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RENEWED LEASE AGREEMENT

NO. 99-139

This renewed lease agreement is entered into ~~1999~~ <sup>June 1</sup> ~~SEP 10 1999~~ <sup>1999</sup> ~~10 15~~ <sup>1999</sup>, 19 99, and effective July 1, 1999 between the Walker River Irrigation District, an irrigation district established pursuant to the provisions of chapter 539 of the Nevada Revised Statutes ("irrigation district" or "district"), and Douglas County, Nevada, a political subdivision of the State of Nevada established pursuant to sections 243.045 and 243.050 of the Nevada Revised Statutes ("county").

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RECITALS

1. The county took an assignment from Don H. Tibbals of a previous lease dated April 17, 1967 between Don and Charlotte Tibbals and the district which authorized the Tibbals to operate a camping, boating and recreation business or concession on certain real property leased from the district and located adjacent to Topaz Lake. The county took this assignment on April 21, 1972. The district consented to the assignment on April 20, 1972. This assumption by the county of the lease between the district and the Tibbals will be referred to as the initial assignment in the balance of this lease agreement.

2. The district and the county entered into a lease dated July 6, 1972 covering the premises commonly known as Topaz Lake County Park. This lease will be referred to as the original lease in the balance of this lease agreement.

3. The district and the county entered into a modified lease dated November 6, 1978 which modified and supplemented the

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original lease. The 1978 agreement will be referred to as the modified lease in the balance of this lease agreement.

4. The original term of the modified lease ended on July 6, 1998. The term of the modified lease has been extended twice and currently ends on July 6, 2000.

5. The district owns the real property described in exhibit "A". Exhibit "A" is attached to this lease and made a part of this agreement. The real property described in Exhibit "A" is referred to as the "premises" in this lease agreement and is also commonly referred to as Topaz Lake County Park. Topaz Lake County Park will be referred to as "the county park" in the balance of this lease agreement.

6. The district constructed Topaz Reservoir ("the reservoir") to store and conserve the waters of the West Walker River as well as its tributaries for the purpose of irrigating land located inside the boundaries of the district.

7. The premises are adjacent to and form a portion of the shoreline of the reservoir.

8. The county provides public outdoor recreation facilities on the premises through the operation of the county park. The county has provided these recreation facilities since the initial assignment in 1972 and desires to provide public outdoor recreation facilities on the premises in the future.

9. The district and the county recognize the district's primary purpose for the reservoir is water storage and conservation for irrigation. The district and the county want to

provide for a secondary use of the stored water in the reservoir for recreation purposes by entry into this lease agreement.

10. The district and county desire that the landlord-tenant relationship created by the initial assignment, restated in the original lease and amended in the modified lease be renewed and continued in this lease agreement.

11. The district and county want this lease agreement to completely supersede all of the terms and conditions of the initial assignment, the original lease and the modified lease.

In consideration of these recitals as well as the mutual covenants and conditions contained in this lease agreement, the district and the county agree that these recitals are true and correct and agree as follows:

ARTICLE I

LEASE OF PREMISES,  
USE AND TERM OF LEASE

**Section 1.1.** The district conveys by this lease agreement and the county accepts by this lease agreement the leasehold interest in the premises described in exhibit "A," together with the existing improvements on the premises for the term described in this article and on the conditions set out in this lease agreement.

**Section 1.2.** The premises must be used by the county for public park and recreation purposes. "Public park and recreation purposes" include but are not limited to overnight camping, boat launching, picnicking, fishing, swimming, recreational vehicle spaces and use, hiking, day-use park facilities, concessions

reasonably related to the recreational uses just mentioned, other recreational uses and support uses reasonably related to the recreational uses just mentioned and no other purposes.

**Section 1.3.** During the term of this lease agreement, the district grants to the county a non-exclusive license, for the benefit of the county, to construct, use, operate and maintain, at county's expense a roadway for ingress and egress to the county park located on the premises. This roadway license is over and across the northwest  $\frac{1}{4}$  of the southwest  $\frac{1}{4}$  of Section 28; the northeast  $\frac{1}{4}$  of the southeast  $\frac{1}{4}$  of Section 29 all of Township 10 North, Range 22 East, MDB&M. The real property described in the preceding sentence is Douglas County Assessor's parcel number 39-020-09. This roadway license is a sixty (60) foot wide access and maintenance license which is measured thirty (30) feet on each side of the centerline of the traveled way existing at the time of this lease agreement's approval by both the county and the district. The roadway created, operated and maintained by the county pursuant to the terms of this roadway license may also be used for ingress and egress to the county park located on the premises by the county's invitees, independent contractors, concessioners, assignees and subleasees.

If during the term of this lease district's invitees to other district property, other leasees of other district property or other licensees of other district property use the roadway described in the preceding paragraph of this section to a degree which increases county's maintenance expense, district and county agree to amend this section to apportion the roadway maintenance expense based on traffic counts, vehicle trips per day or some

other reasonable quantitative method which reflects proportionate levels of use and corresponding financial responsibility for roadway maintenance costs. County agrees to pay all costs of completing the traffic counts, determining the vehicle trips per day or performing any other reasonable quantification of proportionate roadway use levels contemplated in this paragraph of this section in the lease agreement.

**Section 1.4.** The term of this lease agreement starts at 12:01 a.m. on July 1, 1999 ("the commencement date") and ends at midnight on June 30, 2024 ("the scheduled termination date"). Unless otherwise specifically stated in this lease agreement, the terms "year" and "lease year" mean the "fiscal year" commencing on the first day of July as provided in section 1 of article 9 of the Nevada constitution rather than the calendar year commencing on the first day of January of each year.

**Section 1.5.** The rent provided in Article II of this lease agreement includes all charges associated with both the leased premises provided in section 1.1 and the roadway license provided in section 1.3 of Article I of this lease agreement. All rent paid by the county under the terms of the modified lease during the year commencing July 1, 1999 is a credit against the county's annual fixed rent payable during the first year of the term of this lease agreement if this lease agreement is approved by both the county and the district on or before June 30, 2000.

ARTICLE II

RENT

**Section 2.1.** The county will pay to the district as rent for the premises during the term of this lease agreement:

(A) an annual fixed rent as provided in section 2.2 of Article II of this lease agreement,

(B) an adjusted rent as provided in section 2.3 of Article II of this lease agreement.

**Section 2.2.** During the first ten (10) years of this lease agreement the exclusive form of rental payment is the annual fixed rent of twenty-five thousand dollars (\$25,000) per year unless otherwise reduced pursuant to section 3.2 of Article III. In the eleventh (11th) through twenty-fifth (25th) years of this lease, the annual fixed rent may also be reduced pursuant to section 3.2 of Article III. The annual fixed rent is payable by the first day of August of each year except during the first year of the lease agreement. In the first year of the lease agreement, if the district and the county both approve the lease agreement on or before July 1, 1999, the annual fixed rent is payable on August 1, 1999. In the first year of the lease agreement, if the district and the county approve the lease agreement after July 1, 1999, the annual fixed rent is payable thirty (30) days after the date that the lease agreement is approved by the last of the two parties.

