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## SHARED ARTESIAN WELL AGREEMENT

This Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between Douglas Christopherson (hereinafter referred to as "Tract 1 Owner") and \_\_\_\_\_ (hereinafter referred to as "Tract 2 Owner");  
WITNESSETH:

### RECITALS

A. Tract 1 Owner is the owner of the following described real property, to-wit:

Lot One (1) in Jacobs-Christopherson Subdivision in the Southeast Quarter (SE1/4) of Section Four (4), Township One Hundred Eighteen (118) North, Range Sixty-two (62), West of the 5th P.M., Spink County, South Dakota ("Tract 1").

B. Tract 2 Owner is the owner of the following described real property, to-wit:

East Half (E1/2) of Section Nine (9), Township One Hundred Eighteen (118) North, Range Sixty-two (62), West of the 5th P.M., Spink County, South Dakota ("Tract 2").

C. There exists upon Tract 1 and Tract 2 a well system to service the properties, with the "main" well located upon Tract 1 (hereinafter referred to as the "Well").

D. It is the intention and purpose of the undersigned parties that the Well and associated water distribution system shall continue to be used and operated to provide water for each of the two Tracts and the property within each Tract as it is currently being utilized, even though the Tracts may have separate ownership, and that the Well and water distribution system shall continue to be used for the watering of livestock and to further assure the continuous and satisfactory operation and maintenance of the Well and water distribution system for the benefit of the present and future owners, their heirs, successors and assigns of the properties connected thereto.

E. All parties agree to refrain from any expansion or extension of the current water distribution system, except as herein provided, and to govern consumption through the existing

water distribution system so as to maintain reasonable volume and head pressure to both Tracts. Further, all parties agree to govern themselves according to principles of reasonable use, refrain from avoidable waste and abstain from any and all commercial irrigation.

NOW, THEREFORE, IN CONSIDERATION OF THE FACTS AND OTHER CONSIDERATION RECITED ABOVE, WHICH ARE HEREBY MADE A PART OF THIS AGREEMENT, AND THE FOLLOWING MUTUAL PROMISES, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Until this Agreement is terminated, as hereinafter provided, the parties hereto, their heirs, successors and assigns, for the exclusive benefit of the respective Tracts, and for the exclusive use of the individuals and agricultural livestock thereon, are hereby granted the right in common with the other parties to this Agreement, to draw water from the Well located on Tract 1 for use for watering livestock. In no event shall the use include any commercial irrigation.

2. The Owners of both Tracts shall refrain from any expansion or extension of the current water distribution system except as herein provided. Without exception, the Owners of both Tracts shall refrain from interfering with the reasonable volume and head pressure to the other Tract as they existed upon the execution of this Agreement, and each party shall govern water consumption so as to maintain reasonable volume or head pressure to both Tracts. Further, all parties agree to govern themselves according to principles of reasonable use, and refrain from avoidable waste.

3. The Owner of either Tract may expand or extend the current water distribution system only for such Owner's agricultural purposes, to include, but not be limited to, additional pasture taps or additional cattle yards or feedlots (either personal or commercial); however, nothing contained herein shall be deemed to grant any party the right to expand the existing waterline to real property not already included in the two Tracts covered by this Agreement. The cost of such expansion to the system shall be solely the responsibility of the Tract Owner expanding the system. Such expansion will not be allowed if it interferes with providing adequate volume or head pressure to the other Tract. In no event, without the consent of the other Owner, may a Tract Owner consume more than his/her/their/its 50% Share of total water flow available from the well.

4. The Owner of Tract 2, as of the date of this Agreement shall pay or cause to be paid promptly to the Owner of Tract 1 his/her/their/its proportionate share (50%) of all expenses for the operation and maintenance of the Well and any pumping equipment that may become necessary. Shared expenses shall be in the percentages established in Section 3 above and shall include the cost of repairs and maintenance on said Well and water distribution system. The parties to this Agreement agree that they shall agree on the contractor to perform repairs, replacement or maintenance services for the Well/pumping equipment; or in the event they cannot agree, each may contact a contractor for a bid, and the low "responsible" bidder will be awarded the contract.

