

**AGREEMENT BETWEEN
EMIGRATION IMPROVEMENT DISTRICT
AND
R. STEVE CREAMER
FOR
WELL SITE, PROTECTION ZONES,
AND RELATED EASEMENTS AND FACILITIES**

This Agreement effective as of the date of the signing of this Agreement, between Emigration Improvement District, a special district of the State of Utah, which is referred to in this Agreement as "the District" and R. Steve Creamer, an individual, referred to in this Agreement as "Creamer" is made with reference to the following facts.

The District is an improvement district, which is the owner and operator of a public water system serving the Emigration Oaks area of Emigration Canyon, Utah, and property owned by Creamer.

Creamer is the owner of a parcel of land which the District has determined may be suitable for the construction of a public water system source well, pipeline, power line, and related facilities to serve the public water system well.

The District desires to acquire from Creamer a temporary access and temporary site easement for the purpose of drilling a test hole at the proposed well site described in this Agreement and referred to as the "Brigham Fork Well" or "the Well" herein. If the test hole demonstrates that the site is a suitable site for a public water system source well, the District desires to acquire a permanent well site at the location which is described in Exhibit 1 to this Agreement together with the required land use easement agreements for Drinking Water Source Protection Zone 1 and Zone 2 as required under the Drinking Water Source Protection rule of the Utah Division of Drinking Water (DDW), and a road and facilities easement for access to the well, a pipeline from the well to an existing pipeline dedicated by Creamer to the District and for all appurtenant power, telemetry, and other connections and facilities normally required for operation of a public water system well and water supply pipeline.

On July 1, 2000, the District and Creamer entered into a Water Service Agreement and this Agreement does not modify or change the terms of the Water Service Agreement between the parties which is in force and effect.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and the payments and benefits to be received by each party from the other under the terms of this Agreement, the parties agree as follows:

1. Creamer hereby grants permission to the District to enter the Creamer property described on Exhibit 2 and to occupy the site described on Exhibit 1 for the purpose of drilling a test hole to determine the suitability of the site for a public water system well. The District covenants and warrants that in the event the District determines that the site is not suitable for a public water system well, it will plug the test hole.

2. Concurrent with the execution of this Agreement, Creamer will execute a Notice of Intent, prepared by the District, for presentation to the DDW indicating that if a well is developed as provided herein, a Zone 1 and Zone 2 Drinking Water Source Protection Zone Easement will be executed and recorded.

2.1 Creamer hereby grants to the Emigration Improvement District (an Option) to Acquire the well site described on Exhibit 1 and associated rights-of-way and easements for access, power lines, telemetry, and other facilities described on Exhibit 3 to be located on the property on Exhibit 3 strictly within the terms and conditions of this Agreement.

2.2 The District may exercise the Option to Acquire granted herein by Creamer by notifying Creamer by regular mail or hand delivery of its intent and exercise of the Option.

2.3 In the event the District exercises the Option to Acquire the well site and related easements, Creamer will, as an act of public generosity and as a donation to the District, deed to the District the property described in Exhibit 1 by Special Warranty Deed which documents shall be prepared by the District and approved by Creamer; Creamer shall not unreasonably withhold such approval. The District acknowledges that the value of the property interests conveyed by Creamer to the District if the District exercises the option granted in this Agreement is the sum of \$50,000.00.

2.4 If the option is exercised, the District and Creamer shall close the transaction within ten (10) days of notice to Creamer of the exercise of the option by the District. Closing shall occur at the office of counsel to the District or at such other location designated by the District in Emigration Canyon or Salt Lake City, Utah reasonably accessible by both of the parties.

2.5 At the closing, Creamer shall execute and deliver to the District all of the documents required under the terms of this Agreement to convey the property interests free and clear of any financial encumbrances and to concur in the District use of the well under the District water right.

2.6 If after concurrence in the Preliminary Evaluation Report by the DDW, and in the event that in the future the District requires a land use agreement which extends beyond the boundaries of the Zone 2 Drinking Water Source Protection Area described herein, the District shall, unless otherwise agreed to, purchase the Zone 2 easement from Creamer at the rate of \$10,000.00 per acre or fraction thereof.

