

WHEN RECORDED, RETURN TO:

Francis City
2317 S Spring Hollow Road
Francis, UT 84036
Parcel No. FT-612

ENTRY NO. 01170424

08/09/2021 01:40:06 PM B: 2684 P: 0777

Agreement PAGE 1/11

RHONDA FRANCIS, SUMMIT COUNTY RECORDER

FEE 0.00 BY FRANCIS CITY



**WATER RIGHT DEDICATION AGREEMENT FOR
VILLAGE EAST SUBDIVISION**

This Water Rights Dedication Agreement (“**Agreement**”) is entered by Harriet C. Natter, Trustee, Wise Earth Concepts, Inc. 401(k) Profit Sharing Plan, (“**Developer**”), and Francis City (“**City**”), a Utah municipal corporation. Mrs. Natter, and the City are individually referred to as “**Party**” and collectively referred to as the “**Parties**” as the context may require.

RECITALS

WHEREAS, the City is a public water supplier under Utah Code § 73-1-4(1)(b), which owns, operates, and maintains a water distribution system to serve the public within the City’s boundaries pursuant to the Francis City Code and applicable law; and

WHEREAS, Wise Earth Concepts, Inc. 401(k) Profit Sharing Plan owns Parcel No FT-612 (the “**Parcel**”) in the City; and

WHEREAS, Developer intends to subdivide the property into two residential lots known as the Village East Subdivision (“**Proposed Development**”); (A copy of the plans for the proposed development are attached as **Exhibit A**); and

WHEREAS, at present, Developer’s desire to satisfy the City’s water dedication requirements needed to connect the Proposed Development to the City’s water system; and

WHEREAS, pursuant to Section 17.25.290 of the Francis City Code, the City requires that the Developers “transfer to the City ownership of [a] net 0.45 acre-feet of wet water for culinary use for each equivalent residential unit in the parcel or project” and “transfer to the City net three acre-feet of wet water for irrigation of each one acre of land in the parcel or project” for the Proposed Development (“**Dedication Requirement**”); and

WHEREAS, because the Proposed Development will include two (2.0) residential lots with 0.17 acres of irrigation per lot, the Dedication Requirement for the Proposed Development will be 1.93 acre-feet of water per year (0.9 acre-feet for domestic use and 1.02 acre-feet for irrigation), for culinary use pursuant to Section 17.25.290 of the Francis City Code; and

WHEREAS, Wise Earth Concepts, Inc. 401(k) Profit Sharing Plan owns 3.6 Class A shares in South Kamas Irrigation Company (“**South Kamas**”) that are represented by Certificate Number 1308 (“**South Kamas Shares**”), a copy of which is attached as **Exhibit B**; and

WHEREAS, Mrs. Natter owns 22 shares in Beaver and Shingle Creek Irrigation Company (“Beaver and Shingle”) that are represented by Certificate Number 4210 (“Beaver and Shingle Shares”), a copy of which is attached as Exhibit C; and

WHEREAS, The City currently is only allowed to accept either Washington Irrigation Company or South Kamas Irrigation Company shares; and

WHEREAS, The City is currently exploring the option to accept Beaver and Shingle Irrigation Company shares in addition to either Washington Irrigation Company Shares or South Kamas Irrigation Company Shares; and

WHEREAS, the Parties desire to allow the Proposed Development to connect to the City’s water system notwithstanding the uncertainty of the State approving the use of Beaver and Shingle Creek Irrigation Company shares.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

AGREEMENT

1. **Incorporation of Recitals and Exhibits.** The Recitals and Exhibits contained in this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

2. **Water Shares in Escrow.** Upon the execution of this Agreement, Mrs. Natter will deliver the certificates for the South Kamas Shares and Beaver and Shingle shares to the City to hold in escrow subject to the terms of the Agreement, but will not endorse said certificate. As of the date Mrs. Natter places the certificate in escrow with the City:

- a) The Developers will be deemed to have satisfied the City’s water dedication requirements for the Proposed Subdivision; and
- b) The City will allow the Proposed Subdivision to connect to the City’s water system and will not deny any other approvals related to the Home that pertain to the City’s water dedication requirements.

3. **Change Application.**

- a) **Preparation of Change Application.** When the City determines if the State will allow the City to accept Beaver and shingle shares, the Developer will, at their own cost and expense, prepare a change application for the City’s review and approval that requests authorization from the State Engineer to divert the water under the requisite number of shares from points of diversion in the City’s municipal water system (“Change Application”). The Change Application shall be approved by the City

4. Approvals from Irrigation Company.

After the City approves the Change Application, the Developers will secure the necessary approvals from Irrigation Company to file the Change Application to the extent approval from Irrigation Company is required to file the Change Application.

