# DUTCH FIELDS P.U.D.
# DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is entered into as of this 22nd day of July, 2002, by and between Watts Dutch Fields, L.L.C. (hereinafter called "Developer"), and the CITY OF MIDWAY, a political subdivision of the State of Utah (hereinafter called the "City"). Developer and the City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties." Unless otherwise noted herein, this Agreement supersedes and replaces any previous development agreements entered into by and between Developer and the City involving the same Property (defined below).

## RECITALS

A. The City, acting pursuant to its authority under Utah Code Ann. Section 10-9-101, *et. seq.*, in compliance with section 02.1006.01 of the Midway City Zoning Ordinance, and in furtherance of its land use policies, goals, objectives, ordinances, and regulations, has made certain determinations with respect to the proposed Dutch Fields Planned Unit Development and therefore has elected to approve and enter into this Agreement in order to advance the policies, goals, and objectives of the City, and the health, safety, and general welfare of the public.

B. Developer has a legal interest in certain real property located in the City as described in Exhibit A attached hereto.

C. Developer intends to develop the real property described in Exhibit A as a planned unit development consisting of 169 dwelling units, one clubhouse, and certain landscaping and recreational amenities. This planned unit development is commonly known as Dutch Fields P.U.D.

D. The property is subject to the City of Midway Zoning Ordinance and is currently zoned "RA-1-43". Developer and the City desire to allow Developer to make improvements to the property.

E. The City has authorized the negotiation of and adoption of development agreements under appropriate circumstances where proposed development contains outstanding features which advance the policies, goals and objectives of the Midway City General Plan, preserves and maintains the open and rural atmosphere desired by the citizens of Midway City, and contributes to capital improvements which substantially benefit the City.

F. The City's governing body has authorized execution of this Agreement by motion at a special meeting held on July 18, 2002.

Ent 249388 Bk 0580 Pg 0657-0696
ELIZABETH PARCELL, Recorder
WASATCH COUNTY CORPORATION
2002 OCT 4 3:41pm Fee 89.00 MWC
FOR WATTS RUSS

G. Each Party acknowledges that it is entering into this Agreement voluntarily. Developer consents to all of the terms of the Agreement as valid conditions of development under all circumstances.

H. On November 15, 2001, following a duly noticed public hearing, the Midway City Council granted preliminary approval to Developer to construct Dutch Fields as a planned unit development, subject to certain conditions set forth in this Agreement.

I. On February 6, 2002, the Midway City Planning Commission recommended to the Midway City Council that final approval of the Dutch Fields P.U.D. Master Plan be granted subject to the completion of this Agreement and the resolution of water service issues to the Project.

**NOW, THEREFORE**, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

## AGREEMENT

### Section 1. EFFECTIVE DATE AND TERM

**1.1 Effective Date.**

This Agreement shall become effective on the date it is executed by Developer and the City (the "Effective Date"). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals.

**1.2 Term.**

The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of 25 years. Unless otherwise agreed between the City and Developer, Developer's vested interests and rights contained in this Agreement expire at the end of the Term, or upon termination of this Agreement. Upon termination of this Agreement, the obligations of the Parties to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

### Section 2. DEFINITIONS

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have that meaning given to it by this

Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including its Exhibits.

"Applicable Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Governing Body" shall mean the Midway City Council.

"Changes in the Law" shall have that meaning set forth in Section 4.2 of this Agreement.

"Conditions to Current Approvals" shall have the meaning set forth in Section 3.1(b) of this Agreement.

"City" shall mean the City of Midway and shall include, unless otherwise provided, any and all of the City's agencies, departments, officials, employees or agents.

"City General Plan" or "General Plan" shall mean the General Plan of the City of Midway.

"Developer" shall have that meaning set forth in the preamble, and shall also include Developer's successors and/or assigns, including any homeowners' association which may succeed to control of all or any portion of the Project.

"Director" shall mean the Director of the Midway City Planning Department, or his or her designee.

"Effective Date" shall have that meaning set forth in Section 1.1 of this Agreement.

"Notice of Compliance" shall have that meaning set forth in Section 8.1 of this Agreement.

"Planning Commission" shall mean the Midway City Planning Commission.

"Project" shall mean the Property and the development on the Property, which is the subject of this Agreement as well as any ancillary and additional improvements or endeavors incident thereto.

"Property" shall mean the parcel or parcels of land which are the subject of this Agreement and which are more particularly described in Exhibit A.

"Subsequent Approval" means a City approval or permit, which is not otherwise provided for in this Agreement, and which is reasonably necessary for completion of the Project as reasonably determined by the City.

## Section 3. OBLIGATIONS OF DEVELOPER AND THE CITY

### 3.1 Obligations of Developer.

*(a) Generally*. The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of the City set forth herein is material consideration for Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein.

*(b) Conditions to Current Approvals*. Developer shall comply with all of the following Conditions to Current Approvals:

(1) ***Payment of Fees***: Developer agrees to pay all Midway City fees as a condition of developing the Property and Project, including all engineering and attorney fees and other outside consultant fees incurred by the City in relation to the Project. All fees, including outstanding fees for prior plan checks (whether or not such checks are currently valid) shall be paid current prior to the recording of any plat or the issuance of any building permit for the Project or any portion thereof.

(2) ***Special Service District Fees and Charges***: Developer acknowledges that sewer service for the Project shall be provided by the Midway Sanitation District (the "District"). Developer agrees to pay any and all fees imposed by the District in connection with development of the Project, including (but not limited to) fees for plan check and engineering review.

(3) ***Water Service***: In order to assure an adequate and perpetual supply of primary (culinary) and secondary (irrigation) water to the Project, Developer agrees to the following terms:

a. Upon final approval of Phase I by the City, Developer will lease thirty-four (34) shares of Midway Irrigation Company stock owned by the City for culinary use in Phase I and as security for and a condition of building Phase I. Such lease will continue perpetually if other phases of the Project are never built. In addition, lease of all or a portion of the 34 shares may continue for use in phases of the Project beyond Phase I only under the circumstances set forth in paragraph c immediately below. Notwithstanding the above, the City shall retain the option to, at any time, terminate the lease of any or all of said 34 shares that are in excess of those required for lots which have received final approval by the City and for which the plat has been recorded.

b. Developer will meet the secondary water needs of the Project through a separate service arrangement with Midway Irrigation Company. If for any reason this arrangement fails and Developer is unable to obtain secondary water from Midway Irrigation Company at any time, Developer agrees to immediately provide secondary water to the Project by transporting secondary water directly to the Project from the Milk House Spring, which is owned and controlled by Developer. To guarantee performance under this provision, Developer agrees not to transfer its ownership interest in the Milk House Spring to any entity other than the City and/or Midway Irrigation Company, and also agrees to post a bond, prior to the issuance of any building permits to any persons or entities other than Developer, in an amount sufficient, as determined by the City, to accomplish the direct provision of secondary water to the Project from the Milk House Spring. Developer also agrees to provide to the City, prior to execution of this Agreement, documentation evidencing the current status of title to the Milk House Spring water rights.

