

Contract # 46910

CONTRACT AND LIEN BETWEEN WEBER BASIN WATER CONSERVANCY DISTRICT

AND

Mountain Valley Ranch Home Owners Association

FOR THE SALE AND USE OF UNTREATED WATER

THIS CONTRACT, made this 10, day of April, 2006 between the

WEBER BASIN WATER CONSERVANCY DISTRICT, organized under the laws of the

State of Utah, herein styled "District", and

Mountain Valley Ranch Home Owners Association of Summit County, herein

styled the "Purchaser",

WITNESSETH:

WHEREAS, the Purchaser desires, by means of a well/spring to divert or withdraw underground water for domestic and miscellaneous purposes, which diversion will intercept and withdraw water that will require replacement, and the district has water to sell to the Purchaser to replace the water so intercepted and withdrawn; and

WHEREAS, Purchaser intends to utilize said water upon the following described lands:

SEE ATTACHED "EXHIBIT A"

and

WHEREAS, this contract and purchaser's obligation to pay for the water as set forth herein shall constitute a lien upon the real property described in Exhibit "A";

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ALAN SPRIGGS, SUMMIT CO RECORDER
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REQUEST: WEBER BASIN WATER CONSERVANCY D

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NOW, THEREFORE, in consideration of the mutual and dependent promises and covenants herein contained, it is hereby mutually agreed by and between the parties hereto as follows:

1. **SALE OF WATER:** The District for the price hereinafter specified, hereby sells and agrees to deliver in the manner and at the place hereinafter provided, and the purchaser hereby purchases the right to use in each calendar year untreated District water in amounts of 6.0 acre-feet, except the District will not be obligated to deliver water to the Purchaser as herein provided until satisfactory evidence is furnished that the use of this water as replacement water has been approved by the State Engineer of Utah.

2. **PLACE OF DELIVERY AND USE:** The water covered hereby is sold to the purchaser solely for the replacement of underground water diverted, withdrawn or to be diverted or withdrawn by said well or spring for domestic and miscellaneous use in and upon the following described lands in Summit County, Utah:

SEE ATTACHED "EXHIBIT A"

and for no other use or purpose. Its use as replacement water shall be subject to such rules and regulations as the State Engineer of Utah may prescribe.

Delivery of such water shall be as directed by the State Engineer or his representative at the outlet works of _____ Reservoir. The District shall have no obligation to provide works or facilities of any type to conduct such water from such point of delivery to its ultimate place of use. The Purchaser shall have no right to hold over or accumulate water from year to year, nor to sell or rent the water.

3. OBLIGATION OF PURCHASER TO PAY FOR WATER: For the purchase of the annual quantity of water which the District holds and will hold for the Purchaser as herein provided, the Purchaser shall pay to the District an annual amount to consist of the total of the following items:

(a) \$99.66 per acre-foot of water. Such price per acre-foot shall continue until such time as the District may otherwise determine; provided, only, that an increase in such price shall become operative only at the beginning of the next calendar year.

(b) A fair proportionate amount of estimated operating and maintenance charges of the District for the then calendar year. Such fair proportionate amount shall be determined each year by the Board of Directors of the District and the determination shall be final and conclusive.

The first annual payment under items (a) and (b) above shall be made by the Purchaser to the District concurrently with the execution hereof by Purchaser, and shall be in payment for water available for use of Purchaser in the calendar year in which this contract is approved by the Board of Directors of the District; provided, however, if such approval by the Board of Directors of the District is given on or subsequent to October 1 of the then year, the payment so made by Purchaser shall apply as a credit upon the amount accruing hereunder for the next succeeding calendar year, and no payment shall be required for the remainder of the calendar year in which such initial payment is made.

Succeeding annual payments shall be made by the Purchaser to the District on or before January 1 of each year thereafter. Each annual payment shall be made to the District whether or not all or any part of the water is called for or used hereunder.

Purchaser's obligation to pay for the water as described above exists irrespective of whether purchaser actually uses the water.

