

JOINT USE, WELL SHARING AND EASEMENT AGREEMENT
Lots 10 & 11, Filing 1

This Joint Use, Well Sharing and Easement Agreement (hereinafter "Agreement") is entered into this ____ day of _____, 20__, by and between _____ whose address is 2070 Terri Lee Drive and _____, whose address is 15520 Sara Jo Lane, (hereinafter "Parties"). This Agreement shall be identified in the final plat and in the deeds of lot(s)/tract(s) Lots 10 and 11 in Filing 1 in the Davis Ranch subdivision and in any other recorded instrument relating to these lot(s)/tract(s) individually or to the subdivision as a whole.

RECITALS

A. ~~Michael O'Neil owns the water rights and SOCO Properties LLC owns the real property legally described in Exhibit A as Lot 10 Davis Ranch Subdivision Filing 1 and Michael O'Neil owns the underlying water rights.~~

B. Michael O'Neil owns both the underlying water rights and the real property legally described as Lot 11 Davis Ranch Subdivision Filing 1.

C. The well, Well Permit No. _____ is located on lot/tract _____ and is subject to the approval and conditions set forth by the Colorado Division of Water Resources and state law. The parties are desirous of entering into an agreement regarding their ownership and responsibilities concerning the well and water usage, for this Agreement, the distribution system to supply domestic water to their respective properties, and for the sharing of the cost of operating and maintaining the well and distribution system and responsibility of said Agreement and distribution system

NOW, THEREFORE, in consideration of the above recitals, and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS:

A. TRACT OWNER OR OWNERS: The record owner in fee simple of either lot/tract who has, by his/her, or any prior owner's signature hereon subscribed to this Agreement, ~~Regardless of whether lot/tract ownership is held in joint tenancy or tenancy in common, for purposes of voting, there shall be one vote per lot/tract.~~

B. WELL: The well, is to be located on the _____ property at the location described on the well permit, Well Permit No. _____, a copy of which well permit is attached hereto as Exhibit C.

C. EASEMENT: An easement ~~as is reasonably needed~~, which shall be created on one or more lot(s)/tract(s), ~~and shall be represented and depicted on the final plat, for the purpose of accessing, constructing, and maintaining effectuating the terms of this Agreement~~ a Joint Use, Well Sharing and Easement Agreement. This legal easement shall be defined, and properly executed and recorded, together with this Agreement, in the records of the El Paso County Clerk and Recorder, by the owner of the lot(s)/tract(s) upon which said easement and well is located.

D. LOT(s)/TRACT(s): The _____ lot(s)/tract(s) which have been properly and legally platted are known as lot(s)/tract(s) _____, _____, _____, and _____, _____ Subdivision, El Paso County, Colorado and are referred to herein interchangeably as lot(s)/tract(s).

2. SERVICE/APPLICATION:

The Parties each own an equal interest (50%) in the well, its water rights and entitlement thereunder, ~~which shall to be shared equally between them, and hereby so convey to one another.~~ The Parties' ownership interest in the well is coupled with their title to each lot and cannot be severed from ownership of their respective properties without ~~the Parties owners agreeing in writing to withdraw or terminate this Agreement or an owner setting forth in writing such owner's withdraw from the Agreement as set forth herein.~~ The Well is subject to the conditions set forth in Well Permit No. _____ and shall include any wiring, electrical and plumbing fixtures and fittings, pipe, meters, pressure or storage tank systems, equipment pit, pump, motor, and any other well equipment and appurtenances located within the well site easement as necessary for the delivery of the water hereunder. The individual water distribution lines to the Parties respective properties, as well as any appurtenance located outside of said easement, shall be considered the personal property and responsibility of the individual lot owner supplied water therefrom.

At such time as the first lot owner requires water from the well, then the well, the well drilling, casing, well equipment and other infrastructure necessary to the diversion and distribution of water from the well, and a totalizing flow meter will be installed by Michael W. O'Neil (the developer). At the time of closing on the land, the buyer will pay for ~~one half (1/2+2 (one half))~~ of the total costs for the well as determined by the developer, Michael W. O'Neil. The buyer of the lot will also bear one-hundred percent (100%) of the costs of connecting to the ~~well source of water which will be at the lot line.~~ Each Party shall, at their own expense, keep their infrastructure from the well site to their property in good condition and repair for the receipt and delivery of water from the well. As each of the ~~two~~ four lots commence use of the well, the lot owner will pay his portion of the electric bill, which will be divided by the number of lots that have tapped into the water supply.

