

**City of Carson City
Agenda Report**

Date Submitted: November 25, 2013

Agenda Date Requested: December 5, 2013

Time Requested: 30 Minutes

To: Mayor and Supervisors

From: City Manager

Subject Title: For Possible Action: Secure the employment of Lee B. Smith, MAI-ARA, of Lee B. Smith & Associates, a competent licensed real estate appraiser to appraise the Empire Ranch Golf Course real property.

Staff Summary: The Empire Ranch Golf Course real property is an asset of a bankruptcy estate in an ongoing bankruptcy case; Empire Ranch Golf Course, LLC, Case No. 12-51565-btb Chapter 11. It is an integral part of the City's sewer system through its use of reclaimed irrigation water.

Type of Action Requested: (check one)

Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move that we appoint and have Mr. Lee Smith sworn, pursuant to NRS 244.275, to appraise the Empire Ranch Golf Course real property, facilitating the City's consideration of a possible purchase of such land.

Explanation for Recommended Board Action:

This is in alignment with the City's goal from the 2012/13 Strategic Plan to provide a clean and healthy environment. Achieving a more balanced land use pattern requires a focus on "[b]alancing future growth with available water resources and sewer capacity." Master Plan at Chapter 2, p. 2-2 and see pp. 3-1 – 3-2. Authorizing the City Manager to hire Mr. Smith to appraise the Empire Ranch Golf Course real property, as addressed above, will secure the City's position and expedite and facilitate a possible City purchase of such land. Mr. Smith must be appointed and sworn by this Board for such purpose before a purchase. See NRS 244.275. Without City favorable restrictions on this golf course land, its sale to another could present difficulties in the future for the City's sewer system. An acquisition of this land by the City could enable it to use such property as it deems fit, facilitating a fiscally prudent operation of its sewer system by ensuring a perpetual disposal area for reclaimed water during wet years and making reclaimed water more available during drought years. Lee B. Smith, MAI-ARA, of Lee B. Smith & Associates, is a competent licensed Nevada Certified General Appraiser who has an office at 1761 College Parkway, Suite 111, Carson City, Nevada 89706, phone 883-8008.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 244.275

Fiscal Impact: Unknown at this time.

Explanation of Impact: Eventually, although Debtor Dwight Millard exercised an option to allow the continued discharge of the City's reclaimed wastewater on this golf course, there is no guarantee that a subsequent owner would allow this. The City needs to explore possible ways to ensure the ability to


perpetually use this property for disposing its excess wastewater to facilitate the proper operation of its sewer system. Having the appraisal accomplished will facilitate any consideration by the City of its possible purchase of such land.


Alternatives: Do nothing in this regard and hope that whoever acquires the Empire Ranch Golf Course real property will cooperate with the City in this regard.

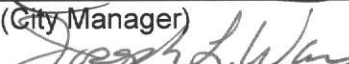
Supporting Material: Agreement and addenda.

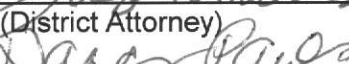
Prepared By: City Manager

Reviewed By:



(Public Works Director)


(City Manager)


(District Attorney)


(Finance Director)

Date: 11-25-13
Date: 11/25/13
Date: 11/25/13
Date: 11/25/13

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

A G R E E M E N T

This Agreement made this 17th day of MARCH,
1983, between Carson City, Nevada, a consolidated municipality,
hereinafter referred to as "CITY", and MICHAEL DARLING, hereinafter
referred to as "DARLING".

WHEREAS, CITY will construct and operate a wastewater treatment
plant which will make reclaimed water usable and available for irri-
gation; and

WHEREAS, CITY is in need of a site for the disposal of its
wastewater; and

WHEREAS, DARLING owns certain real property utilized for
agricultural purposes and described in Exhibit "A"; and DARLING
desires to use said reclaimed water for irrigation of said lands; and

WHEREAS, DARLING has certain water rights, more specifically
described in Exhibit "B" attached hereto and by this reference
incorporated herein, which he utilizes for purposes of irrigating
the land described in Exhibit "A";

NOW, THEREFORE, CITY and DARLING agree as follows:

1. DARLING shall use all reclaimed water supplied under
this Agreement for irrigation of farmlands; provided, however, that
in the event said reclaimed water may be utilized for other purposes
specifically approved by any governmental agencies having jurisdiction
in connection with the uses of said reclaimed water, that DARLING, at
his option, may utilize said reclaimed water for such other approved
uses. Said use shall be confined to those lands described in Exhibit
"A" which is attached hereto and incorporated herein; provided, however,
that the land described in Exhibit "C", which comprises a portion of
the land described in Exhibit "A", may be withdrawn by DARLING, upon
two (2) years written notice to CITY, at any time during the term
of this Agreement with respect to the applicability of the terms of
this Agreement.

2. Except as otherwise provided herein, DARLING shall not
use said reclaimed water in the production of crops for human
consumption.

FILED FOR RECORD
AT THE REQUEST OF
TED THORNTON
CARSON CITY CLERK
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3. DARLING shall use said reclaimed water in accordance with standards and regulations established by the Nevada Division of Environmental Protection.

4. CITY shall treat said reclaimed water at its wastewater treatment plant in accordance with standards and regulations established by the Nevada Division of Environmental Protection and shall comply with applicable discharge requirements pertaining to discharges from the Carson City Wastewater Treatment Plant issued by the Nevada Division of Environmental Protection or any other governmental agency having jurisdiction. CITY shall perform all sampling and laboratory testing that is required by the Nevada Division of Environmental Protection and CITY's discharge permit.

5. CITY shall make available to DARLING a minimum of 500 acre feet of reclaimed water per year during the irrigation season commencing at the beginning of the 1985 irrigation season and reserve to DARLING the right to take delivery of a maximum of 1,385 acre feet of reclaimed water per year. The water shall be delivered at a rate compatible with reasonable agricultural practice:

6. Said delivery of reclaimed water shall commence in 1985. However, if the facilities described in paragraph 12 of this Agreement are completed prior to 1985, the parties may by mutual consent advance said commencement.

