

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMI

COMMISSIONERS

GARY PIERCE, Chairman
SANDRA D. KENNEDY
PAUL NEWMAN
BOB STUMP
BRENDA BURNS

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

2012 MAR 5 PM 1 33

WS-03478A-12-0085

IN THE MATTER OF THE REQUEST OF FAR
WEST WATER & SEWER COMPANY, INC.,
FOR DECLARATORY RULING OR, IN THE
ALTERNATIVE, FOR FINANCING APPROVAL.

DOCKET NO. WS-03478A-12-____
**REQUEST FOR DECLARATORY
RULING**

1 Far West Water & Sewer Company, Inc. ("Far West") hereby asks the Commission for a
2 declaratory ruling that the execution of a promissory note to secure payment of a preexisting
3 obligation does not require financing approval by the Commission under A.R.S. § 40-301 *et. seq.*
4 In the alternative, should the Commission determine that financing approval is necessary, Far
5 West asks the Commission to approve the note.

6 **I. BACKGROUND**

7 Far West has been engaged in a multi-million dollar construction program to expand and
8 upgrade its wastewater treatment plants. This construction was required to comply with a June
9 22, 2010, Consent Judgment with the Arizona Department of Environmental Quality and to
10 satisfy Far West's public-service obligations. The Consent Judgment included deadlines to
11 complete identified plant upgrades and mandated substantial financial penalties if these deadlines
12 were not met.

13 The Consent Judgment allowed Far West to consolidate its operations by

- 14 • Expanding and upgrading the Del Oro Wastewater Treatment Plant;
- 15 • Expanding and upgrading the Palm Shadows Wastewater Treatment Plant;
- 16 • Closing the Villa del Rey and Villa Royal Wastewater Treatment Plants and
- 17 directing their flow to the upgraded Del Oro plant;

Arizona Corporation Commission

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- Closing the Palm Shadows Wastewater Treatment Plant, constructing a new force main, and directing flows to the upgraded Section 14 Wastewater Treatment Plant.

The expanded and upgraded wastewater treatment plants are state-of-the-art facilities that, through an ultra-filtration process, will transform wastewater to reclaimed water that is A+ in quality, a level which exceeds current state requirements. The new facilities will also eliminate odor issues that have been reported by some area residents who live adjacent to several of the older treatment facilities.

Zenon Environmental Corporation (“Zenon”) was the vendor for the membrane-filtration systems required for Far West’s expanded and upgraded Section 14 and Del Oro wastewater treatment plants. As of the first quarter of 2011, virtually all construction at these plants was complete and the Zenon membranes were on site. The remaining tasks required to put these plants in service were membrane installation, system integration, and final testing – all tasks that required additional services from Zenon. However, Zenon would not proceed with these tasks unless Far West could satisfy its pre-existing contractual obligations to pay Zenon \$2,242,447.61. On Far West’s books, the contractual obligations were shown as accounts payable totaling \$2,242,447.61.

To allow construction to proceed and the facilities to be completed, Far West executed a promissory note on March 31, 2011, with Zenon in the amount of \$2,242,447.61. The note secured payment of Far West’s accounts payables for Zenon products and services. The note was an unsecured obligation for Far West; however, Far West’s shareholders secured the note through personal guarantees and pledges of shareholder-owned property. Exhibit A is a copy of the executed promissory note.

Far West has now completed construction of its expanded Section 14 WWTP and Phase 1 of its expanded Del Oro WWTP. Far West has also completed construction of a new forcemain that allows wastewater previously treated at the Palm Shadows WWTP to be treated at the expanded Section 14 plant. Completion of this construction has allowed ADEQ to lift its moratorium on new sewer hook-ups for areas previously served by the Palm Shadows WWTP.

1 **II. DISCUSSION**

2 Far West does not believe that execution of the Zenon promissory note required
3 Commission approval. As discussed above, the note merely secured payment of an existing
4 account-payable balance. These types of business transactions are routine and, to Far West's
5 knowledge, have never required Commission approval.

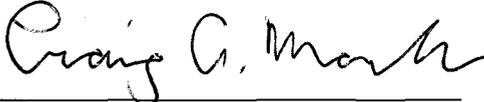
6 Further, obtaining prior Commission approval of the Zenon promissory note would have
7 substantially delayed construction of the Section 14 and Del Oro plant expansions and upgrades.
8 Also, this would have indefinitely continued ADEQ's moratorium on new sewer connections.
9 These delays would clearly not have been in the public interest and would have subjected Far
10 West to significant financial penalties under the ADEQ Consent Judgment.

11 **III. REQUESTED RELIEF**

12 Far West asks the Commission to declare that execution of the March 31, 2011,
13 promissory note did not require prior Commission approval.

14 In the alternative, Far West asks the Commission to approve the March 31, 2011,
15 promissory note.

16 Respectfully submitted on March 5, 2012, by:

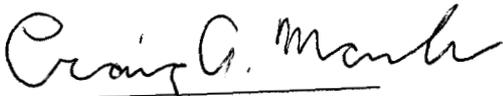
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28 Attorney for Far West Water & Sewer Company

Original and 13 copies **filed**
on March 5, 2012, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

By:



Craig A. Marks

TERM LOAN PROMISSORY NOTE

\$2,242,447.61

As of March 31, 2011

FOR VALUE RECEIVED, the undersigned, **FAR WEST WATER & SEWER, INC.**, an Arizona corporation (the "**Borrower**"), hereby promises to pay to the order of **ZENON ENVIRONMENTAL CORPORATION**, a Michigan corporation (the "**Lender**"), at the office of the Lender at 760 Shadowridge Drive, Vista, California 92083-7986, or at such other place as the holder (including the Lender, hereinafter referred to as "**Holder**") hereof may designate (in each case, the "**Head Office**"), the principal sum of **TWO MILLION TWO HUNDRED FORTY TWO THOUSAND FOUR HUNDRED FORTY SEVEN AND 61/100 DOLLARS (\$2,242,447.61)** in Dollars in immediately available funds, together with interest on the unpaid principal under this Note, beginning on the date hereof, before and after maturity (by acceleration or otherwise) or judgment (but subject to the default rate of interest set forth below) at the per annum rate equal to twelve percent (12%) per annum, and to pay all taxes levied or assessed on this Note or the debt evidenced hereby against the Holder, and together with all costs, expenses and attorneys' and other professional fees incurred in any action to collect and/or enforce this Note or to enforce, preserve, protect, defend, foreclose or realize upon any security agreement or other agreement securing or relating to this Note or to enforce, preserve, protect, defend, foreclose or sustain the lien of said security agreement or other agreement or in any litigation or controversy arising from or connected with said security agreement or other agreement, or this Note.

