

2 miles
South of
Peterson

Ent **146837** Bk **348** Pg **1562**
Date: 07-FEB-2019 11:34:40AM
Fee: \$32.00 Credit Card Filed By: CB
BRENDA NELSON, Recorder
MORGAN COUNTY
For: WEBER BASIN WATER CONSERVANCY DISTRICT
Replacement Contract/District 2

Account No. 01959

Previous Owners: 1

Previous Contract: 14040

ASSIGNMENT

THIS ASSIGNMENT is made and entered into this 29 day of November, 2018, by and between Dalton Creek Estates, LLC (herein "First Party") and Brent V and Hollie K Anderson Trust, (herein "Second Party") (herein "Assignment").

WITNESSETH

WHEREAS, under date of May 27, 2008, Dalton Creek Estates, LLC, as Purchaser, entered into a contract with Weber Basin Water Conservancy District (herein "District") for the purchase of 22.0 acre-feet of water for replacement purposes (herein "Original Allotment"), which contract was thereafter recorded in the office of the County Recorder of Morgan County, Utah, as Entry No. 114798 (herein "Original Contract"); and

WHEREAS, First Party now desires to assign and transfer to Second Party hereunder, First Party's right, title and interest in and to 22.0 acre-feet of water from the Original Allotment.

WHEREAS, the parties agree that, if any terms contained in this Assignment are inconsistent with any of the terms contained in the Original Contract, the terms of this Assignment shall govern; and

NOW, THEREFORE, it is hereby agreed between First Party, Second Party, and the District as follows:

1. ASSIGNMENT. First Party hereby assigns and transfers to Second Party all of First Party's right, title and interest in and to 22.0 acre-feet of water from the Original Allotment. Second Party agrees to comply strictly with all of the terms and conditions of the Original Contract and this Assignment, and proposes to use the water referred to in said Original Contract, and herein, on the following described lands in Morgan County, Utah:

Section 17, Township 4N, Range 2E, Acres 140.64

Serial No.(s): 01-004-242, 01-004-243 & 01-004-244

Parcel No.(s): 00-0001-6269, 00-0001-6293 & 00-0001-6301

See Attached "Exhibit A"

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2. OBLIGATION TO PAY. In consideration of such Assignment and upon condition that this Assignment is granted by the District, Second Party hereby agrees with First Party, and with the District:

(a) To pay for the right to use the allotted water an amount annually, which amount initially shall be \$6,427.08. A portion of the above payment amount is to be applied to the extent required on the District's obligations under bonds or other government-District contracts or capital expenditures, and is to be fixed from time to time by the District's Board of Trustees. The remainder of the above payment amount is to apply to the District's general operation, maintenance, and repair and replacement 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 Assignment, hereinafter referred to as "OM&R". Such fair OM&R amounts shall be estimated each year by the Board of Trustees of the District, and any such determination shall be final and conclusive and binding on all parties. If such estimate is more than the actual cost thereof, an appropriate adjustment will be made in the annual OM&R amount for the year following the year for which the estimate was made.

(b) The amount so fixed shall be paid whether or not Second Party actually takes or uses the water allotted.

(c) The first payment of the amounts so fixed shall be paid by the Second Party to the District on or before January 1, 2019 and shall be in payment for water available for use by Second Party in the 2019 calendar year. Succeeding annual payments shall be made by the Second Party to the District on or before January 1 of each year thereafter. The Second Party shall be bound by the rules and regulations of the District's Board of Trustees. Nothing contained herein shall be construed to exempt the Second Party from paying the charges as assessed by the District.

(d) Notwithstanding any of the forgoing, the District shall be entitled to change the charging structure of this Contract, including the amounts charged under this Contract, as determined from time to time by the District's Board of Trustees. The District may, in its sole and absolute discretion, change the billing structure outlined herein, including but not limited to changing that billing structure so that the Second Party is billed based on the amounts of water used ("bill for use"), such that the District may choose to charge by the unit or gallon delivered or used, and may institute tiers that provide for increasing charges for each such unit based on the total use. As outlined in this Contract, Second Party is obligated to install appropriate metering and measuring devices. Second Party agrees that any such meter will satisfy all requirements of the District and will properly measure water usage, which measurement may be used by the District in determining any overuse, as outlined below, and in determining the appropriate charge under any bill for use payment structure adopted by the District under this paragraph.

