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OFFICIAL RECORD  
Requested By:  
DC/PUBLIC WORKS

Assessor's Parcel Number: N/A

Date: FEBRUARY 9, 2009

Recording Requested By:

Douglas County - NV  
Karen Ellison - Recorder  
Page: 1 Of 8 Fee: 0.00  
BK-0209 PG- 2475 RPTT: 0.00



Name: EILEEN CHURCH, PUBLIC WORKS

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Real Property Transfer Tax: \$ N/A

AGREEMENT #2009.029

(Title of Document)

FILED

NO. 2009.029

**WATER RIGHTS BANKING AND DEDICATION AGREEMENT**

2009 FEB -9 PM 12: 02

This Agreement made as of the 5 of February 2009 by and between Walley's Partners, Limited Partnership ("Dedicator") and Douglas County, a political subdivision of the State of Nevada ("County") for the purpose of dedicating and banking certain water rights.

TESTIMONIAL CLERK  
BY: *[Signature]*

**RECITALS**

WHEREAS, the County owns and operates a water distribution system located in the County; and

WHEREAS, the Dedicator desires to transfer certain water rights to the County to be reserved and credited towards future utility service requirements; and

WHEREAS, the County is willing to accept the water rights to be utilized by the Dedicator for future development requirements within the Douglas County Water District area, as it may change from time to time, on the condition that the Dedicator be responsible for all costs associated with the initial transfer, all costs associated with future transfers as they may be required by the Nevada State Engineer's office, and all costs associated with the maintenance of the water rights; and

WHEREAS, the Dedicator desires to assign their rights to apply as dedicated water rights toward future will-serve requirements to the County; and

WHEREAS, the County's acceptance of this water right dedication does not create an obligation to provide water service to the Dedicator, a utility service obligation is created only after a will-serve request has been applied for with the County and all conditions for that service have been satisfied; and

WHEREAS, the County will accept the dedicated water rights in lieu of provisions of new water rights when an application for water service is made in the future by the Dedicator, thereby satisfying one of the pre-conditions for utility service (i.e. the provision of a water right).

NOW THEREFORE, it is agreed between the Dedicator and the County as follows:

1. **DEDICATION OF WATER RIGHTS AND FACILITIES.** The Dedicator agrees to dedicate water rights to Douglas County. The Dedicator agrees and understands that dedication of the described water rights is a condition precedent to receiving a will-serve commitment or water service from the County. The parties further agree that:



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- a. The quality of surface or ground water rights reasonably necessary to insure an adequate water supply to the subject property is independently determined by the County. The parties agree and understand that the County has no obligation to independently obtain the necessary water rights to fulfill a will-serve commitment;
- b. Any facilities for water treatment, supply, storage, transmission and distribution, treatment and disposal, and appurtenances (such as wells, pipelines, pumps and storage tanks), located within or outside of the property for which future will-serve commitments, that are requested and which are reasonably necessary to insure an adequate water supply to the property, will be constructed by the Dedicator, must meet applicable County requirements, and be dedicated to and accepted by the County; and
- c. Any easement or legal access reasonably necessary to insure an adequate water supply to the property will also be dedicated from the Dedicator to the County as part of grant of will-serve commitments.

2. **DEDICATED WATER RIGHTS.** The water rights dedicated by this agreement are described as follows:

No: 67307  
 Acre-feet: Ten (10.0)  
 Current owner: Walley's Partners, Limited Partnership

3. **BANKING.** The water rights dedicated to the County by dedication under this agreement will be available for the use in the satisfaction for the water right dedication requirement that is a precondition to receiving water service from the County. Once the water rights have been dedicated to the County, the County will maintain those rights in an account as a credit for the Dedicator.

- a. The Dedicator may request will-serve commitments for water service from the County in the future, and the water rights that are held by the County in an account as a credit for the Dedicator, may be used to satisfy the water dedication requirement at the time of the request for the will service.
- b. **Assignment of Banked Credits.** The Dedicator's banked credits in an account with the County may be assigned to another individual. Upon the execution and recording of an assignment agreement with an assignee, the County will allow the assignee to receive the credits as satisfaction of the water right dedication requirement when that assignee applies for will-serve commitments from the county for water service.
- c. **Reduction in Banked Credits.** The Dedicator will file an application to change the manner of use and place of use of the Dedicator's water rights

to municipal uses in the Douglas County. If the State Engineer determines, or if appeal from such a ruling by the State Engineer determines, that the total number of acre feet that can be used by the County for municipal uses in its service area is less than the amount of water rights that are dedicated under this agreement, the County will reduce the credits that are accounted to the Dedicator by the amount of the reduction in the State Engineer's ruling, or in the appeal from such a ruling.