**Section 2.3.** During the eleventh (11th) through twenty-fifth (25th) years of this lease agreement the rent shall be the payment of the annual fixed rent as provided in section 2.2 of this Article and the adjusted rent, if any, calculated and paid

as provided in this section of Article II of the lease agreement.

The adjusted rent for a lease year is calculated by multiplying the gate revenue of the county park for that lease year by twenty percent (20%). If the product of this multiplication is less than the amount of the annual fixed rent, no adjusted rent is payable during the year in which the calculation is made. If the product of this multiplication is greater than the amount of the annual fixed rent, the annual fixed rent is subtracted from the product with the difference being the adjusted rent which is due and payable during the lease year in which the calculation is made. By October 1, after the end of a lease year the county will pay the district a sum such that the county will have paid the district 80% of the adjusted rent due for that lease year. The balance of the adjusted rent, if any, for a lease year shall be paid by the first day of January of the lease year. If the payment of adjusted rent made by the county by October 1 after the end of a lease year exceeds the adjusted rent determined to be due on or before the first of January, the district shall reimburse the county for the excess within 45 days after notice from the county of such excess payment.

"Gate revenue" consists of the gross receipts paid to the county for recreational vehicle hook-up fees, camping fees, day use fees, boat ramp fees and season pass fees. At the commencement date of this lease agreement, the county collects the gate revenue directly. If at any time during the term of this lease agreement, the county either stops collecting all or any type of gate revenue or contracts with an independent contractor or concessioner to collect all or any type of gate revenue, the procedures in the two following paragraphs of this

0476397

section will be complied with by the district and the county in calculating the adjusted rent payable pursuant to this section of Article II of the lease agreement.

The county must notify the district in writing within thirty (30) days of the date that the county either ceases collecting all or any portion of the gate revenue or the county's contracting with an independent contractor or concessioner to collect all or any portion of the gate revenue. The district and the county will negotiate and attempt to agree on an alternative formula for calculating the adjusted rent amount. The district and the county have six (6) months from the date of the written notice specified in this paragraph within which to complete their negotiation of an alternate adjusted rent calculation formula. The district and the county will conduct these negotiations in good faith. If the negotiations result in a new formula for calculating the adjusted rent, the new formula relates back to the date of the written notice specified in this paragraph. If the negotiations do not result in a new formula for calculating the adjusted rent, the district and the county will comply with the default adjusted rent formula and procedures specified in the following paragraph of this section. Seasonal fluctuations in county park operation do not constitute a cessation of collection of all or any portion of the gate revenue within the meaning of this paragraph of this section.

"Default gate revenue" under the default adjusted rent formula means the receipts received by the county, or by any other person, firm or corporation from all sales, rentals or fees paid (both for cash and on credit) made in, upon or from the use of the premises or any business conducted on the premises. This default gate revenue under the default adjusted rent formula is



multiplied by twenty percent (20%). The product is then compared with the annual fixed rent. If the product of the multiplication is less than the annual fixed rent, no default adjusted rent is due. If the product of the multiplication is greater than the annual fixed rent, the annual fixed rent is subtracted from the product with the difference being the default adjusted rent.

Payment of the default adjusted rent, if any is due for a particular year, must be made by the same payment date as for the basic adjusted rent provided at the outset of this section. The default adjusted rent formula relates back to the date of the county's written notice specifying a cessation or change in collection of gate revenue.

**Section 2.4.** As of the commencement date of this lease, the district and the county acknowledge that the county charges fees under the definition of gate revenue which either directly or indirectly constitute a charge or fee to the county's invitees for the use of the water surface of the reservoir. The district and the county agree that the county may continue to charge the categories of gate revenue fees which are in place as of the commencement date of this lease agreement in any amounts deemed appropriate and reasonable by the county without further approval by the district. The district and county also agree that no further approval by district is required for new fees and new costs charged by county or county's concessioners for other recreational uses or recreational support uses which are not water-related in nature.

During the term of this lease agreement, the district and county acknowledge that the county, an independent contractor of the county or a concessioner of the county may charge a new fee or fees for reservoir water-related activities which can include

0476397

but not be limited to watercraft rental for watercraft hired for use by county's invitees on the water surface of the reservoir. The district and the county agree that during the term of this lease agreement, should the county, the county's independent contractor or the county's concessioner want to charge a new reservoir water-related activity fee, the county must notify the district of the county's intent to charge this water-related fee. The district's consent to charge this water-related fee must be obtained, with that consent not being unreasonably withheld. The parties to this lease must comply with the requirements of section 2.3 concerning a negotiated alternate adjusted rent or the default adjusted rent so that the district may participate in the additional revenue derived from this water-related fee commencing with the start of the eleventh year of this lease agreement or as of the date that collection of any new reservoir water-related activity fee commences, whichever date is later in time.

In consideration of the provisions contained in this section and 2.3 of Article II of this lease agreement, the district agrees not to directly or indirectly charge the county, the county's independent contractors, the county's concessioners or the county's invitees to the premises and county park facility any fee, uniform or otherwise, for the use of the water surface of the reservoir during the term of this lease agreement except for a water surface fee which may be required by federal or state regulatory authorities because of county's use of the premises. In the event that a water surface fee of the kind just mentioned must be collected during the term of this lease agreement, the county is entitled to retain a reasonable administrative fee for collection of this fee on behalf of the district. The method for

collecting this water surface fee and the amount of the county's administrative fee will be negotiated in accord with the procedures and time limits specified in the fourth paragraph of section 2.3 of the lease agreement. However, there is no "default" formula for the amount of the water surface fee and no "default" formula for the administrative fee.

**Section 2.5.** For purposes of Section 2.3 and starting with the eleventh (11th) year of this lease, the county will provide the district with an unaudited statement of gate revenue for the previous lease year by the first day of October in the current lease year and an internally audited statement by January 1 of the current lease year. These statements of gate revenue will be prepared using generally accepted accounting standards applicable to local government entities and will include the amount of adjusted rent payable under section 2.3 of Article II of this lease agreement. The January 1 statement of gate revenue will be audited and certified in accord with this section by the county's comptroller. If during the term of this lease the county ceases to have a comptroller, this statement of gate revenue will be audited and certified in accord with this section by the county's auditor or other county officer as the legislature may prescribe to perform financial and accounting duties of this kind.

**Section 2.6.** For the eleventh (11th) through the twenty-fifth (25th) years of this lease, the district has the right, once with respect to each year and not later than one year after the end of a particular year to have an audit performed concerning the county's park operation conducted on the premises. This audit is to be performed by a certified public accountant of the district's selection. This audit is conducted for the purpose of verifying the county's calculation and payment of

adjusted rent pursuant to section 2.3 of Article II of this lease agreement.

If this audit finds that the county has underpaid adjusted rent by an amount exceeding two percent (2%) of the adjusted rent for that year, the county shall pay the amount of the deficiency and the costs of the audit within forty-five (45) days of the date the county receives written notice from the district of the audit report and the statement of the audit costs.

If this audit finds that the county has underpaid adjusted rent by an amount equal to or less than two percent (2%) of the adjusted rent for that year, the county shall pay the amount of the deficiency within forty-five (45) days of the date the county receives written notice from the district of the audit report. The district and the county must share equally the costs of the audit in the circumstances described in this paragraph of this section.

If the audit finds that the county has overpaid adjusted rent by an amount equal to or greater than two percent (2%) for that year, the district shall refund the amount of the overpayment within forty-five (45) days of the date the district receives the audit report from the certified public accountants performing the audit on behalf of the district. The district must pay the costs of the audit in the circumstances described in this paragraph of this section.

The county agrees to keep and maintain at its offices in the county seat (Minden, Nevada) for a period of one year after the end of each year all of the ledgers, books, accounts and other data related to the calculation of adjusted rent pursuant to section 2.3 of Article II of this lease agreement and make it available to the district's certified public accountants retained

to perform the audit provided in this section of Article II of this lease agreement. The receipts related to the calculation of adjusted rent will be made available for audit from the County's Parks and Recreation Department Offices located in Gardnerville, Nevada. The county's assurance made in this paragraph of this section regarding record-keeping at the county seat is subject to the abolishment or consolidation of the county pursuant to section 36 of article 4 of the Nevada Constitution and sections 243.420 *et seq.* of the Nevada Revised Statutes as well as any redesignation of the seat of the county government which may be part of that process.

**Section 2.7.** If the initial adjusted rent formula provided in section 2.3 of this article changes to either a negotiated alternative adjusted rent formula or to the default adjusted rent formula, both of which are provided in the same section, at a date other than the first day of a year, the adjusted rent payable must be prorated on a ratio based on the number of days in the year that the county operated under the initial adjusted rent formula and the number of days in the year the county operated under either the negotiated alternative adjusted rent formula or the default adjusted rent formula.

**Section 2.8.** The county must pay all costs, expenses, obligations and impositions of every kind relating to the county's use of the premises for the county park. The district must pay the costs, expenses, obligations and impositions of every kind relating to the district's interest in the premises, if any, as well as adjacent properties and the reservoir for water storage and conservation for irrigation purposes.

As used in this section, "impositions" means without limitation all assessments, water, storm and sanitary sewer fees

as well as all charges for gas, electricity and other utilities. The county will pay all impositions or installments of impositions which the county is responsible for under the terms of this section before any fine, penalty, interest or cost is added to them. The county will, at the district's request, provide the district with evidence of payment of any or all impositions which the county is responsible for under the terms of this section.

As of the commencement date of this lease agreement, both the district and the county enjoy an exemption from real property taxation in accord with section 361.060 of the Nevada Revised Statutes. As of the commencement date of this lease, a concessioner operating a concession reasonably related to the recreational uses made of the premises by the county pursuant to section 1.2 of Article I of this lease agreement on the premises and within the limits of the county park is exempt from real property taxation pursuant to section 361.157(2) (a) of the Nevada Revised Statutes.

If during the term of this lease the district loses its statutory exemption from real property taxation, the district agrees to pay the real property taxes due on the premises which are attributable to the district's activities of water storage and conservation for irrigation purposes in accord with state statutes and the terms of this section concerning impositions. If during the term of this lease the county loses its statutory exemption from real property taxation, the county agrees to pay the real property taxes due on the premises which are attributable to the county's activities of operating the county park to the extent of the taxable value of the county's leasehold interest in the premises in accord with state statute and the

terms of this section concerning impositions. If during the term of this lease any concessioner identified in the previous paragraph of this section loses its statutory exemption from real property taxation or is determined not to be exempt from taxation pursuant to provisions contained in Title 32 of the Nevada Revised Statutes, the county agrees to require the concessioner to pay the real property taxes due on the premises to the extent of the concessioner's subleasehold interest, possessory interest, beneficial interest or beneficial use in accord with state statute and the terms of this section concerning impositions.

**Section 2.9.** The county may, at its own cost, contest the amount or validity of any imposition or tax which the county is responsible for under the terms of section 2.7 of this article. The county may postpone payment of an imposition while the county is contesting it if the county notifies the district of the postponement and the postponement will not place all or a portion of the premises in danger of being forfeited or lost. The county may pay a tax under protest while the county is contesting it if the county notifies the district of the protest and the protest will not place all or a portion of the premises in danger of being forfeited or lost.

**Section 2.10.** Each payment of rent will be made to the district by the county without demand by the district, in good funds, at a place in the United States of America as may be designated in writing by the district. The county's rent payments must be made to the order of the district or such other person as the district may from time to time specify in writing.

Until further notice by the district, the county must pay all rent to:

Walker River Irrigation District  
Post Office Box 820  
Yerington, Nevada 89447

**Section 2.11.** If any payment obligation on the part of either the county or the district is due or falls on a day which is not the first or last day of a month or the first or last day of a year and the payment obligation is measured in either months or a year, the county and the district agree to prorate the payment amount through the use of generally accepted accounting methods by establishing a ratio of the days in either the month or year before the due date and the days in either the month or year after the due date and reducing the payment obligation through application of the ratio.

### ARTICLE III

#### RESERVOIR OPERATION

**Section 3-1.** The county acknowledges that the district owns additional land which is adjacent to and forms a portion of the shoreline of the reservoir. The district acknowledges that as of the commencement date of this lease, the Douglas County Master Plan (adopted April 18, 1996) at 11.079 has created certain land use designations for the Topaz Lake area including the premises and adjacent properties. These land use designations have been adopted as zoning districts by the county with the passage and publication of Douglas County Ordinance No. 97-767 (April 3, 1997) and amendments thereto in accord with section 278.250 et seq. of the Nevada Revised Statutes.



The uses which have been placed by the referenced ordinances on the property located in the county and that is adjacent to the reservoir are: forest and range, single family residential, rural estates, community facilities and commercial. These land uses guide the county's use of the premises, the county's use of county-owned land adjacent to the reservoir and the district's use of district-owned lands surrounding the portion of the reservoir located in the county.

The district may make district-owned lands located in the county which are adjacent to and form a portion of the shoreline of the reservoir available to others for uses which are the same as or comparable to the county's use of the premises for the county park so long as those uses are in compliance with the county's master plan, development code and zoning regulations and all other applicable laws and regulations.

**Section 3.2.** The reservoir was constructed and is operated primarily for the purpose described in paragraph 6 of the "Recitals" to this lease agreement, *supra*. Fulfillment of this purpose requires that the surface elevation of the water in the reservoir fluctuate with seasonal water flows in the river system above the reservoir and seasonal demand for irrigation water below the reservoir. The district reserves the right to vary the surface elevation of the water in the reservoir to the extent necessary or desirable for purposes of operating the reservoir to fulfill its primary purpose.

A surface elevation of the water which is less than 4,967.68 (per U.S.G.S.) feet above mean sea level is the elevation at

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which reservoir water will no longer flow into the reservoir's outlet facilities without being pumped. At the commencement of this lease agreement, the county and the district acknowledge the park is subject to seasonal fluctuations in use. The high use season for the park starts on the first day of May in each year and ends on the last day of September in each year. Every day during the high use season that the reservoir water is below the elevation just stated equals  $1/365$ . At the end of each year all of the fractions, if any, will be added together. The sum of the fractions will be multiplied by the amount of the fixed annual rent provided in section 2.2 of Article II of this lease agreement. The product of the multiplication will be subtracted from the amount of the fixed annual rent provided in section 2.2 of Article II. The difference is the fixed annual rent payable during the following year pursuant to section 2.2 of Article II of the lease agreement.

