

Recorded at the Request of:

When Recorded Mail To:

John W. Palmer
Jones, Waldo, Holbrook & McDonough
249 E. Tabernacle, Suite 200
St. George, Utah 84770

AMENDED
AGREEMENT

THIS AGREEMENT is entered into this 30 day of November, 1989, between TOQUERVILLE, a municipal corporation of the State of Utah, hereinafter designated as "Town"; and TOQUERVILLE DIXIE PROPERTIES, INC., a Utah corporation, hereinafter designated as "Owner";

WITNESSETH:

WHEREAS, Owner is the owner of the following described real property situated within the corporate limits of Toquerville, Washington County, State of Utah, to-wit:

COMMENCING at a point which is South 898.26 feet from the Southwest corner of the Southeast quarter of the Southwest quarter (SE1/4 SW 1/4) of Section 11, Township 41 South, Range 13 West, Salt Lake Base and Meridian, and running thence North 3,297.11 feet; thence North 83°59'56" East 80.0 feet; thence South 61°06'12" East 69.04 feet; thence East 660.0 feet; thence North 425.0 feet; thence North 72°10'17" East 340.66 feet; thence North 20°56'23" West 852.46 feet; thence South 69°12'00" West 567.34 feet; thence North 17°30'00" West 300 feet; thence North 69°12'00" East 884.74 feet; thence South 17°30'00" East 280.50 feet; thence South 5°00'00" East 419.10

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FOR: JONES WALDO HOLBROOK ETAL

feet; thence South 17°30'00" East 297.98 feet;
thence North 68°30'00" East 93.93 feet; thence
South 519.42 feet; thence West 335.46 feet;
thence South 2,389.98 feet; thence South
26°30'00" West 283.80 feet; thence South
12°00'00" West 1,536.48 feet; thence North
41°53'49.5" West 812.36 feet to the point of
beginning.

AND WHEREAS, Owner desired to subdivide said property into a
subdivision known as ALMOND HEIGHTS PARK SUBDIVISION, Plat "A"
and Town required Owner to install certain improvements on the
property, or in the alternative to guarantee the installation of
the improvements before lots are sold from the Subdivision, and

WHEREAS, Town and Owner have previously executed an
Agreement dated May 3, 1972, and recorded in the Washington
County Recorder's Office on May 8, 1972, in Book 117, at pages
428-433, a copy of which Agreement is attached hereto as Exhibit
"A" for informative purposes, and

WHEREAS, the parties to this Agreement previously entered
into a Trust Agreement, dated the 27th day of October, 1973,
which stated the rights and obligations of each of the parties,
with which Trust Agreement the Town and Owner have found it
impossible to comply. Because of impossibility of performance,
the parties hereby agree that the previous Trust Agreement is
void and that the parties will henceforth be bound by this
Agreement, and

WHEREAS, Owner and Town have mutually agreed to amend the

previously recorded plat to reduce the number of lots from 248 to 120 lots and to dedicate and record the amended plat as an acceptable concept of a subdivision which will be completed in phases as hereinafter described, each new lot being either a single lot designated in the old plat or a combination of two or three lots in the old plat, and

WHEREAS, the aforesaid Agreement dated May 3, 1972, contemplates and requires that Owner convey title to property to Security Title Company of Southern Utah and execute of a Trust Agreement and instructions to the Title Company,

NOW THEREFORE, in consideration of the mutual covenants, conditions and agreements set forth in this Agreement, the parties agree as follows:

1. Conveyance in Trust. Owner has, by Warranty Deed dated 27 October 1973, conveyed the real property to Security Title Company of Southern Utah free and clear of all liens and encumbrances. It is hereby agreed by Town and Owner that no Trustee of the land will be required. By agreement of Owner and Town Security Title Company has been instructed to reconvey all remaining property to the Owner which it has done. Also, Owner has conveyed to and deposited with Town nineteen (19) shares of stock of Toquerville Irrigation Company.

2. Security. To ensure the completion of improvements to

the Subdivision, as hereinafter described, Owner may: 1) provide a bond to insure the completion of each phase of the project; or, 2) the Owner may record a lien in favor of the Town against the lots in each phase of the Subdivision and pledge all lots in phase as it is developed as security for completion of improvements in that phase as required by the Town, or 3) Owner may complete the improvements on a phase prior to requesting approval from the Town for that phase as provided herein after at Paragraph 3. If a lien is recorded, this lien shall apply against all lots in the phase of the Subdivision currently being developed except those lots not under Owner's control which have been conveyed to buyers by the Owner prior to the date of this Agreement and which are not subject to this Agreement.

