



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: September 1, 2016

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: To adopt Resolution No. ____ and authorize the Mayor to sign the Easement Agreement between Carson City and Yturbide Revocable - 1992 Trust to purchase an eight thousand, one hundred thirty-seven (8,137) square foot permanent easement from a portion of APN 009-223-03 along Clear Creek Avenue for the purpose of roadway, utilities, and the associated improvements. (Stephanie Hicks, SHicks@carson.org)

Staff Summary: This agreement to purchase a permanent easement and the permanent easement deed provide the means to purchase the necessary easement for existing roadway and waterline improvements along Clear Creek Avenue. Clear Creek Road was constructed across the property frontage in the 1980's and a waterline was later constructed prior to 2005. The purchase of the easement will provide just compensation to the Owner and formalize the City's right to use this property for these purposes.

Agenda Action: Resolution

Time Requested: 10 minutes

Proposed Motion

I move to adopt Resolution No. ____ and authorize the Mayor to sign the Easement Agreement between Carson City and Yturbide Revocable - 1992 Trust to purchase an eight thousand, one hundred thirty-seven (8,137) square foot permanent easement from a portion of APN 009-223-03 along Clear Creek Avenue for the purpose of roadway, utilities, and the associated improvements.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

None

Background/Issues & Analysis

As part of the Clear Creek Avenue Sanitary Sewer Extension project, it was brought to the City's attention through the successor in interest of the property, that no agreements had been formalized for City improvements located along the property frontage. In the 1980's a portion of Clear Creek Road was constructed across the property frontage located at 5460 Lynette Lane (APN 009-223-03). Approximately 2 feet of paved roadway extends onto the subject property. Additionally, prior to 2005, the City was notified by NDOT that the freeway extension would jeopardize an existing waterline. At the time, the City coordinated with the current property owner to construct the line across the property frontage. However, due to the expedited timeframe necessary to relocate the waterline, no formal agreement was put into place.

Although it was determined that it was not necessary to utilize this property frontage for the sewer extension project, it was determined that it was necessary to formalize the prior agreements and provide just compensation to the Owner for use of the property. Therefore, City staff has been working with the Owner for

the last two years to formalize the agreement and to purchase a permanent easement of 8,137 square feet from a portion of APN 009-223-03 along Clear Creek Avenue.

Pursuant to an appraisal performed by the Johnson Valuation Group, Ltd., the just compensation totals \$36,596. On August 5, 2016, staff was notified by the Owners that the offer has been accepted.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 266.265 & 271.265, Development Standards, Table 12.1, Minimum Right-of-Way Widths.

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number: Water Fund: 520-3505-435.70-40

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: The cost of the permanent easement is \$36,596. The amount was budgeted in the Clear Creek Sewer Line Replacement project funded in part by the Water Fund in FY2016.

Alternatives

Do not adopt the resolution and do not authorize the Mayor to sign Easement Agreement between Carson City and Yturbide Revocable - 1992 Trust.

Adopt the resolution with modifications.

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

RESOLUTION NO. _____

A RESOLUTION ADOPTING AND APPROVING CARSON CITY'S EASEMENT AGREEMENT WITH THE YTURBIDE REVOCABLE - 1992 TRUST, TO PURCHASE AN EIGHT THOUSAND, ONE HUNDRED THIRTY-SEVEN (8,137) SQUARE FOOT PERMANENT EASEMENT FROM A PORTION OF APN 009-223-03 ALONG CLEAR CREEK AVENUE FOR THE PURPOSE OF ROADWAY, UTILITIES, AND THE ASSOCIATED IMPROVEMENTS.

WHEREAS, NRS 266.265 authorizes the purchase of real property for the benefit of the City and entering into the above-referenced Easement Agreement is authorized by law; and

WHEREAS, Carson City desires to purchase a permanent easement for the purpose of roadway, utilities and the associated improvements upon, under, over and across the property; and

WHEREAS, the Yturbide Revocable - 1992 Trust located at 5460 Lynette Lane, (APN 009-223-03) has accepted the appraised value of the subject portion of their property along Clear Creek Road and has executed the subject Easement Agreement; and

NOW, THEREFORE, BE IT RESOLVED, that the terms and conditions of the Easement Agreement for the purpose purchasing necessary permanent easement, is hereby adopted and approved; and

BE IT FURTHER RESOLVED that the Easement Agreement, for the purpose of acquiring a permanent easement and the Easement Deed for necessary easement shall be attached in full thereto, and that a copy of this Resolution and two signed Agreements (two originals) shall be executed, and recorded, and that payment shall be made to Yturbide Revocable - 1992 Trust.

APN 009-223-03 (Portion)

AFTER RECORDING RETURN TO:
STEPHANIE HICKS
CARSON CITY PUBLIC WORKS
3505 BUTTI WAY
CARSON CITY, NV 89701-3498

EASEMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2016,
between the following:

an undivided 25% interest to Thomas Michael Yturbide, Jr., Trustee of the Yturbide Revocable - 1992 Trust;

an undivided 25% interest to Jennifer Ann Yturbide, Trustee of the Carlini/Yturbide Trust;

an undivided 25% interest to Paul J. Yturbide, Trustee of the P&W Yturbide 2015 Trust;

an undivided 12.5% interest to Kathy L. Yturbide, an unmarried woman; and

an undivided 12.5% interest to Alexander Daniel Yturbide, a single man

hereinafter called the OWNER, and the CARSON CITY, NEVADA, A CONSOLIDATED MUNICIPALITY, hereinafter called the CITY,

WITNESSETH:

1. The OWNER, for and in consideration of and subject to performance of the promises and covenants of the CITY, as hereinafter provided, agrees as follows:

(a) To convey to the CITY a permanent easement and right-of-way consisting of approximately 8,137 square feet of land, being a portion of APN 009-223-03, for the purpose of roadway, utilities and the associated improvements upon, under, over and across the property; said land situate, lying, and being in Carson City, State of Nevada and more particularly described in Exhibit "A" and depicted in Exhibit "B" attached hereto and made a part hereof.

(b) To deliver to the CITY an Permanent Easement Deed granting to the CITY a permanent easement and right-of-way for the property described in Exhibit "C", and the Permanent Easement Deed for the property described in Exhibit "A" and depicted in Exhibit "B".

(c) To be responsible for OWNER's property (a portion of portion of APN 009-223-03), including the maintenance of risk and liability insurance for loss or damage until such date as OWNER has delivered the before mentioned Permanent Easement Deed to the CITY, or such earlier date as OWNER has given physical possession of said subject property to the CITY.

(d) To permit the CITY, its authorized agents and contractors to enter in and upon OWNER'S Exhibit "A" property (being a portion of APN 009-223-03), for which a permanent easement is granted upon execution of this agreement.

(e) To the fullest extent permitted by law, OWNER shall indemnify, hold harmless and defend, not excluding the CITY's right to participate, the CITY from and against all liability, APN

009-223-03 (Portion)

claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of the negligent or willful acts or omissions of

OWNER, its officers, employees, and agents arising out of their performance or nonperformance of this Agreement. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This indemnification obligation is conditioned upon receipt of written notice by the indemnifying party within thirty (30) days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorney's fees and costs for the indemnified party's chose right to participate with legal counsel.

2. The CITY, in consideration of subject to performance of the promises and covenants of the OWNER herein above set forth, agrees as follows:

(a) To pay to the OWNER in the manner hereinafter provided the sum of THIRTY SIX THOUSAND, FIVE HUNDRED NINETY-SIX AND NO/100 DOLLARS (\$36,596), which shall be the total purchase price for all that said permanent easement herein granted by OWNER.

