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Utah Div. Of Corp. & Comm. Code

AMENDED AND RESTATED ARTICLES OF INCORPORATION
of
WILKINSON COTTONWOOD MUTUAL WATER COMPANY

The undersigned do, for the purpose of re-organizing Wilkinson Water Company into a nonprofit mutual water company pursuant to the Utah Revised Nonprofit Corporation Act (Utah Code Ann, 16-6a-101, *et seq.*) to be named Wilkinson Cottonwood Mutual Water Company, hereby adopt the following Amended and Restated Articles of Incorporation.

ARTICLE I - CORPORATE NAME

The name of this Company is the **Wilkinson Cottonwood Mutual Water Company**.

ARTICLE II - PERIOD OF DURATION

The period of duration for this Company is perpetual, unless sooner terminated in the manner provided by law.

ARTICLE III - POWERS AND PURPOSES

In furtherance of and in no way in limitation of the powers now or hereinafter conferred upon non-profit corporations by the laws of the State of Utah, the nature of business of the Company, and the objects, purposes and powers to be transacted, promoted, exercised or carried on by it are as follows:

A. To own water rights for domestic, culinary, municipal, secondary, irrigation and other purposes allowed under the laws of the State of Utah, and to store and distribute this water on a non-profit basis only to the members of the Company.

B. To acquire and maintain water rights and sources of water supply by purchase, lease, contract, appropriation, change application or otherwise.

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C. To acquire, hold, and sell real and personal property useful to the carrying on of the corporate business.

D. To own water diversion, transportation, distribution, measurement and storage facilities useful to the distribution of the water supply held by the Company.

E. To solicit and receive contributions, to purchase, own, and sell real and personal property, to make contracts, to invest corporate funds, to spend corporate funds for corporate purposes, and to engage in any activity in furtherance of, incidental to, or connected with any of the other purposes.

F. To convey its assets as security for loans and make and perform contracts of any kind and description, including, without limitation, contracts with the State of Utah or the United States of America, or any agency, department or political subdivision thereof, for the purpose of borrowing money, acquiring water and water rights, and for the use, joint development of and/or the construction, development, repair, improvement, modification, repair, and replacement of all springs, wells, reservoirs and other water sources, as well as all other water diversion, transportation, distribution, measurement and storage facilities.

G. To charge fees for water service and make assessments, in accordance with Article VIII and Utah Code Annotated, sections 16-4-4, et seq., against its membership shares ("Shares") and members either on or not on a pro rata basis for the purpose of raising funds to accomplish any of the other purposes or powers, or to pay its debts or obligations, to publish notice of delinquency for nonpayment of assessments, and to sell at public auction, after adequate notice, the Shares that remain delinquent.

H. To engage in any and all other lawful purposes, activities and pursuits, which are substantially similar to the foregoing and which are or may hereafter be authorized by Section

501(c)(12) of the Internal Revenue Code and consistent with those powers described in the Utah Revised Nonprofit Corporation Act, as amended and supplemented.

I. To do any and all acts and things, and to exercise any and all other powers which a natural person could do or exercise, and which are not now nor hereafter prohibited by law, in carrying on its business, or for the purpose of attaining or furthering its objectives.

J. With respect to such purposes:

(1) no part of the net earnings of the Company shall inure to the benefit of, or be distributed to, its directors, officers, members, or other private persons, except that the Company shall be authorized and empowered to pay reasonable and customary compensation for services rendered to the Company by employees or contractors and to make payments and distributions in furtherance of the purposes set forth herein;

(2) no substantial part of the activities of the Company shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Company shall not participate in, or intervene in (including publishing or distribution of statements) any political campaign on behalf of any candidate for public office, except as authorized under the Internal Revenue Code of 1954, as amended; and

(3) the Company shall not carry on any other activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c) of the Internal Revenue Code of 1954, as amended (or the corresponding provision of any future United States Internal Revenue Code).

ARTICLE IV - MEMBERS

This Company shall have one or more classes of members, which are the shareholders in the Company.

ARTICLE V – MEMBERSHIP SHARES

Ownership in the Company shall be held by the members in accordance with their respective interests. For purposes of ownership, interest in the Company is divided into Shares. The total number of Shares in the Company is flexible and may change according to the capacity of the Company's water systems as more specifically set forth below. The total number of Shares, however, shall not exceed 14,000. Shares in the Company are divided into the following four (4) classes with the respective maximum numbers of Shares in parentheses—(1) Class A (Culinary) Shares (1,500); (2) Class B (Secondary) Shares (2,000); (3) Class C (Control) Shares (7,000), and (4) Class D (Development) Shares (3,500). Subclasses within each class may be created for purpose of administering the non-pro rata assessments authorized under Utah Code Annotated section 16-4-24 and as may be required to meet certain membership costs not fairly attributable to all (e.g., canal and irrigation ditch company assessments and Weber Basin Water Conservancy District contract charges associated with the water rights contributed to the Company).

Seven thousand (7,000) Shares may be issued at the ratio of one-half acre foot per year (325,851 gallons per year) per share as Class A, B or D Shares in accordance with the requirements for the issuance of such Shares as specified in these Articles. The maximum number of Shares may be increased or decreased, and additional classes may be added in a manner provided by law. In addition, inasmuch as the Company will likely, at some future date, be converted into a governmental entity, all Shares issued by the Company may be cancelled and recalled for no consideration upon resolution of the Board of Directors so long as Class A and B members are assured of continued water service by the resulting governmental entity. The number, preferences, limitations and relative rights of the Shares of each class are:

1. Class A (Culinary) Shares:

Each person receiving water service from Wilkinson Water Company as of the date of the filing of these Amended and Restated Articles of Incorporation shall receive a Class A (Culinary) Share upon execution of a membership and water service agreement prepared by the Company and approved by the Board of Directors. Thereafter Class A (Culinary) Shares shall only be issued upon a duly approved resolution by the Board of Directors approving the conversion of Class D (Development) Shares upon terms and conditions assuring that the Company receives adequate compensation in the form of money, water rights, facilities, land, easements, personal property or such combination of the above to assure that the Company is able to provide culinary water service to the Class A members who will hold such Shares. Any compensation received must be used for purposes of paying for past, present, or future expansions of the culinary water system unless the Board of Directors approves an alternative use for such funds. The decision by the Board of Directors as to conversion of Class D (Development) Shares and issuance of Class A (Culinary) Shares shall be final. Class A (Culinary) Shares may only be issued in the ratio of one Share per one-half acre foot of water per year (325,851 gallons per year) in the culinary water system (e.g., there can be no more than two Class A Shares per acre foot of water rights committed to the culinary water system). No Class A (Culinary) Share may be issued unless the Company owns all facilities, works, and rights necessary to serve the property designated on the Share with water meeting culinary standards. In conformance with this requirement, however, a Class A (Culinary) Share may be issued at any time after (1) the Company has capacity to serve the relevant lot with water meeting culinary standards, and (2) a water main is installed in the street adjacent to that lot. Prior to a Class A member's receiving water service, the Board of Directors may assess a standby fee in lieu of the assessments or rates charged to holders of Class A (Culinary) Shares.

Class A (Culinary) Shares shall represent an actual proportionate ownership interest in the water rights and facilities committed to this class of Shares and no interest whatsoever in the water rights, diversion facilities, water distribution works or storage facilities under the B, C, and D Classes of Shares. Holders of Class A (Culinary) Shares shall have one vote per Share in accordance with the provisions of these Articles and the duly adopted Bylaws, and as specifically limited by Article VII below. Class A (Culinary) Shares shall be fully assessable in such manner as may be authorized by law and as is specifically provided for in Utah Code Annotated Title 16, Chapter 4.

2. Class B (Secondary) Shares:

Class B (Secondary) Shares shall only be issued upon a duly approved resolution by the Board of Directors approving the conversion of Class D (Development) Shares upon terms and conditions assuring that the Company receives adequate compensation in the form of money, water rights, facilities, land, easements, personal property or such combination of the above to assure that the Company is able to provide secondary water service to the Class B members who will hold such Shares. Any compensation received must be used for purposes of paying for past, present, or future expansions of the secondary water system unless the Board of Directors unanimously approves an alternative use for such funds. The decision by the Board of Directors as to conversion of Class D (Development) Shares and issuance of Class B (Secondary) Shares shall be final. Class B (Secondary) Shares may only be issued in the ratio of one Share per one-half acre foot of water per year (325,851 gallons per year) in the secondary water system (e.g., there shall be no more than two Class B (Secondary) Shares per acre foot of water rights committed to the secondary water system). No Class B (Secondary) Share may be issued unless the Company owns all facilities, works, and rights necessary to serve the property designated on the Share with secondary water. In

conformance with this requirement, however, a Class B (Secondary) Share may be issued at any time after (1) the Company has capacity to serve the relevant lot with secondary water, and (2) a secondary water main is installed in the street adjacent to that lot. Prior to a Class B member's receiving water service, the Board of Directors may assess a standby fee in lieu of the assessments or rates charged to holders of Class B (Secondary) Shares.

Class B (Secondary) Shares shall represent water to be used exclusively for secondary purposes on a separate secondary storage and distribution system. Class B (Secondary) Shares shall represent an actual and proportionate ownership in the water rights or facilities committed to this class of Shares and no interest whatsoever in the water rights, diversion facilities, water distribution works or storage facilities under the A, C, and D Classes of Shares. Holders of Class B (Secondary) Shares shall have one vote per Share in accordance with the provisions of these Articles and the duly adopted Bylaws, and as specifically limited by Article VII below. Class B (Secondary) Shares shall be fully assessable in such manner as may be authorized by law and as is specifically provided for in Utah Code Annotated Title 16, Chapter 4.

3. Class C (Control) Shares:

The seven thousand (7,000) shares of stock issued in Wilkinson Water Company prior to the adoption and ratification of these Amended and Restated Articles shall be deemed converted into seven thousand (7,000) Class C (Control) Shares. Class C (Control) Shares shall be non-assessable. Holders of Class C (Control) Shares shall have one vote per Share in accordance with the provisions of these Articles and the duly adopted Bylaws, and as specifically provided in Article VII below. Class C (Control) Shares shall represent an actual and proportionate ownership in the water rights, facilities, and all other assets of the Company.

4. Class D (Development) Shares:

Class D (Development) Shares may be issued upon transfer to the Company of a source site, a storage site, and approved water rights sufficient to increase the Company's capacity by one-half acre foot of water per year (325,851 gallons per year). A Class D (Development) Share may be converted into a Class A (Culinary) Share or a Class B (Secondary) Share as provided in these Articles and in the duly adopted Bylaws of the Company. To ensure continual beneficial use of all water rights held by the Company, prior to conversion into a Class A or Class B Share, the water rights associated with a Class D (Development) Share may be used by the holder of such Share for irrigation purposes on an irrigation, storage and distribution system not necessarily owned or otherwise controlled by the Company.

In lieu of conveying the source site and storage site to the Company as a condition precedent to the issuance of Class D (Development) Shares, a party may produce evidence satisfactory to the Board of Directors of the Company that the party owns the subject source and storage sites free and clear of all liens and encumbrances save only those encumbrances securing repayment of a construction loan obtained for the purpose of developing the source, diversion works and storage for such water rights. In this regard, if the party deems it necessary to hold title to the source site or storage site for the purpose of creating a security interest in favor of a construction lender, such circumstances in and of themselves shall not preclude the issuance of Class D (Development) Shares to the party so long as reasonable assurances are provided to the Company from time to time, and as requested by the Company, that the party is not in default under the terms of the construction financing and that the party will be capable of conveying the source site, completed diversion works and storage site to the Company upon completion of the diversion works and storage facilities thereon. Further, upon completion of the diversion works and storage facilities, the party may

transfer the source and storage sites, together with the diversion works and storage facilities, to the Company subject to an underlying encumbrance so long as the Company is not required to assume any of the indebtedness originally undertaken by the party and so long as the party provides reasonable assurances that the lien on the underlying assets will be satisfied prior to the issuance of Class A or B Shares which are to be supported by such source. Under no circumstances shall Class A or B Shares be issued if the underlying source site, storage site, diversion works or storage facilities are encumbered by a lien in favor of a construction lender. However, it shall be sufficient to support the issuance of Class A or B Shares if the construction lender shall agree to release, on a pro rata, or partial release basis, its security interest in the source site, storage site, diversion works or storage facilities to the extent necessary to issue Class A or B Shares free and clear of such lien.

