

**Carson City
Agenda Report**

Date Submitted: January 23, 2015

Agenda Date Requested: February 5, 2015

Time Requested: 2 minutes

To: Mayor and Supervisors

From: Public Works

Subject Title: For Possible Action: To adopt Resolution No. _____, and authorize the Mayor to sign the Agreement to Purchase. A Resolution adopting and approving Carson City's Agreement to Purchase from the Hugh J. & Ellen M. Smith Family Irrevocable Trust, a four thousand, sixty-nine (4,069) square foot area of real property from a portion of APN 009-224-05 along Clear Creek Avenue for the purposes of improving Clear Creek Avenue roadway and other matters properly relating thereto. *(Daniel Rotter)*

Staff Summary: This Agreement to Purchase and accompanying conveyance deed provides the means for the City's purchase of necessary right-of-way in fee simple to allow the City to improve the Clear Creek Avenue roadway. Currently, the width of Clear Creek Avenue is 30 feet in this area; the minimum width for a collector roadway like Clear Creek Avenue is 60 feet. Improving Clear Creek Avenue is part of the Sewer Main Installation Project.

Type of Action Requested: (check one)

Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: To approve the Agreement to Purchase and adopt Resolution No. _____, a Resolution adopting and approving Carson City's Agreement to Purchase from the Hugh J. & Ellen M. Smith Family Irrevocable Trust, a four thousand, sixty-nine (4,069) square foot area of real property from a portion of APN 009-224-05 along Clear Creek Avenue for the purposes of improving Clear Creek Avenue roadway, and other matters related properly thereto.

Explanation for Recommended Board Action: The roadway improvements along Clear Creek Avenue are necessary as a part of the sewer main installation. Clear Creek Avenue is an older City road and is designated as a collector roadway. The existing road section here consists of 4 to 5 inches of asphalt concrete on decomposed granite base which is not the City standard. The new sewer main will run down the center of the current 30-foot wide road and include sewer laterals which will make the asphalt concrete surface difficult to repair. Improving the Clear Creek Avenue to City standards will provide a safe and functional roadway.

Applicable Statute, Code, Rule or Policy: NRS 266.265 & 271.265, Development Standards, Table 12.1, Minimum Right-of-Way Widths.

Fiscal Impact: \$4,500.00



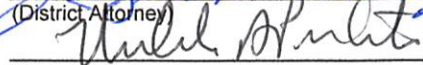
Explanation of Impact: The cost of the right-of-way was budgeted as part of the project.

