

A.P.N. 1320-33-402-081

RECORDING REQUESTED BY:

Town of Gardnerville
1407 Highway 395 North
Gardnerville, Nevada 89710

WHEN RECORDED MAIL TO:

Nevada Division of State Lands
Question 1 Program
901 S. Stewart St., Suite 5003
Carson City, Nevada 89701



NONREVOCABLE AGREEMENT TO RESTRICT PROPERTY

This NONREVOCABLE AGREEMENT TO RESTRICT PROPERTY (“Agreement”) is made and entered into this 1TH day of October, 2011, by and between The Town of Gardnerville (“Grantee”), and the State of Nevada (“State”). Grantee and State are sometimes hereinafter referred to collectively as the “Parties.”

Recitals

WHEREAS, Grantee is the owner of that certain real property located in Douglas County, State of Nevada, described as follows:

Douglas County Assessor Parcel Number 1320-33-402-081, (hereinafter “Property”). For a complete legal description of the Property see “Exhibit A” attached hereto and incorporated herein by this reference.

WHEREAS, This deed restriction is given to insure that the Property is maintained and used in a manner consistent with the regulations (NAC Section 321) adopted by the State for the Conservation and Resource Protection Grant Program, hereinafter referred to as “Question 1 Program.” Regulatory authority is provided by Subsection 1-35, Section 2 of Assembly Bill No. 9 of the 17th Special Session of the Nevada Legislature, Chapter 6, Statutes of Nevada 2001. The referenced regulations require the Nevada Division of State Lands, (hereinafter “State Lands,” an agency of the State), when entering into a Funding Agreement, to include pertinent nonrevocable deed restrictions and appropriate reversionary clauses to ensure that at all times the land is maintained in a manner consistent with the purpose of the Question 1 Program.

WHEREAS, Grantee has entered into a State Lands Question 1 Program Funding Agreement which provides funding to implement the project entitled the “Hellwinkel Ranch Fee Title Acquisition” and which has been assigned Q1 Project ID No. DO-LW-09015.

WHEREAS, State Lands has authority to award grants of money from the sale of general obligation bonds to a county, or a municipality within a county for the acquisition of land and water or interests in land and water for the public benefit to protect and enhance wild life habitat, sensitive or unique



vegetation, historic or cultural resources, riparian corridors, floodplains, wetlands, and other environmental resources pursuant to an adopted plan an adopted open spaces.

Declarations

NOW, THEREFORE, in consideration of the grant funds received and the covenants and agreements contained herein, the Parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct.
2. Authorized Uses. Pursuant to this Nonrevocable Agreement to Restrict Property, Grantee agrees that the Property will be used only for open space purposes that are consistent with the objectives for which the Property is acquired and the local jurisdictions' adopted open space plan. The Grantee further agrees that the property will be used for those allowable uses defined in Nevada Administrative Code, Chapter 321, ranching, recreational facilities, recreational trails, and as a greenbelt and/or for purposes that are consistent with the protection or enhancement of wildlife habitat, protection of sensitive or unique vegetation, protection of historic or cultural resources, protection and maintenance of riparian corridors, sloughs, ditches, floodplains, or wetlands, receiving and treating stormwater, perpetuating historic drainage, perpetuating irrigation for agricultural purposes and/or to protect or preserve the benefits of the Property or natural resources within the State for the public.
3. In Event of Unauthorized Uses. If at any time the Property, or any portion of it, is used for some purpose other than that stated in Paragraph 2 above, the following actions shall be taken:
 - A. In the event of a violation or infringement, or threatened violation or infringement, of any provision of this Agreement, the State, or any person, shall give written notice to Grantee and request that the Grantee take corrective action sufficient to cure the violation or prevent the threatened violation. Grantee shall have 30 days to comply with the request. If Grantee is unable to cure the violation within the time allotted but is pursuing corrective measures with due diligence, the State may permit the Grantee a reasonable extension of time. If the State, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the permitted use of the property as described in Paragraph 2 of this Agreement, the State may pursue its remedies under this section without prior notice to Grantee or without waiting for the period provided for cure to expire. Nothing in this Agreement shall be construed to impair the State's, or any person's right to seek temporary or permanent injunctive or other relief to enforce the terms of this Agreement against a violation or threatened violation hereof.
 - B. If the Grantee fails to take corrective action to cure the violation or prevent the threatened violation pursuant to subparagraph A., the Grantee shall offer to convey the Property, for no consideration, to the State for the purposes stated in paragraph 2 above; or, if said offer is rejected by the State or if the State fails to respond to the offer within ninety (90) days of the date of the offer, then Grantee shall offer to convey the Property, for no consideration, to each reasonably identifiable Nonprofit Conservation Organization active in Nevada. For purposes of this Agreement, the term "Nonprofit Conservation Organization" means a nonprofit organization, qualified in the State, that has as one of its primary purposes the acquisition of property for the protection,



