

## **WATER WELL USERS' AGREEMENT**

This Water Well Users' Agreement ("Agreement") is entered into by and among Timbrshor Association, Inc. (the "Association") and the unit owners the development known as Timbrshor (the "Members") who sign or accept this Agreement now or in the future. This Agreement will be effective as of \_\_\_\_\_ [date] for initial signatories and as of the date of signing and delivery for future signatories.

### **RECITALS**

WHEREAS, the Members own individual units within, and have undivided common property interests in, the development known as Timbrshor. Timbrshor and the property subject to this Agreement is legally described as:

Lot 3, Section 7, Township 23 North, Range 19 West, P.M.M., Lake County,  
Montana

hereinafter ("Timbrshor").

WHEREAS, Timbrshor and the Members are subject to the Amended Declaration Under the Unit Ownership Act and Restrictive Covenants recorded March 27, 1980 as Instrument No. 254077, records of Lake County, Montana (the "Amended Declaration").

WHEREAS, on April 2, 2019 the Association's Board of Directors ("Board") approved a new water well plan ("Well Plan") through which all Members will be provided an opportunity to connect their respective developable units (each, a "Unit") to the water wells that will be constructed on Timbrshor common property.

WHEREAS, the parties wish to define the terms under which the Members may build and operate ground water well and water systems to serve their respective Units, to specify the conditions under which they may do so, to clarify their mutual reciprocal easements as they pertain to the ground water well systems, and to provide for other rights and obligations.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises herein set forth and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and subject to the terms and conditions herein, the parties agree as follows:

1. Purposes. The purposes of this Agreement include: (a) conferring upon each of the 47 developed and developable sites at Timbrshor a right to access ground water by

connecting to one of the five (5) shared wells referenced in the Well Plan; (b) specifying the required conditions to be eligible to build and operate private shared wells on Timbrshor common property; and (c) clarifying the mutual reciprocal easements pertaining to ground water well systems.

2. Wells. The Well Plan assigns 47 Units to one of the five shared wells on Timbrshor common property as reflected in Exhibit A hereto. All Units assigned to a particular well are referred to as a “Well Group” and the well assigned to that group is referred to as the “Assigned Well.” Subject to the terms and conditions herein, each Well Group shall have a right to build, operate and maintain its Assigned Well to provide ground water to Units at the locations specified by the Association and as generally reflected on Exhibit A hereto. The exclusive ground water source for each Unit are the particular wells as specified in Exhibit A. Water from Assigned Wells shall only be used for domestic purposes.

3. Acceptance and Participation. Members must sign and return this Agreement to be eligible to connect to a well located on Timbrshor common property. Members shall become “Participating Well Group Members” of their Assigned Well by: (a) executing this Agreement; (b) signing the Participating Well Group form appended hereto as Exhibit B; and (c) paying the Member’s share of Well Infrastructure Costs, as defined below; or conveying an easement for the placement of a well and infrastructure on the Member’s property, as the case may be.

4. Construction, Costs and Expenses; Responsibilities and Ownership.

(a) It is the responsibility of the Participating Well Group Members of each Assigned Well to construct and maintain a shared groundwater well, pump house and pump, well casing, pump controls and main water line (if necessary), and pay all costs associated therewith (the “Well Infrastructure Costs”).

(b) One or more Members may construct an Assigned Well in anticipation that other Members of the Well Group may join and pay later. Initial Participating Well Group Members constructing an Assigned Well shall pay an equal share of Well Infrastructure Costs on a per Unit basis. A Member that was not initially a Participating Well Group Member but desires to connect to its Assigned Well after construction shall pay a late hook-up fee equal to: the Well Group’s Well Infrastructure Costs divided by the number of Units then participating in the Well Group (including the newly participating Unit(s)), plus interest accruing at four percent (4%) per year from the date of well construction. Payments will be distributed pro rata to the Participating Well Group Members that funded initial construction or are otherwise entitled to reimbursement.

(c) The Participating Well Group Members are the owners of the well infrastructure paid for by the Participating Well Group Members.

(d) A Member is not obligated to pay any costs associated with its Assigned Well until the Member becomes a Participating Well Group Member. But a Member that has not become a Participating Well Group Member or paid its share of well Infrastructure costs may not connect to its Assigned Well.

(e) Each Member shall be responsible for and individually pay all other water infrastructure costs that may be necessary to connect Member’s Unit to its Assigned Well, including water lines (pipes), tanks, meters, etc.

5. Cisterns. Subject to Association approval, and upon the amendment of the applicable Montana Department of Environmental Quality (“DEQ”) Certificate of Subdivision Approval (“COSA”) by a Member, at the Member’s expense, a Member may substitute a cistern for its Assigned Well. In that event, the provisions of this Agreement shall apply to the construction and use of the Member’s cistern, and such Member shall be solely responsible for building and operating a cistern to serve its Unit at a location approved by the Association. Unless a Member electing to use a cistern also retains an interest in the Member’s Assigned Well by becoming a Participating Well Group Member and paying the Member’s share of Well Infrastructure Costs, the Member will no longer have a well assignment after substituting a cistern.

