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SETTLEMENT AGREEMENT AND MUTUAL RELEASE

JIM BRANNON 8P 2523572000
KOOTENAI COUNTY RECORDER Page 1 of 8
BJQ Date 11/16/2015 Time 03:15:40
REQ OF MACOMBER LAW, PLLC
RECORDING FEE: \$31.00



2523572000 XX

This Settlement Agreement and Mutual Release ("Agreement") is entered into this 11 day of Nov, 2015 between EILEEN ELLEN HAWLEY, a single woman ("Hawley"), whose real property is described herein at **Exhibit "A,"** and THE JOHN AND SJOUKJE BUNGEN FAMILY TRUST; JOHN S. BUNGEN, TRUSTEE; SJOUKJE ZIMMERMANN BUNGEN, TRUSTEE ("Bungen"), whose real property is described herein at **Exhibit "B,"** to settle a lawsuit commonly entitled *Hawley v. Bungen*, which is now pending in the Kootenai County First Judicial District Court of the State of Idaho and filed using case number CV-2015-3479. Hawley and Bungen may be referred to herein as "the Parties."

It is the express intention of the below signing parties to have this Agreement end their disputes finally, and not to use this document to create any avenue for new claims or the continuance of existing claims in any way related to any matter related to that First District Court case, whether formally raised in that case or not.

During the lawsuit and when evaluating this Agreement, Hawley was and is represented by Michael J. Verbillis, a licensed Idaho attorney ("Verbillis"), and Bungen was and is represented by Arthur B. Macomber, a licensed Idaho attorney ("Macomber"), both Hawley and Bungen receiving such competent legal counsel from their respective counsel as they desired prior to entering into this Agreement.

THEREFORE, the Parties agreeing to the above stated intentions state those intentions are to be included in the Agreement below as part of the consideration for this Agreement, in addition to the consideration stated below as follows:

(1) Bungen and Hawley agree that the boundary between their two properties will be the original deeded boundary line from Hawley's original northwest corner monument to the Hawley southwest corner as originally surveyed and shown on the Hawley deed recorded in Kootenai County on September 8, 1958 using instrument number 345079, and Hawley shall not remove brush, bushes, timber, firewood, or fencing of any kind to the west of that boundary line.

(2) However, Bungen hereby recognizes and will honor a permissive encroachment in the existing north-south fence line north of Hawley's southernmost east-west corral fence

STATE OF IDAHO
COUNTY OF KOOTENAI
THIS IS TO CERTIFY THAT THE ORIGINAL INSTRUMENT
WAS FILED FOR RECORD IN THE OFFICE OF THE
CLERK OF THE KOOTENAI COUNTY COURT ON
NOVEMBER 16, 2015 AT 3:15 PM.
BOOK PAGE

Handwritten signature/initials

STATE OF IDAHO
COUNTY OF KOOTENAI

}- NOV 16 2015

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE COPY OF
THE ORIGINAL NOW ON FILE OR RECORDED IN THIS OFFICE
MARRIAGE / INSTRUMENT # 252,357 2000

BOOK PAGE ☐ NOT TO SCALE

JIM BRANNON
CLERK

BY


DEPUTY PAGE COUNT 8 PAGES

until Ms. Hawley's passing, and on the date of that event the permissive encroachment will terminate. After that event, and no sooner, Bungens will completely remove and reinstall the existing north-south fencing north of that southernmost corral east-west fence onto the Hawley deed boundary line at Bungens' cost, but in the interim the existing fence north of that southernmost east-west corral fence shall remain in place and undisturbed. Bungens shall remove and reinstall the existing fence on the original deeded boundary that is south of the southernmost corral east-west fence before October 1, 2025.

(3) Weather permitting, Bungens' surveyor will lay out the boundary line and monument it for a survey to be recorded in the public record within sixty (60) days of Bungen receiving and executing Hawley's signed acceptance of this settlement Agreement, but if weather is not permitting, within six (6) months of receipt of said Agreement. Both Parties agree to refrain from moving or removing those placed monuments from the original boundary line to assure paragraph (2) above can be timely completed.

