

**WATER USE, OWNERSHIP AND WELL SHARING AGREEMENT**

THIS AGREEMENT, made and entered into this 15 <sup>August KM</sup> day of ~~July~~ 2024, by and between Kevin W. Miller and Kevin W. Miller.

WHEREAS, Kevin W. Miller owns certain property located in Weld County, Colorado as depicted on the Family Farm Division FFD24-0012; and

WHEREAS, the property has been divided into two lots, Lot A consisting of 5 acres and Lot B consisting of 65 acres as further described on the Family Farm Division FFD24-0012 plat; and

WHEREAS, Lots A and B will be served by a common well permitted under Permit No. 329426 (the "Well"); and

WHEREAS, the parties desire to set forth in writing the conveyance of rights to and their agreement concerning the ownership of the Well and related improvements, the use and maintenance of the Well, and the rights and obligations of the parties concerning the Well and the use of water therefrom.

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Water Well.** Water service for Lots A and B shall be provided by the Well. At all times the owners of Lots A and B (the "Owners") shall abide by and comply with the terms, conditions and provisions contained within the permit. Each Lot shall be deemed to own an undivided one-half (1/2) share of the permit, Well and shared water system facilities. The individual service line and meter for each Lot shall be owned exclusively by and be the sole responsibility of the Lot's owner.

2. **Construction and Maintenance of Water Well.** All costs of construction of the Well and all work required on shared components of the water system to cause the Well to become and remain available to deliver water to Lots A and B shall be shared by the Owners in proportion to their share of ownership in the Well.

3. **Operation, Maintenance and Repairs to Water Well.** The Owners shall cooperate with each other at all times to promote the proper function and use of the Well and water system to provide an optimum water supply on demand at all times possible based upon the availability of the water. The Owners shall not waste water and shall endeavor to use no more than their respective share of the available water. The Owners shall cooperate on the future maintenance, operation, repair, replacement or improvement of the Well, water system and all common facilities. Each Owner shall be responsible for 1/2 of the costs associated with the operation, maintenance, replacement and repairs to Well and the shared water system facilities. The Owners agree to annual well water sampling and testing and inspection every five years at a minimum by a licensed well contractor as part of a regular maintenance plan. In the event the owners are unable to agree on any required maintenance, repair, replacement, or improvement, any

Owner shall be entitled to undertake the minimal maintenance, repair, replacement, or improvement necessary and essential for proper functioning of the common facilities. In the event an Owner determines to undertake such work unilaterally, such Owner shall notify the other Owners in writing. The Owner undertaking the work shall, upon completion, provide the other Owner with a written statement of work performed and the other Owners' proportionate share of any amount due within thirty (30) days after presentment, the Owner which has paid such costs and expense shall be entitled to pursue any remedy available at law or in equity. The Court, in its discretion, may award to the prevailing party any reasonable costs and attorneys fees incurred.

4. **Meter Readings/Payments.** The Owner of Lot B shall be responsible to submit meter readings, if required, and to make any payments related to the Well. The Owner of Lot B shall notify Lot A of any such charges or payments and the Owner of Lot A shall pay its proportionate share to the Owner of Lot B within thirty (30) days of receipt of such notice.

5. **Easement.** The Owner of Lot B dedicates to the Owner of Lot A, a permanent, non-exclusive easement as depicted in Exhibit A attached hereto and as identified on the final plat. The term shall be perpetual. The ownership of the easement granted herein is appurtenant to Lot A and such easement may not be transferred, assigned or conveyed apart or separately from Lot A.

6. **Emergency Access.** Each Owner shall have the right to act to correct an emergency situation and shall have access to the Lots 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.

7. **Default.** If an Owner fails to discharge its obligations hereunder, any other Owner may give written notice thereof to such defaulting Owner ("Defaulting Owner"). If the Defaulting Owner does not cure such failure within twenty (20) days after its receipt of such notice, then the non-defaulting Owner shall have the right, but not the obligation, to cure such failure. If the non-defaulting Owner elects to cure the Defaulting Owner's failure under this paragraph, then the Defaulting Owner shall, within ten (10) days after written demand by the non-defaulting Owner (accompanied by invoices setting forth a reasonable detail the costs incurred by such Owner), reimburse the non-defaulting Owner for the reasonable costs and expenses incurred in connection therewith, together with interest thereon from the date of such demand until paid at the rate of 18% per annum.

