

CIVIL COVER SHEET

A- 10 - 615961 - B
XI

Clark County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party InformationPlaintiff(s) (name/address/phone): Carmel Land & Cattle Co.,
L.P.

Defendant(s) (name/address/phone): City of Henderson

Attorney (name/address/phone): O'Reilly Law Group, LLC
John F. O'Reilly, Esq., Timothy R. O'Reilly, Esq.,
Claudia K. Cormier, Esq.
325 South Maryland Parkway
Las Vegas, Nevada 89101
(702) 382-2500Attorney (name/address/phone):
Unknown**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

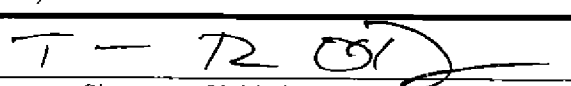
Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
<input type="checkbox"/> Probate Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Other Civil Filing Types <input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	
	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> Other Civil Matters	

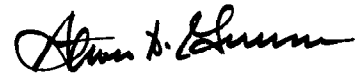
III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|--|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input checked="" type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

May 6, 2010

Date


 Signature of initiating party or representative



CLERK OF THE COURT

COMPB
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Attorneys for Plaintiff
CARMEL LAND & CATTLE CO., L.P.

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

CARMEL LAND & CATTLE CO., L.P., a
Texas limited partnership,

Plaintiff,

vs.

CITY OF HENDERSON, a political
subdivision of the State of Nevada; DOE
Defendants 1 through 10,

Defendants.

CASE NO.: **A- 10 - 615961 - B**

DEPT. NO.: **XI**

COMPLAINT

**(Arbitration Exemption Claimed: Specific
Performance, Declaratory Relief, Amount in
Controversy Exceeds \$50,000)**

**[Business Court Designation Pursuant to
EDCR 1.61]**

PLAINTIFF REQUESTS A JURY TRIAL

Plaintiff, CARMEL LAND & CATTLE CO., L.P., by and through its attorneys of record,
O'Reilly Law Group, LLC, and as and for a Complaint against the above referenced Defendants,
does state and allege as follows:

...

...

I. PARTIES AND JURISDICTION

1
2 1. Carmel Land & Cattle Co., L.P., is a Texas Limited Partnership ("Carmel")
3 registered with the Nevada Secretary of State as a foreign limited partnership and is qualified to do
4 business within the State of Nevada.
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6 2. At all times material hereto, City of Henderson was and is a political subdivision of the
7 State of Nevada ("City"). City is located in Clark County, Nevada.

8 3. At all material times hereto, DOE Defendants 1 through 10, inclusive, were individuals
9 or legal entities doing business in the State of Nevada and involved in and connected with the
10 conduct complained of, but the true names and identities of such Defendants are not yet known.
11 Plaintiff will amend its Complaint to identify such individuals and entities when the identities of
12 such Defendants become known.
13

14 4. This Court has jurisdiction over this matter as all parties reside in or are otherwise
15 located in Clark County, Nevada, and many of the alleged events took place in Clark County,
16 Nevada, the real property involved is located in the City of Henderson, Clark County, Nevada, and
17 the water involved is controlled by parties located in Clark County, Nevada.

18 5. Venue is proper in this Court as Defendants operate in, are located in, and/or reside in
19 Clark County, Nevada.
20

II. GENERAL ALLEGATIONS

21
22 6. Lake Las Vegas is a resort community located approximately 17 miles east of Las
23 Vegas Boulevard (the "Strip"), in the City of Henderson, Clark County, Nevada ("Lake Las Vegas
24 Development").

25 7. Based upon information and belief, Lake Las Vegas Development was designed as a
26 3,200 acre multi-billion dollar project to include up to five resort-hotels, shopping, up to four golf
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1 courses, and approximately 10,000 private residential units in a variety of residential areas (the
2 "Property").

