

When Recorded, Return To:  
Wayco W. Cowan and Rachael A. Cowan  
361 Wrangler Court  
Grantsville, UT 84029

Ent: 446265 - Pg 1 of 6  
Date: 03/30/2017 03:14 PM  
Fee: \$23.00  
Filed By: CF  
Jerry Houghton, Recorder  
Tooele County Corporation  
For: RACHAEL COWAN

## **DECLARATION OF EASEMENT AND WELL SHARING AGREEMENT**

This Declaration of Easement and Well Sharing Agreement ("**Declaration**") is hereby executed and recorded by Wayco W. Cowan and Rachael A. Cowan ("**Cowans**") as the owners of the four parcels of land and the water right described below.

### RECITALS

- A. The Cowans are the owners of the following four parcels ("**Lots**") in Tooele County, Utah:
- Lot 1 of the Pheasant Run Ranch Minor Subdivision (Parcel No. 19-060-0-0001)
  - Lot 2 of the Pheasant Run Ranch Minor Subdivision (Parcel No. 19-060-0-0002)
  - Lot 3 of the Pheasant Run Ranch Minor Subdivision (Parcel No. 19-060-0-0003)
  - Lot 4 of the Pheasant Run Ranch Minor Subdivision (Parcel No. 19-060-0-0004)
- B. The Cowans are also the owners of Water Right No. 15-1380 and associated Change Application a41949 ("**Water Right**"), which is to be used to provide water for the Lots. The Water Right allows for the diversion of 6.25 acre-feet for the domestic use of 4 homes, irrigation of 1.0845 acres, and stockwatering of 4 head of livestock.
- C. The Water Right is to be diverted from a common well to be drilled at an approximate location of S 450 ft W 525 ft from NE cor, Sec 25, T 2S, R 6W, SLBM ("**Well**"). This location is located on Lot 3. As used in this Declaration, the term "**Well**" shall include all infrastructure and facilities associated with the Well, including the pump house and pump, but shall not include the water pipelines used to convey water from the Well to each Lot.
- D. Through this Declaration, the Cowans intend to define the sharing of the Well and associated easements for the successor owner(s) of each of the four Lots ("**Lot Owners**").

### TERMS

Accordingly, it is hereby declared as follows:

1. **Well Ownership and Sharing.** The Well shall be jointly owned by the Lot Owners, with each Lot Owner having an undivided interest in the Well as tenants in common, as follows:
  - Lot 1: 15%
  - Lot 2: 15%
  - Lot 3: 55%

• Lot 4: 15%  
The Well shall be used and operated to provide water under the Water Right to each Lot.

## 2. Water Right.

- a. The Water Right shall be jointly owned by the Lot Owners, with each Lot Owner owning a portion of the Water Right, as follows:
  - Lot 1: 0.9892 acre-feet for domestic use of 1 home and irrigation of 0.1348 acres
  - Lot 2: 0.9892 acre-feet for domestic use of 1 home and irrigation of 0.1348 acres
  - Lot 3: 3.282 acre-feet for domestic use of 1 home, irrigation of 0.68 acres, and stockwatering of 4 ELUs
  - Lot 4: 0.9892 acre-feet for domestic use of 1 home and irrigation of 0.1348 acres
- b. No Lot Owner may draw more water from the Well than allowed by the Lot Owner's interest in the Water Right, nor shall any Lot Owner divert and use water from the Well for any use that exceeds or is inconsistent with the approved uses under the Water Right, except by written agreement between the affected Lot Owners in order to prevent forfeiture from nonuse of a portion or all of a Lot Owner's interest in the Water Right.
- c. At the appropriate time, the Lot Owners shall jointly file a Proof of Beneficial Use on the Water Right. All costs associated with the Proof, and all other costs associated with maintaining the Water Right in good standing with the Utah Division of Water Rights, shall be split between the Lot Owners in the percentages provided in Section 1.

## 3. Management.

- a. Any Lot Owner may act unilaterally and take reasonable steps to correct an emergency situation involving the Well, including the failure of the Well to deliver water on demand.
- b. Additionally, any Lot Owner may act unilaterally and take reasonable steps to maintain, repair, or improve the Well if the cost is less than \$100.00.
- c. Except in the described above, consent of three of the four Lot Owners is required before actions are taken for any non-emergency maintenance, repair, replacement, or improvement of the Well with a cost exceeding \$100.00.
- d. Each Lot Owner shall use their best efforts to not waste water, including promptly repairing any leak detected in the water pipeline(s) serving their Lot.
- e. Each Lot Owner shall install and maintain a backflow preventer and a lockable valve on the water pipeline serving their Lot, such that water to the property may be shut off without impacting the supply of water to other Lots.

#### **4. Cost Sharing.**

- a. Electricity for the Well will be separately metered from the Lots, and the account shall be in the name of one of the Lot Owners. Electricity costs for the Well shall be split between the Lot Owners in the percentages provided in Section 1.
- b. Maintenance, operation, repair, replacement, and/or improvement costs for the Well shall be split between the Lot Owners in the percentages provided in Section 1.
- c. Each Lot Owner shall be solely responsible for the costs of installation, maintenance, repair, replacement, and/or improvement of the water pipeline(s) serving their respective Lot.
- d. In the event of abandonment of the Well, costs to properly and permanently seal the Well shall be split between the Lot Owners in the percentages provided in Section 1.

