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IN-63317
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Area: North Davis
Original Petitioner: _____
Current Petitioner: Lander FD LLC
Development: Dayana Commercial Park
WCS Number: 09-050-0097

Secondary Contract (GAL)/D3

E 3324926 B 7654 P 973-982
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
12/10/2020 12:46 PM
FEE \$0.00 Pgs: 10
DEP RT REC'D FOR WEBER BASIN WATER
CONS DIST

Not billed thru taxes

Security Required

**PETITION TO WEBER BASIN WATER CONSERVANCY DISTRICT
FOR THE ALLOTMENT OF WATER**

Lander FD LLC, (herein "Petitioner") hereby applies to the Weber Basin Water Conservancy District (herein "District") for the allotment of untreated water for the irrigation of land situated in Davis County, Utah described as follows (the "Land" or the "Lands"):

Section 10, Township 4N, Range 1W, 3.49 Acres

Serial Tax I.D. No.(s):

Parcel No.(s): 09-050-0097

Description of Lands:

See Exhibit "A"

I. APPROVAL BY DISTRICT. In the event that the District grants this petition by executing the Order on Petition, attached hereto, this instrument shall be a contract between the Petitioner and the District (sometimes referred to herein as the "Contract"), which Contract shall be effective on the date upon which the District enters the Order on Petition. (the "Land" or the "Lands")

2. OBLIGATION TO PAY. In consideration of such allotment and upon condition that this petition is granted by the District, Petitioner agrees:

(a) To pay for the right to use District allotted water annually, which payment initially shall be \$1,655.56 , as such payment amounts may thereafter be adjusted annually by the District's Board of Trustees, as outlined herein below. A portion of the above payment amount is to be applied to the extent required on the District's obligations under bonds or other government-District contracts or capital expenditures and is to be fixed from time to time by the District's Board of Trustees. The remainder of the above payment amount is to apply to the District's general operation, maintenance, and repair and replacement expenses, and other special expenses and costs incurred in operating, maintaining, repairing and replacing the separate facilities of the District used or required in servicing this Contract, hereinafter referred to as "OM&R". Such fair OM&R amounts shall be estimated each year by the Board of Trustees of the District, and any such determination shall be final and conclusive and binding on all parties. If such estimate is more than the actual cost thereof, an appropriate adjustment will be made in the annual OM&R amount for the year following the year for which the estimate was made.

(b) The amount so fixed shall be paid whether or not Petitioner actually takes or uses the water allotted.

(c) The first payment of the amount so fixed shall be a tax lien upon the above described Lands. The Petitioner shall be bound by the rules and regulations of the District's Board of Trustees. Nothing contained in this paragraph shall be construed to exempt the Petitioner from paying the taxes levied.

(d) The charges specified in this paragraph (2) shall remain effective against the Lands herein described, provided however that (i) the District may reallocate the water allotted pursuant to this petition, and the charges specified in this paragraph (2), to parcels of said land in separate ownership in accordance with the rules and regulations of the District; and (ii) further provided that the District is expressly entitled to, as a condition to the continued receipt of water on the Lands) require any subsequent purchaser and/or owner of the Lands, or any portion of the Lands, to execute a new contract, assignment, and/or assumption agreement containing water purchase contract terms that are consistent with the then prevailing District policies and procedures.

(e) Notwithstanding any of the forgoing, the District shall be entitled to change the charging structure of this Contract, including the amounts charged under this Contract, as determined from time to time by the District's Board of Trustees. The District may, in its sole and absolute discretion, change the billing structure outlined herein, including but not limited to changing that billing structure so that the Petitioner is billed based on the amounts of water used ("bill for use"), such that the District may choose to charge by the unit or gallon delivered or used, and may institute tiers that provide for increasing charges for each such unit based on the total use. As outlined in this Contract, Petitioner is obligated to install appropriate metering and measuring devices. Petitioner agrees that any such meter will satisfy all requirements of the District and will properly measure water usage, which measurement may be used by the District in determining any

overuse, as outlined below, and in determining the appropriate charge under any bill for use payment structure adopted by the District under this paragraph.

(f) The volume of District allotted water shall be determined on an annual basis by the District, in its sole and absolute discretion. This volume will be based on the District's determination of the appropriate water volume for the Lands, considering then existing land size, landscaping and hardscape, efficient watering practices and irrigation technologies. The District shall be entitled to change the volume of District allocated water as determined from time to time by the District's Board of Trustees to reflect advancing irrigation technologies, changing landscapes and improvements to irrigation practices that may result in more efficient irrigation practices.

3. PENALTY FOR DELINQUENCY: Every installment or charge required to be paid to the District under this contract, which shall remain unpaid after its due date, shall bear interest from date of delinquency at a rate of 18% APR.

4. REMEDIES IN CASE OF DEFAULT: If the Petitioner shall fail to make any payment due hereunder on or before the due date, or in the event that the petitioner shall violate any of the terms of this Contract, the District may refuse the delivery of water, or upon written notice to Petitioner, cancel this contract in its entirety, but either or both of these remedies are not exclusive. The District may exercise any other remedy given by this contract or by law to enforce collection of any payment due hereunder.

5. DELIVERY OF WATER. District water so allotted shall be delivered and measured at a point or points designated by the District. It shall not be the responsibility of the District to provide facilities to convey the water from such point or points to the place of use. The District may use any water available to the District to the extent that it can be delivered at points where it can be used. Petitioner agrees to bear a pro rata share of all conveyance and evaporation losses. Petitioner shall install, at their own cost and at no cost to the District, a water meter, a customer valve, and all other equipment necessary to meet current District standards.

6. SECURITY. The District may, as a condition of this contract, require security to be pledged and committed by the Petitioner in addition to that security required in this contract in order to insure and secure payments so required in this contract. The sufficiency and form of security shall be determined by the District. Petitioner hereby agrees to commit to the District sufficient security as determined by the District and to supply whatever documentation is required by the District prior to this contract becoming effective, wherein such commitment and documentation shall be a condition precedent to this contract.

7. OVERUSE. The amount of water to which the Petitioner is entitled annually shall be determined annually by the District and be based on efficient watering practices and landscape needs. The Petitioner's water use shall not exceed the allotted amount as described above. In the event that Petitioner receives water in excess of the allotted amount in any given year, whether intentionally or unintentionally, the Petitioner may be billed for the excess water at a rate or rates fixed from time to time by the Board of Trustees of the District and/or have service discontinued for the remainder of the year, in such manner as outlined in the District's then existing Policies and Procedures. Payment for use of water in excess of the allotted amount shall be paid within 30 days from notification by the District. Failure to make payment in full by the due date

may result, at the District's sole discretion, in the discontinuation of service until payment in full is received by the District. Additionally, the repeated and/or excessive exceeding of the allotted amount, may result, at the District's sole and absolute discretion, in the discontinuation of service.

8. WATER SHORTAGE. In the event there is a shortage of District water caused by drought, inaccuracy in distribution not resulting from negligence, hostile diversion, prior or superior claims, or other causes not within the control of the District, no liability shall accrue against the District, or the United States, or any of their respective officers, agents, or employees for any damage, whether direct or indirect, arising therefrom and the payments to the District provided for herein shall not be reduced because of any such shortage or damage. During periods of water shortages, allocations of drinking water for municipal and domestic use and treated and untreated water for industrial use shall have first priority.

9. WATER CONSERVATION. The Petitioner shall, at a minimum, take the following actions to conserve and protect water: (i) keep water use within the District's conservation goals (ii) follow all applicable water use restrictions for landscape watering; (iii) follow all applicable landscape ordinances.

10. PERIODS OF DELIVERY. In no event shall the District be required to make deliveries of water hereunder other than during the irrigation seasons, the extent of which shall be determined solely by the District.

11. BENEFICIAL USE. The basis, the measure and the limit of the right of the Petitioner in the use of water shall rest perpetually in the beneficial application thereof, and the Petitioner agrees to put the water allotted Petitioner hereby to beneficial use in accordance with law. The Petitioner shall have no right to hold over or accumulate water from year to year, nor to sell or rent the water.