This Note has been executed and delivered subject to the following terms and conditions:

1. **Definitions.** As used in this Paragraph 1 and elsewhere in this Note, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Business Day" means any day other than a Saturday, Sunday or a day on which commercial banks located in Hartford, Connecticut or in New York, New York are required or permitted by law to close.

"Capacity Fees" means all capacity fees paid by developers to the Borrower for sewer services which capacity fees shall be: (a) directed to a blocked account in the name of the Borrower at the Borrower's primary depository bank, and (b) swept daily from such blocked account to an account of the Lender for application to the Obligations, as more particularly set forth herein and in the Cash Sweep Agreement.

"Cash Sweep Agreement" means that certain agreement to be entered into among the Borrower, the Lender, the Borrower's primary depository bank and a financial institution at which the Lender has established an account, all as contemplated by and more particularly set forth herein and in the Cash Sweep Agreement.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means all of the property, rights and interests of the Borrower and each Guarantor that is or is intended to be subject to the security interests created by the Loan Documents, including, without limitation the Mortgaged Properties and the collateral described in the Pledge Agreement.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Debt" means, with respect to any Person, without duplication: (a) all indebtedness or liability of such Person for borrowed money, or with respect to deposits or advances of any kind; (b) all obligations of such Person

evidenced by notes, bonds, debentures or similar instruments; (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person; (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services (including trade obligations and accrued obligations incurred in the ordinary course of business); (e) all Debt of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; (f) all obligations of such Person under capital leases; (g) all obligations of such Person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements; (h) current liabilities of such Person in respect of unfunded vested benefits under any Plan; (i) obligations of such Person under letters of credit, bankers acceptances or comparable arrangements; and (j) all obligations of such Person under guaranties, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any Person, or otherwise to assure a creditor against loss. The Debt of any Person shall include the Debt of any partnership in which such Person is a general partner.

“Defaulting Event” means the occurrence of an Event of Default or the occurrence of any condition or event which but for the giving of notice or passage of time or both would constitute an Event of Default.

“Dollar” or “\$” means lawful money of the United States of America.

“Environmental Indemnity Agreement” means that certain environmental indemnity agreement with respect to each of the Mortgaged Properties to be executed and delivered by the Guarantors in favor of the Lender, as contemplated by and more particularly described in the Post Closing Letter.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, the regulations and published official interpretations thereunder and judicial interpretations thereof.

“ERISA Affiliate” means any trade or business (whether or not incorporated) which, together with Borrower, is treated as a single employer under Section 414(b), (c) (m) or (o) of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan, whether or not notice is waived; (b) the adoption of any amendment to a Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA; (c) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (d) the filing pursuant to Section 412(d) of the Code or Section 303 of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the incurrence of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (f) the receipt by Borrower or any ERISA Affiliate from the PBGC of any notice relating to the intention to terminate any Plan or to appoint a trustee to administer any Plan or the intention to terminate any Plan subject to Title IV of ERISA; (g) the receipt by Borrower or any ERISA Affiliate of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (h) the occurrence of a “prohibited transaction” with respect to which Borrower or any of its Subsidiaries is a “disqualified person” (within the meaning of Section 4975 of the Code) or with respect to which Borrower or any such Subsidiary could otherwise be liable; (i) the notice of the IRS with respect to any defect with respect to the qualification of any Plan; (j) the voluntary or involuntary correction of any form or operational defect with respect to any Plan or the failure to correct any known defect; (k) the imposition of any retroactive rate increase or other charge with respect to any Welfare Plan; (l) the failure to timely remit contributions to any Plan pursuant to ERISA Regulations sections 2510.3-102; and (m) any other event or condition with respect to a Plan or Multiemployer Plan that could reasonably be expected to result in a Material Adverse Effect.

“Event of Default” shall have the meaning set forth in Paragraph 9 hereof.

“FSR” means field service representative.

"GE Company" means the Lender, any subsidiary and/or affiliate of Lender, including, without limitation any subsidiary or affiliate of Lender which is a party to any contracts or proposals relating to any equipment or services provided by such subsidiary or affiliate to the Borrower.

"Governmental Authority" means any government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government.

"Guarantors" means the Individual Guarantors, the Trust, each other Person which owns an equity interest in the Borrower, and each other Person which owns any interest in any of the Mortgaged Properties.

"Guaranty Agreements" means the Unlimited Guaranty Agreement and the Limited Recourse Guaranty Agreement.

"Head Office" shall have the meaning assigned in the first paragraph of this Note.

"Individual Guarantors" means Paula Capestro and Sandie Braden.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, whether based on common law, statute, or contract, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Limited Recourse Guaranty Agreement" means the limited recourse guaranty agreement to be executed and delivered by the Trust in favor of the Lender pursuant to which the Trust will guaranty all obligations of the Borrower to the Lender with recourse under such limited recourse guaranty to be limited to the right, title and interest of the Trust in and to the Mortgaged Properties.

"Loan" means the loan evidenced by this Note.

"Loan Documents" means all now existing or hereafter arising instruments, loan agreements and any other agreements and documents governing, evidencing, guarantying, securing or otherwise relating to any or all of the Obligations, together with all amendments, modifications, renewals or extensions thereof, including without limitation this Note, the Mortgages, the Cash Sweep Agreement, the Guaranty Agreements, the Pledge Agreement, the Post Closing Letter, and all other promissory notes, guaranties, mortgages, security documents and written matters, whenever executed and delivered to the Lender by or on behalf of the Borrower or any Guarantor, with respect to the transactions contemplated by this Note.