#### **5. Payment.**

- a. For any given expense or cost, including electricity costs for the Well, that is to be split among the Lot Owners according to the terms of this Declaration, the nonpaying Lot Owners shall reimburse the paying Lot Owner for their share of the expense or cost.
- b. Reimbursement to the paying Lot Owner shall be made within thirty (30) days after notice of the amount to be reimbursed and documentation of the expense or cost is given to the nonpaying Lot Owners, or within a reasonable time as the Lot Owners may agree. If payment is not timely received, the paying Lot Owner may close and lock the valve of the nonpaying Lot Owner. The lock shall be removed immediately upon payment.
- c. If practical, the Lot Owners may elect to be billed for their portion of the costs directly from the contractor performing service on the Well, and shall be responsible for paying their portion of the costs directly to the contractor.

#### **6. Easements.**

- a. Each Lot shall have a utility easement over and across the other Lots, as reasonably necessary for the installation, operation, maintenance, repair, and replacement of water pipelines to convey water from the Well to each Lot. If a Lot is disturbed for the installation, operation, maintenance, repair, and replacement of water pipelines, the Lot Owner responsible for the installation, operation, maintenance, repair, or replacement shall reasonably return the property to its prior condition.
- b. Each Lot Owner shall have an easement encompassing the land within 10 feet of the Well as shall be reasonably necessary for operation, maintenance, and repair of

the Well, which shall include a reasonable easement for access to and from the Well.

- c. There shall be a 100-foot protection zone around the Well, and the Lot Owners may reasonably preclude any buildings or activities within this protection zone that may cause damage to the Well or to the water to be diverted from the Well.
  - d. No Lot Owner shall use the easements granted herein for any purpose other than the reasonably necessary operation, maintenance, and repair of the Well and associated infrastructure.
7. **Additional Users.** The Well currently serves only the Lots listed this Declaration. No additional users or properties may be served by the Well without the prior written consent of all Lot Owners.
8. **Duration.** The term of this Declaration shall be perpetual, except as herein limited. This Declaration shall constitute a covenant running with each of the Lots, and shall be binding on upon all successor owners of said Lots.
9. **Termination.** This Declaration may be terminated in its entirety upon the consent of all Lot Owners. Any individual Lot Owner may terminate their participation in this Declaration with the written consent of all of the other Lot Owners, provided the terminating Lot Owner has paid all amounts owed under this Declaration. The non-terminating Lot Owners shall not unreasonably withhold consent.
- a. The terminating Lot Owner shall file a written notice of termination with the Tooele County Recorder's Office.
  - b. Upon termination, the terminating Lot Owner shall have no further right to use the Well and must disconnect from the Well prior to filing the written notice of termination. Disconnection costs shall be paid by the terminating Lot Owner.
  - c. The terminating Lot Owner shall retain his/her ownership interest in the Water Right; however, within six months of termination, the terminating Lot Owner must either (i) sell his/her interest to another Lot Owner (or Lot Owners) or (ii) segregate his/her interest to a new water right and file a Change Application with the Utah Division of Water Rights to move the segregated water right to a new point of diversion and place of use.
  - d. Upon termination, the non-terminating Lot Owners shall have all rights to continue to use the Well and any easements granted herein. The percentages provided in Section 1 shall be adjusted to account for the terminating Lot Owner(s).
10. **Amendment.**
- a. This Declaration may be amended only upon the consent of all Lot Owners.

- b. Any amendments to this Declaration must be in writing, signed and notarized by all Lot Owners, and recorded with the Tooele County Recorder's Office.

## 11. General Provisions

- a. **No Third Party Beneficiaries.** This Declaration does not create, and shall not be construed as creating, any rights enforceable by any person who is not a Lot Owner.
- b. **Binding Effect.** The provisions of this Declaration shall be binding upon and inure to the benefit of the Cowans and the successor owners of the Lots.
- c. **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.
- d. **Attorney Fees.** In any action arising out of this Declaration, including but not limited to an action to enforce payment under Section 5, the prevailing party shall be entitled to costs and reasonable attorney fees.
- e. **Severability.** The provisions of this Declaration are severable, and should any provision hereof be found to be void, voidable, or unenforceable, such void, voidable, or unenforceable provision shall not affect any other portion or provision of this Declaration.
- f. **Waiver.** Any waiver by a Lot Owner of a breach of any provision of this Declaration shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Declaration. The failure of a Lot Owner to insist upon strict adherence to any term of this Declaration on one or more occasions shall not be considered a waiver or deprive that Lot Owner of the right thereafter to insist upon strict adherence to that term or any other term of this Declaration. Any waiver must be in writing.
- g. **Availability of Equitable Remedies.** Since a breach of the provisions of this Declaration could not be adequately compensated by money damages, any Lot Owner shall be entitled, in addition to any other right or remedy available by law, to an injunction restraining such breach or a threatened breach and to specific performance of any provision of this Declaration, and in either case no bond or other security shall be required in connection therewith, and the Lot Owners are hereby deemed to consent to the issuance of such injunction and to the ordering of specific performance.
- h. **Time Of Essence.** Time is of the essence in the performance of any and all obligations under this Declaration.

*[Signature and notarization on following page]*

Executed this 30<sup>th</sup> day of March, 2017.

Wayco W. Cowan  
WAYCO W. COWAN

Rachael A. Cowan  
RACHAEL A. COWAN

STATE OF UTAH            )  
                                  ) ss.  
COUNTY OF Tooele    )

On this 30<sup>th</sup> day of March, 2017, WAYCO W. COWAN and RACHAEL A. COWAN personally appeared before me, whose identities have been proven on the basis of satisfactory evidence, and after being duly sworn, acknowledge that they executed the foregoing Declaration, for the purposes stated therein, of their own voluntary act.

Dana K. Averett  
Notary Public

