



# WASHOE COUNTY

"Dedicated To Excellence in Public Service"

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CM/ACM *De*  
Finance *De*  
DA *De*  
Risk Mgt. n/a  
HR n/a  
Other n/a

## STAFF REPORT

BOARD MEETING DATE: April 15, 2008

**DATE:** March 19, 2008

**TO:** Board of County Commissioners

**FROM:** Vahid Behmaram, Water Rights Manager, Dept. of Water Resources  
954-4647, [vbehmaram@washoecounty.us](mailto:vbehmaram@washoecounty.us) *1.13/*  
Paul Orphan, Engineering Manager, Department of Water Resources  
954-4614, [porphan@washoecounty.us](mailto:porphan@washoecounty.us) *EO*

**THROUGH:** Rosemary Menard, Director, Department of Water Resources *pm*

**SUBJECT:** **Approve and authorize the Chairman to execute the Fourth Amendment to the Water Dedication Agreement Adjusting Verified Dedication Amount between Nell J. Redfield Foundation, a non-profit corporation, Southwest Pointe Associates, LLC a Delaware limited liability company and Washoe County. (Commission District 1)**

### SUMMARY

Attached is the Fourth Amendment to the Water Dedication Agreement between Nell J. Redfield Foundation, a non-profit corporation, Southwest Pointe Associates, LLC, a Delaware limited liability company and Washoe County. This amendment reduces the amount of water rights dedication to the ArrowCreek subdivisions in accordance with the terms of the original agreement dated March 18, 1997.

*County Priorities/Goals supported by this item:* Preserve and Enhance Our Quality of Life – Effectively plan and manage use of our natural assets including water, air and open space. The Department of Water Resources will manage and protect regional water resources in a sustainable, cost-effective manner.

### PREVIOUS ACTION

The original water dedication agreement was executed on March 18, 1997. The first amendment to this agreement was executed on October 28, 1997. This amendment encumbered the water rights associated with the ArrowCreek subdivision in accordance with the terms of SAD 23. The second amendment to the Water Dedication Agreement, to adjust the dedication amount, was approved by the Board of County Commissioners on March 21, 2001. The third amendment was approved by the Board on July 27, 2004 to also adjust the dedication amount.

AGENDA ITEM # 6K(2)

## **BACKGROUND**

On March 18, 1997, the Board approved an agreement between Washoe County, the Nell J. Redfield Foundation and Southwest Pointe Associates. This agreement, in part, dealt with water rights dedication requirements for the ArrowCreek subdivision. It was the desire of the developers to utilize the Sierra Pacific (SPPCo), (currently Truckee Meadows Water Authority aka TMWA) water rights dedication formula (which is a function of the lot size) to determine water rights demand. Washoe County, however, felt that those demand calculations might be inadequate to serve the project.

The agreement resolved this issue by requiring a dedication equivalent to the Washoe County demand (1.12 acre-feet per lot), which consists of two components. The first component consists of water formally committed to the subdivisions according to the SPPCo demand calculations (currently referred to as TMWA Rule #7). The second component consists of water held in trust by Washoe County (1.12 acre-feet per lot less the SPPCo demand) until an actual consumption of the subdivision can be determined through a water consumption audit. The audit was to be at the developer's expense, subject to County approval with specific audit criteria. The criteria for this audit would be met once 600 developed lots received certificates of occupancy. At which point a review of meter readings from a minimum of 300 developed lots, with two full years of occupancy, would be used to determine the water consumption rate.

All parties agreed that once a water consumption audit was conducted the results from that audit would indicate either a deficit of water rights dedication, in which the developer would have to dedicate additional water rights, or a surplus of water rights dedicated, in which the surplus would be credited to the developer.

However, the criteria specified in the original agreement to conduct an accurate audit were not achieved in the time frame contemplated in the agreement. Therefore, in order to facilitate the progress of this project a Second Amendment was approved by the Board to reduce the Washoe County water rights demand from 1.12 acre-feet to 0.965 acre-feet per lot. The third amendment to the agreement in 2004 further reduced the dedicated amount to 0.8816 acre-feet per lot, which was based on analysis of additional metered consumption data.

Based on the review of new water consumption data from 2005, the Department of Water Resources has determined that the water rights demand can further be reduced from 0.8816 to 0.7371 acre-feet per lot. Nothing in this verification alters the provisions of Subsections 5.2, 5.3, 5.4 and 5.5 regarding future verification of actual water use, over-dedication or under-dedication of water rights, including without limitation developers' liability for shortfalls as stated therein.

## **FISCAL IMPACT**

There is no fiscal impact associated with this amendment.

