Code of Utah in form satisfactory to Beneficiary and Trustor agrees to pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.

(4) Trustor's principal place of business is in the State of Utah at Salt Lake City, Utah. Trustor does not do business under any trade name except as previously disclosed in writing to Beneficiary. Trustor will immediately notify Beneficiary in writing of any change in its place of business or the adoption or change of any trade name or fictitious business name, and hereby authorizes the filing of additional financing statements necessary to reflect any such adoption or change.

(5) Trustor shall immediately notify Beneficiary of any claim against the Personal Property adverse to the interest of Beneficiary therein.

(6) The grant of a security interest to Beneficiary by this Deed of Trust shall not be construed to derogate from or impair the lien or provisions of, or the rights of Beneficiary under, this Deed of Trust with respect to any property described herein which is real property, or which the parties have agreed to treat as real property, including power of sale rights.

(c) Use of Personal Property by Trustor. Until the occurrence of an Event of Default hereunder or under any other Loan Document, Trustor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.

(d) Remedies Upon an Event of Default.

(1) In addition to the remedies provided herein, upon the occurrence of an Event of Default hereunder, Beneficiary shall have all of the rights and remedies of a Secured Party under the Utah Uniform Commercial Code, and Beneficiary may, at its option, do any one or more of the following:

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

(B) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any lien or encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorney's fees) incurred in connection therewith;

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

(D) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine;

(E) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Property;

(F) Sell, lease, or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(G) Exercise any other remedies of a secured party under the Utah Uniform Commercial Code, the other Loan Documents or any other applicable law.

(2) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be mailed to Trustor at the address set forth in **Section 38**.

(3) The proceeds of any sale under **Section 8(d)** shall be applied as follows:

(A) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including, without limitation, costs of litigation and attorneys' fees) and the discharge of all impositions, liens and encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any impositions or liens and encumbrances subject to which such sale shall have been made);

(B) To the payment of the Obligations in such order as Beneficiary shall determine; and

(C) The surplus, if any, shall be paid to Trustor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(4) Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to prevent Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

9. **Uniform Commercial Code Filings**

(a) The filing of one or more financing statements in the records relating to personal property shall in no way derogate or impair Beneficiary's priority or rights on default to exercise either its rights and remedies as a Beneficiary of this Deed of Trust or as a secured party with respect to personal property under the Utah Uniform Commercial Code (the "**UCC**") in connection with the items of the Property covered by the UCC. This Deed of Trust is intended to and shall create a security interest in favor of Beneficiary in those items of the Property which are covered by the UCC, although such items are to be considered fixtures to the fullest extent permitted by law.



(b) Beneficiary shall also be entitled to proceed as to both the Real Property and all personal or mixed Property and all fixtures in accordance with Beneficiary's rights and remedies with respect to the Real Property as provided by *Utah Code Annotated* § 70A-9a-604 (or any replacement statute).

(c) This Deed of Trust constitutes a security agreement and a financing statement (fixture filing) and it is hereby recited (to the extent that such recitation is required by *Utah Code Annotated* § 70A-9a-502 (or any replacement statute) because any portion of the Property may constitute fixtures) that this Deed of Trust is to be filed in the office where a mortgage on the Real Property would be recorded, which is the office of the recorder of the county in which the Real Property is located. Trustor is the record owner of the Real Property. Certain UCC financing statement information is set forth in **Exhibit B** to this Deed of Trust.

(d) Trustor represents and warrants to Beneficiary that no effective financing statements will be on file in the Utah Department of Commerce, Division of Corporations and Commercial Code, in the office of any secretary of state, county recorder or other public office in favor of a secured party other than Beneficiary naming Trustor as debtor and describing any of the Property as collateral, and there shall be no other financing statements filed without the prior written consent of Beneficiary.

(e) Trustor represents and warrants to Beneficiary that the address for Trustor appearing in the introductory paragraph hereto is the chief executive office of Trustor and, unless Trustor provides thirty (30) days' prior written notice to Beneficiary, Trustor shall continue to be so located so long as any portion of the Obligations remains unpaid or unperformed.

(f) Trustor irrevocably authorizes Beneficiary to prepare and file, in accordance with the UCC, financing statements, or such other documents as may be required from time to time to create, maintain and perfect the liens and security interests granted herein. Trustor covenants and agrees that it will not make any change to its legal name, which legal name as shown in the introductory paragraph hereto is true and correct, its state of formation, organization or registration, or the location of its chief executive office or principal place of business, or its organizational structure or governing documents, without the prior written consent of Beneficiary. Trustor further irrevocably authorizes Beneficiary at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (A) indicate the Collateral (1) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code or such jurisdiction, or (2) as being of an equal or lesser scope or with greater detail, and (B) contain any other information required by *Part 5 of Article 9* of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment. Trustor agrees to furnish any such information to Beneficiary promptly upon request. Trustor also ratifies its authorization for Beneficiary to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

**10. INTENTIONALLY OMITTED.**

**11. Actions or Proceedings Affecting Property; Duty to Appear.** Trustor agrees to appear in and prosecute or defend any action or proceeding that may affect the priority of this Deed of Trust or the security, rights or powers of Beneficiary hereunder or that seeks to impose liability on Trustee or Beneficiary because of any act or omission of Trustor, and Trustor shall pay all costs and expenses (including the cost of searching title) and attorneys' fees incurred in such action or proceeding.

Beneficiary may appear in and defend any action or proceeding purporting to affect the security or priority hereof or the rights or powers of Beneficiary. Beneficiary may, if Beneficiary reasonably determines that Trustor is failing or will fail to do so, pay, purchase, contest or compromise any adverse claim, encumbrance, charge or lien which, in the judgment of Beneficiary, appears to be prior or superior to the lien of this Deed of Trust. All amounts paid, suffered or incurred by Beneficiary in exercising the authority granted in this Deed of Trust, including reasonable attorneys' fees, shall be added to the Obligations, shall be a lien on the Property and shall be due and payable by Trustor to Beneficiary on demand, together with interest from the date of advance until paid at the then effective default rate.

**12. Additional Documents.** Trustor agrees to execute and deliver to Beneficiary, upon demand, any additional agreements, instruments or documents that Beneficiary deems reasonably necessary to secure to Beneficiary any right or interest granted or intended to be granted to Beneficiary under this Deed of Trust. In the event any rights, easements or other hereditaments shall hereafter become appurtenant to any part of the Property, they shall become subject to the lien of this Deed of Trust.

**13. Sale, Lease or Conveyance by Trustor.**

(a) Except as expressly permitted or contemplated by the Loan Agreement or this Deed of Trust, Trustor shall not sell, convey or further encumber (including granting any easements (except for public utility or other easements needed to service the improvements being constructed on the Real Property) or other interests affecting title to the Property) or pledge or hypothecate or in any manner dispose of any of its interest in all or any portion of the Property, voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, which Beneficiary may withhold in its sole and exclusive discretion, Beneficiary may require as a condition of its consent a change in the terms and conditions of repayment of the Obligations, including payment of a fee, an increase in interest rate payable and/or a reduction in the time remaining prior to the maturity date. For the purposes of this **Section 13**, a change in the control or management of Trustor, transfer or encumbrance of fifty percent (50%) of the voting stock of a corporation which is a Trustor, transfer or encumbrance of fifty percent (50%) of the ownership or voting interests in a partnership, joint venture or limited liability company which is a Trustor, or the death or dissolution of the Trustor or any transfer or assignment of all or substantially all of the assets of a Trustor or any general partner or member of Trustor shall be deemed a transfer of the Property which gives the Beneficiary the right to exercise the remedies set forth herein.