(b) To the fullest extent permitted by law, CITY shall indemnify, hold harmless and defend, not excluding the OWNER's right to participate, the OWNER from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of the negligent or willful acts or omissions of CITY, its officers, employees, and agents arising out of performance or nonperformance of this Agreement. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This indemnification obligation is conditioned upon receipt of written notice by the indemnifying party within thirty (30) days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorney's fees and costs for the indemnified party's chosen right to participate with legal counsel.

3. It is mutually agreed and understood by the CITY and by the OWNER as follows:

(a) That all of the facilities and improvements constructed by CITY pursuant to the terms of this Agreement referred to herein shall be designed and constructed by CITY at its expense and risk in accordance with Carson City Development Standers.

(b) If OWNER or CITY fails, neglects, or refuses to do or perform any act or thing herein covenanted and agreed to be done or performed, such failure, neglect, or refusal will constitute a breach and default of this Agreement. If OWNER or CITY fails, neglects, or refuses to cure the default within a reasonable time following a written request of the other party, such other party, at its option, may correct such default and thereupon recover from the other party the cost thereof or may require the specific performance by the other party of all terms, conditions, and covenants of this Agreement. The foregoing will be in addition to any other remedy now or hereafter provided by law. In the event the government approvals required

APN 009-223-03 (Portion)

for the performance of this Agreement are not obtained, despite the good faith efforts and recommendations of the parties, then the parties shall have the rights and remedies afforded them by law, in addition to any rights and remedies conferred under this Agreement.

(c) The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity or any remaining provision.

(d) The law of the State of Nevada shall be applied in interpreting and construing this Agreement.

(e) This Agreement and Easement Deed, referred to in this Agreement, hereinafter collectively call the TRANSACTION DOCUMENTS, shall be executed and delivered contemporaneously, and once executed, the TRANSACTION DOCUMENTS shall constitute the entire contract and agreement between the parties hereto, and no modification hereof shall be binding unless such modification is set forth in writing, and signed by the parties hereto.

(f) All property descriptions are fixed and no adjustment will be necessary to meet construction requirements.

(g) All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors and assigns, as the case may be, of the respective parties.

(h) As used herein the term OWNER shall include the plural as well as the singular, and the feminine as well as the masculine and the neuter.

(i) As set forth in the TRANSACTION DOCUMENTS, the CITY shall have the right to adapt and improve the whole or any part of said property acquired by CITY from OWNER in accordance with the provisions of N.R.S. 271.265.

(j) This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

APN 009-223-03 (Portion)

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

OWNER

Yturbide Revocable - 1992 Trust

By: Thomas Michael Yturbide, Jr.
Thomas Michael Yturbide, Jr., Trustee

Carlini/Yturbide Trust

By: Jennifer Ann Yturbide
Jennifer Ann Yturbide, Trustee

P&W Yturbide 2015 Trust

By: Paul J. Yturbide
Paul J. Yturbide, Trustee

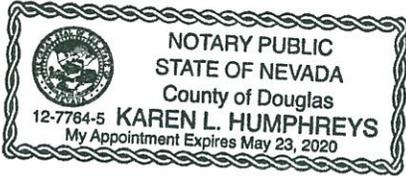
By: Kathy L. Yturbide
Kathy L. Yturbide

By: Alexander Daniel Yturbide
Alexander Daniel Yturbide

State of Nevada
~~Carson City~~ County of Douglas

This instrument was acknowledged before me on August 07, 2016 (date) by Thomas Michael Yturbide, Jr. as Trustee of of the Yturbide Revocable - 1992 Trust.

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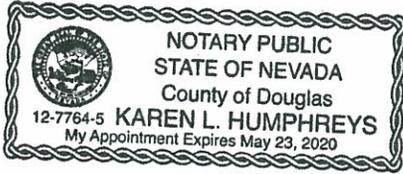
Karen L. Humphreys
(Signature of notarial officer)

(Title and rank (optional))

State of Nevada
~~Carson City~~ County of Douglas

This instrument was acknowledged before me on August 17, 2016 (date) _____ by _____ Jennifer Ann Yturbide as Trustee of of the Carlini/Yturbide Trust.

