



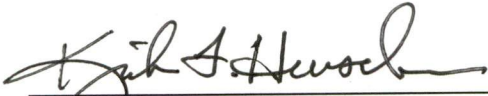
**RESOLUTION 11-01-2017**  
**A RESOLUTION APPROVING A WATER TRANSFER AND**  
**DEDICATION AGREEMENT FOR THE BELLA VISTA**  
**DEVELOPMENT**

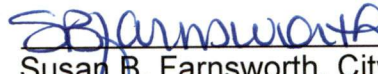
**BE IT HEREBY RESOLVED:**

**SECTION 1:** The attached document represents the Water Transfer and Dedication Agreement for the Bella Vista Development.

**SECTION 2:** This Resolution shall become effective upon passage.

Approved on this 1<sup>st</sup> day of November, 2017.

  
\_\_\_\_\_  
Kirk F. Hunsaker, Mayor

  
\_\_\_\_\_  
Susan B. Farnsworth, City Recorder



## WATER TRANSFER AND DEDICATION AGREEMENT

THIS WATER TRANSFER AND DEDICATION AGREEMENT (the "Agreement") is entered into as of the 1<sup>st</sup> day of November 2017, by and between Bella Vista Development AKA Suzie B, LLC, a Utah Limited Liability Company (hereinafter referred to as the "Petitioner"), and Santaquin City, a fourth class city of the State of Utah (hereinafter referred to as the "City"), (together, the "Parties").

### RECITALS

WHEREAS, Petitioner owns real property located within Santaquin City (the "Property"), which is more particularly described in Exhibit A;

WHEREAS, the City owns and operates a water system, including water sources, and infrastructure for the delivery of culinary and irrigation/secondary water to residents, businesses and other entities in and near Santaquin City; and

WHEREAS, Petitioner desires to develop its Property as a residential development; and

WHEREAS, to comply with City development requirements, Petitioner must dedicate to the City, sufficient water rights to meet City Code for its development and has appeared before the City Council seeking its approval to initiate a transfer of water rights being discussed herein ("Water Rights"), which Water Rights are more particularly described in Exhibit B, into Santaquin City's name and within the City's service area.

WHEREAS, the Water Rights transfer falls within the guidelines of the City Code and has been preliminarily approved by the City Council on (October 6, 2017) subject to the formalization of said approval into this written Agreement and the approval of all state and local entities required for use of the Water Rights the City's municipal water system; and

WHEREAS, City and Petitioner now desire to enter into a mutually beneficial agreement for the transfer of Water Rights to the City as part of the process for the residential development of the Property according to the terms and conditions.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants hereafter set forth, the sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

### SECTION I. WATER RIGHTS TRANSFER, COSTS AND INDEMNIFICATION

1.1 **Water Rights Transfer and Dedication.** Based on Petitioner's stated intention to pursue development of the Property, which will require dedication of Water Rights pursuant to Santaquin City Code Title Eight Chapter One the City Council agrees to allow Petitioner to transfer Water Rights into the City's ownership, subject to the approval of the State Engineer, as a credit toward water dedication requirements for development of the Property.

1.2 **Acceptance of Water Rights by the City.** All water rights transferred or dedicated to the City by Petitioner must be approved by the Utah division of water rights: a) for diversion from one or more



of the city's sources, or from another source acceptable to the City at its sole discretion; and b) for municipal use within the City's service area. The City shall have sole discretion as to the acceptability of the quantity and quality of the water as well as the suitability of the water right or water shares. The City will cooperate with the property owner in filing the required applications with the Utah division of water rights, but the property owner shall be solely responsible for prosecuting any such applications and the City reserves the right to protest any applications which may interfere with its existing rights.

1.3 **Cost of Water Rights Transfer.** Petitioner will be solely responsible for the transfer of the Water Rights to the City, including but not limited to application(s) to the State Engineer and all documentation and proceedings necessary for the transfer, including any change in the point of diversion and other actions necessary to accomplish the purposes of this agreement (the "Transfer"). Petitioner will pay all costs associated with the Transfer, including reimbursement of all costs and attorney's fees of the City associated with the Transfer.

