

# GROUND LEASE

THIS GROUND LEASE (the "Lease") is entered into as of the 15 day of SEPTEMBER, 2008, between Gerald M Finch ("Landlord") and

Strawberry High Line Canal Company ("Tenant") collectively referred to herein as the "Parties."

1. Premises. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord hereby leases and lets to Tenant and Tenant hereby rents from Landlord that certain real property located in the South East ¼ of Section 13 Township 9 South Range 1 East, containing approximately 2 acres (87120) square feet of land, the legal description of which is contained on Exhibit "A" attached hereto and incorporated herein by reference, together with all easements, rights-of-way and appurtenances in connection therewith or thereunto belonging (all of which are hereinafter referred to as the "Premises").

2. Terms. The term of the Lease shall commence on the 15 day of SEPTEMBER 20 08, and expire at midnight on the 15 day of SEPTEMBER, 21 07, following the expiration of ninety-nine years (99).

Tenant's improvements on the Premises may be subject to third party financing, including, but not limited to institutional mortgage financing or financing in connection with a sale/leaseback, collateral trust or similar transaction (a "Financing").

3. Option Terms. Upon expiration of the term, this Lease shall automatically extend for an additional term of ninety-nine years unless Tenant gives Landlord notice of Tenant's intent not to renew this Lease. Notice by Tenant of Tenant's intent not to renew shall be in writing and shall be given to Landlord at least ninety (90) days prior to the expiration of the original term. If this Lease is so renewed, the additional term shall be on the same terms and conditions as the original term. If this Lease is so renewed, this Lease shall be deemed to be extended without the execution of any further Lease or other instrument.

4. Rent. The rent for the first term shall be due and payable in full on the first day after the conditions set forth in Article 6 are all performed in an amount equal to 25 acre feet of Strawberry Valley Project water made supplemental to Serial # 229.001. Also, Strawberry High Line Canal Company will install an irrigation line with risers to supply water to Parcel # 29:012:0005, and a connection into the pressurized line from the proposed pond sufficient enough to provide water into a trough for cattle. If Tenant exercises its option for an additional term, the rent for the optional terms shall be due and payable in full on the first day of the optional term in the amount of one dollar (\$1.00).

5. Landlord's Title. Landlord warrants that Landlord has good and marketable title to the Premises with full right and authority to grant the estate demised herein and to



execute and perform all of the terms and conditions of this Lease, and that such title to the Premises is free and clear of all encumbrances, easements, liens, assessments, restrictions, tenancies and other exceptions to title except those exceptions set forth on Exhibit "B" attached hereto and incorporated herein by reference. Landlord further warrants that Tenant shall peaceably and quietly have, hold and enjoy the Premises for the full term of this Lease and as the same may be extended as provided herein.

6. Conditions. Notwithstanding the execution of this Lease, Tenant may terminate this Lease if based upon soils, tests, topographical surveys and upon engineering and other studies which may be performed by Tenant and Tenant has determined, in its sole opinion, that the Premises are not suitable for Tenant's proposed use. Including utility availability and the physical condition of the Premises are such that Tenant's proposed facilities could not be constructed and operated upon the Premises without incurring any extraordinary costs. Also, all Permits and Approvals and the zoning required hereunder shall be without conditions thereto which in Tenant's reasonable opinion would cause construction or operation of the pond and pumping facilities upon the Premises to be uneconomical. All Permits and Approvals and the zoning required hereunder shall not be deemed to be finally adopted until the last time period within which to contest each such matter by administrative or judicial proceedings, referendums, petitions for rehearing or other proceedings has expired without contest, or if there is a contest, such contest is finally and favorably resolved. Landlord covenants to undertake all reasonable efforts necessary to satisfy the foregoing conditions and Tenant agrees to cooperate in connection therewith. Tenant agrees to advise Landlord by written notice that each of the above conditions have been satisfied, waived or remains unsatisfied upon the expiration of a reasonable period of time after Tenant's receipt of each item necessary to satisfy the same. Tenant's termination of this Lease pursuant to this provision shall be exercised by written notice thereof to Landlord, such notice being effective as of the date therein specified.