7. CITY shall provide the quantity and quality of water, for the lands developed under this Agreement, necessary for proper irrigation of agricultural lands and proper renovation of treated effluent.

8. The parties agree that DARLING is presently able to utilize 1,385 acre feet of reclaimed water per year. Therefore, DARLING shall accept and use all reclaimed water made available by CITY to a maximum of 1,385 acre feet per year, unless the conditions referred to in paragraphs 1, 10 and 11 of this Agreement make such usage impossible. In that event, DARLING shall accept and use as much of the reclaimed water as said conditions permit.

9. DARLING shall utilize his farmland so as to maximize the amount of reclaimed water that it will be able to accept and use under this Agreement.

10. DARLING acknowledges that the actual quantity of reclaimed water that CITY will be able to make available during any irrigation season is dependent on the wastewater treatment facilities that are available, population growth in Carson City, and annual and seasonal variations in the flow of reclaimed water.

11. CITY acknowledges that the actual quantity of reclaimed water that DARLING will be able to accept during any irrigation season is dependent on the capacity of DARLING's lands and sound farm management practices.

12. CITY shall provide at its own expense the reasonable and necessary facilities and appurtenances for the full performance of its duties and obligations under this Agreement, including the engineering and construction of a wastewater treatment plant and a pipeline to DARLING's lands. CITY shall also construct and install an irrigation system upon DARLING's farmland. DARLING shall provide the reasonable and necessary temporary easements for the construction of said facilities, appurtenances and irrigation system, and any permanent easements necessary for operation and maintenance of the entire sewer system. The location of said easements are designated on Exhibit "A". Upon completion of said construction, said irrigation system upon DARLING's farmland shall remain the CITY's property until the expiration of the term of this Agreement at which time the irrigation system shall become the property of DARLING.

13. CITY shall be responsible for the operation, maintenance and repair of said facilities and appurtenances to the points of delivery on DARLING's lands. The locations of said points of delivery are designated on Exhibit "A". DARLING shall be responsible for the operation, maintenance and repair of the irrigation system and appurtenances thereto on DARLING's farmland; provided, however, that in the event modifications of said irrigation system and appurtenances thereto are required by a governmental agency having jurisdiction

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in connection with the land application of the reclaimed water, the costs of said modifications shall be borne by CITY.

14. The term of this Agreement shall be thirty (30) years and DARLING shall have the option to renew it for two additional thirty (30) year terms provided it gives CITY written notice of its intention to renew at least two (2) years prior to the expiration of each term.

15. This Agreement shall constitute a covenant that runs with those lands of DARLING described in Exhibit "A" and shall be binding on DARLING, its successors, assigns and all subsequent owners of all or any part of said lands.

16. The right to receive reclaimed water hereunder shall not be assignable by DARLING to other persons except upon conveyance of all or part of the lands described in Exhibit "A", nor shall said right be transferable to DARLING's other lands without the prior consent of CITY.

17. The parties acknowledge that breach of this Agreement will produce great or irreparable injury to them. Therefore, if either party refuses or fails to carry out the terms of this Agreement, the other party shall be entitled to injunctive relief to restrain the breaching party from violating this Agreement and any damages that may be caused by such breach.

18. The parties shall be relieved of their respective duties and obligations hereunder if performance of this Agreement is prevented by the elements, natural disaster or acts of God, or if they are ordered or enjoined from performing hereunder by any court or regulatory agency having jurisdiction. Either party may discontinue performance of its duties and obligations hereunder if the other party breaches any term or condition of this Agreement.

19. CITY shall make application to the State Municipal Bond Bank for the issuance of a bond entitled 1982 Comprehensive Sewer Improvements Bond. The funds obtained by the issuance of said bond shall be used to build the facilities described in paragraph 12 of this Agreement.

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20. DARLING acknowledges that issuance of the 1982 Comprehensive Sewer Improvement Bond is a condition precedent to CITY's ability to perform under this Agreement. CITY shall make reasonable effort to obtain issuance of said bond but if it is unsuccessful, this Agreement shall become null and void.

21. CITY agrees to add DARLING as an additional insured on their comprehensive general liability insurance policy. It is acknowledged and understood by the parties that said coverage is specifically limited to liability arising in connection with the subject matter of this Agreement and additionally limited to claims which do not arise out of the negligent or intentional conduct of DARLING.

22. It is expressly understood and agreed by the parties that DARLING, by execution of this Agreement and the exercise of the rights granted by said Agreement, is acquiring reservoir - secondary permit rights to the effluent as provided in NRS 533.440. In this regard, it is further expressly understood and agreed by the parties that the execution of this Agreement is contingent upon DARLING obtaining approval by the State Engineer of an application for a reservoir secondary permit. Any cost in connection with the obtaining of said permit shall be borne by Carson City. It is further expressly understood and agreed that DARLING, by execution of this Agreement and the exercise of the rights granted by said Agreement, is not acquiring any right, title, or interest in and to CITY's sewer system, treatment plant, reclaimed water delivery system, or other city facilities other than the rights expressly granted by this Agreement. All other rights of CITY are reserved.

23. It is expressly acknowledged and understood by the parties that in the event DARLING's acceptance of the reclaimed water in any way jeopardizes the continued utilization and ownership of water rights presently being used by DARLING on the lands described in Exhibit "A", that CITY will take any and all steps necessary to protect DARLING's water rights including, but not

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limited to, the purchasing of said rights or the discontinuance of application of reclaimed water on DARLING's lands described in Exhibit "A". In the event of the purchase of said rights, it is agreed that the price and terms of purchase shall be mutually agreed upon by the parties, but in no event shall the price be less than \$795.00 per acre foot.

24. This Agreement may be recorded in the Office of the Recorder of Carson City, Nevada.

25. The parties hereto pledge their cooperation and shall vigorously defend any action of any kind attacking the validity of this Agreement and any terms and conditions herein contained.

DATED this 17th day of MARCH, 1983.

