



Control Number: 46120



Item Number: 54

Addendum StartPage: 0

**PUC DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS**

RECEIVED

2017 JAN 17 AM 10: 01

**CITY OF MIDLOTHIAN NOTICE OF
INTENT TO PROVIDE WATER
SERVICE TO LAND DECERTIFIED
FROM MOUNTAIN PEAK SPECIAL
UTILITY DISTRICT**

§
§
§
§
§

**BEFORE THE PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
PUBLIC UTILITY COMMISSION
OF TEXAS**

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S SECOND SUPPLEMENTAL
RESPONSES TO CITY OF MIDLOTHIAN'S FIRST SET OF REQUESTS FOR
INFORMATION AND REQUEST FOR ADMISSION TO MOUNTAIN PEAK SPECIAL
UTILITY DISTRICT**

Mountain Peak Special Utility District ("Mountain Peak") files these Second Supplemental Responses to the City of Midlothian's ("City") First Set of Requests for Information and Request for Admission to Mountain Peak Special Utility District. Mountain Peak Special Utility District agrees and stipulates that all parties may treat these responses as if the answers were filed under oath.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: /s/ Mallory Beck
Leonard Dougal - State Bar No. 06031400
Mallory Beck - State Bar No. 24073899
100 Congress, Suite 1100
Austin, Texas 78701
E: ldougal@jw.com
T: (512) 236 2233
F: (512) 391-2112

David A. Miller – State Bar No. 14067025
MILLER MENTZER WALKER, P.C.
P.O. Box 130
Palmer, Texas 75152
E: dmiller@milmen.com
T: (972) 845-2222
F: (972) 845-3398

ATTORNEYS FOR MOUNTAIN PEAK
SPECIAL UTILITY DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of January 2017, a true and correct copy of the foregoing document was served on the individuals listed below by hand delivery, email, facsimile or First Class Mail.

Patrick W. Lindner
Paul M. Gonzalez
Davidson, Troilo, Ream, & Garza, P.C.
601 NW Loop 410, Suite 100
San Antonio, Texas 78216
Telephone: (210) 349-6484
Facsimile: (210) 349-0041
Email: plindner@davidsontroilo.com

Attorney for City of Midlothian, Texas

Sam Chang
Stephen Mack
Attorney-Legal Division
Public Utility Commission
1701 N. Congress
P. O. Box 13326
Austin, Texas 78711-3326
sam.chang@puc.texas.gov
stephen.mack@puc.texas.gov
512-936-7261
512-936-7442
512-936-7268 (Facsimile)

Attorney for the Public Utility Commission of Texas

/s/ Mallory Beck

Mallory Beck

**PUC DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS**

CITY OF MIDLOTHIAN NOTICE OF INTENT TO PROVIDE WATER SERVICE TO LAND DECERTIFIED FROM MOUNTAIN PEAK SPECIAL UTILITY DISTRICT	§ § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
---	-----------------------	--

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S RESPONSES TO
CITY OF MIDLOTHIAN'S FIRST SET OF REQUESTS FOR INFORMATION AND
REQUEST FOR ADMISSION TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

City's RFI No. 1-1. If you cannot unequivocally admit the foregoing request (RFA No. 1-1), identify the real property rendered useless or valueless to Mountain Peak, in whole or part, as a result of the decertification in Docket No. 44394, including, for each parcel, the date and purchase price of the property, any current or planned uses for the property, any appraisals related to the property, and information on remaining debt service for loans or bonds to acquire the same.

RESPONSE:

All real property associated with the water facilities which were rendered useless or valueless, in whole or in part, by the decertification in PUC Docket No. 44394 are set forth in the documents responsive to this request. In addition, a 2.06-acre tract of land was rendered useless or valueless to Mountain Peak SUD as a result of the decertification. Pursuant to 16 Tex. Admin. Code § 22.144(c)(2)(E), please see documents produced in response to this request bates labeled MPSUD02990-03290 and documents enclosed herein bates labeled MPSUD03890-03947.

Prepared/Sponsored by: Randel Kirk
 General Manager
 Mountain Peak Special Utility District

**PUC DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS**

CITY OF MIDLOTHIAN NOTICE OF INTENT TO PROVIDE WATER SERVICE TO LAND DECERTIFIED FROM MOUNTAIN PEAK SPECIAL UTILITY DISTRICT	§ § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
---	-----------------------	--

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT’S RESPONSES TO
CITY OF MIDLOTHIAN’S FIRST SET OF REQUESTS FOR INFORMATION AND
REQUEST FOR ADMISSION TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

- City’s RFI No. 1-4.** Identify any water service facilities of Mountain Peak located within the Park Property, including for each facility:
- a. A description and the location;
 - b. Any service requests, studies, reports or other documents establishing the need for the facility;
 - c. The dates of Mountain Peak’s decision to build, of construction, and of placement into service;
 - d. The costs of design and of construction;
 - e. The date(s), purpose(s) and design/construction costs of any expansion(s);
 - f. [withdrawn]
 - g. [withdrawn].

RESPONSE:

Pursuant to 16 Tex. Admin. Code § 22.144(c)(2)(E), please see documents produced in response to this Request bates labeled MPSUD00001-00324 and MPSUD02401-02415. Please also see documents produced in response to this Request bates labeled MPSUD03291-03406 and documents enclosed herein bates labeled MPSUD03985-03987.

Prepared/Sponsored by: Randel Kirk
 General Manager
 Mountain Peak Special Utility District

PUC DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS

CITY OF MIDLOTHIAN NOTICE OF § BEFORE THE
INTENT TO PROVIDE WATER §
SERVICE TO LAND DECERTIFIED § PUBLIC UTILITY COMMISSION
FROM MOUNTAIN PEAK SPECIAL §
UTILITY DISTRICT § OF TEXAS

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S RESPONSES TO
CITY OF MIDLOTHIAN'S FIRST SET OF REQUESTS FOR INFORMATION AND
REQUEST FOR ADMISSION TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

- City's RFI No. 1-7. Identify any water service facilities of Mountain Peak located within 1000 feet of (but not on or within) the Park Property, including for each facility:
- a. A description and the location;
 - b. Any service requests, studies, reports or other documents establishing the need for the facility;
 - c. The dates of Mountain Peak's decision to build, of construction, and of placement into service;
 - d. The costs of design and of construction;
 - e. The date(s), purpose(s) and design/construction costs of any expansion(s);
 - f. [withdrawn]
 - g. [withdrawn].

RESPONSE:

Subject to Mountain Peak's pending objection to subsection (c), pursuant to 16 Tex. Admin. Code § 22.144(c)(2)(E), please see documents produced in response to this Request bates labeled MPSUD00001-00324 and MPSUD02401-02415 and documents enclosed herein bates labeled MPSUD03985-03987.

Prepared/Sponsored by: Randel Kirk
General Manager
Mountain Peak Special Utility District

**PUC DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS**

CITY OF MIDLOTHIAN NOTICE OF INTENT TO PROVIDE WATER SERVICE TO LAND DECERTIFIED FROM MOUNTAIN PEAK SPECIAL UTILITY DISTRICT	§ § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
---	-----------------------	--

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT’S RESPONSES TO
CITY OF MIDLOTHIAN’S FIRST SET OF REQUESTS FOR INFORMATION AND
REQUEST FOR ADMISSION TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

City’s RFI No. 1-8. If you cannot unequivocally admit the foregoing request (RFA No. 1-7), identify and describe each impairment of service a Mountain Peak water customer has experienced as a result of the decertification, including the identity and service location of each customer, reports or documents relied upon by Mountain Peak in asserting this belief, and any actions under taken by Mountain Peak to resolve the impairment of service.

RESPONSE:

All of Mountain Peak’s customers have been negatively affected by the decertification of the Park Property resulting in an impairment of their service. The decertification delays the full utilization of Mountain Peak’s facilities and, thus, prevents Mountain Peak from recovering the proportional share of fixed costs in the timeframe that would have occurred without decertification. Moreover, a water loop system was envisioned as part of the development of the Park Property which will now be left to existing customers.

Prepared/Sponsored by: Randel Kirk
 General Manager
 Mountain Peak Special Utility District

**PUC DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS**

CITY OF MIDLOTHIAN NOTICE OF INTENT TO PROVIDE WATER SERVICE TO LAND DECERTIFIED FROM MOUNTAIN PEAK SPECIAL UTILITY DISTRICT	§ § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
---	-----------------------	--

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S RESPONSES TO
CITY OF MIDLOTHIAN'S FIRST SET OF REQUESTS FOR INFORMATION AND
REQUEST FOR ADMISSION TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

City's RFI No. 1-16. Identify and Produce any document that includes Mountain Peak's long range plans to construct or acquire facilities that would specifically and directly provide water service to the Park Property.

RESPONSE:

Please see the documents produced in response to this Request bates labeled MPSUD00358-00359 and MPSUD02416-02456 and documents enclosed herein bates labeled MPSUD03948-03983.

Prepared/Sponsored by: Randel Kirk
 General Manager
 Mountain Peak Special Utility District

**PUC DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS**

CITY OF MIDLOTHIAN NOTICE OF	§	BEFORE THE
INTENT TO PROVIDE WATER	§	
SERVICE TO LAND DECERTIFIED	§	PUBLIC UTILITY COMMISSION
FROM MOUNTAIN PEAK SPECIAL	§	
UTILITY DISTRICT	§	OF TEXAS

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT’S RESPONSES TO
CITY OF MIDLOTHIAN’S FIRST SET OF REQUESTS FOR INFORMATION AND
REQUEST FOR ADMISSION TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

City’s RFI No. 1-18. Provide documents reflecting expenditures for the planning, design, and/or construction of Mountain Peak facilities that would specifically and directly provide water service to the Park Property.

RESPONSE:

Please see the documents produced in response to this Request bates labeled MPSUD00001-00324, MPSUD00358-00359, MPSUD02401-02415, and MPSUD03291-03406 and documents enclosed herein bates labeled MPSUD03948-03983 and MPSUD03985-03987.

Prepared/Sponsored by: Randel Kirk
 General Manager
 Mountain Peak Special Utility District

**PUC DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS**

CITY OF MIDLOTHIAN NOTICE OF INTENT TO PROVIDE WATER SERVICE TO LAND DECERTIFIED FROM MOUNTAIN PEAK SPECIAL UTILITY DISTRICT	§ § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
---	-----------------------	--

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S RESPONSES TO
CITY OF MIDLOTHIAN'S FIRST SET OF REQUESTS FOR INFORMATION AND
REQUEST FOR ADMISSION TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

City's RFI No. 1-22. Identify and Produce any document that evaluates the impact a proposed subdivision service extension to serve the Park Property will make on Mountain Peak's water supply system.

RESPONSE:

Please see the documents produced in response to this Request bates labeled MPSUD02324-02364 and MPSUD02457-02476 and documents enclosed herein bates labeled MPSUD03948-03983.

Prepared/Sponsored by: Randel Kirk
 General Manager
 Mountain Peak Special Utility District

**PUC DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS**

CITY OF MIDLOTHIAN NOTICE OF INTENT TO PROVIDE WATER SERVICE TO LAND DECERTIFIED FROM MOUNTAIN PEAK SPECIAL UTILITY DISTRICT	§ § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
---	----------------------------------	--

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S RESPONSES TO
CITY OF MIDLOTHIAN'S FIRST SET OF REQUESTS FOR INFORMATION AND
REQUEST FOR ADMISSION TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

City's RFI No. 1-24. Produce deeds to Mountain Peak for any property located within 1000 feet of the Park Property and any documents setting for the reason(s) for acquisition of such property.

RESPONSE:

The documents requested are equally available to Midlothian through county records. However, please see the documents produced in response to this Request bates labeled MPSUD02365-02391, MPSUD 02457-02476, MPSUD02990-03290 and documents enclosed herein bates labeled MPSUD03890-03947.

Prepared/Sponsored by: Randel Kirk
 General Manager
 Mountain Peak Special Utility District

**PUC DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS**

CITY OF MIDLOTHIAN NOTICE OF INTENT TO PROVIDE WATER SERVICE TO LAND DECERTIFIED FROM MOUNTAIN PEAK SPECIAL UTILITY DISTRICT	§ § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
---	-----------------------	--

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT’S RESPONSES TO
CITY OF MIDLOTHIAN’S FIRST SET OF REQUESTS FOR INFORMATION AND
REQUEST FOR ADMISSION TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

City’s RFI No. 1-31. If you cannot unequivocally admit the foregoing request (RFA No. 1-14), explain the factual basis for your belief that the usefulness and/or value of the facilities has decreased as a result of the decertification, identifying specifically which facilities were affected and the amount of any decrease in usefulness or value.

RESPONSE:

Pursuant to 16 Tex. Admin. Code § 22.144(c)(2)(E), please see documents produced in response to Request 1-7. Please also see the response to Request 1-6.

Prepared/Sponsored by: Randel Kirk
 General Manager
 Mountain Peak Special Utility District

WATER
IS
LIFE



MOUNTAIN PEAK
SPECIAL UTILITY DISTRICT
5671 WATER WORKS ROAD
MIDLOTHIAN, TEXAS 76065

① Make file
for New Well
Property

② put copy in
white book-bank

facsimile transmittal

To: GARY SOMMERFELT FAX# 214-361-4169

From: Mountain Peak S.U.D Date: 3/7/2005

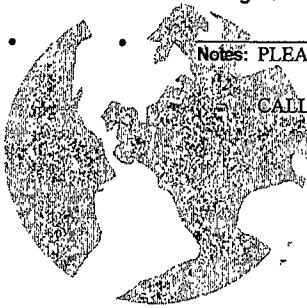
Re: SEE ATTACHED Pages: 2 pages (including cover)

CC:

Urgent For Review Please Comment Please Reply Please Recycle

Notes: PLEASE SEE ATTACHED. IF YOU HAVE ANY FURTHER QUESTIONS PLEASE

CALL 972-775-3765



Thanks,

Tammi Baxter

fax to
title Co.
Gary Sommerfelt
214-361-4169

MP SUD03890

Mountain Peak Special Utility District
5671 Waterworks Rd.
Midlothian, Texas 76065
Phone: 972-775-3765 Fax: 972-775-6508

1500
Land

March 7, 2005

Re: Wire Transfer (see attached)

Dear Sir,

Please wire transfer in the amount of \$29,305.83 from the Capital Improvement Fund Account #050222075 in accordance with the attached wiring instructions. After wiring instructions are completed please fax confirmation to: 972-775-6508. If you have any questions, please call 972-775-3765.

Thank you,
Ann Major
Ann Major, Secretary Treasurer
Mountain Peak Special Utility District

ITGOING WIRE TRANSFER		GENERAL LEDGER CREDIT		Citizens National Bank		REFERENCE NO.
				200 North Elm St. / P.O. Box 717 Waxahatchie, Texas 75165		31152
APPROVED BY:	<i>JMB</i>	TIME	12:00	DATE	3-7-05	
TRANSFER FROM	CHASE BANK	TRANSFER TO	113.000-609	ACCOUNT NUMBER	00103413028	G/L CREDIT TOTAL 47.57
CREDIT ACCOUNT OF	Chicago Title Ins Co.			CHARGE TO ACCOUNT NUMBER	050222075	
BY ORDER OF	Ref. GFA 601296		LAWSON FARM			
SELLER INITIAL	SM	TRANSFER FEE	29,305.83 ANALYSIS	\$	29,305.83	
NAME	Mountain Peak Sp. Util. Dist.				WIRE AMOUNT ONLY	
IF ADDRESS					3012	
IF CITY					1005 101 40570	

MPSUD03891
18

18



P.O. Box 717 Waxahachie, TX 75168 Member FDIC

FAX COVER SHEET

BANKING OFFICES:
Waxahachie, TX 75165
200 N. Elm
Ph: 972-938-4300
Fax: 972-938-4364

104 N. Elm
Ph: 972-938-4300
Fax: 972-938-4365

1001 N. Hwy. 77
Ph: 972-938-4300
Fax: 972-938-4378

Midlothian, TX 76065
1021 E. Hwy. 287
Ph: 972-723-2265
Fax: 972-723-2584

310 N. 9th St
Ph: 972-775-8271
Fax: 972-723-1261

Red Oak, TX 75154
102 Harris Avenue
Ph: 972-617-5440
Fax: 972-617-5030

CNB MORTGAGE:
Waxahachie, TX 75165
104 N. Elm
Ph: 972-938-4374
Fax: 972-938-4365

TO: *Mit Rake Spe U*

DATE: *8-7-05*

COMPANY:
PHONE #:
FAX #:

PAGES:

FROM: *J. Smith*

COMPANY: CITIZENS NATIONAL BANK - 9th St
PHONE #: 972/723-2265
FAX #: 972/723-1261

COMMENTS:

== Banking The Way It Ought To Be ==
Since 1868

MPSUD03892

WATER
IS
LIFE



MOUNTAIN PEAK
SPECIAL UTILITY DISTRICT
5671 WATER WORKS ROAD
MIDLOTHIAN, TEXAS 76065

facsimile transmittal

To: CNB FAX# 972-723-1261

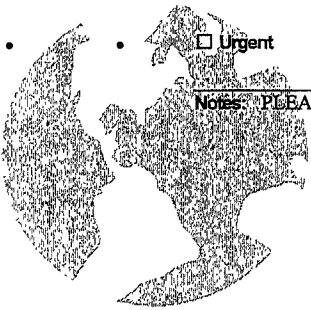
ATTN: KELLY SCHMIDT

From: Mountain Peak S.U.D Date: 3/7/2005

Re: SEE ATTACHED Pages: 4 pages (including cover)

Urgent For Review Please Comment Please Reply Please Recycle

Notes: PLEASE WIRE TRANSFER THE FOLLOWING AND SEND CONFIRMATION



Thanks,

Tammi Baxter

MPSUD03893

20

Mountain Peak Special Utility District
5671 Waterworks Rd.
Midlothian, Texas 76065
Phone: 972-775-3765 Fax: 972-775-6508

March 7, 2005

Ref: Wire Transfer (see attached)

Dear Sir,

Please wire transfer in the amount of \$29,305.83 from the Capital Improvement Fund Account #050222075 in accordance with the attached wiring instructions. After wiring instructions are completed please fax confirmation to: 972-775-6508. If you have any questions, please call 972-775-3765.

Thank you,


Ann Major, Secretary/Treasurer
Mountain Peak Special Utility District

WIRE INSTRUCTIONS

ACCOUNT STYLED: CHICAGO TITLE INSURANCE COMPANY
BANK: CHASE-TEXAS
2200 Ross Avenue
Dallas, Texas

ACCOUNT NO: 00103413028

ABA NO: 113-000-609

PHONE ADVISE: GARY SOMMERFELT
(214) 361-4171 UPON RECEIPT

REF: GF#661896
LAWSON FARM

PURCHASER'S STATEMENT

Date: MARCH 7, 2005 GF No. 661869
Sale From: SKJ LAWSON FARMS DEVELOPMENT, L.P. TO: MOUNTAIN PEAK SPECIAL UTILITY DISTRICT
Property: 2 ACRES, ELLIS COUNTY, TEXAS

Purchase Price: \$ 30,000.00

Plus: Charges

Filing Fees to County Clerk: WD, D/T, ESTIM \$ 0.00
Loan Chgs & Fees Due to: UCC Search, Appr fee, Orig. Fee, Insp. Fee, Flood Cert
Loan Transfer Fee of Assumption Fee
Fees to: CHICAGO TITLE INSURANCE COMPANY Title Company
Title Policy: Owner, Mortgage, Survey Delete 56.70, Escrow 250.00, Standby, Tax Am
Policy Guaranty Fee \$ 306.70
Attorney fee to
For closing/Examining (Included in Premium)
Tax Certificates:
Survey Fee to
Atty's Fees To
Hazard Insurance From To
Tax & Ins. Escrowed With
Interest from to
Prorations: Taxes from to, Maintenance from to

Total Charges \$ 306.70
Gross Amount Due By Purchaser \$ 30,306.70

Less: Credits

Down Payment or Earnest Money Paid to CHICAGO TITLE \$ 1,000.00
Loan from
Note Assumed
Interest Proration from to
Prorations: Taxes from 01/01/05 to 03/06/05 \$ 0.87
Rent from to
Security Deposits

Total Credits \$ 1,000.87
\$ 29,305.83

Purchaser understands the Closing or Escrow Agent has assembled this information representing the transaction from the best information from other sources and cannot guarantee the accuracy thereof. Any real estate agent or lender involved may be furnished a copy of this Statement. Purchaser understands that tax and insurance prorations and reserves were based on figures for the preceding year or supplied by others, or estimates for current year, and in the event of any change for current year, all necessary adjustments must be between Purchaser and Seller direct. The undersigned hereby authorizes CHICAGO TITLE INSURANCE COMPANY to make expenditures and disbursements as shown and approves same for payment. The undersigned also acknowledges receipt of Loan funds, if applicable, in the amount shown above and receipt of a copy of this statement. HUD - Paid outside of Closing

CHICAGO TITLE INSURANCE COMPANY MOUNTAIN PEAK SPECIAL UTILITY DISTRICT
BY: Closing/Escrow Agent, Gary J. Sommerleit TITLE: 3/4/05 10:44 AM

MP SUD03896

WATER
IS
LIFE

MOUNTAIN PEAK
MOUNTAIN PEAK
SPECIAL UTILITY DISTRICT
5671 WATER WORKS ROAD
MIDLOTHIAN, TEXAS 76065

facsimile transmittal

from

To: Ann Major FAX# 972-937-0271

to: From: Mountain Peak S.U.D. Date: 3/7/2005

Re: SEE ATTACHED Pages: 2 pages (including cover)

CC:

Urgent For Review Please Comment Please Reply Please Recycle

Notes: Thank you



Thanks,

Tanmi Baxter

Mountain Peak Special Utility District
5671 Waterworks Rd.
Midlothian, Texas 76065
Phone: 972-775-3765 Fax: 972-775-6508

March 7, 2005

Ref: Wire Transfer (see attached)

Dear Sir,

Please wire transfer in the amount of \$29,305.83 from the Capital Improvement Fund Account #050222075 in accordance with the attached wiring instructions. After wiring instructions are completed please fax confirmation to: 972-775-6508. If you have any questions, please call 972-775-3765.

Thank you,

Ann Major, Secretary Treasurer
Mountain Peak Special Utility District

Miller
Mentzer, P.C.

Attorneys and Counselors

100 North Main St.
P.O. Box 130
Palmer, Texas 75152

972.845.2222 Phone
972.845.3398 Fax

Website: www.milmen.com

Sandee Hanna, Legal Asst.
shanna@milmen.com

FAX TRANSMISSION

Date: March 4, 2005

PLEASE DELIVER TO: RANDY KIRK

Fax Number: 972-775-6508

Office Number:

FROM: Sandee Hanna

Page 1 of 3

File No: 7070.022

Comments: Randy - here are the Purchaser's closing statement and wiring instructions. Just give the wiring info to your bank with the amount shown on the statement. Just come by Monday morning whenever it is convenient. Call me if you have any questions in the meantime.

Original documents will:

- Follow by regular mail.
- Follow by Federal Express.
- Be hand delivered.
- Not be sent.

If you have any problems receiving this fax, contact: Sandee

IMPORTANT/CONFIDENTIAL: This transmission from d for the use of the addressee(s) shown. It contains information th disclosure under applicable law. If you are not the intended r that the copying, use, or distribution of any information or m: you have received this facsimile by mistake please immediately to arrange for its return to us via regular U.S. Mail at no cost

Kelly - CIOB

Wire \$ 29,305.83

from Capital Imp. fund.

Letter from Ann

Chicago Title Insurance Company
6688 N. CENTRAL EXPRESSWAY, SUITE 560
DALLAS, TEXAS 75206
PHONE: 214.361.4171
FAX: 214.361.4169

FACSIMILE TRANSMITTAL SHEET

TO: RANDY KIRK
DAVID A. MILLER, ESQ.
KIM GILL
LEONARD A. STERN, ESQ.

FROM: Gary Sommerfelt

COMPANY: DATE: 01/11/05

FAX NUMBER: 972-775-6508
972-845-3398
817-877-0115
HAND DELIVER

TOTAL NO. OF PAGES INCLUDING COVER:

PHONE NUMBER: SENDER'S REFERENCE NUMBER:

RE: SKJ LAWSON FARMS/
MOUNTAIN PEAK
GF NO. 661869

YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Attached is a copy of the revised commitment covering the 2.06 acre tract.

Gary Sommerfelt

Chicago Title Insurance Company
6688 N. CENTRAL EXPRESSWAY, SUITE 560
DALLAS, TEXAS 75206
PHONE: 214.361.4171
FAX: 214.361.4169

FACSIMILE TRANSMITTAL SHEET

TO: **RANDY KIRK**
DAVID A. MILLER, ESQ.
KIM GILL
LEONARD A. STERN, ESQ.

FROM: **Gary Sommerfelt**

COMPANY: _____ DATE: **01/11/05**

FAX NUMBER: **972-775-6508**
972-845-3398
817-877-0115
HAND DELIVER

TOTAL NO. OF PAGES INCLUDING COVER: _____

PHONE NUMBER: _____ SENDER'S REFERENCE NUMBER: _____

RE: **SKJ LAWSON FARMS/
MOUNTAIN PEAK
GF NO. 661869**

YOUR REFERENCE NUMBER: _____

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Attached is a copy of the revised commitment covering the 2.06 acre tract.

Gary Sommerfelt

SCHEDULE A

GF# 661869 - GS

Commitment No. 44-903-80-

661869

Issued January 10, 2005

8:00 AM

Commitment Effective Date: December 16, 2004

1. The policy or policies to be issued are:

(a) Form T-1: OWNER POLICY OF TITLE INSURANCE (Not applicable for improved one-to-four family residential real estate)

Policy Amount: \$30,000.00

Proposed Insured:

MOUNTAIN PEAK SPECIAL UTILITY DISTRICT

(b) Form T-1R: TEXAS RESIDENTIAL OWNER POLICY OF TITLE INSURANCE ONE-TO-FOUR FAMILY RESIDENCES

Policy Amount:

Proposed Insured:

(c) Form T-2: MORTGAGEE POLICY OF TITLE INSURANCE

Policy Amount: \$0.00

Proposed Insured:

Proposed Borrower:

(d) Form T-2R TEXAS SHORT FORM RESIDENTIAL MORTGAGEE POLICY OF TITLE INSURANCE

Policy Amount:

Proposed Insured:

Proposed Borrower:

(e) Form T-13 MORTGAGEE TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN

Binder Amount:

Proposed Insured:

Proposed Borrower:

(f) OTHER

Policy Amount:

Proposed Insured:

2003COMA

SCHEDULE A, CONTINUED

GF# 661869 - GS

Commitment No. 44-903-80- 661869

2. The interest in the land covered by this Commitment is:

Fee Simple

3. Record title to the land on the Effective Date appears to be vested in:

SKJ Lawson Farms Development, L.P., A Texas limited partnership

4. Legal description of the land:

Being a 2.060 acre tract of land in the Martha Brennan Survey, Abstract No. 43, and being a portion of that certain tract of land described in deed to SKJ Lawson Farms Development, L.P., recorded in Volume 2005, Page 2309, Official Public Records, Ellis County, Texas. The bearings for this description are based on the north line of said SKJ Lawson Farm tract, recorded in Volume 2005, Page 2309, Official Public Records, Ellis County, Texas. Said 2.060 acre tract of land being described by metes and bounds as follows:

Commencing at the southeast corner of said SKJ Lawson Farms tract and the north right-of-way line of Ashford Lane;

Thence South $89^{\circ}40'39''$ East, along the south line of said SKJ Lawson Farms tract and the north right-of-way line of Ashford Lane, a distance of 629.54 feet;

Thence North $0^{\circ}19'21''$ West, departing the north right-of-way line of Ashford Lane and the south line of said SKJ Lawson Farms tract and over and across said SKJ Lawson Farms tract, a distance of 5.00 feet to the POINT OF BEGINNING;

Thence continuing over and across said SKJ Lawson Farms tract the following courses and distances:

South $89^{\circ}40'39''$ West, a distance of 335.91 feet to the beginning of a tangent curve, concave to the northeast, having a radius of 25.00 feet, a central angle of $90^{\circ}39'56''$ and a chord which bears North $44^{\circ}59'23''$ West, a distance of 35.56 feet;

2022CMA2

GF# 000661869 -GS

Commitment No. 44-903-80-

000661869

LEGAL DESCRIPTION

Westerly along said curve, a distance of 39.56 feet;

North $0^{\circ}20'35''$ East, a distance of 78.96 feet to the beginning of a tangent curve, concave to the west, having a radius of 530.00 feet, a central angle of $8^{\circ}05'22''$ and a chord which bears North $3^{\circ}42'06''$ West, a distance of 74.77 feet;

Northerly along said curve, a distance of 74.83 feet to the beginning of a reverse curve, concave to the east, having a radius of 475.00 feet a central angle of $8^{\circ}05'22''$, and a chord of 67.01 feet bearing North $3^{\circ}42'06''$ West;

Northerly along said curve, a distance of 67.06 feet;

North $0^{\circ}20'35''$ East, a distance of 39.29 feet;

North $89^{\circ}40'39''$ East, a distance of 271.71 feet;

South $18^{\circ}58'06''$ East, a distance of 300.85 feet to the POINT OF BEGINNING and containing a computed area of 2.060 acres, more or less.

NOTE: COMPANY DOES NOT REPRESENT THAT THE ABOVE ACREAGE AND/OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.

COMES

SCHEDULE B

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

- A 1. (Deleted)
- r 2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments, or protrusions, or any overlapping of improvements.
- x 3. Homestead or community property or survivorship rights, if any, of any spouse of any insured. (Applies to the Owner Policy only.)
- i 4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
 - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
 - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
 - c. to filled-in lands, or artificial islands, or
 - d. to statutory water rights, including riparian rights, or
 - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.(Applies to the Owner Policy only.)
- l 5. Standby fees, taxes and assessments by any taxing authority for the year 2004 and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Mortgagee Policy (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year 2004 and subsequent years.")
- o 6. The terms and conditions of the documents creating your interest in the land.
- r 7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Mortgagee Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before binder is issued.)
- o 8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Mortgagee Policy (T-2) only.)

SCHEDULE B (continued)

- T 9. *The Exceptions From Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Mortgagee Policy (T-2R). (Applies to Texas Short Form Residential Mortgagee Policy (T-2R) only.) Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Mortgagee Policy (T-2R).*
- U 10. *The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):*
- AI 11. Rights of parties in possession.
- AN 12. Easement granted to TP&L Co., recorded in Volume 302, Page 541; Volume 348, Page 579; Volume 366, Page 184 and Volume 497, Page 438, Deed Records, Ellis County, Texas.
- AO 13. Thirty foot (30') easements to TP&L Co. recorded in Volume 569, Page 789, and Volume 766, Page 485, Deed Records, Ellis County, Texas, and as noted on survey dated January 14, 2004 by Stuart G. Hamilton, RPLS.
- AP 14. Easement granted to Mt. Peak Water Supply Corp., recorded in Volume 547, Page 29 and Volume 584, Page 296, Deed Records, Ellis County, Texas, and as noted on above survey.
- AO 15. Easement granted to Sardis-Lone Elm Water Supply Corp., recorded in Volume 866, Page 604, Deed Records, Ellis County, Texas, and as noted on above survey.
- AR 16. Easement granted to Ensat Pipeline Company and Enserch Corporation, recorded in Volume 841, Page 875, Deed Records, Ellis County, Texas, subject to ROW Deed recorded in Volume 847, Page 454, Deed Records, Ellis County, Texas, and as noted on above survey.
- AS 17. Ordinances to the City of Midlothian recorded in Volume 616, Page 790; Volume 620, Page 923; Volume 620, Page 930 and Volume 768, Page 655, Deed Records, Ellis County, Texas, and Volume 1381, Page 730, Volume 1381, Page 742, Official Public Records, Ellis County, Texas.
- AT 18. Easement granted to Mountain Peak Water Supply Corporation, recorded in Volume 1356, Page 878, Official Public Records, Ellis County, Texas, and as noted on above survey.
- AU 19. Easement granted to City of Midlothian, recorded in Volume 1858, Page 271, Official Public Records, Ellis County, Texas, and as noted on above survey.
- AV 20. Any portion of the property described herein within the limits or boundaries of any public or private roadway and/or highway.
-

SCHEDULE C

Your Policy will not cover loss, costs, attorney's fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

- z 1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
 - AA 2. Satisfactory evidence must be provided that:
 - no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
 - all standby fees, taxes, assessments and charges against the property have been paid,
 - all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, subcontractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
 - there is legal right of access to and from the land,
 - (on a Mortgagee policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
 - AB 3. You must pay the seller or borrower the agreed amount for your property or interest.
 - AC 4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
 - AW 5. Vendor's Lien retained in Deed from E.M. Lawson and wife, Dorothy Lawson to SKJ Lawson Farms Development, L.P., a Texas limited partnership, dated January 15, 2004, filed for record on January 21, 2004 and recorded in Volume 2005, Page 2309, Official Public Records of Ellis County, Texas, securing the payment of a note in the original principal sum of \$1,500,000.00, payable to the order of Summit Bank, National Association, additionally secured by Deed of Trust of even date therewith, to Don R. McBride, Trustee, filed for record on January 21, 2004 and recorded in Volume 2005, Page 2314, Official Public Records, Ellis County, Texas, and subject to all of the terms, conditions and stipulations contained therein, including but not limited to any future indebtedness also secured by this lien.
 - AX 6. Deed of Trust executed by SKJ Lawson Farms Development, L.P., a Texas limited partnership to Sharon B. Smith, Trustee, dated January 16, 2004, filed for record on January 21, 2004 and recorded in Volume 2005, Page 2325, Official Public Records of Ellis County, Texas, to secure the payment of one note of even date therewith in the original principal sum of \$1,000,000.00, payable to JMS Investments, LLP, a Texas limited liability partnership, and subject to all of the terms, conditions and stipulations contained therein, including but not limited to any future
-

SCHEDULE C (continued)

- indebtedness also secured by this lien.
- AY 7. SKJ Lawson Farms Development, L.P., a Texas limited partnership is a limited partnership. Secure the following and return to the examination department for review and possible additional requirements:
- A) A copy of the executed partnership agreement and all amendments thereto for examination and approval.
 - B) Certificate from the Secretary of State of Texas showing that said limited partnership has been properly registered.
 - C) Properly executed instruments from all of the general partners authorized to execute same as provided in the partnership agreement.
- AZ 8. Except in an exempt transaction, the Company must be furnished with seller's social security number or tax identification number and all other information necessary to complete IRS Form 1099B.
-

SCHEDULE D

1. Disclosure of CHICAGO TITLE INSURANCE COMPANY, a Missouri Corporation
- a. The Shareholders owning or controlling, directly or indirectly, ten (10%), or more of the shares of Chicago Title Insurance Company: CHICAGO TITLE AND TRUST COMPANY, an Illinois corporation
 - b. The names of the Directors of Chicago Title Insurance Company:

Christopher Abbinante	Ronald R. Maudsley	Erika Meinhardt
Raymond R. Quirk	Burton J. Rain	Ernest D. Smith
Alan L. Stinson	Patrick F. Stone	Frank P. Willey
 - c. The names of the president, the executive or senior vice-president, the secretary and the treasurer of Chicago Title Insurance Company:

Chairman of the Board, President and Chief Executive Officer	Patrick F. Stone
Senior Vice President and Manager, Eastern Division	Christopher Abbinante
Vice President and Corporate Secretary	Fernando Velez, Jr.
Vice President and Treasurer	Patrick G. Farenga

2. "You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving any sum from the settlement of this transaction will be disclosed on the closing or settlement statement".

"You are further advised that the estimated title premium* is:

Owners Policy	\$
Mortgagee Policy	\$
Endorsement Charges	\$
Total	\$

Of this total amount: (or%) will be paid to the policy issuing Title Insurance Company; (or%) will be retained by the issuing Title Insurance Agent; and the remainder of the estimated premium will be paid to other parties as follows:

AMOUNT	TO WHOM	FOR SERVICES
--------	---------	--------------

*The estimated premium is based upon the information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of premium will be made at closing in accordance with the rules and regulations adopted by the State Board of Insurance."

DELETION OF ARBITRATION PROVISION
(Not applicable to the Texas Residential Owner Policy)

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$1,000,000 or less. If you want to retain your right to sue the company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.

The Arbitration provision in the Policy is as follows:

"Unless prohibited by applicable law or unless this arbitration section is deleted by specific provision in Schedule B of this policy, either the Company or the Insured may be deemed arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this Policy, and service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less SHALL BE arbitrated at the request of either the Company or the Insured, unless the insured is an individual person (as distinguished from a corporation, trust, partnership, association or other legal entity). All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this Policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the rules in effect at the Date of Policy shall be binding upon the parties. The award may include attorney's fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request."

I request deletion of the Arbitration provision.

_____ Date

_____ Date

Fidelity National Financial Group of Companies' Privacy Statement
July 1, 2001

We recognize and respect the privacy expectations of today's consumers and the requirements of applicable federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us and the public we serve. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time to time consistent with applicable privacy laws.

In the course of our business, we may collect Personal Information about you from the following sources:

- From applications or other forms we receive from you or your authorized representative;
- From your transactions with, or from the services being performed by, us, our affiliates, or others;
- From our internet web sites;
- From the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others; and
- From consumer or other reporting agencies.

Our Policies Regarding the Protection of the Confidentiality and Security of Your Personal Information

We maintain physical, electronic and procedural safeguards to protect your Personal Information from unauthorized access or intrusion. We limit access to the Personal Information only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Our Policies and Practices Regarding the Sharing of Your Personal Information

We may share your Personal Information with our affiliates, such as insurance companies, agents, and other real estate settlement service providers. We may also disclose your Personal Information:

- to agents, brokers or representatives to provide you with services you have requested;
- to third-party contractors or service providers who provide services or perform marketing or other functions on our behalf; and
- to others with whom we enter into joint marketing agreements for products or services that we believe you may find of interest.

In addition, we will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

One of the important responsibilities of some of our affiliated companies is to record documents in the public domain. Such documents may contain your Personal Information.

Right to Access Your Personal Information and Ability To Correct Errors Or Request Changes Or Deletion

Certain states afford you the right to access your Personal Information and, under certain circumstances, to find out to whom your Personal Information has been disclosed. Also, certain states afford you the right to request correction, amendment or deletion of your Personal Information. We reserve the right, where permitted by law, to charge a reasonable fee to cover the costs incurred in responding to such requests.

All requests must be made in writing to the following address:

Privacy Compliance Officer
Fidelity National Financial, Inc.
601 Riverside Drive
Jacksonville, FL 32204

Multiple Products or Services

If we provide you with more than one financial product or service, you may receive more than one privacy notice from us. We apologize for any inconvenience this may cause you.

CHICAGO TITLE INSURANCE COMPANY

6688 N. CENTRAL EXPRESSWAY, SUITE 560, DALLAS, TEXAS 75206
(214) 361-6771 FAX (214) 361-4169 EMAIL: gsommerfelt@sommerfeltlaw.com



GARY J. SOMMERFELT
Escrow Officer

March 31, 2005

VIA MAIL DELIVER

Mr. Randy Kirk
Mountain Peak Special Utility District
5671 Waterworks Road
Midlothian, TX 75065

Re: Contract for Sale and Purchase of Unimproved Real Property ("Contract")
between Mountain Peak Special Utility District, as Buyer, and SKJ Lawson
Farms Development, L.P., as Sellers, Our GF#661869

Dear Mr. Kirk:

In connection with the referenced matter, enclose please find the Owner Policy of Title Insurance No. 44-903-100-000661869 issued to MOUNTAIN PEAK SPECIAL UTILITY DISTRICT. I also enclose original and/or copies the following recorded documents:

1. Special Warranty Deed;
2. Memorandum Regarding Right of First Refusal (certified copy);
3. Partial Release of Lien (certified copy).

If you should have any questions or need anything further from us, please do not hesitate to give us a call.

Yours truly,

Charita Carrion
Escrow Assistant

/cc

Enclosures

CTIC

02107 2250

6618695
RETURN TO:

VOL. PG.

Mailing Address of Grantee:

Chicago Title Insurance Company
8888 N. Central Expressway, Suite 660
Dallas, Texas 75206 214-861-6771

5671 Waterworks Road
Midlothian, Texas 75065

**SPECIAL WARRANTY DEED
(With Restrictions)**

380
12

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF ELLIS §

THAT, **SKJ LAWSON FARMS DEVELOPMENT, L.P.**, a Texas limited partnership (hereinafter referred to as "Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration to the undersigned paid by **MOUNTAIN PEAK SPECIAL UTILITY DISTRICT** (hereinafter referred to as "Grantee"), the receipt and sufficiency of which consideration are hereby acknowledged, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto Grantee, all of the following described property in Ellis County, Texas, to-wit (the "Property"):

See Exhibit "A" attached hereto and made a part hereof; subject, however, to those matters set forth on Exhibit "B" attached hereto and made a part hereof (but only to the extent that same remain in full force and effect and pertaining to such Property).

TO HAVE AND TO HOLD the above described Property, together with (but without warranty, except that Grantor has not previously conveyed the same to any third party) all and singular the rights and appurtenances thereto in anywise belonging to Grantor, unto the said Grantee, its successors, legal representatives and assigns forever, and Grantor does hereby binds itself and its successors to WARRANT AND FOREVER DEFEND all and singular the said Property unto the said Grantee, its successors, legal representatives and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, or through the Grantor, but not otherwise, and subject as aforesaid.

DISCLAIMER AND RELEASE.

(A) GRANTEE ACKNOWLEDGES AND AGREES THAT IT IS EXPERIENCED IN ACQUIRING, OWNING, DEVELOPING, MARKETING, LEASING, OPERATING, MANAGING AND SELLING OF PROPERTIES SIMILAR TO THE PROPERTY, AND THAT GRANTEE HAS THOROUGHLY INSPECTED, TESTED, STUDIED, REVIEWED AND INVESTIGATED ALL ASPECTS OF THE PROPERTY TO ITS FULL

INST NO: 0507291 FILED FOR RECORD - ELLIS COUNTY, TX
FILING DATE/TIME: Mar 10, 2005 @ 10:44:00 AM

SATISFACTION, AND THAT GRANTEE IS RELYING SOLELY THEREON IN MAKING ITS DECISION TO ACQUIRE THE PROPERTY. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THAT CERTAIN CONTRACT FOR PURCHASE AND SALE DATED DECEMBER 20, 2005 (THE "CONTRACT"), EXECUTED BY GRANTOR AND GRANTEE, AND/OR IN THIS DEED OR ANY OTHER DOCUMENT DELIVERED BY GRANTOR TO GRANTEE PURSUANT TO THE CONTRACT ON EVEN DATE HERewith (THE "CLOSING DOCUMENTS"), GRANTOR IS NOT MAKING, AND HEREBY SPECIFICALLY DISCLAIMS MAKING ANY WARRANTY, GUARANTY OR REPRESENTATION, OF ANY KIND OR CHARACTER, WHETHER EXPRESS, IMPLIED; STATUTORY OR ARISING BY OPERATION OF LAW, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, OR CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (I) THE PHYSICAL AND ENVIRONMENTAL NATURE AND CONDITION OF THE PROPERTY; INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, AND THE SUITABILITY THEREOF AND OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY ELECT TO CONDUCT THEREON, AND THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS SUBSTANCES) OR THE COMPLIANCE OF THE PROPERTY WITH ANY AND ALL APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS; (II) ANY MATTERS AFFECTING TITLE TO THE PROPERTY; (III) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, STATUTES, ORDINANCES, RULES, REQUIREMENTS OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY; (IV) THE ECONOMIC VIABILITY OR MARKETABILITY OF THE PROPERTY; (V) TAX MATTERS PERTAINING TO THE TRANSACTION CONTEMPLATED HEREBY; (VI) THE ACCURACY OR COMPLETENESS OF ANY REPORTS OR OTHER INFORMATION FURNISHED BY GRANTOR TO GRANTEE WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ENGINEERING, ENVIRONMENTAL OR OTHER REPORTS, STUDIES OR INVESTIGATIONS, IF ANY; (VII) ZONING; (VIII) VALUATION; (IX) HABITABILITY; (X) MERCHANTABILITY; OR (XI) SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, GRANTEE HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE SPECIFICALLY STATED THE CONTRACT AND/OR THE CLOSING DOCUMENTS, THE PURCHASE OF THE PROPERTY IS BEING MADE ON AN "AS IS" BASIS, "WITH ALL FAULTS," AND GRANTEE HEREBY ASSUMES THE RISK THAT ADVERSE MATTERS, INCLUDING, WITHOUT LIMITATION, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY EXIST WITH RESPECT TO THE PROPERTY AND WITH FULL KNOWLEDGE AND ACCEPTANCE BY GRANTEE OF ALL INFORMATION AND MATTERS DISCLOSED IN ANY AND ALL REPORTS, STUDIES, ASSESSMENTS, INVESTIGATIONS, PROPOSALS AND DOCUMENTS FURNISHED TO, OR OBTAINED BY, GRANTEE WITH RESPECT TO THE PROPERTY. FURTHER, GRANTEE ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PURCHASE OF THE PROPERTY WHICH HAVE BEEN MADE BY GRANTOR OR ANY THIRD PARTY.

(B) EXCEPT AS SPECIFICALLY SET FORTH HEREIN, ANY FACTUAL INFORMATION SUCH AS PROPERTY TAXES, UTILITY INFORMATION, PROPERTY DIMENSIONS, SQUARE FOOTAGE OR SKETCHES SHOWN TO GRANTEE ARE OR MAY BE APPROXIMATE. GRANTEE REPRESENTS TO GRANTOR THAT GRANTEE HAS INSPECTED AND VERIFIED OR, DURING THE REVIEW PERIOD, SHALL INSPECT AND VERIFY THE FACTS AND INFORMATION TO GRANTEE'S SATISFACTION. NO LIABILITY FOR ANY INACCURACIES, ERRORS OR OMISSIONS IS ASSUMED BY GRANTOR OR OTHER AGENTS OR REPRESENTATIVES OF GRANTOR. GRANTEE UNDERSTANDS AND ACKNOWLEDGES THAT SALES BROCHURES AND OTHER DOCUMENTS, IF ANY, DELIVERED TO GRANTEE PRIOR THE DATE HEREOF MAY HAVE BEEN PREPARED BY PARTIES OTHER THAN GRANTOR AND THAT GRANTOR MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE COMPLETENESS, CONTENT OR ACCURACY OF THE SAID SALES BROCHURES AND OTHER DOCUMENTS WHICH WERE PREPARED BY THIRD PARTIES. GRANTEE SPECIFICALLY RELEASES GRANTOR AND GRANTOR'S PARTNERS, EMPLOYEES, OFFICERS, DIRECTORS AND AFFILIATES (COLLECTIVELY, THE "GRANTOR PARTIES"), FROM ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, WHETHER SUIT IS INSTITUTED OR NOT, AND ENVIRONMENTAL CONSULTANTS' FEES) WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR CONTINGENT (COLLECTIVELY "CLAIMS") ASSERTED AGAINST OR INCURRED BY GRANTEE BY REASON OF THE INFORMATION CONTAINED IN, OR THAT SHOULD HAVE BEEN CONTAINED IN, THE SAID SALES BROCHURES AND OTHER DOCUMENTS PREPARED BY THIRD PARTIES.

(C) IN THE EVENT THAT FROM AND AFTER THE DATE HEREOF ANY INVESTIGATION, REMOVAL, ABATEMENT, REMEDIATION, OR OTHER CORRECTIVE ACTION IS AT ANY TIME REQUIRED IN CONNECTION WITH THE PORTION OF THE PROPERTY PURCHASED OR ANY ADJACENT OR NEARBY PROPERTY AS A RESULT OF THE PRESENCE OF ANY ENVIRONMENTAL PROBLEMS, HAZARDOUS SUBSTANCES, HAZARDOUS MATERIALS, OR ENVIRONMENTAL CONTAMINATION AT OR ON THE PROPERTY OR ANY ADJACENT OR NEARBY PROPERTY, INCLUDING, WITHOUT LIMITATION, ASBESTOS AND PETROLEUM PRODUCTS AND BYPRODUCTS AND ANY CONSTITUENTS THEREOF, REGARDLESS OF WHEN SAME OCCURRED, GRANTEE ACKNOWLEDGES AND AGREES THAT: (I) GRANTOR SHALL NOT BE RESPONSIBLE FOR THE COST OF ANY SUCH INVESTIGATION, REMOVAL, REMEDIATION, OR CORRECTIVE ACTION; AND (II) THE GRANTOR HAS NO DUTY OR OBLIGATION TO PERFORM OR CAUSE TO BE PERFORMED ANY SUCH INVESTIGATION, REMOVAL, REMEDIATION, OR CORRECTIVE ACTION. THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT THE GRANTEE, FOR ITSELF, AND ITS SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, RELEASES, AND RELINQUISHES, GRANTOR FROM ANY AND ALL CLAIMS OR RIGHTS OF CONTRIBUTION (INCLUDING ANY RIGHT TO CONTRIBUTION UNDER 42 U.S.C. §9613(F)) WHICH THE GRANTEE OR ITS SUCCESSORS, LEGAL REPRESENTATIVES OR ASSIGNS NOW HAS OR MAY HAVE AGAINST ANY OF THE

GRANTOR PARTIES BY REASON OF THE PRESENCE OF ANY HAZARDOUS SUBSTANCE (INCLUDING, BUT NOT LIMITED TO, ASBESTOS AND PETROLEUM PRODUCTS AND BYPRODUCTS AND THE CONSTITUENTS THEREOF) OR ANY OTHER ADVERSE ENVIRONMENTAL CONDITION, DEFECT, OR PROBLEM WITH RESPECT TO THE PROPERTY (WHETHER SUCH CONDITION, DEFECT, OR CONDITION BE KNOWN OR UNKNOWN, LATENT OR PATENT, OR WHETHER OR NOT ANY INVESTIGATION, REMEDIATION, OR CORRECTIVE ACTION MAY BE REQUIRED OR DESIRABLE WITH RESPECT TO THE PROPERTY).

(D) EXCEPT AS PROVIDED IN PARAGRAPH (C) ABOVE, EFFECTIVE UPON THE DATE HEREOF, GRANTEE HEREBY UNCONDITIONALLY AND IRREVOCABLY RELEASES GRANTOR FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LIABILITIES, LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) ARISING FROM OR RELATED TO THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PORTION OF THE PROPERTY. THE RELEASE SET FORTH IN THIS SECTION SPECIFICALLY INCLUDES ANY CLAIMS UNDER ANY ENVIRONMENTAL LAWS. "ENVIRONMENTAL LAWS" INCLUDES, BUT IS NOT LIMITED TO, THE RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. 6901, ET SEQ.), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED BY THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT (42 U.S.C. 9601, ET SEQ.); THE CLEAN AIR ACT (42 U.S.C. 4701, ET SEQ.); THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (42 U.S.C. §1101, ET SEQ.); THE HAZARDOUS MATERIALS TRANSPORTATION ACT OF 1974 (49 U.S.C. §1801, ET SEQ.); THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. §1251, ET SEQ.); THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (7 U.S.C. §137, ET SEQ.); THE SAFE DRINKING WATER ACT (42 U.S.C. §3001, ET SEQ.); AND THE TOXIC SUBSTANCE CONTROL ACT (15 U.S.C. §2601, ET SEQ.), AS ANY OF THE SAME MAY BE AMENDED FROM TIME TO TIME, AND ANY COMPARABLE OR SUCCESSOR PROVISIONS OF FEDERAL, STATE OR LOCAL LAW, AND ANY REGULATIONS, ORDERS, RULES, PROCEDURES, GUIDELINES AND THE LIKE PROMULGATED IN CONNECTION THEREWITH.

Notwithstanding anything seemingly to the contrary contained herein, as part of the consideration of Grantee to Grantor for the Property, Grantee hereby covenants and agrees that the conveyance effectuated hereby shall be subject to the following covenants, conditions and restrictions, each of which shall be a covenant running with the land and binding upon Grantee, and its successors and assigns with respect to the Property, for the benefit of Grantor with respect to that certain real property being fully described on Exhibit "C" attached hereto and made a part hereof for all purposes (the "Grantor's Property"), but only for as long as Grantor owns any portion thereof:

1. Restricted Use. Grantee hereby covenants and agrees that the development and/or use of the Property by any person or party, in whole or in part, while the Property is owned by Grantee, shall be restricted solely to one (1) or more water wells, pumps, towers and appurtenant facilities for the production and delivery of water.

2. Right of First Refusal. Grantee hereby grants to Grantor (and Grantor only) a right of first refusal and option to repurchase the Property in accordance with this Paragraph 2. If, as and when Grantee receives an acceptable, bona fide written offer to purchase all or any portion of the Property from a third-party (the "Offer"), Grantee shall promptly provide written notice thereof to Grantor, setting forth the price, amount of earnest money, and key time periods and closing schedule for same, accompanied by a copy of the Offer (collectively, the "Option Notice"). Within thirty (30) days following Grantee's delivery of an Option Notice, Grantor may elect to exercise its right of first refusal and option to purchase the Property (or the applicable portion thereof covered by the Offer) on the same terms and conditions set forth therein by delivering written notice thereof to Grantee. In the event that Grantor timely exercises its right of first refusal and option to purchase the Property (or the applicable portion thereof covered by the Offer), Grantee shall prepare (or cause to be prepared), execute and deliver to Grantor, a contract (the "Option Contract") substantially identical to the Contract, but embodying the terms set forth in the Offer, and Grantor shall execute and deliver same to the Title Company within two (2) business days following delivery thereof. If, for any reason, Grantor does not timely and properly exercise its right of first refusal and option to purchase the Property (or the applicable portion thereof covered by the Offer), or thereafter fails to timely and properly execute and deliver the Option Contract, as aforesaid, then Grantor shall be deemed to have waived its right of first refusal and option to purchase the Property (or the applicable portion thereof covered by such Offer). Further, in the event that Grantee and Grantor enter into the Option Contract with respect to the Property (or the applicable portion thereof covered by an Offer), but Grantee fails to consummate the closing thereunder, for any reason other than Grantor's default, Grantee shall have waived its right to purchase the Property (or the applicable portion thereof covered by such Offer).

For purposes of the foregoing covenants, conditions and restrictions, the Property shall be the burdened estate and the Grantor's Property shall be the benefited estate. Grantor and Grantee (or the then owner(s) of any portion of the benefited estate) shall have the right, but not the obligation, to cause the foregoing covenants, conditions and restrictions to be carried out and performed, together with the right to bring any suit or take any legal process that may be proper to specifically enforce the performance thereof, to enjoin any violation thereof, or to recover damages, or any other recourse or remedy as may be available at law or in equity with respect to the breach of such covenants, conditions and restrictions; it being the intention hereby to attach to each benefited estate the right to have the applicable covenants, conditions and restrictions strictly complied with, and the failure by Grantor, Grantee and/or any owner of any portion of the benefited estate to enforce same shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding anything seemingly to the contrary contained herein, Paragraphs 1 and 2 above shall only burden the Property for so long as Grantee owns the same and Grantor owns any portion of the Grantor's Property.

By its acceptance hereof, Grantee hereby assumes and agrees to pay all ad valorem taxes assessed against the above-described property for 2005 and all subsequent years, and agrees to save, defend, indemnify and hold Grantor harmless from all such taxes and assessments; subject, however, to the reparation requirements set forth in Paragraph 11 of the Contract.

EXECUTED effective as of (although not necessarily on) the 7th day of March 2005.

GRANTOR:

SKJ LAWSON FARMS DEVELOPMENT, L.P.,
a Texas limited partnership

BY: 5409 MIRAMAR, LLC,
a Texas limited liability company, general partner

By: 
Kim Gill, Sole Member

STATE OF TEXAS

COUNTY OF ELLIS

BEFORE ME, the undersigned authority, a Notary Public on this day personally appeared Kim Gill, the sole member of 5409 MIRAMAR, LLC, a Texas limited liability company, the general partner of SKJ LAWSON FARMS DEVELOPMENT, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, on behalf of such limited liability company and limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 4 day of March, 2005.

TYPE, STAMP OR PRINT
NAME AND COMMISSION
EXPIRATION DATE



Notary Public in and for the State of Texas



GRANTEE:

MOUNTAIN PEAK SPECIAL UTILITY DISTRICT

By: [Signature]
Name: Randall Kirk
Title: General Manager

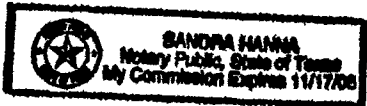
STATE OF TEXAS §
 §
COUNTY OF Ellis §

BEFORE ME, the undersigned authority, a Notary Public on this day personally appeared Randall Kirk, the General Manager of MOUNTAIN PEAK SPECIAL UTILITY DISTRICT, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, on behalf of such Utility district.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 7th day of March, 2005.

TYPE, STAMP OR PRINT
NAME AND COMMISSION
EXPIRATION DATE

[Signature]
Notary Public in and for the State of Texas



Legal Description

Being a 2.060 acre tract of land in the Martha Brennan Survey, Abstract No. 43, and being a portion of that certain tract of land described in deed to SKJ Lawson Farms Development, L.P., recorded in Volume 2005, Page 2309, Official Public Records, Ellis County, Texas. The bearings for this description are based on the North line of said SKJ Lawson Farms tract, recorded in Volume 2005, Page 2309, Official Public Records, Ellis County, Texas. Said 2.060 acre tract of land being described by metes and bounds as follows:

Commencing at a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the Southeast corner of said SKJ Lawson Farms tract and the North right-of-way line of Ashford Lane;

Thence South 89 degrees 40 minutes 39 seconds West, along the South line of said SKJ Lawson Farms tract and the North right-of-way line of Ashford Lane, a distance of 629.54 Feet;

Thence North 0 degrees 19 minutes 21 seconds West, departing the North right-of-way line of Ashford Lane and the South line of said SKJ Lawson Farms tract and over and across said SKJ Lawson Farms tract, a distance of 5.00 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set for the POINT OF BEGINNING;

Thence continuing over and across said SKJ Lawson Farms tract the following courses and distances:

South 89 degrees 40 minutes 39 seconds West, a distance of 335.91 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the beginning of a tangent curve, concave to the Northeast, having a radius of 25.00 Feet, a central angle of 90 degrees 39 minutes 56 seconds and a chord which bears North 44 degrees 59 minutes 23 seconds West, a distance of 35.56 Feet;

Westerly along said curve, a distance of 39.56 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set;

North 0 degrees 20 minutes 35 seconds East, a distance of 78.96 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the beginning of a tangent curve, concave to the West, having a radius of 530.00 Feet, a central angle of 8 degrees 05 minutes 22 seconds and a chord which bears North 3 degrees 42 minutes 06 seconds West, a distance of 74.77 Feet;

Northerly along said curve, a distance of 74.83 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the beginning of a reverse curve, concave to the East, having a radius of 475.00 Feet a central angle of 8 degrees 05 minutes 22 seconds, and a chord of 67.01 Feet bearing North 3 degrees 42 minutes 06 seconds West;

COUNTY CLERK'S MEMO
Instrument UNSATISFACTORY
For microfilm recording

Legal Description cont.

Northerly along said curve, a distance of 57.06 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set;

North 0 degrees 20 minutes 35 seconds East, a distance of 39.29 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the Northwest corner of herein described tract;

North 89 degrees 40 minutes 39 seconds East, a distance of 271.71 Feet to a 1/2 inch iron rod with plastic cap stamped "RPLS 4818" set at the Northeast corner of herein described tract;

South 18 degrees 58 minutes 06 seconds East, a distance of 300.85 Feet to the POINT OF BEGINNING and containing a computed area of 2.060 Acres, more or less.

COUNTY CLERK'S MEMO
Instrument UNSATISFACTORY
For microfilm recording

EXHIBIT "B"
PERMITTED EXCEPTIONS

1. Rights of tenants in possession, as tenants only, under any unrecorded lease agreements.
2. Memorandum Regarding Right of First Refusal, dated March 7, 2005, executed by and between SKJ Lawson Farms Development, L.P. and Mountain Peak Special Utility District and recorded or to be recorded in the Real Property Records of Ellis County, Texas.

EXHIBIT "C"DESCRIPTION
(112.261 ACRES)

BEING a 112.261 acre tract of land situated in the M.T. HAWKINS SURVEY, ABSTRACT NO. 463, the MARTHA BRENAN SURVEY, ABSTRACT NO. 43, and the J.M. GARVIN SURVEY, ABSTRACT NO. 424 and being a portion of that tract of land described in deed to SKJ Lawson Farms Development, L.P. and recorded in Volume 2005, Page 2309, Deed Records, Ellis County, Texas, said 112.261 acre tract of land being more particularly described as follows:

BEGINNING at a point in the east right-of-way line of F.M. 663 (an 80 foot public right-of-way), said point being the most westerly southwest corner of said SKJ Lawson Farms Development, L.P. and the northwest corner of a tract of land described in deed to John G. Hedrick and recorded in Volume 526, Page 973, Official Public Records, Ellis County, Texas;

THENCE N00°15'55"W, along the east right-of-way line of said F.M. 663, a distance of 1209.28 feet to a point;

THENCE N89°44'05"E, leaving the east right-of-way line of said F.M. 663, a distance of 15.00 feet to a point;

THENCE S37°55'30"E, a distance of 93.48 feet to a point;

THENCE N89°44'05"E, a distance of 636.00 feet to a point;

THENCE N85°07'40"E, a distance of 110.23 feet to a point;

THENCE N55°41'42"E, a distance of 107.78 feet to a point;

THENCE N53°25'56"E, a distance of 50.00 feet to a point at the beginning of a non-tangent curve to the right having a radius of 725.00 feet and whose long chord bears S26°47'15"E, a distance of 246.32 feet;

THENCE along said curve to the right, through a central angle of 19°33'39", an arc length of 247.52 feet to a point at the beginning of a curve to the left having a radius of 375.00 feet and whose long chord bears S35°04'45"E, a distance of 232.66 feet;

THENCE along said curve to the left, through a central angle of 36°08'39", an arc length of 236.56 feet to a point at the end of said curve;

THENCE N53°25'56"E, a distance of 229.59 feet to a point;

THENCE N89°40'28"E, a distance of 270.62 feet to a point at the beginning of a non-tangent curve to the right having a radius of 465.00 feet and whose long chord bears N17°17'44"E, a distance of 281.53 feet;

THENCE along said curve to the right, through a central angle of 35°14'32", an arc length of 286.02 feet to a point at the end of said curve;

THENCE S52°00'05"E, a distance of 235.97 feet to a point;

Exhibit "C" – Page 1 of 3

THENCE N37°59'55"E, a distance of 170.83 feet to a point;

THENCE N89°03'07"E, a distance of 120.12 feet to a point;

THENCE S16°44'17"E, a distance of 92.10 feet to a point;

THENCE S42°16'38"E, a distance of 31.30 feet to a point;

THENCE S67°48'59"E, a distance of 93.93 feet to a point;

THENCE N89°37'31"E, a distance of 892.53 feet to a point in the east line of said SKJ Lawson Farms Development, L.P., said point also being in the west line of Lot 11, Block 3, Lakegrove, Revised, as recorded in Cabinet A, Slides 753/754, Plat Records, Ellis County, Texas;

THENCE S00°22'29"E, a distance of 2243.56 feet to a point in the north right-of-way line of Ashford Lane (a 50 foot right-of-way) for the southeast corner of said SKJ Lawson Farms Development, L.P. tract of land;

THENCE S89°40'39"W, along the north right-of-way line of said Ashford Lane, a distance of 1170.81 feet to a point for the most southerly southwest corner of said SKJ Lawson Farms Development, L.P. tract of land and the southeast corner of a tract of described in deed to John R McMichael and recorded in Volume 805, Page 113, Deed Records, Ellis County, Texas;

THENCE N00°20'35"E, along the common line of said SKJ Lawson Farms Development, L.P. and McMichael tracts of land, a distance of 1108.71 feet to a point for an ell corner and the northeast corner of said Hedrick tract of land;

THENCE S89°35'35"W, along the common line of said SKJ Lawson Farms Development, L.P. and Hedrick tracts of land, a distance of 2050.12 feet to the POINT OF BEGINNING.

SAVE AND EXCEPT the following described tract of land:

COMMENCING at a point in the north right-of-way line of Ashford Lane (a 50 foot right-of-way) for the most southerly southwest corner of said SKJ Lawson Farms Development, L.P. tract of land;

THENCE N89°40'39"E, along the north right-of-way line of said Ashford Lane, a distance of 205.36 feet to a point;

THENCE N00°19'21"W, leaving the north right-of-way line of said Ashford Lane, a distance of 5.00 feet to the POINT OF BEGINNING of the herein described tract of land, said point being at the beginning of a non-tangent curve to the right having a radius of 25.00 feet and whose long chord bears N44°59'23"W, a distance of 35.56 feet;

THENCE along said curve to the right, through a central angle of 90°39'56", an arc length of 39.56 feet to a point at the end of said curve;

THENCE N00°20'35"E, a distance of 78.96 feet to a point at the beginning of a curve to the left having a radius of 530.00 feet and whose long chord bears N03°42'06"W, a distance of 74.77 feet;

Exhibit "C" – Page 2 of 3

02107 2273

VOL. PG.

Any provision herein which restricts the sale, rental, or use of this described real property because of color or race is invalid and unenforceable under federal law. STATE OF TEXAS, COUNTY OF ELLIS I hereby certify this instrument was filed on the date and time stamped herein and was duly recorded in the volume and page of the OFFICIAL PUBLIC RECORDS of Ellis County Texas as stamped hereon.



Cindy Polley

COUNTY CLERK, ELLIS COUNTY, TEXAS

FILED FOR RECORD - ELLIS COUNTY, TX
Inst No: 0507291
On Mar 10, 2005 at 10:44:00 AM

54

MPSUD03927

Real Estate Sales Contract

This contract to buy and sell real property is between Seller and Buyer as identified below and is effective on the date (Effective Date) of the last of the signatures by Seller and Buyer as parties to this contract and by Title Company to acknowledge receipt of the Earnest Money. Buyer must deliver the Earnest Money to Title Company and obtain Title Company's signature before the Earnest Money Deadline provided in section A.1. for this contract to be effective. If the Earnest Money is paid by check and payment on presentation is refused, Buyer is in default.

Seller: SKJ Lawson Farms Development, L.P.

Address: 411 W 7th St, Suite 1004
Ft Worth, TX 76102

Phone: 817-877-0422

Fax: _____

Type of entity: Texas limited partnership

Seller's Broker: _____

Buyer: Mountain Peak Special Utility District

Address: 5671 Waterworks Road
Midlothian, TX 76065

Phone: 972-775-3765

Fax: 972-775-6508

Type of entity: special utility district of the State of Texas

Buyer's Attorney: David A. Miller

Address: PO Box 130
100 N Main St.
Palmer, TX 75152

Phone: 972-845-2222

Real Estate Sales Contract – Page 1
J:\Documents\Developments\Lawson Farms\e9.email.excite.doc

Fax: 972-845-3398

Buyer's Broker: None

Property: Real property in Ellis County, Texas, consisting of 2.03 acres of land (the AProperty@) located in the Northeast corner of the intersection of Ashford Lane and Street II (as depicted on the Preliminary Utility Plan(the "Utility Plan") for Lawson Farms, an addition to the City of Midlothian, Texas), and being composed of Block 27, Lots 1-4 of Block 26, and Court CC on the Utility Plan, and being a part of 290.131 acres owned by Seller ("Seller's Land") known as Lawson Farms. The Property is more fully described in Exhibit A-1 attached hereto or to be attached hereto and the Seller's Land is more fully described in Exhibit A-2 attached hereto.

Title Company: Trinity Abstract & Title Company

Address: 613 Ferris Ave
Waxahachie, TX 75165

Phone: 972-938-7373

Fax: 972-938-7333

Underwriter: Chicago Title Ins. Company

Purchase Price: Thirty Thousand Dollars (\$30,000.00)

Earnest Money: \$1,000

Surveyor: N. W. Krieger, Jr. (972-878-7013)

Survey Category: TSPS Category 1A

Buyer's Liquidated Damages: \$1,000

Seller's Additional Liquidated Damages: \$1,000

County for Performance: Ellis County, TX

A. Deadlines and Other Dates

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a

deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Earnest Money Deadline: ten (10) days after the Effective Date
2. Delivery of Title Commitment: thirty (30) days after the Effective Date
3. Delivery of Survey: thirty (30) days after the Effective Date
4. Delivery of legible copies of instruments referenced in the Title Commitment and Survey: ten (10) days after delivery of each, respectively
5. Delivery of Title Objections: fifteen (15) days after delivery of the last to be delivered of the Title Commitment, Survey, and legible copies of the instruments referenced in them
6. Delivery of Seller's records as specified in Exhibit C: twenty (20) days after the Effective Date
7. End of Inspection Period: sixty (60) days after the Effective Date, or such earlier date as provided by notice from Buyer
8. Closing Date: fifteen (15) days after the End of the Inspection Period
9. Closing Time: 11:00 AM

B. Closing Documents

1. At closing, Seller will deliver the following items:

General Warranty Deed

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as specified in Exhibit D

2. At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction

Deceptive Trade Practices Act waiver

The documents listed in this section B are collectively known as the AClosing Documents. Unless otherwise agreed by the parties before closing, the deed will be prepared using the printed forms contained in appendix A of the current edition of the *Texas Real Estate Forms Manual* (State Bar of Texas).

C. Exhibits

The following are attached to and are a part of this contract:

Exhibit AC Descriptions of the Property and the Seller's Land

Exhibit BC Representations; Environmental Matters

Exhibit CC Seller's Records

Exhibit DC Notices, Statements, and Certificates

D. Purchase and Sale of Property

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract.

E. Interest on Earnest Money

Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money.

F. Title and Survey

1. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

2. *Title Commitment; Title Policy.* A Title Commitment means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. The Effective date stated in the Title Commitment must be after the Effective Date of this contract. A Title Policy means an Owner Policy of Title

Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

3. *Survey.* A Survey@ means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

4. *Delivery of Title Commitment, Survey, and Legible Copies.* Seller must deliver the Title Commitment to Buyer by the deadline stated in section A.2.; the Survey by the deadline stated in section A.3.; and legible copies of the instruments referenced in the Title Commitment, and Survey by the deadline stated in section A.4.

6. *Title Objections.* Buyer has until the deadline stated in section A.5. (A Title Objection Deadline@) to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them (A Title Objections@). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are A Permitted Exceptions.@ If Buyer notifies Seller of any Title Objections, Seller has five days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing (A Cure Notice@). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

G. Inspection Period

1. *Review of Seller's Records.* Seller will deliver to Buyer copies of Seller's records specified in Exhibit C, or otherwise make those records available for Buyer's review, by the deadline stated in section A.6.

2. *Entry onto the Property and Determination of Suitability.* Buyer may enter the Property before closing to inspect it, subject to the following:

a. Buyer must deliver evidence to Seller that Buyer has insurance for its proposed inspection activities, in amounts and with coverages that are reasonably satisfactory to

Seller;

- b. Buyer may not unreasonably interfere with existing operations or occupants of the Property;
- c. Buyer must notify Seller and Seller's tenant (Allen Byrd 972-723-0728; 214-354-3766) in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;
- d. if the Property is altered because of Buyer's inspections, Buyer must return the Property to its pre-inspection condition promptly after the alteration occurs;
- e. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three days of their preparation or receipt; and
- f. Buyer must abide by any other reasonable entry rules imposed by Seller.

In addition, Seller will provide reasonable cooperation to Buyer, but at the sole expense of Buyer, in conjunction with Buyer's determination of the suitability of the Property for Buyer's intended use, including applications for zoning, special use permits, regulatory exceptions or other governmental authorizations ("Governmental Authorizations"), and the Inspection Period will be extended as necessary to allow Buyer to obtain any Governmental Authorizations required for Buyer's intended use of the Property, provided (1) that Buyer is reasonably diligent in making application therefore and continues to pursue approval therefore with reasonable diligence, and (2) that Buyer pays Seller in advance the sum of \$500 for each month that the Inspection Period is extended in order to obtain such Governmental Authorizations.

3. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period.

4. *Buyer's Indemnity and Release of Seller*

- a. *Indemnity.* Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except for repair or remediation of existing conditions discovered by Buyer's inspection.
- b. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

H. Representations

The parties' representations stated in Exhibit B are true and correct as of the Effective Date and must be true and correct on the Closing Date.

I. Condition of the Property until Closing; Cooperation

1. *Maintenance and Operation.* Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property. Until the end of the Inspection Period, Seller will not enter into, amend, or terminate any contract that affects the Property other than in the ordinary course of operating the Property and will promptly give notice to Buyer of each new, amended, or terminated contract, including a copy of the contract, in sufficient time so that Buyer may consider the new information before the end of the Inspection Period. If Seller's notice is given within three days before the end of the Inspection Period, the Inspection Period will be extended for three days. After the end of the Inspection Period, Buyer may terminate this contract if Seller enters into, amends, or terminates any contract that affects the Property without first obtaining Buyer's written consent.

2. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within fifteen days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen days before closing). If Buyer does not terminate this contract, Seller will (a) convey the Property to Buyer in its damaged condition, (b) assign to Buyer all of Seller's rights under any property insurance policies covering the Property, and (c) pay to Buyer the amount of the deductibles and coinsurance provisions under any insurance policies covering the Property, but not in excess of the cost to repair the casualty damage and less any amounts previously paid by Seller to repair the Property. If Seller has not insured the Property and Buyer does not elect to terminate this contract in accordance with this section, the Purchase Price will be reduced by the cost to repair the casualty damage.

3. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the

Property will be revised to delete the portion taken.

4. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

5. *Cooperation.* Seller will cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

J. Termination

1. Disposition of Earnest Money after Termination

a. *To Buyer.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within five days of receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer, less \$100, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this contract.

b. *To Seller.* If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer will, within five days of receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Seller.

2. *Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract.

K. Closing

1. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

a. *Closing Documents.* The parties will execute and deliver the Closing Documents.

b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.

c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record

the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

d. *Delivery of Originals.* Seller will deliver to Buyer copies of Seller's Records.

e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.

2. *Transaction Costs*

a. *Seller's Costs.* Seller will pay the basic charge for the Title Policy; one-half of the escrow fee charged by Title Company; the costs to prepare the deed; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by Seller; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession; the costs to obtain the Survey and certificates or reports of ad valorem taxes; the costs to deliver copies of the instruments described in section A.5.; and Seller's expenses and attorney's fees.

b. *Buyer's Costs.* Buyer will pay one-half of the escrow fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense; the additional premium for the Survey/area and boundary deletion in the Title Policy, if the deletion is requested by Buyer; the costs of work required by Buyer to have the survey reflect matters other than those required under this contract; the costs to obtain financing of the Purchase Price, including the incremental premium costs of mortgagee's title policies and endorsements and deletions required by Buyer's lender; and Buyer's expenses and attorney's fees.

c. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date. Seller's portion of the prorated taxes will be paid to Buyer at closing as an adjustment to the Purchase Price. If the assessment for the calendar year of closing is not known at the Closing Date, the proration will be based on taxes for the previous tax year. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after closing. All taxes due as of closing will be paid at closing. If the Property has been the subject of special valuation and reduced tax assessments pursuant to the provisions of chapter 23, subchapter D, of the Texas Tax Code with respect to any period before the closing and additional taxes are assessed pursuant to section 23.55 thereof, the following will apply:

(1) If Seller changes the use of the Property before closing, resulting in the assessment of additional taxes for periods before closing, Seller will pay the additional taxes.

(2) At closing, the Buyer will assume "roll-back" or recapture of deferred taxes for the current year and all preceding tax years for which the "roll-back" or recapture could be imposed ("Potential Roll-Back Amount").

d. *Income and Expenses.* Seller will terminate the agricultural lease on the Land at or prior to Closing at its expense. No proration will be made for agricultural income or expenses.

e. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.

f. *Brokers' Commissions.* Buyer and Seller each indemnify and agree to defend and hold the other party harmless from any loss, attorney's fees, and court and other costs arising out of a claim by any person or entity claiming by, through, or under the indemnitor for a broker's or finder's fee or commission because of this transaction or this contract, whether the claimant is disclosed to the indemnitee or not. At closing, each party will provide the other party with a release of broker=s or appraiser=s liens from all brokers or appraisers for which each party was responsible.

3. *Issuance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

L. Default and Remedies

1. *Seller's Default.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date (ASeller's Default@), Buyer may elect either of the following as its sole and exclusive remedy:

a. *Termination; Liquidated Damages.* Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money, less \$100 as described above, returned to Buyer.

b. *Specific Performance.* Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

2. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract (ABuyer's Default@), Seller may elect either of the following as its sole and exclusive remedy:

a. *Termination; Liquidated Damages.* Seller may terminate this contract by giving

notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller.

b. *Specific Performance.* Seller may enforce specific performance of Buyer's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

3. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money and the amounts provided above are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

4. *Attorney's Fees.* If either party retains an attorney to enforce this contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

M. Miscellaneous Provisions

1. *Notices.* Any notice required by or permitted under this contract must be in writing. Any notice required by this contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. *Entire Contract.* This contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this contract.

3. *Amendment.* This contract may be amended only by an instrument in writing signed by the parties.

4. *Assignment.* Buyer may assign this contract and Buyer's rights under it only to an entity in which Buyer possesses, directly or indirectly, the power to direct or cause the direction of its management and policies, whether through the ownership of voting securities or otherwise, and any other assignment is void. This contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

5. *Survival.* The obligations of this contract that cannot be performed before termination of this contract or before closing will survive termination of this contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

6. *Choice of Law; Venue; Alternative Dispute Resolution.* This contract will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the County for Performance, except as otherwise provided by applicable law. Time permitting, the parties will submit in good faith to an alternative dispute resolution process before filing a suit concerning this contract.

7. *Waiver of Default.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this contract.

9. *Severability.* The provisions of this contract are severable. If a court of competent jurisdiction finds that any provision of this contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. *Counterparts.* If this contract is executed in multiple counterparts, all counterparts taken together will constitute this contract.

13. *Confidentiality.* The parties will keep confidential this contract, this transaction, and all information learned in the course of this transaction, except (a) to the extent disclosure is required by law or court order or (b) to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction or (c) in connection with Buyer's application for Governmental Authorizations.

14. *Waiver of Consumer Rights.* BUYER WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ. OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, BUYER VOLUNTARILY CONSENTS TO THIS WAIVER.

Seller:

SKJ Lawson Farms Development, LP.

By: _____, its general partner

By: _____
_____, President

Date: _____

Buyer:
Mountain Peak Special Utility District

By: _____

Its: _____

Date: _____

Title Company acknowledges receipt of Earnest Money in the amount of \$ _____ and a copy of this contract executed by both Buyer and Seller.

Ellis County Abstract & Title Company

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A-2

Description of the Seller's Land

Exhibit B

Representations; Environmental Matters

A. Seller's Representations to Buyer

Seller represents to Buyer that to the best of its knowledge after review of its applicable books and records the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is a limited partnership duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.
2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.
3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.
4. *Licenses, Permits, and Approvals.* Seller has not received notice that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal.
5. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.
6. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property, Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound; provided, however, Seller is negotiating to sell the balance of Seller's Land, including the portion containing the easements.
7. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give

rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.

8. *No Other Representation.* Except as stated above or in the notices, statements, and certificates set forth in Exhibit D, Seller makes no representation with respect to the Property.

9. *No Warranty.* Seller has made no warranty, except as to title, in connection with this contract.

B Buyer's Representations to Seller

1. *Authority.* Buyer is a special utility district of the State of Texas, duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to purchase the Property from Seller. This contract is, and all documents required by this contract to be executed and delivered to Seller at closing will be, duly authorized, executed, and delivered by Buyer.

2. *Litigation.* There is no litigation pending or threatened against Buyer that might affect the Property or Buyer's ability to perform its obligations under this contract.

B. AAs Is, Where Is@

THIS CONTRACT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN AAS IS, WHERE IS@ TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT FOR THE WARRANTY OF TITLE STATED IN THE CLOSING DOCUMENTS AND SELLER'S REPRESENTATIONS TO BUYER SET FORTH IN SECTION A OF THIS EXHIBIT B.

The provisions of this section B regarding the Property will be included in the deed with appropriate modification of terms as the context requires.

C. Environmental Matters

Seller has no knowledge of (1) the violation of any environmental laws in connection with the Property or (2) the presence of any hazardous materials in or on the Property.

Exhibit C

Seller's Records

To the extent that Seller has possession of the following items pertaining to the Property, Seller will deliver or make the items or copies of them available to Buyer by the deadline stated in section A.7.:

Governmental

governmental licenses, certificates, permits, and approvals

tax statements for the prior three years

notices of appraised value for the current year if available

records of regulatory proceedings or violations (for example, condemnation, environmental)

Land

soil reports

environmental reports

engineering reports

prior surveys

site plans

Exhibit D

Notices, Statements, and Certificates

The following notices, statements, and certificates, to the extent applicable, are attached for delivery to Buyer, and Buyer acknowledges receipt of such of the notices, statements, and certificates as are denoted by the initials of Buyer and Seller in front of each:

Notice regarding real property located adjacent to tidally influenced, submerged lands of Texas, described in section 33.135 of the Texas Natural Resources Code

Notice concerning public easements to the public beach, described in section 61.025 of the Texas Natural Resources Code

Seller's disclosure of the condition of residential property, described in section 5.008 of the Texas Property Code

Condominium declaration, bylaws, and association rules, described in section 82.156 of the Texas Property Code

Resale certificate from the condominium owners association, described in section 82.157 of the Texas Property Code

Seller's disclosure of the location of pipelines under the surface of unimproved property to be used for residential purposes, described in section 5.010 of the Texas Property Code

Notice of additional tax liability for vacant land that has been subject to a special tax appraisal method, described in section 5.010 of the Texas Property Code

Notice of deed restrictions, described in section 230.005 of the Texas Local Government Code

Notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code

Notice concerning insulation to be installed in a new home, described in section 460.16 of title 16 of the Code of Federal Regulations

Lead-paint warning statement, described in section 745.100 et seq. of title 40 of the Code of Federal Regulations

Notice concerning asbestos, described in sections 1910.1001 and 1926.1101 of title 29 of the Code of Federal Regulations

Notice containing the sale of property located outside the limits of a municipality that the property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality, described in section 5.011 of the Texas Property Code

Notice concerning the sale of single-family residential property that is subject to membership in a property owners association, described in section 5.012 of the Texas Property Code

Notice concerning the purchaser's three-day right of rescission under a contract to purchase real property if (1) the seller or the seller's agent solicits the sale at a place other than the seller's place of business; (2) the purchaser submits the purchase contract to the seller or the seller's agent at a place other than the seller's place of business; and (3) the consideration payable under the purchase contract exceeds \$100; unless either (1) the purchaser is represented by a licensed attorney; (2) the transaction is negotiated by a licensed real estate broker; or (3) the transaction is negotiated at a place other than the purchaser's residence by the person who owns the property, as described in chapter 39 of the Texas Business and Commerce Code

Notice regarding the sale of property used or to be used as the purchaser's residence located in a county subject to the 1995 colonia regulations if the contract does not provide for delivery of a deed from the seller to the purchaser within 180 days after the final execution of the contract, described in sections 5.091-.103 of the Texas Property Code

CE CHILDRESS ENGINEERS
ENGINEERS & CONSULTANTS

TX Registered Eng. Firm F-702
 211 N. Ridgeway Drive
 Cleburne, TX 76033

817-645-1118 Fax # 817-645-7235

Invoice

Date	Invoice #
3/2/2015	15-064

Bill To
Mt. Peak SUD 5671 Waterworks Road Midlothian, TX 76065

Description		Project #	Amount
Engineering services related to the Midlothian Law Suit:		15023	
Principal, 4 MH @ \$200/MH			800.00
Total Billed to Date: \$800.00			
Less Previously Paid:			0.00
		Total	\$800.00
		Credits	\$-800.00
Thank you for your business		Due This Invoice	\$0.00

CE CHILDRESS ENGINEERS
ENGINEERS & CONSULTANTS

TX Registered Eng. Firm F-702
 211 N. Ridgeway Drive
 Cleburne, TX 76033

817-645-1118 Fax # 817-645-7235

Invoice

Date	Invoice #
4/6/2015	15-119

Bill To
Mt. Peak SUD 5671 Waterworks Road Midlothian, TX 76065

Description		Project #	Amount
Engineering services related to the Midlothian Law Suit:		15023	
Principal, 7 MH @ \$200/MH			1,400.00
Total Billed to Date: \$1,400.00			
Less Previously Paid:			-800.00
		Total	\$600.00
		Credits	\$-600.00
Thank you for your business		Due This Invoice	\$0.00

CE CHILDRESS ENGINEERS
ENGINEERS & CONSULTANTS

TX Registered Eng. Firm F-702
 211 N. Ridgeway Drive
 Cleburne, TX 76033

817-645-1118 Fax # 817-645-7235

Invoice

Date	Invoice #
11/2/2016	16-397

Bill To
Mt. Peak SUD 5671 Waterworks Road Midlothian, TX 76065

Project #	15023
-----------	-------

Description	Amount
Engineering services related to the Midlothian Law Suit:	
Principal, 13 MH @ \$200/MH	2,600.00
Total Billed to Date: \$2,600.00	
Less Previously Paid:	-1,400.00
Total	\$1,200.00
Credits	\$-1,200.00
Thank you for your business	Due This Invoice \$0.00

HERZOG DEVELOPMENT CORPORATION

May 15, 2001

Mr. Randy Kirk, General Manager
Mountain Peak WSC
5671 Waterworks Road
Midlothian, TX 76065

Re: Water Service to Lawson Property

Dear Mr. Kirk:

Herzog Development Corporation currently has the above referenced property under contract for developing a subdivision on the south side of Midlothian. I believe you are aware of the location of the proposed subdivision, which is completely within Midlothian's city limits. There will be approximately 1100 homes in the subdivision. In order for these homes to be marketable, we, as well as the City of Midlothian, require city level water service, including adequate water volume and pressure for Midlothian to provide fire protection.

Midlothian has advised me that they are ready and willing to provide the required water service to our subdivision, but, as we know, the area is within your CCN. I understand that a CCN is a certificate of convenience and necessity from the Texas Natural Resource Conservation Commission that gives you an exclusive franchise to provide water service in the area where our subdivision will be located. I also understand that you are required to provide continuous and adequate water service to all customers within your CNN. In urban areas such as this, your service requirements includes urban fire flow standards. It is our understanding that recent flow/pressure tests in the area of our proposed subdivision indicate that your current system cannot provide the required level of service.

We are prepared to prepay the water provider for an initial 4 inch water service connection within our subdivision for water to be used for grading/construction within sixty days; prepay 151-1 inch water service connections for single family residences for Phase 1 within one hundred twenty days for use within six months, and will need 958 more or less additional connections in the future. We will also construct all internal water lines to city specifications since our subdivision is within the city limits. As previously stated, we need the initial connection within sixty days.

If you are not able to provide the initial required water service to our subdivision within sixty days and the additional 151 connections within the above mention time frame which meet adequate urban fire flow standards, we are requesting that you transfer this service area to the City of Midlothian. We understand that a written request for transfer, by you to the TNRCC will be sufficient for the City to begin service.

September 14, 2001

Herzog Development Corporation
9696 Skillman Avenue, Suite 210
Dallas, Texas 75243

Re: Lawson Acreage
Midlothian, Texas

Dear Mr. Herzog:

It has recently come to my attention that you may be laboring under the mistaken impression that your proposed development of the ~~reference acreage~~ has been denied service by Mountain Peak Water Supply Corp. Please rest assured nothing could be further from the truth, than such an assumption. The management and Board of Directors eagerly await your formal application for service. In light of recent planned facilities and future water purchase options some of the previous criteria for your proposed development may have changed. Mountain Peak W.S.C. has not and will not delay decisions on any **serious, formal request** made by any party interested in service within our certified service area.

To assist in getting you on the track of the approval process, I have enclosed a copy of our non-standard service application and a schedule of those items which will need to be addressed for Mountain Peak W.S.C. to consider your anticipated request. If I can be of assistance in any way please do not hesitate to contact me at the telephone number shown above.

Very truly yours,

MOUNTAIN PEAK W.S.C.

Randel Kirk
General Manager

RK/bs

cc: Mr. Joseph D. LaBeau
City of Midlothian
104 W. Avenue E
Midlothian, TX 76065

CE CHILDRESS ENGINEERS
ENGINEERS & CONSULTANTS

ROBERT T. CHILDRESS, JR., P.E. • BENJAMIN S. SHANKLIN, P.E. • ROBERT T. CHILDRESS III, P.E.

March 26, 2002

Mr. Randy Kirk, Manager
Mountain Peak Water Supply Corporation
5671 Waterworks Road
Midlothian, TX 76065

Re: Herzog 1100 Lot Development
Water Use

Dear Mr. Kirk:

As per your request, we have calculated the additional water supply capacity necessary to serve the above referenced addition. In order to meet the TNRCC requirements for supply capacity, Mountain Peak W.S.C. must obtain an additional 1.0 million gallons per day from the City of Midlothian. The addition can be temporarily served by connecting directly to the existing 12" transmission main and by installing a pressure-sustaining valve at Plant No. 2 to maintain adequate pressure for the addition when the plant calls for water. Since Midlothian's elevated tank operates in a range from 930 feet MSL to 940 feet MSL, the property should experience average pressures from 50 psi to 80 psi. When the addition is connected to the high-pressure portion of Mountain Peak's system, these pressures should increase approximately 15 to 20 psi. The subject property does not provide a good location on which to locate a new pump station. It is located in too close proximity to Plant No. 2 to drill a new well and lies at too low of an elevation to pump into the upper pressure plane without excessive electrical costs.

The development provides an opportunity for Mountain Peak to participate with the Herzog Development Corporation to construct a 12" distribution line from Plant No. 2 along F.M. 663 to Plant No. 4. An 8" line could supply domestic water to the Herzog addition in accordance with TNRCC regulations. However, a 12" line is required in order to provide the fire protection that has been requested by Mr. Herzog. Mountain Peak can also greatly benefit by the construction of this line. It will provide the means necessary to distribute more Midlothian water into the system. We recommend that an arrangement be made with the Herzog Development to share the cost of the 12" line. Although it will benefit Mountain Peak to have this additional line, due to the costs involved, it is a low priority as compared to other near future projects. We suggest that you examine the precedent (real or imagined) that may be established by constructing all of the offsite utilities at no cost to the developer. Also keep in mind that impact fees pay for supply, storage, and pump stations and do not include line extensions.

Please call if you have any additional questions.

Very truly yours,

CHILDRESS ENGINEERS



Robert T. Childress, III, P.E.

RTC/sm



An employee-owned company

May 8, 2001

Mr. Robert T. Childress III, P.E.
Childress Engineers
One North Walnut
Cleburne, Texas 76031

**Re: Mountain Peak Water System and
Proposed Development S.H. 663
PBSJ Proj. No. 520196.00**

Dear Robert,

Thank you for the copy of your report on the Hydraulic Analysis Update for the Mountain Peak Water Supply Corporation. The report was very helpful in understanding the Mountain Peak Water System. As we have discussed during our meetings, our primary concerns for water service to this development are to assure: 1) A reliable, uninterrupted source of water for the full development, approximately 1,100 connections, and 2) A safe supply, meeting TNRCC requirements and providing adequate fire protection.

Since the date of your Hydraulic Analysis Update, the TNRCC has also updated their rules and regulations contained in 30 TAC Chapter 290 Subchapter D. Any references in this letter to TNRCC are to this latest version.

Based upon your System Hydraulics Update and the brief analysis for the proposed Herzog Addition done in March, we still have questions and concerns regarding the adequacy of service from Mountain Peak. These are:

- A. Minimum fire flow requirements were given as 1,000 gpm for a two (2) hours duration, while operating at a max. 24 hour demand. Your initial analysis showed a 12-inch main would be required from the existing elevated tank past the project site to Heritage Estates.

You indicated a demand of 1.0 gpm per connection for the Herzog Development at four (4) take-off points and a fire flow of 1,000 gpm.

Mr. Robert T. Childress III, P.E.
May 8, 2001
Page 2 of 4

- Did your analysis include maximum day demand from the other 891 connections in this pressure plain?
 - Was 20 psi residual pressure met in the remainder of the system? Does this allow for other new connections?
 - Please confirm a 50 psi residual at peak demand and fire flow conditions at the extreme northwest corner of the subject tract. There was some confusion on the elevated tank operating range.
- B. It appears from your brief review of fire flow that the 12-inch main is required to provide a similar level of service to other additions, i.e., Hilltop Estates, Hillside Manor, Ashford Lane, etc.

Also, this line is critical in filling the existing elevated tank during peak demand periods and to maintain operating pressures.

- You indicated an approximate construction cost of \$350,000 for this connection. Would this line be constructed and paid for by Mountain Peak?
- C. The system relies very heavily on a number of single points of feed, i.e., one connection to Midlothian, one ground storage tank at Plant 1, one well at Plant 1, and two booster pumps at Plant 1. Transfer of significant volumes of water from other plants, or locations appears to be limited by the small main sizing.
- Are there plans to provide additional back-up, supplies, lines and/or alternative connection points to add redundancy to the system?
- D. The Mountain Peak System relies very heavily on a number of deep ground water wells as part of their supply.
- Is there an established Well Head Protection Program and is the system in compliance with 290.41 Subchapter D to assure long term continued use of the wells?
 - Have any studies been undertaken to assure long term continued supply from the aquifer?

Mr. Robert T. Childress III, P.E.
May 8, 2001
Page 3 of 4

E. The capacity evaluation section of the update discusses the TNRCC requirement of .6 gpm per connection. Within the Mountain Peak System 1783 connections are reported, requiring a supply of 1070 gpm. The stated capacity is 1050 gpm from the existing wells. A statement is made that 2.0 mgd is available from Midlothian.

However, the attached contract only provides for 500,000 gpm from Midlothian through the year 2007. This would allow for only 2,328 connections $(1050 + 347)/.6$ or 545 new connections over the next 5-1/2 years.

- Are there negotiations underway to increase the water supply or water purchase from Midlothian?
- We understand that Plants 1, 2, & 4 are in the same pressure plain. Using a strict interpretation, this would reduce the allowable connections above by 333 connections $(200/.6)$, or provide for only 211 new water services.
- Please clarify the terms of the purchase agreement since the copy furnished gives a maximum rate in 2013-2017 of 1.0 mgd and the System Hydraulic Analysis states 2.0 mgd is available. We are confused on the firm amount of water available for this development.
- Will Mountain Peak guarantee all new connections?

F. We understand that there are plans underway for a new elevated storage tank. Since storage requirements are a significant factor in TNRCC requirements for supply, standby power, booster pumps, etc., satisfying the requirement of 200 gallons per connection is critical. It is unclear which pressure plain the proposed tank will serve.

- If the proposed tank is in a lower pressure plain than the proposed development, per 290.45(b), it may not be counted as meeting capacity requirements. Storage would be deficient by $(891 + 1100) \times 200 \text{ gpm/connection} - 300,000 = 98,000$ gallons. Please confirm which pressure plain the new tank will serve.
- How will the new elevated water tank be connected for use by this proposed development?

G. The discussion on the 5-year Master Plan states a 40% growth rate over the next 5 years.

- Is this growth in the number of connections or rate as indicated?

Mr. Robert T. Childress III, P.E.
May 8, 2001
Page 4 of 4

- With the proposed Herzog development, the actual growth rate may actually be 100%. Is the District prepared to commit to provide service to those new connections and meet current TNRCC Regulations without curtailment of service, fire protection or connections?

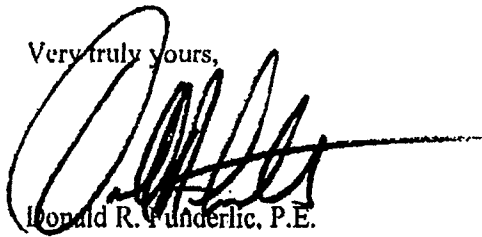
As you can see, we have several concerns about the level of service, number of firm connections, and cost to provide water to this proposed development. We also understand that there are fundamental differences between municipal and rural systems and that the transition of systems can be difficult.

However, there is an excellent opportunity for Mountain Peak and the City to develop infrastructure and increase the economic base with planned developments such as this. Finding an adequate, reliable water supply is a key element.

Please call me with any questions concerning this letter. If a meeting to discuss engineering details would be helpful, we can meet at your convenience.

I look forward to working with you to find an acceptable proposal for water service to this development.

Very truly yours,



Donald R. Funderlic, P.E.
Project Manager

DRF/mr

c. Don Herzog

m:\jnh\52019600\at\childress-water supply drf.doc

HERZOG DEVELOPMENT CORPORATION

December 6, 2001

Mountain Peak Water Supply Corporation
5671 Waterworks Road
Midlothian, Texas 76065
Attn: Randall Kirk, General Manager

Re: Non-Standard Service Application And Agreement

Dear Mr. Kirk,

As was discussed at the Mountain Peak Water Supply Corporation Board of Directors meeting held on Tuesday, November 13, 2001, we have prepared a proposed agreement by and between Herzog Development Corporation and Mountain Peak Water Supply Corporation for water service to Mr. Lawson's property. We chose to use the document referenced above as the base document for an agreement and have, through our attorney, revised this document accordingly.


Enclosed please find one (1) draft copy dated 12/06/01 of the above referenced document with revision markings and one (1) draft copy dated 12/06/01 without revision markings.

As we have been working on this water issue for over a year, we and Mr. Lawson are anxious to get this matter resolved. As soon as this document is executed, we will proceed with our zoning application to the City of Midlothian for this property.

If there are any questions, please contact me at the number listed below. If your attorney wishes to contact my attorney, please have him call Bill Dahlstrom with Jenkins & Gilchrist at 214-855-4500.

We look forward to hearing from you.

Sincerely


Donald P. Herzog
President

cc E. M. Lawson
William Dahlstrom, Jenkins & Gilchrist
Don Funderlic, PBS&J
Joe LaBeau, City Manager, City of Midlothian

Draft Dated
12/6/01

MOUNTAIN PEAK WATER SUPPLY CORPORATION
NON-STANDARD SERVICE APPLICATION AND AGREEMENT

COUNTY OF ELLIS

THIS AGREEMENT is made and entered into by and between _____ HERZOG DEVELOPMENT CORPORATION, hereinafter referred to as "Developer", and Mountain Peak Water Supply Corporation MOUNTAIN PEAK WATER SUPPLY CORPORATION, hereinafter referred to as "WSC") "WSC".

WHEREAS, Developer is engaged in developing that certain _____ acres an approximately 292-acre tract of land in _____ Ellis County, Texas, more particularly known as the _____ subdivision, according to the plat thereof recorded at Vol: _____, Page _____ of the Plat Records of _____ County, Texas described in Exhibit "A" attached hereto and incorporated herein for all purposes, said land being hereinafter referred to as "the the "Property""; and

WHEREAS, WSC owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area; and

WHEREAS, Developer has requested or shall request WSC to provide such water service to the Property through an extension of WSC's water system, such extension being hereinafter referred to as "the Water System Extension";

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:

THAT for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, Developer and WSC agree as follows:

1. Engineering and Design of the Water System Extension.
 - a. The All portions of the Water System Extension shall must be engineered and designed by a Texas Registered Professional Engineer in accordance with the applicable specifications of the WSC and all governmental agencies having jurisdiction. All plans and specifications must shall be reviewed and approved by WSC's consulting engineer prior to the issuance of any request for bids for the(the "WSC Engineer") prior to commencement of construction of the Water System Extension by either party. After such approval of the plans and specifications by the ~~WSC's consulting engineer~~ WSC Engineer, the plans and specifications shall become part of this Agreement by reference and shall more particularly define "the Water System Extension".
 - b. The Water System Extension must be sized to provide continuous and adequate water service to the property based on plans for the Adequate Water Service (as defined below) to the Property based on the plans for

the full development of the Property as provided to WSC by the Developer. "Adequate Water Service" shall mean the amount of potable water that must be delivered to the Property to satisfy all of the following standards: (i) the fire flow requirements (1997 Uniform Fire Code) adopted by the City of Midlothian (the "City"); (ii) Texas Natural Resource Conservation Commission requirements; and (iii) sufficient quantity of supply of potable water and capital improvements to serve the reasonably anticipated population growth of the Property. WSC may require the Water System Extension to be oversized in anticipation of the needs of other customers of the WSC, subject to the obligation to reimburse the Developer for any such oversizing as provided below: in Paragraph 5(f) below.

- c. The Water System Extension shall provide for a connection (the "Emergency Water Service Connection", as more particularly defined herein) to the City water system to ensure uninterrupted water service to the Property in the event of an emergency or in the event that the Water System Extension cannot provide Adequate Water Service. The Emergency Water Service Connection shall only be in operation in the event the City determines that the Water System Extension does not comply with the provisions defined above or will not issue building permits because of inadequate water service to the Property. The Emergency Water Service Connection shall be adequately valued and metered for systematic operation by WSC whereby, upon notification by either telephone or facsimile to WSC, followed by written notification to WSC in accordance with Section 9 below, WSC shall open the Emergency Water Service Connection immediately upon notice by telephone or facsimile and keep the Emergency Water Service Connection operational until Adequate Water Service is restored to the Property by means of the Water System Extension. WSC shall use its best efforts to enter into an agreement with the City providing for the Emergency Water Service Connection.

2. Required Easements or Rights-of-Way.

- a. Developer shall be responsible for dedicating ~~or acquiring~~ any easements across ~~privately owned land~~, within the boundaries of the Property which are necessary for the construction of the Water System Extension, the location of which shall be determined in Developer's sole discretion. WSC shall be responsible for acquiring any easement outside of the Property which are necessary for the construction of the Water System Extension and for obtaining any ~~Governmental~~ governmental approvals necessary to construct the Water System Extension in public right-of-way.
- b. Any necessary easements acquired by the Developer within the boundaries of the Property shall be assigned to WSC upon proper completion of the

construction of the entire Water System Extension. The validity of the legal instruments by which the ~~Developer acquires any such easements and by which~~ Developer assigns such easements to WSC must be approved by WSC's attorney.

3. Construction of the Water System Extension.

a. ~~The Corporation shall or instruct the Developer Engineer to advertise for bids~~ WSC is responsible for the construction of that portion of the Water System Extension outside the boundaries of the Property, and the Developer is responsible for the construction of that portion of the Water System Extension within the boundaries of the Property.

b. For those portions of the Water System Extension outside the Property only, WSC or the WSC Engineer shall advertise for bids for the construction of that portion of the Water System Extension in accordance with generally accepted ~~bidding~~ bidding practices and shall award the contract for the construction of that portion of the Water System Extension subject to the approval of the WSC. WSC may reject any bids.

b c. The Water System Extension within the Property shall be constructed in accordance with the approved plans and specifications. WSC shall have the right to inspect all phases of the construction of the Water System Extension. Developer must give written notice to WSC of the date on which construction ins of the Water System Extension within the Property is scheduled to begin so that WSC may assign an inspector. WSC may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses of the inspectors, plus 10% overhead, but in no event shall such inspection fees exceed 2% of the total construction cost of the Water System Extension within the Property. WSC shall properly complete construction of the portion of Water System Extension outside the Property within one year of the adoption of a zoning ordinance allowing the Property to be developed by right as proposed by the Developer ("Zoning Approval").

4. Dedication of Water System Extension to WSC.

Upon proper completion of construction of the entire Water System Extension and final inspection thereof by WSC, the Water System Extension within the Property shall be dedicated to the WSC by ~~no an~~ appropriate legal instrument approved by WSC's ~~Attorney-~~ attorney. The entire Water System Extension shall thereafter be owned and maintained by WSC.

5. Cost of Water System Extension.

- a. ~~Developer shall pay all costs associated with WSC~~ **WSC shall be responsible for the entire cost of that portion of the Water System Extension as a contribution in aid of construction, including without limitation to the cost of the following outside the boundaries of the Property, including, but not limited to:**
- (1) engineering and design;
 - (2) ~~casement of right-of-way acquisition;~~
 - (3) construction;
 - (4) inspection;
 - (5) ~~attorney's fees;~~
 - (6) governmental or regulatory approvals required to lawfully provide service.
- b. ~~Developer shall indemnify WSC and hold WSC harmless from all of the foregoing costs. Performance or maintenance Bond~~ **be responsible for the cost of that portion of the Water System Extension within the boundaries of the Property, with the exception of any oversizing, but including:**
- (1) ~~engineering and design;~~
 - (2) ~~construction;~~
 - (3) ~~inspection;~~
 - (4) ~~governmental or regulatory approvals required to lawfully provide service.~~
- c. ~~Developer shall contribute up to \$100,000.00 toward the costs associated with the Water System Extension outside the boundaries of the Property. Developer shall deliver the \$100,000.00 to WSC within sixty (60) of the later to occur: (i) written notification by WSC including a copy of the "Notice to Proceed" by WSC to its contractor for that portion of the Water System Extension outside the boundary of the Property necessary for Adequate Water Service to the Property or (ii) Zoning Approval. WSC shall reimburse Developer the \$100,000.00, including interest at the prime rate plus 1% per annum, out of the impact fee revenue generated from the Property. Upon receipt by WSC, one-half of all impact fee payments shall be used by WSC to reimburse the Developer until such time as the Developer has been reimbursed all of the principal and interest on its \$100,000.00 payment.~~
- d. ~~A one-year performance or maintenance bond~~ may be required and will be furnished by Developer the contractor(s) upon request by WSC.
- e. ~~Provided, however, nothing~~ Nothing herein shall be construed as obligating the Developer to maintain any portion of the Water System Extension subsequent to its dedication and acceptance for maintenance by WSC.

d. ~~The f.~~ WSC may require certain portions of the Water System Extension within the boundaries of the Property to be oversized in anticipation of the needs of the other customers of WSC. This ~~would~~ shall be determined by the ~~WSC's consulting engineer~~ WSC Engineer and the board of directors. WSC shall, upon request, immediately reimburse the Developer for all costs associated with the oversizing of the Water System Extension within the Property ~~c. Unless paid directly by Developer, all of the foregoing costs will be paid by Developer to WSC within ten days of WSC's invoice.~~

6. Service From the Water System Extension.

a. After proper completion and dedication of the Water System Extension to WSC, WSC shall provide continuous and ~~adequate water service to~~ Adequate Water Service to the Property, subject to all duly adopted rules and regulation of WSC and the payment of the following:

- (1) All standard rates, fees and charges are reflected in WSC's approved tariff; and
- (2) Any applicable impact fee adopted by WSC;

~~(3) Any applicable reserved service charge adopted by WSC.~~

b. It is understood and agreed by the parties that the obligation of WSC to provide water service in the manner contemplated by this Agreement ~~is~~ may be subject to the issuance by the Texas Natural Resource Conservation Commission and ~~all~~ other governmental agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service. WSC shall use its best efforts to obtain all necessary certificates or approvals, if any, in a timely manner so that such water service may be provided to the Property upon completion of the Water System Extension.

c. Unless the prior approval of WSC is obtained, the Developer shall not:

- (1) construct or install additional water lines or facilities to service areas outside the Property;
- (2) add any additional lands to the Property for which water service is to be provided pursuant to this ~~agreement~~; Agreement; or
- (3) connect or serve any person or entity that, in turn, sells water service directly or indirectly to another person or entity.

d. Impact fees are due ~~upon approval of the plat by the WSC~~; ~~provided~~; however, that upon written application by the Developer, WSC may allow a deferral of payment of such impact fees on the following terms:

- (1) The impact fees are due within sixty (60) days of written notice to Developer by WSC, but in no event later, for each meter, than the date such meter is installed;
- (2) WSC may demand payment of all or less than all of the impact fees, at its discretion;

~~(3) Upon the failure of a Developer to pay impact fees when due hereunder, the entire amount of the deferred impact fees shall be immediately due and payable, no other meters will be installed within the area of the approved plat until payment in full of all of the deferred impact fees is received by the WSC, and Developer will not be eligible for this deferred payment arrangement in the future.~~

~~(4) Before impact fees can be deferred, Developer must furnish to WSC a letter of credit, performance bond or other security for payment of the full amount of the deferred impact fees satisfactory to the WSC, and in each event subject to the approval of WSC's counsel.~~

7 on a lot by lot basis at the time an application for water service is made by the owner or builder of a structure on a lot within the Property.

7. Failure to Provide Adequate Water Service.

a. In the event WSC is not able to provide Adequate Water Service in accordance with the terms of this Agreement or the Emergency Water Service Connection remains open for a period of thirty (30) consecutive days or for sixty (60) days out of a one hundred and twenty (120) day period, WSC shall agree that the Property shall be served by the City in accordance with Section 13.255 of the Texas Water Code.

b. In the event that it is reasonably certain that WSC shall not complete construction of the portion of the Water System Extension for which it is responsible under the terms of this Agreement within one year after Zoning Approval, unless otherwise agreed to in writing by the parties, the Developer may terminate this Agreement. Upon receiving notice of such termination, WSC shall immediately reimburse the Developer all of the principal and interest on the \$100,000.00 payment referenced in paragraph 5(c).

8. Effect of Force Majeure.

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Agreement, in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided, however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party.

The cause, as far as possible, shall be remedied with all reasonable diligence. The terms "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restrains of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability's of either party,

whether similar to those enumerated or have been avoided by the exercise of due diligence and care, but shall specifically not include water rationing. It is understood and agreed that the settlement or strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty.

~~8:~~ 9. Notices.

Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed. Any notice mailed to the WSC shall be delivered:

Mountain Peak Water Supply Corporation
5671 Waterworks Road
Midlothian, Texas 76065
Attn: Randall Kirk, General Manager

Any notice mailed to Developer shall be addressed

Don Herzog
9696 Skillman Street, Suite 210
Dallas, TX 75243

Either party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

~~9:~~ 10. Severability.

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained herein.

~~10:~~ 11. Entire Agreement.

This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

~~11~~ **12. Amendment.**

No amendment of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of the WSC and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

~~12~~ **13. Governing Law.**

This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Ellis County, Texas.

~~13~~ **14. Venue.**

The obligations hereunder are performable in Ellis County, Texas

~~14~~ **15. Successors and Assigns.**

This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.

~~15~~ **16. Assignability.**

a. The rights and obligations of the Developer hereunder may not be assigned without the prior written consent of the WSC, **except in the case of an assignment by the Developer to a related entity, in which case the Developer shall only be required to notify WSC in writing of the assignment.**

b. **The rights and obligations of WSC shall automatically be assigned to an entity acquiring WSC or created or formed to replace or acquire WSC.**

16. Effective Date:

This Agreement shall be effective from and after the date of due execution by all parties.

IN WITNESS WHEREOF each of the parties has caused this Agreement to be executed by its duly authorized representatives in multiple copies, each of equal dignity, on the date or dates indicated below.

MOUNTAIN PEAK WATER SUPPLY CORPORATION **HERZOG DEVELOPMENT CORPORATION**
WSC DEVELOPER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

GUARANTY

~~The undersigned being financially interested in Developer personally guarantees the payment and performance of the obligations of Developer hereunder.~~

~~By: Name:~~

~~Date: Title:~~

Draft Dated
12/6/01

**MOUNTAIN PEAK WATER SUPPLY CORPORATION
NON-STANDARD SERVICE APPLICATION AND AGREEMENT**

COUNTY OF ELLIS

THIS AGREEMENT is made and entered into by and between HERZOG DEVELOPMENT CORPORATION, hereinafter referred to as "Developer", and MOUNTAIN PEAK WATER SUPPLY CORPORATION, hereinafter referred to as "WSC".

WHEREAS, Developer is engaged in developing an approximately 292-acre tract of land in Ellis County, Texas, more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes, said land being hereinafter referred to as the "Property"; and

WHEREAS, WSC owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area; and

WHEREAS, Developer has requested or shall request WSC to provide such water service to the Property through an extension of WSC's water system, such extension being hereinafter referred to as "the Water System Extension".

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:

THAT for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, Developer and WSC agree as follows:

1. **Engineering and Design of the Water System Extension.**
 - a. All portions of the Water System Extension must be engineered and designed by a Texas Registered Professional Engineer in accordance with the applicable specifications of the WSC and all governmental agencies having jurisdiction. All plans and specifications shall be reviewed and approved by WSC's consulting engineer (the "WSC Engineer") prior to commencement of construction of the Water System Extension by either party. After such approval of the plans and specifications by the WSC Engineer, the plans and specifications shall become part of this Agreement by reference and shall more particularly define the Water System Extension.
 - b. The Water System Extension must be sized to provide continuous and Adequate Water Service (as defined below) to the Property based on the plans for the full development of the Property as provided to WSC by the Developer. "Adequate Water Service" shall mean the amount of potable water that must be delivered to the Property to satisfy all of the following standards: (i) the fire flow requirements (1997 Uniform Fire Code) adopted

by the City of Midlothian (the "City"); (ii) Texas Natural Resource Conservation Commission requirements; and (iii) sufficient quantity of supply of potable water and capital improvements to serve the reasonably anticipated population growth of the Property. WSC may require the Water System Extension to be oversized in anticipation of the needs of other customers of the WSC, subject to the obligation to reimburse the Developer for any such oversizing as provided in Paragraph 5(f) below.

- c. The Water System Extension shall provide for a connection (the "Emergency Water Service Connection", as more particularly defined herein) to the City water system to ensure uninterrupted water service to the Property in the event of an emergency or in the event that the Water System Extension cannot provide Adequate Water Service. The Emergency Water Service Connection shall only be in operation in the event the City determines that the Water System Extension does not comply with the provisions defined above or will not issue building permits because of inadequate water service to the Property. The Emergency Water Service Connection shall be adequately valued and metered for systematic operation by WSC whereby, upon notification by either telephone or facsimile to WSC, followed by written notification to WSC in accordance with Section 9 below, WSC shall open the Emergency Water Service Connection immediately upon notice by telephone or facsimile and keep the Emergency Water Service Connection operational until Adequate Water Service is restored to the Property by means of the Water System Extension. WSC shall use its best efforts to enter into an agreement with the City providing for the Emergency Water Service Connection.

2. **Required Easements or Rights-of-Way.**

- a. Developer shall be responsible for dedicating any easements within the boundaries of the Property which are necessary for the construction of the Water System Extension, the location of which shall be determined in Developer's sole discretion. WSC shall be responsible for acquiring any easement outside of the Property which are necessary for the construction of the Water System Extension and for obtaining any governmental approvals necessary to construct the Water System Extension in public right-of-way.
- b. Any necessary easements within the boundaries of the Property shall be assigned to WSC upon proper completion of the construction of the entire Water System Extension. The validity of the legal instruments by which the Developer assigns such easements to WSC must be approved by WSC's attorney.

3. **Construction of the Water System Extension.**

- a. WSC is responsible for the construction of that portion of the Water System Extension outside the boundaries of the Property, and the Developer is responsible for the construction of that portion of the Water System Extension within the boundaries of the Property.
- b. For those portions of the Water System Extension outside the Property only, WSC or the WSC Engineer shall advertise for bids for the construction of that portion of the Water System Extension in accordance with generally accepted bidding practices and shall award the contract for the construction of that portion of the Water System Extension subject to the approval of the WSC. WSC may reject any bids.
- c. The Water System Extension within the Property shall be constructed in accordance with the approved plans and specifications. WSC shall have the right to inspect all phases of the construction of the Water System Extension. Developer must give written notice to WSC of the date on which construction of the Water System Extension within the Property is scheduled to begin so that WSC may assign an inspector. WSC may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses of the inspectors, plus 10% overhead, but in no event shall such inspection fees exceed 2% of the total construction cost of the Water System Extension within the Property. WSC shall properly complete construction of the portion of Water System Extension outside the Property within one year of the adoption of a zoning ordinance allowing the Property to be developed by right as proposed by the Developer ("Zoning Approval").

4. **Dedication of Water System Extension to WSC.**

Upon proper completion of construction of the entire Water System Extension and final inspection thereof by WSC, the Water System Extension within the Property shall be dedicated to the WSC by an appropriate legal instrument approved by WSC's attorney. The entire Water System Extension shall thereafter be owned and maintained by WSC.

5. **Cost of Water System Extension.**

- a. WSC shall be responsible for the entire cost of that portion of the Water System Extension outside the boundaries of the Property, including, but not limited to:
 - (1) engineering and design;
 - (2) construction;
 - (3) inspection;
 - (4) governmental or regulatory approvals required to lawfully provide service.

- b. Developer shall be responsible for the cost of that portion of the Water System Extension within the boundaries of the Property, with the exception of any oversizing, but including:
 - (1) engineering and design;
 - (2) construction;
 - (3) inspection;
 - (4) governmental or regulatory approvals required to lawfully provide service.

- c. Developer shall contribute up to \$100,000.00 toward the costs associated with the Water System Extension outside the boundaries of the Property. Developer shall deliver the \$100,000.00 to WSC within sixty (60) of the later to occur: (i) written notification by WSC including a copy of the "Notice to Proceed" by WSC to its contractor for that portion of the Water System Extension outside the boundary of the Property necessary for Adequate Water Service to the Property or (ii) Zoning Approval. WSC shall reimburse Developer the \$100,000.00, including interest at the prime rate plus 1% per annum, out of the impact fee revenue generated from the Property. Upon receipt by WSC, one-half of all impact fee payments shall be used by WSC to reimburse the Developer until such time as the Developer has been reimbursed all of the principal and interest on its \$100,000.00 payment.

- d. A one-year performance or maintenance bond may be required and will be furnished by the contractor(s) upon request by WSC.

- e. Nothing herein shall be construed as obligating the Developer to maintain any portion of the Water System Extension subsequent to its dedication and acceptance for maintenance by WSC.

- f. WSC may require certain portions of the Water System Extension within the boundaries of the Property to be oversized in anticipation of the needs of the other customers of WSC. This shall be determined by the WSC Engineer and the board of directors. WSC shall, upon request, immediately reimburse the Developer for all costs associated with the oversizing of the Water System Extension within the Property.

6. **Service From the Water System Extension.**

- a. After proper completion and dedication of the Water System Extension to WSC, WSC shall provide continuous and Adequate Water Service to the Property, subject to all duly adopted rules and regulation of WSC and the payment of the following:
 - (1) All standard rates, fees and charges are reflected in WSC's approved tariff; and
 - (2) Any applicable impact fee adopted by WSC.

- b. It is understood and agreed by the parties that the obligation of WSC to provide water service in the manner contemplated by this Agreement may be subject to the issuance by the Texas Natural Resource Conservation Commission and other governmental agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service. WSC shall use its best efforts to obtain all necessary certificates or approvals, if any, in a timely manner so that such water service may be provided to the Property upon completion of the Water System Extension.
- c. Unless the prior approval of WSC is obtained, the Developer shall not:
 - (1) construct or install additional water lines or facilities to service areas outside the Property;
 - (2) add any additional lands to the Property for which water service is to be provided pursuant to this Agreement; or
 - (3) connect or serve any person or entity that, in turn, sells water service directly or indirectly to another person or entity.
- d. Impact fees are due on a lot by lot basis at the time an application for water service is made by the owner or builder of a structure on a lot within the Property.

7. **Failure to Provide Adequate Water Service.**

- a. In the event WSC is not able to provide Adequate Water Service in accordance with the terms of this Agreement or the Emergency Water Service Connection remains open for a period of thirty (30) consecutive days or for sixty (60) days out of a one hundred and twenty (120) day period, WSC shall agree that the Property shall be served by the City in accordance with Section 13.255 of the Texas Water Code.
- b. In the event that it is reasonably certain that WSC shall not complete construction of the portion of the Water System Extension for which it is responsible under the terms of this Agreement within one year after Zoning Approval, unless otherwise agreed to in writing by the parties, the Developer may terminate this Agreement. Upon receiving notice of such termination, WSC shall immediately reimburse the Developer all of the principal and interest on the \$100,000.00 payment referenced in paragraph 5(c).

8. **Effect of Force Majeure.**

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Agreement, in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided, however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force

majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party.

The cause, as far as possible, shall be remedied with all reasonable diligence. The terms "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restrains of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability's of either party, whether similar to those enumerated or have been avoided by the exercise of due diligence and care, but shall specifically not include water rationing. It is understood and agreed that the settlement or strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty.

9. **Notices.**

Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed. Any notice mailed to the WSC shall be delivered:

Mountain Peak Water Supply Corporation
5671 Waterworks Road
Midlothian, Texas 76065
Attn: Randall Kirk, General Manager

Any notice mailed to Developer shall be addressed

Don Herzog
9696 Skillman Street, Suite 210
Dallas, TX 75243

Either party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

10. **Severability.**

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of

such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained herein.

11. **Entire Agreement.**

This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

12. **Amendment.**

No amendment of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of the WSC and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

13. **Governing Law.**

This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Ellis County, Texas.

14. **Venue.**

The obligations hereunder are performable in Ellis County, Texas

15. **Successors and Assigns.**

This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.

16. **Assignability.**

- a. The rights and obligations of the Developer hereunder may not be assigned without the prior written consent of the WSC, except in the case of an assignment by the Developer to a related entity, in which case the Developer shall only be required to notify WSC in writing of the assignment.
- b. The rights and obligations of WSC shall automatically be assigned to an entity acquiring WSC or created or formed to replace or acquire WSC.

16. **Effective Date.**

This Agreement shall be effective from and after the date of due execution by all parties.

IN WITNESS WHEREOF each of the parties has caused this Agreement to be executed by its duly authorized representatives in multiple copies, each of equal dignity, on the date or dates indicated below.

MOUNTAINPEAK WATER SUPPLY CORPORATION

HERZOG DEVELOPMENT CORPORATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

FAX Transmission

HERZOG DEVELOPMENT CORPORATION

**9696 Skillman Street
Suite 210
Dallas, Texas 75243
(214) 348-1300**

Date: 30-Jul-2002

To: Randy Kirk

Company: Mountain Peak Water Supply

Phone: (972) 775-6508 Fax

Project:

Regarding: Water Service Proposal for E. M. Lawson Property.

