



201104190042

Skagit County Auditor

4/19/2011 Page

1 of

7 1:23PM

Return Address:

Fulbright & Jaworski L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201
Attn: Gary Clark, Esq.

GUARDIAN NORTHWEST TITLE CO.

100889

**Document Title: LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT,
FIXTURE FILING AND ASSIGNMENT OF RENTS AND LEASES**

Reference numbers of related documents: None

Grantor(s): Advanced H2O LLC, a Delaware limited liability company, as "Grantor"

**Grantee(s): First American Title Insurance Company, as "Trustee"
Chase Capital Corporation, a Delaware corporation, as "Agent"**

Legal Description:

1. Lots 20 and 22, Hopper Road Business Park 2nd Revised BSP
2. Additional legal description is on Exhibit A attached to this document.

Assessor's Property Tax Parcel Account Number(s): P116593, P116595

8025-000-020-0000

8025-000-022-0000

To be filed in Skagit County, Washington

This Leasehold Deed of Trust, Security Agreement,
Fixture Filing and Assignment of Rents and Leases
was prepared outside of the State of Washington

By: Gary Clark, Esq.
Fulbright & Jaworski L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING AND
ASSIGNMENT OF RENTS AND LEASES**

MARCH 24, 2011

STATE OF WASHINGTON

COUNTY OF SKAGIT

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

THAT, Advanced H2O LLC ("**Grantor**"), in order to secure the payment of the Secured Indebtedness (as hereinafter defined) and the performance of the obligations, covenants, agreements and undertakings of Grantor hereinafter described, does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER, in trust with power of sale and right of entry and possession, to First American Title Insurance Company ("**Trustee**") all of the right, title, interest and leasehold estate of the Grantor under the Grantor Lease (as hereinafter defined), concerning the premises ("**Premises**") located in Skagit County, Washington, as described on Exhibit A attached hereto and incorporated herein (the "**Leasehold Estate**"), TOGETHER WITH all of Grantor's right, title and interest in and to all materials, equipment, fixtures, furnishings, inventory, and other personal property of Grantor which are in any way used or associated with the Premises, whether now owned or hereafter acquired ("**Personal Property**"; together with the Leasehold Estate, the "**Mortgaged Property**") for the benefit of Agent (defined below).

TO HAVE AND TO HOLD the Mortgaged Property, together with the rights, privileges, and appurtenances thereto belonging unto the Trustee and Trustee's successors, substitutes and/or assigns, IN TRUST, with power of sale and right of entry and possession, for the benefit of Chase Capital Corporation, as administrative agent ("**Agent**"). Neither the Premises nor any portion of the Mortgaged Property is used principally for agricultural or farming purposes.

This Leasehold Deed of Trust, Security Agreement, Fixture Filing and Assignment of Rents and Leases ("**Deed of Trust**") is made to secure the payment and satisfaction of all obligations ("**Secured Indebtedness**") of Mortgagor under or in connection with that certain Second Lien Credit Agreement (as amended, modified, or otherwise supplemented, "**Credit Agreement**"), dated as of November 22, 2010, and entered into by and among Grantor, Agent, and certain other parties, and all agreements and transactions related thereto. This Deed of Trust secures future advances and future obligations. Grantor will make prompt payment, as the same becomes due, of the Secured Indebtedness and shall punctually and properly perform all of Grantor's covenants, obligations and liabilities under the Credit Agreement, this Deed of Trust, and all other documents relating thereto or to the Secured Indebtedness (collectively, "**Loan Documents**"). To the extent all or any portion of the Mortgaged Property is ever subleased to

other parties, Grantor does hereby absolutely and unconditionally assign, transfer and set over to Agent all rents, income, receipts, revenues, issues, profits and proceeds to be derived from the Mortgaged Property, including, without limitation, the immediate and continuing right to collect and receive the same.