4. PENALTY FOR DELINQUENCY: Every installment or charge required to be paid to the District under this contract, which shall remain unpaid after its due date, shall bear interest from date of delinquency at the existing prime interest rate as of January 1 of each year.

5. REMEDIES OF DISTRICT IN CASE OF DEFAULT: The annual amount payable hereunder shall be and constitute a perpetual lien upon the lands herein above described. If the Purchaser shall fail to make any payment due hereunder on or before the due date, the District may refuse the delivery of water, or upon written notice to Purchaser, cancel this contract in its entirety, but either or both of these remedies are not exclusive, and the District may exercise any other remedy given by this contract or by law to enforce collection of any payment due hereunder, and for the foreclosure of the lien hereby created.

6. RELIEF IN EVENT OF DROUGHT AND WATER SHORTAGE: In the event there is a shortage of water caused by drought, inaccuracies in distribution not resulting from negligence, hostile diversion, prior or superior claims or other causes not within the control of the District, no liability shall accrue against the District or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom and the payments to the District provided for herein shall not be reduced because of any such shortage or damage. During periods of water shortage, allocations of treated and untreated water for municipal, domestic and industrial use shall have first priority.

7. CONSTRUCTION, OPERATION AND MAINTENANCE OF PURCHASER'S FACILITIES: The Purchaser shall construct, operate and maintain, without cost to the

District, the well or spring and appurtenant facilities necessary to secure and accurately measure its water supply. The metering or other measuring device installed by the Purchaser shall be satisfactory to the State Engineer. The District has no responsibility for the quality or quantity of water that the Purchaser is able to secure through the operation of its well or spring.

8. **BENEFICIAL USE OF WATER:** The basis, the measure and the limit of the right of the Purchaser in the use of water shall rest perpetually in the beneficial application thereof, and the Purchaser agrees to put the water purchased by him hereunder to beneficial use in accordance with law.

9. **ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED:**
The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto.

10. **NOTICE:** Any notice herein required to be given to the Purchaser shall be sufficiently given if sent by mail addressed to Purchaser at: 4882 So 1130 W, Taylorsville, UT 84123, and the District if sent to 2837 East Highway 193, Layton, Utah 84040.

11. **OBSERVATION OF FEDERAL AND STATE POLLUTION LAWS:** The Purchaser agrees that it will comply fully with all applicable Federal laws, orders and regulations and the laws of the State of Utah, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts or other pollutants.

12. The reuse of water delivered pursuant to this contract shall not be allowed without permission of the District. The waste, seepage, or return flow from water delivered pursuant to this contract shall belong to the United States or the Weber Basin Water Conservancy District for the use and benefit of the Weber Basin Project.

IN WITNESS WHEREOF, the parties have caused this contract to be executed and signed the day and year first above written.

PURCHASERS:

Mtn Valley Ranch Homeowners Assoc

c/o Sterling Tholen

4882 South 1130 West

Taylorville, UT 84123

Address:

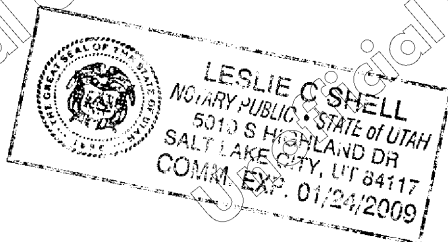
Pres. Mtn Valley Ranch HOA

STATE OF UTAH)

: ss

COUNTY OF Salt Lake

On the 10th day of April, 2009, personally appeared before me Sterling Tholen, President Mtn Valley Ranch HOA the signer(s) of the above instrument, who duly acknowledged to me that he executed the same.



Leslie C Shell
NOTARY PUBLIC

RECORDERS NOTE

DUE TO THE COLOR OF THE INK OF THE NOTARY SEAL AFFIXED TO THIS DOCUMENT, THE SEAL MAY BE UNSATISFACTORY FOR COPYING.