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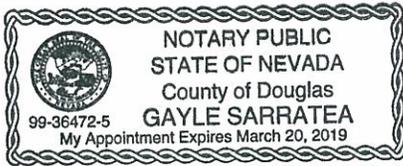
Karen L. Humphreys
(Signature of notarial officer)

(Title and rank (optional))

State of Nevada
~~Carson City~~ Douglas County

This instrument was acknowledged before me on 22 August, 2016 (date) _____ by _____ Paul J. Yturbide as Trustee of of the P&W Yturbide 2015 Trust.

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Gayle Sarratea
(Signature of notarial officer)

NOTARY

(Title and rank (optional))

State of Nevada
~~Carson City~~ County of Douglas

This instrument was acknowledged before me on August 19, 2016 (date) _____ by _____ Kathy L. Yturbide.

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Karen L. Humphreys
(Signature of notarial officer)

(Title and rank (optional))

State of Nevada
Carson City

This instrument was acknowledged before me on August 17, 2016 (date) _____ by _____ Alexander Daniel Yturbide.

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Karen L. Humphreys
(Signature of notarial officer)

(Title and rank (optional))

APN 009-223-03 (Portion)

CITY:

REVIEWED AND RECOMMENDED BY:

DARREN SCHULZ, P.E., PUBLIC WORKS DIR. Date

APPROVED FOR LEGALITY AND FORM:

CARSON CITY DISTRICT ATTORNEY Date

BOARD APPROVED BY:

ROBERT L. CROWELL Date
MAYOR

ATTEST:

SUSAN MERRIWETHER Date
CLERK-RECORDER

EXHIBIT "A"
A.P.N. 009-223-03

All that certain real property situate within a portion of the W1/2 SW1/4 NW1/4 SW1/4 of Section 32, Township 15 North, Range 20 East, M.D.M., Carson City, State of Nevada, being a portion of that certain real property described in that Government Patent No. 1176075, dated October 28, 1957, being more particularly described as follows:

BEGINNING at a point 30.00 feet northerly of, as measured at right angles to the South 1/16 line of the Southwest 1/4 of said Section 32, and 30.00 feet easterly of, as measured at right angles to the West line of said Section 32, said point lies on the easterly right-of-way line of the roadway commonly known as Horatio Lane, said point also bears North 45°48'45" East, 42.40 feet from the South 1/16 corner of said Section 32 and Section 31 of Township 15 North, Range 20 East, M.D.M.;

THENCE parallel with said West line of Section 32, and along said easterly right-of-way line, North 00°46'41" East, 30.00 feet to a point that is 60.00 feet northerly of, as measured at right angles to said South 1/16 line, and 30.00 feet easterly of, as measured at right angles to said West line of Section 32;

THENCE easterly and parallel with said South 1/16 line of Section 32, South 89°09'10" East, 271.24 feet to a point that is 30.00 feet westerly of, as measured at right angles to the East line of said W1/2 SW1/4 NW1/4 SW1/4 of Section 32, said point lies on the westerly right-of-way line of the roadway commonly known as Lynnett Lane;

THENCE southerly and parallel with said East line, South 00°45'57" West, 30.00 feet to a point that is 30.00 feet northerly of, as measured at right angles to said South 1/16 line;

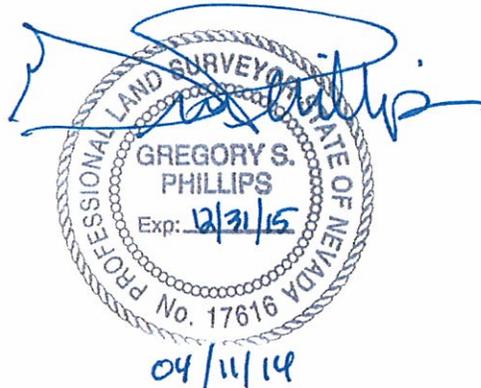
THENCE westerly and parallel with said South 1/16 line, North 89°09'10" West, 271.25 feet to the point of **BEGINNING** and end of this description.