Approved for form:

CARSON CITY DISTRICT ATTORNEY

By *David Steber*

CARSON CITY PUBLIC WORKS DEPARTMENT

By *Lawrence A. Werner*
Lawrence A. Werner, Public
Works Director

CARSON CITY

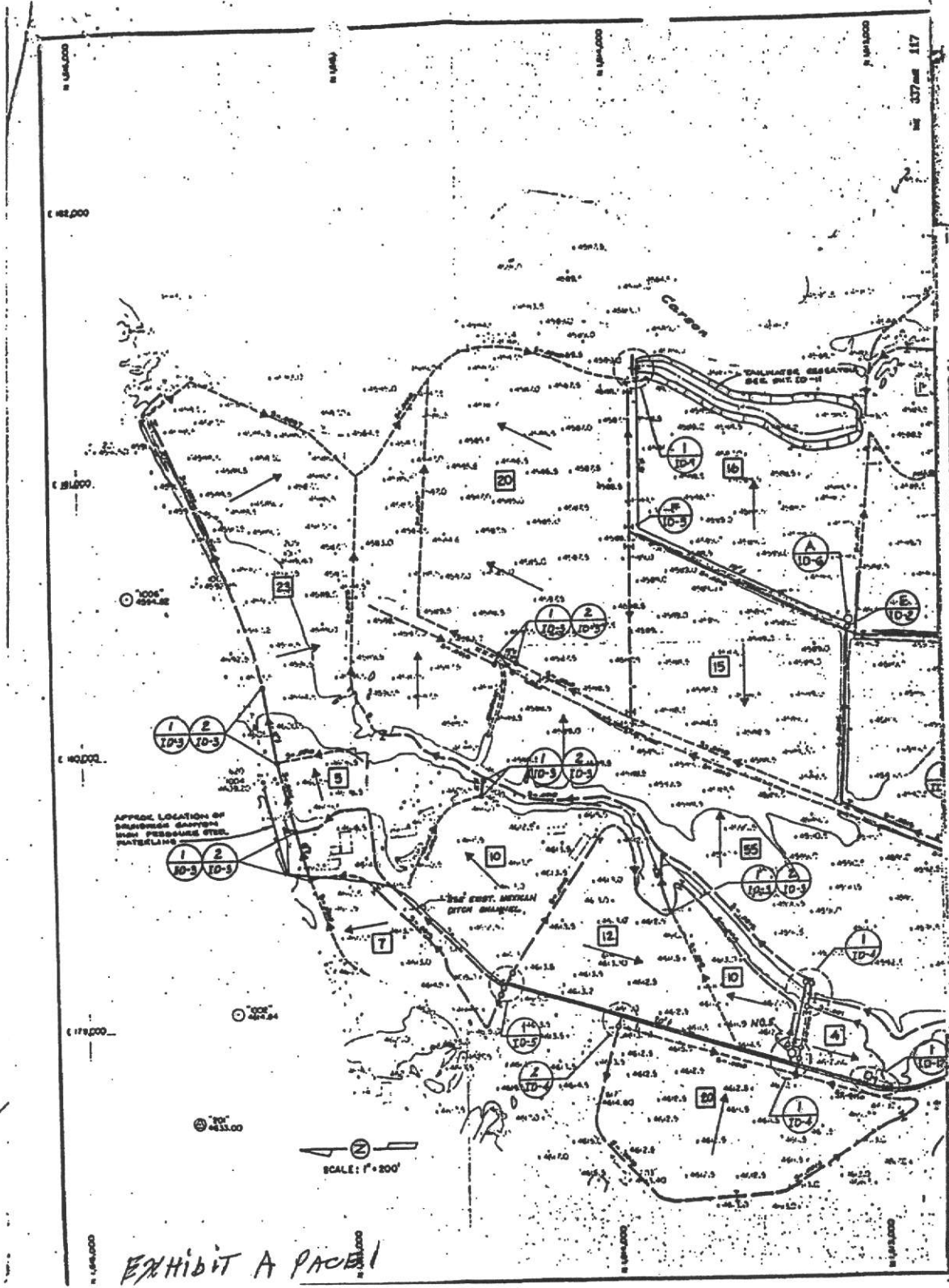
By *Harold J. Jacobsen*
Harold J. Jacobsen, Mayor

ATTEST:

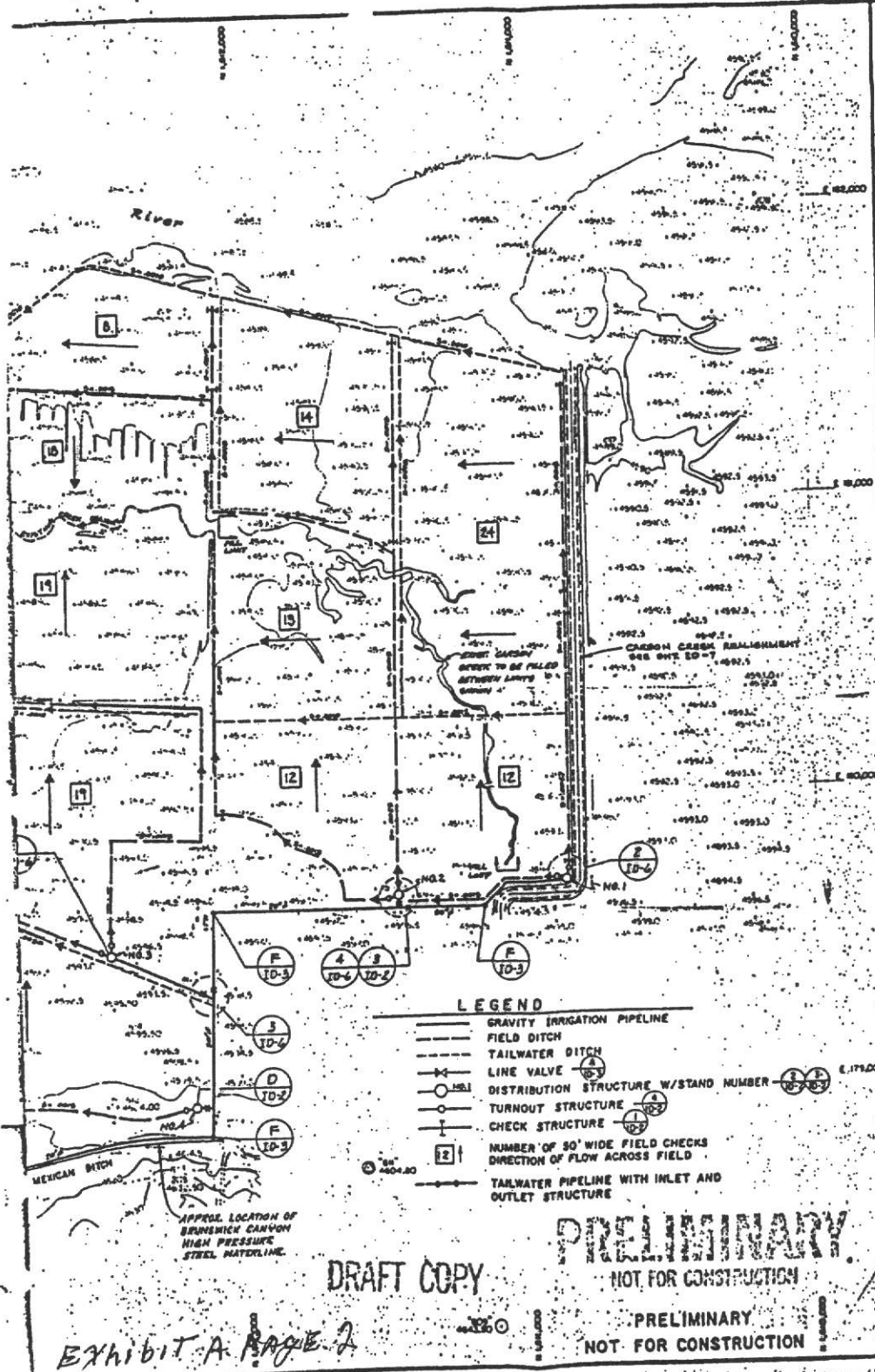
Ted P. Thornton
Ted P. Thornton, Clerk-Treasurer