7. Tenant's Improvements of Premises and Construction of Building.

Tenant shall have the right from time to time at its own expense to raze, construct and reconstruct on the Premises such structures and improvements, including, without limitation, a pond for pumping of Spring Creek water, buildings and parking areas and to extend, enlarge, alter, remove, repair, replace or improve any structure or other improvements then existing on the Premises, as Tenant may deem desirable. All improvements constructed on the Premises by Tenant and all additions, alterations and improvements thereto shall remain the exclusive property of Tenant during the term of this Lease. Throughout the term of this Lease, Tenant may sell any improvements, alterations or additions made by Tenant to the Premises to a third party.

Upon the expiration or termination of this Lease, Tenant agrees to peaceably and promptly surrender possession of the Premises to Landlord, and all improvements to the Premises then existing on the Premises shall become the exclusive property of the Landlord in its "then condition" without obligation of Tenant to replace or restore any of such improvements or the Premises to their original condition, and the Premises and improvements thereon shall be free and clear of all liens or encumbrances, except those existing as of the commencement of this Lease and those created thereafter by Landlord or anyone claiming by, through or under Landlord.

8. Fixtures. Tenant may install in any building constructed by it on the Premises such trade fixtures and equipment as Tenant deems desirable, and all of such items shall remain Tenant's personal property whether or not attached to the Premises. Tenant may remove any such items from the Premises at any time during the original term or the optional term, if exercised, and for thirty (30) days thereafter, but shall in no event be obligated to do so. In the event such trade fixtures or equipment are not removed within thirty (30) days after the expiration or termination of this Lease, the same shall be deemed abandoned and Landlord may dispose of such trade fixtures and equipment as it desires without any liability to Tenant.

9. Utility Charges. Tenant agrees to pay all charges for electricity, gas, heat, water, telephone and other utility services used on the Premises.

10. Taxes. Tenant, during the original term of this Lease and during any optional term hereunder, shall pay or cause to be paid all taxes levied against the Premises and the improvements thereon, including property taxes and special improvements taxes or assessments. If bills for taxes on the Premises and the improvements thereon are received by Landlord, Landlord shall immediately remit such bills to Tenant.

If any taxes or assessments may be payable in installments, Tenant may pay the same in installments as the same become due. Tenant shall be obligated to pay only those installments which become due during the term of this Lease and any such tax or assessment or installment thereof payable with respect to a tax period during which the term of this Lease shall expire or terminate shall be adjusted between Landlord and Tenant as of the expiration or termination of this Lease so that Tenant shall pay only the amount which bears the same relation to the tax or assessment or installment thereof as the part of such tax period included within the terms of this Lease bears to the entire tax period.

11. Indemnification. Landlord shall not be responsible or liable for and Tenant agrees to indemnify and defend Landlord from all claims, damages, expenses, liabilities and judgments for injury to persons, loss of life or damage to property occurring on the Premises (including within any buildings thereon) and on the portion of the streets and sidewalks adjacent thereto or arising from or connected with the streets and sidewalks adjacent thereto, which occurrences are not caused by the negligence of Landlord.

Landlord shall promptly notify Tenant of any asserted claim with respect to which Landlord may be indemnified against hereunder and shall deliver to such other party copies of all process and pleadings pertaining thereto.

The indemnity provisions of this Article shall not apply to damage or destruction of property which is owned by Landlord, or Tenant and as to such property, each party waives and releases any claim or cause of action against the other party for such damage or destruction except as specifically provided in the Article entitled "Damage or Destruction"; it being agreed that each party shall provide their own insurance or shall assume the risk of such damage or destruction even though such damage or destruction is solely caused by the fault or neglect of the other party.

12. Liability insurance.

A. General Coverage and Limits. Tenant agrees to maintain or cause to be maintained liability insurance against claims for bodily injury, loss of life or property damage occurring on the Premises (including within the buildings thereon ) and on the portion of the streets and sidewalks adjacent thereto with bodily injury, loss of life and property damage coverage in a combined single limit of not less than One Million Dollars (\$1,000,000.00) for total claims for any one occurrence. Such insurance may be in the form of blanket liability coverage applicable to the Premises and other property owned or occupied by Tenant.