Upon the occurrence of and during the continuance of an Event of Default (as defined in the Credit Agreement) under the Loan Documents ("**Default**"), Agent shall have the option of declaring the Secured Indebtedness in its entirety to be immediately due and payable, and the liens and security interests evidenced hereby shall be subject to foreclosure in any manner provided for herein or provided for by applicable law as Agent may elect. Upon the occurrence of a Default, Trustee, his successor or substitute, if, as, and when requested by Agent, shall sell, by judicial or non-judicial foreclosure sale, the Mortgaged Property or any part thereof in accordance with applicable laws, including without limitation the Deed of Trust Act of the State of Washington, WASH. REV. CODE Title 61, Ch. 24 and WASH. REV. CODE § 62A.9A-604, as amended from time to time, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of the sale, including a reasonable Trustee's fee and attorney's fee; (2) to the Secured Indebtedness; and (3) the surplus, if any, shall be distributed to the persons entitled thereto. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor had or had the power to convey at the time of its execution of this Deed of Trust, and such as it may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrancers for value. The power of sale granted herein shall not be exhausted by any sale held hereunder by Trustee or Trustee's substitute or successor, and such power of sale may be exercised from time to time and as many times as Agent may deem necessary until all of the Mortgaged Property has been duly sold and all Secured Indebtedness has been fully paid. In the event any sale hereunder is not completed or is defective in the opinion of Agent, such sale shall not exhaust the power of sale hereunder and Agent shall have the right to cause a subsequent sale or sales to be made hereunder. Trustee, his successor or substitute, may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including, without limitation, the posting of notices and the conducting of sales, but in the name and on behalf of Trustee, his successor or substitute. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy; Agent may cause this Deed of Trust to be foreclosed as a mortgage, and any foreclosure suit may be brought by Trustee or by Agent. This Deed of Trust shall constitute a "Fixture Filing" for purposes of WASH. REV. CODE, Title 62A, Ch. 9A. Portions of the Mortgaged Property are or may become fixtures.

This Deed of Trust shall also constitute a security agreement with respect to, and Grantor hereby grants to Agent a security interest in, the Mortgaged Property. Upon the occurrence of a Default, Agent may also exercise its rights of enforcement as a secured party with respect to the Personal Property under the WASH. REV. CODE, Title 62A, as amended from time to time, and in conjunction with, in addition to or in substitution for those rights and remedies: (a) Agent may enter upon the Mortgaged Property to take possession of, assemble and collect the Personal Property or to render it unusable; and (b) Agent may require Grantor to assemble the Personal Property and make it available at a place Agent designates which is mutually convenient to allow Agent to take possession or dispose of the Personal Property; and (c) written notice mailed to Grantor as provided herein five (5) days prior to the date of public sale of the Personal Property or prior to the date after which any private sale of the Personal Property will be made shall constitute reasonable notice; and (d) any sale made pursuant to the provisions of this Paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personal Property hereunder as is required for such



sale of the Mortgaged Property under power of sale; and (e) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Personal Property and the Mortgaged Property may, at the option of Agent, be sold as a whole; and (f) it shall not be necessary that Agent take possession of the Personal Property or any part thereof prior to the time that any sale pursuant to the provisions of this Paragraph is conducted and it shall not be necessary that the Personal Property or any part thereof be present at the location of such sale; and (g) prior to application of proceeds of disposition of the Personal Property to the Secured Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Agent; and (h) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Indebtedness or as to the occurrence of any Default, or as to Agent having declared all of such Secured Indebtedness to be due and payable, or as to notice of time, place, and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Agent, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (i) Agent may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Agent, including the sending of notices and the conduct of the sale, but in the name and on behalf of Agent.

In case of the death, resignation, removal or disqualification of Trustee or if for any reason Agent shall deem it desirable to appoint a substitute or successor Trustee to act instead of the herein named Trustee or any substitute or successor Trustee, then Agent shall have the right and is hereby authorized and empowered to appoint a successor Trustee, or a substitute Trustee, without formality other than appointment and designation in writing executed by Agent and the authority hereby conferred shall extend to the appointment of other successor and substitute Trustees successively until the Secured Indebtedness has been paid in full or until the Mortgaged Property is sold hereunder.

All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any of the other Loan Documents, or any part thereof, or otherwise benefitting Agent, and Trustee and Agent shall, in addition to the remedies herein provided, be entitled to avail themselves of all such other remedies as may now or hereafter exist at law or in equity for the collection of the Secured Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and resort to any remedy provided for hereunder or under any such Loan Documents or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies. If any clause or provision of this Deed of Trust is or should ever be held to be illegal, invalid, or unenforceable under any present or future law applicable to the terms hereof, then and in that event, it is the intention of the parties hereto that the remainder of this Deed of Trust shall not be affected thereby, and that in lieu of each such clause or provision of this Deed of Trust that is illegal, invalid, or unenforceable, such clause or provision shall be judicially construed and interpreted to be as similar in substance and content to such illegal, invalid, or unenforceable clause or provision, as the context thereof would reasonably suggest, so as to thereafter be legal, valid, and enforceable.

