

33

OFFICIAL RECORD

Requested By:
TOWN OF MINDEN

A.P.N. 1320-30-611-002

RECORDING REQUESTED BY:

The Town of Minden
P.O. Box 205
Minden, NV 89423

Douglas County - NV
Werner Christen - Recorder
Page: 1 Of 20 Fee: 33.00
BK-0605 PG-10917 RPTT: 0.00



WHEN RECORDED MAIL TO:

Nevada Division of State Lands
Question 1 Program
333 S. Carson Meadows Drive, Suite 44
Carson City, Nevada 89701

IRREVOCABLE AGREEMENT TO RESTRICT PROPERTY

This IRREVOCABLE AGREEMENT TO RESTRICT PROPERTY is made and entered into this ___ day of June, 2005, by and between the unincorporated Town of Minden, ("Town"), a municipality, created pursuant to chapter 269 of the Nevada Revised Statutes, and the State of Nevada ("State"). Town and State are sometimes hereinafter referred to collectively as the "Parties."

Recitals

WHEREAS, This deed restriction is given to insure that the real property described in Attachment A, a copy of which is attached hereto and incorporated herein, is maintained and used in a manner consistent with the regulations adopted by the State of Nevada for the Conservation and Resource Protection Program Grant Program, hereinafter referred to as "Question 1 Program." Regulatory authority is provided by Subsection 1-35, Section 2 of Assembly Bill No. 9 of the 17th Special Session of the Nevada Legislature, Chapter 6, Statutes of Nevada 2001. The referenced regulations require the Nevada Division of State Lands, (hereinafter "State Lands," an agency of the State), when entering into a Funding Agreement, to include pertinent nonrevocable deed restrictions and appropriate reversionary clauses to ensure that at all times the land is maintained in a manner consistent with the purpose of the Question 1 Program.

WHEREAS, the unincorporated Town has entered into a State Lands Question 1 Program Funding Agreement which provides funding to implement the project entitled the "Martin Slough Water Quality and Restoration Project" and which has been assigned Q1 Project ID No. DO-CR-04015.

WHEREAS, State Lands has authority to award grants of money from the sale of municipal bonds to municipalities, including the Town, to enhance and restore the Carson River corridor. Money awarded under this authority must be used to acquire and develop land and water rights; provide recreational facilities; provide access to and along the Carson River, including, without limitation, parking areas; or restore the Carson River corridor.

WHEREAS, On or about June 11, 2004, the Town entered into an agreement with Scotsman Development Corporation, a Nevada corporation, and Nevada Northwest LLC, a Nevada limited-liability company (hereinafter collectively referred to as "Scotsman") in which Scotsman agreed to dedicate to the Town open space areas requiring perpetual maintenance of certain drainage facilities, easements, landscape/trails, ponds, and stream areas by the Town and in which the Town and Scotsman agreed that the referenced Offer of Dedication or Grant, Bargain & Sale Deed described in the referenced agreement "shall restrict the Town of Minden's use of the land described . . . [in the referenced agreement] to parks and open space, except for construction, installation and maintenance of parks and open space. The referenced agreement also included provision for Scotsman "to dedicate water rights to the satisfaction of the Town of Minden and to submit documentation to Douglas County that the water rights dedication requirement [of Douglas County in approving Scotsman's development] has been met." Additionally, Scotsman agreed "to dedicate to the Town of Minden all surface water rights" identified in the agreement.

