

APNs: 179-19-512-001 and -002;
179-19-611-001 and -003;
179-20-210-001, -005 and -006;
179-20-211-001 and -020; and
179-20-301-001

RECORDING REQUESTED BY, _____
AND WHEN RECORDED RETURN TO:

City of Henderson, Nevada
P.O. Box 95050, MSC 144
Henderson, Nevada 89050
Attn: City Attorney

TERMINATION AGREEMENT

(Black Mountain Reuse Water Facilities)

THIS TERMINATION AGREEMENT (this "Agreement") is made by and between the CITY OF HENDERSON, a municipal corporation and political subdivision of the State of Nevada (the "City"), and Black Mountain Golf & Country Club, a Nevada limited liability company (together with its permitted successors and assigns, "Owner"), and together with the City, the "Parties", and each, a "Party"), and dated for reference purposes as of _____, 2020 (the "Effective Date").

RECITALS

A. Owner owns that certain real property, consisting of approximately [one-hundred ninety-nine (199)] acres, more or less, formerly part of the now-retired Black Mountain Golf Course (the "Golf Course"), generally located north of Horizon Drive, south of the Union Pacific Railroad Henderson Spur, and between Mona Lane and Blackridge Road, in Henderson, Nevada and more particularly described on Exhibit A hereto (the "Property").

B. The Property is subject to that certain Agreement dated July 1, 1985 and recorded in the Office of the County Recorder, Clark County, Nevada ("Official Records") on July 18, 1985 in Book 2151 as Instrument No. 2110342 and on March 19, 1986 in Book 860519 as Instrument No. 00500 (the "Reuse Water Agreement") with respect to the construction and maintenance of two reuse water storage ponds (each, a "Pond"), pipeline and related improvements (collectively, the "Facilities") more particularly described on Exhibit B hereto.

C. The Parties have entered into a Development Agreement, dated as of the Effective Date, with respect to the development of the Property as a residential community as more particularly described in the Development Agreement (the "Planned Community") and desire to provide for the abandonment and removal of the Facilities and the mutual release of the Parties'

respective obligations under the Reuse Water Agreement, pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the foregoing Recitals are true and correct and shall be incorporated as part of this Agreement as though set forth below and as follows:

1. AGREEMENT

1.1. Release of Certain Obligations. It is the intent of the Parties to provide for the orderly abandonment and removal of the Facilities from the Property. Effective as of the Effective Date, Sections 16 and 19 of the Reuse Water Agreement are hereby deleted in their entirety. Owner shall be entitled to disconnect any existing water lines serving exclusively the Property from the Facilities and the reuse water system and connect such lines to the existing City potable water distribution system, subject to compliance with all applicable provisions of the Henderson, Nevada, Municipal Code (“Code”), including all rules, regulations, standards, criteria, manuals and other references adopted therein and all other City rules, general plans, policies, regulations, ordinances, fees, construction codes and laws, general or specific, including the then-current version of Title 15 or 19 of the Code.

1.2. Abandonment.

(a) Pond A Facilities. Not later than [_____] months following the Effective Date, the City shall abandon that portion of the Facilities identified on Exhibit B as the Pond A Facilities and record in the Official Records a release and reconveyance, in a form satisfactory to Owner, of all of City’s right and interest in that portion of the real property on which the Pond A Facilities are located (the “Pond A Relinquishment”). [If any portion of the Pond A Facilities has been publicly dedicated, the City shall vacate such portion of the Pond A Facilities not later [_____] months following the Effective Date.]

(b) Pond B Facilities. Not later than the first anniversary of the Effective Date, the City shall abandon that portion of the Facilities identified on Exhibit B as the Pond B Facilities and record in the Official Records a release and reconveyance, in a form satisfactory to Owner, of all of City’s right and interest in that portion of the real property on which the Pond B Facilities are located (the “Pond B Relinquishment”). [If any portion of the Pond B Facilities has been publicly dedicated, the City shall vacate such portion of the Pond B Facilities not later than the first anniversary of the Effective Date.]

(c) Termination Fee. To mitigate the impact of the Planned Community on the water network, Owner shall (i) pay _____ dollars

(\$ _____) to the City for the water enterprise fund within thirty days (30) following the recording of the latter to record of the Pond A Relinquishment and the Pond B Relinquishment (the "Termination Fee").

1.3. [DISCUSS: Responsibility for removal of Facilities, draining and filling ponds, etc.]

1.4. Termination of Reuse Water Agreement. Upon the performance of the City's obligations pursuant to Sections 1.2 and 1.3, and the payment of the Termination Fee, the Parties shall execute and cause to be recorded in the Official Records a termination of the Reuse Water Agreement.

2. GENERAL PROVISIONS

2.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the matters covered hereby. All prior negotiations, representations and agreements with respect thereto not incorporated in this Agreement documents are hereby canceled. All exhibits hereto are incorporated herein by this reference.

2.2. Modifications. All modifications to this Agreement are null and void unless reduced to writing and signed by the Parties hereto and recorded in the Official Records.

2.3. Third-Party Beneficiaries. This Agreement is intended for the exclusive benefit of Owner and the City and their respective permitted successors and assigns and is not intended and shall not be construed as conferring any benefit on any third party or the public generally.

2.4. Waiver. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of the City and/or Owner, as the case may be. No consent or waiver, express or implied, by either Party to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by such Party hereunder. Failure on the part of any Party hereto to complain of any act or failure to act of the other Party or to declare that other Party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such Party hereunder. Except as otherwise provided herein or by applicable law, inspection by, payment by or tentative approval or acceptance by the City or the failure of the City to perform any inspection hereunder shall not constitute a final acceptance of the work or any part thereof and shall not release Owner of any of its obligations hereunder.

