

Eagle Mountain City, Utah

RESOLUTION NO. R-07-2009

**A RESOLUTION OF THE CITY COUNCIL OF
OF EAGLE MOUNTAIN CITY, UTAH ACKNOWLEDGING
AND APPROVING ASSIGNMENT OF BANKED WATER ENTITLEMENT**

WHEREAS, Eagle Mountain City holds certain water rights creating a banked water entitlement for Oquirrh Mountain Ranch L.L.C, referred to as "the Assignor" to meet the requirements of the City for development; and

WHEREAS, the Assignor has assigned the banked water entitlement with the City as collateral to (the "Assignee"); and

WHEREAS, the Assignee has requested that the City acknowledge the assignment and the banked water entitlement and the City is prepared to acknowledge the entitlement and the assignment.

NOW THEREFORE, be it resolved by the City Council of Eagle Mountain City, Utah as follows:

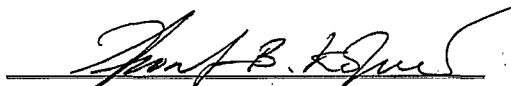
1. The "Assignment of Banked Water Entitlement with Eagle Mountain City" attached to this Resolution as Exhibit 1 is hereby acknowledged, received and approved by Eagle Mountain City.

2. The Mayor is authorized to execute the Acknowledgement and Consent to the Assignment of Banked Water Entitlement and to return this Resolution with the Acknowledgement to the Assignee upon completion of date of the relevant Promissory Note.

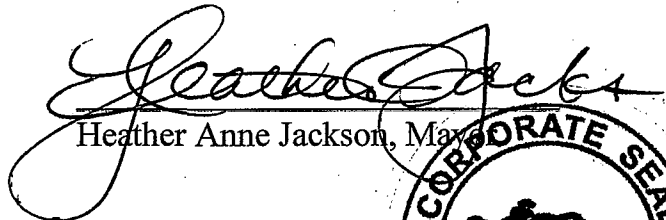
ADOPTED by the City Council of Eagle Mountain City, Utah, this 20th day of January, 2009.

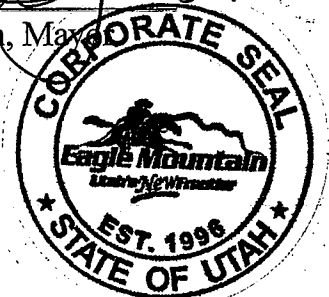
EAGLE MOUNTAIN CITY, UTAH

ATTEST:


Fionnuala B. Kofoed, City Recorder

{00046730.DOC /}


Heather Anne Jackson, Mayor



POSTED
1.23.09

CERTIFICATION

The above resolution was adopted by the City Council of Eagle Mountain City on the 20th day of January, 2009.

5 voting aye 0 voting nay

Fionnuala B. Kofod
Fionnuala B. Kofod, City Recorder

EXHIBIT

1

When Recorded Mail To:
Bishop Special Asset Management
Paul W. Hess, Manager
3 Triad Center, Suite 500
Salt Lake City, Utah 84180

**ASSIGNMENT OF BANKED WATER ENTITLEMENT
WITH EAGLE MOUNTAIN CITY**

This Assignment of Banked Water Entitlement (the "Assignment") is made and entered into this 4th day of February, 2009, by and between **OQUIRRH MOUNTAIN RANCH, L.L.C.** ("Assignor") and **BISHOP SPECIAL ASSET MANAGEMENT, LLC**, a Utah limited liability company ("Assignee")

RECITALS

WHEREAS, on **June 14, 2007**, Assignor purchased and was deeded a divided right to **227** acre-feet of water evidenced by water Right Number **54-1153 (a29551)**, approved for municipal use in Eagle Mountain City, Utah City, Utah ("City") under Change Application Number **a29551** (the "**1153 Water Right**").

WHEREAS, by **April 17, 2008**, Assignor also purchased and was deeded a divided right to **47.506** acre-feet of water evidenced by water Right Numbers **54-1146 (a28384)**, and **54-1147 (a28384)**, and approved for municipal use in the City under Change Application Number **a28384** (the "**1146 and 1147 Water Right**") (the 1153 Water Right and the 1146 and 1157 Water Right are referred to herein collectively as the "**Water Right**").

WHEREAS, City required and Assignor has deeded the Water Right to the City to be used in connection with the development of real property located in the Oquirrh Mountain Master Planned Area, Eagle Mountain in Utah County, Utah, more particularly described in the attached legal description, see **Exhibit "A"** (the "**Development**").

WHEREAS, City granted to Assignor the exclusive right to use the Water Right in the Development in and subject to, compliance with the requirements of the City for the payment of relevant fees, maintenance and use of the Water Right (referred to herein as the "**Banked Water Entitlement**").