From: Don Herzog

Total Pages Including This Cover Page: 4

Comments:

If this FAX did not transmit clearly, please contact this office at (214) 348-1300.

**FAX NUMBER: (214) 348-1720
ORIGINAL TO FOLLOW BY MAIL**

HERZOG DEVELOPMENT CORPORATION

July 30, 2002

Mr. Randy Kirk
General Manager
Mountain Peak Water Supply Corporation
5671 Waterworks Road
Midlothian, Texas 76065

Re: Water Service to E. M. Lawson Property

Dear Randy,

As we discussed, Mr. Lawson is extremely discouraged at the lack of progress in getting the water service issued resolved for his property. In order for this property to have adequate water for fire protection for development, I propose the following:

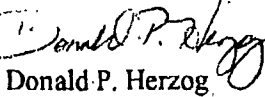
1. All water line construction shall be accordance with the specifications and standards of Mountain Peak and the City of Midlothian, whichever is the most restrictive.
2. Mountain Peak and the City of Midlothian enter into an agreement allowing the proposed subdivision be connected to the 12" water line located in FM 663 which provides water from the City of Midlothian to Mountain Peak.
3. Application for water service to each lot will be made through Mountain Peak. Each lot or residence would be individually metered with the meters being read monthly by Mountain Peak who then would provide the City of Midlothian with the monthly water usage reading for the development. The billing would be for the actual amount of water used within the development. There is no minimum or maximum usage requirements.
4. The water rate would be agreed upon by Mountain Peak and the City of Midlothian. The agreement would provide for an adjustment to the water usage rate on each anniversary of the agreement for pass through expenses. This rate would be independent of any other existing contractual water usage rate agreements between the two entities.
5. Mountain Peak and the City of Midlothian will enter into an agreement for the collection of sewer usage fees allowing Mountain Peak the ability to shut off water service if the sewer bill has not been paid.
6. A portion of the water impact fees, which are to be paid by the builder at the time of application for a water meter, are to be used for over sizing of water mains within the development and for the connection of the subdivision to the existing City of Midlothian water

line in 14th Street, as shown on the attached Exhibit "A", which will provide for a looped water system to and within the subdivision.

7. This agreement shall remain in effect until the subdivision has been completely developed or until Mountain Peak, the City of Midlothian and the developer agree the water service provided by Mountain Peak is sufficient to meet the requirements for fire flow protection to the development, it being the desire of all parties that the issuance of building permits not be delayed because of inadequate water pressure and storage capacity for meeting fire flow requirements.

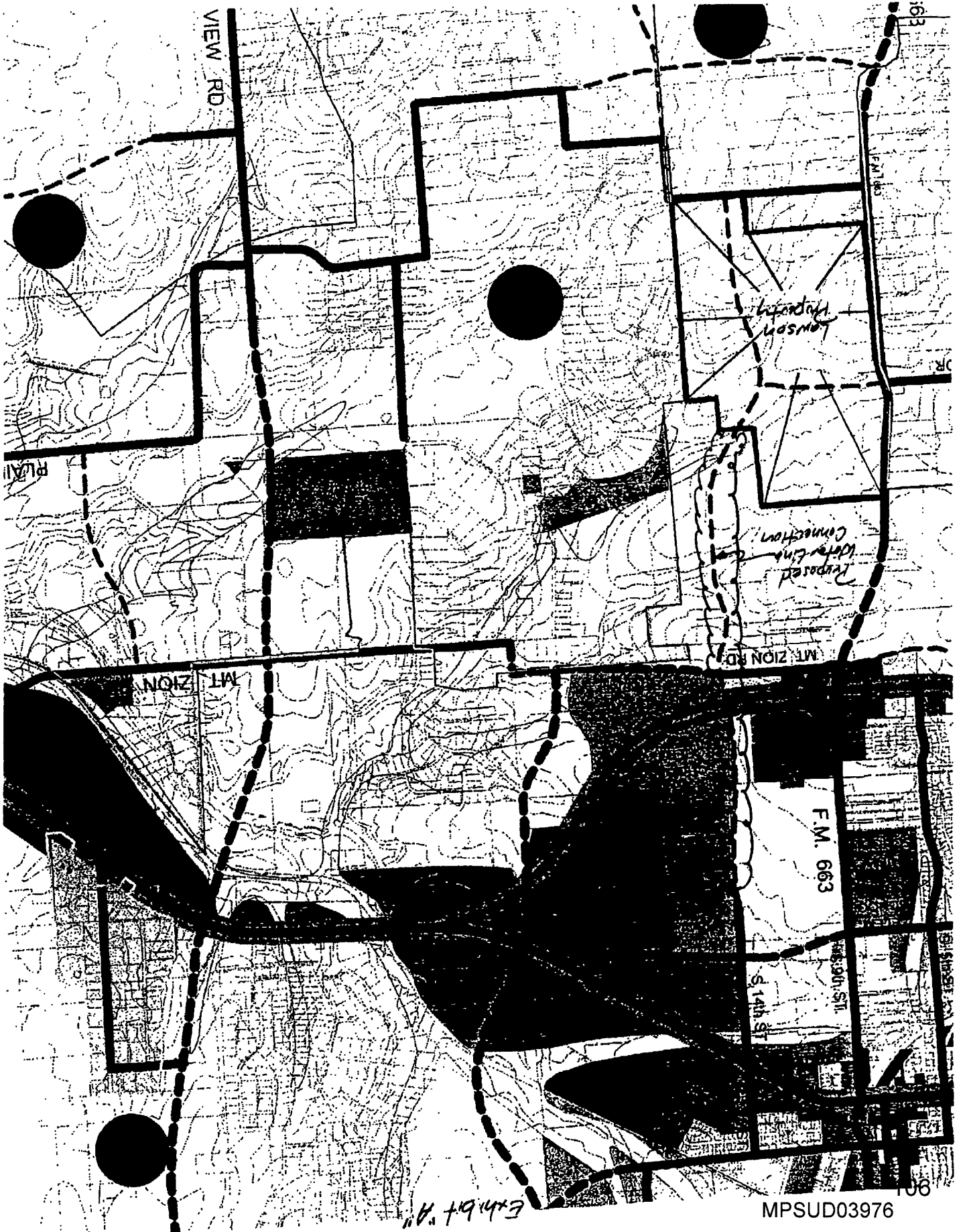
I have tried to make this proposal specific to the Lawson property and not to issues unrelated to the proposed development. I would like to discuss this proposal with Mr. Clyde Bryant and you. Your assistance in addressing these matters are greatly appreciated as we are rapidly running out of time.

Sincerely



Donald P. Herzog

G:\PROJECTS\Midlothian\Mountain Peak\WSC\Proposed Agreement 073002.lwp



96303DUSMP

Exhibit "A"

Mountain Peak Water Supply Corp.

5671 Waterworks Road · Midlothian, TX 76065
Telephone (972) 775-3765 · Fax (972) 775-6508

Herzog Development Corporation
9696 Skillman Street, Suite 210
Dallas, TX 75243

Re: Lawson Acreage
Midlothian, Texas

Dear Mr. Herzog;

It has come to my attention that you may be laboring under the mistaken impression that your proposed development has been denied service by Mountain Peak Water Supply Corp. Please rest assured that nothing could be further from the truth. The Management and Board of Directors eagerly await your formal application for service. In light of recent planned facilities and future water purchase options, some of the previous criteria for your proposed development may have changed. Mountain Peak Water Supply has not and will not delay decisions on any **serious, formal request** made by parties interested in service within our certified area.

To assist in getting you on the track of the approval process, I have inclosed a copy of our non-standard service application and a schedule of those terms which need to be addressed for Mountain Peak W.S.C. to consider your anticipated request. If I can be of assistance in any way please do not hesitate to contact me at the telephone number shown above.

Very truly yours,

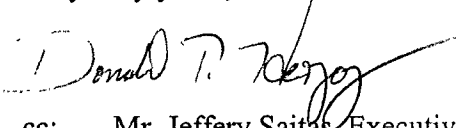
Mountain Peak W.S.C.

Randel Kirk
General Manager

RK/bs
cc: Mr. Joseph D. LaBeau
City of Midlothian
104 W. Avenue E
Midlothian, TX 76065

Please call me at 214-348-1300 so that we may begin water service installation as soon as possible in accordance with the above schedule and requirements.

Very truly yours,



cc: Mr. Jeffery Saitas, Executive Director TNRCC
Mr. Joe LaBeau, City of Midlothian

G:\PROJECTS\Midlothian\Mountain Peak WSC\Request Water Service.lwp

Mountain Peak Water Supply Corp.

5671 Waterworks Road · Midlothian, TX 76065
Telephone (972) 775-3765 : Fax (972) 775-6508

Herzog Development Corporation
9696 Skillman Street, Suite 210
Dallas, TX 75243

Dear Mr. Herzog;

In the past several weeks it has come to the attention of Mountain Peak Water Supply that several misconceptions may have come into play due to misinformation by persons other than officials of Mountain Peak Water Supply. In order to clarify any misconceptions or questions you may have, We urge you to make formal application for water service to your proposed development. In light of recent planned facilities and future water purchase options some of the previous criteria for your proposed development may have changed. Mountain Peak Water Supply has no intention of delaying decisions on any serious formal request made by parties interested in service within our certified area. If I can be of any assistance please call me at 972-775-3765.

Thank You,

Randel Kirk
General Manager
Mountain Peak W.S.C.

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*
Jeffrey A. Saitas, *Executive Director*



110
MPSUD03980

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

October 11, 2001

Mr. Donald P. Herzog
Herzog Development Corporation
9696 Skillman Street, Suite 210
Dallas, Texas 75243

Re: Mountain Peak Water Supply Corporation (WSC), Certificate of Convenience and Necessity (CCN) Number 10908 and the City of Midlothian, CCN No. 11706

Dear: Mr. Herzog

This letter is in response to your letter dated September 12, 2001 to Mr. Jeffery Saitas concerning water service to a potential 300 acre subdivision in Ellis County, Texas. As it appears, the proposed development is within the certificated area of Mountain Peak WSC's certificated area. If the area of interest is within Mountain Peak WSC's certificated area, once a qualified formal application for service has been made. Mountain Peak WSC is obligated to provide service within a timely manner. According to Chapter 291.85 of the Texas Natural Resource Conservation Commission (TNRCC) Rules, if service can not be completed within 30 days, a written detailed explanation of the cost and time frame to obtain service is required. If the stated cost of service is thought to be unreasonable, a cost of service appeal can be filed according to Chapter 291.41 which will institute a review of the relevant costs to determine if the cost is just and reasonable.

In your letter you stated a desire to decertify Mountain Peak WSC in the area of interest in order for the City of Midlothian to provide service. To decertify Mountain Peak WSC, we would require an application from Mountain Peak WSC asking to decertify a portion of their CCN or an application by the City of Midlothian to request decertification and/or amendment of their CCN through a CCN amendment application. The only other potential option according to Chapter 291.113 of the Rules to decertify Mountain Peak WSC is for a finding that service has been refused or that Mountain Peak WSC has failed to provide service.

Both the CCN application and the cost of service appeal forms are available on the Internet at www.TNRCC.state.tx.us in the utilities and districts page.

I would encourage continued discussions with Mountain Peak WSC to negotiate for water service. In addition, I would encourage discussions between Mountain Peak WSC and the City of Midlothian for potential service area changes.

Mr. Donald P. Herzog
October 11, 2001
Page 2

111
MPSUD03981

If you have any other questions, please call me at (512) 239-0353, by e-mail at Vharkins@TNRCC.state.tx.us or if by correspondence include MC 153 in the letterhead address.

Sincerely,



Victoria Harkins, Ph.D., P.E.
Utilities & Districts
Water Supply Division

VH/mmr

cc: Mountain Peak WSC
City of Midlothian
PWS Files PWS ID Nos. 0700005 (Midlothian) and 0700042 (Mountain Peak WSC)

111



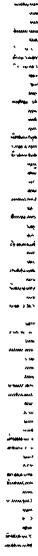
TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION
P.O. Box 13087
Austin, Texas 78711-3087

MC 153

RETURN SERVICE REQUESTED

Mountain Peak WSC
5671 Waterworks Road
Midlothian, Texas 76065

0000 76065



112

112
MPSUD03982

October 10, 2001

Mr. Donald R. Funderlic, P.E.
PBS&J - Project Manager
5999 Summerside Drive, Suite 202
Dallas, Texas, 75252

Re: Mountain Peak Water System and
Herzog 1100 Lot Development
PBSJ Proj. No. 520196.00

Dear Mr. Funderlic:

We have been requested to provide you with updated information related to the Herzog development. Recently, we have been authorized to proceed with the site selection, design and construction of a well and pump station which will directly serve the area of the proposed development. We anticipate that it will serve approximately 800 connections.

We have re-examined the fire flow conditions as previously described. In this evaluation, we modeled the system with the existing pumps running and were able to maintain a residual pressure of 53 psi at the northwest corner of the addition, as well as minimum residual pressure of 39 psi throughout the upper pressure plane. The proposed pump station was not included in the model.

Due to the new model results, the offsite construction requirements have also been reduced. Mountain Peak is currently constructing a 12" line from the elevated storage tank to the 8" line on F.M. 663. The northern 4000 LF of the originally recommended 12" line may be served with an 8" line and depending on your phasing schedule, may be omitted due to the construction of the new pump station. However, approximately 9300 LF of 12" line and 4000 LF of 8" line will most likely be required at a rough cost of \$225,000.

If you have any additional questions or wish to discuss this matter further, please give us a call.

Very truly yours,

CHILDRESS ENGINEERS

Robert T. Childress, III, P.E.

RTC/sm

cc: Randy Kirk, Mt. Peak W.S.C. ✓
Donald P. Herzog

**PUC DOCKET NO. 46120
SOAH DOCKET NO. 473-16-5823.WS**

CITY OF MIDLOTHIAN NOTICE OF	§	BEFORE THE
INTENT TO PROVIDE WATER	§	
SERVICE TO LAND DECERTIFIED	§	PUBLIC UTILITY COMMISSION
FROM MOUNTAIN PEAK SPECIAL	§	
UTILITY DISTRICT	§	OF TEXAS

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S
DOCUMENT PRODUCTION LOG
TO CITY OF MIDLOTHIAN'S REQUESTS FOR INFORMATION**

City of Midlothian RFI #	Responsive Bates Numbers
Produced 10/24/2016	
1-4, 1-5, 1-7, 1-18	MPSUD00001-00296 MPSUD02401-02415
1-4, 1-5, 1-7, 1-18, 1-22	MPSUD00297-00314
1-4, 1-5, 1-7, 1-15, 1-18, 1-21, 1-22, 1-23	MPSUD00315-00324
1-14	MPSUD00325-00357
1-16	MPSUD02416-02456
1-16, 1-17, 1-18, 1-23, 1-26, 1-27	MPSUD00358-00359
1-17	MPSUD00360-02101
1-19	MPSUD02102-02321
1-20	MPSUD02322-02323
1-21, 1-22, 1-23	MPSUD02324-02364 MPSUD02457-02476
1-21, 1-22, 1-23, 1-24, 1-25	MPSUD02457-02476
1-24	MPSUD02365-02391
1-26, 1-27	MPSUD02392-02394
1-28	MPSUD02395-02400

Produced 11/07/2016	
2-16	MPSUD02477-02522
2-18	MPSUD02523-02957
2-19	MPSUD02958-02989
Produced 12/16/2016	
1-1, 1-19, 1-24, 2-5, 2-31	MPSUD02990-02992
1-1, 1-19, 1-24, 2-31	MPSUD02993-03020
1-1, 1-24	MPSUD03021-03043
1-1, 1-24, 1-25	MPSUD03044-03290
1-4, 1-5, 1-7, 1-16, 1-18, 1-30, 2-2, 2-3, 2-6	MPSUD03291-03297
1-4, 1-5, 1-7, 1-18, 1-19, 1-30, 2-2, 2-3, 2-6, 2-31	MPSUD03298-03299
1-4, 1-5, 1-7, 1-18, 1-30, 2-2, 2-3, 2-6	MPSUD03300-03395
1-4, 1-5, 1-7, 1-30, 2-2, 2-3, 2-6	MPSUD03396-03406
1-19, 2-31	MPSUD03407-03422
1-20	MPSUD03423-03504
2-21	MPSUD03505-03509
2-24	MPSUD03510-03515
2-26	MPSUD03516-03889
	<p><i>See</i></p> <p>MPSUD00001-00314 MPSUD00328-00338 MPSUD02324-02334 MPSUD02336 MPSUD02401-02406 MPSUD2411-02456 MPSUD02830-02957 MPSUD02982-02989</p> <p><i>See</i> PUC Docket No. 46140, Item No. 22 <i>See</i> PUC Docket No. 46140, Item No. 26 <i>See</i> PUC Docket No. 46140, Item No. 30 <i>See</i> PUC Docket No. 46140, Item No. 28 <i>See</i> PUC Docket No. 46140, Item No. 9 <i>See</i> PUC Docket No. 46140, Item No. 6 <i>See</i> PUC Docket No. 46140, Item No. 7 <i>See</i> PUC Docket No. 46140, Item No. 29 <i>See</i> PUC Docket No. 46140, Item No. 10</p>

	See PUC Docket No. 46140, Item No. 24 See PUC Docket No. 45848; Item No. 42
Produced 01/13/2017	
1-1	MPSUD03890-03947
1-4, 1-5, 1-7, 1-18	MPSUD03985-03987
1-16, 1-17, 1-18, 1-22 and 1-29	MPSUD03948-03983
2-4	MPSUD03984
2-26 and 2-29	MPSUD03988-03989