"Material Adverse Effect" means (a) a material adverse effect on the business, condition (financial or otherwise), operations or properties of the Borrower or any Guarantor, (b) material impairment of the validity or enforceability of this Note or any of the other Loan Documents, (c) material impairment of the ability of the Lender to enforce any of the rights and remedies of the Lender hereunder or under any other Loan Document, or (d) material impairment of the ability of the Borrower or any Guarantor to perform its/her obligations under any Loan Document.

"Maturity Date" means March 31, 2013.

"Mortgaged Properties" means: (a) the real property owned by the Trust located at 14200 E. County 14th Street, Yuma, Arizona 85367 and more commonly known as the Foothills Nine Hole Golf Course, (b) the real property currently owned by H&S Developers, Inc. located at 14000 E. 56th Street, Yuma, Arizona 85367 and more commonly known as the Foothills Par 3 Golf Course, which property is to be transferred to the Trust on or before April 20th as more particularly set forth in the Post Closing Letter, and (c) the real property owned by the Trust located at 14476 E. 48th Street, Yuma, Arizona 85367 and more commonly known as the Las Barrancas Golf Course, and each of which is to be mortgaged to the Lender pursuant to the Mortgages.

"Mortgages" means those certain mortgages to be executed and delivered by the Trust with respect to the Mortgaged Properties, all as contemplated by and more particularly described in the Post Closing Letter, each of which shall be in form and content satisfactory to the Lender in its sole and absolute discretion.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate (a) is making or accruing an obligation to make contributions, or (b) has within any of the preceding five plan years made or accrued an obligation to make contributions and has any Withdrawal Liability which has not been satisfied in full.

"Obligations" means all loans, advances, interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), Debt (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), liabilities, obligations, guaranties, indemnities, covenants and duties at any time owing by the Borrower or any Guarantor to the Lender and/or to any of the Lender's direct and indirect affiliates and subsidiaries, of every kind and description, whether or not evidenced by any note or other instrument, whether or not for the payment of money, whether direct or indirect, primary or secondary, absolute or contingent, due or to become due, now existing or hereafter arising under this Note and the other Loan Documents, and all reasonable costs, expenses, fees, charges and attorneys' (both outside and in-house), paralegals' and professional fees incurred in connection with any of the foregoing, or in any way connected with, involving or relating to the preservation, enforcement, protection or defense of, or realization under this Note, any of the other Loan Documents, any related agreement, document or instrument, any of the collateral security and the rights and remedies hereunder or thereunder, including without limitation, all reasonable costs, expenses and fees incurred in connection with any "workout" or default resolution negotiations involving legal counsel or other professionals and further in connection with any re-negotiation or restructuring of the any of the Debt evidenced by this Note and/or any of the other Loan Documents.

"PBGC" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Person" means any natural person, sole proprietorship, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, organization, joint venture, institution, Governmental Authority, or other entity of any nature whatsoever.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of ERISA or the Code, and in respect of which Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA or Section 414 of the Code.

"Pledge Agreement" means that certain stock pledge agreement to be executed and delivered by the Individual Guarantors and any other Guarantor which may have an ownership interest in the Borrower, if any, in favor of the Lender regarding the capital stock of the Borrower which is owned by the Individual Guarantors or any other Guarantor which may have an ownership interest in the Borrower, if any, as contemplated by and more particularly described in the Post Closing Letter, which stock pledge agreement shall be in form and content satisfactory to the Lender in its sole and absolute discretion.

"Post Closing Letter" means that certain Post Closing Obligations Letter among the Borrower, the Guarantors and the Lender dated as of the date hereof pursuant to which the Borrower and the Guarantors have agreed to execute and deliver and/or provide to the Lender the items set forth therein within on or before the dates set forth therein.

"Principal Repayment Date" means the first day of each April, July, October and January commencing on October 1, 2011 through and including January 1, 2013 and the Maturity Date.

"Stated Startup Activities" means: (a) thirty (30) FSR days and two (2) trips for the Section 14 plant, and (b) twenty (20) FSR days and three (3) trips for Del Oro.

"Technical Terms and Conditions" has the meaning set forth in Paragraph 7(m) hereof.

"Trust" means the Schechert Trust of which the Individual Guarantors are trustees.

"Unlimited Guaranty Agreement" means the guaranty agreement to be executed and delivered by the Individual Guarantors in favor of the Lender pursuant to which such Individual Guarantors will unconditionally, jointly and severally guaranty all obligations of the Borrower to the Lender.

"Welfare Plan" means any employee welfare benefit plan as such term is defined in Section 3(1) of ERISA and in respect of which Borrower or any ERISA Affiliate is an "employer" as defined in Section 3(5) of ERISA.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

2. **Background.** The Borrower is an account debtor of the Lender. The Borrower has requested that the Lender permit the Borrower to convert certain accounts receivable owing by the Borrower to the Lender to term debt. The Lender has agreed to the conversion of \$2,242,447.61 of accounts receivable owing by the Borrower to the Lender to term debt which term debt is to be evidenced by and repaid in accordance with the terms and conditions set forth in this Note and the other Loan Documents.

3. **Default Rate; Calculation of Interest, Lawful Interest.**

(a) **Default Rate.** Upon the occurrence of a Defaulting Event (whether or not the Holder has accelerated payment of this Note) or after maturity (by acceleration or otherwise) or after judgment has been rendered on this Note, the unpaid principal balance of this Note shall automatically and without notice bear interest at a fixed rate per annum equal to eighteen percent (18%).

(b) **Calculation of Interest.** All computations of interest under this Note shall be made on the basis of a three hundred sixty (360) day year and the actual number of days elapsed.

(c) **Lawful Interest.** All agreements between the Borrower and the Holder are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid to the Holder for the use or the forbearance of the indebtedness evidenced hereby exceed the maximum permissible under applicable law. As used herein, "**applicable law**" shall mean the law in effect as of the date hereof provided, however, that in the event there is a change in the law which results in a higher permissible rate of interest, then this Note shall be governed by such new law as of its effective date. In this regard, it is expressly agreed that it is the intent of the Borrower and the Holder in the execution, delivery and acceptance of this Note to contract in strict compliance with the laws of the State of New York from time to time in effect. If, under or from any circumstances whatsoever, fulfillment of any provision hereof at the time of performance of such provision shall be due, shall involve transcending the limit of such validity prescribed by applicable law, then the obligation to be fulfilled shall automatically be reduced to the limits of such validity, and if under or from circumstances whatsoever the Holder should ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the principal balance evidenced by this Note and not to the payment of interest. This provision shall control every other provision of all agreements between the Borrower and the Holder.