2.7 The District hereby grants to Creamer an Option to Purchase four (4) additional connections to the District water system to be used. The Option to Purchase granted herein shall expire on December 1, 2011. If Creamer exercises the Option, Creamer shall pay all applicable and legally required fees and charges and comply with all standard specifications and rules to use the connections subject to the Option granted herein.

3. The District selects Creamer to construct the necessary access road and related pipeline and power line conduits required to use the Well and shall execute a contract with Creamer to construct the pipeline and associated power conduits to connect the Well to the existing Creamer pipeline according to plans and specifications prepared by Carollo Engineers for the District on the terms and for the consideration set forth in Section 3.1 and 3.3. The District shall contract with Utah Power to install the actual power lines in the conduit, with necessary junction boxes and transformers.

3.1 The District shall pay Creamer for the excavation and construction of the pipeline and related materials, the sum of \$10.00 per lineal foot and shall reimburse Creamer for the necessary pipe, conduit, pipeline appurtenances and related materials to build the pipeline and underground utilities necessary for the operation of the Well at the actual cost for the pipe, bedding materials and conduit for power lines.

3.2 In the interest of mitigating severance damage to the Creamer property for the construction of the Well, access road and related facilities, the District selects Creamer to construct the access road to the Well and associated erosion control and drainage structures which are necessary if the District approves the Well site after drilling of the test Well and exercise by the District of the option to acquire the Well site and related property.

3.3 In addition to the re-imbusement of costs as provided in Paragraph 3.1, the District shall pay Creamer \$50,000.00, \$40,000.00 at the signing of this Agreement and \$10,000.00 upon completion of the work for the access road, well site drilling pad, and related erosion control measures and drainage structures. The temporary access road for test well drilling and the test well drilling pad has been completed in a manner which is

satisfactory to the District. The District has obtained the approval of Salt Lake County for construction of the road. Creamer shall not complete the pipeline or power conduits to the Well until the District completes the test pumping described in Section 5.2 below and notifies Creamer in writing to complete the pipelines, power conduits, and road. The road and related pipelines and utilities shall be completed within 90 days after notice to Creamer that the Well is ready to be placed in service, subject to normal construction season limitations, in accordance with standard District specifications for such facilities. If the District desires the pad larger than exists on November 12, 2001, the District shall pay an additional \$6,000.00 for each 5 feet of width for restoration and 100,000 gallons of water per year for two (2) years for re-visitation of the site.

4. As part of the consideration by the District to Creamer, the District agrees that the permanent well house facility located by the District on the site shall be architecturally compatible, including cladding, with the structures depicted in the plans and specifications for the Creamer residence which have been supplied to the District prior to the date of this Agreement, and subject to approval by Creamer.

5. The intent of this section is to define precautions to be used by the District in evaluating the well for service and the rights and responsibilities of the parties if under future conditions Creamer claims that the stream flow in Brigham Fork's Stream in the reach of the stream on Creamer's property has been reduced or eliminated by the District pumping the Well.

5.1 The parties acknowledge that the ecological and aesthetic values in the Brigham's Fork Stream as it passes through the Creamer property are important. Further, a well which is under the direct influence of surface water is not desirable to the District. The District will use a well design intended to minimize potential communication with surface water sources. The parties further acknowledge that the flow in the Brigham Fork Stream is highly variable.

5.2 Upon completion of the test hole, and prior to completing the Well, the District shall conduct, in coordination with the DDW, a Microscopic Particulate Analysis (MPA) test on the waters in the test hole to determine whether or not there is reason to believe that there is a direct connection between the water produced from the encountered aquifer and Brigham's Fork Stream. The Well MPA test shall be conducted according to a test protocol provided by the District hydrologist to investigate possible direct hydrologic interference of the Well operation with the stream flow and assure that surface water is not entering the Well and that the Well can be used as a groundwater source without surface treatment.