(b) Trustor shall give Beneficiary thirty (30) days' prior written notice of any proposed transaction which requires Beneficiary's consent, and Trustor shall furnish to Beneficiary such information as Beneficiary may reasonably require. Beneficiary may require, as a condition of its consent to any transfer or conveyance of the Property or any portion thereof, that: (i) any person succeeding to an ownership interest in the Property or any portion thereof assume personal liability for the payment and performance of the Obligations; (ii) Trustor confirm its continuing obligation and liability for the payment and performance of the Obligations; (iii) Trustor shall have obtained and provided to Beneficiary evidence of the consent of all guarantors of the payment of the Obligations or any portion thereof or the completion of the improvements to be constructed or any portion thereof to the transfer and their acknowledgment that the transfer will not in any manner impair the validity or effectiveness of their respective guaranties; (iv) Trustor provide to Beneficiary such documentation, title insurance endorsements, opinions of counsel and other items as Beneficiary may determine are reasonably required or prudent to assure that Beneficiary's rights under Beneficiary's loan documents are maintained in full force and effect and are not impaired; (v) Trustor execute such financing statements and other documents as Beneficiary may require in its conservative discretion in order to continue the

perfected status of its security interests with respect to the Property; (vi) Trustor or the transferee reimburse Beneficiary for its reasonable legal expenses in connection with the consideration and documentation of the transfer and assumption; and (vii) no Event of Default shall then exist. Consent to any one transaction shall not release Trustor from personal liability for the Obligations or be deemed to constitute consent to any other transaction, and shall in no way obligate Beneficiary to subordinate the lien of this Deed of Trust to any interest created by such sale, transfer, lease, assignment, conveyance, encumbrance or other disposition.

(c) If the ownership of the Property or any portion thereof becomes vested in any person other than Trustor, Beneficiary may deal with such successor(s) in interest with reference to the Obligations and this Deed of Trust in the same manner as with Trustor, without in any way vitiating or discharging Trustor's liability hereunder or for payment of the Obligations. However, the foregoing sentence shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof.

**14. Changes or Modification of Applicable Tax Laws.** In the event of the imposition after the date of this Deed of Trust of any law of the United States of America, the State of Utah, or any other domestic or foreign governmental authority claiming to have jurisdiction, deducting from the value of real property for the purposes of taxation or assessment any lien thereon or changing in any way the taxation of mortgages, deeds of trust or of debts secured by mortgages or deeds of trust or the manner of the collection of any such taxes, and imposing a tax or assessment, either directly or indirectly on this Deed of Trust or the Note, the sums evidenced or secured thereby or the interest payable thereon, Trustor shall pay the entire tax or assessment in addition to all other payments required hereunder and shall pay any such tax or assessment thereafter levied or assessed against the Real Property. The provisions of this Section 14 shall not apply to changes in federal and state income tax laws.

**15. Estoppel Certificate/Record Inspection.**

(a) Trustor, within ten (10) business days after written request by Beneficiary, will furnish to Beneficiary a written statement, duly acknowledged, of the amount of the Obligations and whether any offsets or defenses exist against the Obligations and such other matters as Beneficiary may reasonably request.

(b) Trustor will permit Beneficiary or its representatives from time to time to examine within the county in which the Real Property is located all books and records and agreements of Trustor pertaining to any portion of the Property.

**16. Substitute Performance.** Should Trustor fail to pay or perform any portion of the Obligations, then Beneficiary, without obligation to do so and without releasing Trustor from any portion of the Obligations, upon five (5) days' prior written notice (or such shorter period as is reasonably practicable under the circumstances) to Trustor, may pay or perform the same in such manner and to such extent as Beneficiary, in its sole good faith discretion, may deem necessary to protect the security hereof. Beneficiary shall be authorized to enter upon the Property for such purposes. All expenses or charges that Beneficiary may incur in connection with the care or preservation of the Property or any part thereof at any time, or the payment of any taxes, assessments, insurance premiums, or encumbrances levied upon or attaching to the Property or any portion thereof or interest therein, or any cost of redemption thereon, or any sums of money, charges, expenses or fees which Beneficiary may pay pursuant to any provision hereof or of the Loan Agreement, shall be added to the Obligations, shall be payable by Trustor on demand, and shall bear interest at the then effective default rate from the date of advance until paid.

17. **Events of Default; Acceleration; Remedies.** Subject only to the applicable notice and cure provisions set forth in the Loan Agreement, upon the occurrence of any Event of Default, and at any time thereafter while such Event of Default is continuing, Beneficiary may declare the Obligations to be immediately due and payable pursuant to the Loan Agreement, and Beneficiary may exercise any one or more of the rights and remedies described herein and in the other Loan Documents. In the event the Events of Default are not defined in a Loan Agreement, an "Event of Default" under this Deed of Trust shall include any one of the following events:

(a) Trustor fails to make any payment under the Note or the Loan Agreement or Trustor fails to make any payment under any of the other Obligations when due;

(b) Trustor defaults in any payment or performance obligation under this Deed of Trust or under any agreement evidencing the Obligations; or

(c) Any representation made by Trustor in any agreement or written communication shall be incorrect, false or misleading in any material respect when made;

(d) Trustor seeks relief under the Bankruptcy Code or other insolvency laws.

18. **Beneficiary's Right to Possession.** Following the occurrence of an Event of Default, then Beneficiary shall, at its option, be entitled to the immediate possession of the Property, with the right to manage the same as a mortgagee in possession, to operate any business thereon at the expense of and for the account of Trustor, and to collect and apply the Rents as described in Section 7 hereof. Trustor and all persons claiming under Trustor shall, upon demand, immediately deliver possession of the Property to Beneficiary or its assigns. Beneficiary shall not be liable to Trustor for any obligation or charge in dealing with the Property as a mortgagee in possession (other than for loss caused by Beneficiary's gross negligence or willful misconduct or that of Beneficiary's employees, agents and representatives). Nothing in this Section 18 shall impose upon Beneficiary: (a) any duty, obligation or responsibility for the control, care, management or repair of the Property, or for complying with or enforcing any of the terms and conditions of any lease agreement; or (b) any responsibility or liability for any waste committed on the Property by the tenants or by any other persons, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss, injury or death to any tenant, licensee, employee or other person.

19. **Appointment of a Receiver.** Following the occurrence of an Event of Default, a receiver may be appointed, with or without notice (except for such notice as is required by law or applicable court), whereupon the receiver shall immediately be entitled to possession of all of the Property. Beneficiary's right to a receiver shall be absolute and unconditional. The receiver may be appointed without regard to the adequacy of any security for the Obligations and Trustor shall immediately surrender possession of the Property to the receiver upon his appointment. The receiver shall have the right to take possession of the Property, to collect the Rents therefrom, to complete the construction of any structures or improvements in progress thereon, to rent the Property or any part thereof, to operate any business thereon, and to exercise such other rights as may be granted by the court pending such proceedings, and up to the time of redemption or issuance of a trustee's or sheriff's deed. Rents shall be applied to the costs and expenses of the receiver and the receivership, including costs of construction, and the balance shall be applied in the manner described in Section 7 hereof. The receiver shall have the power to borrow money from any person, including Beneficiary, for expenses of operating, preserving, maintaining and caring for the Property, and completing the construction in progress of any improvements or structures upon the Property, and all such borrowed sums, together with interest thereon, whether expended or not, shall be added to the Obligations. The receiver may expend such borrowed money for the purposes described in this Section 19 during any redemption period and, upon any

redemption, any unexpended amounts of such borrowed money shall be credited on the redemption price of the Property. In addition, any costs incurred, or advances made, by Beneficiary in connection with the implementation or operation of the receivership, shall be added to the Obligations, bear interest at the default rate and be secured by this Deed of Trust.

