

WELL LEASE AGREEMENT

THIS LEASE ("Lease") is made this 5th day of October 2007 ("Effective Date"), by and between SHELLEY LAKE ESTATES HOMEOWNERS' ASSOCIATION, a Washington nonprofit corporation, with an address for notice purposes of P.O. Box 1872, Veradale, WA 99037 ("Landlord") and ROBERT L. HEITMAN, JR., an individual, and SHELLEY LAKE DEVELOPMENT, L.L.C., a Washington limited liability company, with an address for notice purposes of 8225 N. Division, Spokane, Washington 99208 ("Tenant"). The parties agree as follows:

R E C I T A L S

A. WHEREAS, Landlord is the owner of real property consisting of part of the Common Area ("Common Area") owned in conjunction with a phased property development and residential community located in Spokane County, Washington commonly known as Shelley Lake Community ("Shelley Lake Community");

B. WHEREAS, Landlord is the owner of a well, pump, piping from the pump to Shelley Lake, a structure housing the pump and wellhead, and related equipment and apparatus (collectively "Well"), with the Well being located within Tract B of Shelley Lake P.U.D.; and

C. WHEREAS, Tenant was the developer of the Shelley Lake Community and is the owner of the property currently under development and commonly known as the Fifth Addition to Shelley Lake Estates ("Fifth Addition"); and

D. WHEREAS, Tenant and Landlord are also entering a settlement agreement resolving a dispute between them related to the development of the Fifth Addition, and Tenant's execution of this Lease is partial consideration for Landlord's execution of the Fifth Addition Settlement Agreement; and

E. WHEREAS, Landlord is desirous of leasing the Well to Tenant and Tenant is desirous of leasing the Well from Landlord as hereinafter provided;

NOW, THEREFORE, Landlord and Tenant do hereby contract, covenant and agree as follows:

1. **LEASE:** Landlord leases to Tenant and Tenant hereby leases from Landlord the Well, subject to the provisions and conditions herein. The Well shall consist of all items referred to above as the Well, as well as use and control of those portions of the Common Area reasonable and appropriate for Tenant to gain access to, operate, inspect, maintain, repair and, to the extent necessary, reconstruct the Well, including all portions thereof, and to operate the same for purposes of pumping water and delivering the same into the lake located within a portion of the Common Area commonly known as Shelley Lake.

2. **PARTIES:** Landlord and Tenant agree and acknowledge that the agreements and undertakings provided herein are entered between the parties hereto only and that nothing herein shall be construed as making owners of lots and dwellings within the Shelley Lake Community, in their individual capacity as such or as members of Landlord, or the individuals who have served, now serve, or who may in the future serve, as directors of Landlord, as parties to this Lease or the undertakings and commitments provided herein, in any respect. As among the parties hereto, however, all parties agree that any statute of limitations relating to claims arising between them in any way in connection with the Well, this Lease, or alleged wrongful actions claimed to have been committed by any of the parties hereto, shall be tolled while this Lease remains in effect. Further, notwithstanding anything in this Lease to the contrary, in addition to other obligations undertaken herein, Tenant covenants and agrees to indemnify and hold Landlord and present and future Board Members of Landlord harmless, from all civil or criminal actions, sanctions, or penalties arising from Tenant's pumping of water from the Well into Shelley Lake as contemplated under this Lease. These indemnification obligations shall survive termination of this Lease.

3. **TERM:** The term of this Lease commences as of the Effective Date stated in the introductory paragraph above and shall terminate two years following the Effective Date. In addition to the initial term, at the election of Landlord only (and not at the election of Tenant) the lease shall be automatically renewed for successive terms of one year each, with such renewal rights continuing in perpetuity until this Lease is terminated as provided below. In order to cancel such automatic renewals of this Lease for any extension period, Landlord must deliver to Tenant written notice of Landlord's election to cancel renewal of the Lease, which written notice must be received by Tenant at least 30 days prior to the expiration of the then existing term.

Notwithstanding the foregoing, Landlord shall have the right to terminate this Lease at any time, with or without cause, upon delivery to Tenant of 30 days' prior written notice of such election. In addition to the above, and notwithstanding any of the foregoing, this Lease shall

terminate upon the first to occur of issuance of a final agency order from an agency having jurisdiction thereof (presently the City of Spokane Valley or the Washington State Department of Ecology ("DOE")) requiring no further pumping from the well and pump into Shelley Lake or procurement of an acceptable alternative delivery mechanism. For purposes of this provision, an acceptable alternative delivery mechanism shall entail provision and procurement by Tenant on behalf of Landlord of a 700 gallon per minute water right, or comparable contractual commitment through a public water provider, or creation of a group water system by and through Landlord, allowing pumping or delivery of water to Shelley Lake during the same periods during which water was customarily pumped into Shelley Lake during calendar years 2001 through 2006, at a minimum flow of 700 gallons per minute of water and at a cost for operating the pump which is not greater than 115% of the amount that would otherwise be paid by Landlord if Landlord were operating the system in like fashion as the system was operated in 2006 (but with costs computed as of the time the new delivery mechanism is implemented).

