

**4601 SNOW ROAD  
IRRIGATION WELL MEMORANDUM****DONA ANA TITLE CO., INC.**  
**GF Acc. SRG**

The Well Sharing Agreement (recorded 4-15-2021 DAC Clerk #2112195) and Maintenance Agreement (recorded 4-15-2021 DAC Clerk #2112196) for NM OSE LRG 1705-8 are modified by this Memorandum. It is made and entered into by:

**RECITALS – Owners:**

De Paul Farms, LLC a New Mexico Limited Liability Company owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 1A

EBID Account 891100P-00 10.00 WRA = 50.0% OF TOTAL WRA

LRG-1705-8 9.910 AC 44.595 ACFT

Daddy's Nuts LLC a New Mexico Limited Liability Company owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 2A

EBID Account 891000P 2.46 WRA = 12.3% OF TOTAL WRA

LRG-1705-13 2.886 AC 12.987 ACFT

Carl Krause and Deninne Stevens own:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 3A

EBID Account 891030P-01 7.54 WRA = 37.7% OF TOTAL WRA

LRG 1705-13A 7.034 AC 31.653 ACFT

**TOTALS:** EBID = 20.00 WRA

**WELL:** LRG 1705-8 – Irrigation Well –

19.830 AC 89.235 ACFT (a 4.50 ACFT FARM DELIVERY RATE)

**Current Lot 2A Owner:** Daddy's Nuts, LLC.

James Kerner

4601-B Snow Road

Las Cruces, NM 88005

575.405.1814

[jaimeandjames@hummingbirdvillasaba.com](mailto:jaimeandjames@hummingbirdvillasaba.com)

In the current irrigation water delivery process, no irrigation water is delivered to Lot 2A through canal, above or below ground pipes or via auxiliary pump from EBID Allotments or LRG 1705-8. Berms to control irrigation water distribution within the 2.5 Acre Lot 2A are not established.



DONA ANA TITLE CO., INC.  
GF Acc-SRG

## 4601 SNOW ROAD IRRIGATION WELL MEMORANDUM

The Well Sharing Agreement (recorded 4-15-2021 DAC Clerk #2112195) and Maintenance Agreement (recorded 4-15-2021 DAC Clerk #2112196) for NM OSE LRG 1705-8 are modified by this Memorandum. It is made and entered into by:

### RECITALS – Owners:

De Paul Farms, LLC a New Mexico Limited Liability Company owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 1A

EBID Account 891100P-00 10.00 WRA = 50.0% OF TOTAL WRA

LRG-1705-8 9.910 AC 44.595 ACFT

Daddy's Nuts LLC a New Mexico Limited Liability Company owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 2A

EBID Account 891000P 2.46 WRA = 12.3% OF TOTAL WRA

LRG-1705-13 2.886 AC 12.987 ACFT

Carl Krause and Deninne Stevens own:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 3A

EBID Account 891030P-01 7.54 WRA = 37.7% OF TOTAL WRA

LRG 1705-13A 7.034 AC 31.653 ACFT

TOTALS: EBID = 20.00 WRA

WELL: LRG 1705-8 – Irrigation Well –

19.830 AC 89.235 ACFT (a 4.50 ACFT FARM DELIVERY RATE)

Current Lot 2A Owner: Daddy's Nuts, LLC.

James Kerner

4601-B Snow Road

Las Cruces, NM 88005

575.405.1814

[jaimeandjames@hummingbirdvillasaba.com](mailto:jaimeandjames@hummingbirdvillasaba.com)


In the current irrigation water delivery process, no irrigation water is delivered to Lot 2A through canal, above or below ground pipes or via auxiliary pump from EBID Allotments or LRG 1705-8. Berms to control irrigation water distribution within the 2.5 Acre Lot 2A are not established.



The Owner, Daddy's Nuts, LLC through this Memorandum, and its assigns and successors, is immediately relieved from Irrigation Well expenses. The Owner of Lot 2A, in the event of seeking to apply irrigation water, EBID Allotment or supplemental irrigation water provided by LRG 1705-8, must provide 30-day prior written notice to Lot 1A and Lot 3A Owners. All well sharing expense as outlined in the Well Sharing Agreement begins at end of 30-day notice. Absent any such written request from the Owner of Lot 2A, any and all repairs of well LRG 1705-8 will be the sole responsibility and cost of the owners of lots 1A (44.595 ACFT) and 3A (31.653 ACFT), at proportions, 58.5% and 41.5% based on their respective water allotments.

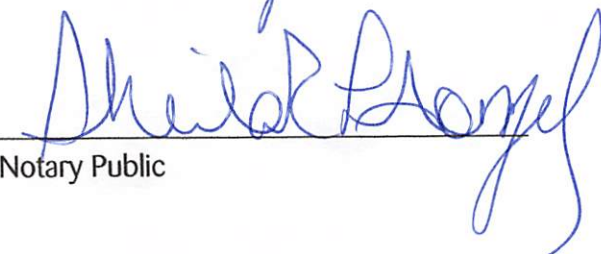
The Maintenance Agreement (recorded 4-15-2021 DAC Clerk #2112196) has specified that all repairs of well LRG 1705-8 will be shared equally by the Owners of Lots 1A, 2A & 3A. As clarification the Well Sharing Agreement (recorded 4-15-2021 DAC Clerk #2112195) provides a percentage of cost sharing based on allocated Acre Feet (ACFT) for the three parcels and hereby applies to expenses described in the Maintenance Agreement. Those shared expenses will only apply if the Owner of Lot 2A has begun sharing irrigation water from well LRG 1705-8 as provided by written notice.

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates specified below. The effective date of this Agreement shall be the later of said dates.

  
\_\_\_\_\_  
J. Michael Paul, Member  
De Paul Farms, LLC  
Owner Lot 1A

This instrument was acknowledged before me on the 9<sup>th</sup> day of June, 2021  
by J. Michael Paul.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

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



OFFICIAL SEAL  
SHEILA R. LAUER GONZALEZ  
NOTARY PUBLIC - STATE OF NEW MEXICO

My commission expires: 3/19/25

  
James Kerner, Member  
Daddy's Nuts, LLC  
A New Mexico Limited Liability Company  
Owner Lot 2A

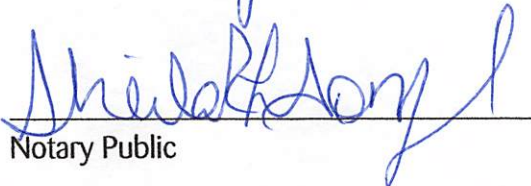


OFFICIAL SEAL  
SHEILA R. LAUER GONZALEZ  
NOTARY PUBLIC - STATE OF NEW MEXICO

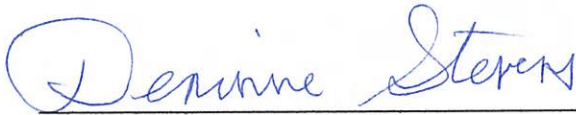
My commission expires: 3/19/25

This instrument was acknowledged before me on the 10<sup>th</sup> day of June, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
  }  
COUNTY OF DONA ANA    }

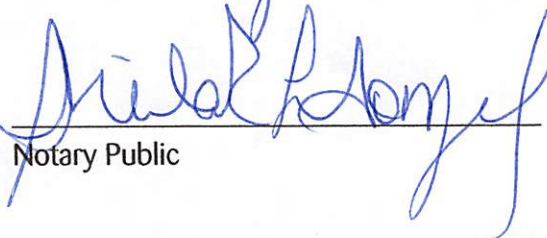
  
Notary Public

  
Carl Krause  
Owner Lot 3A

  
Deninne Stevens  
Owner Lot 3A

This instrument was acknowledged before me on the 22<sup>nd</sup> day of June, 2021  
by Carl Krause & Deninne Stevens.

STATE OF NEW MEXICO    }  
  }  
COUNTY OF DONA ANA    }

  
Notary Public



OFFICIAL SEAL  
SHEILA R. LAUER GONZALEZ  
NOTARY PUBLIC - STATE OF NEW MEXICO

My commission expires: 3/19/25





2112195

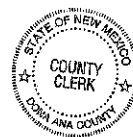
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AGREEMENT

Deputy: Aixa Adame

Amanda López Askin, County Clerk, Dona Ana, NM



**4601 SNOW ROAD**  
**IRRIGATION WELL SHARING AGREEMENT**

BUENO TITLE # 21030277/mm

This Well Sharing Agreement (this "Agreement") is made and entered into by and between James Kerner, LLC, Daddy's Nuts, LLC and James Kerner are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties"), based on the following facts:

**RECITALS – Owners:**

**James Kerner owns:**

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 1A

EBID Account 891100P-00 10.00 WRA = 50.0% OF TOTAL WRA

LRG-1705-8 9.910 AC 44.595 ACFT

**Daddy's Nuts, LLC owns:**

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 2A

EBID Account 891000P 2.46 WRA = 12.3% OF TOTAL WRA

LRG-1705-13 2.886 AC 12.987 ACFT

**James Kerner owns:**

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 3A

EBID Account 891030P-01 7.54 WRA = 37.7% OF TOTAL WRA

LRG 1705-13A 7.034 AC 31.653 ACFT

**TOTALS:** EBID = 20.00 WRA

LRG = 19.830 AC 89.235 ACFT (a 4.50 ACFT FARM DELIVERY RATE)

**WELL – LRG 1705-8** Irrigation Well is located on Lot 1A. Combined ACFT equals 89.235 ACFT, with Lot 1A pumping 50.0%, Lot 2A 14.5% and Lot 3A pumping 35.5%. The Parties agree to a 50.0% Lot 1A, 14.5% Lot 2A and 35.5% Lot 3A ownership share, respectively, of interest and all expenses related to the Well.

A. There is an irrigation water well (the "Well") on Lot 1A that currently provides supplemental water for the irrigation needs of the Lots: The equipment and fixtures necessary to operate and protect the Well, including the valves, pump, natural gas engine, pressure tank, holding tank and pump house (collectively, the Well Equipment), are located on Lot 1A and are included in the definition of the term "Well."

B. The Parties have been sharing the water produced by the Well and the costs of operating and maintaining the Well pursuant to an oral agreement between them. The Parties desire to document that agreement for the benefit and protection of both them and their respective successors in interest.

**NOW, THEREFORE**, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant, agree and declare that the Lots shall be subject to the easements and covenants of this Agreement, which shall run with the land and shall be binding upon and inure to the benefit of the Parties, their respective successors and assigns, and any person acquiring any right, title or interest in the Lots, or any part thereof, and their respective heirs, devisees, personal representatives, grantees, successors and assigns from the date of the recording of this Agreement in the real property records in the office of the County Clerk of the County.

1. Grant. Each Owner (as defined below) of a Lot shall have the right to use the water produced from the Well for irrigation use only on their Lot. Owners agree to a split ownership interest in the Well. Such split ownership interests in the Well are hereby declared to be appurtenant to the respective Lots.
2. Well Usage. The Well shall serve exclusively the irrigation water needs of the Lots and shall not be used to serve any property other than the Lots. Neither the Owners collectively nor any one Owner shall be entitled to divert more water from the Well than permitted for irrigation use only under the laws of the State of New Mexico from time to time in effect and permitted under this Agreement. Each Owner shall use water produced from the Well in a reasonable manner so as not to interfere with the reasonable use and enjoyment of the other Owner.
3. Adequacy of Well: In the event that the Well ceases to be able to produce enough water to serve the reasonable irrigation needs of each Lot without being deepened or substantially modified, and a determination is made by a licensed well driller or other person similarly qualified that such shortage may be reasonably remedied by deepening or modification, such deepening or modification shall be deemed a repair and the cost thereof shall be paid pursuant to Paragraph 5 (Maintenance and Repair) of this Agreement.
4. Operation: As an Irrigation Well, water is delivered through an irrigation canal to each lot. Each lot owner is responsible for ensuring water delivery is made through open gates to their parcel and closed following water delivery. This applies to both water delivered from Elephant Butte Irrigation District and Well LRG 1705-8. Meter reports for total Well LRG 1705-8 are to be submitted by the owner of Lot 1A.
5. Maintenance and Repair. The Owners shall cooperate with one another in good faith to insure the efficient administration of the Well. The Owner of Lot 1A shall act for the Owners in managing the Well. The Well shall be maintained and repaired as needed, but no less frequently than annually. The Well shall be improved or replaced as needed to insure the Well is producing and delivering irrigation water in the quantity permitted by this Agreement and permitted by law. At the request of either Owner, the Owners shall meet to determine how and when to effect the annual maintenance and repair, and whether any improvement or replacement shall be required. In the event of an inability of the Owners to agree as to maintenance, repair, improvement or replacement of the Well, or any other issue having to do with the Well, the matter shall be

determined by mediation or, if necessary, by arbitration conducted pursuant to Paragraph 10 (Resolution of Disputes) of this Agreement. In the event of an emergency, an Owner may make such repairs to the Well as are necessary to rectify the conditions causing or constituting the emergency. Each Owner shall be notified as soon as possible of any emergency expenditure. Each Owner's share of the cost of each maintenance, repair, replacement, rebuilding, reaming or deepening of the Well shall bear the same ratio to the amount of that cost as that Owner's Lot's usage of the Well from the then oldest known contemporaneous reading of each Lot's use of the Well to the then most recent contemporaneous reading of each Lot's use of the Well bears to both Lots' usage of the Well during the same period. Provided, however, that if the Well is damaged by the act or omission of any Owner, or agent of any Owner, the damage shall be repaired at that Owner's expense.

6. Easements. The Owner of Lot 1A grants to the Owner of Lot 3A an easement where the Well is located and within a 10-foot radius around the Well for the purposes of operating, inspecting, maintaining, repairing, replacing, rebuilding, reaming and deepening the Well or any part thereof. The Owner of Lot 1A also grants to the Owner of Lot 3A a 20-foot wide easement across Lot 1A for access to the Well to conduct any of the activities described in the preceding sentence and for inspecting, maintaining, repairing, and replacing the underground water line from the Well to the Well Equipment.

The easements include the right to use such vehicles and rigs as are commonly and reasonably used for the purpose of well drilling, equipping and repair, and of water and power line installation, repair and replacement.

7. Priority and Metering. Each Lot shall have equal rights to the water produced by the Well. The Owners approve and agree to submit any meter readings as required by the office of the State Engineer of the State of New Mexico or other governmental agency or body.

8. Term. The term of this Agreement shall commence on the date that it is recorded in the real property records of the County Clerk of the County and shall continue thereafter indefinitely until it is terminated by recording in the real property records in the office of the County Clerk of the County a document to that effect that is signed and acknowledged by all of the Owners.

9. Abandonment. Each Owner shall be entitled to abandon its ownership interest in the Well, and, except as provided below, to thereby terminate its rights and obligations under this Agreement, by recording in the real property records in the office of the County Clerk of the County a document to that effect that is signed and acknowledged by that Owner and by giving notice thereof to the other Owner. Any such abandonment shall have no effect on any easement granted under this Agreement that burdens the Lot owned by the abandoning Owner. Any Owner abandoning its ownership interest in the Well pursuant to the terms of this paragraph shall carry out any provisions of this Agreement which contemplate performance by such Owner subsequent to such abandonment, and such abandonment shall not affect any liability or other obligation which shall have accrued up to and including the date of such abandonment. The

abandoning Owner shall not be entitled to any reimbursement from the other Owner for any expenditures made or obligations incurred prior to the date that the abandoning Owner serves the notice required by this paragraph.

10. Resolution of Disputes.

(a) Mediation. The Owners shall endeavor in good faith to resolve any and all disputes arising out of or in connection with this Agreement, whether based upon contract, tort or any other theory of or basis in law, by mediation according to the then prevailing rules and procedures of the American Arbitration Association.

(b) Arbitration. Any and all disputes arising out of or in connection with this Agreement, whether based upon contract, tort or any other theory of or basis in law, shall be subject to binding arbitration if the dispute is not resolved by the Owners within 10 days after either Owner gives notice to the other Owner of its desire to arbitrate the dispute. Such arbitration shall be the exclusive remedy of each Owner. The arbitration shall be in Las Cruces, New Mexico by the American Arbitration Association in accord with its then-prevailing rules. The arbitration shall be before one neutral arbitrator to be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association and shall proceed under the Expedited Procedures of said rules, irrespective of the matter or amount in dispute. The Owners shall continue performing their obligations under this Agreement pending the award in the arbitration proceeding. However, whenever any action is required to be taken under this Agreement within a specified period of time and the taking of such action is materially affected by a matter submitted to arbitration, such period shall automatically be extended by 10 days plus the number of days that are taken for the determination of the matter by arbitration. The arbitrator shall have no power to change the provisions of this Agreement. Except as provided in the next sentence, the damages the arbitrator may award shall be limited to the reasonable value of replacing and/or repairing the Well as of the date of an Owner's default together with the reasonable cost, as of the date of the default, of providing or obtaining water and/or water service during the period that the Well is inoperable or otherwise unusable. The arbitrator shall award to be prevailing Owner the reasonable expenses and costs they incur with respect to the arbitration, including reasonable attorneys fees. Any award made by the arbitrator shall be final, binding, and conclusive on all Owners involved in the arbitration for all purposes. Judgment upon the arbitration award may be entered in any court having jurisdiction.

(c) Lien. If any non-prevailing Owner refuses to pay the damages that the arbitrator awards within 10 days after the award is made, then the other Owner shall be entitled to place a lien upon the Lot of that Owner to secure payment of the award, plus interest at the rate of 15% per annum, from the date of the award, by recording a claim of lien in the real property records in the office of the County Clerk of the County. The method of foreclosure shall be the method for foreclosing a mortgage except that any right of redemption shall be limited to one (1) month. Any lien so filed shall be superior to the claims of the Owner of such Lot, such Owner's heirs, assigns and



personal representatives, and superior to the claims of any mortgages or other liens recorded after the date of recording of said lien.

11. No Waiver. The failure of any Owner to enforce any right, provision, covenant or condition which may be granted by this Agreement shall not constitute a waiver of the right of any such Owner to enforce such right, provision, covenant or condition in the future.

12. Rights Cumulative. All rights, remedies and privileges granted to any Owner pursuant to the provisions of this Agreement shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies and privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the Owner thus exercising the same from exercising such other additional rights, remedies or privileges, as may be available to such Owner at law or in equity.

13. Binding Effect; Obligations Run with the Land. This Agreement shall be recorded in the real property records in the office of the County Clerk of the County. The benefits and burdens of the covenants and easements in this Agreement shall run with the land and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, including all successors in title, interest or possession of the Lots and all persons claiming under them. No other person shall have any right, benefit or obligation hereunder.

14. Entire Agreement; Modifications. This Agreement embodies and constitutes the entire understanding between the Parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement Except as provided in this Agreement, neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed and acknowledged by the Owner against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought and duly recorded in the real property records in the office of the County Clerk of the County, and then only to the extent set forth in such instrument.

15. Delivery of Notices. All notices or other documents required herein to be delivered to an Owner shall be in writing and may be delivered either personally or by mail. If delivered personally, the same shall be deemed to have been delivered to the Owner when delivered addressed to the physical address of such Owner's Lot. If mailed, the same shall be deemed delivered three (3) days after being deposited in the United States Mail, certified and return receipt requested and addressed to the Owner at the physical address of such Owner's Lot, with postage thereon prepaid.

