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OFFICIAL RECORDS

Requested By  
DC/DISTRICT ATTORNEY

DOUGLAS COUNTY RECORDERS  
Karen Ellison - Recorder

Page: 1 of 23 Fee: \$ 0.00

Bk: 0414 Pg: 980



Deputy: sd

Assessor's Parcel Number: N/A

Date: APRIL 4, 2014

Recording Requested By:

Name: CYNTHIA GREGORY, DA'S OFFICE  
& JEANE COX, COMMUNITY DEVELOPMENT

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

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

Real Property Transfer Tax: \$ N/A

**DEVELOPMENT AND INFRASTRUCTURE  
IMPROVEMENT AGREEMENT #2014.067**

(Title of Document)

FILED

NO. 2014-067

**DEVELOPMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT** APR -4 AM 11:01

TED THUAN  
CLERK

THIS DEVELOPMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT (the "**Agreement**") is made and entered into between CLEAR CREEK RESIDENTIAL, LLC, a Delaware limited liability company ("**Clear Creek**"), and the COUNTY OF DOUGLAS, a political subdivision of the State of Nevada (the "**County**"), with reference to the following recitals:

A. Clear Creek is the owner of that certain real property located in the County of Douglas, State of Nevada, more particularly described in Exhibit "A" (the "**Property**").

B. The Property is subject to the Clear Creek Specific Plan dated December 5, 2003, and approved by the County, inclusive of the Specific Plan Development Handbook, all as amended from time to time (the "**Specific Plan**").

C. Clear Creek wishes to develop the Property with certain residential subdivision improvements, resort uses, and recreational amenities in accordance with the Specific Plan (the "**Development**").

D. The County has informed Clear Creek, and Clear Creek understands that, in connection with Clear Creek's advancement of the Development, Clear Creek will be required both to install new improvements to the County's community water system and to reimburse the County for existing improvements within said system.

E. Ordinance 2003-1005 approved the Development subject to certain conditions including the construction of off-site improvements benefitting the Development.

F. The parties no longer believe it is optimal for Clear Creek to construct a water well (Condition 2.a) and the Development and the residents of the County will be better served by having Development receive its water supply from the County's existing water utility infrastructure.

G. The County will receive a \$2,500.00 connection surcharge fee in connection with each building permit in lieu of Clear Creek constructing a water well. Based on the number of estimated Equivalent Dwelling Unit connections, the parties estimate that the County will receive approximately \$1,000,000 from these connection surcharges.

H. Clear Creek agrees to construct off-site water system improvements, at an estimated cost of \$2,000,000, to connect the County's valley water systems.

I. Pursuant to DCC 20.100.100.C, the County will reimburse Clear Creek a maximum of \$1,000,000 for the construction of a 12" water line along Jacks Valley Road that will benefit the County.

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J. On or before July 1, 2018, Clear Creek will pay the County 110% of the monies paid to it by the County to construct the Water Line Segment. Clear Creek will provide a bond or other security for the benefit of the County securing this payment.

K. The County finds that the Agreement complies with the requirements of NRS 278.0201 and Douglas County Code 20.400.

L. The County and Clear Creek now wish to enter into this Agreement for purposes of memorializing their understanding with regard to certain community water system improvements and reimbursements to be made in connection with the Development, and to provide both the County and Clear Creek with certain rights and safeguards related to the development of the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Clear Creek and the County agree as follows:

1. **DEFINITIONS; INTERPRETATION.**

1.1 **Definitions.** The terms used in this Agreement shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below, and shall incorporate the concepts set forth in each definition.

“**Agreement**” has the meaning set forth in the introductory paragraph hereof.

“**Beneficiary**” means a beneficiary, mortgagee, or holder of a Deed of Trust, and/or the assignee of such beneficiary, mortgagee, or holder.

“**Business Day**” means any day other than a Saturday, Sunday, or day that is a legal holiday under the laws of the State of Nevada or is a day on which banking institutions located in the State of Nevada are authorized or required by law or other governmental action to close.

“**Clear Creek**” has the meaning set forth in the introductory paragraph hereof.

“**County**” has the meaning set forth in the introductory paragraph hereof

“**County’s Representative**” means the Director of the Department of Public Works for the County, or his/her designee.

“**DCC**” means the Douglas County Code.

“**Deed of Trust**” means any form of security instrument encumbering title to a portion of the Property as security for an obligation, including a mortgage, deed of trust, trust deed, security deed, or other consensual lien or title retention contract intended as security for an obligation.

**“Development”** has the meaning set forth in the Recitals.

**“Effective Date”** means the date that a fully executed original of this Agreement is recorded in the Office of the Douglas County Recorder and has been published in accordance with Nevada law.

**“Existing Approvals”** means all development approvals issued by the County as of the Effective Date, including, without limitation, the Specific Plan, all existing tentative maps related to the Property, and all existing excavation, grading, building, construction, encroachment, or street improvement permits, occupancy certificates, utility connection authorizations, and other permits or approvals for the Property, each as amended or supplemented from time to time.

**“Existing Rules”** means all ordinances, agreements, resolutions, codes, rules, regulations, and official policies of County legally adopted in accordance with all applicable laws which govern the Property or the Development as of the Effective Date, including, without limitation, the terms and provisions of this Agreement, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, the phasing or timing of development, and standards for design, improvements, and construction.

**“Expiration Date”** means the date that is the thirtieth (30th) anniversary of the Effective Date.

**“Force Majeure”** means strikes, fires, national emergencies, natural calamities, unusually inclement weather, or other supervening forces beyond the control of Clear Creek or its agents.

**“Maximum Reimbursement Amount”** has the meaning set forth in Section 2.7.2(a).

**“Notice of Acceptance”** means a written notice from the County’s Representative to Clear Creek stating that the Work has been satisfactorily completed.

**“Notice of Acceptance Date”** means the date the County’s Representative issues the Notice of Acceptance.

**“NRS”** means the Nevada Revised Statutes.

**“Plans”** has the meaning set forth in Section 2.2.

**“Plat”** means a final subdivision map or parcel map for any portion of the Property, filed of record with the Office of the County Recorder of Douglas County, Nevada, as amended and supplemented from time to time.