Declarations

NOW, THEREFORE, in consideration of the grant funds received and the covenants and agreements contained herein, the Parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct.
2. Irrevocable Restriction of Property. The Town agrees with State Lands that the Town will well and faithfully perform the duties enjoined on the Town by that certain Open Space/Drainage Improvements Agreement, a copy of which is attached hereto as Attachment A and incorporated herein by this reference.
3. Recordation. This Irrevocable Agreement to Restrict Property shall be recorded in the Office of the Douglas County Recorder and shall run with the land.
4. Amendments. This Irrevocable Agreement to Restrict Property shall not be amended except upon the written agreement of the parties after public notice by publication no less than three (3) times at one-week intervals in a newspaper of general circulation in Douglas County.
5. Entire Agreement. This Irrevocable Agreement to Restrict Property constitutes the entire agreement of the Parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings and agreements.
6. Further Assurances; Additional Documents. The Parties agree to execute any and all further documents, deeds and other writings, and to undertake any further action necessary to consummate the transactions contemplated herein.
7. Authority. County and State, respectively, represent and warrant that, as of the date of this Agreement, each has the full right, power and authority to enter into this Agreement and to consummate the transaction contemplated herein, and that each has duly and properly taken all action required of it, to authorize the execution, delivery and performance by it of this Agreement.
8. Binding Effect. This Agreement is binding upon the representatives, successors, and assigns of the Parties hereto.

9. Captions. The captions and headings of the sections of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.
10. Severability. If any term or provision of this Agreement is deemed unenforceable by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect so long as the purpose and intent of this Agreement may be achieved.
11. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nevada.
12. Attorneys Fees. In the event of any controversy, claim, or dispute relating to this Agreement or to the violation or infringement thereof, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the Parties hereto have entered into this Irrevocable Agreement to Restrict Property as of the date first written above.

DATED this 14th day of JUNE, 2005.

"Town"

TOWN OF MINDEN

By: [Signature]
 Robert S. Hadfield
 Its chairman

"State"

STATE OF NEVADA

By: [Signature]
 Name: PAMELA IS. WILCOX
 Its: STATE LAND REGISTRAR

STATE OF NEVADA)
) SS.
 COUNTY OF DOUGLAS)

This instrument was acknowledged before me on the 16 day of June, 2005, by ROBERT S. HADFIELD as chairman of the Minden Town Advisory Board.

[Signature]
 NOTARY PUBLIC



Attachment A

(See attached 16 Page Facsimile Dated March 24, 2005, Open Space/Drainage Improvements Agreement between Scotsman Development and the Town of Minden)

SCOTSMAN



APN _____

RECORDATION REQUESTED BY SAFTER RECORDATION
 RETURN BY MAIL TO:
 Scarpeño, Huss & Oshinski, Ltd.
 600 East Williams Street, Suite 300
 Carson City, NV 89701

SPACE ABOVE THIS LINE FOR RECORDER'S USE

OPEN SPACE/DRAINAGE IMPROVEMENTS AGREEMENT

THIS OPEN SPACE/DRAINAGE IMPROVEMENTS AGREEMENT (herein "Agreement") is made and entered into this 11th day of June, 2004, by and between SCOTSMAN DEVELOPMENT CORPORATION, a Nevada corporation, and NEVADA NORTHWEST, LLC, a Nevada limited liability company, (collectively referred to herein as "Scotsman"), and the TOWN OF MINDEN, a political subdivision of the State of Nevada.

R E C I T A L S

WHEREAS, Scotsman owns land located in the Town of Minden, Douglas County, Nevada, depicted in the attached Exhibit "A," which land is located within an approved Specific Plan area (Nevada Northwest, LLC, Specific Plan), and an approved Plan Development Overlay zone and is subject to an approved Tentative Map (herein collectively referred to as "Government Approvals").

WHEREAS, the Governmental Approvals require Scotsman, or its assigns, concurrent with the submittal of a final map application, to evidence (1) that the open space areas have been or will be offered for dedication with Phase 1 final map recording, (2) that the perpetual maintenance of those areas will occur, and (3) that construction of the open space/drainage improvements will occur.

WHEREAS, the Governmental Approvals further require of Scotsman, or its assigns, as applicable to the newly-created parcels throughout the life of the project, that maintenance of all drainage facilities and easements, and improved open space, landscape/trails, ponds, and stream areas be the responsibility of the individual property owners or other private entity or the Town of Minden.