16. General Construction Principles. Time is of the essence with respect to any covenant or obligation imposed by this Agreement. Words in any gender shall be deemed to include the other genders. The singular shall be deemed to include the plural and vice versa. The word "person" shall include corporations, partnerships, limited liability companies and other entities or forms of associations. For purposes of this Agreement, the term "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to each Lot, including the

purchaser under a recorded real estate contract wherein the purchaser is entitled to possession, but excluding those having such interest merely as security for the payment or performance of an obligation, including the holder of an owner's interest in a recorded real estate contract wherein the purchaser is entitled to possession. The captions and headings in this Agreement are solely for convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions of this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning, without regard to any presumption or rule of construction causing this Agreement or any part of it to be construed against the Party causing the Agreement to be written. The words "include" and "including" mean include or including, without limitation.

17. Consent. Whenever this Agreement requires an Owner to obtain the consent or approval of the other Owner prior to taking some action, such other Owner shall not unreasonably withhold such consent or approval.


18. Force Majeure. Neither party shall be liable for delay or failure to perform any obligation under this Agreement if the delay or failure is caused by any circumstance beyond their reasonable control, including but not limited to acts of God, war, civil unrest or industrial action.

19. Governing Law and Venue. This Agreement is to be construed in accordance with and governed by the internal laws of the State of New Mexico without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New Mexico to the rights and duties of the parties.

Each party hereby irrevocably consents to the jurisdiction and venue of the state and federal courts located in the county in which the Property, or any portion of the Property is located, in connection with any claim, action, suit, or proceeding relating to this Agreement and agrees that all suits or proceedings relating to this Agreement shall be brought only in such courts.

20. SEVERABILITY. If any portion of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.

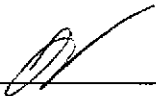
IN WITNESS WHEREOF the Parties have executed this Agreement on the dates specified below.  
The effective date of this Agreement shall be the later of said dates.

  
James Kerner  
Owner Lot 1A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

  
Notary Public

  
James Kerner  
Daddy's Nuts, LLC  
A New Mexico Limited Liability Company  
Owner Lot 2A



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

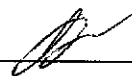
STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

  
Notary Public



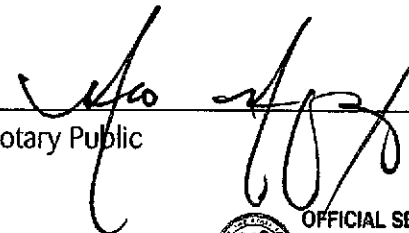
OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22

  
James Kerner  
Owner Lot 3A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

  
Notary Public



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22

**Amanda López Askin, County Clerk, Dona Ana, NM**



**4601 SNOW ROAD  
IRRIGATION WELL SHARING AGREEMENT  
MAINTENANCE ADDENDUM**

BUENO TITLE #

21030277/mm

The Well Sharing Agreement (this "Agreement") made and entered into by and between James Kerner, Daddy's Nuts, LLC and James Kerner are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties"), based on the following facts:

RECITALS – Owners:

James Kerner owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 1A

Daddy's Nuts LLC owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 2A

James Kerner owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 3A

WELL 1705-8 - Irrigation Well -

TOTALS: EBID = 20.00 WRA

LRG = 19.830 AC    89.235 ACFT (a 4.50 ACFT FARM DELIVERY RATE)

Well Log LRG 1705-8 Attached

The parties acknowledge the following:

**Well Drilling:** Hargraves Drilling Company, Inc.

2545 W Hadley Avenue

Las Cruces, NM 88007

575.524.9382

Is the authorized company to maintain and repair the LRG 1705-8 Irrigation Well.

The Owner of Lot 1A, with 10.0 acres authorized to engage Hargraves Drilling Company and provide payment following services. The final cost is to be shared equally between property Owners.

Current Lot 1A Owner:

James Kerner

4601-B Snow Road

Las Cruces, NM 88005

575.405.1814

jaimeandjames@hummingbirdvillasaba.com

Electrical Service to the Well is provided by:

El Paso Electric

Account # \_\_\_\_\_

201 N Water Street

Las Cruces, NM 88001

Meter # \_\_\_\_\_

575.526.5555

Natural Gas Service to the Well is provided by:

Zia Natural Gas

Account # \_\_\_\_\_

3700 W Picacho Avenue

Las Cruces, NM 88007

Meter # \_\_\_\_\_

575.526.4427

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Irrigation Well entity or Banking Account has been created or is in use for monthly bills, maintenance or repairs and is currently the sole responsibility of the Owner of Lot 1A.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Irrigation Well monthly billing for any expenses are currently assessed.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Irrigation Well meters for each Lot Owner are in place, only a single meter has or will be installed.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Irrigation Well concrete ditch maintenance agreement exists, Owners agree to share proportionally in any maintenance/repair/replacement required.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Irrigation Well operating regulations are in place.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no additional access to the shared Irrigation Well may be created by any further subdivision of any lot without all Owners approval.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no guarantee or warranty regarding the shared Irrigation Well current or future production has been provided.

Owners/Occupants of Lots 2A & 3A may in the absence of Lot 1A engage Hargraves.

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates specified below.  
The effective date of this Agreement shall be the later of said dates.

[Signature]  
James Kerner  
Owner Lot 1A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

[Signature]  
Notary Public

[Signature]  
James Kerner  
Daddy's Nuts, LLC  
A New Mexico Limited Liability Company  
Owner Lot 2A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

[Signature]  
Notary Public

[Signature]  
James Kerner  
Owner Lot 3A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

[Signature]  
Notary Public



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22



**Amanda López Askin, County Clerk, Dona Ana, NM**



**4601 SNOW ROAD  
IRRIGATION WELL SHARING AGREEMENT  
MAINTENANCE ADDENDUM**

BUENO TITLE #

21030277/mm

The Well Sharing Agreement (this "Agreement") made and entered into by and between James Kerner, Daddy's Nuts, LLC and James Kerner are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties"), based on the following facts:

RECITALS – Owners:

James Kerner owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 1A

Daddy's Nuts LLC owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 2A

James Kerner owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 3A

WELL 1705-8 - Irrigation Well -

TOTALS: EBID = 20.00 WRA

LRG = 19.830 AC    89.235 ACFT (a 4.50 ACFT FARM DELIVERY RATE)

Well Log LRG 1705-8 Attached

The parties acknowledge the following:

**Well Drilling:** Hargraves Drilling Company, Inc.

2545 W Hadley Avenue

Las Cruces, NM 88007

575.524.9382

Is the authorized company to maintain and repair the LRG 1705-8 Irrigation Well.

The Owner of Lot 1A, with 10.0 acres authorized to engage Hargraves Drilling Company and provide payment following services. The final cost is to be shared equally between property Owners.