13. Wavier of Rights in Connection with Damage or Destruction. Landlord (on behalf of itself) and Tenant do hereby waive any rights against each other which they might have on account of any loss or damage suffered by Landlord or Tenant, the Premises of Landlord's Property (including improvements and buildings thereon and the contents thereof) or their personal property arising from any risk generally covered by fire and extended coverage insurance whether or not such an insurance policy is maintained or there are insurance proceeds sufficient to cover the loss, and Landlord and Tenant shall each procure from their insurers under all policies of fire and extended coverage insurance a waiver of all rights or subrogation against such parties which the insurers might otherwise have under such policies.

14. Condemnation. If any portion of or interest in the Premises shall be condemned or taken by any public authority or by any other person or entity with the power of condemnation, by eminent domain or by purchase in lieu thereof, and such condemnation or taking renders the Premises unsuitable in the judgment of Tenant for Tenant's business operations (which determination by Tenant shall not be unreasonably made), Tenant may terminate this Lease by giving notice thereof to Landlord at any time subsequent to the entry of an order of taking until ninety (90) days after possession is actually taken by the condemning authority, such termination being effective as of the date specified in such notice. Whether or not this Lease is terminated as a result of any such condemnation or taking, all damages awarded as a result of taking of Landlord's interest in the land constituting the Premises shall belong to tenant. In addition, Tenant shall have the right to claim, prove, collect and retain any damages awarded other damages compensable under the applicable laws of the jurisdiction in which the Premises is located.

15. Damage or Destruction. Should any building on the Premises be damaged or destroyed by fire or other casualty or any cause whatsoever which is not the result of Tenants negligence, Tenant has the sole discretion whether or not to repair the damage. All costs incurred in the repair are the sole responsibility of the Tenant.

16. Hypothecation. Tenant may at any time and from time to time, subject to the terms and conditions of this Lease, mortgage or otherwise hypothecate its leasehold estate and/or its interest or rights hereunder, or any part thereof, and sell its interest in any and all buildings, construction, and improvements now or hereafter located upon the Premises. No mortgagee, trustee or holder of the rights and interest of Tenant hereunder (hereinafter a "Lienholder") shall be or become liable to Landlord as a result of its acceptance of an assignment of this Lease as security.

Landlord agrees that Lienholder may, in the event of a default by Tenant in the performance of any obligations of Tenant which are contained in any instrument of hypothecation or evidence of indebtedness, the repayment of which is secured by Tenant's interest hereunder, exercise or cause to be exercised any remedies under the terms of such hypothecation, including an election to cause the leasehold estate of Tenant in and to the Premises to be sold without prejudice to Landlord, to hold foreclosure proceedings upon Tenant's leasehold estate in the Premises or to accept from Tenant an assignment, transfer or other conveyance of those interests which are thus hypothecated.

Landlord agrees that any purchaser, assignee or other successor in interest to Tenant under the terms of this Article shall, upon paying to the proper parties all amounts due and performing all other obligations of Tenant under this Lease, succeed to all Tenant's rights under this Lease, provided, this Lease shall not have been heretofore terminated.

This Lease (any new lease entered into pursuant to this Article) is and shall be prior and superior to any financing by Landlord of the Premises.

17. Tenant's Option to Purchase. Whenever during the term of this Lease and as it may be extended, Tenant wishes to buy all or part of the Premises, Tenant shall have the option to purchase the Premises for the sum of one dollar (\$1.00).

18. Assignment, Subletting or Sale. Tenant may sublet the Premises or any portion thereof or assign this Lease for any lawful purpose.

19. Unperformed Covenants of Landlord. If Landlord fails to make any repairs or do any work required of Landlord by the provisions of the Lease or in any other respect fails to perform any of the covenants, terms or conditions of this Lease to be performed by Landlord and, unless another time limit is elsewhere in this Lease specifically provided, such default continued for a period of thirty (30) days after written demand for performance is given by Tenant, then and in any of such events, Tenant may, in addition to any other remedies provided for in this Lease or by law (including the right to sue for damages, an injunction or specific performance): (i) terminate this Lease, (ii) obtain a refund of the prepaid rent, (iii) elect to make such payments and cure such defaults on behalf of Landlord and, in connection therewith, do all work and make all payments deemed necessary thereto by Tenant, including costs and charges in connection with any legal action which may have been commenced or threatened. In the event Tenant elects to exercise its rights under subparagraph (iii) above, all sums so expended by Tenant, together with interest thereon from the date of expenditure until reimbursement at the rate of twelve percent (12%) per annum or the highest legal rate, whichever is lower, shall be paid by Landlord to Tenant upon demand.