Funding Source: Sewer Fund: account 510-3205-434.70-40

Alternatives: N/A

Supporting Material: Agreement to Purchase, & Conveyance Deed

Prepared By: Robert Fellows, Senior Project Manager

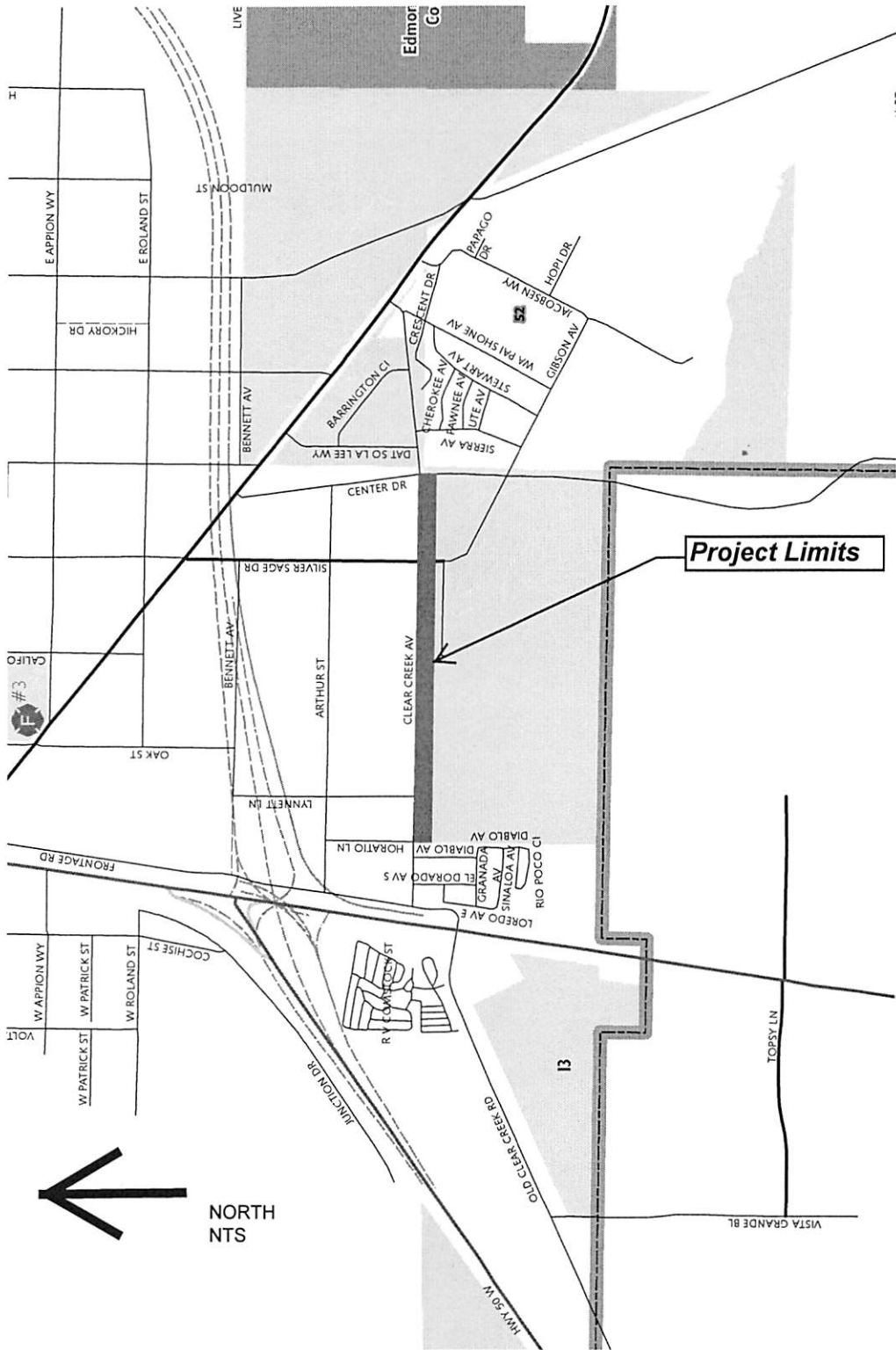
Reviewed By: <u></u>	Date: <u>1/27/15</u>
(Public Works)	
<u></u>	Date: <u>1/27/15</u>
(City Manager)	
<u></u>	Date: <u>1/27/15</u>
(District Attorney)	
<u></u>	Date: <u>1/27/15</u>
(Finance Director)	

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

PROJECT LOCATION MAP



RESOLUTION NO. _____

A RESOLUTION ADOPTING AND APPROVING CARSON CITY'S AGREEMENT TO PURCHASE FROM THE HUGH J. & ELLEN M. SMITH FAMILY IRREVOCABLE TRUST, A FOUR THOUSAND, SIXTY-NINE (4,069) SQUARE FOOT AREA OF REAL PROPERTY FROM A PORTION OF APN 009-224-05 ALONG CLEAR CREEK AVENUE FOR THE PURPOSES OF IMPROVING CLEAR CREEK AVENUE ROADWAY, AND OTHER MATTERS PROPERLY RELATED THERETO.

WHEREAS, NRS 266.265 authorizes the purchase of real property for the benefit of the City and entering into the above-referenced Agreement to Purchase is authorized by law; and

WHEREAS, Carson City desires to improve Clear Creek Avenue; and

WHEREAS, the Hugh J. & Ellen M. Smith Family Irrevocable Trust located at 160 Clear Creek Avenue, (APN 009-224-05) has accepted the appraised value of the subject portion of their property along Clear Creek Road and has executed the subject Agreement to Purchase; and

NOW, THEREFORE, BE IT RESOLVED, that the terms and conditions of the Agreement to Purchase for the purpose of Carson City purchasing necessary land, is hereby adopted and approved; and

BE IT FURTHER RESOLVED that the Agreement to Purchase, for the purpose of acquiring title to the subject necessary land and the Conveyance Deed, attached in full thereto, and that a copy of this Resolution and two signed Agreements (two originals) shall be executed, and recorded, and that payment shall be made to Hugh J. & Ellen M. Smith Family Irrevocable Trust.

Upon motion by Supervisor _____, seconded by Supervisor _____, the foregoing Resolution was passed and adopted this 5th day of February, 2015 by the following vote.

VOTE:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Robert Crowell, Mayor

ATTEST

Susan Merriwether, Clerk
Carson City, Nevada

APN 009-224-05 (Portion)

AFTER RECORDING RETURN TO:
ROBERT FELLOWS
CARSON CITY PUBLIC WORKS
3505 BUTTE WAY
CARSON CITY, NV 89701-3498

AGREEMENT TO PURCHASE

THIS AGREEMENT, made this _____ day of _____, 2014, by and between Hugh J. & Ellen M. Smith Family Irrevocable Trust hereinafter called the OWNER, and CARSON CITY, NEVADA, A CONSOLIDATED MUNICIPALITY, hereinafter called the CITY,

WITNESSETH:

1. The OWNER, for and in consideration of and subject to performance of the promises and covenants of the CITY, as hereinafter provided, agrees as follows:
 - a. To convey to CITY fee simple title of an area consisting of approximately 4,069 square feet of land, being a portion of APN 009-224-05, for the purpose of roadway, utilities and the associated improvements upon, under, over, and across the property; said land situate, lying, and being in Carson City, State of Nevada, and more particularly described as parcel "A" in Exhibit "A" attached hereto and made a part hereof.
 - b. To deliver to the CITY the Conveyance Deed for the property described in Exhibit "A1", and the Conveyance Deed for the property described in Exhibit "B1".
 - c. To be responsible for the OWNER's property (a portion of APN 009-224-05), including the maintenance of risk and liability insurance for loss or damage until such date as OWNER has delivered the before mentioned Deed to the CITY, or such earlier date as OWNER has given physical possession of said subject property to the CITY.
 - d. To permit the CITY, its authorized agents and contractors to enter in and upon OWNER's Exhibit "A" property (being a portion of APN 009-224-05), which is herein agreed to be conveyed, for the purposes of inspection, land survey, environmental analysis, engineering and construction upon execution of this Agreement, all at the City's sole expense and risk, and so long as such inspection, survey, environmental analysis, engineering and construction work is done without any interruption in the OWNER's ingress and egress to the OWNER's land. Each entry shall be coordinated through the OWNER, and conducted only by licensed or qualified personnel.

APN 009-224-05 (Portion)

- e. To the fullest extent permitted by law, OWNER shall indemnify, hold harmless and defend, not excluding the CITY's right to participate, the CITY from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of the negligent or willful acts or omissions of OWNER, its officers, employees, and agents arising out of their performance or nonperformance of this Agreement. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This indemnification obligation is conditioned upon receipt of written notice by the indemnifying party within thirty (30) days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorney's fees and costs for the indemnified party's chosen right to participate with legal counsel.
2. The CITY, in consideration of and subject to performance of the promises and covenants of the OWNER herein above set forth, agrees as follows:
 - a. To pay the OWNER in the manner hereinafter provided the sum of \$4,500.00 in payment for the fee title of the land herein granted by OWNER.
 - b. To the fullest extent permitted by law, CITY shall indemnify, hold harmless and defend, not excluding the OWNER's right to participate, the OWNER from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of the negligent or willful acts or omissions of CITY, its officers, employees, and agents arising out of performance or nonperformance of this Agreement. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This indemnification obligation is conditioned upon receipt of written notice by the indemnifying party within thirty (30) days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorney's fees and costs for the indemnified party's chosen right to participate with legal counsel.
3. It is mutually agreed and understood by the CITY and by the OWNER as follows:
 - a. That all of the facilities and improvements constructed by CITY pursuant to the terms of this Agreement referred to herein shall be designed and constructed by CITY at its expense and risk in accordance with Carson City Development Standards.