(4) In addition, within thirty (30) days of signing this Agreement, Bungen will reconvey back to Hawley the water right in the northeast corner of the Hawley parcel, including any right to excavate across Hawley's property, which excavation for maintenance of that spring's piping Bungens are now planning to undertake in the spring of 2016 due to the present meager water flows from the pipe. This water right is referenced in the **Exhibit "A"** herein as a "grant to Clay Galland for use of one-half of water supply from spring located in Northeast corner of above land; as recorded in Book 130 of Deeds, page 373." The Parties hereby agree that no later than forty (40) days after the signing of this Agreement the conveyance deed for that water right shall be recorded in the Kootenai County Recorder's Office and filed with the Idaho Department of Water Resources.

(5) In addition, within ten (10) days after the signing of this Agreement by both Parties, Hawley shall file the requisite documents through the offices of the Idaho Department of Water Resources to withdraw any objection to Bungens' Application for Permit No. 95-16979 for water arising from Bungens' property, which Application both parties hereby recognize does not involve any water from the spring feeding the cistern near the common boundary supplying Hawley's home. In addition, within that same ten (10) days after the signing of this Agreement the Bungen's attorney shall file the original of this Agreement in the Kootenai County Recorder's Office and with the Idaho Department of Water Resources.

(6) Bungens hereby confirm that the point of diversion number one ("POD #1") labeled on page 4 of their Application for Permit filed with the Idaho Department of Water Resources on February 24, 2015 and denominated water right number 95-16979 has no relationship to the Hawley cistern, the spring feeding the cistern, or the water captured by the cistern. Further, Bungens agree not to drill or excavate in the future within ten (10) feet of any of the Hawley cistern's walls. Further, Bungens agree to grant easement rights to Hawley to maintain and improve that existing cistern which supplies the Hawley home, as long as any maintenance or improvement to it is confined to the existing four walls of that cistern, and spring.

(7) After the terms of paragraphs (3), (4), and (5) hereof have been completed, each Parties' legal counsel is hereby instructed to file a Stipulation of Dismissal with Prejudice, on the merits, drafted by Verbillis and approved by Macomber for dismissal of the lawsuit denominated CV-2015-3479 with each Party to pay their own attorney's fees and costs.

(8) Both Parties agree that within ten (10) days of becoming informed that additional documents are required to be executed for the terms of this Agreement to be fulfilled that they each will execute such documents necessary to that performance.

(9) In consideration of said acts and Agreement, both Parties hereby completely release and forever discharge each other and their respective officers, directors, employees, brokers, agents, members, independent contractors, representatives, successors, assigns and insurers, and all other persons, firms and corporations acting for, by, or through or in any way on behalf of them, except as to their respective legal counsel to the extent allowed by the Idaho State Bar Rules of Professional Conduct, of and from any and all claims, actions, and causes of action, rights, suits, covenants, contracts, agreements, judgments, debts, liabilities and damages, whether past, present or future, or whether based in law or equity, including claims for contribution, existing or as may arise in the future from and by reason of any and all KNOWN AND UNKNOWN, FORESEEN AND UNFORESEEN, damages, losses or harm which have been or may be sustained by them or by any and all other persons, entities, associations and corporations, whether herein named or referred to or not, on account of and/or arising out of the acts, omissions and claims alleged or which could have been alleged by the Parties in Kootenai County, Idaho First District Court Case No. CV-2015-3479, *Hawley v. Bungen* and all matters and issues related thereto.

(10) IT IS HEREBY AGREED AND UNDERSTOOD that the completion of the duties required by this Agreement are not and will not be construed as an admission on the part of any of the Parties of any liability or responsibility whatsoever. The accomplishment of the actions required by this Agreement are in compromise and settlement of doubtful and disputed claims, whether past, present, or future, and all liability for them is expressly denied by the Parties.

