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INDEMNIFICATION AND MAINTENANCE AGREEMENT

This maintenance and indemnity agreement, entered into this 13<sup>th</sup> day of July, 1997, by and between BMC West Corporation and Marelko, Ltd. Partnership and BMC West Corporation as the landowners and indemnitors, hereinafter referred to as "Owner" (Marelko holding title and BMC holding a lease with option to purchase), and Wasatch Irrigation Company as the indemnitee,

WITNESSETH:

WHEREAS, Wasatch Irrigation Company and/or its stockholders has an irrigation easement across the property of the Owner, and

WHEREAS, the Owner has a desire and need to adjust or realign the course of said waterway and/or to cover a portion thereof, and

WHEREAS, the coverage of said irrigation course will enhance the risks of debris and material obstructing the waterway and will possibly create additional hazards;

NOW, THEREFORE, it is hereby mutually agreed as follows:

1. The realignment and coverage of said waterway shall be per the specifications attached hereto as Exhibit A.
2. That the Owner of the land, together with his successors and assigns shall be responsible for the maintenance of the waterway for a distance of fifteen (15) feet upstream from the opening on through the covered portion of the waterway, and the Owner shall keep the same free and clear of all debris and other obstacles that would interfere with the free flow of water through the channel.
3. The Owner, his successors, assigns and any lessees, jointly and severally, hereby covenant and agree to indemnify and keep indemnified Wasatch Irrigation Company and its stockholders, users and assigns, and hold and save Wasatch Irrigation Company and its stockholders, users and assigns harmless from and against any and all actions or causes of action, claims, demands, liabilities, losses, damage, or expense of whatsoever kind and nature, including counsel or attorney's fees which Wasatch Irrigation Company or its stockholders, users, successors or assigns shall or may at any time sustain or incur by reason or in consequences of any injury to life or property with respect to that section of the waterway from fifteen (15) feet upstream of the opening of the covered portion and on through to the end of the covering, cement box and/or culvert that covers the waterway, or which Wasatch Irrigation Company, stockholders, users or assigns may sustain or incur in connection with any litigation, investigation, or other expenditures incident to such injury, including any suit instituted to enforce the obligations of this agreement of indemnity.

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WASATCH CO RECORDER-ELIZABETH M PARSONS  
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REQUEST: THACKER WAYNE

4. It is further understood and agreed, as a condition of this indemnity, that the same shall be a covenant running with the land described in the attached Exhibit B and shall be binding upon the owners of the land, his/their/or its successors and assigns and lessees, and that this agreement shall be recorded in the office of the Wasatch County Recorder's Office to give notice to any successors or assigns or lessees that with their taking ownership or possession of the premises they are subject to and responsible under this indemnity agreement. Said covenants and conditions shall be perpetual and shall apply to and be forever binding upon the undersigned Owner and its assigns, and are imposed upon said realty as an obligation or charge against the same for the benefit of the Wasatch Irrigation Company, its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LANDOWNER:

WASATCH IRRIGATION COMPANY

BMC WEST CORPORATION, Owner

By: [Signature], President  
[Signature], Secretary

By: Claude Hicken  
 Claude Hicken, Its President

Jeffery M. Bradshaw  
 Jeffrey M. Bradshaw, Sec.

MARELKO, LTD. PARTNERSHIP, Owner

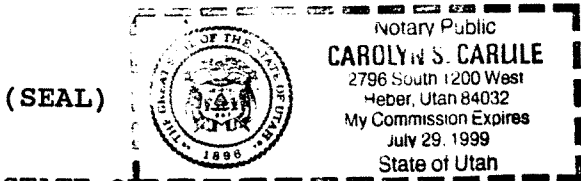
By: Mark A. Kohler  
 Mark A. Kohler, General Partner  
 By: Rae Lynne W. Kohler  
 Rae Lynne W. Kohler,  
 General Partner

Wayne B. Thacker  
 Wayne B. Thacker, Stockholder  
 and User  
Michael Bardole  
 Michael Bardole, Stockholder  
 and User

STATE OF UTAH )  
 : ss.  
 COUNTY OF WASATCH )

On the 23<sup>rd</sup> day of July, 1997, personally appeared before me Claude Hicken and Jeffery M. Bradshaw. who being by me duly sworn did say, each for himself, that he, the said Claude Hicken, is the president, and he, the said Jeffery M. Bradshaw, is the secretary of Wasatch Irrigation Company, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors, and said Claude Hicken and Jeffery M. Bradshaw each duly acknowledged to me

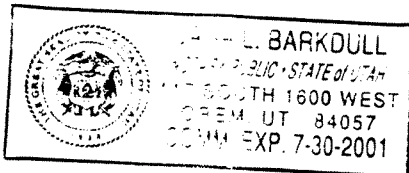
that said corporation executed the same and that the seal affixed is the seal of said corporation.



Carolyn S. Carlile  
NOTARY PUBLIC

STATE OF )  
: ss.  
COUNTY OF )

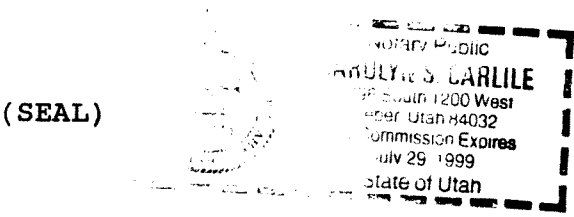
On the 3<sup>rd</sup> day of Sept. July, 1997, personally appeared before me Patrick Day and N/A, who being by me duly sworn did say, each for himself, that he, the said Patrick Day, is the president, and he, N/A, is the secretary of BMC West Corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors, and said Patrick Day and N/A each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.



James L. Barkdull  
NOTARY PUBLIC

(SEAL)  
STATE OF UTAH )  
: ss.  
COUNTY OF WASATCH )

On the 23<sup>rd</sup> day of July, 1997, personally appeared before me Mark A. Kohler and Rae Lynne W. Kohler, who being by me duly sworn did say, that they are the general partners of Marelko, Ltd. Partnership, and that the within and foregoing instrument was signed in behalf of said partnership by them and they each duly acknowledged to me that said partnership executed the same.



Carolyn S. Carlile  
NOTARY PUBLIC

## EXHIBIT "A"

## DESCRIPTION

BEGINNING at the 1977 Wasatch County Reference Monument for the Southeast Corner of Section 6, Township 4 South, Range 5 East, Salt Lake Base and Meridian; thence West a distance of 480.52 feet; thence North a distance of 165.00 feet; thence East a distance of 662.30 feet to the Westerly right of way line of U.S. Highway 40; thence South  $00^{\circ}48'00''$  West along said right of way a distance of 68.13 feet to the beginning of a tangent curve concave to the West having a radius of 172.00 feet; thence Southwesterly 103.43 feet along said curve through a central angle of  $34^{\circ}27'16''$ ; thence West a distance of 149.30 feet to the point of beginning.

TOGETHER WITH a right of way across the following tract of land:

BEGINNING West 505.02 feet and North  $00^{\circ}48'$  East 165 feet from the Southeast corner of Section 6, Township 4 South, Range 5 East, Salt Lake Base and Meridian; thence North  $00^{\circ}48'$  East 30 feet; thence East 612 feet; thence North  $00^{\circ}48'$  East 465 feet; thence East 60 feet to Highway 40; thence Southerly along Highway to a point which is 165 feet North of South line of Section 5; thence West to the point of beginning.

The above described property also known by the street address of:  
1160 South Main, Heber City, Ut 84032.

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