

APN 1420-34-111-005

RECORDING REQUESTED BY:

Douglas County Utilities
Carl Ruschmeyer, Public Works Director
Post Office Box 218
Minden NV 89423



KAREN ELLISON, RECORDER

WHEN RECORDED MAIL TO:

Douglas County Utilities
Carl Ruschmeyer, Public Works Director
Post Office Box 218
Minden NV 89423

R & R Builders Inc.
2799 Kayne Avenue
Minden NV 89423

NONREVOCABLE AGREEMENT TO RESTRICT PROPERTY

This NONREVOCABLE AGREEMENT TO RESTRICT PROPERTY (“Agreement”) is made and entered by and between **Douglas County**, a political subdivision of the State of Nevada, (“County”), and the **R&R Builders Inc., a Nevada Corporation** (“Landowner”). County and Landowner are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

Recitals

WHEREAS, Landowner owns that certain real property located at **2799 Kayne Avenue**, Minden, Nevada, said property also known as **APN 1420-34-111-005**, in Douglas County, Nevada, more particularly described in **Exhibit “A”** attached hereto and incorporated herein by this reference. It is hereafter referred to as the “Property.”

WHEREAS, this Agreement will accomplish a deed restriction. It will ensure Landowner does not drill, have a functioning domestic well on the Property and plug any domestic well if required by the State Engineer. In exchange, County’s public water system will provide water to the Property. This bargained for exchange will allow County to receive a domestic well credit from the State Engineer, pursuant to Order No. 1195 attached as Exhibit “B.” This permanent nonrevocable deed restriction prohibits the placement of a domestic well on the Property and mandates the plugging of any domestic well no longer in use if required by the State Engineer.

WHEREAS County, through the Douglas County Utilities, is a public water system that provides water for municipal purposes.

WHEREAS Landowner owns the Property and has a domestic well or the ability to drill a domestic well on the Property.

WHEREAS Landowner is affected by Order No. 1195 attached as Exhibit "B."

WHEREAS County may receive well credits from the State Engineer in accordance with Order No. 1195 at p. 2, subsections a and/or b, attached as Exhibit "B" which provides:

[T]his order proposes that a public water system that provides water for municipal purposes within the area described above receive a credit for each customer who is added to their system provided:

- a. A single family dwelling which is presently utilizing a domestic well on a lot established as a separate lot before July 1, 1993, and voluntarily ceases to draw water from that well located within the described area; or
- b. Any owner of a lot with the ability to drill a domestic well and utilize water from that well meets the following conditions:
 - (1) That the described lot is located within the area described; and
 - (2) That the lot was established as a separate lot before July 1, 1993; and
 - (3) That the lot was approved by a local governing body or planning commission for service by an individual domestic well before July 1, 1993; and
 - (4) A written agreement is entered between the owner of the lot and the public water system, wherein, the owner agrees not to drill a domestic well on the lot, and the public water system agrees that it will provide water service to that lot. Any such agreement must be acknowledged and recorded in the same manner as conveyances affecting real property are required to be acknowledged and recorded pursuant to Chapter 111 of NRS.

WHEREAS Landowner's Property is within the area described in Order No. 1195 attached as Exhibit "B;" the Property is a parcel or subdivision lot established as a separate lot before July 1, 1993; the Property lot was approved by County's Planning Commission and/or County's Board of Commissioners for service by an individual domestic well before July 1, 1993; and the Parties enter into this Agreement to ensure no domestic well is drilled on the Property and any existing domestic well is plugged if required by the State Engineer, to facilitate Landowner's connection to County's water system and accomplish County's domestic well credit pursuant to Order No. 1195, which is attached as Exhibit "B."

Declarations

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

1. Recitals. The foregoing recitals are true and correct.
2. Nonrevocable Restriction of Property. Landowner agrees not to drill a domestic well on the Property and to plug any existing domestic well in accordance with the requirements of NAC Chapter 534 if required by the State Engineer.
3. County Water Service. In exchange for the nonrevocable restriction of the Property, County agrees to provide water to the Property through its public water system and add Landowner as a new customer.
4. Unauthorized Uses. If at any time a domestic well is drilled on the Property, or any portion of it, then County shall promptly take steps to ensure it is made inoperable by and through its being plugged by the Landowner, in accordance with paragraph 6 below.
5. Transfer of Property. The Property may not be sold or transferred without Landowner providing the purchaser with actual notice of this deed restriction, which runs with the land.
6. Enforcement. A Party may institute a suit to enjoin the violation of this Agreement and require the restoration to the condition that existed prior to the violation whether the violation is actual or threatened. Landowner agrees and acknowledges that the remedies at law for a violation evidenced by steps taken toward drilling a well on the Property are inadequate and that County shall be entitled to injunctive relief and also damages, fees and costs incurred by County through steps taken to ensure the plugging of an operable domestic well on the Property if required by the State Engineer.
7. Recordation. This Agreement shall be recorded in the office of the Douglas County Recorder. The covenants, conditions and restrictions contained herein shall run with the land and are binding on the Parties, their successors and assigns.
8. 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.
9. 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.