APN 009-224-05 (Portion)

- b. CITY and OWNER will coordinate and cooperate with each other in scheduling the construction of improvements.
- c. If OWNER or CITY fails, neglects, or refuses to do or perform any act or thing herein covenanted and agreed to be done or performed, such failure, neglect, or refusal will constitute a breach and default of this Agreement. If OWNER or CITY fails, neglects, or refuses to cure the default within a reasonable time following a written request of the other party, such other party, at its option, may correct such default and thereupon recover from the other party the cost thereof or may require the specific performance by the other party of all terms, conditions, and covenants of this Agreement. The foregoing will be in addition to any other remedy now or hereafter provided by law. In the event the governmental approval required for the performance of this Agreement are not obtained, despite the good faith efforts and recommendations of the parties, then the parties shall have the rights and remedies afforded them by law, in addition to any rights and remedies conferred under this Agreement.
- d. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of any remaining provision.
- e. The laws of the State of Nevada shall be applied in interpreting and construing this Agreement.
- f. This Agreement, the Deed, referred to in this Agreement, hereinafter collectively called the TRANSACTION DOCUMENTS, shall be executed and delivered contemporaneously, and once executed, the TRANSACTION DOCUMENTS shall constitute the entire contract and agreement between the parties hereto, and no modification hereof shall be binding unless such modification is set forth in writing, and signed by the parties hereto.
- g. All property descriptions are fixed and no adjustment will be necessary to meet construction requirements.
- h. All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors, and assigns, as the case may be, of the respective parties.
- i. As used herein the term OWNER shall include the plural as well as the singular, and the feminine as well as the masculine and the neuter.

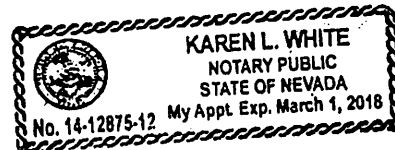
APN 009-224-05 (Portion)

- j. As set forth in the TRANSACTION DOCUMENTS, the CITY shall have the right to adapt and improve the whole or any part of said property acquired by CITY from OWNER in accordance with the provisions of N.R.S. 271.265.

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

OWNER, Hugh J. & Ellen M. Smith Family Irrevocable Trust :

Hugh J. Smith, Jr.
 Hugh J. Smith, Jr.
 Trustee



STATE OF NEVADA)
) SS.
 CARSON CITY)

This instrument was acknowledged before me on July 7th, 2014, by Hugh J. Smith, Jr., Trustee.

Karen L. White
 NOTARY PUBLIC

CITY:

REVIEWED AND RECOMMENDED BY:



DARREN SCHULZ
PUBLIC WORKS DIRECTOR

1/21/15
Date

APPROVED FOR LEGALITY AND FORM:



CARSON CITY DISTRICT ATTORNEY

1/21/15
Date

BOARD APPROVED BY:

ROBERT L. CROWELL
MAYOR

Date

ATTEST:

SUSAN MERRIWETHER
CLERK-RECORDER

Date

EXHIBIT "A"
A.P.N. 009-224-05

All that certain real property situate within a portion of the SW1/4 SE1/4 NW1/4 SW1/4 of Section 32, Township 15 North, Range 20 East, M.D.M., Carson City, State of Nevada, being a portion of that certain real property described in that Government Patent No. 1224369, dated December 5, 1961, being more particularly described as follows:

BEGINNING at a point 30.00 feet northerly of, as measured at right angles to the South 1/16 line of the Southwest 1/4 of said Section 32, and coincident with the West line of the E1/2 SW1/4 SE1/4 NW 1/4 SW1/4 of said Section 32, said point bears North 88°46'20" East, 828.62 feet from the South 1/16 corner of said Section 32 and Section 31 of Township 15 North, Range 20 East, M.D.M.;

THENCE northerly along said West line, North 00°44'52" East, 30.00 feet to a point that is 60.00 feet northerly of, as measured at right angles to said South 1/16 line;

THENCE easterly and parallel with said South 1/16 line of Section 32, South 89°09'10" East, 135.62 feet to a point that is 30.00 feet westerly of, as measured at right angles to the East line of said SW1/4 SE1/4 NW1/4 SW1/4 of Section 32, said point lies on the westerly right-of-way line of the roadway commonly known as Aspen Street;

THENCE southerly and parallel with said East line, South 00°44'30" West, 30.00 feet, to a point that is 30.00 feet northerly of, as measured at right angles to said South 1/16 line;

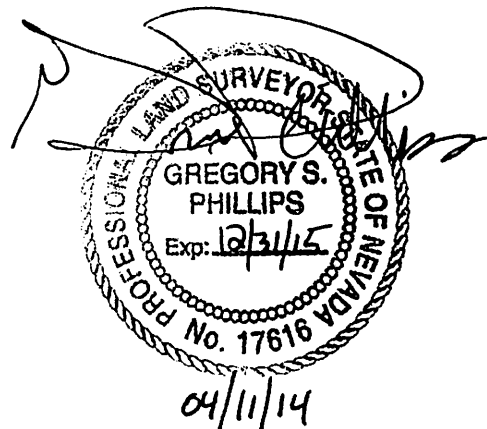
THENCE westerly and parallel with said South 1/16 line, North 89°09'10" West, 135.62 feet to the point of **BEGINNING** and end of this description.

