

**NOTICE AND AGENDA
MIDWAY WATER ADVISORY BOARD
MONDAY, AUGUST 5, 2013**

Notice is hereby given that the Midway Water Advisory Board will hold their regular meeting Monday, August 5, 2013 at 6:00 p.m. in the Midway City Office Building at 75 North 100 West Midway, Utah. Notice of the meeting and agenda was posted in the Midway City Office Building, Main Street Station and 7-Eleven, a copy was sent to each of the Trustees and a copy posted on the Utah Meeting Notice Web Site.

The agenda shall be as follows:

1. Roll Call
2. General Consent Calendar:
 - a. Approve the Agenda for August 5, 2013
 - b. Approve the Minutes of the July 1, 2013 Meeting
3. Restated and Amended Water Lease for The Links (Cervino)–Discussion/Possible Action
4. Dutch Fields - Discussion with Water Advisory Board
5. New Business
6. Old Business
7. Board Reports
8. Adjourn

Dates this 29th day of July, 2013

Jennifer Sweat
Secretary

The order of individual items on this agenda is subject to change in order to accommodate the needs of the Board and those in attendance.

This agenda can be amended up to 24 hours before the meeting. Any Changes will be posted on the agenda located in the Midway City Office Building, 75 North 100 West Midway, Utah

If you are planning to attend this public meeting and need special assistance in accordance with the Americans with Disabilities Act, please notify Jennifer Sweat secretary for the Midway Water Advisory Board prior to the meeting at 435-654-3223 x 110.

General Consent Calender

MIDWAY WATER ADVISORY BOARD
MONDAY, JULY 1, 2013

Minutes of the Midway Water Advisory Board meeting held July 1, 2013 at 6:00 p.m. in the Midway City Office Building, 75 North 100 West, Midway, Utah.

Roll Call

Chairman/Mayor Connie Tatton, Vice Chairman Steve Farrell, Council Member Colleen Bonner, Irrigation Board members Doyle Wilson and Grant Kohler, Secretary Jennifer Sweat.

General Consent Calendar

Mayor Tatton called for a motion to approve the general consent calendar which includes the agenda for July 1, 2013 and the minutes of June 3, 2013 meeting.

Motion: Vice Chairman Steve Farrell made a motion to approve the General Consent Calendar, Board Member Doyle Wilson seconded the motion and it was carried unanimously.

Wright Subdivision – 131 West 970 South – Discuss and possibly take action.

Paul Berg, agent for the Wright Subdivision attended the meeting. He stated that the subdivision was located at 131 West 970 South, and it was a four (4) lot subdivision on 8.27 acres. There is already an existing home on one lot that is already connected to the City water. The lots would be connecting to existing pipeline on South boundary. The lot sizes are as follows: lot one, 1.99 acres, lot two, 1.96 acres, lot three, 3.41 acres and lot four, .9 acres, which the existing home is located on. The total amount of water that would need to be turned in would be eight (8) shares.

Mayor Tatton agreed that the number of shares should be eight (8) shares.

Mayor Tatton said there is only a two inch water line for this property and when did the applicant plan on building? As the line would have to be upsized.

Paul stated that was correct, they had just discovered that there was only a two inch water line on this property. The question right now is if they should put in the eight (8) inch water line in now, or wait and see what Saddle Creek PUD does. They will need to figure it out and whoever goes first and will then need a line extension agreement which will need to be signed so that the funds can be reimbursed.

Vice Chairman Farrell stated that the irrigation line needs to be replaced, because they do have problems with this line breaking quite often, and so the pipe would need to be replaced.

Paul stated that currently he does have a proposed easement agreement for the Midway Irrigation

Company. Vice Chairman Farrell stated that they should take a look at it, and maybe see what can be done. He suggested Paul can come to Midway Irrigation board meeting when they get closer to moving forward, and the irrigation company will not hold them up.

There was further discussion regarding extending the water line from a two inch to an eight inch line. It was decided that whoever puts in the water line, be it the Wrights or Saddle Creek, a line extension agreement will need to be done, and reimbursement will need to be done.

(Note: Information included in packet is in the supplemental file if needed for details.)

Mayor Tatton asked if there were any other questions?
There were no further questions.