Class D (Development) Shares shall be non-assessable, with the exception of (1) those holding costs incurred to maintain the contributed water right in good standing or such other needed or requested work, and (2) any special assessments or contract charges associated with the water rights contributed to the Company (e.g., canal and irrigation ditch company assessments and Weber Basin Water Conservancy District contract charges). Class D (Development) Shares shall represent an actual and proportionate ownership in the water rights or facilities committed to this class of Shares and no interest whatsoever in the water rights, diversion facilities, water distribution works or storage facilities committed to the A, B, and C Classes of Shares. Class D (Development) Shares shall not entitle the holder thereof to water delivery, but must be surrendered and converted into Class A or B Shares to obtain water delivery and to obtain an interest in the Company's culinary or secondary water distribution works. Class D (Development) Shares shall be non-voting.

ARTICLE VI – SHARES APPURTENANT TO LAND

Class A (Culinary) and Class B (Secondary) Shares of this Company shall be deemed to be appurtenant to the land described on the membership certificate at such time and in the manner specifically provided for in the Bylaws or rules and regulations. Once Shares become appurtenant to the land, the owner thereof shall not be entitled to separately convey or transfer ownership of its Shares off the land without the express written approval of the Board of Directors of the Company.

ARTICLE VII - VOTING RIGHTS

The Company's members, with the exception of Class D (Development) members, are entitled to cast one vote for each Share. Class A (Culinary) members are entitled to vote in all decisions committed to the members except the election of the members of the Board of Directors, and the election of the non-appointed members of the Secondary Rate Board. Class B (Secondary) members are entitled to vote in all decisions committed to the members except the election of the members of the Board of Directors, and the election of the non-appointed members of the Culinary Rate Board. Class C members are entitled to vote in all decisions committed to the members except the election of the non-appointed members of the Culinary and Secondary Rate Boards. In the event that there cease to be any Class C members, Class A and B members shall be entitled to vote in the election of the members of the Board of Directors. Classes A, B, and C members are entitled to vote in elections pertaining to: the sale, transfer, or other conveyance of the assets of the Company and the operation of the Company's water system to any other entity; and such other matters as the Board of Directors deems appropriate to place before the members. In elections concerning the sale, transfer, or other conveyance of the assets of the Company and the operation of the Company's water system to any other entity, the majority vote of all voting Shares is required in order to take action

on the matter being voted upon. In all other matters, only a majority vote of the Shares present or represented by proxy at a meeting of the members is required in order to take action on the matter being voted upon, unless otherwise provided for herein or in the duly adopted Bylaws of the Company.

ARTICLE VIII - ASSESSMENT OF SHARES

A. All Shares shall be fully assessable for the purpose of paying their proportionate share of all lawful obligations of the Company, including, without limitation, operating, maintaining, developing, and managing the facilities used to divert and convey water from any water source within the Company to water storage facilities, or to the place of use, and for the operation, maintenance, development, and management of facilities utilized to divert, store and distribute water, and to pay their proportionate share of the general administrative expenses incurred in the operation of the Company. Subject to exceptions detailed below, assessments shall be levied proportionally within specific classes of Shares. For example, holders of Class A (Culinary) Shares shall be assessable for all the costs associated with the culinary system, and holders of Class B (Secondary) Shares shall be assessable for all the costs associated with the secondary system. Holders of Class A (Culinary) Shares and Class B (Secondary) Shares shall not bear any costs incident to an expansion of the Company's water distribution systems except to the extent that such expansion is calculated to benefit the then-existing members. Assessments shall be levied and provisions made for the collection of all delinquent assessments as provided in Rules and/or Regulations as may be adopted in accordance with state law by the Company from time to time.