**“Property”** has the meaning set forth in the Recitals.

**“Reimbursement Amount”** has the meaning set forth in Section 2.7.3.

**“Reimbursement Date”** has the meaning set forth in Section 2.7.3.

**“Reimbursement Expiration Date”** has the meaning set forth in Section 2.7.2(b).

**“Reimbursement Request”** has the meaning set forth in Section 2.7.2(c).

**“Residential Unit”** means a physical portion of the Property depicted as a lot or parcel on a Plat and intended for improvement with an attached or detached residence for a single family.

**“Site Plan”** means the Overall Water Plan set forth in Exhibit “B” attached hereto.

**“Specific Plan”** has the meaning set forth in the Recitals.

**“Subsequent Rules”** means rules, regulations, ordinances, laws, and official policies promulgated or enacted by the County after the Effective Date.

**“Water Line Segment”** means the portion of the Jacks Valley Road right-of-way situated between Bavarian Drive and James Canyon, as depicted in the Site Plan. If a change or modification to the Site Plan is recommended by Clear Creek and determined to be in the best interests of the County, then the County Representative may approve the modification administratively without an amendment to this Agreement.

**“Work”** means the provision of any and all costs, fees, labor, supervision, materials, equipment, services, professional services, engineering, required testing, permitting, inspection, and overhead for and/or reasonably incidental to the installation and construction of a 12-inch water line and necessary infrastructure within the Water Line Segment, all in accordance with the Plans.

1.2 **References.** All references to Exhibits or Schedules refer to Exhibits or Schedules, as applicable, attached to this Agreement and all such Exhibits and Schedules are incorporated herein by reference. The words “this Agreement,” “herein,” “hereof,” “hereto,” “hereinafter” and words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision of this Agreement.

1.3 **Other Usages.** When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and the neuter and vice versa. The use in this Agreement of the term “including” and related terms such as “include” shall in all cases mean “without limitation.”

1.4 **Headings.** The various headings of this Agreement are included for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

1.5 **Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated

period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day. Unless otherwise expressly provided herein, the last day of any period of time described herein shall be deemed to end at 5:00 p.m., Nevada time.

## 2. PERFORMANCE OF THE WORK.

2.1 **Generally.** Subject to the terms and conditions of this Agreement, Clear Creek agrees to perform the Work. Clear Creek shall complete the Work in a good and workmanlike manner, using quality materials which, at a minimum, meet the standards imposed by the DCC.

2.2 **Plans.** Prior to commencing the Work, Clear Creek shall deliver to the County plans and specifications for the installation and construction of a 12-inch water line within the Water Line Segment. In the event that the County disapproves such plans and specifications, it shall specify the reasons for such disapproval, and the County and Clear Creek shall confer and negotiate in good faith to resolve the County's concerns and reach agreement on the plans and specifications. The plans and specifications approved by the County in accordance with this Section are referred to as the "**Plans**" herein.

2.3 **Commencing Construction.** Following the County's approval of the Plans, Clear Creek will apply to the County for such County permits as are required for performance of the Work. Following the County's issuance of all such permits, Clear Creek will physically begin the Work within ten (10) Business Days, and shall thereafter diligently pursue the Work to the issuance of a Notice of Completion, subject to Force Majeure events.

Subject to the foregoing and Clear Creek's compliance with the conditions of any County permits, the County and Clear Creek acknowledge and agree that Clear Creek shall be solely responsible for and shall have control or charge over, timing and sequencing, and construction means, methods, techniques, and procedures in connection with performance of the Work.

2.4 **Completing Construction and Turnover.** During construction, Clear Creek will comply with all of the conditions of any permit issued by the County, including any inspections required during the construction process. Upon completion of the Work, Clear Creek shall deliver to the County a request for inspection; provided, however, that regardless of the completion of the Work, Clear Creek shall have no obligation to initiate the Notice of Acceptance and dedication process described in this Section until on or before October 31, 2015. Upon receipt of a request for a final inspection of the Work, the County's Representative shall work with Clear Creek to schedule a time, within thirty (30) Business Days after the County's receipt of said request, to inspect the Work with Clear Creek. Within fifteen (15) Business Days of such inspection, the County's Representative shall either (a) identify to Clear Creek in writing such corrective items as may be required to satisfy the completion and maintenance standards set forth in Sections 2.1 and 2.5, respectively, or (b) issue to Clear Creek the Notice of Acceptance. In the event the County's Representative identifies corrective items, Clear Creek shall diligently undertake to perform such work as is necessary to remediate the corrective items, and the County's



Representative and Clear Creek shall confer and work with one another in good faith to confirm remediation of the corrective items. The County and Clear Creek shall repeat the foregoing process of requests and inspections until such time as the County issues to Clear Creek the Notice of Acceptance. The parties mutually agree to work together in good faith to utilize a demonstration period during which Clear Creek will initiate water flows through the Work to prove the functional integrity of the mechanical and electrical equipment and components comprising the Work. The County hereby agrees to work with Clear Creek in good faith to achieve issuance of the Notice of Acceptance, and that the issuance of the Notice of Acceptance shall not be unreasonably withheld, conditioned, or delayed.

Upon issuance of the Notice of Acceptance, all materials and infrastructure installed and/or constructed by Clear Creek in the Water Line Segment pursuant to the Work shall be deemed dedicated to and accepted by the County, all at no additional cost to the County. Clear Creek understands and agrees that it warrants all improvements constructed in connection with the Work for a period of one year from the date of the issuance of the Notice of Acceptance.

2.5 **Maintenance.** Prior to Clear Creek’s receipt of the Notice of Acceptance, Clear Creek shall maintain any completed portion of the Work, and the improvements related thereto, in good order and repair, subject to ordinary wear and tear. Following its receipt of the Notice of Acceptance, Clear Creek shall have no further obligation for the maintenance, repair, replacement, or modification of any portion of the Work subject to the one-year warranty period from the date of the issuance of the Notice of Acceptance.

2.6 **Access Rights.** The County hereby grants to Clear Creek and its agents such temporary access rights over the Jacks Valley Road right-of-way as may be necessary or useful for the satisfaction of Clear Creek’s obligations under Sections 2.1 and 2.5. Clear Creek agrees to comply with all laws and regulations including DCC requirements regarding traffic controls.

2.7 **Payments and Reimbursement for the Work.**

2.7.1 **Generally.** Clear Creek shall be solely responsible for the payment of all initial costs associated with the performance of the Work and the satisfaction of Clear Creek’s obligations under Sections 2.1 and 2.5.

2.7.2 **Reimbursement by the County.** The County acknowledges and agrees that Clear Creek’s performance of the Work will result in substantial benefit to the County’s community water systems, which benefit will extend to residents of the County beyond those located in the Development by further connecting the County’s valley water systems. Pursuant to DCC 10.100.100.C and as consideration to Clear Creek for its obligations hereunder, the County hereby agrees to reimburse Clear Creek for the costs actually paid by Clear Creek in connection with the Work, including all costs and expenses incurred in connection with the construction, installation, repair, maintenance, minor modification, and/or replacements of the Water Line Segment and all other costs and expenses associated with performance and completion of the Work. Such reimbursement shall be made on the following terms and conditions.

(a) **Maximum Reimbursement.** The County’s total reimbursement to Clear Creek for costs paid by Clear Creek in connection with the Work shall not exceed One Million and No/100ths Dollars (\$1,000,000.00) (the “**Maximum Reimbursement Amount**”).

(b) **Availability Period.** The County’s obligation to make reimbursement hereunder shall expire ninety (90) days from the Notice of Acceptance Date (“**Reimbursement Expiration Date**”), except as to any Reimbursement Request submitted to the County’s Representative, but not yet paid, prior to the Reimbursement Expiration Date.

(c) **Method of Reimbursement.** Prior to the Reimbursement Expiration Date, Clear Creek may submit to the County’s Representative, from time to time, a reimbursement request in a form reasonably acceptable to the County’s Representative, which request shall be accompanied by copies of invoices and proof of payment for the work and/or materials covered by such request (each such request and its accompanying information, a “**Reimbursement Request**”). It is understood and agreed that, by Clear Creek’s submission of a Reimbursement Request to the County, Clear Creek is certifying that all contractors, material suppliers, laborers, and other vendors have been paid for the scope of work covered by the Reimbursement Request. The County’s Representative shall have the right, but shall be under no obligation, to telephone or otherwise communicate with any contractor, subcontractor, supplier, or other person to verify the facts disclosed by any Reimbursement Request, or for any other purpose.

Within fifteen (15) Business Days of receipt of a completed Reimbursement Request, the County’s Representative shall either provide written notice to Clear Creek summarizing why the requested reimbursement will not be made or, within twenty-one (21) Business Days of receipt of a completed Reimbursement Request, the County will advance funds to Clear Creek in an amount equal to *the lesser of either* (i) the amount requested under the Reimbursement Request, *or* (ii) the unused portion of the Maximum Reimbursement Amount. However, the County’s duty to make any payment to Clear Creek is subject to the following conditions: (1) Clear Creek shall not be in default of any of its obligations under this Agreement and (2) the applicable Reimbursement Request shall have been submitted to the County’s Representative prior to the Reimbursement Expiration Date. Advances shall be made in immediately available funds through the County’s standard payment procedure and delivered to Clear Creek’s offices at 199 Old Clear Creek Road, Carson City, Nevada 89705, Attn: Michelle Godde.

(d) **Frequency of Requests.** Clear Creek shall not submit a Reimbursement Request more frequently than once every four (4) weeks.

2.7.3 **Reimbursement by Clear Creek.** Clear Creek hereby promises to pay to the County an amount equal to one hundred ten percent (110%) of all funds paid by the County to Clear Creek pursuant to Section 2.7.2 (the “**Reimbursement Amount**”). Such reimbursement shall be made in a single payment in immediately available funds delivered to the County’s Representative from Clear Creek, and shall be made on or before July 1, 2018 (the “**Reimbursement Date**”).



As security for Clear Creek’s obligations under this Section 2.7.3, Clear Creek shall secure and maintain in full force and effect (i) a payment bond in a form approved by the County, which bond shall be in favor of the County and in the principal amount of no less than One Million One Hundred Thousand and No/100ths Dollars (\$1,100,000.00), or (ii) an irrevocable standby letter of credit, issued by a financial institution and in a form acceptable to County, in the principal amount of no less than One Million One Hundred Thousand and No/100ths Dollars (\$1,100,000.00), or (iii) other appropriate form of security approved by the County. Clear Creek shall provide the aforementioned bond/letter of credit/security to the County before the Work commences. At such time as full repayment is made under this Section 2.7.3, the County shall promptly release and/or terminate, as applicable, the aforementioned bond/letter of credit/security. If Clear Creek fails to pay the Reimbursement Amount on or before the Reimbursement Date, or otherwise breaches this Agreement after having been given an opportunity to cure such breach, then the County may resort to any security provided hereunder in favor of the County.

**2.7.4 Prevailing Wage Exemption.** Clear Creek and the County acknowledge and agree that the Work constitutes a water line extension being constructed by Clear Creek for the benefit of the Development, and that the initial costs of the Work shall be borne solely by Clear Creek. Accordingly, this Agreement is exempt from the requirements of Chapters 332, 338, and 339 of the NRS, as provided in NRS 338.0115.

**3. WATER CONNECTION FEES.** The County has developed infrastructure suitable for a regional community water system. In order to connect various portions of the Development to this regional community water system, Developer has constructed, or will construct, certain on-site and off-site community water service infrastructure, such infrastructure to be completed in accordance with the terms and conditions of any permit issued by the County to Clear Creek related to the Work, and for the purpose of bringing the Development into the area serviced by the County’s regional community water system.

In order to offset the costs of the above-referenced infrastructure, and to fairly allocate its expense to the parties benefitted thereby, the County and Developer agree that the County shall charge community water system connection fees (or “hook-up fee”) in connection with the issuance of certain building permits in the Development. Specifically, the water connection fee charged in connection with the issuance of a building permit for a Residential Unit in the Development will be an amount not less than the sum of (i) the then applicable water connection fee charged by the County in connection with a building permit for a comparable project in other areas of the County (estimated, as of the Effective Date, to be \$4,219.00 for a 3/4 inch meter and \$10,548.00 for a 1 inch meter) and (ii) a surcharge for off-site water infrastructure in the amount of Two Thousand Five Hundred and No/100ths Dollars (\$2,500.00) based on approximately Four Hundred and Nine (409) Equivalent Dwelling Units (totaling approximately \$1,000,000.00).

The County hereby agrees that (i) except as set forth in this Section 3, no water connection fee, water service “hook-up” fees, or other fees for community water system infrastructure shall be charged in connection with the issuance of building permits for Residential Units in the Development; and (ii) the County shall reserve capacity within its regional community water system sufficient to provide water service to the Development

as developed in accordance with the Specific Plan.

