



W2746129

When Recorded, Please Mail To:

MaryAnn Holley
1287 N. 7000 E.
Huntsville, UT 84317

EH 2746129 PG 1 OF 10
LEANN H KILTS, WEBER COUNTY RECORDER
16-JUL-15 1053 AM FEE \$28.00 DEP JKC
REC FOR: MARYANN HOLLEY

WATER WELL JOINT USE AGREEMENT

THIS AGREEMENT is made and entered into as of this 5 day of June, 2015, by and among,

(hereinafter referred to as" Property owner 1A Preston Jordan Holley,
Property owner 1B NA

(hereinafter referred to as" Property owner 2A
Kristin Summers, Property owner Thomas Matthew Summers,

(hereinafter referred to as" Property owner 3A Sean Glen Holley,
Property owner 3B NA,

(hereinafter referred to as" Property owner
4A Richard Joshua Holley, Property owner 4B NA.

(hereinafter referred to as" Property owner 5A Richard G. Holley Property owners 5B MaryAnn Holley
and all being hereinafter sometimes referred to
collectively as the "Parties" or on an individual basis as a "Party"):

RECITALS:

WHEREAS, THE Parties each own a water right identified of record in the Office of the Utah State Engineer as follows:

Water Right No. E5109 (35-12476)

S 46 E 161 from the W4 corner of section 08

Township 6N, Range 2E, SL B+M

According the plat thereof of record in the office of the County Recorder, Weber Utah.

Water Right No. E5109 (35-12476)

S 46 E 161 from the W4 corner of section 08

Township 6N, Range 2E, SL B+M

According the plat thereof of record in the office of the County Recorder, Weber Utah.

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B. WHEREAS, the Parties have heretofore contributed in equal, 2 shares to the cost of drilling and equipping a 5 1/4" diameter culinary water well, for their joint use and benefit, located at a point 546E 162' from the NW corner of section 68, Township 6N Range 2E

C. WHEREAS, the Parties are desirous of memorializing the terms of their agreement as pertaining to the ownership of said well and the on-going operation, maintenance, repair and replacement of the same:

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. TITLE. The title to the well, including the casing, pump, motor, electrical panel, well house and all other equipment and facilities related thereto, and the main water trunk line extending to the individual water meter of each of the Parties (hereinafter referred to collectively as the "Well System"), shall be vested in the Parties as tenants in common, as follows:

Richard G + Mary Ann Holley, Richard J. Holley, Thomas Matthew + Kristin Summers, Sean Holley, Preston Holley

The water rights of the respective Parties approved by the State Engineer for diversion and use from this well as hereinabove described shall remain the sole and separate property of each of the respective Parties, and each of the Parties shall be separately responsible, at their sole cost and expense, for the application of the water to be diverted therefrom to beneficial use and to file proof of appropriation on each of their respective water rights.

2. RECIPROCAL EASEMENTS. The Parties each hereby grant and convey to each other, and their respective heirs, successors-in-interest and assigns, reciprocal easements over, under, across and through their respective properties described in the Recitals above, together with the right of ingress and egress thereto and therefrom, for the construction, operation, maintenance, repair and replacement of such portion of the Well System as shall exist on each of their respective properties, including, without limitation, a reciprocal easement extending over, under, across and through 21-006-003 for the well, well house and related facilities and

equipment, and an easement for the main water trunk line and related facilities, extending over, under, across, through and along the properties of _____ and'

3. OPERATION AND MAINTENANCE OF THE WELL SYSTEM. The Well System shall be operated and maintained by the Parties for their joint use and benefit in accordance with the following terms:

(a) The parties shall designate one of the Parties to act as the manager, who shall be charged with the responsibility of the day-to-day operation, maintenance and repair of the Water System, in conformance with and subject to the provision of this agreement.

(b) Each Party shall be limited to 1/32 of the well's optimum producing capacity; however, no Party shall divert and use more water from the well on an annual basis than they are allowed under their individual water rights.

(c) The Parties' right to use the Well System shall be on an equal priority basis with each other, and no Party shall have a preferential right to water through the Water System, as against each other, regardless of the respective priorities of their individual water rights of record with the State Engineer.

(d) The well shall be equipped with a permanent totalizing meter. It is agreed that individual meters shall be installed by each of the Parties at their respective points of connection with the Water System in the event 5 determine that the installation of such meters is necessary. Accurate records of the total quantity of water produced by the well shall be maintained by the manager of the Water System. These records shall be available for inspection by each of the Parties at reasonable times and upon reasonable request. These records shall also be available to the State Engineer and his duly authorized commissioner, if any.

(e) The Parties agree to pay the costs and expenses of operating and maintaining the Well System on a joint and proportionate basis. Operation and maintenance expenses may include, if the Parties agree, a salary expense for the Party acting as manager. The proration of costs and expenses shall be based on the respective ownership interests of the parties as provided herein, i.e. 1/5 each, unless and until it becomes necessary to install individual water meters. In such event, the proration of costs and expenses shall thereafter not be based on their respective ownership interests, but rather on the actual quantity of water delivered to each Party during each

billing cycle. Under either method, bills for payment of costs and expenses shall be sent by the manager and be paid by the Parties at least quarterly, and more frequently if the Parties desire. The Parties agree to pay these bills within 30 days of their receipt.