c. Prior to receiving approval for Phase II or any subsequent phase of the Project, Developer will demonstrate to the City's satisfaction that adequate arrangements for the provision of culinary and secondary water to the Project for Phases I through VI are in place by way of signed agreement(s) with the City and with Midway Irrigation Company. In addition, prior to receiving approval for Phase II or any subsequent phase of the Project, Developer will obtain an adjudication from the Utah Division of Water Rights as to the quantity of water legally available for actual use from the Milk House Spring and will provide the City with the results of same. Developer shall then deed water rights of the Milk House Spring to the City and any other entities as directed by the City in amounts sufficient to satisfy the water-service needs of the Project as such amounts are reasonably determined by the City. If the adjudication by the Utah Division of Water Rights shows the water from the spring to be insufficient to meet the Project's combined culinary and secondary needs, as reasonably determined by the City, Developer will either (1) immediately obtain additional water rights for use in the Project by perpetually leasing enough of the City-owned Midway Irrigation Company shares referenced in paragraph

a above to make up for the deficit (if the City so agrees) or obtain additional water rights from third-party sources or (2) reduce the number of units to be built in the Project to match the amount of adjudicated water rights.

d. Developer hereby agrees to drill and construct a culinary-grade well near the northwest corner of the Project and a storage tank for water drawn from said well. Said tank and well will be used to service the culinary water needs of the Project. Said tank and well may also be used to service other water needs of the City located outside of the Project. Prior to receiving approval for Phase II or any subsequent phase of the Project, Developer will negotiate in good faith, cooperate in drafting, and fully execute an agreement with the City (and any additional parties thereto as required by the City) concerning the size, specifications, design, construction, construction timeline, bonding, use, pumping fees, maintenance and ownership of, and any reimbursement to Developer for, said well and tank. Said agreement shall give the City the option to place the well and/or tank at a higher location, if desired by the City, the extra costs of which will be paid by the City as specified in the agreement. Said agreement shall also grant to the City (and to any other parties specified by the City) an easement for use and maintenance of the well and tank applicable to the relevant common area of the Project. As part of said agreement, Developer shall also agree to bear all expenses of studying and creating an appropriate water source protection area for said well as specified by the City and required by state law. As long as said well and tank are located on property owned by Developer, Developer also agrees to make available and/or obtain any real property and/or easements to real property necessary for said water source protection area. Said agreement shall also include an additional line extension agreement between the City and Developer to enable the City's use of the tank and well for areas other than the Project. Unless and until Developer and the City successfully negotiate and execute such an agreement, Developer will not be granted approval to proceed with Phase II of the Project or any subsequent phases. In addition, prior to receiving approval for Phase II, Developer shall be required to post a bond, as specified by the City, to secure Developer's obligation to construct the well and tank. In any event, and under any and all circumstances, construction permits for the well and tank must be issued and construction on same must be

commenced within five (5) years from the date of this Agreement or Developer will be in default under this Agreement. Furthermore, Developer agrees that a $3,000 major system improvement fee per Project unit will be charged by the City for use of the capacity of the Homestead pressure zone. If bonding and permits for the tank and well referenced above are completed and construction on same is commenced within five years of the date of this Agreement, the City will grant Developer a future credit for each $3,000 fee already paid by a Project unit, which may be transferred and applied to Developer's future obligations to pay Homestead pressure zone system improvement fees for other projects of Developer, but only to the extent to which such fees are thereafter imposed on such other projects of Developer. For example, if, at the time the bonding and permits for the well and tank are completed, Developer has previously paid a total of $3,000.00 to the City for Homestead pressure zone fees for one Project unit, the City will then waive Developer's obligation to pay the $3,000 fee on one unit Developer may construct in another project of Developer's, representing a transferred purchase of tank capacity due to Developer's construction of the new tank associated with the Project.

(4) ***Water Line Extension and Reimbursement:*** Developer will, at its own expense, extend the City water line from its current endpoint on Burgi Lane to the point needed to service the Project, as memorialized more fully in the Waterline Extension and Reimbursement Agreement attached hereto as Exhibit B (the "Line Extension Agreement"). Pursuant to the Line Extension Agreement, Developer agrees to transfer ownership of the pipeline extension and appurtenant facilities, free of encumbrances, to the City upon completion of installation. City will then reimburse Developer for the actual costs of installing the extension, pursuant to the schedule and up to the amounts set forth in the Line Extension Agreement, from designated fees received by the City from property owners who will benefit from the pipeline extension. Developer shall be obligated to monitor all requested connections to the pipeline extension during the term of the Line Extension Agreement and to affirmatively request reimbursement for such from the City.

(5) ***Construction of Project Improvements***:

a. Unless otherwise stated herein, the City shall not issue building permits for the construction of residential structures within the Project unless and until all required

Project improvements for the plat in question are installed by Developer in accordance with City standards and accepted in writing by the City. When all required Project improvements are installed and accepted in writing by the City with respect to any single plat, the City shall issue building permits to applicants other than Developer, so long as the applicant makes application for the desired permits and otherwise complies with Applicable Law. Developer agrees that all infrastructure located within the boundaries of the Project, including but not limited to sewer lines, water lines, roads, electricity, gas, telephone, and detention basins, shall be built and completed in accordance with City and other governing entities' standards and accepted by the City for the plat in question in writing prior to the issuance of any building permit within the Project to anyone other than Developer.

b. Notwithstanding paragraph (4)(a) immediately above, Developer may, prior to the completion of all Project improvements, at Developer's own and sole risk, obtain building permits for structures to be built by Developer on lots owned by Developer at the time the building permit is requested within previously-approved and recorded phases. In such cases, Developer agrees not to transfer ownership of the lot to a party other than Developer until all requirements of paragraph (4)(a) regarding Project improvements have been completed. Furthermore, under no circumstances will any certificate of occupancy be issued prior to the completion of all Project improvements for the then-current phase.

(6) ***Wildlife Habitat.*** Developer agrees that the portion of the Project's common area described on Exhibit C attached hereto is to be maintained perpetually as an undeveloped wildlife habitat. To this end, Developer agrees to execute and record, simultaneously with the recordation of this Agreement, a restrictive covenant limiting use of said property to wildlife habitat purposes, and to note said restriction on the Project plat. Developer and its successors shall have the authority to donate title to said property to a governmental or other non-profit entity, consistent with, and in order to further, the perpetual wildlife habitat purposes of the property. Notwithstanding the above, Developer and the City agree that said wildlife habitat property will be subject to an easement as necessary for the placement, construction, installation, maintenance, use and perpetual existence of the well and water tank referenced in section 3(b)(3)(d) above, and any necessarily associated infrastructure, equipment and pipelines, all of which will

be located on said wildlife habitat property. Developer agrees to make the property, the recorded plat, and the restrictive covenant referenced above in this paragraph subject to said easement.

(7) ***Additional Obligations of Developer***: Developer shall comply with all conditions of approval required by the Planning Commission and the City Council.