preservation and/or conservation of land, water, open space and/or the natural communities, resources and wildlife located thereon.

Any offer made herein by Grantee must be made: (a) by delivering a written offer to the party to whom the offer is being made via certified U.S. Mail or hand delivery, and (b) by providing public notice of the offer, which public notice shall include, without limitation, notice of such offer by publication no less than three (3) times at one week intervals in a newspaper of general circulation in Carson City. Both the written offer and the public notice described herein shall state that in the event multiple Parties are interested in accepting the offer and are otherwise qualified to accept the offer, the party to whom the Property will be conveyed will be determined promptly by the Grantee in its sole and absolute discretion. The written offer and public notice shall also include the date by which a qualified party must accept the offer in writing, which date shall be not less than sixty (60) days nor more than ninety (90) days after the date of third publication, and shall identify the representative to whom the written acceptance must be made and the place where such written acceptance must be delivered. The Grantee shall bear all costs for any offer required to be made by it hereunder.

Should an offer described herein be accepted, Grantee shall, at its sole cost and expense, promptly deliver to the qualified party accepting said offer, a duly executed warranty, grant bargain sale, or quitclaim deed capable of being recorded in order to convey clear title to the Property to said party subject to encumbrances imposed by the State.

If neither the State nor a qualified Nonprofit Conservation Organization has accepted Grantee's offer, Grantee shall, at the sole discretion of the State, promptly take one of the following actions (either sub-subparagraph i or subsubparagraph ii):

- i. Sell said Property or a portion of the property as determined by the State to any other person or entity for fair market value. Upon such sale, Grantee shall promptly transmit to the State its pro rata share of the sale price of the portion of the Property sold, or the amount of the grant, whichever is greater. Upon receipt of said payment, the State shall release the Grantee from any further obligations or liabilities under this Agreement.
- ii. Remit to the State a sum equivalent to the amount of the Grant, together with interest thereon at the rate of 10% per annum, commencing from the date of the Grantee's acquisition of the Property until the date paid. Upon receipt of said payment, the State shall release the Grantee from any further obligations or liabilities under this Agreement and shall remove any deed restrictions or other encumbrances on the Property imposed by this Agreement.

4. Voluntary Transfer of Property. In the event the Grantee desires to sell or otherwise transfer the Property, prior to any such sale or transfer of the Property by Grantee, Grantee shall offer to convey the Property, for no consideration, to the entities described in sub-subparagraph 3(B) above, subject to the same terms and conditions, and according to the same procedures, set forth therein. If, after complying with the provisions of sub-subparagraph 3(B), neither the State nor a qualified Nonprofit Conservation Organization has accepted Grantee's offer, Grantee may, at the sole discretion of the State, promptly take one of the following actions (either subparagraph A or subparagraph B):

- A. Sell the Property to any other person or entity for fair market value, based on an appraisal of the property at the time of transfer. Upon such sale, other than to the State or a



qualified Nonprofit Conservation Organization, Grantee shall promptly transmit to the State its pro rata share of the sale price of the portion of the Property sold, or the amount of the grant, whichever is greater. Upon receipt of said payment, the State shall release the Grantee from any further obligations or liabilities under this Agreement.

B. Promptly transmit to the State the amount of the Grant, together with interest thereon at the rate of 10% per annum, commencing from the date of the Grantee's acquisition of the Property until the date paid. Upon receipt of said payment, the State shall release the Grantee from any further obligations or liabilities under this Agreement and shall remove any deed restrictions or other encumbrances on the Property imposed by this Agreement.