3 8. Based upon information and belief, a 320-acre man-made reservoir, sometimes
4 referred to as "Lake Montelago," "Lake Las Vegas," and other names (the "Lake"), was
5 constructed on the Property as a centerpiece for the Lake Las Vegas Development.
6

7 **Background Relating to Agreements for**
8 **Non-residential Water for the LLV Development**

9 9. On or about September 23, 1991, the City of Henderson entered into that certain
10 Agreement for Purchase of Raw Water (the "1991 Water Agreement").

11 10. A true and correct copy of the 1991 Water Agreement is attached as Exhibit 1.

12 11. The recitals set forth in the 1991 Water Agreement state:

13 "WHEREAS, the City is engaged in distributing water to
14 customers within its boundaries; and

15 WHEREAS, the DEVELOPER is developing a real estate
16 development known as LAKE LAS VEGAS (hereinafter
17 referred to as the "PROPERTY") located within
18 the CITY OF HENDERSON and the DEVELOPER
is desirous of constructing a network of water
facilities to serve the PROPERTY; and

19 WHEREAS, the DEVELOPER desires to purchase water
20 for the purpose of filling and maintaining the LAKE and of
irrigating the PROPERTY, among other purposes; and

21 WHEREAS, the CITY is willing to provide raw water to the
22 DEVELOPER."

23 12. Among other things in Section 3 of the 1991 Water Agreement, which is entitled,
24 "DUTIES OF THE CITY," City covenants and agrees to:

25 "furnish up to 5,000 acre-feet of raw water per calendar year
26 commencing in 1991 as and when requested by the DEVELOPER
27 for circulation, evaporation, lake-related uses and such
28 supplemental supply of water for irrigation; and to furnish
raw water in excess of the 5,000 acre-feet per calendar year for

lake fill purposes, if available.”

13. The 5,000 acre-feet of raw water per calendar year referenced in Section 3 of the 1991 Water Agreement was increased to 7,000 acre-feet of raw water per calendar year under the provisions of Section 5 of the 1991 Water Agreement, which states in pertinent part:

“In addition to the water to be furnished by the City pursuant to paragraph 3(b) above, the City agrees to furnish up to 2,000 acre-feet of raw water per calendar year commencing in 1996 as and when requested by the DEVELOPER for circulation, evaporation, Lake-related uses and such supplemental supply of water for irrigation.”

14. The term of the 1991 Water Agreement is set forth in Section 11, which is entitled “TERM” and states:

“The term of this Agreement shall be for thirty-three (33) years with two thirty-three (33) year options to extend on the same terms and conditions as stated herein except as to the costs and fees for water and its delivery which will be established by the City Council at the time the option is renewed. Said option to extend shall be exclusive to the DEVELOPER, its successors and assigns. Notice of exercise of the option to extend shall be made in writing to the CITY not later than six (6) months prior to the date of expiration of the initial term of this Agreement or the expiration of the first extended term of this Agreement, as the case may be.”

Changes in LLV Property Ownership

15. On or about March 2002, Wells Fargo Bank, National Association (“Wells Fargo”) extended loans for the Lake Las Vegas Development (the “Wells Fargo Loans”). Part of the collateral for the Wells Fargo Loans was the Reflection Bay Golf Course property and The Vineyard Golf Course property, both of which are located on the Property (the “Lake Las Vegas Golf Courses”).

16. The Vineyard Golf Course property is also known as the Falls Golf Course property.

17. On or about October 16, 2007, Carmel purchased the Wells Fargo Loans and acquired the rights of Wells Fargo as lender.

1 18. On or about March 2009, Carmel foreclosed on the Wells Fargo Loans with respect
2 to the Falls Golf Course property and on or about July 2009, Carmel foreclosed on the Wells Fargo
3 Loans with respect to the Reflection Bay Golf Course property. Carmel thereby became the owner
4 of, among other things, the Reflection Bay Golf Course and the Vineyard Golf Course (also known
5 as the Falls Golf Course).

6
7 19. The 1991 Water Agreement provides that Carmel, as a lender who acquired the
8 Vineyard/Falls Golf Course and Reflection Bay Golf Course through foreclosure, automatically
9 succeeds to the benefits of the 1991 Water Agreement pertaining to such land.