10. Authority. County and Landowner, 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.
11. Binding Effect. This Agreement is binding upon the representatives, successors, and assigns of the Parties hereto.
12. 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.
13. 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.
14. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nevada.
15. Attorneys Fees. In the event of any controversy, claim, or dispute relating to this Agreement or to the violation or infringement thereof, the prevailing Party shall be entitled to recover from the losing Party reasonable attorneys' fees and costs. Attorney's fees for the County are charged at the rate of \$200 per hour for the services of the Douglas County District Attorney's Office.

DATED this 25 day of June, 2015.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the date first written above.

"Landowner"

[Signature]

By: **Robert Freetly**

Name: **R&R Builders Inc.**

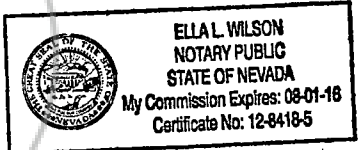
Its: President

State of Nevada)
) ss.
County of Douglas)

On this 25th day of June in the year 2015, before me, Ella L. Wilson a Notary Public, personally known to me (or proved to me on the basis of satisfactory evidence) to be **Robert Freetly**, the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.

Witness my hand and official seal.

Ella L. Wilson
Notary's Signature
My Commission Expires: 08/01/2016



"County" DOUGLAS COUNTY

By: Carl Ruschmeyer

Name: Carl Ruschmeyer

Its: Public Works Director

State of Nevada)
) ss.
County of Douglas)

On this 20 day of June, in the year 2015, before me, Deborah Beam a Notary Public, personally known to me (or proved to me on the basis of satisfactory evidence) to be **Carl Ruschmeyer**, the person whose name is subscribed to this instrument, and acknowledged that he executed it.

Witness my hand and official seal.

Deborah Beam
Notary's Signature
My Commission Expires: 1/31/19

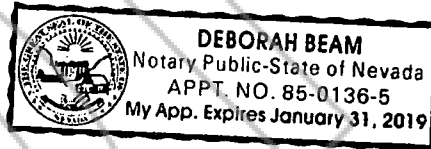
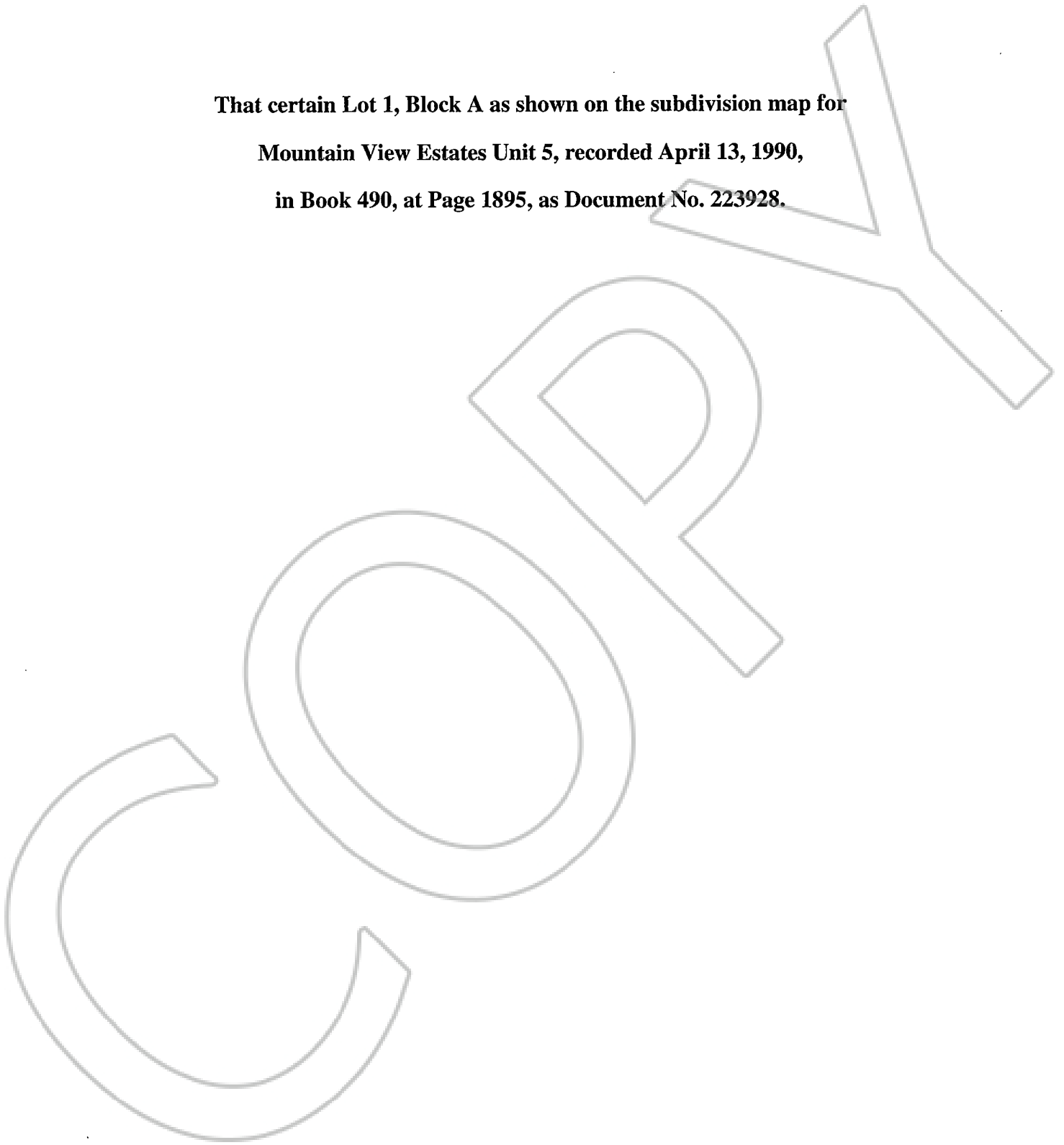