Michael Darling
Michael Darling

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**CARSON CITY
COMPREHENSIVE WATER PLAN**

DARLING RANCH
IRRIGATION SYSTEM PLAN

BOYLE ENGINEERING CORPORATION

JOHN CAROLLO ENGINEERS

VASEY ENGINEERING CO., INC.

23/41 ID-1

337 11/8

LEGEND

- GRAVITY IRRIGATION PIPELINE
- - - FIELD DITCH
- - - TAILWATER DITCH
- |— LINE VALVE
- DISTRIBUTION STRUCTURE W/STAND NUMBER
- TURNOUT STRUCTURE
- CHECK STRUCTURE
- NUMBER OF 90' WIDE FIELD CHECKS
DIRECTION OF FLOW ACROSS FIELD
- |— TAILWATER PIPELINE WITH INLET AND
OUTLET STRUCTURE

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PRELIMINARY
NOT FOR CONSTRUCTION

PRELIMINARY
NOT FOR CONSTRUCTION

EXHIBIT A PAGE 2

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CLAIM NUMBER	NAMES OF DITCHES AND LOCATIONS OF DIVERSIONS—COMMENTS	OWNER	REPARIAN OR PRIORITY	INTERRUPTED ACRES	PLACE OF USE BY SUBDIVISIONS 1/4 of 1/4 of SECTION UNLESS OTHERWISE SPECIFIED	SEC	TWP. N.	R. E.
705	Mordcan	Michael Darling	1849	62.6 20.9 30.7 15.8 17.4	N1/2ND/4, W of River SESW, W of River SESW NWSW, E of River SESW, E of River	14	15	20
						11	15	20
						11	15	20
705	Mordcan	Michael Darling	1861 1861 1861	15.0 18.0 30.7 15.0	E1/2SE1/4, W of West. Dlt. E1/2SE1/4, E of West. Dlt. E1/2SE1/4, N. pt. SESW, S. part	10	15	20
						10	15	20
						11	15	20
706	Mordcan	Michael Darling	1900 1900 1900 1900 1900	3.0 9.8 10.0 7.4 5.0	SESE, SE COR. MNSW, W. of old Rl. MNSW, E. of old Rl. MNSW, E. of old Rl. SESW, SE. COR.	10	15	20
						11	15	20
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ADDENDUM TO AGREEMENT

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THIS ADDENDUM made this 28th of April, 1983, between
CARSON CITY, NEVADA, a consolidated municipality, hereinafter referred to as
"CITY" and MICHAEL DARLING and MURIEL H. DARLING, hereinafter referred to as
"DARLING".

WHEREAS, on March 17, 1983, CITY and DARLING entered into an
Agreement which is recorded at Book 337, Page 111 of the Official Records of
the Carson City Recorder, and

WHEREAS, the government of the United States is requiring certain
wildlife ponds and wetlands be set aside as a condition of issuing a permit
for the installation of irrigation improvements and application of
secondarily treated effluent on the DARLING ranch, and

WHEREAS, CITY and DARLING desire to enter into this Addendum to
clarify DARLING's responsibility to abide by the designation of wildlife
ponds and wetlands,

NOW, THEREFORE, CITY and DARLING agree as follows:

1. Section 1 of the March 17, 1983 Agreement shall be amended by
adding the following requirements. DARLING shall maintain 23.5 acres as
wildlife habitat and ponds and 69.9 acres as wetlands within the land
described in Exhibit "A" during the term of this Agreement, or renewal
thereof, in accordance with the wildlife ponds and wetlands depicted in
Exhibit "D" attached hereto. The wildlife ponds including a portion of
field 23 shall be fenced by City and DARLING agrees to maintain the fencing.
DARLING further agrees to annually maintain the wetlands with species of
seed approved by the government of the United States that are appropriate
for wetlands.

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2. All other provisions of the Agreement dated March 17, 1983, not expressly amended by this Addendum are hereby acknowledged, expressly affirmed and shall remain in full force and effect.

DATED this 28th day of April, 1988.

Approved as to Form
Carson City District Attorney

C.P. Cockerill
Charles P. Cockerill

CARSON CITY PUBLIC WORKS DEPT.