4. **Payments, Direct Debits.**

(a) **Interest.** Interest on the Loan shall be compounded quarterly and shall be due and payable in Dollars in immediately available funds on July 1, 2011 and on each Principal Repayment Date.

(b) **Principal.** Principal shall be due and payable in Dollars in immediately available funds as follows:

(i) in six (6) consecutive quarterly installments in the amount of \$150,000 each, such quarterly installment to commence on October 1, 2011, with succeeding installments being due and payable on each Principal Repayment Date thereafter through and including the Principal Repayment Date occurring on January 1, 2013, plus

(ii) on a daily basis, an amount equal to all Capacity Fees which are swept into the account of the Lender identified in the Cash Sweep Agreement (or any substitute or replacement account) which amounts the Lender shall apply to the outstanding principal hereunder; provided, however, that in the event that any such Capacity Fees are for any reason received by the Borrower and not remitted to the Borrower's blocked account, the Borrower shall hold any such Capacity Fees so received in trust for the Lender and shall immediately turn over such Capacity Fees to the Lender for application by the Lender to the repayment of principal outstanding under this Note, plus

(iii) a final principal payment of all outstanding principal on the Maturity Date.

(c) Final Payment at Maturity. Notwithstanding anything herein to the contrary, unless sooner accelerated as a result of the occurrence of an Event of Default, the entire outstanding indebtedness under this Note, including, but not limited to, outstanding principal together with any and all accrued and unpaid interest and any other amounts due hereunder, shall be due and payable in full, in Dollars and in immediately available funds on the Maturity Date.

(d) Method of Payment; Direct Debits; Payment on Non-Business Days; Applicable of Payments. The Borrower shall make each payment due under this Note to the Holder at its Head Office not later than 2:00 P.M., New York, New York time, on the date when due in Dollars in immediately available funds, without setoff, defense or counterclaim. Whenever any payment to be made under this Note shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day. If the date for any payment of principal is extended by operation of law or otherwise, interest and fees thereon shall be payable for such extended time. All payments by or on behalf of the Borrower under this Note shall be applied first to the payment of all fees, expenses and other amounts due to the Holder (excluding principal and interest), then to accrued interest, and the balance on account of outstanding principal; provided, however, that after the occurrence of an Event of Default, payments will be applied to the indebtedness under this Note in such manner and order of priority as the Holder determines in its sole discretion.

5. **Late Charge.** Without in any way affecting the Holder's right to declare an Event of Default to have occurred, if the entire amount of any required principal and/or interest is not paid in full in Dollars in immediately available funds within ten (10) days after the same is due, the Borrower shall pay to the Holder a late fee equal to five percent (5%) of the required payment.

6. **Prepayments.** Borrower may, at its option and upon five (5) Business Days' prior written notice to the Holder, prepay principal evidenced by this Note, in whole, but not in part, on the condition that the Borrower shall pay all accrued interest on the principal being paid to the date of the prepayment and all fees, charges, costs, expenses and other amounts then due hereunder. In its notice, the Borrower shall specify the date and amount of the prepayment.

7. **Representations, Warranties and Covenants.** In order to induce the Holder to make the Loan, the Borrower makes the following representations, warranties and covenants to and with the Holder, which shall be deemed made as of the date hereof and on the date of the Loan and shall survive the execution and delivery hereof and each performance hereunder. Any knowledge acquired by Holder shall not diminish its rights to rely upon such representations, warranties and covenants.

(a) Good Standing and Qualification. The Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Arizona.

(b) Authority. The Borrower has full power and authority to enter into and perform the obligations under this Note and the other Loan Documents to which it is or will be a party, to make the borrowings contemplated herein, to execute and deliver this Note and the other Loan Documents to which it is or will be a party, and to incur the obligations provided for herein and therein, all of which have duly authorized by all necessary and proper corporate action. No other consent or approval or the taking of any other action in respect of the shareholders or of any public authority (including, without limitation, the Arizona Corporation Commission) is required as a condition to the validity or enforceability of this Note, the other Loan Documents to which it is a party or any other document executed and/or delivered in connection herewith or therewith.

(c) Binding Agreements. This Note, the other Loan Documents and any other document executed and/or delivered in connection herewith or therewith by the Borrower constitute the valid and legally binding obligations of Borrower, enforceable in accordance with their respective terms.

(d) No Conflicting Law or Agreements. The execution, delivery and performance by Borrower of this Note, the other Loan Documents to which it is a party, and any other document executed and/or delivered in connection herewith or therewith (i) do not violate any provision of any of the organizational documents of the Borrower, (ii) do not violate any order, decree or judgment, or any provision of any statute, rule or regulation, (iii) do not violate or conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any shareholder agreement, mortgage or contract to which Borrower is a party, or by which any of its property is bound, and (iv) do not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property or assets of Borrower, other than the liens contemplated by the Loan Documents in favor of the Lender.

(e) Compliance. The Borrower: (i) is not in default with respect to or in violation of any order, writ, injunction or decree of any court or of any federal, state, municipal or other governmental department, commission, board, bureau, agency, authority or official, or in violation of any law, statute, rule or regulation to which it or its properties is or are subject, (ii) has not received notice of any such default from any party, and (iii) after giving effect to this Note, is not default in the payment or performance of any of its obligations or in the performance of any mortgage, indenture, lease, contract or other agreement to which it is a party or by which any of its assets or properties are bound.

(f) Blocked Account. Cash Sweep Agreement. The Borrower shall cause to be established and maintained at all times after the date hereof until all Obligations have been indefeasibly paid in Dollars in full, a blocked account in its name into which all Capacity Fees shall be deposited. All Capacity Fees deposited to such blocked account shall be swept on a daily basis tot an account of the Lender identified in the Cash Sweep Agreement (or to any substitute or replacement account that the Lender may establish) on the terms set forth therein. All proceeds received into the Lender's account will be applied to the Obligations of the Borrower to the Lender hereunder.