10 20. Section 13 of the 1991 Water Agreement states in pertinent part,

11 “any lender which makes a loan to the DEVELOPER . . .
12 for the project or any portion thereof, which loan is secured
13 by a mortgage or deed of trust encumbering all or a
14 portion of the PROPERTY, and who thereafter acquires said
15 real property by statutory foreclosure, judicial foreclosure,
16 deed in lieu of foreclosure or other means, shall automatically
17 succeed to the benefits of DEVELOPER hereunder pertaining
18 to such land, and shall have the ability to transfer said benefits
19 to a transferee of such lender acquiring said land; provided,
20 however, that any such lender and/or transferee shall at all
21 times be bound to perform the obligations of DEVELOPER
22 hereunder.”

23 21. The Lake is no longer in common ownership with the Lake Las Vegas Golf
24 Courses.

25 22. Based upon information and belief, the Lake Las Vegas Master Property Owners
26 Association (“MPOA”) is governed by a board of directors (the “MPOA Board”), and one of the
27 director positions on the MPOA Board is held now and was held at all times material hereto by an
28 employee of the City who has significant influence and control over the City’s actions and
decisions concerning the distribution of water to the Lake Las Vegas Development.

 23. The MPOA Board owes a fiduciary duty to the members of the MPOA.

1 24. The interests of the City and the interests of the MPOA with respect to the
2 distribution of raw water for irrigation of golf courses at the LLV Development are inconsistent.

3
4 **Changes in Irrigation Water**

5 25. The Vineyard/Falls Golf Course was developed after the 1991 Water Agreement,
6 and based upon information and belief, the Vineyard/Falls has historically been irrigated with raw
7 water.

8 26. The Reflection Bay Golf Course was developed after the 1991 Water Agreement,
9 and based upon information and belief, Reflection Bay has historically been irrigated with raw
10 water.

11 27. Carmel is a third party beneficiary of, and permitted successor in interest to the
12 1991 Water Agreement.

13 28. Carmel has the right to raw water to irrigate both the Vineyard/Falls Golf Course
14 and the Reflection Bay Golf Course.

15 29. Carmel will suffer irreparable harm if the Las Vegas Golf Courses are not irrigated.

16
17 **The City's Proposed New Water Agreements**

18 30. In approximately the period July 2009 through March 2010, the City proposed to
19 cancel the 1991 Water Agreement and replace it with entirely new agreements.

20 31. The new water agreements proposed by the City include the Agreement for Raw
21 Water Distribution Within Lake Las Vegas, the Lake Water Lines Agreement, and separate Water
22 Service Agreements with specific customers at Lake Las Vegas for water distribution to those
23 specific customers at Lake Las Vegas (collectively, the "2010 COH Proposed Agreements").

24 32. Carmel has not entered into the 2010 COH Proposed Agreements.
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1 33. The conditions precedent to the termination of the 1991 Water Agreement have not
2 been satisfied, and the 1991 Water Agreement is and was at all times material hereto in full force
3 and effect.

4
5 **City's Unclean Hands**

6 34. In approximately January 2010, the City informed Carmel that the City would shut
7 off the raw water distributed to Carmel for the irrigation of the Carmel-owned golf courses if
8 Carmel failed or refused to enter into the 2010 COH Proposed Agreements. That threat by the
9 City follows a pattern of coercive conduct by the City since the time when Carmel acquired the
10 Falls Golf Course of shutting off water needed by Carmel for the irrigation of its golf courses in
11 order to obtain concessions from Carmel under duress, including the payment by Carmel to the
12 City of higher charges for water.

13
14 35. On February 15, 2010, the City again cut off the distribution of water to Carmel.

15 36. On or about March 15, 2010, the City finally agreed to provide to Carmel the most
16 recent versions of the proposed new water agreements and agreed the raw water would be turned
17 on and distributed to Carmel for a period of 90 days (until June 17, 2010).

18 37. City has expressed its intention to cut off raw water to Carmel on or about June 17,
19 2010 unless Carmel enters into the 2010 Proposed New Water Agreements.