(a) Foreclosure. This lien is to secure payment for the improvements required in this Agreement and shall provide that in the event of failure of the Owner to comply with the terms and conditions of this Agreement, the Town may foreclose its lien and sell enough lots on which it has a lien to complete the improvements required on the phase then under development. If foreclosure by the Town becomes necessary, the Town may sell the lots on which it has a lien and apply the proceeds to pay for the improvements to the phase of the Subdivision then being developed. If the sale proceeds are not sufficient to complete the improvements, the Town may pursue a

deficiency judgment against the Owner. The Town agrees that in enforcing its lien against the lots in the subdivision or in liquidating lots acquired in enforcing a deficiency judgment it will not sell such lots for less than eighty percent (80%) of their then appraised fair market value as determined by an independent appraisal of the lots.

(b) To ensure completion of improvements within the subdivision and particularly within the phase then being developed by Owner, Owner will not sell lots within an approved phase except upon the happening of either of the following events: (1) That Owner has installed the required improvements upon said Subdivision lot and Town has been notified in writing that said improvements have been installed and that Town approves the same, or (2) that the Owner deposits into the aforesaid Zions First National Bank account upon each sale of a lot sufficient funds to insure the completion of the improvements required in that phase or a portion thereof as follows: \$2,000 for single lots under the old plat or \$4,000 for a double lot under the old plat and \$6,000 for a triple lot under the old plat. Attached to this Agreement as Exhibit "B" is a list of all lots in the Amended plat, by number, identifying the number of lots from the old Subdivision included in each lot in the Amended Subdivision plat. Because the development and sale of the lots

within the subdivision may require several years, every three years there shall be an adjustment of the amount required to be deposited. The \$ 2,000, \$ 4,000 and \$ 6,000 deposits required herein shall be adjusted on January first of 1993, 1996 and January first of each third year thereafter in accordance with changes in the Consumer Price Index for "all items" in the table entitled "All Urban Consumers" (U Index) under "United States City Average" as published by the Bureau of Labor Statistics of the U. S. Department of Labor with 1990 being used as the base year. Town and Owner may also agree to adjustments based upon conditions that may then exist rather than using the Consumer Price Index. If improvements have been completed on a phase to the satisfaction and approval of the Town as specified in this Agreement, no deposit shall be necessary upon the sale of lots in that phase. With the completion and acceptance by the Town of all improvements in a particular phase of construction, the Town will authorize the release of all monies held for that phase to the Owner or its order, together with any interest that may have been earned on said monies. In the event that Owner shall desire to convey a lot, Owner shall request consent of the Town for conveyance based upon deposit of funds or representation by Owner of completion of improvements as provided above. If the Town does not respond to such request within thirty days of mailing such request, Owner may presume consent has been given.

(c) Release of Funds to Town. In the event that Owner has failed or neglected to install the required improvements in said Subdivision on or before the completion date for that phase of the Subdivision, then the money held in the Bank shall be given to Town. Town may use such funds to complete required improvements to that phase and may pursue its remedies provided herein if such funds are insufficient or shall disburse any excess funds to the Owner.

3. Phases. To facilitate orderly development and maintain control over the pace of work, the Owner agrees to develop the Subdivision in phases.

(a) Phases to be identified. Each phase to be developed by the Owner must be identified to the Town Council in a writing outlining the perimeter and the lot numbers to be developed before work is begun. Before work on that phase is begun, the Town Council must grant written approval for that phase. No more than two phases may be under construction at any time.

(b) Completion of Phases. Each phase shall be completed within three (3) years after approval is given by the Town to begin construction of that phase. Upon reasonable cause being shown, the Owner shall be entitled to extend the completion period for each phase up to an additional three (3) years, provided that the amount paid into the bank for the release of

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be given
0.82.
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each lot may be increased by an amount to be designated by the Town. The amount of the increase shall be reasonable and in line with increases of the prices of completing improvements to the lots and the conditions that may exist at the time the extension is granted. The extension of this completion period will be at the discretion of the Town, upon reasonable cause being shown, but consent will not be unreasonably withheld.

(c) Town Not Responsible. Any lot sold by the Owner which is not within the current phase of the Subdivision which is approved by the Town or not in a phase which has already been completed, must have a statement in the sales contract between Owner and the buyer of the lot that the Town of Toquerville has assumed no responsibility for completion of the improvements to that lot in that phase until it becomes part of an approved phase. Each sales Agreement to a purchaser outside an approved phase of the Subdivision will contain a statement that the Town of Toquerville will not assure that improvements to that phase will ever be made.