5. Change Application Filing and Approval Process.

- a) **Change Application Filing.** After securing approval from the City and South Kamas to file the Change Application, the Developers will file and prosecute the Change Application with the State Engineer.
- b) **Protests, Request for Reconsideration, and Appeals:** If a protest is filed, if the State Engineer approves the Change Application for less than 2.10 acre-feet, or if the State Engineer approves the Change Application with conditions that are unacceptable to the Developers, Developers will determine how or whether to respond to a protest or to file a request for reconsideration or appeal.
- c) **Costs and Expenses.** The Developers will be solely responsible for: (1) their reasonable, documented actual costs in preparing, filing, and prosecuting the Change Application with the State Engineer, (2) any reasonable, documented actual costs associated with preparing, filing, and prosecuting a request for reconsideration before the State Engineer; and (3) costs or other fees associated with filing a request for reconsideration with the State Engineer's Office or an appeal filed in district court following an unfavorable decision by the State Engineer regarding the Change Application; and (4) costs associated with changing shares from A to B.

6. Dedication Process

- a) **Execution of Water Documents.** After State Engineer issues a final and unappealable decision that approves the Change Application for at least 2.143 acre-feet without conditions that are unacceptable to the Developers, the Developers will endorse any share certificates or execute any water deeds held in by the City needed to convey title to 2.143 acre-feet of water to the City, Developer will also, at their sole cost and expense, obtain any new certificates from any applicable water companies or file and prosecute any segregation requests that may be needed to fulfill the terms of this Agreement.
- b) **Unfavorable Decision.** If the State Engineer issues a final and unappealable decision that denies the Change Application or approves the Change Application for less than 2.143 acre-feet, or includes conditions that Developers deem unfavorable, Developers will dedicate additional water shares or rights to the City that are acceptable to the City ("**Additional Water Rights**") to cure any deficiency between 2.143 acre-feet and the

amount of water approved under the Change Application following the same dedication and change application process set forth in this Agreement. Provided, however, that the City may not unreasonably deny, condition, or delay its acceptance of Additional Water Rights.

7. **Dispute Resolution.**

- a) **Informal Negotiation.** It is the intent of the Parties that any dispute relating to the interpretation and enforcement of this Agreement be resolved informally and promptly through informal good faith negotiations between the Parties as set forth in this Paragraph 7 before either Party may file suit against the other Party to exercise any right or remedy that it may have under this Agreement, at law, or in equity.
- b) **Formal Mediation.**
 - i. *Written Notice.* After at least one attempt to resolve an alleged default or dispute through informal negotiation, either Party to this Agreement may initiate formal mediation proceedings by sending a written notice to the other Party setting forth the particulars of the dispute, the provision(s) of this Agreement involved, and a suggested resolution of the issue.
 - ii. *Response to Written Notice.* The Party receiving the written notice will respond in writing within 20 days of receipt of the written notice with an explanation and response to the proposed resolution.
 - iii. *Mediation.* If the correspondence does not resolve the dispute, then the Parties will endeavor to reasonably agree upon a mediator and will mediate the dispute in good faith. Each Party will be responsible for their own costs and will split the costs of the mediator between them by dividing the total costs of the mediator by the number of Parties involved. If the Parties cannot agree upon a mediator, each Party will name a mediator and such two mediators will name a third mediator. The Parties will be bound to mediate the dispute with the third mediator. The Parties will share sharing the costs of mediation equally.
- c) **Completion of Mediation.** If the Parties are unable to resolve a dispute after completing one session of mediation, either Party may file suit against the other Party to exercise any right or remedy that it may have under this Agreement, at law, or in equity regarding the issue in question.
- d) **Applicable Law and Venue.** This Agreement will be construed in accordance with the laws of the State of Utah, and any actions between the

Parties arising out of the relationship contemplated by this Agreement will be brought in Summit County, Utah.

- e) Attorneys' Fees. If a dispute between any of the Parties arises under this Agreement, the prevailing Party shall be awarded its attorneys' fees and costs to enforce the terms of this Agreement.

8. Miscellaneous Provisions.

- a) Effective Date and Term. This Agreement will become effective on the date when each Party executes it.

- b) Entire Agreement. This Agreement, including exhibits, constitutes the entire agreement of the Parties and supersedes all prior oral or written agreements, communications, understandings, representations, or discussions between the Parties involving the issues that are the subject of this Agreement.

- c) Amendment. This Agreement may only be amended by a writing signed by both Parties.

- d) Severability. If any provision of this Agreement or the application of any provision of this Agreement 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.

- e) Time is of the Essence. Time is of the essence in performing all duties and obligations under this Agreement.