EXHIBIT "A"

MOUNTAIN VALLEY RANCH PROPERTY DESCRIPTION:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 26 OF MOUNTAIN VALLEY RANCHES, ENTRY NO 116704. ACCORDING TO THE OFFICIAL PLAT HEROF ON FILE AND OF THE RECORD IN THE OFFICE OF THE RECORDER, SUMMIT COUNTY, UTAH; THENCE N00°42'12" W 355.50 FEET; THENCE S72°48'59"E 101.49 FEET; THENCE S45°56'20" E 331.49 FEET; THENCE S53°33'18E 191.91 FEET TO THE SOUTHEAST PROPERTY CORNER OF LOT 32; THENCE S66°22'24" W 496.98 FEET; THENCE WEST 61.87 FEET TO THE SOUTHEAST PROPERTY CORNER OF LOT 30; T HENCE N81°23'41"E 35.00 FEET TO THE POINT OF BEGINNING. CONTAINS 2 LOTS EQUAL TO 3.579 ACRES

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT made this 10th day of April, 2006, between Mountain Valley Rance Homeowner Association, A Utah Association (herein called the "Mortgagor"), and WEBER BASIN WATER CONSERVANCY DISTRICT, 2837 East Highway 193, Layton, Utah 84040 (herein called the "District").

WITNESSETH:

WHEREAS, the Mortgagor has been assigned interests in that certain Water Purchase Contract hereinafter described, and as a condition for approval by the District of the assignment, based on the policy of the Board of the District, the District has required the pledge by Mortgagor of certain securities; and

WHEREAS, Mortgagor is the owner of the hereinafter described "Mortgaged Property", Exhibit A attached and incorporated hereto, and has agreed to mortgage said property to secure the performance of the obligations under the assigned portion of the Water Purchase Contract, as hereinafter described;

NOW, THEREFORE, for and in consideration of the approval of the above assignment, and to secure all obligations hereinafter described, Mortgagor mortgages to the District all of the hereinafter described property, and to the extent that any of the property, rights and interests hereinafter described are personal property of the kind or character defined in or subject to the applicable provisions of the Utah Uniform Commercial Code, Mortgagor grants to the District a security interest in said property:

SEE ATTACHED "EXHIBIT A"

(a) that certain real property and those certain easements, rights of way and other interests in real property described in Exhibit A, attached hereto and made a part hereof, and that certain personal property described in Exhibit A;

(b) all improvements now or hereafter placed or erected on the real property described in Exhibit A and all fixtures now or hereafter attached to said lands, all of which, including all appurtenants, replacements or additions thereto, shall be deemed to be and shall remain a part of the Mortgaged Property;

(c) all easements, rights of way, permits and licenses appurtenant to and used in connection with the property described in Exhibit A whether or not described in Exhibit A;

(d) revenues, accounts, receivables, and contract rights resulting from assessments of Mortgagor's shareholders or resulting from or relating to the delivery or sale of water by Mortgagor or resulting from the sale or other disposal of any of the above described property, including the proceeds of any insurance covering the same;

(All of the above described property, rights and interests being hereinafter called the "Mortgaged Property.")

TO HAVE AND TO HOLD the Mortgaged Property unto the District, its successors and assigns forever, to secure all payments due under the portion of that certain Water Purchase Contract entered into the 10th day of April, 2006, between the District and Mountain Valley Ranch Homeowner Assoc., assigned to Mortgagor by Assignment dated as of the 10th day of April, 20 06, (the assigned portion of said contract being hereinafter called the "Assigned Contract" attached as Exhibit B) including all penalties, late payments and other fees or assessments included therein, and the covenants and obligations of Mortgagor contained in this Mortgage (hereinafter collectively called the "Obligations").

AS ADDITIONAL SECURITY, Mortgagor hereby assigns to the District, during the continuance of this Mortgage, all assessments, proceeds, rents, issues, royalties, and profits of the Mortgaged Property. Until Mortgagor shall default in the payment or performance of any Obligation secured hereby, Mortgagor shall have the right to collect all such assessments, proceeds rents, issues, royalties, and profits earned prior to default as they become due and payable. If Mortgagor shall default as aforesaid, Mortgagor's right to collect any of such moneys shall cease and the District shall have the right, with or without taking possession of the Mortgaged Property, to collect all assessments, rents, royalties, issues, and profits. The District at its option shall have the right to assess any additional costs for such collection. Failure or discontinuance of the District as any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by the District of the right, power, and authority to collect the same.

