

FOURTH AMENDMENT TO RAILROAD CANYON RESERVOIR LEASE AGREEMENT

This Fourth Amendment to Railroad Canyon Reservoir Lease Agreement is made this 17<sup>th</sup> day of January, 1989, by TEMESCAL WATER COMPANY herein called "Lessor" and by CANYON LAKE PROPERTY OWNERS ASSOCIATION, INC., herein called "Lessee".

WITNESSETH:

WHEREAS, Lessor and Lessee (as assignee) are parties to that certain Railroad Canyon Reservoir Lease Agreement dated February 12, 1968 as amended on November 1, 1969, November 30, 1970 and August 1, 1974; and

WHEREAS, the parties hereto desire to make a further amendment to said Lease Agreement as set forth herein for clarification purposes.

NOW THEREFORE, it is agreed as follows:

1. COST INCREASE SUM

Paragraph 2(c)(1) of the Lease Agreement is hereby amended to read in full as follows:

"On or before September 1 of each year, Lessee shall pay to Lessor that amount in excess of \$52,000.00 obtained by multiplying \$52,000.00 by a fraction which has, as its numerator, the then lowest current price per acre foot of water available for purchase by Lessor for

the purpose of maintaining the lake level under Paragraph 3 and has as its denominator \$22.00; this sum shall be payable regardless of whether water is actually purchased by Lessor. In the event water for delivery into the lake can be purchased from more than one source, the lowest current price as used herein shall be the price offered by the source which offers the lowest actual cost including price of water and delivery and transmission costs of the water to the lake. If during the twelve months preceding September 1 of each year water has been purchased by lessor for delivery into the lake, the then lowest current price as used herein shall be computed by determining the average of the price per acre foot for water so purchased and the price of water as of September 1 of said year.

2. The last paragraph at the end of Section 3, at page 5 of the Lease Agreement is deleted and in its place is substituted the following paragraph:

"In any event, Lessor's liability for damages incurred by Lessee, Lessee's assignees, sublessees or other interested parties in any year for failure of Lessor to maintain the reservoir shall not exceed, in the aggregate 1/365th per day of that year's cost

increase sum for each day after 10 days that the lake level falls below 1372 M.S.L. at which the water elevation is maintained by Lessor or such year's annual cost increase sum whichever is less."

### 3, ARBITRATION

Paragraph 16 of the Lease Agreement is hereby revised to read in full as follows:

"All disputes and controversies of every kind and nature whatsoever between Lessor and Lessee arising out of or in connection with this lease as to the existence, validity, construction, meaning, interpretation, performance, non-performance, enforcement, operation, breach, continuance, or termination of this lease shall be determined by arbitration before a panel of three arbitrators in accordance with the Rules of the American Arbitration Association. Pending arbitration between the parties hereto, there shall be no cancellation or forfeiture of this agreement.

(a) Each party shall pay one-half (1/2) of the fees of the arbitrators and one-half (1/2) of the other costs of such arbitration proceeding.

(b) An award agreed to by a majority of the arbitrators so appointed shall be final and binding upon all parties to the proceeding during the period of this

lease, and judgment upon such award may be entered by any party in the highest court of the forum, state or federal, having jurisdiction.

(c) The parties agree that the provisions of this section shall be a complete defense to any suit, action or proceeding instituted in any Federal, State or local court or before any administrative tribunal with respect to any controversy or dispute which arises during the period of this lease and which is therefore arbitratable as set forth above. The arbitration provisions of this lease shall, with respect to such controversy or dispute, survive the termination or expiration of this lease.

(d) Nothing herein contained shall be deemed to give the arbitrators the authority, power, or right to alter, amend, change, modify, add to or subtract from any of the provisions of this contract."

4. SKIPPER'S ISLAND AND LIGHTHOUSE ISLAND

Paragraph 3, of the Amendment to Railroad Canyon Reservoir Lease Agreement dated November 1, 1969, entitled Lessee's Duties, is hereby amended to read in full as follows:

"In addition to the duties and obligations of Lessee set forth in said Lease Agreement, Lessee shall have additional duties and obligations in regard to

Skipper's Island and Lighthouse Island as follows:

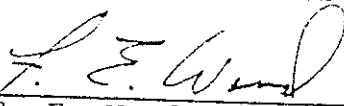
Lessee shall keep and maintain all improvements located thereon in a good and usable condition. Lessee shall also pay all taxes which are assessed on Skipper's Island and Lighthouse Island improvements.

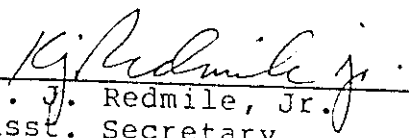
5. OTHER TERMS AND CONDITIONS

Nothing contained herein shall alter or otherwise affect the terms and conditions of said Lease Agreement (as amended) except as specifically set forth herein.

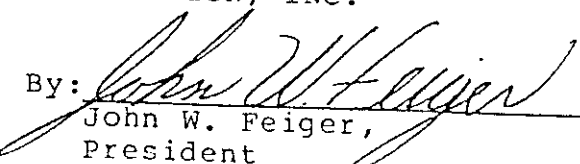
IN WITNESS WHEREOF the parties have executed this Fourth Amendment on the day and year first above written.


TEMESCAL WATER COMPANY

By:   
F. E. Wood,  
President

By:   
K. J. Redmile, Jr.  
Asst. Secretary

CANYON LAKE PROPERTY OWNERS  
ASSOCIATION, INC.

By:   
John W. Feiger,  
President

By:   
Robert E. Rogers  
Secretary

RCB/ma