20. Costs and Attorney's Fees. In the event that any party hereto commences a legal proceeding to enforce any of the terms of this Lease, the prevailing party in such action shall have the right to recover reasonable attorneys' fees and costs from the other party, as fixed by the court in the same action.

21. Commissions. Any brokerage commission or finder's fee payable on account of this Lease or the letting of the Premises shall be paid by Tenant hereby warrants and represents that it has not entered into any contracts whatsoever with any brokers or finders nor has Tenant in any manner obligated itself to pay any real estate commission or finder's fee on account of this transaction. Based on such warranty and representation, Landlord hereby agrees to indemnify and hold Tenant harmless from any claim arising from such commission or fees.

22. Notices and Place for Payment of Rent. Notices made or given by the Parties hereto must be in writing and may be served personally or by depositing the same in the United States mail, postage prepaid, or by another commercially recognized means of delivery, addressed as follows:

TO LANDLORD: Gerald M Finch  
5025 West 10900 South  
Payson, UT 84651

TO TENANT: Strawberry High Line Canal Company  
54 West 100 North  
Payson, UT 84651

Landlord agrees that a copy of all notices which Landlord gives Tenant hereunder shall also be given as hereinabove provided to such other persons at such places as Tenant may designate in writing. In the event Tenant shall assign its interest in this Lease to any unrelated third party and any subleases or otherwise occupies the Premises and advises Landlord thereof, any notices to Tenant hereunder shall also be delivered to such Affiliate.

The person and the place to which notices are to be mailed may be changed by either party by written notice to the other party.

23. Memorandum Lease. This Lease shall not be recorded by Landlord and Tenant, but they will execute and record a Memorandum of Lease in the form attached hereto as Exhibit "C" and herein incorporated by reference.

24. Successors. Notwithstanding anything to the contrary herein, all of the rights and obligations under this Lease shall bind and inure to the benefit of the respective heirs, personal representatives, successors, grantees and assigns of the parties hereto and the respective restrictions, covenants and obligations pertaining to the Premises and Landlord's Property shall run with the land and shall continue until this Lease is terminated or expires.

25. Miscellaneous Provisions. Nothing herein contained shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that neither the method or computation of rent nor any other

provision contained herein, nor any acts of the Parties hereto, shall be deemed to create any relationship between the Parties other than the relationship of Landlord and Tenant.

The various rights and remedies herein contained and reserved to each of the Parties, except as herein otherwise expressly provided, shall not be considered as exclusive of any other right or remedy of such party, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy by either party shall impair any such right, power or remedy or be construed as a waiver of any default of non-performance or an acquiescence therein.

This Lease shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either Landlord or Tenant.

The headings of the articles contained herein are for convenience only and do not define, limit or construe the contents of such articles.

When required by context, the singular shall include the plural, and the neutral gender shall include a person, corporation, firm or association.

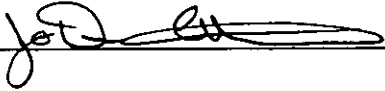
If any provision of this Lease is declared invalid in a court proceeding between the Parties, such invalidity shall not invalidate this Lease, and this Lease shall be construed as if the invalid part were not contained herein, and the rights and obligations of the Parties shall be construed and enforced accordingly.

Except as expressly provided elsewhere in this Lease, this Lease is and shall be considered to be the only agreement or understanding between the Parties hereto. All negotiations and oral agreements acceptable to both parties have been incorporated herein. It may not be amended or modified by any act or conduct of the Parties or by oral agreement, unless reduced to writing.

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

"LANDLORD"

Attest:

  
\_\_\_\_\_

Gerald M Finch

By:   
\_\_\_\_\_

Its: \_\_\_\_\_

"TENANT"

Attest:

  
\_\_\_\_\_ Secretary

Strawberry High Line Canal Company

a Utah Non Profit Corporation

By:   
\_\_\_\_\_

Its: President



EXHIBIT "A" TO GROUND LEASE

Between Gerald M Finch

And Strawberry High Line Canal Company

Dated 9/15/08

Attach the legal description of the Premises:

**PROPERTY DESCRIPTION FOR POND**

BEGINNING AT A POINT WHICH IS WEST 1471.91 FEET AND SOUTH 1145.64 FEET FROM THE EAST 1/4 CORNER OF SECTION 13, TOWNSHIP 9 SOUTH, RANGE 1 EAST, SLB&M: THENCE S89°59'58"E 564.34 FEET, THENCE S35°52'03"W 130.37 FEET, THENCE S76°08'10"W 124.52 FEET, THENCE 265.38 FEET ALONG A 1157.55 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS S69°34'06" W 264.80 FEET), THENCE S89°38'48"W 118.95 FEET, THENCE N0°00'00"W 228.66 FEET TO THE POINT OF BEGINNING.