8. **Indemnity.** Each Owner shall indemnify, defend and hold harmless the other Owner from and against any and all claims, damages, liens (including without limitation mechanics' and materialman's liens), losses, suits, actions, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) arising from or related to the operation, construction, maintenance or use of shared facilities addressed in this Agreement by an Owner or its permittees except to the extent that such claims, liens, losses, suits, actions, judgments, liabilities, costs or expenses resulted from the negligence, recklessness or willful act of the indemnified Owner or its permittees.

9. **Covenants Running With the Land.** This Agreement and the provisions contained herein are intended to and shall run with the titles to Lots A and B and shall be binding upon and inure to the benefit of the Owners thereof, and their successors and assigns. This Agreement may not be modified in any manner except by an instrument in writing such by the Owners of each of the Lots.

10. **Notice.** Any notice or demand under this Agreement shall be in writing and shall be deemed given, received, and served (a) upon personal delivery or (b)

11. **Entire Agreement.** This Agreement contains the entire agreement of the parties concerning the subject matter herein and supersedes all prior agreements.

12. **Governing Law.** The laws of the State of Colorado shall govern the validity, effect and construction of this Agreement.

13. **Attorney Fees.** In an action to enforce this Agreement, the prevailing party or parties in any such action shall be entitled to recover its costs, expenses and reasonable attorneys' fees.

[SIGNATURES ON NEXT PAGE]

Kevin W. Miller

## Exhibit A

### LEGAL DESCRIPTION FOR A 30' SHARED WELL AGREEMENT

BEING A PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 6 NORTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARING: ASSUMING THE NORTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 23 AS BEARING NORTH 89°47'19" EAST AS MONUMENTED AS SHOWN ON THE ATTACHED EXHIBIT B, WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE CENTER WEST 1/16 CORNER OF SAID SECTION 23;

THENCE SOUTH 44°52'06" EAST A DISTANCE OF 589.03 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 88°51'43" EAST A DISTANCE OF 30.62 FEET;

THENCE SOUTH 12°42'00" EAST A DISTANCE OF 568.82 FEET;

THENCE SOUTH 77°18'00" WEST A DISTANCE OF 30.00 FEET;

THENCE NORTH 12°42'00" WEST A DISTANCE OF 574.96 FEET TO THE POINT OF BEGINNING;

**EXHIBIT B**

LOCATED IN THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 6 NORTH, RANGE 66 WEST  
OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO

CENTER WEST 1/16 CORNER  
S23, T6N, R66W SET A 3 1/4"  
ALUMINUM CAP ON A NO. 6 REBAR  
STAMPED 38729

N 89°47'19" E, 1323.22'

LOT A  
FFD24-0012

CENTER 1/4 CORNER  
S23, T6N, R66W FOUND 2 1/2"  
ALUMINUM CAP ON A NO. 6 REBAR  
STAMPED 30462

S 44°52'06" E, 589.03'  
TIE TO CENTERWEST 1/16

N 88°51'43" E, 30.62'

APPROXIMATE CENTERLINE OF  
EXISTING DITCH

LOT B  
FFD24-0012

N 00°23'39" W, 2636.75'

N 12°42'00" W, 574.96'  
S 12°42'00" E, 568.82'

N 37°35'44" E, 1232.61'  
TIE TO CENTER 1/4

SCALE: 1"=200'  
LEGEND

- SECTION LINE
- EASEMENT LINE
- PARCEL BOUNDARY
- RIGHT-OF-WAY LINE
- SECTION CORNER

WEST 1/16 CORNER  
S23, T6N, R66W FOUND  
A NO. 6 REBAR WITH AN  
ILLEGIBLE PLASTIC CAP  
STAMPED 38729

NOTE  
THIS EXHIBIT IS MEANT TO DEPICT  
THE ATTACHED LEGAL DESCRIPTION  
AND IS FOR INFORMATIONAL  
PURPOSES ONLY. IT DOES NOT  
REPRESENT A MONUMENTED LAND  
SURVEY.

**SHARED WELL EASEMENT**

|          |            |
|----------|------------|
| DATE:    | 07/08/2024 |
| DRAWN:   | TSD        |
| CHECKED: | TSD        |
| JOB NO.: | 240002     |

|      |    |
|------|----|
| SHT. | 01 |
| OF   | 01 |

**TSD Surveying**

13013 County Road 86, Pierce, CO 80650  
(970) 590-2197