

After Recording Return To:
Arthur B. Macomber
Macomber Law, PLLC
1900 Northwest Blvd., Ste. 110
Coeur d'Alene, Idaho 83814

Instrument # 882249
BONNER COUNTY, SANDPOINT, IDAHO
11-17-2015 11:34:54 AM No. of Pages: 12
Recorded for : KELLY HUTCHISON
MICHAEL W ROSEDALE Fee: 43.00
Ex-Officio Recorder Deputy *CB*
Index to: MISC

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IDWR / NORTH

SHARED WELL AGREEMENT

This Agreement, made and entered into this 17 day of November, 2015 by and between KELLY HUTCHISON, Grantor and owner of the well parcel ("GRANTOR"), KELLY HUTCHISON, Grantee, hereinafter referred to as "GRANTEE #1," and ERIC C. NELSON, Grantee, hereinafter referred to as "GRANTEE #2," and WAYNE & SUSAN CARDWELL, husband and wife, Grantee, hereinafter referred to as "GRANTEE #3." Grantor or any of the Grantees may be referred to in this Agreement as the party or parties.

WHEREAS:

- a) The GRANTOR is the owner of property known as the Well Parcel, described fully at Exhibit "A" and located in Bonner County, State of Idaho; and
- b) GRANTEE #1 is the owner of property described fully at Exhibit "B" and located in Bonner County, State of Idaho; and
- c) GRANTEE #2 is the owner of property described fully at Exhibit "C" and located in Bonner County, State of Idaho; and
- d) GRANTEE #3 is the owner of property described fully at Exhibit "D" and located in Bonner County, State of Idaho; and
- e) GRANTOR and GRANTEE #3 have an unrecorded and undated Water Easement Agreement that is ineffective and that requires replacement; and
- f) The undersigned parties deem it necessary to maintain a well system including pipes to each of the four parcels described herein at Exhibits "A through D" inclusive, and an Agreement has been reached for supplying water from the well, guaranteeing access to the water servicing facilities, and the cost of supplying water; and
- g) There is a well located upon and serving GRANTOR'S property that is registered with the Idaho Department of Water Resources ("IDWR") as water right number 95-16101, which includes a wellhead in (A) a pump house upon Grantor's property, inside of which are two pressure tanks; and then to (B) one main water line that runs through each parcel, and after reaching each parcel the individual line connection to each residence becomes that individual owner's responsibility; and
- h) Which water distribution system will be available to fight fires by the Sagle Fire District in its serving area under terms found at paragraphs 9 and 10; and
- i) The undersigned parties' intention and purpose is that the well and water distribution system be used to provide up to an adequate supply of water for domestic use only, and to assure continuous and satisfactory operation and maintenance of the well and water distribution system for the benefit of the present and future owners, their heirs, successors and assigns of the four properties connected to it; and

- j) The well is agreed by the parties to be of adequate capacity to supply one single family dwelling on each of the four parcels described in said Exhibits with water for all domestic uses of a single family residing therein, except swimming pools; and
- k) The parties understand that mortgage lenders may not finance or guarantee mortgage loans covering the separate properties and improvements thereon unless proper assurance is given by the parties as demonstrated by execution of this Agreement that the water distribution system will have a continuous and satisfactory operation in accordance with the terms of this Agreement; and
- l) The water from the well has undergone a water quality analysis from the State of Idaho health authority and has been determined by that authority to supply safe and potable water; and
- m) The parties hereto desire to enter this Agreement for the purpose of reducing to writing their respective rights and obligations pertaining to said well and water distribution system.

NOW THEREFORE, in consideration of the promises and covenants herein contained, including the parties' acceptance of the recitals above, it is agreed that the well and water distribution system may be used by the parties to this Agreement for domestic use only (as that term is defined by Idaho law), and by all future owners and occupants of said parcels, upon the following terms and conditions:

1. That until this Agreement is terminated as detailed below, the parties, their heirs, successors and assigns, for the exclusive benefit of the residence on their respective parcels, hereby grant and convey certain rights to the other parties, to draw water from the well located on Grantor's parcel as distributed by the water distribution system for daily domestic use, excluding the right to draw water to fill swimming pools of any type. Further, as a part of those grants and conveyances, each party to this Agreement grants and conveys to the other parties easement rights to cross over, upon, and under their real property three feet to each side of the existing location of the water distribution pipes for the maintenance and replacement of the physical facilities of said water distribution system, including the rights and responsibilities appurtenant to said easements.

