



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** November 3, 2022

Staff Contact: Jennifer Budge, Parks, Recreation and Open Space Director

Agenda Title: For Possible Action: Discussion and possible action regarding a Limited Indemnity Agreement ("Agreement") between Carson City and Greenlaw Carson City Owners, LLC ("Indemnitor") as required by the Amended Easement, Grant of Limited Parking Rights and Recognition of Collateral Agreements ("Amended Easement") dated December 20, 2001 and recorded in the Official Records of Carson City, Nevada as file no. 271522, which provides for Indemnitor's limited use of a portion of City parking spaces at Governor's Field and limited indemnification of City in the amount of \$2,000,000, and to authorize the Mayor to sign the Agreement. (Jennifer Budge, jbudge@carson.org)

Staff Summary: Indemnitor is in the process of purchasing real property at 580 Mallory Way (APN 009-551-29). As part of the purchase, the Indemnitor is required to provide the City with a new limited indemnity agreement pursuant to the terms of the Amended Easement. The Agreement raises the amount of the indemnity from \$1,000,000 to \$2,000,000. The Agreement indemnifies the City from liability, consequences, injuries, damages, costs, expenses and causes of action suffered by the City caused by the use of City's parking spaces by the Indemnitor.

Agenda Action: Formal Action / Motion **Time Requested:** consent

Proposed Motion

I move to approve, and authorize the Mayor to sign, the Agreement as presented.

Board's Strategic Goal

Efficient Government

Previous Action

N/A

Background/Issues & Analysis

On March 9, 1995, Harry R. Eberlin ("Eberlin") entered into an easement agreement with the City recorded in the Official Records of Carson City, Nevada on March 28, 1995 as file No. 173602 to allow the owners of APNs 009-551-28 and 009-551-29 limited use of the City's property, APN 004-016-03 (now APNs 004-017-01, 004-016-04, and 004-016-06).

On April 30, 1995, Eberlin, HRE Properties, Inc. ("HREP"), Mallory, Inc., and Automotive Specialty Accessory Parts, Inc. entered into a Reciprocal Ingress, Egress, Parking Easement and Maintenance Agreement on APNs 009-551-28 and 009-551-29 recorded in the Official Records of Carson City, Nevada on May 4, 1995 as file No. 175257.

On December 20, 2001: 1) Eberlin and HREP entered into a Second Reciprocal Ingress, Egress, Parking Easement and Maintenance Agreement superseding the first agreement dated April 30, 1995; and 2) Eberlin and HREP entered into a Limited Indemnity Agreement with Carson City requiring Eberlin and HREP to indemnify the City in the amount of \$1,000,000 for the use of the easement on the City's property.

On December 24, 2001, Carson City granted an Amended Easement and Grant of Limited Parking Rights and Recognition of Collateral Agreements (the "Amended Easement"). Simultaneously, HREP entered into an Assignment of Amended Easement, Grant of Limited Parking Rights and Recognition of Collateral Agreements with Mount Rose Publishing Co., a Nevada Corporation ("MRPC") recorded as one document in the Official Records of Carson City, Nevada on December 28, 2001 as file No. 271522. The Amended Easement required transferee to provide the City with a new Limited Indemnity Agreement in the amount of \$1,000,000, adjusted for inflation from the date of the Amended Easement until the date any new transferee takes title to the parcel.

On January 29, 2002, MPRC entered into a Limited Indemnity Agreement with the City agreeing to indemnify the City in the amount of \$1,000,000 recorded in the Official Records of Carson City, Nevada on March 26, 2002 as file No. 275516.

Applicable Statute, Code, Policy, Rule or Regulation

N/A

Financial Information

Is there a fiscal impact? No

If yes, account name/number:

Is it currently budgeted?

Explanation of Fiscal Impact:

Alternatives

Do not approve the agreement, and/or provide alternative direction to staff.

Attachments:

[9.21.22 - Limited Indemnity Agreement_FINAL_clean.pdf](#)

[2002.01.29 - Governor's Field Easement and Parking - MRPC Ltd Indemnity Agmt.pdf](#)

[Amended Parking Easement_Doc#271522.pdf](#)

Board Action Taken:

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

(Vote Recorded By)

APN 009-551-29, 004-017-01, 004-016-04, and 004-016-06

Limited Indemnity Agreement

This Limited Indemnity Agreement (the "Agreement") is made and is effective as of this ____ day of _____, 2022 by and between Greenlaw Carson City Owners, LLC, a California limited liability company ("Indemnitor") and Carson City, a consolidated municipality and political subdivision of the State of Nevada ("Indemnitee").