(8) ***Construction Schedule***: The following terms and conditions shall govern construction of the Project:

a. Developer shall construct the Project's phases in the following order and according to the following specifications, as referenced to the Phasing Plan Map attached as Exhibit D, unless otherwise approved by the Midway City Council in writing:

i. Phase I, consisting of Lots 1-10, 23-36, and 50-53, for a total of 28 lots.
ii. Phase II, consisting of Lots 11-22 and 37-49, for a total of 25 lots.
iii. Phase III, consisting of Lots 62-78 and 106-119, for a total of 31 lots.
iv. Phase IV, consisting of Lots 79-87, 103-105, and 120-127, for a total of 20 lots.
v. Phase V, consisting of Lots 54-61, 98-102, and Units 128-169, for a total of 55 lots. Units 128-169 will be duplexes.
vi. Phase VI, consisting of Lots 88-97, for a total of 10 lots.

b. Developer shall construct amenities according to the following specifications and schedule, as referenced to the Phase Plan/Improvement Schedule attached as Exhibit E, unless otherwise approved by the Midway City Council in writing:

i. Phase I will include construction of lakes, entry planters, entry landscaping and berming, entry signage, entry road landscaping improvements for Phase I, and entry trails.
ii. Phase II will include landscaping of all lake areas and construction of lake areas in Phase II, Phase II trails, and Phase II River Road improvements to Burgi Lane.

iii. Phase III will include construction of clubhouse, courts, Phase III trails, Dutch Canyon Road improvements, River Road roundabout, and landscaping of East River Road and River Road roundabout area.

iv. Phase IV will include construction of picnic area and gazebo, trails in Phase IV, landscaping of West River Road, and the well, tank, and water source protection areas referenced in paragraph (3)(d) above.

c. Construction of roads in each phase will proceed as illustrated on the Street Phasing Plan attached hereto as Exhibit F.

d. Prior to receiving approval for Phase II or any subsequent phase of the Project, Developer will negotiate and execute a written Agreement with the City concerning the construction by Developer of a roundabout at the intersection of River Road and Burgi Lane according to City's specifications and instructions. Said agreement will address the timing, costs, reimbursement by City and other specifications for construction of the roundabout. City shall retain the option, however, to delay or cancel the construction of said roundabout by giving notice to Developer prior to approval of Phase II.

e. Developer will construct temporary asphalt turnarounds 80 feet in diameter, as shown on the Street Phasing Plan attached as Exhibit F, at all points of street termination for use during the periods between construction of each phase.

f. During construction of Phase II, Developer will construct a temporary access road, 20 feet in width, near Lot 18 as shown on Exhibit F, for use until the construction of Phase V is completed.

(9) ***Maintenance***: Developer is obligated to maintain (including snowplowing) any and all areas that are not dedicated to the City, including trails, open spaces and any and all other improvements intended for public use within the Project. Maintenance provided by Developer must meet or exceed a standard of reasonableness as established by the City. The City, at its option (not obligation), may construct or maintain such improvements upon Developer's failure to do so following written notice to Developer and a reasonable opportunity to cure. The reasonable market value of the City's

services to construct and/or maintain such improvements are hereby agreed to constitute a valid lien on the delinquent Property and may be charged to and collected from Developer.

(10) ***Bonding***: Performance and Maintenance Bonds: Developer agrees to post bonds in amounts and types established by the City and the Midway Sanitation District ("the District") related to the performance of Developer's construction and maintenance obligations for each plat, pursuant to current City and District ordinances and resolutions.

**3.2 Obligations of the City.**

*(a)* ***Generally***. The Parties acknowledge and agree that Developer's agreement to perform and abide by the covenants and obligations of Developer set forth herein is material consideration for the City's agreement to perform and abide by the covenants and obligations of the City set forth herein.

*(b)* ***Conditions to Current Approvals.*** The City shall not impose any further Conditions to Current Approvals other than those detailed in this Agreement, unless agreed to in writing by the Parties.

*(c)* ***Acceptance of Improvements.*** The City agrees to accept all Project improvements constructed by Developer, or Developer's contractors, subcontractors, agents or employees, provided that (1) the Midway City Planning and Engineering Departments review and approve the plans for any Project improvements prior to construction; (2) Developer permits Midway City Planning and Engineering representatives to inspect upon request any and all of said Project improvements during the course of construction; (3) the Project improvements have been inspected by a licensed engineer who certifies that the Project improvements have been constructed in accordance with the plans and specifications; (4) Developer has warranted the Project improvements as required by the Midway City Planning and Engineering Departments; and (5) the Project improvements pass a final inspection by the Midway City Planning and Engineering Departments.

*(d)* ***Issuance of Building Permits.*** The City agrees to issue building permits for structures in the Project only after verifying that the architectural committee of the Project's owners' association has approved the structure by way of the Association's official stamp on the plans pursuant to the Project's Covenants, Conditions and Restrictions.

**Section 4. VESTED RIGHTS AND APPLICABLE LAW**

**4.1 Vested Rights.**

*(a)* ***Generally***. As of the Effective Date of this Agreement, Developer shall have the vested right to develop the Property only in accordance with this Agreement and Applicable Law.

*(b)* ***Reserved Legislative Powers.*** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation shall not modify Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1988), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

**4.2 Applicable Law.**

*(a)* ***Applicable Law.*** The rules, regulations, official policies, standards and specifications applicable to the development of the Property (the "Applicable Law") shall be in accordance with those set forth in the Conditions to Current Approvals set forth in this Agreement, and those rules, regulations, official policies, standards and specifications, including City ordinances and resolutions, in force and effect on the date the City Council granted preliminary approval to Developer. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of the City necessary for approval and recordation of subdivision plats, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of the City.

*(b)* ***State and Federal Law***. Notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law") applicable to the Property. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary, to comply with the Changes in the Law.

**Section 5. AMENDMENT.**

Unless otherwise stated in this Agreement, the Parties may amend this Agreement from time to time, in whole or in part, by mutual written consent. No amendment or modification to this Agreement shall require the consent or approval of any person or entity having any interest in any specific lot, unit or other portion of the Project. Each person or entity (other than the City and Developer) that holds any beneficial, equitable,

or other interests or encumbrances in all or any portion of the Project at any time hereby automatically, and without the need for any further documentation or consent, subjects and subordinates such interests and encumbrances to this Agreement and all amendments thereof that otherwise comply with this Section 5. Each such person or entity agrees to provide written evidence of that subjection and subordination within 15 days following a written request for the same from, and in a form reasonably satisfactory to, the City and/or the Developer.

## Section 6. COOPERATION-IMPLEMENTATION

### 6.1 Processing of Subsequent Approvals.

(a) Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval to be granted by the City, the City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, (i) the notice and holding of all required public hearings, and (ii) granting the Subsequent Approval application as set forth below.

(b) The City's obligations under Section 6.1(a) of this Agreement are conditioned on Developer's provision to the City, in a timely manner, of all documents, applications, plans, and other information necessary for the City to meet such obligations. It is the express intent of Developer and the City to cooperate and work diligently and in good faith to obtain any and all Subsequent Approvals.

(c) The City may deny an application for a Subsequent Approval by Developer only if (i) such application does not comply with Applicable Law, (ii) such application is inconsistent with the Conditions to Current Approvals, or (iii) the City is unable to make all findings related to the Subsequent Approval required by state law or city ordinance. The City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with state law or city ordinance or to make the Subsequent Approval consistent with the Conditions to Current Approvals, so long as such conditions comply with Section 4.1(b) of this Agreement.

(d) If the City denies any application for a Subsequent Approval, the City must specify the modifications required to obtain approval of such application. Any such specified modifications must be consistent with Applicable Law (including Section 4.1(b) of this Agreement). The City shall approve the application if subsequently resubmitted for the City's review and the application complies with the specified modifications.

### 6.2 Other Governmental Permits.

(a) Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies in connection with the development of, or the provision of services to the Project.

(b) The City shall cooperate with Developer in its efforts to obtain such permits and approvals, provided that such cooperation complies with Section 4.1(b) of this Agreement. However, the City shall not be required by this Agreement to join, or become a party to any manner of litigation or administrative proceeding instituted to obtain a permit or approval from, or otherwise involving any other governmental or quasi-governmental agency.

## Section 7. DEFAULT; TERMINATION; ANNUAL REVIEW

### 7.1 General Provisions.

*(a) Defaults*. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. Upon the occurrence of an uncured default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing Party shall take no further action.

*(b) Termination*. If the City elects to consider terminating this Agreement due to a material default of Developer, then the City shall give to Developer a written notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City Council shall send written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter. The City may thereafter pursue any and all remedies at law or equity. By presenting evidence at such hearing, Developer does not waive any and all remedies available to Developer at law or in equity.

### 7.2 Review by City

*(a) Generally.* The City may at any time and in its sole discretion request that Developer demonstrate that Developer is in full compliance with the terms and conditions of this Agreement. Developer shall provide any and all information requested by the City within thirty (30) days of the request, or at a later date as agreed between the Parties.

*(b) Determination of Non-Compliance*. If the City Council finds and determines that Developer has not complied with the terms of this Agreement, and noncompliance may amount to a default if not cured, then the City may deliver a Default Notice pursuant to Section 8.1(a) of this Agreement. If the default is not cured timely by Developer, the City may terminate this Agreement as provided in Section 8.1(b) of this Agreement.

**7.3 Default by the City.**

In the event the City defaults under the terms of this Agreement, Developer shall have all rights and remedies provided in Section 8.1 of this Agreement and provided under Applicable Law.

**7.4 Enforced Delay; Extension of Time of Performance.**

Notwithstanding anything to the contrary contained herein, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, or similar basis for excused performance which is not within the reasonable control of the Party to be excused. Upon the request of either Party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

**7.5 Limitation on Liability.**

No owner, director or officer of the Developer, when acting in his or her capacity as such, shall have any personal recourse, or deficiency liability associated with this Agreement, except to the extent that liability arises out of fraud or criminal acts of that owner, director, or officer.

**Section 8. NOTICE OF COMPLIANCE**

**8.1 Timing and Content.**

Within fifteen (15) days following any written request which Developer may make from time to time, the City shall execute and deliver to Developer a written "Notice of Compliance," in recordable form, duly executed and acknowledged by the City, certifying that: (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification; (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and (iii) any other reasonable information requested by Developer. Developer shall be permitted to record the Notice of Compliance.

### 8.2 Failure to Deliver.

Failure to deliver a Notice of Compliance within the time set forth in Section 9.1 shall constitute a presumption that as of fifteen (15) days from the date of Developer's written request (i) this Agreement was in full force and effect without modification except as may be represented by Developer; and (ii) there were no uncured defaults in the performance of Developer. Nothing in this Section, however, shall preclude the City from conducting a review under Section 8.2 or issuing a notice of default, notice of intent to terminate or notice of termination under Section 8.1 of this Agreement for defaults which commenced prior to the presumption created under this Section, and which have continued uncured.

## Section 9. DEFENSE AND INDEMNITY

### 9.1 Developer's Actions.

Developer shall defend, hold harmless, and indemnify the City and its elected and appointed officers, agents, employees, and representatives from any and all claims, costs, judgments and liabilities (including inverse condemnation) which arise directly or indirectly from the City's approval of the Project, construction of the Project, or operations performed under this Agreement, by (a) Developer or by Developer's contractors, subcontractors, agents or employees, or (b) any one or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors.

### 9.2 City's Actions.

Nothing in this Agreement shall be construed to mean that Developer shall defend, indemnify, or hold the City or its elected and appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage or other liabilities arising from (i) the willful misconduct or negligent acts or omissions of the City, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the City of improvements that have been offered for dedication and accepted by the City for maintenance.

## Section 10. CHANGE IN DEVELOPER, ASSIGNMENT, TRANSFER AND NOTICE.

The rights of the Developer under this agreement may not be transferred or assigned, in whole or in part except by written approval of the City. Developer shall give notice to the City of any proposed or requested assignment at least thirty (30) days prior to the effective date of the assignment. City shall not unreasonably withhold its consent to assignment.

**Section 11. DEVELOPER WAIVER AND RELEASE, ARBITRATION, HAZARDOUS MATERIALS, AND INSURANCE CERTIFICATES**

**11.1 Mandatory Non-Binding Arbitration of City Actions.** In consideration for the promises contained herein, (the sufficiency of which Developer expressly acknowledges), Developer agrees to submit to non-binding arbitration any and all claims or causes of action against the City, and its elected and appointed officers, agents, employees and representatives, arising out of the City's actions during the approval process on the Project, including but not limited to taking claims under the state or federal constitution, equal protection claims under the state or federal constitution, due process claims under the state or federal constitution, U.S.C. § 1983 claims, equitable claims relating to the interpretation or application of City ordinances, claims challenging the validity, or seeking adjustment of any impact fee, engineering review fee, or other City fee, or claims challenging any exaction required by the City as a Condition to Current Approvals.

Arbitration of any of the foregoing causes of action shall be conducted according to the rules of the American Arbitration Association. If the Parties cannot agree on a single person to arbitrate the matter, a panel of three persons shall be selected, each Party selecting its own person, and those two persons selecting the third. The arbitration shall occur in Utah and each Party shall pay its own costs and attorneys' fees, without regard to which Party prevails.

Developer agrees that a prerequisite to such arbitration shall be the exhaustion of any and all administrative remedies available under state law or city ordinance.

**11.2 Hazardous, Toxic, and/or Contaminating Materials.** Developer further agrees to defend and hold harmless the City and its elected and/or appointed boards, officers, employees, and agents from any and all claims, liabilities, damages, costs, fines, penalties and/or charges of any kind whatsoever relating to the existence of hazardous, toxic and/or contaminating materials on the Project solely to the extent caused by the intentional or negligent acts of Developer, or Developer's officers, contractors, subcontractors, employees, or agents.

**11.3 Insurance Certificates.** Prior to beginning construction on the Project, Developer shall furnish to the City certificates of general liability insurance indicating that the City has been added as an additional named insured with respect to the Project and this Agreement. Until such time as the Project improvements described in Section 3.1(b)(5) of this Agreement are completed and approved by the City, such insurance coverage shall not terminate or be canceled or the coverage reduced until after thirty (30) days' written notice is given to the City.

**Section 12. NO AGENCY, JOINT VENTURE OR PARTNERSHIP**

It is specifically understood and agreed to by and between the Parties that: (1) the subject Project is a private development; (2) the City has no interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the City accepts the same pursuant to the provisions of this Agreement or in connection with the various Current Approvals or Subsequent Approvals, except as otherwise expressly set forth in this Agreement; (3) Developer shall have full power over and exclusive control of the Property and Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Conditions to Current Approvals, and Subsequent Approvals, and (4) the City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and Developer.