By: *Daniel K. O'Brien*
DANIEL K. O'BRIEN
Public Works Director

CARSON CITY

By: *Tom Fettic*
Tom Fettic, Mayor Pro-Tem

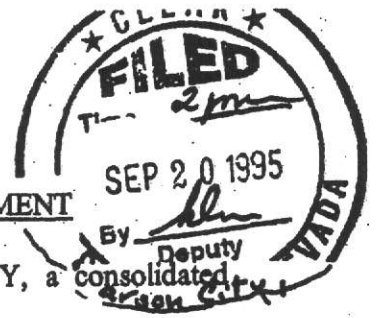
ATTEST:

Alan Glover
ALAN GLOVER, Clerk-Recorder

Michael Darling
MICHAEL DARLING

Muriel H. Darling
MURIEL H. DARLING

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1 1995 ADDENDUM TO 1983 EFFLUENT SERVICE AGREEMENT

2 THIS AGREEMENT entered into by and between CARSON CITY, a
3 municipality of the State of Nevada, hereinafter "CARSON CITY" and STANTON PARK
4 DEVELOPMENT, INC., a Nevada Corporation, hereinafter "STANTON PARK" or "USER."

5 RECITALS

6 WHEREAS, USER own certain property in Carson City specifically described on Exhibit
7 A attached hereto and referred to in this agreement as the "Subject Property"; and

8 WHEREAS, Michael Darling, the predecessor of STANTON PARK to the Subject
9 Property, entered into an agreement with the City in 1983 for the application of reclaimed waste
10 water on Darling's agricultural property ("1983 Darling Agreement") which agreement was amended
11 with an addendum agreed to in 1988 ("1988 Addendum"); and

12 WHEREAS, the 1983 Darling Agreement and the 1988 Addendum do not provide for the
13 quantity and quality of reclaimed waste water that is necessary for use on Stanton Park's proposed
14 Empire Ranch golf course, nor do they provide that Darling or his successors must pay for the
15 reclaimed waste water; and

16 WHEREAS, the 1988 Addendum was agreed to for the purpose of clarifying the
17 responsibilities of the parties for setting aside and the maintenance of wildlife habitat and ponds
18 which were conditions of Department of the Army Permit no. 9835 (Sacramento District, 1988); and

19 WHEREAS, permit no. 9835 is no longer of any effect and has been superseded by
20 Department of the Army Permit no. 199400227 (Sacramento District, 1995) which renders the 1988
21 Addendum unnecessary; and

22 WHEREAS, CARSON CITY and USER desire to amend the 1983 Darling Agreement to

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1 retain certain rights granted therein, including the right to priority to certain water, and to change
2 certain other rights and obligations including the obligation to pay for the use of reclaimed waste
3 water; and

4 WHEREAS, for the purposes of this agreement "reclaimed waste water" means that water
5 which is discharged from the point of final treatment from within the Carson City sewage
6 collection and treatment systems as it exists on the effective date of this agreement; and

7 WHEREAS, CARSON CITY has treatment facilities capable of processing an estimated
8 5,500,000 gallons of reclaimed waste water per day; and

9 WHEREAS, CARSON CITY has the authority to discharge to "permitted effluent reuse
10 sites" pursuant to Permit No. NEV90008 issued by the Division of Environmental Protection of
11 the State of Nevada; and

12 WHEREAS, Chapter 445 of the Nevada Revised Statutes ("NRS") requires that any
13 person must obtain from the Nevada Department of Environmental Protection ("NDEP") a permit
14 for the discharge of pollutants including reclaimed waste water and such a permit is separate and
15 different from the permit referred to in the preceding paragraph; and

16 WHEREAS, the Subject Property may be a site suitable for the application of reclaimed
17 waste water and USER desires to obtain reclaimed waste water for use on the Subject Property.

18 NOW, THEREFORE, for and in consideration of the mutual promises contained herein,
19 the above-named parties, by and through their respective authorized representatives hereby agree
20 that the 1988 Addendum is rescinded and no longer of any effect and the 1983 Darling
21 Agreement is amended to provide in its entirety as follows:

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1 1. Term of Agreement. The term of this agreement begins on the date it is signed
2 by the mayor of Carson City and continues year to year until written notice of non-renewal is
3 given by USER to CARSON CITY which notice shall be given at least one (1) year prior to the
4 date USER desires to terminate the agreement.

5 2. Quantity of Reclaimed Waste Water and Priority of Service. Subject to the
6 limitations in this paragraph and this agreement, CARSON CITY agrees to supply and USER
7 agrees to accept not less than 500 acre-feet of reclaimed waste water per year. At the request
8 of USER, CARSON CITY agrees to supply additional reclaimed waste water in an amount up
9 to 1,385 acre-feet per year subject to the availability of such reclaimed waste water and
10 CARSON CITY'S contractual obligations which are of a higher priority. CARSON CITY
11 acknowledges and agrees that the priority of the right to the reclaimed waste water granted to
12 USER's predecessor in the 1983 Darling Agreement is retained. All rights to the use of
13 reclaimed waste water granted by CARSON CITY to other persons since March 17, 1983 (the
14 date of the 1983 Darling Agreement) shall be subordinate to and of a lesser priority than the
15 rights granted to USER (and its predecessor) in 1983. To the extent it is available due to the
16 normal operations of the Carson City sewage collection and treatment systems as they exist on
17 the effective date of this agreement, CARSON CITY hereby agrees that it will provide reclaimed
18 waste water to all users on a priority basis, such priority to be determined by the date that
19 CARSON CITY legally binds itself to provide and furnish reclaimed waste water to that person.
20 USER and CARSON CITY acknowledge that CARSON CITY has previously granted rights to
21 use reclaimed waste water to the State of Nevada prison farm for irrigation and USER does
22 hereby acknowledge these prior rights.

1 3. Quality Standards and Pressure of Reclaimed Waste Water. CARSON CITY

2 agrees to maintain the quality of the reclaimed waste water in accordance with the standards for
3 the use of reclaimed waste water specified by the Nevada Division of Environmental Protection
4 in CARSON CITY'S permit or specified by any other governmental agency that has authority
5 to control the use of reclaimed waste water. CARSON CITY reserves the right to provide
6 reclaimed waste water of a higher standard of cleanliness than required. CARSON CITY agrees
7 to test the reclaimed waste water in a manner necessary to ensure such quality at all times.
8 CARSON CITY agrees to provide reclaimed waste water at a pressure sufficient for the
9 reclaimed waste water to flow from the pipe. USER acknowledges that it is responsible for
10 creating pressure or constructing other facilities or structures required to distribute the reclaimed
11 waste water on the Subject Property.