Current Lot 1A Owner:

James Kerner

4601-B Snow Road

Las Cruces, NM 88005

575.405.1814

jaimeandjames@hummingbirdvillasaba.com

Electrical Service to the Well is provided by:

El Paso Electric

Account # \_\_\_\_\_

201 N Water Street

Las Cruces, NM 88001

Meter # \_\_\_\_\_

575.526.5555

Natural Gas Service to the Well is provided by:

Zia Natural Gas

Account # \_\_\_\_\_

3700 W Picacho Avenue

Las Cruces, NM 88007

Meter # \_\_\_\_\_

575.526.4427

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Irrigation Well entity or Banking Account has been created or is in use for monthly bills, maintenance or repairs and is currently the sole responsibility of the Owner of Lot 1A.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Irrigation Well monthly billing for any expenses are currently assessed.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Irrigation Well meters for each Lot Owner are in place, only a single meter has or will be installed.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Irrigation Well concrete ditch maintenance agreement exists, Owners agree to share proportionally in any maintenance/repair/replacement required.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Irrigation Well operating regulations are in place.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no additional access to the shared Irrigation Well may be created by any further subdivision of any lot without all Owners approval.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no guarantee or warranty regarding the shared Irrigation Well current or future production has been provided.

Owners/Occupants of Lots 2A & 3A may in the absence of Lot 1A engage Hargraves.

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates specified below.  
The effective date of this Agreement shall be the later of said dates.

[Signature]  
James Kerner  
Owner Lot 1A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

[Signature]  
Notary Public

[Signature]  
James Kerner  
Daddy's Nuts, LLC  
A New Mexico Limited Liability Company  
Owner Lot 2A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

[Signature]  
Notary Public

[Signature]  
James Kerner  
Owner Lot 3A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

[Signature]  
Notary Public



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MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22



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MARIO MARQUEZ  
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MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22



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ROAD MAINTENANCE AGREEMENT Deputy: Aixa Adame  
Amanda López Askin, County Clerk, Dona Ana, NM



## DRIVEWAY/PRIVATE ROAD MAINTENANCE AGREEMENT

**Property:** 4601 Snow Road  
**Township:** Section 12, Township 24S, Range 1E  
**County:** Dona Ana, New Mexico

BUENO TITLE # 21030277/MM

The conditions, terms and covenants expressed in this document shall run with each parcel served by a driveway/private road and shall bind current and successor owners.

### 1. DRIVEWAY/PRIVATE ROAD EASEMENT

The easement in which the driveway/private road is on exists is described in Exhibit A Survey (Recorded Dona Ana County Clerk on 4-1-2008, Plat Book 22, Pgs 454-455) attached and made a part of this Agreement.

### 2. EASEMENT PURPOSES

The undersigned acknowledge the purposes of the easement described in Exhibit A are:

- (a) to permit construction and maintenance of a driveway/private road,
- (b) to provide for ingress and egress to all properties described in Exhibit A attached, and
- (c) to serve as a right of way for utility lines, pipes and cables including but not limited to electric, telephone, gas, television, communication, water main, sanitary sewer and appurtenances to the foregoing.

### 3. BENEFITING PROPERTIES

The properties served by and benefiting from use of 4601 Snow Road driveway/private road, are each described in Exhibit A attached and made a part hereof.

### 4. COST OF ROAD MAINTENANCE

All costs associated with maintenance of 4601 Snow Road driveway/private road, shall be equally divided and apportioned to each owner of benefiting property described in Exhibit A.

Owners of benefiting parcels shall appoint one of the owners to oversee maintenance of the private road. That owner will arrange on behalf of all owners all private road maintenance.

The actual cost of the maintenance shall be billed no less frequently than once each year equally to each benefiting parcel owner.

Road maintenance shall include but not limited to snow plowing, grading, adding gravel, maintaining drainage ditches, repair and patching of pavement if applicable, and replacement of private road sign.

### 5. USE OF PRIVATE ROAD

Each owner of a benefiting parcel shall have use of the private road without any form of interference resulting from actions of any other benefiting parcel owner.

Each Owner acknowledges that an electronically controlled gate is located approximately 700' from the entrance off Snow Road. The gate initially offered both code access and voice requested access controlled through the owner of Lot 2A. Any activation, upgrade, maintenance, or renovation of the gate that limits access to any lot must be mutually agreed upon in writing by all owners who will share equally in the cost.


### 6. ENFORCEMENTS OF THIS AGREEMENT

Any owner(s) of a benefiting parcel described in Exhibit A has the right to commence an action against any other benefiting parcel owner(s) who may be in violation of this agreement.

The conditions, terms and covenants contained in this Agreement shall be binding as the undersigned benefiting parcel owners and their successors or assigns in title.

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 1A  
USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 2A  
USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 3A

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates specified below. The effective date of this Private Driveway/Road Maintenance Agreement shall be the later of said dates.

  
James Kerner  
Owner Lot 1A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

  
Notary Public

  
James Kerner  
Daddy's Nuts, LLC  
A New Mexico Limited Liability Company  
Owner Lot 2A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

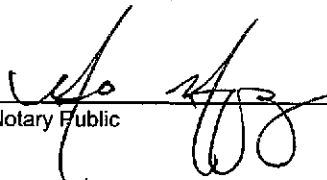
STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

  
Notary Public

  
James Kerner  
Owner Lot 3A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

  
Notary Public



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22



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MARIO MARQUEZ  
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My commission expires: 10.30.22



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22



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PAGES: 7

AGREEMENT

Deputy: Aixa Adame

Amanda López Askin, County Clerk, Dona Ana, NM



**4601 SNOW ROAD**  
**DOMESTIC WELL SHARING AGREEMENT**

BUENO TITLE #

21030277/MM

This Well Sharing Agreement (this "Agreement") is made and entered into by and between James Kerner, Daddy's Nuts, LLC and James Kerner are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties"), based on the following facts:

**RECITALS – Owners:**

James Kerner owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 1A

Daddy's Nuts LLC owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 2A

James Kerner owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 3A

WELL – LRG 03429 – Domestic Well – Adjudicated 3.0 Acre Feet Per Annum

Attached are NM OSE Water Right and Point of Diversion Summaries

A. There is a domestic water well (the "Well") on Lot 2A that currently provides water for the domestic needs of the Lots: The equipment and fixtures necessary to operate and protect the Well, including the valves, pump, pressure tank, holding tank and pump house (collectively, the Well Equipment), are located on Lot 2A and are included in the definition of the term "Well." The Well is not equipped as of the date of this agreement with a water meter.

