

② 99010534

WATER WELL-SHARE AGREEMENT

This Agreement made effective the 16th day of March, 2005, by and between ARIEL SCHOEN, a single person (hereinafter "Ariel") and ROBERT SCHOEN, a single person (hereinafter "Beau"), hereinafter jointly referred to as "Declarants", who declare that they are the owners of two adjacent tracts of real property located in Ranchos Orchard, Taos County, New Mexico, and for the purpose of making well-share covenants binding on both tracts, declare as follows:

A. Beau is the owner of Tract B, Lot 5, and Ariel is the owner of Tract A, Lot 5 (hereinafter the "Tracts"), as shown on survey plat entitled "Lot Line Adjustment and Lot Split for Paul R. Adams, Jr.," filed in Cabinet E at page 33-A, prepared by Lawrence Sterling, RPS #11010, dated July 2004, and having job nos. 04070-A and 04070-B. A legal description for Tract A, Lot 5 is attached as Exhibit "A," and the legal description for Tract B, Lot 5, is attached as Exhibit "B."

B. There is a water well installed, but related well equipment is not yet installed. After the equipment is installed, the well is expected to provide water to the Tracts. The well is located on Tract A, Lot 5, near the common property line with Tract B, Lot 5. There are no other wells on the Tracts. This well was drilled under State Engineer Permit No. RG83697, by Fennell Drilling Company, Arroyo Hondo, New Mexico.

C. Declarants desire to establish the respective rights and duties of successor owners with respect to the water well, and to all the equipment and lines related thereto to be installed and paid for by Declarants or their successors. The well and related equipment are collectively referred to herein as "the Well." Water lines and equipment whose use is not shared by both the above tracts are not included in this well.

THEREFORE, the parties hereby agree as follows:

1. Well Usage. The Well shall serve the domestic water needs of each of the Tracts. The maximum amount of water that can be taken from the Well by any Tract owner is one and one-half (1.5) acre feet per Tract, per year. The owners and occupants of the Tracts shall use the Well only as permitted by applicable law and regulations and State Engineer's Permit issued in State Engineer File No. RG83697. Only one household on any Tract may connect to the Well. No additional households or Tracts shall connect to the Well without the unanimous written consent of all of the Declarants. A guest house which is otherwise lawful shall not be considered an additional household for the purposes of the preceding sentence.

2. Installation of Equipment. Each Owner shall be responsible for installing such water lines, a pressure tank, a meter, and any other equipment, that serves only the Owner's property. Installation of the pump, common electrical equipment, and any other equipment serving both Tracts shall be the joint responsibility of the Owners. The Owner who first constructs a residence or other improvement on his or her Tract, or who for any other reason desires to install such common equipment, shall confer with the other Owner concerning

specifications for such common equipment, and shall select, purchase, and install such equipment as is reasonably necessary to make the well function. The other Owner shall promptly reimburse the Owner who purchases and installs the equipment for one-half the cost of the common equipment, including labor, materials, and any related charges such as permit fees, electrical hook-up fees, and applicable taxes.

3. Operation, Maintenance and Repair.

A. The Tract owners shall jointly provide and pay for electrical power to the Well. There shall be a separate meter, account, and bill for electrical service to the Well, which may be in the name of any one or more tract owners. All such expenses shall be borne in equal proportions, and shall be rotated on an annual basis. The owner of Tract A, Lot 5, shall be responsible to pay electrical expenses for the year 2005, and the owner of Tract B, Lot 5, shall be responsible to pay electrical expenses for the Well for 2006, and continuing thereafter in succession.

B. In the event replacement, repair, rebuilding or reaming (all of which are collectively referred to herein as "repair") of the Well become necessary or prudent, the owners of each Tract connected to the Well shall share the expense in equal proportions. Each owner shall promptly pay for all maintenance and repair expenses, including, but not limited to, any necessary pump replacement and improvements to the Well. Each Tract owner shall be obligated to reimburse any other owner who incurred expenses for needed repairs and maintenance to the Well done in conformity herewith. The costs of installation, maintenance, and repair of any meter, valve and line from the Well which serves only one Tract shall be paid promptly and exclusively by the owner of that Tract. Notwithstanding the above, if any shut-off valve or meter on the water line from the Well (or any other component of the system) requires repair, any owner may undertake such repair on his own, with the permission of the other Tract owners, and if such repairs are entirely or partly the responsibility of another owner(s), the undertaking owner shall be entitled to reimbursement for all the reasonable costs for such repair. To the extent possible, all maintenance and repair shall be performed by the same experienced well-repair person each time.

4. Easements and Shut-Offs.

A. Each owner shall have an easement for the purposes of installation, operation, maintenance, and repair of the Well and the water and power lines connected thereto, and for maintenance and repair of water lines, valves, and meters upon each Tract.