Containing 8,137 square feet, more or less.

SEE EXHIBIT "B" attached hereto and made a part hereof.

The **BASIS OF BEARING** for this description is based on the Nevada Coordinate System of 1983, West Zone, NAD 83/94, being said South 1/16 line of the Southwest 1/4 of Section 32 having a bearing of North 89°09'10" West.

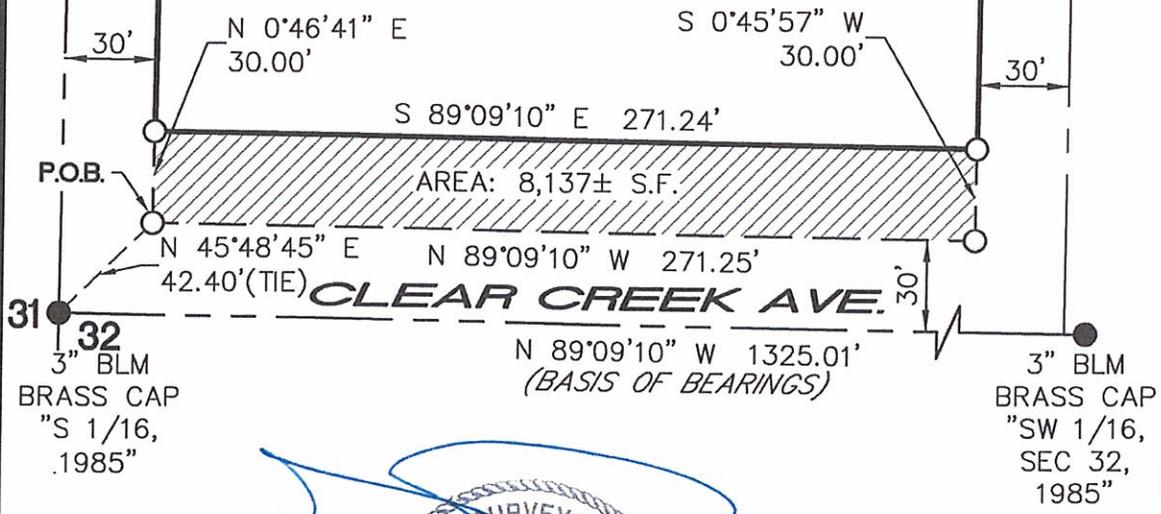
Prepared by:
Lumos & Associates
Gregory S. Phillips, P.L.S. 17616
800 E. College Parkway
Carson City, NV 89706



HORATIO LN.

LYNNETT LN.

A.P.N. 009-223-03
PATENT #1176075
YTURBIDE, REV TR. & ET AL



[Handwritten signature]

GREGORY S. PHILLIPS
PROFESSIONAL LAND SURVEYOR STATE OF NEVADA
No. 17616
Exp: 12/31/15

04/11/14

LUMOS & ASSOCIATES
800 E. COLLEGE PARKWAY
CARSON CITY, NEVADA 89706
PH. (775) 883-7077 FAX (775) 883-7114

EXHIBIT "B"
BEING THE SOUTH 30' OF A.P.N. 009-223-03
PORTION OF SEC. 32, T15N, R20E, MDM

Date: APRIL 2013
Scale: 1" = 60'
Job No: 8181.007

CARSON CITY NEVADA

EXHIBIT "C"

APN 009-223-03 (Portion)

AFTER RECORDING RETURN TO:
STEPHANIE HICKS
CARSON CITY PUBLIC WORKS
3505 BUTTI WAY
CARSON CITY, NV 89701-3498

PERMANENT EASEMENT DEED

THIS DEED, made this ____ day of _____, 2016,
between:

an undivided 25% interest to Thomas Michael Yturbide, Jr., Trustee of the Yturbide Revocable - 1992 Trust;
an undivided 25% interest to Jennifer Ann Yturbide, Trustee of the Carlini/Yturbide Trust;
an undivided 25% interest to Paul J. Yturbide, Trustee of the P&W Yturbide 2015 Trust;
an undivided 12.5% interest to Kathy L. Yturbide, an unmarried woman; and
an undivided 12.5% interest to Alexander Daniel Yturbide, a single man, hereinafter called GRANTOR, and CARSON CITY, NEVADA, A CONSOLIDATED MUNICIPALITY, hereinafter called CITY,