2. That the owners or residents of each of the four parcels shall:

a. Pay or cause to be paid \$25.00 per month paid in advance on a calendar quarterly basis as a fee for electric and the use of the well and water distribution system. These quarterly payments shall be made to the Grantor. In the event the Grantor does not fulfill their obligations, the Grantees may assign by mutual agreement a yearly trustee for such payments. All parties agree to share equally in the annual costs of maintenance, including once-yearly water testing, and for equipment replacement as needed, which replacement cost shall be shared equally, subject to (b) below. No parcel owner will pay based on any measure of volume used. Non-payment by any parcel owner for two of four calendar quarters in one calendar year will result in legal action.

b. Shared expenses will not include expenses for system repairs caused by an owner or owner's negligence or accident, but such causing owner will be completely liable.

3. That the cost of any removal or replacement of pre-existing site improvements on an individual parcel necessary for system operation, maintenance, replacement, improvements, inspection, or testing damaged as a result of repair of the well or water distribution system maintenance will be borne by the owner of the affected parcel. Should removal or replacement of pre-existing site improvements become necessary, the maintaining parcel owner or their contractor will work with the owner of the affected parcel to minimize damages according to a schedule agreed-upon by them prior to the commencement of work. After notification that pre-existing site improvements must be removed or replaced, the owner of the affected parcel will be allowed ten days to choose its own contractor to complete the work, but if none is chosen in that time period the maintaining parcel owner or their contractor may complete the work and tender invoices to the affected parcel owner within ten days of completion of the work, and said affected parcel owner shall make payment within thirty days.

4. That each of the parties agree that they will promptly repair, maintain and replace as needed all water pipes or mains serving their respective dwellings.

5. For portions of the water system that are not an individual parcel owner's responsibility, that the written consent of all parties to pay an equal share of costs shall be obtained by the party requesting the expenditure at least fourteen days prior to embarking upon system maintenance, replacement, or improvement, except in emergency situations defined as when health and safety are in jeopardy, see paragraph 9. Should the parties not consent within that period, a mediator shall be chosen by the party requesting the expenditure within ten days thereafter, who shall be consulted if the parties cannot agree regarding the said expenditures, and the mediator's decision shall be conclusive. The cost for the mediator shall be paid by the party not consenting to the initial request for approval of the expenditure for the work.

6. That it is the Agreement of the parties that they shall permit a third party to cure a default of payment or other obligation and shall permit water distribution service to be reinstated upon such curative action.

7. That each of the parties to this Agreement does hereby grant to the other, his heirs, successors, and assigns, such easements over, across, and through the respective parcels as shall be reasonably necessary for the reconstruction of the well, maintenance of water pipes, the pump house, pumping equipment, pressure tanks, water mains, electrical wiring, and conduit consistent with the purposes of this Agreement. The water system facilities easements are described herewith on Exhibit "E," which is incorporated herein by reference.

8. That no party may install landscaping or improvements that will impair the use of said easements.

9. That each party shall have the right to act to correct an emergency situation related to this water system and shall have access to the pertinent parcel in the absence of the other party. An emergency situation shall be defined as the failure of any shared portion of the system to deliver water upon demand to the detriment of health and safety. Further, the Sagle Fire District shall have the right to use water from the water distribution system to fight wildfires or structural fires within its service area, as long as domestic water service to the four parcels is not injured by such firefighting. Injury to domestic water service is defined as

when a firefighting use of the water results in a decrease in water pressure to any of the four parcels' domestic water service for more than six hours.

10. That only those four parcels of real estate herein described and the structures located thereon shall be permitted to receive water from said water distribution system; and each of the parties agrees that he or she will not allow or permit other persons, other than household guests, to take, draw, use or receive water from the well, nor permit other persons to connect to the pipes or mains serving his or her respective parcel, subject to paragraph 9 above for firefighting purposes only.

11. That if by act of God or nature the Grantor's well becomes contaminated and can no longer supply water suitable for domestic consumption, or shall no longer supply water adequate for the domestic needs of the parties, that Grantor shall not be liable to other parties for such loss of quantity or quality. If another source of water becomes available to any of the four parcels (whether by that owner's own volition or by extension of public services), then the rights and obligations created by this Agreement for the party gaining alternate water sourcing will cease and terminate in accordance with the terms and conditions below.