20 38. Carmel has paid hundreds of thousands of dollars in water bills issued to Carmel by
21 the City of Henderson and based upon information and belief is not in arrears on any City of
22 Henderson water service fees and charges.

23
24 39. Carmel has made numerous and repeated requests, in writing and verbally and
25 pursuant to NRS Chapter 239 for copies of the expert reports and any and all additional
26 information and documentation that the City relied upon in developing the 2010 Proposed New
27 Water Agreements.
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II.

SECOND CAUSE OF ACTION

(Specific Performance)

47. Carmel repeats and re-alleges each and every allegation contained in the preceding paragraphs as if the same were fully set forth at length and incorporates them herein by reference.

48. The terms of the 1991 Water Agreement are definite and certain.

49. City has refused to acknowledge Carmel's rights under the 1991 Water Agreement and has demanded that Carmel enter into the proposed new water agreements even though Carmel has no assurance that its interests will not suffer as a result and Carmel has the right to raw water under the 1991 Water Agreement.

50. City has demanded that Carmel enter into the proposed new water agreements in spite of repeated requests for information and assurances that Carmel's golf courses will not be damaged as a result and Carmel's rights to raw water under the 1991 Water Agreement.

51. The remedies at law that are available to Carmel for potential damage to the golf courses as a result of shutting off the water are inadequate and Carmel is entitled to raw water under the 1991 Water Agreement.

52. Carmel has tendered performance under the 1991 Water Agreement, but City has failed and refused and continues to fail and refuse to perform in accordance with the terms and conditions of the 1991 Water Agreement

53. As a direct and proximate result of City's wrongful conduct as herein described, Carmel is entitled to specific performance of the 1991 Water Agreement.

54. Carmel has been required to retain the services of attorneys to prosecute this action, and Carmel has been damaged thereby. In addition to other relief specified above, Carmel is entitled to recover reasonable attorneys' fees and costs of suit.

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III.

THIRD CAUSE OF ACTION

(Breach of Contract)

55. Carmel repeats and re-alleges each and every allegation contained in the preceding paragraphs as if the same were fully set forth at length and incorporates them herein by reference.

56. The 1991 Water Agreement is a valid contract.

57. Carmel has performed all of the material terms and conditions required of it under the 1991 Water Agreement.

58. City has breached the 1991 Water Agreement by failing and refusing to provide the raw water as specified therein.

59. City refuses to provide water after June 17, 2010 and manifests a clear, definite, unequivocal and absolute intent not to perform a substantial portion of the 1991 Water Agreement, which is an anticipatory repudiation of the 1991 Water Agreement.

60. As a direct and proximate result of City's wrongful conduct as hereinabove described, Carmel seeks specific performance by the City of the City's obligations to provide water to Carmel under the 1991 Water Agreement.

61. Carmel has been required to retain the services of attorneys to prosecute this action, and Carmel has been damaged thereby. In addition to other relief specified above, Carmel is entitled to recover reasonable attorneys' fees and costs of suit.

IV.

FOURTH CAUSE OF ACTION

(Injunctive Relief)

62. Carmel repeats and re-alleges each and every allegation contained in the preceding paragraphs as if the same were fully set forth at length and incorporates them herein by reference.

63. Unless City is restrained and enjoined from breaching the 1991 Water Agreement or otherwise damaging the interests of Carmel as herein alleged, Carmel will suffer immediate and irreparable harm for which compensatory damages are an inadequate remedy.

64. Carmel has been required to retain the services of attorneys to prosecute this action, and Carmel has been damaged thereby. In addition to other relief specified above, Carmel is entitled to recover reasonable attorneys' fees and costs of suit.

WHEREFORE, Carmel demands judgment against City as follows:

1. For declaratory relief as prayed for herein.
2. For specific performance by City of the 1991 Water Agreement.
3. For an order preliminarily and permanently enjoining City from withholding the distribution of raw water to Carmel for irrigation of the Vineyard/Falls Golf Course and Reflection Bay Golf Course as required by the 1991 Water Agreement.
4. For reasonable attorneys fees and costs of suit incurred herein.
5. For pre- and post-judgment interest on all amounts awarded.
6. For such other and further relief as the Court deems just and proper.