5.3 The District will conduct a 24-hour test pump of the Well after its completion but prior to completing the road, access pipeline, power to the Well, pump house, control equipment and other associated improvements. The primary purpose of the test pumping of the Well will be to determine aquifer characteristics and to meet the requirements of the DDW. During the test pumping of the Well, the District will also monitor the flow in Brigham Fork to determine whether or not a direct connection exists between the Well and the surface water in Brigham's Fork Stream. Flows in Brigham's Fork Stream shall be measured by the District with notice to Creamer and full disclosure to Creamer of the means, records and results of measurement near the Creamer vehicle bridge which crosses Brigham's Fork Stream on the Creamer property. The Well pump test shall be conducted according to a test protocol provided by the District hydrologist to investigate possible direct hydrologic interference of the Well operation with the stream flow and assure that surface water is not directly entering the Well and that the Well can be used as a groundwater source without surface treatment. Both parties acknowledge that the test pump is not intended to confirm or refute indirect consequences to the stream environment over a long-term of operation of the Well.

5.4 If the results of the MPA or Well pump or any future MPA test on water from the Well, indicate that there is a direct connection between the Well and Brigham's Fork Stream and that surface water is entering the Well and will immediately and directly reduce the flow in Brigham's Fork Stream, the Well shall be plugged and abandoned by the District and Creamer may restore or utilize the Well pad. If Creamer elects to restore the Well pad, the District shall pay Creamer a lump sum of \$10,000.00 for all restoration of the Well pad and road and Creamer shall have no further claims against the District for damage to the property or for restoration and revegetation of the areas disturbed by the Well access road construction and the drilling and testing of the proposed Well.

5.5 After the Well is completed and placed in operation, the District may continue to collect flow measurements on Brigham's Fork Stream with notice to Creamer and disclosure of the records of measurement, if any.

5.6 In order to mitigate claims by Creamer that the operation of the well may damage the stream environment by reducing the water available in the stream, the District shall pay Creamer the sum of \$10,000.00 upon completion of the well to fund and construct a stream flow recirculation system for Brigham's Fork Stream to be constructed by Creamer at his discretion to be used to improve stream flow related values. Creamer agrees to accept the payment provided in this Section 5.6 and the replacement water supplied to the flow recirculation system as provided herein in settlement of all claims of every kind arising out of direct or indirect losses of value to the Creamer property caused

by reduced stream flow as a result of operation of the well. The recirculation system installed by Creamer may be supplied water without cost to Creamer, from the District water system measured by a meter and delivered to the stream at a rate not to exceed 1 gpm for a period of not more than 60 days during non-drought years, to augment the natural stream flow to assure that the stream flow at the Creamer vehicle bridge is not reduced below 1 gpm in the months of August and September in normal precipitation years (other than drought years.) Water used for augmentation of the stream flow in drought years or used to maintain a flow greater than 1 gpm, in normal precipitation years, shall be billed to Creamer at the District standard water rates. "Drought years" are those annual calendar years when the annual precipitation has been less than average for at least, but not more than two (2), successive prior years to the year in question as measured at the Lookout Peak Snotel site maintained by USDA, Natural Resources and Conservation Service. If Creamer determines that the Well has caused catastrophic effect to the vegetation along Brigham's Fork, Creamer reserves all rights to take action against the District to stop pumping of the Well. If Creamer elects to take action against the District, as a condition of initiating litigation, Creamer shall refund the \$10,000.00 paid by the District under this paragraph and pay for all water used for stream augmentation at the District standard water rates.

6. The District acknowledges that under the Rules and Regulations of the DDW of the State of Utah, a residential structure may be constructed on the area within the Zone 2 Protection Zone described in Exhibit 3, provided however, that the septic system drain field for waste disposal and other uncontrolled pollution sources must be constructed at a location outside the Zone 2 area.

7. The District shall be responsible for all damages caused by the acts of its contractors and shall assure that, upon demand by Creamer, damages caused by the acts of District contractors are promptly cured. This provision shall not apply to damages caused by Creamer or parties or entities under his control and the District shall have no liability for damages to the Creamer property or to others caused by Creamer or his agents or subcontractors.

8. ~~This Agreement is personal to Creamer and shall not be assignable and shall not benefit Creamer's successors in interest.~~

9. This Agreement constitutes the entire understanding and agreement between the parties, and supersede any previous agreement, representation, or understanding between the parties relating to the subject matter hereof.

Handwritten signature and initials, possibly "MSK" and "4", in the right margin.

10. The provisions of this Agreement are not severable, and should any provision hereof be deemed void, unenforceable or invalid, such provision shall effect the remainder of this Agreement, and shall provide grounds for dissolution of the Agreement at the option of the parties in the exclusive discretion of each of them.

