




RESOLUTION 09-03-2018
A RESOLUTION APPROVING A WATER TRANSFER AND
DEDICATION AGREEMENT WITH L & V PROPERTYS,
LLC. AS REPRESENTED BY EVAN JOHNSON

BE IT HEREBY RESOLVED:

SECTION 1: The attached document represents the Water Transfer and Dedication Agreement with L & V Properties, LLC as represented by Evan Johnson.

SECTION 2: This Resolution shall become effective upon passage.

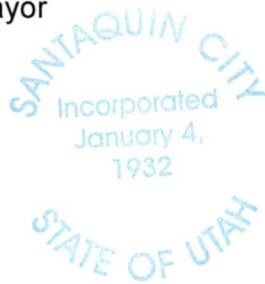
Approved on this 18th day of September, 2018.



Kirk F. Hunsaker, Mayor



Susar B. Farnsworth, City Recorder



WATER TRANSFER AND DEDICATION AGREEMENT

THIS WATER TRANSFER AND DEDICATION AGREEMENT (the "Agreement") is entered into as of the 18th day of September 2018, by and between L & V Properties, LLC, a Utah Limited Liability Corporation (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 certain water rights as described in Exhibit A hereto y (the "Water Rights");

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, the City also uses water rights owned by Santaquin Special Service District, a political subdivision of the state of Utah (the "District"), in the operation of the City's water system; and

WHEREAS, Developers must dedicate to the City or the District, sufficient water rights to meet City Code for development; and

WHEREAS, Petitioner desires to dedicate water rights to help satisfy the water dedication requirements of third-party developers of real property within Santaquin City; and

WHEREAS, Petitioner has appeared before the City Council seeking its approval to initiate a transfer of Water Rights into the name of the District to be used within the City's service area; and

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

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 dedicate water rights to satisfy future development requirements, which require third-party developers to dedicate Water Rights pursuant to Santaquin City Code Title Eight Chapter One, the City agrees to allow Petitioner to transfer Water Rights representing 600 acre feet of water, to the District, subject to the approval of the State Engineer, as a credit toward water dedication requirements for future development of property within Santaquin City.

1.2 **Acceptance of Water Rights by the District.** All water rights transferred or dedicated to the District 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. The City will cooperate with the Petitioner in filing the required applications with the Utah Division of Water Rights, but the Petitioner 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 District, 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 and the District associated with the Transfer.

1.4 **Water Credits for Development.** Upon approval of the State Engineer, and Petitioner's transfer and conveyance of 600 acre feet of water right to the District, The City will issue a water credit to Petitioner of 588 acre feet of water, which Petitioner may use toward satisfaction of the City's water dedication requirements as outlined in Santaquin City Code Title Eight Chapter One. These water credits will not expire; however, Petitioner shall be solely responsible for all risks associated with redemption and marketability of the water credits. Neither the City nor the District shall have any obligation to reimburse any party for water credits which are not used.

1.5 **Indemnification.** Petitioner will indemnify and hold harmless the City and the District 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 Petitioner's consent or acquiescence, the City may undertake to defend this Agreement or the Development. In such a case, Petitioner shall be liable for all legal fees, including attorneys' fees, expenses, and/or court costs incurred by the City and the District upon presentation to the Petitioner of an itemized list of costs, expenses, and fees.

1.6 **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.

1.7 **30 Day Acceptance/Rejection.** Upon approval of the State Engineer, District and Petitioner shall have 30 days to either accept or reject the approved Memorandum Decision (approval) from the State Engineer. Within that time period, should either Party deem the approved Memorandum Decision as unacceptable, for any reason or no reason whatsoever, and provide notice thereof to the other Party, this agreement will be deemed Void. Upon the expiration of said 30-day period, where no acceptance or rejection has taken place by either party, both parties shall accept the approved Memorandum Decision (approval) from the State Engineer.

SECTION II. GENERAL PROVISIONS

2.1 **Transfer of Property.** Petitioner shall have the right to assign or transfer all or any portion of its water right credit and obligations under this Agreement. In the event of an assignment or transfer, the assignee or transferee shall succeed to all of Petitioner's rights and obligations under this Agreement.

2.2 **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, or between District and Petitioner; and (ii) nothing contained herein shall be construed as creating any such relationship between City or District, and Petitioner.

2.3 **Non-Exclusivity.** Nothing in this Agreement shall be construed to prevent or preclude the City or the District from acquiring or accepting water for present or future property development, or for any other water requirement of the City, from any source, or sources other than those described in this Agreement. Neither City nor District shall be under any obligation to assist Petitioner in the sale or promotion of the water rights described in Exhibit A and shall be free to enter into agreements similar to this Agreement with other water providers without any prior notice, obligation, or liability to Petitioner. Petitioner's right to provide water credits to developers or others through this Agreement is solely the responsibility of, and shall be at the discretion of Petitioner.

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
P.O. Box 970663
1145 East 800 South, Suite 110
Orem, Utah 84097
Email: bbr@ns-law.com


If to Petitioner:

Les Phillips – Manager of L & V Properties, LLC,
P.O. Box 190
Elberta, Utah 84626

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 one (1) 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 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 21 day of Sept, 2018.

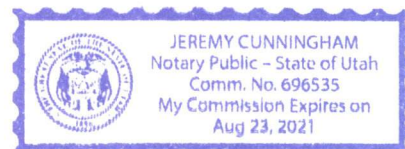
 L & V Properties, LLC
Les Phillips - Manager L & V Properties LLC

Les Phillips – Manager of L & V Properties, LLC

On this 21 day of Sept, personally appeared before me Leslie Phillips, who upon oath affirmed to me that he is authorized to execute this Agreement on behalf of L & V Properties, LLC and who did execute the same.

