

March 3, 2023

Tony:

Attached is the signed document. I attached the photos you sent to the last pages as the exhibit.

Thank you for everything. You are approved to build your wall as noted in the pictures provided and per the agreement.

If you need anything else from us, please let me know.

Tami Wittich  
Last Chance Irrigation Co.  
P. O. Box 40692  
Reno, NV 89504  
(775)323-5224

**REVISED**

**MAR 06 2023**

**CITY OF RENO  
Community Development Dept**

APN: 018-253-15

When Recorded Return To:  
Last Chance Irrigation Company  
c/o McDonald Carano LLP  
100 W. Liberty St., 10<sup>th</sup> Floor  
Reno, NV 89501  
Attn: Eric Duhon

REVISED

MAR 06 2023

CITY OF RENO  
Community Development Dept

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the Social Security number of any person or persons (per NRS 239B.030)

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**LICENSE AND INDEMNIFICATION AGREEMENT**

THIS LICENSE AND INDEMNIFICATION AGREEMENT (the "Agreement"), dated for identification purposes as of the date last executed by the parties below (the "Effective Date"), is entered by and between LAST CHANCE IRRIGATION COMPANY, a Nevada corporation ("Last Chance") and Carol Reno, as trustee of the Reno Living Trust, dated September 9, 2013 ("Licensee").

Recitals

WHEREAS, Last Chance operates a canal system within Washoe County, Nevada, in an area generally known as the "greater Truckee Meadows" pursuant to certain easements, the location of which has been established by eminent domain, statutory dedication, prescription or grant, and the scope of which variously includes the channel of the canal ("Last Chance Canal"), along with associated canal banks, bank slopes, adjacent access roads or trails, and seepage in, under and through adjacent property (collectively, the "Last Chance Easement").

WHEREAS, Licensee owns that certain real property commonly known as 2600 Outlook Dr., in Reno, NV, with the APN 018-253-15 and more particularly described in Exhibit "A" (the "Property").

WHEREAS, Licensee desires to construct and maintain the Improvements, defined below, across a portion of the Property located within a portion of the Last Chance Easement.

WHEREAS, Last Chance is willing to grant Licensee access to the Last Chance Canal and to permit the construction, operation and maintenance of the Improvements within the Last Chance Easement subject to the terms and conditions set forth in this Agreement, each of which terms and conditions is a material inducement for Last Chance's consent.

NOW, THEREFORE, in consideration of the mutual covenants of good faith and promises by and between the parties set forth herein, and for other good and valuable consideration, the respective parties hereto agree as follows:

## 1. LICENSE

1.1 **Access to Last Chance Easement.** Subject to the terms set forth below, Last Chance hereby grants Licensee a nonexclusive license to (i) use that portion of the Last Chance Easement at the intersection of the Improvements and the Last Chance Easement (the "License Area") for the sole and exclusive purpose of constructing, operating, maintaining, repairing, replacing, reconstructing, and using those certain retaining walls and related improvements generally depicted on Exhibit "B", attached hereto and incorporated herein (collectively, the "Improvements"); and (ii) a right to enter over, upon and across any property owned, operated or controlled by the Last Chance within the License Area to construct, operate, maintain, repair, replace and reconstruct the Improvements, as contemplated by this Agreement; provided, Licensee's construction, use, occupancy, operation, repair, reconstruction or maintenance of the Improvements does not impair, impede or in any manner disrupt any use of the Last Chance Canal or the Last Chance Easement by Last Chance, including without limitation, the transportation of irrigation water through the Last Chance Canal. Licensee and its successors shall be solely and exclusively responsible for all cleaning, repair, replacement, operation and maintenance of the Improvements in the License Area and provided further, however, that Licensee shall not perform any significant repairs, replacements, reconstruction or modifications within the Last Chance Canal without Last Chance's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

1.2 **Duration of License.** The term of this Agreement shall be perpetual provided, and so long as Licensee is not in material default of any provision hereunder.

1.3 **No interference.** The licenses herein granted are limited and shall not permit the Licensee to use the Last Chance Canal or any of the Last Chance Easement in any manner as to impair, impede or in any manner disrupt any use of the Last Chance Canal, or the Last Chance Easement by Last Chance, including without limitation, the delivery of irrigation water through the Last Chance Canal or the quality of water naturally flowing in the Last Chance Canal or diverted from the Truckee River by Last Chance.

1.4 **Seepage.** Licensee understands and agrees that the Property is subject to seepage from the Last Chance Canal and that any improvements or buildings constructed or installed on the Property may be impacted, damaged or otherwise affected by such seepage.

