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Account No. 42573

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LEANN H KILTS, WEBER CTY. RECORDER
26-DEC-23 116 PM FEE \$.00 SED
REC FOR: WEBER BASIN WATER CONSERV
DIST

Replacement Contract/4

**PETITION TO WEBER BASIN WATER CONSERVANCY DISTRICT
FOR THE ALLOTMENT OF WATER**

Lowe Family Enterprises LC (herein "Petitioner") hereby applies to the Weber Basin Water Conservancy District (herein "District") for the allotment of the beneficial use of 0.65 acre-foot of untreated replacement water annually, primarily for domestic purposes, with limited irrigation use, as outlined below, on land situated in Weber County, Utah, legally described as follows:

Section 6, Township 7N, Range 1E, Acres 139.26

Parcel. No.(s): 22-003-0002 *SD* BT

Description of Lands:

ALL OF LOT 2, AND THE SOUTHWEST QUARTER OF THE NORTHEASTQUARTER AND THE WEST 1/2 OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE MERIDIAN, U.S. SURVEY, WEBER COUNTY, UTAH. CONTAINING 153.15 ACRES, M/L. EXCEPTING THEREFROM THAT PORTION CONVEYED TO THOMAS HSHUPE & WF (910-285). EXCEPTING THEREFROM THAT PORTION CONVEYED TO DONALD C MONTGOMERY & WF MARCENE G MONTGOMERY (1425-801). ALSO EXCEPTING PART OF THE SOUTHEAST QUARTER OF SECTION 6 TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT SOUTH 86D52'35" WEST 69.00 FEET ALONG THE SECTION LINE NORTH 29D19'50" EAST 155.49 FEET AND NORTH 87D35'00" EAST 409.21 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 6 AND RUNNING THENCE NORTH 7D06'49" EAST 1219.07 FEET THENCE NORTH 86D37'17" EAST 520.35 FEET THENCE SOUTH 3D22'43" EAST 192.07 FEET THENCE SOUTH 44D16'16" WEST 109.29 FEET THENCE SOUTH 30D16'37" WEST 177.80 FEET THENCE SOUTH 67D45'04" WEST 125.90 FEET, THENCE SOUTH 7D06'49" WEST 766.06 FEET, THENCE SOUTH 88D12'28" WEST 303.66 FEET TO THE POINT OF BEGINNING.

1. APPROVAL BY DISTRICT. In the event that the District grants this petition by executing the Order on Petition, attached hereto, this instrument shall be a contract between the Petitioner and the District (sometimes referred to herein as the "Contract"), which Contract shall be effective on the date upon which the District enters the Order on Petition.

2. OBLIGATION TO PAY. In consideration of such allotment and upon condition

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that this Petition is granted by the District, Petitioner agrees:

(a) To pay for the right to use the allotted water an amount annually, which amount initially shall be \$365.29. 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 Contract, 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 the Petitioner actually takes or uses the water allotted.

(c) The first payment of the amounts so fixed shall be a tax lien upon the above-described land and the Petitioner shall be bound by the rules and regulations of the District's Board of Trustees. Nothing contained herein shall be construed to exempt the Petitioner from paying the taxes levied.

(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 Petitioner 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, Petitioner is obligated to install appropriate metering and measuring devices. Petitioner 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 Contract, which shall remain unpaid after its due date, shall bear interest from date of delinquency at a rate of 18% APR.

4. REMEDIES IN CASE OF DEFAULT: If the Petitioner shall fail to make any payment due hereunder on or before the due date, or in the event that the petitioner shall violate any of the terms of this Contract, the District may refuse the delivery of water, or upon written notice to Petitioner, cancel this Contract in its entirety, but either or both of these remedies are not exclusive. The District may exercise any other remedy given by this Contract or by law to enforce collection of any payment due hereunder.

5. USE OF WATER. The use of the water allotted hereby shall be solely for the

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replacement of underground water diverted, withdrawn or to be diverted or withdrawn by means of a well, primarily for domestic purposes, with limited irrigation use, as outlined in this Contract, at a point located on the land hereinabove described, and for no other use or purpose.

6. OVERUSE. The amount of water to which the Petitioner is entitled (and which Petitioner receives and/or uses) annually shall not exceed the allotted amount as described above. The Water Efficiency Standards, contained in Paragraph 11, below, contain guidelines to assist the Petitioner in complying with these water use limitations. In the event that Petitioner receives District water in excess of the allotted amount in any given year, whether intentionally or unintentionally, the Petitioner 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 the total amount being levied as a tax lien in future years, and, at the District's sole discretion, in the discontinuation of service until payment in full is received by the District.

7. UTAH STATE ENGINEER. Petitioner'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 Petitioner shall not use the allotted water in any way, and the District will not be obligated to deliver water to the Petitioner as herein provided, until Petitioner first receives an approved exchange application from the Utah State Engineer. It is the responsibility of the Petitioner to obtain such approved exchange application.

8. 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 Pineview 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.

9. 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 Petitioner 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.