For purposes of this Deed of Trust, the term "**Grantor Lease**" shall mean that certain Lease, by and among Grantor, as tenant, and Panattoni Investments, LLC; Brynestad Family LLC; and Diepenbrock Washington Holdings, LLC (collectively, "**Original Landlord**"), as landlords, as amended by that certain First Amendment to Lease, dated as of January 16, 2006, by and between Grantor and Original Landlord, and as affected by that certain Assignment of Leases, Service Contracts and Warranties, dated as of September 25, 2006, assigning Original Landlord's rights and obligations under the Grantor Lease to 1600 Port Drive, LLC ("**Landlord**") (together with any and all modifications, extensions and renewals thereof and all credits, deposits, options, privileges and rights of Grantor as tenant thereunder, including, but not limited to, rights of first refusal, if any, and the right, if any, to renew or extend the term thereof for a



succeeding term or terms). The Grantor Lease represents the entire agreement between Grantor and Landlord with respect to the Premises, and Grantor has no rights in or to the Premises except as expressly set forth in the Grantor Lease.

The lien created by this Deed of Trust on the Mortgaged Property is junior and subordinate to the lien on such property created by any mortgage, deed of trust or similar instrument now or hereafter granted to JPMorgan Chase Bank, N.A., as Administrative Agent, and its successors and assigns, in such property, in accordance with the provisions of the Intercreditor Agreement dated as of November 22, 2010 among JPMorgan Chase Bank, N.A., as First Priority Representative, Chase Capital Corporation, as Second Priority Representative, and the Loan Parties referred to therein, as amended from time to time.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

[Signature page follows]



201104190042
Skagit County Auditor

4/19/2011 Page 5 of 7 1:23PM

EXECUTED as of the date set forth in the acknowledgment below, to be effective, however, as of the date first written above.

GRANTOR:

Advanced H2O LLC, a Delaware limited liability company

By: David J. Borges
Name: David J. Borges
Title: CEO

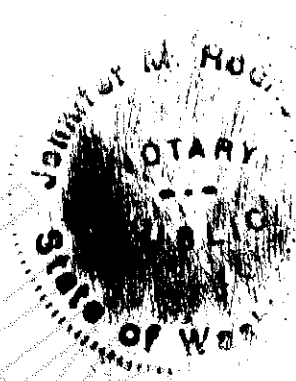
STATE OF WASHINGTON

COUNTY OF KING

This instrument was acknowledged before me on the 2nd day of February, 2011,
by David J. Borges as CEO of Advanced H2O LLC, on
behalf of said limited liability company.

Jennifer M. Rodriguez
Notary Public, State of Washington

[NOTARIAL SEAL]



For purposes of filing this Deed of Trust as a financing statement, the mailing address of Grantor is 7853 Southeast 27th Street, Suite 283, Mercer Island, Washington 98040, the type of organization is a limited liability company, the state of its organization is Delaware, and its filing number is 3968520; the mailing address of Agent is 10 South Dearborn St., 19th Floor, Mail Code IL 1-0548, Chicago, IL 60603-2003; and the mailing address of Trustee is P.O. Box 1667, Mount Vernon, WA 98273.



201104190042
Skagit County Auditor

Signature Page

Advanced H2O
LEASEHOLD DEED OF TRUST (BURLINGTON, WA)

EXHIBIT A

The Premises

Leasehold estate evidenced by that certain Memorandum of Lease recorded on June 28, 2005 under Auditor's File No. 200506280198, records of Skagit County, Washington, covering a portion of the property more particularly described as follows:

Tract 1:

Lots 20 and 22, Hopper Road Business Park Second Revised Binding Site Plan, as recorded under Auditor's File No. 200506280192, records of Skagit County, Washington.

Tract 2: Easement

A non-exclusive easement for ingress, egress and utilities across the Northerly portion of Lot 21 as delineated on the face of Hopper Road Business Park Revised Binding Site Plan, as recorded January 30, 2003, under Auditor's File No. 200301300162, records of Skagit County, Washington.



201104190042
Skagit County Auditor

4/19/2011 Page 7 of 7 1:23PM