12 4. Payments for Reclaimed Waste Water. From the effective date of this

13 agreement until April 30, 2004, USER agrees to pay to CARSON CITY an amount equal to the
14 initial rate established by Carson City Municipal Code ("C.C.M.C.") for any reclaimed waste
15 water used on the Subject Property exceeding 500 acre feet per year (162,925,000 gallons per
16 year). From May 1, 2004 until the end of the term of this agreement, USER agrees to pay to
17 CARSON CITY an amount equal to the rate established by Carson City Municipal Code
18 ("C.C.M.C.") for all reclaimed waste water used on the Subject Property. USER shall also pay
19 a monthly meter service charge per C.C.M.C. 12.01.02, which charge shall be paid on a monthly
20 basis in arrears when USER begins to use reclaimed water supplied by Carson City through the
21 meter. All amounts due pursuant to this paragraph shall be paid on a monthly basis in arrears.
22 The charges to USER for reclaimed waste water may be reviewed and adjusted periodically,

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1 7. Dedication to of Property to Carson City. USER will dedicate to CARSON
2 CITY, at no cost to CARSON CITY, any:

- 3 (a) easements or rights of way over or upon property it owns; and
4 (b) structures or improvements constructed by USER located in Carson City
5 owned right-of-way or easement,

6 which are necessary to provide service to the Subject Property. CARSON CITY shall operate,
7 and maintain any such off-site structures or facilities in the manner required by all governmental
8 agencies that may have jurisdiction of the use of the reclaimed waste water.

9 8. Reimbursement. Upon the connection of other users, if any, to the reclaimed
10 waste water supply pipeline for the Subject Property during the term of this agreement, USER
11 will be entitled to reimbursement for a portion of USER'S costs, if any, according to the
12 provisions of C.C.M.C. 17.21.020, as amended on a prorata basis upon gallonage utilized, except
13 that Carson City and its streets, parks and recreation, cemetery department and the Carson City
14 School District may connect to said pipeline without making any reimbursement to USER. Any
15 such subsequent user's right to reclaimed waste water is junior in priority to that of USER. All
16 such subsequent users shall be required to pay uniform rates for the reclaimed waste water.

17 9. Daily Fluctuations in Water Use. The parties acknowledge that the daily use of
18 reclaimed waste water on the Subject Property will fluctuate in accordance with the season and
19 the temperature, and it is agreed that CARSON CITY will provide on a daily basis that amount
20 of reclaimed waste water necessary to irrigate the Subject Property in a manner required by
21 USER in accordance the Management Plans such amount not to exceed the total amount provided
22 for in paragraph 2, above. USER may from time to time request of the Carson City Utilities

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1 Department a commitment of additional reclaimed waste water for allocation pursuant to the
2 terms of this Agreement and CARSON CITY, will supply the amount requested subject to
3 availability and priority of rights of other users.

4 10. Other Sources of Water. In the event CARSON CITY is unable to provide the
5 quantities of reclaimed waste water necessary to properly irrigate the Subject Property or in the
6 event that USER shall be unable to use reclaimed waste water for reasons including, but not
7 limited to, governmental restriction or qualification of such use, or damage to the Subject
8 Property by the use of a reclaimed waste water, USER may purchase water rights acceptable to
9 the Carson City Utilities Department and provide the production capabilities and convey them
10 to CARSON CITY and utilize the city delivery system for potable water necessary to irrigate and
11 maintain the Subject Property.

12 11. Transferability and Assignment. In the event USER shall sell, convey or
13 transfer the Subject Property, the rights granted to USER hereunder can be and will be transferred
14 to the person or party purchasing or otherwise acquiring the Subject Property upon that person's
15 or party's assumption of USER'S obligations hereunder. This Agreement shall be binding upon
16 and inure to the benefit of the parties, their successors and assigns.

17 12. Acts of God. The parties shall be relieved of their respective duties and
18 obligations hereunder, if performance of this Agreement is prevented by the elements, natural
19 disaster or acts of God, or if they are ordered or enjoined from performing hereunder by any
20 court or regulatory agency having jurisdiction. Either party may discontinue performance of its
21 duties and obligations hereunder if the other party breaches any term or condition of this
22 Agreement.

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1 13. General Provisions. The parties agree: the officials executing this agreement
2 hereby warrant and guarantee that they have the authority to act for and bind the respective
3 organizations which they represent; all notices required by this agreement shall be in writing,
4 must be sent to the addresses provided herein and are deemed effective upon placement in the
5 United States Mail, postage prepaid; this agreement constitutes the entire agreement between the
6 parties; this agreement shall be enforced and construed according to the laws of the State of
7 Nevada; the prevailing party to any dispute involving this agreement is entitled to reasonable
8 attorneys fees and costs; any modification of this agreement must be made by a writing signed
9 by both parties; portions of this agreement which are held invalid are severable from the rest of
10 the agreement; this agreement may be recorded in the office of the Carson City Recorder; the
11 preamble and recitals are hereby made a part of this agreement; and this agreement may be
12 executed in any number of counterparts, each of which is deemed an original but together which
13 constitute but one and the same agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed

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as of the day and year of the signature of the Carson City Mayor, below.

**STANTON PARK
DEVELOPMENT, INC.**

2989 Highway 50 East
Carson City, Nevada 89701

By: *EDD Ferguson*
EDD FURGERSON, President

Dated: 9/14/95

CARSON CITY

2621 Northgate Lane
Carson City, Nevada 89701

By: *Marv Teixeira*
MARV TEIXEIRA, Mayor

Dated: 9/18/95

ATTEST:

By: *Alan Glover*
ALAN GLOVER, Clerk-Recorder

Dated: 9/20/95

APPROVED AS TO FORM:

By: *Paul A. Lipparelli*
PAUL A. LIPPARELLI,
Deputy District Attorney

Dated: 9/20/95

For Recorder's Use

320670

1 1996 ADDENDUM TO 1983 EFFLUENT SERVICE AGREEMENT

2 THIS AGREEMENT entered into by and between CARSON CITY, a consolidated
3 municipality of the State of Nevada, hereinafter "CARSON CITY" and STANTON PARK
4 DEVELOPMENT, INC., a Nevada Corporation, hereinafter "STANTON PARK" or "USER."