1.4 **Indemnification.** Petitioner will indemnify and hold harmless the City and all of its officers, agents, and employs for any claims of third-parties related to the Transfer and dedication of the Water Rights and any and all claims arising from City's rights and obligations under this Agreement. In the event that any person challenges this Agreement or the Development contemplated herein, upon request by Petitioner, or with notice to Petitioner and Petitioners' consent or acquiescence, the City may undertake to defend this Agreement or the Development. In such a case, Petitioners agree that they shall be jointly and severally liable for all legal fees, including attorneys' fees, expenses, and/or court costs incurred by the City upon presentation to the Petitioners of an itemized list of costs, expenses, and fees.

1.5 **Termination.** In the event that any of the foregoing conditions are not completed within six months of the execution of this Agreement, the City may terminate this Agreement with no further obligation to Petitioner.

## SECTION II. GENERAL PROVISIONS

2.1 **Covenants Running with the Land.** The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto. All successors in interest shall succeed only to those benefits and burdens of this Agreement which pertain to the portion of the Property to which the successor holds title, or which would apply to the Petitioner through whom the interest was acquired. Such titleholder is not a third party beneficiary of the remainder of this Agreement or to zoning classifications and benefits relating to other portions of the Property.

2.2 **Transfer of Property.** Petitioner shall have the right to assign or transfer all or any portion of its rights and obligations under this Agreement, but only to the party or parties acquiring the right, title and interest in all of the Property. In the event of an assignment, the transferee shall succeed to all of Petitioner's rights and obligations under this Agreement.

2.3 **No Agency, Joint Venture or Partnership.** It is specifically understood and agreed to by and among the Parties that: (i) City and Petitioner hereby renounce the existence of any form of agency



relationship, joint venture or partnership between City and Petitioner; and (ii) nothing contained herein shall be construed as creating any such relationship between City and Petitioner.

2.4 **Consent.** In the event this Agreement provides for consent from the City or the Petitioner, such consent shall be deemed to be given thirty (30) days after consent is requested in writing in the event no response to the request is received within that period. All requests for consent shall be made in writing.

### SECTION III. MISCELLANEOUS

3.1 **Incorporation of Recitals, Introductory Paragraphs, and Exhibits.** The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits referred to or attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

3.2 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

3.3 **Severability.** If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

3.4 **Construction.** This Agreement has been reviewed and revised by legal counsel for Petitioner, and by legal counsel for the City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

3.5 **Further Assurances, Documents, and Acts.** Each of the Parties agrees to cooperate in good faith with the others, and to execute and deliver such further documents, and to take all further acts reasonably necessary in order to carry out the intent and purposes of this Agreement and the actions contemplated hereby. All provisions and requirements of this Agreement shall be carried out by each party as allowed by law.

3.6 **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned by the Petitioner to any other party, individual or entity without assigning the obligations as well as the rights under this Agreement. The rights of the City under this Agreement shall not be assigned.

3.7 **Governing Law, and Dispute Resolution, and Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

3.7.1 **Mediation.** Any and all disputes arising out of or related to this Agreement or the Parties' performance hereunder shall be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation or any other binding or adjudicative dispute resolution process. The parties shall: (i) mediate in good faith; (ii) exchange all documents which either believes to be relevant and material to the issue(s) in dispute; (iii) exchange written position papers stating their position on the dispute(s) and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the dispute(s), and; (iv) engage and cooperate in such further discovery as the parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the Parties. Venue of the

mediation shall be Utah County, State of Utah. In the event the Parties are unable to agree upon a mediator, the mediator shall be appointed by a court of competent jurisdiction. This provision shall be specifically enforceable according to its terms, including but not limited to an action to compel mediation. The prevailing party in any action to enforce, in whole or in part, this mediation clause or in any subsequent arbitration or mediation shall be entitled to reimbursement of attorneys' fees and costs incurred in said action.