Detailed written records concerning the shared portions of the well system, together with copies of all receipts pertinent thereto, shall be distributed to all owners to document and establish the amounts to be paid to keep the well and shared system operational and in good repair.

The parties shall jointly operate and control the well for the distribution of water to them in accordance and compliance with this Agreement, the well permit, and all applicable laws, codes, rules and regulations. The parties shall equally share in the costs and expenses for the maintenance, replacement, operation, repair, ~~replacement~~, improvement, and redrilling of the well, pump, and other appurtenant well equipment and improvement necessary in order to effectively and efficiently provide water to their respective water delivery points at the well site. These expenses include any water quality treatment, water storage tank and well house. The typical ongoing maintenance and operational costs shall be coordinated between the parties and timely paid. Each lot owner shall be solely responsible for and shall immediately repair any and all physical damage, which they may cause to the well, whether resulting from their connection to the well or otherwise. Upon reasonable notice, each owner shall be entitled, without liability or responsibility to the other Party, to temporarily interrupt the flow of water from the well as necessary for their connection to the well or for repairs.

When any work is needed for the well beyond the typical ongoing maintenance and operational costs, the parties shall first attempt to agree on the scope, manner and expense of the work, unless an emergency exists. Emergency work to the well shall be limited to the extent necessary to meet the emergency of the situation. All construction, maintenance or other work to be performed hereunder, whether for the jointly or individually maintained and operated structures and equipment, shall be performed in a workmanlike manner and in compliance with all applicable laws, codes, rules and regulations. All such work shall be paid for in a timely manner. Work performed by a Party or at the direction of any Party that is a proper shared expense under the terms of this Agreement may, after ten (10) days written notice to the other Party, make an itemized demand on the other Party for the payment of that Party's proportionate share. Reimbursement for proper shared expenses shall then be due and payable upon such demand. Amounts due which are not paid within thirty (30) days after the due date shall bear interest at eighteen percent (18%) per annum. Should any Party fail or refuse to pay their proportionate share of the proper shared costs and expenses incurred under the terms of this Agreement, then the other Party paying the refusing Party's share shall be entitled to enforce that refusing Party's obligation for payment and obtain judgment therefore for the amounts due, plus ~~and to shut off the water to the well and to the house of the refusing Party.~~ any controversy, dispute, or question arising out of, in connection with, or in relation to this Agreement or its interpretation, performance of non-performance, or any breach thereof shall be determined by arbitration in Colorado Springs, Colorado, conducted in accordance with the existing rules of the Colorado Uniform Arbitration Act (§ 13-22-201, et seq. C.R.S.) No owner shall be entitled to

Commented [RF1]: This is a very concerning provision. I would never agree to a provision like this as it instantly creates a new litigation tree that is best to avoid. Judgements and liens are the best approach to handling uncollected payments, not shutting off water to a house.

compensation from the other owner for administrative time or personal time expended in the management or operation of the well.

3. USE OF WATER: Water from the well shall be used by the Parties only for ~~household domestic use, lawn and garden irrigation yard maintenance, and for stock watering for up to two horses as~~ allowed under the well permit. The Parties shall comply with all terms, provisions and requirements of the well permit, Well Permit No. _____ and applicable laws and regulations governing the use of the well. Allowed use under the well permit shall be split equally between the lots. Two examples of such split: (1) if the well permit allows 1 annual acre-foot of use, each lot will be allowed 0.5 annual acre-feet of use; and (2) if the well permit allows the watering of up to four horses or equivalent livestock, each lot will be allowed two horses or equivalent livestock. ~~Under the existing well permit, each Party is annually entitled to .55 acre-feet. That entitlement shall consist of .27 acre-feet for in-house use; .03 acre-feet for up to 2 large domestic animals (13 gallons per day, per animal); and .25 acre-feet for the irrigation of lawn and garden.~~ Each Party shall use a non-evaporative septic tank and leach field for their wastewater disposal. Diversions under the well will be separately metered ~~to in order to keep total water usage properly allocated the total water usage~~ between the Parties. During any time of a physical shortage of water supply from the well, priority among the Parties shall first be given to their in-house domestic use, with curtailment of other permitted uses until each of their ~~domestic in-house domestic~~ needs are adequately met. The Parties agree to comply with the terms and provisions of the well permit, unless further limited by this Agreement.

