

## RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO  
 DARIN G. FAIN  
 2300 P ST  
 SACRAMENTO, CA 95816



00068869201809103700120127

KAREN ELLISON, RECORDER

Order No.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Parcel Nos 1318-09-810-086, 1318-09-810-087

## GRANT OF EASEMENT AND AGREEMENT

THIS GRANT OF EASEMENT AND AGREEMENT, is made this 9 day of February 2018, by and between DARIN G. FAIN ("GRANTOR"), and JOHN W & PAMELA MCNAY, TRUSTEES OF THE MCNAY REV INTER VIVOS TRUST ("GRANTEE")

WHEREAS, GRANTEE desires to acquire a certain easement ("Easement") in a portion of GRANTOR'S property commonly known as 631 Freel Dr., Zephyr Cove, NV 89448, Douglas County Assessor's Parcel Number 1318-09-810-086, more particularly described on Exhibit "A" ("GRANTOR'S Land"), which easement is described in Exhibit "B" and depicted on Exhibit "C", (the "Easement Area") for the sole purpose of installing, constructing, maintaining, repairing, replacing and removing pipes and mains constituting the underground water distribution system for GRANTEE'S property commonly known as 634 Pharris Ln., Zephyr Cove, NV 89448 Douglas County Assessor's Parcel Number 1318-09-810-087, which is more particularly described on Exhibit "D".

NOW, THEREFORE FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

- GRANTOR hereby grants to GRANTEE a permanent easement and right-of-way to install, construct, maintain, repair, replace and remove pipes and mains constituting the underground water distribution system, and all other equipment and appurtenances as may be necessary or convenient for the operation of the underground water services (hereinafter referred to as "Water Lines and Associated Equipment over/under/on/across the Land located as described in Exhibits B and C for the purpose(s) of water distribution to the land described on Exhibit D, and provided all such facilities are buried at least five (5) feet, or otherwise as directed by any governmental agency, below the surface of GRANTOR'S Land. GRANTOR expressly reserves for itself, its successors and its assigns, the right and privilege to use and occupy d the surface and first 4 feet below the surface, and air space over the Easement Area for any purpose which is consistent with the rights herein granted to GRANTEE, including for the installation of vegetation and irrigation, so long as such use/uses does/do not unreasonably interfere with the rights herein granted.
- GRANTOR further grants to GRANTEE: the perpetual right of ingress and egress to said Easement Area for the purpose of exercising, performing, and protecting GRANTEE'S rights and privileges hereunder

3. GRANTEE shall maintain any improvements constructed or installed thereon by GRANTEE or associated with GRANTEE'S use of the Easement Area. The operation and maintenance of such improvements and of the Easement Area shall be at GRANTEE'S sole cost and expense.

4. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Land, whether or not of record; the use of the word "grant" shall not imply any warranty on the part of the GRANTOR with respect to the Easement or the Easement Area.

5. GRANTEE shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at GRANTEE'S sole cost and expense.

6. GRANTEE shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the GRANTOR'S Land.

7. GRANTEE shall be responsible for any damage to GRANTOR'S property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, subsidence or damage resulting therefrom. GRANTEE shall promptly repair and restore to its original condition any of GRANTOR'S property, including, but not limited to, roads, utilities, vegetation, plants, buildings and fences that may be altered, damaged or destroyed in connection with the exercise of the Easement or use of the Easement Area.

8. This Grant of Easement is made on the express condition that GRANTOR is to be free from all liability by reason of injury or death to persons or injury to property from whatever cause arising out of GRANTEE'S, its contractors', agents', invitees', or licensees' exercise of rights granted pursuant to this Easement or use of the Easement Area or of the improvements or personal property of GRANTEE thereto or thereon, including any liability for injury or death to the person or property of GRANTEE, its contractors, agents, officers, members, employees, invitees, or licensees or to any property under the control or custody of GRANTEE. GRANTEE hereby covenants and agrees to defend and indemnify GRANTOR, its agents, invitees and guests and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses caused or claimed to be caused by the exercise of the Easement or use of the Easement Area by GRANTEE, however occurring, other than those caused solely by the willful or grossly negligent acts or omissions of GRANTOR.

9. GRANTEE alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against GRANTEE'S interest in the Easement Area, or against any of GRANTOR'S real property as a result of the Easement herein granted. GRANTEE shall not cause liens of any kind to be placed against the Easement Area or any of GRANTOR'S real property.

10. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing, signed by the party to be charged.

11. **Miscellaneous.**

a. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the internal laws of the State of Nevada

b. **Covenant Runs with the Land.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators and assigns, and shall run with the Land in accordance with applicable law.

c. **Attorneys' Fees.** If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party shall pay the prevailing party's reasonable attorney's fees, in addition to other relief that may be granted.

d. **Partial Invalidity.** The provisions of this Agreement are intended to be severable and enforceable to the maximum extent permitted by law. If for any reason any provision of this Agreement shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision shall be ineffective only to the extent of the invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of this Agreement in any other jurisdiction. The unaffected portion and provisions of this Agreement will be enforced to the maximum extent permitted by law.

e. **Waiver, Modification and Amendment.** No amendment of, supplement to or waiver of any obligations under this Agreement will be enforceable or admissible unless set forth in a writing signed by the party against which enforcement or admission is sought. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated.

f. **Counterparts.** This Agreement may be executed in any number of identical counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document and any counterpart signature pages may be detached and assembled to form a single original document.

g. **Notices.** Any and all notices given in connection with this Agreement shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by personal delivery, Federal Express or other nationally-recognized overnight messenger service, or first class registered or certified mail, postage prepaid, return receipt requested. A written notice shall be deemed to have been given to the recipient party on the earlier of: (a) the date it shall be delivered to the address required by this Agreement; (b) the date delivery shall have been refused at the address required by this Agreement; or (c) with respect to notices sent by mail, upon the first to occur of receipt or the expiration of three (3) days after deposit in the United States Postal Service mail. Any and all notices referred to in this Agreement, or which either party desires to give to the other, shall be addressed as follows:

If to GRANTOR:  
DARIN G. FAIN  
2300 P ST  
SACRAMENTO, CA 95816

If to GRANTEE:  
JOHN W & PAMELA MCNAY  
PO BOX 11695  
ZEPHYR COVE, NV 89448

Any party hereto may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**EXHIBIT A**  
**[GRANTOR'S LAND]**

**LEGAL DESCRIPTION**

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

COMMENCING AT THE MOST WESTERLY CORNER OF LOT 23, IN BLOCK G, AS DELINEATED ON THAT CERTAIN MAP ENTITLED "AMENDED MAP OF SUBDIVISION NO. 2 OF ZEPHYR COVE PROPERTIES, INC.", IN SECTION 9 AND 10, TOWNSHIP 13 NORTH, RANGE 18 EAST, WHICH WAS FILED FOR RECORD AUGUST 5, 1929, WITH JOSEPHINE L. KLOTZ, COUNTY RECORDER OF DOUGLAS COUNTY, NEVADA, AFTER BEING APPROVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, NEVADA, ON THE SAME DAY, RUNNING, THENCE NORTH 53°30' EAST, A DISTANCE OF 70 FEET; THENCE SOUTH 36°30' EAST, A DISTANCE OF 75.03 FEET (ORIGINAL PLAT DISTANCE OF 75 FEET); THENCE SOUTH 53°30' WEST, A DISTANCE OF 70 FEET; THENCE NORTH 36°30' WEST, A DISTANCE OF 75.03 FEET (ORIGINAL PLAT DISTANCE OF 75 FEET) TO THE POINT OF BEGINNING AND BEING FURTHER DESCRIBED AS THE SOUTHWEST 70 FEET OF SAID LOT 23 IN BLOCK "G" ADJACENT TO FREEL DRIVE. THIS SUBDIVISION IS SOMETIMES CALLED "MARLA BAY".

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED APRIL 08, 2005, IN BOOK 405, PAGE 3006, AS INSTRUMENT NO. 641231.

Assessor's Parcel No. 1318-09-810-086

**EXHIBIT B**  
[LEGAL DESCRIPTION OF EASEMENT AREA]

COPY

September 2, 2015  
09178

DESCRIPTION  
Waterline Easement

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

All that portion of Lot 23, Block G of Zephyr Cove Properties Amended No. 2, filed for record on August 5, 1929, as Document No. 267, Douglas County Official Records, more particularly described as follows:

Beginning at the most Southerly corner of said Lot 23  
thence North 36°30'00" West 8.00 feet;  
thence North 53°30'00" East 62.00 feet;  
thence North 36°30'00" West 32.00 feet;  
thence North 53°30'00" East 8.00 feet;  
thence South 36°30'00" East 40.00 feet;  
thence South 53°30'00" West 70.00 feet to the Point of Beginning.