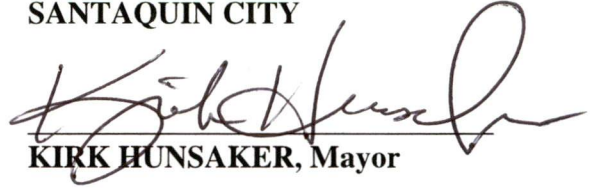


Notary Public





SANTAQUIN CITY



KIRK HUNSAKER, Mayor

ATTEST:



Susan B. Farnsworth, City Recorder

EXHIBIT A
(Description of Water Rights)

STATE OF UTAH -- DIVISION OF WATER RIGHTS -- DATA PRINT OUT for 53-1773(A33374)

(WARNING: Water Rights makes NO claims as to the accuracy of this data.) RUN DATE: 09/21/2018 Page 1

WATER RIGHT: 53-1773 APPLICATION/CLAIM NO.: A33374 CERT. NO.: CERTIFICAT

OWNERSHIP*****

NAME: L & V Properties L.L.C.
 ADDR: P.O. Box 190
 Elberta, Utah 84626
 INTEREST: 100%

DATES, ETC.*****

LAND OWNED BY APPLICANT? Yes COUNTY TAX ID#:
 FILED: 06/26/1961 PRIORITY: 06/26/1961 PUB BEGAN: IPUB ENDED: INEWSPAPER:
 ProtestEnd: IPROTESTED: [No] HEARNG HLD: ISE ACTION: [Approved] ActionDate: 02/01/1963 PROOF DUE:
 EXTENSION: IELEC/PROOF: [] ELEC/PROOF: 11/29/1999 CERT/WUC: 09/19/2001 LAP, ETC: I LAPS LETTER:
 RUSH LETTR: IRENOVATE: IRECON REQ: I TYPE: []

PD BOOK: [53-] I MAP: [] I PUB DATE:

Type of Right: Application to Appropriate Source of Info: Certificate Status: Certificate

LOCATION OF WATER RIGHT*****

FLOW: 600.0 acre-feet
 SOURCE: Underground Water Wells
 COUNTY: Utah COMMON DESCRIPTION:

POINTS OF DIVERSION -- UNDERGROUND:

- (1) S 3198 ft W 1173 ft from NE cor, Sec 32, T 8S, R 1W, SLBM
 DIAMETER OF WELL: 16 ins. DEPTH: 675 to ft. YEAR DRILLED: 1995 WELL LOG? Yes WELL ID#: 427097
- (2) S 3328 ft W 2488 ft from NE cor, Sec 32, T 8S, R 1W, SLBM
 DIAMETER OF WELL: 16 ins. DEPTH: 700 to ft. YEAR DRILLED: 1997 WELL LOG? Yes WELL ID#: 427096
- (3) N 583 ft W 1478 ft from SE cor, Sec 05, T 9S, R 1W, SLBM
 DIAMETER OF WELL: 16 ins. DEPTH: 823 to ft. YEAR DRILLED: 1970 WELL LOG? Yes WELL ID#: 427095
- (4) N 1687 ft W 3733 ft from SE cor, Sec 05, T 9S, R 1W, SLBM
 DIAMETER OF WELL: 16 ins. DEPTH: to ft. YEAR DRILLED: WELL LOG? No WELL ID#:

USES OF WATER RIGHT***** ELU -- Equivalent Livestock Unit (cow, horse, etc.) ***** EDU -- Equivalent Domestic Unit or 1 Family
 (The Beneficial Use Amount is the quantity of Use that this Water Right contributes to the Group Total.)

WATER USE GROUP NO. 233730. Water Rights Appurtenant to the following use(s):
 53-1277 (CERT), 1686 (CERT), 1763 (CERT), 1770 (CERT), 1771 (CERT), 1772 (CERT), 1773 (CERT)

IRRIGATION: Beneficial Use Amt: 150.0 acres of the Group Total of 592.1 PERIOD OF USE: 04/01 TO 10/31

##PLACE OF USE:	*-----NORTH WEST QUARTER-----*	*-----NORTH EAST QUARTER-----*	*-----SOUTH WEST QUARTER-----*	*-----SOUTH EAST QUARTER-----*	Section
	* NW NE SW SE *	* NW NE SW SE *	* NW NE SW SE *	* NW NE SW SE *	Totals
Sec 32 T 8S R 1W SLBM *	13.5000	24.4000*38.5000 19.7000 40.0000 31.7000*	6.2000	22.6000*36.4000 12.4000 40.0000 31.7000*	317.1000
Sec 05 T 9S R 1W SLBM *	21.5000	19.1000*39.9000 16.1000 37.1000 12.4000*	31.9000	7.3000*40.0000 20.6000 4.4000*	275.0000
				GROUP ACREAGE TOTAL:	592.1000

SEGREGATION HISTORY*****

This Right was Segregated from 53-1771, with Appl#: A33374, Approval Date: 02/01/1963 under which Proof is to be submitted.

This Right as originally filed:

FLOW IN CFS	QUANTITY IN * ACRE-FEET	-----W A T E R U S E S-----					
		IRRIGATED ACREAGE	STOCK (ELUs)	DOMESTIC (FAMILIES) (*)	MUNICIPAL	MINING ACRE-FEET	POWER
	600.0	150.0					

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APPLICATIONS FOR EXTENSIONS OF TIME WITHIN WHICH TO SUBMIT PROOF*****

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FILED: 12/02/1993|PUB BEGAN: 12/22/1993|PUB ENDED: |NEWSPAPER: The Payson Chronicle
ProtestEnd:02/04/1994|PROTESTED: [No]|HEARNG HLD: |SE ACTION: [Approved]|ActionDate:05/11/1994|PROOF DUE: 11/30/1999

*****E N D O F D A T A*****