Assessor's Parcel Number: N/A Date: SEPTEMBER 19, 2019 Recording Requested By: Name: ZACH WADLE, DA'S OFFICE Address: City/State/Zip:

Real Property Transfer Tax: \$_N/A

2019-935425 DOUGLAS COUNTY, NV This is a no fee document 09/19/2019 10:38 AM NO FEE DC/DISTRICT ATTORNEY

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KAREN ELLISON, RECORDER

SETTLEMENT	AGREEMENT	AND	MUTUAL	RELEASE	PARTIES
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SETTLEMENT AGREEMENT AND MUTUAL RELEASE

PARTIES

This Settlement Agreement and Mutual Release ("AGREEMENT"), entered into on the 30th day of May, 2019, is made by and between Plaintiffs JOHN C. and JUDY A. MARSH, Trustees of THE J AND J MARSH FAMILY TRUST, dated March 23, 2012; THOMAS and AMY HALTON: DEREK and ROBIN CLARK, Trustees of the CLARK FAMILY TRUST UTD 03/07/05; DAVID and ROSA BECKER; WILLIAM and VALERIE WHARTON: JEFFREY and DENA EVANS; WILLIAM and DEBORAH DENKLER; BRYAN SMITH: GERALD L. and JACOUELINE A. FLORENCE, Co-Trustees of THE FLORENCE FAMILY LIVING REVOCABLE TRUST DATED May 15, 2015; BUCK BRUSH INVESTMENTS, LLC; JOHN HELMER; DAVID and NANETTE BOOGMAN; RICK and BECKY COLTRA; THOMAS and PATRICIA WALTER; THOMAS FRUTH; JOSEPH LEBAS III and JULAYNE LEBAS; DANIEL S. and IRENE S. SCHWARTZ, Trustees of THE SCHWARTZ LIVING TRUST UNDER TRUST AGREEMENT DATED March 10, 1988; TROY M. and CARLEE J. BENNETT, Co-Trustees of THE TROY & CARLEE BENNETT FAMILY TRUST DATED 5-12-2006; FARRIS and SUE HALE; SHARRE ANN MARTIN, Trustee of THE SHARRE ANN MARTIN FAMILY TRUST; PATRICK and PHYLLIS SAUNDERS; GEORGE and CELIA JOHNSON, Co-Trustees of THE JOHNSON FAMILY TRUST UNDER TRUST AGREEMENT DATED 9-27-05; ROBERT and STACY WALLACE; PENELOPE COLTER; MICHAEL MASON; DENNIS and JANET GEARY; MALA and DONNA CHIZEK, Trustees of THE MALA AND DONNA CHIZEK FAMILY LIVING TRUST; WILLIAM and MARIANNE ISAACS; EUGENE and MARY PLEIMAN, Co-Trustees of THE PLEIMAN FAMILY TRUST DATED DECEMBER 19, 2002; R. VAUGHAN DAVIS, Trustee of THE TRUST AGREEMENT OF R. VAUGHAN DAVIS TRUST DATED 5/26/99; JUDY DUNN-SCHMIDT; GREGG and CAROL PAGE; ROBYN THORNE; DANIEL and CHRISTIANNE O'MALLEY; DAVID CONRAD GOETSCH AND BARBARA LEONA GOETSCH, Trustees of THE GOETSCH REVOCABLE LIVING TRUST DATED AUGUST 15, 1989; ("PLAINTIFFS") and Douglas County, a political subdivision of the State of Nevada ("the COUNTY"). PLAINTIFFS and the COUNTY are collectively referred to herein as the "PARTIES."

2. RECITALS

- A. On or about June 6, 2016, PLAINTIFFS initiated a lawsuit entitled *Marsh*, et al v Douglas County in the Ninth Judicial District Court for the State of Nevada, Case No.16-CV-0138 ("ACTION").
- B. The ACTION asserted claims of negligence, trespass, nuisance and inverse condemnation of PLAINTIFFS' properties ("SUBJECT PROPERTIES").
- C. Whereas in making this AGREEMENT, which involves disputed facts and issues, the COUNTY does not admit the truth or sufficiency of any of the claims or allegations asserted by PLAINTIFFS nor do PLAINTIFFS admit the truth of sufficiency of any of the claims or allegations asserted by the COUNTY. The COUNTY does not admit liability for any of the claimed damages asserted by PLAINTIFFS. The PARTIES intend by this AGREEMENT

to settle, finally and completely, any and all CLAIMS asserted in the ACTION by the PLAINTIFFS against the COUNTY.

