

Ent 135851 Bk 321 Pg 1362  
Date: 20-AUG-2015 4:48:53PM  
Fee: \$29.00 Check  
Filed By: CB  
BRENDA NELSON, Recorder  
MORGAN COUNTY  
For: GARDNER COTTONWOOD CREEK LC

WHEN RECORDED, PLEASE RETURN TO:

Jeffrey R. Gittins  
SMITH HARTVIGSEN  
175 S. Main Street, Suite 300  
Salt Lake City, Utah 84111

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(Space above for Recorder's use only.)

DECLARATION OF EASEMENT

THIS DECLARATION OF EASEMENT (the "**Declaration**") dated as of the 5<sup>th</sup> day of ~~July~~ <sup>Aug.</sup>, 2015, is executed by Wilkinson Family Farm, L.L.C., a Utah limited liability company ("**Grantor**"), in favor of Mountain Green Secondary Water Company, a Utah not for profit corporation, ("**Grantee**"), whose address for the purpose hereof is 4000 West Old Highway Road, Mountain Green, Utah 84050.

RECITALS:

- A. Grantor owns or has an interest in a parcel of real property located in Morgan County, State of Utah, more particularly described on the attached **Exhibit A** (the "**Parcel**").
- B. Grantee is the current owner of a distribution line and related facilities that runs through the Parcel and that distributes irrigation water from a diversion dam on Cottonwood Creek to various downstream parcels (collectively, the "**Delivery Pipeline System**").
- C. Grantor and Grantee desire to create certain rights-of-ways, easements and restrictions with respect to the Delivery Pipeline System and the Parcel.

AGREEMENT:

NOW, THEREFORE, for the foregoing purposes and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby consent, acknowledge, and agree to all of the following terms and provisions:

1. Grant of Easement.

1.1 Delivery Pipeline System Easement. Grantor hereby grants to Grantee a non-exclusive perpetual right of way and easement twenty (20) feet in width, ten (10) feet on each side of the Delivery Pipeline System in its present location as of the date hereof (the

“Easement Area”), which location is generally depicted on **Exhibit B** attached hereto, over, across, under and through the Easement Area to: (a) construct, lay, maintain, operate, repair, inspect, protect, remove and replace the Delivery Pipeline System and related facilities; and (b) to transmit water within the Delivery Pipeline System to construct, maintain, repair, replace, relocate and operate the Delivery Pipeline System.

1.2 Limitation. The rights-of-way and easements granted in Paragraph 1.1 shall be limited to such extent as may be customary and necessary for the use and operation of the Delivery Pipeline System and related uses, and includes vehicular and pedestrian ingress and egress to, from and along the Easement Area, the distribution of irrigation water, and the construction, use, operation, inspection, repair, maintenance and replacement of any and all of the foregoing. Such use of the Delivery Pipeline System shall not unreasonably interfere with the use of the Easement Area for residential or agricultural purposes; provided, Grantor may not construct any buildings or other permanent structures within the Easement Area, or otherwise make improvements or engage in activities that would interfere with Grantee’s right to use the Easement Area for the purposes stated herein.

1.3 Surveyed Location. If either Grantor or Grantee elect to survey the existing location of the Delivery Pipeline System and corresponding Easement Area, then upon completion of such survey the party causing the same to be performed shall provide a copy of such survey to the other party, together with the surveyed legal description of the Delivery Pipeline System and Easement Area. Upon review and acceptance of the surveyed location of the Delivery Pipeline System and Easement Area by Grantor or Grantee, as applicable, which approval shall not be unreasonably withheld, conditioned or delayed, then Grantor and Grantee agree that they will execute and cause to be recorded an amendment to this Declaration reflecting the actual surveyed Easement Area.

1.4 Relocation. Should Grantor, at any future date, desire either to relocate the Easement Area or the some or any portion of the Delivery Pipeline System within the Parcel or other property owned by Grantor, said relocation shall be performed by a contractor approved by Grantee, at Grantor’s sole cost and expense. Any relocation shall be without interruption of Grantee’s use of the Pipeline Delivery System except as specifically approved by Grantee, shall be accomplished pursuant to plans and specifications approved in advance and in writing by Grantee, and upon completion of the relocation, the Pipeline Delivery System shall provide Grantee with the same or better functional use of the Pipeline Delivery System and Related Equipment as existed prior to such relocation. With respect thereto, as appropriate, new easements shall be granted to Grantee at no cost or expense to Grantee with respect to any relocation of the Easement Area.