B. The Parties have been sharing the water produced by the Well and the costs of operating and maintaining the Well pursuant to an oral agreement between them. The Parties desire to document that agreement for the benefit and protection of both them and their respective successors in interest.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant, agree and declare that the Lots shall be subject to the easements and covenants of this Agreement, which shall run with the land and shall be binding upon and inure to the benefit of the Parties, their respective successors and assigns, and any person acquiring any right, title or interest in the Lots, or any part thereof, and their respective heirs, devisees, personal representatives, grantees, successors and assigns from the date of the recording of this Agreement in the real property records in the office of the County Clerk of the County.

1. Grant. Each Owner (as defined below) of a Lot shall have the right to use the water produced from the Well for quotidian domestic use only on its Lot. Each Owner shall have an



equal undivided ownership interest in the Well. Such undivided interests in the Well are hereby declared to be appurtenant to the respective Lots.

2. Well Usage. The Well shall serve exclusively the domestic water needs of the Lots and shall not be used to serve any property other than the Lots. Neither the Owners collectively nor any one Owner shall be entitled to divert more water from the Well than permitted for domestic use only under the laws of the State of New Mexico from time to time in effect and permitted under this Agreement. Each Owner shall use water produced from the Well in a reasonable manner so as not to interfere with the reasonable use and enjoyment of the other Owner.

3. Adequacy of Well: In the event that the Well ceases to be able to produce enough water to serve the reasonable domestic needs of each Lot without being deepened or substantially modified, and a determination is made by a licensed well driller or other person similarly qualified that such shortage may be reasonably remedied by deepening or modification, such deepening or modification shall be deemed a repair and the cost thereof shall be paid pursuant to Paragraph 5 (Maintenance and Repair) of this Agreement.

In the event the referenced well shall become contaminated and shall no longer supply water suitable for domestic consumption, or shall no longer supply water adequate for the needs of all relevant parties, or in the event that another source of water shall become available to the respective parcels, the rights and obligations of the parties created by this Agreement shall cease and terminate in with a document signed, notarized and filed with the Dona Ana County Clerk's office and with the New Mexico Office of the State Engineer.

4. Operation. In absence of individual water or electric meters tied to water consumption to each residential dwelling, the parties agree the Owner of 4601-B Snow Road (Lot 2A) will receive and make payment on the monthly electric bill for operation of the Well. The parties agree that on an annual basis, the total well electric expense as provided by monthly billing will be shared as follows:

4601-A Snow Road - 20%  
4601-B Snow Road - 60%  
4601-C Snow Road - 20%.

With payment to the Owner of 4601-B Snow Road due to within 10 days from receipt of annual electric expense accounting.

5. Maintenance and Repair. The Owners shall cooperate with one another in good faith to insure the efficient administration of the Well. The Owner of Lot 2A shall act for the Owners in managing the Well. The Well shall be maintained and repaired as needed, but no less frequently than annually. The Well shall be improved or replaced as needed to ensure the Well is producing and delivering potable water in the quantity permitted by this Agreement and permitted by law. At the request of either Owner, the Owners shall meet to determine how and when to affect the annual maintenance and repair, and whether any improvement or replacement shall be required.

In the event of an inability of the Owners to agree as to maintenance, repair, improvement or replacement of the Well, or any other issue having to do with the Well, the matter shall be determined by mediation or, if necessary, by arbitration conducted pursuant to Paragraph 10 (Resolution of Disputes) of this Agreement. In the event of an emergency, an Owner may make such repairs to the Well as are necessary to rectify the conditions causing or constituting the emergency. Each Owner shall be notified as soon as possible of any emergency expenditure.

Each Owner's share of the cost of each maintenance, repair, replacement, rebuilding, reaming or deepening, or installation of meters of the Well shall bear the same ratio shown above for payment of annual electric expense (20%, 60%, 20%). Provided, however, that if the Well is damaged by the act or omission of any Owner, or agent of any Owner, the damage shall be repaired at that Owner's expense.

Each Lot Owner will be responsible the maintenance and cost of repair of water lines from the well to their residence. This would include any water line located on adjoining lots unless the water line was damaged by any act by the adjoining Lot Owner, who then is responsible for maintenance and cost of repair.

6. Easements. The Owner of Lot 2A grants to the Owners of Lots 1A and 3A an easement where the Well is located and within a 10-foot radius around the Well for the purposes of operating, inspecting, maintaining, repairing, replacing, rebuilding, reaming and deepening the Well or any part thereof. The Owner of Lot 2A also grants to the Owners of Lot 1A and 3A a 20-foot wide easement across Lot 2A for access to the Well to conduct any of the activities described in the preceding sentence and for inspecting, maintaining, repairing, and replacing the underground water line from the Well to the Well Equipment. The Owner of Lot 2A grants to the Owners of Lots 1A and 3A an easement where the Well Equipment is located and within a 10-foot radius around the Well Equipment for the purposes of operating, inspecting, maintaining, repairing, and replacing the Well Equipment or any part thereof and for installing, reading, maintaining, repairing, and replacing the water meter for Lot 2A.

The easements include the right to use such vehicles and rigs as are commonly and reasonably used for the purpose of well drilling, equipping and repair, and of water and power line installation, repair and replacement.

7. Priority and Metering. Each Lot shall have equal rights to the water produced by the Well. The Owners agree to submit any meter readings that may be required by the office of the State Engineer of the State of New Mexico or other governmental agency or body.

8. Term. The term of this Agreement shall commence on the date that it is recorded in the real property records of the County Clerk of the County and shall continue thereafter indefinitely until it is terminated by recording in the real property records in the office of the County Clerk of the County a document to that effect that is signed and acknowledged by all of the Owners.

9. Abandonment. Each Owner shall be entitled to abandon its ownership interest in the Well, and, except as provided below, to thereby terminate its rights and obligations under this Agreement, by recording in the real property records in the office of the County Clerk of the County a document to that effect that is signed and acknowledged by that Owner and by giving notice thereof to the other Owner. Any such abandonment shall have no effect on any easement granted under this Agreement that burdens the Lot owned by the abandoning Owner. Any Owner abandoning its ownership interest in the Well pursuant to the terms of this paragraph shall carry out any provisions of this Agreement which contemplate performance by such Owner subsequent to such abandonment, and such abandonment shall not affect any liability or other obligation which shall have accrued up to and including the date of such abandonment. The abandoning Owner shall not be entitled to any reimbursement from the other Owner for any expenditures made or obligations incurred prior to the date that the abandoning Owner serves the notice required by this paragraph.