5. The cost of any removal or replacement of pre-existing site improvements on an individual Tract necessary for system operation, maintenance, replacement, improvements, inspection or testing, damaged as a result of repair of the Well or water distribution system maintenance will be borne by the Owner of the affected Tract, except that costs to remove and replace common boundary fencing or walls damaged as a result of repair shall be shared equally between or among parties so damaged.

6. Each of the parties hereby agrees that they will promptly repair, maintain and replace all water pipes or mains serving their respective Tracts.

7. The consent of both parties to pay a proportionate share of costs shall be obtained prior to embarking upon expenditures for system maintenance or replacement, except in emergency situations. An arbitrator shall be chosen by the parties; shall be consulted in the event the parties cannot agree regarding the said expenditures; and the arbitrator's decision shall be definitive.

8. It is the agreement of the parties hereto that the payment for energy cost, which shall be paid in the percentages set forth in paragraph 4 above, shall be made not later than the 1st day of each succeeding month during the term of this Agreement. In the event that any such payment remains unpaid for a period of ten (10) days, the Owner of Tract 1 may terminate the supply of water to the deficient Tract until all arrearages in payment are received. Upon such curative action, the supply of water shall be restored.

9. It is the agreement of the parties that they shall permit a party to this Agreement to cure a default of payment or other obligation and shall permit water distribution service to be reinstated upon such curative action.

10. Each of the parties to this Agreement does hereby grant to the other, his/her/their/its heirs, successors and assigns, such easements over, across and through the respective Tracts as shall be reasonably necessary for the construction of the Well, maintenance of water pipes, pumping equipment, mains, electrical wiring and conduit consistent with the purposes of this Agreement over the most direct and expeditious route possible and attempting to cause as little damage or disruption as possible.

11. No party may install landscaping or improvements that will impair the use of said easements.

12. Each party shall have the right to act to correct an emergency situation and shall have access to the pertinent Tract in the absence of the other. An emergency situation shall be defined as the failure of any shared portion of the system to deliver water upon demand.

13. Only those Tracts of real estate hereinabove described shall be permitted to receive water from said Well; and each of the parties hereto does hereby covenant and agree that he/she/they/it will not allow or permit other persons, other than household guests, to take, draw, use or receive water from the Well, nor permit other persons to connect to the pipes or mains serving his/her/their/its respective Tract.

14. In the event the referenced Well shall become contaminated and shall no longer supply water suitable for agricultural purposes, or in the event that Tract Owner 2 no longer wishes to utilize water from the Well located on Tract 1, then the rights and obligations of the parties created by this Agreement shall cease and terminate in accordance with the terms and conditions hereinafter described.

15. The respective rights and obligations of the parties shall continue until the parties who wish to terminate their participation in the Well Agreement have executed and filed a written statement of termination at the Office of the Register of Deeds of the County of Spink State of South Dakota. Upon termination of participation in this Agreement, the Owner of each Tract which is terminated from the Agreement shall have no further right to the use of the Well. The terminated parties shall disconnect their respective lateral connection from said well system, adequately seal the well system and shall have no further obligation to pay for maintenance and related expenses incurred thereafter. The costs of disconnection from the Well and water system shall be borne by the Owner of the pertinent Tract.

16. The Owner of each Tract is individually responsible for monitoring the quality and nature of the water in the Well and water distribution system. Frequent water tests are recommended. No Tract Owner guarantees, warrants or makes any representation whatsoever regarding the quality of water delivered through the water distribution system to any other Tract.

17. In the event of default by any party to this Agreement, the nondefaulting party(ies) shall those remedies available to them pursuant to the laws of the State of South Dakota.

18. The term of this Agreement shall be perpetual, except as herein limited.

19. The benefits and burdens of this Agreement shall constitute a covenant running with the tracts of land herein described and shall be binding upon the heirs, successors in title and assigns of the parties hereto.

20. This Agreement shall be construed by and governed in accordance with the laws of the State of South Dakota.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and date first above written.

OWNER OF TRACT 1:

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OWNER OF TRACT 2:

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STATE OF SOUTH DAKOTA  
SS  
COUNTY OF \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned officer, personally appeared Douglas Christopherson,, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF SOUTH DAKOTA  
SS  
COUNTY OF \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person\_\_ whose name\_\_ \_\_\_\_\_ subscribed to the within instrument and acknowledged that \_\_he\_\_ executed the same for the purposes therein contained.

In Witness Whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: