

The undersigned hereby affirms that there is no Social Security number contained in this document.

APNs: 1219-03-002-067, 1219-03-001-075

**RECORDING REQUESTED BY:**

Taggart & Taggart, Ltd.  
108 N. Minnesota St.  
Carson City, NV 89703

**AFTER RECORDATION, RETURN TO:**

Taggart & Taggart, Ltd.  
108 N. Minnesota St.  
Carson City, NV 89703

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**IRRIGATION DITCH EASEMENT AGREEMENT**

THIS IRRIGATION DITCH EASEMENT AGREEMENT (this "Agreement") is entered into to be effective this 12<sup>th</sup> day of September 2022, by and between BERNARD D. BENZ and MARGARET W. BENZ, Trustees of THE BENZ FAMILY TRUST ("Grantor"), and GORDON R. ZUCKERMAN and JULIA ANNE ZUCKERMAN, Trustees of THE ZUCKERMAN FAMILY TRUST DATED NOVEMBER 1992 ("Grantee"). Grantor and Grantee are sometimes referred to individually as a "Party," and collectively as the "Parties."

**RECITALS**

- A. Grantor owns certain real property located in Douglas County, Nevada (the "Grantor's Property"). The Grantor's Property is more particularly described on Exhibit A, attached hereto and incorporated herein by this reference.
- B. Grantee owns certain real property located to the East and downgradient from the Grantor's Property (the "Grantee's Property"). The Grantee's Property is more particularly described on Exhibit B, attached hereto and incorporated herein by this reference.
- C. Grantee receives decreed water rights from Mott Creek through an irrigation ditch that passes through the Grantor's Property ("**Irrigation Ditch**") as illustrated on Exhibit C.
- D. Grantor also has decreed water rights from Mott Creek that are used for irrigation, domestic, and stock purposes on Grantor's Property.
- E. Grantee desires to obtain a thirty-seven (37)-foot-wide irrigation ditch easement (the "**Easement**") on, over, and across a portion of the Grantor's Property (the "**Easement Area**"). The Easement Area is that area located fourteen (14) feet on the southerly side of the centerline of the Irrigation Ditch and twenty-five (25) feet on the northerly side of the Irrigation Ditch.

F. Grantor is willing to convey the Easement to Grantee, subject to the terms and conditions set forth herein.

### TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the conditions set forth below, the parties agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated and made part of this Agreement by this reference.

2. Grant of Easement. This grant of easement is in two parts as specified to wit and depicted in Exhibit C.:

2.1 **“Upper Segment”:** The Upper Segment of the Easement is defined as the northern and western portion of the Easement where it begins at the western boundary line of the Grantor’s Property from Old Foothill Road to where it crosses under the fence into Grantor’s pasture. Grantor hereby conveys without warranty to Grantee a non-exclusive easement through the Upper Segment to allow the conveyance and delivery of water to the Lower Segment and ultimately onto Grantee’s Property, subject to the terms specified herein.

2.2 **“Lower Segment”:** The Lower Segment of the Easement is defined as the portion of the Easement from where it crosses under the fence of Grantor’s pasture to where it reaches the eastern boundary of Grantor’s Property. Grantor hereby conveys, without warranty, to Grantee, for the benefit of the Grantee’s Property, a non-exclusive easement on, over and across the Easement Area for the restoration, operation, and maintenance of the Irrigation Ditch. The design, restoration, construction, operation and maintenance of the Irrigation Ditch conducted by Grantee shall comply with the terms of this Agreement and all governmental laws, ordinances, regulations, and permits governing the same.

3. Ditch Alignment.

3.1 Grantor authorizes Grantee to restore the Irrigation Ditch on the Grantor’s Property at Grantee’s cost.

3.2 Grantee may use mechanized equipment to restore the Ditch with 24-hours notice to Grantor.

3.3 Grantee’s restoration must be completed before April 1, 2023, and be designed at its current location as illustrated in Exhibit C, and constructed according to the following specifications:

Trapezoidal design  
Average slope = 1.9%  
Side slopes = 1:1 (H:V)  
Roughness coefficient = 0.025-0.035

Bottom width = 18 inches  
Depth = 15.4 inches

3.4 In the event that a government entity requires a modification or change in the location of the Irrigation Ditch, Grantee agrees that Grantor has the right to move the location of the Irrigation Ditch upon thirty (30) days-notice to Grantee under the following conditions:

3.4.1 The new location is required to be reasonably placed to allow the continued delivery of Grantee's water rights.

3.4.2 The proposed location is subject to the review and approval of Grantee to ensure the continued and sufficient delivery of decreed water.