WHEREAS, Assignor has requested and Assignee has agreed to extend credit to Assignor for use in the development of land in the Oquirrh Mountain Master Planned Area, in which an affiliate of Assignor owns an interest.

WHEREAS, Assignee desires to acquire from Assignor all of the Assignor's right, title, and interest in the Banked Water Entitlement as collateral security for all of Assignor's obligations in favor of Assignee.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignment. Assignor hereby presently and absolutely grants, conveys, and assigns to Assignee all of Assignor's right, title, and interest in and to 75 ACRE FEET of the Banked Water Entitlement; Assignor further assigns all Assignor's right, title, and interest in an to any claim, in law or equity, which Assignor may have in connection with or which Assignor might have by virtue of 75 ACRE FEET of the Banked Water Entitlement all as comprised of 47.506 af from water rights 54-1146 and 54-1147 and 27.494 af from water right 54-1153 .

2. Grant of Security Interest. To the extent, if any, the foregoing assignment is ineffective, or not complete, Assignor hereby grants and conveys to Assignee a lien and security interest in and to the Banked Water Entitlement and all of Assignor's right, title, and interest thereto (the "**Security Interest**"). Assignor further authorizes Assignee to file for record with the Utah Division of Corporations and Commercial Code a UCC-1 Financing Statement, giving public notice of the Security Interest.

3. Warranties. For the purpose of inducing Assignee to make loans to Assignor, and with full knowledge that Assignee will rely thereon, Assignor hereby represents, warrants, and covenants to Assignee as follows:

(a) Assignor shall duly perform all the conditions, covenants, and terms imposed on Assignor by the City regarding the Banked Water Entitlement.

(b) The Banked Water Entitlement has not previously been assigned by Assignor to secure any existing indebtedness of Assignor.

(c) Assignor is the owner of interest in the Banked Water Entitlement and Assignor's interests in the Banked Water Entitlement have not been previously pledged, conveyed, transferred, or hypothecated in whole or in part.

(d) Assignor is not in default under any of the terms, covenants, or conditions regarding the Banked Water Entitlement and will not permit a default to occur.

(e) The Banked Water Entitlement is free and clear of all defenses, setoffs, counterclaims, liens, and encumbrances of every kind and nature except for the requirements of the City for its use.

4. Obligation. This Assignment is made and the Security Interest granted to Assignee for payment by Assignor under that certain Promissory Note dated FEBRUARY 4th, 2009 in the original principal amount of \$200,000, together with interest, costs, fees, and expenses incidental thereto, and all extensions, modifications, or renewals there of (the "**Obligation**").

5. Satisfaction of the Obligation. Assignee will reassign to Assignor the rights, title, and interest in the Banked Water Entitlement when the Obligation is fully performed and satisfied and provide prompt and concurrent notices to the City of such reassignment.

6. Assignor's Covenants. Assignor shall defend the Banked Water Entitlement against all claims or demands of any and all persons claiming any security interest therein which is allegedly superior to that of Assignee. Assignor shall execute any other documents reasonably required by Assignee necessary to perfect the interest of Assignee in the Banked Water Entitlement. Assignor shall not further assign the Banked Water Entitlement or create or permit any lien, charge, or encumbrance upon the Banked Water Entitlement or otherwise transfer the Banked Water Entitlement or any interest therein without the prior written consent of the Assignee and notice to the City.

7. Assignee Not Responsible for Terms of the Banked Water Entitlement. It is further understood that this Assignment shall not operate to place responsibility for the Banked Water Entitlement upon Assignee, nor for the carrying out of any of the terms and conditions that the City may impose regarding the Banked Water Entitlement.

8. Liability of Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to exercise its rights under and pursuant to this Assignment, and nothing contained herein shall require Assignee to exercise its rights pursuant hereto, which rights shall be exercised at the sole option and discretion of Assignee after the default by Assignor under the Obligation or this Assignment. Assignee shall not be obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability under the City's requirements regarding the Banked Water Entitlement or under or by reason of this Assignment.

9. Assignor to Perform Obligations. Assignor covenants with Assignee to observe and perform all the obligations imposed upon Assignor as its interests appear under the Banked Water Entitlement and not to do or permit to be done anything to impair the security thereof; not to transfer or assign Assignor's obligations under the Banked Water Entitlement; not to encumber or hypothecate Assignor's interest in the Banked Water Entitlement to any person other than Assignee hereunder; not to alter, modify or change the terms of the Banked Water Entitlement or give up or waive any right or option Assignor may have under or pursuant to the Banked Water Entitlement or any interest therein so as to affect directly or indirectly, proximately or remotely, the rights of or a termination or diminution in the value of Assignor's or Assignee's interest thereunder.