WHEREAS, Scotsman and the Town of Minden desire to establish their respective rights and obligations with respect to these conditions.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the parties hereby agree as follows:

1. Dedication of Open Space/Drainage Improvement Area

1.1. Scotsman agrees to dedicate or transfer all right, title and interest to the Town of Minden to the property described in Exhibit "B" attached hereto, which are portions of what is commonly known as the Martin Slough (herein "Open Space/Drainage Improvement



Area"). The dedication or transfer of the Open Space/Drainage Improvement Area shall be evidenced by an Offer of Dedication or a Grant, Bargain & Sale Deed conveying fee title to the Town of Minden, which instrument shall be duly recorded in the office of the Douglas County Recorder. Scotsman shall be entitled to reserve from the property described in Exhibit "B," those areas that are to be subsequently dedicated as rights-of-way to Douglas County or the Town of Minden.

1.2. Scotsman shall bear all costs associated with the preparation and filing of any and all surveys, boundary-lines adjustments, and/or parcel maps necessary to transfer the property described in Exhibit "B."

1.3. The parties agree that Western Title Company of Carson City shall be the escrow holder, and Scotsman agrees to be responsible for all escrow fees.

1.4. Scotsman shall be responsible to prepare the Offer of Dedication or Grant, Bargain & Sale Deed granting fee title to the portion of land described in Exhibit "B," subject to approved exceptions noted on a Preliminary Title Report.

1.5. The parties acknowledge and agree that the Offer of Dedication or Grant, Bargain & Sale Deed described herein shall restrict the Town of Minden's use of the land to open space, recreational and scenic uses, except for construction, installation and maintenance of open space, and drainage facilities, which



facilities are to include a pedestrian and/or bicycle path and underground public facilities. This restriction shall be deemed to be a covenant running with the land.

1.6. Scotsman shall deliver the Offer of Dedication or the Grant, Bargain & Sale Deed in recordable form to the Town of Minden no later than the time to be established for the approval of the first final map associated with the approved Planned Development Overlay's single family residential district located within the Property.

1.7. Until such time as Scotsman conveys all right, title, and interest in the land described in Exhibit "B," Scotsman agrees to provide to the Town of Minden an Access and Construction Easement over land described in Exhibit "A" in order to enable the Town of Minden to access the property described in Exhibit "B" and commence construction of Open Space/Drainage Improvements.

1.8. Scotsman agrees to pay any Real Property Transfer Tax associated with the property described herein and the cost of recording any Grant, Bargain & Sale Deed.

1.9. Scotsman agrees to pay for any policy of title insurance associated with the Offer of Dedication or the Grant, Bargain & Sale Deed.

2. Construction of Open Space and Drainage Facilities

2.1 Following recordation of the Offer of Dedication or Grant, Bargain & Sale Deed described above, the Town of Minden



agrees to construct or cause to be constructed on the Open Space/Drainage Improvement Area described in Exhibit "B" certain open space, water quality, and regional detention improvements ("Open Space/Drainage Improvements").

2.2. Scotsman shall be responsible to pay to the Town of Minden Twenty-Two Thousand Dollars (\$22,000.00), which is deemed to be the amount of consideration which would have otherwise been required of Scotsman to construct its share of the Open Space/Drainage Improvements.

2.3. In order to satisfy its condition to provide a pedestrian pathway within the Open Space/Drainage Improvements Area described in Exhibit "B," Scotsman agrees to pay the Town of Minden Thirty-Six Thousand Dollars (\$36,000.00), which is deemed to be the estimated cost of the pedestrian pathway required by the Government Approvals.

2.4. Scotsman shall pay to the Town of Minden the consideration noted above at the time the Open Space/Drainage Improvement Area described in Exhibit "B" is conveyed to the Town of Minden.

2.5. The Town of Minden shall be fully responsible to construct or cause the construction of all Open Space/Drainage Improvements within the Open Space/Drainage Improvements Area. The Town of Minden agrees to hold Scotsman harmless from any and all construction costs for the Open Space/Drainage Improvements which



exceed the contributions provided by Scotsman pursuant to the terms of this Agreement.

2.6. In designing, constructing and maintaining the Open Space/Drainage Improvements, the Town of Minden or Douglas County agrees to use best management practices applicable to such improvements.

2.7. The Town of Minden agrees to be fully responsible for all maintenance costs of the Open Space/Drainage Improvements contemplated in this Agreement. The Town of Minden reserves its right to tax, assess, or otherwise require payment by Scotsman, or its successors in interest, equally with all other residents of the Town of Minden, for the cost of maintenance of the Open Space/Drainage Improvements.

2.8. In order to enable Scotsman, or its assigns, to satisfy Government Approvals, the Town of Minden agrees to timely provide to Douglas County and Scotsman, or its assigns, a written commitment that the Open Space/Drainage Improvements have been or will be dedicated, constructed, and maintained in the future.

3. Dedication and Maintenance of Parks and Open Space Area

3.1. Scotsman agrees to dedicate to the Town of Minden the park and open space areas located in the single family residential district, median strips, and any landscaping on the perimeter of the subdivision (herein "Parks and Open Space Area") more fully described in Exhibit "C" attached hereto. The Parks and Open Space



Area shall not include the Open Space/Drainage Improvement Area discussed above in section 2 of this Agreement. In addition, the Parks and Open Space Area shall not include those areas of a public right-of-way commonly known as landscape strips that are used for landscaping or passive recreational purposes that lie between the back of a curb and either the adjacent property line or physical boundary definition such as walls or front of a sidewalk (as defined in the Douglas County Development Code in Appendix A, page 20, revised 2-2003) (herein "landscape strips"). The Town of Minden shall not be responsible to maintain landscape strips which abut single family residences. The Town of Minden agrees to be responsible to maintain those landscape strips which are located adjacent to the central park which is presently planned within the single family residential district and which landscape strips are actually a part of the parks and Open Space Area. The Town of Minden also agrees to be responsible to maintain all other areas described in Exhibit "C," which shall be included within the term Parks and Open Space Area for purposes of this Agreement.

3.2. The dedication or transfer of the Parks and Open Space Area shall be evidenced by an Offer of Dedication or a Grant, Bargain and Sale Deed conveying fee title to the Town of Minden, which instrument shall be duly recorded in the office of the Douglas County Recorder. Scotsman shall be entitled to reserve from the property described in Exhibit "C," those areas that are to



be subsequently dedicated as rights of way to Douglas County or the Town of Minden.

3.3. Scotsman shall bear all costs associated with the preparation and filing of any and all surveys, boundary-lines adjustments, and/or parcel maps necessary to transfer the property described in Exhibit "C."

3.4. The parties agree that Western Title Company of Carson City shall be the escrow holder, and Scotsman agrees to be responsible for all escrow fees.

3.5. Scotsman shall be responsible to prepare the Offer of Dedication or Grant, Bargain & Sale Deed granting fee title to the portion of land described in Exhibit "C," subject to approved exceptions noted on a Preliminary Title Report to be provided to the Town of Minden by Scotsman.

3.6. The parties acknowledge and agree that the Offer of Dedication or Grant, Bargain & Sale Deed described herein shall restrict the Town of Minden's use of the land described in Exhibit "C" to parks and open space, except for construction, installation and maintenance of parks and open space. This restriction shall be deemed to be a covenant running with the land for the benefit of Douglas County and its citizens.

3.7. Scotsman shall deliver the Offer of Dedication or the Grant, Bargain & Sale Deed in recordable form to the Town of Minden no later than the time to be established for the approval of the



first final map associated with the approved Planned Development Overlay's single family residential district located within the Property.

3.8. Scotsman agrees to pay any Real Property Transfer Tax associated with the property described herein and the cost of recording any Grant, Bargain & Sale Deed.

3.9. Scotsman also agrees to pay for any policy of title insurance associated with the Offer of Dedication or the Grant, Bargain & Sale Deed.

4. Dedication of Water Rights

4.1. The Governmental Approvals require Scotsman, or its assigns, to dedicate water rights to the satisfaction of the Town of Minden and to submit documentation to Douglas County that the water rights dedication requirement has been met. The parties stipulate that the Town of Minden will not require Scotsman or its assigns to dedicate water rights in connection with this Planned Development Overlay. The Town of Minden agrees to timely provide Douglas County and Scotsman, or its developer assign, documentation that the requirement for water rights has been satisfied and issue to Scotsman, or its developer assign, required will serve letters.

4.2. Notwithstanding that Scotsman is under no legal obligation to do so, Scotsman agrees to dedicate to the Town of Minden all surface water rights as identified in Exhibit "D." The Town of Minden agrees that, in consideration of such dedication of



water rights, the fees for water connections to the Town of Minden shall be established in accordance with the schedule attached hereto as Exhibit "E."

5. Covenant of Cooperation

The parties agree to cooperate in timely obtaining approval of this Development Agreement by all appropriate governmental entities. The parties further agree to cooperate in obtaining the necessary permits and approvals for the dedications and construction improvements contemplated in this Agreement.

6. Governmental Approval

The Town of Minden, as a governmental entity, must lawfully approve this Agreement, and the duties and obligations therein. The Town of Minden shall be entitled to all rights and defenses afforded to it by NRS Chapter 41.

7. General Provisions

7.1. The parties executing this Agreement hereby represent that they have the power and authority to execute this Agreement on behalf of the parties thereto and to transfer the property stated herein.

7.2. All parties shall bear their own costs and fees, including attorneys' fees, associated with the terms and conditions herein.

7.3. The parties agree to execute, file and/or record such further documents as may be reasonable necessary to carry out the



terms of this Agreement.


7.4. In the event of a dispute concerning the terms of this Agreement, the prevailing party shall be entitled to an award of fees and costs.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

NEVADA NORTHWEST, LLC, a Nevada limited liability company
By: CORPORATE MANAGEMENT SERVICES, INC., a Nevada corporation
Its: Manager

SCOTSMAN DEVELOPMENT CORPORATION, a Nevada corporation

By: 
James S. Bradshaw
Secretary

By: 
James S. Bradshaw
President

TOWN OF MINDEN

By: 
Its: Chairman

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STATE OF NEVADA)
 : ss.
CARSON CITY)

This instrument was acknowledged before me on this 9th day of June, 2004, by James S. Bradshaw, as president of Corporate Management Services, Inc., a Nevada corporation and as secretary of Scotsman Development Corporation, a Nevada corporation.

WITNESS my hand and official seal.

Karen A Easton
NOTARY PUBLIC



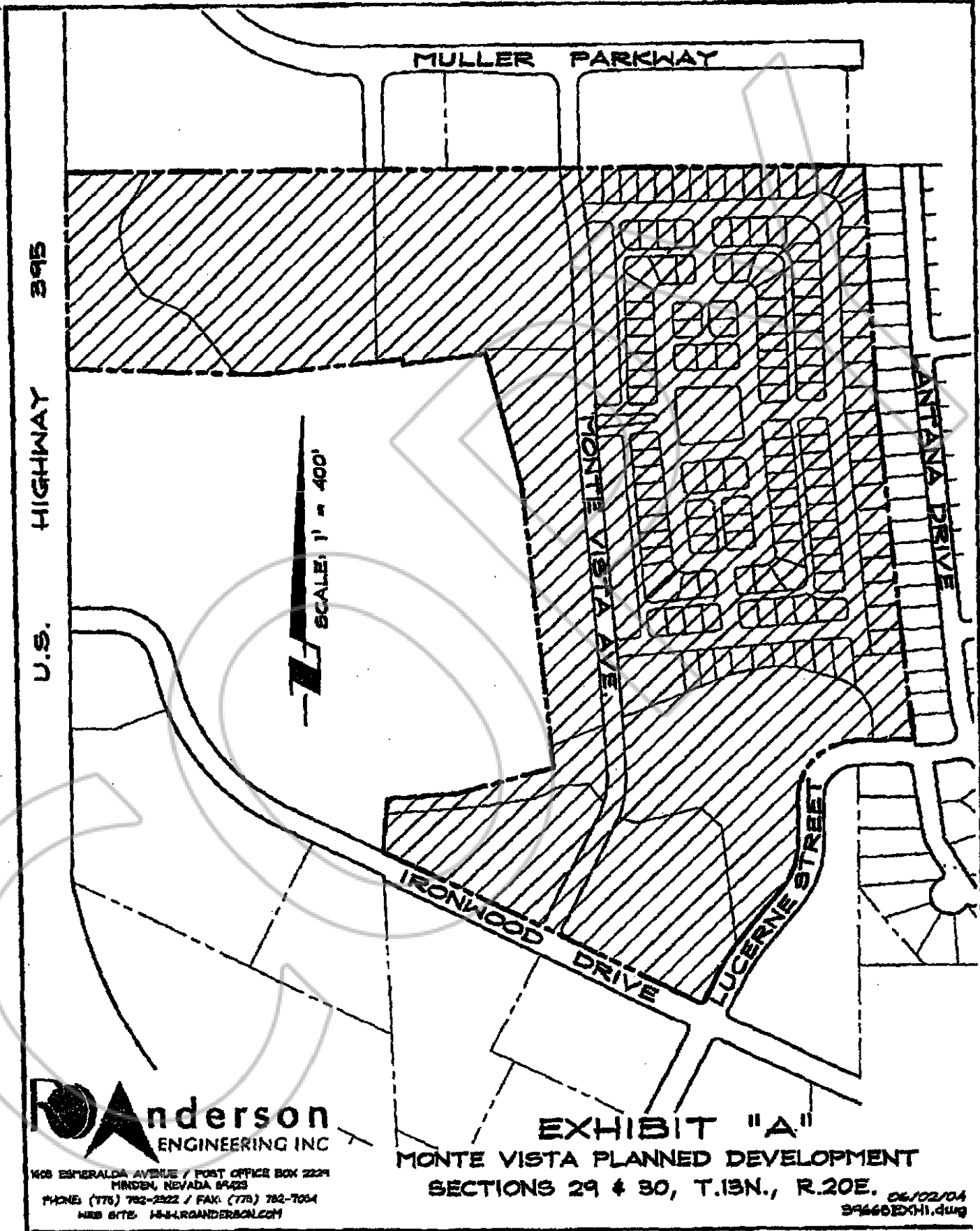
STATE OF NEVADA)
 : ss.
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on this 1st day of June, 2004, by David Shute, as Chairman of the Town of Minden.

WITNESS my hand and official seal.

Natalie Nielson
NOTARY PUBLIC

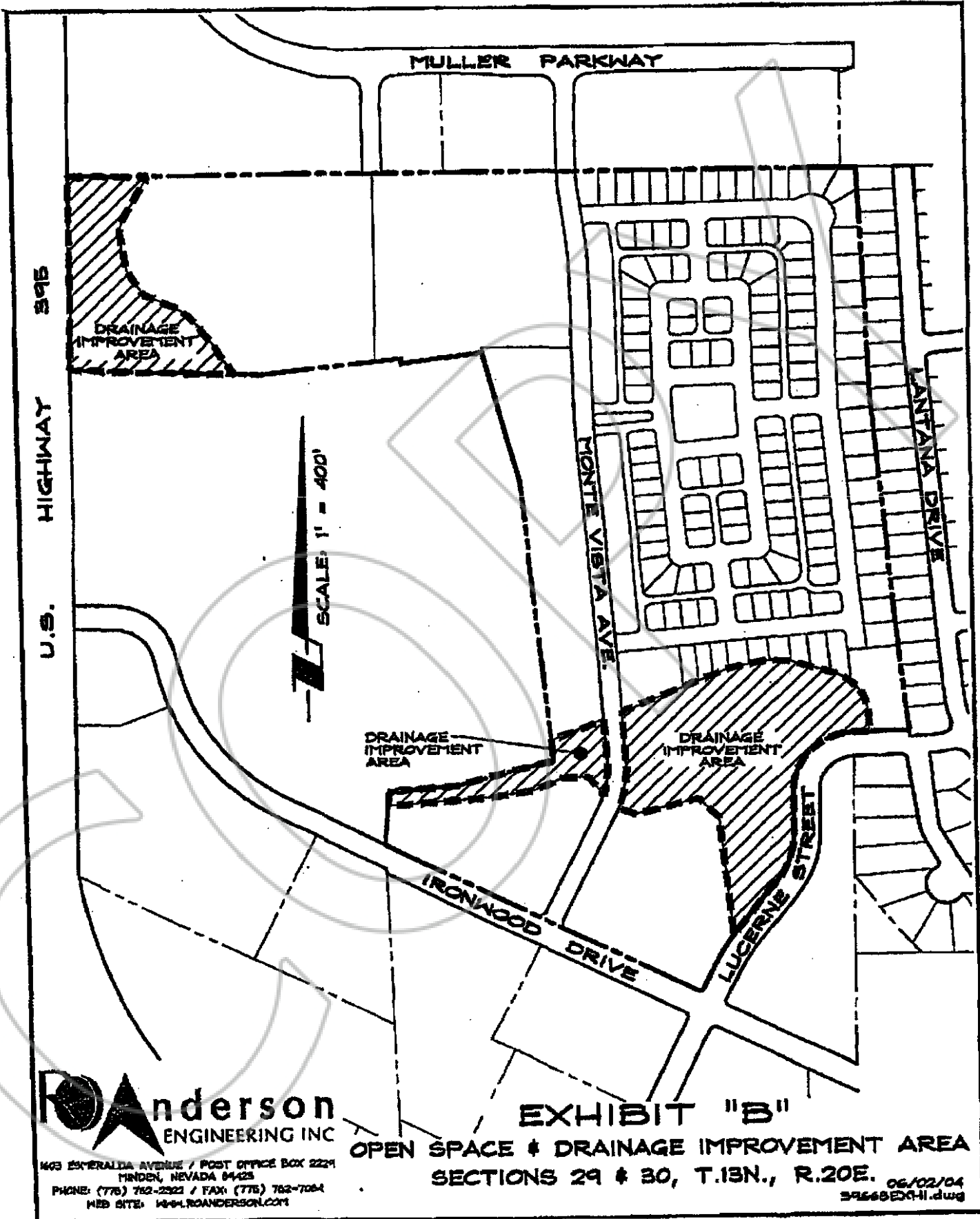




Anderson
ENGINEERING INC
1608 EMERALDA AVENUE / POST OFFICE BOX 2224
MINDEN, NEVADA 89423
PHONE: (775) 782-2322 / FAX: (775) 782-7064
WEB SITE: WWW.ANDERSON.COM

EXHIBIT "A"
MONTE VISTA PLANNED DEVELOPMENT
SECTIONS 29 & 30, T.13N., R.20E.

06/02/04
39466EDKH.dwg



Anderson
ENGINEERING INC

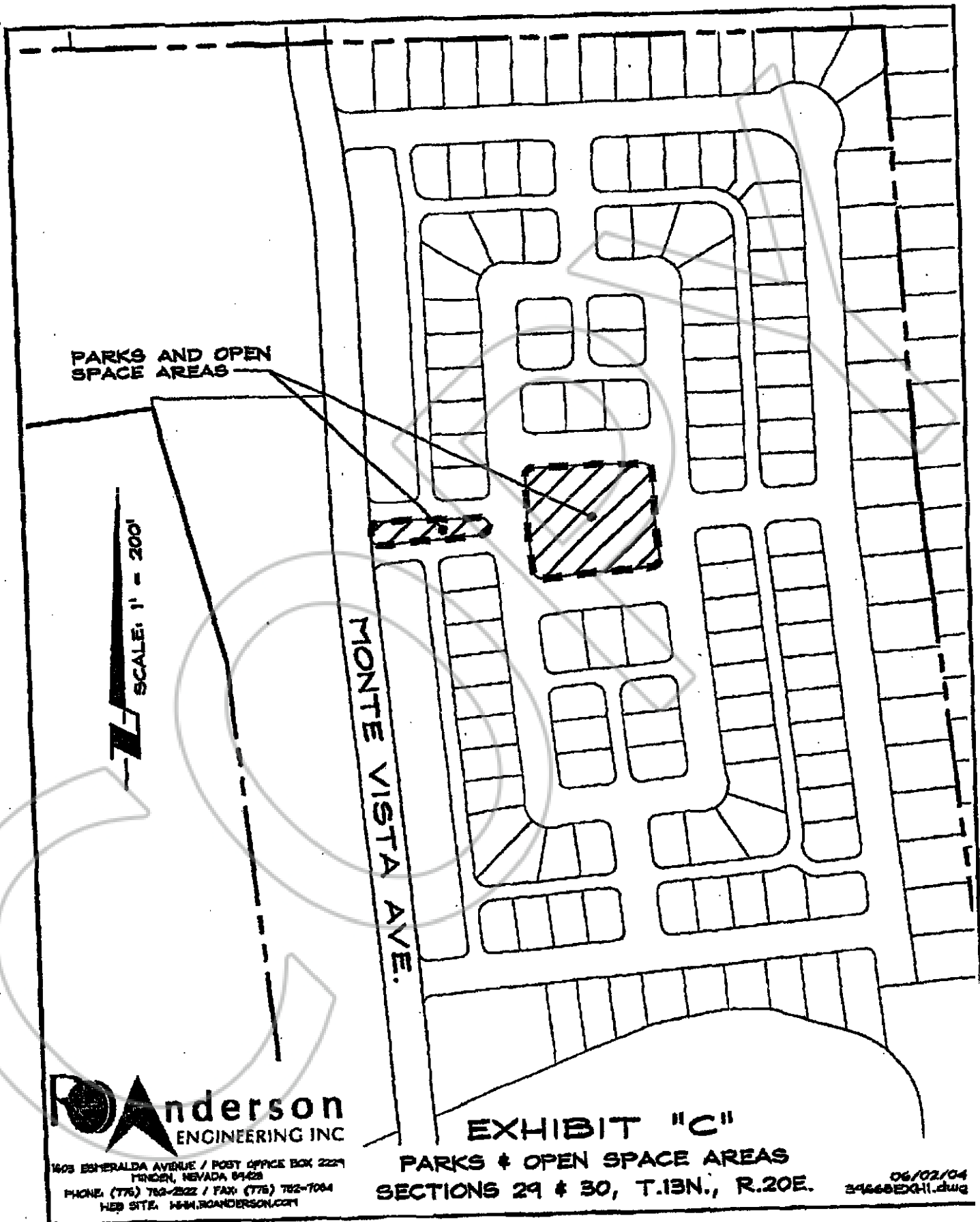
1403 ESERALDA AVENUE / POST OFFICE BOX 2221
MINDEN, NEVADA 89423
PHONE: (775) 762-2322 / FAX: (775) 762-7064
WEB SITE: WWW.ROANDERSON.COM

EXHIBIT "B"

OPEN SPACE & DRAINAGE IMPROVEMENT AREA
SECTIONS 29 & 30, T.13N., R.20E.

06/02/04
39668939.dwg





PARKS AND OPEN SPACE AREAS

SCALE: 1" = 200'

MONTE VISTA AVE.



1603 EMERALDA AVENUE / POST OFFICE BOX 2229
 PRINCEN, NEVADA 89429
 PHONE: (775) 782-2822 / FAX: (775) 782-7084
 WEB SITE: WWW.ROANDERSON.COM

EXHIBIT "C"

PARKS & OPEN SPACE AREAS
 SECTIONS 29 & 30, T.13N., R.20E.

06/02/04
 34668EDH1.dwg



EXHIBIT "D"

Open Space/Drainage Improvement Agreement
Nevada Northwest, LLC and Town of Minden

Summary of Water Rights (portion located
northerly of Ironwood Drive)

<u>CLAIM NO.</u>	<u>ACREAGE</u>	<u>PRIORITY</u>	<u>APPLICATION NO.</u>
180	9.00	1878	69149
182	30.00	1875	69148
184	11.00	1890	69147
185	10.00	1878	69146
188	10.00	1875	69145
407	<u>14.30</u>	1873	
Total Acres	84.30		

