

COMMUNITY WATER SYSTEM AGREEMENT

MEADOWLAND - UNIT #2

THIS AGREEMENT, made and entered into this 17th day of October, 1975, by and between DARWIN HAMILTON, of Kalispell, Flathead County, Montana, hereinafter referred to as FIRST PARTY; and RICHARD F. UHDE and L. JUANITA UHDE, husband and wife, of Kalispell, Flathead County, Montana, hereinafter referred to as SECOND PARTIES;

W I T N E S S E T H:

WHEREAS, FIRST PARTY is the owner of the following described tracts of land situate in the County of Flathead, State of Montana, to-wit:

Lots 3 through 10, and 13 through 46, of Meadowland - Unit #2, according to a map or plat thereof on file and of record in the Office of the County Clerk and Recorder of Flathead County, Montana,

and

WHEREAS, SECOND PARTIES are the purchasers of the following described tract of land situate in the County of Flathead, State of Montana, to-wit:

Lots 11 and 12 of Meadowland - Unit #2, according to the recorded plat thereof, records of Flathead County, Montana,

and

WHEREAS, a community water system consisting of a water well situate on Lot 11 of Meadowland - Unit #2, together with pump, storage tank, pressure tank, central water mains and other appurtenances hereinafter referred to as the Water System, has been or shall hereafter be installed within said Meadowland - Unit #2, and over and across the lots hereinabove referred to for the purpose of providing water service to each of said lots subject to the proportionate sharing of all costs and expenses of operation and maintenance of said water system by the owners of each of said lots;

NOW THEREFORE, in consideration of the mutual covenants herein exchanged, the parties hereto hereby agree as follows:

1. OWNERS OF WATER SYSTEM. FIRST PARTY, as owner of said water system, does hereby sell and transfer to SECOND PARTIES, as purchasers of said Lots 11 and 12 of Meadowland - Unit #2, above described, an undivided two forty-fourths ($2/44$) interest in and to said water well and water system together with the complete operating mechanism therein contained and the water mains, extending therefrom, together with the free and equal right to use the water flowing therefrom, said interest to be appurtenant to the above described lots as hereinafter provided for, and subject to all covenants, terms, conditions and default provisions as contained in that certain Contract for Deed of even date by and between Darwin Hamilton and Mary Hamilton, as Sellers and SECOND PARTIES herein

as Purchasers, relating to the sale and purchase of said lots. The remaining ownership in said water system is retained in FIRST PARTY as of the date hereof.

2. EASEMENT. It is agreed that Richard F. Uhde and L. Juanita Uhde, SECOND PARTIES herein, as purchasers of Lot 11 of Meadowland - Unit #2, upon which the water well and other equipment hereinabove referred to is situate, do hereby grant, bargain, sell and convey to the other parties to this agreement, an easement and right of way over, across and under said Lot 11 for the purpose of maintaining said water well, water mains and other appurtenances as may be required, in order to enable any of the parties hereto to exercise their ownership interest in and to said water well and the water therein, together with the right to enter thereon for the purpose of operation and maintenance of said water well and equipment, said easement and right of way all more particularly described as follows, to-wit:

Commencing at the Southwest corner of said Lot 11; thence Easterly and along the Southerly boundary of said lot a distance of 75 feet; thence Northerly and parallel with the Westerly boundary of said lot a distance of 75 feet; thence Westerly and parallel to the Southerly boundary of said Lot 11 a distance of 75 feet to a point on the Westerly boundary thereof; thence Southerly and along the Westerly boundary of said lot, a distance of 75 feet to the point of beginning.

3. MAINTENANCE, REPAIR AND REPLACEMENT OF WATER SYSTEM. The expense of maintenance, repair and/or replacement of said water system, or any portion thereof, shall be borne in equal shares by the owners or purchasers of the real property hereinabove described as hereinafter provided for; it being understood however, that the cost of hook-up, maintenance, repair and/or replacement of any pipeline extending from the central water mains to the dwellings or other appurtenances or fixtures which may be constructed or maintained on the individual lots within Meadowland - Unit #2, shall be borne in full by the purchaser or owner of such individual lot.

