

AMENDED AGREEMENT

Between

Midway City

And

Watts Dutch Fields L.L.C.

Ent 275224 Bk 0713 Pg 0028-0034
ELIZABETH M PALMIER, Recorder
WASATCH COUNTY CORPORATION
2004 SEP 15 11:47am Fee 22.00 MMM
COR DUTCH FIELDS LC

Effective Date – September 10, 2004

PREFACE

The following amended agreement is made to amend the text and phasing plans of a development agreement effective July 22nd, 2002 (executed July 29th, 2002), and recorded October 4, 2002 as Entry Number 249388 in Book 580, Pages 657-696, Wasatch County Records (hereinafter referred to as the "Original Agreement"). This amended agreement covers real property described as:

All of the real property and lots included within all phases of Dutch Fields P.U.D., a planned unit development located in Midway City, Wasatch County, Utah

AMENDED AGREEMENT

This amended agreement entered into this *10th day of September, 2004*, by and between Watts Dutch Fields L.L.C. of Salt Lake City, Utah, its successors or assigns, (hereinafter called "Developer") and the City of Midway, a political subdivision of the State of Utah (hereinafter called "City"), covering changes to the water supply and phasing provisions of the original agreement.

RECITALS

A. On April 21, 2004 the Midway City Planning Commission recommended to the Midway City Council the approval of the revised Dutch Fields Master Plan and preliminary approval of Phase II.

ARTICLE I

Introduction

I.1 The Developer is engaged in developing land for residential purposes and in doing so providing water sources, water storage, fire protection, culinary and irrigation water

systems, sanitary sewer, roads and transportation and other utilities and related services.

I.2 It is expressly understood and agreed that the provisions covered by this agreement pertain to and are essential to the operation of services outlined in subsection I.1 of this agreement and to the welfare of the public dependent thereon, and in consideration thereof, the City and Developer agree to make the following amendments to the Original Agreement.

ARTICLE II

Amendments

Scope

II.1 The following amendments pertain to changes made in order to facilitate culinary and irrigation water for the Dutch Fields development and to the Phasing Plans and Improvement Schedules as hereinafter set forth.

Amendments to Section 3.1 Obligations of the Developer

II.2 Subsections of 3.1 of the Original Agreement shall be amended to read as follows:

II.2.(a)

Section 3.1 (b) (3) a.

a. The Developer has leased 34 shares of Midway Irrigation Company stock from the City for culinary and secondary use for 28 Units in Phase I of Dutch Fields. On January 10, 2004 the Developer and the Midway Irrigation Company signed an agreement that provides secondary water for the entire Dutch Fields P.U.D. This action satisfies item 3.1 (b)(3) b. of the Original Agreement. The Developer will continue to lease the 34 shares of stock for culinary water purpose for the approval and use of up to 102 total units in the Dutch Fields P.U.D. in perpetuity (if the City Agrees, in its sole discretion, by written instrument executed at the time the additional phases and/or additional units are approved), or until a well is completed and operational and sufficient water rights for the entire development have been approved to be transferred into said well by the State of Utah Division of Water Rights as outlined in amendment to Sections 3.1 (b) 3 c. & d., as described below.

Section 3.1 (b) (3) c.

c. Prior to receiving final 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 water for the Project for Phases I through VI are in place by way the provisions of this agreement. Developer shall then include City as a Co-owner on the deed to the water right 55-1510 (Cunningham Lake) in order to assure 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 lake to be insufficient to meet the Project's culinary 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 (if the City Agrees) or obtain additional water rights from third -party sources (2) reduce the number of units to be built in the Project to match the amount of adjudicated water rights. Once a well site is selected, Developer will obtain an adjudication from the Utah Division of Water Rights as to the quantity of water legally available for actual use from water right 55-1510 (Cunningham Lake) and will provide the City with the results of same. At this same time, the City will submit a change application to the State Water Engineer's Office to change the irrigation right in the Cunningham Lake to a culinary right and to move the point of diversion to the well. Within 90 days of the well being put into operation, Developer will sign complete ownership of water right 55-1510 over to the City.

