

DA 99-145
Robert M. ...

DEED OF CONSERVATION EASEMENT

R.P.T. # 3

APN PTN 1200-16-301-001

This Deed of an Open Space and Conservation Easement is made this 15th day of May 2001, by BING CONSTRUCTION COMPANY OF NEVADA, through its President, D. Gerald Bing, at PO Box 487, Minden, Nevada (Grantor), in favor of Douglas County (County or Grantee), at PO Box 218, Minden, Nevada.

PREAMBLE

The Grantor is the sole owner in fee simple of certain real property in Douglas County, Nevada, having an address at 1226 Kimmerling, and more particularly described in the attached Exhibit A (the Property), which is incorporated by this reference.

The Grantor submitted a Development Application (DA99-145) to make a major modification to its existing Special Use Permit (SUP 93-32) on its property on April 11, 2000, before the Douglas County Planning Commission. The property is being used as a gravel and materials pit. The Development Application requested expansion of the pit and a reduction of a buffer zone.

Condition 3 of the Special Use Permit approval required that the applicant dedicate a permanent Open Space and Conservation Easement on the Property, more particularly described in the attached Exhibit B (the Easement Property), which is incorporated by this reference, that prohibits all development, including building and grading in the Easement Property, and requires it to be maintained free of debris.

In consideration of the statements above, the mutual covenants, terms, conditions, and restrictions contained in this Deed, the Grantor voluntarily grants and conveys to Grantee an Open Space and Conservation Easement in perpetuity over the Easement Property, of the nature and character and to the extent as follows:

1. Purpose

It is the purpose of this Open Space and Conservation Easement to assure that the property covered by this easement will be retained in its undeveloped condition, and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. The Grantor intends that this Conservation Easement will confine the use of the property as undeveloped open space and that it will be maintained in a nuisance free condition. The Grantor agrees that all development, including building and grading, is prohibited.

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DAVID J. ...
COUNTY CLERK

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NO. 2001.086

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2. Rights of Grantee

To accomplish the purpose of this easement the following rights are conveyed to Grantee by the easement:

- (a) To preserve and protect the conservation values of the easement;
- (b) To enter upon the easement at reasonable times in order to monitor Grantor's compliance with and to enforce the terms of this easement; provided that the entry will be after reasonable notice to Grantor, and Grantee will not unreasonably interfere with Grantor's use and quiet enjoyment of the property; and
- (c) To prevent any activity on or use of the easement that is inconsistent with the purpose of this Open Space and Conservation Easement and to require the restoration of any areas or features of the easement that may be damaged by any inconsistent activity or use.

3. Prohibited Uses

Any activity on or use of the easement inconsistent with the purpose of this easement is prohibited. The following activities and uses are expressly prohibited:

- (a) subdivision or development
- (b) commercial or industrial use
- (c) storage of anything, including any type of debris, asphalt, clean fill, or any other item
- (d) nuisance

4. Reserved Rights

The Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the property, including the right to engage in or permit or invite others to engage in all uses of the property that are not expressly prohibited and are not inconsistent with the purpose of this easement.

5. Grantee's Remedies

If Grantee determines that Grantor is in violation of the terms of this easement or that a violation is threatened, Grantee must give written notice to Grantor of the violation and demand corrective action sufficient to cure the violation and, where the violation involves

injury to the property resulting from any use of activity inconsistent with the purpose of the easement, to restore the portion of the property injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty-day period, fails to begin curing the violation within the thirty-day period, or fails to continue diligently to cure the 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, to enjoin the violation, *ex parte* as necessary, by temporary or a permanent injunction, and to require the restoration of the property to the condition that existed prior to any injury.

Grantor agrees that Grantee's remedies at law for any violation of the terms of this easement are inadequate and that Grantee will be entitled to the injunctive relief described under this paragraph, both prohibitive and mandatory, in addition to any 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 are cumulative and are in addition to all remedies now or in the future existing at law or in equity.

6. Enforcement Discretion

Enforcement of the terms of this easement is at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this easement in the event of any breach of any term of this easement by Grantor will not be deemed or construed to be a waiver by Grantee of the 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 will impair any right or remedy or be construed as a waiver.

6.1 Acts Beyond Grantor's Control

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

6.2 Attorney's Fees

In the event that there is a default under this Agreement and it becomes necessary for either party hereto to employ the services of an attorney, with or without litigation, the losing party to the controversy agrees to pay to the successful party a reasonable attorney's fee and, in addition, such reasonable costs and expenses as are incurred.

6.3 Hold Harmless

Grantor shall defend, indemnify, save, and keep harmless Grantee, its boards, officers, agents, and employees against all liabilities, judgments, costs, and expenses which may in any way accrue against Grantee as a consequence of the granting of this easement except claims or litigation arising through (and only to the extent of) the sole negligence or sole willful misconduct of the Grantee, its officers or employees.

7. Access

No right of access by the general public or any member of the public to any portion of the property is conveyed by this easement.

8. Extinguishment

If circumstances arise in the future that render the purpose of this easement impossible to accomplish, this easement can be terminated or extinguished, in whole or in part, after public hearing and approval by the Douglas County Planning Commission and the Board of County Commissioners, or by judicial proceedings in a court of competent jurisdiction, on application by either or both Grantor and Grantee.

8.1 Condemnation

If the easement of the burdened property is taken in whole or in part, by exercise of the power of eminent domain, Grantee will be entitled to compensation in accordance with applicable law.

9. Assignment

This easement is not transferable by Grantor. This easement shall be appurtenant to and run with the property.

10. Notices

Any notice, demand, request, consent, approval, or communications that either party desires or is required to give to the other will be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Bing Construction Company of Nevada
PO Box 487
Minden, Nevada 89423

To Grantee: Douglas County
PO Box 218
Minden, Nevada 89423

or to any other address that either party may designate by written notice to the other, or to any transferee of ownership for Grantor at the record address.

11. Recordation

Grantee will record this instrument and an acceptance of the easement in timely fashion in the official records of Douglas County, Nevada, and may re-record it any time as may be required to preserve its rights in this easement.

12. General Provisions

12.1 Controlling Law – The interpretation and performance of this easement is governed by the laws of the State of Nevada.

12.2 Severability – If any provision of this easement, or its application to any person or circumstance is found to be invalid, the remainder of the provisions of this easement, or the application of the provision to persons or circumstances other than those as to which it is found to be invalid will not be affected.

12.3 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.

12.4 No Forfeiture – Nothing contained in this deed will result in a forfeiture or reversion of Grantor's title in any respect.

12.5 Successors – The covenants, terms, conditions, and restrictions of this easement is binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns and will continue in a servitude running in perpetuity with the property.

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12.6 Termination of Rights and Obligations – A party's rights and obligations under this easement terminate upon transfer of the party's interest in the easement or property, except that liability for acts or omissions occurring prior to transfer will survive transfer.

The Grantor has signed on the day and year written above.

Grantor

Bing Construction Company of Nevada

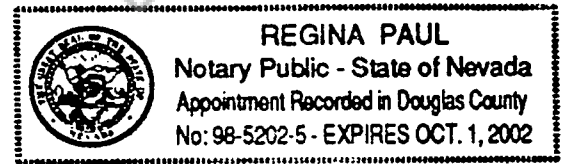
By: [Signature]
D. Gerald Bing, President
Bing Construction Company of Nevada

STATE OF NEVADA)
)ss:
COUNTY OF DOUGLAS)

On this 7th day of May, 2001, before me, a notary public, personally appeared **D. Gerald Bing**, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed in the within instrument and acknowledged to me that he executed the same in his authorized 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.

[Signature: Regina Paul]
NOTARY PUBLIC



Accepted on behalf of Douglas County
this 15th day of May, 2001.

By: [Signature: Bernard W. Curtis]
Bernard W. Curtis, Chairman
Douglas County Commissioners

Attest: [Signature: Barbara Reed]
Barbara Reed
Douglas County Clerk
BY: [Signature: Cocha Lord] DEPUTY

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EXHIBIT

A

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EXHIBIT A

The land referred to herein is situated in the State of Nevada, County of Douglas, described as follows:

LEGAL DESCRIPTION NO. 1

The Southwest 1/4 of the Southwest 1/4 and the West 3/4 of the South 1/2 of the Northwest 1/4 of the Southwest 1/4 of Section 16, Township 12 North, Range 20 East, M.D.B. & M.

APN 1220-16-401-001

LEGAL DESCRIPTION NO. 2

The East 1/4 of the South 1/2 of the Northwest 1/4 of the Southwest 1/4 of Section 16, Township 12 North, Range 20 East, M.D.B. & M.

APN 1220-16-301-002

LEGAL DESCRIPTION NO. 3

All that certain lot, piece or parcel of land situate in the County of Douglas, State of Nevada, more particularly described as follows, to-wit:

That certain piece of parcel of land, being situated in the Northeast 1/4 of the Southeast 1/4 of Section 17, Township 12 North, Range 20 East, M.D.B. & M., County of Douglas, State of Nevada, being more particularly described as follows:

BEGINNING at the East 1/4 corner of said Section 17, said point being the TRUE POINT OF BEGINNING; proceed thence South 89°50'37" West along the East-West centerline of said Section 17, a distance of 1287.34 feet to a point on the Easterly side of a farm equipment and maintenance road; thence South 00°39'30" East along the Easterly side of said road, a distance of 511.47 feet; thence South 46°15'41" East, a distance of 27.99 feet; thence North 88°08'09" East, a distance of 236.91 feet; thence South 02°58'09" West, a distance of 208.36 feet; thence South 43°31'21" East, a distance of 27.54 feet; thence North 89°59'09" East, a distance of 118.93 feet; thence South 18°00'26" West, a distance of 603.22 feet to a point on the Southerly line of the Northeast 1/4 of the Southeast 1/4 of said Section 17; thence North 89°46'18" East along said Southerly line a distance of 1088.73 feet to the Southeast corner of the Northeast 1/4 of the Southeast 1/4 of Section 17; thence North 00°12'42" West along the East line of said Section 17, a distance of 1324.00 feet returning to the TRUE POINT OF BEGINNING.

APN 1220-17-701-001

LEGAL DESCRIPTION NO. 4

All that certain lot, piece, or portion of land situate, lying and being within the Southwest 1/4 of Section 16, Township 12 North, Range 20 East, M.D.B. & M., Douglas County, Nevada and more particularly described as follows:

The North 1/2 of the Northwest 1/4 of the Southwest 1/4 of said Section 16; the West 1/2 of the Northeast 1/4 of the Southwest 1/4 of said Section 16 and the North 1/2 of the Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of said Section 16.

APN 1220-16-301-001

LEGAL DESCRIPTION NO. 5

In Section 16, Township 12 North, Range 20 East, M.D.B. & M.

North 1/2 of Northwest 1/4 of the Southwest 1/4; West 1/2 of Northwest 1/4 of Southwest 1/4; Northwest 1/4 of Southeast 1/4 of Southwest 1/4.

In Section 17, Township 12 North, Range 20 East, M.D.B. & M.

Southeast 1/4 of Southeast 1/4 less that portion deeded to the Gardnerville Ranchos in July 1972, described as follows:

Commencing at the Northeast corner of the Southeast 1/4 of the Southeast 1/4 of said Section 17, being a 3/4" rebar; thence southerly along the easterly section line South 00°12'54" West 428.79'; to the TRUE POINT OF BEGINNING; thence continuing along said section line South 00°12'54" West 466.69'; thence leaving said section line North 89°47'06" West 476.69'; thence North 00°12'54" East 466.69'; thence South 89°47'06" East 476.69' to the point of beginning.

APN 1220-17-801-001

LEGAL DESCRIPTION NO. 6

In Section 17, Township 12 North, Range 20 East., M.D.B. & M.

Southeast 1/4 of Southeast 1/4 less that portion deeded to the Gardnerville Ranchos in July, 1972, described as follows:

Commencing at the Northeast corner of the Southeast 1/4 of the Southeast 1/4 of said Section 17, being a 3/4" rebar; thence southerly along the easterly section line South 00°12'54" West 428.79' to the TRUE POINT OF BEGINNING; thence continuing along said section line South 00°12'54" West 466.69'; thence leaving said section line North 89°47'06" West 476.69'; thence North 00°12'54" East 466.69'; thence South 89°47'06" East 476.69' to the point of beginning.

APN 1220-17-801-002

EXHIBIT

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Legal Description

All that certain real property located in Sections 16, 17, 20 & 21, Township 12 North, Range 20 East, Mt. Diablo Meridian, within the County of Gardnerville, State of Nevada and more particularly described as follows:

Commencing at the northeast corner of A.P.N. 1220-16-301-001 said point being the **TRUE POINT OF BEGINNING**;

THENCE, S 00°11'37" E a distance of 1655.70 ft.
THENCE, S 89°47'39" W a distance of 700.00' ft.
THENCE, N 00°11'37" W a distance of 331.09' ft.
THENCE, N 89°51'29" E a distance of 44.41 ft.
THENCE, N 89°47'37" E a distance of 299.98 ft.
THENCE, N 00°12'23" W a distance of 992.56 ft.
THENCE, S 89°45'43" W a distance of 2141.83 ft.
THENCE, S 00°14'17" E a distance of 991.54 ft.
THENCE, N 90°00'00" W a distance of 149.50 ft.
THENCE, S 17°50'23" W a distance of 363.02 ft.
THENCE, along a tangent curve to the left with an arc length of 384.24 ft., a chord bearing of S 03°07'38" E and having a radius of 525.00 ft.
THENCE S 24°05'39" E, a distance of 116.20 ft.
THENCE along a tangent curve to the right with an arc length of 315.86 ft. a chord bearing of S 12°06'33" E and having a radius of 755.00 ft.
THENCE, N 89°40'01" W a distance of 75.00 ft. to a point on the easterly right of way of Drayton Boulevard.
THENCE, leaving said point bears a non-tangent curve to the left with an arc length of 283.88 ft., a chord bearing of N 12°08'04" W and having a radius of 680.00 ft.
THENCE, N 24°05'39" W, a distance of 116.20 ft.
THENCE, along a tangent curve to the right with an arc length of 439.13 ft., a chord bearing of N 03°07'38" W and having a radius of 600.00 ft.
THENCE, N 17°50'23" E a distance of 607.34 ft.
THENCE, along a tangent curve to the left with an arc length of 684.09 ft., a chord bearing of N 10°58'49" W and having a radius of 680.00 ft. to a point on the centerline of Edna Ditch.
THENCE, from said point following along said centerline of Edna Ditch in a northeasterly direction to a point along the northern boundary of said property.
THENCE, N 89°44'57" E a distance of 2.72 ft.
THENCE, S 12°53'52" W a distance of 24.65 ft.
THENCE, N 89°44'58" E a distance of 361.68 ft.
THENCE, N 00°15'02" W a distance of 24.00 ft.
THENCE, N 89°44'58" E a distance of 2178.15 ft. to the **TRUE POINT OF BEGINNING**.

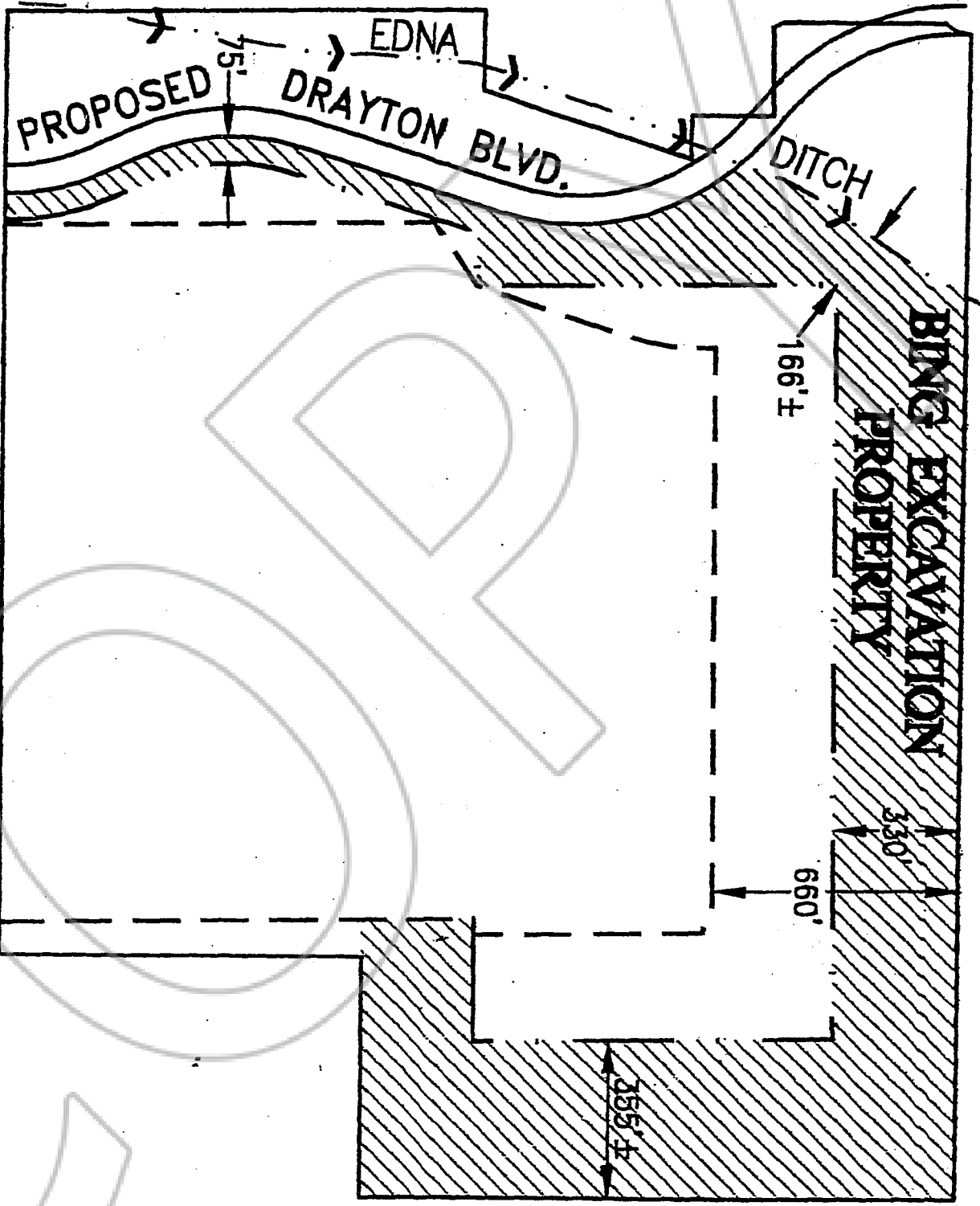
This description contains 40.52 acres, plus or minus.

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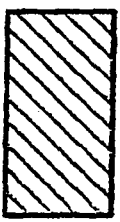
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NOT TO SCALE



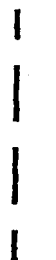
KIMMERLING ROAD



OPEN SPACE TO REMAIN IN PERPETUITY



PROPOSED PIT EXPANSION



EXISTING PIT BOUNDARY

YOUR COMMENTS

IF YOU HAVE ANY COMMENTS OR QUESTIONS REGARDING THIS PLAN, PLEASE CONTACT THE ENGINEER AT THE ADDRESS LISTED BELOW.

DATE: 11/15/2011
BY: [Signature]

0514334

TILLMAN LANE

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COPY

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: 5-17-01 **SEAL**

By B. Reed Clerk of the 9th Judicial District Court of the State of Nevada, in and for the County of Douglas.

By Joseph Ford Deputy

REQUESTED BY
DOUGLAS COUNTY/DA'S
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2001 MAY 17 PM 2:34

LINDA SLATER
RECORDER

\$ 0 PAID Kg DEPUTY

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