The fixed annual rent abatement provided in this section applies only if the extreme low water elevations are the result of actions performed by the district or omissions on the part of the district.

If the fixed annual rent abatement provided in this section is determined to apply in three consecutive years because of the acts or omissions of the district, the county may terminate this lease on one hundred eighty (180) days written notice with the notice period commencing on September 30th of the third consecutive year in which the extreme low water elevation condition exists.

The district and the county reserve the right to renegotiate the definition of the "high use season" provided in this section. Any renegotiation of the "high use season" definition must be done in accord with the procedures and time limits specified in the fourth paragraph of section 2.3 of the lease agreement. However there is no "default" definition for the definition of "high use season" other than that provided in this section at the commencement of the lease agreement.

**Section 3.3.** At all times during the term of the lease agreement the district shall have access over, on and through the premises as may be necessary for the operation, maintenance, improvement and repair of the reservoir and related facilities. In exercising its access rights pursuant to this section, the district will take all reasonable steps to keep to a minimum any damage to county park improvements located on the premises. Additionally, in the exercise of its access rights pursuant to this section, the district will give the county reasonable advance notice of the district's intent to access the premises in nonemergency situations. No reasonable advance notice is required in emergency situations. As used in this section, "emergency" means an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) disasters caused by flood, earthquake, wildland fire or other natural causes affecting the reservoir and related facilities; or (b) any major mechanical impairment of the infrastructure impounding the reservoir water and regulating its volume which constitutes a threat to the health and safety of the public.

• ARTICLE IV

CONSTRUCTION AND MAINTENANCE OF PREMISES

~~Section 4.1~~ County shall, at its expense, undertake all maintenance necessary to keep the premises and roadway license and any improvements thereon in good repair, ordinary wear and tear excepted, and shall at all times during the term of this lease agreement maintain the entire premises and roadway license in a manner which complies in all material respects with all laws and regulations of all governmental authorities having jurisdiction over them. The county shall not at any time during the term of this lease permit waste of the premises or the roadway license or allow the premises to depreciate in value by reason of any neglect of the county. District or its agents may come into and upon the premises and roadway license at any reasonable time for purposes of examining and inspecting them, to perform any work or other act found necessary on such inspection and for any other purpose reasonably connected with district's interest in the premises and roadway license.

Nothing in this section of the lease agreement prohibits the county from accessing and using materials located on the premises and the easement area of the roadway license to make minor repairs and improvements to the access road leading to the county park located on the premises. Access and use of materials located on the premises and the right-of-way area of the roadway license to make minor repairs and improvements to the access road is limited to ten (10) cubic yards per lease year without the permission of the district. All minor repairs and improvements

to the access road requiring a greater amount of on-site material than the amount just stated are subject to the advance approval and consent of the district. The district's approval and consent for these minor repairs and improvements must not be withheld unreasonably.

**Section 4.2.** Immediately prior to the commencement date, the county has been in possession of the premises under the modified lease and has inspected the premises and accepts the premises and roadway license in the condition in which they are at the date of commencement of the term of this lease agreement. The county has not relied upon and the district has not made any representations or warranties which are not expressly set forth in this lease agreement. District does not warrant or represent that the premises are properly zoned for county's uses.

**Section 4.3.** County will make all repairs to the premises which are required by all governmental authorities having jurisdiction over the premises for any required certificate of occupancy. County shall pay for all such repairs.

#### ARTICLE V

#### ALTERATIONS AND NEW CONSTRUCTION

**Section 5.1.** Subject to the limitations set forth in section 5.4, the county may, with the prior written consent of the district, which will not be unreasonably withheld, make alterations to buildings or improvements on the premises, demolish buildings and improvements on the premises, and construct new buildings or other improvements on the premises, provided that,

(A) the county will complete all permitted construction on the premises undertaken by it,

(B) all alterations and new construction on the premises will be completed in a good and workmanlike manner, in accordance with all applicable laws, ordinances and regulations,

(C) that county will first obtain all required licenses and permits relating to alterations or new construction on the premises, and

(D) the county will not undertake any alterations to, or demolish any portion of, buildings or improvements on the premises unless

(1) such portion thereof is replaced

(2) the alteration or replacement does not impair the structural soundness of other buildings on the premises or materially lessen their market value.

When seeking district's consent hereunder the county will provide district with detailed plans and specifications, any other drawings that are representative of the improvements to be completed and a schedule for completion thereof.

Nothing in this section prohibits the county from making minor alterations or improvements to existing facilities on the premises, constructing new minor improvements on the premises with the use of county's employees. In addition, nothing in this section prohibits the county from demolishing an improvement which at the time of demolition has a value based upon replacement cost less depreciation which is within the definition

of a minor project. Minor projects are defined as those projects with an estimated cost of completion which would exempt the project from the solicitation of formal bids in response to a published advertisement inviting bids under Nevada's Local Government Purchasing Act (Chapter 332 of the Nevada Revised Statutes).

**Section 5.2.** The county will pay all costs of alterations, construction and demolition permitted under this Article during the term of this lease agreement, and will be entitled to all salvage in connection with demolition or replacement (including replacing to furniture, furnishings and equipment) during the term of this lease agreement.

**Section 5.3.** The county will pay for all alterations and construction on the premises in time to prevent the imposition of any workman's or materialman's lien upon the premises or, if a workman's or materialman's lien is imposed upon the premises because of a claim which the county contesting, the county will obtain a bond sufficient to cause the discharge of the lien. No bond is required under the terms of this section for a minor project as defined in section 5.1 of this Article in the lease agreement.

**Section 5.4.** County shall not construct improvements within the area one hundred and seventy-five (175) feet on either side of the centerline of the outlet tube of the reservoir (the "non-improvement zone"), except as otherwise provided in this section. The non-improvement zone is an area essential to the operation of the reservoir and in particular the release of water from the

reservoir and the district reserves the right to maintain, modify, repair, replace, or eliminate the outlet tube from the reservoir within the non-improvement zone. County may construct new roads and crossings over the non-improvement zone with the prior written consent of the district. The county may construct "dry" or "primitive" overnight camping facilities and limited day-use park facilities in the non-improvement zone with the prior written consent of the district. The county will employ all reasonable efforts to keep overnight camping and day-use facilities to a minimum in the non-improvement zone in recognition of the essential purpose this area of the premises serves in the district's operation of the reservoir. The county may maintain and use any roads or crossings existing over the non-improvement zone at the time of this lease agreement's approval by both the county and the district without the prior written consent of the district.

## ARTICLE VI

### INSURANCE

**Section 6.1.** At the commencement of this lease agreement the district and the county participate in the Northern Nevada Insurance Pool to protect their respective insurable interests for the activities and facilities stated in paragraphs 6 and 8 of the recitals for this lease agreement. The district and the county agree that this mutual participation in the insurance pool is sufficient to meet their respective insurable risks.

If during the term of the lease agreement the district, the county or both should terminate their participation in the



Northern Nevada Insurance Pool or the Pool should cease to provide liability insurance coverage or cease to exist, the district and the county agree to renegotiate this article of the lease agreement using the procedures and time limits specified in the fourth paragraph of section 2.3 of the lease agreement. However, there is no "default" formulation of adequate insurance coverage.

**Section 6.2.** District shall not be liable for any damages to any property of county upon the premises, howsoever caused, unless caused by the intentional or negligent acts of district, its agents or employees.

**Section 6.3.** No damage or destruction of any building or improvement on the premises by fire or any other cause will cause an abatement of rent or in any other way affect the obligations of the county under this lease agreement. The county will at its own expense make any repair necessary to restore such improvements to at least as good condition as they were in immediately prior to the damage or destruction, whether or not the cost of those repairs is reimbursed by insurance. The net proceeds of insurance resulting from any damage or destruction (after collection of expenses, if any) will be paid to the county, which will apply the proceeds to reimburse itself for the cost of repairs, and will retain any excess.

ARTICLE VII

DEFAULT

**Section 7.1.** Subject to the provisions of any applicable law in effect at the time, each of the following events will be an event of default under this lease agreement:

(A) The county fails to pay any rent required by sections 2.1(A) or 2.1(B) by the earlier of

(1) thirty (30) days after it is due or

(2) fifteen (15) days after notice from the district, except that if in any year the district has given two notices of default in payment, any subsequent failure in that year to pay rent within thirty (30) days after it is due will be an event of default without any notice from the district.

(B) The county fails to perform or comply with any of the other terms, covenants, agreements or conditions contained in this lease agreement and the failure continues for more than thirty (30) days after the district notifies the county in writing of the failure, except that if the failure cannot be cured within thirty (30) days, there will not be an event of default if within the thirty (30) day period the county begins to cure the failure, and thereafter the county proceeds diligently to cure it.

(C) The county files or consents to the filing of any petition seeking debtor's relief or a petition

seeking relief is filed against the county under the laws of any state or of the United States and is not dismissed within sixty (60) days.

(D) County abandons the premises. The district and the county understand and agree that the county park operated on premises is seasonal in the nature of the use made of that park by the county's invitees. During those portions of the year where use of the county park on the premises is low or non-existent, the premises will be under the care, maintenance and supervision of the county. Seasonal fluctuations in county park operation and maintenance do not constitute an abandonment under this paragraph.

**Section 7.2.** If there is an event of default under this lease agreement (regardless of the pendency of any proceeding which has nor might have the effect of preventing the county from complying with the terms of this lease agreement), the district may at any time while the situation which constitutes an event of default continues, terminate this lease agreement by a notice in writing to the county on a date (the "early termination date") specified in the notice (which may be the date the notice is given), without any right by the county to reinstate its rights by paying any rent or other sum which is due or otherwise curing the situation which constituted an event of default. On the early termination date the term of this lease agreement will terminate as fully and with the same effect as if that were the last day of the term of this lease agreement, the county shall

immediately surrender possession of the premises to district, the county will have no further rights under this lease agreement, and the district will immediately become entitled to receive damages from the county.

In addition, upon termination of this lease agreement under this section, the district will be entitled to recover from the county

(A) any cost of repairing or restoring the premises to the condition in which it is required to be kept hereunder, less any insurance or other proceeds available to the district for that purpose,

(B) all rent and other sums due up to the early termination date, and

(C) any reasonable costs, including, but not limited to reasonable attorneys' fees, incurred by the district in recovering possession of the premises.

**Section 7.3.** If any portion of the premises is sublet or leased by the county to others, during the continuance of the situation which constitutes the event of default, the district may, as the county's agent, collect rents due from any sub-tenant and apply those rents to the rent and other sums the county is required to pay under this lease agreement, without in any way affecting the county's remaining obligations under this lease agreement. This agency is being given for security and is hereby declared to be irrevocable.

**Section 7.4.** If the district terminates this lease agreement as provided in section 7.2, the district may remove the

county, all persons claiming under the county, and their respective property, from the premises, and upon ten (10) days written notice to the county store that property in a public warehouse or elsewhere at the cost of, and for the account of, the county, without resort to legal process which the county expressly waives, and without being deemed guilty of trespass or becoming liable for any resulting loss, damage or injury.

**Section 7.5.** The county waives, for itself and all persons claiming under or through it, all rights under present or future law to redeem any portion of the premises or otherwise reinstate this lease agreement if the term of this lease agreement is terminated.

**Section 7.6.** The remedies in this Article VII are intended to be cumulative. No remedy made available to the district in this Article VII is intended to preclude the district from using any other remedy provided in this lease agreement or by law.

**Section 7.7.** No waiver by the district of, or failure of the district to seek a remedy for, any breach by the county of any of its obligations under this lease agreement will be a waiver of any subsequent or continuing breach of that or any other obligation.

### ARTICLE VIII

#### TERMINATION OF LEASE

**Section 8.1.** Except as provided otherwise in this Article, upon the termination of this lease agreement, whether by lapse of time or otherwise, the county will at once surrender the premises

and the roadway license to the district in the condition in which they are required to be kept under this lease agreement, and the district and the county will have no further obligations under this lease agreement, except the county's obligation to pay rent for periods prior to the termination of this lease agreement and the county's obligations on termination of this lease agreement set forth in Article VII. All improvements to the premises that are permanent fixtures meeting the annexation and adaption tests which include but are not limited to buildings, recreational vehicle hook-ups, rest room facilities, boat landings, utility infrastructure, wells, septic systems, and roadways shall remain upon the premises at the termination of this lease agreement and shall become the property of the district. All other improvements such as picnic tables, barbecue grills and other temporary improvements shall be removed upon the termination of this lease agreement by the county provided that no permanent damage is done to the premises and the premises are restored to their original condition by the county.

**Section 8.2.** At its election the district may cause the lease to terminate within 120 days of its written notice to the county of a sale of the premises or roadway license free of the lease and license. In the event that this lease agreement is terminated because of such a sale, the district and county will comply with the provisions contained in this section.

Within 60 days of the date that initial notice is given of any of the events described in the preceding paragraph, the county must provide the district with a list of all improvements

of the premises which were installed during the term of this lease agreement and which are permanent fixtures, including but not limited to buildings, recreational vehicle hook-ups, rest room facilities, boat landings, roadways and other park amenities which are fixtures meeting the annexation and adaptation tests. With respect to each improvement on the list the county must provide the following information: the date the installed improvement was completed, the cost of the installed improvement, the salvage value, if any, of the installed improvement and the depreciated value of the installed improvement. The expected useful life of the installed improvement is determined by the application of generally accepted accounting and engineering principles. If the expected useful life of a particular installed improvement is greater than the scheduled term of the lease agreement then the expected useful life of the installed improvement is the time interval between the date the installed improvement was completed and the scheduled termination date of the lease. The salvage value of the installed improvement, if any, is determined by the application of generally accepted accounting and engineering principles. This salvage value, if any, is determined as of the end of the installed improvement's expected useful life as defined in this section. The depreciated value of the installed improvement is determined by the use of "straight line" depreciation.