3.4.3 If the maintenance sections need to be redefined with any new alignment, the Parties agree to negotiate in good faith a new maintenance responsibility cut-off point at that time.

3.4.4 The parties agree to split equally the cost of any such realignment.

4. Access. Grantee and its agents, servants, employees, consultants, contractors, and subcontractors (collectively, "**Grantee's Agents**") will have the right to enter upon the Easement Area for the purposes permitted by this Agreement. Grantee's Agents will enter upon the Easement Area at their sole risk and hazard. Grantee shall install a gate where the Irrigation Ditch exits the Grantor's Property at Grantee's own expense. Unless otherwise given permission in writing, Grantee shall access the Grantor's Property to perform restoration and maintenance through the installed gate and shall take reasonable care to keep the gate closed to protect and prevent the escape of livestock in Grantor's pasture.

5. Purpose of Easement and Reservation of Rights. This Easement is being created for the sole and exclusive purpose of permitting Grantee to receive delivery of decreed water rights from Mott Creek, appurtenant to Grantee's Property, through the Grantor's Property, and to further permit Grantee to have reasonable rights of access to and from the Irrigation Ditch for restoration, maintenance and conveyance purposes. The rights conveyed to Grantee herein are nonexclusive, and Grantor hereby expressly reserves all rights to the use and enjoyment of the Easement Area that are not inconsistent with, and which do not unreasonably interfere with, Grantee's rights to the use of the Easement Area as expressly set forth herein. The rights granted in this Easement are solely for the benefit of Grantee's Property, and Grantee has no right to grant permission to convey water through the Irrigation Ditch to any third party separately from Grantee's Property or to benefit any property other than Grantee's Property.

6. Maintenance and Upkeep. Grantor shall be responsible for maintenance and upkeep of the Upper Segment. Grantee shall be responsible for maintenance and upkeep of the Lower Segment. Maintenance responsibilities are set forth as follows:

6.1 The Easement Area and Irrigation Ditch are to be maintained in good conditions to ensure proper and timely delivery of water as decreed, to prevent erosion and sedimentation, and to prevent harm to livestock in Grantor's pasture.

6.2 Grantor shall be responsible to keep the Easement Area and the surrounding area free from debris, clutter, refuse, bins, receptacles, hazards, or any other material that may interfere with the purpose of the Easement.

6.3 Each Party shall maintain the segment of the Irrigation Ditch for which it is responsible in good condition according to generally accepted irrigation practices to ensure proper and timely delivery of water, as decreed, to prevent erosion and sedimentation, and to prevent harm to livestock in Grantor's pasture.

6.4 Each Party is solely responsible for maintenance work and cost for their respective easement segment, with no approval required from the other party except as specified herein.

6.5 Neither Party may harass or otherwise interfere with the equipment operator, maintenance laborers, or other agent performing work under the terms of this Agreement. Except in an Emergency, as defined herein, all disputes regarding compliance with duties and obligations set forth in this Agreement shall be communicated to each Party's counsel who will contact the other Party's counsel to attempt to address the raised concerns or issues. The Parties may directly communicate with one another regarding any matter not constituting a dispute.

6.6 Maintenance using mechanized equipment may be used when reasonably necessary, at the discretion of the party responsible for maintenance. Grantee shall provide Grantor twenty-four (24) hours-notice prior to bringing any heavy equipment on the Grantor's Property for restoration or maintenance.

6.7 If maintenance is not performed to the satisfaction of the other Party to allow the delivery of decreed water or to prevent Excessive Sedimentation or Excessive Erosion, as defined in this Agreement, each Party reserves the right to seek performance of this Agreement to the full extent of the law.

6.7.1 Excessive Sedimentation is defined as sedimentation that reduces the depth of the Irrigation Ditch to twelve (12) inches or the bottom width to fifteen (15) inches.

6.7.2 Excessive Erosion is defined as a depth in any location greater than twenty-one and four tenths (21.4) inches, being six (6) inches below the Irrigation Ditch depth specified in Section 3.3 above, or bottom width greater than twenty-four (24) inches.