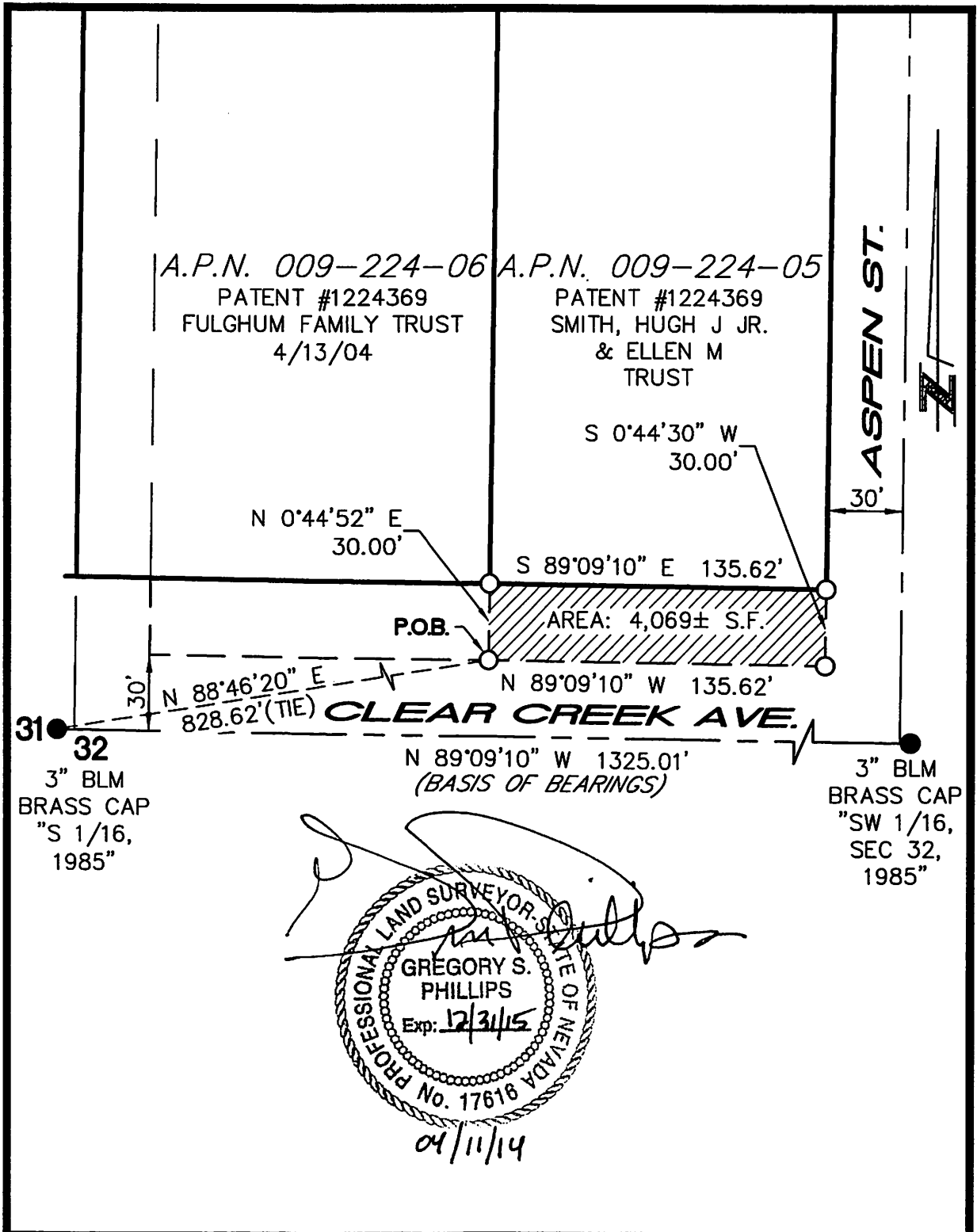
Containing 4,069 square feet, more or less.

SEE EXHIBIT "B" attached hereto and made a part hereof.