(g) Litigation. Notices. The Borrower shall promptly advise the Lender in writing (a) of the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity, including arbitration proceedings and any proceedings by or before any Governmental Authority, against the Borrower that could reasonably be expected to result in a Material Adverse Effect, (b) of the occurrence of any Defaulting Event or Event of Default, specifying the nature and extent thereof and the corrective action (if any) which is being taken or proposed to be taken with respect thereto, and (c) any development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

(h) Obligations and Taxes. The Borrower shall pay its obligations promptly and in accordance with their terms and pay and discharge promptly when due all taxes, assessments, and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default; **provided, however,** that such payment or discharge shall not be required with respect to any tax, assessment, charge, levy or claim so long as the validity or amount thereof shall be contested in good faith by appropriate proceedings and the Borrower shall have set aside on its books adequate reserves with respect thereto in

accordance with GAAP and such contest operates to suspend collection of the contested obligation, tax, assessment or charge and enforcement of a Lien.

(i) Rights of Inspection and Appraisal. The Borrower shall permit the Lender or any agent or representative of the Lender to (a) examine and make copies of and abstracts from the records, including without limitation computer records, and books of account of, and visit the properties of, the Borrower as often as reasonably requested and upon reasonable prior notice, and to discuss the affairs, finances, and accounts of the Borrower with any of its officers and directors and its independent accountants (who, by this reference, are authorized by the Borrower to discuss such matters with the Lender or any agent or representative of the Lender), and (b) cause appraisals of any Collateral to be conducted by appraisers selected and engaged by the Lender at the sole cost and expense of the Borrower.

(j) Further Assurances. The Borrower shall execute any and all further documents, financing statements, agreements and instruments, and take all further action (including filing uniform commercial code and other financing statements, mortgages and deeds of trust) that may be required under applicable law, or that the Lender may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents.

(k) No Additional Debt. The Borrower shall not, without the prior written consent of the Lender, create, incur, assume, or suffer to exist any recourse or nonrecourse Debt, except:

- (i) Debt of the Borrower created under this Note and under the other Loan Documents;
- (ii) Debt resulting from endorsement of negotiable instruments for collection in the ordinary course of business; and
- (iii) accounts payable to trade creditors for goods or services and current operating liabilities (other than for borrowed money), in each case incurred in the ordinary course of business and paid within the required time, unless contested in good faith and by appropriate proceedings.

(l) No Liens. The Borrower shall not, without the prior written consent of the Lender, create, incur, assume, or suffer to exist any Lien upon or with respect to any of its properties or assets, now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except the following which shall constitute "**Permitted Liens**":

- (i) Liens created under the Loan Documents in favor of the Lender;
- (ii) Liens for taxes or assessments or other government charges or levies not yet due and payable or which are being contested in good faith by the Borrower and for adequate reserves has been set up in accordance with GAAP and which are otherwise satisfactory to the Lender;
- (iii) pledges and deposits made (other than Liens imposed by ERISA) in the ordinary course of business in compliance with workers' compensation, unemployment insurance or other social security laws or regulations;
- (iv) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like statutory Liens (other than Liens arising from violations of any Environmental Law) arising in the ordinary course of business and securing obligations that are not yet due and payable or which are being contested in good faith and for which adequate reserves have been established which are satisfactory to the Lender;
- (v) deposits made in the ordinary course of business to secure liability to insurance carriers;
- (vi) any attachment or judgment Lien not constituting an Event of Default under Paragraph 9(i) hereof;

(vii) Liens arising from precautionary uniform commercial code financing statements with respect to assets leased by the Borrower pursuant to permitted operating leases; and

(viii) zoning restrictions, easements, rights-of-way, restrictions on the use of real property and other similar encumbrances incurred in the ordinary course of business which, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Borrower.

(m) Amendments to Technical Terms and Conditions. The Borrower and the Lender (by its acceptance of this Note) hereby agree that, notwithstanding anything to the contrary contained in any agreement between any GE Company and the Borrower or in any proposal by any GE Company to the Borrower, the following terms and conditions relating to the technical aspects of any equipment and previously furnished proposals by any GE Company (the "Technical Terms and Conditions") shall apply:

(i) any membrane warranty as described in any and all GE Company contracts with and/or proposals to the Borrower entered into or delivered prior to the date hereof is hereby void and of no further force and effect;

(ii) any process warranty as described in any and all GE Company contracts with and/or proposals to the Borrower entered into or delivered prior to the date hereof is void and of no further force and effect;

(iii) any material and workmanship warranty in any and all GE Company contracts with and/or proposals to the Borrower entered into or delivered prior to the date hereof is void and of no further force and effect.

(iv) any membrane module replacement price guarantee of US \$810.00 per module is void and of no further force and effect. GE Membrane Module Replacement Price (MMRP), to be paid by the Borrower, to replace Membrane Modules shall be USD\$1,100.00 plus adjustment for inflation and Foreign Exchange fluctuation. This price shall remain valid for a period of five (5) years. At any time during this 5 year period when replacement modules are purchased, the replacement price will be subject to adjustment for any increase in the North American Consumer Price Index (CPI) plus 1.0% plus any increase due to currency exchange rate differences from the date of this Note and the date of purchase. The Bank of Canada FX rates will be the basis of this FX adjustment. The offered replacement price is quoted EXW Hungary. All freight, packaging and applicable duties and taxes are extra. No warranty will apply for the replacement;

(v) all GE Company supplied equipment for the Del Oro and Section 14 plants is deemed to be previously received onsite by the Borrower and in good working order and condition at the time of delivery. Notwithstanding anything to the contrary contained in any agreement between any GE Company and the Borrower, any missing or broken equipment will be the Borrower's responsibility and obligation to repair or replace;

(vi) all future startup activities by any GE Company field services representative or process support exceeding the Stated Startup Activities will be charged on a per diem basis by the applicable GE Company as per the applicable GE Company 2011 field service rate sheet, with invoices to be generated monthly by the applicable GE Company, due net thirty (30) days;

(vii) for all startups, the Borrower will provide mechanical and electrical contractors onsite full time to start-up and non GE Company equipment and to assist any GE Company start-up as required;

(viii) Section 5.2.1 (Scope of Supply-Others) set forth in the original proposal form the applicable GE Company to the Borrower remains in effect or, at the option of the applicable GE Company, may be restated in the new proposal; and

(ix) there will be no requirement for a performance test by the applicable GE Company after start-up is complete on either plant of the Borrower.

(n) Mergers, Consolidations and Acquisitions. The Borrower shall not merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, assign, lease, transfer or otherwise dispose of (whether in one transaction or in a series of transactions) all or any substantial part of its assets (whether now owned or hereafter acquired), or purchase, lease or otherwise acquire (whether in one transaction or in a series of transactions) all or a substantial part of the assets or business of any Person, except asset sales and dispositions otherwise permitted under Paragraph 7(p) hereof.

(o) Sale and Leaseback. The Borrower shall not sell, transfer, or otherwise dispose of any real or personal property to any Person and thereafter directly or indirectly lease back the same or similar property.

(p) Sale of Assets. The Borrower shall not sell, lease, assign, transfer, or otherwise dispose of any of its now owned or hereafter acquired assets except (a) distributions by the Borrower which are permitted under Paragraph 7(q) hereof, (b) the sale or other disposition of assets in the ordinary course of the Borrower's business, (c) the sale or other disposition of assets no longer used or useful in the conduct of the Borrower's business, and (d) the sale or other disposition of assets which are promptly replaced with similar assets of reasonably equivalent book value.

(q) Distributions. The Borrower shall not make, directly or indirectly, any distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, to any of its members, or directly or indirectly purchase, redeem, retire or otherwise acquire for value any member's interest.

(r) Investments. The Borrower shall not make any loan or advance to any Person, or purchase, hold or otherwise acquire any capital stock, assets, obligations, or other securities of, or make any capital contribution to, or otherwise invest in or acquire any interest in any Person.

(s) Guaranties, Etc. The Borrower shall not assume, guaranty, endorse, or otherwise be or become directly or contingently responsible or liable (including, but not limited to, an agreement to purchase any obligation, stock, assets, goods, or services, or to supply or advance any funds, assets, goods, or services, or to maintain or cause such Person to maintain a minimum working capital or net worth, or otherwise to assure the creditors of any Person against loss) for obligations of any Person, except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

(t) Transactions With Affiliates. The Borrower shall not enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, with any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of the Borrower's business and upon fair and reasonable terms no less favorable to the Borrower than would obtain in a comparable arm's-length transaction with a Person not an Affiliate.

(u) Change in Control, Business and Accounting Methods. (a) the Individual Guarantors shall at all times be the sole owners of all equity interests in the Borrower and the Borrower shall not issue any additional share of capital stock to any Person without the prior written consent of the Lender, and (b) the Borrower shall not engage at any time in any business or business activity other than currently conducted or reasonably related thereto, or permit a material change in its method of accounting or a change in its fiscal year.

(v) Compensation. The Borrower shall not increase salaries, bonuses, fees or other cash compensation paid to any Guarantor, any officer or any other principal of the Borrower by more than 10% over the prior year's total cash compensation paid to any such Guarantor, officer or other principal of the Borrower.

8. **Conditions Precedent.** The agreement of the Lender to permit the Borrower to convert certain past due accounts receivable owing by the Borrower to the Lender to term debt as evidenced by this Note and the other Loan Documents, shall be subject to the prior satisfaction of each of the following conditions (unless the Lender otherwise agrees in writing to the contrary):

(i) the Lender shall have received each of the following, in form and substance satisfactory to the Lender and its counsel:

(A) this Note and the Post Closing Letter, all duly executed and delivered by the Borrower and/or the Guarantors, as applicable;

(B) copies of all corporate action taken by the Borrower, including resolutions of its Board of Directors, authorizing the execution, delivery, and performance of the Loan Documents, certified as of the date of this Note by the Secretary of the Borrower;

(C) a certificate, dated as of the date of this Note, of the Secretary of the Borrower certifying the names and true signatures of the officers of the Borrower authorized to sign the Loan Documents and the other documents to be delivered by the Borrower under this Note and the other Loan Documents;

(D) a Certificate of Legal Existence issued by the Secretary of State of the State of Arizona, evidencing that the Borrower legally exists as a corporation in the State of Arizona;

(E) a favorable opinion of independent counsel for the Borrower satisfactory to Lender, dated the date of this Note;

(F) receipt by the Lender of the \$25,000 good faith deposit from the Borrower; and

(G) all other documents, instruments and agreements that the Lender shall reasonably require in connection with this Note or any of Loan Document.

(ii) All representations and warranties contained in this Note and the other Loan Documents shall be true and correct in all material respects.

9. **Events of Default; Remedies.** Each of the following shall constitute an "Event of Default" hereunder:

(a) Failure to make due payment of principal or interest on this Note or in the payment of any other indebtedness or liability owing by the Borrower or any Guarantor to the Holder under the Loan Documents or otherwise (including, without limitation, any receivables or other amounts which may become due for equipment provided or services rendered by the Lender to the Borrower), whether now existing or hereinafter incurred, whether direct or contingent;

(b) Failure by the Borrower or any Guarantor to observe or perform any covenant contained in this Note or any of the other Loan Documents to which it/she is a party or by which it/she is bound, including, without limitation, the failure of the Borrower or any Guarantor to perform any of their respective obligations under the Post Closing Letter or to deliver or cause to be delivered to the Lender any of the items required to be delivered pursuant thereto;

(c) Any representation or warranty made by the Borrower or any Guarantor to the Holder or any statement, certificate or other data furnished by Borrower or any Guarantor in connection herewith or any of the other Loan Documents proves at any time to be incorrect in any material respect;