B. The amount assessed per Share shall be equal and pro-rata within each class of Shares, except that special assessments may be levied on an equitable but unequal basis, at the discretion of

the relevant Board, in situations where expenditures are made or are necessary for purposes that are of benefit to only a part of the members, or where existing or future contracts with the United States, the State of Utah, or any other lending institutions or agencies, or the laws or regulations of such institutions or agencies or other contracting parties, now or hereafter, require unequal assessments, or where unequal assessments are required or permitted by the terms or conditions of any contract between the Company and any of its members.

ARTICLE IX – ALLOCATION OF COSTS OF EXPANSION

Revenue from rates for culinary and secondary water, and assessments on Class A (Culinary) or Class B (Secondary) Shares may not be used to fund expansion of the company to serve additional lots. All costs attributable to the expansion of a water system to serve new connections shall be paid by Class D (Development) members.

ARTICLE X - BOARD OF DIRECTORS

This Company shall be governed by a Board of Directors. The Board of Directors shall consist of between three and seven directors. Each director shall be a member of the Company holding at least one Share in the Company. The normal term of a directorship is three years. The Board of Directors shall appoint a President, Vice-President, Secretary, and Treasurer as more fully set forth in the Bylaws of the Company. (If initial directors are not named herein, then until such time as directors are elected, the incorporators may hold an organizational meeting at the call of a majority of the incorporators to do whatever is necessary and proper to complete the organization of the Company.) The initial directors are as follows:

Rulon C. Gardner
Gardner Cottonwood Creek, L.C.
Union Pacific Depot
12 South 400 West, Suite 250
Salt Lake City UT 84101

Dan C. Gardner
Gardner Cottonwood Creek, L.C.
Union Pacific Depot
12 South 400 West, Suite 250
Salt Lake City UT 84101

Wayne Wilkinson
2985 West Old Highway Road
Morgan, Utah 84050

Kathleen Collins
4308 West Old Highway Road
Morgan, Utah 84050

Pursuant to Utah Code Annotated section 6-6a-801, the Board of Directors may authorize persons other than the Board of Directors to have the authority and perform a duty of the Board of Directors and the directors shall be relieved to that extent from such duty. Accordingly, there shall be a Culinary Rate Board and a Secondary Rate Board which shall each consist of five members. The Culinary Rate Board shall have authority to set the assessments on Class A (Culinary) Shares and rates for culinary water service. The rates for culinary water service and assessments set by the Culinary Rate Board must be at least sufficient to pay for the operation, maintenance, reasonably necessary improvements or expansions, and management of the culinary water system. The Secondary Rate Board shall have authority to set the assessments on Class B (Secondary) Shares and rates for secondary water service. The rates for secondary water service and assessments set by the Secondary Rate Board must be at least sufficient to pay for the operation, maintenance, reasonably necessary improvements or expansions, and management of the secondary water system. The Board of Directors shall appoint one member to each of these Boards. Four members of the Culinary Rate

Board and four members Secondary Rate Board shall be elected as provided in these Articles and in the duly adopted Bylaws.

ARTICLE XI – QUORUM & TIE BREAKING PROCEDURE

A majority of the members of the Board of Directors of the Company shall be necessary to form or constitute a quorum to transact the business and exercise the corporate powers of the Company and every decision of a majority of the quorum so formed shall be valid as a corporate act. If the Board of Directors, in voting on a Board resolution, has an equal number of votes in support and in opposition to some resolution, the Board may pursue the following procedure to cure the tie: First, the members of the Board who support the resolution shall select an independent person versed in the operation of water companies (“Representative One”). Second, the members of the Board who oppose the resolution shall select an independent person versed in the operation of water companies (“Representative Two”). Third, Representative One and Representative Two shall jointly select some other independent person versed in the operation of water companies (“Independent”). Finally, the Independent, upon being fully informed as to the resolution at a duly called Board meeting, shall cast the deciding vote on the disputed resolution.