4. TERM OF AGREEMENT. The term of this Agreement shall run for a period of 25 years from the date hereof, unless sooner terminated by the parties as provided in Paragraph 8 (Default) hereof. This Agreement may be extended by written agreement signed by all of the Parties, upon the same covenants and conditions as contained herein.

5. ADDITIONAL PARTIES. The parties hereby acknowledge that the Lot's 1-5 own lots. Lot's 1-5, as described under 1A - 5B in Recital A above, and that or their successors-in-interest may, in the future, sell Lot to a third party. In the event Lot is sold to a third party, the Parties agree as follows:

(a) The third party purchaser of Lot shall be given an opportunity to participate in the Well System and receive water service therefrom, subject to the condition that said third party purchases shall first:

(1) Obtain a water right from the State Engineer authorizing the diversion and use of water from the Well System, and

(2) Pay an amount equal to 1/5 of the actual cost incurred by the Parties to initially drill, construct, equip and install the Well System (referred to herein as the "Buy-in Charge"). The amount so paid by the third party purchaser shall be divided equally among the original 5 parties.

(b) Upon payment of the Buy-In Charge, this Agreement shall be amended by the Parties to include the third party purchaser as a = Party to this Agreement; whereupon, title to the Well System, and all rights in and obligations and responsibilities related thereto, shall thereafter be allocated and divided among themselves on the basis of 1/5 interest, and the third party purchaser shall be able to participate in and receive water service out of the Well System subject to and in conformance with the terms and conditions of this Agreement as so amended.

6. COVENANT NOT TO WASTE. Each Party agrees that the water to be supplied from the Water System shall not be permitted to be wasted. Should any Party allow waste to occur, and the wastage is not remedied within 10 days of receipt of written notice thereof, or

if such waste constitutes a threat to life or property, or threatens the loss of water supply to the detriment of any other Party, any other Party shall have the right to shut off the water usage that is causing the waste. Each Party covenants with other Parties that any pipelines or other water distribution facilities installed by said Party shall be maintained in good working order and operated in a prudent fashion to avoid the loss of pressure or water supply, property damage, contamination of the water supply, and the wasting of water.

7. INDEMNIFICATION. Each party agrees on their own behalf, and in behalf of its successors and assigns to indemnify and save the others and their successors and assigns harmless from and all claims, expense, damages, losses, liens or liabilities which may arise out of or result from their negligent acts and omissions while operating and maintaining the Water System for their mutual benefit, including reasonable attorney fees and other legal costs reasonably incurred by the other Parties in connection with each such claim or liability. Each Party and their successors and assigns harmless from any and all claims, liens, damages, losses and liabilities arising out of or in any way relating to the operation and maintenance of their own, individual water systems from the point of connection with the Water System, including reasonable attorneys fees and all other costs reasonably incurred in connection with each such claim or liability.

8. DEFAULT. In the event any Party fails to pay its proportionate share of the costs of operation and maintenance of the Water System when the same shall become due, or otherwise default in the performance any of their obligations under this Agreement, the non-defaulting Parties shall have the right to pay the same on account of the defaulting Party in order to avoid interruption of water service. The defaulting Party shall cure their default within 30 days of receipt of written notice of default. If the default is not timely cured, the non-defaulting Parties shall have the right to close the valve at the point of connection of the defaulting Party's system to the Water System and to terminate water delivery to the defaulting Party until the default is cured. If necessary, the non-defaulting Parties may physically disconnect the defaulting Party's water line from the Water System, and may enjoin the defaulting Party from reconnecting to the Water System until such time as the default has been cured and the non-defaulting Parties reimbursed for any cost incurred by them on the defaulting Party's account.

Interest shall be paid on any delinquent amounts due and owing and on any amounts due to be reimbursed by a defaulting Party for costs incurred by any non-defaulting Party, at the rate of 21% per annum. In addition, the defaulting Party shall be required to pay all costs incurred by the non-defaulting Parties in disconnecting service to the defaulting Party, as well as costs incurred required to reconnect the defaulting Party's system to the Water System. Termination under this provision shall not relieve any Party of any obligation to pay past due and accrued amounts for operation and maintenance of the Water System.

9. DROUGHT OR SHORTAGE CONDITIONS. During times of drought or other periods of natural or man-caused shortage conditions beyond the reasonable control of any of the Parties (defined as those periods where due to natural conditions, judicial or administrative orders, the Water System cannot be utilized at full capacity for which it is equipped), the Parties shall proportionately curtail their use of water and shall share equally in the available water supply on the basis of 1/3 each.