6. Administration of Assigned Wells. Each Assigned Well shall be managed by its Participating Well Group Members who, upon majority vote, may decide all normal and customary issues pertaining to the management of a private well in accordance with this Agreement. Issues that may be managed by Well Groups include but are not limited to the following: contracting with a well driller to drill the well; determining the style and cost of the pump house; determining the payment of Well Infrastructure Costs, periodic fees and special charges by Participating Well Group Members; creating and maintaining of any reserve fund; procuring any insurance for the Assigned Well; any water testing; determining whether to sell water to cistern users and at what cost; well maintenance; ensuring compliance with this Agreement and all applicable rules and regulations of the State, County and the Association; and paying all costs and expenses pertaining to the Assigned Well. At each annual meeting of the Association, Participating Well Group Members of each Assigned Well shall elect a manager whose responsibilities include managing the foregoing and other issues and keeping a record of all actual construction costs and reporting the same annually to the Association. It is specifically understood and agreed that until a Member opts to become a Participating Well Group Member, the Member has no responsibility to pay any costs whatsoever pertaining to their Assigned Well, other than general costs assessed to all Members relating to the Well Plan and related professional costs.

7. Well Group Enforcement. In the event that any Participating Well Group Member fails to pay any fees or charges to its Well Group after a 30-day uncured delinquency notice mailed or hand-delivered to the delinquent member, the other Participating Well Group members acting as a group shall have a lien on the delinquent Member’s property (i.e., Unit) for the amount of the unpaid fees and charges, with interest accruing thereon at the rate of ten percent (10%) per year from the date of the notice, forward, and may pursue all lawful remedies against the delinquent Member, including shutting off water from the Assigned Well, recording notice of the lien in property records, filing suit against the delinquent Member, and recovering from the delinquent Member attorney fees and court costs incurred in enforcing the lien and/or this Agreement.

8. Association Oversight. All construction plans and planning for wells, cisterns, unit water line connections and all other well and water infrastructure are subject to the prior review and approval of the Association Board of Directors or its designee.

9. Compliance. Each Well Group and its Participating Well Group Members shall have a continuing obligation to comply with this Agreement, all applicable governmental laws and regulations, the Amended Declaration, the Association's bylaws, and all rules and regulations adopted by the Association.

10. Reciprocal Easements. The Members hereby mutually grant and convey to one another, and one another's successors and assigns, non-exclusive easements and rights of way under, over, and across the Members' properties and the Timbrshor common areas for the surveying, construction, maintenance, operation, use, repair, and/or replacement of the well systems reflected in the Well Plan and related infrastructure, including all rights of access necessary to accomplish the foregoing.

11. Defaults. If a Member elects to become a Participating Well Group Member but fails to pay its share of Well Infrastructure Costs by the date specified by the Well Group, then upon a majority vote of the Well Group, the Member becomes a "Defaulting Member" until the outstanding amounts are paid. Further, if a Member fails to pay an Association water plan assessment by its due date is, then upon a majority vote of the Board, the Member becomes a "Defaulting Member" until the outstanding amounts are paid. A Defaulting Member is not allowed to connect to a well. The paragraph shall not limit any remedy that any party may have for any other default.

12. Breach or System Failure. In addition to all other legal remedies, in the event of a breach of this Agreement or failure of any well or water system, the Association shall have the right to remedy and/or repair any circumstance that poses an imminent or significant risk to a Member, Member property or common property, and to require all applicable Participating Well Group Members whose Assigned Well was involved in the breach or failure to reimburse the Association for the cost of any such remedy and/or repair.

13. Indemnification. A Member shall indemnify and reimburse the Association for any costs and expenses that the Association may incur (including attorney's fees and costs) due to the Member's willful misconduct, gross negligence, or noncompliance with any legal, regulatory or the Association's requirements pertaining to any Assigned Well or Well Group, including, but not limited to, the construction, operation and maintenance of the wells and associated water systems and compliance with DEQ orders and regulations.

14. Continuing Rights and Recordation. This Agreement shall run with the land and be binding upon and inure to the benefits of the heirs, successors and assigns of all the parties hereto. Once the Well Plan and associated COSA are approved by the applicable regulatory bodies, this Agreement shall be recorded with Lake County.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana.

16. Severability. If any provision of this Agreement is found to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.

17. Counterparts. This Agreement may be executed over time in one or more counterparts, each of which will be deemed an original instrument, but all of which together shall constitute one and the same agreement.

18. Entire Agreement and Amendment. This Agreement and the documents specified or referred to herein constitute the entire agreement between the parties concerning the subject matter describe herein. If a well fails or DEQ authorizes other well sites that are of benefit to the Association, the well assignments specified herein may be amended by the Board with the concurrence of the DEQ. The other terms and conditions of this Agreement may be amended only by a majority of Participating Well Group Members in writing.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the dates set forth below.

[counterpart signature pages follow]

ASSOCIATION

TIMBRSHOR ASSOCIATION, INC.