Commented [RF2]: This may not be the condition of a new well permit. As such, it might be confusing to have this included.

4. GRANT OF EASEMENT: _____ hereby grants to _____ a nonexclusive, perpetual easement across the _____ property for the installation, construction, maintenance, improvement, repair and replacement of an underground water distribution pipeline from the well site to the _____ property. Said easement shall be for a width of _____ feet to be located _____ feet on each side of the centerline of the easement as shown on the recorded plat of _____. Said easement also includes the right of access to the water distribution pipeline within the easement area for the above-described purposes. In addition, _____ grants to _____ a nonexclusive, perpetual easement over, across and upon the _____ property for the location, construction, installation, maintenance, operation, and the redrilling and replacement of the well, the pump and other appurtenant well equipment and improvements as necessary to fulfill the terms of this Agreement, as said well site is also shown on the recorded plat of _____ at reception number _____. In the event that the well is relocated in the future, then the easements provided herein shall likewise be relocated as necessary to accommodate the new well location and pipelines, and the parties shall amend the Plat of _____ to reflect the relocated easement(s). Except for the well equipment and improvements, neither Party shall place any landscaping or

improvements within the easement areas. All work with the easements shall be performed in a workmanlike manner and in compliance with all laws, codes, rules and regulations pertaining to such work, and shall be paid for in a timely manner. Any disturbance to the surface of the easement area shall be restored to its previously existing condition.

5. TERM: The term of this Agreement shall run in perpetuity unless terminated in writing by mutual agreement of the Parties, or until one of those Parties properly withdraws from this Agreement as set forth herein.

6. TERMINATION: The Parties may terminate this Agreement by mutual agreement set forth in writing and signed by all Parties. After such termination, the Parties shall equally share in any costs associated with the ceasing of well operations including the dismantling of any well house, removal of equipment, and the capping of the well. Any costs for the removal of infrastructure from the well to the individual Party's lot shall be borne solely by that Party. The Parties shall execute and record the necessary deeds to eliminate any easements created to facilitate water provision from the well to the Parties.

7. ~~TERMINATION~~WITHDRAWAL: Either Party may withdraw from this Agreement in writing and have no further responsibility hereunder, except as provided below, upon obtaining a legal alternative source of water supply acceptable to El Paso County sufficient for their property and upon ceasing their use of the well and removing their separate pipeline and infrastructure. Prior to ~~termination~~withdrawal, the ~~owners~~Parties shall apply to the Colorado Division of Water Resources for a change of use of the well, stating which lot the well is to serve, the proposed amount of appropriation and irrigable area. Upon receipt of written approval from the State, the Party ~~terminating~~withdrawing from the Agreement shall execute and record with the El Paso County Clerk and Recorder a quitclaim deed in favor of the Party ~~upon~~whose lot will continue to be served by the well ~~is located~~. Said deed shall identify the easement, this Agreement, the Well Permit Number and the intention of the ~~Party to withdraw from the Agreement~~Parties to terminate the same. Upon withdrawal by a Party, ownership of the well shall vest in the other Party, and any easements for the benefit of the remaining Party shall continue in place.

7. ENTIRE AGREEMENT: This Agreement represents the entire agreement of the Parties with respect to the subject matter covered herein. All negotiations, considerations, representations and understanding between the Parties are incorporated and merged herein.

8. AMENDMENT: This Agreement may be modified or altered at any time by a statement signed by all Parties hereto and recorded in the records of the El Paso County Clerk and Recorder.

9. ATTORNEY'S FEES: In the event of any dispute between the Parties concerning this Agreement, or in the event of any action to enforce this Agreement or to collect damages on account of any breach of the obligations provided for herein, the prevailing Party shall be entitled to recover from the other Party, all costs and expenses, including reasonable attorneys' fees, incurred in such litigation as well as all additional costs of collecting any judgment rendered in such action.