6.7.3 Grantee shall be responsible to repair all Excessive Erosion at Grantee's cost. Should Excessive Erosion occur, Grantee shall repair the Irrigation Ditch using erosion-preventing material, such as gravel rip rap.

6.7.4 Grantee acknowledges and agrees that Excessive Erosion may be dangerous for livestock in Grantor's pasture and shall timely make any necessary repairs and otherwise take actions to protect livestock should Excessive Erosion occur.

6.7.5 If Excessive Erosion or Excessive Sedimentation should occur or water delivery is interrupted or reduced for failure of the other Party to perform its maintenance obligations hereunder, after five (5) calendar days from the delivery of a written request for maintenance has been submitted in writing to the other Party ("the Cure Period"), the requesting Party may perform the necessary maintenance, and recover the reasonable costs thereof.

6.7.6 The Cure Period is waived and does not apply in the event of an Emergency, defined as an extraordinary occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, or property.

7. Run with the Land/Successors. Subject to the terms and conditions of this Agreement, the Easement shall run with the land, and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties, their successors, and assigns.

8. Extinguishment or Termination of Easement. This Easement may be voluntarily extinguished or terminated upon the execution of a written release signed by both the Grantor and Grantee, their successors, or assigns, which shall be duly recorded in the official records of Douglas County, Nevada.

9. Liens. Grantee shall keep the Grantor's Parcel free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for, or under Grantee, and agrees to defend Grantor from any liens that may be placed on the Grantor's Parcel and/or the property pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under Grantee or any of Grantee's Agents. Any such liens shall be released of record within thirty (30) days.

10. Notices. Any notice required or desired to be given under this Agreement shall be considered given either: (i) when delivered in person to the recipient named below, or (ii) three (3) days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage prepaid, addressed by name to the person and party intended. All notices shall be given at the following addresses:

If to Grantor: 1265 OLD FOOTHILL RD  
GARDNERVILLE, NV 89460

If to Grantee: 394 MOTTSVILLE LN  
GARDNERVILLE, NV 89460

Either Party may designate a different individual or address for notices, by giving written notice thereof in the manner described above. The Parties shall also provide telephone or email notice to one another in the event of an Emergency and to the extent reasonably necessary for other purposes consistent with the terms of this Agreement.

11. No Third-Party Beneficiaries. In assuming and performing the obligations of this Agreement, Grantor and Grantee are each acting as independent parties, and neither shall be considered or represent itself as a joint venture, partner, agent, or employee of the other. There is no intent by either Party to create or establish third-party beneficiary status or rights in any third-party. This Agreement shall not be deemed to confer any rights upon any individual or entity which is not a Party hereto, and Grantor and Grantee expressly disclaim any such third-party benefit.

12. Counterparts. The Parties may sign this Agreement in multiple identical counterparts, all of which taken together shall constitute one and the same Agreement. Further, the Parties shall treat a copy of an original signature to this Agreement for all purposes as an original signature. The parties shall consider a copy of the signed Agreement for all purposes as an original of the Agreement to the maximum extent permitted by law, and no party to this Agreement shall have any obligation to retain a version of this Agreement that contains original signatures in order to enforce this Agreement, or for any other purpose.

13. Compliance with Laws. Parties will comply with all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials, and officers, foreseen or unforeseen, ordinary, or extraordinary, including, without limitation, any building, zoning, and land use laws.

14. Indemnification and Compensation for Personal Injury and Property Damage. Grantee shall indemnify, defend and hold harmless Grantor from any personal injury or property damage arising from Grantee's restoration, maintenance, and use of the Irrigation Ditch and Easement Area on Grantor's Property, including the acts and omissions of Grantee's agent, contractor or any third party who performs restoration and maintenance on Grantee's behalf. Grantor shall indemnify, defend and hold harmless Grantee from any personal injury or property damage arising from Grantor's restoration, maintenance, and use of the Irrigation Ditch and Easement Area on the Grantor Property, including the acts and omissions of Grantor's agent, contractor or any third party who performs maintenance on Grantor's behalf.

15. Representation by Counsel. Both Parties to this agreement hereby represent and acknowledge that they have been represented by counsel regarding the terms of this Agreement and that their counsel have fully advised them with respect to the consequences associated with agreeing to its terms.

