

Peggy A. Trent
Wyoming Bar No. 6-3466
Trent & Wilkerson Law Office, LLC
621 South 2nd Street
Laramie, Wyoming 82070
Office: (307) 742-3039
Facsimile: (307) 745-8225
E-mail: ptrent@tandwlaw.com

Brandon L. Jensen
Wyoming Bar No. 6-3464
Budd-Falen Law Offices, LLC
300 East 18th Street
Cheyenne, Wyoming 82001
(307) 632-5105 Telephone
(307) 637-3891 Facsimile
brandon@buddfalen.com

STATE OF WYOMING
COUNTY OF CARBON
FILED

JUN 21 2010

LINDY L. GLODE
CLERK OF DISTRICT COURT
BY _____
DEPUTY

STATE OF WYOMING)
) ss. IN THE DISTRICT COURT
COUNTY OF CARBON) SECOND JUDICIAL DISTRICT
 JUDGE WADE WALDRIP

THE GOVERNING BODY OF THE)
TOWN OF SARATOGA, WYOMING,)
a Wyoming municipal corporation,)
)
Plaintiff,)

vs.)

Civil Action No. CV-09-284

RANDY W. STEVENS; RANDY W. STEVENS)
LIVING TRUST, by and through its Trustee,)
Randy W. Stevens; and QUALITY LANDSCAPE)
& NURSERY, INC.,)
)
Defendants.)

CONSENT DECREE

A. **Parties.** This Settlement Agreement and Mutual Release of All Claims (hereinafter "Agreement") is entered into this 16th day of June, 2010, by and between Plaintiff, the Governing Body of the Town of Saratoga, Wyoming (hereinafter "Town"), and Defendants, Randy W. Stevens, Randy W. Stevens Living Trust, by and through its Trustee, Randy W. Stevens, and Quality Landscape & Nursery, Inc., (hereinafter "Landowner"). The Town and Landowner are individually referred to as a "Party" and collectively as the "Parties."

B. **Recitals.**

1. On or about January 15, 2008, Raymond J. Corbett conveyed and warranted to the Defendant, Randy W. Stevens Living Trust, dated November 22, 1999, by and through its trustee, Randy W. Stevens, Lots 1-9 of Block 11 of the Riverside Addition and on or about March 2, 2009, the Transportation Commission conveyed and warranted to the Defendant, Randy W. Stevens Living Trust, by and through its trustee, Randy W. Stevens, Lot 10 of Block 11 of the Riverside Addition. (hereinafter collectively referred to as the "subject property").

2. On or about August 19, 2009, the Defendant Randy W. Stevens and the Town entered into a Stipulated Settlement Agreement adopted by the Town's Governing Body and by the Town Municipal Court in the underlying criminal action of *Town of Saratoga, Wyoming v. Randy Stevens*, Saratoga Municipal Court, Docket No. 09-0018, pertaining to the abatement of a nuisance or retaining wall on the subject property, and the Town's construction of an alleyway adjacent to the subject property.

3. On or about November 12, 2009, the Town filed a Verified Complaint for Injunction and Abatement of Nuisance in the Carbon County District Court alleging that Landowner was creating a public nuisance by the removal of soil from the subject property resulting in storm water discharge into the Hugus Ditch, which is located adjacent to the subject property. Further, the Town alleges Landowner was not authorized by the Stipulated Settlement Agreement to remove soil from the entire subject project and failed to submit a site plan as to use of the

property in violation of the Town Municipal Code and the Stipulated Settlement Agreement. Additionally, the Town alleges that the removal of soil from subject property by Landowner was for the use of mining, which is not a permitted use of the subject property by the Town Municipal Code, and Landowner was not authorized or permitted by the Wyoming Department of Quality, Land Division, for mining on the subject property. Moreover, Landowner was removing soil without an excavation permit from the Town for the construction of a driveway/access to the subject property. Accordingly, the Town requested a Preliminary Injunction against Landowner enjoining the Landowner from further removing soil from the subject property and affecting the storm water discharge into the Hugus Ditch in violation of the Town's Municipal Code.

