

**AMENDMENT TO AGREEMENT DATED FEBRUARY 21, 1996**

This agreement ("Agreement") is made and entered into this 19<sup>th</sup> day of October, 2006, by and between the City of Fernley (hereinafter "City"), and DLG Associates, LLC, a Nevada limited liability company (hereinafter "DLG").

WHEREAS, the City by its predecessor in interest, the Town of Fernley, entered into that certain agreement dated February 21, 1996 with Mark E. Simoncini and Julie R. Simoncini, Trustees of the Rainbow Trust, concerning utilization of water rights for development of the property described therein, which development included a golf course and subdivision map for the development of some 806 individual single family residences (hereinafter referred to as the "Development Agreement");

WHEREAS, DLG is the present owner of the golf course located off Farm District Road in Fernley, Lyon County, Nevada (the "golf course"), which is in part the subject of the 1996 Development Agreement, and the successor in interest to the Rainbow Trust;

WHEREAS, the City and DLG entered into an agreement in August of 2002 which, in part, ratified the 1996 Development Agreement and confirmed that the said 1996 Development Agreement was in full force and effect as between the City and DLG;

WHEREAS, the City and DLG are desirous of amending the 1996 Development Agreement for the purpose of clarifying the rights that each has to the water rights transferred to the City by virtue of the 1996 Development Agreement; and

WHEREAS, the City and DLG have agreed to certain amendments to the 1996 Development Agreement, which amendments were adopted, subject to application of a

final draft of the proposed amendment at the City Council Meeting for the City on August 2, 2006 at its regularly scheduled City Council meeting.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and in addition to the applicable laws, ordinances, rules and regulations of the utilities, water and waste water systems, the parties agree that the 1996 Development Agreement be amended as follows:

1. That the undeveloped, open space area consisting of the current golf course configuration and detention basins as shown on the tentative map dated June 1, 2005 shall be deed restricted as open space recreation, and the exact boundaries of the golf course and detention basins shall be set at the filing of the final map based on the June 1, 2005 tentative map approval by the City.
2. Three Hundred Seventy five (375) acre feet of the surface water rights and Three Hundred Seventy Five 375 acre feet of supplemental ground water rights dedicated for use by the Project (as defined by the 1996 Development Agreement) are hereby allocated for use on the open space and undeveloped areas of the project property (the golf course and detention basins described above). The City shall request said amount from the Truckee Carson Irrigation District (TCID) annually.
3. DLG will assist the City in processing the proper change of use applications for the ground water, supplemental ground water and surface water permits and/or certificates with the State Engineer's office to comply with the intended purpose of the 1996 Development Agreement and the amendments thereto, including this Agreement.

4. The parties agree that DLG is the beneficial owner of the balance of all water rights (estimated to be 272.94 acre feet annually of surface water rights and 259.4 acre feet of supplemental ground water rights). The 272.94 acre feet of surface water rights shall be held by the City for the benefit of DLG. As beneficial owner of the uncommitted water rights, DLG may transfer its beneficial ownership to any person or entity for use within the boundaries of the City's municipal water service area. The City agrees to cooperate to effecuate any such transfers. The parties shall request the office of the State Engineer to validate the total rights transferred through the 1996 Development Agreement and any amendments thereto, deeded to the City of Fernley, and the total set forth above shall be adjusted, accordingly if necessary.

5. DLG shall be issued a "will-serve" letter for the 92 lots approved by the City on the tentative map dated June 1, 2005 from the uncommitted portion of the water rights dedicated under the 1996 Development Agreement (103.04 acre feet) upon approval of Application Number 73758 by the State Engineer and upon approval of the improvement plans for the said tentative map.

6. Upon issuance of the "will serve" letter for the 92 lots, DLG will transfer its beneficial interest in the supplemental ground water rights not otherwise allocated to use on the golf course pursuant to paragraph 2 above, to the City. The supplemental ground water rights are approximately 259.4 acre feet annually.

7. In the event that the action of the State Engineer results in there being a reduction of the 272.94 acre feet of surface water rights referenced in paragraph 4, the

parties agree that the amount of water rights which may be transferred by DLG or otherwise used by them within the City's municipal water service area boundaries shall be adjusted accordingly. It is not the intent of the parties that the City would be obligated beyond the amount of water approved under any change applications by the State Engineer.

8. Upon execution of this Agreement, DLG will withdraw its protest of the City's Application Number 73758 which is pending before the State Engineer to change the place of use/manner of use of water rights under Permit Number 53894.

IN WITNESS WHEREOF, the parties have set their hands of the dates indicated above:

Attested to:

By: Patricia Norman CMC  
 PATRICIA NORMAN, City Clerk

**"CITY"**  
 CITY OF FERNLEY, NEVADA  
 By: [Signature]  
 DAVID STIX, JR., Mayor

**"D.L.G."**  
 D.L.G. ASSOCIATES, LLC. a Nevada  
 Limited Liability Company  
 By: [Signature]  
 WARREN TREPP, Manager