(d) If any of the Loan Documents shall be cancelled, terminated, revoked or rescinded or the Lender's security interests, mortgages or liens in any Collateral shall cease to be perfected, or shall cease to have the priority contemplated by the Loan Documents, in each case otherwise than in accordance with the terms thereof or with the express prior written agreement, consent or approval of the Lender, or any action at law, suit or in equity or other legal proceeding to cancel, revoke or rescind any of the Loan Documents shall be commenced by or on behalf of the Borrower or any Guarantor party thereto or any of their respective members or stockholders, as the case may be, or any court or any other governmental or regulatory authority or agency of competent jurisdiction shall make a

determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is illegal, invalid or unenforceable in accordance with the terms thereof;

(e) Any levy, seizure, attachment, execution or similar process shall be issued or levied on any of the Borrower's property or on any of the Mortgaged Properties;

(f) The Borrower or any Guarantor shall (i) apply for or consent to the appointment of a receiver, conservator, trustee or liquidator of all or a substantial part of any of its/her assets; (ii) become insolvent or be unable, or admit in writing its inability, to pay its/her debts as they mature; (iii) file or permit the filing of any petition, case, arrangement, reorganization, or the like under any insolvency or bankruptcy law, or the adjudication of it as a bankrupt, or the making of an assignment for the benefit of creditors or the consenting to any form of arrangement for the satisfaction, settlement or delay of debt or the appointment of a receiver for all or any part of its/her properties; or (iv) take any action for the purpose of effecting any of the foregoing;

(g) An order, judgment or decree shall be entered, or a case shall be commenced, against the Borrower or any Guarantor, without the application, approval or consent of the Borrower or such Guarantor, by or in any court of competent jurisdiction, approving a petition or permitting the commencement of a case seeking reorganization or liquidation of the Borrower or any Guarantor or appointing a receiver, trustee, conservator or liquidator of the Borrower or any Guarantor, or of all or a substantial part of its assets and the Borrower or any Guarantor, by any act, indicates its approval thereof, consent thereto, or acquiescence therein;

(h) Failure by the Borrower or any Guarantor to pay or perform any other indebtedness or obligation in excess of \$50,000, whether contingent or otherwise, or if any such other indebtedness or obligation shall be accelerated, or if there exists any event of default under any instrument, document or agreement governing, evidencing or securing such other indebtedness or obligations;

(i) One or more tax liens, writ of garnishment or attachment, judgments, decrees, or orders for the payment of money in excess of \$50,000 shall be rendered against the Borrower or any Guarantor and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of the Borrower or any Guarantor to enforce any such judgment;

(j) (i) An ERISA Event occurs with respect to a Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of Borrower under Title IV of ERISA to the Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$50,000, or (ii) Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$50,000, or (iii) the PBGC makes a determination that there has occurred an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or for the appointment of a trustee to administer, any Plan of Borrower;

(k) The Holder believes that there has occurred any Material Adverse Effect on the assets (including, without limitation, any Collateral), liabilities, financial condition or business of the Borrower or any Guarantor after the date of this Note; and

(l) If, at any time, the Holder believes in good faith that the prospect of payment of any obligation or the performance of any agreement of the Borrower or any Guarantor is impaired, or there is such a change in the assets, liabilities, financial condition or business of the Borrower or any Guarantor as the Holder believes in good faith impairs the Holder's security, including without limitation, any Collateral, or increases its risk of non-collection.

Upon the occurrence of (1) any Event of Default set forth in subparagraphs (f) and (g) of this Paragraph 9, any and all indebtedness hereunder shall automatically become immediately due and payable, without presentment, demand, protest, notice of protest or other notice or requirements of any kind, all of which are expressly waived by the Borrower, and (2) any one or more of the other Events of Default, any and all indebtedness hereunder shall, at

the option of the Holder, become immediately due and payable, without presentment, demand, protest, notice of protest or other notice or requirements of any kind, all of which are expressly waived by the Borrower. Failure to exercise such option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. On and after the occurrence of an Event of Default, the Lender may exercise any rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the Uniform Commercial Code as in effect in any applicable jurisdiction.

10. **Jury Trial Waiver.** THE BORROWER AND THE HOLDER (BY ITS ACCEPTANCE OF THIS NOTE) MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR RELATED HERETO OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF THE HOLDER RELATING TO THE ADMINISTRATION OF THE LOAN OR ENFORCEMENT OF THIS NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR RELATED HERETO, AND AGREE THAT NEITHER PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EXCEPT AS PROHIBITED BY LAW, THE BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE BORROWER CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS. THE BORROWER ACKNOWLEDGES AND STIPULATES THAT THE WAIVERS GRANTED ABOVE ARE MADE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AND CONSTITUTE A MATERIAL INDUCEMENT FOR THE LENDER TO MAKE LOAN.

11. **No Waiver.** Failure by the Holder to insist upon the strict performance by Borrower of any terms and provisions herein shall not be deemed to be a waiver of any terms and provisions herein, and the Holder shall retain the right thereafter to insist upon strict performance by the Borrower of any and all terms and provisions of this Note or any agreement securing the repayment of this Note.

12. **Fees and Expenses; Indemnification.**

(a) The Borrower shall pay on demand all expenses of the Lender in connection with the preparation, negotiation, execution, delivery, filing and recording of this Note and/or any of the other Loan Documents, including, without limitation, fees of outside counsel or the allocated costs of in-house counsel, accounting, consulting, brokerage or other similar professional fees or expenses, any taxes and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of any of the Loan Documents and the other documents to be delivered under any of the Loan Documents, and any fees or expenses associated with travel or other costs relating to any appraisals or examinations conducted in connection with the closing of the Loan or any collateral therefore (collectively, the "**Lender's Closing Costs**"), and the amount of all such Lender's Closing Costs shall, until paid, bear interest at the highest rate applicable to the Loan (including any default rate, if applicable) and be an obligation secured by any Collateral; **provided, however,** that notwithstanding the forgoing, any Lender's Closing Costs which are in excess of \$50,000 shall be shared evenly by the Borrower and the Lender. In addition to the forgoing Lender's Closing Costs, the Borrower shall pay on demand all expenses of the Lender (without limitation) in connection with the default, collection, waiver or amendment of loan terms, or in connection with Lender's exercise, preservation or enforcement of any of its rights, remedies or options hereunder or under any of the other Loan Documents, including, without limitation, fees of outside counsel or the allocated costs of in-house counsel, accounting, consulting, brokerage or other similar professional fees or expenses, and any fees or expenses associated with travel or other costs relating to any appraisals or examinations conducted in connection with the Loan or any collateral therefor (collectively, "**Enforcement Costs**"), and the amount of all such Enforcement Costs shall, until paid, bear interest at the highest rate applicable to the Loan

(including any default rate, if applicable) and be an obligation secured by any collateral. In addition, the Borrower agrees to hold and save the Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or failure to pay: (i) Lender's Closing Costs for which it is responsible, and (ii) Enforcement Costs.