12. COMPLIANCE WITH LAW. The Petitioner agrees to comply fully with all applicable federal laws, orders and regulations, and the laws of the State of Utah, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts, or other pollutants.

13. INDEMNIFICATION. Petitioner agrees to indemnify, protect, and save and hold the District harmless against and in respect of any and all claims, losses, liabilities, damages, costs, deficiencies or expenses (including attorney's fees) resulting from any claim for any rights under the Contract or from the non-fulfillment of any covenant or agreement on the part of Petitioner under or relating to this instrument, and any and all actions, suits, proceedings, demands, assessments, judgments, costs, legal and accounting fees and other expenses incident to any of the foregoing.

14. NUMBER AND JOINT LIABILITY. In this instrument, the singular number includes the plural and the plural number includes the singular. If this instrument is executed by more than one person, firm, partnership or corporation, the obligations of each such person, firm, partnership or corporation hereunder shall be joint and several.

15. NO THIRD-PARTY BENEFICIARIES. Nothing herein shall be interpreted or construed to confer any right or remedy upon, or any duty, standard of care, liability or inference

of liability to or with reference to, any person other than the District and the Petitioner and their respective successors and permitted assigns, as specifically provided for in Paragraph 19, below.

16. **GOVERNING LAW; JURISDICTION.** This instrument shall be governed by and construed in accordance with the domestic laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah. Petitioner submits to the jurisdiction of the Second Judicial District Court of the State of Utah in any action or proceeding arising out of or relating to this instrument and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Petitioner waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of the District with respect thereto.

17. **INTERPRETATION.** In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this instrument. The paragraph headings contained herein are for purposes of reference only and shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include the masculine, feminine and neuter gender, and the term "person" shall include any individual, firm, partnership (general or limited), joint venture, corporation, limited liability company, trust, association, or other entity or association or any combination thereof. If any provision of this instrument or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this instrument and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by applicable law.

18. **WAIVER.** No failure or delay in exercising any right, power or privilege under this instrument, whether intentional or not, shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of a right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

19. **SUCCESSION AND ASSIGNMENT.** The Contract shall be binding upon and inure to the benefit of the parties named herein. Petitioner may not assign the Contract or any of its rights, interests, or obligations thereunder without the prior written approval of the District. Any party that acquires title to any portion of the Lands described in this Contract (whether by purchase, conveyance or otherwise) shall do so subject to the terms and conditions of this Contract; provided however that the District is expressly entitled to, as a condition to the continued receipt of water on the Lands) require any such subsequent purchaser and/or owner of the Lands, or any portion of the Lands, to execute a new contract, assignment, and/or assumption agreement containing water purchase contract terms that are consistent with the then prevailing District policies and procedures.

20. **FURTHER ACTS.** The parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of the Contract.

21. INCORPORATION OF RECITALS. The recitals set forth in this instrument are incorporated herein by reference and made a part hereof.

22. INTEGRATION. This instrument sets forth the entire understanding of the parties with respect to the subject matter hereof, and all prior negotiations, correspondence, proposals, discussions, understandings, representations, inducements and agreements, whether oral or written and whether made by a party hereto or by any one acting on behalf of a party, shall be deemed to be merged in and superseded by this instrument and shall be of no further force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as set forth herein, and no party has relied upon any representation, promise, assurance, covenant, omission or agreement not included in the terms hereof in making the decision to enter into this instrument. This instrument may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements among or between the parties.

23. AMENDMENTS. This instrument may not be modified, amended or changed by any oral agreement, either express or implied. No amendment, modification or change in this instrument shall be valid or binding unless reduced to writing and signed by both the District and the Petitioner. The provisions of this and the immediately preceding sentence themselves may not be amended or modified, either orally or by conduct, either express or implied, and it is the declared intention of the parties that no provisions of this instrument, including said two sentences, shall be modifiable in any way or manner whatsoever other than through a written document signed by both the District and the Petitioner.