5 RECITALS

6 WHEREAS, USER and CITY are parties to an agreement entered into in 1983 for the
7 application of reclaimed waste water on property owned by USER ("1983 Agreement") which
8 agreement was amended with an addendum agreed to in 1988 ("1988 Addendum"; and

9 WHEREAS, the 1983 Agreement was amended again in 1995 ("1995 Addendum") which
10 addendum expressly rescinded the 1988 Addendum; and

11 WHEREAS, CARSON CITY and USER desire to amend the 1983 Agreement to change
12 the land to which the agreement applies.

13 NOW, THEREFORE, for and in consideration of the mutual promises contained herein,
14 the above-named parties, by and through their respective authorized representatives hereby agree
15 as follows:

16 1. No portion of the 1983 Agreement or the 1995 Addendum is effected by this
17 addendum unless expressly provided in this addendum.

18 2. The 1988 Addendum was rescinded and is still of no effect.

19 3. The description of the property to which the 1983 Agreement and the 1995
20 Addendum apply is hereby modified by removing therefrom the property described as follows:

21 All that certain Real Property situate in the County of Carson City,
22 State of Nevada and more particularly described as follows:

1 Lots 1 through 14 (inclusive) in Block A, Lots 15 through 24
2 (inclusive) in Block B, Lots 25 through 32 (inclusive) in Block C,
3 Lots 107 through 114 (inclusive) in Block D, lots 82 through 89
4 (inclusive) in Block E, Lots 67 through 81 (inclusive) in Block F,
5 Lots 90 through 106 (inclusive) in Block G, Lots 49 through 66
6 (inclusive) in Block H, Lots 33 through 48 (inclusive) in Block I,
7 as shown on the Final Map for Empire Ranch Estates Subdivision
8 recorded in the office of the Carson City Recorder, State of Nevada
9 on December 14, 1995 in Book 8 of Maps at Page 2135 as File
10 No. 183055, Official Records

11 4. The removal of the property specified above leaves a remainder. It is the intention
12 of the parties that the obligations under the 1983 Agreement and the addenda which are still
13 effective and the obligations created by federal, state and local law or regulations which apply
14 to the use of reclaimed water or land designated as wetlands will be enforced against the owner
15 of the unaffected remainder.
16

17 5. This addendum is subject to the approval of the U.S. Department of the Army,
18 Corps of Engineers, if any is required. If approval is required and is declined, this agreement
19 is of no effect.

20 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
as of the day and year of the signature of the Carson City Mayor, below.

**STANTON PARK
DEVELOPMENT, INC.**

2989 Highway 50 East
Carson City, Nevada 89701

By: *Ed Ferguson*
EDD FURGERSON, President

Dated: 8-14-96

CARSON CITY

2621 Northgate Lane
Carson City, Nevada 89701

By: *Mary Teixeira* Mayor Pro-Tem
MARY TEIXEIRA, Mayor Greg Smith

Dated: August 1, 1996

ATTEST:

By: *Alan Glover*
ALAN GLOVER, Clerk-Recorder

Dated: 8/11/96

APPROVED AS TO FORM:

By: *Paul A. Lipparelli*
PAUL A. LIPPARELLI,
Deputy District Attorney

Dated: 8/16/96

For Recorder's Use

FILED FOR RECORD
AT THE REQUEST OF
CARSON CITY CLERK TO
THE BOARD
96 AUG 16 AM 11:32

FILE NO. 192825
ALAN GLOVER
CARSON CITY RECORDER
FEE AGREES TO PAYS AGR

To Paul Lipparelli Chief Dept A
From Katherine, Rec Sec 3 pages

1997 ADDENDUM TO 1983 EFFLUENT SERVICE AGREEMENT

THIS AGREEMENT entered into by and between Carson City, a consolidated municipality of the State of Nevada, hereinafter "Carson City" and Stanton Park Development, Inc., a Nevada Corporation, hereinafter "Stanton Park" or "User."

RECITALS

WHEREAS, User owns certain property in Carson City which is the subject of a 1983 agreement between Carson City and Stanton Park's predecessor for the application of reclaimed waste water on agricultural property ("1983 Agreement") which agreement was amended with addenda agreed to in 1988 ("1988 Addendum") and 1996 ("1996 Addendum")

WHEREAS, the 1996 addendum rescinded the 1988 Addendum and restated the 1983 Agreement; and

WHEREAS, Carson City and User desire to amend the 1983 Darling Agreement to change the minimum number of acre-feet of reclaimed waste water, to be delivered to User from 500 acre-feet per year to 750 acre-feet per year; and

WHEREAS, for the purposes of this agreement "reclaimed waste water" means that water which is discharged from the point of final treatment from within the Carson City sewage collection and treatment systems as it exists on the effective date of this addendum

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, the above-named parties, by and through their respective authorized representatives hereby agree the 1983 Darling Agreement is amended as follows:

A. Paragraph 2 of the 1983 Agreement as restated by the 1996 addendum is amended to provide in its entirety as follows:

2. Quantity of Reclaimed Waste Water and Priority of Service.

Subject to the limitations in this paragraph and this agreement, Carson City agrees to supply and User agrees to accept not less than 750 acre-feet of reclaimed waste water per year. At the request of User, Carson City agrees to supply additional reclaimed waste water in an amount up to 1,385 acre-feet per year subject to the availability of such reclaimed waste water and Carson City's contractual obligations which are of a higher

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1 priority. Carson City acknowledges and agrees that the priority of the right to the
2 reclaimed waste water granted to User's predecessor in the 1983 Darling Agreement is
3 retained. All rights to the use of reclaimed waste water granted by Carson City to other
4 persons since March 17, 1983 (the date of the 1983 Darling Agreement) shall be
5 subordinate to and of a lesser priority than the rights granted to User (and its predecessor)
6 in 1983. To the extent it is available due to the normal operations of the Carson City
7 sewage collection and treatment systems as they exist on the effective date of this
8 agreement, Carson City hereby agrees that it will provide reclaimed waste water to all
9 Users on a priority basis, such priority to be determined by the date that Carson City
10 legally binds itself to provide and furnish reclaimed waste water to that person. User and
11 Carson City acknowledge that Carson City has previously granted rights to use reclaimed
12 waste water to the State of Nevada prison farm for irrigation and User does hereby
13 acknowledge these prior rights.