Within 60 days of the date of the district's receipt of the list described in the preceding paragraph, the district agrees to pay to the county the depreciated value of each installed improvement on the list less the salvage value, if any, for that

installed improvement. The district will make the payment of the sums described in the preceding sentence from any sale proceeds, any award in condemnation or negotiated taking, any insurance award paid to the district or other good funds of the district. The payment must be made to the order of Douglas County and delivered to:

Douglas County Treasurer's Office  
Post Office Box 218  
Minden, Nevada 89423-0218

The obligation and procedure described in this section is an express exception to the general procedure and obligation described in Section 8.1 of this Article.

**Section 8.3.** Nothing in this lease agreement is intended to preclude the county from the full exercise of the county's statutory "fund-out clause" rights provided in section 244.320 of the Nevada Revised Statutes during the term of this lease agreement. If the county exercises its statutory right under this section during the term of this lease agreement, the county and district will comply with the requirements of section 8.1 of this Article and the district will not be required to make any payment pursuant to section 8.2 of this Article.

**Section 8.4.** Nothing in this Article shall preclude the district from selling the properties on which the premises is located or which is subject to the roadway license with the condition that the sale or sales be subject to the provisions of this lease agreement, the roadway license, or both, as is appropriate, given the property which is the subject of the sale transaction or transactions. In the event of a sale which is subject to the lease and roadway license, the provisions of Section 8.2 do not apply.



**ARTICLE IX**

**ASSIGNMENT, SUBLEASES, TRANSFERS OR ENCUMBRANCES**

**Section 9.1.** Neither this lease agreement nor any interest therein, whether legal or equitable, shall be assigned, alienated, pledged or hypothecated, in whole or in part, voluntarily or by operation of law, nor shall the premises be sublet, in whole or in part, without the written consent of district having been previously had and obtained. A consent to one assignment, subletting, occupation or use by any other person, shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall be an event of default. This lease agreement shall not, nor shall any interest therein, be assignable, as to the interest of county, by operation of law, without the written consent of district.

**Section 9.2.** The consent of the district required under section 9.1 above may not be withheld unreasonably.

**Section 9.3.** The following conditions shall apply to any proposed assignment or sublease hereunder:

(A) Each and every covenant, condition, or obligation imposed upon county by this lease agreement and each and every right, remedy, or benefit afforded district by this lease agreement shall not be impaired or diminished as a result of such assignment or sublease;

(B) No subletting or assignment, even with the consent of district, shall relieve county of its obligation to pay rent and to perform all other

obligations to be performed by county hereunder and the acceptance of rent by district from any person shall not be deemed to be a waiver by district of any provision of this lease agreement to be a consent to any assignment or subletting;

(C) No permitted assignment or sublease shall be valid and no assignee or sublessee shall take possession of the premises assigned or sublet unless, within ten (10) days after the execution thereof, county shall deliver to district a duly executed duplicate original of such assignment or sublease in form satisfactory to district which provides

(1) the assignee or sublessee assumes county's obligations for the payment of rent and for the full and faithful observance and performance of the covenants, terms and conditions contained herein, and

(2) that such assignee or sublessee will, at district's election, attorn directly to district in the event county's lease agreement is terminated for any reason, and

(3) such assignment or sublease contains such other assurances as district reasonably deems necessary.

**Section 9.4.** Nothing in this Article shall preclude or prohibit the county's full exercise of its statutory rights to issue all manner of bonds, securities or other forms of public debt financing for purposes of the improvement, expansion, operation and maintenance of county park facilities on the premises or on county-owned property adjacent to the premises.

In the event of a conflict between any of the provisions of this lease agreement and applicable state statutes regarding the county's financial activities of the kind described in this section, the state statutes shall control over the lease agreement provisions.

ARTICLE X

INDEMNIFICATION

Section 10.1. The county will indemnify the district against, and hold the district harmless from

(A) any and all claims arising from the use or management of the premises and the roadway license or from any work or other things done on the premises and the roadway license during the term of this lease agreement, including, but not limited to, all impositions and utility charges relating to the term of this lease agreement,

(B) any and all claims for loss or damage arising during the term of this lease agreement from the condition of any building or other improvements on the premises or arising from a failure by the county to fulfill any of its obligations under this lease agreement, or arising from any other cause except the negligent or willful acts of district's agents, contractors, servants or employees, and

(C) all liabilities, costs and expenses, including reasonable attorneys' fees, incurred in connection with any such claim or any action or proceeding arising from county's use and occupancy of the premises and roadway license brought with regard to any such claim. If any action or proceeding is brought against the district by

reason of any such claim, the district will promptly notify the county of the commencement of the action or proceeding and will offer the county the opportunity to assume the defense of the action or proceeding.

Section 10.2. The district will indemnify the county against, and hold the county harmless from

(A) any and all claims arising from the district's acts or omissions arising from the use or management of district-owned property for the district's water storage, water conservation, water conveyance and irrigation activities,

(B) any and all claims for loss or damage arising during the term of this lease agreement from the condition of any district-owned building or district-owned improvements on the premises or arising from a failure by the district to fulfill any of its obligations under this lease agreement, or arising from any other cause except the negligent or willful acts of county's agents, contractors, concessioners, servants, or employees, and

(C) all liabilities, costs and expenses, including reasonable attorneys' fees, incurred in connection with any such claim action or proceeding arising from district's activities described in clauses (A) and (B) of this sentence. If any action or proceeding is brought against the county by reason of any such claim, the county will promptly notify the district of the commencement of the action or proceeding and will offer the district the opportunity to assume the defense of the action or proceeding.

ARTICLE XI

CONDEMNATION

**Section 11.1.** If at any time during the term of this lease agreement any portion of the premises or roadway license is taken by any authority by the exercise of any right of eminent domain or in any condemnation proceeding, or by agreement between the district and those authorized to exercise such right, the district will give the county prompt notice of the occurrence, describing the nature and extent of the taking which might result from them as the case may be.

**Section 11.2.** If a taking reduces the area of the premises by more than 3.5%, or as a result of the taking the county cannot continue to operate its park business on the premises from the standpoint of good business practices, the taking may, at the election of the county exercised by a notice in writing to the district given within 60 days after legal title to the portion of the premises passes to the governmental authority, be considered a taking of the entire premises to which section 11.3 will apply. There shall be no abatement of rent for any taking which is not considered a taking of the entire premises.

**Section 11.3.** If the entire premises is taken or condemned, this lease agreement will terminate as of the date the governmental authority takes possession, with the same force and effect as though that were the date specified in Article I.

**Section 11.4.** If this lease shall have terminated as a result of taking as provided in Section 11.1 or Section 11.3, the county's share of the condemnation award shall be that part of the net proceeds of the award attributable to the value of any buildings and improvements taken in whole or in part, multiplied

by a fraction, the denominator of which is 25 and the numerator of which is the number of lease years remaining in the term of this lease at the time of the taking, plus the portion of such condemnation award that is designated as compensation for county's lost profits, if any. The county's share of the condemnation award shall be remitted directly to the county promptly after it is determined hereunder. The district shall be entitled to the balance of the net proceeds of the condemnation award, including without limitation, the portion attributable to the value of the land taken, any severance damages to the land not so taken and the portion of such condemnation award that is designated as compensation for the district's lost rent, if any. If the district and county cannot agree on the county's share within thirty (30) days following the first payment of the award, sale proceeds or damages, the issue shall be submitted to two appraisers, both of whom shall be residents of the State of Nevada and each of whom shall be a member of the American Institute of Real Estate Appraisers, or the successor thereto. One shall be selected by the district and one shall be selected by the county. Each appraiser shall independently determine the county's share of the condemnation award as defined above within 30 days of his appointment. If the appraisals submitted are within 10% of each other, then the two appraisals shall be added together and divided by two and the average so obtained shall be the county's share of the condemnation award.