10. Resolution of Disputes.

(a) Mediation. The Owners shall endeavor in good faith to resolve any and all disputes arising out of or in connection with this Agreement, whether based upon contract, tort or any other theory of or basis in law, by mediation according to the then prevailing rules and procedures of the American Arbitration Association.

(b) Arbitration. Any and all disputes arising out of or in connection with this Agreement, whether based upon contract, tort or any other theory of or basis in law, shall be subject to binding arbitration if the dispute is not resolved by the Owners within 30 days after either Owner gives notice to the other Owner of its desire to arbitrate the dispute. Such arbitration shall be the exclusive remedy of each Owner. The arbitration shall be in Las Cruces, New Mexico by the American Arbitration Association in accord with its then-prevailing rules. The arbitration shall be before one neutral arbitrator to be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association and shall proceed under the Expedited Procedures of said rules, irrespective of the matter or amount in dispute. The Owners shall continue performing their obligations under this Agreement pending the award in the arbitration proceeding. However, whenever any action is required to be taken under this Agreement within a specified period of time and the taking of such action is materially affected by a matter submitted to arbitration, such period shall automatically be extended by 10 days plus the number of days that are taken for the determination of the matter by arbitration. The arbitrator shall have no power to change the provisions of this Agreement. Except as provided in the next sentence, the damages the arbitrator may award shall be limited to the reasonable value of replacing and/or repairing the Well as of the date of an Owner's default together with the reasonable cost, as of the date of the default, of providing or obtaining water and/or water service during the period that the Well is inoperable or otherwise unusable. The arbitrator shall award to the prevailing Owner the reasonable expenses and costs they incur with respect to the arbitration, including reasonable attorneys' fees. Any award made by the arbitrator shall be final, binding, and conclusive on all Owners involved in the

arbitration for all purposes. Judgment upon the arbitration award may be entered in any court having jurisdiction.

(c) Lien. If any non-prevailing Owner refuses to pay the damages that the arbitrator awards within 10 days: after the award is made, then the other Owner shall be entitled to place a lien upon the Lot of that Owner to secure payment of the award, plus interest at the rate of 15% per annum, from the date of the award, by recording a claim of lien in the real property records in the office of the County Clerk of the County. The method of foreclosure shall be the method for foreclosing a mortgage except that any right of redemption shall be limited to one (1) month. Any lien so filed shall be superior to the claims of the Owner of such Lot, such Owner's heirs, assigns and personal representatives, and superior to the claims of any mortgages or other liens recorded after the date of recording of said lien.

11. No Waiver. The failure of any Owner to enforce any right, provision, covenant or condition which may be granted by this Agreement shall not constitute a waiver of the right of any such Owner to enforce such right, provision, covenant or condition in the future.

12. Rights Cumulative. All rights, remedies and privileges granted to any Owner pursuant to the provisions of this Agreement shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies and privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the Owner thus exercising the same from exercising such other additional rights, remedies or privileges, as may be available to such Owner at law or in equity.

13. Binding Effect; Obligations Run with the Land. This Agreement shall be recorded in the real property records in the office of the County Clerk of the County. The benefits and burdens of the covenants and easements in this Agreement shall run with the land and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, including all successors in title, interest or possession of the Lots and all persons claiming under them. No other person shall have any right, benefit or obligation hereunder.

14. Entire Agreement; Modifications. This Agreement embodies and constitutes the entire understanding between the Parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement Except as provided in this Agreement, neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed and acknowledged by the Owner against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought and duly recorded in the real property records in the office of the County Clerk of the County, and then only to the extent set forth in such instrument.

15. Delivery of Notices. All notices or other documents required herein to be delivered to an Owner shall be in writing and may be delivered either personally or by mail. If delivered personally, the same shall be deemed to have been delivered to the Owner when delivered addressed to the physical address of such Owner's Lot. If mailed, the same shall be deemed

delivered three (3) days after being deposited in the United States Mail, certified and return receipt requested and addressed to the Owner at the physical address of such Owner's Lot, with postage thereon prepaid.

16. General Construction Principles. Time is of the essence with respect to any covenant or obligation imposed by this Agreement. Words in any gender shall be deemed to include the other genders. The singular shall be deemed to include the plural and vice versa. The word "person" shall include corporations, partnerships, limited liability companies and other entities or forms of associations. For purposes of this Agreement, the term "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to each Lot, including the purchaser under a recorded real estate contract wherein the purchaser is entitled to possession, but excluding those having such interest merely as security for the payment or performance of an obligation, including the holder of an owner's interest in a recorded real estate contract wherein the purchaser is entitled to possession. The captions and headings in this Agreement are solely for convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions of this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning, without regard to any presumption or rule of construction causing this Agreement or any part of it to be construed against the Party causing the Agreement to be written. The words "include" and "including" mean include or including, without limitation.

17. Consent. Whenever this Agreement requires an Owner to obtain the consent or approval of the other Owner prior to taking some action, such other Owner shall not unreasonably withhold such consent or approval.

18. Force Majeure. Neither party shall be liable for delay or failure to perform any obligation under this Agreement if the delay or failure is caused by any circumstance beyond their reasonable control, including but not limited to acts of God, war, civil unrest or industrial action.

19. Governing Law and Venue. This Agreement is to be construed in accordance with and governed by the internal laws of the State of New Mexico without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New Mexico to the rights and duties of the parties.

Each party hereby irrevocably consents to the jurisdiction and venue of the state and federal courts located in the county in which the Property or any portion of the Property is located, in connection with any claim, action, suit, or proceeding relating to this Agreement and agrees that all suits or proceedings relating to this Agreement shall be brought only in such courts.

20. SEVERABILITY. If any portion of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.

ATTACHMENT: LRG 03924 INSPECTION DATED \_\_\_\_/\_\_\_\_/\_\_\_\_

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates specified below.  
The effective date of this Agreement shall be the later of said dates.

James Kerner  
Owner Lot 1A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
  }  
COUNTY OF DONA ANA    }

Mario Marquez  
Notary Public



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO  
My commission expires: 10.30.22

James Kerner  
Daddy's Nuts, LLC  
A New Mexico Limited Liability Company

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STATE OF NEW MEXICO    }  
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COUNTY OF DONA ANA    }

Mario Marquez  
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James Kerner  
Lot 3A

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AGREEMENTAPR 15, 2021 03:16:28 PM  
Deputy: Aixa Adame

PAGES: 5

Amanda López Askin, County Clerk, Dona Ana, NM



**4601 SNOW ROAD**  
**DOMESTIC WELL SHARING AGREEMENT**  
**MAINTENANCE ADDENDUM**

BUENO TITLE #

21030277/MMM

The Well Sharing Agreement (this "Agreement") made and entered into by and between James Kerner, Daddy's Nuts, LLC and James Kerner are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties"), based on the following facts:

**RECITALS – Owners:**

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USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 1A

Daddy's Nuts LLC owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 2A

James Kerner owns:

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 3A

**WELL**            LRG 03429 – Domestic Well – Adjudicated 3.0 Acre Feet Per Annum  
Well Log LRG 03429 Attached

The parties acknowledge the following:

**Well Drilling:** Hargraves Drilling Company, Inc.  
2545 W Hadley Avenue  
Las Cruces, NM 88007

575.524.9382

Is the authorized company to maintain and repair the LRG 03924 Domestic Well.

