

APNs: 1320-33-402-057
1320-33-402-080



KAREN ELLISON, RECORDER

RECORDING REQUESTED BY AND
MAIL TO:

✓ The Town of Gardnerville
Attn: Thomas A. Dallaire
1407 Hwy 395
Gardnerville, NV 89410

DITCH IRRIGATION AND MAINTENANCE EASEMENT

THIS Ditch Irrigation and Maintenance Easement (“Easement”) is entered into this 18 day of August, 2016, by and between the Grantors, Village Motel, LLC, a Nevada limited liability company, by and through its Managers, Cheryl Ann Agresti and David P. Agresti (LLC), and the Town of Gardnerville (“Town”), by and through its Manager, Thomas A. Dallaire (“Grantors”) and any downstream user of the Martin Slough Waters (“Grantees”). Grantor and Grantees are sometimes individually referred to as “Party” and may collectively referred to as “Parties.”

WITNESSETH

WHEREAS, Grantors are the owner of certain real property located in Douglas County, Nevada, commonly identified as Douglas County Assessor’s Parcel Nos. 1320-33-402-057 and 1320-33-402-080, as further set forth in that certain Record of Survey in Support of a Boundary Line Adjustment for Grantors recorded concurrently herewith, and more particularly described in Exhibit A and depicted in Exhibit B attached hereto and incorporated herein by this reference; and

WHEREAS, Grantors desire to grant, and Grantee desires to acquire, a perpetual non-exclusive variable width ditch irrigation and maintenance easement over, through and under those portions of the property depicted, and more particularly described, in Exhibits A and B attached hereto and incorporated herein by this reference.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantors and Grantees hereby agree as follows:

1. **Recitals:** The foregoing recitals are true and correct and are incorporated herein.

2. **Grant of Easement:** The Grantors hereby grant and convey to the Grantees a perpetual non-exclusive, rent free, variable width ditch and irrigation maintenance easement over, through and under the Easement Area for the following purposes:

a. The maintenance and repair (including necessary replacements and reconstruction) of the improvements located within the Easement Area and any appurtenances reasonably connected therewith shall be performed and paid for by the Town; provided, however, that the Grantees shall have the right, should the Town, after thirty (30) days written notice provided by Grantees specifying the maintenance or repair needed, neglect, refuse or fail to maintain and repair the improvements within the Easement Area, to enter the Easement Area and conduct such maintenance and repair (including necessary replacements and reconstruction) of the improvements located within the Easement Area and any appurtenances reasonably connected therewith. Should Grantees maintain and repair the improvements located within the Easement Area, the existing improvements within the Easement Area shall not be materially changed without the written consent of the Town; and

b. Upon the Town's failure to do so, after thirty (30) days written notice provided by Grantees specifying the maintenance or repair needed, Grantees shall have the right to maintain, install and repair (including necessary replacements and reconstruction) of any and all improvements in any way related to the Martin Slough operation, irrigation and maintenance within the Easement Area; and

c. Grantees shall have such access, ingress and egress over the Easement Area as may be necessary or useful to enjoy the foregoing rights.

3. **Use of Easement:** The purpose of this Easement is to provide year round access to Grantees for ditch irrigation and maintenance access over, through and under the Easement Area for the operation of existing Martin Slough improvements; provided, however, that such access shall only be allowed in the event that the Town, after thirty (30) days written notice provided by Grantees specifying the maintenance or repair needed, neglects, refuses or fails to maintain and repair the improvements constructed within the Easement Area. Nothing in this Easement is intended to prohibit the use of the Easement Area by the Town, provided such use does not interfere with the use of the Easement by the Grantees.

4. **Improvements:** The Town shall have the right to construct, at its sole expense, improvements on the easement property suitable for the uses delineated in this variable width ditch irrigation and maintenance easement, including, but not limited to, the operation and maintenance of existing ditch structures. Grantees shall not be obligated to install any of these improvements, but Grantees shall be afforded the right to install improvements in the event that the Town, after thirty (30) days written notice provided by Grantees specifying the improvements needed, neglects, refuses or fails to do so. Any improvements within the Easement Area made by the Town shall be subject to prior approval of the Grantees.

5. **Maintenance:** The Town shall be responsible for maintaining the ditch improvements within the Easement Area to the extent necessary for the uses described in this Easement; provided, however, that Grantees, after thirty (30) days written notice provided by Grantees specifying the maintenance needed, may maintain the ditch improvements within the Easement Area in the event that the Town neglects, refuses or fails to do so.

6. **Indemnity:** Each Party to this Agreement hereby agrees that such Party (the "Indemnifying Party") shall defend, protect, indemnify, and hold harmless each other Party (the "Protected Party") from and against any and all damages, losses, expenses, and fines based upon any claim of personal injury or property damage occurring during the term of this Agreement and resulting from the Indemnifying Party's use of, construction upon, or maintenance of, the Easement Area or the Improvements, except to the extent arising from the Protected Party's own negligence or misconduct, or that of the Protected Party's agents, tenants, licensees, or invitees. In the event that the Protected Party receives notice of any claim potentially implicating the Indemnifying Party's duties under this Section 6, the Protected Party shall inform the Indemnifying Party of the claim as soon as is reasonably possible, and in any event within ten (10) days of receiving notice of such claim. The Protected Party's failure to timely inform the Indemnifying Party of a claim shall waive the Protected Party's rights under this Section 6 as to that claim.

7. **Easement Runs with Land; Successors and Assigns:** The easement created in this Agreement is perpetual in nature, appurtenant to the Dominant Property, and shall run with the Dominant Property and benefit any owner of any portion of the Dominant Property in perpetuity. The provisions of this Agreement shall be binding upon the successors and assigns of Grantors and Grantees. Grantors and Grantees shall be responsible for their respective obligations that accrue during their ownership of the Dominant Property and the Servient Property; provided, however, in the event that either Party conveys, transfers, assigns, or otherwise disposes of all of its interest in the property described in Exhibit "A" to this Easement, the transferring party shall be released and discharged from any liabilities and obligations under this Agreement that occur after such transfer.

8. **Notices:** All communications which may be, or are required to be, given by either Party to this Agreement shall be properly given if made in writing and sent by: (a) hand delivery; (b) certified mail, return receipt requested; (c) facsimile, provided a confirming copy thereof is also sent in accordance with (a), (b), or (d); or (d) Federal Express or another nationally recognized overnight delivery service for next business day delivery, with all postage, delivery, and other charges paid by the sender and addressed to Grantors or Grantees, as applicable, as follows, or at such other address as each may request in advance in writing. Such notices shall be deemed delivered: (i) by hand, upon actual delivery; (ii) by overnight delivery service, on the next business day after the notice is sent; (iii) by facsimile, on the next business day after the date the notice is sent; and (iv) if mailed, upon the earlier of actual receipt or

three (3) business days after mailing. Refusal of delivery shall be deemed effective delivery. Unless changed as provided in this Section , notice addresses are as follows:

If to Grantor (the Town):

Town of Gardnerville
Attn: Thomas A. Dallaire
1407 Hwy 395
Gardnerville, NV 89410
Telephone: 775-782-7134
Facsimile: 775-782-7135

If to Grantor (LLC):

Village Motel, LLC
David P. and Cheryl Ann Agresti
1383 North Highway 395
Gardnerville, NV 89460
Telephone: 775 782 2624
Facsimile: 775 782 1135

If to Grantee:

Water Conveyance Advisory Committee
P.O. Box 218
Gardnerville, NV 89410
Telephone: 775-782-7134
Facsimile: 775-782-7135

9. **Damage to Easement Property:** The Grantors and Grantees shall be responsible for any damage each may cause to the improvements within the Easement Area. The Party responsible for such damage shall promptly make all needed repairs, restoring the Easement Area and improvements thereon to its condition prior to the damage.

10. **Obstructions to Use of the Easement Property:** Neither the Grantors nor the Grantees or any person permitted to use the Easement Area under the terms of this Easement may utilize the Easement Area in any way that interferes with its use by any person permitted to use it. Any obstructions or impediments to the use of the Easement Area may be removed, without notice, by the Town or Grantees and the cost of such removal shall be borne by the party responsible for such obstruction.

11. **Enforcement of Agreement:** The Grantors and Grantees shall have the right to legally enforce this Easement and the covenants, conditions and restrictions set forth herein, by whatever action or actions are legally available, including, without limitation, enjoining any violation or threatened violation hereof.

12. **Amendments:** This Easement may not be modified, amended or terminated except by execution and recording of a written instrument signed by both Grantors and Grantees.

13. **Breach Shall Not Permit Termination:** No breach of this Easement shall entitle either party to terminate this Easement or to bring any action for termination; provided,

however, that such limitation shall not impact any other rights that may be available to such party.

14. **Severability:** If any provision or specific application of this Easement is found to be invalid by a court of competent jurisdiction, the remaining provisions or specific applications of this Easement shall remain valid and binding.

IN WITNESS WHEREOF, the Grantors have agreed to and executed this Ditch Irrigation and Maintenance Easement this 18th of August, 2016.

DATED this 18th day of August, 2016.

Village Motel, LLC, by and through its Managers

Cheryl Ann Agresti
By: Cheryl Ann Agresti
Its: Manager

David P. Agresti
By: David P. Agresti
Its: Manager

DATED this 18 day of August, 2016.

Town of Gardnerville, by and through its Manager

Thomas A. Dallaire
By: Thomas A. Dallaire
Its: Manager

ACKNOWLEDGEMENT

STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

On August 18, 2016, before me, the undersigned, a Notarial Officer in and for said County and State, personally appeared Village Motel, LLC by and through its Managers Cheryl Ann Agresti and David P. Agresti, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that

they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of Nevada that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Carol A. Louthan
 NOTARIAL OFFICER



ACKNOWLEDGEMENT

STATE OF NEVADA)
) ss.
 COUNTY OF DOUGLAS)

On August 18, 2016, before me, the undersigned, a Notarial Officer in and for said County and State, personally appeared the Town of Gardnerville, by and through its Manager, Thomas A. Dallaire, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of Nevada that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Carol A. Louthan
 NOTARIAL OFFICER



COPY

EXHIBIT A

**DESCRIPTION
IRRIGATION AND MAINTENANCE EASEMENT**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

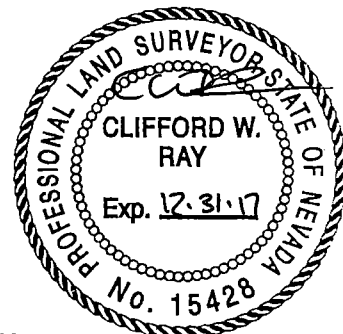
A strip of land, varying in width, for irrigation and maintenance purposes located within a portion of Section 33, Township 13 North, Range 20 East, Mount Diablo Meridian, Douglas County, Nevada being 5-feet westerly of the adjusted property line as shown on the Record of Survey to Support a Boundary Line Adjustment for The Town of Gardnerville and Village Motel, LLC filed for record JANUARY 5, 2017 in the office of Recorder, Douglas County, Nevada as Document No. 2017-892986 and 27-feet easterly of the easterly top of bank of the Martin Slough with the distance across said Martin Slough from top of bank to top of bank varying in width from 4-feet to 16-feet, the centerline of the Martin Slough particularly described as follows:

Commencing at a point on the north line of Toler Lane, said point also being the southeast corner of Adjusted Parcel 1 as shown on said Record of Survey to Support a Boundary Line Adjustment for The Town of Gardnerville and Village Motel, LLC;
thence along the south line of said Adjusted Parcel 1, North 89°34'11" West, 23.60 feet;
thence continuing along said south line North 89°35'19" West, 5.90 feet to the POINT OF BEGINNING;
thence North 15°20'33" West, 80.20 feet;
thence North 08°28'49" West, 78.28 feet;
thence North 35°48'11" West, 51.73 feet to a point on the southerly line of an Existing Irrigation and Maintenance filed for record July 15, 2015 in the office of Recorder, Douglas County, Nevada as Document No. 2015-866303, the TERMINUS of this description, containing 10,260 square feet, more or less.

The westerly sideline of said easement shall be lengthened or shortened so as to extend to begin on said southern boundary of Adjusted Parcel 1 and end on the south line of said Existing Irrigation and Maintenance Easement. The easterly sideline of said easement shall be lengthened or shortened so as to begin on the easterly line of said Adjusted Parcel 1 and end on the south line of said Existing Irrigation and Maintenance Easement.

The Basis of Bearing of this description is identical to the Record of Survey to Support a Boundary Line Adjustment for The Town of Gardnerville and Village Motel, LLC filed for record JANUARY 5, 2017 in the office of Recorder, Douglas County, Nevada as Document No. 2017-892986.

Prepared By: R.O. ANDERSON ENGINEERING, INC.
P.O. Box 2294
Minden, Nevada 89423



COPY

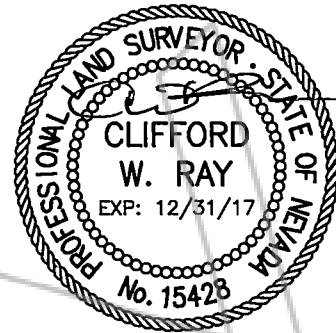
EXHIBIT B

Y:\Client Files\1393\1393-018\CAD\Survey\Exhibits\1393-018 MARTIN SLOUGH ESMT.dwg 7/1/2016 1:56:42 PM Bill C. Ray

SCALE: 1" = 40'

**ADJUSTED
PARCEL 1**
(1320-33-402-080)
340,831 SF
7.82± AC

EXISTING IRRIGATION
AND MAINTENANCE
EASEMENT PER DOC.
NO. 2015-866303



**ADJUSTED
PARCEL 2**
(1320-33-402-057)
56,644 SF
1.30± AC

IRRIGATION AND
MAINTENANCE
EASEMENT
(WIDTH VARIES)
(10,260± SF)

DITCH WIDTH VARIES
(TOP OF BANK TO
TOP OF BANK)

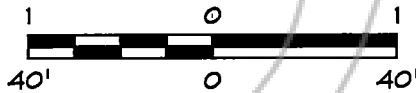
27' TOP OF DITCH
TO EASEMENT

TOP OF DITCH TO
EASEMENT VARIES

5' PROPERTY LINE
TO EASEMENT

1320-33-402-059
DOUGLAS COUNTY
SCHOOL DISTRICT

POINT OF
COMMENCEMENT



TOLER LANE

R|O|Anderson
WWW.ROANDERSON.COM

NEVADA
1603 Esmeralda Ave
P.O. Box 2229
Minden, NV 89423
p 775.782.2322
f 775.782.7084

CALIFORNIA
595 Tahoe Keys Blvd
Suite A-2
South Lake Tahoe, CA 96150
p 530.600.1660
f 775.782.7084

**EXHIBIT
IRRIGATION AND
MAINTENANCE EASEMENT
SECTION 33, T.13N., R.20E., M.D.M.**

9/10/16/90