4. On or about December 2, 2009, Landowner filed an answer to the Town's Verified Complaint for Injunction and Abatement of Nuisance, along with a Motion to Dismiss such action and the Town's request for a Preliminary Injunction against Landowner. Landowner also countersued the Town claiming the Town breached the Stipulated Settlement Agreement by interfering with its removal of soil from the subject property, in that the Stipulated Settlement Agreement did not require Landowner to submit a site plan, nor obtain an excavation permit, prior to removing soil from the subject property. Further, Landowner alleged the Town breached the Stipulated Settlement Agreement by failing to construct the alleyway and move the electrical transformer box within alleyway in compliance with the terms of the Stipulated Settlement Agreement. Moreover, Landowner asserts that the Stipulated Settlement Agreement authorizes Landowner to remove soil on the entire subject property so that the subject property is level to two (2) feet above the existing Maple Street right-of-way grade and that the Town was interfering, preventing, and prohibiting Landowner from removing soil from the subject property in accordance with the Stipulated Settlement Agreement. Finally, Landowner alleged that the garage facility constructed and installed by the Saratoga-Encampment-Rawlins Conservation District, was approved by the Plaintiff Town of Saratoga without an adequate site development plan and was not connected to a public sanitary or combined sewer of the town, or water line, as required by the Saratoga Municipal Code.

5. The Court herein ordered the Parties to engage in alternative dispute resolution before the Honorable Jeffrey A. Donnell. As a result of the settlement conference with the Honorable Jeffrey A. Donnell, the Parties have reached an agreement to settle their disputes and outline certain procedures for handling the issues, and any future complaints involving Landowner's use of the subject property.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are true and correct and are hereby incorporated in this Agreement by this reference, and of the premises and mutual covenants, conditions and agreements set forth herein and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, hereto covenant and agree as follows:

C. Definitions.

1. "Discharge" shall mean to dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked or placed by any means, including any direct or indirect entry of any solid or liquid.
2. "Erosion" shall mean the removal of soil particles by the action of water, wind, ice or other geological agents, whether naturally occurring or acting in conjunction with or promoted by anthropogenic activities or effects.
3. "Excavation permit" shall be as defined in Section 12.08.040 of the Town Municipal Code.
4. "Grading Permit" shall be as defined in Section 15.04.100 of the Town Municipal Code.
5. "Land disturbing activity" shall mean any activity on property that results in a change in existing soil cover (both vegetative and non-vegetative) and/or the existing soil

topography. Land disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling and excavation.

6. "Runoff" shall mean surface flows from precipitation, rain or snowmelt.

7. "Site plan" shall include the information as outlined in Section 18.09.070 of the Town Municipal Code.

8. "Stabilization" shall mean providing adequate measures (vegetative and/or structural) that will prevent erosion from occurring.

9. "Storm water" shall mean surface runoff.

10. "Storm water runoff" shall mean surface flows resulting from precipitation.

D. Mutual promises and Conditions of Settlement.

1. **Landowner Use of Subject Property.** Landowner intends to use the subject property for additional retail, storage and parking space for Quality Landscaping & Nursery, Inc., including landscape materials and equipment. Landowner desires to remove soil from the subject property to the following described grades:

Beginning at the northwest corner of the subject property, which will be two (2) feet higher than the point of intersection of the south right-of-way line of Maple Avenue extended to the centerline of Hwy 130 (said point also being two (2) feet higher than the top of concrete along the Hugus Ditch), thence in a easterly upwards direction at a minimum of one (1) percent grade to the northeast corner of the subject property; from this line the subject property shall be sloped upwards at a three percent (3%) grade to an alleyway on the south side of subject property. The alleyway shall be reconstructed by the Town so that the majority of storm water discharge will flow from the alleyway onto River Street and minimize any erosion of the slope of the subject property (hereinafter referred to as the "Project").

Landowner shall submit an application along with site plan to the Town within five (5) business days from the signing of this agreement as to the proposed use of the subject property. The site plan shall comply with the requirements as outlined in Section 18.09.070 of the Town Municipal Code including but not limited to providing the proposed grades as described herein and the proposed drainage system for such grades for the subject property.

2. **Survey of Existing Soil Topography; Plan for Grade of Alleyway; Construction Timetable; Grading Permit and Removal of Soil.**

2.1. Upon receipt of a site plan as described in Paragraph D(1), the Town, at its sole cost and expense, shall survey or contract to be surveyed the existing soil topography of the subject property and type of soil on the subject property within fifteen (15) business days. Since the Landowner is not amenable to survey the existing elevation of topography or grade and type of soil on subject property, Landowner agrees to be bound by the survey and soil maps prepared by Town or its agents and shall waive any claim or objection thereto. In the event the Landowner relies or uses the Town's survey and soil maps to determine the grades or construction on the subject property, the Landowner agrees to defend, protect, indemnify and hold harmless the Town and its agents from and against any and all Claims (hereinafter defined), actually and reasonably suffered or incurred by Town, arising from the Town's preparation of the survey and soil maps herein. Landowner will permit the Town access to the subject property to take any necessary measurements or samples of soil to determine the grades and types of soils of the alleyway. Landowner agrees to not conduct any land disturbing activity on the subject property until final approval of Landowner's site plan, finalization of an agreed-upon construction time table, and issuance of a grading permit by the Town to Landowner in accordance with this Agreement. Within five (5) business days of the above-referenced survey,

the Town shall propose to Landowner the finished contours or grades as to the alleyway to minimize storm water runoff and discharge onto the subject property. The proposed contours or grades for the alleyway shall take into consideration Landowner's site development plan, including Landowner's desire to remove soil from the subject property as described in Paragraph D(1). Landowner shall review the proposed contours or grades of the alleyway and submit any comments or objections to the Town. The Parties shall make every reasonable effort to agree upon the contours or grades of the alleyway within ten (10) business days of the Town's receipt of Landowner's comments or objections thereto. The final agreed-upon contours or grades for the alleyway shall be reduced to writing and executed by all Parties to this Agreement. Due to the grade differences between the subject property and the Saratoga-Encampment-Rawlins Conservation District property to the south, a portion of the alleyway west of Lot 1 of Block 11 of the Riverside Addition may be inaccessible and unusable for its intended purpose and therefore closed to any vehicular through traffic. The parties in finalizing the grade and contour of the alleyway will determine from which lot within Block 11 of the Riverside Addition will be inaccessible and unusable to vehicular through traffic. The slope created in the alleyway due to the grade difference shall be stabilized to prevent erosion. Any costs incurred by the Town for the initial stabilization of the slope created in the alleyway, as defined in Paragraph D(1), shall be shared equally between the Parties in accordance with Paragraph D(4) herein.

2.2. Within five (5) business days of the finalization of the plan for proposed finished contours or grades as to the alleyway, Landowner shall submit to the Town a plan addressing the sequencing of the Project and develop a construction time table to show how each phase of the Project relates to the other to minimize the amount of storm water drainage at any time. The Town shall review the construction time table within five (5) business days and submit any comments or amendments to Landowner. The final agreed-upon construction time table shall be reduced to writing and executed by all Parties to this Agreement. Nothing in this Agreement shall be interpreted or deemed to create an expectation that the time periods for construction of phases of the project outlined in the final agreed-upon construction time table shall be extended. Any extension of the final construction time shall be effective only after it is reduced to writing and executed by all Parties to this Agreement.

2.3. Landowner shall make application with the Town for a grading permit in accordance with Section 15.04.100 of the Town Municipal Code and comply with all requirements of the permitting process. The Town shall issue such permit within ten (10) business days. Landowner shall comply with any other existing state laws regarding the removal, and disposal of soil and storm water discharge from subject property. The Town recognizes that Landowner may be required to obtain a temporary mining permit from the Wyoming Department of Environmental Quality, Land Quality Division, for the removal and disposal of soil from the subject property for the sole purpose of the Project pursuant to this Agreement. At no time is the Town authorizing Landowner, or any other person, permission to mine within the boundaries of the Town. The Town shall cooperate with Landowner as necessary to obtain any approvals or permission as may be required by the Wyoming Department of Environmental Quality, Land Quality Division, including the execution of any documents, and shall undertake any actions which may be necessary or appropriate for the temporary permitting of Landowner's removal and disposal of soil from the subject property for the sole purpose of the Project pursuant to this Agreement.

