

Contract # 14040

CONTRACT AND LIEN BETWEEN WEBER BASIN WATER CONSERVANCY DISTRICT

AND

Dalton Creek Estates, LLC

FOR THE SALE AND USE OF UNTREATED WATER

THIS CONTRACT, made this 27<sup>th</sup>, day of May, 2008 between the WEBER BASIN WATER CONSERVANCY DISTRICT, organized under the laws of the State of Utah, herein styled "District", and Dalton Creek Estates, LLC of Davis County, Utah 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will require replacement, and the district has water to sell to the Purchaser to replace the water so intercepted and withdrawn; and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:

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";

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:

Ent 114798 Bk 272 Pg 980  
Date: 17-DEC-2008 10:32AM  
Fee: \$26.00 Check  
Filed By: CRB  
BRENDA NELSON, Recorder  
MORGAN COUNTY  
For: WEBER BASIN WATER CONSERVANCY D  
IST

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 22.0 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AND USE: The water covered hereby is sold to the purchaser solely for the replacement of underground water diverted, withdrawn or to be diverted or withdrawn by said well or spring for domestic and miscellaneous use in and upon the following described lands in Morgan County, Utah: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) \$243.00 per acre-foot of water purchased, a portion thereof to apply to the extent required on the District's obligation under bonds or other Government-District Contract and the remainder to apply to the District's general operation and maintenance expenses, and other special expenses and costs incurred in operating, maintaining, repairing and replacing the separate facilities of the District used or required in servicing this Contract, hereinafter referred to as "OM&R". Such fair amounts shall be determined each year by the Board of Trustees of the District and any such determination shall be final and conclusive and binding on all parties.

The first annual payment under item (a) 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:  
641 East Windsor Lane, Kaysville, UT 84037, 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:

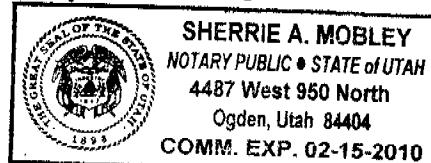
Address: Dalton Creek Estates LLC  
641 East Windsor Lane  
Kaysville, Utah 84037

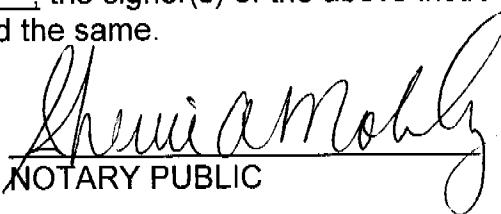
Address

Tre H. Giles

STATE OF UTAH )  
: ss.  
COUNTY OF Davis )

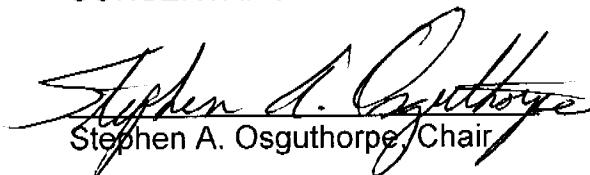
On the 27th day of May, 2008, personally appeared before me  
Ned Giles, Managing Partner, the signer(s) of the above instrument,  
who duly acknowledged to me that he executed the same.



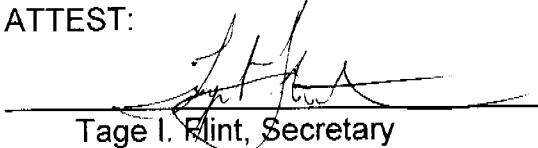
  
Sherrie A. Mobley  
NOTARY PUBLIC

APPROVED DATE: May 30, 2008

WEBER BASIN WATER  
CONSERVANCY DISTRICT

  
Stephen A. Osguthorpe, Chair

ATTEST:

  
Tage I. Flint, Secretary

(SEAL)



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Serial No: 01-004-245 EXHIBIT A  
Parcel No: 00-0001-6293