It is understood that FIRST PARTY intends to sell the lots presently retained by him, and it is specifically understood and agreed that as such lots are sold and conveyed, the purchaser of each such lot shall be vested with an undivided one forty-fourth ($1/44$) interest in and to said water system, together with the water flowing therefrom, and shall bear an equal share of the expense of said maintenance, repair and/or replacement in accordance with the terms hereof.

4. ADDITIONAL PARTIES. FIRST PARTY agrees that he will not convey the presently unsold lots above referred to, or any undivided interest in and to said water system, to any purchaser unless said purchaser shall ratify and become a party to this Water Well Agreement, and become subject to the terms and conditions hereof.

5. SERVICE CONNECTIONS. No lot shall be connected to the central water mains by more than a single three-quarter inch ($3/4$ ") service connection.

6. WARRANTY. It is specifically understood and agreed that FIRST PARTY makes no warranty with respect to said water system except as follows:

(a) All materials and equipment utilized in the original construction thereof are hereby warranted exactly in accordance with the manufacturers' warranty thereof.

(b) It is further warranted that all work shall be completed in a workmanlike manner and shall be free from defective workmanship for a period of one (1) year from the date performed.

7. DEFINITION OF PARTIES. The words "parties," "parties to this agreement," or "parties hereto," as used in this agreement shall include, in addition to the parties herein specifically named and designated, all persons who subsequent to the date hereof become owners/purchasers of any of the real property hereinabove described, it being the intent of the parties hereto that the terms of this Water Well Agreement shall be appurtenant to the real property hereinabove described as more particularly provided for in Paragraph 12 below.

Joint owners or purchasers of any of the lots hereinabove referred to shall collectively constitute a single party for the purpose of this agreement.

8. MONTHLY SERVICE CHARGE. A monthly charge of _____, per lot, shall be assessed to the owners or purchasers of each lot actually connected to said water system or actually receiving the beneficial use thereof through irrigation or otherwise, immediately upon such connection, which said sum shall be payable on or before the 10th day of each month following connection of such lot to said water system, which said sum shall be paid to and administered by the custodian, as hereinafter provided for.

9. CUSTODIAN OF WATER SYSTEM. The duty to supervise, operate, maintain and keep said water system in good repair and condition, shall be vested in a custodian, who shall be a party hereto, and who, with the sole exception of the first custodian as hereinafter provided for must, in addition to being a party hereto, be the owner/purchaser of a lot or lots actually connected to said water system.

DARWIN HAMILTON shall be the first custodian hereby selected by the parties, to serve until such time as his successor may be selected as hereinafter provided.

The custodian shall collect all monthly service charges as herein provided for, and shall deposit the moneys received in a bank account entitled "Meadowland - Unit #2 Water Users" at such banking institution as the parties hereto may decide upon from time to time. All such funds shall be utilized by the custodian in payment of the necessary costs of operation, maintenance, repair or replacement of the water system, and the appurtenances thereto. The custodian shall execute the signature card for such bank account, shall act as trustee of the funds so collected and deposited, and shall be accountable therefrom.

In the event the monthly service charge herein contemplated shall for any reason be insufficient to pay the ordinary costs of operation, maintenance, repair or replacement of the water system, or any appurtenances thereto, or in the event any unexpected cost of repair, maintenance or replacement shall be in excess of the funds available in that account, then the custodian shall immediately call a meeting of the parties hereto, for the purpose of discussion and adoption of any increase in monthly service charge or special assessment that may be necessary.

The custodian shall further arrange for and obtain a water sample from the water system well, and submit the same to the Montana State Board of Health, Helena, Montana, for testing, and shall further submit copies of the report thereon to the parties hereto. Such testing shall be conducted in accordance with the requirements of the Department of Health and Environmental Sciences of the State of Montana.

