

02-034- 0065 thru 0092
02-035- 0093 thru 0124
02-037- 0001 thru 0024, 0041 thru 0050
02-038- 0025 thru 0040, 0049 thru 0064
02-036- 0125 thru 0144

2116654

BK 3898 PG 218

001885

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AGREEMENT

This Agreement entered into this 21st day of April 2000, by and between the State of Utah, acting through the BOARD OF WATER RESOURCES, ("STATE"), and the PHEASANTBROOK HOMEOWNERS ASSOCIATION, a corporation organized under the Laws of the State of Utah, ("WATER COMPANY"):

W I T N E S S E T H

E 2116654 B 3898 P 218-226
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
10/25/2005 08:19 AM
FEE \$0.00 Pgs: 9
DEP RT REC'D FOR DIVISION OF WATER RESOURCES

THAT WHEREAS, the Utah Legislature has authorized the Board of Water Resources, under Title 73 Chapter 10 Utah Code Annotated, to enter into contracts for the construction of water conservation projects which, in the opinion of the Board, will best conserve and utilize the water resources of the State of Utah; and

WHEREAS, the STATE desires to promote a water conservation project ("PROJECT"), estimated to cost \$88,000, and to provide from the Conservation and Development Fund, 77% of the PROJECT cost, but not more than \$68,000, for construction of a piped secondary irrigation system in the Pheasantbrook Condominium complex, in Section 8, T2N, R1E, SLB&M, in Davis County, Utah; and

WHEREAS, the WATER COMPANY desires to enter into a contract with the STATE, to construct and to use PROJECT, and as the WATER COMPANY has the available manpower and facilities necessary for construction of the PROJECT, and is ready, willing, and able to enter into a contract for such purpose;

NOW THEREFORE, by execution of this Agreement, and upon the consideration of the mutual covenants and agreements expressed herein, the STATE and the WATER COMPANY enter into this agreement and make the following assignments:

1. The WATER COMPANY hereby agrees to convey, grant, and warrant to the STATE, title, in fee simple, as required, to the real property upon which the structures are to be constructed; and further agrees to convey, grant, and warrant to the STATE, title to such easements and rights-of-way as shall be necessary to enable

the STATE to construct, maintain, and operate the PROJECT. The WATER COMPANY hereby grants to the STATE the right to use any and all of the WATER COMPANY'S water storage and distribution facilities, including all easements and rights-of-way and the right of ingress and egress for operation and maintenance of the system.

2. The WATER COMPANY hereby agrees to convey, assign, and warrant to the STATE, all right, title, and interest which it has or may have, to the right to the use of the water which shall be developed or conveyed through the use of the PROJECT, and particularly: 4 ½ shares in the Deuel Creek Irrigation Company.

3. The WATER COMPANY recognizes as valid the conveyance of easements and rights-of-way executed by various owners of the land to the STATE, and agrees that all performance by the WATER COMPANY under this contract shall be subservient to, and in recognition of, the aforesaid rights of the STATE in and to the aforesaid easements and rights-of-way.

4. The WATER COMPANY agrees to supply the necessary manpower and facilities and agrees and undertakes to construct to completion the PROJECT in all events, regardless of unforeseen contingencies, in accordance with plans, specifications, and work items, a copy of which is hereby incorporated by reference and made a part hereof.

5. The STATE agrees to pay to the WATER COMPANY 77% of the total cost of constructing the PROJECT; not to exceed Sixty-eight Thousand Dollars (\$68,000), and the WATER COMPANY agrees to pay all costs in excess of the amount paid by the STATE. Included in the amount to be paid by the STATE is the amount of \$2,000, which shall be transferred to the Division of Water Resources ("DIVISION") for administrative fees as specified in paragraph 8 below. Any grant funds received by the WATER COMPANY for the PROJECT, and not already included in the cost-sharing plan, shall reduce the STATE'S share by an amount equal to the grant.

6. Payments for the STATE'S share of PROJECT costs, in the form of state warrants, shall be mailed to the WATER COMPANY in care of Roberta Jones, Secretary, 21 W. Pheasantbrook Drive, Centerville, Utah, 84014 (Phone 801-295-0613), for disbursement to the contractors or other payees (VENDORS). At the option of the STATE, warrants will be made payable either to the WATER COMPANY solely or jointly to the WATER COMPANY and the VENDOR as co-payees. Joint warrants shall be endorsed by the WATER COMPANY officials and

immediately forwarded to the appropriate VENDOR. Warrants payable to the WATER COMPANY only, along with all other monies dedicated to the PROJECT, shall be deposited in a checking account established by the WATER COMPANY and disbursed by check to meet PROJECT obligations. All costs related to PROJECT shall be fully accounted for, and upon completion of construction, the WATER COMPANY shall send to the DIVISION a financial report summarizing all project expenditures.