PARCEL 1:  
A TRACT OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 4 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, MORGAN COUNTY, UTAH BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 17, AS MONUMENTED BY A B.L.M. BRASS CAP (1952 RESURVEY);  
THENCE SOUTH 00 DEG 20 MIN 22 SEC WEST 2640.04 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 17;  
THENCE SOUTH 00 DEG 56 MIN 48 SEC WEST 1332.79 FEET ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 17 TO A REBAR AND CAP, THE TRUE POINT OF BEGINNING;  
THENCE SOUTH 76 DEG 02 MIN 03 SEC EAST 1374.73 FEET TO A REBAR AND CAP PLACED ON THE ONE-SIXTEENTH LINE;  
THENCE SOUTH 00 DEG 29 MIN 55 SEC WEST 990.62 FEET ALONG SAID ONE-SIXTEENTH LINE TO A REBAR AND CAP PLACED ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 17;  
THENCE SOUTH 89 DEG 34 MIN 49 SEC WEST 1347.51 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 17;  
THENCE NORTH 00 DEG 56 MIN 48 SEC EAST 1332.43 FEET ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 17 TO THE POINT OF BEGINNING;  
THE BASIS OF BEARING IS THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 17 CALLED: NORTH 00 DEG 20 MIN 22 SEC WEST.

PARCEL 2: Serial No: 01-004-244 Parcel No: 00-0001-6301  
A TRACT OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 4 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, MORGAN COUNTY, UTAH, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 17 AS MONUMENTED BY A B.L.M. BRASS CAP (1952 RESURVEY);  
THENCE SOUTH 00 DEG 20 MIN 22 SEC WEST 2640.04 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 17;  
THENCE SOUTH 00 DEG 56 MIN 48 SEC WEST 228.41 FEET ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 17 TO A REBAR AND CAP, THE TRUE POINT OF BEGINNING;  
THENCE NORTH 56 DEG 47 MIN 08 SEC EAST 419.02 FEET ALONG THE SOUTH LINE OF DAVID WRIGHT SUBDIVISION TO A REBAR AND CAP;  
THENCE NORTH 89 DEG 48 MIN 38 SEC EAST 988.70 FEET ALONG SAID SOUTH LINE OF DAVID WRIGHT SUBDIVISION TO A REBAR AND CAP;  
THENCE SOUTH 11 DEG 46 MIN 27 SEC WEST 48.45 FEET TO A REBAR AND CAP PLACED ON THE ONE-SIXTEENTH LINE;  
THENCE SOUTH 00 DEG 29 MIN 55 SEC WEST 1624.42 FEET ALONG SAID ONE-SIXTEENTH LINE TO A REBAR AND CAP;  
THENCE NORTH 76 DEG 02 MIN 03 SEC WEST 1374.73 FEET TO THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 17;  
THENCE NORTH 00 DEG 56 MIN 48 SEC EAST 1104.42 FEET ALONG SAID WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 17 TO THE POINT OF BEGINNING;  
THE BASIS OF BEARING IS THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 17 CALLED NORTH 00 DEG 20 MIN 22 SEC WEST.

PARCEL 4 (INCLUDES PARCEL 3) S. N #01-004-242 00-01-6269  
A TRACT OF LAND SITUATED IN SECTION 17, TOWNSHIP 4 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, MORGAN COUNTY, UTAH, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 17 AS MONUMENTED BY A B.L.M. BRASS CAP (1952 RESURVEY);  
THENCE SOUTH 00 DEG 20 MIN 22 SEC WEST 573.17 FEET ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 17;  
THENCE NORTH 90 DEG 00 MIN 00 SEC EAST 2798.22 FEET TO A REBAR AND CAP PLACED ON THE WESTERLY LINE OF MORGAN VALLEY DRIVE, THE TRUE POINT OF BEGINNING;  
THENCE SOUTH 67 DEG 58 MIN 46 SEC EAST 117.37 FEET ALONG SAID WESTERLY LINE;  
THENCE 534.56 FEET ALONG SAID WESTERLY LINE, A CURVE TO THE RIGHT HAVING A RADIUS OF 609.00 FEET AND A CHORD BEARING SOUTH 42 DEG 50 MIN 00 SEC EAST 517.57 FEET TO A REBAR AND CAP;  
THENCE SOUTH 17 DEG 41 MIN 23 SEC WEST 114.38 FEET ALONG SAID WESTERLY LINE TO A REBAR AND CAP;  
THENCE 296.04 FEET ALONG SAID WESTERLY LINE, A CURVE TO THE RIGHT HAVING A RADIUS OF 2464.45 FEET AND A CHORD BEARING SOUTH 14 DEG 14 MIN 54 SEC EAST 295.86 FEET TO A REBAR AND CAP;