10. ASSIGNMENT: This Agreement may be assigned by either Party only to a purchaser or transferee of their respective properties. Upon such assignment and the assumption of this Agreement by the purchaser or transferee, the assignor shall be released from any future obligations hereunder. Such assignment and assumption shall be recorded in the records of the El Paso County Clerk and Recorder.

11. SEVERABILITY: Unenforceability of any provision contained in this Agreement shall not affect or impair the validity of any other provision of this Agreement.

12. BINDING EFFECT: All current and future record owners of the subject properties shall be bound by this Agreement. The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit of the Parties hereto as well as their respective personal representatives, heirs, successors and assigns. The Parties acknowledge that this Agreement touches concerns, benefits and burdens the following properties:

1. Lot 10, Filing 1
2. Lot 11, Filing 1

and also the well and its water rights, and shall be a covenant running with those lands and water rights.

13. RECORDING: The Agreement shall be recorded with the El Paso County Clerk and Recorder.

IN WITNESS WHEREOF, the Parties have entered into this Joint Use, Well Sharing and Easement Agreement on the date and year set forth above.

OWNER OF LOT _____

OWNER OF LOT _____

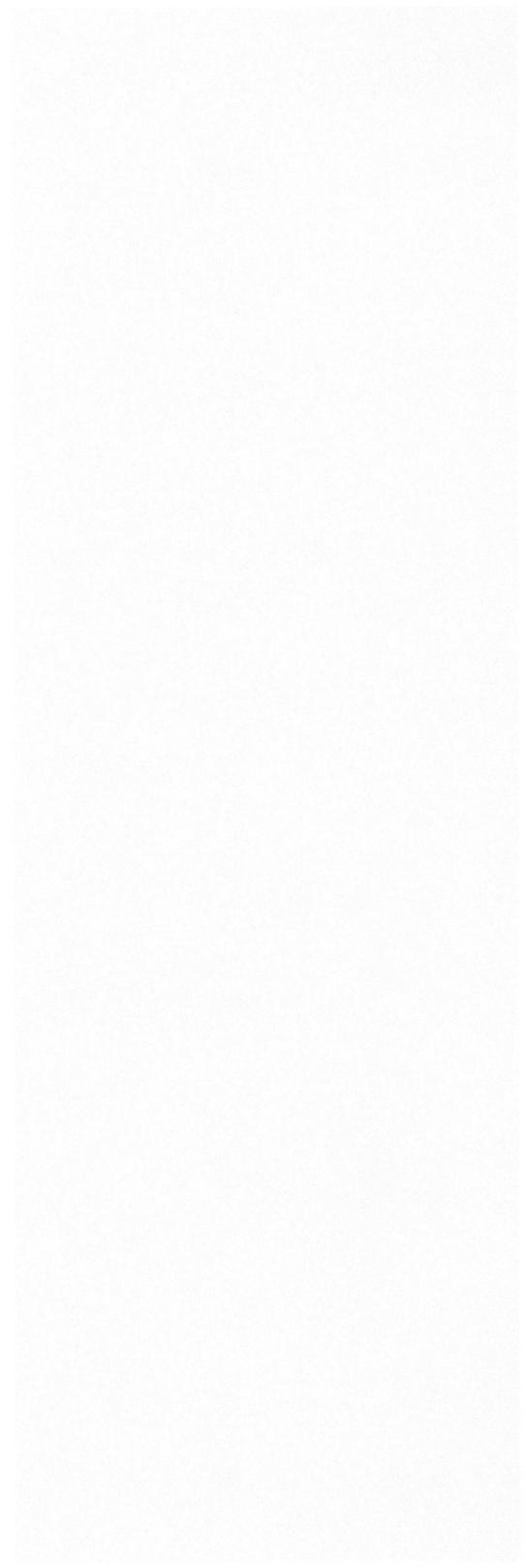
STATE OF COLORADO)
)
COUNTY OF EL PASO)

Subscribed and sworn to and acknowledged before me this ____ day of _____, 20__, by _____, as _____ of lot _____.

Witness my official hand and seal.

Notary Public

My Commission Expires: _____



STATE OF COLORADO)
)
COUNTY OF EL PASO)

Subscribed and sworn to and acknowledged before me this ____ day of _____, 2001, by _____, as _____ of lot _____.

Witness my official hand and seal.

Notary Public

My Commission Expires: _____

