

Exhibit A

**WATER RIGHTS BANKING
AND DEDICATION AGREEMENT**

This Agreement made as of the 5th day of ~~June~~^{July}, 2006, by and between D&S Limited (hereinafter "the Dedicator"), and the City of Fernley, a political subdivision of the State of Nevada, (hereinafter "the City") for the purpose of dedicating and banking certain water rights.

RECITALS

WHEREAS, the City owns and operates a water distribution system located in the City of Fernley, Lyon County; and

WHEREAS, the Dedicator is desirous of transferring certain water rights to the City to be reserved and credited towards future utility service requirements; and

WHEREAS, the City is willing to accept the water rights to be utilized by the Dedicator for future development requirements within the Fernley City Utility service area, as it may change from time to time, on the condition that the Dedicator be responsible for all costs associated with the initial transfer, all costs associated with future transfers as they may be required by the Nevada State Engineer's office from time to time, and all costs associated with the maintenance of the water rights; and

WHEREAS, the Dedicator desires to assign their rights to apply the dedicated water rights toward future will serve requirements to Assignee; and

WHEREAS, City's acceptance of said water right dedication does not create an obligation to provide City water service to the Dedicator or Assignee, as that utility service obligation is created only after a will serve request of applied for from the City and all conditions for such service has been satisfied; and

WHEREAS, the City will accept the dedicated water rights in lieu of the provision of new water rights when an application for water service is made in the future by the Dedicator or his Assignee, thereby satisfying one of the pre-conditions for utility service (i.e. the provision of a water right).

NOW, THEREFORE, it is hereby agreed between the Dedicator and City as follows:

1. **Dedication of Water Rights and Facilities.** The Dedicator hereby agrees to dedicate the water rights to the City of Fernley. The Dedicator and Assignee agree and understand that dedication of the above described water rights is a condition precedent to receiving a will-serve commitment or water service from the City. The parties further agrees that
 - (a) The quantity of surface or ground water rights reasonably necessary to insure an adequate water supply to the subject property is independently determined by the

City. The parties agree and understand that the City has no obligation to independently obtain the necessary water rights to fulfill a will-serve commitment;

- (b) Any facilities for water treatment, supply, storage, transmission and distribution, treatment and disposal, and appurtenances (such as wells, pipelines, pumps and storage tanks), located within or outside of the property for which future will serve commitments, that are requested and which are reasonably necessary to insure an adequate water supply to the property will be constructed by the Dedicator or the Assignee, and dedicated to the City; and
- (c) Any easement or legal access reasonably necessary to insure an adequate water supply to the property will also be dedicated from the Dedicator or Assignee to the City as part of the grant of will serve commitments.

2. **Dedicated Water Rights.** The water rights dedicated by this agreement are described as follows:

TCID Serial No.: 1046-3-1-15
Acre-Feet: 4.28
Current Owner: D&S Limited

3. **Annexation.** If utility service is requested by the Dedicator or Assignee from the City of Fernley outside the city limits of Fernley, and the Dedicator or Assignee desires to use the dedicated water rights to satisfy the water right dedication requirements for service, the City of Fernley will determine whether it is appropriate to annex that property, and will only provide utility service if the area is annexed into the City of Fernley.

- (a) If annexation is necessary, Dedicator or Assignee is responsible for any and all annexation costs and fees in the same manner as any other person or entity requesting that property be annexed to the service area; and
- (b) If annexation is necessary, all line extensions, water distribution systems and upgrades shall be constructed to the standard required by the City, and the Dedicator or Assignee shall pay all hook-up fees and complete all required improvements that the City of Fernley determines is reasonably necessary to service the property.

4. **Banking.** The water rights dedicated to the City of Fernley under this Agreement shall be available for use in the satisfaction of the water right dedication requirement that is a pre-condition to receiving water service from the City of Fernley. Once the water rights have been dedicated to the City of Fernley, the City will maintain those rights in an account as a credit for the Dedicator.

- (a) The Dedicator may request will serve commitments for 4.01 acre feet for water service from the City of Fernley in the future and the water rights that are held by the

City in an account as a credit for the Dedicator, may be used to satisfy the water dedication requirement at the time of the request for the will service;

- (b) **Water Right Discrepancy.** Due to the fact there is a discrepancy of .27 acre feet of water rights in the water rights summary analysis submitted on behalf of Dedicator, the City will provide Dedicator, or his assignee, with water right credits for the .27 acre feet to be used for future will serve requests, after approval of a change application by the State Engineer. The quantity of will serve credits that will be awarded based on the water rights that are approved by the State Engineer.
 - (c) **Assignment of Banked Credits.** The Dedicator's banked credits in an account with the City may be assigned to another individual. Upon the execution and recording of an Assignment Agreement with an assignee, the City of Fernley will allow the assignee to receive the credits as satisfaction of the water right dedication requirement when that assignee applies for will serve commitments from the City of Fernley for water service; and
 - (d) **Reduction in Banked Credits.** The City of Fernley will file an application to change the manner of use and place of use of the Dedicator's water rights to municipal uses in the City of Fernley water utility service area. If the State Engineer determines, or if appeal from such a ruling by the State Engineer determines, that the total number of acre feet that can be used by the City of Fernley for municipal uses in its service area is less than the amount of water rights that are dedicated under this Agreement, the City of Fernley will reduce the credits that are accounted to the Dedicator by the amount of the reduction in the State Engineer's ruling, or in the appeal from such a ruling.
5. **Administrative, Engineering and Legal Costs.** Applicable Fernley Ordinances require any person who is dedicating water rights to the City of Fernley to pay all the City costs associated with said dedication. Such costs include the administrative, legal and engineering costs associated with water right change applications.
- (a) As part of this Banking and Dedication Agreement, the Dedicator, and his assignee, agree to pay all administrative, engineering and legal costs associated with this dedication in the following manner;
 - (b) The Dedicator or Assignee shall aid and assist the City in all administrative and legal proceedings except as otherwise advised by the City in order to process the change application;
 - (c) The Dedicator or Assignee will pay all costs that have been incurred by the City of Fernley in the review the good standing of the dedicated water rights prior to dedication. Those costs will be reimbursed by the Dedicator, or his assignee, at the

close of escrow for the water right dedication, or at the time the City executes the water rights dedication agreement;

- (d) The City of Fernley, and its representatives, will submit invoices to the title company, or other party supervising the escrow, and those invoices will be paid before the close of escrow or at the time the City executes the water rights dedication agreement; and
- (e) The Dedicator or his Assignee, agrees to pay all costs that the City incurs after the close of escrow on this dedication. Those costs will be accounted by the City of Fernley, as they are incurred, and will be charged to the Dedicator, or his Assignee, when will serve commitments are requested from the City of Fernley based on the dedicated water rights.

6. **Change Applications.** As a precondition of the dedication of water rights under this agreement, the Dedicator or Assignee will prepare the necessary change applications that are required by the Nevada State Engineer to change the manner of use and place of use of the dedicated water rights to municipal use in the City of Fernley.

- (a) Dedicator or Assignee will submit to the City of Fernley prepared applications, including the required maps, that list the City of Fernley as the applicant for the water right change application;
- (b) The City shall file a change application with the State Engineer to change the manner and/or place of use of the dedicated water. Change applications that change the points of diversion, manner and place of use of the water rights referenced above will be prepared so that the water rights may be utilized for municipal purposes within the City's service area as its boundaries are currently set and as they may be expanded through annexation; and
- (c) The Dedicator and Assignee understands and agrees to pay all costs associated with the change application with the State Engineer including, but not limited to, the payment of fees, geological studies, hydrologist reports, maps and any other necessary study and cost associated with the change application.

7. **Re-vegetation Requirements.** As a condition of receiving water right dedications in exchange for utility service, any lands which are the existing place of use of the water rights, and which will no longer be a place of use of the dedicated water rights, must be re-vegetated to the City of Fernley's approval. The intent of this requirement is to prevent formally irrigated lands to become dust and erosion hazards when the land is no longer irrigated. This requirement does not apply to land which is the existing place of use if that land will become a subdivision, or other use that will maintain ground cover.

- (a) As part of any dedication, the City of Fernley will determine whether re-vegetation of formally irrigated land is required, and if re-vegetation is required, the Dedicator of the water rights, or his assignee, will submit a plan for re-vegetation that will be reviewed and approved by the City of Fernley;
 - (b) A re-vegetation plan must be prepared by a qualified agricultural engineer or the equivalent, and must outline the method by which permanent ground cover will be established;
 - (c) The goal of a re-vegetation plan is to establish natural ground cover that will limit dust and erosion and can be sustained in Fernley's climatic conditions without human assistance; and
 - (d) For each water right that is dedicated to the City of Fernley from land that it is determined by the City to require re-vegetation, the City of Fernley will hold back a portion of the water right, in an amount equal to twenty-five (25) percent, from the issuance of will serve commitments until the City of Fernley has approved the actual re-vegetation of the property at issue. Once the City of Fernley has approved the actual re-vegetation on a former place of use for a dedicated water right, the last twenty-five (25) percent of the dedicated water rights will be made available for future will serve commitments.
8. **Use of Water Rights and Facilities.** The parties agree that the City may, by contract or written agreement, permit the use of the dedicated water rights and/or facilities by other governmental entities, public or private utilities, or any other person or entity, including those engaged in providing water, storm drainage or sewer service, subject to the Dedicator's and Assignee's right to use the dedicated water to satisfy will serve requirements.
9. **Facilities Standards.** Any facilities that are subject to this dedication agreement shall be designed and constructed in accordance with standards and other requirements recommended by the City as a condition to provision of water service.
10. **Option to Require Conveyance of Contested Water.** If the dedication of water rights in this Agreement only includes the water rights that have been determined by the City of Fernley to be non-contested water rights, the City of Fernley hereby is granted an option to demand the conveyance, through dedication, of any additional, contested, water rights that are appurtenant to the place of use of the dedicated water rights.
- (a) Contested water rights in this paragraph are defined as those water rights that are appurtenant to lands that are not included on the Composite Map that was prepared by the U.S. Bureau of Reclamation and has been used by the Pyramid Lake Paiute Tribe to challenge the validity of water rights in the Fernley area; and

- (b) In the event the City of Fernley exercises this option, the City will provide the dedicator, or his assignee, with water right credits to be used for future will serve requests, after approval of a change application by the State Engineer on the contested water. The quantity of will serve credits that will be awarded based on the contested water dedication will be equal to the amount of contested water rights that are approved by the State Engineer.
11. **Approval of Service Conditional.** Every will-serve notification and administrative approval of applications for water service is conditioned upon the acceptance of the dedication, and the satisfaction of all other service requirements that are established by local ordinance or state law. Any application or renewal, including applications for extension of will serve commitments is subject to the provisions herein.
- (a) The parties agree that the City is the final authority in determining the number of will-serves which may be granted by the City; and
- (b) The City is also the final authority regarding the number of hook-ups which may be serviced by the water rights transferred hereunder for any development, such determination shall be based on the criteria established by the City Utility and further established by the State Engineer.
12. **Term of Agreement.** The term of this Agreement shall be for a period of fifteen (15) years and shall be renewable for successive terms of agreed duration upon application of the Dedicator or Assignee, and the approval of the City.
- (a) It is further understood and agreed between the City and the Dedicator that either party (or its heirs, successors, or assigns) may terminate this Agreement at any time after the initial fifteen (15) year period with one hundred twenty (120) days written notice to the other party at the name and address included in the State of Nevada, Division of Water Resources' official files and records of water rights that are the subject of this Agreement;
- (b) In the event the Agreement is terminated after the fifteen (15) year period, the City shall retain the water rights referenced above that have not been credited to an existing will serve commitment.
13. **General Conditions.**
- (a) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument;
- (b) **Governing Law.** This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Nevada applicable