DATED: May 6, 2010.

O'REILLY LAW GROUP, LLC

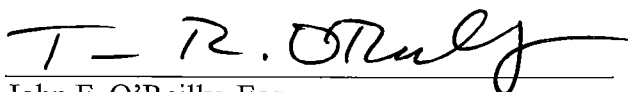
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Claudia K. Cormier, Esq.
Nevada Bar No. 0880
325 South Maryland Parkway
Las Vegas, Nevada 89101
Attorneys for Plaintiff
CARMEL LAND & CATTLE CO., L.P.

Exhibit 1

RECEIVED

SEP 23 1991

AGREEMENT FOR PURCHASE OF RAW WATER

CITY CLERK
CITY OF HENDERSON

THIS AGREEMENT is made and entered into this 23rd day of September, 1991, by and between the CITY OF HENDERSON, a municipal corporation of the State of Nevada (hereinafter referred to as "City"), and LAKE AT LAS VEGAS JOINT VENTURE (hereinafter referred to as "DEVELOPER").

W I T N E S S E T H :

WHEREAS, the CITY is engaged in distributing water to customers within its boundaries; and

WHEREAS, the DEVELOPER is developing a real estate development known as LAKE LAS VEGAS (hereinafter referred to as the "PROPERTY") located within the CITY OF HENDERSON and the DEVELOPER is desirous of constructing a network of water facilities to serve the PROPERTY with non-potable water; and

WHEREAS, the DEVELOPER is building a man-made reservoir (hereinafter referred to as the "LAKE") to be the center of the PROPERTY; and

WHEREAS, the DEVELOPER desires to purchase water for the purpose of filling and maintaining the LAKE and of irrigating the PROPERTY, among other purposes; and

WHEREAS, the CITY is willing to provide raw water to the DEVELOPER.

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

1. INSTALLATION OF FACILITIES

The DEVELOPER has installed at its expense all facilities required by the CITY necessary for filling and maintaining the LAKE. For purposes of this Agreement "Facilities" shall mean a 16-inch diameter pipeline with control valve(s) running from the existing raw water pipeline to the PROPERTY, together with related vault structures and meters as shown on drawings approved by the CITY.

2. TRANSFER OF TITLE

The DEVELOPER agrees that it will dedicate the Facilities to the CITY without charge upon receipt of written request from the CITY. The CITY agrees that it will accept dedication of the Facilities upon final inspection and acceptance by the Department of Public Works. Dedication of such Facilities shall not terminate this Agreement nor shall it relieve the DEVELOPER of the obligation to maintain the LAKE, or the obligation of the CITY to continue to provide water as provided herein.

3. DUTIES OF THE CITY

The CITY covenants and agrees as follows:

(a) to issue necessary permits for the installation and construction of the Facilities; and

(b) to furnish up to 5,000 acre-feet of raw water per calendar year commencing in 1991 as and when requested by the DEVELOPER for circulation, evaporation, lake-related uses and such supplemental supply of water for irrigation; and

(c) to furnish raw water in excess of the 5,000 acre-feet per calendar year for lake fill purposes, if available; a decision regarding availability shall be made solely by the CITY; and

(d) to read the meter at the point of connection to the Facilities in accordance with the requirements of Henderson Municipal Code, Title 13, and report the readings to the DEVELOPER; and

(e) to render monthly billings for raw water deliveries made during the preceding month, based on meter reading(s) at Point(s) of Delivery. Billings shall be in accordance with Henderson Municipal Code Title 13 procedures. The initial rate of raw water shall be the average of the reuse water rate and the potable water rate as currently defined in Title 13, Section 12 of the Henderson Municipal Code. In the event the City Council of the City establishes a raw water rate by ordinance, the rate pursuant to this paragraph shall be void and the rate for raw water shall be pursuant to the ordinance as may be amended from time to time. Any late payments shall be considered delinquent and shall be subject to the CITY's standard penalty charges and disconnect procedures pursuant to Henderson Municipal Code, Title 13; and

(f) to maintain books, records, documents and other evidence of its performance of services under the Agreement in accordance with generally accepted accounting principles and practices consistently applied. The DEVELOPER, at its own expense, shall have reasonable and consistent access to such books, records, documents and other evidence for the purpose of inspection, audit,

and copying at any time during CITY's normal business hours and upon reasonable notice in accordance with the Nevada Public Records law (NRS Chapter 239) and Henderson Municipal Ordinances; and

(g) to maintain the Facilities, and to keep the Facilities in good condition and repair, once dedication of the Facilities to the City has occurred.