B. If a problem is suspected in a line or water system from the Well to or upon a Tract whose Owner is either absent or does not immediately authorize inspection or repair, or if there is an emergency or repair which requires each shut-off, the other owner or owner's agent may shut off the water line(s) until the repair is accomplished to the extent needed to avoid damage to the system or the users.

5. Limits on Consumption. Water use is restricted to no more than 1.5 acre feet per year for one residential unit on each Tract at this time. If the Well proves unable

(physically or legally) to supply 1.5 acre feet per lot, and there is not sufficient water for all uses to which the parties seek to put the water, or if the State Engineer reduces the total amount of water which may be taken from this Well, then the total amount of water available to each lot shall be reduced pro-rata.

6. Priority and Meters. Each owner shall have equal rights and priority to the water produced to the Well. There is a separate meter for each Tract using the Well. Each Tract owner shall be responsible for reading his or her own meter and reporting water usage to any other Tract owner requesting such information, including to the Tract owner who has responsibility for managing the electric costs for that year. If the State Engineer requires additional or different meters, the expense of such meters shall be a "repair" and shall be allocated as provided in Section 2. Each Tract owner shall be entitled to inspect at reasonable times the water meter to their respective Tract and to repair the same if needed, or require the other Tract owner(s) to maintain or repair the other owner's meter(s) in good operable condition.

7. Liens. Any reimbursement for costs of installation of equipment, and any maintenance or repair costs due pursuant to the terms of this Agreement, shall become a recordable lien on a Tract if said costs should remain unpaid for thirty (30) days after written demand is made by certified mail, return receipt requested on the party responsible for payment of the same. The lien may be foreclosed by any enforcing owner in the same manner as a mortgage lien. In the event of such a foreclosure, the redemption period shall be thirty (30) days.

8. Term. The term of this Agreement shall commence on the effective date of this Agreement and shall continue thereafter for thirty (30) years so long as the Well (or substitute shared well agreed to by the owners of the above lots served at the time by the Well) is able to produce a volume of water adequate to serve the reasonable and lawful uses of each Tract (a volume of at least one-quarter acre foot per year per tract). At the end of said thirty (30) years, the term of this Agreement shall automatically extend for an additional ten (10) years, and thereafter for like ten-year periods indefinitely, unless an instrument signed by a majority of the owners has been recorded providing for a termination or modification of this Agreement in whole or in part.

9. Termination and Modification. Each of the owners shall be entitled to terminate his or her obligations to maintain, operate, and repair by abandoning, in a notarized recordable writing, his/her claim to use water from the Well and to the above easements on the other tracts for the purpose of water lines and Well. Upon execution, recording, and delivery of a conformed copy showing recording information to the other Tract owner of such a termination and abandonment document, the Tract abandoning such rights herein shall thereafter have no rights in or to the Well, its water, or the easements described herein for the purposes of water lines or the Well. Thereafter the abandoning owner shall have no responsibility for payment of utilities or repairs for the Well.

10. Default. All payments and other performance called for herein shall be made or done within thirty (30) days of notice thereof, unless a sooner performance is specified

herein. In the event an owner fails to substantially perform any of his/her obligations provided herein, such owner shall be in default. In such event, any of the other owners ("enforcing owner") may notify the defaulting owner in writing of such default, and, if such default is not fully corrected within fifteen (15) days after the giving of such notice, the enforcing owner may commence a legal action to require the defaulting owner to perform his/her obligations hereunder. In the event the enforcing owner obtains substantially the relief sought in such legal action or obtains other relief which the court deems substantial, the defaulting owner shall pay the enforcing owner's reasonable attorney's fees and other related expenses and costs incurred in connection with such enforcement or legal action, plus pre-judgment and post-judgment interest on any advances by the enforcing Tract owner, or any other monetary damages, at the rate of 15% per annum.

11. Entire Agreement: Amendments. This Agreement constitutes the entire agreement between the parties relating to the subject matters hereof and may only be amended by the written consent of the owners of both Tracts which are parties hereto.

12. Binding Effect: Important Miscellaneous Provisions. This Agreement shall be recorded with the Taos County Clerk and shall be binding upon and inure to the benefit of the Declarants and their heirs, representatives, successors, and assigns as owners of each Tract, and any conveyance or transfer of any Tract shall be made subject to the provisions hereof. References to the masculine shall include the feminine and neuter and vice versa, and references to the singular shall include the plural, and vice versa. The undertakings hereof benefit and burden the two Tracts shown on the attached plat of survey, and run with the land.

13. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if mailed via certified mail, return receipt requested, to:

Ariel Schoen, P.O. Box 3172, Taos, NM 87571

Robert Schoen, HCR 74, Box 22111, El Prado, NM 87529

or to such other address as such party shall have specified by notice in writing to the other party.