(11) Further, the Parties hereby declare and represent that in making this Agreement they rely wholly upon their own judgment, belief, and knowledge as to the nature and extent of any claims they may have and that they have not been influenced to any extent whatsoever in making this Agreement by any representations or statements regarding said claims, or regarding any other matters not contained herein, whether made by the other Party, or by any other person representing them, except as to their respective legal counsel. The Parties knowingly and voluntarily enter into this Agreement recognizing that all damages, claims, awards and judgments including those of an unknown nature, will be satisfied or waived upon execution of this Agreement and further claims will forever be barred thereafter.

(12) In case of breach, this Agreement may be submitted to the First District Court for adjudication regarding any dispute over its terms or performance thereof with the prevailing party being awarded all their attorneys' fees and costs. This is the final Agreement of the Parties related to the issues stated herein, and any modification of it must be in a mutually signed written document. This Agreement may be signed and notarized in counterparts separately, but together such separately signed pages shall be considered as one Agreement.

(13) BY SIGNING BELOW, THE UNDERSIGNEDS CERTIFY THEY HAVE EACH COMPLETELY READ THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE AND FULLY UNDERSTAND AND VOLUNTARILY ACCEPT IT FOR THE PURPOSE OF FINAL RESOLUTION AND SETTLEMENT OF ALL CLAIMS, DISPUTED, OR NOT.

(14) THE UNDERSIGNEDS ACKNOWLEDGE THAT THE INFORMATION RECEIVED BY EACH REGARDING THEIR CLAIMS IS SUFFICIENT TO ENTER INTO THIS FINAL SETTLEMENT AGREEMENT AND RELEASE AND THEY HEREBY EXPRESSLY WAIVE ANY CLAIM THAT THIS RELEASE IS NOT FAIRLY AND

KNOWINGLY MADE AFTER RECEIVING ADVICE UPON IT FROM THEIR
RESPECTIVE COUNSEL.

Eileen E. Hawley
Eileen E. Hawley

John S. Bungen
John S. Bungen, Trustee for the John and
for the Sjoukje Bungen Family Trust

Sjoukje Zimmermann Bungen
Sjoukje Zimmermann Bungen, Trustee
John and Sjoukje Bungen Family Trust

APPROVED AS TO FORM AND CONTENT:

Michael J. Verbillis
Michael J. Verbillis, Counsel for Hawley
Bungen.

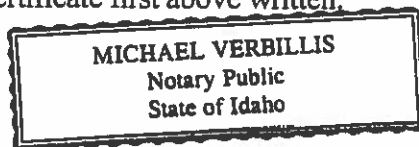
Arthur B. Macomber
Arthur B. Macomber, Counsel for
Bungen

ACKNOWLEDGMENTS FOLLOW, THEN EXHIBITS

STATE OF IDAHO)
) ss.
County of Kootenai)

On this 11 day of Nov, 2015, before me personally appeared
EILEEN E. HAWLEY, known or identified to me to be the person whose name is subscribed to
the within and foregoing Settlement Agreement and Mutual Release and acknowledged to me
that she voluntarily executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and
year in the certificate first above written.



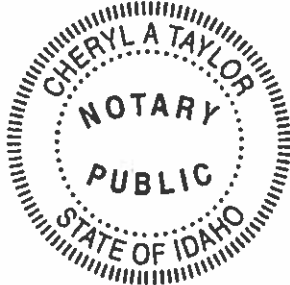
Michael J. Verbillis
Notary Public for IDAHO
Residing at CAA
Commission expires 4/29/16

* * *

STATE OF IDAHO)
) ss.
County of Kootenai)

On this 13th day of November, 2015, before me personally appeared **JOHN S. BUNGEN AND SJOUKJE ZIMMERMANN BUNGEN**, both Trustees for the John and Sjoukje Bungen Family Trust, known or identified to me to be the persons whose names are subscribed to the within and foregoing Settlement Agreement and Mutual Release and acknowledged to me that they each voluntarily executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.



