

SHARED WELL AGREEMENT

This instrument drafted by: Joseph M. Collins
 COLLINS & HENSLEY, P.A.
 217 Iotla Street
 Franklin, NC 28734

20-01-657

North Carolina)
 Macon County)

THIS SHARED WELL AGREEMENT (this "Agreement"), made this 5th day of January, 2021, by and between **RD HOME SALES, INC.**, ("Grantor"); and **RICARDO E. LOZANO and wife, MEAGAN L. LOZANO**, (Grantees");

- A. Grantor is the owner of that certain property located in Macon County, North Carolina, being that 0.82 acre tract as shown on that certain plat recorded in Plat Book 5, Plat Card #11264, Macon County Land Registry, and further described as a portion of Tract One in that deed recorded in Deed Book D-40, Pages 2311-2313, Macon County Land Registry, ("Grantor's Property"); and
- B. Grantee is the owner of that certain property located in Macon County, North Carolina, being that 8.49 acre tract as shown on that certain plat recorded in Plat Book 5, Plat Card #11264, Macon County Land Registry, and further described as a portion of Tract One in that deed recorded in Deed Book D-40, Pages 2311-2313, Macon County Land Registry("Grantee's Property"); and

- C. The Well is located on Grantor's Property as shown on the plat recorded in Plat Book 5, Plat Card #11264, Macon County Land Registry, (the well, pump, piping, and waterworks system, and any and all components and accessories related thereto are collectively referred to as the "Well"); and
- D. Grantee has requested that Grantor grant to Grantee the right to take an undivided portion of the flow of water produced by the Well for the use and benefit of Grantee's Property, and Grantor has agreed to do so.

NOW THEREFORE, Grantor and Grantee, for valuable consideration paid to Grantor, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. **Shared Well Agreement:** The Well shall be for the use of the real properties as shown on the plat recorded in Plat Book 5, Plat Card #11264, Macon County Land Registry, if and when conveyed from the Grantor and/or Grantee herein. Grantor grants unto Grantee, its successors and assigns the nonexclusive right to take a portion of the flow of water produced by the Well for the use and benefit of Grantee's Property for up to five (5) home connections. Grantee, its successors and assigns shall have the nonexclusive right to take a portion of the flow of water produced by the Well for domestic use. Grantor hereby retains for itself, its successors and assigns, the nonexclusive right to take a portion of the flow of water produced by the Well for up to four (4) home connections.
If either party hereto conveys unto a third party well rights, then and in that event, this Shared Well Agreement shall be included and made a part of said conveyance, and said third party shall comply with the terms and regulations of this Agreement.
2. **Stipulations and Conditions:** The Well shall be shared and jointly used by and between Grantor, Grantee, their successors and assigns, and is granted and reserved subject to the following terms, stipulations and conditions:
 - A. The parties hereto shall permit well water sampling and testing by responsible local authority at the time of either party's request. Further, corrective measures shall be implemented by the parties hereto if testing reveals water quality deficiency.

- B. Neither party hereto shall locate or relocate any element of an individual sewage disposal system within 50 feet to the Well, or such further distance as applicable regulations might require.
- C. Neither party hereto may install any landscaping and/or improvements on their respective properties which would impair the use of the Well.
- D. Either party hereto shall have the right to act to correct an emergency situation in the absence of the other party. Costs shall be allocated as set forth in Paragraph 4 of this Agreement. An emergency situation is defined as failure of any shared portion of the Well to deliver water upon demand.
- E. The parties hereto may implement system improvements, if necessary, to increase the service life of the component parts, to restore well water yield, and/or to provide necessary system protection for the Well. All system improvements must be mutually agreed upon in writing by the parties hereto. No party will unreasonably withhold consent in order to provide continued use of the Well.
- F. Grantor agrees and assures continuity of water service to Grantee, their heirs and assigns, if Grantor has no further need of the Well.
- G. Each party hereto agrees to be responsible for the following:
 - (1) Prompt repair, by the respective property owner, of any detected leak of his/her water service line or plumbing system;
 - (2) Repair costs to be paid by the respective property owner to correct system damage caused by his/her resident or guest;
 - (3) Necessary repair or replacement, by the respective property owner, of the service line connecting the Well to his/her dwelling.
- H. Both parties agree that they shall resort to binding arbitration in the case of any dispute or impasse between themselves with regard to the Well or the terms of this Agreement. Binding Arbitration shall be through the American Arbitration Association or a similar body and may be initiated at any time by any party to this Agreement. Arbitration costs shall be equally shared by the parties to this Agreement.

- I. During the term of a Federally insured or guaranteed mortgage on any property served by the Well, both parties agree that this Agreement may not be amended except as set forth in paragraphs 5 and 2(b) of this Agreement.
3. **Maintenance and Repair:** Grantee shall have the right to maintain, at the site of the Well, a pump, tank and other equipment necessary and appropriate for the use of the Well; together with the right to install and maintain a water pipeline running from the Well to Grantee's Property; together with the right to inspect, maintain, replace and repair the Well and the components of the water system. This right and easement also includes the right of Grantee to go upon the lands of Grantor, in order to lay, install, maintain, repair or replace the water pipelines and/or any and all elements of the Well. This right and easement also includes necessary working space to be allowed for system operation, maintenance, improvement, inspection and testing. Provided however, that if Grantee excavates or disrupts any of the Grantor's property, landscaping and/or improvements, Grantee must replace the real property, landscaping and improvements, back in the same condition as existing prior to Grantee's excavation. These well rights are restricted to the use of the water supply for bona fide domestic purposes only.
4. **Expenses for Maintenance and Repair of Well:** The parties hereto shall be individually responsible and liable for the cost of maintenance and upkeep of their individual pipelines serving their respective residences. The parties hereto hereby agree to share equally in the cost of the testing, inspection, repairs, disinfecting, upkeep and maintenance of the Well jointly used by both parties. Any removal and/or replacement of preexisting site improvements, necessary for Well operation, maintenance, replacement, improvement, inspection or testing, will be at the cost of the individual party for their respective properties, except that costs to remove and replace common boundary fencing or walls shall be shared equally among the parties. Further, the parties hereto agree to share equally in the cost of a new joint pump and/or the replacement of system components if needed in the future for any reason including but not limited to obsolescence, incrustation

and/or corrosion. Any necessary replacement or improvement of system elements will at least restore original system performance. Except in emergency situations, the parties hereto must mutually agree, which agreement shall not be unreasonably withheld, before actions are taken for system maintenance, replacement or improvement for the Well. No party shall be responsible for unilaterally incurred debts for the property of another party, except for correction of emergency situations. Emergency situations shall be equally shared between the parties hereto. The parties hereto shall share equally the repair costs for the Well caused by persons other than residents or guests of the properties sharing the Well. The parties hereto shall share equally the costs for abandoning all or part of the Well so that contamination of ground water or other hazards will be avoided. Further, the parties hereto shall assure the prompt collection from all parties and prompt payment of the Well operation, maintenance, replacement, or improvement costs.

5. **Electrical Bill:** The monthly electrical bill for running the pump for the Well shall be divided equally between the Grantor and Grantee or between Grantor's and Grantee's heirs and assigns, unless the parties agree in writing to a different allocation. The monthly electrical bill may be increased or decreased in the future based on any changes in utility rates as established by the utility company being used by Grantor at that time to power the Well. Further, the parties hereto may amend this Agreement to assure equitable readjustment of shared costs when there may be significant changes in well pump energy rates or the occupancy or use of an involved property.

MISCELLANEOUS PROVISIONS

Running of Benefits: All provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, licensees, invitees, successors, tenants, employees and personal representatives of the parties.

Rule of Strict Construction: The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction so that the intention of the parties to

grant a commercially usable right of enjoyment to the other parties is carried out.

Grantor/Grantee Designations: The designations “Grantor” and “Grantee” as used herein shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine and neuter as required by context.

Successors and Assigns: This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina in all respects, including all matters of construction, validity and performance.

Modification and Waiver: No provisions of this Agreement shall be amended, waived or modified except by an instrument in writing signed by the parties.

Headings: All descriptive headings of sections and paragraphs in this Agreement are inserted for convenience only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

No Interpretation Against Drafter: This Agreement has been entered into at arm’s length and between persons sophisticated and knowledgeable in business and real estate matters. Accordingly, any rule of law or legal decision that would require interpretation of this Agreement against the party that has drafted it is not applicable and is irrevocably and unconditionally waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purposes of the parties and this Agreement.

Notice: All notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been given on the date of receipt and shall be delivered to the following addresses, or to such other addresses as specified by written notice delivered in accordance herewith, except that such other address shall be effective ten (10) days after receipt of same:

Grantor: RD Home Sales, Inc., 3614 Lynn Road, Raleigh, North Carolina, 27613

Grantee: Ricardo E. Lozano and wife, Meagan L. Lozano, 60 Spring Hill Road,
Franklin, North Carolina, 28734

Execution and Counterparts: This Agreement may be executed in one or more counterparts, all of which shall be considered one in the same agreement, and shall become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other party.

Partial Invalidity: If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Attorney's Fees: If any action, suit arbitration or other proceeding is instituted to remedy, prevent, or obtain relief from a default in the performance by any party to this Agreement of its obligations under this Agreement, the prevailing party shall recover all of such party's attorney's fees incurred in each and every such action, suit, arbitration, or other proceeding, including any and all appeals or petitions therefrom. As used in this Section, attorney's fees shall be deemed to mean the full and actual costs of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual fee charged by the attorney performing such services and shall not be limited to "reasonable attorneys fees" as defined in any statute or rule of Court.

TO HAVE AND TO HOLD the aforesaid Well Agreement, with all privileges and appurtenances thereto, belonging to Grantor and Grantee their heirs, successors and assigns.

TO INDICATE THEIR CONSENT TO THIS AGREEMENT, the parties, or their authorized representatives, have signed this Agreement as of the day and year first above written.

RD HOME SALES, INC.



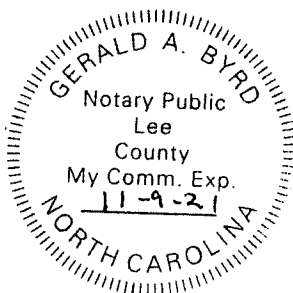
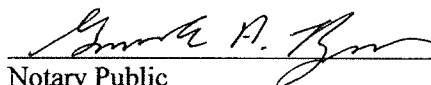
(SEAL)

By: Rodney Daw, President

STATE OF NC
COUNTY OF Wake

I, a Notary Public of the County and State aforesaid, certify that Rodney Daw personally appeared before me this day and acknowledged that he is President of RD Home Sales, Inc., a corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation. Witness my hand and official stamp, this the 5th day of January, 2021.

(Seal/Stamp)

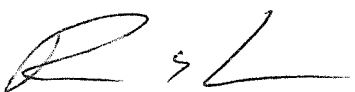



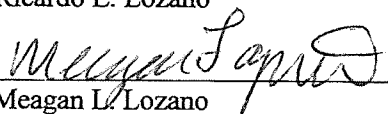
Notary Public

My Commission Expires: 11-9-21

TO HAVE AND TO HOLD the aforesaid Well Agreement, with all privileges and appurtenances thereto, belonging to Grantor and Grantee their heirs, successors and assigns.

TO INDICATE THEIR CONSENT TO THIS AGREEMENT, the parties, or their authorized representatives, have signed this Agreement as of the day and year first above written.

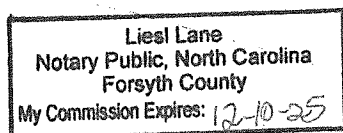
 (SEAL)
Ricardo E. Lozano

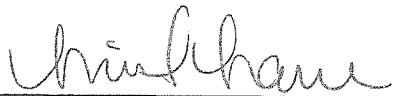
 (SEAL)
Meagan L. Lozano

STATE OF North Carolina
COUNTY OF Macon

I, a Notary Public of the County and State aforesaid do hereby certify that Ricardo E. Lozano and wife, Meagan L. Lozano personally appeared before me this day, and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 8 day of January, 2021.

(SEAL)




Notary Public
My Commission Expires: 12-10-25