At such time as the successor to the first custodian is selected, as hereinafter provided for, such successor custodian and each custodian selected thereafter shall, in consideration of his/her services in operating said water system and performing the duties hereinabove set forth, be relieved of the obligation of payment of a sum equal to the monthly service charge for one (1) lot, however shall continue to be liable for any special assessment as may be determined by the parties to be necessary as hereinabove set forth.

In the event any person selected as custodian by the parties hereto should resign, refuse to assume the foregoing duties, or should otherwise become unqualified, then and in that event, the parties hereto shall, at a meeting called for that purpose, among themselves, select another of their number to act as custodian, and any bank selected by the parties as depository of the funds in "Meadowland - Unit #2 Water Users" account shall be, and is hereby authorized upon receipt of an affidavit executed by the acting secretary of such meeting of the selection of such successor custodian, to issue and obtain a new signature card, signed by the custodian then selected by the parties.

10. SUSPENSION OF SERVICE. Any monthly service charge or special assessment not paid when due shall be delinquent. In the event any such charge or assessment shall be in arrears for a period of sixty (60) days, water service to the lot concerned shall be suspended, and the custodian shall have the right to enter upon such lot to effect such suspension. Water service shall be restored upon payment of all amounts in arrears, together with a \$10.00 penalty.

11. MEETINGS OF THE PARTIES. Meetings of the parties hereto may be called by the custodian as hereinabove set forth, or by a majority of the parties to this agreement, upon ten (10) days' written notice to the other parties, except where notice is waived in writing by all parties to this agreement.

At any such meeting, any business pertinent to the operation, maintenance, repair or replacement of said water system may properly be discussed and voted upon.

The presence in person or by proxy of a majority of the parties

to this agreement shall constitute a quorum for the transaction of business.

For the purpose of voting at any such meeting, each party whose property is actually connected to said water system shall have one vote for each lot so connected. In the event there are several owners or purchasers of such property, they must collectively exercise such vote.

12. AGREEMENTS APPURTENANT TO PROPERTY. The terms of this agreement shall be, and shall be construed to be appurtenant to the properties owned or purchased by the parties hereto, and shall run with the land.

13. IT IS SPECIFICALLY UNDERSTOOD AND AGREED that time is an essential element of this agreement, and that all covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year set forth above.

FIRST PARTY:

Darwin Hamilton
DARWIN HAMILTON

SECOND PARTIES:

Richard F. Uhde
RICHARD F. UHDE

L. Juanita Uhde
L. JUANITA UHDE

STATE OF MONTANA)
County of Flathead) ss.

On this 17 day of October, 1975, before me, the undersigned, a Notary Public for the State of Montana, personally appeared DARWIN HAMILTON, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above



Nancy G. ...
Notary Public for the State of Montana
Residing at Kalispell, Montana
My Commission expires 8 30 77

STATE OF MONTANA)
County of Flathead) ss.

On this 17 day of October, 1975, before me, the undersigned, a Notary Public for the State of Montana, personally appeared

RICHARD F. UHDE and L. JUANITA UHDE, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

WITNESS WHEREOF, I have hereunto set my hand and affixed my Notary Seal the day and year in this certificate first above written.



Nancy G. Ritz
Notary Public for the State of Montana
Residing at Kalispell, Montana
My Commission expires 1-20-77

STATE OF MONTANA } ss
County of Flathead

Filed for record at the request of *S. Y. Larrick*

this 14 day of October 1975 at 10:09 o'clock a M and recorded in

VOL. 587 PAGE 358 Records of Flathead County, State of Montana.

Fee \$ 12⁰⁰

Ethel L. Smith
FLATHEAD COUNTY CLERK AND RECORDER

RECEPTION NO. 9559

RETURN TO *S. Y. Larrick*

Box 1159 *Sal. Mt.*

Jim L. Henderson
Deputy

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