ARTICLE XII - INCORPORATORS

The names and addresses of the original incorporators of this Company are:

<u>Name</u>	<u>Address</u>
Gardner Cottonwood Creek, L.C.	Union Pacific Depot 12 South 400 West, Suite 250 Salt Lake City UT 84101
Wilkinson Family Farm, L.L.C.	2985 W. Old Highway Rd. Morgan, Utah 84050

ARTICLE XIII - INITIAL REGISTERED AGENT

The initial registered agent of the Company is:

Rulon C. Gardner
Gardner Cottonwood Creek, L.C.
Union Pacific Depot
12 South 400 West, Suite 250
Salt Lake City UT 84101

ARTICLE XIV - INITIAL REGISTERED OFFICE

The initial location of the registered principal offices of the Company is:

Wilkinson Cottonwood Mutual Water Company
c/o Rulon C. Gardner
Union Pacific Depot
12 South 400 West, Suite 250
Salt Lake City UT 84101

ARTICLE XV - SHAREHOLDERS AND DIRECTORS NOT LIABLE

Officers, directors and members are not liable under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the Company, and the private property of a director, officer or member of the Company shall not be subject to a debt or obligation of the Company.

ARTICLE XVI - BYLAWS

The Board of Directors shall adopt, by a two-thirds vote, appropriate bylaws, rules and regulations and any amendments thereto that may be necessary for the proper governance of this Company. Bylaws and amendments thereto so approved need not be confirmed by the members.

ARTICLE XVII - DISSOLUTION

In the event of dissolution, each member of the Company shall receive his proportionate share of the Company's property based upon their legal interests as they may appear, after paying

or providing for the payment of all debts of the Company. This Article shall not apply in the event of a conversion of the Company into a governmental entity.

ARTICLE XVIII – OWNERSHIP OF WATER SYSTEM

The Company shall hold title for and on behalf of its members to all land, reservoirs, storage tanks, wells, pumps, pumphouses, pressure reduction valves, treatment plants, main distribution lines, delivery and service lateral lines and connections from the water mains to the curb stop of each individual member-water user, including the meter, outside readout, curb-stop valve box and shut-off valve, and any other facilities constituting the water system. Each individual member shall own the service lateral from the property side of the curb-stop valve box and shut-off valve to the premises being served excluding the water meter and outside readout.

ARTICLE XIX – MEETINGS

Meeting of the Board of Directors, the Culinary Rate Board, and the Secondary Rate Board shall be held at the time and place set forth in the Bylaws of the Company, or by resolution of the Board. The annual members meeting shall be held in the month of March at a place designated by the Board of Directors.

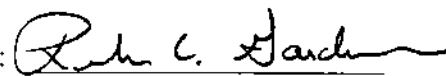
DATED this 14 day of December, 2004.

REGISTERED AGENT


Rulon C. Gardner

INCORPORATOR(S)

Gardner Cottonwood Creek LC

By: 
Title: manager

Wilkinson Family Farm, LLC

By: H. Wayne Wilkinson
Title: MANAGER

APPROVAL OF THE SHAREHOLDERS OF WILKINSON WATER COMPANY

Pursuant to section 16-10a-1008.5 of the Utah Code Annotated, the present shareholders of Wilkinson Water Company hereby approve of the conversion of Wilkinson Water Company into a nonprofit corporation through these Amended and Restated Articles of Incorporation.

<u>H. Wayne Wilkinson</u>	<u>12-14-04</u>	<u>1167</u>
H. Wayne Wilkinson	Date	Shares

<u>Max Wilkinson</u>	<u>12-14-04</u>	<u>1167</u>
Max Wilkinson	Date	Shares

<u>Ann Taylor</u>	<u>1-7-05</u>	<u>1167</u>
Ann Taylor	Date	Shares

<u>Rex Wilkinson</u>	<u>12-14-04</u>	<u>1167</u>
Rex Wilkinson	Date	Shares

<u>Mark Wilkinson</u>	<u>12-14-04</u>	<u>1166</u>
Mark Wilkinson	Date	Shares

<u>Kathy Collins</u>	<u>Dec 14-04</u>	<u>1166</u>
Kathy Collins	Date	Shares