

City of Carson City
Agenda Report

#13

Date Submitted: November 10, 2008

Agenda Date Requested: November 20, 2008
Time Requested: 15 Minutes

To: Mayor and Supervisors

From: Parks and Recreation Department - Open Space Division

Subject Title: Discussion only regarding the status of a draft conservation easement with Mr. Michael Fagen limiting the future development and providing for the agricultural use of Horse Creek Ranch, APN 7-051-78.

Staff Summary: Staff and Michael Fagen will update the Board of Supervisors regarding the draft Horse Creek Ranch conservation easement. Once reviewed by the Board, there will be an appraisal made of the cost and be placed on the Board of Supervisors' agenda for action.

Type of Action Requested: (check one)

- Resolution Ordinance
 Formal Action/Motion Other (Specify) Discussion Only

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: No action. This item is for discussion only.

Explanation for Recommended Board Action: N/A

Applicable Statute, Code, Policy, Rule or Regulation:

Nevada Revised Statutes 111.390 to 111.440
Carson City Open Space Master Plan

Fiscal Impact: N/A

Explanation of Impact: N/A

Funding Source: N/A

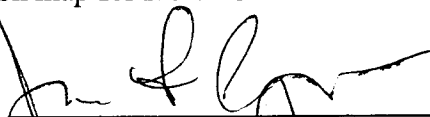
Alternatives:

Place on the agenda for action.
Comment on desirable changes.

Supporting Material:

- 1) Draft conservation easement
- 2) Land division map for Horse Creek Ranch

Prepared By:

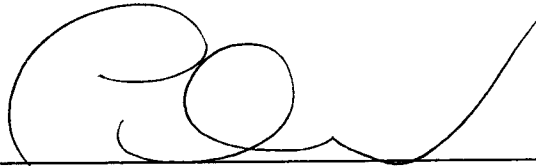

Juan F. Guzman, Open Space Manager

Date: 11/12/08

Reviewed By:

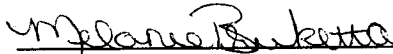

Roger Moellendorf, Parks & Recreation Director

Date: 11/14/08



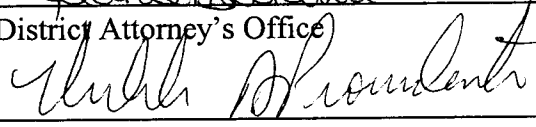
Larry Werner, City Manager

Date: 11/10/08



District Attorney's Office

Date: 11/10/08



Finance Department

Date: 11/10/08

Board Action Taken:

Motion: _____

1: _____

Aye/Nay

2: _____

(Vote Recorded By)

Agricultural Open Space Agreement

Revised 11-10-08

When Recorded Mail To:
William Michael Fagen 2005 Trust
William Michael Fagen, Trustee
15925 Caswell Lane
Reno NV 89511

Juan F. Guzman
Open Space Manager
Carson City Parks & Recreation Department
3303 Butti Way, Building #9
Carson City, NV 89701

DEED OF AGRICULTURAL CONSERVATION EASEMENT

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT (the "Easement") is made by is made by The William Michael Fagen 2005 Trust, William Michael Fagen, Trustee ("Fagen"), to the city of Carson City, Nevada ("Carson City")

WITNESS THAT:

WHEREAS, Fagen is the owner in fee simple of that certain real property in Carson City, Nevada, comprising Carson City Assessor's Parcel Number 7-051-78, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Property possesses significant agricultural, historic, open space, and watershed protection values of great importance to Fagen, the people of Carson City, and the people of the State of Nevada; and