11. Any waiver by any party hereto of any breach of any kind or character what so ever by the other party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement on the part of the other party.

12. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

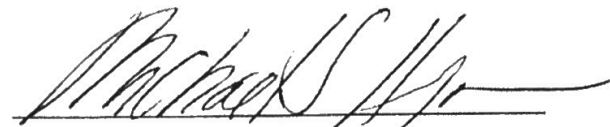
13. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Utah.

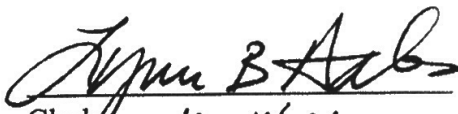
14. In the event of default on the part of any party to this Agreement, that party shall be liable for all costs and expenses incurred by the other party to enforce the provisions of this Agreement, whether or not legal action is instituted.

DECEMBER 14, 2001

Emigration Improvement District

Attest:


Chairman - Board of Trustees


Clerk : 12-14-01


By: 
R. Steve Creamer, Individually

EXHIBIT 1

Well Site

EXHIBIT 1

Brighams Fork Well Site:

A perpetual exclusive surface and subsurface easement upon part of an entire tract of property situate in the S½NE¼ of Section 28, T. 1 N., R. 2 E., Salt Lake Base and Meridian, in Salt Lake County, Utah for the purpose of constructing thereon an access road, waterlines, water system facilities, power and telemetry facilities, a well and well pump house, and appurtenant parts thereof for a public water supply well culinary water line. The boundaries of said part of an entire tract are described as follows:

Beginning at a point 1300.48 feet N. 0°44'05" E. along the Quarter Section line and 505.34 feet East from the Southwest Corner of the Northeast Quarter of Section 28, T. 1 N., R. 2 E., SLB & M; and running thence N. 89°56'03" E. 70.00 feet along the 40 acre line; thence S. 0°54'21" E. 100.00 feet; thence S. 89°56'03" W. 70.00 feet; thence N. 0°54'21" W. 100.00 feet to the point of beginning.

Together with a temporary construction easement for construction and drilling a well upon part of an entire tract of property situate in the S½NE¼ of Section 28, T. 1 N., R. 2 E., Salt Lake Base and Meridian, in Salt Lake County, Utah and for the purpose of constructing thereon access, waterlines, water system facilities, power and telemetry facilities, a well and well pump house, and appurtenant parts thereof for a culinary water line. The boundaries of said part of an entire temporary construction easement tract are described as follows:

Beginning at a point 1300.46 feet N. 0°44'05" E. along the Quarter Section Line and 487.84 feet from the Southwest Corner of the Northeast Quarter of Section 28, T. 1 N., R. 2 E., SLB & M; and running thence N. 89°56'03" E. 125.00 feet along the 40 acre line; thence S. 0°54'21" E. 150.00 feet; thence S. 89°56'03" W. 125.00 feet; thence N. 0°54'21" W. 150.00 feet to the point of beginning.

The above described part of an entire tract contains 18,750 square feet, less 7,000 square feet within the above described perpetual well pump house easement. Balance 11, 750 square feet or 0.270 acre.

EXHIBIT 2

**Creamer Property
Temporary Well Pad**

EXHIBIT 2

Creamer Property

Legal Description:

The South ½ of the North East Quarter of Section 28,
Township 1 North, Range 2 East, Salt Lake Base & Meridian.

EXHIBIT 3

**Protection Zones,
Road Easement and Well Site**

EXHIBIT 3

Brighams Fork Road and Water Line Easement:

A perpetual non-exclusive surface and subsurface easement upon part of an entire tract of property situate in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T. 1N., R. 2E., Salt Lake Base and Meridian, in Salt Lake County, Utah for the purpose of constructing thereon roads and related access, waterlines, water system facilities, power and telemetry facilities and appurtenant parts thereof for a public water system supply line. Said part of an entire tract is a strip of land 15.0 feet wide, being 7.5 feet perpendicularly distant left, or northerly and westerly, and 7.5 feet perpendicularly distant right, or southerly and easterly from the following described line.