**Section 13. MISCELLANEOUS**

**13.1 Incorporation of Recitals and Introductory Paragraph.** The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

**13.2 Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

**13.3 Other Necessary Acts.** Each Party shall execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the Conditions to Current Approvals, and Subsequent Approvals and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

**13.4 Construction.** Each reference in this Agreement to any of the Conditions to Current Approvals or Subsequent Approvals shall be deemed to refer to the Condition to Current Approval or Subsequent Approval as it may be amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

**13.5 Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive.

**13.6 Covenants Running with the Land and Manner of Enforcement.**

The provisions of this Agreement shall constitute real covenants, contract and property rights and equitable servitudes, which shall run with all of the land subject to this Agreement. The burdens and benefits of this Agreement shall bind and inure to the benefit of each of the Parties, and to their respective successors, heirs, assigns, and transferees. Notwithstanding anything in this Agreement to the contrary, the owners of individual units or lots in the Project shall (1) only be subject to the burdens of this Agreement to the extent applicable to their particular unit or lot; and (2) have no right to bring any action under this Agreement as a third-party beneficiary or otherwise.

The City may look to Developer, its successors and/or assigns, an owners' association governing any portion of the Project, or other like association, or individual lot or unit owners in the Project for performance of the provisions of this Agreement relative to the portions of the Project owned or controlled by such party. Any cost incurred by the City to secure performance of the provisions of this Agreement shall constitute a valid lien on the Project, including prorated portions to individual lots or units in the Project

**13.7 Waiver.** No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach.

**13.8 Remedies.** Either Party may, in addition to any other rights or remedies, institute an equitable action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto, or to obtain any remedies consistent with the foregoing and the purpose of this Agreement. In no event shall either Party be entitled to recover from the other Party either directly or indirectly, legal costs or attorneys' fees in any legal or equitable action instituted to enforce the terms of this Agreement.

**13.9 Utah Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

**13.10 Other Public Agencies.** The City shall not unreasonably withhold, condition, or delay its determination to enter into any agreement with another public agency concerning the subject matter and provisions of this Agreement if necessary or desirable for the development of the Project and if such agreement is consistent with this Agreement and Applicable Law. Nothing in this Agreement shall require that the City

take any legal action concerning other public agencies and their provision of services or facilities other than with regard to compliance by any such other public agency with any agreement between such public agency and the City concerning subject matter and provisions of this Agreement.

**13.11 Attorneys' Fees.** In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorneys' fees.

**13.12 Covenant of Good Faith and Fair Dealing.** Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and Applicable Law to ensure that the rights secured by the other Party through this Agreement can be enjoyed.

**13.13 Requests to Modify Use Restrictions.** Developer's successors, heirs, assigns, and transferees shall have the right, without the consent or approval of any other person or entity owning property in any other part of the Project, to request that the City modify any zoning classification, use, density, design, setback, size, height, open space, road design, road dedication, traffic configuration, site plan, or other use restrictions associated with that portion of the Project to which the successor, heir, assign, or transferee holds title. The City shall consider any such request, but is not required to grant it.

**13.14 Representations.** Each Party hereby represents and warrants to each other Party that the following statements are true, complete and not misleading as regards the representing warranting Party:

(a) Such Party is duly organized, validly existing and in good standing under the laws of the state of its organization.

(b) Such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder. The individual(s) executing this Agreement on behalf of such Party do so with the full authority of the Party that those individual(s) represent.

(c) This Agreement constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to the rules of bankruptcy, moratorium and equitable principles.

**13.15 No Third-Party Beneficiaries.** This Agreement is between the City and Developer. No other party shall be deemed a third-party beneficiary or have any rights under this Agreement.

**Section 14. NOTICES**

Any notice or communication required hereunder between the City and Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party may at any time, by giving ten (10) days written notice to the other Party, designate any other address to which notices or communications shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

**If to the City:**

**Director**
**Planning Department**
**Midway City**
**P.O. Box 277**
**Midway, UT 84049**

**With Copies to:**

**TESCH, VANCE & MILLER c/o**
**JOSEPH E. TESCH**
**Midway City Attorney**
**2 South Main, Suite 2-D**
**Heber City, UT 84032**

**If to Developer:**

**RUSSELL K. WATTS**
**Watts Dutch Fields, L.L.C**
**5200 South Highland Drive**
**Salt Lake City, UT 84111**

## Section 15. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

Unless otherwise noted herein, this Agreement, including its Exhibits, is the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the City and Developer.

## Section 16. RECORDATION OF DEVELOPMENT AGREEMENT

No later than ten (10) days after the City enters into this Agreement, the City Recorder shall cause to be recorded, at Developer's expense, an executed copy of this Agreement in the Official Records of the County of Wasatch.

**IN WITNESS WHEREOF**, this Agreement has been entered into by and between Developer and the City as of the date and year first above written.

**CITY OF MIDWAY:**

**Attest:**

BILL PROBST
Mayor

BRAD WILSON,
City Recorder

STATE OF UTAH )
ss:
COUNTY OF WASATCH )

The foregoing instrument was acknowledged before me this 29 day of July, 2002, by Bill Probst, who executed the foregoing instrument in his capacity as the Mayor of the City of Midway, Utah, and by Brad Johnson, who executed the foregoing instrument in his capacity as the Midway City Recorder.

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
February 15, 2006
GAY S. MOTLEY
75 North 100 West
P.O. Box 277
Midway, Utah 84049

NOTARY PUBLIC
Residing at: Midway Utah

My Commission Expires:

February 15, 2006

E 249388 B 0580 P 0679

**Watts Dutch Fields, L.L.C.:**

By: Russell K. Watts

Manager

STATE OF UTAH )
:ss
COUNTY OF Wasatch )

The foregoing instrument was acknowledged before me this 22nd day of July, 2002, by Russell K. Watts, who executed the foregoing instrument in his capacity as the Manager of Developer, a Utah Limited Liability Company.

NOTARY PUBLIC
KATE HELLER
5 SOUTH MAIN ST.
HEBER CITY, UT 84032
COMMISSION EXPIRES
OCT. 14, 2003
STATE OF UTAH

Kate Heller
NOTARY PUBLIC
Residing at: Heber, Utah

My Commission Expires:

10-14-2003

E 249388 B 0580 P 0680

# EXHIBIT A

# Boundary Description
for
# Dutch Fields P.U.D.

BEGINNING at the North Quarter Corner of Section 26, Township 3 South, Range 4 East of the Salt Lake Base and Meridian:

| | | |
|---|---|---|
| Thence | N 89°41'16" E | 2662.32 feet; |
| Thence | S 27°58'31" E | 883.60 feet; |
| Thence | S 26°59'58" W | 295.54 feet; |
| Thence | S 41°34'03" W | 725.22 feet; |
| Thence | S 39°40'34" W | 854.48 feet; |

Thence along the arc of a 1075.93 foot radius curve to the left 939.01 feet (curve has a central angle of 39°59'43" and a chord bearing S 64°40'43" W, 909.50 feet);

| | | |
|---|---|---|
| Thence | S 89°40'51" W | 544.45 feet; |
| Thence | S 88°12'03" W | 548.82 feet; |
| Thence | N 00°05'24" W | 2634.62 feet to the point of beginning. |

Containing 150.61 acres.