Signed by: \_\_\_\_\_

Date: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA        )  
  : ss.  
County of Lake                )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the  
year \_\_\_\_\_, before me, \_\_\_\_\_, Notary  
Public for the State of Montana, \_\_\_\_\_, on behalf of Timbrshor Association, Inc., personally appeared  
and acknowledged to me that he or she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day  
and year above.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

[counterpart signature page to Water Well User's Agreement]

MEMBER(S):

Printed Name(s): \_\_\_\_\_

\_\_\_\_\_

The current owner(s) of Timbrshor Unit Number: \_\_\_\_\_

Legal Description (if applicable): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signed \_\_\_\_\_ Date: \_\_\_\_\_

Signed \_\_\_\_\_ Date: \_\_\_\_\_

Signed \_\_\_\_\_ Date: \_\_\_\_\_

Signed \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

: ss.

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public for the State of \_\_\_\_\_, the Members stated above personally appeared and acknowledged to me that they executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above.

\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

(NOTARIAL SEAL)

[counterpart signature page to Water Well User's Agreement]

Exhibit A

Well and Water Line Layout and Well Assignments







Project: Timbrshor  
Project #: T.58.1  
File: S:/.../Water Rights/DEQ 2018  
Assignment Hafferman

Revision Date

DEQ Key  
COMSA Compliant COM  
Not COMSA Compliant NCOM

Water System Compliance

Unit#	Owner	Status D=developed-#bdrms ND = not developed	DEQ Water Supply Status	TWP Assignment
201	Rose	DEVELOPED	NCOM	8
203	Acher	DEVELOPED	COM	8
204	Swindlehurst	DEVELOPED	COM	8
205	Rotondi	DEVELOPED	COM	8
206	Walters	DEVELOPED	NCOM	8
209	Peterson	DEVELOPED	NCOM	5
210	Schwank	DEVELOPED	COM	8
211	Fordahl	DEVELOPED	COM	8
216	Rotondi, M	NOT DEVELOPED	NCOM	8
219	Borchers-Michione	NOT DEVELOPED	NCOM	8
301	Karpstein	DEVELOPED	NCOM	9
302	Rountree	DEVELOPED	NCOM	9
305	Estvold	DEVELOPED	NCOM	9
306	Nichols (Trustee Selvig 4-plex)	DEVELOPED	COM	5
307	Payson (4-plex)	DEVELOPED	COM	5
308	Cole (4-plex)	DEVELOPED	COM	5
309	Cole (4-plex)	DEVELOPED	COM	5
311	Tillinghast	DEVELOPED	COM	9
312	Novinski	DEVELOPED	COM	9
314	Brooke-Lewis	DEVELOPED	COM	9
315	Feieraband Partnership	DEVELOPED	COM	9
316	Carney	DEVELOPED	COM	9
317	McCarthy	DEVELOPED	NCOM	McCarthy
318	McCarthy	NOT DEVELOPED	NCOM	McCarthy
320	McCarthy	NOT DEVELOPED	NCOM	McCarthy
401	Johnson	DEVELOPED	COM	4
402	Manning	DEVELOPED	COM	4
406	Armstrong	DEVELOPED	NCOM	4
408	Caraway,Dasinger	NOT DEVELOPED	NCOM	4
409	Roy	DEVELOPED	NCOM	4
410	Sand	NOT DEVELOPED	NCOM	4
411	Mead	DEVELOPED	NCOM	4
412	Cox	DEVELOPED	NCOM	4
414	McCarthy	NOT DEVELOPED	NCOM	McCarthy
416	Manning	NOT DEVELOPED	NCOM	4
417	Manning	NOT DEVELOPED	NCOM	4
421	Johnson	NOT DEVELOPED	NCOM	4
422	Johnson	NOT DEVELOPED	NCOM	4
424	Johnson	NOT DEVELOPED	NCOM	4
426	Borchers, B	NOT DEVELOPED	NCOM	4
427	Maxwell	NOT DEVELOPED	NCOM	4
428	Rys-Sikora	DEVELOPED	NCOM	4
429	Manning	NOT DEVELOPED	NCOM	4
430	Rys-Sikora	NOT DEVELOPED	NCOM	4
403/404	Cobb	NOT DEVELOPED	NCOM	4
418/419	Cobb	DEVELOPED	NCOM	4
Lodge	Rose	DEVELOPED	COM	5

Exhibit B

Participating Well Group Member

I, \_\_\_\_\_ [print name], the owner of Unit \_\_\_\_\_ at Timbrshor, and pursuant to Section 3 of the Water Well Users Agreement of which I am a signatory, and intending to be legally bound hereby, agree to become a Participating Well Group Member of my Assigned Well (a) by Agreeing to become a party to Water Well Users Agreement and (b) by committing to pay an equal share of Well Infrastructure Costs by the date(s) specified by my Well Group, upon the understanding that my Unit will not be subject to any other costs until I connect my Unit to the Assigned Well other than general costs assessed to all Members relating to the Well Plan and related professional costs.

Agreed by Member:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Accepted by Well Group:

\_\_\_\_\_  
Well Group Manager

\_\_\_\_\_  
Date