The Owner of Lot 2A, with the primary residence is authorized to engage Hargraves Drilling Company and provide payment following services. The final cost is to be shared equally between property Owners.

**Current Lot 2A Owner:**        James Kerner  
4601-B Snow Road  
Las Cruces, NM 88005  
575.405.1814  
jaimeandjames@hummingbirdvillasaba.com

Electrical Service to the Well is provided by:

El Paso Electric  
201 N Water Street  
Las Cruces, NM 88001  
575.526.5555

Account # \_\_\_\_\_

Meter # \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Domestic Well entity or Banking Account has been created or is in use for monthly bills, maintenance or repairs and is currently the sole responsibility of the Owner of Lot 2A.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Domestic Well monthly billing for any expenses are currently assessed.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Domestic Well meters for each Lot Owner are in place, only a single meter has or will be installed.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no separate shared Domestic Well operating regulations are in place, each Owner shall monitor water use and minimize excessive water consumption, report any leaks and/or damage to plumbing.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no additional access to the shared Domestic Well may be created by any further subdivision of any lot.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ Owners acknowledge no guarantee or warranty regarding the shared Domestic Well current or future production has been provided.

Owners/Occupants of Lots 1A & 3A may in Owner Lot 2A absence engage Hargraves.

Recent Well Potability Tests (Attached):	4601 A Snow Road	____/____/____
	4601 B Snow Road	____/____/____
	4610 C Snow Road	____/____/____

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates specified below.  
The effective date of this Agreement shall be the later of said dates.

[Signature]  
James Kerner  
Owner Lot 1A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

[Signature]  
Notary Public



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO  
My commission expires: 10-30-22

[Signature]  
James Kerner  
Daddy's Nuts, LLC  
A New Mexico Limited Liability Company

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

[Signature]  
Notary Public



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO  
My commission expires: 10-30-22

[Signature]  
James Kerner  
Owner Lot 3A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 2021  
by James Kerner.

STATE OF NEW MEXICO    }  
                                     }  
COUNTY OF DONA ANA    }

[Signature]  
Notary Public



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO  
My commission expires: 10-30-22

## **DRIVEWAY/PRIVATE ROAD MAINTENANCE AGREEMENT**

**Property:** 4601 Snow Road  
**Township:** Section 12, Township 24S, Range 1E  
**County:** Dona Ana, New Mexico

The conditions, terms and covenants expressed in this document shall run with each parcel served by a driveway/private road and shall bind current and successor owners.

### **1. DRIVEWAY/PRIVATE ROAD EASEMENT**

The easement in which the driveway/private road is on exists is described in Exhibit A Survey (Recorded Dona Ana County Clerk on 4-1-2008, Plat Book 22, Pgs 454-455) attached and made a part of this Agreement.

### **2. EASEMENT PURPOSES**

The undersigned acknowledge the purposes of the easement described in Exhibit A are:

- (a) to permit construction and maintenance of a driveway/private road,
- (b) to provide for ingress and egress to all properties described in Exhibit A attached, and
- (c) to serve as a right of way for utility lines, pipes and cables including but not limited to electric, telephone, gas, television, communication, water main, sanitary sewer and appurtenances to the foregoing.

### **3. BENEFITING PROPERTIES**

The properties served by and benefiting from use of 4601 Snow Road driveway/private road, are each described in Exhibit A attached and made a part hereof.

### **4. COST OF ROAD MAINTENANCE**

All costs associated with maintenance of 4601 Snow Road driveway/private road, shall be equally divided and apportioned to each owner of benefiting property described in Exhibit A

Owners of benefiting parcels shall appoint one of the owners to oversee maintenance of the private road. That owner will arrange on behalf of all owners all private road maintenance.

The actual cost of the maintenance shall be billed no less frequently than once each year equally to each benefiting parcel owner.

Road maintenance shall include but not limited to snow plowing, grading, adding gravel, maintaining drainage ditches, repair and patching of pavement if applicable, and replacement of private road sign.

### **5. USE OF PRIVATE ROAD**

Each owner of a benefiting parcel shall have use of the private road without any form of interference resulting from actions of any other benefiting parcel owner.

Each Owner acknowledges that an electronically controlled gate is located approximately 700' from the entrance off Snow Road. The gate initially offered both code access and voice requested access controlled through the owner of Lot 2A. Any activation, upgrade, maintenance, or renovation of the gate that limits access to any lot must be mutually agreed upon in writing by all owners who will share equally in the cost.

### **6. ENFORCEMENTS OF THIS AGREEMENT**

Any owner(s) of a benefiting parcel described in Exhibit A has the right to commence an action against any other benefiting parcel owner(s) who may be in violation of this agreement.

The conditions, terms and covenants contained in this Agreement shall be binding as the undersigned benefiting parcel owners and their successors or assigns in title.

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 1A

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 2A

USRS TRACT 12 - 37B2D REPLAT NO 2 (BK 22 PG 454-455 - 0809993) Lot: 3A

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates specified below. The effective date of this Private Driveway/Road Maintenance Agreement shall be the later of said dates.

[Signature]  
James Kerner  
Owner Lot 1A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 20 21  
by James Kerner.

STATE OF NEW MEXICO     }  
                                     }  
COUNTY OF DONA ANA     }

[Signature]  
Notary Public

[Signature]  
James Kerner  
Daddy's Nuts, LLC  
A New Mexico Limited Liability Company  
Owner Lot 2A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 20 21  
by James Kerner.

STATE OF NEW MEXICO     }  
                                     }  
COUNTY OF DONA ANA     }

[Signature]  
Notary Public

[Signature]  
James Kerner  
Owner Lot 3A

This instrument was acknowledged before me on the 15<sup>th</sup> day of April, 20 21  
by James Kerner.

STATE OF NEW MEXICO     }  
                                     }  
COUNTY OF DONA ANA     }

[Signature]  
Notary Public



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22



OFFICIAL SEAL  
MARIO MARQUEZ  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10.30.22