10. WATER CONSERVATION. In order to help preserve the precious water supply entrusted to the District, and in order to help facilitate the sustainable use of that limited water resource, the Petitioner shall, at a minimum, take the following actions to conserve and protect water: (i) pursuant to appropriate metering, keep water use strictly within the allotted volume outlined in this Contract; (ii) follow all applicable water use restrictions for landscape watering; (iii) follow all applicable landscape ordinances; (iv) adhere to the water efficiency standards applicable to this contract found in section 11.

11. WATER EFFICIENCY STANDARDS. As outlined above, the Petitioner shall not receive and/or use District water in any amount that exceeds the allotted volume outlined in this Contract. The following guidelines should be considered by Petitioner in order to limit the

use of water hereby allotted to the volumes outlined:

(a) Indoor Water: As outlined above, the primary purpose of this Contract is to provide for domestic water use, with only very limited irrigation water use. In order to comply with the water volume restrictions outlined in this Contract, it is recommended that indoor water use (water not used for outdoor landscaping) should not exceed 0.45 acre-feet (approximately 146,000 gallons) annually. It is highly recommended that the Petitioner install plumbing fixtures that have the WaterSense label, including: faucets, shower heads, urinals and toilets.

(b) Outdoor Water: Assuming the allocation of water for indoor use, as outlined in Paragraph (a), above, outdoor water should not exceed 0.20 acre-feet (approximately 65,000 gallons) annually. As outlined herein, the combined indoor and outdoor water use shall not exceed the 0.65 acre feet allotted. Nothing in this Contract should be construed to restrict or limit Petitioner's right to seek and obtain water from other sources to provide for additional indoor or outdoor water use. In order to meet these requirements, it is strongly recommended that landscaping and irrigation design and construction comply with the following standards:

i. Irrigation Design

- (1) WaterSense labeled irrigation controllers should be utilized for the irrigation of landscaping.
- (2) Irrigation should be designed to achieve the highest water efficiency for the designated plant materials. Drip irrigation, or bubblers, should be used except in lawn areas.
- (3) Irrigation valves should irrigate landscaping with similar site, slope, soil conditions, and plant materials with similar needs. Drip irrigation and overhead sprinklers should be placed on separate irrigation valves.

ii. Landscape Design

In order for the Petitioner to stay within the recommended outdoor water allocation of 0.20 acre-feet annually, it is recommended that the following criteria be incorporated into the landscaping of the allocated lands:

- (1) Turf grass should be limited to the greater of 35% of the total irrigable space or 250 square feet, but in no case shall exceed 2,000 square feet.
- (2) Turf grass should not be placed in:
 - a. Areas with widths less than 8-feet
 - b. Slopes greater than 25%
- (3) Water allotted shall not be used for outdoor water features, and any use of water under this Contract for any outdoor water features shall be a violation of the terms of this Contract.

12. FACILITIES. The Petitioner shall construct, operate and maintain, without cost to the district, the well and appurtenant facilities necessary to secure and accurately measure Petitioner's water supply. The metering or other measuring device installed by Petitioner shall be satisfactory to the Utah State Engineer and to the District. The required meter installation shall be according to the drawings and specifications provided herein, see Exhibit A. The District has no responsibility for the quality or quantity of water that Petitioner is able to secure through the source of Petitioner's well.

13. RIGHTS OF WAY ACCESS AGREEMENT. Petitioner agrees to allow the District and its agents unrestricted access across the above-described land for the purpose of ongoing operation and maintenance of water metering equipment and appurtenances. Said equipment shall be owned, operated and maintained by the District. District's Ownership and O&M responsibilities are limited to the meter, radio, and meter enclosure.

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

15. ACCOUNTING AND WATER SUPPLY RECORDS. The Petitioner 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, including, at all times, meter records showing all use of water under this Contract. The Petitioner agrees to provide the above information and documentation to the District upon request, and within 30 days of any such request.

16. COMPLIANCE WITH LAW. The Petitioner 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.

17. INDEMNIFICATION. Petitioner 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 Contract or from the non-fulfillment of any covenant or agreement on the part of Petitioner 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.

18. 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.

19. 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 Petitioner and their respective successors and permitted assigns.

20. 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. Petitioner 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.

Petitioner 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.

21. 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.

22. 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.

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

24. 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 Contract.

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

26. 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.

27. 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 Petitioner. 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 Petitioner.

28. 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.

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

30. REUSE. 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 District for the use and benefit of the District.

31. NOTICE. Any notice herein required to be given to the Petitioner shall be sufficiently given if sent by mail addressed to the Petitioner at the address listed below, or if sent by electronic mail addressed to the Petitioner 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.

32. 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.

33. CONTRACT ASSESSMENTS: This Petition is governed by the provisions of Utah Code Section 17B-2a-1007, titled "Contract Assessments," together with the rules and regulations of the District's board of trustees relating to contract assessments.

ORDER ON PETITION

DUE NOTICE having been given and hearing had, IT IS ORDERED that the foregoing petition of Lowe Family Enterprises LC be granted and an allotment of 0.65 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 petition set forth.

DATED this 30 day of November, 2023

WEBER BASIN WATER CONSERVANCY DISTRICT

BY Marlin K. Jensen
Marlin K. Jensen, Chairman

ATTEST:

Scott W. Paxman
Scott W. Paxman, General Manager/CEO

(SEAL)