Basis of Bearing is N 89°41'16" E between the Wasatch County Surveyor's monument for the North Quarter Corner of Section 26, Township 3 South, Range 4 East, Salt Lake Base and Meridian and the Wasatch County Surveyor's monument for the Northeast Corner of said section.

# EXHIBIT B

## WATERLINE EXTENSION AND REIMBURSEMENT AGREEMENT

This contract is entered into this 22nd day of July, 2002, by and between **Midway City** ("City"), 100 West 75 North, Midway, Utah 84049, a Utah municipal corporation, and **Watts Dutch Fields, L.L.C.** ("Watts"), 5200 South Highland Drive, Suite 101, Salt Lake City, Utah 84117, a Utah Limited Liability Company.

WHEREAS, Watts is the owner of property on which it has proposed the development of a 169-unit planned unit development to be known as Dutch Fields P.U.D. ("the Project"); and

WHEREAS, City has formally annexed said property into its corporate limits pursuant to Midway City Ordinance 2001-07; and

WHEREAS, Watts desires to extend the City's water distribution system to the Project by installing a pipeline between the existing water line and the Project; and

WHEREAS, pursuant to City standards and review by the Midway City Engineer, the Project will require an 8" diameter water line to meet fire flow and water demand requirements of the Project; and

WHEREAS, City is willing to allow Watts to make the connection provided the connecting pipeline is oversized sufficient to accept water flows above the needs of the Project; and

WHEREAS, the parties have agreed that the Project will require an 8" pipeline and that Watts will oversize the pipeline as requested by City by constructing a 12" diameter water line and one additional fire hydrant along the water line extension to benefit future development and provide for the health, safety and welfare of the City's residents; and

WHEREAS, other properties will benefit from the additional capacity and associated fire hydrants and fire flow protection; and

WHEREAS, Ordinance 98-2, Section 20(F) sets forth the procedure by which Midway City shall reimburse developers for water line extensions that benefit adjacent and connecting properties; and

WHEREAS, Watts is ready, willing and able to finance and construct the water line extension provided that proper reimbursement is made for the benefit to adjacent and connecting properties as a result of extending the water line; and

WHEREAS, Midway City and Watts desire to set forth the terms and conditions of reimbursement consistent with Ordinance 98-2;

THEREFORE, the parties hereby agree as follows:

E 249388 B 0580 P 0684

1. Authorization to Connect. City hereby grants Watts the right to connect onto the City's water distribution system. Said connecting pipeline shall be 12" ductile iron pipe or PVC C-900 pipe with a #8 copper tracer line placed on top of the line and installed in accordance with the plans and specifications as required by City.

2. Acceptance by City and Transfer of Ownership. Upon completion of construction and acceptance by City, Watts will, by Bill of Sale and Grant of Easement, transfer ownership of the pipeline and appurtenant facilities to City, free and clear of encumbrances, together with a perpetual pipeline easement sufficient to operate, maintain, repair and replace said pipeline. City will thereafter own and operate said pipeline as City property subject only to Watts's rights of reimbursement as set forth herein.

3. Final Costs and As-Built Drawing. As a condition precedent to reimbursement under this agreement, Watts shall deliver to City as-built drawings of the pipeline and final project costs as to be determined by the City Engineer.

4. Reimbursement.

a. Oversizing of Pipeline and Off-site Facilities. City agrees to reimburse Watts for the difference in actual cost between the 8" line Watts would have otherwise had to install for its own purposes and the 12" waterline it is actually being required to install at City's request. It is estimated that the difference in cost between the 8" and 12" pipeline, plus associated materials, is $12,379.92. The construction costs of installing a 12" waterline instead of an 8" line are roughly equivalent so no reimbursement on this item of cost is being provided. In addition to reimbursement for oversizing the pipeline, City further agrees to provide reimbursement for the actual cost of the one additional fire hydrant required by City, to a maximum of $2,150.00. The terms and conditions of reimbursement for these items and costs is as follows:

(1) The City shall enter a deferred credit on its books and records for the amount of actual difference in pipeline costs between the 8" line and 12" line and the cost of the one fire hydrant as determined by the City Engineer. However, in no event shall the total reimbursement for these items exceed $14,529.92.

(2) The City shall provide reimbursement for the oversizing of the pipeline and one fire hydrant to Watts as new connections are made to the City water system from the Project and City connection fees are paid.

(3) From each connection fee paid to City for connections from the Project, City shall reimburse to Watts $1,500.00 per connection from the Base Connection Fee as set forth in

Ordinance 98-2. No interest shall accrue to Watts during the period of repayment.

(4) Watts's right of reimbursement stall extend for a period of twenty (20) years from the date of completion of construction of the pipeline and acceptance by the City, or until the deferred credit has been reduced to zero, whichever occurs first. In no event will Watts be entitled to further repayment once the deferred credit has been satisfied or the repayment period has expired.

(5) Watts understands that City makes no guarantees that the Project will make any connections to the City Water System or pay connection fees within a twenty (20) year period. Watts also understands that no money will be paid over to Watts if no connections are made.

(6) Watts shall be responsible for tracking new connections from the Project and requesting reimbursement from the City as the new connection fees are paid.

b. Pipeline Capacity Reimbursement. In addition to reimbursement for the oversizing of the pipeline as set forth in paragraph 3(a) above, the City shall also reimburse Watts for third-party connections serviced from the pipeline extension consistent with the Midway City Water Ordinance:

(1) City shall reimburse to Watts upon collection of the third-party connection fees for connections serviced by the pipeline extension.

(2) City shall reimburse to Watts $1,500.00 per connection, up to a total amount equaling sixty-five percent (65%) of the actual cost of constructing the pipeline, less the oversizing and fire hydrant costs, or $41,386.10, whichever is less.

(3) City shall have no obligation to reimburse Watts except as through third-party connections as set forth herein.

(4) Watts's right of reimbursement shall extend for a period of twenty (20) years from the date of completion of construction of the pipeline and related facilities and acceptance by City, or until reimbursement is complete, whichever occurs first. In no event will Watts be permitted to recover more than the sum of $41,386.10.

(5) Watts understands that no money will be paid over to Watts if no connections are made, that the amount third parties will be required to pay for using the pipeline will be determined solely by the City, and that the City makes no guarantees that any third parties will connect onto the system within a twenty (20) year period.

(6) Watts also understands and agrees that it shall be responsible to track third-party connections serviced from the pipeline and request reimbursement from City as connection fees are paid consistent with this agreement.

5. Inspection of Pipeline and Other Facilities by City. Watts hereby agrees, consistent with City Ordinance, to pay the hourly rate of the City Engineer or his designated representative as set by the City, for all inspections associated with construction and approval of the pipeline extension. Such costs shall be paid to City prior to acceptance of the pipeline, water delivery and reimbursement under this agreement.

6. Notice. Any notice to the parties hereto shall be sufficiently given if sent by certified mail, return receipt requested, addressed as follows, or hand-delivered:

Midway City
c/o Mayor
75 North 100 West
Midway, Utah 84049

Watts Dutch Fields, L.L.C.
c/o Russ Watts
5200 South Highland Drive
Suite #101
Salt Lake City, Utah 84117

7. Integration. The stated terms of this Agreement represent the entire Agreement regarding the matters herein and the parties hereto agree that no additional statements or agreements made by representatives of the City or Watts shall be binding unless appended hereto in writing.