**20. Additional Remedies of Beneficiary; No Waiver.** In addition to any remedies provided herein for breach or default hereof, Beneficiary shall have all other remedies allowed or provided for under or described in the Loan Agreement, the Note and all other writings executed or delivered in connection with the Obligations, or available under applicable law. Any one or more rights and remedies available to Beneficiary may, at its option, be sought and exercised concurrently or consecutively, and in inconsistent proceedings, whether legal or equitable. Beneficiary's failure to exercise any of its rights upon any default or breach shall not prejudice its rights in the event of any other or subsequent default or breach. Beneficiary's delay in exercising any rights shall not preclude it from exercising the same at any time during the continuance of such default or breach. By accepting any performance or payment of any portion of the Obligations after its due date, Beneficiary shall not waive the agreement contained herein that time is of the essence hereof, nor shall Beneficiary waive its rights to require prompt performance or payment when due of the remainder of the Obligations or to consider failure to so perform or pay a default hereunder.

**21. Sale by Trustee Pursuant to Power of Sale; Judicial Foreclosure.** After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* § 57-1-25 and § 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, in such order as Beneficiary may determine (but subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale or on such other terms as are set forth in the notice of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

*First:* To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees actually incurred not to exceed the amount which may be provided for in this Deed of Trust.

*Second:* To payment of the obligations secured by this Deed of Trust.

*Third:* The balance, if any, to the person or person's legally entitled to the proceeds, or Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

Upon any sale made under or by virtue of this **Section 21**, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the Obligations of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

**22. Deficiency.** Trustor agrees to pay any deficiency to which Beneficiary may be entitled after applications of the proceeds of any sale and for which any beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law.

**23. Reinstatement.** If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan within three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as determined by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

**24. Marshalling of Assets.** Trustor, on its own behalf and on behalf of its successors and assigns, hereby expressly waives all rights to require a marshalling of assets by Trustee or Beneficiary.

**25. No Merger.** In the event of a foreclosure of this Deed of Trust or any other mortgage or deed of trust securing the Obligations, the Obligations then due Beneficiary shall not be merged into any decree of foreclosure entered by the court, and Beneficiary may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Obligations.

**26. Request for Notice.** Beneficiary hereby requests, pursuant to *Utah Code Annotated* § 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth on the first page of this Deed of Trust.

**27. Attorneys' Fees and Expenses; Failure of Trustor to Vacate.** If any sale, proceeding, lawsuit or arbitration is commenced, or any attorney is retained to collect any amounts secured hereby or to enforce any rights granted Beneficiary hereunder (regardless of whether an action is actually commenced), Trustor shall pay Beneficiary's reasonable attorneys' fees and costs incurred in enforcing its rights under the Note, this Deed of Trust, the Loan Agreement and Beneficiary's other loan documents, any guaranty now or hereafter relating to the Obligations and any other agreements which evidence, secure or guarantee all or any portion of the Obligations, and Trustee's reasonable attorneys' fees, Trustee's fees and its costs and expenses in connection with any sale proceedings or lawsuit. In addition, Trustor shall pay a reasonable fee for title searches, foreclosure reports, trustee's sale guaranties, litigation guaranties, publication costs, environmental assessments or appraisal reports made or obtained either (i) in preparation for and in the conduct of any such proceedings or suit, or (ii) to evidence to potential bidders at any judicial or nonjudicial sale pursuant to this Deed of Trust the true condition of title to or the value of the Property or any portion thereof. All of the foregoing fees and expenses shall be payable on demand, added to the Obligations and secured by this Deed of Trust, shall be included in any judgment or

arbitration award obtained by Beneficiary and shall be paid to Beneficiary as part of any reinstatement tendered hereunder. If Trustor fails to vacate the Property following foreclosure or sale, Trustor shall be a tenant at sufferance and subject to an action for forcible entry and detainer, wherein Beneficiary shall be entitled to collect from Trustor, in addition to all other amounts due hereunder, a reasonable rental for the Property during the period of such holding over at sufferance. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligations.

**28. Reserved.**

**29. Effect of Foreclosure on Existing Leases.** Upon any sale of the Property under this Deed of Trust, any Lease that is subordinate to the lien of this Deed of Trust shall remain in effect, the purchaser thereby being subrogated to Trustor's interest therein, unless the purchaser elects to treat any such Lease as terminated by virtue of the sale under the prior lien and charge of this Deed of Trust, unless a separate nondisturbance agreement, in the form of Beneficiary's standard Subordination, Non-Disturbance and Attornment Agreement or similar agreement approved as to form and substance by Beneficiary in its sole and absolute discretion, executed by Beneficiary precludes such termination.

**30. Reconveyance of Property.** Upon (a) written request of Beneficiary stating that the entire Obligations has been paid, (b) surrender of this Deed of Trust and the Note to Trustee for cancellation and retention, and (c) payment of Trustee's fees, if any, Trustee shall reconvey the Property without warranty. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

**31. Partial Reconveyance by Trustee; Dedication of Easements.**

(a) At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note, without affecting the personal liability of any person for payment or performance of any portion of the Obligations or the lien or priority of this Deed of Trust, Trustee may reconvey any part of the Property, consent to any rezoning or the making of any map or plat thereof, join in granting any easement or dedication thereon or in creating any covenants, conditions or restrictions affecting the use or occupancy of the Property, or join in any extension agreement or agreement subordinating the lien or charge hereof.

(b) So long as no Event of Default then exists, and Trustor obtains any required written joinders or consents from any other parties who have interests in any relevant portions of the Real Property, Beneficiary shall not unreasonably withhold its consent to, approval of or joinder (on a quitclaim basis only, without creating potential liability for Beneficiary) in any customary and standard roadway or utility easements or similar dedications that are reasonably necessary to complete the improvements, or to otherwise properly develop the Real Property, or to satisfy any customary and standard Legal Requirements. To the extent any such easements or dedications are granted or made without receipt by Trustor of consideration therefor, Beneficiary shall provide appropriate partial releases from the lien of this Deed of Trust without charge to Trustor except for the reimbursement of any Beneficiary costs and expenses in connection therewith.

**32. Acceptance of Trust; Trustee Resignation; Notification of Sale.** Trustee accepts the trust created hereby, which shall be irrevocable by Trustor, when this Deed of Trust, executed and acknowledged, is recorded as provided by law. Trustee may resign at any time by giving notice thereof to Beneficiary as provided by law. Trustee is not obligated to notify any party hereto of pending sale under

any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

33. **Successor Trustee.** Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, in the manner provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all its title.

34. **Additional Security.** The taking or acceptance of this Deed of Trust by Beneficiary shall in no event be considered to constitute a waiver of, or in any way affect or impair, any other security that Beneficiary may have, acquire simultaneously herewith, or hereafter acquire for the Obligations, nor shall the taking at any time by Beneficiary of any such additional security be construed to constitute a waiver of, or in any way affect or impair, the security of this Deed of Trust. Beneficiary may resort to its several securities for the payment of the Obligations in such order and manner as it may deem appropriate.