4. **RIGHT TO DEVELOP.** Clear Creek has the vested right to develop the Property in accordance with, and to the extent of, the Existing Approvals. Such development shall be in accordance with and subject to the terms of any permit issued to Clear Creek by the County. Until the Expiration Date, the rules, regulations, ordinances, laws, and official policies governing development, density, permitted uses, growth management, timing and phasing of development, environmental considerations, design criteria, and construction standards applicable to the Property and the Development, shall be solely the Existing Rules, subject to the following:

(a) **Subsequently Enacted Rules.** County may apply Subsequent Rules to the Property and the Development as permitted by law.

(b) **County Fees.** Except as expressly provided in Section 3 hereof, this Agreement shall not prevent County from charging fees with respect to the Property and the Development that are in effect as of the Effective Date or which are adopted or increased by County after the Effective Date, provided that (i) County agrees to impose such fees in a consistent manner on all those served by the infrastructure or service to which the fee relates, and (ii) County shall issue to Clear Creek appropriate credit and/or reimbursement rights for those fees related to capital improvement costs otherwise offset by Clear Creek (which credit and/or reimbursement rights may be as more fully set forth in an additional agreement related to a particular capital improvement at issue). Clear Creek hereby reserves the right to challenge, protest and oppose the imposition of any such existing, new, or increased fees to the fullest extent permitted by law.

(c) **Limitation on Development Exactions.** Except as expressly provided in this Agreement and/or the Existing Approvals, the County may not impose upon Clear Creek any requirement for dedication of land, construction or improvement of public facilities, payment of fees, or making any other contribution required in order to address impacts of development on areas of the County other than the Property.

5. **COMPLIANCE WITH NRS 278.0201.** The County and Clear Creek hereby acknowledge and agree to the following for the purpose of complying with NRS 278.0201 and DCC 20.400:

(a) The land to which this Agreement applies is the Property, and Clear Creek has a legal interest therein by virtue of its fee ownership of the Property;

(b) This Agreement shall be in effect until the Expiration Date; and

(c) The permitted uses on the Property, the density or intensity of its use, the maximum height and size of the proposed buildings allowed thereon, and any provisions for the dedication of any portion of the Property for public use are as set forth in the Existing Approvals and/or the Existing Rules.

6. **LENDER PROTECTION.**

6.1 **Generally.** This Agreement shall not prevent or limit in any manner the encumbrance of the Property, or any portion thereof or any improvement thereon, by one or more Deeds of Trust. The Beneficiary under any Deed of Trust shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Deed of Trust made in good faith and for value;

(b) A Beneficiary that has submitted a request in writing to the County in the manner specified herein for giving notices, shall be entitled to receive written notification from the County of any default by Clear Creek in the performance of Clear Creek's obligations under this Agreement;

(c) If the County receives a request from a Beneficiary for a copy of any notice of default given by the County to Clear Creek under the terms of this Agreement, the County shall provide a copy of that notice to the Beneficiary within fifteen (15) Business Days of sending the notice of default to Clear Creek, and such Beneficiary shall have the right, but not the obligation, to cure the default during the remaining cure period allowed to Clear Creek under this Agreement, but in no event less than thirty (30) days from Beneficiary's receipt of such notice of default; and

(d) Any Beneficiary (or its affiliate) who comes into possession of the Property, or any part thereof, pursuant to a trustee's sale, foreclosure or deed in lieu of foreclosure of its Deed of Trust shall come into such possession subject to the terms of this Agreement.

6.2 **Certificate of Compliance.** Within fifteen (15) Business Days of the request therefore, the County will execute and deliver to any requesting Beneficiary a certificate of compliance acknowledging that this Agreement is in full force and effect and that Clear Creek is not in default hereunder. The County's failure to provide the requested certificate within such ten (10) Business Day period shall constitute a confirmation that to the best of the County's knowledge this Agreement is in full force and effect and that Clear Creek is not in default hereunder. Nothing herein or in any such certificate, however, shall be deemed to relieve Clear Creek of its obligations under this Agreement or its liability for failure to perform its obligations under this Agreement.

7. **AMENDMENTS.**

7.1 **Generally.** Except as set forth in Section 7.2 below, this Agreement shall not be amended, in whole or in part, except by a joint written agreement of Clear Creek and the County adopted in accordance with NRS 278.0201 through 278.0207, inclusive and DCC. 20.400.

7.2 **Unilateral Amendment by the County.** As required by NRS 278.0205, the County shall periodically undertake a review to determine Clear Creek's compliance

with the terms of this Agreement. In the event the County determines during such a review that non-compliance exists, the County shall provide a written description of each instance of non-compliance to Clear Creek and, where appropriate, the manner and period of time in which the instance of non-compliance may be corrected. Clear Creek shall thereafter have no less than thirty (30) days to complete such corrective activities; provided, however, that if an instance of non-compliance is not of the type that could reasonably be corrected completely within thirty (30) days, Clear Creek shall have such additional time as may be necessary, provided Clear Creek initiates its corrective activities within said thirty (30) day period and thereafter diligently pursues such activities to completion. In the event Clear Creek fails to correct completely the instances of non-compliance within the foregoing time periods, the County may proceed to either cancel or amend this Agreement in accordance with NRS 278.0205(2) and may enforce the provisions of Section 2.7.3. The County hereby acknowledges and agrees that a failure by unaffiliated third parties to pay fees due under Section 3 above shall not be deemed an instance of Clear Creek's non-compliance under this Agreement.

8. **ASSIGNMENT; BINDING EFFECT.** The terms contained herein shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns subject to the following:

(a) All provisions of this Agreement, with the exception of Section 2, shall be enforceable as equitable servitudes and constitute covenants running with the Property, and each covenant to do or refrain from doing some act hereunder with regard to development of the Property, with the exception of Section 2, (i) is for the benefit of and is a burden upon every portion of the Property, (ii) runs with the Property and each portion thereof, and (iii) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof;

(b) The provisions of Section 2 shall be personal rights and obligations of Clear Creek, shall not run with or burden the Property, and may not be assigned by Clear Creek except with the County's prior written consent; and

(c) Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any legal lot within the Property, and such lot shall be released and no longer be subject to this Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for a structure on such lot.