16. Severability. Parties agree that, in the event that any portion ("Offending Portion(s)") of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, then those Offending Portions shall be severed from

this Agreement, as if they were never incorporated into this Agreement. Parties agree that if any Offending Portions are so severed from this Agreement, then the remainder of the Agreement shall, nevertheless, survive and remain fully intact, valid, and enforceable.

*[signatures and notaries are on the following page]*



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

**GRANTOR:**

THE BENZ FAMILY TRUST

By: Bernard D Benz  
BERNARD D. BENZ, Trustee

Dated: 9/12/2022

By: Margaret W Benz  
MARGARET W. BENZ, Trustee

Dated: 9/12/2022

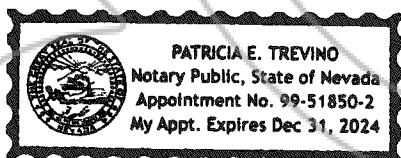
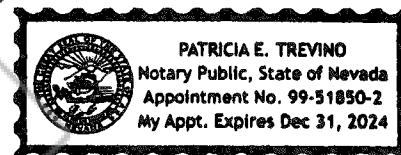
STATE OF NEVADA            )  
  : ss.  
COUNTY OF Washoe        )

This instrument was acknowledged before me on the 12<sup>th</sup> day of September 2022, by  
BERNARD D. BENZ.

Patricia E Trevino  
Notary Public

STATE OF NEVADA            )  
  : ss.  
COUNTY OF Washoe        )

This instrument was acknowledged before me on the 12<sup>th</sup> day of September 2022, by  
MARGARET W. BENZ.



Patricia E Trevino  
Notary Public

*[further signatures and acknowledgements to follow]*



**GRANTEE:**  
THE ZUCKERMAN FAMILY TRUST DATED  
NOVEMBER 1992

By: *Gordon R. Zuckerman*  
GORDON R. ZUCKERMAN, Trustee


Dated: 9/8/22

By: *Julia Anne Zuckerman*  
JULIA ANNE ZUCKERMAN, Trustee

Dated: 9/8/22

STATE OF NEVADA            )  
  : ss.  
COUNTY OF Carson City


This instrument was acknowledged before me on the 8<sup>th</sup> day of September 2022, by  
GORDON R. ZUCKERMAN.

 **CHLOE GOULDMAN-GAINEY**  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No: 19-2213-02 - Expires July 12, 2023

*[Signature]*  
Notary Public

STATE OF NEVADA            )  
  : ss.  
COUNTY OF Carson City

This instrument was acknowledged before me on the 8<sup>th</sup> day of September 2022, by  
JULIA ANNE ZUCKERMAN.

 **CHLOE GOULDMAN-GAINEY**  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No: 19-2213-02 - Expires July 12, 2023

*[Signature]*  
Notary Public

**EXHIBIT A**

(Legal Description of the Grantor's Property)

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

A parcel of land located within portions of Section 3, Township 12 North, Range 19 East, Mount Diablo Baseline and Meridian, Douglas County, Nevada, described as follows:

Commencing at the West one-quarter ( $W\frac{1}{4}$ ) corner of Section 3, Township 12 North, Range 19 East, M.D.B.&M., as shown on the Land Division Map for Robert and Val Easterwood and Recorded in Book 387 on Page 11 as Document No. 150824, Douglas County, Nevada, Recorder's Office; thence North  $84^{\circ} 35' 57''$  East, 1737.81 feet; thence North  $70^{\circ} 04' 00''$  East, 600.44 feet to the Northeast corner of Assessor's Parcel No. 19-060-06; thence South  $18^{\circ} 03' 18''$  East, 871.05 feet to the POINT OF BEGINNING; thence North  $71^{\circ} 04' 40''$  East, 401.80 feet; thence South  $18^{\circ} 03' 18''$  East, 552.30 feet to the North right-of-way line of Mottsville Lance as shown on the unrecorded Record of Survey for Douglas County prepared by Ernest E. Muller, Sr.; thence along said right-of-way South  $70^{\circ} 30' 12''$  West, 1306.30 feet to the East right-of-way of Mottsville Cemetery Road as shown on the above said Land Division Map; thence North  $06^{\circ} 41' 36''$  West, 560.23 feet to the Southwest corner of Assessor's Parcel No. 19-060-06; thence North  $69^{\circ} 47' 35''$  East, 794.35 feet to THE POINT OF BEGINNING.