2.4. Landowner shall make application with the Town for an excavation permit for the construction of the access/driveway from River Street to subject property in accordance with Section 12.08.040 of the Town Municipal Code and comply with all requirements of the permitting process. The Town shall issue such permit within ten (10) business days. Landowner shall comply with any other existing state laws regarding access to subject property.

2.5. Upon approval of Landowner's site plan, a final agreed-upon construction time table, and issuance of grading permit by the Town to Landowner, Landowner shall be authorized to remove soil as approved by the grading permit and in accordance with this Agreement and grading permit. The total amount of soil authorized to be removed from the subject property and grade of soil on the subject property shall be in accordance with the final approved site plan, the proposed finished contours or grades as to the alleyway, the final agreed-upon approved construction table and the grading permit issued by the Town.

2.6. Pending the submittal and approval of the Project by the Town, Landowner agrees to provide temporary erosion control devices, such as hay bales, located on west side of subject property adjacent to the Saratoga Encampment Rawlins Conservation District Building.

2.7. The final approved site plan and construction time table, the proposed finished contours or grades as to the alleyway, and the grading permit issued by the Town shall all be incorporated and made a part of this Agreement.

3. **Town Construction of Alleyway.** The Town shall reconstruct the alleyway adjacent to the subject property in accordance with the agreed-upon finished contours or grades, the final agreed-upon construction time table, the Saratoga Municipal Code and Appendix Chapter 33 of the 1997 Uniform Building Code and any permissible exceptions therein. The Town shall make a written request to Carbon Power & Light for the immediate removal of the transformer box from within the alleyway by Carbon Power & Light, but in no event shall the removal of the transformer box from within the alleyway occur later than the scheduled reconstruction of the alleyway as set by the final agreed-upon approved construction table. The Town, at its own expense, shall rebury the power-transmission line located underneath the alleyway. Upon completion of the reconstruction of the alleyway, the Town shall provide for the replacement of any survey pins or markers removed or displaced from within the alleyway or the subject property as a result of any action or activity performed in accordance with this Agreement. Any costs incurred by the Town for the replacement of any survey pins or markers shall be shared equally between the Parties in accordance with Paragraph D(4) herein. Landowner shall permit the Town access to the subject property for the initial construction of grading and erosion control measures in the alleyway. It is understood that the rights and permission granted hereunder are granted only to the Town and its employees, agents, or contractors and such permission and said rights are restricted to the uses indicated herein and are given for no other purposes whatsoever.

4. **Contribution to Construction of Alleyway.** The Town shall construct or contract for the construction of the alleyway in accordance with this Agreement. The Parties hereto shall share equally the costs related to the reconstruction of the alleyway, *provided, however,* that Landowner's contribution shall not exceed Ten Thousand Dollars (\$10,000.00). Landowner shall make payment to the Town within thirty (30) days of notice of completion of construction and receipt of itemized invoices for the construction

5. **Stabilization of Slopes.** Landowner agrees to maintain and stabilize, at its sole cost and expense, the structural integrity of the slope on the subject property, as defined in Paragraph (D)(1) herein, in accordance with all applicable laws to minimize soil erosion into the Hugus Ditch. The Town agrees to maintain and stabilize, at its sole cost and expense, the structural integrity of the slope and grade of the alleyway subsequent to its construction so that a majority of storm water discharge will flow from the alleyway onto River Street and minimize any erosion of the slope of the subject property.