Commencing with the Effective Date of this Lease, Tenant shall use its best efforts to obtain an acceptable alternative mechanism to provide for augmentation of the water in Shelley Lake. These efforts shall include good faith efforts to work cooperatively with the City of Spokane Valley and DOE to avoid, if possible, issuance of a final agency order to stop further pumping unless and until an acceptable alternative delivery mechanism, as described in the paragraph above is procured and implemented. While this Lease remains in effect, Tenant shall provide written semiannual updates to Landlord describing the efforts expended and the progress, if any, made toward obtaining an acceptable alternative delivery mechanism during the previous six months. For its part, Landlord and its directors shall use their best efforts to cooperate with Tenant in obtaining an acceptable alternative delivery mechanism including execution of petitions, providing representative support and testimonial assistance at hearings or in connection with applications, and similar matters (except that Landlord and its directors shall not be expected or required to provide financial support or assistance in connection with efforts to obtain such acceptable alternative delivery mechanism).

4. BASE RENT: Tenant shall be required to execute the Fifth Addition Settlement Agreement as consideration for lease of the Well. No financial base rent shall be required. Rather, Tenant shall pay the costs and charges associated with maintaining the Well and its component parts in good condition and repair, normal wear and tear excepted. Tenant shall provide a performance bond in a form acceptable to Landlord to secure performance of all Tenant's obligations herein in the amount of \$38,500.00, which amount shall not constitute any limitation on Tenant's potential liability for breach of any provision of this Lease. Such performance bond shall be reduced by \$13,500.00 in the event payment is required by Tenant pursuant to Section 22 of this Lease.

5. UTILITIES and FEES: Landlord agrees to pay all charges for power and other utility services, if any, for the Well while this Lease remains in effect. Tenant agrees to take reasonable steps and precautions to conserve power and utility services to minimize such costs.

6. **TAXES AND ASSESSMENTS:** Landlord agrees to pay any taxes and assessments applicable to the Well or its operation while this Lease remains in effect.

7. **CASUALTY INSURANCE:** Landlord shall maintain in force and effect, at its sole expense, casualty insurance coverage for all buildings and improvements and component parts of the Well insured against all perils of physical loss, in an amount not less than the total replacement cost for said items, and with a deductible not to exceed \$5,000.00. While this Lease remains in effect, Landlord shall provide to Tenant certificates evidencing that required insurance coverage is being maintained, which certificates shall evidence that insurance coverage is in force and effect at all times, and Landlord shall not permit the required coverage to lapse.

8. **COMMON AREAS:** Intentionally left blank.

9. **REPAIRS AND MAINTENANCE:** Prior to the Effective Date of this Lease, Tenant caused the Well to be inspected and provided Landlord with a copy of a report prepared by Fogle Pump, agreed by Landlord to be a qualified professional. Prior to the Effective Date of this Lease, Landlord has caused all work to be performed as outlined under said report, in order to cause the Well and all portions thereof to be put in good repair and appropriate operating condition. From and after the Effective Date, Tenant shall be responsible for costs associated with operating and maintaining the Well that are not allocated to Landlord under this Lease. Upon termination of this Lease for whatever reason, and in the event the Well will continue to be used in connection with pumping water into Shelley Lake (whether by Landlord or someone else operating under or through Landlord), then Landlord shall, prior to termination of this Lease if possible, or if not possible then within 30 days after termination of this Lease, cause a similar inspection of the Well to be conducted and, except for normal wear and tear, Tenant shall cause any required repairs to be made within 30 days following such inspection at Tenant's expense. Provided, the time periods for completing inspection and/or repair stated above shall be subject to reasonable extension in the event that such inspection and/or repair, as applicable, cannot be completed within said 30-day period(s) for reasons that are beyond the reasonable control of the party responsible for performing such work. Should either party believe an extension is warranted, that party will deliver a written request for an agreed extension to the other party, and consent to such a request will not be unreasonably withheld.