10. Power of Attorney. Assignor appoints Assignee its attorney-in-fact to demand, receive, and enforce all rights under the Banked Water Entitlement and to give receipts, releases, and satisfactions and to sue for all rights either in the name of Assignor or in the name of Assignee, with the same force and effect as Assignor could have done if this Assignment had not been made.

11. Default. Assignor will be in default hereunder if any of the following events occur:

- (a) There is any default of the Banked Water Entitlement.
- (b) If any statement, representation, or warranty made herein or otherwise by Assignor to Assignee is untrue in any material respect when made.
- (c) When Assignor becomes insolvent or unable to pay debt as they mature or when Assignor makes an assignment for the benefit of creditors, or when any proceeding is instituted against or by Assignor under the United States Bankruptcy Code.
- (d) When there is any default of the Obligation for which this Assignment is given as collateral or of any term, condition, or covenant of this Assignment.

12. Remedies. Upon or at any time after default hereunder, Assignee, without in any way waiving such default or limited any other remedy, may after notice to the City, at its sole discretion and option, take any or all of the following actions:

- (a) Accelerate and declare immediately due and payable all indebtedness or payments remaining under the Obligation secured hereby.
- (b) Pursue any other remedy allowed it by the terms of this Assignment, the Obligation secured hereby, or any law, and receive from Assignor all its Costs and expenses in so doing, including attorney's fees and costs (and attorney's fees and costs for the appeal of any judicial action).

The remedies of Assignee are cumulative and not exclusive, and any waiver of Assignor's default shall not be considered a waiver of any other or future default. No failure or delay on the part of Assignee in exercising any rights, power, privilege, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any rights, power, privilege or remedy hereunder preclude any other or further exercise thereof.

13. Indemnification. Assignor shall, and does hereby agree, to indemnify Assignee for, and to hold Assignee harmless from, any and all liabilities, losses, or damages which may or might be incurred pursuant to the Banked Water Entitlement or under or by reason of this Assignment and from any an all claims and demands whatsoever that may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements regarding the Banked Water Entitlement. Should Assignee incur any such liability under the Banked Water Entitlement or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including any costs, expenses, and reasonable attorney's fees, including any fees from the appeal of any judicial action, shall be secured immediately upon demand and upon failure to do so, Assignee may, at its option, declare all sums secured hereby immediately due and payable.

14. Miscellaneous. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted in hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the agreements now existing or hereafter arising between Assignor and Assignee secured hereby, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under and pursuant to the terms of said agreements. The right of Assignee to full satisfaction of the Obligation secured hereby and to enforce any other security held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

15. Binding Effect. This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee, its successors, representatives, and assigns and shall be binding upon Assignor, its successors, representatives, and assigns.

16. Notices. For purpose of written notice to Assignor hereunder, Assignor hereby designates the following to be its address and agrees that Assignee will be in compliance with any notification requirements under this Assignment or any governing statutory law upon mailing of written notice to: **OQUIRRH MOUNTAIN RANCH, L.L.C. 65 NORTH 920 EAST, OREM, UTAH, 84097.**

17. Final Agreement. This Assignment, together with any written instruments or documents that are referred to in or made a part of this Assignment, is the final expression of the agreement between Assignee and Assignor concerning the subject matter of this Assignment and may not be contradicted by evidence of any alleged oral agreement.

OQUIRRH MOUNTAIN RANCH, L.L.C.

By: SAGE COMMUNITIES, L.L.C.,
MANAGER OF OQUIRRH MOUNTAIN
RANCH, L.L.C.



BY: SCOTT F. KIRKLAND, MANAGER
OF SAGE COMMUNITIES, L.L.C.

STATE OF UTAH)
) ss.
COUNTY OF Utah)

On the 15th day of January 2009, personally appeared before me Scott F. Kirkland, who duly acknowledged to me that he executed the foregoing instrument in his capacity as Manager of Sage Communities, L.L.C., as Manager of Oquirrh Mountain Ranch, L.L.C.



Fionnuala B. Kofod
NOTARY PUBLIC

CONSENT BY EAGLE MOUNTAIN CITY

Eagle Mountain City hereby consents to and approves the foregoing Assignment of Banked Water Entitlement with Eagle Mountain City.

Date: January 21, 2009 Eagle Mountain City

By: Leanne S. Seltzer, MAYOR
Print name and title of authorized City official



ATTEST:

BY: Fionnuala B. Kofod
CITY RECORDER

EXHIBIT A

(Attached to and forming part of Assignment of Banked
Water Entitlement With Eagle Mountain City)

The Northwest quarter of the Northwest quarter of Section 32, Township 5 South,
Range 1 West, Salt Lake Base and Meridian.

Excepting therefrom all oil, gas, minerals, and ores situated in, upon, or under the
above described tract on and, together with all rights in connection with or
relative to the exploration, mining, removal or sale of the same.