Exhibit "A" – Description of Property

**That certain Lot 1, Block A as shown on the subdivision map for
Mountain View Estates Unit 5, recorded April 13, 1990,
in Book 490, at Page 1895, as Document No. 223928.**



IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

Exhibit B

1195

ORDER
**FOR DOMESTIC WELL CREDIT WITHIN THE
CARSON VALLEY (105), HYDROGRAPHIC BASIN**

WHEREAS, this order is adopted under the procedure set forth in Chapter 534.350 of the Nevada Revised Statutes for the establishment of a program that allows a public water system to receive credits for the addition of new customers to its system;

WHEREAS, this order covers a portion of the Carson Valley Hydrographic Basin (105) within Douglas County as described:

- T.10N., R.21E. (MDB&M)
That portion of Sections 2, 3, 4, 5, 9, 10, 11, 14, 15, 23 and 24 lying within the Carson Valley Drainage Basin, and also lying within the boundaries of the State of Nevada.
- T.11N., R.20E. (MDB&M)
All of Sections 1, 2, 3, 4, 10, 11, 12, 13, 14 and 24, that portion of Sections 5, 6, 8, 9, 15, 16, 22, 23, 25, 26 and 36 lying within the boundaries of the State of Nevada.
- T.11N., R.22E. (MDB&M)
All of Sections 4 through 8, 17, 18 and 19, and that portion of Sections 3, 9, 10, 16, 20, 21, 29, 30 and 31 lying within the Carson Valley Drainage Basin.
- T.12N., R.18E. (MDB&M)
That portion of Section 1 lying within the Carson Valley Drainage Basin, and also lying within the boundaries of the State of Nevada.
- T.12N., R.19E. (MDB&M)
All of Sections 1 through 5, 9 through 15, 23, 25 and 25, and that portion of Sections 6, 7, 8, 16, 17, 21, 22, 26, 27, 35 and 36 lying within the boundaries of the State of Nevada.
- T.12N., R.20E. (MDB&M)
All of Sections 1 through 30, 32 through 36, and that portion of Section 31 lying within the boundaries of the State of Nevada.
- T.12N., R.21E. (MDB&M)
All.
- T.12N., R.22E. (MDB&M)
All of Sections 3 through 10, 15 through 22, 28 through 33, and that portion of Sections 1, 2, 11, 12, 14, 23, 26, 27, 34 and 35 lying within the Carson Valley Drainage Basin.
- T.13N., R.18E. (MDB&M)
That portion of Section 36 lying within the Carson Valley Drainage Basin.
- T.13N., R.19E. (MDB&M)
All of Sections 1 through 5, 8 through 16, 20 through 29, 32 through 36, and that portion of Sections 6, 7, 18, 19, 30 and 31 lying within the Carson Valley Drainage Basin.
- T.13N., R.20E. (MDB&M)
All.

T.13N., R.21E. (MDB&M)

All.

T.13N., R.22E. (MDB&M)

All of Sections 3 through 11, 14 through 23, 26 through 35, and that portion of Sections 1, 2, 12, 13, 24, 25 and 36 lying within the Carson Valley Drainage Basin.