- f) Further Assurances. The Parties will each execute such documents as necessary to implement the intent and purposes of this Agreement.

- g) Warranty of Authority. The signers of this Agreement warrant that they are duly authorized to execute this Agreement on behalf of the entity for which they are signing.

- h) Counterparts. This Agreement may be executed in one or more counterparts each of which is an original of this Agreement and all of which, when taken together is the same agreement.

- i) Governing Law. This Agreement shall be construed and governed under the laws of the State of Utah.

- j) Headings and Captions. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe,

interpret, define, or limit the scope, extent, or intent of this Agreement or any provision.

- k) Necessary Acts and Cooperation. The Parties will perform those acts and/or sign all documents required by this Agreement and which may be reasonably necessary to effectuate the terms of this Agreement.
- l) Required Approvals and Consent. Neither Party will unreasonably withhold, condition, or delay its consent for any approvals required herein.
- m) Assignment. It is expressly understood that either Party may assign any and all of their duties and obligations arising under this Agreement after providing written notice to the other Party.
- n) Runs With Land. The terms hereof will be binding on the successors and assigns of the Parties hereto and touch and concern and run with the land and burden the land.
- o) Legal Review. The Parties represent and agree that they had full opportunity to review this Agreement and that they accept the terms hereof. The rule that such an agreement is to be construed against its drafter does not apply to this Agreement.
- p) No Third-Party Beneficiary. This Agreement is not intended to be a third-party beneficiary contract for the benefit of any third-parties.
- q) Notices. All notices and other communications, required or permitted to be given hereunder, will be in writing and will be deemed to have been duly given and delivered as of the date the notice is sent, if delivered by mail or email to the following, which Parties may change from time to time in writing:

Harriet Natter
P.O. Box 980994
Park City, UT 84098
wisearth@msn.com

Francis City
c/o City Engineer
2317 South Spring Hollow Road
Francis, UT 84036
SKettle@horrocks.com

[Signatures and Acknowledgments Follow]

Wise Earth Concepts, Inc. 401(k) Profit Sharing Plan

Harriet C. Natter, Trustee
Wise Earth Concepts, Inc. 401(k) Profit Sharing Plan

Harriet C. Natter, Trustee

By: Harriet C. Natter, Trustee

ACKNOWLEDGEMENT

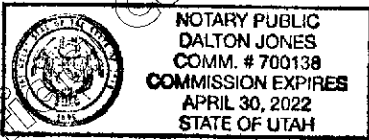
State of Utah)

County of Summit)

On this 29 day of July, 2021, personally appeared before me, HARRIET C. NATTER, Trustee of the Wise Earth Concepts, Inc. 401(k) Profit Sharing Plan who proved on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the foregoing instrument and acknowledged that he executed the same.

[Signature]

Notary Public



INCORPORATED
UNDER THE LAWS OF THE
STATE OF UTAH

SUMMIT
1908

SHARES
A 3 1/2
B 10
D 108

South Kanab Irrigation Company

PRINCIPAL PLACE OF BUSINESS: WOODLAND, UTAH

Transfer of Shares
Class A 3 1/2 B D 1.08

South Kanab Irrigation Company

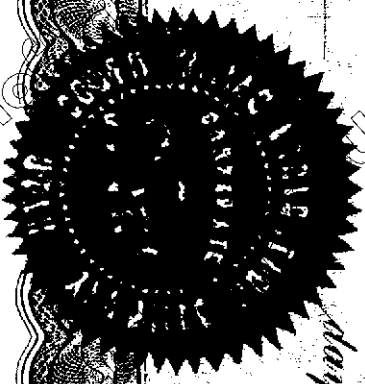
transferred to only on the books of the Corporation by the proper person in person or by attorney upon surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed.