DATED this 22nd day of July, 2002.

MIDWAY CITY

Bill Probst
Mayor

Attest:

Brad Wilson, City Recorder

E 249388 B 0580 P 0687

WATTS DUTCH FIELDS, L.L.C.

Russ Watts
Manager

STATE OF UTAH )
:ss
COUNTY OF )

On this 22 day of July, 2002, personally appeared before me BILL PROBST and BRAD WILSON, the signers of the foregoing instrument, who, being by me duly sworn, did say that they are the MAYOR and CITY RECORDER, respectively, of MIDWAY CITY CORPORATION, a municipal corporation of the State of Utah, and said persons acknowledged to me that said corporation executed the same.

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
February 15, 2006
GAY S. MOTLEY
75 North 100 West
P.O. Box 277
Midway, Utah 84049

Gay S. Motley
Notary Public

STATE OF UTAH )
:ss
COUNTY OF Wasatch )

On this 22nd day of July, 2002, personally appeared before me RUSS WATTS, who, being by me duly sworn, did say that he is MANAGER of WATTS DUTCH FIELDS, L.L.C., a Utah Limited Liability Company; and that said instrument was signed by him in behalf of said company and said RUSS WATTS acknowledged to me that said company executed the same.

NOTARY PUBLIC
KATE HELLER
5 SOUTH MAIN ST.
HEBER CITY, UT 84032
COMMISSION EXPIRES
OCT. 14, 2003
STATE OF UTAH

Kate Heller
Notary Public

E 249388 B 0580 P 0688

# EXHIBIT C

# Boundary Description
for
# Dutch Fields Wildlife Habitat

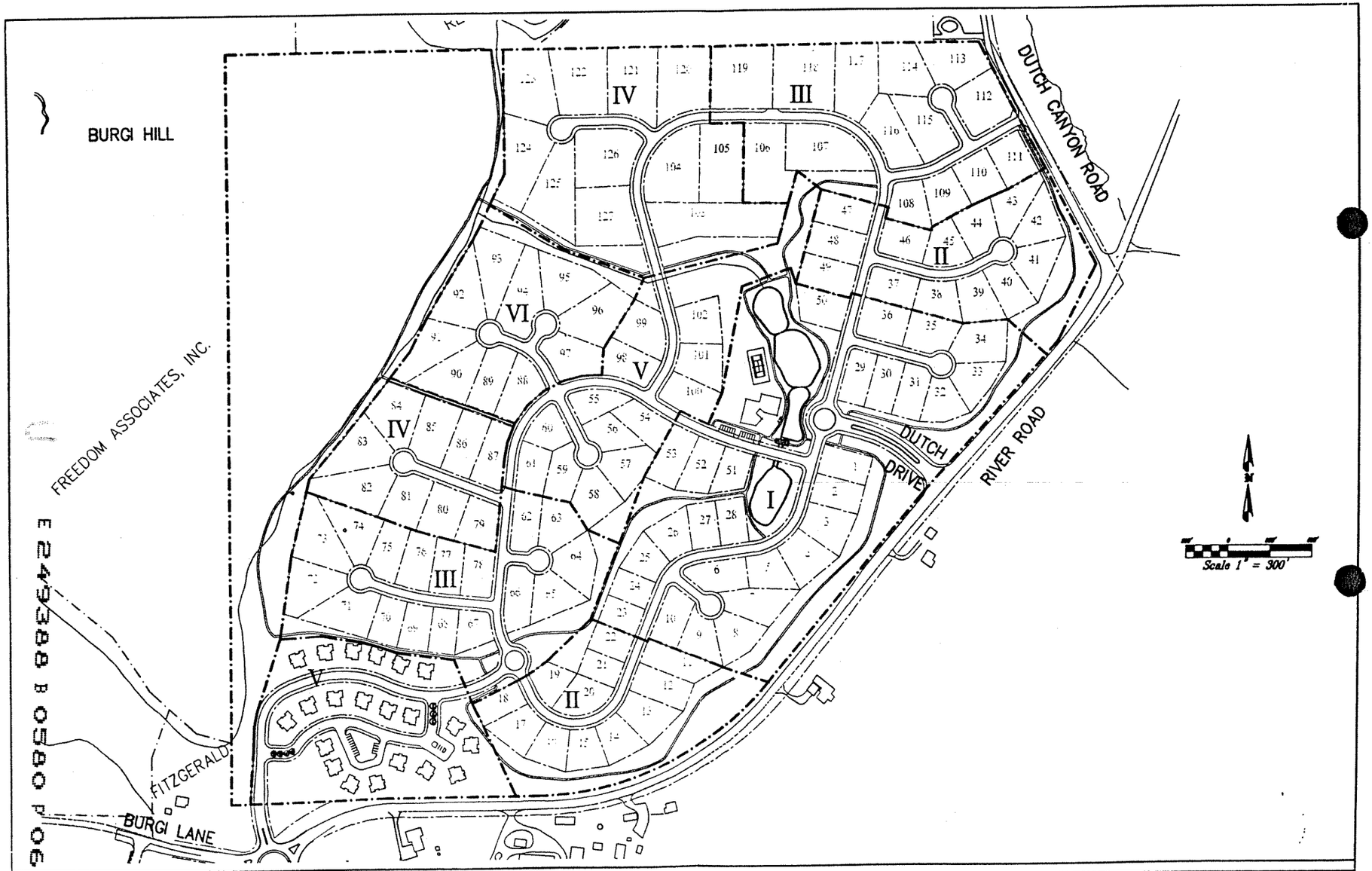
BEGINNING at the North Quarter Corner of Section 26, Township 3 South, Range 4 East of the Salt Lake Base and Meridian:

| | | |
|---|---|---|
| Thence | N 89°41'16" E | 953.03 feet along the north property line of Dutch Fields to the River Ditch; |
| Thence | S 02°17'49" E | 35.95 feet generally along the River Ditch; |
| Thence | S 09°30'00" E | 97.78 feet generally along the River Ditch; |
| Thence | S 01°36'00" E | 93.88 feet generally along the River Ditch; |
| Thence | S 08°39'38" W | 134.28 feet generally along the River Ditch; |
| Thence | S 15°47'38" W | 86.92 feet generally along the River Ditch; |
| Thence | S 20°37'12" W | 252.61 feet generally along the River Ditch; |
| Thence | S 31°22'13" W | 227.59 feet generally along the River Ditch; |
| Thence | S 26°40'13" W | 123.24 feet generally along the River Ditch; |
| Thence | S 42°28'55" W | 93.34 feet generally along the River Ditch; |
| Thence | S 34°07'44" W | 83.03 feet generally along the River Ditch; |
| Thence | S 44°16'26" W | 103.16 feet generally along the River Ditch; |
| Thence | S 36°11'09" W | 145.42 feet generally along the River Ditch; |
| Thence | S 41°33'31" W | 149.98 feet generally along the River Ditch; |
| Thence | S 50°22'26" W | 87.20 feet generally along the River Ditch; |
| Thence | S 23°54'42" W | 110.82 feet generally along the River Ditch; |
| Thence | S 18°39'47" W | 104.43 feet generally along the River Ditch; |
| Thence | S 38°00'39" W | 128.67 feet generally along the River Ditch; |
| Thence | S 16°00'34" W | 166.34 feet generally along the River Ditch; |
| Thence | S 07°56'18" W | 85.29 feet generally along the River Ditch; |
| Thence | S 02°59'18" W | 225.79 feet generally along the River Ditch; |
| Thence | S 10°26'55" W | 92.14 feet generally along the River Ditch; |
| Thence | S 23°54'59" W | 79.10 feet generally along the River Ditch to the west property line of Dutch Fields; |
| Thence | N 00°05'24" W | 2,409.30 feet along the west property line of Dutch Fields to the point of beginning. |

Containing 26.64 acres.