Containing 816 square feet.

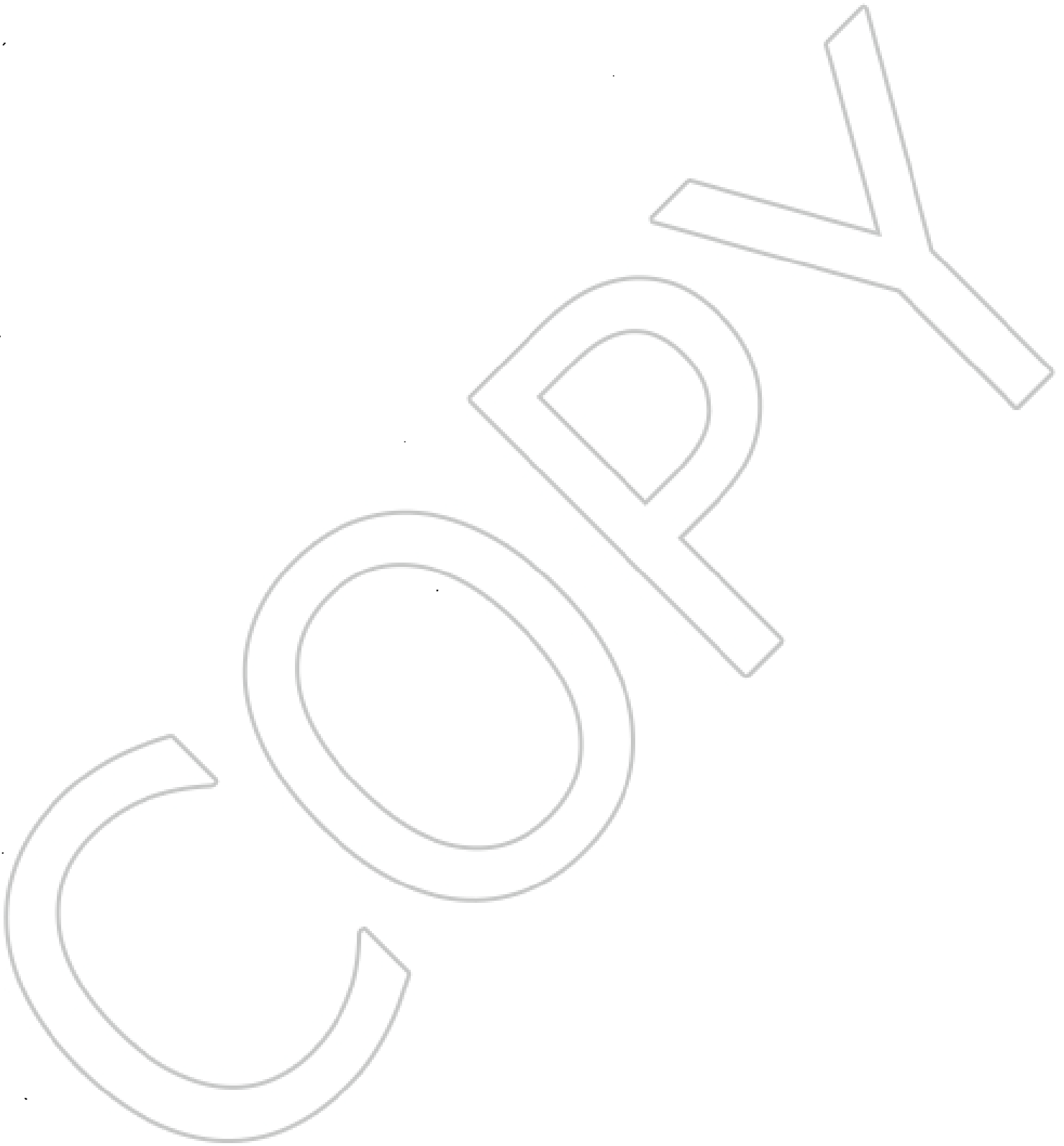
The Basis of Bearing for this description is the above referenced Zephyr Cove Properties Amended No. 2.

Note: Refer this description to your title company before incorporating into any legal document.

Prepared by: Turner & Associates, Inc.  
Land Surveying  
P.O. Box 5067  
Stateline, NV 89449



**EXHIBIT C**  
**[DIAGRAM/DEPICTION OF EASEMENT AREA]**





**TURNER & ASSOCIATES, INC.**

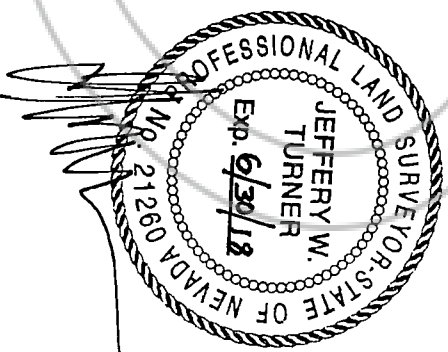
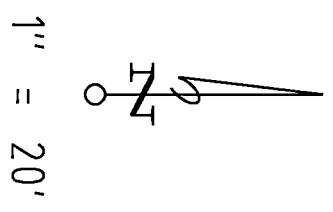
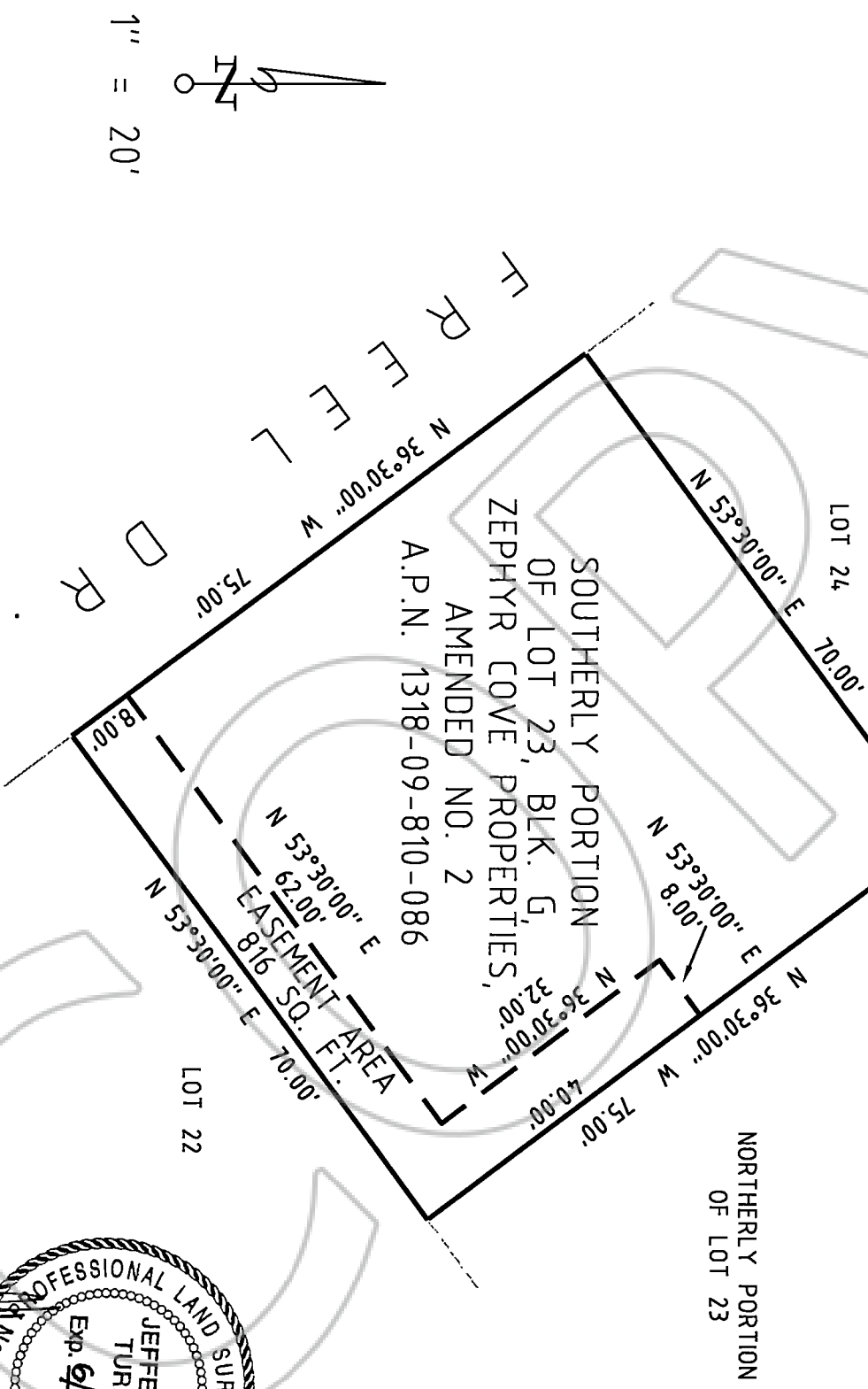
LAND SURVEYING

