

## SHARED WELL AGREEMENT

This Shared Well Agreement ("Agreement") is made by and between James L Beck ("Beck") and Edgar Enrique Cauich Zermeno, ("Zermeno"), to provide domestic water from two existing wells to four individual land parcels.

### RECITALS

- A. Beck and Zermeno ("The Parties") have executed a Vacant Land Purchase Agreement and Joint Escrow Instructions, dated April 24, 2017, together with its Addendums ("VLPA") for Zermeno's purchase of a single parcel of unimproved real property located at 22045 Old Santa Cruz Highway, Los Gatos, California 95033, APN 558-08-111 ("Parcel 111") in Santa Clara County. The parcel to be conveyed is adjacent to parcel APN 558-08-112 ("Parcel 112"), and nearby to APN 558-08-095 ("Parcel 095"), APN 558-08-096 ("Parcel 096"), APN 558-08-119A ("Parcel 119A"), APN 558-08-119B ("Parcel 119B"), and 558-08-130 ("Parcel 130") which are also owned by Seller.
- B. Parcel 096 and Parcel 119B each have functioning water wells, which are interconnected such that water is shared between them, and the combined yield of these two wells is sufficient to meet the requirements set forth by Santa Clara County to serve up to four residences.
- C. Beck currently holds easements for ingress and egress and utilities across parcels: APN 558-08-029, APN 558-08-077, APN 558-08-121, APN 558-08-122, APN 558-08-138, APN 558-08-139, APN 558-08-141, and APN 558-08-142, previously granted by: (1) Easement Deed, dated October 21, 1958, recorded in book 4207, page 488 of Santa Clara County Recorder's Office, and (2) Road Agreement, recorded April 17, 2006 as Document 18889788 in Santa Clara County Recorder's Office.
- D. The parties to this Agreement wish to share water produced by these two wells between the owners of Parcel 095, Parcel 096, Parcel 111, and Parcel 112, each parcel owner therefore having an undivided 25% share of said water supply. Construction and maintenance costs shall be shared by the served parcels as specified herein.
- E. The Shared Private Water System, Engineer's Report For APN 558-08-095, APN 558-08-096, APN 558-08-111, & APN 558-08-112 ("Report") provides the relevant construction and maintenance details for this system, and is attached hereto and incorporated herein.

THEREFORE, in consideration of the agreements herein contained and other good and valuable consideration, the parties agree as follows:

#### 1. Consideration

The rights granted and the terms and covenants herein are made in consideration of the VLPA between Beck and Zermeno ("The Parties"), and the sum of

ten dollars (\$10.00) to be paid by Beck to Zermeno at the close of the subject escrow.

## 2. The Water System

The ("Water System") is described as all well casings, conduits, controllers, meters, pumps, pipelines, and other equipment and devices used to supply water from the wells identified as Well 096B and Well 119C in the Report, including but not limited to all existing equipment and devices, as well as those added pursuant to the implementation of this Agreement. Each parcel receiving water from the Water System shall be known as a ("Served Parcel").

## 3. Easements

Zermeno has granted to Beck non-exclusive easements across his Parcel 111 for the installation and maintenance of the Water System for the benefit of Beck's served parcels, Parcel 095, Parcel 096, Parcel 112, and Parcel 130, said easement being recorded concurrently and incorporated herein.

## 4. Grants and Covenants of Easement

A. The Parties' expressed intent and mutual understanding is that Seller hereby covenants that he shall be compelled by this Agreement to execute easements from APN 558-08-119A, APN 558-08-119B, and APN 558-08-096, to the buyers of APN 558-08-095, APN 558-08-096, and APN 558-08-112 at such time as each of these Served Parcels is sold.

B. Additionally this Agreement shall be entered into by the buyers of APN 558-08-095, APN 558-08-096, and APN 558-08-112 at such time as each of these served parcels is sold. Copies of these easements shall be submitted to the Santa Clara County, Department of Environmental Health, Drinking Water Program after being recorded.

C. The covenants in 4A and 4B above are intended to merge with this Agreement, bind the parties hereto, and shall survive after closing of escrow of paragraph 1

## 5. Use of Water

The respective owners of Served Parcels, viz., Parcel 095, Parcel 096, Parcel 111 and Parcel 112 shall be entitled to use and receive water from the Water System for domestic use, including spas, swimming pools, landscaping and family gardens. This Agreement does not allow any water from the Water System to be distributed to any other person, entity, or parcel.

## 6. Construction

A. The cost of drilling, developing, testing and interconnecting well 096B and well 119C shall be born entirely by Seller. All other construction costs, including but not limited to, tanks, pumps, trenching, piping, and electrical service connections to connect

the wells to the remaining three Served Parcels shall be shared equally between the four Served Parcel Owners.