13. Mediation. Any disputes under this Well Share Agreement shall be mediated prior to filing a court action. The parties shall equally split the costs of mediating the dispute.

14. Attorneys. This Agreement has been prepared by counsel acting jointly for all the parties, based on written instructions that all parties had previously agreed to before retaining counsel. This Agreement shall be construed fairly and evenly, and not for or against any party. Each Tract owner has had the opportunity to have this Agreement reviewed by independent attorneys of their own choosing, and has either consulted with such attorneys, or has declined to do so after having had a reasonable opportunity. Each Tract owner will pay one-half of the actual cost of legal fees for the preparation of this Agreement,

either paying such amount directly, or reimbursing the other Tract owner who advances such fees.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of this _____ day of _____, 2005.

Ariel Schoen
ARIEL SCHOEN, Declarant

Robert Schoen
ROBERT SCHOEN, Declarant

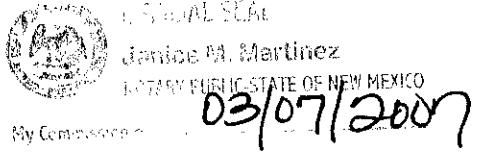
ACKNOWLEDGMENTS

STATE OF NEW MEXICO)
) ss
COUNTY OF TAOS)

The foregoing instrument was acknowledged before me this 18th day of March, 2005, by ARIEL SCHOEN.

Janice Martinez
NOTARY PUBLIC

My Commission Expires: _____

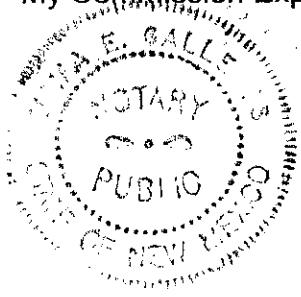


STATE OF NEW MEXICO)
) ss
COUNTY OF TAOS)

The foregoing instrument was acknowledged before me this 16th day of March, 2005, by ROBERT SCHOEN.

Emma E. Gallier
NOTARY PUBLIC

My Commission Expires: 4/14/2007



PROPERTY DESCRIPTION
OF
TRACT A, LOT 5

ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATE WITHIN THE GIJOSA GRANT, BEING A PORTION OF LOT 10, BLOCK 11 OF THE RANCHOS ORCHARD AND LAND COMPANY SUBDIVISION, WITHIN PROJECTED SECTION 32, TOWNSHIP 25 NORTH, RANGE 12 EAST, NEW MEXICO PRINCIPAL MERIDIAN, WITHIN THE COUNTY OF TAOS AND WITHIN THE STATE OF NEW MEXICO. BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE TRACT OF LAND DESCRIBED HERewith, FROM WHENCE THE NEW MEXICO STATE ENGINEERS MONUMENT "GODOI" BEARS N53°39'20"E, 7002.90' DISTANT, THENCE: RUNNING FROM SAID POINT OF BEGINNING, S00°00'48"E, 295.00' TO THE SOUTHEAST CORNER, THENCE: S89°59'01"W, 197.78' TO THE SOUTHWEST CORNER, THENCE: N00°00'59"W, 290.23' TO THE NORTHWEST CORNER, THENCE: N88°36'07"E, 197.86' TO THE POINT OF BEGINNING.

TAOS COUNTY
ELAINE S. MONTANO, CLERK
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03/18/2005 02:11:37 PM
BY MARYJEAN

PROPERTY DESCRIPTION
OF
TRACT B, LOT 5

ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATE WITHIN THE GIJOSA GRANT, BEING A PORTION OF LOT 10, BLOCK 11 OF THE RANCHOS ORCHARD AND LAND COMPANY SUBDIVISION, WITHIN PROJECTED SECTION 32, TOWNSHIP 25 NORTH, RANGE 12 EAST, NEW MEXICO PRINCIPAL MERIDIAN, WITHIN THE COUNTY OF TAOS AND WITHIN THE STATE OF NEW MEXICO. BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE TRACT OF LAND DESCRIBED HEREWITH, FROM WHENCE THE NEW MEXICO STATE ENGINEERS MONUMENT "GODOI" BEARS N55°49'21"E, 6818.19' DISTANT, THENCE: RUNNING FROM SAID POINT OF BEGINNING, S00°00'48"E, 320.00' TO THE SOUTHEAST CORNER, THENCE: S88°36'07"W, 197.86' TO THE SOUTHWEST CORNER, THENCE: N00°00'59"W, 320.02' TO THE NORTHWEST CORNER, THENCE: N88°36'25"E, 197.87' TO THE POINT OF BEGINNING.

EX. "B"