D. Whereas the PARTIES wish to memorialize the terms and conditions of their settlement, which is made for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES hereto agree as follows:

3. **DEFINITIONS**

A. "CLAIM" or "CLAIMS" shall refer to the claims asserted by PLAINTIFFS in the ACTION for damages related to the 2014 and 2015 flood events in the Johnson Lane area of Douglas County.

4. <u>SETTLEMENT TERMS</u>

- A. PLAINTIFFS and the COUNTY have agreed to settle this matter for One Million Three Hundred Thousand Dollars (\$1,300,000) ("SETTLEMENT AMOUNT").
- B. The COUNTY shall make a payment of Four Hundred Seventy Thousand Dollars (\$470,000) to Maddox, Segerblom and Canepa, LLP Client Trust Account, TAX ID 46-4328357 no later than twenty-one (21) days following receipt of the executed AGREEMENT by PLAINTIFFS for attorney's fees and costs incurred by PLAINTIFFS in this ACTION.
- C. The COUNTY shall make payment of Three Hundred and Two Thousand and Two Hundred-Fifty Dollars (\$302,250) into a separate escrow/trust account to be used for projects requested by Plaintiffs that would be of regional flood protection benefit to the Johnson Lane area or otherwise upon a showing of good cause to Judge Nathan Tod Young or another Judge sitting in the Ninth Judicial District Court, in and for the County of Douglas, State of Nevada ("the Court"), that the PARTIES may agree to in writing or by stipulation of the PARTIES or by order of the Court. PLAINTIFFS will make application to the Court for such project and if approved, the project will be conducted by the COUNTY within a specified frame time as ordered by the Court and the completion of the project will be paid out of the escrow/trust account funds. However, if the application to the Court is for the completion of a project identified in the JE Fuller report accepted by the COUNTY on August 23, 2018 (the "JE Fuller Report"), good cause need not be shown by PLAINTIFFS. The PARTIES agree that, after five years from the deposit of this \$302,250, if these funds have not been expended, the funds will revert to the Johnson Lane flood fund for the County to use to implement flood control projects in the Johnson Lane area. The Court, may extend the 5-year period upon a showing of good cause. Any funds that revert to the Johnson Lane funds will be used by the County for the sole benefit of drainage and maintenance within the Johnson Lane area.
- D. The COUNTY shall make payment into a separate escrow/trust account of Two Hundred and Eight Thousand and Two Hundred Dollars (\$208,200) for the installation of the 25-year Romero Retention Basin and payment of Three Hundred and Nineteen Thousand and Five Hundred Fifty Dollars (\$319,550) for the installation of the 25-year Stephanie Retention Basin, including outlets, both as described by the JE Fuller Report.

- It is understood by the Parties that the installation of the two basins will require permitting from the U.S. Department of the Interior, Bureau of Land Management ("BLM"). As such, the COUNTY will submit the permitting application(s) to BLM no later than six months after the execution of this Agreement. The COUNTY will then cause the basins to be installed within no later than nine months from the date the BLM issues the permits. If the BLM fails to issue the necessary permits for the completion of the basins or it is independently determined that the basins cannot be installed, then the funds allocated for the basins will be used, as deemed appropriate by the Court, for flood control projects for the benefit of the Johnson Lane area.
- E. The Court will retain jurisdiction over the ACTION to enforce the terms of this AGREEMENT including but not limited to all applications made under section 4(C) of this agreement, and may issue all orders necessary to enforce the terms hereof.
- F. Within five days of receiving the portion of the SETTLEMENT AMOUNT allocated for PLAINTIFFS' fees and costs, and after receiving proof that the remaining SETTLEMENT AMOUNT has been placed in the required separate escrow/trust accounts, PLAINTIFFS shall execute a Stipulation and Order for Dismissal with Prejudice as to the ACTION.

5. RELEASE

This release is intended to apply to claims arising out of the 2014 and 2015 flood events as more particularly described in the ACTION. In consideration of the agreements, promises and recommendations referred to herein, PLAINTIFFS, each of them individually and on behalf of their respective predecessors and successors in interest, heirs and assigns, do hereby settle, release, acquit and forever discharge the COUNTY and its employees, agents, elected officials and representatives from any and all demands, actions, causes of action and claims for relief of every kind and nature whatsoever, known or unknown, suspected or unsuspected, anticipated and unanticipated, past, present and future, for personal and/or emotional injuries, property losses, economic losses, or otherwise, including all consequential damages, resulting of to result from or in any way arising out of the 2014 and 2015 flood events in the Johnson Lane area of Douglas County which have been brought or could have been brought in the ACTION.