Basis of Bearing is N 89°41'16" E between the Wasatch County Surveyor's monument for the North Quarter Corner of Section 26, Township 3 South, Range 4 East, Salt Lake Base and Meridian and the Wasatch County Surveyor's monument for the Northeast Corner of said section.

# EXHIBIT D

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| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| MIDWAY, UTAH | WATTS ENTERPRISES<br>ADDRESS: 5300 S. HIGHLAND DR., SLC UT 84117<br>PHONE: (801) 272-7111 | DUTCH FIELDS P.U.D. - PHASING PLAN | SOWBY & BERG CONSULTANTS<br>270 E. 300 N. HEBER CITY, UT 84032<br>PHONE: (435) 654-0250 | SCALE: 1" = 300' | DESIGN BY: PDB<br>DRAWN BY: PDB | DATE: 28 MAR 2002<br>REV: | DRAWING NO.<br>PHASE | SHEET NO.<br>1 |

# EXHIBIT E

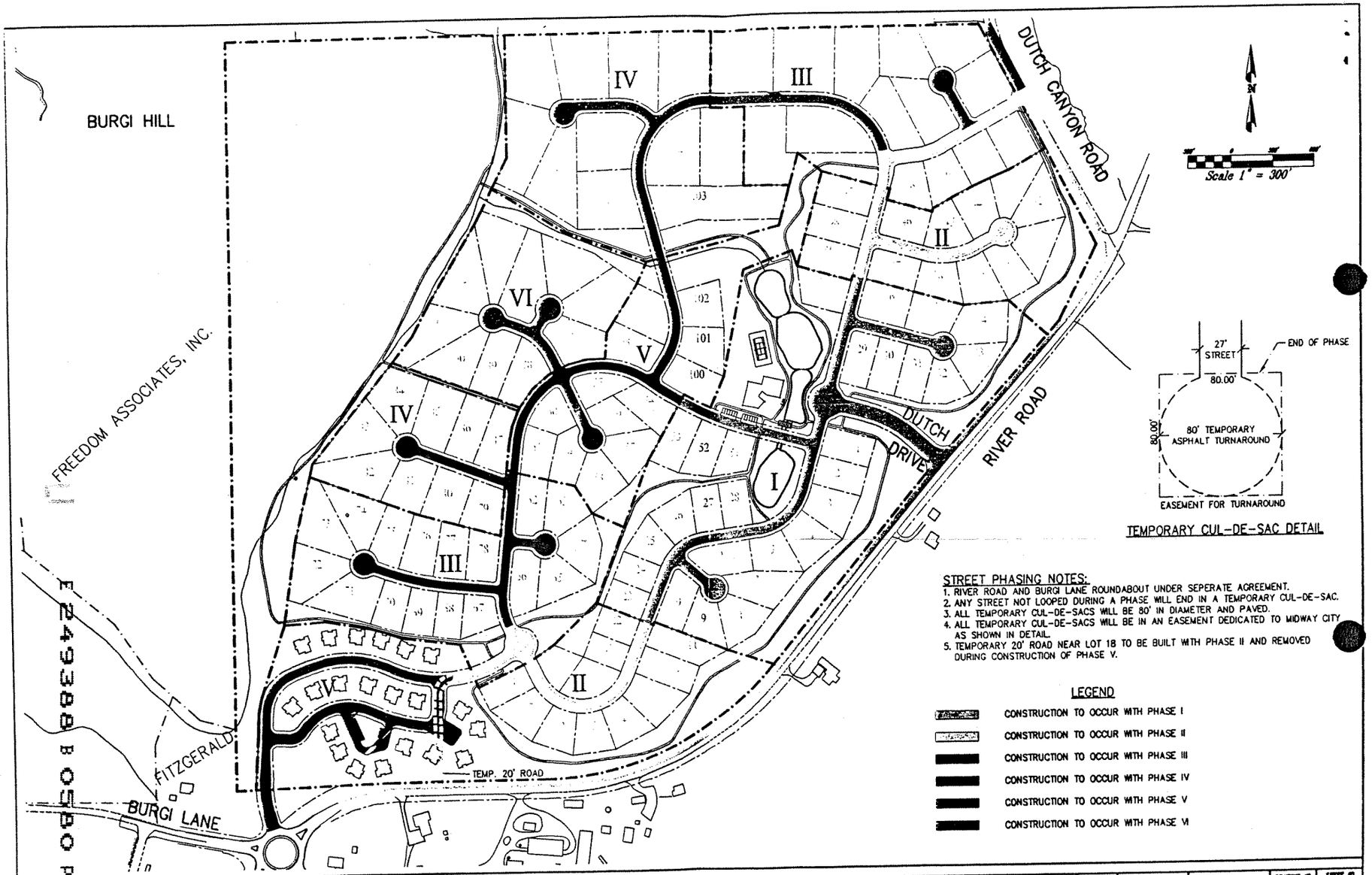
# DUTCH FIELDS

## PHASE PLAN / IMPROVEMENT SCHEDULE

12-Jul-02

| PHASE | HOMESTEADS | AMENITIES |
|---|---|---|
| Phase I | 28 | Lakes<br>Entry Planters<br>Entry Landscaping & Berming<br>Entry Signage<br>Entry Road Improvements for Phase I<br>Entry Trails |
| Phase II | 25 | Landscape Lake Area<br>Trails, Lake Area at Phase II<br>River Road Improvements, Phase II |
| Phase III | 31 | Clubhouse<br>Court<br>River Road Roundabout<br>Landscape River Road/Roundabout Zone<br>Trails at Phase III<br>Dutch Canyon Road Improvement<br>Landscape River Road / East |
| Phase IV | 20 | Trails at Phase IV<br>Landscape River Road / West<br>Well & Tank, and Protection Area<br>Picnic Area, Gazebo |
| Phase V | 55 | |
| Phase VI | 10 | Bird Watching Zone |

# EXHIBIT F




MIDWAY, UTAH

WATTS ENTERPRISES
ADDRESS: 5200 S. HIGHLAND DR., SLC UT 84117
PHONE: (801) 278-7111

# DUTCH FIELDS P.U.D. - STREET PHASING PLAN

SORENSEN & BERG CONSULTANTS
270 E. 300 N. HEBER CITY, UT 84032
PHONE: (435) 654-0250

SCALE: 1" = 300'
DESIGN BY: PDB
DRAWN BY: PDB
DATE: 2 APR 2002
REV:
DRAWING NO. PHASE_STR
SHEET NO. 4

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