(775) 588-5558  
318 DORLA COURT, SUITE 283  
ROUND HILL, NEVADA  
P.O. BOX 5867 - STATELINE, NEVADA 89449

09178 EASEMENT EXHIBIT FOR RECORDING

PROJECT FILE:

DATE 9/2015 JOB No. 09178  
PROJECT EASEMENT EXHIBIT  
BY SW PAGE 1 OF 1  
SOUTHERLY POR. OF LOT 23, BLK. G,  
ZEPHYR COVE PROPERTIES AMENDED NO. 2  
631 FREEL DR., DOUGLAS CO., NV  
A.P.N. 1318-09-810-086





**EXHIBIT D**  
**[BENEFITTED PROPERTY/GRANTEE LAND]**

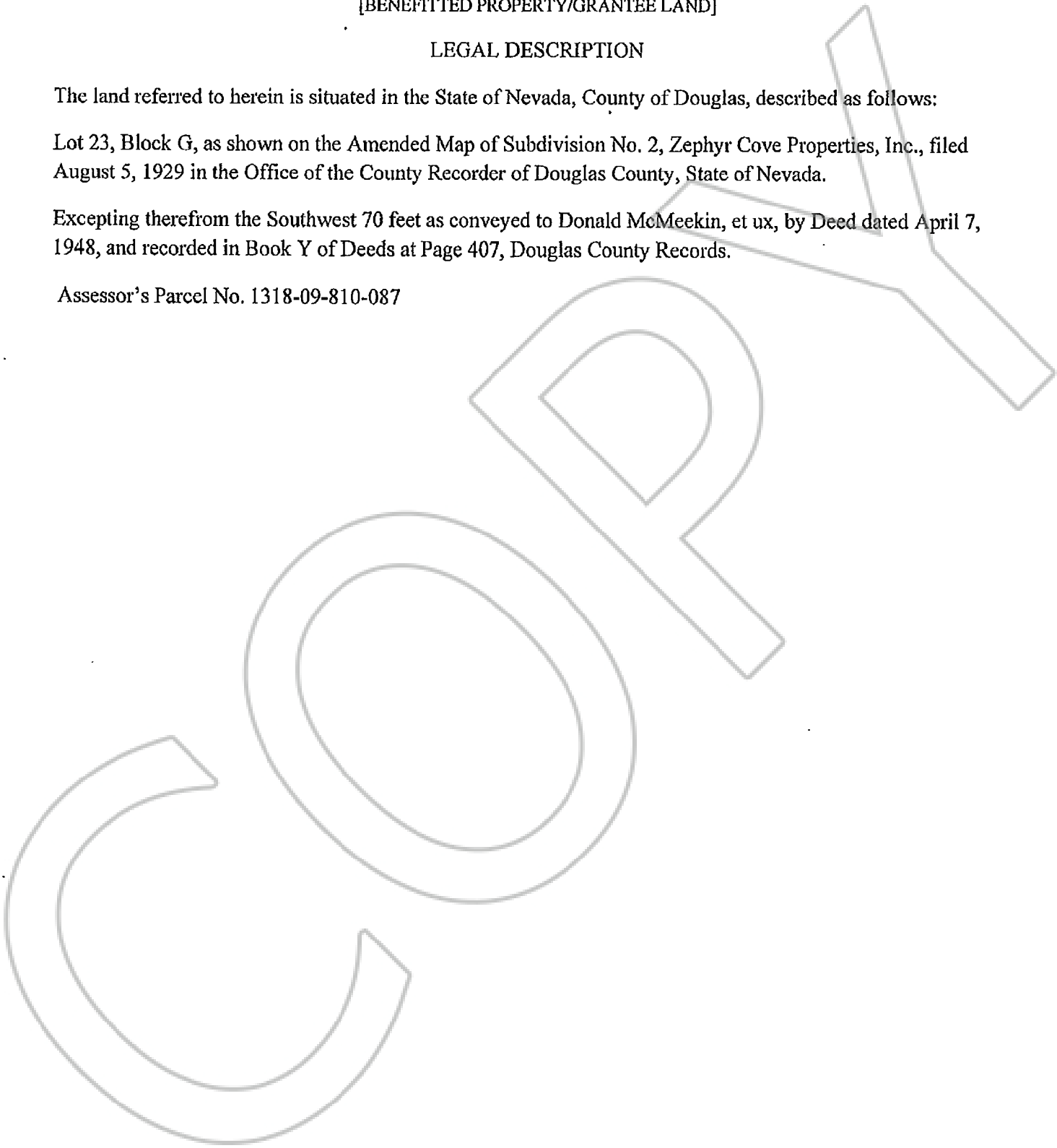
**LEGAL DESCRIPTION**

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

Lot 23, Block G, as shown on the Amended Map of Subdivision No. 2, Zephyr Cove Properties, Inc., filed August 5, 1929 in the Office of the County Recorder of Douglas County, State of Nevada.

Excepting therefrom the Southwest 70 feet as conveyed to Donald McMeekin, et ux, by Deed dated April 7, 1948, and recorded in Book Y of Deeds at Page 407, Douglas County Records.

Assessor's Parcel No. 1318-09-810-087



IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

GRANTOR:

*Darin G. Fain*

2/12/18

By: DARIN G. FAIN

GRANTEE

*John W. McNay*  
JOHN W. MCNAY, TRUSTEE OF THE MCNAY REV  
INTER VIVOS TRUST

*Pamela McNay*  
PAMELA MCNAY, TRUSTEE OF THE MCNAY REV  
INTER VIVOS TRUST

**COPIES**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA } ss:  
COUNTY OF San Mateo

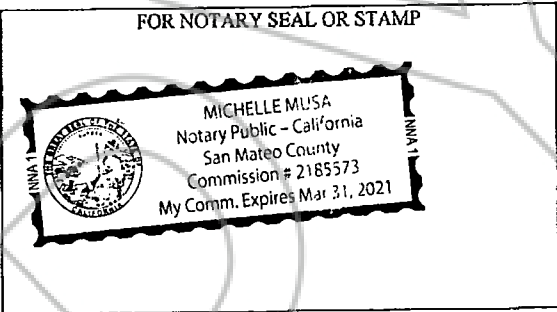
On 2/9/18, before me, Michelle Musa, Notary Public,  
personally appeared John W. Mcnay & Pamela Mcnay

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]



STATE OF NEVADA  
COUNTY/ OF \_\_\_\_\_

On \_\_\_\_\_,  
personally appeared before me, a Notary Public,  
in and for said County,

known or proven to me to be the person(s) whose name(s) is/are subscribed to the above instrument, who acknowledged that he/she/they executed this instrument for the purposes therein contained

Witness my hand and official seal.

Notary signature \_\_\_\_\_

Print name \_\_\_\_\_

My commission expires: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA } ss:  
COUNTY OF Sacramento

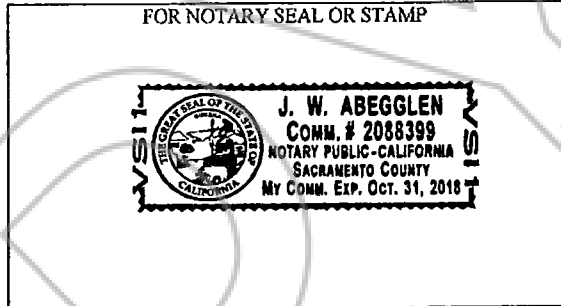
On 2-12-2018, before me, J.W. Abegglen, Notary Public,  
personally appeared Darin G. Fain

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature J.W. Abegglen



STATE OF NEVADA  
COUNTY/ OF \_\_\_\_\_

On \_\_\_\_\_,  
personally appeared before me, a Notary Public,  
in and for said County,

known or proven to me to be the person(s) whose name(s) is/are subscribed to the above instrument, who acknowledged that he/she/they executed this instrument for the purposes therein contained

Witness my hand and official seal.

Notary signature \_\_\_\_\_

Print name \_\_\_\_\_

My commission expires: \_\_\_\_\_