9. **DEFAULT.** Clear Creek or the County, respectively, shall be in default hereunder in the event such party fails to perform or comply with any obligation or agreement of such party contained herein and, with respect to any such default that by its nature can be cured, such default shall continue for a period of thirty (30) days from its occurrence; provided, however, that if such default is not of the type that could reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to complete such cure, provided the defaulting party initiates its curative efforts within said thirty (30) day period and thereafter diligently pursues such cure to completion. Upon an event of default hereunder, the non-defaulting party shall be entitled to exercise all rights and remedies available to such party at law or in equity, all of which shall be cumulative.



10. **MISCELLANEOUS PROVISIONS.**

10.1 **Notices.** All written notices or demands of any kind which either party hereto may be required or may desire to serve on the other in connection with this Agreement shall be served by personal service, by registered or certified mail, recognized overnight courier service or facsimile transmission. Any such notice or demand so to be served by registered or certified mail, recognized overnight courier service or facsimile transmission shall be delivered with all applicable delivery charges thereon fully prepaid and, if the party so to be served is Clear Creek, addressed to Clear Creek as follows:

Clear Creek Residential, LLC  
Attn: Michelle Godde  
199 Old Clear Creek Road  
Carson City, Nevada 89705  
Telephone No.: (775) 720-5768  
Fax No.: (775) 782-9763

and, if the party so to be served is the County, addressed to the County as follows:

Douglas County Department of Public Works  
Attn: Carl Ruschmeyer, P.E.  
1120 Airport Road, Building F-2  
Minden, Nevada 89423  
Telephone No: (775) 782-6227  
Fax No.: (775) 782-6266

Service of any such notice or demand so made by personal delivery, registered or certified mail, recognized overnight courier or facsimile transmission shall be deemed complete on the date of actual delivery as shown by the addressee's registry or certification receipt or, as to facsimile transmissions, by "answer back confirmation" (provided that a copy of such notice or demand is delivered by any of the other methods provided above within one (1) Business Day following receipt of such facsimile transmission), as applicable, or at the expiration of the third (3rd) Business Day after the date of dispatch, whichever is earlier in time. Either party hereto may from time to time, by notice in writing served upon the other as aforesaid, designate a different mailing address to which or a different person to whose attention all such notices or demands are thereafter to be addressed.

10.2 **Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed or delivered by the parties, the parties hereby agree to perform, execute and deliver, or cause to be performed, executed and delivered, any and all such further as may be reasonably required in order to consummate fully the transactions contemplated hereunder.

10.3 **Attorneys' Fees.** If any legal action or any arbitration or other proceeding is brought or if an attorney is retained for the enforcement of this Agreement or any portion thereof, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be



entitled to recover only those reasonable costs incurred from the other party (including court costs and witness fees), but excluding attorney's fees which are not recoverable, in addition to any other relief to which it may be entitled. The term "prevailing party" means the party obtaining substantially the relief sought, whether by compromise, settlement or judgment.

10.4 **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties in respect to the subject matter hereof, and the parties intend for the literal words of this Agreement to govern and for all prior negotiations, drafts, letters-of-intent (both binding and non-binding), and other extrinsic communications, whether oral or written, to have no significance or evidentiary effect. The parties further intend that neither this Agreement nor any of its provisions may be changed, amended, discharged, waived or otherwise modified orally except only by an instrument in writing duly executed by the party to be bound thereby. Each party hereto acknowledges that this Agreement accurately reflect the agreements and understandings of the parties hereto with respect to the subject matter hereof and hereby waive any claim against the other party which such party may now have or may hereafter acquire to the effect that the actual agreements and understandings of the parties hereto with respect to the subject matter hereof may not be accurately set forth in this Agreement.

10.5 **Governing Law.** This Agreement shall be governed by the internal laws of the State of Nevada. Any legal action to enforce the terms of this Agreement must be brought before a court located in Douglas County, Nevada.

10.6 **Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

10.7 **Partial Validity; Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

10.8 **No Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the parties hereto and their respective permitted and acknowledged successors and assigns, and no third party is intended to, or shall have, any rights hereunder.

10.9 **Joint Product of Parties.** This Agreement is the result of arms-length negotiations between Clear Creek, the County, and their respective attorneys. Accordingly, neither party shall be deemed to be the author of this Agreement and this Agreement shall not be construed against either party.

10.10 **Development as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the Development of the Property is a private development, that neither party is acting as the agent of the other in any respect hereunder and that each party is an independent contracting entity with respect to the terms, covenants

and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between the County and Clear Creek is that of a government entity regulating the development of private property and the owner of such property.

10.11 **Cooperation.** Clear Creek and County agree that they will cooperate with each other in the implementation of this Agreement.

10.12 **Further County Approvals.** The County retains the authority to review, in accordance with NRS chapter 278 and the Douglas County Code, future development applications, tentative map(s) and final map(s), and to approve, conditionally approve or disapprove any future development application(s), tentative map(s) or final map(s) consistent with the applicable law.

10.13 **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of each party and the partners, officers or trustees of each party, if any, have the legal power, right, and actual authority to bind each party to the terms and conditions of these documents.

10.14 **County Ordinance.** On April 3, 2014, the Board of Douglas County Commissioners, having found that this Agreement, and that the execution hereof by and on behalf of the County, is in the public interest and is lawful in all respects, adopted Ordinance No. 2014-1409 approving this Agreement and authorizing the execution hereof by duly constituted officers of the County.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each party is signing this Agreement as of the date of the notarization of such party's signature, but in each case to be effective as of the Effective Date.

THE COUNTY:

THE COUNTY OF DOUGLAS,  
a political subdivision of State of Nevada

By: *Doug N. Johnson*  
Doug N. Johnson  
Chairman of the Board of County

Commissioners

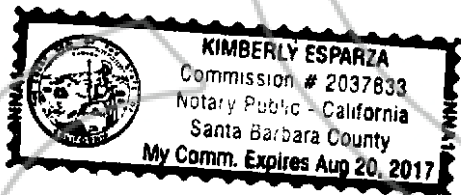
ATTEST:

By: *Ted Thran*  
Ted Thran, Douglas County Clerk

By: *Luciana Sudler*  
CLERK TO THE BOARD

CLEAR CREEK:

CLEAR CREEK RESIDENTIAL, LLC,  
a Delaware limited liability company



By: *JJ Taylor*  
Name: JAMES J. TAYLOR  
Its: Manager

STATE OF California  
COUNTY OF Santa Barbara

This instrument was acknowledged before me on 3/20, 2014, by Kimberly Esparza as \_\_\_\_\_ of \_\_\_\_\_ a \_\_\_\_\_ as \_\_\_\_\_ of Clear Creek Residential, LLC, a Delaware limited liability company.