5. Condemnation. Any and all funds received by Grantee in connection with any portion of the Property taken by right of eminent domain or by condemnation shall be delivered pro rata promptly to the State as reimbursement, in whole or part, for the amount of the Grant. If only a portion of the Property is taken by right of eminent domain or by condemnation, and if Grantee thereafter desires to dispose of that portion of the Property not taken by right of eminent domain or condemnation (hereinafter "the Remainder Portion"), Grantee shall offer to convey the Remainder Portion for no consideration, to the entities described in sub-subparagraph 3(B) above, subject to the same terms and conditions, and according to the same procedures, set forth therein.

If, after complying with the provisions of the preceding paragraph, neither the State nor a qualified Nonprofit Conservation Organization has accepted Grantee's offer, Grantee may sell said Remainder Portion to any other person or entity for fair market value. Upon such sale, Grantee shall promptly transmit to the State the State's pro rata share of the sale price of the Remainder Portion sold, or the amount of the grant attributable to the Remainder Portion, whichever is greater.

6. Enforcement. The State, or any person, has the right to prevent any activity or use on this property that is inconsistent with the permitted use as described in paragraph 2 of this Agreement. The terms and conditions in this Agreement may be enforced as follows:

A. Enforcement of the provisions of this Agreement shall be at the discretion of the enforcing party. Any forbearance in the enforcement of rights and interest under this Agreement in the event of a violation or infringement, or threatened violation or infringement, of any provision of this Agreement shall not be deemed or construed to be a waiver of such provision or of any subsequent violation or threatened violation of the same or any other provision of this Agreement, and any failure to act shall not be deemed a waiver or forfeiture of the right to enforce the provisions of this Agreement in the future.

B. Grantee will not be responsible for injury to or change in the property subject to this Agreement resulting from natural causes or environmental catastrophe beyond Grantee's control, such as fire, flood, storm and earth movement, or from any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the property resulting from such causes.

C. If Grantee fails to cure a violation or threatened violation of the terms and conditions as expressed herein after receiving written notice of the violation or threatened violation, the State or any person may institute a suit to enjoin the violation or infringement and/or to require the restoration to the condition that existed prior to the violation or infringement; in addition, the State or any person enforcing this Agreement may seek



damages to which they may be entitled including reimbursement to the State of all or a portion of the grant funding provided to Grantee for acquisition of the property herein. The enforcement rights under this subparagraph shall apply equally in the event of either actual or threatened violations of the provisions of this Agreement. The Grantee agrees and acknowledges that the remedies at law for any violation of the provisions of this Agreement are inadequate and that any person enforcing this Agreement shall be entitled to the injunctive relief described in this subparagraph, both prohibitive and mandatory, in addition to such other relief, including damages, to which the enforcing person may be entitled, including specific performance of the provisions of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

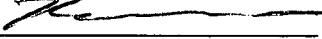
D. If a court determines that this Agreement has been breached Grantee will reimburse the State or any other person bringing suit for relief under this section, for reasonable costs of enforcement, including court costs, reasonable attorney's fees, and any other payments ordered by the court.

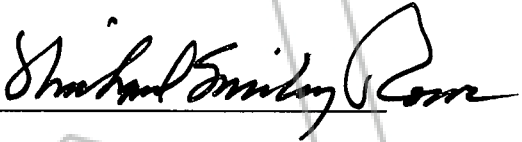
7. Recordation. This Agreement shall be recorded in the Office of the Douglas County Recorder and shall run with the land.
8. Amendments. No modification or amendment to this Agreement shall be binding on the parties unless the same is in writing and signed by the respective parties hereto.
9. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings and agreements.
10. Further Assurances. Additional Documents. The Parties agree to execute any and all further documents, deeds and other writings, and to undertake any further action necessary to consummate the transactions contemplated herein.
11. Authority. Grantee and State, respectively, represent and warrant that, as of the date of this Agreement, each has the full right, power and authority to enter into this Agreement and to consummate the transaction contemplated herein, and that each has duly and properly taken all action required of it, to authorize the execution, delivery and performance by it of this Agreement.
12. Binding Effect. This Agreement is binding upon the representatives, successors, and assigns of the Parties hereto.
13. Captions. The captions and headings of the sections of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.
14. Severability. If any term or provision of this Agreement is deemed unenforceable by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect so long as the purpose and intent of this Agreement may be achieved.
15. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nevada. Grantee consents to the jurisdiction of the Ninth Judicial District Court, Douglas County, Nevada for enforcement of this Agreement.