If the appraisals are not within 10% of each other, then the two appraisers so appointed shall confer jointly and, if possible, determine the county's share of the condemnation award. If the two appraisers cannot agree within 10 days from the date on which the last appraisal was submitted, then the two

appraisers shall appoint a third appraiser who shall be a resident of the State of Nevada and a member of the American Institute of Real Estate Appraisers, or the successor thereto. The third appraiser shall independently determine the county's share of the condemnation award within 30 days of his appointment. If this appraiser's determination is within 10% of one of the other appraisals, the two appraisals that are within 10% of each other shall be added together and divided by two and the average so obtained shall be determinative of the county's share of the condemnation award.

If the third appraisal is not within 10% of either of the other appraisals, then the third appraisal shall bind both district and county and shall be determinative of the tenant's share of the condemnation award.

The district shall pay the fee of its appraiser and the county shall pay the fee of its appraiser. The fee of the third appraiser shall be paid for equally by the district and county. In the event district and county refuses to appoint an appraiser as hereinabove provided, then it is mutually understood and agreed that the appraisal by the appraiser appointed by the party willing to appoint an appraiser, shall determine the county's share of the condemnation award.

## ARTICLE XII

### DISCHARGE OF LIENS

**Section 12.1.** County will not create or permit to exist any lien or other encumbrance on the premises and roadway license resulting from any acts or omissions by the county. If as a result of the failure of the county to pay any imposition which the county is required by this lease agreement to pay, to make any payment to a contractor or subcontractor which the county is

required by this lease agreement to make, or to make any-other payment, a lien is placed upon the premises or roadway license, the district may, but will not be required to, pay such sum as is required to obtain discharge of the lien, or obtain the discharge of the lien by deposit of bonding. If the district does that, the county will pay the district, promptly on demand as additional rent under this lease agreement, the entire sum spent by the district plus the district's reasonable expenses, including reasonable attorneys' fees, in connection with obtaining discharge of the lien.

### ARTICLE XIII

#### BANKRUPTCY

**Section 13.1.** If at any time during the term of this lease agreement there shall be filed by or against either district or county in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency (any of which are referred to herein as "a bankruptcy event"), then the following provisions shall apply:

(A) In all cases any debtor in possession or trustee in bankruptcy shall either expressly assume or reject this lease agreement within the time provided in 11 U.S.C. §365(d).

(B) In the event of an assumption of the lease agreement by a debtor or by a trustee, such debtor or trustee shall immediately after such assumption

(1) cure any default or provide adequate assurances that defaults will be promptly cured; and



(2) compensate the non-debtor party to this lease agreement for actual pecuniary loss; and

(3) provide adequate assurance of future performance.

(C) Where a default exists in the lease agreement, the trustee or debtor assuming the lease agreement may not require the non-debtor district or county to provide services or supplies incidental to the lease agreement before its assumption by such trustee or debtor, unless the non-debtor party is compensated under the terms of the lease agreement for such services and supplies provided before the assumption of such lease agreement.

(D) Subject to the provisions of Article IX, the debtor and trustee may only assign this lease agreement if:

(1) it is assumed; and

(2) adequate assurance of future performance by the assignee is provided, whether or not there has been a default under the lease agreement.

(E) The non-debtor party specifically reserves any and all remedies available to that party in this lease agreement or at law or in equity in respect of a bankruptcy even by the debtor party to the extent such remedies are permitted by law.

**ARTICLE XIV**

**MISCELLANEOUS**

**Section 14.1.** This lease agreement will inure to the benefit of the district, the county, the district's successors and assigns and the county's successors and assigns permitted by this lease agreement. Provided, however, that nothing in this section shall limit any of the provisions in this lease agreement inhibiting the transfer, assignment, subleasing and encumbering without the written consent of the district.

**Section 14.2.** Whenever the approval or consent of the district or the county is required for any purpose under this lease agreement, that approval or consent will not be unreasonably withheld or delayed. Without limiting the foregoing, if any approval or consent is requested by either party, unless the consenting party notifies the requesting party within ninety (90) days that it will not grant the approval or consent, the consenting party will be deemed to have given the approval or consent on the ninety-first (91st) day.

**Section 14.3.** The district and the county each represents and warrants to the other that no person has acted as a broker or finder or in a similar capacity in connection with this lease agreement or the transaction embodied in it. The district hereby indemnifies the county, and the county hereby indemnifies the district against, and each of them agrees to hold the other harmless from, any liabilities, costs or expenses (including reasonable attorneys' fees) by reason of any claim for broker's, finder's or similar fees arising out of services allegedly performed for the indemnifying party.

**Section 14.4.** The rights and privileges of the district under this lease agreement will be cumulative, and no one of them will preclude the district from taking advantage of any other of them, nor will they preclude the district from taking advantage of any granted by law.

**Section 14.5.** This lease agreement will be governed by, and construed under, the laws of the State of Nevada.

**Section 14.6.** The captions of the Articles of this lease agreement are for convenience only and in no way affect the construction of the terms and conditions of this lease agreement.

**Section 14.7.** The term "district" as used in this lease agreement means the owner of the fee interest in the premises.

**Section 14.8.** All notices and other communications required or permitted to be given by the district or the county must be in writing and will be deemed given on the day when delivered in person or on the third business day after the day on which mailed from within the United States of America by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

IF TO THE DISTRICT: Walker River Irrigation District  
Attn: General Manager  
Post Office Box 820  
Yerington, Nevada 89447-0820

IF TO THE COUNTY: Douglas County  
Parks and Recreation Department  
Attn: Director  
Post Office Box 218  
Minden, Nevada 89423-0218

or to such other place as the district or the county may from time to time designate in a written notice to the other.

**Section 14.9.** This lease agreement contains the entire agreement between the parties hereto and there are no promises,

agreement, conditions, undertakings, or warranties, or representations, oral or written, express or implied, between them as herein set forth. No change or modification of this lease agreement or any of the provisions hereof shall be valid or effective unless the same is in writing and signed by the parties hereto. No alleged or contended waiver of any of the provisions of this lease agreement shall be valid or effective unless in writing signed by the party against whom it is sought to be enforced.

**Section 14.10** If the district or the county is required by this lease agreement to proceed diligently to complete any construction or do anything else, or to complete construction by a specified date, but the efforts to proceed or complete are delayed by governmental action, work stoppages, extraordinary weather conditions or similar factors entirely beyond the control of the district or the county, the delay will not be deemed a breach of the obligation to proceed diligently and any date by which construction must be completed will be extended by a number of days equal to the number of days of the delay.