35. **Construction of Agreement; Definitions.** This Deed of Trust shall apply to the parties according to the context hereof, without regard to the number or gender of words or expressions used herein. The captions of paragraphs in this Deed of Trust are for convenience and reference only, and in no way define or limit the scope or intent of this Deed of Trust or the provisions of such paragraphs. This Deed of Trust shall be construed as a whole, in accordance with the fair meaning of its language, and, as each party has been represented by legal counsel of its choice or deliberately chosen not to be so represented, in the negotiation of this Deed of Trust, neither this Deed of Trust nor any provision thereof shall be construed for or against either party by reason of the identity of the party drafting the same. As used in this Deed of Trust, the term(s): (a) "include" or "including" shall mean without limitation by reason of enumeration; (b) "herein," "hereunder," "hereof," "hereinafter" or similar terms refer to this Deed of Trust as a whole rather than to any particular paragraph; (c) "person" includes a corporation, trust, partnership, limited liability company, association, governmental authority or other entity, as well as a natural person; (d) "Beneficiary" shall mean the holder at any time, including pledgees, of the Note or other writings secured hereby, whether or not named as Beneficiary herein; and (e) "Trustor" shall include all persons or entities named in this Deed of Trust as Trustors, severally and collectively, and any subsequent owner of all or any portion of the Property, and their liability under this Deed of Trust shall be joint and several (however, the foregoing shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof). Capitalized terms used herein shall have the meaning specified in the Loan Agreement unless otherwise stated.

36. **Time of the Essence; Successors and Assigns.** Time is of the essence hereof. Without limitation of the restrictions on transfer described in Section 13 above, this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, personal representatives, legatees, devisees, successors and assigns.

37. **Governing Law.** This Deed of Trust is delivered in, relates to real property located in, and shall be governed by and construed according to the substantive laws and judicial decisions of the State of Utah (regardless of Utah conflict of laws principles or the location, residence, domicile or place of business of Trustor or any constituent principal thereof) and applicable federal laws, rules and regulations.

38. **Notices.** Except as provided in Section 21 hereof with respect to Trustee's exercise of the power of sale contained herein or as otherwise required by law, all notices required or permitted to be given hereunder shall be given as provided in the Loan Agreement.



39. **Amendment.** This Deed of Trust may not be amended or changed except by a written agreement signed by Trustor and Beneficiary.

40. **Severability; Enforceability.**

(a) Each covenant, provision and condition of this Deed of Trust shall be interpreted so as to be valid and effective under applicable law. If any such covenant, provision or condition is held to be void or invalid, the same shall not affect the remainder hereof, which shall be valid and effective as though the void or invalid covenant, provision or condition had not been contained herein.

(b) Should this Deed of Trust be or ever become ineffective as a deed of trust, then it shall be construed and enforceable as a mortgage (with Trustor as the mortgagor and Beneficiary as the mortgagee).

(c) If the lien of this Deed of Trust is invalid or unenforceable (either as a deed of trust or as a mortgage) as to any part of the Obligations, or if the lien is invalid or unenforceable as to any portion of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Obligations. All payments made on the Obligations, whether voluntary or pursuant to foreclosure or some other enforcement action or procedure taken hereunder, shall be considered to have been first applied to the full payment of that portion of the Obligations which is not secured or fully secured by the lien of this Deed of Trust.

41. **Subrogation.** Beneficiary shall be subrogated to the rights and lien, whether or not released of record, of the owner or holder of each and every encumbrance or lien paid from the proceeds of the loan or advances secured hereby, and such loan or advances have been or will be advanced, if at all, at Trustor's request.

42. **Incorporation of Exhibits.** Any exhibit attached hereto is hereby incorporated herein and made a part hereof for all purposes, and references in this Deed of Trust to such exhibits shall be deemed to include this reference and incorporation.

43. **Declarations and Associations.** The assignment herein by Trustor to Beneficiary of the rights of Trustor with respect to any declaration of covenants, conditions and restrictions, any design review or architectural control committee and any owners' or similar association, together with any voting rights therein, shall be for the purpose of security only and shall not impose any duty or obligation on Beneficiary with respect to any such matters unless expressly assumed by Beneficiary in a writing which is recorded. Trustor shall not give any consent, approval or permission under the terms of any declaration of covenants, conditions and restrictions without the prior written consent of Beneficiary.

44. **No Offset.** All sums comprising the Obligations payable by Trustor shall be paid without notice, demand, offset, deduction, counterclaim, defense, abatement, suspension, diminution or reduction. Trustor's obligation to do so shall not be released, discharged or otherwise diminished by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of, the Property or any portion thereof; (b) any restriction or prevention of, or interference with, the use of the Property or any portion thereof; (c) any title defect or encumbrance, or any eviction from the Property or any portion thereof by the holder of superior title or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, dissolution, liquidation or similar proceeding relating to Trustor or Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Trustor or Beneficiary, or by any court, in any such proceeding; (e) any claim that Trustor may now or in the future have against Beneficiary; (f) any

default or failure on the part of Beneficiary to perform or comply with any of the terms of this Deed of Trust or any other loan document with Trustor; or (g) any other similar or dissimilar occurrence. Beneficiary's acceptance of any payment in an amount less than the amount then due and owing under the Loan Documents shall be deemed an acceptance on account only, and shall not in any way constitute an accord and satisfaction or a waiver, or impair Beneficiary's ability to treat a Default or an Event of Default as continuing to exist.

45. **No Merger.** If the interests of Beneficiary and Trustor under this Deed of Trust shall at any time become vested in Beneficiary, by reason of foreclosure or otherwise, the lien of this Deed of Trust shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates, unless otherwise consented to in writing by Beneficiary.

46. **Multiple Advances.** The proceeds of the obligation secured by this Deed of Trust may be advanced in multiple installments at different times subsequent to the recordation of this Deed of Trust. Each advance made subsequent to the initial advance shall be deemed to be "obligatory" in nature (subject to conditions precedent for advances) and shall be secured in the same lien priority position as the initial advance. If for any reason a court of competent jurisdiction should determine the foregoing sentence to be unenforceable, then all amounts advanced by Beneficiary as of the time that a third party acquires or provides notice of (whichever action such court may require) an interest in the property encumbered by this Deed of Trust shall continue to be secured in a first priority lien position, and amounts advanced by Beneficiary after the acquisition or giving notice of (as applicable) the intervening interest (except for amounts determined by the court to be senior to the intervening interest, even though advanced by Beneficiary after the recordation or giving notice of the intervening interest) shall be secured in a position junior to the intervening interest. The foregoing sentence shall not be construed to permit any person or entity to acquire an intervening interest without Beneficiary's consent, to acknowledge that any or all of the secured obligation will be subordinate to intervening interests, or to excuse any party that may obtain an intervening interest from complying with the requirements of applicable law for giving *actual* notice to Beneficiary or for taking other necessary measures to establish its lien priority over subsequently advanced amounts, and the holder of any intervening interest will be charged with notice of the provisions of this paragraph to the fullest extent allowed by law. Rather, the intent of this paragraph is to ensure that in no circumstance will the provisions of this Deed of Trust securing other and subsequent advances in the same lien priority as the initial advance hereunder impair or adversely affect the priority that Beneficiary would have had absent those provisions.

**\*\*Signature on following page\*\***

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first set forth above.

"Trustor"

DRAPER IRRIGATION COMPANY  
a Utah non-profit corporation

By: [Signature]

Name: Darrin L. Jensen

Title: CEO and General Manager

By: [Signature]

Name: Stephen L. Tripp

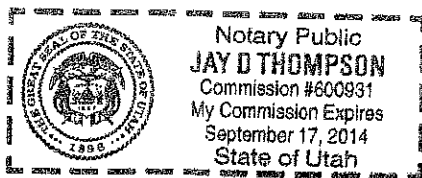
Title: President

STATE OF UTAH )

: ss

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June, 2013, by Darrin L. Jensen, the CEO and General Manager of DRAPER IRRIGATION COMPANY, a Utah non-profit corporation.