Motion: Vice Chairman Steve Farrell made a motion to approve the Wright Subdivision, for eight shares of water to meet the requirements, and to work with the City in regards to the culinary water line on 970 South and to work with the irrigation company on the south boundary line for the secondary water. Council Member Colleen Bonner seconded the motion. It was carried unanimously.

Dutch Fields – Russ Watts – Discussion & Possible Action

Mayor Tatton stated that we had been contacted by Paul Berg before the meeting that Russ Watts wasn't ready to meet at this time. He was looking at further options and ideas, and so he would like to have the item continued.

Paul Berg was present for the 1st item on the agenda, and said he could discuss a few things that he had found out about Cunningham Lake. Paul stated that basically if they break the pressure at the intersection of Burgi and River Road that it only leaves 35 pounds by the time you get to 4th East and Michie Lane, which wouldn't work. Vice Chairman Farrell stated that he agreed that wouldn't work.

Grant Kohler arrived at the meeting at 6:25 p.m.

Further discussions were had about different ideas that could possibly work for Dutch Fields. The board and Paul Berg reviewed the Ditch Map to discuss the different options. As stated previously Russ Watts was not ready to move forward, and the item was continued to the next meeting.

Mayor Tatton asked Secretary Jennifer Sweat to please send the meeting minutes to Russ Watts and Paul Berg from the previous meeting. Jennifer stated she would make sure to email the minutes to them both.

Mayor Tatton stated that there is more than one issue on Dutch Fields Water besides what we have discussed tonight: it's the contribution to the well, the system fee, putting it into the Snake Creek Well, which the city has no rights to that well and there are a lot of issues. Paul agreed, she felt that Vice Chairman Farrell is just looking at what options are available to get the Cunningham Lake water into the irrigation system, which may open up other possibilities.

Vice Chairman Farrell stated that he had recently went on tour with the State, and he showed her the Cunningham Lake, and he felt that the way to go would not be to file another Change Application, because she didn't feel the source was there. The best thing to do would be to live with the change application that was already approved. She was expecting it to be a lake, not a slew.

Paul Berg also wanted to let the board know that he wasn't totally creative with the numbers he presented last month. He looked back to 2003 and they had always proposed the well would be .9 acre feet per unit, which is the state engineer policy. Whether that was right or not that was the number that had always been used.

Mayor Tatton thanked Paul, and said we would hopefully see them next month.

New Business/Old Business/Board Reports

There was no New Business/Old Business or Board Reports.

Mayor Tatton moved for adjournment, Council Member Colleen Bonner seconded the motion

Mayor Tatton adjourned the meeting @ 6:45 p.m.

Restated and Amended Water Lease for
The Links (Cervino)-
Discussion/Possible Action

AMENDED AND RESTATED WATER LEASE

(The Links at the Homestead)

THIS AMENDED AND RESTATED WATER LEASE (this "Amended and Restated Water Lease") is entered into as of this ___ day of June, 2013 by and among MIDWAY CITY (the "City"), a Utah municipal corporation, MIDWAY IRRIGATION COMPANY (the "Company"), a Utah non-profit corporation, the City and the Company acting for and on behalf of the MIDWAY CITY WATER ADVISORY BOARD (the "Water Advisory Board") and RESET MIDWAY, LLC ("Reset Midway"), a Utah limited liability company and the successor in interest of UHB.

RECITALS

- A. On January 1, 2007, the City, the Company and UHB entered into that certain water lease (the "Original Water Lease") to provide water for UHB's planned unit development in the City, known as The Links at the Homestead PUD ("Project").
- B. The Project originally was approved for 57 equivalent residential units on 26.14 acres, of which 19.5 acres would be irrigated.
- C. The City also required, as a condition to approval of the Project, that UHB provide for the Project 115.5 acre feet of water for culinary and irrigation use (the "Project's Water Requirements") (included within this 115.5 acre feet of water requirements were 4.5 acre feet of water for which UHB was given credit due to three pre-existing connections for three pre-existing structures on the Project property).
- D. The City also required that UHB participate in the development of source, transportation, treatment, and storage systems ("System Costs") for that portion of the Leased Water to be used as culinary water. In connection therewith, UHB was required to pay to the City \$11,500 per acre foot of the Project's culinary water requirement that was to be satisfied by the Leased Water for a total payment of \$465,750.00. This \$465,750.00 was to be paid by UHB in order to help defray the System Costs. Since entering into the Original Water Lease, UHB has paid, and the City and the Company acknowledge and agree that they have received, the \$465,750.00 payment contribution from UHB for the System Costs.
- E. UHB has contributed to the City and the City has accepted 13.5 shares of Company stock to satisfy 40.5 acre feet of the Project's Water Requirements.
- F. The City agreed to provide, has provided and shall continue to provide culinary water to the Project's individual lots and buildings using the culinary portion of the Project's Water Requirements pursuant to the terms of this Amended and Restated Water Lease.
- G. The Company has agreed to deliver, has delivered and shall continue to deliver secondary water to irrigate the Project's lots and common areas, using the irrigation portion of

the Project's Water Requirements, pursuant to the terms of this Amended and Restated Water Lease.

H. The City has available non-culinary grade water, part of which the City has obtained through a third party contract, and which is managed by the Water Advisory Board.

I. The Water Advisory Board recommended and the City approved the lease of 70.5 acre feet of non-culinary grade water to the Developer to meet a portion of the Project's Water Requirements. This non-culinary grade water has been provided by the Company to the Developer under the Original Water Lease and shall continue to be provided to the Developer pursuant to the terms and conditions of this Amended and Restated Water Lease.

J. The Water Advisory Board recommended and the City approved the lease of 40.5 acre feet of culinary grade water to the Developer to meet a portion of the Project's Water Requirements. This culinary grade water has been provided by the Company to the Developer under the Original Water Lease and shall continue to be provided to the Developer pursuant to the terms and conditions of this Amended and Restated Water Lease.

K. The Water Advisory Board, the City and the Company agree and acknowledge that the water contributions previously made by the Developer to the City combined with the Developer's lease of the culinary and non-culinary water under this Amended and Restated Water Lease fulfill all of the Project's Water Requirements and that no additional water contributions of any kind are required to be made by the Developer or any other person for the Project.

L. Since at least January 1, 2010, the cost for leasing the water provided to the Project under the Original Water Lease has been a total, annual lease payment of TWENTY-TWO THOUSAND AND SEVENTY-SIX AND NO/100 DOLLARS (\$22,076.00).

M. On or about September 11, 2011, UHB sold, transferred, assigned and conveyed to Reset Midway any and all rights, titles and interests that UHB possessed, held or controlled in the Project, the real property comprising the Project and the agreements, contracts and instruments related thereto including, without limitation, UHB's rights, interests and powers under (i) the Original Water Lease and (ii) as Declarant of the Declaration of Covenants, Conditions and Restrictions for The Links at the Homestead recorded with the Wasatch County Recorder on or about July 12, 2006, as amended.

N. The City has approved UHB's assignment and delegation of all its rights, interests and duties as Declarant to Reset Midway.

O. The Water Advisory Board, the City and the Company have approved UHB's assignment and delegation of all its rights, interests and duties under the Original Water Lease to Reset Midway.

P. Concurrently with the execution of this Amended and Restated Water Lease, Reset Midway has paid the \$22,076.00 water lease payment due for January 1, 2013.

Q. The City, the Company, the Water Advisory Board and Reset Midway desire to enter into this Amended and Restated Water Lease in order to acknowledge the performances that have occurred, accept the conditions that have been satisfied, the assignments that have been made and the other changes provided herein.

AGREEMENT

NOW THEREFORE, for the payment of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration acknowledged and received this day, the City, the Company, the Water Advisory Board and Reset Midway hereby covenant and agree as follows:

1. Definitions.

1.1 “Amended and Restated Water Lease” has the meaning given in the introductory paragraph.

1.2 “City” means Midway City, Utah.

1.3 “Company” means Midway Irrigation Company, a Utah non-profit corporation.

1.4 “CUP M&I water” means the Municipal & Industrial Water from the Bonneville Unit of the Central Utah Project, sold by Central Utah Water Conservancy District to the Wasatch County Special Service District No.1.

1.5 “Developer” means Reset Midway or any assignee or successor in interest of Reset Midway.

1.6 “HOA” means The Links at The Homestead Owners’ Association, Inc., a Utah non-profit corporation and the homeowners association for the Project.

1.7 “Lease Payment” means the payment described in Section 3.1.

1.8 “Leased Water” means the water leased to the Developer described in Section 2.

1.9 “New Developer” means the person or entity to whom the Developer proposes to assign its right and to delegate its obligation under this Water Lease as provided in Section 6.

1.10 “Original Water Lease” means the Water Lease entered into by and among the City, the Company and UHB on January 1, 2007.

1.11 “Project” means The Links at the Homestead PUD also known as Cervino.

1.12 “**Project’s Water Requirements**” means 115.5 acre feet of water that the Developer is required to provide for the Project for culinary and irrigation use.

1.13 “**Reset Midway**” means Reset Midway, LLC, a Utah limited liability company and the assignee and successor in interest of UHB.

1.14 “**System Costs**” means the costs described in Recital Paragraph D.

1.15 “**Third Party Contract**” means the agreement, including a lease, by which the Water Advisory Board, City, or Company obtains water for the Project. The Company shall insure that any water that the Company acquires from third parties (or from the Company itself) for the use of the Project including, without limitation, from the Homestead, its successors and assigns (the “**Homestead**”), shall be reasonably filtered and of a quality to avoid providing an unreasonable burden and/or cost upon the Developer when it seeks to use such water. For example and for illustration purposes only, in calendar year 2012 the water provided from the Homestead had so much particulate matter and other solids in it that the Developer was compelled to clean its irrigation filters every other day or more often. Likewise, new capital improvements consisting of new filtration systems had to be contributed by Developer to use this water in the Project. The lack of quality water causing such actions required to be undertaken by Developer were separately and/or collectively unreasonably burdensome on the Developer. The Company and Water Advisory Board shall prevent such events from occurring again.

1.16 “**UHB**” means Utah Home Building Company, a Utah corporation, the original developer of the Project and the assignor to Reset Midway.

1.17 “**Water Advisory Board**” means the City and Company acting as managers of the City’s available water.

2. Leased Water.

The City, upon recommendation of the Water Advisory Board, has agreed to lease to Developer 115.5 acre fee of culinary and irrigation water, of which 45.0 acre fee shall be for culinary use and 70.5 acre feet shall be for untreated irrigation water pursuant to the terms and provisions of this Amended and Restated Water Lease (the “**Leased Water**”). The Developer may use the Leased Water only to fulfill the Project’s Water Requirements and the City’s culinary water policy and for no other purpose.

3. Lease Payments.

3.1 Upon execution of this Amended and Restated Water Lease, the Developer and/or its successors or assigns shall be obligated to pay a total of TWENTY-TWO THOUSAND AND SEVENTY-SIX AND NO/100 DOLLARS (\$22,076.00) annually for the Leased Water (the “**Lease Payment**”). The Developer shall be obligated to make the Lease Payment whether or not it actually makes use of the Leased Water.

3.2 The Developer and/or its successors or assigns shall make the Lease Payment in annual installments beginning January 1, 2014 and thereafter on January 1 of each year following execution of this Amended and Restated Water Lease.

3.3 The Developer shall pay all amounts due and payable under this Amended and Restated Water Lease on the due date. Past due amounts shall bear interest at the rate of 1.5% per month until paid.

4. Adjustment of Lease Payment.

Effective on January 1 of each year, the Lease Payment shall be increased, but not decreased, to match that year's actual percentage increase, if any, in the cost to the City for CUP M&I Water. For the purposes of this adjustment, the City's cost of CUP M&I water shall mean the price and expenses charged by Wasatch County Special Service Area No. 1 to the City for CUP M&I Water under the Agreement for Sale of Untreated CUP Municipal and Industrial Water for Indoor Culinary Quality Uses. The price and expenses for the CUP M&I Water includes all costs imposed by Wasatch County Special Service Area No.1 on the City for the right to use the CUP M&I water including, but not limited to, costs of operation and maintenance, reserve fund requirements, carriage charges, or other required costs or charges.

5. Lease Term and Renewal.

The term of this Amended and Restated Water Lease shall be for ninety-nine (99) years. The parties intend that the Developer shall lease the water in perpetuity. The lease term shall therefore automatically renew for additional ten (10) year terms thereafter subject only to such amendments, modifications or additions as the Water Advisory Board and the City and Company may reasonably require.

