

AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into as of AUGUST ____, 2002 (the "Effective Date"), by and between the CITY OF FERNLEY (hereinafter "City"), and D.L.G. ASSOCIATES, LLC, a Nevada limited liability company (hereinafter "D.L.G."). This Agreement is made with reference to the following facts:

Statements of Fact:

A. City entered into that certain agreement dated February 21, 1996, with Marc E. Simoncini and Julia R. Simoncini, Trustees of the Rainbow Trust, concerning utilization of water rights for golf course irrigation (the "1996 Development Agreement").

B. D.L.G. is the present owner of the golf course located off Farm District Road in Fernley, Lyon County, Nevada (the "Golf Course"), which is the subject of the 1996 Development Agreement, and the successor-in-interest to the Rainbow Trust.

C. Pursuant to the 1996 Development Agreement, D.L.G. is required to provide infrastructure and related appurtenances, including the installation of necessary facilities to use surface water for irrigation of the Golf Course (the "Irrigation Improvements"), the design, plans, specifications and construction of which shall require approval by City.

D. City has notified D.L.G. of the need to install certain Irrigation Improvements at this time and D.L.G. has agreed to provide such Irrigation Improvements.

NOW, THEREFORE, the parties hereto agree as follows:

1. Ratification of 1996 Development Agreement. City and D.L.G. hereby confirm, ratify and approve that the 1996 Development Agreement is in full force and effect.

2. Irrigation Improvements. D.L.G. agrees to design, plan and install at its expense the following Irrigation Improvements for the Golf Course:

(a) Flow meters on existing water wells (the "Flow Meters").

(b) Irrigation system to provide surface water irrigation for the Golf Course (the "Surface Water Irrigation System").

3. Time Table. D.L.G. agrees to comply with the following time table in connection with the installation of the Flow Meters and the Golf Course Irrigation System:

(a) Flow Meters will be installed on each existing well on the Golf Course within thirty (30) days of the date of this Agreement.

(b) D.L.G. will prepare and deliver to City, for its approval, a plan for installing the Surface Water Irrigation System within three (3) months of the date of this

Agreement and complete the installation of the Surface Water Irrigation System by April 30, 2003.

4. Approval Process. In connection with the subject of this Agreement, D.L.G. agrees to the following:

(a) D.L.G. will provide City, for its approval, all reasonable information requested in connection with the selection and installation of the Flow Meters, which approval will not be unreasonably withheld or delayed.

(b) D.L.G. will prepare and deliver to City and to Truckee-Carson Irrigation District, for their approval, such information as they shall reasonably require concerning the design, engineering and implementation of the Golf Course Irrigation System, which approval will not be unreasonably withheld or delayed.

5. Successors. This Agreement is binding upon the parties and their respective heirs, successors and assigns forever.

6. No Further Modifications. Except as specifically set forth herein, the 1996 Development Agreement shall remain in full force and effect in accordance with its terms.

7. Force Majeure. Neither Party shall be liable for failure of performance hereunder if such failure results from acts of nature, or due to labor strike or war, terrorism or catastrophic event beyond the control of such Party. Notice, with full details of any circumstance referenced herein shall be given to the other party within ten (10) days after its occurrence.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

Attested to:

By: Patricia Norman
PATRICIA NORMAN, City Clerk

"CITY"

CITY OF FERNLEY, NEVADA

By: David Stix, Jr.
DAVID STIX, JR., Mayor

"D.L.G."

D.L.G. ASSOCIATES, LLC
A Nevada Limited Liability Company

By: Warren Trepp
WARREN TREPP, Manager

Notary Acknowledgement

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On September 25, 2002, before me, the undersigned, a Notary Public in and for the State of Nevada, personally appeared WARREN TREPP,

- personally known to me, or
- proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person or the entity upon whose behalf the person acted, executed the instrument.

WITNESS my hand and official seal.



Susan Zangara
Signature of Notary Public in and for
the State of Nevada

Douglas J. Frye*
24955 Pacific Coast Highway, Suite A201
Malibu, California 90265-4747
Telephone 310 456 0800
Facsimile 310 456 0808

Stewart Hsieh*
888 S. Figueroa Street, Suite 860
Los Angeles, California 90017-5457
Telephone 213 538 1365
Facsimile 213 538 1368

* Professional Corporations

Our File Reference:
TRE-DLG (D.L.G. Associates, LLC/Fernley Water Agreement)

October 7, 2002

Delivered Via First-Class Mail

Rebecca Harold, Esq.
P.O. Box 1362
Fernley, Nevada 89408

Re: City of Fernley/D.L.G. Associates, LLC

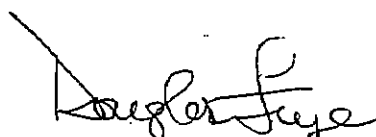
Dear Rebecca:

Enclosed is the Agreement between the above-referenced parties which has been signed by D.L.G. Please obtain the appropriate signatures on behalf of the City of Fernley and return the counter-signed copy of the Agreement to me.

Please call me should you have any questions.

Very truly yours,

FRYE & HSIEH, LLP


Douglas J. Frye

DJF/dms
Enclosures

cc: D.L.G. Associates, LLC (w/o enclosures via facsimile)

SEP 04 07 02:00p City Clerks Office 043000 p.0

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE is entered into this 6th day of August, 2003, by and between the City of Fernley (formerly Town of Fernley) and Fernley Town Utility System (collectively "Fernley") and Marc E. Simoncini, individually and as Trustee of the Rainbow Trust ("Simoncini") herein all collectively referred to as "Parties."

RECITALS:

1. On December 26, 2001, Simoncini filed its Complaint ("Lawsuit").
2. On May 30, 2002, Fernley filed its Answer and Counterclaim.
3. On June 4, 2002, Simoncini filed its reply to Fernley's counterclaim.
4. On August 20, 2002, Fernley filed its First Amended Answer to Complaint.
5. The Parties deny and continue to deny all of the allegations in the Lawsuit and in the documents filed by the Parties respectively, and have entered into this Settlement Agreement and Release for the sole purpose of concluding this matter.
6. The Parties desire to resolve all past, present and potential claims and liabilities arising out of this matter and Lawsuit.

NOW, THEREFORE, FOR VALUE RECEIVED, and in consideration of the mutual covenants and conditions set forth below, the Parties agree as follows:

1. **Settlement Amount and Terms.** Fernley shall pay the total sum of Two Hundred Fifteen Thousand Dollars (\$215,000.00) in cash. If the check is not received by Simoncini on or before August 8, 2003, the settlement agreement maybe voided at Simoncini's sole option. The remaining terms of the settlement are as follows:

1.1 Simoncini hereby assigns without warranty, representation or recourse, the balance of his twenty-five (25) year will serve letters to Fernley for the lots currently owned by Simoncini. In the event there are will serve letters applied for by Simoncini but not yet issued for the lots currently owned by Simoncini, Simoncini shall receive such will serves upon payment of the current connection fee like any other developer and receive a one year will serve commitment (with a possibility of a one year extension).

1.2 Fernley will dismiss its counterclaim and waive all other claims against Simoncini.

1.3 Simoncini hereby assigns, without warranty, representation, or recourse, all his rights under the Reimbursement Agreement dated February 21, 1996 to Fernley. If Fernley decides to extend the Reimbursement Agreement, Simoncini hereby consents to the extension provided Fernley makes said request within one hundred eighty (180) days of this Agreement. The Parties further agree that the construction costs of the improvements which are to be included in the Reimbursement Agreement is One Million Nine Hundred Seven Thousand Three Hundred Eighty Eight Dollars and 69/100 (\$1,907,388.69).