II.2.(c)**Section 3.1 (b) (3) d.**

d. Developer hereby agrees either to (1) drill and construct a culinary- grade well near the northwest corner of the Project and a storage tank for water drawn from said well or (2) work with the City to find an offsite well location and participate in the well drilling, construction, site development, and well site protection costs. Developer will not request more than 102 units until a well site has been secured and the well is completed, operational, and approved for culinary use.

If option (1) is used, 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. 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 time line, 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.

If option (2) is used Developer agrees to deed an easement to the City for a tank site and the other associated easements as described in the above paragraph. Developer agrees to pay his proportionate share of the well costs based on the capacity required for Dutch Fields and the total capacity of the well. Developer understands that it is his responsibility to provide a well that meets the requirements of his project.

If a storage tank is determined by the City not to be required, persons obtaining building permits within the Dutch Fields P.U.D. shall pay for the same water impact and connection fees that are collected with other building permits within the same pressure zone. Water Impact fees will not be assessed to persons obtaining building permits if the storage tank is built by the Developer; however, connection fees will be assessed to cover the City's cost of connecting homes to the water system, at the same rate charged throughout the city.

Provisions of the amended sections of this agreement shall be completed within five (5) years from the date of the original Agreement or Developer will be in default under this Amended Agreement and the Original Agreement. Furthermore, Developer agrees that a \$3,000 major system improvement fee (or other amount as amended by the City) per Project unit will be charged by the City for use of the capacity of the Homestead pressure zone as long as the City assess this fee. If improvements as mentioned in either Option (1) or (2) are completed within five years of the date of the Original 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.

II.2.(d)

Section 3.1 (b) (8) Construction Schedule

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 has been approved and the plat recorded for Lots 1-28 for a total of 28 lots.
- ii. Phase II, consisting of Lots 29-57 for a total of 29 lots.
- iii. Phase III, consisting of Lots 58-79 for a total of 22 lots.
- iv. Phase IV, consisting of Lots 80-105 for a total of 26 lots.
- v. Phase V consisting of Lots 106-118 and Units 128-169, for a total of 55 lots. Units 128-169 will be duplexes.
- vi. Phase VI consisting of Lots 119-127 for a total of 9 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. The lakes, entry planters, entry landscaping and berming, entry signage, entry road improvements for Phase I and entry trails were constructed as part of Phase I.
- ii. Phase II will include landscaping of all lake areas, trails located within Phase II including the trail along Dutch Canyon Road, River Road improvements to Dutch Canyon Road and Dutch Canyon Road improvements.
- iii. Phase III will include construction of the clubhouse, courts, Phase III trails, River Road improvements to Burgi Lane, River Road roundabout, and landscaping of River Road roundabout
- iv. Phase IV will include construction of a picnic area and gazebo, trails in Phase IV and the well, water line improvements to connect well to the Midway culinary water system and a water storage tank unless the well is connected to existing storage tanks within the water system.

II.2. (E)

Section 3.1 (b)(8) f. -- regarding the secondary access is hereby removed from the original agreement as the changes to the construction plan will provide a secondary access on Dutch Canyon Road when Phase II is completed.

ARTICLE III

Effect of this Agreement on the Original Agreement

Other than amendments outlined in Article II of this agreement, all provisions of the Original Agreement shall remain in full force and effect.

ARTICLE IV

Term

This agreement shall take effect on the **10th day of September 2004**, for the period and term outlined in Section 1.2 of the original agreement, except where modified herein and shall continue in full force and effect unless terminated under the provisions of Section 7 or further amended as outlined in Section 5 of the original agreement.

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

ATTEST:

CITY OF MIDWAY
an Utah municipal corporation

By: *Brad Wilson*
Brad Wilson
City Recorder

By: *Bill Probst*
Bill Probst
Mayor



APPROVED AS TO FORM:

By: *Kraig Powell*
Craig Powell
City Attorney

By: *Russ Watts*
Russ Watts

Title: _____
A person authorized by Watts Enterprises, to bind the company

STATE OF UTAH)
)ss
County of Wasatch)

The foregoing instrument was acknowledged before me this *25th* day of *August*
200*4* by *Russ Watts*, on behalf of *Watts Enterprises*

John Notary Public
My Commission Expires: *April 15th, 2008*