6. Assignment.

6.1 Except as expressly stated in this Section 6, the Developer shall not assign its rights or delegate its obligations under this Amended and Restated Water Lease. Without limiting the foregoing and notwithstanding any other provision of this Amended and Restated Water Lease, the Developer is absolutely, and without exception, prohibited from subleasing the Leased Water for any reason.

6.2 Assignment to New Developer.

6.2.1 The Developer may assign its obligations to a New Developer, only if the Water Advisory Board gives its prior written approval as provided in this Section 6.2. A "**New Developer**" is a person or entity: (i) to whom the Developer has sold all the land within the Project; and (ii) who has undertaken to complete the approval process and to construct the improvements required by the City's approvals. Unless the person or entity satisfies both of the conditions in the immediately preceding sentence, the Developer cannot assign this Amended and Restated Water Lease to that person or entity.

6.2.2 Not less than forty-five days before the proposed assignment, the Developer shall submit to the Water Advisory Board a written request for approval of the assignment under this Section 6.2. The written request shall include:

6.2.2.1 A written assignment agreement setting forth all terms of the assignment.

6.2.2.2 Sufficient information about the New Developer to permit the Water Advisory Board to determine the ability of the New Developer to make the Lease Payment and to complete the Project. This information shall include but not be limited to: (i) the New Developer's financial statements for three prior years of operation, a description of other developments or similar projects completed by the New Developer, (iii) names of the New Developer's officers and key personnel and their experience in real estate development. (iv) a list of litigation involving the New Developer commenced in the prior five years and a description of its status, (v) a written acknowledgment from the New Developer that the Leased Water may only be used for the Project, and (v) such other additional information that the Water Advisory Board may reasonably request.

6.2.2.3 Upon submission of a fully completed request, the Water Advisory Board may approve the assignment or may withhold approval on any reasonable basis, not limited to the matters listed in this Section 6.2.2.

6.3 Assignment to the HOA.

6.3.1 Upon the Developer's sale of all seventy-five percent (75%) or more of all of the lots within all phases of the Project, the Developer may assign and delegate its rights, interests and obligations under this Amended and Restated Water Lease to the HOA.

6.3.2 Not less than forty-five (45) days prior to the assignment to the HOA, the Developer shall submit to the Water Advisory Board a written request for assignment to the HOA including such documents establishing that the HOA is validly existing and in good standing under Utah law.

6.3.3 Upon submission of a fully completed request, the Water Advisory Board will promptly approve the assignment by the Developer to the HOA unless the Water Advisory Board possesses good faith, reasonable grounds for refusing to consent to such an assignment. If the Water Advisory Board refuses to consent to such an assignment, it will give written notice to the Developer of its reasonable grounds for refusal. The

Developer may then take the actions necessary to address the Water Advisory Board's reasons for refusal and if the Developer satisfactorily addresses or cures the same, the Water Advisory Board will approve the assignment to the HOA.

6.3.4 If the Water Advisory Board approves the assignment to the HOA, the City or the Company may, but are not required to, bill individual owners of the Project's lots or residential units for their proportionate share of the Lease Payment.

7. Notice of Water Lease.

7.1 Notice of Amended and Restated Water Lease. Upon execution of this Amended and Restated Water Lease, the parties shall execute and record with the Wasatch County Recorder a Notice of Amended and Restated Water Lease notifying purchasers of property within the Project of this Amended and Restated Water Lease and the possible delegation of the Developer's obligations under the Water Lease to the HOA.

7.2 Provision in Project's Amended and Restated Declaration of Covenants, Conditions, and Restrictions. The Developer shall include in the Project's Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Links At The Homestead a provision describing: (a) the Water Lease, (b) the Developer's ability to assign the obligations of the Water Lease to the HOA and, (c) the City's and Company's option to bill lot owners directly for the Lease Payment.

8. Force Majeure.

8.1 "***Force Majeure***" means any event: (a) that is beyond the reasonable control of the claiming party; and (b) that the claiming party is unable to prevent or provide against by exercising prudent operating practices, including the following events or circumstances, but only to the extent that they satisfy the preceding requirements: acts of war, public disorder, insurrection, or rebellion; drought, floods, hurricanes, earthquakes, lightning, storms, and other natural calamities; explosions or fires; strikes, work stoppages or labor disputes; embargoes; and sabotage.