WHEREAS, the modern history of Horse Creek Ranch dates back at least to the mid-1800's when it served as a horse resting, watering, and exchange depot for pioneers traveling to California and the Pacific coast via the original Lincoln Highway, now more popularly known as King's Canyon Road, which forms the northern and western boundaries of the property for almost one mile. Certificated water rights and a still-in-use water flume ("Neal's Flume") similarly date back to this period. This water serves to infiltrate and replenish the City's watershed. In the winter the water is stored in the form of snow and the process of melting and infiltration also serves to replenish Carson City's water aquifer. From Kings Canyon Road looking south, one has a view unparalleled by any other site in Carson City. The meadows of Horse Creek Ranch and the adjacent Schulz Ranch stretch out immediately below, then the Schneider and Ascuaga

ranches are visible in the mid-range, and finally Heavenly Valley Peak and Job's Peak, as well as the rest of the Sierra Nevada's reach into the distance. The property has indigenous populations of bear, mountain lions, eagles, great owls, and many other species under human pressure. It contains the headwaters of the north branch of Clear Creek, as well as half a dozen pure mountain springs. In short, Horse Creek Ranch is a unique and stunningly beautiful property, one of very few left like it in the Sierras, and most worthy of conservation; and

WHEREAS, Fagen and Carson City intend that the Property be maintained in agricultural production by the maintenance of the agricultural values thereof and that the open space and scenic values of the Property be preserved by the continuation of the agricultural and ranching uses that have proven historically compatible with such values; and

WHEREAS, Carson City supports the protection and preservation of agricultural land uses, agricultural land, and open land through Objectives, Policies, and Implementation Programs as expressed in the Open Space Element of the Carson City Master Plan, including, inter-alia, the permanent protection of lands for agricultural uses by acquisition of perpetual agricultural conservation easements; and

WHEREAS, Fagen intends, as owner of the Property, to convey to Carson City the right to preserve and protect the agricultural, and to the extent consistent with agricultural values, the open space, historic, watershed protection, and scenic values of the Property in perpetuity; and

WHEREAS, Carson City intends, by acceptance of the grant made hereby, forever to honor the intentions of Fagen to preserve and protect the agricultural, open space, historic, watershed protection, and scenic values of the Property in perpetuity; and

WHEREAS, in consideration for funding provided by the State of Nevada to acquire the conservation easement, third party enforcement rights, as defined in Sections 6 and 7 following, are being granted to the State of Nevada as authorized by N.R.S. Section 111.410;

NOW, THEREFORE, for good and valuable consideration, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Nevada including, inter-alia, sections NRS 111.390 to 111.440, Fagen does hereby voluntarily grant to Carson City an Agricultural Conservation Easement in gross in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Easement").

1. Purpose. It is the purpose of this Easement to enable the Property to remain in agricultural uses (as defined in Exhibit B, section 2), by preserving

and protecting in perpetuity its agricultural values, character, use and utility, and by preventing any use or condition of the Property that would significantly impair or interfere with its agricultural values, character, use or utility. To the extent that the preservation of the open space and scenic values of the Property is consistent with such use, it is within the purpose of this Easement to protect those values.

2. Affirmative Rights and Interests Conveyed. To accomplish the purpose of this Easement, the following rights and interests are conveyed to Carson City by this Easement:

(a) To identify, to preserve and to protect in perpetuity the agricultural values, character, use and utility, including the agricultural productivity, vegetation, soil and water quality, watershed protection, historic value, and the open space and scenic values of the Property. (The agricultural values, character, use and utility, watershed protection, historic value, and the open space and scenic values of the Property are hereinafter referred to collectively as "the Protected Values".) No identification of new Protected Values which would obligate Fagen in any way shall be made after the signing of this Agreement.

(b) To enter upon, inspect, observe, and study the Property for the purposes of: (i) identifying the current condition of, uses and practices thereon, and the baseline condition thereof; and (ii) monitoring the uses and practices to determine whether they are consistent with this Easement. Such entry shall be permitted upon prior notice to Fagen, and shall be made in a manner that will not unreasonably interfere with Fagen's use and quiet enjoyment of the Property, and shall not occur with undue frequency.

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent condition, activity or use. However, it is the intention of this Easement not to limit Fagen's discretion to employ their choices of farm and ranch uses and management practices, including water and energy supplies for use on Fagen's property, so long as those uses and practices are consistent with the purpose of this Easement.

(d) Subject to Fagen's consent, to erect and maintain a sign or other appropriate marker in a prominent location on the Property, visible from a public road, bearing information indicating that the Property is protected by Carson City. The wording of the information shall be determined by Carson City and approved by Fagen, and shall clearly indicate that the Property is privately owned and NOT open to the public. Carson City shall be responsible for the costs of erecting and maintaining such sign or marker. Should it become apparent that any signage is a causal factor in inadvertently inviting trespass on the Property, then said signage shall be removed at Carson City's expense.

3. Uses and Practices. Fagen and Carson City intend that this Easement shall confine the uses of the Property to agriculture and renewable energy production restricted to use on the Property and appurtenances, and residential use associated with the agricultural use of the Property, and the other uses which are described herein. Examples of uses and practices which are consistent with the purpose of this Easement and which are hereby expressly permitted, are set forth in Exhibit B, attached hereto and incorporated herein by this reference. Examples of uses and practices which are inconsistent with the purpose of this Easement, and which are hereby expressly prohibited, are set forth in Exhibit C, attached hereto and incorporated herein by this reference. The uses and practices set forth in Exhibits B and C are not necessarily exhaustive recitals of consistent and inconsistent activities, respectively. They are set forth both to establish specific permitted and prohibited activities, and to provide guidance in determining the consistency of other activities with the purpose of this Easement.

4. Baseline Data. In order to establish the present condition of the Protected Values, Carson City has examined the Property and prepared a report (the "Baseline Documentation Report") containing an inventory of the Property's relevant features and conditions, its improvements and its natural resources (the "Baseline Data"). A copy of the Baseline Documentation Report has been provided to Fagen, and another shall be placed and remain on file with Carson City. The Baseline Documentation Report has been signed by Fagen and Carson City, and thus acknowledged to represent accurately the condition of the Property at the date of the conveyance of this Easement. The parties intend that the Baseline Data shall be used by Carson City to monitor Fagen's future uses of the Property, condition thereof, and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the Property or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. Fagen and Carson City recognize that changes in economic conditions, changes due to climate change such as global warming, in energy supply and availability, in water supply and availability, in agricultural technologies, in accepted farm and ranch management practices, and in the situations of Fagen may result in an evolution of agricultural uses of the Property, provided such uses are consistent with this Easement.

5. Reserved Rights. Fagen reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved: (i) all right, title, and interest in and to all tributary and non-tributary water, water rights, and related interests in, on, under, or appurtenant to the Property, provided that

such water rights are used on the Property in a manner consistent with the purpose of this Easement and in accordance with applicable law; (ii) all right, title, and interest in subsurface oil, gas and minerals; provided that the manner of exploration for, and extraction of any oil, gas or minerals shall be only by a subsurface method, shall not damage, impair or endanger the Protected Values, shall be in accordance with applicable law, and shall be approved by Carson City prior to its execution; and (iii) all right title, and interest to the production of any renewable energy supplies of any type, subject to their use on the Property.

6. Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Fagen agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing upon the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to the American Arbitration Association for the appointment of a trained and impartial mediator with relevant experience in real estate, and conservation easements. Mediation shall then proceed in accordance with the following guidelines:

(a) Purpose. The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning issues in the dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the covenants, terms, conditions, or restrictions of this Easement.

(b) Participation. The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.

(c) Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

(d) Time Period. Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of the selection or appointment of a mediator or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in mutually

agreeable resolution of the dispute.

(e) **Costs.** The cost of the mediator shall be borne equally by Fagen and Carson City; the parties shall bear their own expenses, including attorney's fees, individually.

7. **Carson City's Remedies.** If Carson City determines that Fagen is in violation of the terms of this Easement or that a violation is threatened, Carson City shall give written notice to Fagen of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use, condition or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Fagen fails to cure the violation within thirty (30) days after receipt of notice thereof from Carson City, conditions of weather and access permitting, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Carson City may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Protected Values, including damages for any loss thereof, and to require the restoration of the Property to the condition that existed prior to any such injury. If Carson City believes that circumstances require immediate action to prevent or mitigate significant damage to the Protected Values, Carson City may pursue its remedies under this section without waiting for the period provided for cure to expire, provided that a qualified expert acceptable to both Parties is consulted at Fagen's sole expense and said Party concurs with Carson City's assessment of the need for preemptive action, and further provided that Fagen is notified in advance of such intention to embark on corrective action. In such a case, Carson City shall nominate the qualified expert and Fagen shall have no more than 48 hours after notification to approve said nominee or to nominate an alternative expert. Carson City's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Fagen agrees that Carson City's remedies at law for any violation of the terms of this Easement are inadequate and that Carson City shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Carson City may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Carson City's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

7.1 **Costs of Enforcement.** Any costs incurred by Carson City in enforcing the terms of this Easement against Fagen, including, costs of suit and

attorneys' fees, and any costs of restoration necessitated by Fagen's violation of the terms of this Easement, shall be borne by Fagen, amounts not to exceed the sum received for the original procurement of this Easement. If Fagen prevails in any action to enforce the terms of this Easement, Fagen's costs of suit, including, without limitation, attorneys' fees, shall be borne by Carson City, up to the amount paid by Carson City to Fagen.

7.2 Carson City's Discretion. Any forbearance by Carson City to exercise its rights under this Easement in the event of any breach of any term of this Easement by Fagen shall not be deemed or construed to be a waiver by Carson City of such term or of any subsequent breach of the same or any other term of this Easement or of any of Carson City's rights under this Easement. No delay or omission by Carson City in the exercise of any right or remedy upon any breach by Fagen shall impair such right or remedy or be construed as a waiver. However, any condition of which Carson City is aware or should have been aware, and for which no notice of violation and demand for correction has been sent to Fagen on a timely basis, shall not subject Fagen to damages or costs in excess of those which would have been required should such a notice have been given by Carson City upon first learning of said violation.

7.3 Acts Beyond Fagen's Control. Nothing contained in this Easement shall be construed to entitle Carson City to bring any action against Fagen for any injury to or change in the Property resulting from causes beyond Fagen's control, or without his knowledge, including, without limitation, fire, flood, storm, drought, earth movement, trespass, climate change, or from any prudent action taken by Fagen under emergency conditions to prevent, abate, or mitigate significant injury to any person or to the Property resulting from such causes.

7.4 Third Party Enforcement Rights. Pursuant to NRS 111.410, in the event that the Carson City fails to enforce the terms and conditions of the Conservation Easement created by this Deed, as determined in the sole discretion of the State of Nevada, the State of Nevada shall have the same rights of enforcement as Carson City, and under the same terms and conditions, including the right of access to monitor compliance; provided, however, that the State of Nevada agrees that it shall not exercise the enforcement rights granted herein with respect to any act, conduct or activity which:

(a) was the subject of a prior enforcement action by Carson City, regardless of the resolution of the enforcement action, whether by judgment of a court, order of an administrative body, or through compromise and a written settlement between Carson City and Fagen; or

(b) Carson City approved, or was deemed to have approved, pursuant to the terms and conditions of the Conservation Easement.

In the event that Carson City attempts to terminate, transfer, or

otherwise divest themselves of any rights, title, or interests of this Conservation Easement, without prior consent of the State of Nevada, and payment of consideration to the State, then, at the option of the State, Carson City shall transfer Carson City's interest in this Easement to the State or another public agency or qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Conservation Easement.

8. Costs and Taxes. Fagen retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Fagen shall pay any and all taxes, assessments, fees and charges levied by competent authority on the Property or on this Easement. However Carson City shall support Fagen's attempts to have the Property assessed in the lowest possible tax category that the property qualifies for under the Nevada Revised Statutes for the duration of this Easement. It is intended that this Easement constitute an enforceable restriction within the meaning of NRS 111.390 to 111.440, inclusive.

9. Hold Harmless. Fagen shall hold harmless, indemnify, and defend Carson City and its directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person excepting those persons representing Carson City or its subcontractors, or physical damage to any property, excepting property pertaining to those persons representing Carson City or its subcontractors, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties; and (b) the obligations specified in section 8.

9.1. Carson City Not Operator. Nothing in this Easement shall be construed as giving any right or ability to Carson City to exercise physical or managerial control of the day to day operations of the Property, of Fagen's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, or any other federal, state, or local law or regulation making operators of property responsible for remediation of contamination.

9.2 Notwithstanding Section 9.1 above, Carson City shall have the right, with Fagen's consent, to perform, at Carson City's sole expense, various remediation and/or prevention activities to control erosion (such as road repair and correcting stream bed headcuts), fire breaks, or other such activities as may enhance the conservation values of the Easement and the Property.

10. Access. NO right of access by the Carson City NOR by the State of Nevada NOR by the general public to any portion of the Property is conveyed by this Easement.

11. Development Rights. The parties acknowledge that under currently applicable zoning regulations of Carson City the Property is so classified. "Conservation Reserve," and that upon receipt of required government approvals the Property could be developed to a density of up to one single family residential dwelling units ("the Development Rights") per 20 acres, and, with Carson City's approval, could potentially support greater density than that under a Planned Unit Development (PUD); further, that under certain circumstances the Development Rights may be transferred to and utilized on other property or properties. Fagen agrees that he shall not exercise the Development Rights nor transfer them or utilize them on other property or properties.

12. Recognition of Existing Easements and Encumbrances on the Property. Carson City agrees and recognizes the existence of recorded easements and other encumbrances upon the Property, as well as recorded easement reserves which may serve to provide physical access as well as water supply(s) to and from adjacent parcels . Carson City and Fagen agree that the existing recorded easements and easement reserves and other encumbrances upon the Property shall not be affected by the Agreement and shall continue to be in full force and effect. The existing easements and encumbrances covered by this Paragraph include:

(a) **THE RECORDED EASEMENT FOR THE ROADS – DESCRIBE THE EASEMENT AND THE NUMBER OF THE RECORDING AT THE COUNTY RECORDERS OFFICE; and**

(b) **THE RECORDED EASEMENT FOR THE FLUME AND DITCHES – AGAIN DESCRIBE THE EASEMENT AND THE NUMBER OF THE RECORDING AT THE COUNTY RECORDERS OFFICE.**

13. Conveyance of Separate Parcels; Merger. Fagen acknowledges that the Property currently consists of one separate Assessor's parcel (APN 7-051-78) (this number may change with the Land Division Map) which under existing law and regulations might be sold or conveyed. It is agreed that the sale or conveyance of one or more parcels separated from or made apart from the Property is inconsistent with the purpose of this Easement. However, Fagen may accomplish lot line adjustments with adjacent property owners in order to facilitate management or administration of the land, subject to the approval of Carson City, such approval shall not unreasonably be denied. If Fagen receives less acreage than he relinquishes, then Carson City must approve, in its sole discretion, the lot line adjustment agreement.

14. Extinguishment. If circumstances other than those caused by

natural forces arise in the future such as to render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Carson City shall be entitled to compensation from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Nevada law at the time, in accordance with Section 15.

15. Compensation. This Easement constitutes a real property interest immediately vested in Carson City. For the purpose of this Agreement, the parties stipulate that the Easement has an initial fair market value as determined by a self-contained appraisal conducted by a Nevada licensed appraiser qualified in conservation easements. For the purposes of this section, Fagen and Carson City agree that, for any future valuations of the Property and the Easement, the value of the Easement shall be calculated at the same ratio of the value of the Easement to the value of the Property unencumbered by the Easement as determined by the appraisal conducted to determine the initial fair market value of the Easement and the Property. The initial ratio of the Easement is agreed by the Parties, based on appraisal, to be _____% of the value of the unencumbered Property.

16. Condemnation. Should all or part of the Property be taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by the Easement, Fagen and Carson City shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate values of Fagen's and Carson City's interests as set forth in Section 15, unless otherwise provided by applicable law. All expenses incurred by Fagen and Carson City in such action shall be first paid out of the recovered proceeds. However, should Carson City, or any entity controlled by it, or any subsequent entity or assign which would have both condemnation rights and monetary or other recompense or benefit from such an act of condemnation, be the Authority to take the Property by eminent domain, then Carson City or the successor entity shall be entitled to recover only one-half of the value of Carson City's interest in the Property and the Easement in the eminent domain proceedings.

17. Assignment of Carson City's Interest. Carson City may assign its interest in this Easement only to a "qualified organization", within the meaning of section 170(h) of the Internal Revenue Code, as amended, or any successor provision, and which is authorized to acquire and hold conservation easements under Nevada law, provided that all of Carson City's other obligations to Fagen, such as, but not limited to, appropriate tax assessment, shall remain in full effect.

18. Executory Limitation. If City shall cease to exist for any reason, or

to be a qualified organization under section 170(h) of the Internal Revenue Code, as amended, or to be authorized to acquire and hold conservation easements under Nevada law, then Carson City's rights and obligations under this Easement shall become immediately vested in-a similar qualified organization.

19. **Amendment of Easement.** This Easement may be amended only with the written consent of the Fagen and Carson City. Any such amendment shall be consistent with the purposes of this Easement and with Carson City's easement amendment policies, and shall comply with section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section, and with NRS 111.390 to 111.440, inclusive, or any regulations promulgated there under. No amendment shall diminish or affect the perpetual duration or the Purpose of this Easement nor the rights of Carson City under the terms of this Easement. Should Carson City enter into a conservation easement with any adjacent property owners, then Carson City will negotiate in good faith to offer Fagen the same terms and conditions of any such easement via amendment to this Easement.

20. **Applicable Law.** All uses, practices, specific improvements, construction or other activities permitted under this Easement shall be in accordance with applicable law and any permits or approvals required thereby.

21. **General Provisions.**

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Nevada.

(b) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of the Nevada Revised Statutes, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Fagen's title in any respect.

(f) Joint Obligation. The obligations imposed by this Easement upon Fagen and Carson City shall be joint and several.

(g) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(h) Termination of Rights and Obligations. Except as provided for in Paragraph 16 above, a party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Future Conveyance. Fagen agrees that reference to this Easement will be made in any subsequent deed or other legal instrument by means of which Fagen conveys any interest in the Property (including but not limited to a leasehold interest).

(j) Not Governmental Approval. No provision of this Easement shall constitute governmental approval of any specific improvements, construction or other activities that may be permitted under this Easement.

(k) Limited Liability. CARSON CITY will not waive and intends to assert available Nevada Revised Statutes Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any CARSON CITY breach shall never exceed the amount of funds appropriated for payment under this AGREEMENT.

IN WITNESS WHEREOF, Fagen has executed this Deed of Agricultural Conservation Easement this _____ day of _____, 2008.

Name on Title Report

By: _____
Fagen

Accepted by

CARSON CITY:

By: _____

[Notarization of Fagen's and Carson City's signatures]

EXHIBIT A

All that certain real property situated in Carson City, State of Nevada, described as follows:

[Insert Property Legal Description] - To be provided by Michael Fagen's engineer.

EXHIBIT B PERMITTED USES AND PRACTICES

The following uses and practices, though not necessarily an exhaustive recital of consistent uses and practices, are expressly permitted as set forth herein.

1. Residential Use. To reside on the Property. There are two existing structures, "cabins," attached by a wood deck, as well as two additional separate structures on the Property. These structures range in age from 30 to over 100 years old and are in various stages of disrepair. The sum total of ground covered by these existing structures is approximately 3,240 square feet. New primary residential construction is permitted so long as such construction takes place in a single concise building envelope and the new building(s) do not exceed the existing ground coverage of the current structures on the Property. Furthermore, no new construction shall occur in the area designated as "Meadow" in the original Baseline Report attached hereto.

2. Agriculture. To engage in agricultural uses of the Property in accordance with sound, generally accepted agricultural practices, which may include innovative or experimental crops and/or techniques, that do not threaten or degrade significant natural resources. For the purposes of this Easement "agricultural uses" shall be defined as: breeding, raising, pasturing, and grazing livestock of every nature and description for the production of food, fiber, or biomass; breeding and raising bees, fish, poultry, and other fowl; planting, raising, harvesting, and producing agricultural, aquacultural, horticultural, and forestry crops and products of every nature and description; and the processing, storage, and sale, including direct retail sale to the public, of crops and products harvested and produced principally on the Property, provided that the on site processing, storage, and sale of any such crops or products that are not food, fiber, or biomass shall require the consent of Carson City; further provided, however, that such agricultural uses shall not result in significant soil degradation, significant pollution or degradation of any surface or subsurface waters, and that all uses and activities are consistent with applicable laws.

3. Improvements and Facilities.

(a) Maintenance and Repair of Existing Improvements and Facilities. To maintain and repair existing structures, housing, fences, corrals, roads, water courses, and other improvements and facilities on the Property.

(b) Construction of Additional Improvements and Facilities. Additional improvements and facilities accessory to the residential use of the Property, and additional structures, housing, roads, fences, water courses and tanks, communications and energy supply, and other improvements and facilities reasonably necessary to the agricultural and/or approved residential uses of the Property, shall be permitted, provided that Fagen obtain the express written approval of Carson City for the construction of structure, housing, road, or other improvements and facilities, including the size, function, capacity and location,

which consent should not be unreasonably withheld, and that such construction is made in accordance with applicable laws. Fagen shall provide Carson City written notice of Fagen's intention to undertake any such construction, together with information on its size, function, capacity and location, not less than forty-five (45) days prior to the commencement thereof. Except as permitted in Paragraph B.4 below, any new construction shall occur outside the area designated as "Meadow" in the original Baseline Report attached hereto. Additional fencing and corrals, water courses and water storage facilities, and private communications and/or renewable energy facilities deemed by Fagen to be reasonably necessary to residential, ranching and/or agricultural activities on the property may be constructed without Carson City's consent.

(c) Replacement of Improvements and Facilities. In the event of destruction, deterioration or obsolescence of any structures, housing, barns, fences, corrals, roads, water courses/storage facilities or other improvements and facilities, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this section, Fagen may replace the same with structures, barns, housing, fences, corrals, roads, water courses/storage facilities, or other improvements and facilities of similar size, function, capacity and location. Additionally, agricultural access roads and/or driveways may be constructed, consistent with applicable laws and building codes, by Fagen without the need for Carson City's consent. Furthermore, Fagen has the right now and in the future to remove all or any part of any existing or new structure, road, water course, improvement or facility on the Property at his sole discretion.

4. Water Resources and Impoundments. To develop and maintain such water resources, of a size and in a manner consistent with the purpose of this Easement, including, but not limited to, creeks, springs, ponds, flumes, ditches, pipes, weirs, liners, holding tanks, and groundwater resources on the Property as are necessary or convenient for ranching, agricultural, irrigation, power generation, fire mitigation, and residential uses, provided that the creation, alteration or enlargement of any water impoundment shall not damage, impair or interfere with the Protected Values and that all such water resources shall be developed in accordance with applicable laws.

5. Agrichemicals. To use agrichemicals, including, but not limited to, fertilizers and biocides, in those amounts and with that frequency of application necessary to accomplish reasonable grazing, agricultural, and landscaping purposes. Such use shall be carefully circumscribed near surface water and during periods of high ground water, and in strict compliance with City, State, and Federal regulations.