RECITALS

WHEREAS, Indemnitor is in the process of purchasing the real property commonly known as 580 Mallory Way, Carson City, Nevada and more particularly described on Exhibit "A" attached hereto and incorporated by this reference ("Lot A");

WHEREAS, the Indemnitee is the owner of the real property commonly known as Governor's Field and the street commonly known as Evalyn Drive, Carson City, Nevada as shown on Parcel Map no. 2104 recorded in the office of the Clerk-Recorder of Carson City, State of Nevada on May 4, 1995 as file no. 175253 of Official Records; and more particularly described on Exhibit "B" attached hereto and incorporated by this reference ("Lot B");

WHEREAS, Indemnitor, as part of the purchase of Lot A, will also be the assignee of that certain Amended Easement dated December 20, 2001, and recorded in the Official Records of Carson City, Nevada (the "Amended Easement") which allows for the limited use of a portion of the parking spaces located on Lot B by the owners, successors, assigns, tenants and operators of Lot A;

WHEREAS, as an express condition for the grant of certain rights contained in the Amended Easement, the Indemnitee has required certain conditions, one of which is an agreement to indemnify the Indemnitee in the aggregate sum of two million dollars (\$2,000,000.00) and the requirement that such indemnity be required of all future transferees, successors and assigns in order for the grant to continue; and

WHEREAS, the Indemnitor considers it to be in its best interest to comply with such conditions as required by the Indemnitee.

NOW, THEREFORE, in consideration of the mutual promises, agreements and covenants set forth herein, the parties hereto expressly promise, agree and covenant as follows.

1. Subject to any limitations set forth herein, the Indemnitor hereto expressly covenants and agrees to indemnify and hold the Indemnitee, as well as any of its employees, agents, representatives and invitees, harmless from any and all consequences, losses, damages, liabilities, claims, causes of action, expenses and attorneys' fees suffered by the Indemnitee as well as any of its employees, agents, representatives and invitees, caused by the use, in any manner whatsoever, by the Indemnitor, or any of its successors, assigns, tenants, operators, shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees, of the rights granted to the Indemnitor and its successors and assigns by the Amended Easement.

2. The amount of the indemnity granted by the Indemnitor to the Indemnitee hereunder shall be expressly limited to the sum of two million dollars (\$2,000,000.00). In no event shall there be any joint and several liability amongst the Indemnitor and any of the other parties indemnifying the Indemnitee pursuant to separate agreements. Each such party indemnifying the Indemnitee shall be solely liable for any claims of indemnity by the Indemnitee due to the use, in any manner whatsoever, by any such party, or any of its successors, assigns, tenants, operators, shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees, of the rights granted to any such party and its successors and assigns by the Amended Easement.

3. In the event of any future assignment or transfer of Lot A by the Indemnitor, the Indemnitee shall, in order for the continuation of certain of the rights granted by the Amended Easement, be provided with a new limited indemnity agreement in the amount of two million dollars (\$2,000,000.00), from any such future successor, assign or transferee.

4. Indemnitee shall not, in any manner whatsoever, be liable for any consequences, injuries, damages, costs, expenses (including payment of reasonable attorneys' fees and costs) or causes of action, of any nature whatsoever, arising out of or suffered by the Indemnitor, or its parent corporation, or any of its affiliates, divisions, subsidiaries, employees, agents, representatives, invitees, vendors, service providers or any other entity or person affiliated, in any manner whatsoever, with the Indemnitor as a result, whether direct or indirect, from the use, in any manner whatsoever, by the

Indemnitor, or any of its successors, assigns, tenants, operators, shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees, of the rights granted to the Indemnitor and its successors and assigns by the Amended Easement.

5. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any and all other agreements, communications, understandings, promises, stipulations, arrangements, whether any of the same are either oral or in writing, or express or implied, between the parties hereto with respect to the subject matter hereof. No change to or modification of this Agreement shall be valid or binding unless the same shall be in writing and signed by a duly authorized representative of Indemnitee and a duly authorized representative of the Indemnitor.

6. A waiver of any provision of this Agreement shall not be valid unless such waiver is in writing and signed by the party or person to be charged, and no waiver of any provision hereof shall be deemed or construed as a waiver of the same or any different provision in the future. Furthermore, the failure of a party to insist upon strict adherence to any term of this Agreement, or to object to any failure to comply with any provision of this Agreement, shall not be a waiver of that term or provision by laches. The receipt of a party of any benefit from this Agreement shall not effect a waiver or estoppel of the right of that party to enforce any provision of this Agreement.

7. If any provision of this Agreement is found, by a court of competent jurisdiction, to be invalid or unenforceable, such provision shall (i) be modified to the minimum extent necessary to render it valid and enforceable or (ii) if it cannot be so modified, be deemed not to be part of this Agreement and shall not affect the validity or enforceability of the remaining provisions of this Agreement.

8. The indemnity created hereby is an obligation that runs with the benefit created by the Amended Easement. The Amended Easement is an encumbrance/benefit running with Lot A and Lot B, and should Indemnitor sell, transfer, convey or otherwise no longer hold to title ownership of Lot A, or should Indemnitor be deprived of any rights created under the Amended Easement, this Agreement shall be of no further force or effect as against Indemnitor.

9. Subject to the provisions hereof, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, administrators, successors and assigns, and wherever a reference in this Agreement is made to either of the parties hereto such reference shall be deemed to include, wherever applicable, also a reference to the heirs, executors, legal

representatives, administrators, successors and assigns of such party, as if in every case so expressed.

10. Nothing contained in this Agreement shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto.

11. This Agreement may be executed in counterparts with the understanding that so long as each of the parties signs one or more such counterpart, this Agreement shall have the same force and effect as though all signatures appeared on one document. The parties expressly agree that a facsimile signature shall be deemed to have the same validity as an original signature.

12. Time is of the essence in this Agreement and each and every provision hereof.

13. This Agreement shall be governed and construed under the laws of the State of Nevada.

IN WITNESS WHEREOF, the parties hereto set their hands hereunto to be effective as of the day and date first set forth above.

**GREENLAW CARSON CITY OWNERS
INDEMNITOR**

By _____

Date: _____

CARSON CITY

By _____

Date: _____

Exhibit "A"

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

Parcel 2 of the Parcel Map recorded at Book 7, Page 2104, Document No. 175253 recorded in the Official Records of Carson City, Nevada on May 4, 1995.

Assessor's Parcel No. 009-551-29

Together with that Certain Easement and Right of Way as Granted by Document Recorded March 28, 1995 as Document No. 173602. Said Easement affects that portion of Evalyn Drive lying Northerly of Parcel 1 and Parcel 2 of Parcel Map No. 2104.

Exhibit "B"

All that certain real property situated in the City of Carson City, State of Nevada commonly known as Governor's Field and more particularly described as follows:

Assessor's Parcel Nos. 004-017-01, 004-016-04, and 004-016-06

Together with:

All that certain real property situated in the City of Carson City, State of Nevada commonly known as Evalyn Drive and more particularly described as follows:

A strip of land being thirty feet (30') in width lying within the NW 1/4 of Section 20, Township 15 North, Range 20 East, M.D.M., Carson City, Nevada, and being more particularly described as follows:

Beginning at a point on the West 1/4 of Section 20 thence South 89° 14' 46" East, a distance of 131.55 feet, thence along Roop Street, North 00° 20' 11" East a distance of 659.10 feet, thence North 89° 07' 25" West a distance of 30.00 feet to a spike and the true point of beginning, thence East along Evalyn Drive and the northern property lines of the above-referenced parcel numbers, as follow: South 89° 07' 25" East 866.04 feet to a 5/8 rebar with tag PLS 6497, thence North 00° 20' 11" East a distance of 30.00 feet, thence continuing West and parallel to the Northernmost parcel line previously referred to, South 89° 07' 25" West a distance of 866.04 feet, thence South 00° 20' 11" West a distance of 30.00 feet to a spike and the true point of beginning.

RECEIVED
APR 8 2002
CARSON CITY PARKS DEPT

LIMITED INDEMNITY AGREEMENT

This Limited Indemnity Agreement (the "Agreement") is made and is effective as of this 29 day of Jan, 2002 by and between the Mount Rose Publishing Co., a Nevada Corporation, sometimes referred to herein as "MRPC" (the "Indemnitor") and the City of Carson City, Nevada, acting through its Board of Supervisors (the "Indemnitee").

RECITALS

WHEREAS, MRPC is the owner of the real property commonly known as 580 Mallory Way, Carson City, Nevada and more particularly described on Exhibit "A" attached hereto and incorporated by this reference ("Lot A");

WHEREAS, the Indemnitee is the owner of the real property commonly known as Governor's Field and the street commonly known as Evalyn Drive, Carson City, Nevada and more particularly described on Exhibit "B" attached hereto and incorporated by this reference ("Lot B");

WHEREAS, Indemnitor is the assignee of that certain Amended Easement dated December 20, 2001, and recorded in the Official Records of Carson City, Nevada (the "Amended Easement") which allows for the limited use of a portion of the parking spaces located on Lot B by the owners, successors, assigns, tenants and operators of Lot A;

WHEREAS, as an express condition for the grant of certain rights contained in the Amended Easement, the Indemnitee has required certain conditions, one of which is an agreement to indemnify the Indemnitee in the aggregate sum of one million dollars (\$1,000,000.00) and the requirement that such indemnity, adjusted for inflation, be required of all future transferees, successors and assigns, other than MRPC, in order for the grant to continue; and

WHEREAS, the Indemnitor considers it to be in its best interest to comply with such conditions as required by the Indemnitee.

NOW, THEREFORE, in consideration of the mutual promises, agreements and covenants set forth herein, the parties hereto expressly promise, agree and covenant as follows.

1. Subject to any limitations set forth herein, the Indemnitor hereto expressly covenants and agrees to indemnify and hold the Indemnitee, as well as any of its employees, agents, representatives and invitees, harmless from any and all consequences, losses, damages, liabilities, claims, causes of action, expenses and attorneys' fees suffered by the Indemnitee as well as any of its employees, agents, representatives and invitees, caused by the use, in any manner whatsoever, by the Indemnitor, or any of its successors, assigns, tenants, operators, shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees, of the rights granted to the Indemnitor and its successors and assigns by the Amended Easement.

2. The amount of the indemnity granted by the Indemnitor to the Indemnitee hereunder shall be expressly limited to the sum of one million dollars (\$1,000,000.00). In no event shall there be any joint and several liability amongst the Indemnitor and any of the other parties indemnifying the Indemnitee pursuant to separate agreements. Each such party indemnifying the Indemnitee shall be solely liable for any claims of indemnity by the Indemnitee due to the use, in any manner whatsoever, by any such party, or any of its successors, assigns, tenants, operators, shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees, of the rights granted to any such party and its successors and assigns by the Amended Easement.

3. In the event of any future assignment or transfer of Lot A by the Indemnitor, the Indemnitee shall, in order for the continuation of certain of the rights granted by the Amended Easement, be provided with a new limited indemnity agreement in the amount of one million dollars (\$1,000,000.00), from any such future successor, assign or transferee, adjusted for inflation from the date of the Amended Easement until the date any such transferee, successor or assign of said parcel takes title to Lot A. Said adjustment for inflation shall be based on the cumulative increases in the cost of living, if any, and shall be calculated based upon the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for the Western Urban Area, Subgroup "all items" (1982-84=100) (the "Index"). The Index published as of the month of the effective date of this Amended Easement shall be considered the "Base Index". Such adjustment shall reflect a percentage equal to the cumulative percentage increase, if any, in the Index over the Base Index as of the month prior to the date of transfer of title to any such parcel. Notwithstanding any subsequent decrease in the Index, the amount of the new limited indemnity agreement shall be no less than as expressly set forth herein.

4. Indemnitee shall not, in any manner whatsoever, be liable for any consequences, injuries, damages, costs, expenses (including payment of reasonable attorneys' fees and costs) or causes of action, of any nature whatsoever, arising out of or suffered by the Indemnitor, or its parent corporation, or any of its affiliates, divisions, subsidiaries, employees, agents, representatives, invitees, vendors, service providers or any other entity or person affiliated, in any manner whatsoever, with the Indemnitor as a result, whether direct or indirect, from the use, in any manner whatsoever, by the Indemnitor, or any of its successors, assigns, tenants, operators, shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees, of the rights granted to the Indemnitor and its successors and assigns by the Amended Easement.

5. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any and all other agreements, communications, understandings, promises, stipulations, arrangements, whether any of the same are either oral or in writing, or express or implied, between the parties hereto with respect to the subject matter hereof. No change to or modification of this Agreement shall be valid or binding unless the same shall be in writing and signed by a duly authorized representative of Indemnitee and a duly authorized representative of the Indemnitor.

6. A waiver of any provision of this Agreement shall not be valid unless such waiver is in writing and signed by the party or person to be charged, and no waiver of any provision hereof shall

be deemed or construed as a waiver of the same or any different provision in the future. Furthermore, the failure of a party to insist upon strict adherence to any term of this Agreement, or to object to any failure to comply with any provision of this Agreement, shall not be a waiver of that term or provision by laches. The receipt of a party of any benefit from this Agreement shall not effect a waiver or estoppel of the right of that party to enforce any provision of this Agreement.

7. If any provision of this Agreement is found, by a court of competent jurisdiction, to be invalid or unenforceable, such provision shall (i) be modified to the minimum extent necessary to render it valid and enforceable or (ii) if it can not be so modified, be deemed not to be part of this Agreement and shall not affect the validity or enforceability of the remaining provisions of this Agreement.

8. The indemnity created hereby is an obligation that runs with the benefit created by the Amended Easement. The Amended Easement is an encumbrance/benefit running with Lot A and Lot B, and should Indemnitor sell, transfer, convey or otherwise no longer hold to title ownership of Lot A, or should MRPC be deprived of any rights created under the Amended Easement, this Agreement shall be of no further force or effect as against MRPC.

9. Subject to the provisions hereof, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, administrators, successors and assigns, and wherever a reference in this Agreement is made to either of the parties hereto such reference shall be deemed to include, wherever applicable, also a reference to the heirs, executors, legal representatives, administrators, successors and assigns of such party, as if in every case so expressed.

10. Nothing contained in this Agreement shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto.

11. This Agreement may be executed in counterparts with the understanding that so long as each of the parties signs one or more such counterpart, this Agreement shall have the same force and effect as though all signatures appeared on one document. The parties expressly agree that a facsimile signature shall be deemed to have the same validity as an original signature.

12. Time is of the essence in this Agreement and each and every provision hereof.

13. This Agreement shall be governed and construed under the laws of the State of Nevada.

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IN WITNESS WHEREOF, the parties hereto set their hands hereunto to be effective as of the day and date first set forth above.

Mount Rose Publishing Co., a Nevada Corporation

By: 
Arne Hoel, its President

City of Carson City

By: 
Its Authorized Representative

Exhibit "A"

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

Parcel 2 of the Parcel Map recorded at Book 7, Page 2104, Document No. 175253 recorded in the Official Records of Carson City, Nevada on May 4, 1995.

Assessor's Parcel No. 009-551-29

Together with that Certain Easement and Right of Way as Granted by Document Recorded March 28, 1995 as Document No. 173602. Said Easement affects that portion of Evalyn Drive lying Northerly of Parcel 1 and Parcel 2 of Parcel Map No. 2104.

Exhibit "B"

All that certain real property situated in the City of Carson City, State of Nevada commonly known as Governor's Field and more particularly described as follows:

Assessor's Parcel No. 004-016-03

Together with:

All that certain real property situated in the City of Carson City, State of Nevada commonly known as Evalyn Drive and more particularly described as follows:

A strip of land being thirty feet (30') in width lying within the NW 1/4 of Section 20, Township 15 North, Range 20 East, M.D.M., Carson City, Nevada, and being more particularly described as follows:

Beginning at a point on the West 1/4 of Section 20 thence South 89° 14' 46" East, a distance of 131.55 feet, thence along Roop Street, North 00° 20' 11" East a distance of 659.10 feet, thence North 89° 07' 25" West a distance of 30.00 feet to a spike and the true point of beginning, thence East along Evalyn Drive and the northern property lines of the above-referenced parcel numbers, as follow: South 89° 07' 25" East 866.04 feet to a 5/8 rebar with tag PLS 6497, thence North 00° 20' 11" East a distance of 30.00 feet, thence continuing West and parallel to the Northernmost parcel line previously referred to, South 89° 07' 25" West a distance of 866.04 feet, thence South 00° 20' 11" West a distance of 30.00 feet to a spike and the true point of beginning.

FILED FOR RECORD
AT THE REQUEST OF
CARSON CITY CLERK TO
THE BOARD
'02 MAR 26 P12:46

FILE NO. 275516
ALAN GLOVER
CARSON CITY RECORDER
FEES DEP.

WHEREAS, Eberlin and HREP are parties to that certain Second Reciprocal Ingress, Egress, Parking Easement and Maintenance Agreement affecting Lot A and Lot B dated as of December _____, 2001 and recorded in the Official Records of Carson City (the "Second Parking Agreement") which expressly replaces and supersedes the First Parking Agreement;

WHEREAS, the Agreement has never been recorded by Eberlin or the City nor has it been officially recognized by the City; and

WHEREAS, the parties hereto deem it desirable and necessary to enter into this Amended Easement to accurately establish the rights and obligations of the owners of Lots A, B and C and for this Amended Easement to replace and supersede the Easement and, to the extent set forth herein, to modify the Agreement.

NOW, THEREFORE, for and in consideration of the recitals set forth above and the agreements set forth below, the parties hereto agree as follows.

Section I
Grant of Evalyn Drive Easement

The City does hereby grant, in perpetuity, to Eberlin and HREP, and their respective tenants, operators, heirs, successors and assigns, an easement and right of way for the purpose of ingress, egress, turning around, backing up, driving over, or other wise accessing the northern property lines of Assessor's Parcels Numbered 009-551-28 and 009-551-29 across, upon, in, over and under the following described real property (the "Evalyn Drive Easement").

A strip of land being thirty feet (30') in width lying within the NW 1/4 of Section 20, Township 15 North, Range 20 East, M.D.M., Carson City, Nevada, and being more particularly described as follows:

Beginning at a point on the West 1/4 of Section 20 thence South 89° 14' 46" East, a distance of 131.55 feet, thence along Roop Street, North 00° 20' 11" East a distance of 659.10 feet, thence North 89° 07' 25" West a distance of 30.00 feet to a spike and the true point of beginning, thence East along Evalyn Drive and the northern property lines of the above-referenced parcel numbers, as follow: South 89° 07' 25" East 866.04 feet to a 5/8 rebar with tag PLS 6497, thence North 00° 20' 11" East a distance of 30.00 feet, thence continuing West and parallel to the Northernmost parcel line previously referred to, South 89° 07' 25" West a distance of 866.04 feet, thence South 00° 20' 11" West a distance of 30.00 feet to a spike and the true point of beginning.

This grant shall be one that runs with the land for the benefit of Assessor's Parcels Numbered 009-551-28 and 009-551-29.

Section II
Grant of Mallory Way Parking Easement

Eberlin and HREP, subject to the conditions set forth herein, do hereby grant, in perpetuity, to the City, and its successors and assigns, an easement and right of way for the purpose of ingress, egress, parking, driving over, or other wise accessing the common parking areas of Assessor's Parcels Numbered 009-551-28 and 009-551-29 across, upon, in, over and under said real property (the "Mallory Way Easement"). This grant is subject to the following conditions.

1. The hours of access to the parking areas shall be after 5:00 PM, Monday through Friday, and all day on Saturdays and Sundays.

2. The City shall continue to hold Eberlin and his successors and assigns harmless as provided for in the Agreement.

This grant shall be one that runs with the land for the benefit of Assessor's Parcel Number 004-016-03 provided that any transferee, successor or assign of either parcel agrees to and complies with the following conditions. Failure to do so shall render this grant void and of no further force and effect.

1. The hours of access to the parking areas shall be after 5:00 PM, Monday through Friday, and all day on Saturdays and Sundays.

2. Any successor or assign of the City shall continue to hold Eberlin and his successors and assigns harmless as provided for in the Agreement.

Section III
Grant of Limited Governor's Field Parking Rights

The City, subject to the conditions set forth herein, does hereby grant, in perpetuity, to Eberlin and HREP, and their respective heirs, successors, assigns, tenants and operators, limited rights for the purpose of ingress, egress, parking, driving over, or other wise accessing the parking areas of Assessor's Parcel Number 004-016-03 across, upon, in, over and under said real property (the "Governor's Field Rights"). This grant is subject to the following conditions.

1. The City shall be provided with a limited indemnity agreement in the amount of one million dollars (\$1,000,000.00).

2. The hours of access to the parking areas shall be 7:30 AM until 5:15 PM, Monday through Friday.

3. The maximum number of parking spaces that can be utilized shall be forty five (45) spaces.

This grant shall be one that runs with the land for the benefit of Assessor's Parcels Numbered 009-551-28 and 009-551-29 provided that any transferee, successor or assign of either parcel agrees to and complies with the following conditions. Failure to do so shall render this grant void and of no further force and effect.

1. The City shall be provided with a new limited indemnity agreement from any such transferee, successor or assign in the amount of one million dollars (\$1,000,000.00), adjusted for inflation from the date of this Amended Easement until the date any such transferee, successor or assign to either of said parcels takes title to such parcel. Said adjustment for inflation shall be based on the cumulative increases in the cost of living, if any, and shall be calculated based upon the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for the Western Urban Area, Subgroup "all items" (1982-84=100) (the "Index"). The Index published as of the month of the effective date of this Amended Easement shall be considered the "Base Index". Such adjustment shall reflect a percentage equal to the cumulative percentage increase, if any, in the Index over the Base Index as of the month prior to the date of transfer of title to any such parcel. Notwithstanding any subsequent decrease in the Index, the amount of the hold harmless agreement shall be no less than as expressly set forth herein. Furthermore, notwithstanding anything to the contrary set forth herein, the foregoing adjustment to the hold harmless agreement amount shall not be applicable to any transfer of title from HREP to the Mount Rose Publishing Co., or any successor or assign of it taking title from

HREP.

2. The hours of access to the parking areas shall be 7:30 AM until 5:15 PM, Monday through Friday.

3. The maximum number of parking spaces that can be utilized shall be forty five (45) spaces.

Section IV
Indemnity

Subject to any limitations set forth herein, each party hereto expressly covenants and agrees to indemnify and hold each other party, as well as any of its shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees, harmless from any and all consequences, losses, damages, liabilities, claims, causes of action, expenses and attorneys' fees suffered by another party, or parties, hereto, as well as any of their shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees, caused by the use, in any manner whatsoever, by any other party hereto, or any of its shareholders, affiliates, divisions, subsidiaries, employees, agents, representatives and invitees, of the rights accorded by the Evalyn Drive Easement, the Mallory Way Easement or the Governor's Field Rights.

Section V
Maintenance

Each party hereto agrees to maintain its respective driveways, access ways and parking lots located on its real property in good condition and repair at the sole cost and expense of each respective party.

Section VI
Further Building

Eberlin and HREP hereby re-acknowledge and re-affirm that, as a condition of granting a building permit for Lot B, no further structures may be constructed within the west sixty (60) feet of the building that was constructed on Lot B.

Section VII
Fire Hydrant Easement/Maintenance

Eberlin agrees to continue maintain the check valve, water line and fire hydrant located adjacent to the Premises for the mutual benefit of both Lots A and B. HREP hereby reaffirms the grant, in perpetuity, to Eberlin, his tenants, his operators and/or his successors and assigns of an easement for such maintenance. This grant shall be one that runs with the land on Lot B for the benefit of Lot A. Further, Eberlin, HREP and their tenants, operators, successors and assigns hereby re-acknowledge that a right of entry was also granted to the City of Carson City for use of the check valve, water line and fire hydrant when Parcel Map 1434 was recorded in the Official Records of Carson City. This right of entry was a condition to obtaining the lot split that created Lot A and Lot B.

Section VIII
Acknowledgement of the Second Parking Agreement

The City hereby acknowledges the Second Parking Agreement, in the form as is recorded in

the Official Records of Carson City and confirms that it provides parking for both Lot A and Lot B in conformity with the City's Municipal Code requirements as are applicable to said lots.

Section IX
Acknowledgement of the Agreement

Eberlin, HREP and the City hereby acknowledge, confirm and ratify the Agreement, as it may be amended or modified hereby. Furthermore Eberlin and the City hereby covenant and agree to execute a recordable form of the Agreement, and cause it to be recorded concurrently herewith, in the event that any party hereto deems it to be advisable.

Section X
Correction of Legal Description

The parties hereto expressly understand and agree that any reference to an "Evelyn Way" in any document affecting Lot A, Lot B or Lot C shall be deemed to be a reference to "Evalyn Drive" and any reference to an "Evelyn Drive" in any document affecting Lot A, Lot B or Lot C shall be deemed to be a reference to "Evalyn Way".

Section XI
Binding Effect

This Amended Easement shall, subject to any conditions set forth herein, bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of each of the parties hereto as well as any of the tenants and/or operators of Eberlin and HREP and their respective successors and assigns.

Section XII
Governing Law

This Amended Easement shall be governed and construed under the laws of the State of Nevada.