10. **DAMAGE OR DESTRUCTION:** In the event the Well is rendered impracticable to continue to use due to fire, the elements, or other casualty, then, to the extent insurance proceeds are available under Landlord's casualty insurance policy, Landlord and Tenant shall cooperate to cause the Well and its component parts to be restored and rebuilt and, at such time as work has been able to be completed so that it is practicable to resume operation of the Well, applicable obligations for use and operation of the Well under this Lease shall recommence. In the event proceeds are not sufficient, Landlord shall have the right to rebuild and restore the Well to operating condition at its expense, unless such damage or destruction was caused by the fault or neglect of Tenant, in which case Tenant shall have the obligation to pay for such reconstruction and

restoration. In the event Landlord has the obligation to pay for such restoration and reconstruction and fails to give notice to Tenant of its election to do so within 60 days of the date of such damage or destruction, then such failure to give notice shall be considered the equivalent of Landlord having given Tenant 30 days notice of an election to terminate this Lease, in which event, at the expiration of said 60th day following such damage or destruction, this Lease shall terminate.

11. **ACCIDENTS AND LIABILITY:** Landlord and Tenant each agree to maintain public liability insurance affecting operations of the Well in an amount of not less than \$1,000,000.00 combined limit for bodily injuries and property damage, with a deductible of not more than \$10,000.00. The policy maintained by each shall name the other as an additional insured. Landlord and Tenant shall each furnish to the other a certificate indicating that the insurance policies required of them are in force and effect, that the other has been named as an additional insured, and that the policy may not be canceled or non-renewed unless ten (10) days prior written notice of the proposed cancellation or non-renewal has been given to the party having been added as an additional insured.

12. **SUBROGATION WAIVER:** Landlord and Tenant each herewith and hereby waive all rights of subrogation against each other or against the officers, directors, shareholders, partners, joint venturers, employees, agents, customers, invitees or business visitors of each other for any loss or damage to the property of Landlord or Tenant from any cause. This waiver shall not be construed to apply to any such matters to the extent not covered by insurance so long as the insurance policies referred to above are maintained (with retained deductible amounts, claims or losses in excess of available coverage, or claims excluded from coverage all being considered not covered by insurance).

13. **SUBLETTING OR ASSIGNMENT:** Tenant shall not sublet or assign any of its rights, duties or obligations under this Lease for all or any portion of the Well or its operation without Landlord's prior written consent, which Landlord may withhold in its sole discretion. In the event of any permitted subletting or assignment, Tenant shall remain responsible and personally obligated for payment and performance of all of the obligations of Tenant under this Lease, unless Landlord releases Tenant therefrom in writing. This Lease shall not be assignable by operation of law.

14. **ACCESS:** Landlord shall have the right to enter the Well at all reasonable times, upon reasonable prior notice, for the purpose of inspection of the Well. In the event of emergency, Landlord and/or Landlord's authorized agents shall have the right to enter the Well or any portion thereof at any time to prevent damage to any part of the Well or damage to other property, or injury to any person, or to preserve the public peace.

15. **USE AND OPERATION:** While this Lease remains in effect, Tenant shall, except as provided otherwise in this Lease, use and operate the Well for the purposes of maintaining the water level in Shelley Lake in like fashion as the Well was utilized for such purposes during 2001 through 2006, except that the water level shall be maintained no higher than two

(2) feet above the Ordinary High Water Mark for Shelley Lake (as defined in the Shelley Lake P.U.D.) (including operating the Well during the time periods when water was customarily pumped into Shelley Lake for said purpose). Landlord acknowledges that Tenant will utilize the services of a third party qualified professional such as Fogle Pump, in conjunction with the actual operation and maintenance of the Well.

16. **NOTICE:** All payments, notices, statements, request, consents, approvals, authorizations, offers, agreements, appointments, designations, or demands required or permitted by law, or any provision hereof shall be in writing and shall be sufficiently given and served upon the other party if deposited in the U.S. Mail, postage pre-paid and addressed to the receiving party at the address for notice purposes as stated in the introductory paragraph above in this Lease or at such other address as either party may notify the other of in writing.

17. **NO WAIVER OF COVENANTS:** Any waiver by either party of any breach hereof by the other shall not be considered a waiver of any future similar breach. Except for the Fifth Addition Settlement Agreement, this Lease contains all the agreements between the parties; and there shall be no modification of the agreements contained herein except by written instrument.

18. **COSTS AND ATTORNEY'S FEES:** If, by reason of any default or breach on the part of either party in the performance of any of the provisions of this Lease, either party employs an attorney to interpret or enforce any provision of this Lease, whether or not a legal action is instituted, the losing party agrees to pay all reasonable costs and attorney's fees in connection therewith.