3. PENALTY FOR DELINQUENCY. Every installment or charge required to be paid to the District under this Assignment, which shall remain unpaid after its due date, shall bear interest from the date of delinquency at a rate of 18% APR.

4. REMEDIES OF DISTRICT IN CASE OF DEFAULT. If the Second Party 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 Second Party, cancel this Assignment in its entirety, but either or both of these remedies are not exclusive. The District may exercise any other

remedy given by this Assignment or by law to enforce collection of any payment due hereunder.

5. SECURITY. The District may, as a condition of this Assignment, require security to be pledged and committed by the Second Party, in addition to that security required in the Original Contract in order to insure and secure payments so required in this Assignment. The sufficiency and form of security shall be determined by the District. Second Party hereby agrees to commit to the District sufficient security as determined by the District and to supply whatever documentation is required by the District prior to this Assignment becoming effective wherein such commitment and documentation shall be a condition precedent to this Assignment. Second Party agrees that those assets described in Exhibit A shall be pledged as security for this Assignment.

6. USE OF WATER. The use of the water allotted hereby shall be solely for the replacement of underground water diverted, withdrawn or to be diverted or withdrawn by means of a well for irrigation and domestic purposes at a point located on the land hereinabove described, and for no other use or purpose.

7. OVERUSE. The amount of water to which the Second Party is entitled annually shall not exceed the allotted amount as described above. In the event that Second Party receives water in excess of the allotted amount in any given year, whether intentionally or unintentionally, the Second Party will be billed for the excess water at a rate or rates fixed from time to time by the Board of Trustees of the District. Payment for use of water in excess of the allotted amount shall be paid within 30 days from notification by the District. Failure to make payment in full by the due date will result in, at the District's sole discretion, in the discontinuation of service until payment in full is received by the District.

8. UTAH STATE ENGINEER. Second Party's use of the water hereby allotted as replacement water shall be subject to such rules and regulations as the Utah State Engineer may from time to time prescribe. The Second Party shall not use the allotted water in any way and the District will not be obligated to deliver water to the Second Party as herein provided, until Second Party first receives an approved exchange application from the Utah State Engineer. It is the responsibility of the Second Party to obtain such approved exchange application.

9. DELIVERY OF WATER. Delivery of the water hereby allotted by the District shall be as directed by the Utah State Engineer or his representative at the outlet works of East Canyon Reservoir. The District shall have no obligation to provide works or facilities of any type to conduct the water hereby allotted from its point of delivery to its ultimate place of use.

10. 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 arise against the District or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom to Second Party and the payments to the District provided for herein shall not be abated or reduced because of any such shortage or damage. During periods of water shortage, allocations of drinking water for municipal and domestic use and treated and untreated water for industrial use shall have first priority.

11. WATER CONSERVATION. The Second Party shall, at a minimum, take the

following actions to conserve and protect water: (i) keep water use within the District's conservation goals (ii) follow all applicable water use restrictions for landscape watering; (iii) follow all applicable landscape ordinances.

12. FACILITIES. The Second Party shall construct, operate and maintain, without cost to the district, the well and appurtenant facilities necessary to secure and accurately measure Second Party's water supply. The metering or other measuring device installed by Second Party shall be satisfactory to the Utah State Engineer. The District has no responsibility for the quality or quantity of water that Second Party is able to secure through the source of Second Party's well.

13. BENEFICIAL USE. The basis, the measure and the limit of the right of the Second Party in the use of water shall rest perpetually in the beneficial application thereof, and the Second Party agrees to put the water allotted Second Party hereby to beneficial use in accordance with law. The Second Party shall have no right to hold over or accumulate water from year to year, nor to sell or rent the water.

14. ACCOUNTING AND WATER SUPPLY RECORDS. The Second Party shall maintain a set of books and records, satisfactory to the District, which shall keep and furnish suitable records of water supply and the disposition thereof. The Second Party agrees to provide the above information and documentation to the District upon request, and within 30 days of such request.

15. COMPLIANCE WITH LAW. The Second Party agrees to fully comply 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.

16. INDEMNIFICATION. Second Party agrees to indemnify, protect, and save and hold the District harmless against and in respect of any and all claims, losses, liabilities, damages, costs, deficiencies or expenses (including attorney's fees) resulting from any claim for any rights under the Assignment by any prior purchaser under the Assignment or from the non- fulfillment of any covenant or agreement on the part of Second Party under or relating to this instrument, and any and all actions, suits, proceedings, demands, assessments, judgments, costs, legal and accounting fees and other expenses incident to any of the foregoing.