6. **Encroachment Permit.** Landowner has placed fill in the Town's right-of-way on the north and east end of the subject property. Landowner shall make application to the Town for an excavation permit for the removal of the encroachment in accordance with Section 12.08.040 of the Town Municipal Code unless the fill will be incorporated within Landowner's proposed site plan. If the Town approves the proposed site plan, whereby the fill blends with the Landowner's grade of soil, the Town agrees to waive such encroachment. If an encroachment permit is needed, the Town shall issue such permit within three (3) business days and Landowner agrees to remove the fill encroaching on the Town's right-of-way in accordance with the agreed-upon construction time table

7. **Default and Remedies.**

7.1 The failure of either Party to comply with the provisions of this Agreement shall constitute a default. Any delay in the completion of the work described herein shall constitute a material breach of this Agreement.

7.2. If a Party determines that the other Party is in default in the performance of any terms or conditions of this Agreement, it shall serve the defaulting-Party with written notice of the default. The defaulting-Party shall have five (5) business days after service upon it of said notice in which to cure the default by rendering a satisfactory performance, or in the event the default cannot be cured within said five (5) day period, then the defaulting-Party shall in good faith commence to cure the default and diligently and in good faith continue to take all reasonable actions necessary to cure the default. In the event that the defaulting-Party fails to cure its default within such period of time, or fails to diligently commence to cure the default if the default cannot be cured within five (5) business days, the non-defaulting Party shall have the right to apply to the court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Agreement, for the enforcement of compliance with the Agreement, or for the punishment of violations thereof.

8. **Indemnification.** Each Party (the "Indemnifying Party") shall defend, protect, indemnify and hold harmless the other Party and such other Party's Related Persons (each, an "Indemnified Party") from and against any and all judgments, fines, causes of action, claims, litigation, actions, proceedings, losses, damages, penalties, injuries, liabilities, obligations, or other liability of any kind, including costs and expenses, attorneys' investigators' and consulting fees, court costs and litigation expenses, and amounts paid in settlement (collectively, "Claims"), actually and reasonably suffered or incurred by such Indemnified Party, arising from: (i) physical damage to the Indemnified Party's real or personal property (which (A) in Landowner's case, shall include damage to the subject property or any improvements thereon or thereunder, and (B) in the Town's case, shall include damage to the alleyway), to the extent caused by the Indemnifying Party or any Related Person thereof; (ii) physical injuries or death to or of the Indemnified Party, to the extent caused by the Indemnifying Party or any Related Person thereof; and (iii) any breach of, or failure to perform, any of the covenants, agreements, or obligations contained in this Agreement, and any failure to be true of any representation or warranty under this Agreement; *provided, however*, that in no event shall the Indemnifying Party be responsible for defending, indemnifying or holding harmless any Indemnified Party to the extent of any Claim caused by, arising from or contributed to by the gross negligence or willful misconduct of such Indemnified Party or any Related Person thereof. The Town assumes responsibility for all persons who are upon the subject property at the request of the Town or for the benefit or on behalf of the Town. Landowner agrees to defend, protect, indemnify and hold harmless the Town and its agents from and against any and all Claims, actually and reasonably suffered or incurred by Town, arising from Landowner's removal of soil from the subject property to the described grades in Paragraph D(1). This indemnification shall survive the expiration or earlier termination of this Agreement and shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy. This indemnification shall be governed by and construed in accordance with the laws of the State of Wyoming.

As used herein, the term "Related Person" means any member, partner, principal, officer, director, shareholder, successor-in-interest, employee (acting within the scope of their employment), agent (acting within the scope of their authorization), heir, representative, contractor, subcontractor, sublessee, licensee, or invitee (to the extent that each such contractor, subcontractor, sublessee, licensee, or invitee is acting within the scope of their contract, lease, grant, or invitation) of either Party, or any other person or entity that has obtained or hereafter obtains rights or interests from either Party.

9. **Release of Liability.** Except for the obligations set forth herein, the Town and Landowner do hereby mutually release and discharge the other, including their employees, partners, agents, representatives, attorneys, officers, elected officials, directors, shareholders, successors, predecessors, assigns and affiliated legal entities (representatives or successors) from any and all claims, causes of action or demands of any nature whatsoever, anticipated or unanticipated, known or unknown, which are contained in, may arise out of or being in any way connected with the subject property, this Agreement or any other matter mentioned or contemplated herein.

