

WEBER COUNTY PRESSURIZED SECONDARY WATER LINE AGREEMENT

PARTIES: The parties to the Pressurized Secondary Water Line Agreement (“agreement”) are Terakee Farms, Inc. (“Terakee”), a Utah non-profit organization, and Weber County (“County”).

RECITALS

WHEREAS, Terakee has entered the process of developing two parcels of property within the County to be known as The Barn @ Terakee Farms Planned Residential Unit Development and Terakee Meadow Subdivision (“Developments”), which property is shown and described on Exhibit “A” attached hereto; and,

WHEREAS, Terakee plans to install its own pressurized secondary water system (“Water System”) to serve the Developments; and,

WHEREAS, Terakee seeks to connect the Developments by running an eight (8) inch pressurized secondary water line approximately 1,000 feet within the County’s right-of-way known as 900 South Street in West Weber, Weber County, State of Utah (“Water Line”); and,

WHEREAS, the purpose of this Agreement is to protect the County from the cost of installing and/or repairing the Water Line; and,

WHEREAS, the cost of installing and maintaining the Water Line will be the responsibility of Terakee;

NOW THEREFORE, the parties agree as follows:

TERAKEE’S OBLIGATIONS

Improvements: Terakee will construct and install, at their own expense, the Water Line based on designs approved by the Weber County Engineering Department and to Hooper Irrigation standards.

Code Compliance: Terakee will comply with all applicable current and future county codes related to the installation and operation of the Water Line and all related Water System components.

Future Connectivity: The County and Terakee agree that in the event that an authorized secondary water provider (“Provider”) establishes secondary water lines directly accessible to Terakee’s Developments and the Water Line, that Provider may take ownership of, and responsibility for, Terakee’s Water System, including the Water Line, through a separate agreement between Terakee and the Provider.

Location of Terakee Secondary Water Pond and Pumps: Terakee will construct a secondary water pond and pump system on the Agricultural Parcel of the development known as The Barn @ Terakee Farms shown on Exhibit "B" attached hereto.

Water System Design: Terakee will be responsible for the design of the Water System, including the Water Line.

Water System Maintenance and Repair: Terakee and its successors in interest will be responsible, at their own expense, for the long-term care and maintenance of the Water System, including the Water Line. The County shall have no obligation for maintenance or repair of the Water Line, but the County may perform emergency repairs if needed, in which case Terakee shall reimburse County for the full cost of those repairs. In addition to all other requirements imposed by law or by other current or future approvals or agreements, the following terms will apply specifically to the Water Line:

- a. Terakee shall perform all operation, inspection, maintenance, and repair activities to the Water Line in compliance with all applicable requirements of governmental entities having jurisdiction, including Weber County excavation permits. Emergency repairs shall be allowed as stated in the Weber County Code.
- b. Terakee shall keep the Water Line in good condition and shall promptly repair any leaks or other problems that affect the functioning of the Water Line or that cause, or threaten to cause, damage or injury.
- c. Terakee shall be fully responsible for the replacement or relocation of the Water Line if replacement or relocation is needed as a result of the rebuilding, reconstruction, or realignment of 900 South Street. Within five days after notice from the County of such a need, Terakee shall perform all the necessary work at its own expense. If Terakee fails so to do, the County may have the work done and Terakee shall be obligated to pay for it.
- d. Terakee shall establish and maintain a reserve account in the amount of \$25,000.00 to cover maintenance, repairs, and other obligations related to the Water Line under this Agreement. This account shall be set up as an escrow account acceptable to the County and may be held at a financial institution chosen by Terakee, with Terakee receiving any interest earned. Expenditures from the account shall require the County's authorization. The County shall be entitled to draw funds from the account without Terakee's authorization upon presentation to the financial institution of a letter certifying that the County is entitled to the funds under the terms of this Agreement. After expenditures are made from the account, Terakee shall replenish the account to the full \$25,000.00 within three months.
- e. If Terakee fails to properly maintain, repair, or relocate the Water Line, the County may draw from the escrow account to pay for the necessary work. Before doing so, the County must notify Terakee of the need for the work and give Terakee ten days to remedy the situation, unless it is an emergency

situation that requires immediate action to prevent likely damage or injury to any person or property. Terakee's financial obligations under this Agreement are not limited to the amount in the escrow account.

- f. If Terakee ceases to exist without having first transferred ownership of any portion of the Developments and the Water System, including the Water Line, to one or more other owners or successors, or if a homeowners' association or other legal entity that is set up to serve the Developments ceases to exist or fails to fulfill Terakee's responsibilities under this Agreement after reasonable notice, then the County shall be entitled to draw the full amount from the escrow account immediately, to be used for maintenance, repair, or relocation of the Water Line.
- g. Until the termination of this Agreement, Terakee will maintain insurance as follows:
 - a) A comprehensive general liability and property damage policy that includes contractual liability coverage with minimum limits of \$1,000,000.00 per occurrence with a \$2,000,000.00 aggregate. The policy shall include coverage for personal injury, including death, and broad form property damage, including completed operations.
 - b) The insurance shall be obtained from insurance carriers authorized to do business in the State of Utah.
 - c) If any of the required coverage is provided on a claims-made basis, then Terakee shall maintain the policy for no less than four years after termination of this Agreement.