(b) In addition to any other fees and expenses which may be due by the Borrower hereunder or under any of the other Loan Documents, including, without limitation the Lender's Closing Costs and any Enforcement Costs, the Borrower hereby agrees to pay to the Lender on an annual basis on June 15th of each year commencing on June 15, 2011, an administrative fee equal to \$12,500; **provided, however**, that in the event the Lender shall assign this Note to an unrelated third party, the Borrower's obligation to pay an administrative fee on and after the date of such assignment shall be null and void and of no further force and effect.

(c) To the fullest extent permitted by applicable law, the Borrower agrees to defend, indemnify and hold harmless the Lender, any other holder of the Obligations and each of the present and future shareholders, partners, directors, officers, employees, agents, counsel and successors and assigns of each of them (collectively with the Lender, the "**Lender Parties**") from and against any and all loss, cost, expense, claim, liability (including strict liability) or asserted liability incurred from or out of the Loan, the execution, delivery or performance of this Note or any of the documents or instruments to be executed and delivered hereunder, or otherwise arising out of the debtor/creditor relationship between them, the Lender or Lender Parties relating to the Loan or any of the other Obligations, the exercise of any of the Lender's rights under the Loan or any of the other Obligations, any litigation or proceeding instituted or conducted by any Governmental Authority, any act or omission of the Lender or otherwise, except to the extent (and only to the extent) that the same arises from the gross negligence or willful misconduct of the Lender. The Borrower shall have the right to choose counsel to defend any such action, provided that such counsel is acceptable to the Lender and provided further that neither Borrower nor such counsel shall settle or compromise any such claim with respect to the Lender without the prior written consent of the Lender.

13. **Miscellaneous.** Any delay on the part of the Holder hereunder in exercising any right hereunder or under any mortgage or security agreement which may secure this Note shall not operate as a waiver of any such right, and any waiver granted for one occasion shall not operate as a waiver in the event of a subsequent default. The rights and remedies of the Holder hereof shall be cumulative and not in the alternative, and shall include all rights and remedies granted herein, in any document, instrument or agreement governing, evidencing or securing this Note and under all applicable laws. This Note is intended by the parties as the final, complete and exclusive statement of the transactions evidenced by this Note. All prior or contemporaneous promises, agreements and understandings, whether oral or written, are deemed to be superceded by this Note, and no party is relying on any promise, agreement or understanding not set forth in this Note. This Note may not be amended or modified except by a written instrument describing such amendment or modification executed by the Borrower and the Holder. If any provision of this Note shall to any extent be held invalid or unenforceable, then only such provision shall be deemed ineffective and the remainder of this Note shall not be affected.

14. **Acknowledgment of Copy, Use of Proceeds, Replacement Note.** The Borrower acknowledges receipt of a copy of this Note and attests, represents and warrants to the Holder that no part of the proceeds of the Loan were or will be used, in whole or in part, directly or indirectly, for the purpose of purchasing the stock or assets or any entity or purchasing or carrying any "margin security" or "margin stock" as such terms are defined in Regulation U of the Board of Governors of the Federal Reserve System. Upon receipt of any affidavit of an officer of the Holder as to the loss, theft, destruction or mutilation of this Note and, in the case of any such loss, theft, destruction or mutilation, upon surrender and cancellation of such Note, Borrower will issue, in lieu thereof, a replacement of this Note in the same principal amount thereof and otherwise of like tenor.

15. **Governing Law.** This Note shall be governed by the laws of the State of New York (without regard to its conflicts of law provisions).

16. **Severability.** If any provision of this Note is deemed void, invalid or unenforceable under applicable law, such provision is and will be deemed to be totally ineffective to that extent, but the remaining provisions shall be deemed unaffected and shall remain in full force and effect.

17. **Successors and Assigns.** The provisions of this Note shall bind the assigns and successors of the Borrower and shall inure to the benefit of Holder, its successors and assigns; **provided, however,** that that the Borrower shall not (by agreement, operation of law, or otherwise) assign any of its rights, or delegate any of its obligations, under this Note or any of the Loan Documents without the prior written consent of the Lender, and any such assignment or delegation made without such consent shall be null and void; and **provided further, however,** that, except for any transfer or assignment made by Lender to another GE Company or any further transfer or assignment by one GE Company to another GE Company which may be made at time, any assignment made by the Lender on or after that date which is thirty (30) days after the date on which all of the conditions set forth in the Post Closing Letter have been satisfied (the "Satisfaction Date"), the Lender (by its acceptance of this Note) agrees to give the Borrower not less than ten (10) days written notice of such intended assignment and a brief description of the terms of such intended assignment (which shall be on such terms as the Lender determines in its sole and absolute discretion). Any assignments made by the Lender prior to the Satisfaction Date may be made without prior notice to the Borrower.

18. **USA Patriot Act Notice.** Pursuant to Section 326 of the USA Patriot Act, the Lender hereby notifies the Borrower that if they or any of their subsidiaries open an account, including any loan, deposit account, treasury management account, or other extension of credit with the Lender or any other GE Company, the Lender or such other GE Company will request the applicable Person's name, tax identification number, business address and other information necessary to identify such Person (and may request such Person's organizational documents or other identifying documents) to the extent necessary for the Lender and/or such other GE Company to comply with the USA Patriot Act.

IN WITNESS WHEREOF, the Borrower has executed, or caused this Note to be duly executed, as a sealed instrument as of the date first above written.

WITNESSES:




FAR WEST WATER & SEWER, INC.

By: 
Name: PAULLA CAPESTRO
Its: PRESIDENT