NOTE: The above metes and bounds description appeared previously in that certain Quitclaim Deed recorded in the office of the County Recorder of Douglas County, Nevada on August 11, 1995, as Document No. 368188, Book 895, Page 1871, Official Records.

APN 1219-03-002-067

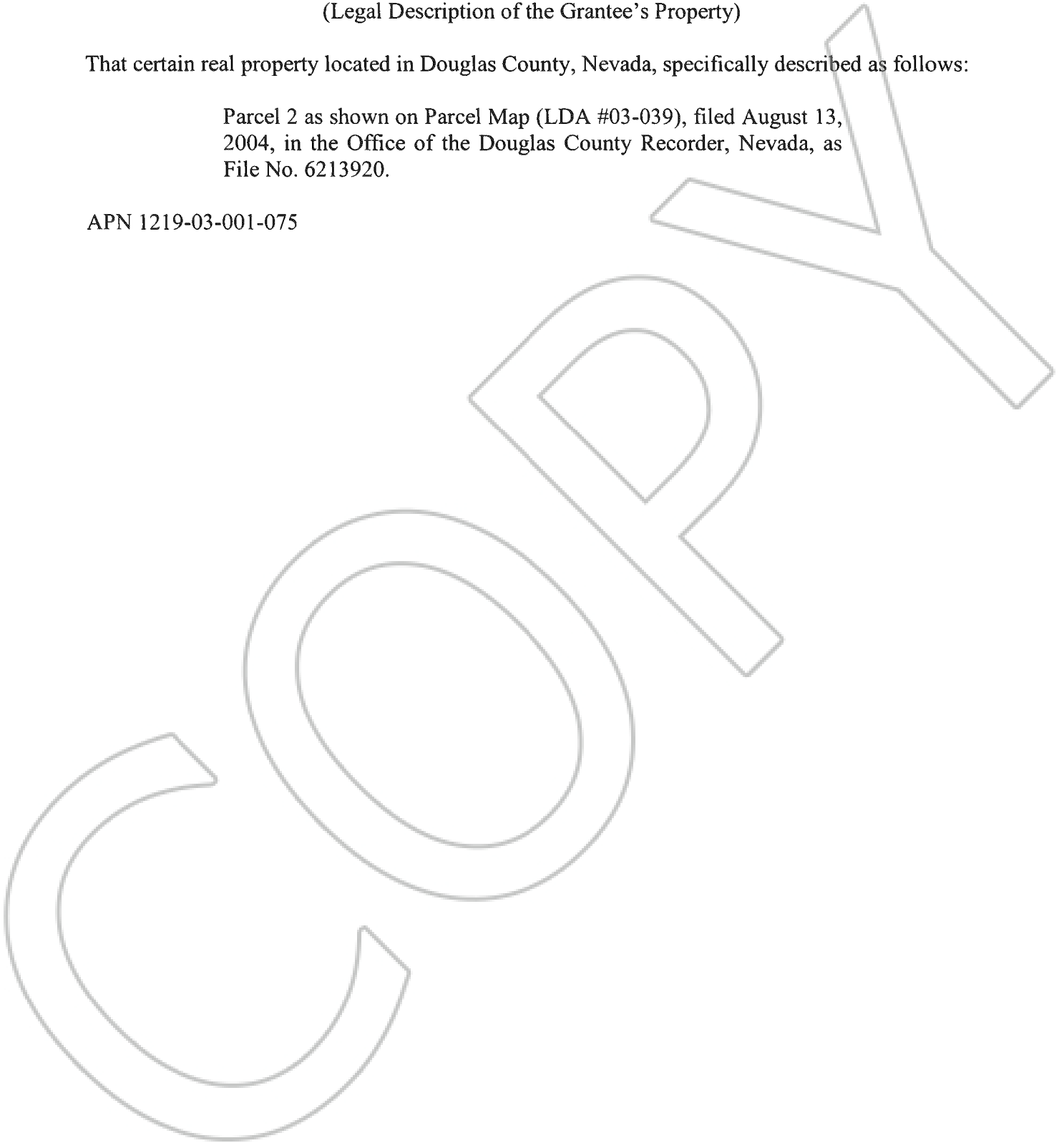
**EXHIBIT B**

(Legal Description of the Grantee's Property)

That certain real property located in Douglas County, Nevada, specifically described as follows:

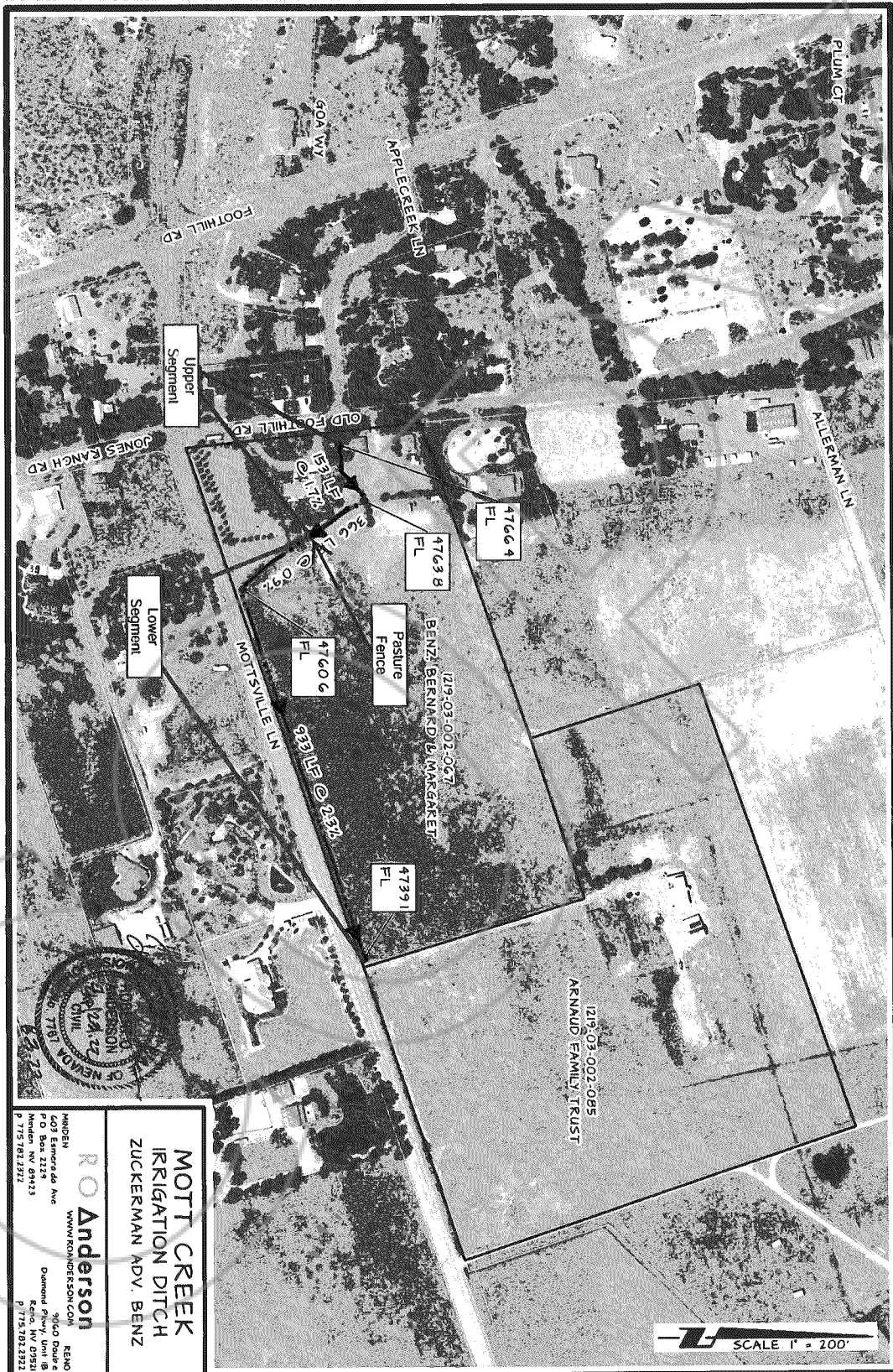
Parcel 2 as shown on Parcel Map (LDA #03-039), filed August 13, 2004, in the Office of the Douglas County Recorder, Nevada, as File No. 6213920.

APN 1219-03-001-075



# EXHIBIT C

3245-00-22, P.1 of Date: 0/3/2022 - Map Document: BaseMapM302 - GIS Works by Ron Hennon



**MOTT CREEK  
IRRIGATION DITCH  
ZUCKERMAN ADV. BENZ**

**RO Anderson**  
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