4. **ADMINISTRATIVE, ENGINEERING AND LEGAL COSTS.** Applicable County ordinances require any person who is dedicating water rights to the County to pay all the costs associated with said dedication. These costs include the administrative, legal and engineering costs associated with the water right change applications.
- a. As part of this Banking and Dedication Agreement, the Dedicator agrees to pay all administrative, engineering, and legal costs associated with this dedication in the following manner:
- i. The Dedicator must aid and assist the County in all administrative legal proceedings except as otherwise advised by the County in order to process the change application;
  - ii. The Dedicator will pay all costs that have been incurred by the County in the review of the good standing of the dedicated water rights prior to dedication. Those costs will be reimbursed by the Dedicator at the close of escrow for the water right dedication;
  - iii. The County, and its representatives, will submit invoices to the title company, or other party supervising the escrow, and those invoices will be paid before the close of escrow;
  - iv. The Dedicator or his Assignee, agrees to pay all costs that the County incurs after the close of escrow on this dedication. The costs will be accounted by the County, as they are incurred, and will be charged to the Dedicator when will-serve commitments are requested from the County, based on the dedicated water rights.
5. **CHANGE APPLICATIONS.** As a precondition of the dedication of water rights under this agreement, the Dedicator will prepare the necessary change applications that are required by the Nevada State Engineer to change the manner of use and place of use of the dedicated water rights to municipal use in the County.

- a. The Dedicator will submit to the County prepared applications, including the required maps that list the County as the applicant for the water right change application.
  - b. The County will file a change application with the State Engineer to change the manner or place of use of the dedicated water. Change applications that change the points of diversion, manner and place of use of the water rights referenced above will be prepared so that the water rights may be utilized for municipal purposes within the Douglas County Water District's service area.
  - c. The Dedicator understands and agrees to pay all costs associated with the change application with the Nevada State Engineer including, but not limited to: the payment of fees geological studies, hydrologist reports, maps, and any other necessary study and cost associated with the change application.
6. **USE OF WATER RIGHTS AND FACILITIES.** The parties agree that the County may, by contract or written agreement, permit the use of the dedicated water rights or facilities by other governmental entities, public or private utilities, or any other person or entity including those engaged in providing water, storm drainage or sewer service, subject to the Dedicator's right to use the dedicated water to satisfy will-serve requirements.
7. **APPROVAL OF SERVICE CONDITIONAL.** Each will-serve notification and administrative approval of applications for water service is conditional upon the acceptance of the dedication, and the satisfaction of all other service requirements that are established by Douglas County ordinance or Nevada law. Any application or renewal, including applications for extension of will-serve commitments, are subject to the provisions of this agreement.
- a. The parties agree that the County is the final authority in determining the number of will-serves which may be granted by the County;
  - b. The County is also final authority regarding the number of hook-ups which may be serviced by the water rights transferred for any development, such determination shall be based on the criteria established by Douglas County and further established by the Nevada State Engineer.
8. **TERMS OF SERVICE.** The term of this agreement is for a period of fifteen years and may be renewable for successive terms of agreed duration upon application of the Dedicator, and the approval of the County.
- a. It is further understood and agreed between the County and the Dedicator that either party (or its heirs, successors, or assignees) may terminate this agreement at any time after the initial ten year period with one hundred

twenty days written notice to the other party at the name and address included in the State of Nevada Division of Water Resources' official files and records of water rights that are the subject of this agreement.

b. In the event the agreement is terminated after the ten year period the County will retain the water rights referenced above that have not been credited to an existing will-serve commitment.