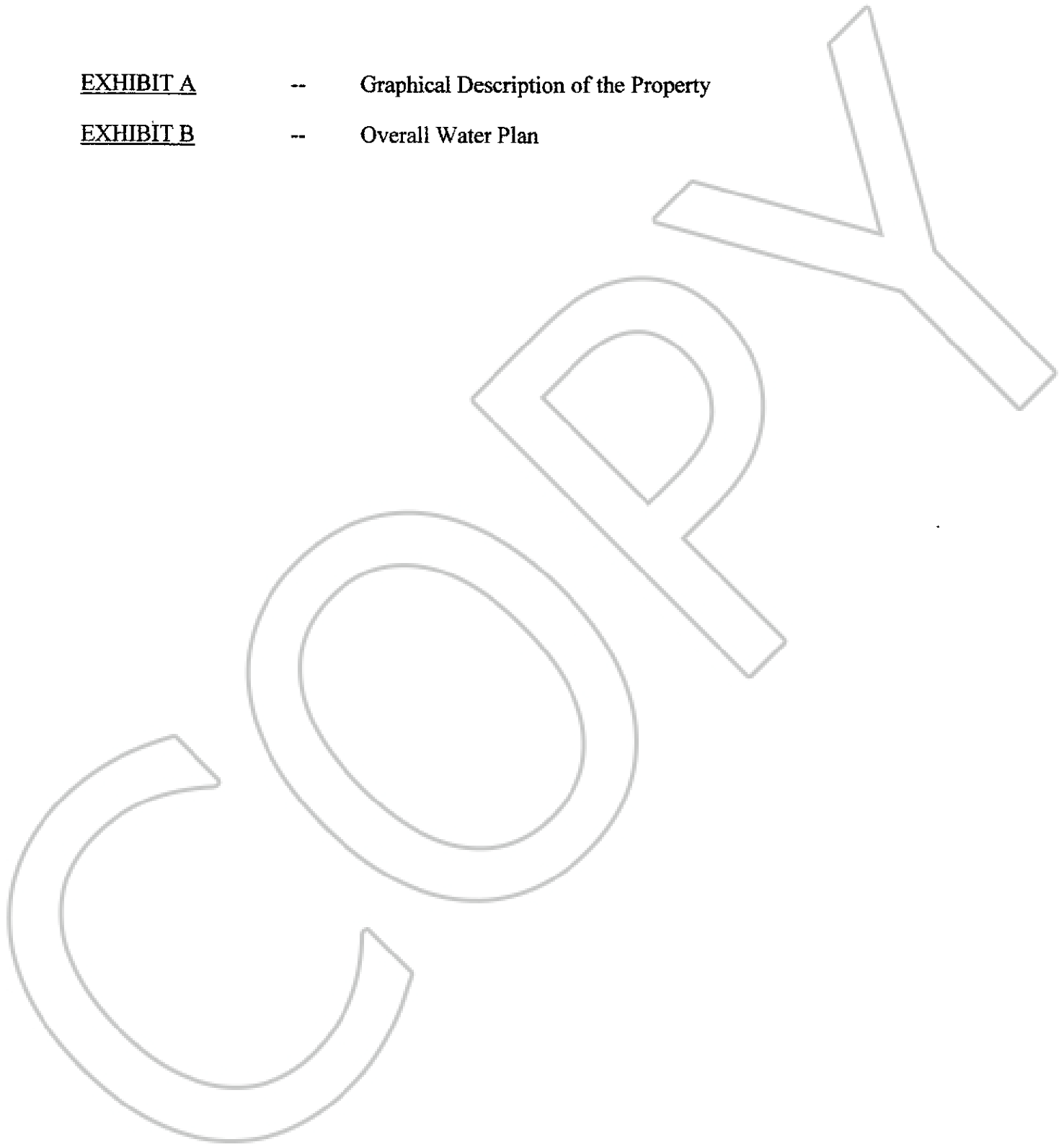
*K. Esparza*  
Notary Public

My Commission Expires: 8/20/17

COPY

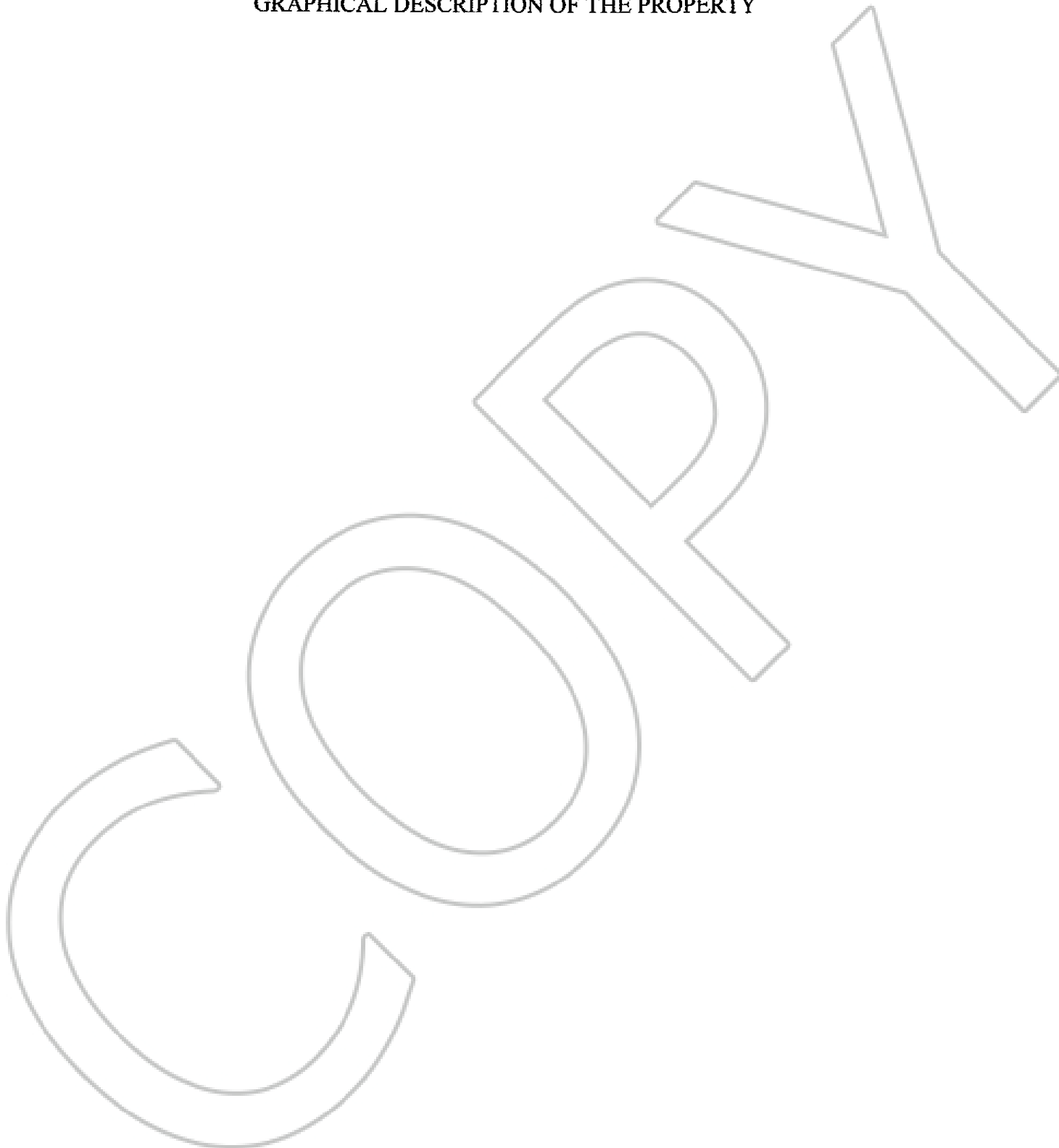