IN CONSIDERATION of the premises and Obligations hereby secured, Mortgagor hereby covenants and agrees as follows:

ARTICLE I

Representations and Warranties

Mortgagor represents and warrants that:

1. Mortgagor is the lawful owner of the Mortgaged Property, free and clear from prior liens or encumbrances that could have a material adverse effect on the District's security interest in the Mortgaged Property;

2. Mortgagor has full right and authority to grant this Mortgage and to perform the covenants and conditions of this Mortgage, and a certified copy of a resolution authorizing the execution hereof is attached hereto as Exhibit C.

3. Mortgagor will warrant and defend the Mortgaged Property unto the District and its successors and assigns, against every person whomsoever lawfully claiming the same or any part thereof.

4. Mortgagor will warrant they are not subject to the jurisdiction of the Public Service Commission under Title 54.

ARTICLE II
Covenants

Mortgagor covenants and agrees as follows:

1. To pay all Obligations secured hereby, promptly when due whether under any agreement contained herein, extension hereof, or otherwise.

2. To promptly pay when due all taxes, assessments, and governmental charges or levies, imposed upon or attributable to the Mortgaged Property except such taxes as are being contested in good faith by appropriate proceedings diligently prosecuted.

3. To keep the Mortgaged Property in good repair and not commit waste or permit impairment or deterioration of the Subject Property.

4. To promptly pay or cause to be paid all laborers or materialmen for labor and material furnished in connection with the operation, development or maintenance of the Mortgaged Property.

5. To execute and deliver such other and further instruments and do such other and further acts as in the discretion of the District may be necessary or desirable to carry out more

effectively the purposes of this Mortgage, including, without limiting the generality of the foregoing, prompt correction of any defect which may be hereafter discovered in the title to the Mortgaged Property which may have a material adverse effect on the District's security, or in the execution and acknowledgment of this Mortgage or any instrument creating, evidencing or connected with the Obligations secured hereby.

6. To keep the Mortgaged Property insured, with standard insurance companies, against loss or damage by fire and other casualties and risks of the kinds and in the amounts generally carried by similar companies engaged in similar undertakings and to carry such public liability and other insurance coverage as similar companies maintain for their operations.

7. To keep Mortgagor in compliance with all rules and regulations of all applicable governmental entities, including but not limited to water quality testing, monitoring and source protection, complying with all necessary conditions of any exchange applications related to the assigned contract.

ARTICLE III

Events of Default and Remedies of District

1. In the event of (1) default in the payment, when due, of any payment required by the Assigned Contract, or (2) the failure by Mortgagor to cure a default in the performance or observation of any covenant or agreement contained in this instrument within 30 days after the notice of the default by the District; then and in any such event the District shall thereupon have any or all of the following remedies, to-wit:

(a) The District may institute suit of foreclosure of the lien of this indenture in any court or courts having jurisdiction. In any such suit the District may, at its option, apply for and be entitled, as a matter of right, to the appointment of a receiver to take possession and control of, operate, maintain, and preserve the Mortgaged Property or any part thereof to the extent that Mortgagor could have so controlled or operated the facilities for application upon the indebtedness and other sums then due the District hereunder until the costs are fully paid, and said receiver may be authorized to sell and dispose of all or any part of said property under orders of the court appointing him as such.

(b) The District shall have all rights and remedies granted by law, and particularly by the Uniform Commercial Code, including, but not limited to, the right to take possession of all personal property constituting a part of the Mortgaged Property, and for that purpose the District may enter upon any premises on which any or all of such personal property is situated and take possession of and operate such personal property (or any portion thereof) or remove it therefrom. The District may require the Mortgagor to assemble such personal property and make it available to the District at a place to be designated by the District which is reasonably convenient to all parties. Unless such personal property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the District will give the Mortgagor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition of such personal property is to be made. This requirement of sending reasonable notice will be met if the notice is mailed by first-class mail, postage prepaid, to the Mortgagor at its address shown above at least five (5) days before the time of the sale or disposition.