4. PAYMENT BY THE DEVELOPER

As full compensation for all water furnished, and services performed by the CITY under this Agreement, the DEVELOPER will pay the CITY for all water delivered by CITY pursuant to this Agreement at the rate set forth in Paragraph 3(e) hereinabove and as provided for in Henderson Municipal Code Title 13. During the term of this Agreement the DEVELOPER will not purchase raw, untreated water from any third party except amounts in excess of amounts which the CITY is obligated to furnish pursuant to this Agreement. The preceding sentence shall not be construed as precluding use of well water from wells drilled on the PROPERTY.

5. ASSIGNMENT TO CITY OF APPROPRIATED PUBLIC WATERS

The DEVELOPER hereby assigns to the CITY without representation or warranty the right to 2,000 acre feet annually of the DEVELOPER'S appropriated public waters which are the subject of Applications 46029, 46030, 53704, 53829, 53830, and 53831 approved by the Nevada Division of Water Resources by ruling dated July 12, 1990. All new costs and expenses of obtaining such appropriated

waters assigned to the CITY shall be borne by the CITY. The CITY shall not be required to reimburse the DEVELOPER for any costs or expenses expended or accrued. The DEVELOPER shall be entitled to appropriated waters in excess of 2,000 acre feet annually, including water from wells existing as of the date of this Agreement. In addition to the water to be furnished by the CITY pursuant to Paragraph 3(b) above, the CITY agrees to furnish up to 2,000 acre feet of raw water per calendar year commencing in 1996 as and when requested by the DEVELOPER for circulation, evaporation, lake-related uses and such supplemental supply of water for irrigation. In order to fulfill its obligations to furnish water under this Paragraph 5, the CITY, at its option, may utilize, without limitation, appropriated waters assigned to the CITY pursuant to this Paragraph 5, water which becomes available to the CITY pursuant to any growth coordination strategy ordinance(s) which may be adopted by the CITY, or new sources of water. Unavailability of appropriated waters shall not diminish the CITY's obligations under this Paragraph 5.

6. EMERGENCY PRIORITIES/WATER SHORTAGES

In the event of water shortages, curtailments, equipment failure or natural disasters it is understood by DEVELOPER that the CITY by and through its City Manager has the right to declare a temporary water emergency for the purpose of establishing and implementing "emergency water usage priorities". DEVELOPER agrees that in such emergency situations, lake fill, recreational and irrigation water usage may need to be limited, curtailed or

prohibited for a limited period of time. During such situations DEVELOPER agrees to cooperate with CITY and will permit the LAKE to be utilized as an emergency reservoir to supplement other water supplies or sources for priority water usage during the declared emergency. DEVELOPER shall not be liable to CITY or any third party for any claim that any water drawn from the LAKE by CITY pursuant to this Paragraph 6 does not meet any applicable standards of water quality. CITY shall hold DEVELOPER harmless and shall indemnify DEVELOPER from any and all loss, liability, expense or damage, including lawsuit defense costs and attorney's fees, incurred as a result of claims directly or indirectly concerning the quality or use of water drawn from the LAKE, and delivered by CITY pursuant to this Paragraph 6. CITY agrees that, to the extent CITY draws water from the LAKE for any purpose pursuant to this Paragraph 6, CITY will replace, at no cost to DEVELOPER, the water which was drawn from the LAKE pursuant to this Paragraph 6, such replacement to be accomplished as soon as possible after the declared emergency ends. The terms, conditions and procedural aspects of the foregoing will be developed by the parties in conjunction with CITY's emergency management system.

