

DOC # 764707
06/02/2010 08:45AM Deputy: DW
OFFICIAL RECORD
Requested By:
FIRST AMERICAN TITLE MIN
Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 14 Fee: 27.00
BK-610 PG-473 RPTT: 0.00



I the undersigned hereby affirm that this document submitted for recording does not contain any personal information.

Denise Lewis
Signature

Loan Documentation Specialist
Title

05-25-2010
Date

Assessor Parcel No(s): 1320-32-602-001

RECORDATION REQUESTED BY:

Wells Fargo Bank, National Association; SBA Lending; 2355 E. Camelback Rd., Suite 250; Phoenix, AZ 85016

WHEN RECORDED MAIL TO:

Wells Fargo Bank, National Association, SBA - BBG Loan Ops - Recorded Docs, P O Box 659713, San Antonio, TX 78265-9827

FOR RECORDER'S USE ONLY



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NOTICE: THIS LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION

THIS LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION dated May 25, 2010, is made and executed among Keith J. Hart ("Lessee"); Hart to Hart Real Estate, LLC; and Keith J. Hart ("Borrower"); and Wells Fargo Bank, National Association ("Lender"). In this Subordination one or more of the parties defined as "Borrower" is the owner and owner and lessor of the Real



LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
(Continued)

Property described below, which is sometimes referred to in this Subordination as the "Premises."

SUBORDINATED LEASE. Lessee has executed a lease dated May 3, 2010 of the property described herein (the "Subordinated Lease").

REAL PROPERTY DESCRIPTION. The Lease covers a portion of the following described real property located in Douglas County, State of Nevada:

See Exhibit "A", which is attached to this Subordination and made a part of this Subordination as if fully set forth herein.

The Real Property or its address is commonly known as 1546 US HIGHWAY 395 N, GARDNERVILLE, NV 89410. The Real Property tax identification number is 1320-32-602-001.

SUPERIOR INDEBTEDNESS. Lender has extended or has agreed to extend the following described financial accommodations to Borrower, secured by the Real Property (the "Superior Indebtedness"):

All indebtedness now or hereafter secured by the deed of trust or mortgage evidencing the Lender's Lien, including without limitation, all principal, interest and other amounts, costs and expenses payable under the Note or Related Documents and any renewals of, extensions of, modifications of, consolidations of and substitutions for the Note and Related Documents. .

LENDER'S LIEN. The Superior Indebtedness is or will be secured by the Real Property and evidenced by a deed of trust, dated May 25, 2010, from Hart to Hart Real Estate, LLC to Lender (the "Lender's Lien"). As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Lease.

REQUESTED FINANCIAL ACCOMMODATIONS. Lessee and Borrower each want Lender to provide financial accommodations to Borrower in the form of the Superior Indebtedness. Borrower and Lessee each represent and acknowledge to Lender that Lessee will benefit as a result of these financial accommodations from Lender to Borrower, and Lessee acknowledges receipt of valuable consideration for entering into this Subordination.

ASSIGNMENT OF LEASE. As an additional condition to the granting of the requested financial accommodations, Lender has also required an assignment, with right of reassignment, of the Subordinate Lease (also referred to as the "Lease" in this Subordination).

NOW THEREFORE THE PARTIES TO THIS SUBORDINATION HEREBY AGREE AS FOLLOWS:

SUBORDINATION. All of Lessee's right, title, and interest in and to the Subordinated Lease and the Real Property is and shall be subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is agreed that Lender's Lien shall be and remain, at all times, prior and superior to Lessee's interests in the Subordinated Lease and the Real Property. The words "Security Interest" mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.



LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
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LESSEE'S ASSIGNMENT OF LEASE. For value received, and as security for the financial accommodations (the "Loan") and as security for all other loans, advances or other financial accommodation, whenever made, issued or extended by Lender to Borrower or Lessee, Lessee hereby grants Lender a security interest in, and does hereby irrevocably assign, transfer and set over to Lender all of Lessee's right, title and interest in and to the leasehold granted and created by the Lease. As long as Lessee is not in default in the performance of any of Lessee's obligations under the Lease and so long as there is no default under this Subordination or under any other document securing the Guaranty or otherwise executed in connection with the Loan (hereinafter collectively referred to as the "Loan Documents"), Lessee may remain in possession of the Premises under the terms, covenants and conditions of the Lease.

REPRESENTATIONS AND WARRANTIES. Lessee hereby represents and warrants to Lender that Lessee has heretofore delivered to Lender a true, correct and complete copy of the Lease, which constitutes the entire agreement between the parties thereto and Lessee further acknowledges that the Lease is in full force and effect and that no default by Lessee or, to Lessee's knowledge, by other party under the terms and provisions of the Lease exists as of the date hereof.

LESSEE PERFORMANCE UNDER THE LEASE. Lessee covenants and agrees with Lender that Lessee will perform all of the covenants, conditions, and agreements of the Lease and will keep Lender, its successors and assigns indemnified against all losses, liabilities, actions, suits, expenses and claims on account of non-payment of rent or other breach of the Lease. Default by Lessee of any obligation set forth in the Lease shall constitute a default under this Subordination.

CONSENT TO ASSIGNMENT. Apart from any contrary language that might exist in the Lease, Borrower hereby consents to the creation and grant of the security interest and assignment of Lessee's interest in the Lease to Lender and further consents to Lender's possession, enjoyment and assumption of the Lease in the place and stead of Lessee in the event a default occurs under the terms and conditions of any Loan Document. Lessee further acknowledges that, as long as Lender has a security interest in the Lease, any modification, alteration or amendment of any of the terms thereof without the prior written approval of Lender, such approval not to be unreasonably withheld, shall be null and void. Notwithstanding the prior sentence, Borrower shall not be prevented from deeming the Lease to be terminated pursuant to its terms so long as appropriate notice and opportunity to cure any default has been given. Lessee agrees to provide Lender with simultaneous notice of any default as a result of which Borrower intends to terminate the Lease or commence any judicial proceeding to recover possession of the Premises, whether by an action for unlawful detainer, summary eviction or otherwise.

Borrower and Lessee further agree that upon Lender's receipt of a notice of default from Borrower, Lender shall have the option to (A) assume Lessee's obligations under the Lease, cure the aforesaid default and take possession of the Premises as a lessee or assign the Lease to any third party, subject to the approval of Borrower of such third party as set forth in the Lease, which approval shall not be unreasonably withheld; or (B) take no action whatsoever in the event Lender elects not to enforce its security interest in the Lease. Until Lender has elected to enter into possession of the Premises, Lender shall have no obligation or responsibility to pay rent or to perform or observe any of the terms, covenants or conditions of the Lease. Lender shall have no further rights in the assigned Lease under this Subordination in the event it should fail, within ninety (90) days of its receipt of written notice that Lessee is in



**LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
(Continued)**

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default, to inform Borrower in writing of its intention to cure the default and to initiate such action as may be necessary to take possession of the Premises; provided, however, that in the event Lender is restrained, enjoined or stayed from taking possession of the Premises, Borrower shall not terminate the Lease as long as Lender is making a good faith effort to vacate such restraining order, injunction or stay. All damages of Borrower accruing during any such period of prohibition, injunction, or stay, not to exceed ninety (90) days from the entry of any such order of prohibition, injunction, or stay shall be deemed the sole liability of Lessee; and shall not be attributable to Lender in the calculation of Lender's cure upon default.

Borrower further agrees that if Lender has elected to take possession of the leased Premises and should thereafter assign, convey or otherwise transfer its leasehold interest to a third party, Borrower shall release Lender from any and all further liability under the Lease and have recourse only against the transferee. Any sums expended by Lender in connection with the Lease as well as all costs, expenses and attorneys' fees incurred by Lender relating thereto shall become a part of the indebtedness secured hereby and shall become immediately due and payable from Lessee without demand and shall bear interest at the same rate as the secured indebtedness.

LEASE TERMINATION. Borrower further agrees that in the event Borrower is informed by Lender in writing of its intention to assume the Lease and there is a termination of the Lease as the result of any bankruptcy or related insolvency proceeding commenced by or against Lessee; Lessee, within thirty (30) days of such termination, will enter into a new lease with Lender on substantially the same terms and conditions as set forth in the Lease and, if Lender should thereafter assign, convey or otherwise transfer its leasehold interest to a third party, Borrower shall release Lender from any and all further liability under the Lease and shall have recourse only against the transferee.

PERSONAL PROPERTY COLLATERAL. Borrower and Lessee further acknowledge and agree that to the extent Lender now or hereafter has a security interest in any of Lessee's personal property, which now or hereafter may be located on or affixed to the Premises (the "Collateral"), the following provisions shall apply with regard to such Collateral: (A) Borrower hereby consents to Lender's security interest (or other interest) in the Collateral and disclaims all interests, liens and claims which Borrower now has or may hereafter acquire in the Collateral. (B) Borrower agrees that any lien or claim it may now have or may hereafter have in the Collateral will be subject at all times to Lender's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Landlord to Lender in this Subordination. (C) Borrower and Lessee grant to Lender the right to enter upon the Premises for the purpose of removing the Collateral from the Premises or conducting sales of the Collateral on the Premises. The rights granted to Lender in this Subordination will continue until a reasonable time after Lender receives notice in writing from Borrower that Lessee no longer is in lawful possession of the Premises. If Lender enters onto the Premises and removes the Collateral, Lender agrees with Borrower not to remove any Collateral in such a way that the Premises are damaged, without either repairing any such damage or crediting Borrower for the cost of repair.

OTHER RIGHTS. The rights, powers and remedies given to Lender by this Subordination shall be in addition to all rights, powers and remedies given to Lender by virtue of any statute or rule of law. Any forbearance or failure or delay by Lender in exercising any right, power or remedy hereunder against Lessee, shall not be deemed to be a waiver of such power or remedy against



**LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
(Continued)**

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Lessee, and any single or partial exercise of any right, power or remedy hereunder shall not preclude the further exercise thereof and such right, power or remedy shall continue in full force and effect until such right, power and remedy is specifically waived by an instrument in writing executed by Lender. No waiver by Lender of any default shall operate as a waiver of any other default or of the same default on a future occasion.

LESSEE WAIVERS. Lessee waives any right to require Lender: (A) to make, extend, renew, or modify any loan to Borrower or to grant any other financial accommodations to Borrower whatsoever; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of any secured by Lender's Lien, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness, or in connection with the creation of new or additional indebtedness; (C) to resort for payment or to proceed directly or at once against any person, including Borrower; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever.

LENDER'S RIGHTS. Lender may take or omit any and all actions with respect to Lender's Lien without affecting whatsoever any of Lender's rights under this Subordination. In particular, without limitation, Lender may, without notice of any kind to Lessee, (A) make one or more additional secured or unsecured loans to Borrower; (B) repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Superior Indebtedness or any part of it, including increases and decreases of the rate of interest on the Superior Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) take and hold collateral for the payment of the Superior Indebtedness, and exchange, enforce, waive, and release any such collateral, with or without the substitution of new collateral; (D) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or guarantors on any terms or manner Lender chooses; (E) determine how, when and what application of payments and credits, shall be made on the Superior Indebtedness; (F) apply such security and direct the order or manner of sale of the security, as Lender in its discretion may determine; and (G) transfer this Subordination to another party.

DEFAULT BY BORROWER. If Borrower becomes insolvent or bankrupt, this Subordination shall remain in full force and effect. Any default by Borrower under the terms of the Subordinated Lease also shall constitute an event of default under the terms of the Superior Indebtedness in favor of Lender.

FACSIMILE AND COUNTERPART. This document may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this document or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Subordination:

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the

**LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
(Continued)**

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terms of this Subordination, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. However, Lessee will only pay attorneys' fees of an attorney not Lender's salaried employee, to whom the matter is referred after Lessee's default. Lessee also will pay any court costs, in addition to all other sums provided by law. Fees and expenses shall include attorneys' fees that Lender, Trustee, or both incur, if either or both are made parties to any action to enjoin foreclosure or to any legal proceeding that Lessee institutes. The fees and expenses are secured by this Subordination and are recoverable from the Property.

Authority. The person who signs this Subordination as or on behalf of Lessee represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Lessee's security interests in Lessee's property, if any.

Applicable Law. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations: (a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law. (b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument. No provision contained in this Subordination shall be construed (1) as requiring Lender to grant to Borrower or Lessee any financial assistance or other accommodations, or (2) as limiting or precluding Lender from the exercise of Lender's own judgment and discretion about amounts and times of payment in making loans or extending accommodations to Borrower.

Successors. This Subordination shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Subordination, and the covenants of Lessee herein in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

Definitions. The following capitalized words and terms shall have the following meanings



**LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
(Continued)**

when used in this Subordination. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Subordination shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means Hart to Hart Real Estate, LLC; and Keith J. Hart and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Lender. The word "Lender" means Wells Fargo Bank, National Association, its successors and assigns.

Note. The word "Note" means the Note executed by Hart to Hart Real Estate, LLC; and Keith J. Hart in the principal amount of \$315,000.00 dated May 25, 2010, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Premises. The word "Premises" means the real property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Subordination.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

EACH PARTY TO THIS SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED MAY 25, 2010.



LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
(Continued)

BORROWER:

HART TO HART REAL ESTATE, LLC

By: *Keith J. Hart*

Keith J. Hart, Manager of Hart to Hart Real Estate, LLC

By: *Monica S. Hart*

Monica S. Hart, Manager of Hart to Hart Real Estate, LLC

X *Keith J. Hart*

Keith J. Hart, Individually

LESSEE:

X *Keith J. Hart*

Keith J. Hart, Individually

LENDER:

WELLS FARGO BANK, NATIONAL ASSOCIATION

X *Denise Lewis*

Denise Lewis, Loan Documentation Specialist



LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
(Continued)

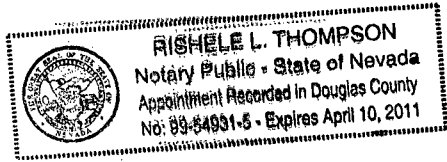
LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Nevada

COUNTY OF Douglas

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This instrument was acknowledged before me on 5/27/10 by Keith J. Hart, Manager of Hart to Hart Real Estate, LLC, as designated agent of Hart to Hart Real Estate, LLC.



(Seal, if any)

Rishle L. Thompson
(Signature of notarial officer)

Notary Public in and for State of NV



LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
(Continued)

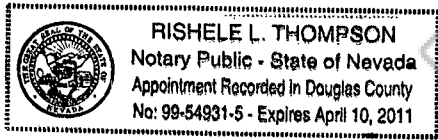
LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Nevada

COUNTY OF Douglas

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) SS
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This instrument was acknowledged before me on 5/27/10 by **Monica S. Hart, Manager of Hart to Hart Real Estate, LLC**, as designated agent of **Hart to Hart Real Estate, LLC**.



Rishele L. Thompson
(Signature of notarial officer)

Notary Public in and for State of NV

(Seal, if any)



**LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
(Continued)**

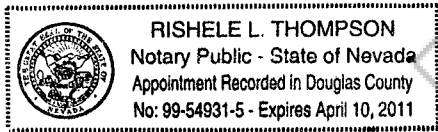
INDIVIDUAL ACKNOWLEDGMENT

STATE OF Nevada

COUNTY OF Douglas

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) SS
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This instrument was acknowledged before me on 5/27/10 by Keith J. Hart.



Rishele L. Thompson

(Signature of notarial officer)

Notary Public in and for State of NV

(Seal, if any)



LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
(Continued)

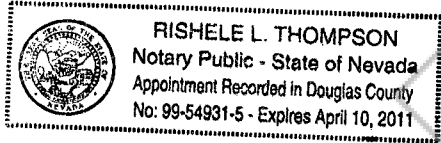
INDIVIDUAL ACKNOWLEDGMENT

STATE OF Nevada

COUNTY OF Douglas

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) SS
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This instrument was acknowledged before me on 5/27/10 by Keith J. Hart.



Rishele L. Thompson

(Signature of notarial officer)

Notary Public in and for State of NV

(Seal, if any)



LESSEE'S ASSIGNMENT OF LEASE AND SUBORDINATION
(Continued)

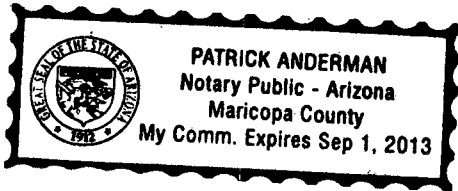
LENDER ACKNOWLEDGMENT

STATE OF Arizona

COUNTY OF Maricopa

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) SS
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This instrument was acknowledged before me on 5-26-10 by **Denise Lewis, Loan Documentation Specialist of Wells Fargo Bank, National Association**, as designated agent of Wells Fargo Bank, National Association.



[Handwritten Signature]
(Signature of notarial officer)

Notary Public in and for State of ARIZONA

(Seal, if any)



EXHIBIT 'A'

A PORTION OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 13 NORTH, RANGE 20 EAST, SITUATE IN THE TOWN OF GARDNERVILLE, COUNTY OF DOUGLAS, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 395, 40 FEET AT RIGHT ANGLES TO STATION 51+32.75 P.O.T.; THENCE SOUTH 44°54'00" EAST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 395, A DISTANCE OF 245.82 FEET; THENCE LEAVING SAID RIGHT OF WAY LINE OF U.S. HIGHWAY 395, SOUTH 89°17'37" WEST A DISTANCE OF 178.57 FEET; THENCE NORTH 0°26'20" EAST A DISTANCE OF 180.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 395; THENCE ALONG SAID RIGHT OF WAY LINE OF U.S. HIGHWAY 395, SOUTH 44°54'00" EAST, A DISTANCE OF 5.18 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT CERTAIN PARCEL CONVEYED FROM J. ARCHIE MILLER, ETAL, TO THE STATE OF NEVADA IN DEED RECORDED JULY 21, 1965, IN BOOK 33, PAGE 42, OFFICIAL RECORDS AS FILE NO. 28846.

NOTE: THE ABOVE METES AND BOUNDS LEGAL DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED JUNE 2, 1986 IN BOOK 686, PAGE 103 AS INSTRUMENT NO. 135657.

A.P.N. 1320-32-602-001