10. **Successors.** Each Party to this Agreement, for themselves and their assigns, successors-in-interests, agents and employees do hereby release, acquit and forever discharge the other and their successors-in-interest, assigns, agents, consultants and employees from any and all claims, demands, actions, cause of action, damage, costs or other claims whatsoever in law or

in equity which they may have against the other Party, which may arise out of or being in any way connected with the subject property, this Agreement or any other matter mentioned or contemplated herein.

11. **No Admission of Liability.** It is understood and agreed that this Agreement is a compromise of disputed claims, and the payment of consideration or performance of any act required by this Agreement may not be deemed or construed as an admission of liability by any of the Parties hereto, or by their principals, officers, directors, shareholders, partners, employees, agents, successors, assigns, and/or predecessors. All such persons and entities expressly deny liability of any nature whatsoever to any other person arising out of the alleged facts or circumstances contained in the pleading filed herein or which could have been alleged.

12. **No Third-Party Beneficiaries.** No term or provision of this Agreement, or the exhibit(s) attached hereto, is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a party hereto, and no such other person, firm, corporation or entity shall have any right or cause of action hereunder.

13. **Cooperation.** The Parties agree to execute such additional documents or instruments, and shall undertake such actions as are necessary and appropriate to effectuate the intent of this Agreement.

14. **Integration.** This Agreement, including any exhibit(s) attached hereto, contains the entire agreement between the Parties in connection with any matter mentioned or contemplated herein, and all prior or contemporaneous proposals, agreements, understandings and representations, whether oral or written, shall be deemed to have been merged herein and superseded hereby. Any agreement, understanding or representation respecting the subject property, this Agreement or any other matter referenced herein not expressly set forth in this Agreement, or in a subsequent writing signed by both Parties, is null and void. This Agreement shall not be modified or amended except in a writing signed by both Parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, except as otherwise expressly set forth herein, shall be binding on either Party.

15. **Terms Contractual.** The terms of this Agreement are contractual and not mere recitals. The terms and obligations of this Agreement shall survive the execution of this Agreement.

16. **Benefit of Counsel.** The Parties acknowledge and agree that they have entered into this Agreement voluntarily, without duress or coercion, and have done so with the full advice of their respective legal counsel. In entering into this Agreement, the Parties represent that they have had the opportunity to discuss this Agreement with their counsel that the terms of this Agreement have been completely read by the Parties and that they understand those terms, and that the Parties voluntarily accept those terms and agree to enter into this Agreement.

17. **Interpretation.** The Parties agree that this Agreement shall be deemed to have been drafted equally by all Parties hereto. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting Party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

18. **Authority to Execute.** This Agreement is executed by Landowner who has the power and authority to do so and to bind Landowner hereby. Those signing on behalf of the Town do so with the power and authority to do so and to bind the Town. Each person executing this Agreement hereby acknowledges, declares, represents and warrants that he is duly authorized to do so.

19. **Severable Provisions.** Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provisions will be deemed not to be part of this Agreement.

20. **Attorneys Fees and Costs.** If any legal action, arbitration, or other proceeding is brought for the enforcement of this Agreement (including any cross-complaint, counterclaims, or third-party claim), or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding (including all such costs incurred on appeal or in the enforcement of any judgment or settlement), in addition to any other relief to which it or they may be entitled.

21. **Executed Originals.** Each Party shall execute two (2) originals of the Agreement and each Party shall receive a fully executed original of the Agreement.

22. **Notice.** All notices, statements, demands, correspondence or other communications required or permitted by this Agreement shall be (a) in writing, (b) deemed given (i) when personally delivered to the recipient, (ii) three (3) days after deposit in the United States mail, certified and postage prepaid, or (iii) two (2) days after delivery to a reputable overnight courier (provided receipt is obtained and charges prepaid by the delivering Party), and (c) addressed as follows:

If to the Town: Chuck Bartlett, Town Engineer
Town of Saratoga, Wyoming
P.O. Box 486
110 E. Spring Avenue
Saratoga, Wyoming 82331