12. That when such other source of water is available, a reasonable time shall be allowed to connect to the new source.

13. That the respective rights and obligations of the parties shall continue until the parties who wish to terminate their participation in this Agreement have (A) connected their domestic water supply to the new source and then, within ten days (B) executed and filed a written statement of termination at the Bonner County Recording Office. Upon termination of participation in this Agreement, the owner and occupant of each residence that is terminated from the Agreement shall have no further right to the use of the water distribution system, but will retain liability for expenses incurred or damages accruing on or prior to the date of their connection to the new source. The party terminating service shall within ten (10) days of connecting to the alternate water source disconnect their respective lateral connection from this water distribution system and shall have no further obligation to pay or collect for maintenance and related expenses incurred after that termination. The costs of disconnection from the well and water system shall be borne by the disconnecting owner of the pertinent parcel. However, if this water distribution system uses an easement to cross over the disconnecting parcel, that easement will remain in place, and appropriate provisions of this Agreement will remain effective for and against such disconnecting owner related to liability for damages caused to the water distribution system.

14. That the undersigned parties shall permit yearly well water sampling and testing by a responsible authority at the request of an undersigned party, mortgagee, or other lender.

15. That the water distribution system and this Agreement as it may be amended shall serve no more than four single family dwelling units or four parcels, notwithstanding the ability of the parties to make other amendments to this Agreement.

16. That the parties may amend this Agreement in writing to assure equitable distribution of shared costs and responsibilities; however, this Agreement may not be amended during the term of a Federally-insured (direct) or guaranteed mortgage on any

property served, except as provided herein, for purposes detrimental to such mortgage without written notice to such lender.

17. That the term of this Agreement shall be perpetual, except as herein limited.

18. That the benefits and burdens of this Agreement shall constitute a covenant running with the parcels of land herein described and shall be binding upon the heirs, successors in title, and assigns of the parties hereto however accomplished.

19. That this Agreement is the entire Agreement of the parties, with all previous negotiations and oral discussions culminating in this Agreement. This Agreement may be signed in counterparts, which together shall constitute the entire Agreement.

20. That any dispute arising from or related to interpretation of this Agreement or the duties or liabilities of the parties hereto or their successors will be submitted first to mediation, and only thereafter to the First Judicial District Court of the State of Idaho, with venue being in Bonner County. In any dispute resolved by that Court the prevailing party is entitled to an award of attorney's fees and costs.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

BY

Kelly Hutchison
Kelly Hutchison, Grantor and Grantee

DATE 11/10/2015

BY

Eric Nelson, Grantee

DATE _____

BY

Wayne Cardwell, Grantee

DATE _____

BY

Susan Cardwell, Grantee

DATE _____

ACKNOWLEDGEMENTS AND FIVE EXHIBITS ON FOLLOWING PAGES

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IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

BY _____ DATE _____
Kelly Hutchison, Grantor and Grantee

BY *Eric Nelson* DATE 11-16-15
Eric Nelson, Grantee

BY _____ DATE _____
Wayne Cardwell, Grantee

BY _____ DATE _____
Susan Cardwell, Grantee

ACKNOWLEDGEMENTS AND FIVE EXHIBITS ON FOLLOWING PAGES

STATE OF IDAHO)
) ss.
County of Bonner)

On this ____ day of _____, 2015 before me _____, personally appeared **KELLY HUTCHISON**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at _____
My Commission Expires _____

STATE OF IDAHO)
) ss.
County of ~~Bonner~~ ^{Kootenai})

On this 16th day of November, 2015 before me Susie Lechot, personally appeared **ERIC NELSON**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Susie Lechot
State of Idaho
Notary Public

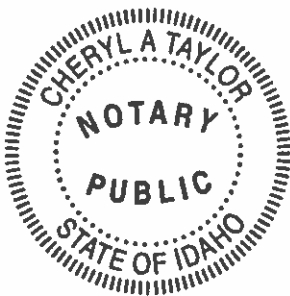
Susie Lechot

NOTARY PUBLIC FOR IDAHO
Residing at Kootenai County
My Commission Expires 07/19/2020

STATE OF IDAHO)
) ss.
County of Bonner)

On this 10th day of November, 2015 before me Cheryl A. Taylor, personally appeared **KELLY HUTCHISON**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Cheryl A. Taylor
NOTARY PUBLIC FOR IDAHO
Residing at Coeur d'Alene, ID
My Commission Expires 1/27/20

STATE OF IDAHO)
) ss.
County of Bonner)

On this _____ day of _____, 2015 before me _____, personally appeared **ERIC NELSON**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at _____
My Commission Expires _____

property served, except as provided herein, for purposes detrimental to such mortgage without written notice to such lender.