the 13th day of July 1921

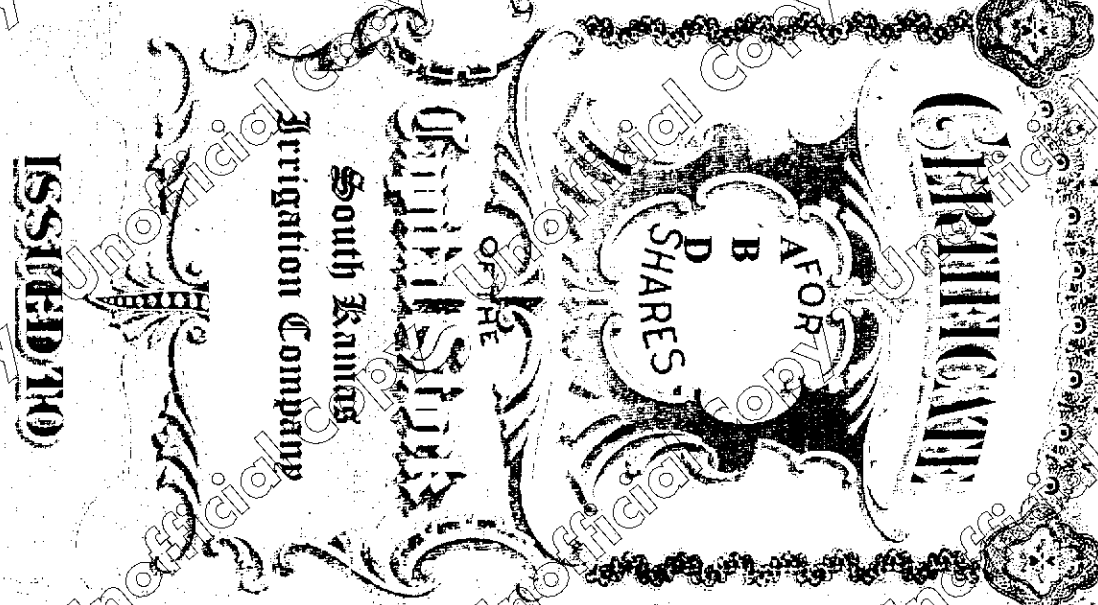
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Handwritten signature



NOTICE OF THE ASSIGNMENT
MUST BE FILED WITH THE CLERK OF THE COUNTY OF SUMMIT
IN THE OFFICE OF THE CLERK OF THE COUNTY OF SUMMIT
AT DENVER, COLORADO

As ordered up
to transfer with full power of attestation to the transferee
of the capital stock represented by the within
certificates, hereby commanding the within
shareholder to surrender the within
certificates to the transferee and to request a new
certificate to be issued in the transferee's name.



DATED

ISSUED TO

Irrigation Company

South Kansas

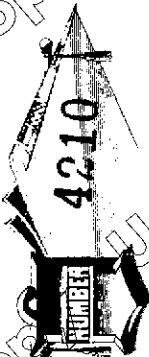
SUMMIT STOCK

IRRIGATION COMPANY

1. These shares are subject to the annual levy of an assessment to pay the operation and maintenance costs of the company, and are further subject to statutory sale for non-payment of assessments.
2. It is the transferee's responsibility to notify the irrigation company regarding any transfer of title to the share certificate, to surrender the old certificate to the company and to request a new certificate issued in the transferee's name. All notices and other information will be mailed to the shareholder of record.
3. The irrigation company will mail shareholder notices and assessments to the last known address of a shareholder of record. It is the shareholder's responsibility to provide the irrigation company information regarding an changes of address.

To Certificate #

INCORPORATED UNDER THE LAWS OF THE



Certificates sold or transferred, placed in wells, owner changes address, must have new owner transfer into their name with address.



Certificate is not valid without transferring to new owner with address, stock may be subject to sale if not complied with

The Beaver and Shingle Creek Irrigation Co., Inc.

CAPITAL STOCK \$31,000.00

China Crittens Mat

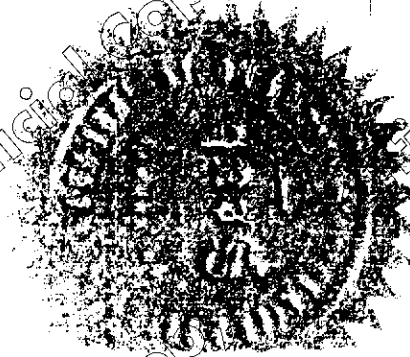
Gallop LLC

- Twenty Two -

is the owner of
Shares of the Capital Stock of

transferable only on the Books of the Corporation by the holder hereof in person or by duly authorized Attorney, on surrender of this Certificate properly endorsed.

In Witness Whereof, the duly authorized officers of the Corporation have hereunto subscribed their names and caused the corporate seal to be hereunto affixed at this City of June 8th A. D. 2021



John F. Blayzard

Shares \$10.00 Each

X Owner

THIS INSTRUMENT IS VALID ONLY IF THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER

In witness whereof
I have hereunto set my hand and the seal of the corporation with full power of substitution in the premises
to transfer the said stock on the books of the within named
certificates and hereby authorize my officers and agents
of the capital stock represented by the within
certificates, and hereby authorize my officers and agents
to make the said stock on the books of the within named
certificates and hereby authorize my officers and agents

BEAVER & SHINGLE CREEK

FOR
- 22 -
SHARES

**OF THE
SHINGLE CREEK**

**Beaver &
Shingle Creek
Irrigation Co., Inc.**

**ISSUED TO
Gallop LLC**

**101474210
June 8, 2021**

Class

A

Ditch

South Ditch #2