If to Landowner: Randy Stevens
P.O. Box 1074
Saratoga, Wyoming 82331

23. **No Partnership.** Nothing contained in this Agreement, nor any agreements or transactions contemplated hereby, shall be construed to create a partnership, trust, association, fiduciary relationship, joint venture, or other relationship between the Parties, or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. The duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. The Parties shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

24. **Choice of Law and Venue.** The Parties agree that the law of the State of Wyoming shall govern the terms, interpretation and enforcement of this Agreement. The Parties also agree that any action brought relating to this Agreement shall be brought exclusively in the Second Judicial District Court, Carbon County, Wyoming. It is the Parties express intention that the above-entitled court shall retain jurisdiction of this matter for the purposes of enabling either of the Parties to this Agreement to apply to the court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Agreement, for the enforcement of compliance with the Agreement, or for the punishment of violations thereof.

25. **Agreement as Defense to Action.** This Agreement may be pleaded as a full and complete defense, and the Parties hereby consent that it may be used as the basis for an injunction against any action, suit, or other proceeding based on claims released by this Agreement.

26. **Waiver.** The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under this Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity. No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term, or provision of this Agreement.

27. **Compliance with law.** All Parties shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.

28. **Force Majeure.** Neither Party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming Party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the Party failing to perform immediately notifies the other Party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming Party.

29. **Assignment/Agreement not used as collateral.** Other than the hauling or removal of soil from the subject property as otherwise provided for herein, Landowner shall not assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of the Town. Landowner shall not use this Agreement, or any portion thereof, for collateral for any financial obligations, without the prior written permission of the Town.

30. **Statutes of Limitation.** The Parties agree that any action in relation to an alleged breach or nonperformance of this Agreement shall be commenced within one (1) year of the date of the breach or nonperformance, without regard to the date the breach or nonperformance is discovered. Any action not brought within that one (1) year time period shall be barred, without regard to any other limitations period set forth by law or statute.

31. **Governmental Immunity.** The Town of Saratoga does not waive governmental immunity by entering into this Agreement, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. Ann. § 1-39-104(a) and all other state and federal laws.

32. **Time is of the Essence.** Time is of the essence in all provisions of this Agreement, and all provisions herein relating thereto shall be strictly construed. Unless otherwise specifically set forth herein, each Party shall act to complete the work described herein within a reasonable time.

33. **Captions.** The captions contained in this Agreement are inserted for convenience only and are not intended to be part of this Agreement. They shall not affect or be utilized in the construction or interpretation of this Agreement.

34. **Good Faith and Fair Dealing; Reasonableness.** The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever the Agreement requires the consent, approval, or similar action by a Party, such consent, approval, or similar action shall not be unreasonably withheld or delayed, and (ii) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

35. **Cooperation.** The Parties agree to reasonably cooperate with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

36. **Time.** If the final day of any period of time set forth in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the State of Wyoming, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or such legal holiday.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date set forth herein above.

TOWN:

GOVERNING BODY OF THE TOWN OF SARATOGA, WYOMING:

By: John Ziegler 06/18/2010
John Ziegler, Mayor and President of the
Town Council

Attest: Suzie Cox 06/18/2010
Suzie Cox
Town Clerk

Approved as to form:

By: Peggy A. Trout 06/16/2010
Peggy A. Trout

LANDOWNERS:

RANDY W. STEVENS:

By: Randy W. Stevens 6/16/2010
Randy W. Stevens

RANDY W. STEVENS LIVING TRUST:

By: Randy W. Stevens 6/16/2010
Randy W. Stevens, Trustee

QUALITY LANDSCAPE & NURSERY, INC.,

By: Randy W. Stevens 6/16/2010
Randy W. Stevens, President

Approved as to form:

By: Brandon L. Jensen 6/16/2010
Brandon L. Jensen

DATED THIS 21st DAY OF JUNE 2010

BY THE COURT:

Wade E. Waldrip

Wade E. Waldrip
District Court Judge

State of Wyoming }
County of Carbon } ss
Certified To Be A Full,
True and Correct Copy

Lindy L. Glode
Clerk of District Court
By: [Signature]
Deputy
Dated 16 Day 22 20 10