Water Line Removal: Upon termination of this Agreement, if the Water Line has been installed and will no longer be used, Terakee, or the authorized secondary water Provider, shall completely remove the Water Line from the County's right-of-way. Terakee, or the authorized secondary water Provider, shall comply with all applicable ordinances or other regulations related to excavation, backfill, and surface restoration.

Liability and Indemnification:

- a. If Terakee's exercise of its rights under this Agreement causes any damage to County property, then Terakee shall notify the County immediately and, at the County's discretion, either repair the damage to the County's satisfaction within a reasonable time or compensate the County for the reasonable costs of repairing the damage.
- b. Terakee hereby releases, indemnifies, and will hold the County harmless from any damage or injury to any person or property that is caused by Terakee's activities, or failure to act, under this Agreement, including any negligent, reckless, or intentional act or omission by Terakee or by any person for whose acts Terakee is responsible.
- c. Terakee's obligation to indemnify the County is not limited or waived in any way by compliance or non-compliance with the insurance requirements of this Agreement. Terakee will be required to indemnify the County to the fullest

extent allowed by law, regardless of whether Terakee has sufficient insurance to cover this obligation.

COUNTY'S OBLIGATIONS

Approval: If Terakee complies with the terms of this Agreement and all other applicable legal requirements, and if the Weber County Engineering Department approves the plans for the Water Line, then the County shall approve the use of the Water Line and its installation in the 900 South right-of-way. This approval shall not constitute an easement, but shall be a license.

Liability and Indemnification: If the County causes damage to the Water Line, then Terakee's remedy shall be limited to the following: the County shall, at its sole discretion, either repair the damage or compensate Terakee for the reasonable costs of repairing the damage.

GENERAL TERMS

Recording Required as a Condition Precedent:

The rights and responsibilities of the parties under this agreement do not arise until the plats for both the Terakee Meadow subdivision and The Barn @ Terakee Farms Planned Residential Unit Development subdivision have been approved by Weber County and have been recorded.

Continuing Obligation:

- a. In this Agreement, the terms "party" and "parties," and specific references to the individual parties, refer to the parties and their heirs, assigns, and other successors.
- b. The obligations of the parties under this Agreement will continue and will bind the parties and their successors in perpetuity, unless modified or terminated in accordance with the terms of this Agreement.
- c. This Agreement shall constitute an equitable servitude and a covenant running with the land on the Developments, and Terakee consents to the recording of this Agreement on each lot and parcel in the Developments.
- d. At the time of each transfer of ownership of any portion of the Developments by Terakee to another owner, Terakee shall provide a copy of this Agreement to the new owner.
- e. As successors to Terakee, each homeowners' association or other legal entity that is set up to serve the Developments, and each other owner of property in the Developments, shall be jointly and severally liable for all obligations incurred by Terakee under this Agreement, to the extent allowed by law.
- f. Each future potential homeowners' association or other legal entity as successor to Terakee shall include notice of the terms of this Agreement in its governing

documents and shall also include, and enforce, provisions that ensure continuing compliance with all of Terakee's obligations under this Agreement.

- g. If Terakee ceases to exist without having first transferred ownership of any portion of the Developments and the Water System, including the Water Line, to one or more other owners or successors, then whoever succeeds to ownership of the Developments and the Water System shall become liable for all of Terakee's responsibilities under this Agreement, to the extent permitted by law. If there are multiple successors, they shall be jointly and severally liable to the extent allowed by law.

Amendment, Modification, and Termination: The parties to this Agreement may amend, modify, or terminate this Agreement only by written instrument executed between the County and Terakee, except that the following events will result in automatic termination of this Agreement and of Terakee's license to operate the Water Line:

- a. Terakee fails to commence installation of the Water Line by January 1, 2022.
- b. Terakee notifies the County that it will no longer use the Water Line.
- c. Terakee ceases to use the Water Line for a period of one year.
- d. The County rebuilds or realigns 900 South in the area of the Water Line, or expands its right-of-way in that area, or materially changes the use of the right-of-way in that area, and determines, in its sole discretion, that the Water Line is no longer compatible with the County's use of the right-of-way.
- e. A Provider or governmental entity takes ownership and control of the Water Line.

Scope: This Agreement constitutes the entire agreement between the parties, and no statements, promises, or inducements that are not contained in this Agreement will be binding on the parties with respect to the subject matter of this Agreement.

Personal Jurisdiction and Venue: Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to this Agreement will be deemed to be proper only if such action is commenced in the District Court for Weber County.

(Signatures on next page)

SIGNATURES AND ACKNOWLEDGMENTS

For Terakee

Printed name: BRAD BLANCH

Signature: *Brad Blanch*

Title: GENERAL PARTNER

Date: 1/6/2021

State of Utah)
 SS
County of Weber)

On the 6th day of January, 2021, personally appeared before me Brad Alan Blanch, who, duly sworn, did say that he is the Registered Agent of Terakee Farms, Inc., the corporation which executed the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors.

Maria D. Lopez
Notary Public
Residing at: Clinton, Utah.



For Weber County

Signature: _____

_____, Chair, Board of County Commissioners

Date: _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor