

**LICENSE AND ASSIGNMENT
OF WATER RIGHTS**

This License and Assignment of Water Rights is made this 11TH day of OCTOBER, 2002, by and between THOMAS P. HILL, a married man dealing in his separate property, STEVEN GOMES, an unmarried man (hereinafter collectively referred to as "Licensor") and MILLVIEW COUNTY WATER DISTRICT, a governmental agency (hereinafter "Millview").

RECITALS

A. Licensor is the owner of those certain water rights established by the claim of J. A. Waldteufel dated March 24, 1914, recorded in the Mendocino County Records of Water Rights, Volume 3, Page 17 on March 24, 1914, by which J.A. Waldteufel claimed the water flowing in the West Fork of the Russian River at the point of posting to the extent of 100 inches measured under a four inch pressure, (approximately 1450 acre foot), the purpose for such claim being for domestic and culinary purposes (the "Water Right").

B. Licensor owns a parcel of land adjacent to the West Forks Subdivision and contiguous to the center line of the West Fork of the Russian River and depicted as "Open Space/Riparian Corridor" as numbered and designated upon the Final Map of Tract 252, West Fork Subdivision, Unit 1, filed for record on May 2, 2000, in Drawer 67 of Maps, Pages 35-39, Mendocino County Records (hereinafter "Riparian Corridor");

C. Licensor Hill reserves 51,000 gallons per day of Water Right, Licensor Gomes reserves 74,000 gallons per day of the Water Right for the benefit of Licensors, or their assignees, which reservation is hereinafter referred to as the "Reserved Right".

IN RECOGNITION OF THE FOREGOING RECITALS, the parties hereto agree as follows:

- 1. **Assignment.** Licensor hereby irrevocably grants, conveys and assigns to Millview all of Licensor's right, title and interest to the Water Right, saving and excepting a share previously reserved for the term hereof.*
- 2. **Access.** Licensor grants, conveys and assigns to Millview an irrevocable, non-exclusive license to access the Russian River through and over the Riparian Corridor and to use the Riparian Corridor, to the extent permitted by any governmental entity with jurisdiction in furtherance of the exercise of the Water Right assigned herein, all for the purpose of diverting, appropriating and using any and all water, less the Reserved Right, for the benefit of Millview. Nothing in this paragraph is designed to restrict or otherwise hinder Licensor's rights to access and use of any property retained by Licensor, consistent with this Agreement and*

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Licensor's interests in such property.

3. **Consideration.** *In consideration for this agreement, Millview shall pay Licensor the sum of Fifteen Thousand Dollars (\$ 15,000), on or before October 14, 2002. Twenty Thousand Dollars (\$ 20,000) on or before October 14, 2003. Twenty Five Thousand Dollars (\$ 25,000) on or before October 14, 2004, and Thirty Thousand Dollars (\$ 30,000), on or before October 14, 2005. Which amounts shall not be applied to the purchase price.*
4. **Term.** *This Agreement shall commence on October 15, 2002, and shall terminate on October 14, 2006, unless extended in writing by all parties.*
5. **Appointment of Millview as Agent for Exercise of Riparian Rights.** *During the Term, Licensor appoints Millview as Licensor's agent for the preservation and exercise of any riparian rights held by Licensor with respect to the Riparian Corridor.*
6. **Options to Purchase.** *Licensor grants to Millview an option to purchase the Water Right as follows:*
 - A. *The option term shall commence on October 15, 2002 and expire on October 14, 2006.*
 - B. *Provided Millview is not in default hereunder, this Option may be exercised by Millview delivering to Licensor before the expiration of the Option Term written notice of the exercise ("Exercise Notice") which shall state that the Option is exercised without condition or qualification accompanied by Millview's warrant by way of earnest money deposit in the amount of Fifteen Thousand Dollars (\$ 15,000).*
 - C. *Time is of the essence of the Option. If the Option is not exercised in the manner provided for herein, Millview shall have no interest in the Water Right and the Option may not be revived by any subsequent action by Millview.*
 - D. *If this Agreement is terminated, Millview agrees, if requested by Licensor, to execute, acknowledge, and deliver a quitclaim deed to Licensor within ten (10) days after termination and to execute, acknowledge and deliver any other documents reasonably required by any title company to remove any cloud upon title to any property held by Licensor.*
 - E. *Millview has executed a Notice of Assignment in the appropriate*

water right referred to herein on Form WR-29A in favor of Licensor, and has deposited the same with Licensor contemporaneously with the execution of the prior License and Agreement of water rights dated October 15, 2001. Millview does irrevocably appoint Licensor to file such assignment in the event that Millview does not exercise the option as provided herein.