The **BASIS OF BEARING** for this description is based on the Nevada Coordinate System of 1983, West Zone, NAD 83/94, being said South 1/16 line of the Southwest 1/4 of Section 32 having a bearing of North 89°09'10" West.

Prepared by:
Lumos & Associates
Gregory S. Phillips, P.L.S. 17616
800 E. College Parkway
Carson City, NV 89706





LUMOS
 & ASSOCIATES
 800 E. COLLEGE PARKWAY
 CARSON CITY, NEVADA 89706
 PH. (775) 883-7077 FAX (775) 883-7114

EXHIBIT "B"
 BEING THE SOUTH 30' OF A.P.N. 009-224-05
 PORTION OF SEC. 32, T15N, R20E, MDM

CARSON CITY NEVADA

Date: APRIL 2013
 Scale: 1" = 60'
 Job No: 8181.007

APN 009-224-05 (Portion)

EXHIBIT "A1"

AFTER RECORDING RETURN TO:
ROBERT FELLOWS
CARSON CITY PUBLIC WORKS
3505 BUTII WAY
CARSON CITY, NV 89701-3498

CONVEYANCE DEED

THIS DEED, made this _____ day of _____, 2014, between Hugh J. & Ellen M. Smith Family Irrevocable Trust, hereinafter called GRANTOR, and CARSON CITY, NEVADA, A CONSOLIDATED MUNICIPALITY, hereinafter called CITY,

WITNESSETH:

That the GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00), lawful money of the United States of America, and other good and valuable consideration, the receipt whereof is hereby acknowledged, does by these presents grant unto the CITY and to its assigns forever, for those purposes as contained in Chapter 271 of the Nevada Revised Statutes, a fee simple title for public purposes upon, over, under and across certain real property to the CITY; said land is shown and more fully described in Exhibits "B1" and "B", attached hereto and made a part hereof:

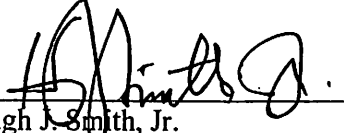
TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; with the exception of any and all reservations as are previously hereinabove expressly excepted from this conveyance.

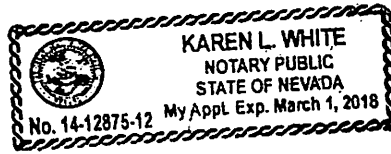
TO HAVE AND TO HOLD all and singular the said real property, together with the appurtenances, unto the said CITY and to any heirs, successors and assigns forever.

APN 009-224-05 (Portion)

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

OWNER, Hugh J. & Ellen M. Smith Family Irrevocable Trust:


Hugh J. Smith, Jr.
Trustee



STATE OF NEVADA)
) SS.
CARSON CITY)

This instrument was acknowledged before me on July 7th, 2014, by Hugh J. Smith, Jr., Trustee.


NOTARY PUBLIC

APN 009-238-05 (Portion)

CITY:

REVIEWED AND RECOMMENDED BY:



DARREN SCHULZ
PUBLIC WORKS DIRECTOR

1/21/15
Date

APPROVED FOR LEGALITY AND FORM:



CARSON CITY DISTRICT ATTORNEY

1/21/15
Date

BOARD APPROVED BY:

ROBERT L. CROWELL
MAYOR

Date

ATTEST:

SUSAN MERRIWETHER
CLERK-RECORDER

Date

EXHIBIT "B1"

JN 8181.007

A.P.N. 009-224-05

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THENCE northerly along said West line, North 00°44'52" East, 30.00 feet to a point that is 60.00 feet northerly of, as measured at right angles to said South 1/16 line;