**TWELVE FOOT ROW DESCRIPTION**

BEGINNING AT A POINT WHICH IS S00°31'20"E 3.04 FEET ALONG THE SECTION LINE FROM THE EAST 1/4 CORNER OF SECTION 13, TOWNSHIP 9 SOUTH, RANGE 1 EAST, SLB&M: THENCE S00°31'20"E 20.23 FEET, THENCE S35°52'03"W 1479.71 FEET, THENCE S76°08'10"W 18.57 FEET, THENCE N35°52'03"E 1510.16 FEET TO THE POINT OF BEGINNING.

Between Gerald M Finch

And Strawberry High Line Canal Company

Dated \_\_\_\_\_

Attach the list of all approved encumbrances, easements, liens, assessments, restrictions, tenancies and other exceptions to title of the Premises and Landlord's Property:

A. The Premises:

B. Landlord's Property:

## EXHIBIT "C" TO GROUND LEASE

Between Gerald M. Finch  
 And Strawberry High Line Canal Company  
 Dated 9 | 15 | 08

## MEMORANDUM TO GROUND LEASE

This Memorandum of Ground Lease is entered into as of the

15 day of SEPTEMBER 20 08, by and between

Gerald M. Finch ("Landlord")

and

Strawberry High Line Canal Company,

a Utah Non Profit Corporation. ("Tenant")

1. Premises. For and in consideration of the sum of Ten Dollars (\$10.00), and the rents reserved and the terms and conditions more particularly set forth in that certain long form ground lease between Landlord and Tenant dated as of the date hereof (the "Ground Lease") and other good and valuable consideration, the receipt of which is hereby acknowledged, Landlord hereby leases to Tenant that certain real property located in the South East ¼ of Section 13 Township 9 South Range 2 East, Which is more particularly described on Exhibit "A" attached hereto and herein incorporated by reference, together with all easements, rights of way, and appurtenances in connection therewith or thereunto belonging to (the "Premises")?
2. Option to Purchase. Landlord has granted to Tenant an option to purchase the Premises at any time as specified in the Ground Lease.
3. Financing of Improvements. Specific rights of Tenant in connection with its financing or sale of leaseback of the improvements constructed on the Premises are stated in the Ground Lease.
4. Term. The term of the Ground Lease is for ninety-nine (99) years from the date of the commencement of the original term, as specified in the Ground Lease. There is an optional ninety-nine (99) year lease.
5. Inquiries. Inquiries concerning the precise terms of the Ground Lease may be made to:

TO LANDLORD: Gerald M Finch  
5025 West 10900 South  
Payson, UT 84651

TO TENANT: Strawberry High Line Canal Company\  
54 West 100 North  
Payson, UT 84651

- 6. The Ground lease provides that all of the rights and obligations created therein shall bind and inure to the benefit of the respective heirs, personal representatives, successors, grantees and assigns of Landlord and Tenant and that the respective restrictions, covenants and obligations pertaining to the Premises and Landlord's Property shall run with the land and shall continue until the Ground Lease is terminated or expires.
- 7. Incorporation and Conflicts. All of the terms and conditions of the Ground Lease are incorporated herein by reference as though set forth fully herein. In the event of any conflict between the terms hereof and of the Ground Lease, the Ground Lease shall prevail.

IN WITNESS WHEREOF, this Memorandum of Ground Lease is executed as of the date first above written.

"LANDLORD"

Attest:

Gerald M Finch

\_\_\_\_\_

By: Gerald M Finch

Its: \_\_\_\_\_

"TENANT"

Attest:

Strawberry High Line Canal Company

W. Jamison Thornton  
Secretary

A Utah Non Profit Corporation

By: D R Ellsworth

Its: President