6. Predator Control. To control predatory and problem animals by the use of selective control techniques.

7. Recreational Uses. To utilize the Property for recreational or educational purposes, (including, without limitation, hiking, skiing, horseback riding, hunting

and fishing) that require no surface alternation or other development of the land.

Exhibit C Prohibited Uses and Practices

The following uses and practices, though not necessarily an exhaustive recital of inconsistent uses and practices, are inconsistent with the purposes of this Easement and are expressly prohibited upon or within the Property:

1. **Impairment of Protected Values.** The impairment of the Protected Values, except as otherwise provided herein.
2. **Commercial or Industrial Use.** The establishment and conduct of commercial or industrial uses or the construction, placing, or erection of any signs or billboards; provided, however, that neither ranching, agriculture, nor the production or processing of food and fiber products as contemplated by the provisions of Exhibit B, shall be considered prohibited commercial or industrial uses. Further provided, however, that Carson City shall have the right in its sole discretion to approve the establishment and conduct of non-agricultural commercial and industrial uses or activities which are compatible with the Protected Values of the Property and which are ancillary and subordinate to the agricultural uses of the Property. Notwithstanding the prohibition above on the placing or erecting of signs, Carson City, in its sole discretion, may also approve signs related to any such commercial or industrial uses approved by Carson City.
3. **Construction.** The construction, reconstruction, or replacement of structures, housing, roads and other improvements and facilities except as provided in section 11 (a) of this Easement and section 3 of Exhibit B.
4. **Subdivision.** The division, subdivision, or de facto subdivision of the Property, provided, however, that a lease of a portion of the Property for agricultural use shall not be prohibited by this section. Fagen may, however, by method of lot line adjustment or similar method, buy, sell or exchange a portion of the Property with adjacent landowner(s) so long as the portion of the Property sold continues in the same or similar easement protection and/or so long as the property acquired through exchange is greater than or equal to the Property ceded though the exchange as measured by acreage or appraised value.
5. **Motorized Vehicles.** The use of motorized vehicles, except by Fagen or others with Fagen's permission, for agricultural, ranching, residential, recreational, educational, or other approved uses of the Property. Carson City acknowledges, recognizes and respects all existing vehicular (and other) easements associate with the Property existing as of the date of this Agreement. Any use of motorized vehicles off of roadways is prohibited except when necessary for agricultural and ranching purposes.
6. **Tree Cutting.** The harvesting or removal of trees; provided, however, that Fagen shall have the right to (i) cut or collect firewood for the heating of ranch

and residential facilities on the Property; and (ii) cut or remove trees as reasonably necessary to control fire, insects and diseases, prevent personal injury and property damage, and to allow construction or repair of residential or agricultural facilities. Fagen may also develop and, with the express prior written approval of Carson City, implement a long-range plan for the growing and/or harvesting of trees in a manner that is consistent with the purpose of this Easement.

7. Dumping. The dumping or other disposal of wastes, refuse or debris on the Property, except for organic material generated by permitted agricultural uses on the Property; provided, that any such dumping or disposal of organic material shall be in accordance with applicable law and generally accepted agricultural management practices. No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, or hazardous waste shall be placed, stored, dumped, buried, or permitted to remain on the Property except as reasonably required for the use of the Property for agricultural purposes, and in accordance with applicable law.

8. Soil Degradation. Ranching, agricultural or other uses, otherwise permitted under this Easement, which result in significant degradation of soil quality.

9. Water Quality Degradation. Ranching, agricultural or other uses, otherwise permitted under this Easement, which result in significant degradation of water quality.

10. Surface Alteration or Excavation. Any alteration of the general topography or natural drainage of the Property including, without limitation, the excavation or removal of soil, sand, rock, or gravel, except as may be required for uses on the Property incidental to agricultural and residential uses permitted herein, subject to the approval of Carson City, such approval will not be unreasonably withheld.

**Exhibit D
Baseline Report**