

Assessor's Parcel Number: N/A

Date: NOVEMBER 8, 2010

Recording Requested By: _____

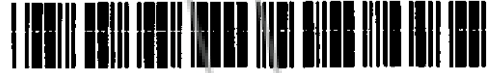
Name: EILEEN CHURCH, PUBLIC WORKS
(CR)

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A

Douglas County - NV
Karen Ellison - Recorder
Page: 1 Of 9 Fee: 0.00
BK-1110 PG-2064 RPTT: 0.00



AGREEMENT #2010.263

(Title of Document)

FILED

2010. 263

2010 NOV -8 AM 9:34

WATER RIGHTS BANKING AND DEDICATION AGREEMENT

This Water Rights Banking and Dedication Agreement ("Agreement") is made as of the 18th day of October 2010, by and between HILLTOP COMMUNITY CHURCH, INC. ("Dedicator") and Douglas County, a political subdivision of the State of Nevada ("County") for the purpose of dedicating and banking certain water rights.

[Handwritten 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 granting of a water right).

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Dedicator and the County agree 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:

- 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 the issuance of will-serve commitments.

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

A portion of Permit No.: 46711
Acre-feet: Three and three quarter (3.75)
Current owner: Hilltop Community Church (f/n/a Carson Valley Community Church)

3. **BANKING.** The water rights dedicated to the County by dedication under this agreement will be available for use by the County in satisfaction of the water right dedication requirement imposed by the County as 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 point of diversion, 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 an 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 the Agreement, the County will reduce the credits that are credited to the Dedicator by the amount of the reduction in the State Engineer's ruling or 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 of the costs associated with said dedication. These costs include the administrative, legal and engineering costs associated with the water right change applications.

As part of the 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 for 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. **DEDICATOR'S COVENANTS.**

- a. The Dedicator will submit to the County for approval as to form the change application to be submitted to the State Engineer, including the required maps.
- b. The Dedicator will file the Change Application with the State Engineer to change the point of diversion, the manner of use to quasi-municipal use, and the place of use to the Douglas County Water District's service area of the dedicated water 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 that Dedicator will 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.
- d. The Dedicator will provide a copy of the Conveyance of Title Report to the County.
- e. In the event that the Change Application and Conveyance of Title to the County is not approved by the State Engineer, all rights, duties and obligations of the parties under this agreement shall cease.

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 an extension of will-serve commitments, are subject to the provisions of the Agreement.

- a. The parties agree that the County is the final authority in determining the number of will-serves that may be granted by the County;

- b. The County is also the final authority regarding the number of hook-ups that may be serviced by the water rights transferred for any development. Such determination will be based upon the criteria established by Douglas County and the Nevada State Engineer.
8. **TERMS OF SERVICE.** The term of this agreement is for a period of ten 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 the 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 official files and records of water rights that are the subject of the Agreement kept by the State of Nevada Division of Water Resources.
- b. In the event the Agreement is terminated after the initial 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.** The 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.** The Agreement is governed by, interpreted under, construed, and enforced in accordance with the laws of the State of Nevada. The parties agree that the only lawful venue for any action related to the interpretation or enforcement of the Agreement will be in the Ninth Judicial District Court in and for the County of Douglas.
11. **ENTIRE AGREEMENT.** The Agreement constitutes the entire agreement between the County and the Dedicator, with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to the Agreement. The Agreement may not be modified, changed or supplemented, nor may any of the obligations contained herein be waived, except by a 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 the Agreement on any person, firm or corporation other than the County and the Dedicator.

12. **WAIVERS; EXTENSIONS.** No waiver of any breach of the 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 the performance of any obligation or act under the terms of the Agreement will be deemed an extension of the time for performance of any other obligation or act.

13. **NO JOINT VENTURE.** The parties are associated with each other only for the purposes and to the extent set forth in the Agreement. Nothing contained in the Agreement will be deemed or construed to create a partnership or joint venture or to create relationships of an employer-employee or principal-agent.

14. **FURTHER ASSURANCES.** The County and the Dedicator each agree to perform any further acts 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 referenced water rights or any other agreement contained in the Agreement in the manner contemplated by the Agreement.

15. **SUCCESSORS AND ASSIGNEES; ASSIGNMENT.** The 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 the Agreement, in whole or in part, to one or more wholly owned subsidiaries, in which case, the reference to the County in the Agreement includes the assignee, and provided that such assignee assumes all of the obligations of the County under the Agreement by written instrument.
 - b. The Dedicator has the right to assign its interests in the Agreement, in whole or in part, to one or more wholly owned subsidiaries, in which case, the reference to the Dedicator in the Agreement includes such assignee, and provided that the assignee assumes all of the obligations of the Dedicator under the Agreement by written instrument.
 - c. Any assignment will not relieve either party of its obligations under the Agreement. Any attempt to transfer, convey or assign the Agreement other than as provided herein will be null and void.

16. **TIME.** Time is of the essence in respect to each and every particular of the Agreement. Any time period to be computed pursuant to the Agreement will be computed by excluding the first day and including the last day. 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 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 the Agreement and, in the event of such determination, the Agreement will be construed as if the invalid covenant, agreement, condition or provision were not included in the Agreement.

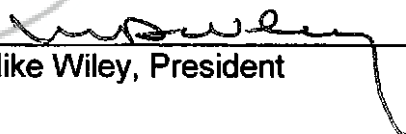
18. **DELIVERY OF DEED AND WARRANTY**. The Dedicator must deliver a water rights grant bargain and sale deed conveying and dedicating the water rights to the County at the time of the execution of the Agreement. The Dedicator warrants that it is the legal owner of the dedicated water rights.

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 the Agreement or the water rights described in the Agreement.

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

Hilltop Community Church

Date: 10/18/2010



Mike Wiley, President

DOUGLAS COUNTY, NEVADA

Michael A. Olson
Michael A. Olson
Chairman, Board of Commissioners
Douglas County

Date: November 4, 2010

Ted Thran

ATTEST:
TED THRAN, Douglas County Clerk

By: Laura S. Decker



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: Nov 8, 2010

T. Thran Clerk of the 9th Judicial District Court of the State of Nevada, in and for the County of Douglas.

By: Carol J. [Signature] Deputy