7. INDEMNITY AND WATER QUALITY

Water delivered shall be raw, untreated Lake Mead water, or equivalent. CITY shall not be liable to DEVELOPER or any third party for any claim that such raw, untreated water does not meet any applicable standards of water quality necessary for the uses contemplated by DEVELOPER or others. Such quality standards may

include but not be limited to provisions of the Safe Drinking Water Act. DEVELOPER shall hold CITY harmless and shall indemnify CITY from any and all loss, liability, expense or damage, including lawsuit defense costs and attorney's fees incurred as a result of claims directly or indirectly concerning the quality of raw, untreated water delivered or its use or distribution by any party other than claims arising out of CITY's use or distribution of water pursuant to Paragraph 6 above. In the event of suit, DEVELOPER shall have the right to jointly defend any action or secure independent counsel for CITY, with selection of said counsel being subject to approval by CITY. Although CITY agrees to operate and maintain its facilities needed to deliver raw, untreated water to DEVELOPER in accordance with generally accepted maintenance and operating procedures, CITY gives no warranty to DEVELOPER as to the quality of raw, untreated water delivered under this Agreement and DEVELOPER assumes all responsibility for the usage of raw, untreated water delivered, including all delivery and distribution beyond the points of delivery by CITY.

8. AVAILABILITY AND USE OF WATER

The DEVELOPER acknowledges and agrees that the water delivered from the CITY pursuant to this Agreement is raw and, therefore, is untreated. The DEVELOPER covenants and agrees that without prior treatment said raw water will not be used for any purpose for which potable water is required. The DEVELOPER acknowledges that CITY cannot guarantee the availability of raw water throughout the term of this Agreement due to possible changes in federal, state or

county regulatory agency requirements and/or other conditions beyond CITY's control. The CITY shall use its best efforts to comply with any changes in regulatory requirements in a timely manner so availability will not be impaired.

9. LIMITATIONS AND CONDITIONS

This Agreement is subordinate to the following pre-existing agreements the CITY has executed authorizing, limiting, or controlling the delivery of raw water through the Basic Management, Inc. pipeline. The parties hereto acknowledge the existing terms, conditions and limitations of the following agreements on this Agreement:

(a) Contract with the CITY OF HENDERSON, Nevada for Delivery of Colorado River Water. Contract No. 0-07-30-W0246, dated 5/22/90.

(b) Contract to Amend Contract No. 14-06-300-2083, Amendment No. 1. The Contract for Delivery of Water to Basic Management, Inc., dated 5/22/90.

(c) Assignment and Transfer of Entitlement to Delivery of Colorado River Water from Basic Management, Inc. to the CITY OF HENDERSON, Nevada. Contract No. 14-06-300-2082, Assignment No. 1, dated 5/22/90.

(d) Water Delivery Contract between CITY OF HENDERSON and Basic Management, Inc., dated 5/22/90.

10. DEFAULT

The CITY and the DEVELOPER agree that in the event of a default hereunder by the DEVELOPER of any terms and conditions

contained herein that the DEVELOPER shall have one-hundred eighty (180) days after receipt of written notice thereof to correct such default. Failure to correct said default within said time limit shall permit the CITY to suspend furnishing water pursuant to this Agreement.

11. TERM

The term of this Agreement shall be for thirty-three (33) years with two thirty-three (33) year options to extend on the same terms and conditions as stated herein except as to the costs and fees for water and its delivery which will be established by the City Council at the time the option is renewed. Said option to extend shall be exclusive to the DEVELOPER, its successors and assigns. Notice of exercise of the option to extend shall be made in writing to the CITY not later than six (6) months prior to the date of expiration of the initial term of this Agreement or the expiration of the first extended term of this Agreement, as the case may be.

12. NOTICES

Invoices, payments and notices of termination shall be delivered to the parties by personal service, hand delivery of United States mail, return receipt requested, at the following addresses:

TO CITY:

Department of Public Works
c/o Utility Services Division
240 Water Street
Henderson, NV 89015

TO DEVELOPER:

Lake at Las Vegas Joint Venture
1050 E. Flamingo Road, Ste 137
Las Vegas, NV 89119
Attention: President

Either party may change the notice address upon written notice to other.

