

DOC # 0220776

07/17/2012

10:51 AM

Official Record

Recording requested By  
EUREKA COUNTY PUBLIC WORKS

Eureka County - NV

Mike Rebaleati - Recorder

Fee: Page 1 of 9  
RPTT: Recorded By: FES  
Book- 534 Page- 0032



APN 001-221-07

The undersigned hereby affirms that this document, including any exhibits, hereby submitted for recording DOES NOT contain the social security number of a person or persons as required by law.

**WHEN RECORDED, MAIL TO:**

Nevada Rural Housing Authority  
3695 Desatoya Drive  
Carson City, NV 89701

Attn: Tom Stone

**EASEMENT MAINTENANCE DECLARATION**

THIS EASEMENT MAINTENANCE DECLARATION ("Declaration") is made this 2 day of July, 2012, by the NEVADA RURAL HOUSING AUTHORITY ("NRHA"), a local government entity created and organized under Nevada Revised Statutes Chapter 315 ("NRHA") with reference to the following facts and is as follows:

**RECITALS:**

A. NRHA is the owner of the real property described in Exhibit A hereto located in Eureka County, Nevada ("Parcel 1").

B. NRHA is the owner of the real property described in Exhibit B hereto located in Eureka County, Nevada ("Parcel 2").

C. Parcel 1 and Parcel 2 will be legally created by a Parcel Map for Eureka Canyon Multifamily ("Parcel Map"), recorded in the Official Records of Eureka County, Nevada. Parcel 1 and Parcel 2 are directly adjoining and contiguous parcels, and are referred to herein individually as a "Parcel" and collectively as the "Parcels."

D. Parcel 1 has access to and from Whistler Street, a public right-of-way, by way of a private access easement ("Easement") over and across a portion of Parcel 2. The Easement was created by, and is shown on the Parcel Map, and is referred to thereon as the P.A.E. and Diamond Peak Drive.

E. NRHA is making this Declaration to provide for the continued maintenance and repair of the Easement, and any and all improvements constructed or to be constructed thereon.

NOW, THEREFORE, NRHA declares that each Parcel shall be held, conveyed, encumbered, leased, used, occupied, improved and otherwise affected in any manner subject to the provisions of this Declaration, all of which are hereby declared to be in furtherance of a general plan of improvement for the purpose of enhancing, maintaining and protecting the value and the attractiveness of the Parcels. All provisions hereof shall be deemed to run with the

Parcels as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens to the Declarant and its assigns, and to all persons hereafter acquiring or owning any interest in the Parcels, however such interest may be obtained.

1. **Definitions.** The following words when used in this Declaration have the meanings set forth in this Section:

- a. "Declaration" means this instrument and any amendment thereto.
- b. "Owner" means the person or persons owning a Parcel now or in the future.
- c. "Parcel 1 Pro Rata Share" is the percentage that the total land area of Parcel 1 (approximately 3.90 acres) bears to the total land area of Parcel 1 and Parcel 2 (approximately 12.74 acres) as shown on the Parcel Map; this percentage is 30.61%.
- d. "Parcel 2 Pro Rata Share" is the percentage that the total land area of Parcel 2 (approximately 8.84 acres) bears to the total land area of Parcel 1 and Parcel 2 (approximately 12.74 acres) as shown on the Parcel Map; this percentage is 69.39%.

2. **Purpose; Use.** The Owner of Parcel 1 may use the Easement only for vehicular (including motorcycles) and pedestrian ingress and egress to and from Whistler Street for its employees, authorized agents, contractors, vendors, visitors, invitees, licensees, tenants and occupants.

3. **Obstructions.** Unless approved by the Owners in writing, (i) no automobile, truck, boat, trailer, recreational vehicle, camper, commercial truck or commercial vehicle shall be parked or left within the Easement (however, parking by commercial vehicles for the purpose of making deliveries, or for performing necessary repairs or maintenance with respect to the Easement is permitted), and (ii) no fence or gate shall be erected or maintained on any portion of the Easement.

4. **Nuisances.** No rubbish or debris shall be placed or permitted to accumulate in or about the Easement so as to render any portion of the Easement unsanitary, unsightly, offensive or detrimental to either Parcel or to the authorized users of each Parcel.