**Section 14.11.** Except as expressly provided in this lease agreement, each requirement that a sum be paid or an act performed by a specified date is an essential term of this lease agreement.

**Section 14.12.** County shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force pertaining to the premises, occasioned by or affecting the use thereof by county.

**Section 14.13.** District and county shall not keep or have on the premises any article or thing of a dangerous, inflammable, explosive, toxic or hazardous character. Nothing in this section shall prohibit county from keeping and using combustible vehicle fuels, firewood, fertilizers and pesticides on the premises which are reasonably necessary for county's operation and maintenance of a county park facility on the premises. Nothing in this section shall prohibit district from keeping and using, in compliance with applicable laws, materials reasonably necessary for the operation, maintenance, improvement and repair of the reservoir and related facilities described in Article III, Section 3.3 of this lease agreement.

**Section 14.14.** This lease agreement may be executed in counterparts, all of which will constitute one and the same agreement.

**Section 14.15.** In the event of any litigation between the parties hereto arising out of this lease agreement, the prevailing party shall be reimbursed for all reasonable costs, including, but not limited to, reasonable attorney's fees.

**Section 14.16.** If any provision of this lease agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this lease agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this lease agreement shall be valid and be enforced to the fullest extent permitted by law.

**Section 14.17.** No failure by district to insist upon strict performance of any term, covenant, agreement, provision,

condition or limitation of this lease agreement to be kept, observed or performed by county, and no failure by district to exercise any right or remedy available upon a breach of any such other, covenant, agreement, provision, condition or limitation of this lease agreement, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation of this lease agreement, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation.

**Section 14.18.** Any amount due from county to district or from district to county herein which is not paid when due shall bear interest at an annual rate equal to three percent (3%) in excess of the "prime rate" announced from time to time by Wells Fargo Bank, or its successor, from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by the party making the payment under this lease agreement.

**Section 14.19.** If county shall hold possession of the premises after the expiration or termination of this lease agreement, at district's option

(A) County shall be deemed to be occupying the premises as a tenant from month-to-month, at a rate which is one-twelfth of the sum the annual fixed rent and the adjusted rent, if any, as well as other charges in effect during the last year immediately preceding such holdover and otherwise subject to all of the terms and conditions of this lease agreement, or

(B) District may exercise any other remedies it has under this lease agreement or at law or in equity including an action for wrongfully holding over. No

payment by county or receipt by district of a lesser amount than the correct rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any check for payment of rent or any other amounts owed to district be deemed to effect or evidence an accord and satisfaction, and district may accept such check or payment without prejudice to district's right to recover the balance of the rent or other amount owed or to pursue any other remedy provided in this lease agreement.

**Section 14.20.** County hereby agrees that it will, at its expense, comply with all applicable laws, regulations, rules and orders, regardless when they become or became effective, relating to county's use and occupancy of the premises, including without limitation those relating to health, safety, noise, environmental protections, waste disposal, and water and air quality and furnish satisfactory evidence of such compliance upon request of district. Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the premises due to county's use and occupancy thereof or district's activities thereon either county or district as appropriate, and, at its expense, shall be obligated to clean the premises to the satisfaction of the non-polluting party and any governmental body having jurisdiction thereover. District and county shall not bring into the premises any hazardous materials or toxic chemicals, substances, mixtures, wastes, contaminants or pollutants within the meaning of any Environmental Laws. The only exceptions to the prohibition in the preceding sentence are the limited exceptions provided to county and district in section

14.13 of this Article. County and district agree to indemnify, defend and hold harmless the other party from and against any and all claims that are asserted against or incurred by the other party as a result of the presence at, on or under the premises of any hazardous material brought on the premises in violation of Environmental Laws by the indemnifying party.

The term "Environmental Laws" shall include, without limitation, the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.*; and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. §136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §4231 *et seq.*; the Noise Control Act, 42 U.S.C. §4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*; the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. §6901 *et seq.*; as amended by the Hazardous and Solid Waste Amendment of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 *et seq.*; as amended by the Superfund Amendments and Reauthorization Act, and the Emergency Planning and Community Right-to-Know Act; the Toxic Substance Control Act ("TSCA"), 15 U.S.C. §2601 *et seq.*; and the Atomic Energy Act, 42 U.S.C. §2011 *et seq.*; all as may be amended, with implementing regulations and guidelines. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations and ordinances insofar as they are

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equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials.

The term "Hazardous Materials" shall include, without limitation, any hazardous substance, pollutant, or contaminant regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel; pesticides regulated under FIFRA; asbestos, polychlorinated biphenyls, and other substances regulated under TSCA; source material, special nuclear material, and byproduct materials regulated under the Atomic Energy Act; and industrial process and pollution control wastes to the extent regulated under applicable Environmental Laws.

The term "Claim" shall include, without limitation, any demand, cause of action, proceedings, or suit for damages (actual or punitive), injuries to persons or property, damages to natural resources, fines, penalties, interest, losses, or the costs of the site investigations, feasibility studies, information requests, health assessments, contribution, settlement, actions to correct, remove, remedies, response to, clean up, prevent, mitigate, monitor, evaluate, assess, or abate the release of a hazardous material, or enforcing insurance, contribution or indemnification agreements.

DISTRICT:  
WALKER RIVER IRRIGATION DISTRICT

ATTEST:

Deak Compton  
Secretary

By: Robert E. Bryan  
Its: CHAIRMAN

ATTEST:

COUNTY:  
DOUGLAS COUNTY, NEVADA

Barbara J. Reed  
Clerk  
Jonda Condens  
Chief Deputy Clerk

By: Jaques E. Ely  
Chairman

**EXHIBIT "A"**

**DESCRIPTION OF THE PREMISES**

The leased premises conveyed by Section 1.1 of Article I in the lease agreement consists of two parcels. Lease parcel one is the southwest ¼ of the southwest ¼ of Section 27; the south ½ of the southeast ¼ of Section 28; the north ½ of the northeast ¼ of Section 33; and the northwest ¼ of the northwest ¼ of Section 34 all in Township 10 North, Range 22 East, M.D.B.&M., excepting therefrom all those portions of land held by the Park Family Trust as set forth in Book 0186, Page 1616, Document Number 0129716 of the Official Records of Douglas County, Nevada. Lease parcel one is a fraction of the westerly portion of Douglas County Assessor's Parcel Number 39-030-01.

Lease parcel two of the premises is the southwest ¼ of the northwest ¼ of Section 34 of Township 10 North, Range 22 East, M.D.B.&M. Lease parcel two is all of Douglas county Assessor's Number 39-020-09.

The legal description of the premises contained in this exhibit is incorporated into the lease agreement.

REQUESTED BY  
**DOUGLAS COUNTY**  
IN OFFICIAL RECORDS OF  
DOUGLAS COUNTY, NEVADA

1999 SEP 13 PM 2:41

LINDA SLATER  
RECORDER

\$ PAID 50 DEPUTY

**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

**SEAL**

DATE: Sept 10, 1999  
B Reed Clerk of the 1900 Judicial District Court  
of the State of Nevada, in and for the County of Douglas.

By Judith Cordner Deputy

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