APPROVED as to Form:
CATHERINE CORTEZ MASTO
Attorney General

APPROVED as to Form:
MICHAEL ROWE
Town of Gardnerville

By: 
Kevin Benson
Deputy Attorney General

By: 
Michael Rowe

COOPER



DO-2091173-WD
1093891

EXHIBIT "A"

All that certain real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of the Southwest one-quarter (SW 1/4) of Section 33, Township 13 North, Range 20 East, Mount Diablo Meridian, more particularly described as follows:

Commencing at a point described as Corner No. 1 in the Deed between Jensen and Hardy recorded December 22, 1942 in the office of Recorder in Book W of Deeds, at Page 374, as Document No. 11028, being the southeasterly corner of the parcel shown as Adjusted APN 25-333-15 on the Record of Survey to Support a Boundary Line Adjustment for The Jeanne B. Dossey Living Trust recorded December 7, 1993 in said office of Recorder in Book 1293, at Page 1301, as Document No. 324362, the POINT OF BEGINNING; thence along the easterly and northerly boundaries of said Adjusted APN 25-333- 15 (Book 1293, at Page 1301, as Document No. 324362), the following courses: North 11°41'19" West, 199.96 feet to a found 1/2" iron pipe, no tag; North 88°05'19" West, 157.11 feet; thence leaving said northerly boundary, North 41°03'36" West, 481.52 feet; thence North 10°16'10" East, 152.15 feet to an angle point in the easterly line of the parcel described in the Deed between Jacobsen and Phillips recorded October 21, 1932 in said office of Recorder in Book T of Deeds, at Page 385, as Document No. 836; thence along said easterly line, North 10°16'10" East, 272.39 feet to the northeasterly corner of said parcel, a found 1/2" iron pipe, no tag; thence along the southerly boundary of Lot 132 as shown on the Final Subdivision Map for Chichester Estates, Phase 1, recorded September 12, 1995 in said office of Recorder in Book 995, at Page 1407, as Document No. 370215, the following courses:

North 10°04'57" East, 108.59 feet;

North 49°05'07" East, 65.06 feet;

South 89°26'31" East, 279.20 feet to the southeasterly corner of said Lot 132 of Chichester Estates; thence leaving said southerly boundary of Lot 132, South 05°47'22" West, 279.22 feet to a found 1/2" Iron pipe, no tag, the northwesterly corner of the parcel described in the Deed between Hellwinkel and Douglas County School District recorded October 11, 1967 in said office of Recorder in Book 54, at Page 123, as Document No. 38519; thence along the westerly line of the parcel described in said Deed between Hellwinkel and Douglas County School District and the Deed recorded October 11, 1967 in said office of Recorder in Book 54, at Page 129, as Document No. 38521, the following courses:

South 00°25'49" West, 345.31 feet;

South 89°34'11" East, 148.92 feet;

South 00°25'49" West, 504.65 feet to the southwesterly corner of the Grammar School Lot as described in said Deed between Jensen and Hardy (Book W of Deeds, at Page 374, Document No. 11028); thence along the northerly line of Toler Lane, North 89°34'11" West, 23.60 feet to a point described as Corner No. 1 in said Deed between Jensen and Hardy, the POINT OF BEGINNING.

Note: Legal description previously contained in Document No. 791701 recorded October 31, 2011 in Book 1011, Page 5468, Official Records of Douglas, State of Nevada.



Reference is further made to Adjusted Parcel 2 on Record of Survey recorded October 31, 2011 in Book 1011, Page 5482 as Document No. 791703, Official Records of Douglas County, State of Nevada.

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