To the extent that the Leased Water is obtained pursuant to a Third-Party Contract, Force Majeure shall include a Force Majeure or any reduction in water delivered under the Third-Party Contract. For the duration of such a Force Majeure or reduction, the Force Majeure or reduction shall result in a proportionate reduction in the Water Advisory Board's obligation to provide Leased Water under this Amended and Restated Water Lease.

To the extent that drought or other similar interruption in the water available to the City results in a City or Company policy reducing or rationing water, a Force Majeure shall exist and the Leased Water available under this Amended and Restated Water Lease shall be reduced pursuant to the City's or Company's policy.

Force Majeure shall not be based on (a) the Developer's ability to purchase water at a lower price or to more economically obtain water from another source, or (b) the Water Advisory Board's ability to sell the Leased Water at a price greater than the Lease Payment.

8.2 To the extent either party is unable to perform, in whole or in part, its obligations under this Amended and Restated Water Lease due to a Force Majeure, claiming party shall be excused from performance of its obligations which it is unable to perform due to a Force Majeure provided that the claiming party gives notice and details of the Force Majeure to the other party as soon as practicable.

8.3 A Force Majeure shall not excuse performance of an obligation to make payments then due or becoming due prior to the Force Majeure.

8.4 The claiming party shall remedy the Force Majeure with all reasonable dispatch and shall only be excused from performance for the duration of the Force Majeure and of the time period within which the claiming party could not have reasonably remedied the Force Majeure.

8.5 The non-claiming party shall not be required to perform or resume performance of its obligations to the claiming party corresponding to the obligations of the claiming party, excused by Force Majeure.

9. Indemnification.

Except for claims arising out of acts caused by the negligence or intentional misconduct of the City, Company or their respective agents, until such time as the Developer assigns its rights, interests and obligations under this Amended and Restated Water Lease to the New Developer and/or the HOA, the Developer shall defend, indemnify, and hold the City and Company harmless from and against any claim, loss, expense or damage to any person or property arising out of (a) the use of the water, or (b) any act or neglect of the Developer, Lot owners, residents or invitees on the Project, or (c) any act or neglect of the Developer's servants, employees or agents. If the City or Company make any expenditures or incurs any obligations for the payment of money in connection therewith including, but not limited to, legal fees in instituting, prosecuting, or defending any action or proceeding, such payments or obligations, plus interest and costs, shall be reimbursed to the City or Company by the Developer, within thirty (30) days after the City or Company submits a bill or statement therefor.

10. Default.

For the purposes of this Amended and Restated Water Lease, a "**Default**" shall mean the occurrence of any of the following:

10.1 The failure to make, when due, any payment required pursuant to this Amended and Restated Water Lease. If such failure is not remedied within three (3) business days after written notice.

10.2 The failure to comply with any other covenant of this Amended and Restated Water Lease, if such failure is not remedied within thirty (30) days after the non-defaulting party's delivery to the defaulting party of receipt of a written notice describing the alleged failure. 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. If the Default is cured, then no Default shall exist and the noticing party shall take no further action.

10.3 The bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, including without limitation proceedings under Title 11, Chapter 9, United States Code or other proceedings for relief under any federal or state bankruptcy law or similar law for the relief of debtors, are instituted by or against the Developer or the Company and, if so instituted, said proceedings are consented to or are not dismissed within thirty days after such institution.

11. Remedies for a Default.

11.1 Suspend Performance. The non-defaulting may suspend performance of its obligations until the defaulting party cures the Default. Suspension of the non-defaulting party's performance shall not affect nor in any way limit or suspend the obligations of the defaulting party to perform, and the non-defaulting party shall remain liable for all of its obligations under this Amended and Restated Water Lease as if the non-defaulting party had fully performed.

11.2 Limitation on Damages and Remedies.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AMENDED AND RESTATED WATER LEASE SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER

BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

12. Miscellaneous Provisions.

12.1 Authorized Representatives of the Parties. The Parties hereby designate the signatories below as their respective representatives who are authorized to act in its behalf with respect to those matters contained in this Amended and Restated Water Lease. Each party hereto may change the designation of its authorized representative(s) upon oral notice given to the other, confirmed promptly by written notice.