9. **COUNTERPARTS.** This agreement may be executed in counterparts, each of which will be deemed an original, and all of which, taken together, will constitute but one and the same instrument.
10. **GOVERNING LAW.** This agreement is governed by, interpreted under, construed, and enforced in accordance with the laws of the state of Nevada applicable to agreements made and to be performed wholly within the State of Nevada.
11. **ENTIRE AGREEMENT** This agreement constitutes the entire agreement between the County and the Dedicator, with respect to the subject matter of this agreement and supersedes all prior understandings with respect to the agreement. This agreement may not be modified, changed or supplemented, nor may any of its obligations be waived, except by written instrument signed by the County and the Dedicator or as otherwise expressly permitted in the agreement. The parties do not intend to confer any benefit set forth in this agreement on any person, firm or corporation other than the County and the Dedicator.
12. **WAIVERS; EXTENSIONS** No waiver of any breach of any agreement or provision in this agreement may be deemed a waiver of any preceding or succeeding breach of the agreement or of any other agreement or provision in this agreement. No extension of time for performance of any obligations or acts will be deemed an extension of the time for performance of any other obligations or acts.
13. **NON-WAIVER OF RIGHTS.** No failure or delay of the County or the Dedicator in the exercise of any right given to the County or the Dedicator constitutes a waiver unless the time specified in this agreement for exercise of the right has expired, nor will any single or partial exercise of any right preclude any other or further exercise of that or of any other right. The waiver of any breach under this agreement will not be deemed to be a waiver of any other or any subsequent breach thereof.
14. **FURTHER ASSURANCES.** The County and the Dedicator each agree to do any further acts and things and to execute and deliver any additional agreements and instruments as the other may reasonably require to

consummate, evidence or confirm the dedication of the above reference water rights or any other agreement contained in this agreement in the manner contemplated by this agreement.

15. **SUCCESSORS AND ASSIGNEES; ASSIGNMENT.** This agreement is binding upon and will inure to the benefit of each of the Dedicator and County and to their respective heirs successor and assigns.
- a. The County has the right to assign its interests in this agreement in whole or in part to one or more wholly owned subsidiaries, in which case, the reference to the County in this agreement includes the assignee, and provided that such assignee assumes all of the obligations of the County under this agreement by written instrument.
  - b. The Dedicator has the right to assign its interests in this agreement in whole or in part to one or more wholly owned subsidiaries, in which case, the reference to the Dedicator in this agreement includes such assignee, and provided that the assignee assumes all of the obligations of the Dedicator under this agreement by written instrument.
  - c. Any assignment will not relieve either party of its obligations under this agreement. Any attempt to transfer, convey or assign this agreement other than as provided above will be null and void.
16. **TIME** Time is of the essence in respect to each and every particular of this agreement. Any time period to be computed pursuant to this agreement shall be computed by excluding the first day and including the last. If the last day falls on a Saturday, Sunday or holiday, the last day must be extended until the next business day that the escrow agent is open for business, but in no case will be the extension be for more than three days.
17. **SEVERABILITY.** The determination that any covenant, agreement, condition, or provision of this agreement is invalid does not affect the enforceability of the remaining covenants, agreements, conditions or provisions of this agreement and, in the event of such determination, this agreement will be construed as if the invalid covenant, agreement, condition or provision were not included in this agreement.
18. **DELIVERY OF DEED AND WARRANTY.** The Dedicator must deliver a water rights grant bargain and sale deed conveying and dedicating the water rights to the County at the time of the execution of this agreement. The Dedicator warrants that they are the legal owner of the dedicated water rights.
19. **INDEMNIFICATION.** The Dedicator agrees to indemnify the County at all times and hold the County harmless in respect of any claims, damages or losses, (including attorney's fees), whether known or unknown, disclosed or

undisclosed, arising from, by reason of or in connection with any part or portion of this agreement or the water right described in this agreement.

- 20. **ATTORNEY'S FEES.** In the event of any litigation between the County and the Dedicator arising out of this Agreement, or if one party seeks to judicially enforce the terms of this Agreement, the prevailing party shall be reimbursed for all reasonable costs, including but not limited to, reasonable attorney's fees.

Date: \_\_\_\_\_

[Signature]  
Walley's Partners Limited Partnership

DOUGLAS COUNTY, NEVADA

Date: Feb. 5, 2009

[Signature]  
NANCY McDERMID  
Chairman, Board of Commissioners  
Douglas County

ATTEST:  
TED THRAN, Douglas County Clerk

By: [Signature]

BY: [Signature]  
CLERK TO THE BOARD

**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.

DATE: Feb 9, 2009  
[Signature] Clerk of the 9th Judicial District Court  
of the State of Nevada, in and for the County of Douglas.

By [Signature] Deputy

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