B. Should it become necessary to complete any or all of the construction of the Water System prior to the sale of the remaining served parcels, Seller shall fund the construction cost and add the proportionate share to future buyers of those Served Parcels in those respective escrows.

C. All construction under this Agreement shall be performed by a licensed contractor or other qualified person, holding proper permits and acceptable to both parties.

#### 7. Maintenance

A. The Owners of Served Parcels, viz., Parcel 111, Parcel 112, Parcel 095, and Parcel 096, shall each pay a share of the costs for improvement, maintenance, and repair or replacement of the Water System in proportion to the volume of water used by each Party.

B. In the event the Parties are unable to agree as to the need for maintenance as provided herein, the Parties agree to submit said dispute to mediation, and subsequently to binding arbitration should agreement not be reached. Each party shall select an arbitrator and the arbitration shall be conducted in the county of Santa Clara and under California Code of Civil Procedure sections 1280 through 1294.2.

C. The owners of all Served Parcels under this Agreement agree that each Owner, and its successors, shall maintain a policy of public liability insurance issued by a reputable company in an amount and on policy terms customary for such Water System.

D. In the event that any Owner of a Served Parcel chooses not to participate in the costs to repair or replace the Water System, after 90 days the refusing owner shall automatically forfeit all rights, titles, interests, and obligations thereunder. Said owner shall execute and deliver promptly to the remaining owners, a quitclaim deed, releasing the refusing owner's rights, titles, and interest to the Water System to the remaining Served Parcels.

#### 8. Potability

Beck cannot and does not make any guarantee concerning the quantity and potability of the water in the existing Water System or concerning the continuing availability of the water supplied thereby. Notwithstanding, no party hereto nor their successors in interest shall do anything which will in any way detrimentally affect the quantity or potability of the Water System.

#### 9. Performance

Each owner of a Served Parcel acknowledges that this is an agreement between neighbors and expressly agrees to act reasonably to perform all their obligations under

this Agreement in good faith. Accordingly, no Served Parcel Owner shall undertake any repairs or maintenance without first requesting and obtaining the written consent of all Owners of the other Served Parcels. Consent for necessary repairs or maintenance shall not be unreasonably withheld. If an Owner of a Served Parcel, so notified by a request for written consent, fails to respond in writing to the notifying Party within 30 days, the non-responding Served Parcel Owner will be deemed to have given consent and shall be responsible for that Served Parcel's proportionate share of the costs incurred. Except in the case of emergency repairs, an Owner of a Served Parcel who undertakes any other repairs or maintenance on the Water System without requesting consent of the other Party shall be wholly responsible for said costs incurred.

10. Default

Any violation of this Agreement by any party to the Agreement may be enforced through legal action, including injunctive relief after written notice to the defaulting party and such party's failure to cure such violation, within thirty days from the notice to cure.

11. Damage

In the event that any party hereto, their respective successor in interest, or respective permittee, causes, by any act or excessive use, material damage to the Water System or its equipment and devices, said party shall bear full responsibility and shall pay any and all costs and expenses to repair such damage.

12. Liability

A. Each party agrees to be equally responsible for any personal injury or property damage to any worker employed to make repairs under this Agreement or to any third parties resulting from or arising out of the repairs and maintenance under this Agreement. This Agreement to share liability shall not extend to any other personal injury or property damage other than that attributable to repairs and maintenance as hereinabove set forth.

13. Entire Agreement; Modification; Waiver; Severability

This Agreement, together with its exhibits and attachments if any, constitute the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect excepting those which are provided in a written amendment hereto, signed by all applicable parties. No supplement, modification, or amendment of this agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. Should any portion of this Agreement be deemed unenforceable or invalid by law, same shall not invalidate this Agreement and the remaining portion of this Agreement shall remain in full force and effect.

14. Attorney's Fees

In the event of any controversy, claim, or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

15. Successors and Assignees

This Water System, along with its rights and obligations created by this Agreement and all applicable easements, is intended to and shall run with the land and shall extend to and be binding upon each parties successors in interest, heirs and assigns. Each party hereto agrees that on conveyance on all or any part of any Parcel referenced herein, the grantee thereof will thereby become a new party to and be bound by this Agreement, at which time the grantor thereof shall be released from any and all future obligations under this Agreement.

16. Operative Date

This Agreement shall become legally effective only upon the close of escrow on the sale by Beck of Parcel 111 to Zermeno, at which time this Agreement will be concurrently recorded.

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Edgar Enrique Cauch Zermeno - Buyer

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James L. Beck - Seller

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Date

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Date