**3.7.2 Default Litigation.** If any Party hereto is required to engage the services of legal counsel by reason of the default of another Party, the nondefaulting Party shall be entitled to receive its costs and reasonable attorneys' fees, both before and after judgment and whether or not suit be filed or if the provisions of this Agreement are enforced through arbitration. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal and in any proceedings under any present or future federal bankruptcy act or state receivership act.

**3.8 Notices.** Any notice or communication required hereunder between the Parties must be in writing and may be given either personally or by registered or certified mail, return receipt requested, or by facsimile. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice is given when delivered to the party to whom it is addressed. If given by facsimile to the address and number for such party set forth below (provided, however, that the notice is not effective unless a duplicate copy of the facsimile notice is promptly given by one of the other methods permitted under this paragraph), the notice is deemed to have been given upon receipt by the other Party. Any Party hereto may at any time, by giving ten (10) days written notice to other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at the address set forth below:

**If to City:**

*Santaquin City Recorder  
275 West Main Street  
Santaquin, UT 84655  
Facsimile: (801) 754-3526*

**Copy to:**

*Brett B. Rich, Esq.  
Nielsen & Senior  
1145 East 800 South, Suite 109  
Orem, Utah 84097  
Email: bbr@ns-law.com*

**If to Petitioner:**

*Bella Vista Development AKA Suzie B, LLC  
c/o Gary Bringhurst, Blue Chip Group*



1911 South 3850 West  
Salt Lake City, Utah 84104

3.9 **Counterparts and Exhibits.** This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of six (6) pages and two (2) additional exhibit(s), which constitute the entire understanding and agreement of the Parties to this Agreement. The following exhibit is attached to this Agreement and incorporated herein for all purposes:

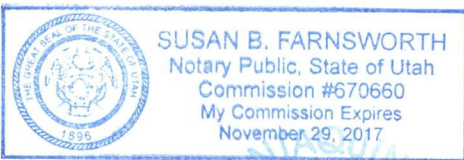
Exhibit A	Legal description of the Property
Exhibit B	Description of Water Rights


IN WITNESS WHEREOF, this Agreement has been executed by the Parties, by persons duly authorized to execute the same as of the 08 day of November, 2017.

**BELLA VISTA DEVELOPMENT  
AKA SUZIE B, LLC**

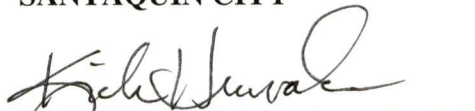
  
Kevin Eads, Manager Suzie B, LLC

On this 08 day of November, 2017 personally appeared before me Kevin C. Eads, who upon oath affirmed to me that he is authorized to execute this Agreement on behalf of Bella Vista Development aka Suzie B, LLC and who did execute the same.




  
Notary Public

SANTAQUIN CITY

  
KIRK HUNSAKER, Mayor

ATTEST:

  
Susan B. Farnsworth, City Recorder

**EXHIBIT A**

PARCEL A: UTAH COUNTY SERIAL NUMBER: 29:041:0097

Legal Description: COMMENCING NORTH 1745.58 FT AND WEST 26.52 FT FROM THE SOUTH 1/4 CORNER OF SECTION 36, TOWNSHIP 9 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; THENCE SOUTH 0° 19' 44" EAST 1085.43 FEET; THENCE SOUTH 88° 18' 37" WEST 549.75 FEET; THENCE NORTH 0° 19' 44" WEST 1098.46 FEET; THENCE NORTH 89° 40' 16" EAST 549.59 FEET TO POINT OF BEGINNING AREA ±13.777 ACRES.