## 2. CONSTRUCTION OF IMPROVEMENTS.

2.1 **Construction.** Licensee shall be solely responsible for all design, plans and construction of the Improvements; provided, however, the Improvements shall be designed and

constructed in full conformance with Last Chance's specifications and requirements, if any; and to minimize interference with and access to, and the regular cleaning and maintenance of, the Last Chance Canal. All designs and plans shall be submitted to Last Chance for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. All work performed by Licensee on or about the Last Chance Canal, including without limitation construction of the Improvements, must be reviewed and approved in writing in advance by Last Chance which approval shall not be unreasonably withheld, conditioned or delayed. Licensee shall be solely responsible for prosecuting the work on the Improvements and agrees to coordinate such construction with Last Chance in advance so as to minimize adverse impacts on Last Chance's canal and/or irrigation operations. Licensee shall notify Last Chance no later than 48 hours prior to commencing any construction or other work on the Improvements.

**2.1.1 Initial Construction Completion Deadline/Liquidated Damages.** No construction may proceed on the Improvements, or any other work contemplated hereunder until this Agreement has been executed by Last Chance and Licensee. LICENSEE MAY NOT PERFORM ANY CONSTRUCTION OR OTHER WORK WITHIN THE LICENSE AREA BETWEEN APRIL 1 AND OCTOBER 15 DURING ANY YEAR. Licensee acknowledges and agrees that Last Chance delivers irrigation water during such period, and Licensee shall perform the work diligently, expeditiously, and with adequate resources so as to complete all work within the License Area before or after such dates.

**2.2 Stormwater Drainage.** No storm water drainage or dumping of any hazardous materials shall be permitted into the Last Chance Canal whether in connection with the Improvements, Licensee's work hereunder or otherwise. The Improvements shall be designed, constructed and maintained to ensure that the storm water drainage from License Area into the Last Chance Canal shall not increase (as compared to the natural drainage existing prior to the construction of the Improvements) as a result of construction of the Improvements. Licensee further acknowledges and agrees that Washoe County utilizes the Last Chance Canal for stormwater discharge purposes outside of the irrigation season, and Licensee shall take all appropriate actions to prevent any escape of stormwater discharge from the License Area during any work on the Improvements.

**2.3 Cost of Construction.** Licensee shall be independently and solely responsible for all costs and expenses, including without limitation labor, material, maintenance, operation, repair, reconstruction and construction related costs and expenses, arising from the Improvements, including without limitation any claims, disputes, lawsuits, changes in work, unforeseen conditions or other claims arising from or in connection with such work, and any adverse impacts on the structure or integrity of the Last Chance Canal. Licensee shall also pay Last Chance's reasonable and customary engineering costs to review plans and specifications for Improvements and any subsequent work performed by Licensee within License Area under this Agreement, including without limitation review pursuant to Section 2.1 and 2.2. Licensee shall indemnify and hold harmless Last Chance and its agents, employees, officers and directors from and against any and all claims, damages, losses, costs and expenses arising from labor, material, maintenance or construction costs and expenses in connection with the Improvements and

construction thereof, and shall immediately remove any lien placed on the Last Chance Easement in connection with such work.

**2.4. Ownership of Improvements.** The parties acknowledge and agree that Licensee shall be the sole and exclusive owner of the Improvements.

**2.5. Maintenance.** During the term of this Agreement, Licensee and its successors and assigns shall be solely responsible for performing, and all costs incurred in connection with, all maintenance, cleaning, repairs, reconstruction, operation and replacements of the Improvements. Licensee shall maintain the Improvements in good condition and repair such that it does not impair or impede the conveyance of water through the Last Chance Canal. If Licensee fails to timely perform its obligations under this Section 2.5 after written notice from Last Chance and a thirty (30) day opportunity to cure, Last Chance may elect to perform such work at Licensee's expense. Except in the event of an emergency, (a) Licensee shall not, without Last Chance's prior written approval, which shall not be unreasonably withheld, conditioned or delayed, perform any maintenance or other work on the Improvements during the period between April 1<sup>st</sup> and October 15<sup>th</sup> during any year hereunder; and shall (b) provide Last Chance forty-eight (48) hours' advance written notice before doing any work on the Improvements within the License Area, provided, however, that the foregoing shall not apply to Licensee's normal cleaning activities associated with the Improvements.

### **3. LICENSEE DUTIES AND RESPONSIBILITIES**

**3.1 Cost Reimbursement.** Prior to performing any work and during the term of this License, Licensee shall reimburse Last Chance for its reasonable engineering and attorneys fees incurred in connection with the review and approval of the Improvements project and this Agreement.