LIST OF EXHIBITS AND SCHEDULES

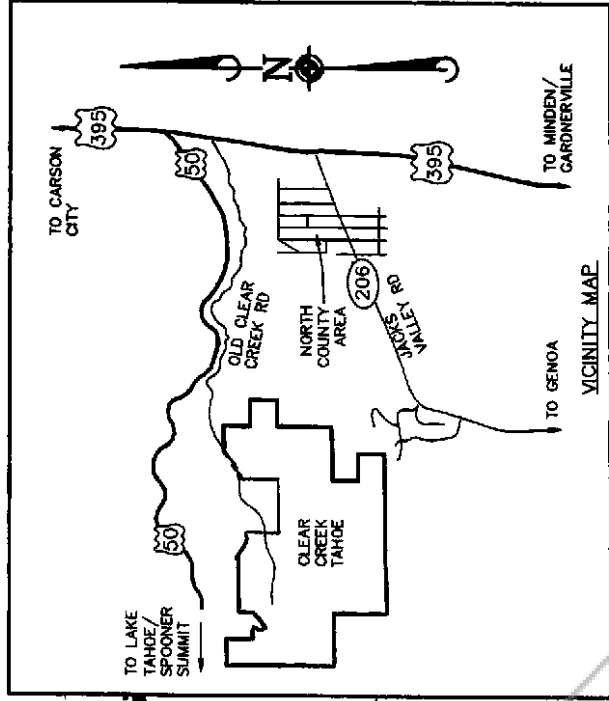
- EXHIBIT A -- Graphical Description of the Property
- EXHIBIT B -- Overall Water Plan