[Signature]  
NOTARY PUBLIC

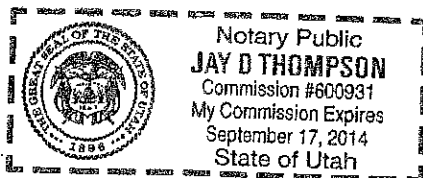
Residing at \_\_\_\_\_

STATE OF UTAH )

: ss

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June, 2013, by Stephen L. Tripp, the President of DRAPER IRRIGATION COMPANY, a Utah non-profit corporation.



[Signature]  
NOTARY PUBLIC

Residing at \_\_\_\_\_

1236538

**EXHIBIT A  
LEGAL DESCRIPTION**

The following located in Salt Lake County, Utah and described as:

**PARCEL 1:**

BEGINNING AT A POINT WHICH LIES 867.08 FEET NORTH AND 851.62 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE WEST 500.00 FEET; THENCE NORTH 451 FEET, MORE OR LESS TO THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER; THENCE EAST ALONG SAID NORTH LINE, 500.00 FEET; THENCE SOUTH 451 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING ALL THAT PORTION CONTAINED IN THAT CERTAIN WARRANTY DEED IN FAVOR OF JORDAN VALLEY WATER CONSERVANCY DISTRICT RECORDED JANUARY 9, 2003 AS ENTRY NO. 8487334 IN BOOK 8718 AT PAGE 3189 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT NORTH  $00^{\circ}03'43''$  WEST 1320.00 FEET AND SOUTH  $89^{\circ}54'15''$  WEST 1008.45 FEET FROM THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN, SAID POINT BEING ON A CHAIN LINK FENCE (SAID FENCE REPRESENTS A BOUNDARY LINE AGREEMENT BETWEEN DRAPER IRRIGATION COMPANY AND JORDAN VALLEY WATER CONSERVANCY DISTRICT, FORMERLY SALT LAKE COUNTY WATER CONSERVANCY DISTRICT); THENCE SOUTH 218.68 FEET; THENCE WEST 194.50 FEET; THENCE NORTH 218.36 FEET TO SAID FENCE LINE; THENCE NORTH  $89^{\circ}54'15''$  EAST 194.50 FEET ALONG SAID FENCE LINE TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM ALL NON MINERAL BEARING SILICA, CLAY, SAND, COAL AND COAL BEARING ROCK AS DISCLOSED BY MESNE INSTRUMENTS OF RECORD INCLUDING, BUT NOT LIMITED TO, THAT CERTAIN WARRANTY DEED DATED NOVEMBER 23, 1942 AND RECORDED DECEMBER 4, 1942 AS ENTRY NO. 942189 IN BOOK 330 AT PAGE 172 OF THE OFFICIAL RECORDS.

**PARCEL 2:**

AN UNDIVIDED SEVEN-FIFTEENTHS (7/15ths) INTEREST IN AND TO THE FOLLOWING:

BEGINNING 867.08 FEET NORTH AND 851.62 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE MERIDIAN; AND RUNNING THENCE WEST 500 FEET; THENCE SOUTH 125 FEET, MORE OR LESS; AND RUNNING THENCE EAST 500 FEET; THENCE NORTH 125 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM ALL NON MINERAL BEARING SILICA, CLAY, SAND, COAL AND COAL BEARING ROCK AS DISCLOSED BY MESNE INSTRUMENTS OF RECORD INCLUDING, BUT NOT LIMITED TO, THAT CERTAIN WARRANTY DEED DATED NOVEMBER 23, 1942, AND RECORDED DECEMBER 4, 1942 AS ENTRY NO. 942189 IN BOOK 330 AT PAGE 172 OF THE OFFICIAL RECORDS.

PARCEL 3:

COMMENCING AT A POINT NORTH 0°90'47" WEST 663.534 FEET AND SOUTH 89°55'57" EAST 1271.143 FEET AND NORTH 40 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 41.152 FEET; THENCE EAST 360.64 FEET, MORE OR LESS, TO A POINT ON THE NORTHERLY LINE OF 11700 SOUTH STREET; THENCE SOUTHWESTERLY ALONG SAID LINE 385 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM ALL NON MINERAL BEARING SILICA, CLAY, SAND, COAL AND COAL BEARING ROCK AS DISCLOSED BY MESNE INSTRUMENTS OF RECORD INCLUDING, BUT NOT LIMITED TO, THAT CERTAIN WARRANTY DEED DATED NOVEMBER 23, 1942, AND RECORDED DECEMBER 4, 1942 AS ENTRY NO. 942189 IN BOOK 330 AT PAGE 172 OF THE OFFICIAL RECORDS.

PARCEL 4:

EASEMENT AND RIGHT-OF-WAY GRANT (i) RECORDED OCTOBER 14, 1968 AS ENTRY NO. 2263326 IN BOOK 2699 AT PAGE 42 OF OFFICIAL RECORDS; (ii) RECORDED OCTOBER 14, 1968 AS ENTRY NO. 2263327 IN BOOK 2699 AT PAGE 44 OF OFFICIAL RECORDS; AND (iii) RECORDED OCTOBER 14, 1968 AS ENTRY NO. 2263328 IN BOOK 2699 AT PAGE 46 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PERPETUAL EASEMENT TO CONSTRUCT, RECONSTRUCT, OPERATE, REPAIR, REPLACE AND MAINTAIN THE WATER LINE AND APPURTENANT STRUCTURES ON, OVER, ACROSS AND THROUGH A STRIP OF LAND 20 FEET WIDE, LYING 10 FEET ON EACH SIDE OF AND PARALLEL AND ADJACENT TO THE BELOW DESCRIBED CENTERLINE:

BEGINNING AT A POINT WHICH LIES 898.52 FEET NORTH AND 1351.62 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 88°40'20" WEST 519.68 FEET; THENCE NORTH 88°46'05" WEST 2549.43 FEET; THENCE SOUTH 64°22'35" WEST 665.57 FEET; THENCE SOUTH 87°47'55" WEST 248.64 FEET TO THE WEST LINE OF SAID SECTION 22.

PARCEL 4A:

EASEMENT FOR THE TRANSPORTATION OF RAW WATER THROUGH GRANTOR'S RAW WATER COLLECTION SYSTEM FOR THE SOUTHEAST REGIONAL WATER TREATMENT PLANT, AS PROVIDED BY THAT CERTAIN WATER TRANSPORTATION EASEMENT, RECORDED NOVEMBER 23, 1999 AS ENTRY NO. 7518837 IN BOOK 8324 AT PAGE 8488 OF OFFICIAL RECORDS.

**EXHIBIT B**

**FINANCING STATEMENT INFORMATION**

The Beneficiary/Secured Party is:

AmericanWest Bank  
10757 South River Front Parkway, Suite 150  
South Jordan, UT 84095

The Debtor is:

Draper Irrigation Company  
12421 South 800 East, Draper, Utah 84020

Organizational Identification No.: 550024-0140

The Collateral is the Personal Property (including all fixtures) described in this Deed of Trust.

When recorded, mail to:

AmericanWest Bank  
10757 South River Front Parkway, Suite 150  
South Jordan, UT 84095  
Attn: Joseph Trunzo

**WATER RIGHT DEED OF TRUST, SECURITY AGREEMENT  
AND FINANCING STATEMENT**

*Draper Irrigation Company*

THIS WATER RIGHT DEED OF TRUST SECURES A PROMISSORY NOTE, THE INTEREST RATE UNDER WHICH MAY VARY ACCORDING TO CHANGES IN AN INDEX RATE OF INTEREST IN ACCORDANCE WITH THE PROMISSORY NOTE GIVEN TO BENEFICIARY.