1.4 The Parties agree all Simoncini's obligations to the Development Agreement have been satisfied.

2. **Release of Claims by Simoncini.** Simoncini, on behalf of itself, its trustees, members, agents, servants, stockholders, employees, sureties, insurance carriers, subcontractors, representatives, successors and assigns fully and completely release and discharge Fernley, its members, agents, servants, stockholders, employees, sureties, insurance carriers, representatives, successors and assigns from and against any and all claims, demands, action and causes of action of any kind and nature, known or unknown, existing, claimed to exist or which can hereinafter ever arise out of or result from or in connection with the matters referred to or which form the general subject matter of the Lawsuit, including the events, transactions and occurrences which could have been referred to, in the Lawsuit.

3. **Release of Claims by Fernley.** Fernley, on behalf of itself, its members, agents, servants, stockholders, employees, sureties, insurance carriers, subcontractors, representatives, stockholders, successors, and assigns fully and completely release and discharge Simoncini, its trustees, members, agents, servants, stockholders, employees, sureties, insurance carriers, subcontractors, representatives, successors and assigns from and against any and all claims, demands, actions and causes of action of any kind and nature, known or unknown, existing, claimed to exist or which can hereinafter ever arise out of or result from or in connection with the matters referred to or which form the general subject matter of the Lawsuit, including the events, transactions and occurrences which could have been referred to, in the Lawsuit.

4. **Confidentiality.** The Parties agree not to disclose to any third party the contents of any documents produced or generated by any party to this Agreement in connection with the dispute. The Parties understand and expressly agree that none of the terms or provisions of this Agreement shall be disclosed (except the existence of this non-disclosure provision); provided that disclosure will be allowed to the Parties attorneys, accountants, or tax preparers with the prior express agreement of the person(s) to whom disclosure is made to maintain the confidentiality of this agreement, or pursuant to an order of a court of competent jurisdiction.

5. **Dismissal of Action With Prejudice.** Upon receipt and negotiation of all sums set forth in Paragraph 1 above, the Parties shall file a Stipulation of Dismissal with Prejudice of the Lawsuit, each party to bear its own attorneys' fees, expert witness fees and costs. Counsel for Simoncini shall provide endorsed, file stamped copies of the Stipulation of Dismissal With Prejudice to counsel for Fernley.

6. **No Previous Assignments.** Each of the Parties warrant and represent that they have not made or caused to be made any assignment of any claim or cause of action that they have or may have in the future against the Parties herein released.

7. **No Liability.** Each of the Parties agrees that this settlement is a compromise of the above described claims and shall never be treated as an admission of liability of any of the Parties for any purpose and that liability is expressly denied by each of the Parties hereto.

8. **Successors and Assigns.** This Settlement Agreement and Release is executed without reliance upon any statement or representations by the Parties released, or their representatives concerning the nature and extent of the injuries and/or damages and/or legal liability. The terms of this Settlement Agreement and Release inure to the benefit and bind the Parties hereto, their heirs, legatees, devisees,

executors, administrators, successors and assigns, and may not be altered, amended, modified or otherwise changed in any manner except by a writing executed by all Parties.

9. **Alleged and Unalleged Claims.** Each of the Parties understands that the facts in respect to which this Settlement Agreement and Release is given may hereafter result in being other or different from the facts known or believed by them and they hereby respectively accept and assume the risk of the facts being different and agree that this Settlement Agreement and Release shall be and remain in all respects effective and not subject to termination or rescission by virtue of any such different in facts.

10. **Contractual Terms.** The terms of this Settlement Agreement and Release are contractual in nature and not a mere recital. A breach of any obligation or duty provided herein shall be deemed a material breach, allowing the non-breaching party at its option to rescind this Settlement Agreement and Release.

11. **Authority to Execute.** Each of the Parties hereto further hereby affirms and acknowledges that they have read and fully appreciate and understand the foregoing words, terms and provisions of this Settlement Agreement and Release, have conferred with their counsel prior to the execution of this document and have executed this document voluntarily and of their own free act and will. Each of the Parties hereto further represents and warrants that each of the persons executing this Settlement Agreement and Release on its behalf has full and complete legal authority to execute this document and further shall indemnify the other party in the event this representation and warranty is breached.

12. **Choice of Law.** This Settlement Agreement and Release shall be construed in accordance with the laws of the State of Nevada.