7. It is further agreed that payment of the STATE'S share of the construction costs shall be made periodically to the WATER COMPANY upon the presentation by the WATER COMPANY to the STATE of a certified statement of the payment requirement which shall be in the nature of a partial estimate of the work completed to date by the WATER COMPANY on each work item. The WATER COMPANY shall withhold Five Percent (5%) of each payment to the construction contractor. At the discretion of the WATER COMPANY and its engineer, and provided the work is progressing satisfactorily, the amount withheld may be reduced. The amounts withheld as set forth hereinabove shall be deposited by the WATER COMPANY in a separate interest-bearing account, with the interest accruing to the benefit of the contractors and subcontractors on a pro rata basis according to the work performed by each. The withholdings and the interest earned thereon shall become due and payable to the said contractors and subcontractors upon satisfactory completion of the construction work under this agreement, or sub-agreements, and upon final inspection and acceptance of the work by an engineer designated by the STATE.

8. As part of the PROJECT costs, the WATER COMPANY agrees to pay the DIVISION a fee for investigation, development, and administration of the PROJECT in the amount of \$2,000. This fee is to defray costs incurred by the STATE relating to the PROJECT and is calculated as a percentage of the committed amount. The DIVISION will receive this fee through a transfer of funds from the Conservation and Development Fund directly into the DIVISION'S Investigation Account. It shall be accounted for as an advance to be repaid by the WATER COMPANY.

9. It is further agreed that the WATER COMPANY shall complete the construction of the PROJECT on or before December 30, 2000, and that title to the entire PROJECT, including all appurtenant facilities and water rights, shall immediately vest in the STATE.

10. The STATE agrees to sell, and the WATER COMPANY agrees to purchase, the land, easements, rights-of-way, water rights, the constructed works, and all appurtenant facilities acquired by the STATE in this Agreement and Assignments at a total purchase price defined to be the combined total of all funds paid by the STATE to the WATER COMPANY for the construction of the PROJECT, but not to exceed Sixty-eight Thousand Dollars (\$68,000) plus interest at the annual rate of Five Percent (5%). Interest shall accrue on the outstanding balance beginning on the date of the first advance of funds by the STATE.

11. The purchase price, as defined above, shall be payable over a period of time not to exceed Ten (10) years. The purchase price shall be amortized over the purchase period, in annual installments of approximately Eight Thousand Eight Hundred Dollars (\$8,800) including principal and interest. Said annual installments shall be due and payable commencing on the First day of September, 2002, and shall continue to be due and payable on the same day of each and every year thereafter until the purchase price, as defined above, shall have been paid in full. Payments may be increased without penalty, at the option of the WATER COMPANY. Delinquent payments shall bear an interest penalty at the rate of Eighteen Percent (18%) per annum. Said sums shall be payable at the office of the DIVISION OF WATER RESOURCES to be applied first to interest, then to principal, and finally to penalties.

12. During the purchase period, the WATER COMPANY may not change the use of any PROJECT water or facilities from irrigation to municipal or hydroelectric power generation without the written consent of the Board of Water Resources. The WATER COMPANY agrees that such consent may be conditional upon an amendment to this agreement to reflect a higher interest rate and/or a shorter repayment period for the outstanding balance due the STATE under this agreement. The terms of the amendment shall be negotiable between the Parties hereto.

13. During the period of such purchase under this contract, provided the WATER COMPANY is not delinquent in any manner, the WATER COMPANY shall have and is hereby given the right to use the STATE'S water rights, and all facilities constructed thereunder; and the WATER COMPANY agrees to assume, at its own expense, the full and complete obligation of maintaining and operating the constructed works, and other facilities, and of protecting all

water rights, easements, and rights-of-way from forfeiture, including the payment of any related fees or assessments.

14. In order to secure the payment of the aforesaid purchase price, it is hereby expressly agreed that the STATE may require the WATER COMPANY to increase its monthly condominium fee, if needed, to pay the full amount of any delinquencies in the aforesaid purchase installments. It is further agreed by the WATER COMPANY that it will not incur any mortgages or encumbrances, other than those already acquired by it, on any of its property, real or personal, without first securing the written consent of the STATE.

15. The WATER COMPANY hereby warrants the STATE that the construction of the PROJECT will not interfere with existing water rights. If the PROJECT herein described shall give rise to a claim, or cause of action to any holder of any water rights because of the interference with such rights by the operation of the PROJECT, then the WATER COMPANY hereby agrees to indemnify the STATE to the extent of such claim or cause of action.

16. A. In constructing or causing the PROJECT to be constructed, the WATER COMPANY shall comply with the provisions of the Utah Anti-Discrimination Act (Act) of 1965 and hereby agrees as follows:

1. The WATER COMPANY will not discriminate against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap.

2. In all solicitations or advertisements for employees, the WATER COMPANY will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, national origin, or handicap.

3. The WATER COMPANY will send to each labor union or workers' representative notices stating the WATER COMPANY'S responsibilities under the Act.

4. The WATER COMPANY will furnish such information and reports as requested by the Anti-Discrimination Division for the purpose of determining compliance with the Act.

5. The WATER COMPANY will include the provisions of sub-sections 1 through 4 above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor unless exempted by law.

B. Failure of the WATER COMPANY to comply with the statute, the rules and regulations promulgated thereunder and this non-discrimination clause shall be deemed a breach of this contract and may be canceled, terminated or suspended in whole or in part.

17. If either party to the contract violates any of the conditions or covenants made herein, the other may give written notice of such breach or failure, and if the same shall not be cured within Ninety (90) days after such notice, the other may declare the contract forfeited and may proceed to its remedies at law for such breach.

18. The WATER COMPANY hereby agrees to indemnify and hold harmless the STATE and its officers, agents and employees from any and all liability or claims in connection with this agreement or the development, design, inspection, construction, or operation and maintenance of the Project, including, but not limited to, any and all claims for injury or death of persons or animals, or for any property loss or damage, including damage to the Project facilities; except for any such claims arising from or caused by the sole negligence of the STATE.

19. It is mutually understood that the STATE'S review of the plans and specifications, bidding documents and general conditions is solely for the purpose of assuring that the PROJECT to be constructed by the WATER COMPANY is as represented in its application and that the PROJECT meets the STATE'S lending criteria. Neither the STATE or officers, employees, or agents thereof shall have any duty to note any design or other defect relating to the PROJECT, and none shall be liable for any loss, claim or damages with respect to the design, bidding, construction, maintenance or operation of the PROJECT or any water system of which the PROJECT is a part.

20. After the WATER COMPANY shall have paid in full the purchase price, as defined above, the STATE shall execute such deeds and bills of sale as will be necessary to revest the same title to the aforesaid property and water rights in the WATER COMPANY.

21. This agreement, or any part thereof, or the benefits to be received under this agreement, may not be the subject or any assignment to any person, firm, or corporation, by the said WATER COMPANY, without first having secured the written consent of the STATE to any such proposed assignment or disposition of this agreement.

22. No covenant or condition of this contract can be waived except by the written consent of the STATE. Forbearance or indulgence by the STATE in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the WATER COMPANY, and until complete performance by the WATER COMPANY of said covenant or condition, the STATE shall be entitled to invoke any remedy available to the STATE under this contract or by law or in equity despite said forbearance or indulgence. Receipt by the STATE of a partial payment of any installment due hereunder shall be deemed to be part payment only and notwithstanding any endorsement, the STATE may accept said payment without prejudice to its right to recover the balance.

23. This agreement shall not become binding upon the STATE until it has been signed by all persons and agencies required by law, and the STATE shall not become liable to the WATER COMPANY for any commitments made by the WATER COMPANY until this agreement has been fully executed.

* * * * *

IN WITNESS WHEREOF, the State of Utah, acting through the BOARD OF WATER RESOURCES, has caused these presents to be signed by the Chairman and Director of the said BOARD OF WATER RESOURCES by authority of a resolution of said Board; and the PHEASANTBROOK HOMEOWNERS ASSOCIATION, has caused these presents to be signed and executed on its behalf by Lorie Hall, its President, and Roberta Jones, its Secretary, by authority of a resolution of its Stockholders.

PHEASANTBROOK HOMEOWNERS ASSOC. BOARD OF WATER RESOURCES

Lorie Hall
President

Cleal Bradford
Chairman

Roberta Jones
Secretary

D. Larry Anderson
Director

23-743 7482
Employer Identification No.

AVAILABILITY OF FUNDS:

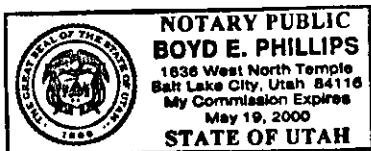
Jerilyn R Jackson
Division Budget/Accounting

APPROVED: DIVISION OF FINANCE

**CONTRACT RECEIVED AND
PROCESSED BY
DIVISION OF FINANCE**

STATE OF UTAH)
County of Salt Lake)^{ss}

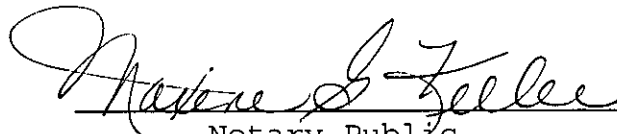
On the 5th day of April, 2000, personally appeared before me Cleal Bradford and D. Larry Anderson, who being duly sworn did say that they are the Chairman and Director of the BOARD OF WATER RESOURCES, and that they signed the foregoing instrument in behalf of the said BOARD by authority of a resolution of said BOARD, and they also acknowledged to me that the said BOARD executed the same.



Boyd E. Phillips
Notary Public

STATE OF UTAH)
County of Davis) ss

On the 14 day of April, 2000, personally appeared before me Lorie Hall and Roberta Jones, who being duly sworn did say that they are respectively the President and Secretary of the PHEASANTBROOK HOMEOWNERS ASSOCIATION and that they signed the foregoing instrument in behalf of said Corporation by authority of a resolution of its Stockholders, and they also acknowledged to me that said Corporation executed the same.



Notary Public