2. Covenants Running with the Land; Duration. The rights-of-way and easements set forth Paragraph 1.1 shall constitute a covenant running with and burdening the Parcel for the

benefit of the Grantee, its successors and assigns. Upon dedication of the Easement Area for use as a public right-of-way, the right-of-way and easement granted hereby shall automatically terminate and shall be of no further force or effect.

3. Repair and Restoration. If in its installation, maintenance, repair, operation, inspection, removal, replacement, or protection of the Delivery Pipeline System, Grantee or its contractors destroy, disturb, or damage any landscaping, parking surface or other improvement within located on the Parcel, Grantee shall promptly restore the same to its original condition. Grantee shall use its best efforts to avoid causing any damage to, or interference with, the remainder of the Parcel and its improvement.

4. Modification. Except as expressly set forth herein, this Declaration and any right-of-way, easement or restriction contained herein may be terminated, extended, modified or amended as to the whole of the Parcel or any portion thereof upon proper recordation of a written document evidencing the same, executed and acknowledged by Grantor and Grantee in the Office of the Morgan County Recorder.

5. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of fee title to any portion of the Parcel to or for the general public or for any public purposes whatsoever, it being the intention of Grantor and Grantee that this Declaration be strictly limited to granting an easement for the purposes expressed herein.

6. Titles and Captions. Paragraph titles or captions to this Declaration are for convenience only and shall not be deemed to be part of this Declaration and in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts of this Declaration.

7. Pronouns and Plurals. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. Each of the foregoing genders and plurals is understood to refer to a corporation, partnership or other legal entity when the contest so requires.

8. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Utah.

9. Severability. In the event that any provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Declaration and shall in no way affect any other provision herein contained. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.



**EXHIBIT A**

to

**DECLARATION OF EASEMENT**

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**Parcel**

The "Parcel" identified in the foregoing Declaration is located in Morgan County, Utah, and is more particularly described as follows:

Phase 5 Legal Description      *Serial 03-005-108 Parcel 00-0002-7340*

Beginning at a point North 3177.45 feet and East 2161.07 feet from the CE 1/16 corner of Section 30, Township 5 North, Range 2 East, Salt Lake Base and Meridian (Basis of bearing being S 88°42'14" E between the Center of Section and the CE 1/16 Corner of said Section 30); and running thence N 09°49'51" W 328.95 feet; thence Northeasterly 329.41 feet along the arc of a 222.50 foot radius curve to the right, chord bears N 32°34'56" E 300.14 feet; thence N 74°59'43" E 296.16 feet; thence Easterly 323.98 feet along the arc of a 600.00 foot radius curve to the right, chord bears S 89°32'09" E 320.06 feet; thence Southeasterly 33.15 feet along the arc of a 230.00 foot radius curve to the left, chord bears S 78°11'47" E 33.12 feet; thence Southeasterly 20.77 feet along the arc of a 15.00 foot radius curve to the right, chord bears S 42°39'46" E 19.15 feet; thence S 03°00'00" E 4.31 feet; thence Southeasterly 103.12 feet along the arc of a 227.50 foot radius curve to the left, chord bears S 15°59'08" E 102.24 feet; thence S 28°58'16" E 195.33 feet; thence Southeasterly 497.04 feet along the arc of a 572.50 foot radius curve to the right, chord bears S 04°05'57" E 481.58 feet; thence S 20°46'21" W 7.18 feet; thence Southwesterly 23.02 feet along the arc of a 15.00 foot radius curve to the right, chord bears S 64°44'16" W 20.83 feet; thence N 71°17'40" W 19.51 feet; thence Northwesterly 88.88 feet along the arc of a 177.50 foot radius curve to the left, chord bears N 85°38'22" W 87.95 feet; thence Northwesterly 507.58 feet along the arc of a 960.90 foot radius curve to the right, chord bears N 84°51'06" W 501.70 feet; thence N 69°43'07" W 48.59 feet; thence Northwesterly 23.56 feet along the arc of a 15.00 foot radius curve to the right, chord bears N 24°43'07" W 21.21 feet; thence N 69°43'07" W 55.00 feet; thence Southwesterly 23.56 feet along the arc of a 15.00 foot radius curve to the right, chord bears S 65°16'40" W 21.21 feet; thence N 69°43'07" W 32.58 feet; thence Northwesterly 116.00 feet along the arc of a 227.50 foot radius curve to the left, chord bears N 84°19'31" W 114.74 feet; thence Northwesterly 23.33 feet along the arc of a 15.00 foot radius curve to the right, chord bears N 54°22'53" W 21.05 feet to the point of beginning.