2.5. Applicable Law; Venue. The laws of the State of Nevada shall govern the validity, construction, performance, enforcement and effect of this Agreement. Each of the Parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the Business Court of the Eighth Judicial District Court, sitting in Clark County,

Nevada and any appellate court thereof, in any Dispute arising out of or relating to this Agreement or any documents or agreements delivered in connection herewith or the transactions contemplated hereby or thereby, and each of the Parties hereto irrevocably and unconditionally (i) agrees not to commence any such Dispute except in such court, (ii) agrees that any claim in respect of any such Dispute may be heard and determined in such Nevada state court, and (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such Dispute in such Nevada state court. Each of the Parties hereto agrees that a final judgment in any such Dispute shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

2.6. Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE SUCH WAIVERS; (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS; (iii) IT MAKES SUCH WAIVERS VOLUNTARILY; AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

2.7. Compliance with Laws. The Parties shall, in the performance of their obligations hereunder, comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Agreement, including, but not limited to, the Federal Occupational Health and Safety Act and all state and federal laws prohibiting and/or related to the discrimination by reason of race, sex, age, religion or national origin.

2.8. Notices. All notices, demands and correspondence required or provided for under this Agreement shall be in writing and personally delivered, mailed by certified mail postage prepaid, return receipt requested, or delivered by professional courier service. Notices shall be addressed as follows:

To City: CITY OF HENDERSON
P.O. Box 95050, MSC 411
240 Water Street Henderson, Nevada 89009-5050
Attention: City Manager

With a copy to: City of Henderson

P.O. Box 95050, MSC 411
240 Water Street Henderson, Nevada 89009-5050
Attention: City Attorney

To Owner: [TBD LLC]

Attn:

With a copy to: Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, NV 89135-2958
Fax: (702) 796-7181
Attention: Tom Amick

Either Party may change its address by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or refusal, delivery by recognized professional courier service or the date delivery of mail is first attempted.

2.9. Remedies. In the event of a breach of this Agreement by any Party, the other Party shall have the right to seek, any and all remedies available at law or in equity, including without limitation specific performance, in order to compel compliance with this Agreement.

2.10. Interpretation. The captions appearing at the commencement of the articles and sections hereof are descriptive only and for convenience of reference and in no way whatsoever define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s). Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to sections and exhibits shall be to sections and exhibits to this Agreement, unless otherwise specified.

2.11. Severability. If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such terms does not materially impair the Parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the Parties.

2.12. Attorney's Fees and Costs. If any Dispute is instituted between or among the Parties in connection with this Agreement, the Party that prevails in such Dispute, as determined by a court of competent jurisdiction, shall be entitled to recover from the other Party all of its reasonable attorneys' fees and legal costs and expenses.

2.13. Successors and Assigns. This Agreement, including the Drainage Easement granted hereby and the covenants and agreements set forth herein, shall run with the land, does touch and concern the same, and is intended to and does burden the land subject hereto. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the respective heirs, successors, assigns, and legal representatives of the Parties. Each person or entity hereafter at any time granted or conveyed an interest in or to any part or portion of any of the Property shall be deemed to undertake performance and compliance with all of the terms, covenants, and conditions of this Agreement.

2.14. Force Majeure. Whenever a day is set on which, or a period of time is set in which, either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof may be extended as provided herein by a period of time equal to the number of days on or during which such Party is prevented from or is unreasonably interfered with, the doing or completion of such act, matter or thing because of labor disputes, civil commotion, war, warlike operation, sabotage, fire or other casualty, inability to obtain any material, or to obtain fuel or energy, severe weather or other acts of God (collectively, "Force Majeure Events"). The delayed Party must provide written notice to the non-delayed Party within thirty (30) calendar days of the commencement of the Force Majeure Event, together with reasonable evidence of the cause of such delay, to receive the benefit of the automatic extension of time, coextensive with the period of the unforced delay or longer as may be required by circumstances and as agreed to between the Parties.

2.15. Recording; Amendments. Promptly after execution hereof, an executed original of this Agreement shall be recorded in the Official Records. All amendments, transfers and assignments hereto must be in writing signed by the appropriate officers of the City and Owner, as applicable, in a form suitable for recordation in the Official Records.

2.16. Release. Each residential lot and each other parcel shown on a recorded subdivision map other than a parcel map or large lot final map within the Planned Community shall be automatically released from the encumbrance of this Agreement without the necessity of executing or recording any instrument of release upon the issuance of a certificate of occupancy with respect to a dwelling unit thereon.

2.17. Mutual Drafting. Each Party has participated in the drafting of this Agreement, which each Party acknowledges is the result of extensive negotiations between the Parties. In the event of any ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or

burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

[Signatures appear on the following pages]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the Effective Date.

City Council Ordinance No. _____ Date adopted: _____

CITY:

CITY OF HENDERSON

ATTEST:

By: _____
RICHARD A. DERRICK
City Manager/CEO

SABRINA MERCADANTE, MMC
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FUNDING:

NICHOLAS G. VASKOV CAO
City Attorney Review

JIM McINTOSH
Chief Financial Officer

APPROVED AS TO CONTENT:

PRISCILLA HOWELL
Director of Utility Services

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on the _____ day of _____, 20__ by _____ as _____ of the City of Henderson.

(Seal, if any)

(Signature of Notarial Officer)

OWNER:

Black Mountain Golf & Country Club,
a Nevada limited liability company

By: _____

Name:

Its:

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____
by _____ as _____ of Black Mountain Golf & Country
Club, a Nevada limited liability company.

(Seal, if any)

(Signature of Notarial Officer)

Exhibit A

The Property

Exhibit B

The Reuse Water Facilities