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R.P.T.T. \$ #3

**Deed of  
Conservation  
Easement  
for  
Mott Creek**

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 16<sup>th</sup> day of June, 2000, by Howard W. Herz and Kregg L. Herz ("Grantors") in favor of Douglas County, a political subdivision of the State of Nevada, Post office Box 218, Minden, Nevada 89423 ("Grantee").

P R E A M B L E

The Grantors are the sole owners in fee simple of certain real property in Douglas County, Nevada, a portion of which is more particularly described in Exhibit A and B attached hereto and incorporated by this reference as the Mott Creek Channel (the "Channel").

Since the property possesses natural, scenic open space, and agricultural values (collectively, "conservation values") of great importance to Grantors and the people of Douglas County; in particular, the agricultural open space and to maintain or enhance the quality of air or water; and

In view of the fact that Grantors intend that the conservation values of the Channel be preserved and maintained by the continuation of land use patterns, including without limitation, those relating to open space existing at the time of this grant, that do not significantly impair or interfere with those values; and

As Grantors further intend, as owners of the Channel, to convey to Grantees the right to preserve and protect the conservation values of the Channel in perpetuity; and

Grantee is a political subdivision of the State and a "Holder" within the meaning of NRS 111.410(2) (a). As Grantee agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the conservation values of the Channel for the benefit of this generation and the generations to come; and

Grantor, on January 6, 2000, received approval for the Mottsville-Herz Estates (henceforth called Black Diamond Estates on Mott Creek) tentative map and special use permit for a Private Development. The approval allowed Grantor to develop 4 parcels for residential development.

Condition G of a letter dated January 13, 2000 from the Community Development office of Douglas County to Howard W. Herz states as a condition of approval that:

G. A drainage and open space conservation easement to the top of Mott Creek's stream banks, inclusive of the Special Flood Hazard Area, which is entirely contained on Parcel Z.

This Easement for Conservation is to comply with the condition "G" as stated above.

In consideration of the above and the mutual covenants, terms, conditions

and restrictions contained and pursuant to the laws of Nevada, in particular NRS 111.390 to 111.440, Grantors voluntarily grant and convey to Grantee a conservation easement ("Easement") in perpetuity over the Channel of the nature and character and to the extent set forth as follows:

1. Purpose. It is the purpose of this Easement and Covenant to assure that the Channel will be retained forever in its natural condition and to prevent any use of the Channel that will significantly impair or interfere with the conservation values of the Channel. Grantors intend that this Easement will confine the use of the Channel. Grantors intend that this Easement will confine the use of the Channel to such activities, including, without limitation, those involving natural open space with the purpose of this Easement.

2. Rights of Grantee. To accomplish the purpose of this Easement the following rights and conveyed to Grantee by this Easement:

(a) To preserve and protect the conservation values of the Property;

(b) To enter upon the Channel at reasonable times in order to monitor Grantor's compliance with and to enforce the terms of this Easement; provided that the entry shall be upon prior reasonable notice to Grantors, and Grantee shall not unreasonably interfere with the Grantor's use and quiet enjoyment of the Channel; and

(c) To prevent any activity on or use of the Channel that is inconsistent with the purpose of this Easement and to require the restoration of any areas or features of the Channel that may be damaged by an inconsistent activity or use, pursuant to paragraph 7.

3. Prohibited Uses. any activity on or use of the Channel inconsistent with the purpose of this Easement and Covenant is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Subdivision or development.

(b) Non-agricultural and open space conservation use.

4. Reserved Rights. Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Channel, including the right to engage in or permit or invite others to engage in all uses of the Channel that are not expressly prohibited herein and are not inconsistent with the propose of this Easement.

5. Perpetual Restriction of Natural Stream Course. Grantor and Grantee mutually agree to preserve the natural stream course in its condition at the time of this agreement. Removal of diseased or dead growth for fire protection and prevention shall be done in a manner consistent with the preservation of the natural stream course.

6. Covenant Runs with the Land. this restrictive Covenant to perpetually restrict the use of the Channel shall run with the land. It may only be modified or terminated by a court of competent jurisdiction in accordance with the principles or law and equity as provided in NRS 111.430 (2) (or and successor provision as may be then applicable), or with the consent of Grantee upon the substitution of adequate alternate restrictions.

7. Grantee's Remedies. If Grantee determines that Grantors are in violation of the terms of this Easement or Covenant or that a violation is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Channel resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Channel so injured. If Grantors fail to cure the violation within thirty (30) days after receipt of notice thereof from the Grantee, or under circumstances there the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement or Covenant, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the property to the condition that existed prior to any such injury. Without limiting Grantors' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Channel. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent and mitigate significant damage to the conservation values of the Channel, and Grantee may pursue its remedies under this paragraph without prior notice to Grantors or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantors agree that Grantee's remedies at law for any violation of the terms of this easement are adequate and that Grantee shall be entitled to the injunctive relief described under this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, Grantee's Remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

8.1 Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of the Easement of Covenant against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit including, without limitation, attorneys' fees, shall be borne by Grantee.

8.2 Grantee's Discretion. enforcement of the terms of this Easement or Covenant shall be at the discretion of Grantee, and an forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or

of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy to be construed as a waiver.

8.3 Waiver of Certain Defenses. Grantors hereby waive any defense of laches, estoppel, or prescription.

8.4 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Channel resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Channel resulting from such causes.

9. Access. No right of access by the general public to any portion of the Channel is conveyed by this agreement.

10. Hold Harmless. Grantors shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Channel, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in paragraphs 8; and (3) the existence or administration of this Easement.

11. Extinguishment. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be extinguished only after public hearing and approval by the planning commission, board of county commissioners or in a court of competent jurisdiction.

12. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to another governmental body or an organization that is a qualified organization at the time of transfer under Section 170 (h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable). as a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

13. Subsequent transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Channel, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantors to perform any action required by this paragraph shall not impair the validity of the Easement or limit its enforceability in any way.

14. Estoppel Certificates. Upon request by Grantors, Grantee shall within twenty (20) days execute and deliver to Grantors any document, including an Estoppel Certificate, which certifies Grantors' compliance with any obligation of Grantors contained in this Easement and otherwise evidences the status of the Easement as may be requested by Grantors.

15. Notices. Any notices, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

✓  
To Grantors: Howard W. Herz  
Kregg L. Herz  
Post Office Box 1000  
Minden, Nevada 89423

To Grantee: Douglas County Community Development  
c/o Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423

or to such other address as either party from time to time shall designate by written notices to the other.

16. Recordation. Grantee shall record this instrument and an acceptance in timely fashion in the official records of Douglas County, Nevada and may rerecord it at any time as may be required to preserve its rights in this Easement.

17. General Provision.

(a) Controlling Law. The interpretation and performance of this easement shall be governed by the laws of the State of Nevada.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of the Easement and policy and purpose of NRS 111.390 to 111.440. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. this instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Joint Obligation. The obligations imposed by this Easement upon Grantors shall be joint and several.

(g) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Channel.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interests in the Easement or Channel, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Captions. The captions in this instrument have been inserted solely for convenience or reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling;

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

/////  
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IN WITNESS WHEREOF Grantors and Grantee have set their hands on the day and year first above written.

Dated: June 16, 2000

Howard W. Herz  
Howard W. Herz, Grantor

Dated: June 16, 2000

Kregg L. Herz  
Kregg L. Herz, Grantor

Dated: June 20, 2000

Jacques Etchegoyen  
JACQUES ETCHGOYEN  
Chairman, County Commission  
Grantee

STATE OF NEVADA,

County of Douglas .....

SS.

On 6-20-00 .....

DATE

personally appeared before me,

a Notary Public (or judge or other authorized person, as the case may be), .....

Jacques Etcheberry .....

who acknowledged that he executed the above instrument.

IN WITNESS WHEREOF, I have hereunto  
set my hand and affixed my official stamp at my office  
in the County of Douglas .....,  
the day and year in this certificate first above written.

Janice K. Condon  
Signature of Notary



CARLISLE'S FORM NO. 36 N (ACKNOWLEDGEMENT GENERAL) — B35945

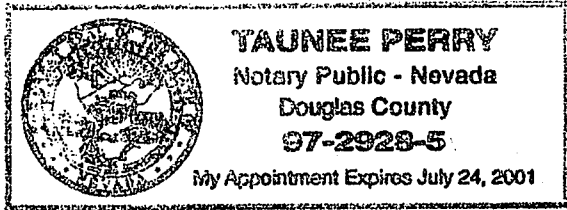
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STATE OF NEVADA )  
 ) SS.  
COUNTY OF DOUGLAS )

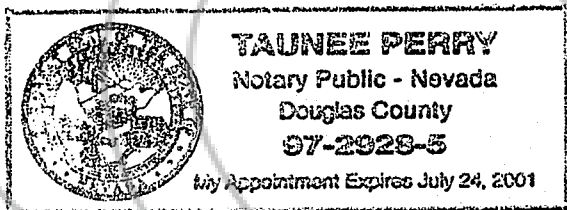
On June 16, 2000, before me, a notary public,  
personally appeared HOWARD W. HERZ, personally known (or) proved) to me to be  
the person whose name is subscribed to the above instrument who acknowledged that he  
executed the instrument.



Taunee Perry  
Notary Public

STATE OF NEVADA )  
 ) SS.  
COUNTY OF DOUGLAS )

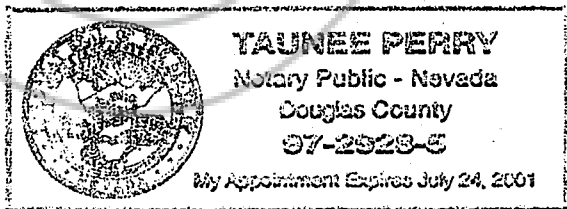
On June 16, 2000, before me, a notary public,  
personally appeared KREGG L. HERZ, personally known (or) proved) to me to be the  
person whose name is subscribed to the above instrument who acknowledged that he  
executed the instrument.



Taunee Perry  
Notary Public

STATE OF NEVADA )  
 ) SS.  
COUNTY OF DOUGLAS )

On June 16, 2000, before me, a notary public,  
personally appeared HOWARD + KREGG HERZ, personally known (or) proved) to me to  
be the persons whose names is subscribed to the above instrument who acknowledged that  
he executed the instrument.



Taunee Perry  
Notary Public

# Legal Description for Douglas County Mott Creek Conservation Easement - Eastern Portion

## EXHIBIT "A"

All that certain lot piece, parcel or portion of land situate, lying and being within the North 1/2 of the Southeast 1/4 of Section 4, Township 12 North, Range 19 East, Mount Diablo Meridian, Douglas County, Nevada and more particularly described as follows:

All that portion of Adjusted Parcel C as described in deed filed for record in Book 1197 at page 4962 as document number 0427093, Official Records of Douglas County, Nevada and shown as Adjusted Parcel C on the Certain Record of Survey for Howard W. Herz recorded January 9, 1990 in Book 190 at page 1630, as document number 217903, of Official records of Douglas County, Nevada and all that portion of Parcel F as described in deed filed for record July 3, 1990 in Book 790 at page 223 as document number 229505, Official Records of Douglas County, Nevada and also known as Assessor's Parcel Numbers 19-040-230 and 19-040-250 respectively and more particularly described as follows:

Commencing at the East 1/4 corner of aforesaid Section 4 as shown on aforesaid map: thence along the true North line of the Southeast 1/4 of said Section 4, South 89°53'42" West 767.42 feet to the most Northeasterly corner of adjusted Parcel D as shown on said map, which point is also the most Northeasterly corner of aforesaid Parcel F; thence along the boundary of said parcels the following courses and distances: South 00°27'24" West 233.78 feet; thence South 00°11'00" East 160.46 feet; to a common point on the boundary line of aforesaid Adjusted Parcel C; thence along the boundary line of said Parcel C North 89°59'01" East 189.44 feet; thence South 00°14'51" West 217.74 feet to a point common with aforesaid adjusted parcels C and F; thence continuing along said line South 00°14'51" West 50.00 feet; thence South 00°05'56" East 77.00 feet; thence South 89°59'01" West 302.83 feet to the TRUE POINT OF BEGINNING and a common point on the boundary line of aforesaid Parcel F; Thence leaving said boundary line North 87°02'13" West 8.41 feet; Thence South 70°27'57" West 192.09 feet; Thence South 72°14'41" West 62.43 feet; Thence South 81°48'29" West 61.67 feet; Thence South 64°30'29" West 96.41 feet to a point on the Southerly boundary line of said Parcel F; Thence along said boundary line North 89°59'01" East 164.55 feet; thence leaving said boundary line North 70°30'03" East 13.37 feet; thence North 73°04'51" East 217.89 feet; thence North 83°00'00" East 11.54 feet to a point on the Easterly boundary of said parcel F; thence along said boundary North 00°05'56" West 63.79 feet to the true point of beginning. Containing 0.443 acres more or less.

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# Legal Description for Douglas County Mott Creek Water Users Easement - Western Portion

## EXHIBIT "B"

All that certain lot piece, parcel or portion of land situate, lying and being within the North 1/2 of the Southeast 1/4 of Section 4, Township 12 North, Range 19 East, Mount Diablo Meridian, Douglas County, Nevada and more particularly described as follows:

All that portion of Adjusted Parcel C as described in deed filed for record in Book 1197 at page 4962 as document number 0427093, Official Records of Douglas County, Nevada and shown as Adjusted Parcel C on the Certain Record of Survey for Howard W. Herz recorded January 9, 1990 in Book 190 at page 1630, as document number 217903, of Official records of Douglas County, Nevada and all that portion of Parcel F as described in deed filed for record July 3, 1990 in Book 790 at page 223 as document number 229505, Official Records of Douglas County, Nevada and also known as Assessor's Parcel Numbers 19-040-230 and 19-040-250 respectively and more particularly described as follows:

Commencing at the East 1/4 corner of aforesaid Section 4 as shown on aforesaid map: thence along the true North line of the Southeast 1/4 of said Section 4, South 89°53'42" West 767.42 feet to the most Northeasterly corner of adjusted Parcel D as shown on said map, which point is also the most Northeasterly corner of aforesaid Parcel F; thence along the boundary of said parcels the following courses and distances: South 00°27'24" West 233.78 feet; thence South 00°11'00" East 160.46 feet; to a common point on the boundary line of aforesaid Adjusted Parcel C; thence along the boundary line of said Parcel C North 89°59'01" East 189.44 feet; thence South 00°14'51" West 217.74 feet; thence continuing along said line South 00°14'51" West 50.00 feet; thence South 00°05'56" East 77.00 feet; thence South 89°59'01" West 302.83 feet to a common point on the boundary line of aforesaid Parcel F; thence along the boundary line of said Parcel F South 00°05'56" East 133.00 feet; thence South 89°59'01" West 419.05 feet to the West line of the Northwest 1/4 of the Southeast 1/4 of said Section 4; thence along said line South 00°02'44" East 13.48 feet to the TRUE POINT OF BEGINNING; Thence leaving said boundary line South 58°25'43" West 37.91 feet; thence North 84°13'13" West 42.08 feet; thence South 67°09'07" West 11.88 feet; thence South 53°23'21" West 18.52 feet to a point on the Westerly boundary of said parcel F; thence along said boundary line South 00°02'44" East 76.85 feet; thence South 55°51'02" West 579.69 feet to the most Westerly point of said parcel F; thence along the most Southerly boundary of said parcel F; South 89°49'22" East 115.39 feet; Thence leaving said South line North 47°14'46" East 86.29 feet; Thence North 51°35'19" East 155.47 feet; Thence North 53°13'00" East 64.39 feet; Thence North 45°00'54" East 50.52 feet; Thence North 50°16'38" East 131.46 feet; Thence North 68°16'50" East 60.32 feet; Thence North 46°39'06" East 47.69 feet to a point on the Southerly boundary line of said parcel F; thence North 00°02'44" West 65.36 feet to the true point of beginning. Containing 0.704 acres more or less.

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COPY

REQUESTED BY  
Howard Herz  
IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2000 JUN 20 AM 9: 28

LINDA SLATER  
RECORDER

\$ 18<sup>00</sup> PAID KJ DEPUTY

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