5. **Repair and Maintenance.** The Owner of Parcel 2 shall maintain the Easement and the improvements constructed or to be constructed thereon in a prudent and reasonable fashion so that the Easement is at all times suitable for its intended purpose as set forth in this Declaration. Such maintenance shall include regular landscape maintenance (to the extent landscaping exists thereon now or in the future), ice and snow removal as necessary, as well as the sealing, resurfacing and repaving of the Easement as reasonably necessary in accordance with a standard of care to prevent the asphalt from deteriorating and forming significant cracks, spalling or holes, or otherwise becoming unusable or hazardous. Such repairs shall be accomplished, if reasonably possible, in such a manner as not to prevent ingress or egress to Parcel 1 from Whistler Street. The Owner of Parcel 2 shall be responsible for the cost to repair



or replace collars on water valves or manhole access points if the collars are damaged by the repair and maintenance activities of the Owner of Parcel 2 under this Section.

6. **Cost Sharing.** The Owner of Parcel 1 shall share the Easement maintenance and repair costs in proportion to the Parcel 1 Pro Rata Share. The Owner of Parcel 2 shall share the Easement maintenance and repair costs in proportion to the Parcel 2 Pro Rata Share. Not later than thirty (30) days after performance of such maintenance or repair, the Owner of Parcel 2 shall provide the Owner of Parcel 1 with a written billing statement, which shall be accompanied by a description of the work or service, invoices and/or other evidence of payment of the cost for which reimbursement is sought. The Owner of Parcel 1 shall make such reimbursement within ten (10) business days of the date of delivery of such written billing statement. Any reimbursement which is not timely made shall be subject to (i) a late payment charge in the amount of eighteen percent (18%) of the required payment, and (ii) interest on such late payment at the rate of ten percent (10%) per year accruing from the date such payment is due until such time as the payment is fully paid.

7. **Notices.** Any notice given pursuant to the provisions of this Declaration shall be in writing addressed to each Owner at the address as such Owner may designate to the other, from time to time, by notice thereof, given in accordance with the provisions of this Section, and shall be deemed received upon personal delivery thereof, or upon the expiration of three (3) days after the deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested.

8. **Miscellaneous.**

a. **Term.** The provisions of this Declaration shall continue and be effective for a period of fifty (50) years from the date of recordation, and shall be automatically extended for successive periods of ten (10) years each, until the Owners of the Parcels shall agree in writing that this Declaration shall terminate, and notice of such termination is acknowledged and recorded in the Official Records of Eureka County, Nevada.

b. **Amendments to Declaration.** This Declaration may be amended from time to time or revoked by written agreement of the Owners. Such amendments or revocation shall be acknowledged and recorded in the Official Records of Eureka County, Nevada.

c. **Right of Enforcement.** Any Owner shall have the right (but not the duty) to enforce by an action for damages or injunctive relief, or both, any or all of the covenants, conditions and restrictions now or hereafter imposed by this Declaration upon the Owners or upon either of the Parcels; provided, however, nothing herein shall be construed as creating a third party beneficiary contract in favor of parties who are not Owners; and there shall be no right of enforcement by anyone else who does not own a Parcel.

d. **Remedies Cumulative.** Any remedy provided by this Declaration is cumulative and not exclusive.



IN WITNESS WHEREOF, we have each executed this Declaration on the date set forth above.

**NEVADA RURAL HOUSING  
AUTHORITY**, a local government entity  
created and organized under Nevada Revised  
Statutes Chapter 315

Signed: *Gary Longaker*  
By: Gary Longaker  
Its: Executive Director

This instrument was acknowledged before me on July 11<sup>th</sup>, 2012,  
by Gary Longaker, as Executive Director of the NEVADA RURAL HOUSING AUTHORITY, a  
local government entity created and organized under Nevada Revised Statutes Chapter 315.

*Melanie M. Evans*  
Notary Public  
My Commission Expires: 10-18-14



**EXHIBIT A**

**Legal Description of Parcel 1**

**LEGAL DESCRIPTION  
PORTION OF APN 001-221-07  
EUREKA CANYON MULTI FAMILY PARCEL PHASE 1**

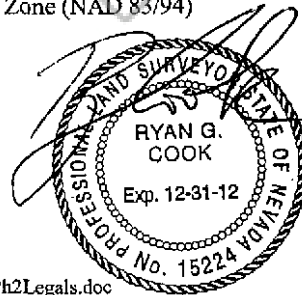
A portion of Adjusted Parcel 1 as shown on the Record of Survey in support of a Boundary Line Adjustment for Eureka County, File Number 217136, recorded on May 20, 2011 in the Official Records of Eureka County situate within the NE 1/4 of Section 11, Township 19 North, Range 53 East, MDM, Eureka County, Nevada being more particularly described as follows:

Beginning at the Northeast Corner of said Adjusted Parcel 1 from which the Northeast Corner of said Section 11 bears South 89°38'16" East a distance of 1347.23 feet; thence along the East boundary of said Adjusted Parcel 1 South 00°16'39" West a distance of 181.72 feet; thence South 06°46'31" West a distance of 86.55 feet; thence South 12°29'06" West a distance of 92.71 feet; thence South 00°00'00" East a distance of 163.33 feet; thence South 02°37'51" West a distance of 146.37 feet; thence departing said East boundary North 89°49'20" West a distance of 39.06 feet; thence North 45°00'00" West a distance of 161.56 feet; thence North 90°00'00" West a distance of 112.23 feet to a point on the West boundary of said Adjusted Parcel 1; thence along said West boundary North 00°18'02" East a distance of 555.27 feet to the Northwest Corner of said Adjusted Parcel 1; thence along the North boundary of said Adjusted Parcel 1 South 89°38'16" East a distance of 300.48 feet to the Point of Beginning.

Said parcel contains an area of approximately 3.90± acres.

Basis of Bearings: Nevada State Plane Coordinate System, West Zone (NAD 83/94)

Description Prepared By:  
Ryan G. Cook, P.L.S. 15224  
Summit Engineering Corp.  
5405 Mae Anne Ave.  
Reno, NV 89523  
(775) 747-8550  
ryan@summitnv.com



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3-20-12



**EXHIBIT B**

**Legal Description of Parcel 2**

**LEGAL DESCRIPTION  
PORTION OF APN 001-221-07  
EUREKA CANYON MULTI FAMILY PARCEL PHASE 2**

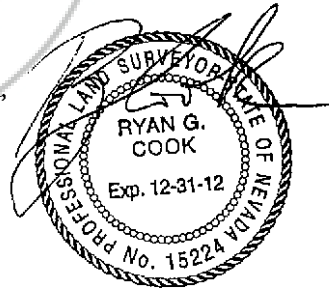
A portion of Adjusted Parcel 1 as shown on the Record of Survey in support of a Boundary Line Adjustment for Eureka County, File Number 217136, recorded on May 20, 2011 in the Official Records of Eureka County situate within the NE 1/4 of Section 11, Township 19 North, Range 53 East, MDM, Eureka County, Nevada being more particularly described as follows:

Beginning at the Southwest Corner of said Adjusted Parcel 1 from which the Northeast Corner of said Section 11 bears North 39°55'30" East a distance of 2582.86 feet;  
thence along the West boundary of said Adjusted Parcel 1 North 00°15'32" East a distance of 9.97 feet to the southwest corner of the SE1/4 of the NE1/4 of the SW1/4 of the NE1/4 of said Section 11, being marked by a BLM bras cap monument stamped "S11 C-E-SW-NE 1/256 1989";  
thence North 00°15'32" East a distance of 660.60 feet to the southwest corner of the SE1/4 of the SE1/4 of the NW1/4 of the NE1/4 of said Section 11, being marked by a BLM brass cap monument stamped "S11 C-E-W-NE 1/256 1989";  
thence North 00°18'02" East a distance of 765.36 feet;  
thence departing said West boundary South 90°00'00" East a distance of 112.23 feet;  
thence South 45°00'00" East a distance of 161.56 feet;  
thence South 89°49'20" East a distance of 39.06 feet to a point on the West boundary of said Adjusted Parcel 1;  
thence along said West boundary South 00°10'40" West a distance of 489.81 feet;  
thence South 04°56'29" East a distance of 179.40 feet;  
thence South 00°15'52" West a distance of 180.09 feet;  
thence South 02°33'41" East a distance of 93.92 feet;  
thence South 83°05'56" East a distance of 81.47 feet;  
thence from a tangent which bears South 06°54'04" West, along a circular curve to the right with a radius of 475.00 feet and a central angle of 34°54'22" an arc length of 289.38 feet;  
thence South 41°48'26" West a distance of 38.71 feet;  
thence along a tangent circular curve to the right with a radius of 245.00 feet and a central angle of 36°52'20" an arc length of 157.67 feet to a point on the South boundary of said Adjusted Parcel 1;  
thence along said South boundary along a tangent circular curve to the right with a radius of 20.00 feet and a central angle of 101°40'59" an arc length of 35.49 feet;  
thence with a non-tangent line North 89°38'15" West a distance of 41.00 feet;  
thence South 00°21'45" West a distance of 4.14 feet;  
thence along a tangent circular curve to the right with a radius of 20.00 feet and a central angle of 90°00'00" an arc length of 31.42 feet;  
thence North 89°38'15" West a distance of 7.85 feet to the Point of Beginning.