The PLAINTIFFS also acknowledge and understand that there is a risk that now or in the future they may discover claims related to the 2014 and/or 2015 flood events that are unknown and unanticipated at the time this AGREEMENT is signed, and that known claims may become more serious than they now expect or anticipate. Nevertheless, PLAINTIFFS hereby expressly waive and release any and all rights they may have in such unknown and unexpected consequences and results.

6. <u>ENFORCEMENT</u>

The PARTIES hereby acknowledge, agree and stipulate that each has the right to enforce any provisions of this AGREEMENT by filing any appropriate action, proceeding, or motion in the appropriate court of law and motion department of the Ninth Judicial District Court, in and for Douglas County.

7. FURTHER REPRESENTATIONS

The PARTIES make the following representations with the understanding that they are material to this AGREEMENT:

- A. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this AGREEMENT on behalf of whom he or she purports to sign.
- B. The PARTIES intend that the terms and conditions of this AGREEMENT and the AGREEMENT as a whole shall inure to the benefit of and shall be binding on the PARTIES to this AGREEMENT and upon their respective RELATED PERSONS and ENTITIES. All representations, warranties, and other agreements contained in this AGREEMENT shall survive the execution and delivery of this AGREEMENT by all PARTIES hereto.
- C. The PARTIES acknowledge and represent that they have had the benefit and advice of their own attorneys, experts, and consultants to inspect, analyze, and advise them regarding the CLAIMS and in evaluating, finalizing, and executing this AGREEMENT, and that they have relied solely upon their own independent judgment, belief and knowledge, and the advice and recommendations of their own independently selected legal counsel concerning the CLAIMS.
- D. The PARTIES agree that this AGREEMENT has been reached in good faith in accordance with of N.R.S. §17.245.

8. MISCELLANEOUS

- A. Attorneys' Fees and Costs. The PARTIES hereto, acknowledge and agree that each of them shall bear their own attorneys' fees arising out of or connected with the subject of this AGREEMENT, including the ACTION and the negotiation, drafting and execution of this AGREEMENT, and all matters arising out of or connected therewith, except that in the event any proceeding is brought by any PARTY to enforce this AGREEMENT, the prevailing PARTY shall be entitled to receive that PARTY's reasonable attorneys' fees and costs, including expert witness fees, incurred in that ACTION or proceeding in addition to all other relief to which the prevailing PARTY may be entitled.
- B. <u>Drafting of the Agreement</u>. Neither the AGREEMENT nor any provision thereof shall be deemed prepared or drafted by one PARTY or another, or its attorneys, and shall not be construed more strongly against any PARTY.
- C. <u>Counterparts</u>. This AGREEMENT may be in counterparts, each of which may include multiple signature pages, each of which shall be an original and shall constitute one and the same AGREEMENT, all of which shall be deemed to constitute one and the same instrument, but is not binding until signed by all signatories listed below. Photocopies or .pdf files of original signature pages may be deemed as originals.

- D. <u>Severability</u>. If any provision or any part of any provision of this AGREEMENT shall for any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this AGREEMENT shall not be affected thereby and shall remain in full force and effect.
- E. <u>Governing Law</u>. This AGREEMENT has been negotiated and entered into in the State of Nevada, and shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.
- F. <u>Cooperation</u>. The PARTIES agree to reasonably cooperate and execute any and all documents necessary to carry out the terms of this AGREEMENT in a timely fashion.
- G. <u>Entire Agreement</u>. This AGREEMENT constitutes the entire AGREEMENT between the PARTIES hereto pertaining to the subject matters hereof; and fully supersedes any and all other prior understandings, representations, warranties and agreements between the PARTIES hereto, or any of them, pertaining to the subject matter hereof; and may be amended only by a writing signed by all PARTIES hereto.

SIGNATURES ON THE NEXT PAGE



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Page 7 of 5

Dated: July, 2019.	William Denkler
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Page 7 of 5

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Page 8 of 5

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Page 8 of 5

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Dated: July, 2019.	Phyllis Saunders
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Douglas County	
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Kathy Lewis, Douglas County Clerk	

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Kathy Lewis, Douglas County Clerk	is attached is a full and con	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 Clark-T	record on file in the Clark-Treasurer's Office on this	