17. NUMBER AND JOINT LIABILITY. In this instrument, the singular number includes the plural and the plural number includes the singular. If this instrument is executed by more than one person, firm, partnership or corporation, the obligations of each such person, firm, partnership or corporation hereunder shall be joint and several.

18. NO THIRD-PARTY BENEFICIARIES. Nothing herein shall be interpreted or construed to confer any right or remedy upon, or any duty, standard of care, liability or inference of liability to or with reference to, any person other than the District and the Second Party and their respective successors and permitted assigns.

19. GOVERNING LAW; JURISDICTION. This instrument shall be governed by and construed in accordance with the domestic laws of the State of Utah without giving effect to

any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah. Second Party submits to the jurisdiction of the Second Judicial District Court of the State of Utah in any action or proceeding arising out of or relating to this instrument and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Second Party waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of the District with respect thereto.

20. INTERPRETATION. In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this instrument. The paragraph headings contained herein are for purposes of reference only and shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include the masculine, feminine and neuter gender, and the term "person" shall include any individual, firm, partnership (general or limited), joint venture, corporation, limited liability company, trust, association, or other entity or association or any combination thereof. If any provision of this instrument or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this instrument and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by applicable law.

21. WAIVER. No failure or delay in exercising any right, power or privilege under this instrument, whether intentional or not, shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of a right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

22. SUCCESSION AND ASSIGNMENT. The Assignment shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. Second party may not assign the Assignment or any of its rights, interests, or obligations thereunder without the prior written approval of the District.

23. FURTHER ACTS. The parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of the Assignment.

24. INCORPORATION OF RECITALS. The recitals set forth in this instrument are incorporated herein by reference and made a part hereof.

25. INTEGRATION. This instrument sets forth the entire understanding of the parties with respect to the subject matter hereof, and all prior negotiations, correspondence, proposals, discussions, understandings, representations, inducements and agreements, whether oral or written and whether made by a party hereto or by any one acting on behalf of a party, shall be deemed to be merged in and superseded by this instrument and shall be of no further force or effect. There are no representations, warranties, or agreements, whether express or

implied, or oral or written, with respect to the subject matter hereof, except as set forth herein, and no party has relied upon any representation, promise, assurance, covenant, omission or agreement not included in the terms hereof in making the decision to enter into this instrument. This instrument may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements among or between the parties.

26. AMENDMENTS. This instrument may not be modified, amended or changed by any oral agreement, either express or implied. No amendment, modification or change in this instrument shall be valid or binding unless reduced to writing and signed by both the District and the Second Party. The provisions of this and the immediately preceding sentence themselves may not be amended or modified, either orally or by conduct, either express or implied, and it is the declared intention of the parties that no provisions of this instrument, including said two sentences, shall be modifiable in any way or manner whatsoever other than through a written document signed by both the District and the Second Party.

27. EXPENSES OF ENFORCEMENT. In any proceeding to enforce, interpret, rescind or terminate this instrument or in pursuing any remedy provided hereunder or by applicable law, the prevailing party shall be entitled to recover from the other party all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding. For purposes of hereof, the term "prevailing party" shall include, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought. The provisions set forth in this paragraph shall survive the merger of these provisions into any judgment.

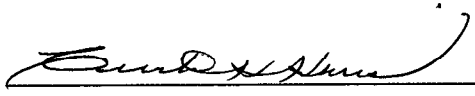
28. EFFECTIVE DATE. This Assignment shall become effective upon approval hereof by the District, as indicated by its endorsement herein below.

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

30. NOTICE. Any notice herein required to be given to Second Party or First Party shall be sufficiently given if sent by mail addressed to the Second Party or First Party at the address listed below, or if sent by electronic mail addressed to the Second Party or First Party at the email address listed below, if any such email address is listed, or through public notice, and to the District office if delivered to 2837 East Highway 193, Layton, Utah 84040.

31. AUTHORIZED EXECUTION. The individuals signing below each represent and warrant (i) that they are authorized to execute this instrument for and on behalf of the party for whom they are signing; (ii) that such party shall be bound in all respects hereby; and (iii) that such execution presents no conflict with any other agreement of such party.

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

FIRST PARTY: 

BY: Managing Partner

ITS: _____

ADDRESS: Dalton Creek Estates, LLC

c/o: Curtis Harris

1335 Haight Creek Drive

Kaysville, UT 84037

SECOND PARTY: Brent V. Anderson Hollie K. Anderson

BY: Trustee Trustee

ITS: _____

ADDRESS: Brent V and Hollie K Anderson Trust

c/o: Brent & Hollie Anderson

3434 Blue Sage Road

Morgan, UT 84050

EMAIL ADDRESS: _____

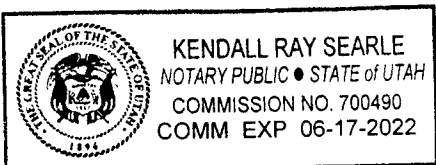
FIRST PARTY

STATE OF Utah)
 : ss.
 COUNTY OF Davis)

On the 19 day of Nov, 20 18, before me, Kendall Searle a notary
date month year notary public name

public, personally appeared Curtis Harris, proved on the basis of
name of document signer(s)

satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and
 acknowledged (he/she/they) executed the same.



(SEAL)

Kendall Ray Searle
 NOTARY PUBLIC SIGNATURE

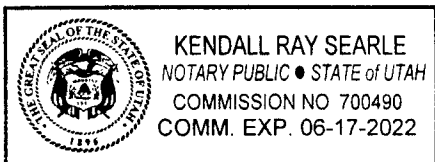
SECOND PARTY

STATE OF Utah)
 : ss.
 COUNTY OF Davis)

On the 19 day of Nov, 20 18, before me, Kendall Searle a notary
date month year notary public name

public, personally appeared Brent V. Anderson & Hollie K Anderson, proved on the basis of
name of document signer(s)

satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and
 acknowledged (he/she/they) executed the same.



(SEAL)

Kendall Ray Searle
 NOTARY PUBLIC SIGNATURE

APPROVAL OF ASSIGNMENT

DUE NOTICE having been given and the Assignment brought before the Board of Trustees, IT IS ORDERED that the foregoing Assignment from Dalton Creek Estates, LLC to Brent V and Hollie K Anderson Trust be granted and an allotment of 22.0 acre-feet of water is hereby made to the lands therein described, upon the terms, at the rates, and payable in the manner as in said Assignment set forth.

DATED this 29 day of November, 2018.

WEBER BASIN WATER CONSERVANCY DISTRICT

BY


Paul C. Summers, President

ATTEST:


Tage I. Flint, Secretary

(SEAL)



Exhibit A

Description of Lands:

Parcel Number: 00-0001-6269**Serial Number: 01-004-242**

A TRACT OF LAND SIT IN SEC 17, T4N, R2E, SLB&M, U.S. SUR, MORGAN CO, UTAH, BEING MORE PART DESC AS FOLS: COM AT THE NW COR OF SD SEC 17 AS MON BY A B.L.M. BRASS CAP (1952 RESURVEY); TH S 00°20'22" W 573.17 FT ALG THE W LN OF THE NW1/4 OF SD SEC 17; TH N 90°00'00" E 2798.22 FT TO A REBAR & CAP PLACED ON THE W'LY LN OF MORGAN VALLEY DR, THE T.POB; TH S 67°58'46" E 117.37 FT ALG SD W'LY LN; TH 534.56 FT ALG SD W'LY LN, A CUR TO THE RGT HAV A RAD OF 609.00 FT & A CHORD BEAR S 42°50'00" E 517.57 FT TO A REBAR & CAP; TH S 17°41'23" W 114.38 FT ALG SD W'LY LN TO A REBAR & CAP; TH 296.04 FT ALG SD W'LY LN, A CUR TO THE RGT HAV A RAD OF 2464.45 FT & A CHORD BEAR S 14°14'54" E 295.86 FT TO A REBAR & CAP; TH S 10°48'26" E 163.83 FT ALG SD W'LY LN TO A REBAR & CAP; TH S 62°00'50" W 120.00 FT LEAV MORGAN VALLEY DR TO A REBAR & CAP; TH S 42°24'39" W 172.00 FT TO A REBAR & CAP; TH S 37°05'27" W 474.60 FT TO A REBAR & CAP; TH S 12°09'30" W 378.50 FT TO A REBAR & CAP; TH S 14°53'45" W 145.80 FT TO A REBAR & CAP; TH S 51°12'58" W 57.00 FT ALG AN ANCIENT FNC LN TO A REBAR & CAP; TH N 85°01'05" W 1123.07 FT ALG AN ANCIENT FNC LN TO A REBAR & CAP; TH S 67°10'22" W 293.05 FT ALG AN ANCIENT FNC LN TO A REBAR & CAP PLACED ON THE 1/16 LN; TH N 11°46'27" E 45.45 FT TO A REBAR & CAP PLACED AT THE SE COR OF DAVID WRIGHT SUB; TH N 00°20'16" W 875.76 FT ALG THE E'LY LN OF DAVID WRIGHT SUB TO THE CTR LN OF DALTON CREEK; TH FOL 8 COURS FOL ALG THE SE'LY LN OF DAVID WRIGHT SUB, BEING ALSO THE CTR LN OF DALTON CREEK; TH N 80°20'01" E 225.43 FT; TH N 46°42'08" E 168.66 FT; TH N 62°30'41" E 138.49 FT; TH N 45°29'36" E 324.59 FT; TH N 23°13'51" E 195.36 FT; TH N 80°28'06" E 70.83 FT; TH N 54°22'45" E 151.04 FT; TH N 04°01'13" W 88.46 FT; TH S 47°00'00" E 111.82 FT TO A REBAR & CAP PLACED IN A FNC LN; TH N 42°30'37" E 608.37 FT ALG SD FNC LN & EXTENSION THEREOF TO THE POB. CONT 59.83 AC, M. OR L.

Parcel Number: 00-0001-6293**Serial Number: 01-004-243**

A TRACT OF LAND SIT IN THE SW1/4 OF SEC 17, T4N, R2E, SLB&M, U.S. SUR, MORGAN CO, UTAH BEING MORE PART DESC AS FOLS: COM AT THE NW COR OF SD SEC 17, AS MON BY A B.L.M. BRASS CAP (1952 RESURVEY); TH S 00°20'22" W 2640.04 FT TO THE W1/4 COR OF SD SEC 17; TH S 00°56'48" W 1332.79 FT ALG THE W LN OF THE SW1/4 OF SD SEC 17 TO A REBAR & CAP, THE T.POB; TH S 76°02'03" E 1374.73 FT TO A REBAR & CAP PLACED ON THE 1/16 LN; TH S 00°29'55" W 990.62 FT ALG SD 1/16 LN TO A REBAR & CAP PLACED ON THE S LN OF THE SW1/4 OF SEC 17; TH S 89°34'49" W 1347.51 FT TO THE SW COR OF SD SEC 17; TH N 00°56'48" E 1332.43 FT ALG THE W LN OF THE SW1/4 OF SD SEC 17 TO THE POB; THE B.B. IS THE W LN OF THE NW1/4 OF SEC 17 CALLED: N 00°20'22" W. CONT 35.81 AC, M. OR L.

Parcel Number: 00-0001-6301**Serial Number: 01-004-244**

A TRACT OF LAND SIT IN THE SW1/4 OF SEC 17, T4N, R2E, SLB&M, U.S. SUR, MORGAN CO, UTAH, BEING MORE PART DESC AS FOLS: COM AT THE NW COR OF SD SEC 17 AS MON BY A B.L.M. BRASS CAP (1952 RESURVEY); TH S 00°20'22" W 2640.04 FT TO THE W1/4 COR OF SD SEC 17; TH S 00°56'48" W 228.41 FT ALG THE W LN OF THE SW1/4 OF SD SEC 17 TO A REBAR & CAP, THE T.POB; TH N 56°47'08" E 419.02 FT ALG THE S LN OF DAVID WRIGHT SUBDIVISION TO A REBAR & CAP; TH N 89°48'38" E 988.70 FT ALG SD S LN OF DAVID WRIGHT SUBDIVISION TO A REBAR & CAP; TH S 11°46'27" W 45.45 FT TO A REBAR & CAP PLACED ON THE 1/16 LN; TH S 00°29'55" W 1624.42 FT ALG SD 1/16 LN TO A REBAR & CAP; TH N 76°02'03" W 1374.73 FT TO THE W LN OF THE SW1/4 OF SEC 17; TH N 00°56'48" E 1104.42 FT ALG SD W LN OF THE SW1/4 OF SEC 17 TO THE POB. THE B.B. IS THE W LN OF THE NW1/4 OF SEC 17 CALLED N 00°20'22" W. CONT 45.00 AC, M. OR L.