10. COSTS AND ATTORNEYS FEES. In the event any Party defaults in the performance of the covenants and conditions contained herein, the defaulting Party shall pay and be responsible to pay all costs incurred by the non-defaulting Parties in the enforcement of this Agreement, including, without limitation, reasonable attorneys fees, whether enforcement is pursued through litigation or otherwise.

11. ASSIGNMENT OF INTEREST. Any Party may assign their interest in this Agreement to another individual without the consent of the other Parties; however, the assigning Party shall provide to the other Parties 60 days written notice of the assignment, together with the name and address of the assignee.

12. INTEGRATION. This Agreement constitutes the entire Agreement by and among the Parties and shall supersede all prior agreements, representations and discussions, written or oral, pertaining to the subject matter hereof.

13. BINDING EFFECT. This Agreement shall binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors-in-interest and assigns.

14. COVENANT RUNNING WITH THE LAND. This Agreement is for the benefit of and is hereby deemed to be appurtenant to the respective subdivision lots described in Recital A

ACKNOWLEDGMENTS

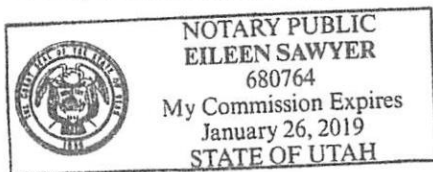
STATE OF UTAH)

:SS.

County of Weber

On the 5 day of June, 2015, appeared before me PROPERTY

OWNER 1A and PROPERTY OWNER 1B, who are personally known , or proved to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to this instrument, and who acknowledged that they executed the same.



Eileen Sawyer

NOTARY PUBLIC

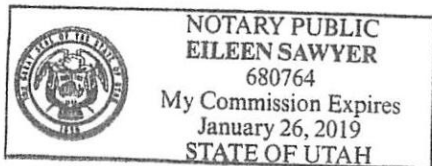
STATE OF UTAH)

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County of Weber

On the 5 day of June, 2015 appeared before me PROPERTY

OWNER 2A and PROPERTY OWNER 2B, who are personally known , or proved to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to this instrument, and who acknowledged that they executed the same.



Eileen Sawyer

NOTARY PUBLIC

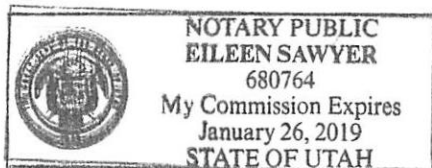
STATE OF UTAH)

:SS.

County of Weber

On the 5 day of June, 2015 appeared before me PROPERTY

OWNER 3A and PROPERTY OWNER 3B, who are personally known , or proved to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to this instrument, and who acknowledged that they executed the same.



Eileen Sawyer

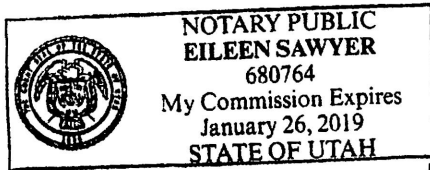
NOTARY PUBLIC

STATE OF UTAH)

:ss.
County of Weber

On the 5 day of June, 2015 appeared before me PROPERTY

OWNER 4A and PROPERTY OWNER 4B, who are personally known , or proved to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to this instrument, and who acknowledged that they executed the same.



Eileen Sawyer

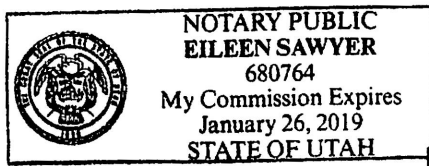
NOTARY PUBLIC

STATE OF UTAH)

:ss.
County of Weber

On the 5 day of June, 2015 appeared before me PROPERTY

OWNER 5A and PROPERTY OWNER 5B, who are personally known , or proved to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to this instrument, and who acknowledged that they executed the same.



Eileen Sawyer

NOTARY PUBLIC

Hereinabove set forth. It is intended that this Agreement shall run with said lands of the Parties and their respective title thereto, and shall be binding upon the Parties, and their respective heirs, successors and assigns.


IN WITNESS WHEREOF, the Parties have hereunto set their hands the say and year first above written.



Property Owner 1A

N/A

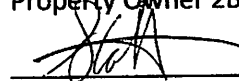
Property Owner 1B



Property Owner 2A



Property Owner 2B



Property Owner 3A

N/A

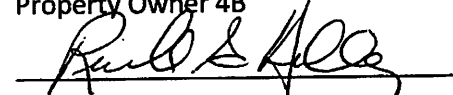
Property Owner 3B



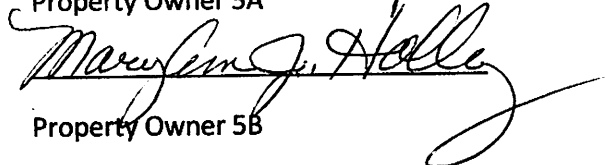
Property Owner 4A

N/A

Property Owner 4B



Property Owner 5A



Property Owner 5B