14 B. Paragraph 4 of the 1983 Agreement as restated by the 1996 addendum is amended to
15 provide in its entirety as follows:

16 4. Payments for Reclaimed Waste Water. From the effective date of
17 this agreement until April 30, 2004, User agrees to pay to Carson City an amount equal
18 to the initial rate established by Carson City Municipal Code ("C.C.M.C.") for any
19 reclaimed waste water used on the Subject Property exceeding 750 acre feet per year
20 (244,387,500 gallons per year). From May 1, 2004 until the end of the term of this
21 agreement, User agrees to pay to Carson City an amount equal to the rate established by
22 Carson City Municipal Code ("C.C.M.C.") for all reclaimed waste water used on the
23 Subject Property. User shall also pay a monthly meter service charge per C.C.M.C.
24 12.01.02, which charge shall be paid on a monthly basis in arrears when User begins to
25 use reclaimed water supplied by Carson City through the meter. All amounts due
26 pursuant to this paragraph shall be paid on a monthly basis in arrears. The charges to
27 User for reclaimed waste water may be reviewed and adjusted periodically, provided the
28 adjustment is applied on a uniform basis to all users of reclaimed waste water supplied by

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Carson City.

C. All of the rest, remainder and other provisions of the 1983 Agreement as restated by the 1996 Addendum remain in full force and effect and are unaffected by this addendum, except where inconsistent with this addendum and as set forth herein.

D. The effective date of this addendum is the date it is executed by the mayor of Carson City.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year of the signature of the Carson City Mayor, below.

STANTON PARK
DEVELOPMENT, INC.

2989 Highway 50 East
Carson City, Nevada 89701

By: [Signature]
Edd Ferguson, President

Dated: 9-19-97

CARSON CITY

201 North Carson Street
Carson City, Nevada 89701

By: [Signature]
Ray Masayko, Mayor

Dated: 9/2/97

ATTEST:

By: [Signature]
Alan Glover, Clerk-Recorder

Dated: 9/22/97

APPROVED AS TO FORM:

By: [Signature]
Paul A. Lipparelli,
Deputy District Attorney

Dated: 8/7/97

For Recorder's Use

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1 acknowledges and agrees that the priority of the right to the reclaimed waste water granted
2 to User's predecessor in the 1983 Darling Agreement is retained. All rights to the use of
3 reclaimed waste water granted by Carson City to other persons since March 17, 1983 (the
4 date of the 1983 Darling Agreement) shall be subordinate to and of a lesser priority than the
5 rights granted to User (and its predecessor) in 1983. To the extent it is available due to the
6 normal operations of the Carson City sewage collection and treatment systems as they exist
7 on the effective date of this agreement, Carson City hereby agrees that it will provide
8 reclaimed waste water to that person. User and Carson City acknowledge that Carson City
9 has previously granted rights to use reclaimed waste water to the State of Nevada Prison
10 Farm for irrigation and User does hereby acknowledge these prior rights.

11 B. Paragraph 4 of the 1983 Agreement as restated in the 1997 addendum is amended to
12 provide in its entirety as follows:

13 4. Payments for Reclaimed Waste Water. From the effective date of this agreement
14 until December 31, 2005, User agrees to pay to Carson City an amount equal to the initial rate
15 established by Carson City Municipal Code ("C.C.M.C.") for any reclaimed waste water used on
16 the Subject Property exceeding 790 acre feet per year (257,404,752 gallons per year). From January
17 1, 2006 until the end of the term of this agreement, User agrees to pay to Carson City an amount
18 equal to the rate established by Carson City Municipal Code ("C.C.M.C.") for all reclaimed waste
19 water used on the Subject Property that exceeds 40 acre feet per year. User shall also pay a monthly
20 meter service charge per C.C.M.C. 12.01.02, which charge shall be paid on a monthly basis in
21 arrears when User begins to use reclaimed water supplied by Carson City through the meter. All
22 amounts due pursuant to this paragraph shall be paid on a monthly basis in arrears. The charges to
23 User for reclaimed waste water may be reviewed and adjusted periodically, provided the adjustment
24 is applied on a uniform basis to all users of reclaimed waste water supplied by Carson City.

25 C. The remainder of the other provisions of the 1983 Agreement and the Addendums
26 remain in full force and effect and are unaffected by this Addendum, except where inconsistent with
27 this Addendum and as set forth herein.

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D. The effective date of this Addendum is the date it is executed by the mayor of Carson City.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed as of the day and year of the signature of the Carson City Mayor, below.

EMPIRE RANCH GOLF COURSE, LLC.
1875 Fair Way
Carson City, NV 89701

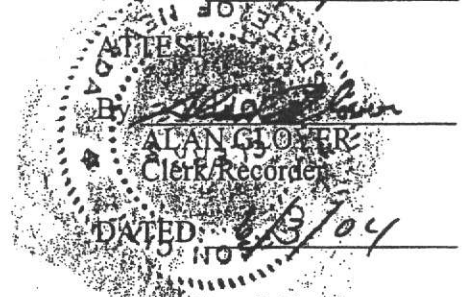
By: Dwight C Millard
DWIGHT C. MILLARD, President member

DATED: May 5, 2004

CARSON CITY
201 N. Carson St.
Carson City, NV 89701

By: Ray Masayko
RAY MASAYKO, Mayor

DATED: 6/3/04



APPROVED AS TO FORM:

By: Melanie Bruketta
MELANIE BRUKETTA
Deputy District Attorney

DATED: 6/3/04

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