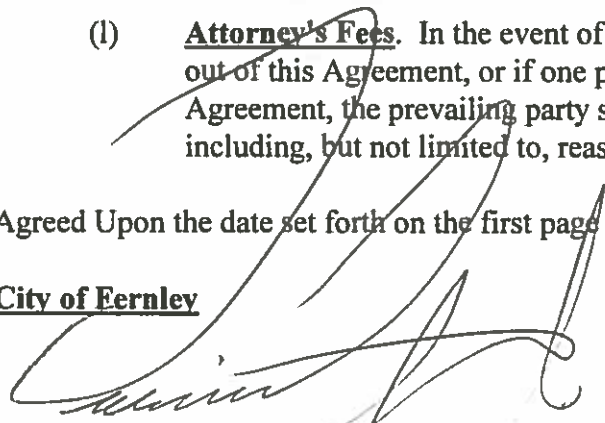
to agreements made and to be performed wholly within the State of Nevada;

- (c) **Entire Agreement.** This Agreement (including any Exhibits attached hereto) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto, including without limitation, that certain memorandum of understanding between the parties. This Agreement may not be modified, changed or supplemented, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto. This provision shall survive the Closing;
- (d) **Waivers; Extensions.** No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts;
- (e) **Non-Waiver of Rights.** No failure or delay of either party in the exercise of any right given to such party hereunder shall constitute a waiver thereof unless the time specified herein for exercise of such right has expired, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or of any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof;
- (f) **Further Assurances.** Dedicator and the City of Fernley each agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm the dedication of the above reference water rights or any other agreement contained herein in the manner contemplated hereby;
- (g) **Successors and Assigns: Assignment.** This Agreement shall be binding upon and shall inure to the benefit of each of the Dedicator and City and to their respective heirs, successors and assigns.
 - (i) The City shall have the right to assign its interest in this Agreement in whole or in part to one or more wholly owned subsidiaries, in which case, the references to City herein shall include such assignee, and provided that such assignee assumes all of the obligations of City under this Agreement by written instrument; and
 - (ii) Any such assignment shall not relieve either party of its obligations under this Agreement. Any attempt to transfer, convey or assign this Agreement other than as provided above shall be null and void.

- (h) **Time.** Time is of the essence in respect to each and every particular of this Agreement. Any time period to be computed pursuant to this Agreement shall be computed by excluding the first day and including the last. If the last day falls on a Saturday, Sunday or holiday, the last day shall be extended until the next business day that the Escrow Agent is open for business, but in no case will the extension be for more than three (3) days;
- (i) **Severability.** The determination that any covenant, agreement, condition or provision of this Agreement is invalid shall not affect the enforceability of the remaining covenants, agreements, conditions or provisions hereof and, in the event of such determination, this Agreement shall be construed as if such invalid covenant, agreement, condition or provision were not included herein;
- (j) **Delivery of Deed and Warranty.** The Dedicator shall deliver a Water Rights Grant Bargain and Sale Deed conveying and dedicating the water rights to the City at the time of the execution of this agreement. Further, Dedicator shall warrant that they are the legal owner of the dedicated water rights;
- (k) **Indemnification.** The Dedicator and Assignee agrees to indemnify the City at all times and hold the City harmless in respect of any claims, damages or losses (including attorney's fees), whether known or unknown, disclosed or undisclosed, arising from, by reason of or in connection with any part or portion of this agreement or the water right described herein; and
- (l) **Attorney's Fees.** In the event of any litigation between the parties hereto arising out of this Agreement, or if one party seeks to judicially enforce the terms of this Agreement, the prevailing party shall be reimbursed for all reasonable costs, including, but not limited to, reasonable attorney's fees.


Agreed Upon the date set forth on the first page between the following parties:

City of Fernley



 Mayor of Fernley

D: S LLC

 Dedicator
 By: 

Its: 

Attested:



 City Clerk

 Assignee, if any

Exhibit B

Requested By
CITY OF FERNLEY

Lyon County - NV

Mary C. Milligan - Recorder

Page 1 of 3 Fee:

Recorded By: BB RPTT:



Lyon County APN 020-482-03

RECORDING REQUESTED BY:
King & Taggart, Ltd.

Mail Recorded Document & Tax Statements To:

King & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703

CITY OF FERNLEY
595 SILVER LACE BLVD,
FERNLEY, NV 89408

SPACE ABOVE THIS LINE FOR RECORDER'S USE

WATER RIGHTS DEED

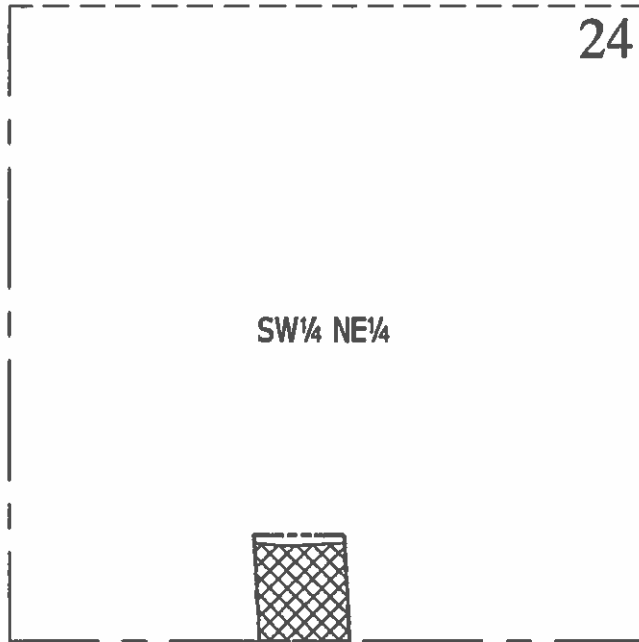
THIS WATER RIGHTS DEED is made and entered into this 21 day of June, 2006, to convey the below-mentioned water rights from D&S LIMITED, (hereinafter referred to as "GRANTOR"), to CITY OF FERNLEY, (hereinafter referred to as "GRANTEE").

WITNESSETH:

That said GRANTOR, for and in consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America, and for other good and valuable consideration, the receipt of which is hereby acknowledged, conveys, transfers and quickclaims to GRANTEE, and to their successors, heirs and assigns forever, all of GRANTOR'S right, title, and interest in and to the following described water rights that are appurtenant to the real property and the following described water rights:

The water rights appurtenant to APN No. 020-482-03 located in Lyon County, State of Nevada, Truckee-Carson Irrigation District Serial Number 1046-3-1-15 in the amount of approximately 4.28 acre feet annually and identified on the attached map.

TOGETHER WITH, all and singular, the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. TO HAVE AND TO HOLD, all and singular, the said water rights and the appurtenances, unto the said GRANTEE, and to their successors and assigns forever.



AREA OF WATER RIGHTS TO BE SOLD (ACRES)	VOLUME OF WATER RIGHTS TO BE SOLD (ACRE-FEET)
0.95	4.28

DUTY = 4.5 AFA



- AREA OF WATER RIGHTS TO BE SOLD

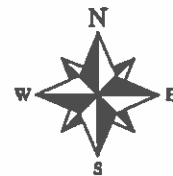


- PARCEL BOUNDARY

SCALE



1 inch = 400 ft.



SIMONCINI

TCID SERIAL NO.: **1046-3-1-15**

LYON COUNTY APN: **020-482-03**

SECTION 24, T.20N., R.24E., M.D.B.&M.



HISTORY MAPPING SERVICES
 230 S. G ST.
 Virginia City NV 89440
 (775) 430-3481
 (775) 847-4771 FAX
 hsdrews@hms.com
 © 2006 History Mapping Services

CERTIFIED COPY

The foregoing instrument is a full, true and correct copy of the original on file in the office of the County Recorder of Lyon County, State of Nevada.

OFFICIAL RECORDS NO. 386578

BOOK PAGE OF RECORDS

Witnessed my hand
this 17th day of July, 2006

MARY C. MILLIGAN
LYON COUNTY, RECORDER

By: Carly D. Law
Deputy