Beginning at a point in the northerly right of way line of a Right-of-Way and Easement Grant to Questar Gas Company, as recorded as Entry No. 7752933, in Book 8398, at Page 8661, which point is 119.09 feet S. 0 \circ 44'05" W. more or less, along the Quarter Section line and 239.15 feet East, more or less, from the northwest corner of the Southeast Quarter of Section 28, T. 1N., R. 2E., SLB&M. and running thence N. 42 \circ 18'26" E. 286.22 feet; thence N. 36 \circ 31'06" E. 69.29 feet; thence N. 24 \circ 56'26" E. 69.29 feet; thence N. 17 \circ 16'14" E. 162.94 feet; thence N. 6 \circ 16'24" E. 155.30 feet; thence N. 12 \circ 19'57" E. 108.75 feet; thence N. 4 \circ 03'26" E. 194.49 feet; thence N. 11 \circ 50'06" W. 128.97 feet; thence N. 5 \circ 34'55" W. 75.80 feet; thence N. 0 \circ 54'21" W. 230.57 feet; thence S. 89 \circ 05'39" W. 30.00 feet to a point.

The above described strip of land contains 22,173 square feet, or 0.509 acres, more or less.

ALSO: Two temporary construction easements upon part of an entire tract of property situate in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 28, T.1.N., R.2E., Salt Lake Base and Meridian, included within a strip of land 25.00 feet wide lying between 7.5 feet and 32.5 feet perpendicularly distant left or northerly, and 25.00 feet wide lying between 7.5 feet and 32.5 feet perpendicularly distant right or southerly, from the above described line.

The sideline boundaries of said strips are to be shortened or extended so as to begin on said northerly right of way line of the Questar Gas Company right of way and end on the southerly and easterly temporary easement line of the well pump house. The above described strips of land contain 68,706 square feet, or 1.577 acres more or less.

A perpetual non-exclusive surface and subsurface easement for the purpose of access, operation, construction, repair and placement of a public water system, power and

telemetry facilities 20 feet either side of the following centerline:

Beginning at a point South 0°44'05" East 138.74 feet from the Northwest Corner of the Southeast Quarter of Section 28, T. 1 North, Range 2 East, SLB&M, said point being on Grantor's west property line; thence South 88°42'44" East 240.60 feet; thence North 79°36'09" East 101.32 feet; thence North 60°29'59" East 99.88 feet; thence North 49°55'26" East 99.85 feet; thence North 58°46'23" East 24.69 feet, more or less, to the North line of the Southeast Quarter of Section 28, T. 1 North, Range 2 E., SLB&M.

Land Use Easements:

Zone 1 Protection Zone

A non-exclusive surface and subsurface easement over the Grantor's property only, to prohibit any and all uses of the area of the easement in violation of the Zone 1 Drinking Water Source Protection Rules of the Utah Division of Drinking Water over and across a circular parcel of land 200 feet in diameter located as a 100 foot radius around a point described as follows:

Beginning at a point in the northerly right of way line of a Right-of-Way and Easement Grant to Questar Gas Company, as recorded as Entry No. 7752933, in Book 8398, at Page 8661, which point is 119.09 feet S. 0°44'05" W. more or less, along the Quarter Section line and 239.15 feet East, more or less, from the northwest corner of the Southeast Quarter of Section 28, T. 1N., R. 2E., SLB&M. and running thence N. 42°18'26" E. 286.22 feet; thence N. 36°31'06" E. 69.29 feet; thence N. 24°56'26" E. 69.29 feet; thence N. 17°16'14" E. 162.94 feet; thence N. 6°16'24" E. 155.30 feet; thence N. 12°19'57" E. 108.75 feet; thence N. 4°03'26" E. 194.49 feet; thence N. 11°50'06" W. 128.97 feet; thence N. 5°34'55" W. 75.80 feet; thence N. 0°54'21" W. 230.57 feet; thence S. 89°05'39" W. 30.00 feet to a point.

