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11-115-0105, 0095

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SHERYL L. WHITE, DAVIS CNTY RECORDER
1999 AUG 3 10:24 AM FEE .00 DEP MEC
REC'D FOR KAYSVILLE CITY

AGREEMENT

THIS AGREEMENT made and entered into this 20 day of July, 1999, by and between **KAYSVILLE CITY**, a Municipal Corporation, of 23 East Center Street, Kaysville City, Davis County, State of Utah (hereinafter referred to as the "City"), and **E. JED BARTON** and **JILL H. BARTON**, currently of USAID/Nepal 6190, Department of State, Washington, DC 20521-6190 (hereinafter referred to as "Bartons"), as follows:

RECITALS

I

In July of 1993, Bartons purchased real property, as herei after described, in Kaysville City consisting of two vacant parcels located at the end of 80 North off 750 East, including property serial numbers 11:115:0095 and 11:115:0105. Said land is hereinafter referred to as the "Property."

II

Bartons are in the process of having the Property surveyed, platted and dedicated as a two lot subdivision to be known as Kaysville Meadows Subdivision.

III

The culinary water system of the City which would be extended to serve the Property consists of four-inch lines. These four-inch lines met all applicable standards when it was constructed, however, since that time new standards provide that fire hydrants to serve new construction shall be serviced by an eight-inch culinary water line.

IV

The City is involved in the process of upgrading culinary water lines as necessary within the City and the scheduled update for the line to serve the Property calls for construction in approximately five years.

V

Bartons have agreed to install at their own cost and expense an eight-inch culinary water line extending the existing City culinary water line to the Property.

VI

The City is willing to allow such extension and as fulfillment of the culinary water requirement in connection with approval of Kaysville Meadows Subdivision provided that Bartons acknowledge that the eight-inch culinary water line to be installed by them will be charged by a four-inch culinary water line and that Bartons covenant not to sue and agree to waive any claim against the City for any damage based upon any claim that the City culinary water line is undersized.

VII

Without the covenant not to sue and agreement to waive all claims against the City contained in this Agreement, the City would not be willing to allow Bartons to install the water line extension until after the anticipated upgrade of the culinary water lines had occurred.

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VIII

Bartons are willing to sign such waiver and covenant not to sue.

NOW, THEREFORE, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, it is hereby agreed by and between the parties as follows:

AGREEMENT

Section One: INCORPORATION OF RECITALS

All of the above and foregoing Recitals are incorporated into and made a part of this Agreement.

Section Two: DESCRIPTION OF PROPERTY

The Property is located in Kaysville City, Davis County, State of Utah, and is more particularly described as follows:

BEGINNING AT A POINT ON THE NORTH LINE OF THE BLOCK 13, PLAT E; KAYSVILLE TOWNSITE, SAID POINT ALSO BEING SOUTH 0° 10' 50" WEST 274.70 FEET ALONG THE QUARTER SECTION LINE FROM THE CENTER OF SECTION 35, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN; AND RUNNING THENCE SOUTH 0° 10' 50" WEST 106.25 FEET ALONG THE QUARTER SECTION LINE TO THE NORTHWEST CORNER OF GRAND OAKS, PLAT "A;" THENCE CONTINUING ALONG SAID QUARTER SECTION LINE SOUTH 0° 10' 50" WEST 590.69 FEET TO THE NORTH LINE OF A STREET; THENCE SOUTH 67° 56' 39" WEST 26.44 FEET ALONG SAID STREET; THENCE NORTH 22° 49' 30" WEST 607.98 FEET TO SAID NORTH LINE OF BLOCK 13, PLAT E, KAYSVILLE TOWNSITE THENCE NORTH

60° 50' 22" EAST 300.65 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING CONTAINING 2.281 ACRES.

Section Three: EXTENSION OF CULINARY WATER LINE

As part of the process for seeking approval of Kaysville Meadows Subdivision, Bartons agree to extend the existing City culinary water line which presently terminates at approximately 780 East 80 North Street, Kaysville City, Davis County, State of Utah, and to extend such line as an eight-inch culinary water line for service within the proposed Kaysville Meadows Subdivision. Such water line extension shall be at the cost and expense of Bartons and shall be in compliance with all Kaysville City Engineering Standards and other requirements.

Section Four: FUTURE UPGRADE OF EXISTING CULINARY WATER LINE

Bartons acknowledge that the existing culinary water line, from which the extension referred to in the preceding paragraph will be made, is a four-inch culinary water line. At the time such existing line was installed it met all applicable standards and requirements. Subsequently adopted standards call for an upgrade to an eight-inch culinary water line, and the City is in the process of upgrading the culinary water system within the City to meet such new requirements. It is understood and agreed by and between the parties that according to the upgrade schedule of the City that the culinary water line to serve the proposed Kaysville Meadows Subdivision will not occur for approximately five years from the date of this Agreement. In accordance with all the

terms and provisions of this Agreement, Bartons agree to accept culinary water service to the proposed Subdivision with the understanding that the existing four-inch culinary water line referred to above does not meet current standards and will not be upgraded for approximately five years.