THENCE SOUTH 10 DEG 48 MIN 26 SEC EAST 163.83 FEET ALONG SAID WESTERLY LINE TO A REBAR AND CAP;  
THENCE SOUTH 62 DEG 00 MIN 50 SEC WEST 120.00 FEET LEAVING MORGAN VALLEY DRIVE TO A REBAR AND CAP;  
THENCE SOUTH 42 DEG 24 MIN 39 SEC WEST 172.00 FEET TO A REBAR AND CAP;  
THENCE SOUTH 37 DEG 05 MIN 27 SEC WEST 474.60 FEET TO A REBAR AND CAP;  
THENCE SOUTH 12 DEG 09 MIN 30 SEC WEST 378.50 FEET TO A REBAR AND CAP;  
THENCE SOUTH 14 DEG 53 MIN 45 SEC WEST 145.80 FEET TO A REBAR AND CAP;  
THENCE SOUTH 51 DEG 12 MIN 58 SEC WEST 57.00 FEET ALONG AN ANCIENT FENCE LINE TO A REBAR AND CAP;  
THENCE NORTH 85 DEG 01 MIN 05 SEC WEST 1123.07 FEET ALONG AN ANCIENT FENCE LINE TO A REBAR AND CAP;  
THENCE SOUTH 67 DEG 10 MIN 22 SEC WEST 293.05 FEET ALONG AN ANCIENT FENCE LINE TO A REBAR AND CAP PLACED ON THE ONE-SIXTEENTH LINE;  
THENCE NORTH 11 DEG 46 MIN 27 SEC EAST 45.45 FEET TO A REBAR AND CAP PLACED AT THE SOUTHEAST CORNER OF DAVID WRIGHT SUBDIVISION;  
THENCE NORTH 00 DEG 20 MIN 16 SEC WEST 875.76 FEET ALONG THE EASTERLY LINE OF DAVID WRIGHT SUBDIVISION TO THE CENTERLINE OF DALTON CREEK;  
THE FOLLOWING EIGHT COURSES FOLLOW ALONG THE SOUTHEASTERLY LINE OF DAVID WRIGHT SUBDIVISION, BEING ALSO THE CENTERLINE OF DALTON CREEK  
THENCE NORTH 80 DEG 20 MIN 01 SEC EAST 225.43 FEET;  
THENCE NORTH 46 DEG 42 MIN 08 SEC EAST 168.66 FEET;  
THENCE NORTH 62 DEG 30 MIN 41 SEC EAST 138.49 FEET;  
THENCE NORTH 45 DEG 29 MIN 36 SEC EAST 324.59 FEET;  
THENCE NORTH 23 DEG 13 MIN 51 SEC EAST 195.36 FEET;  
THENCE NORTH 80 DEG 28 MIN 06 SEC EAST 70.83 FEET;  
THENCE NORTH 54 DEG 22 MIN 45 SEC EAST 151.04 FEET;  
THENCE NORTH 04 DEG 01 MIN 13 SEC WEST 88.46 FEET;  
THENCE SOUTH 47 DEG 00 MIN 00 SEC EAST 111.82 FEET TO A REBAR AND CAP PLACED IN A FENCE LINE;  
THENCE NORTH 42 DEG 30 MIN 37 SEC EAST 608.37 FEET ALONG SAID FENCE LINE AND EXTENSION THEREOF TO THE POINT OF BEGINNING;

THE BASIS OF BEARING IS THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 17  
CALLED: NORTH 00 DEG 20 MIN 22 SEC WEST.