(c) The District may at any time either in person, by agent, or by a receiver to be appointed by a court (Mortgagor hereby consenting to the appointment of the District as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect the assessments, proceeds, rents, issues, and profits herein assigned to the District, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any of the Obligations, and in such order as it may determine.

2. In case of foreclosure, or the undertaking to exercise any other remedy hereunder, Mortgagor hereby agrees to pay all costs of the same, including reasonable attorney's fees, which shall become a part of the indebtedness secured hereby, the District may continue to receive the proceeds of assessments herein assigned or other proceeds from the Mortgaged Property and apply the entire proceeds to the Obligations secured hereby, including interests and penalties until the same are fully paid. The District is authorized to receive such proceeds and to apply the same first to the expense of collection and/or sale, including reasonable attorneys' fees; second to payment of the amount due on the Obligations secured hereby; third the balance, if any, to Mortgagor.

3. Nothing herein contained shall be construed as limiting the District to the collection of any Obligation of Mortgagor to the District only out of the income, revenue, rents, issues and profits from Mortgaged Property (it being expressly understood that such indebtedness shall constitute an absolute, unconditional obligation to pay the amounts therein specified in the Assigned Contract at the due dates.

4. Should Mortgagor fail to pay or cause to be paid as provided, any of the items mentioned in paragraphs 2 to 6 of Article II above, inclusive, or fail to do or cause to be done as provided any of the other things contemplated in said paragraphs, then and in that event, the District although not under any duty or obligation to anyone to do so, may at its option and without notice to Mortgagor in either its own name or that of Mortgagor pay or cause to be paid any such items which may not have been paid, in whole or in part, and do or cause to be done, in any manner and to any extent deemed by it to be expedient or advisable, any such other things which may have been left wholly or partially undone, and all advances, outlays, costs, and expenses made or incurred by District in every such event, including all reasonable attorneys' fees incurred or paid in connection therewith, shall be secured hereby and shall be paid by Mortgagor to District upon demand. The making of any such payment or the doing of any such thing by District or causing the same to be made or done either wholly or partially, shall never impose upon District any duty or obligation to continue to proceed with any such thing or to do the same thing again and shall not be deemed to relieve Mortgagor from the observance or performance of any covenant, warranty, or agreement contained herein or to constitute a waiver of default hereunder or to resort to any of its rights or remedies hereunder and any provision hereof to the contrary notwithstanding District may, in such manner as it may elect, from time to time reimburse itself out of funds collected or received by it hereunder or under any other instrument executed simultaneously herewith, pursuant hereto or in the extension hereof, for any and all outlays and expenditures so made. In no event shall the District be or become liable to anyone for any loss or damage resulting from its exercise of any right, privilege or power conferred upon it by this indenture or any such other instrument or from its attempt or failure to exercise the same, excepting only such loss or damage as may result from its gross negligence or willful misconduct. In no event shall the District be liable for any prior actions of the Mortgagor.

5. No remedy hereby conferred upon or reserved unto the District is intended to be exclusive of any other remedy or remedies, but every such remedy shall be cumulative and in addition to all other remedies now or hereafter existing at law or equity.

Any of said remedies may be exercised without any requirement that other or additional remedies against other security shall be first exhausted. The District shall never be required to foreclose in one action the lien hereof and other liens, if any, upon other security from the indebtedness and other sums secured hereby, but may maintain separate actions upon any such liens without prejudice to any right secured by this or any other liens it may have. The District may resort to any other lien, security, or collateral in such order as it may deem expedient and the Mortgagor and all others now or hereafter bound hereby or obligated on any indebtedness or other sum hereby secured, expressly waives all right of marshalling.

ARTICLE IV

Miscellaneous

1. This instrument shall be construed both as a mortgage covering real property herein described to the extent of Mortgagor's interest and as a chattel mortgage and/or security instrument upon the personal property herein described to the extent of Mortgagor's interest therein. All terms, conditions, covenants, warranties, and agreements contained herein shall be binding upon the personal representatives, successors, and assigns of the Mortgagor and shall be deemed and construed to be covenants running with the estate or interest in the land as herein conveyed and all thereof shall likewise inure to the benefit of the District, its successors and assigns. The invalidity of any provision or provisions hereof shall not in any way affect the remainder of this indenture. This instrument shall be deemed and may be enforced from time to time as a real estate mortgage, chattel mortgage, security instrument or assignment of proceeds or as one or more thereof.

2. The District may, from time to time, release any of the Mortgaged Property from the lien hereof and may likewise release or surrender any other security then held by it as security for the payment of the Obligations secured hereby, and any such release or surrender may be given or made without notice to or the consent of any person having an interest in or lien upon the remaining property hereby mortgaged or anyone else bound hereby, and without affecting either the personal liability or any person for the payment of any such Obligations or other sum or the lien of this indenture upon the remainder of the Mortgaged Property for the full amount of every such indebtedness and other sum.

3. Any notice, request, demand or other instrument which may be required or permitted to be given or served upon the Mortgagor shall be in writing and may be given by mailing such notice by registered or certified mail, return receipt requested, addressed to Mortgagor at the address first herein above set forth or at such other address as Mortgagor may designate by written notice to the District as provided herein. Any notice, request, demand or other instrument which may be required or permitted to be given or served upon the District shall be in writing and may be given by mailing such notice by registered or certified mail, return receipt requested, addressed to the District at the address first herein above set forth or at such other address as the District may designate by written notice to Mortgagor as provided herein.

4. This Mortgage is binding upon Mortgagor and Mortgagor's successors and assigns, and shall inure to the benefit of the District, its successors and assigns, and the provisions hereof shall be covenants running with the land.

IN WITNESS WHEREOF, the undersigned Mortgagor has caused these presents to be executed and delivered on the day and year first above written.

By SEE ATTACHED

President

IN WITNESS WHEREOF, the undersigned Mortgagor has caused these presents to be executed and delivered on the day and year first above written.

By 
President

ATTEST: _____


Secretary

(SEAL)

ACKNOWLEDGEMENT

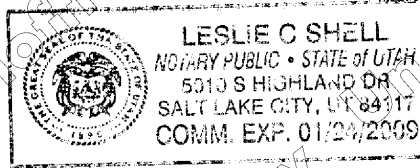
STATE OF UTAH)
COUNTY OF Salt Lake ; ss.
~~Davis~~)

On the 10th day of April, 2009, personally appeared before me Sterling Inolen, who being by me duly sworn, did say that they are the President, and that said instrument was signed in behalf of said corporation by authority of a resolution of its board of directors, and said President acknowledge to me that said corporation executed the same.

Leslie C Shell

Notary Public
Residing at:

My Commission expires: 1/24/2009



RECORDERS NOTE
DUE TO THE COLOR OF THE INK
OF THE NOTARY SEAL AFFIXED
TO THIS DOCUMENT, THE
SEAL MAY BE UNSATISFACTORY
FOR COPYING.

EXHIBIT "A"

MOUNTAIN VALLEY RANCH PROPERTY DESCRIPTION:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 26 OF MOUNTAIN VALLEY RANCHES, ENTRY NO 116704, ACCORDING TO THE OFFICIAL PLAT HEROF ON FILE AND OF THE RECORD IN THE OFFICE OF THE RECORDER, SUMMIT COUNTY, UTAH; THENCE N00°42'12" W 355.50 FEET; THENCE S72°48'59"E 101.49 FEET; THENCE S45°56'20" E 331.49 FEET; THENCE S53°33'18E 191.91 FEET TO THE SOUTHEAST PROPERTY CORNER OF LOT 32; THENCE S66°22'24" W 496.98 FEET; THENCE WEST 61.87 FEET TO THE SOUTHEAST PROPERTY CORNER OF LOT 30; T HENCE N81°23'41"E 35.00 FEET TO THE POINT OF BEGINNING. CONTAINS 2 LOTS EQUAL TO 3.579 ACRES

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