Section Five: COVENANT NOT TO SUE AND INDEMNIFICATION

In consideration of the City accepting extension of the existing culinary water line as hereinabove described as part of the process of seeking approval of the proposed Subdivision and other good and valuable consideration as recited herein, Bartons, on behalf of themselves and their successors in interest, hereby waive any claims against the City arising from any matter or situation referred to herein and covenant and agree never to institute any action or suit at law or in equity or to make any claim against the City or any of its officers, agents, servants, employees, or insurers, or in any way aid in the institution or prosecution of any claim, demand, action, or cause of action for damages, costs, loss of services, expenses, or compensation for or on account of any damage, loss, or injury either to person or property, or both, whether developed or undeveloped, resulting or to result, past, present, or future, arising out of or in any way connected with or attributable to Bartons' extension of, connection to and use of service from the four-inch culinary water line which is hereinabove described and/or the City's refusal to install an eight-inch culinary water line to serve the proposed subdivision. Bartons specifically covenant not to sue or to participate in any suit for damages resulting from their connection to and use of the existing four-inch line recognizing that current standards may

suggest an upgrade to an eight-inch line. Bartons specifically acknowledge that there are certain risks to themselves and their successors and the Property as a result of connecting to and receiving service from the existing four-inch culinary water line including, but not limited to, the possibility of inadequate fire protection being available as a result of a four-inch culinary water line serving the eight-inch line running to the Property. Bartons acknowledge and accept this and all other risks associated with such connection and use for and on behalf of themselves and their successors.

Bartons agree for themselves and their successors to indemnify and hold the City harmless for any loss, claims, damages, judgments, or other costs arising out of or in any way connected with or related to the City allowing Bartons and/or their successors to connect to and use the said four-inch culinary water line and extending it as an eight-inch line into the proposed Kaysville Meadows Subdivision. Such indemnification shall protect the City from any and all claims including, but not limited to, claims of any insurers insuring the Property.

No Building Permit shall be issued by the City for such proposed Subdivision to Bartons or any successors unless the applicant executes such additional covenants not to sue and indemnification agreements as the City may require in its sole discretion in connection with any such application.

Section Six: APPLICATION FOR SUBDIVISION APPROVAL

Bartons shall seek approval of the proposed Kaysville Meadows Subdivision in the usual manner required by the City. Nothing herein shall be construed or constitute

approval of such proposed Subdivision. It is understood and agreed that Bartons must comply with all City requirements in the usual manner in order to obtain City approval of the proposed Subdivision.

Section Seven: ENTIRE AGREEMENT

This Agreement sets forth the full understanding and agreement of the parties with respect to Bartons' extension of and connections to the Kaysville City Culinary Water System. This Agreement supersedes any and all prior understandings and agreements, whether oral or written, with respect to such culinary water connection, and no agreement or understanding with respect thereto shall be valid or enforceable unless set forth herein.

Section Eight: BINDING NATURE OF AGREEMENT

This Agreement shall run with the land and be recorded with the Davis County Recorder. This Agreement shall be binding upon the heirs, successors, administrators and assigns of the parties.

Section Nine: ATTORNEY FEES

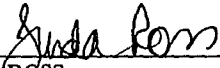
In the event of default by either party, the defaulting party shall be responsible for payment of the attorney fees and court costs of the other party.

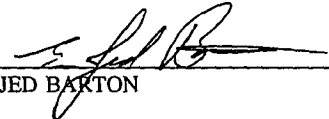
IN WITNESS WHEREOF, the parties have executed this Agreement the day and
year first above written.

KAYSVILLE CITY,
a Municipal Corporation

By: 
BRIAN D. COOK
Mayor

ATTEST:

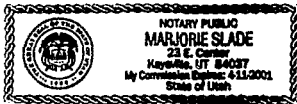
By: 
LINDA ROSS
City Recorder


E. JED BARTON


JILL H. BARTON

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On the 28th day of July, 1999, personally appeared before me, BRIAN D. COOK and LINDA ROSS, who being by me duly sworn did say, each for himself and herself, that he, the said Brian D. Cook, is the Mayor of Kaysville City, and she, the said Linda Ross, is the City Recorder of Kaysville City, and that the within and foregoing instrument was signed on behalf of the said Kaysville City by authority of the City Council of Kaysville City and said Brian D. Cook and Linda Ross each duly acknowledged to me that the said Kaysville City executed the same and that the seal affixed is the seal of the said Kaysville City.

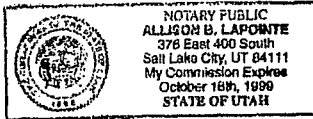


(SEAL)

Marjorie Slade
NOTARY PUBLIC
Residing at: Kaysville, Utah
My Commission Expires: 4-11-2001

NEPAL state of Utah)
County of Salt Lake) : ss.

On the 20th day of July, 1999, personally appeared before me E. JED BARTON and JILL H. BARTON, the signers of the above instrument, who acknowledged that they executed the same.



(SEAL)

Allison B. Lapointe
NOTARY PUBLIC
Residing at: Salt Lake City, UT
My Commission Expires: 10-18-99

K:KAYSIBARTON.agr