THIS WATER RIGHT DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR."

**THIS WATER RIGHT DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT** (this "*Deed of Trust*") is made as of the 18th day of June, 2013, among Draper Irrigation Company, a Utah non-profit corporation, whose address is 12421 South 800 East, Draper, Utah 84020, as trustor ("*Trustor*"), First American Title Insurance Company, whose address is 560 East 300 South, Salt Lake City, Utah 84111, as trustee ("*Trustee*"), and AmericanWest Bank, a Washington State Bank, whose address is 10757 South River Front Parkway, Suite 150, South Jordan, Utah 84095, as beneficiary ("*Beneficiary*").

WITNESSETH:

For good and valuable consideration, including the indebtedness herein recited, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, conveys, transfers, pledges and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit of Beneficiary and, in addition thereto, hereby grants to Beneficiary a security interest in all of Trustor's present and future right, title and interest in and to all of the following property (severally and collectively, the "*Property*");

(a) Water Right No. 57-443 including all right, title and interests in and to all associated, approved or pending change applications including a37915 as filed in the office of the Utah State Engineer, Division of Water Rights, to the extent (and only to the extent) that they pertain to Water Right No. 57-443 (collectively the "*Right*").

(b) All present and future right, title, interest, benefits, privileges, rights in equity, and contractual rights appurtenant to the Right, to the extent of such appurtenance and to the extent that Trustor is contractually allowed to do so by the terms of such contracts;

(c) All present and future licenses, permits, approvals and agreements from or with any governmental or quasi-governmental agency or entity with respect to the Right, including without limitation (i) that certain Agreement dated on or about June 29, 1993, as may be amended, by and between Trustor and the State of Utah, acting through the Department of Natural Resources, Board of Water Resources (the "*BWR*"), and (ii) that certain Interagency Agreement dated on or about April 19, 2002, as may be amended, by and among Trustor, BWR and the State of Utah, acting through the Department of Environmental Quality, Drinking Water Board (the "*DWB*"), but only to the extent that such agreements apply to the Right and only to the extent that Trustor is contractually allowed to do so by the terms of such agreements;

(d) All right, title and interest under (i) that certain Agreement dated August 9, 1985 by and between Trustor and Salt Lake County Water Conservancy District as may have been or hereafter is amended, modified or supplemented and (ii) that certain Water Purchase Agreement dated as of November 8, 2006 by and between Trustor and Jordan Valley Water Conservancy District, as amended by an Amendment to Water Purchase Agreement dated as of November 8, 2011 and as may be further amended, modified or supplemented, but only to the extent that such agreements apply to the Right and only to the extent that Trustor is contractually allowed to do so by the terms of such agreements; and

(e) All (i) replacements and substitutions for, (ii) additions to, (iii) proceeds and products of (including all insurance proceeds and condemnation awards (or proceeds of any purchase in lieu thereof) which are or may become payable with respect thereto), all or any portion of the items described in the preceding paragraphs.

This Deed of Trust shall not encumber any water rights held by Trustor other than the Right.

The conveyances and liens granted by this Deed of Trust are subject to the present rights and interests in and to the Property held by the BWR and the DWB, including without limitation (1) the conveyance by Trustor of the Right to the BWR and related agreements (subject to Trustor's rights of reconveyance with respect thereto), and (2) a water rights trust deed executed by Trustor in favor of DWB.

This Deed of Trust is given in consideration of and as security for: (i) the payment of a loan by Beneficiary to Trustor evidenced by that certain Promissory Note (the "*Note*") of approximately even date herewith executed by Trustor and payable to the order of Beneficiary in the stated principal amount of **\$8,552,878.00**, together with interest thereon and charges with respect thereto, and any and all advances now or hereafter made by Beneficiary under the terms and conditions of the Note, the Loan Agreement by and between Trustor and Beneficiary executed in connection with the Note (the "*Loan Agreement*") or this Deed of Trust, and any and all renewals, replacements, amendments, modifications or extensions of the Note, the Loan Agreement or this Deed of Trust; (ii) all of the terms, conditions, agreements, stipulations, covenants, and provisions of this Deed of Trust, the Loan Agreement and any other agreement, document or instrument (and any and all renewals, replacements, amendments, modifications or extensions thereof) executed by Trustor in connection with the Note or the Loan Agreement, but excluding any environmental or hazardous substance indemnity, which shall remain unsecured obligations (collectively the "*Loan Documents*"); (iii) all late charges, default interest, prepayment charges or premiums, loan fees, commitment fees and extension fees described in the Note or the Loan Agreement and all costs of collecting the indebtedness or other amounts evidenced by the Note or described in this Deed of Trust or the Loan Agreement, including any and all costs and expenditures of



a receiver in possession and reasonable attorneys' fees; (iv) all obligations owed to Beneficiary or any of its affiliates under any and all interest rate protection agreements (swaps, collars, caps and other hedges) executed by Trustor in connection with the Loan Documents, whether now existing or hereafter arising; (v) payment of all sums advanced by Beneficiary to protect the Property, with interest thereon equal to the default rate as provided by the Note; (vi) Trustor's compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Property is bound or is affected; and (vii) all modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (a) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (b) modifications, extensions or renewals at a different rate of interest whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note. This Deed of Trust shall also secure the payment and performance of any additional loans that may hereafter be made by Beneficiary to Trustor which are evidenced by a promissory note or notes or other writings stating that they are secured by this Deed of Trust. All of the foregoing payments and performances secured by this Deed of Trust are sometimes hereinafter referred to as the "*Obligations.*"

**TRUSTOR, TO PROTECT THE PROPERTY AND SECURITY GIVEN BY THIS DEED OF TRUST, HEREBY WARRANTS, COVENANTS AND AGREES AS FOLLOWS:**

1. **Payment of Taxes, Assessments and Charges.** At least ten (10) days prior to delinquency, Trustor shall pay or cause to be paid to the proper officials or persons all taxes and assessments, general or special, of every nature and description that shall have been levied or assessed on the Property and, upon Beneficiary's request, shall deliver to Beneficiary receipts evidencing such payments.

2. **Security Agreement.** This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Utah Uniform Commercial Code. With respect to personal property, if any, comprising the Property ("*Personal Property*"), whether now owned or existing or hereafter acquired or arising, wherever located and whether in Trustor's possession and control or in the possession and control of a third party, Beneficiary is granted a security interest hereunder, and shall be entitled to all the rights and remedies of a "secured party" under the Utah Uniform Commercial Code.

3. **Actions or Proceedings Affecting Property; Duty to Appear.** Trustor agrees to appear in and prosecute or defend any action or proceeding that may affect the priority of this Deed of Trust or the security, rights or powers of Beneficiary hereunder or that seeks to impose liability on Trustee or Beneficiary because of any act or omission of Trustor, and Trustor shall pay all out of pocket costs and expenses (including the cost of searching title) and attorneys' fees incurred in such action or proceeding. Beneficiary may appear in and defend any action or proceeding purporting to affect the security or priority hereof or the rights or powers of Beneficiary. Beneficiary may, if Beneficiary reasonably determines that Trustor is failing or will fail to do so, pay, purchase, contest or compromise any adverse claim, encumbrance, charge or lien which, in the judgment of Beneficiary, appears to be prior or superior to the lien of this Deed of Trust (except for the prior interests held by the BWR and the DWB). All out of pocket amounts paid, suffered or incurred by Beneficiary in exercising the authority granted in this Deed of Trust, including reasonable attorneys' fees, shall be added to the Obligations, shall be a lien on the Property and shall be due and payable by Trustor to Beneficiary on demand, together with interest from the date of advance until paid at the then effective default rate.