17. That the term of this Agreement shall be perpetual, except as herein limited.

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20. That any dispute arising from or related to interpretation of this Agreement or the duties or liabilities of the parties hereto or their successors will be submitted first to mediation, and only thereafter to the First Judicial District Court of the State of Idaho, with venue being in Bonner County. In any dispute resolved by that Court the prevailing party is entitled to an award of attorney's fees and costs.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

BY _____ DATE _____
Kelly Hutchison, Grantor and Grantee

BY _____ DATE _____
Eric Nelson, Grantee

BY Wayne R Cardwell DATE 11/13/2015
Wayne Cardwell, Grantee

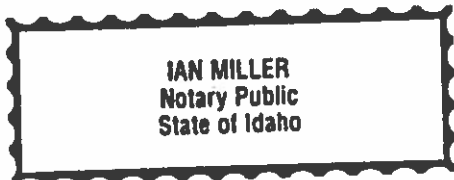
BY [Signature] DATE 11/13/2015
Susan Cardwell, Grantee

ACKNOWLEDGEMENTS AND FIVE EXHIBITS ON FOLLOWING PAGES

STATE OF IDAHO)
KOOTENAI) ss.
County of Bonner)

On this 13 day of NOVEMBER, 2015 before me IAN MILLER, personally appeared **WAYNE CARDWELL**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

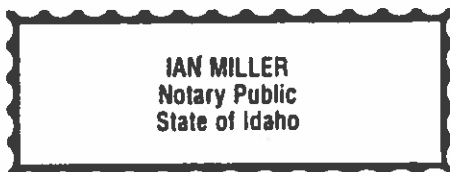



NOTARY PUBLIC FOR IDAHO
Residing at COEUR D'ALENE
My Commission Expires 2/18/20

STATE OF IDAHO)
KOOTENAI) ss.
County of Bonner)

On this 13 day of NOVEMBER, 2015 before me IAN MILLER, personally appeared **SUSAN CARDWELL**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.




NOTARY PUBLIC FOR IDAHO
Residing at COEUR D'ALENE
My Commission Expires 2/18/20

EXHIBIT "A"

(Grantor Hutchison Well Parcel Description)

Real property situated in the County of Bonner, State of Idaho, described as follows:

The South half of the Southwest quarter of the Northwest quarter in Section 35, Township 54 North, Range 3 West, Boise Meridian, Bonner County, Idaho.

EXHIBIT "B"

(Grantee #1 Hutchison Receiving Parcel #1 Description)

Real property situated in the County of Bonner, State of Idaho, described as follows:

The North half of the Southwest quarter of the Northwest quarter in Section 35, Township 54 North, Range 3 West, Boise Meridian, Bonner County, Idaho.

EXHIBIT "C"

(Grantee #2 Nelson Receiving Parcel #2 Description)

Real property situated in the County of Bonner, State of Idaho, described as follows:

Lot 1, Cardwell Tracts, according to the plat thereof, recorded in Book 5 of Plats, Page 169, records of Bonner County, Idaho.

EXHIBIT "D"

(Grantee #3 Cardwell Receiving Parcel #3 Description)

Real property situated in the County of Bonner, State of Idaho, described as follows:

Lot 2, Cardwell Tracts, according to the plat thereof, recorded in Book 5 of Plats, Page 169, records of Bonner County, Idaho.

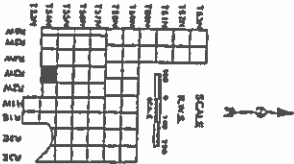
EXHIBIT "E"

(Map of Water Distribution System on Four Parcels)

NEXT and FINAL PAGE

IDWR / NORTH

THIS DRAWING IS TO BE USED FOR
REFERENCE PURPOSES, AND THE
COUNTY IS NOT RESPONSIBLE FOR
ANY DISCREPANCIES THAT MAY
EXIST.



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This sketch is furnished without charge solely for the purpose of assisting in locating said premises and the Company assumes no liability for inaccuracies therein.