Contains 661,934 Square Feet or 15.196 Acres

Phase 6-8 Legal Description

Serial 03-005-108 Parcel 00-0002-7340

A Parcel of Land located in Section 20, and the North half of Section 29, Township 5 North, Range 2 East, Salt Lake Base and Meridian:

Beginning at the Southeast corner of Phase 3A Parcel recorded on January 26, 2007 as Entry No. 106182, in Book 242 at Page 386 of the records of Morgan County, said point being 659.61 feet North 89°47'41" West from the West Quarter corner of said Section 29; thence North 07°15'43" East 973.56 feet along the easterly line of the aforementioned Phase 3A Parcel to the Southeasterly line of Park Meadow Drive as platted on the Cottonwood Meadows A P.U.D. Subdivision recorded on August 8, 2005, as Entry No. 108786, in Book 251 at Page 807 of the records of Morgan County; thence two (2) courses along said Southeasterly line as follows: (1) North 54°28'05" East 25.48 feet to a point of curvature; and (2) Northeasterly along the arc of a 2027.50 foot radius curve to the left a distance of 102.09 feet (Central Angle equals 02°53'06" and Long Chord bears North 53°01'32" East 102.08 feet) to the Westerly line of Lot 3058 of said Cottonwood Meadows A P.U.D. Subdivision; thence South 39°27'16" East 171.78 feet along said Westerly line to the Southeasterly line of said Cottonwood Meadows A P.U.D. Subdivision; thence five (5) courses along said Southeasterly line as follows: (1) North 48°48'18" East 320.36 feet; (2) North 39°49'06" East 355.48 feet; (3) North 25°41'00" East 487.28 feet; (4) North 18°25'34" East 814.88 feet; and (5) due North 396.12 feet to the Northeast corner of said Subdivision; thence North 69°13'39" West 58.44 feet (55.030 more or less along the North line of said Subdivision to the point of intersection with the line described in Parcel 3 B of the aforementioned document recorded on January 26, 2007 as Entry No. 106182, in Book 242 at Page 391 of the records of Morgan County; thence North 05°41'26" West 141.48 feet; thence South 76°00'11" West 275.25 feet; thence South 87°23'49" West 291.01 feet; thence North 72°26'39" West 279.93 feet; thence North 69°33'51" West 55.00 feet; thence North 79°01'03" West 146.06 feet; thence North 03°54'09" West 366.12 feet; thence North 27°25'51" East 194.78 feet; thence North 74°17'54" East 392.09 feet; thence South 78°18'23" East 340.72 feet; thence South 44°13'04" East 171.56 feet; thence North 79°00'05" East 123.60 feet; thence North 00°19'26" East 596.26 feet; thence North 25°28'48" East 439.46 feet; thence North 01°27'19" West 1,043.77 feet; thence North 39°24'40" West 471.89 feet; thence North 59°15'48" East 141.36 feet; thence North 47°08'47" East 1225.38 feet; thence North 48°58'41" East 955.10 feet; thence North 47°35'40" East 520.37 feet to the North line of said Section 20; thence South 89°41'41" East 1,499.70 feet along said North line to the Northeast corner of said Section 20; thence South 38°43'29" West 3,015.59 feet; thence South 08°00'06" West 2,521.06 feet; thence South 70°46'43" East 639.68 feet; thence South 30°40'10" West 1,174.93 feet; thence South 39°58'02" West 969.95 feet; thence South 55°27'20" West 1,050.86 feet; thence South 65°26'03" West 323.30 feet; thence South 73°16'19" West 389.19 feet; thence South 44°03'02" West 433.01 feet; thence North 88°22'28" West 2.06 feet to the Point of Beginning.

Contains 275.675 Acres

**EXHIBIT B**

to

**DECLARATION OF EASEMENT**

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**Easement Description**

The "Delivery Pipeline System" identified in the foregoing Declaration is generally depicted on the attached pictorial:

4814-1898-3697, v. 4

**bit 1 to Water Delivery Agreement**



**Legend**

- MGSWC Valve
- ⊕ Pipeline Delivery Sys
- ▲ WFF Riser
- WFF Valve
- ⊕ WWF Farm Pipeline