4. **Additional Documents.** Trustor agrees to execute and deliver to Beneficiary, upon demand, any additional agreements, instruments or documents that Beneficiary deems reasonably

necessary to secure to Beneficiary any right or interest granted or intended to be granted to Beneficiary under this Deed of Trust.

5. **Sale, Lease or Conveyance by Trustor.** Except as expressly permitted or contemplated by the Loan Agreement or this Deed of Trust, Trustor shall not sell, convey or further encumber or pledge or hypothecate or in any manner dispose of any of its interest in all or any portion of the Property, voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, which Beneficiary may withhold in its sole and exclusive discretion.

6. **Events of Default; Acceleration; Remedies.** Subject only to the applicable notice and cure provisions set forth in the Loan Agreement, upon the occurrence of any Event of Default, and at any time thereafter while such Event of Default is continuing, Beneficiary may declare the Obligations to be immediately due and payable pursuant to the Loan Agreement, and Beneficiary may exercise any one or more of the rights and remedies described herein and in the other Loan Documents. In the event the Events of Default are not defined in a Loan Agreement, an "*Event of Default*" under this Deed of Trust shall include any one of the following events:

(a) Trustor fails to make any payment under the Note or the Loan Agreement or Trustor fails to make any payment under any of the other Obligations when due;

(b) Trustor defaults in any payment or performance obligation under this Deed of Trust or under any agreement evidencing the Obligations beyond all applicable notice and cure periods; or

(c) Any representation made by Trustor in any agreement or written communication shall be incorrect, false or misleading in any material respect when made;

(d) Trustor seeks relief under the Bankruptcy Code or other insolvency laws.

7. **Additional Remedies of Beneficiary; No Waiver.** In addition to any remedies provided herein for breach or default hereof, Beneficiary shall have all other remedies allowed or provided for under or described in the Loan Agreement, the Note and all other writings executed or delivered in connection with the Obligations, or available under applicable law. Any one or more rights and remedies available to Beneficiary may, at its option, be sought and exercised concurrently or consecutively, and in inconsistent proceedings, whether legal or equitable. Beneficiary's failure to exercise any of its rights upon any default or breach shall not prejudice its rights in the event of any other or subsequent default or breach. Beneficiary's delay in exercising any rights shall not preclude it from exercising the same at any time during the continuance of such default or breach. By accepting any performance or payment of any portion of the Obligations after its due date, Beneficiary shall not waive the agreement contained herein that time is of the essence hereof, nor shall Beneficiary waive its rights to require prompt performance or payment when due of the remainder of the Obligations or to consider failure to so perform or pay a default hereunder.

8. **Sale by Trustee Pursuant to Power of Sale; Judicial Foreclosure.** After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* § 57-1-25 and § 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, in such order as Beneficiary may determine (but subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money

of the United States at the time of sale or on such other terms as are set forth in the notice of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

*First:* To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees actually incurred not to exceed the amount which may be provided for in this Deed of Trust.

*Second:* To payment of the obligations secured by this Deed of Trust.

*Third:* The balance, if any, to the person or person's legally entitled to the proceeds, or Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

Upon any sale made under or by virtue of this **Section 8**, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the Obligations of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws and agreements.

In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

9. **Deficiency.** Trustor agrees to pay any deficiency to which Beneficiary may be entitled after applications of the proceeds of any sale and for which any beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law.

10. **Reinstatement.** If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan within three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as determined by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

11. **Marshalling of Assets.** Trustor, on its own behalf and on behalf of its successors and assigns, hereby expressly waives all rights to require a marshalling of assets by Trustee or Beneficiary.

12. **No Merger.** In the event of a foreclosure of this Deed of Trust or any other mortgage or deed of trust securing the Obligations, the Obligations then due Beneficiary shall not be merged into any decree of foreclosure entered by the court, and Beneficiary may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Obligations.

13. **Request for Notice.** Beneficiary hereby requests, pursuant to *Utah Code Annotated* § 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth on the first page of this Deed of Trust.

14. **Attorneys' Fees and Expenses.** If any sale, proceeding, lawsuit or arbitration is commenced, or any attorney is retained to collect any amounts secured hereby or to enforce any rights granted Beneficiary hereunder (regardless of whether an action is actually commenced), Trustor shall pay Beneficiary's out of pocket reasonable attorneys' fees and costs incurred in enforcing its rights under the Note, this Deed of Trust, the Loan Agreement and Beneficiary's other loan documents, any guaranty now or hereafter relating to the Obligations and any other agreements which evidence, secure or guarantee all or any portion of the Obligations, and Trustee's out of pocket reasonable attorneys' fees, Trustee's fees and its costs and expenses in connection with any sale proceedings or lawsuit. In addition, Trustor shall pay a reasonable fee for title searches, foreclosure reports, trustee's sale guaranties, litigation guaranties, publication costs, environmental assessments or appraisal reports made or obtained either (i) in preparation for and in the conduct of any such proceedings or suit, or (ii) to evidence to potential bidders at any judicial or nonjudicial sale pursuant to this Deed of Trust the true condition of title to or the value of the Property or any portion thereof. All of the foregoing fees and expenses shall be payable on demand, added to the Obligations and secured by this Deed of Trust, shall be included in any judgment or arbitration award obtained by Beneficiary and shall be paid to Beneficiary as part of any reinstatement tendered hereunder.

15. **Reconveyance of Property.** Upon (a) written request of Beneficiary stating that the entire Obligations has been paid, (b) surrender of this Deed of Trust and the Note to Trustee for cancellation and retention, and (c) payment of Trustee's fees, if any, Trustee shall reconvey the Property without warranty. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

16. **Acceptance of Trust; Trustee Resignation; Notification of Sale.** Trustee accepts the trust created hereby, which shall be irrevocable by Trustor, when this Deed of Trust, executed and acknowledged, is recorded as provided by law. Trustee may resign at any time by giving notice thereof to Beneficiary as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

17. **Successor Trustee.** Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, in the manner provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all its title.

18. **Additional Security.** The taking or acceptance of this Deed of Trust by Beneficiary shall in no event be considered to constitute a waiver of, or in any way affect or impair, any other security that Beneficiary may have, acquire simultaneously herewith, or hereafter acquire for the Obligations, nor shall the taking at any time by Beneficiary of any such additional security be construed to constitute a waiver of, or in any way affect or impair, the security of this Deed of Trust. Beneficiary may resort to its

several securities for the payment of the Obligations in such order and manner as it may deem appropriate.

19. **Construction of Agreement; Definitions.** This Deed of Trust shall apply to the parties according to the context hereof, without regard to the number or gender of words or expressions used herein. The captions of paragraphs in this Deed of Trust are for convenience and reference only, and in no way define or limit the scope or intent of this Deed of Trust or the provisions of such paragraphs. This Deed of Trust shall be construed as a whole, in accordance with the fair meaning of its language, and, as each party has been represented by legal counsel of its choice or deliberately chosen not to be so represented, in the negotiation of this Deed of Trust, neither this Deed of Trust nor any provision thereof shall be construed for or against either party by reason of the identity of the party drafting the same. As used in this Deed of Trust, the term(s): (a) "include" or "including" shall mean without limitation by reason of enumeration; (b) "herein," "hereunder," "hereof," "hereinafter" or similar terms refer to this Deed of Trust as a whole rather than to any particular paragraph; (c) "person" includes a corporation, trust, partnership, limited liability company, association, governmental authority or other entity, as well as a natural person; (d) "Beneficiary" shall mean the holder at any time, including pledgees, of the Note or other writings secured hereby, whether or not named as Beneficiary herein; and (e) "Trustor" shall include all persons or entities named in this Deed of Trust as Trustors, severally and collectively, and any subsequent owner of all or any portion of the Property, and their liability under this Deed of Trust shall be joint and several (however, the foregoing shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof). Capitalized terms used herein shall have the meaning specified in the Loan Agreement unless otherwise stated.