Cheryl A. Taylor
Notary Public for Kootenai Co. - IDAHO
Residing at Coeur d'Alene, ID
Commission expires 1/27/20

* * *

Exhibit "A"
Hawley Property

Part of Government Lots One (1) and Two (2) in the Northwest Quarter of Section 9, Township 52 North, Range 3 West, B.M., Kootenai County, Idaho, described as follows: Commencing at a point 50 rods East of the Northwest corner of said Section 9; thence South 160 rods; thence East 39.90 rods; thence North 160 rods; thence West 39.90 rods to point of beginning;

Subject to reservation by Federal Land Bank of Spokane of 50% of all minerals, oil and gas in or under above described land, in deed recorded in Book 125 of Deeds, page 362. Also subject to grant to Clay Galland for use of one-half of water supply from spring located in Northeast corner of above land; as recorded in Book 130 of Deeds, page 373; together with its improvements, incidents and appurtenances, including after-acquired title.

* * *

EXHIBIT "B" FOLLOWS

///

Exhibit "B"
Bungen Property

PARCEL 1: The South 528 feet of the West 50 rods of the South 2112 feet of Government Lots 1 and 2, in Section 9, Township 52 North, Range 3 West of the Boise Meridian, Kootenai County, Idaho.

PARCEL 2: The North 1056 feet of the South 2112 feet of the West 50 rods of the South 2112 feet of Government Lots 1 and 2, in Section 9, Township 52 North, Range 3 West of the Boise Meridian, Kootenai County, Idaho.

PARCEL 3: The North 528 feet of the South 1056 feet of the West 50 rods of the South 2112 feet of Government Lots 1 and 2, in Section 9, Township 52 North, Range 3 West of the Boise Meridian, Kootenai County, Idaho.

PARCEL 4: That portion of the Northwest quarter of Section 9, Township 52 North, Range 3 West, Boise Meridian, Kootenai County, Idaho, described as follows:

Tax No. 515 described as: COMMENCING at the Northwest corner of the Northwest quarter; thence East 25 rods; thence South 160 rods; thence West 25 rods; thence North 160 rods, to PLACE OF BEGINNING AND;

Tax No. 852 described as: COMMENCING at point 25 rods East of the Northwest corner; thence South 160 rods; thence East 25 rods; thence North 160 rods; thence West 25 rods to beginning. All in Section 9, Township 52 North, Range 3 W.B.M.

LESS the South 2112 feet of the West 2640 feet of the Northwest quarter of Section 9, Township 52 North, Range 3, W.B.M. LESS ANY portion within road right of way.

PARCEL 5: A non-exclusive easement across the North 3 feet of the property conveyed to David Haman for use by the owners of Parcels 1, Parcels 2 and 3, their heirs, successors and assigns for the purpose of allowing ingress and egress to the property owned by them as set forth in the property line adjustment agreement recorded April 28, 1995 as Instrument #1396591.

EXCEPTING THEREFROM from parcels 1, 2, 3 herein that portion of the Southwest quarter of the Northwest quarter, Section 9, Township 52 North, Range 3 West of the Boise Meridian, Kootenai County, Idaho, lying East of the West line of said Southwest quarter of the Northwest quarter and West of the existing fence, which varies from 0 feet at the South end to 25 feet+/- at the North end and further described as follows:

Beginning at the Southwest corner of said Southwest quarter of the Northwest quarter and the intersection of said fence; thence along said fence to the following courses:

North 01°01'20" East, a distance of 103.45 feet to a point;
Thence North 01°42'53" East, a distance of 113.95 feet to a point;
Thence North 03°13'58" East, a distance of 91.65 feet to a point;
Thence North 01°40'56" East, a distance of 277.17 feet to a point;
Thence North 02°16'29" East, a distance of 112.67 feet to a point;
Thence North 02°13'55" East, a distance of 185.54 feet to a point;
Thence North 02°00'30" East, a distance of 170.11 feet to a point;
Thence North 03°07'19" East, a distance of 147.89 feet to a point (point A) on the Easterly right of way of the county road, 25 feet from the centerline;
Thence along said right of way and around a curve to the right through a central angle of 20°57'59", an arc distance of 65.13 feet a chord bearing of South 22°56'44" West, a distance of 64.77 feet to a point on the West line of said Southwest quarter of the Northwest quarter;
Thence along said line, South 00°57'16" West, a distance of 1142.05 feet to the Point of Beginning.

Together with their appurtenances.

-- END --