19. **TIME IS OF THE ESSENCE OF THIS LEASE.**

20. **GOVERNING LAW AND VENUE:** This Lease shall be governed by the laws of the State of Washington. Venue in any action to enforce or interpret this Lease shall only be proper in Spokane County, Washington.

21. **WATER RIGHTS DISCLOSURE:** Within 30 days following execution of this Lease, Tenant will create a mutually acceptable amended water rights disclosure statement reflecting this Lease to be provided to potential purchasers of property within the Shelley Lake Community.

22. **WATER QUALITY TESTING:** Commencing no sooner than the date 30 days following the date on which the Well has been operating continuously to pump water into Shelley Lake, Landlord will perform or cause to be performed water quality testing in Shelley Lake, and thereafter regularly perform or cause to be performed follow up testing, using best available methods to test for parts per million ("PPM") of dissolved oxygen. Tenant and Landlord agree that unsafe levels shall be defined as less than 5.0 PPM of dissolved oxygen at the depth of Shelley Lake's thermocline as determined by a qualified third party tester. The parties agree that, absent objective conflicting data, the default testing depth shall be 3 meters under Shelley Lake's surface. Tenant agrees to pay Landlord the amount of \$13,500.00 for the expected material costs of a lake aeration system in Shelley Lake within 30 days of the occurrence of either of the

following events:

- a) Written notice from Landlord to Tenant, sent with confirming qualified third party test results, that water quality test results revealed unsafe levels of dissolved oxygen (as defined above) and that the depth tested was an appropriate level for the purpose of the test conducted. The DOE and the Spokane County Conservation District are deemed qualified third party testers for the purposes of this Lease; or
- b) Termination of this Lease by reason of issuance of a final agency order to stop pumping.

This provision shall survive termination of this Lease by any reason other than Landlord's written agreement that Tenant has provided an acceptable alternative delivery mechanism as defined in Section 3 herein.

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

LANDLORD:

SHELLEY LAKE ESTATES
HOMEOWNERS' ASSOCIATION

By: Scotty Smith
Printed Name: Scotty Smith
Title: President

TENANT:

Robert L. Heitman, Jr.
ROBERT L. HEITMAN, JR.

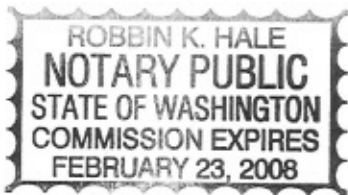
SHELLEY LAKE DEVELOPMENT, L.L.C.

By: Robert L. Heitman, Jr.
Printed Name: Robert L. Heitman, Jr.
Title: Member

STATE OF WASHINGTON)
) ss.
COUNTY OF SPOKANE)

On this 28th day of September 2007 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Scotty Smith to me known to be the President of SHELLEY LAKE ESTATES HOMEOWNERS' ASSOCIATION, a Washington nonprofit corporation, the corporation that executed the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

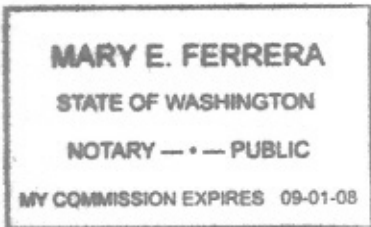


Robbin K. Hale
NOTARY PUBLIC in and for the State of
Washington, residing at Spokane County
My commission expires: 2-23-08
Printed Name: Robbin K. Hale

STATE OF WASHINGTON)
) ss.
COUNTY OF SPOKANE)

On this day personally appeared before me ROBERT L. HEITMAN, JR. to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 5th day of October 2007.

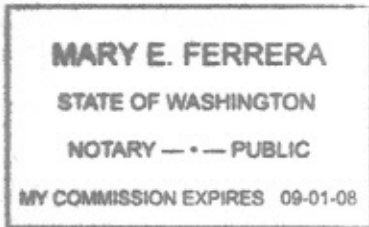


Mary E. Ferrera
NOTARY PUBLIC in and for the State of
Washington, residing at Spokane
My commission expires: 9/1/08
Printed Name: Mary E. Ferrera

STATE OF WASHINGTON)
) ss.
COUNTY OF SPOKANE)

On this 5th day of October 2007 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ROBERT L. HEITMAN, JR. to me known to be a Member of SHELLEY LAKE DEVELOPMENT, L.L.C., a Washington limited liability company, the limited liability company that executed the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.



Mary E. Ferrera
NOTARY PUBLIC in and for the State of
Washington, residing at Spokane
My commission expires: 9/1/08
Printed Name: Mary E. Ferrera