24. EXPENSES OF ENFORCEMENT. In any proceeding to enforce, interpret, rescind or terminate this instrument or in pursuing any remedy provided hereunder or by applicable law, the prevailing party shall be entitled to recover from the other party all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding. For purposes of hereof, the term "prevailing party" shall include, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought. The provisions set forth in this paragraph shall survive the merger of these provisions into any judgment.

25. EFFECTIVE DATE. This Contract shall become effective upon approval hereof by the District, as indicated by its endorsement herein below.

26. REUSE. The reuse of water delivered pursuant to this contract shall not be allowed without permission of the District. The waste, seepage, or return flow from water delivered pursuant to this contract shall belong to the United States or the District for the use and benefit of the District.

27. NOTICE. Any notice herein required to be given to the Petitioner shall be sufficiently given if sent by mail addressed to the Petitioner at the address listed below, or if sent by electronic mail addressed to the Petitioner listed below, if any such email address is listed, or through public notice, and to the District office if delivered to 2837 East Highway 193, Layton, Utah 84040.

28. **AUTHORIZED EXECUTION.** The individuals signing below each represent and warrant (i) that they are authorized to execute this instrument for and on behalf of the party for whom they are signing; (ii) that such party shall be bound in all respects hereby; and (iii) that such execution presents no conflict with any other agreement of such party.

29. **CONTRACT ASSESSMENTS:** This Petition is governed by the provisions of Utah Code Section 17B-2a-1007, titled "Contract Assessments," together with the rules and regulations of the District's board of trustees relating to contract assessments.

30. **SUPERSEDES PRIOR AGREEMENTS:** Upon execution, this Contract shall supersede in its entirety any and all prior agreements or contracts relating to the delivery of water by the District to or on the subject Lands.

IN WITNESS WHEREOF, the parties have caused this contract to be executed and signed the day and year first above written.

Petitioners and Owners of Land Above Described:

[Signature] POA for Neil J. Wall
manager

Address: PO Box 2000
Layton, UT 84041

Email Address: Tyrell@wallcompanies.net

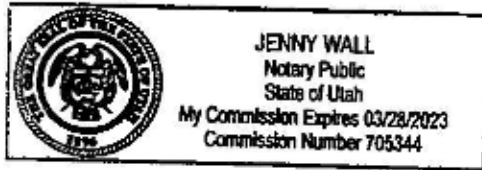
STATE OF VT)
 : ss.
COUNTY OF Davis)

On the 17 day of Sept, 2020, personally appeared before me
Tyrell Wall the signer(s) of the above instrument, who
duly 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 first above written.

[Signature]
Notary Public

(SEAL)



ORDER ON PETITION

DUE NOTICE having been given and hearing had, IT IS ORDERED that the foregoing petition of Lander FD LLC be granted and an allotment of water is hereby made to the lands therein described, upon the terms, at the rates, and payable in the manner as in said petition set forth.

DATED this 29 day of October, 2020

WEBER BASIN WATER CONSERVANCY DISTRICT

BY Dec Alan Waldron
Dec Alan Waldron, President

ATTEST:

Tage I. Flint
Tage I. Flint, Secretary

(SEAL)



FOR INTERNAL USE ONLY

Account Number: _____
WCS Number: 09-050-0097
Original Petitioner: _____
Service Area: North Davis
District Inventory: 3.54D3
CTDI/Type: -3.54D3

EXHIBIT "A"

LEGAL DESCRIPTION OF THE DAYANA COMMERCIAL CENTER

BEGINNING AT A POINT LOCATED SOUTH 89°39'25" EAST ALONG QUARTER SECTION LINE 546.00 FEET FROM THE NORTHWEST CORNER OF SECTION 10, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 89°39'25" EAST ALONG QUARTER SECTION LINE 336.00 FEET; THENCE SOUTH 00°34'35" WEST 480.61 FEET TO THE NORTHERLY LINE OF HIGHWAY 193; THENCE NORTH 80°10'35" WEST ALONG THE NORTHERLY LINE OF SAID HIGHWAY 340.42 FEET; AND THENCE NORTH 00°34'35" EAST 424.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 152,063 SQ. FT. (3.49 ACRES)