- F. The Option consideration shall be the greater of either; (1) an amount agreed upon by the parties prior to September 10, 2006; or (2) an amount determined by binding arbitration commenced no later than June 30, 2006 and completed no later than August 31, 2006. Said consideration shall be payable in cash through an escrow to be established.*

Such binding arbitration for the purchase price of the Water Right pursuant to this Option may be invoked by either party by petitioning the presiding judge of the Superior Court for the appointment of an Arbitrator to conduct arbitration pursuant to Code of Civil Procedure # 1281, et seq for the purpose of determining the Fair Market Value of the Water Right, taking into account all relevant factors in determining the Fair Market Value of such Water Right. However, nothing in the Option Agreement shall compel Licensor to accept the Arbitrator's binding decision if the decision is an amount less than One Thousand Two Hundred Fifty Dollars per acre foot. In all respects, the Arbitrator's decision as to Fair Market Value shall be binding upon the parties.

- G. At the request of either party, the other party shall cooperate in execution of a memorandum of this Option.*

- H. Upon exercise of the Option, Licensor warrants that Licensor is the owner of the Water Right and has marketable title to the Water Right clear of restrictions, leases, liens, and other encumbrances, except as otherwise permitted by this Agreement. If this Option is exercised by Millview, Licensor will convey title to the water deed by good and sufficient instrument. During the Option Term and until the property is conveyed to. Millview, if the Option is exercised, Licensor will not encumber the Water Right in any way or grant any property or contract right relating to the Water Right without the prior written consent of Millview.*

- 7. **No Assignment.** Millview may not assign or transfer this Agreement and the rights hereunder without Licensor's prior written consent. However, should this Agreement be transferred or assigned by either party, the terms of this Agreement shall be binding*

upon and inure to the benefit of The parties' successors and assigns.

8. **Notices.** *All notices, demands, requests, exercises and other communications under this Agreement by either party shall be in writing and; (a) sent by United States Certified Mail, Return Receipt Requested, in which case notices shall be deemed delivered three (3) business days after the deposit, postage prepaid, in the United States Mail; (b) sent by a nationally recognized overnight carrier, in which case, notice shall be deemed delivered one (1) business day after deposit with such carrier, or sent by telecopy or other similar means, with a copy of the notice also sent by United States Certified Mail, in which case notice shall be deemed delivered or transmitted by telecopy or other similar means, provided that a transmission report is generated that reflects actual transmission of the notice as provided in this paragraph. Notice shall be given to the parties as follows:*

*Licensors: Thomas P. Hill
110 S. Highland Avenue
Ukiah, CA 95482*

*Steve Gomes
P.O. Box 1418
Ukiah, CA 95482*

*Millview: Millview County Water District
3081 North State Street
Ukiah, CA 95482*

*Copy to: Christopher J. Neary,
Attorney at Law
110 South Main Street, Suite C
Willits, CA 95490
Facsimile: 707-459-3018*

The foregoing addresses may be changed by written notice to the other party, provided that no notice of a change of address shall be effective until actual receipt of such notice.

9. **No Waivers.** *No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision of this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.*
10. **Further Assurances.** *Whenever requested by the other party, each party shall execute, acknowledge and deliver all further conveyances,*

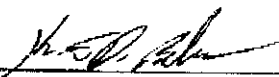
agreements, confirmations, satisfactions, releases, powers of attorney, instrument of further assurance, approvals, consents and all other further instruments and documents as may be necessary, expedient or proper to complete any conveyances, transfers, sales and agreements covered by this Agreement and do all other acts and to execute, acknowledge and deliver all requested documents to carry out the intent and purpose of this Agreement.

- 11. **No Third Party Rights.** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.
- 12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
- 13. **Amendment.** This Agreement may not be amended or altered except by written instrument executed by both parties.
- 14. **Partial Invalidity.** If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms, conditions and covenants shall continue in full force and effect.
- 15. **Authority of the Parties.** All persons executing this Agreement on behalf of any party to this Agreement warrant that they have the authority to execute this Agreement on behalf of that party.
- 16. **Assignees.** Any assignee of either Licensor as referred to in Recital C shall be considered a third party beneficiary of this Agreement, irrespective of the time of assignment, whether before or after execution of this Agreement.
- 17. **Execution of Further Documents.** The parties hereto agree to execute such further documents as are necessary to carry out this Agreement, including, but not necessarily limited to, a Petition for Change of Point of Diversion.

LICENSOR:

MILLVIEW COUNTY WATER DISTRICT



By: 


THOMAS P. HILL

KENNETH BUDROW

President, Board of Directors

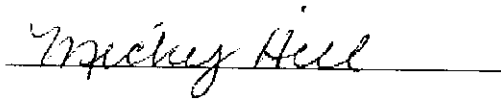

STEVEN GOMES

Attest:


TIM BRADLEY,
Secretary to the Board of Directors

In the event either Licensor is a married individual, the respective spouse (s) shall execute the following statement:

The undersigned acknowledge that the undersigned has no right, title or interest, whether present or future, in the Water Right and further acknowledges that the undersigned understands this Agreement and consents to its execution and performance by the undersigned's spouse.



Approved as to form:


CHRISTOPHER J. NEARY
Attorney for Millview County Water District