

ASSIGNMENT AND ASSUMPTION OF BENEFICIAL INTEREST IN WATER RIGHTS BANKING AND DEDICATION AGREEMENT AND AMENDMENT TO WATER RIGHTS BANKING AND DEDICATION AGREEMENT

This Assignment and Assumption of Beneficial Interest in Water Rights Banking and Dedication Agreement and Amendment to Water Rights Banking and Dedication Agreement (the “Agreement”) is made and entered into this _____ day of _____, 2017, by and between Kim McCreary and Susan McCreary, husband and wife, hereinafter referred to as “Assignor”, and Michael A. Casey and Claudia C. Casey, husband and wife, hereinafter referred to as “Assignee” and the City of Fernley.

RECITALS

- I. Assignor desires to convey a portion of its beneficial interest in a certain Water Rights Banking and Dedication Agreement to Assignee.
- II. Assignee desires to receive said beneficial interest, or portion thereof, and formally assume the rights and obligations of Assignor under said Water Rights Banking and Dedication Agreement and perform the applicable covenants and conditions contained in said Agreement.
- III. Assignor, Assignee, and the City of Fernley desires to amend the Water Rights Banking and Dedication Agreement to allow Assignor and Assignee to use the dedicated water rights to irrigate the subject property until such time as Assignor and Assignee request will-serve commitments from the City of Fernley.

NOW, THEREFORE, for and in consideration of the sum of _____ (\$_____) paid by Assignee to Assignor, and in consideration of the mutual covenants contained herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereto agree as follows:

1. Assignment: Assignor assigns, transfers and forever quitclaims, and does release unto the Assignee and to their heirs, successors and assigns forever, all of Assignor’s right, title and interest in and to the portion of its beneficial interest in the Water Rights Banking and Dedication Agreement executed on July 14, 2006 by and between Sierra West Development and the City of Fernley (the “Banking Agreement”) with respect to (and solely with respect to) the following described water rights: Forty-Four and seven hundred seventy five Thousandths (44.775) acre-feet of TCID Serial No. 1062-1-A, APN 021-303-05 (Assigned Beneficial Interest). All beneficial interest in and

to the water rights dedicated under the Banking Agreement other than the Assigned Beneficial Interest are reserved to and for the benefit of Assignor (the “Reserved Beneficial Interest”). A copy of the Banking Agreement and Recorded Water Rights Deed conveying all of the water rights covered by the Banking Agreement (including the Assigned Water Rights and the Reserved Water Rights) to the City of Fernley are attached hereto as Exhibit “A” and Exhibit “B” , respectively, and by this reference incorporated herein. Copies of all previous assignments of the beneficial interest created by the Banking Agreement are attached hereto as Exhibit “C” and by this reference incorporated herein.

2. Assumption. Assignee expressly assumes all rights and obligations under the Banking Agreement with respect to the Assigned Beneficial Interest and agrees to perform all covenants, conditions, duties and obligations contained therein with respect to the Assigned Beneficial Interest. From and after the effective date hereof, Assignee will become the “Dedicator” under the Banking Agreement with respect to the Assigned Beneficial Interest and Assignor will remain the “Dedicator” under the Banking Agreement with respect to the Reserved Beneficial Interest, with each party retaining responsibility under the Banking Agreement solely with respect to their respective beneficial interests and will-serve credits thereunder.
3. Warranties and Representations. Assignee warrants and represents as follows:
 - a. Assignee is not prohibited under any other agreement with any other person or any judgment or decree, from the execution and delivery of this Agreement;
 - b. No action has been brought or threatened which would in any way interfere with the right of Assignee to execute this Agreement and perform all of Assignee’ obligations contained herein or any of the obligations contained within the Banking Agreement;
 - c. Assignee has full power and authority to consummate the transactions contemplated under this Agreement.
4. Acknowledgement. Assignee acknowledges that the Banking Agreement is in full force and effect;
5. Amendment to Banking Agreement. Assignor, Assignee, and the City of Fernley hereby agree to amend the Banking Agreement to allow Assignee and Assignor to use the water rights dedicated to the City of Fernley under the Banking Agreement to irrigate the subject property, with each party having

the right to use a share of the dedicated water rights in proportion to their respective ownership of the subject property. Assignor and Assignee acknowledge and agree that they each may use their respective share of the water for irrigation of the subject property only until such time as that party requests the issuance of will-serve commitments in accordance with the provisions of the Banking Agreement. Assignor and Assignee further acknowledge and agree that they will not request the issuance of will-serve commitments, and the City of Fernley will have no obligation to issue such will-serve commitments, during any year in which Assignor or Assignee has used the dedicated water rights for irrigation of the subject property. For the purposes of this section, the subject property which may be irrigated using the dedicated water rights is described as follows:

That portion of those parcels of land located within Section 20, Township 20 North, Range 60 East, Mount Diablo Basin and Meridian, delineated on Exhibits “A”, “B”, and “C” of that certain Water Rights Grant, Bargain & Sale Deed recorded as Document No. 386444 in the Official Records of Lyon County.

6. Costs. Assignee shall pay all costs of the assumption made hereby, to include without limitation, attorneys’ fees.
7. Paragraph Headings. The paragraph headings used herein are for convenience of reference only and shall not be used in the interpretation or construction hereof.
8. Incorporation of Recitals. The Recitals listed above are hereby incorporated into, and made a part of, this Agreement by this reference.
9. Governing Law and Venue. This Agreement shall be governed, interpreted and construed by, through and under the laws of the State of Nevada in the district courts of Lyon County, Nevada.
10. Attorneys’ Fees. All costs incurred by the City of Fernley in enforcing this Agreement including, without limitation, reasonable attorneys’ fees through any court proceedings shall be paid by Assignee.
11. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto as well as their successors and assigns, heirs and personal representatives.
12. Indemnification. Assignor and Assignee agree, jointly and severally, to

indemnify and hold harmless the City of Fernley with respect to any claims, damages, or losses (including, without limitation, attorney's fees and costs), whether known or unknown, disclosed or undisclosed arising from, by reason of, or in connection with any part or portion of this Agreement. Assignor hereby represents and warrants it has not sold, assigned, transferred, conveyed, hypothecated, pledged, or otherwise disposed of or encumbered the beneficial interest transferred herein, or the water rights underlying said beneficial interest, except as provided in this Agreement or the Banking Agreement. Assignee acknowledges and agrees that the City makes no representation or warranty as to the title of the water rights underlying the beneficial interest transferred herein, and that in the event that any claim or dispute relating to said title renders such water rights unusable within, or unavailable to, the City's water delivery system, the City may, at its sole discretion and in addition to any other remedies provided for by law, rescind the Banking Agreement and withhold the will-serve commitments provided for therein. In the event that such will-serve commitments have already been issued, the City, in addition to any other remedies provided by law, may require Assignor and Assignee, jointly or severally, to immediately acquire and dedicate to the City the same quantity and quality of water rights as the water rights rendered unusable within, or unavailable to, the City's water delivery system and/or the City may assign any other banked or reserved water rights in which Assignor or Assignee have a beneficial interest, and that remain uncommitted to will-serve commitments, to the will-serve commitments already issued pursuant to this Agreement or the Banking Agreement.

[Signature pages follow]

CITY MANAGER

Daphne Hooper
Telephone: 775-784-9900

Daphne Hooper
DATED this ____ day of _____, 20____.

SPECIAL CITY ATTORNEY

Paul Taggart, Esq.
Telephone: 775-882-9900

I have reviewed this Assignment and Assumption Agreement and approve as to its legal form.

PAUL TAGGART
DATED this ____ day of _____, 20____.

CITY'S ORIGINATING DEPARTMENT:

Department: Public Works

DEREK STARKEY, P.E.
DATED this ____ day of _____, 20____.

ASSIGNMENT AND ASSUMPTION AGREEMENT ACCEPTANCE AND EXECUTION:

The City Council of Fernley, Nevada, at their publicly noticed meeting of _____, 20____, approved the acceptance of this Assignment and Assumption Agreement. Further, the City Council authorizes the Mayor of Fernley, Nevada to set his hand to this document and record his signature for the execution of this Contract in accordance with the action taken.

FERNLEY:

ROY EDGINTON, MAYOR
DATED this ____ day of _____, 20____.

ATTEST:

KIM SWANSON, CITY CLERK
DATED this ____ day of _____, 20____.