

APN: N/A (Water Rights)
When Recorded mail to:
City of Fernley
595 Silver Lace Blvd.
Fernley, NV 89408

AGREEMENT REGARDING BENEFICIAL INTEREST IN BANKED WATER RIGHTS

This Agreement Regarding Beneficial Interest in Banked Water Rights (the "Agreement") is made and entered by and between C.H.R.H. Limited, a Nevada limited liability company, hereinafter referred to as "Dedicator" and the City of Fernley, a political subdivision of the State of Nevada, hereinafter referred to as "City" or "Fernley."

RECITALS

WHEREAS, Dedicator has previously dedicated and conveyed by deed certain water rights to Fernley to wit:

A 53.46 acre-foot portion of TCID Serial No. 1023 formerly appurtenant to Lyon County Assessor Parcel Number ("APN") 21-111-26 conveyed to the City of Fernley by that certain Water Rights Deed recorded in the official records of the Lyon County Recorder on January 28, 1997 as Document No. 201885, and

A 110.655 acre-foot portion of TCID Serial No. 1023 formerly appurtenant to Lyon County Assessor Parcel Number ("APN") 21-111-27 conveyed to the City of Fernley by that certain Water Rights Deed recorded in the official records of the Lyon County Recorder on June 23, 1997 as Document No. 206759, and

A 77.85 acre-foot portion of TCID Serial No. 1023 formerly appurtenant to Lyon County Assessor Parcel Number ("APN") 21-111-32 conveyed to the City of Fernley by that certain Water Rights Deed recorded in the official records of the Lyon County Recorder on August 11, 2000 as Document No. 251167; and

WHEREAS, pursuant to the terms of the aforementioned deeds, said water rights would be held by Fernley to be credited towards the issuance of future water will-serve applications; and

WHEREAS, pursuant to the terms of the aforementioned deeds, the right to use the water rights as a credit towards future water service applications expires 25 years after the date of the conveyance; and

WHEREAS, Dedicator has used the majority of the water rights to receive water will serve commitments from Fernley for certain projects developed by Dedicator; and

WHEREAS, Dedicator and Fernley acknowledge and agree that 46.424 acre-feet of the above-described water rights remain available for use by Dedicator,

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, and the mutual promises and covenants contained herein, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated in this Agreement by this reference.
2. Remaining Water Rights. The parties acknowledge and agree that 195.541 acre-feet of the 241.965 acre-feet of previously dedicated water rights identified above has been used by Dedicator to meet the water dedication requirements of the Fernley Municipal Code and Dedicator hereby disclaims any right, title, or interest in that portion of the dedicated water rights. The parties further acknowledge and agree that Dedicator holds a beneficial interest in the remaining 46.424 acre-feet of water rights not previously assigned to water will-serve commitments and may use that portion of the dedicated water rights to obtain future water will-serve commitments from Fernley in accordance with the provisions of the Fernley Municipal Code and any regulations or policies adopted by the Fernley City Council related thereto.
3. Term. Notwithstanding any provision contained in the Water Rights Deeds identified above, the parties agree that the beneficial interest in the remaining water rights may be used as a credit towards future water will-serve commitments for a period of 10 years commencing on the effective date of this Agreement. Dedicator acknowledges and agrees that upon termination of this Agreement the City shall have no continuing obligations under the aforementioned Water Rights Deeds or this Agreement, and Dedicator further agrees to forever disclaim any right, title, or interest in or to the remaining water rights immediately upon expiration of this Agreement.
4. Warranties and Representations. Dedicator warrants and represents as follows:
 - a. Dedicator is the sole owner of the beneficial interest in the

remaining water rights and has not sold, conveyed, hypothecated, or pledged as security said beneficial to any third party for any reason whatsoever.

- b. Dedicator is not prohibited under any other agreement with any other person or any judgment or decree, from the execution and delivery of this Agreement;
 - c. No action has been brought or threatened which would in any way interfere with the right of Dedicator to execute this Agreement and perform all of Dedicator's obligations contained herein or any of the obligations in the Water Rights Deed;
 - d. The person executing this Agreement on behalf of Dedicator has full power and authority to do so and to consummate the transactions contemplated under this Agreement.
5. Paragraph Headings. The paragraph headings used herein are for convenience of reference only and shall not be used in the interpretation or construction hereof.
6. 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 court of Lyon County, Nevada.
7. Attorneys' Fees and Costs. In the event of any litigation between the parties 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.
8. Assignment. Dedicator's interest in the remaining water rights may be assigned to a third-party. Any such assignment shall not be effective unless presented to and approved by Fernley. Fernley's approval and acceptance of any such assignment shall be contingent upon Dedicator's ongoing compliance with the terms and conditions of this Agreement and the Assignee's agreement to fully comply with said terms and conditions upon completion of the assignment. Upon the City's approval, any assignee shall become Dedicator under this agreement for the portion of the water rights so assigned and said assignee shall assume all of Dedicator's obligations hereunder.
9. 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.

10. 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.
11. Indemnification. Dedicator agrees 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. Dedicator acknowledges and agrees that the City makes no representation or warranty as to the title of the water rights underlying the beneficial interest identified 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 this Agreement and withhold the credits for future water service provided herein. In the event that such water service commitments have already been issued based on the dedicated water rights, the City, in addition to any other remedies provided by law, may require Dedicator 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 Dedicator has a beneficial interest, and that remain uncommitted to water service commitments, to the water service commitments already issued pursuant to this Agreement.

[Signature pages follow]

CITY OF FERNLEY:

The City Council of Fernley, Nevada, at their publicly noticed meeting held on the ____ day _____, 20____, approved the foregoing AGREEMENT REGARDING BENEFICIAL INTEREST IN BANKED WATER RIGHTS and authorized 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.

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

ATTEST:

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

APPROVED AS TO FORM BY:

DAVID H. RIGDON
SPECIAL CITY ATTORNEY
DATED this ____ day of _____, 20____.