WITNESSETH:

That the GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00), lawful money of the United States of America, and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents grant unto the CITY and to its assigns forever, for those purposes as contained in Chapter 271 of the Nevada Revised Statutes, a perpetual easement and right-of-way for public purposes upon, over and across certain real property to the CITY; said land is shown and more fully described in Exhibits "A1" and "B1", attached hereto and made a part hereof;

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; with the exception of any and all reservations as are previously hereinabove expressly excepted from this conveyance.

TO HAVE AND TO HOLD all and singular the said perpetual easement, together with the appurtenances, unto the said GRANTEE and to any heirs, successors and assigns forever.

IN WITNESS WHEREOF said GRANTOR has hereunto signed on the day and year first above written.

GRANTOR

Yturbide Revocable - 1992 Trust

By: Thomas Michael Yturbide, Jr.
Thomas Michael Yturbide, Jr., Trustee

Carlini/Yturbide Trust

By: Jennifer Ann Yturbide
Jennifer Ann Yturbide, Trustee

P&W Yturbide 2015 Trust

By: Paul J. Yturbide
Paul J. Yturbide, Trustee

By: Kathy L. Yturbide
Kathy L. Yturbide

By: Alexander Daniel Yturbide
Alexander Daniel Yturbide

State of Nevada
~~Carson City~~ County of Douglas

August 17, 2016

This instrument was acknowledged before me on _____ (date) _____ by _____ Thomas Michael Yturbide, Jr. as Trustee of of the Yturbide Revocable - 1992 Trust.

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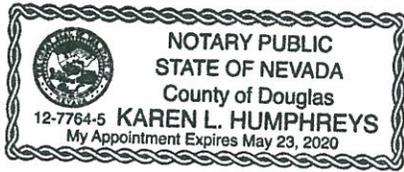
Karen L. Humphreys
(Signature of notarial officer)

(Title and rank (optional))

State of Nevada
~~Carson City~~ County of Douglas

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Karen L. Humphreys
(Signature of notarial officer)

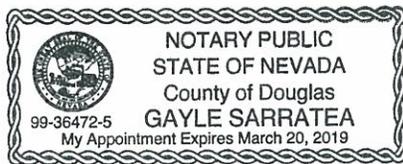
(Title and rank (optional))

State of Nevada

~~Carson City~~
County of Douglas

This instrument was acknowledged before me on 22nd August, 2016 (date) by Paul J. Yturbide as Trustee of of the P&W Yturbide 2015 Trust.

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Gayle Sarratea
(Signature of notarial officer)

NOTARY

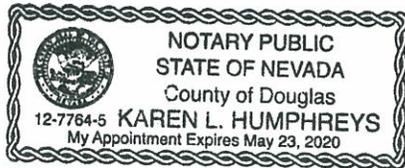
(Title and rank (optional))

State of Nevada

~~Carson City~~ County of Douglas

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Karen L. Humphreys
(Signature of notarial officer)

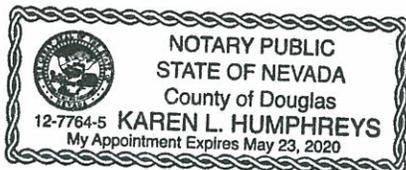
(Title and rank (optional))

State of Nevada

Carson City

This instrument was acknowledged before me on August 17, 2016 (date) by Alexander Daniel Yturbide.