Said parcel contains an area of approximately 8.84± acres.

Basis of Bearings: Nevada State Plane Coordinate System,  
West Zone (NAD 83/94)

Description Prepared By:  
Ryan G. Cook, P.L.S. 15224  
Summit Engineering Corp.  
5405 Mac Anne Ave.  
Reno, NV 89523  
(775)747-8550



3-20-12



e. Nonwaiver. The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provision or any other provisions of this Declaration.

f. Successors and Assigns. The terms, covenants and conditions herein contained shall inure to the benefit of and be binding upon the successors and assigns of each Owner.

g. Attorneys' Fees and Costs. If any legal action or any other proceeding is brought for the enforcement of this Declaration, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Declaration, the successful or prevailing Owner shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled, including the fees and costs incurred in enforcing any judgment which may be obtained in said action.

h. Severability. If any provision of this Declaration is determined by a court having jurisdiction to be illegal, invalid or unenforceable under any present or future law, the remainder of this Declaration will not be affected thereby.

i. **WAIVER OF TRIAL BY JURY. THE OWNERS HEREBY EXPRESSLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING OF ANY KIND ARISING OUT OF OR RELATED TO THIS DECLARATION OR ANY OF RIGHTS OR OBLIGATIONS OF THE OWNERS HEREUNDER.**

j. Force Majeure. The performance by an Owner of its obligations under this Declaration shall be excused during and to the extent of any period of delay to the extent caused at any time by reason of civil commotion, riots, strikes, picketing, or other labor disputes, shortages of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties, restrictions imposed or mandated by governmental or quasi-governmental entities (including, without limitation, new or supplementary environmental regulations), third party litigation, act or neglect of another party, or any other cause beyond the reasonable control of that Owner ("Force Majeure"); provided, however, that Force Majeure shall not apply to the performance of financial obligations hereunder from one Owner to the other.

[Signature on following page.]



**CONSENT AND SUBORDINATION**

Eureka County, being the beneficiary under the (i) Multifamily Deed of Trust and Security Agreement and Fixture Filing with Assignment of Rents, dated as of September 13, 2011, and recorded on September 19, 2011, as Document No. 218614, in the Official Records of Eureka County, Nevada, and (ii) Phase II Multifamily Deed of Trust and Security Agreement and Fixture Filing, dated as of May 25, 2012, and recorded on May 29, 2012, as Document No. 0220477 in the Official Records of Eureka County, Nevada (collectively, the "Deeds of Trust"), in each case made by Nevada Rural Housing Authority, as trustor, to Stewart Title of Nevada Holdings, Inc., as trustee, for the benefit of beneficiary, hereby declares that the liens and charges of the Deeds of Trust are and shall be subject and subordinate to that certain Easement Maintenance Declaration to which this Consent and Subordination is attached.

**EUREKA COUNTY, NEVADA, a political subdivision of the State of Nevada**

Signed *Leonard J. Fiorenzi*  
By: Leonard J. Fiorenzi  
Its: Eureka County Commission Chairman

Date: JULY 2, 2012.

Attest: *Beverly Conley*  
Beverly Conley, Clerk of the Board

STATE OF NEVADA )  
 )ss.  
COUNTY OF Eureka )

This instrument was acknowledged before me on July 2<sup>nd</sup>, 2012, by Leonard J. Fiorenzi, as County Commission Chairman of Eureka County, Nevada, a political subdivision of the State of Nevada.

*Sara G. Simmons*  
Notary Public  
My Commission Expires: 7/17/2012





STATE OF NEVADA            )  
                                          )ss.  
COUNTY OF Eureka        )

This instrument was acknowledged before me on July 2, 2012, by  
"Beverly Conley," Clerk of the Board of Eureka County Commissioners, Eureka County, Nevada,  
a political subdivision of the State of Nevada.

Terrilyn Brown  
Notary Public  
My Commission Expires: February 13, 2016