**3.2 Liability Insurance.** At all times during the construction of the Improvements and any other construction activities adjacent to the Last Chance Canal, Licensee for itself or through its contractor performing the work in the License Area, shall provide at its expense and keep in force a commercial general liability and commercial automobile policy protecting Licensee and Last Chance against liability arising from negligent acts or omissions by Licensee, its officers, employees, agents or its invitees in or about the License Area arising as a result of the exercise by Licensee of its rights and privileges under this Agreement. Commercial general liability coverage shall include liability assumed under an insured contract. Last Chance shall be named as a Certificate Holder and included as an additional insured under the commercial general liability and as a designated insured under, commercial auto liability. The amount of such liability insurance shall be not less than \$2,000,000 per occurrence for bodily injury and property damage under commercial general liability and \$2,000,000 combined single limit for bodily injury and damage under commercial automobile liability. Licensee shall be responsible to provide notice as soon as practicable after receiving notice of cancellation from any insurers providing coverage required in this Agreement. Licensee's liability coverage shall be written as primary coverage for Last Chance as an additional insured and any insurance, or self-insurance

maintained by Last Chance shall be excess of and noncontributory with any insurance or self-insurance carried or offered as a protective device by Licensee on behalf of Last Chance. Insurance coverage, or any self-insurance or other protective device program/coverage maintained by the Licensee or its subcontractors shall apply on a first dollar basis or with application of a deductible or self-insured retention amount not to exceed \$50,000. Licensee shall provide, and shall require its contractors to provide, statutory worker's compensation and employer's liability insurance coverage for any individuals who will be using the License Area in the manner authorized under this Agreement. The employer's liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. A waiver of subrogation shall be provided in favor of Last Chance from any and all claims of damages alleged or otherwise by Licensee, its subcontractors, or either's insurance company against Last Chance. Evidence of the insurance coverage, any self-insurance or other protective device program referenced in this paragraph shall be provided to Last Chance by Certificates of Coverage, including specific insurance policy forms or endorsements relevant to the required provisions. All insurance certificates and proof of workers' compensation coverage must be provided to Last Chance prior to commencing the work.

**4. LICENSEE REPRESENTATIONS AND WARRANTIES.** Licensee represents and warrants to Last Chance at the time of execution and continuing during the term of this Agreement:

4.1 Licensee shall not, nor at any time shall the construction, operation, maintenance or repair of the Improvements, impair, impede or interfere with the delivery of water, the quality of water within, or use of Last Chance Canal by Last Chance; and

4.2 Licensee shall comply with all applicable laws, rules and regulations in exercising their respective rights and carrying out their respective obligations under this Agreement.

#### **5. LAST CHANCE DISCLAIMERS**

Licensee acknowledges and agrees that the Last Chance Canal is subject to flooding or overflow in times of extreme precipitation or other excessive flow events and Last Chance makes no representation or warranty, implied or expressed, as to the suitability of the location of the Improvements or Licensee's intended use of the License Area, or any expressed purpose whatsoever. Licensee acknowledges and agrees that they have been given a full opportunity to inspect and investigate every aspect of the Last Chance Easement and for the purpose of its intended use and accepts the property condition of the Last Chance Easement in all respects. Licensee specifically acknowledge and agree that the Last Chance Easement is being licensed by Last Chance on an "AS IS" basis and in the condition as of the date of this Agreement, and Last Chance makes no representations or warranties, express or implied, concerning the title to the real property constituting the Last Chance Easement, or scope, size or duration of such Last Chance Easement, suitability for Licensee's intended purposes, and that the rights granted to Licensee under this Agreement do not extend beyond such right, title or interest as Last Chance

may have in and to the Last Chance Easement. Licensee acknowledges and agrees the level of water in the Last Chance Canal can vary greatly and Last Chance makes no representation or warranty that any minimum level or duration of water will be conveyed through the Last Chance Canal.

## 6. INDEMNITY.

Licensee, as to itself and on behalf of its successors and assigns (collectively, the "Indemnifying Party"), releases, and shall indemnify, defend and hold harmless Last Chance and its officers, directors, and employees from and against any and all losses, claims, liabilities, damages to persons or property, costs and expenses, including reasonable attorneys' fees, made against or incurred by Last Chance resulting or arising from:

- (i) any willful or negligent act or omission of Indemnifying Party related to or affecting the use, operation, repair or maintenance of the Improvements;
- (ii) any breach of this Agreement or any representation or warranty by Indemnifying Party;
- (iii) the rights granted Indemnifying Party under this Agreement and Indemnifying Party's use of the Last Chance Canal;
- (iv) any point source pollution attributable to or arising from Licensee's work on the Improvements, or water quality issues attributable to the Improvements;
- (v) asserted by any person as a result of an incident on the License Area which is the result of the acts or omissions of Indemnifying Party, its officers, employees, or agents or any use by any person of the Improvements;
- (vi) any failure of the Improvements, or any escape of water from the Last Chance Canal, or unplanned impairment or interruption in the delivery of water caused by Indemnifying Party or a failure in the Improvements, excluding therefrom claims arising from physical damage to the Improvements directly caused solely by the negligent or willful misconduct of Last Chance; and
- (vii) claims related to water seeping or otherwise escaping from the Last Chance Canal caused by or attributable to any other improvement constructed by Licensee, its agents, contractors or assigns.