20. **Time of the Essence; Successors and Assigns.** Time is of the essence hereof. Without limitation of the restrictions on transfer described in Section 5 above, this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, personal representatives, legatees, devisees, successors and assigns.

21. **Governing Law.** This Deed of Trust is delivered in, relates to real property located in, and shall be governed by and construed according to the substantive laws and judicial decisions of the State of Utah (regardless of Utah conflict of laws principles or the location, residence, domicile or place of business of Trustor or any constituent principal thereof) and applicable federal laws, rules and regulations.

22. **Notices.** Except as provided in Section 8 hereof with respect to Trustee's exercise of the power of sale contained herein or as otherwise required by law, all notices required or permitted to be given hereunder shall be given as provided in the Loan Agreement.

23. **Amendment.** This Deed of Trust may not be amended or changed except by a written agreement signed by Trustor and Beneficiary.

24. **Severability; Enforceability.**

(a) Each covenant, provision and condition of this Deed of Trust shall be interpreted so as to be valid and effective under applicable law. If any such covenant, provision or condition is held to be void or invalid, the same shall not affect the remainder hereof, which shall be valid and effective as though the void or invalid covenant, provision or condition had not been contained herein.

(b) Should this Deed of Trust be or ever become ineffective as a deed of trust, then it shall be construed and enforceable as a mortgage (with Trustor as the mortgagor and Beneficiary as the mortgagee).

(c) If the lien of this Deed of Trust is invalid or unenforceable (either as a deed of trust or as a mortgage) as to any part of the Obligations, or if the lien is invalid or unenforceable as to any portion of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Obligations. All payments made on the Obligations, whether voluntary or pursuant to foreclosure or some other enforcement action or procedure taken hereunder, shall be considered to have been first applied to the full payment of that portion of the Obligations which is not secured or fully secured by the lien of this Deed of Trust.

**25. Subrogation.** Beneficiary shall be subrogated to the rights and lien, whether or not released of record, of the owner or holder of each and every encumbrance or lien paid from the proceeds of the loan or advances secured hereby, and such loan or advances have been or will be advanced, if at all, at Trustor's request.

**26. No Offset.** All sums comprising the Obligations payable by Trustor shall be paid without notice, demand, offset, deduction, counterclaim, defense, abatement, suspension, diminution or reduction. Trustor's obligation to do so shall not be released, discharged or otherwise diminished by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of, the Property or any portion thereof; (b) any restriction or prevention of, or interference with, the use of the Property or any portion thereof; (c) any title defect or encumbrance, or any eviction from the Property or any portion thereof by the holder of superior title or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, dissolution, liquidation or similar proceeding relating to Trustor or Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Trustor or Beneficiary, or by any court, in any such proceeding; (e) any claim that Trustor may now or in the future have against Beneficiary; (f) any default or failure on the part of Beneficiary to perform or comply with any of the terms of this Deed of Trust or any other loan document with Trustor; or (g) any other similar or dissimilar occurrence. Beneficiary's acceptance of any payment in an amount less than the amount then due and owing under the Loan Documents shall be deemed an acceptance on account only, and shall not in any way constitute an accord and satisfaction or a waiver, or impair Beneficiary's ability to treat a Default or an Event of Default as continuing to exist.

**27. No Merger.** If the interests of Beneficiary and Trustor under this Deed of Trust shall at any time become vested in Beneficiary, by reason of foreclosure or otherwise, the lien of this Deed of Trust shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates, unless otherwise consented to in writing by Beneficiary.

**28. Multiple Advances.** The proceeds of the obligation secured by this Deed of Trust may be advanced in multiple installments at different times subsequent to the recordation of this Deed of Trust. Each advance made subsequent to the initial advance shall be deemed to be "obligatory" in nature (subject to conditions precedent for advances) and shall be secured in the same lien priority position as the initial advance. If for any reason a court of competent jurisdiction should determine the foregoing sentence to be unenforceable, then all amounts advanced by Beneficiary as of the time that a third party acquires or provides notice of (whichever action such court may require) an interest in the property encumbered by this Deed of Trust shall continue to be secured in a first priority lien position, and amounts advanced by Beneficiary after the acquisition or giving notice of (as applicable) the intervening interest (except for amounts determined by the court to be senior to the intervening interest, even though advanced by Beneficiary after the recordation or giving notice of the intervening interest) shall be secured in a position junior to the intervening interest. The foregoing sentence shall not be construed to permit any person or entity to acquire an intervening interest without Beneficiary's consent, to acknowledge that any or all of the secured obligation will be subordinate to intervening interests, or to excuse any party that

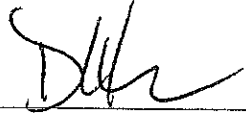
may obtain an intervening interest from complying with the requirements of applicable law for giving *actual* notice to Beneficiary or for taking other necessary measures to establish its lien priority over subsequently advanced amounts, and the holder of any intervening interest will be charged with notice of the provisions of this paragraph to the fullest extent allowed by law. Rather, the intent of this paragraph is to ensure that in no circumstance will the provisions of this Deed of Trust securing other and subsequent advances in the same lien priority as the initial advance hereunder impair or adversely affect the priority that Beneficiary would have had absent those provisions.

**\*\*Signature on following page\*\***

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first set forth above.

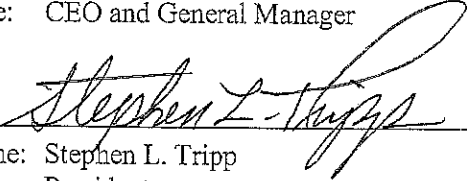
*"Trustor"*

DRAPER IRRIGATION COMPANY  
a Utah non-profit corporation

By: 

Name: Darrin L. Jensen

Title: CEO and General Manager

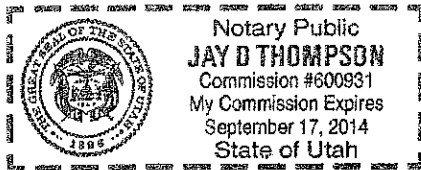
By: 

Name: Stephen L. Tripp

Title: President

STATE OF UTAH                     )  
  : ss  
COUNTY OF SALT LAKE        )

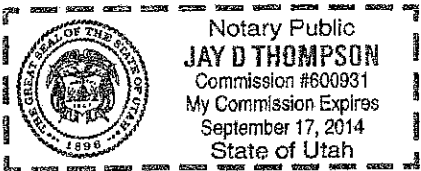
The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June, 2013, by Darrin L. Jensen, the CEO and General Manager of DRAPER IRRIGATION COMPANY, a Utah non-profit corporation, on behalf of such corporation.




  
NOTARY PUBLIC  
Residing at \_\_\_\_\_

STATE OF UTAH                     )  
  : ss  
COUNTY OF SALT LAKE        )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June, 2013, by Stephen L. Tripp, the President of DRAPER IRRIGATION COMPANY, a Utah non-profit corporation, on behalf of such corporation.



  
NOTARY PUBLIC  
Residing at \_\_\_\_\_

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