4. Improvements. It is agreed between the Town and the Owner that the required improvements to the Subdivision shall be as follows: Almond Park Drive shall be sixty-six (66) feet wide and all other roads within the Subdivision shall be fifty (50) feet wide in accordance with the plat approved by the Town. All

roads shall have six (6) inches of crushed gravel as a base and be covered with three (3) inches of cold-mix asphalt to a width of thirty (30) feet. All roads will be compacted prior to the installation of gravel and asphalt paving. Water and sewer pipes shall be installed to the specifications of the Town Engineer and specification of the Ash Creek Special Service District on either side of the paved strip in the unpaved portion of the road with laterals to each lot to be provided before asphalt paving is completed. Street lights shall be installed at each intersection and street identification signs shall be installed at all intersections and at any other places where it would be appropriate to properly identify streets. Fire hydrants shall be installed to the specifications of the Hurricane Fire Department. Drainage is to be properly installed so that all rainwater, irrigation waste water or reasonably anticipated runoff will drain off of lots into chanel and down the sides of the streets, through culverts at intersections and shall be designed to direct the flow into Ash Creek so that no unreasonable amounts of water will drain from one lot onto another lot. The nineteen (19) shares of Toqueruille Irrigation Company water previously described have been conveyed to the Town as herein provided and the Town will provide irrigation water to the buyers of the lots as requested by the buyers at an annual fee. ~~Irrigation ditches, built to the specifications of the Toqueruille Irrigation~~

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~~Company will be provided by the Owner to all lots and will be so situated that each of the lots can receive the irrigation water provided by the Town.~~

(a) Roads. The previous Agreement between the parties required that the road from Ash Creek Bridge to the north entrance of Almond Park Drive South (the West Field Road from the bridge to the Subdivision entrance) would be paved with asphalt. It is agreed that paving will not be required of the Owner so long as it will install two layers of chip and seal on that road.

(b) Fence. In conveying a lot to a buyer, Owner shall provide by deed restriction that all lots along the gorge will have a fence built by the buyer of that lot which will be non-climbable and not less than eight (8) feet in height.

(c) Inspection and Payment for Inspections. The Town will select an inspector to inspect all work completed within the Subdivision for compliance with State, County and Town legal requirements and requirements of this Agreement. The Owner will pay all required inspections at the amount billed by the inspector designated by the Town. The inspector will submit his bills to the Town of Toquerville which will forward them to the Owner and the Owner agrees to pay such bills to the town within thirty (30) days of their receipt.

5. Interest on Funds. It is agreed by the parties hereto, that Owner may deposit any and all funds paid for the release and conveyance of Subdivision lots in a savings account or in a certificate of deposit not to exceed a one (1) year term, provided said savings account or certificate of deposit is insured by the Federal Deposit Insurance Corporation, an entity of the United States Government. All interest that may be so earned on said monies shall become the property of Owner and shall be disbursed at the same time and in the same manner as provided for in Paragraph 2 above with respect to the disbursement of monies deposited hereunder by Owner.

6. Release of Liens. It is agreed by Owner and Town that the lien in favor of Town provided for and established in the aforesaid Agreement of May 3, 1972, and by this Agreement, shall be extinguished and released with respect to any and all portions of said property that is dedicated for public use in connection with the approval and recording of Subdivision plat or plats by Owner, and that said lien shall also be extinguished and released with respect to all Subdivision lots conveyed by Owner in accordance with the terms and conditions hereof. In view of the fact that the Agreement creating said lien in favor of Town has been recorded in the Washington County Recorder's Office, Town agrees, if requested by Owner, to execute and deliver a document capable of recordation, releasing said lien as and when

appropriate.

7. Irrigation Water. Town and Owner agree with respect to the nineteen (19) shares of irrigation water that have been deeded by Owner to Town that Owner shall have the right to use the irrigation water represented by all of said shares of stock until such time as the water is ^{is needed by the Town} ~~used by buyers of lots in the subdivision. Owner agrees to pay the irrigation assessments on each of said shares of stock until they are used by buyers of lots.~~

8. Further Development by Town. It is understood and agreed by the parties to this Agreement that if the Town should acquire ownership and possession of the Subdivision, or any part thereof, that the Town shall have the rights of owner and may choose to sell the lots as then platted, may sell the remaining portions of the Subdivision as a single parcel, or several parcels, and shall have the right to modify the required improvements in accordance with conditions that may then exist.

9. Costs of Enforcement. As between Town and Owner, it is agreed that should they default in any of the covenants or agreements contained herein, that the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee which may arise or accrue from enforcing this Agreement.

10. Controlling Agreement. Any of the terms in the