13. ASSIGNMENT

It is understood and agreed between the parties that the DEVELOPER may assign this Agreement to the Lake Las Vegas Master Property Owners Association (hereinafter referred to as "MPOA") at any time hereafter without the consent of the CITY in which event the DEVELOPER shall be relieved of liability under this Agreement from and after the date of such assignment. The foregoing notwithstanding, any lender which makes a loan to the DEVELOPER or the Lake Las Vegas Master Property Owners' Association for the project or any portion thereof, which loan is secured by a mortgage or deed of trust encumbering all or a portion of the PROPERTY, and who thereafter acquires said real property by statutory foreclosure, judicial foreclosure, deed in lieu of foreclosure or other means, shall automatically succeed to the benefits of DEVELOPER hereunder pertaining to such land, and shall have the ability to transfer said benefits to a transferee of such lender acquiring said land; provided, however, that any such lender and/or transferee shall at all times be bound to perform the obligations of DEVELOPER hereunder.

14. OTHER DOCUMENTATION

The parties agree to enter into and/or execute any and all such legal documents, contracts, applications or certificates as may be required to fully carry out the provisions of this Agreement.

15. GOVERNING LAW

Nevada law shall govern the interpretation, enforcement and resolution of disputes concerning the performance of this Agreement.

16. ENTIRE UNDERSTANDING

This Agreement contains the entire agreement and understanding of the parties hereto with respect to the subject matter of this Agreement and supersedes all prior oral and written negotiations, agreements and understandings of every kind.

17. AMENDMENTS

This Agreement is not subject to amendment except by written modification agreement executed by all parties hereto.

18. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties and their legal successors and assigns; and in the event of the merger, consolidation, or reorganization of either party, the resulting entity shall be deemed the legal successor of the party to which such merger, consolidation or reorganization applies, for purposes of this Agreement.

19. ATTORNEY'S FEES

In the event of litigation between the parties hereto arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs to be fixed by the court.

20. PREPARATION OF THIS AGREEMENT

This Agreement shall not be construed against the party preparing it but shall be construed as if both parties prepared it.

21. CAPTIONS

Captions to paragraphs/subparagraphs of this Agreement are for convenience purposes only and are not part of this Agreement.

22. AUTHORITY TO SIGN AGREEMENT

The undersigned individuals hereby warrant and represent that they each have full legal authority to sign this Agreement and bind the parties hereto.

IN WITNESS WHEREOF, this Agreement has been executed as of the day, month and year first above written.

CITY OF HENDERSON, NEVADA

By: Lorna Kesterson
LORNA KESTERSON
Mayor

ATTEST:

By: Dorothy A. Vondenbrink
DOROTHY A. VONDENBRINK, CMC
City Clerk

STATE OF NEVADA)

COUNT OF CLARK)

ss.

On this 23 day of September, 1991, personally appeared before me, the undersigned, a Notary Public in and for the County of Clark, State of Nevada, LORNA KESTERSON, Mayor, and DOROTHY A. VONDENBRINK, CMC, City Clerk, who acknowledged that he executed the above instrument.

Colleen Bell
NOTARY PUBLIC, In and for said
County and State

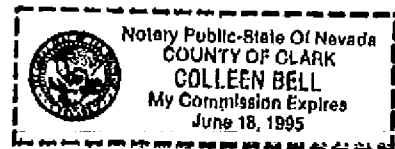
LAKE AT LAS VEGAS JOINT VENTURE

By: TransNeva Limited Partnership
Managing General Partner

By: Transcontinental Properties, Inc.
General Partner

By: Alton E. Jones

Its: Vice President



STATE OF NEVADA)
)
COUNT OF CLARK) ss.

On this 19th day of September, 1991, personally
appeared before me, the undersigned, a Notary Public in and for the
County of Clark, State of Nevada, Alton E. Jones,
who acknowledged that he executed the above instrument.

Vivian A. Kastner
NOTARY PUBLIC, In and for said
County and State