12.2 Notices. All notices, requests, statements or payments shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic mail. Notice by facsimile, electronic mail, or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a business day, and otherwise shall be effective at the close of business on the next business day. Notice by overnight United States mail or courier shall be effective on the next business day after it was sent. A party hereto may change its addresses by providing notice of such change in accordance herewith.

12.3 Relationship of Parties. Nothing in this Amended and Restated Water Lease is intended nor shall be construed to create a relationship of partnership, joint venture, or agency between the parties to the Amended and Restated Water Lease. Nothing in this Amended and Restated Water Lease, whether express or implied, is intended to confer any rights or remedies under or, by reason of this Amended and Restated Water Lease, on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Amended and Restated Water Lease intended to relieve or discharge the obligation or liability of any third persons to any party to this Amended and Restated Water Lease, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Amended and Restated Water Lease. The parties hereto reserve the right to amend or modify this Amended and Restated Water Lease without the consent of any third-party. Without limiting the generality of

the provisions of this Section, the Parties expressly disclaim any intent to give the owners of lots in the Project any rights under this Amended and Restated Water Lease.

12.4 Waivers. Any waivers at any time by either party to the Amended and Restated Water Lease of its rights with respect to a default or any other matter arising under or in connection with the Amended and Restated Water Lease shall not be deemed a waiver with respect to any subsequent default or matter.

12.5 Entire Agreement. This Amended and Restated Water Lease shall form a single integrated agreement between the parties hereto and embody the entire understanding between the parties hereto. There are no prior representations or warranties concerning the subject matter between the parties relating hereto.

12.6 Modifications. Any modification of this Amended and Restated Water Lease or additional obligation assumed by either party hereto in connection with this Amended and Restated Water Lease shall be binding only if evidenced in writing signed by each party hereto or an authorized representative of each party hereto. The parties hereto reserve the right to amend or modify this Amended and Restated Water Lease without the approval of any third-party.

12.7 Attorneys' Fees. In the event that any lawsuit is filed in relation to this Amended and Restated Water Lease, whether to interpret, enforce or otherwise apply it, the unsuccessful party in the action shall pay to the successful party in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

12.8 Terms Survive. The provisions of this Amended and Restated Water Lease shall survive the Amended and Restated Water Lease's termination or expiration to the extent necessary to accomplish their purpose and to permit their full performance. Without limiting the foregoing, the provisions of Section 6 shall survive termination or expiration of this Amended and Restated Water Lease.

12.9 Severability. In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision(s) of this Amended and Restated Water Lease, which shall remain in full force and effect (to the maximum extent permitted by applicable law), and such affected provision shall be construed, narrowed or eliminated only to the extent necessary to remove any such invalidity, illegality or unenforceability with respect to the applicable law as it shall then be applied.

12.10 Counterparts; Facsimile & Emailed Signatures. This Amended and Restated Water Lease may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument, and all signed counterparts shall be deemed to be part of the original Amended and Restated Water Lease. Facsimile and emailed signatures shall bind the party transmitting such signature to the same extent as an original.

12.11 Construction. The parties hereto have participated jointly in the negotiation and drafting of this Amended and Restated Water Lease. In the event an ambiguity or question of intent or interpretation arises, this Amended and Restated Water Lease shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Amended and Restated Water Lease. The terms and provisions of this Amended and Restated Water Lease shall completely supersede and replace the terms and provisions of the Original Water Lease. The introductory paragraph and recital paragraphs set forth above are incorporated in the agreement of this Amended and Restated Water Lease by this reference. The section and other headings contained in this Amended and Restated Water Lease are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of this Amended and Restated Water Lease. Whenever the context reasonably permits, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof. Further, the masculine gender shall include the female gender and neuter, and vice versa.

[This page purposely ends at this point. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereby enter into this Amended and Restated Water Lease as of the date first set forth above.

MIDWAY IRRIGATION COMPANY,
a Utah non-profit corporation

MIDWAY CITY

By: _____

Title: _____

Dated: _____

By: _____

Name: _____

Title: _____

Dated: _____

MIDWAY CITY WATER ADVISORY
BOARD

By: _____

Name: _____

Title: _____

Dated: _____

RESET MIDWAY, LLC,
a Utah limited liability company

By: _____

Name: Richard A. Cook

Title: Manager

Dated: _____

Dutch Fields – Russ Watts

New Business/Old Business/Board
Reports