**RECOMMENDATION**

It is recommended the Board of County Commissioners approve and authorize the Chairman to execute the Fourth Amendment to the Water Dedication Agreement Adjusting Verified Dedication Amount between Nell J. Redfield Foundation, a non-profit corporation, Southwest Pointe Associates, LLC a Delaware limited liability company and Washoe County.

**POSSIBLE MOTION**

Should the Board wish to implement the staff recommendation, a possible motion would be: "Move to approve and authorize the Chairman to execute the Fourth Amendment to the Water Dedication Agreement Adjusting Verified Dedication Amount between Nell J. Redfield Foundation, a non-profit corporation, Southwest Pointe Associates, LLC a Delaware limited liability company and Washoe County."

RM:PO:VB:lrs

Attachments

cc: Betsy Mellinger, Public Information Officer

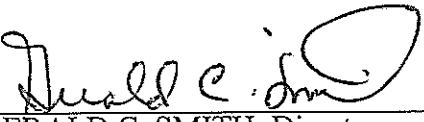
**FOURTH AMENDMENT TO WATER DEDICATION AGREEMENT**  
**ADJUSTING VERIFIED DEDICATION AMOUNT**

The undersigned parties have executed a certain Water Dedication Agreement dated March 18, 1997, as amended, (the "Agreement"). The capitalized words and defined terms in the Agreement shall have the same meanings when used herein. Pursuant to Subsection 5.2 and 5.3 of the Agreement, in the Third Amendment dated July 27, 2004, the parties verified the actual water usage on Southwest Pointe lots and stipulated to a Verified Dedication Amount of .8816 a.f. per lot, based on actual meter readings of Sampled Lots of .7228 a.f. per lot.

Pursuant to Subsection 5.4 of the Agreement, on August 9, 2005 the Developers by written notice initiated another verification of the actual water usage. The results of the consultant's verification and the County analysis are attached hereto as Exhibit "A". Based on actual meter usage of Sample Lots in calendar year 2005, the average amount of water used per lot for the 3 lot size categories is .6900 a.f. However, the Sampled Lots contain a lower percentage of larger lots than the percentage of the larger lots within the total project, and the actual meter readings for the larger lots within the Sampled Lots demonstrate higher meter readings than .6900 a.f. per lot. Therefore, in order to better estimate the total future water consumption by all the 1090 homes within the project, the parties agree to stipulate that the Verified Dedication Amount established at this time shall be .7371 a.f., in order to take into consideration the higher percentage of larger lots which are not within the Sampled Lots and are yet to be subject to a verification. By stipulating to a Verified Dedication Amount which is different than the actual meter usage of Sample

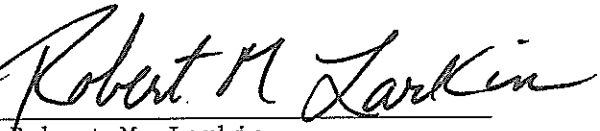
Lots, the parties do not waive or alter the provisions of Section 5 of the Agreement for purposes of future verifications, if any.

**THE NELL J. REDFIELD  
FOUNDATION, a nonprofit corporation**

By:   
GERALD C. SMITH, Director

Date: MARCH 6, 2008

**COUNTY OF WASHOE, a political  
subdivision of the State of Nevada, by  
and through the Department of Water  
Resources**

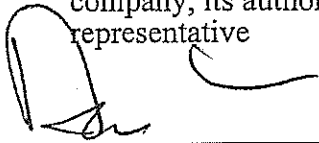
By:   
Robert M. Larkin,  
Title: Chairman,

Board of County Commissioners

Date: April 15, 2008

**SOUTHWEST POINTE ASSOCIATES,  
L.L.C., a Delaware limited liability  
company**

By: Westerra Management, L.L.C.,  
a Delaware limited liability  
company, its authorized  
representative

By:   
DEAN MENANTE, Vice-President

Date: MARCH 6, 2008

**EXHIBIT "A"**

<u>12,000 sq. ft. lots</u>	401 existing + 73 remaining = 474 @ an estimated consumption of 0.5951 acre-foot per lot = 282.0774 af
<u>½ acre lots</u>	200 existing + 161 remaining = 361 @ an estimated consumption of 0.7682 acre-foot per lot = 277.3202 af
<u>Custom Lots</u>	84 existing + 171 remaining = 255 @ an estimated consumption of 0.9569 acre-foot per lot = 244.0095 af

<u>1090 lots</u>	<u>803.4071 af</u>
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OR an average of 803.4071 acre-feet / 1090 lots = 0.7371