PARCEL B: UTAH COUNTY SERIAL NUMBER: 29:041:0096

COMMENCING NORTH 1742.47 FEET AND WEST 576.1 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 36, TOWNSHIP 9 SOUTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN; THENCE SOUTH 0° 19' 44" EAST 1098.49 FEET; THENCE SOUTH 88° 18' 35" WEST 37.71 FEET; THENCE SOUTH 1° 48' 51" WEST 203.32 FEET; THENCE WEST 320.28 FEET; THENCE NORTH 0° 1' 53" EAST 344.59 FEET; THENCE NORTH 0° 1' 53" EAST 593.15 FEET; THENCE NORTH 89° 40' 16" EAST 313.94 FEET; THENCE NORTH 0° 19' 44" WEST 363 FEET; THENCE NORTH 89° 40' 16" EAST 45.74 FEET TO THE POINT OF BEGINING. AREA ±8.002 ACRES.

**EXHIBIT B**

Water Right Description Preliminarily Approved by the City Council:



# REQUEST TO SEGREGATE A WATER RIGHT

STATE OF UTAH

Rec. by # 1743

Fee Amt \$ 50.00

Receipt # 17-03594

This request is hereby filed for the purpose of segregating a water right on the records of the State Engineer pursuant to Section 73-3-27 Utah Code Annotated.

\* NEW WATER RIGHT NUMBER: 55 - 12855 (\*Item to be completed by the Division of Water Rights)

1. WATER RIGHT TO BE SEGREGATED: **55-12763** Application/Claim No: **D886**

2. OWNERS OF 55-12763 TO BE INCLUDED IN NEW WATER RIGHT:

Owner/Address

Jay W Garlick  
1016 North Fort Canyon Road, Alpine UT 84004

3. QUANTITY AND USES OF WATER:

	Currently in 55-12763	Amount To Be Segregated
FLOW and/or QUANTITY:	44.75 acft	41.25 acft
IRRIGATION:	11.1875 acres	10.3125 acres

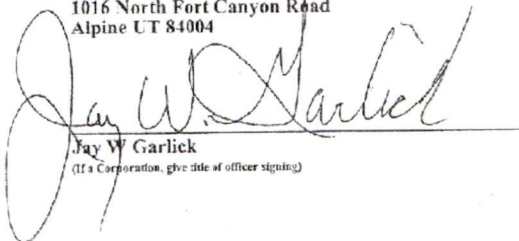
4. ACCOMPANYING CHANGE APPLICATION TO BE SEGREGATED: **a41582**

	Currently in a41582	Amount To Be Segregated
FLOW and/or QUANTITY:	44.75 acft	41.25 acft
MUNICIPAL:	Mapleton	Undetermined Municipal Use

- EXPLANATORY:** *Please provide additional details that may be necessary to properly segregate the water right. If necessary, please attach additional pages. If needed, provide a legal description of the place of use of the water right and the property affected by this segregation.*
- SIGNATURES:** *If the applicant is a corporation or other organization, the signature must be in the name of such corporation or organization by its proper officer, or in the name of the partnership by one of the partners, and the names of the other partners shall be listed. If there is more than one applicant, a power of attorney, authorizing one to act for all should accompany the application.*

The undersigned hereby acknowledges that, even though assistance in the preparation of this form may have been provided by employees of the Division of Water Rights, all responsibility accuracy and completeness of the information contained herein, as well as, the **DECISION TO SEGREGATE THIS WATER RIGHT** rests with the undersigned owner(s).

Jay W Garlick  
1016 North Fort Canyon Road  
Alpine UT 84004



Jay W Garlick  
(If a Corporation, give title of officer signing)

Request To Segregate a Water Right

# APPLICATION FOR PERMANENT CHANGE OF WATER

STATE OF UTAH

Rec. by \_\_\_\_\_

Fee Amt. \$200.00

Receipt # \_\_\_\_\_

For the purpose of obtaining permission to make a permanent change of water in the State of Utah, application is hereby made to the State Engineer, based upon the following showing of facts, submitted in accordance with the requirements of Section 73-3-3 Utah Code Annotated 1953, as amended.