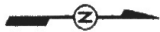
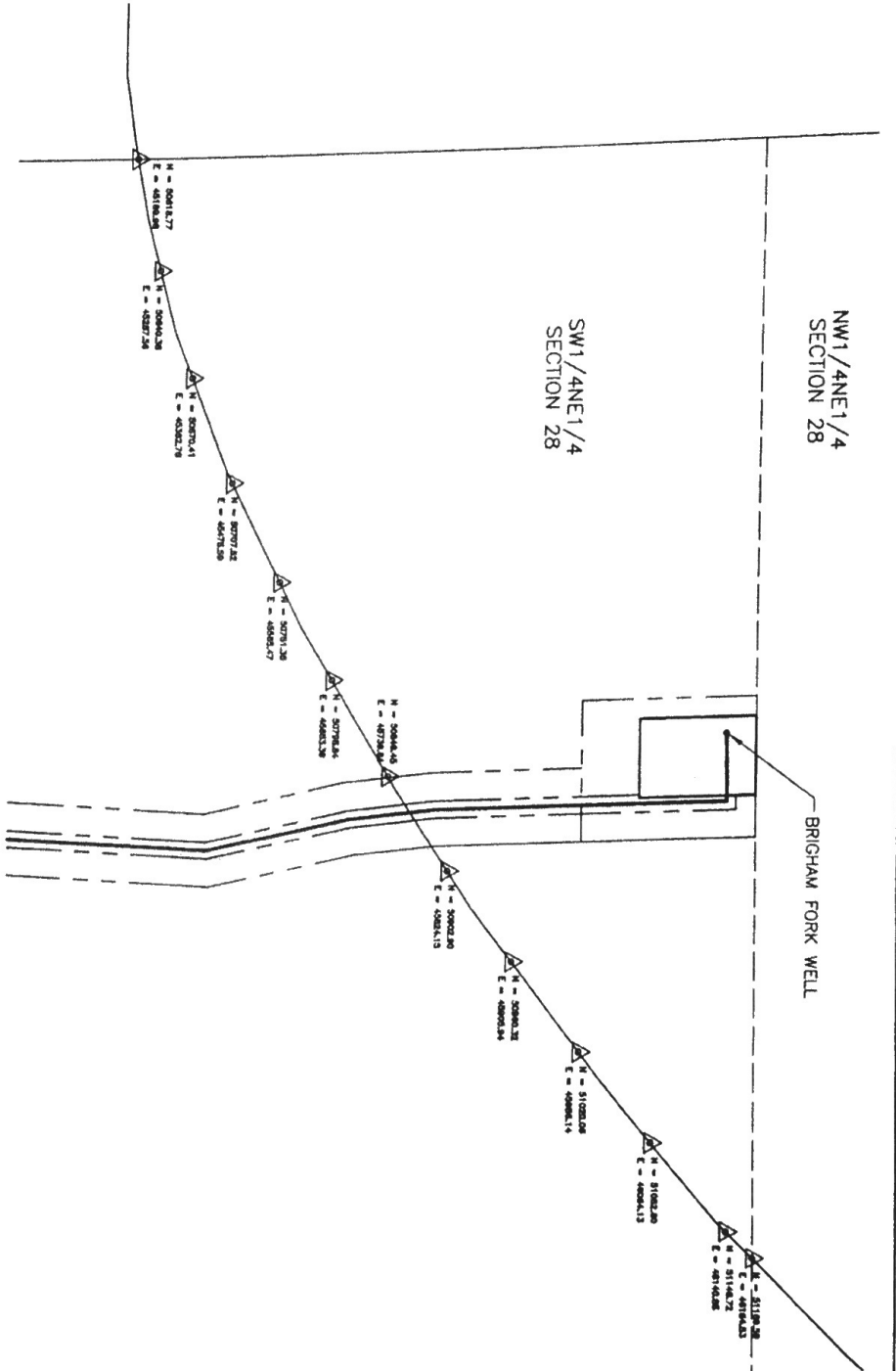
Zone 2 Protection Zone

A non-exclusive surface and subsurface easement over the Grantor's property only, to prohibit land uses on the Grantor's property which violate the requirements of the Utah Division of Drinking Water for public water system sources, Zone 2, as depicted more specifically on the map attached hereto as Exhibit 1, provided however that the Grantor reserves the right to construct a residence on Zone 2 and a septic tank drain field on Zone 3.

NW1/4NE1/4
SECTION 28

SW1/4NE1/4
SECTION 28

BRIGHAM FORK WELL



0 50 100
SCALE: 1" = 100'

STEVE CREAMER
Points Along
Well Protection Zone 2
for Brigham Fork Well