## 7. MISCELLANEOUS

7.1. It is understood and agreed that rights granted to the Licensee under this Agreement apply only to the License Area.

7.2 Any and all rights granted by Last Chance to Licensee under this Agreement are understood and agreed to be irrevocable by Last Chance during the term as long as Last Chance continues to own and operate the Last Chance Canal and Licensee is not in default of any obligation or provision herein. Licensee shall not be in default unless (1) Last Chance has delivered a "Notice of Default" to Licensee, which describes the default and the steps necessary to cure it and (2) Licensee fails to cure the default within 10 business days for monetary defaults or 30 days for non-monetary defaults, or if such non-monetary default cannot reasonably be

cured with such 30 day period, fails to take all necessary steps to cure such default within 30 days and diligently pursues such cure in a timely manner. No breach of this Agreement by Licensee shall entitle Last Chance or its successors or assigns to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect any other rights or remedies which may be available to Last Chance at law or in equity.

7.3. Except as otherwise expressly provided, this Agreement may be modified or amended only in writing with mutual consent of both parties.

7.4. This Agreement is intended only to benefit the parties hereto and their permitted successors and assigns, and does not create any rights, benefits or causes of action for any other person, entity or member of the general public. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective successors and assigns of the Last Chance Canal, Last Chance Easement, and License Area, and all Licensee obligations hereunder are intended to and shall be binding upon successors and assigns to the Improvements. Other than to a successor owner of Improvements, Licensee shall not assign its rights or obligations under this Agreement without the prior written consent of Last Chance, which consent shall not be unreasonably withheld, conditioned or delayed.

7.5. Should any provision in this Agreement be declared invalid, the remaining valid provisions shall remain in full force and effect.

7.6. This Agreement is made in, and shall be governed, enforced and construed under the laws of the State of Nevada. Disputes will be adjudicated in the County of Washoe.

7.7. All notices, demands or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be deemed given upon receipt or refusal when mailed postage prepaid, certified or registered mail, addressed to the parties as follows:

If to LAST CHANCE:

Last Chance Irrigation Company  
Attn: Thomas Ghidossi  
P. O. Box 40692  
Reno, NV 89504

If to Licensee:

Reno Living Trust  
Attn: Carol Reno  
2600 Outlook Drive  
Reno, NV 89509

Any person may change its address for notice by written notice given in accordance with the foregoing provisions.

7.8. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement, and that the parties are authorized by law to perform the services set forth herein.

7.9 This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and supersedes and replaces all prior understandings and agreements, whether verbal or in writing, with respect to the subject matter hereof.

7.10 The parties agree to take such additional actions and execute such additional documents as may be necessary or proper to carry out the transactions contemplated by this Agreement.

7.11 This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original; such counterparts shall together constitute but one agreement.

7.12 Should any party hereto employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including arbitration, declaratory relief or other litigation, including appeals or rehearing, the substantially prevailing party shall be entitled to receive from each opposing party thereto reimbursement for reasonable attorneys' fees and all costs, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees, and the cost of any bonds, whether taxable or not.

*[Signature page to follow]*

[Signature Page to License and Indemnification Agreement]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date and year stated below.

"LAST CHANCE"	"LICENSEE"
<p>LAST CHANCE IRRIGATION COMPANY, a Nevada corporation</p> <p>By: <u><i>Thomas C. Giddens</i></u></p> <p>Printed Name: <u>Thomas Giddens</u></p> <p>Its: <u>President</u></p> <p>Dated: <u>3/2/2023</u></p>	<p>By: <u><i>Carol Reno</i></u></p> <p>Carol Reno, as trustee of the Reno Living Trust, dated September 9, 2013</p> <p>Dated: <u>3/2/2023</u></p>

[Notary pages to follow]

[Notary Page to License and Indemnification Agreement]

STATE OF NEVADA )

ss:

COUNTY OF WASHOE )

On the 2<sup>nd</sup> day of March, 2023, before me, a notary public in and for said State, personally appeared Thomas Ghidossi proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Tami J Wittich  
[Signature of Notary Public]

STATE OF NEVADA )

ss:

COUNTY OF WASHOE )



On the 2<sup>nd</sup> day of March, 2023, before me, a notary public in and for said State, personally appeared Carol Reno proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Tami J Wittich  
[Signature of Notary Public]