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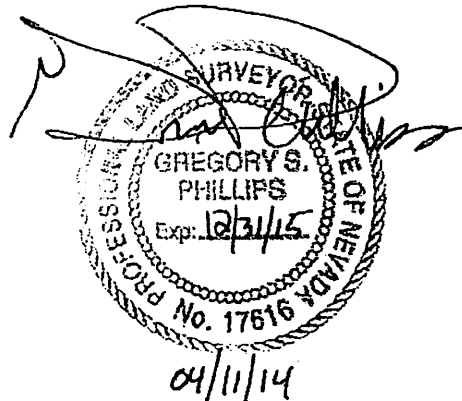
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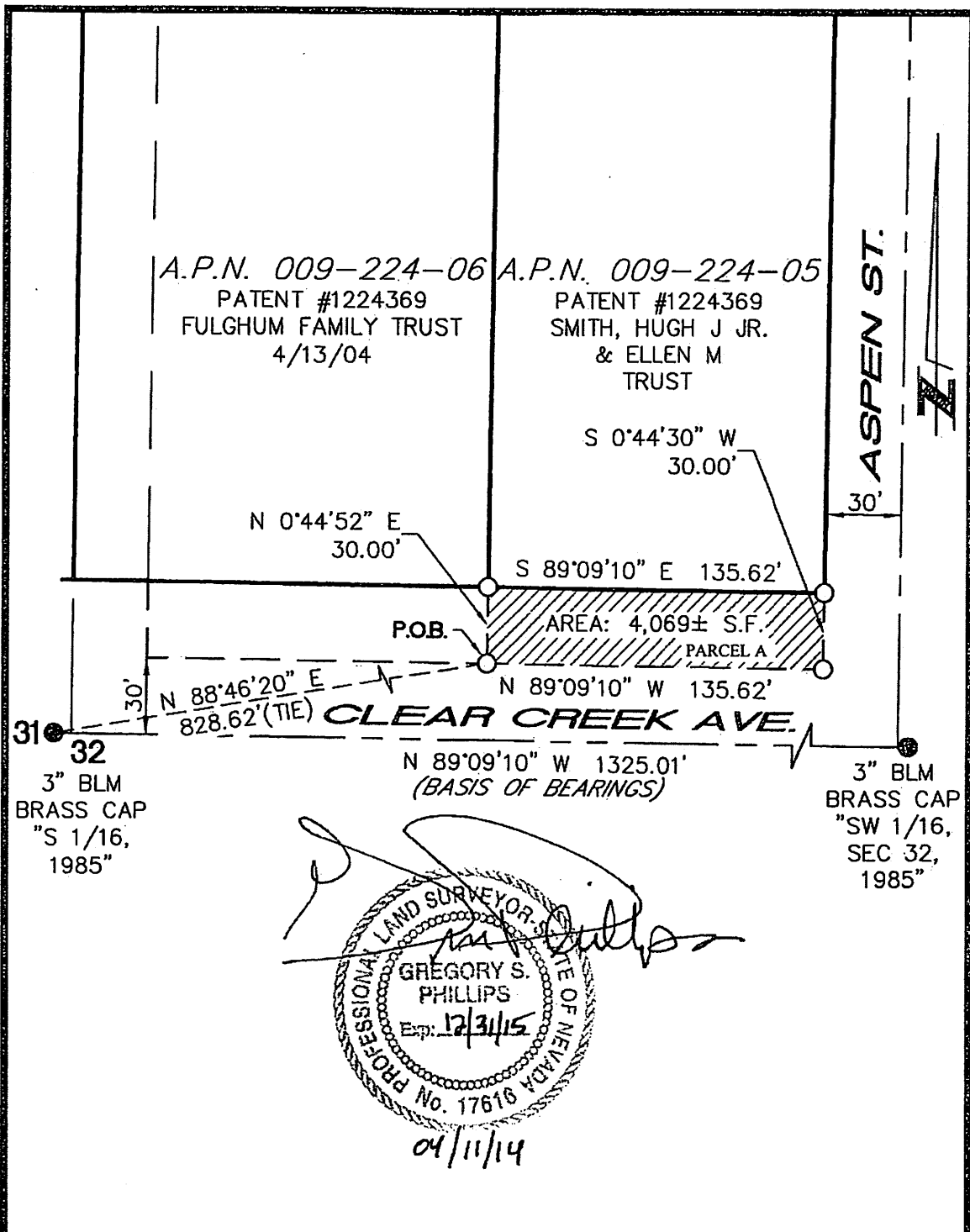
Containing 4,069 square feet, more or less.

SEE EXHIBIT "B" attached hereto and made a part hereof.

The **BASIS OF BEARING** for this description is based on the Nevada Coordinate System of 1983, West Zone, NAD 83/94, being said South 1/16 line of the Southwest 1/4 of Section 32 having a bearing of North 89°09'10" West.

Prepared by:
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EXHIBIT "B"
 BEING THE SOUTH 30' OF A.P.N. 009-224-05
 PORTION OF SEC. 32, T15N, R20E, MDM

CARSON CITY NEVADA

Date: APRIL 2013
 Scale: 1" = 60'
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