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Karen L. Humphreys
(Signature of notarial officer)

(Title and rank (optional))

APN 009-223-03 (Portion)

CITY:

REVIEWED AND RECOMMENDED BY:

DARREN SCHULZ, P.E., PUBLIC WORKS DIR. Date

APPROVED FOR LEGALITY AND FORM:

CARSON CITY DISTRICT ATTORNEY Date

BOARD APPROVED BY:

ROBERT L. CROWELL Date
MAYOR

ATTEST:

SUSAN MERRIWETHER Date
CLERK-RECORDER

EXHIBIT "A"
A.P.N. 009-223-03

All that certain real property situate within a portion of the W1/2 SW1/4 NW1/4 SW1/4 of Section 32, Township 15 North, Range 20 East, M.D.M., Carson City, State of Nevada, being a portion of that certain real property described in that Government Patent No. 1176075, dated October 28, 1957, being more particularly described as follows:

BEGINNING at a point 30.00 feet northerly of, as measured at right angles to the South 1/16 line of the Southwest 1/4 of said Section 32, and 30.00 feet easterly of, as measured at right angles to the West line of said Section 32, said point lies on the easterly right-of-way line of the roadway commonly known as Horatio Lane, said point also bears North 45°48'45" East, 42.40 feet from the South 1/16 corner of said Section 32 and Section 31 of Township 15 North, Range 20 East, M.D.M.;

THENCE parallel with said West line of Section 32, and along said easterly right-of-way line, North 00°46'41" East, 30.00 feet to a point that is 60.00 feet northerly of, as measured at right angles to said South 1/16 line, and 30.00 feet easterly of, as measured at right angles to said West line of Section 32;

THENCE easterly and parallel with said South 1/16 line of Section 32, South 89°09'10" East, 271.24 feet to a point that is 30.00 feet westerly of, as measured at right angles to the East line of said W1/2 SW1/4 NW1/4 SW1/4 of Section 32, said point lies on the westerly right-of-way line of the roadway commonly known as Lynnett Lane;

THENCE southerly and parallel with said East line, South 00°45'57" West, 30.00 feet to a point that is 30.00 feet northerly of, as measured at right angles to said South 1/16 line;

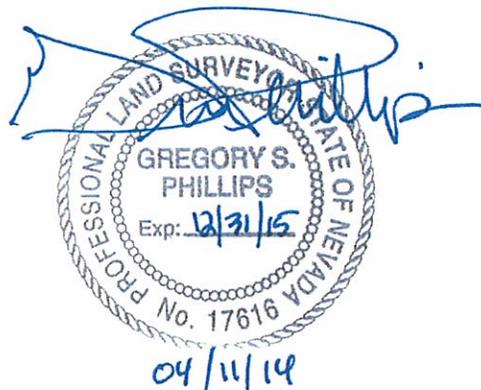
THENCE westerly and parallel with said South 1/16 line, North 89°09'10" West, 271.25 feet to the point of **BEGINNING** and end of this description.

Containing 8,137 square feet, more or less.

SEE EXHIBIT "B" attached hereto and made a part hereof.

The **BASIS OF BEARING** for this description is based on the Nevada Coordinate System of 1983, West Zone, NAD 83/94, being said South 1/16 line of the Southwest 1/4 of Section 32 having a bearing of North 89°09'10" West.

Prepared by:
Lumos & Associates
Gregory S. Phillips, P.L.S. 17616
800 E. College Parkway
Carson City, NV 89706



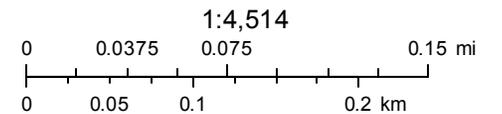
APN 009-223-03 Site Map



APN 009-223-03
5460 Lynette Ave

August 19, 2016

- CCLocations □ Carson City Boundary 🏠 Carson City Fire Station
- Street Centerline 🟡 Parcels (For Aerial Photos)
- Parcel Numbers



Carson City, Douglas County GIS, BLM, USGS, 2016
Carson City, Douglas County GIS, 2016