CHANGE APPLICATION NUMBER:

WATER RIGHT NUMBER: 55-12855

(c14338NJAKC)

\*\*\*\*\*  
This Change Application proposes to change the POINT(S) OF DIVERSION, PLACE OF USE, and NATURE OF USE.  
\*\*\*\*\*

## 1. OWNERSHIP INFORMATION.

- A. NAME: Jay W Garlick  
ADDRESS: 1016 North Fort Canyon Road  
Alpine UT 84004
- NAME: Santaquin City Corporation  
ADDRESS: 45 West 100 South 275 West Main Street  
Santaquin, UT 84655  
REMARKS: Interested Party

B. PRIORITY OF CHANGE: FILING DATE:

C. EVIDENCED BY: 55-12855 (D886)

\*-----\*  
\* DESCRIPTION OF CURRENT WATER RIGHT: \*  
\*-----\*

## 2. SOURCE INFORMATION.

- A. QUANTITY OF WATER: 41.25 acre-feet
- B. SOURCE: Ovard Slough COUNTY: Utah
- C. POINT(S) OF DIVERSION.

POINTS OF DIVERSION -- SURFACE:  
(1) N 1,825 feet W 368 feet from E $\frac{1}{4}$  corner, Section 25, T 5S, R 1E, SLBM  
(2) N 763 feet W 342 feet from E $\frac{1}{4}$  corner, Section 25, T 5S, R 1E, SLBM  
(3) N 240 feet W 349 feet from E $\frac{1}{4}$  corner, Section 25, T 5S, R 1E, SLBM  
(4) N 2,144 feet W 372 feet from E $\frac{1}{4}$  corner, Section 25, T 5S, R 1E, SLBM

Permanent Change

3. WATER USE INFORMATION.

IRRIGATION: from Apr 1 to Oct 31. Acres: 10.3125 Supplemental Acres: 15.4200.

4. PLACE OF USE.

(Which includes all or part of the following legal subdivisions:)

BASE	TOWN	RANG	SFC.	NORTH-WEST ¼				NORTH-EAST ¼				SOUTH-WEST ¼				SOUTH-EAST ¼			
				NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE	NW	NE	SW	SE
SL	5S	1E	25				***					***				***		X	
SL	5S	2E	30				***				***	X			***				

THE FOLLOWING CHANGES ARE PROPOSED:

5. SOURCE INFORMATION.

A. QUANTITY OF WATER: 41.25 acre-feet

B. SOURCE: Underground Water Wells (2) COUNTY: Utah

C. POINT(S) OF DIVERSION. Changed as Follows:

POINTS OF DIVERSION -- UNDERGROUND:

- (1) S 2,820 feet W 2,219 feet from N¼ corner, Section 01, T 10S, R 1E, SLBM  
WELL DIAMETER: 16 inches WELL DEPTH: 461 feet
- (2) N 180 feet E 2,520 feet from Sw corner, Section 03, T 10S, R 1E, SLBM  
WELL DIAMETER: 16 inches WELL DEPTH: 600 feet

D. COMMON DESCRIPTION: Santaquin City Serv. Area

6. WATER USE INFORMATION. Changed as Follows:

MUNICIPAL: from Jan 1 to Dec 31. Santaquin.

7. PLACE OF USE. Changed as Follows:

The Service Area of Santaquin

8. SIGNATURE OF APPLICANT(S).

The undersigned hereby acknowledges that even though he/she/they may have been assisted in the preparation of the above-numbered application through the courtesy of the employees of the Division of Water Rights, all responsibility for the accuracy of the information contained herein including maps and other documents attached, at the time of filing, rests with the applicant(s).



*Jay W. Garlick*

Jay W. Garlick

*Norm Beady, P.E. Civil Engineer*

Norm Beady, P.E. Civil Engineer  
Santaquin City Corporation