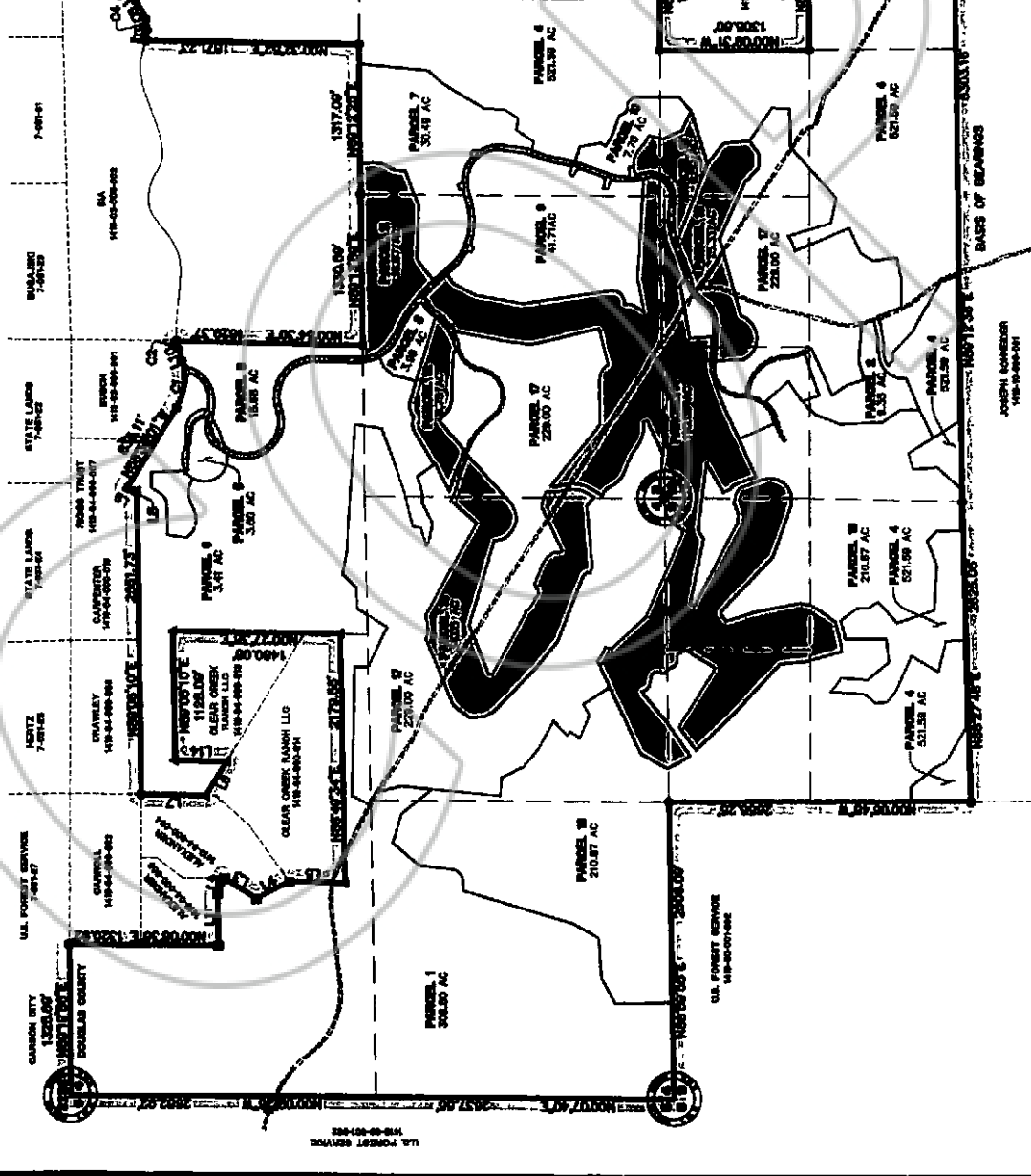
**EXHIBIT A**  
**GRAPHICAL DESCRIPTION OF THE PROPERTY**





**LEGEND**

- DEVELOPMENT PARCELS
- GOLF COURSE PARCELS
- CONSERVATION EASEMENT PARCELS
- ACCESS & PUBLIC UTILITY EASEMENT



**Manhard CONSULTING**

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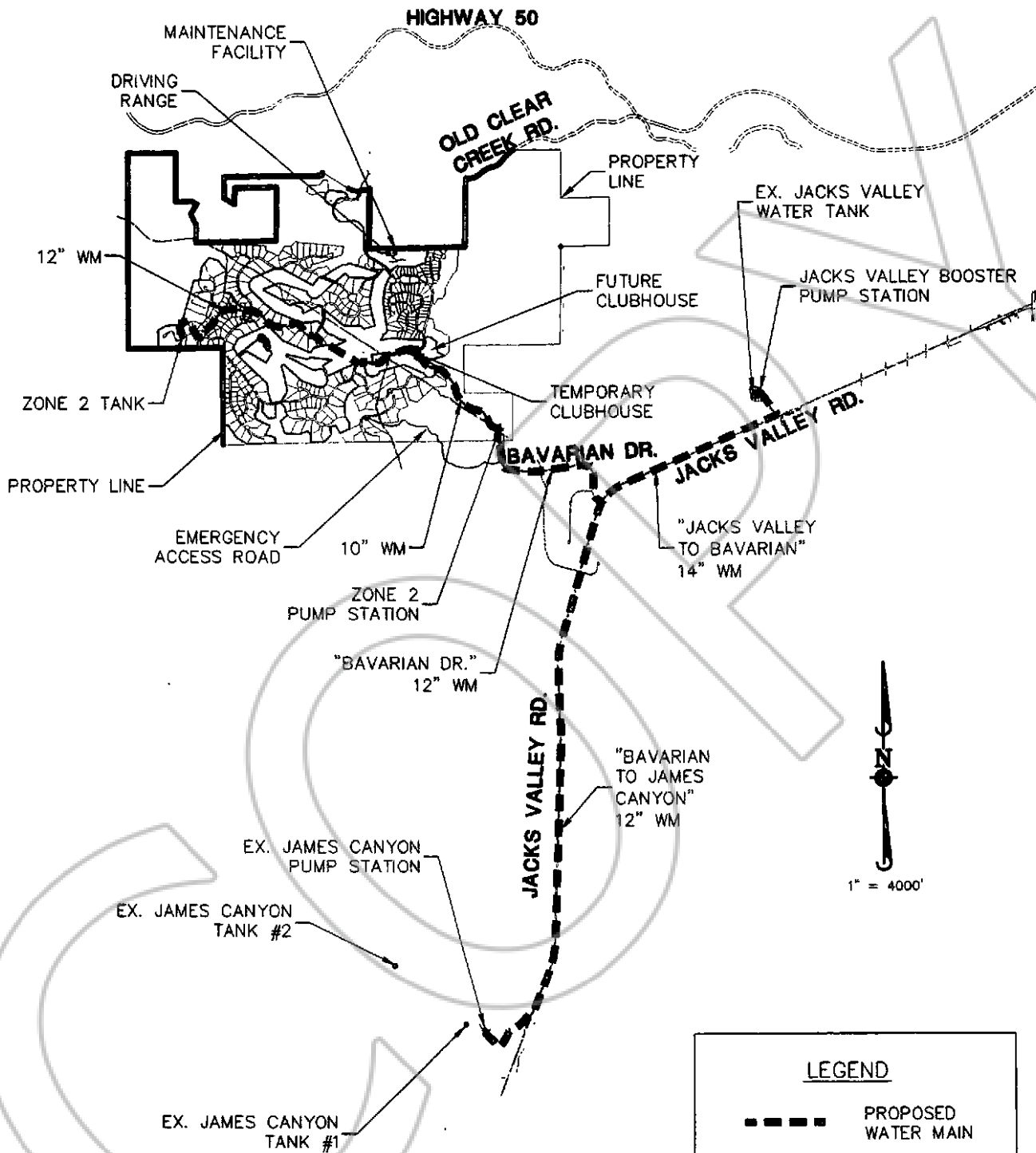
**CLEAR CREEK TAHOE**  
DOUGLAS COUNTY, NEVADA

**EXHIBIT A: VICINITY MAP AND PARCEL EXHIBIT**

DATE	3/26/12	SCALE	NTS	SHEET NO.	000001	PROJECT NO.	100070
CLIENT	DLR	DATE	3/26/12	SHEET NO.	000001	PROJECT NO.	100070

**EXHIBIT B**  
**OVERALL WATER PLAN**

COPY



**Manhard**  
CONSULTING

8950 Double R Blvd, Suite 101, Reno, NV 89521 tel: (775) 748-9500 fax: (775) 748-9520 www.manhard.com  
Civil Engineers • Surveyors • Water Resources Engineers • Water & Wastewater Engineers  
Construction Managers • Environmental Scientists • Landscape Architects • Planners

**CLEAR CREEK TAHOE**  
**DOUGLAS COUNTY, NEVADA**  
**EXHIBIT B - OVERALL WATER PLAN**

PROJ. MGR.: DLR  
DRAWN BY: MSH  
DATE: 02/23/14  
SCALE: NTS

**EXHIBIT B**

COPY

Douglas County

State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

4th day of April, 2014

By [Signature] Deputy