T.14N., R.19E. (MDB&M)

All of Sections 13 through 16, 20 through 29, 32 through 36, and that portion of Sections 2, 3, 4, 5, 8, 9, 10, 11, 12, 17, 18, 19, 30 and 31 lying within the Carson Valley Drainage Basin.

T.14N., R.20E. (MDB&M)

All of Sections 8, 16 through 21, 25 through 36, and that portion of Sections 5, 6, 7, 14, 15, 22, 23 and 24 lying within the Carson Valley Drainage Basin and, also lying within the boundaries of Douglas County.

T.14N., R.21E. (MDB&M)

All of Sections 15, 16, 20, 21, 22, 23, 25 through 36, and that portion of Sections 4, 13, 14, 17, 18, 19 and 24 lying within the Carson Valley Drainage Basin and, also lying within the boundaries of Douglas County.

WHEREAS, this order proposes that a public water system that provides water for municipal purposes within the area described above receive a credit for each customer who is added to their system provided:

- a. A single family dwelling which is presently utilizing a domestic well on a lot established as a separate lot before July 1, 1993, and voluntarily ceases to draw water from that well located within the described area; or
- b. Any owner of a lot with the ability to drill a domestic well and utilize water from that well meets the following conditions:
 - (1) That the described lot is located within the area described; and
 - (2) That the lot was established as a separate lot before July 1, 1993; and
 - (3) That the lot was approved by a local governing body or planning commission for service by an individual domestic well before July 1, 1993; and
 - (4) A written agreement is entered between the owner of the lot and the public water system, wherein, the owner agrees not to drill a domestic well on the lot, and the public water system agrees that it will provide water service to that lot. Any such agreement must be acknowledged and recorded in the same manner as conveyances affecting real property are required to be acknowledged and recorded pursuant to Chapter 111 of NRS.

WHEREAS, if a county requires, by ordinance, the dedication to the county of a right to appropriate water from a domestic well which is located on a lot or other parcel of land that was established as a separate lot or parcel on or after July 1, 1993, the county may, by relinquishment to the State Engineer, allow the right to appropriate water to revert to the source of the water and if an owner of such a parcel of land becomes a new customer of a public water system for that parcel of land, the public water system is entitled to receive a credit in the same manner as the addition of any other customer to the public water system pursuant to NRS 534.350.

WHEREAS, the State Engineer may require each new customer who voluntarily ceases to withdraw water from a domestic well to plug that well at such time as notification of service from the public water system is made;

WHEREAS, a credit granted to the public water system under this order:

- a. Will be for domestic uses as defined by NRS 534.013.
- b. May not exceed the increase in water consumption attributable to the additional service connection or 2 acre-feet per year, whichever is less. The amount of water provided to each service will be reported by each public utility on a yearly basis, in addition to the amount pumped under any permitted water right.
- c. Cannot be converted to an appropriative right.
- d. May only be used at the location of the lot for which credit is being sought.
- e. Will only be from a water purveyor who pumps ground water within the same ground water basin as covered by this order.

WHEREAS, this order does not:

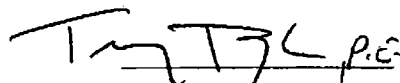
- a. Require any public water system to extend its service area unless approved by the Nevada Public Utilities Commission, if applicable.
- b. Authorize any increase or the potential increase in the total amount of ground water pumped in the Carson Valley Hydrographic Basin (105).
- c. Affect any rights of an owner of a domestic well who does not voluntarily bring himself within the provisions of this order.
- d. Interfere with the State Engineer's authority to possibly restrict the drilling of a domestic well for domestic use, as defined in this order, in the described area of this order where water can be furnished by an entity presently engaged in serving water within the said area.

WHEREAS, any such request for a domestic well credit under this order shall be made to the State Engineer on the form provided by his office or similar pre-approved form.

WHEREAS, for the purposes of this order:

- a. "Domestic well" means a well used for culinary and household purposes in:
 - (1) A single-family dwelling; and
 - (2) An accessory dwelling unit for a single-family dwelling if provided for in an applicable local ordinance, including the watering of a garden, lawn and domestic animals where the drought does not exceed 2 acre-feet per year.
- b. "Lot" has the meaning ascribed to it in NRS 278.0165.
- c. "Public Water System" has the meaning ascribed to it in NRS 445A.840.

NOW THEREFORE, pursuant to the authority in NRS 534.350, the State Engineer hereby establishes a domestic well credit program in the Carson Valley Hydrographic Basin (105), as heretofore described.



Tracy Taylor, P.E.

State Engineer

Dated at Carson City, Nevada this
03rd day of September, 2008.