13. **Attorney Fees.** Should any action or proceeding be brought arising out of, relating to or seeking the interpretation or enforcement of the terms of this Settlement Agreement and Release, the prevailing party thereto shall be entitled to actual attorneys' fees and costs incurred, including the cost of expert witnesses and consultants.

14. **Counterparts.** This Settlement Agreement and Release may be executed in one or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

15. **Complete Agreement.** This Settlement Agreement and Release constitutes the full and complete understanding of the Parties hereto and none of the Parties Party shall be bound to the other in any manner by any agreement, representation or understanding except as specifically set forth herein unless otherwise changed by a writing executed by all Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and Release the date and year written below.

Dated: 8/6/03, 2003.

By: Marc E. Simoncini
Marc E. Simoncini, individually

RAINBOW TRUST

Dated: 8/6/03, 2003.

By: Marc E. Simoncini
Marc E. Simoncini, Trustee

Dated: Aug 8, 2003

City of Fernley

By: [Signature]
Name: David Stix, Jr.
Its: Mayor

Dated: Aug 8, 2003

Fernley Town Utility System

By: [Signature]
Name: David Stix, Jr.
Its: Mayor

APPROVED BY CITY COUNCIL ON AUGUST 6, 2003.

[Signature]
ATTEST: CITY CLERK

APPROVED AS TO FORM:

By: [Signature]
Name: Rebecca A. Harold
Title: City Attorney

AMENDMENT TO REIMBURSEMENT AGREEMENT

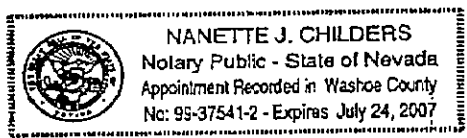
The undersigned, Marc E. Simoncini individually and as the sole Trustee of the Rainbow Trust ("Assignor"), assigns without warranty, representation or recourse, all of his rights, title and interest in the Reimbursement Agreement dated February 21, 1996 ("Agreement") to the City of Fernley ("Assignee") and the parties further agree that pursuant to Fernley Ordinance No. 10, rules and regulations for operation and maintenance of the Fernley Town Utilities Water Division Chapter, the effective date of the Agreement for purposes of commencing the ten (10) year period provided in the Agreement shall commence on August 6, 2003, the same date the parties agreed upon the total reimbursable costs in the total amount of One Million Nine Hundred Seven Thousand Three Hundred Eighty Eight Dollars and 69/100 (\$1,907,388.69).

Marc E. Simoncini
Marc E. Simoncini, individually
Dated: August 6, 2003

RAINBOW TRUST:
Marc E. Simoncini
Marc E. Simoncini, Trustee

STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

On this 6th day of August, 2003, before me, Notary Public, in and for said county and state personally appeared Marc E. Simoncini, known to me to be the person who executed the foregoing instrument and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.



Nanette J. Childers
Notary Public

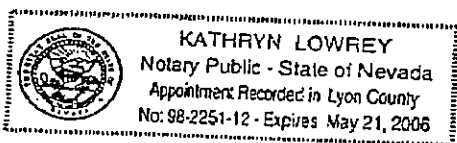
CITY OF FERNLEY:

Name: [Signature]
Title: Mayor.

STATE OF NEVADA)
 : ss.
COUNTY OF LYON)

On this 8 day of August, 2003, before me, Notary Public, in and for said county and state personally appeared David Stix, Jr., known to me to be the person who executed the foregoing instrument and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

[Signature]
Notary Public





City of Fernley

Patricia Norman
City Clerk

Business Licenses
 Council Agendas
 Elections
 Minutes
 Passports
 Records

facsimile transmittal

To: <u>Robin</u>	Fax: <u>883-9900</u>
From: <u>Patricia Norman</u>	Date: <u>9/4/07</u>
Re: <u>Simancini /DLG</u>	Pages: <u>12</u>

595 Silver Lace Blvd.
Fernley NV 89408

pnorman@cityoffernley.org

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Fax: (775) 784-9839