Section XIII
Attorney's Fees

In any action or proceeding which any party hereto may take to enforce such party's rights hereunder, or to which such party may be made a party because of any matters arising or growing out of this Amended Easement, and due to the act or default of some other party, the party whose act or default caused the other party, without fault to become involved in such litigation, or who shall be defeated in such litigation, agrees to pay all costs incurred by the winning or other party therein, including reasonable attorney's fees.

Section XIV
Invalidity of Particular Provisions

If any term or provision of this Amended Easement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Amended Easement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Amended Easement shall be valid and be enforced to the fullest extent permitted by law.

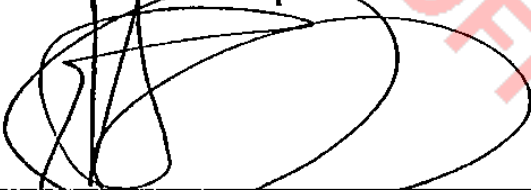
Section XV
Entire Agreement

This document contains the entire agreement between the parties hereto relating to the rights granted and the obligations assumed pursuant to this document. This Amended Easement represents the entire agreement between the parties hereto and expressly replaces and supersedes any and all previous agreements, oral or verbal, including, but not limited to, the Easement made by and between the City and Eberlin. Notwithstanding anything to the contrary contained herein, the terms and conditions of the Agreement shall remain in full force and effect except for those set forth in Paragraph 7 thereof and as to the Evalyn Drive Easement as set forth in Exhibit "A" thereto. This Amended Easement may not be modified or amended except by an amendment, in writing and in recordable form, executed by all parties hereto.


IN WITNESS WHEREOF, the parties hereto have executed this Amended Easement to be effective as of this 20th day of December, 2001.

City of Carson City

By: 
Its Authorized Representative


Harry R. Eberlin

HRE Properties, Inc., a Nevada Corporation

By: 
Gregg W. Koechlein, Its President

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Exhibit "A"

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

Parcel 1 of the Parcel Map recorded at Book 7, Page 2104, Document No. 175253 recorded in the Official Records of Carson City, Nevada on May 4, 1995.

Assessor's Parcel No. 009-551-28

Together with that Certain Easement and Right of Way as Granted by Document Recorded March 28, 1995 as Document No. 173602. Said Easement affects that portion of Evalyn Drive lying Northerly of Parcel 1 and Parcel 2 of Parcel Map No. 2104.

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Exhibit "B"

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

Parcel 2 of the Parcel Map recorded at Book 7, Page 2104, Document No. 175253 recorded in the Official Records of Carson City, Nevada on May 4, 1995.

Assessor's Parcel No. 009-551-29

Together with that Certain Easement and Right of Way as Granted by Document Recorded March 28, 1995 as Document No. 173602. Said Easement affects that portion of Evalyn Drive lying Northerly of Parcel 1 and Parcel 2 of Parcel Map No. 2104.

UNOFFICIAL COPY

Exhibit "C"

All that certain real property situated in the City of Carson City, State of Nevada commonly known as Governor's Field and more particularly described as follows:

Assessor's Parcel No. 004-016-03

Together with:

All that certain real property situated in the City of Carson City, State of Nevada commonly known as Evalyn Drive and more particularly described as follows:

A strip of land being thirty feet (30') in width lying within the NW 1/4 of Section 20, Township 15 North, Range 20 East, M.D.M., Carson City, Nevada, and being more particularly described as follows:

Beginning at a point on the West 1/4 of Section 20 thence South $89^{\circ} 14' 46''$ East, a distance of 131.55 feet, thence along Roop Street, North $00^{\circ} 20' 11''$ East a distance of 659.10 feet, thence North $89^{\circ} 07' 25''$ West a distance of 30.00 feet to a spike and the true point of beginning, thence East along Evalyn Drive and the northern property lines of the above-referenced parcel numbers, as follow: South $89^{\circ} 07' 25''$ East 866.04 feet to a 5/8 rebar with tag PLS 6497, thence North $00^{\circ} 20' 11''$ East a distance of 30.00 feet, thence continuing West and parallel to the Northernmost parcel line previously referred to, South $89^{\circ} 07' 25''$ West a distance of 866.04 feet, thence South $00^{\circ} 20' 11''$ West a distance of 30.00 feet to a spike and the true point of beginning.

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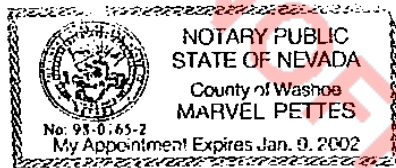
STATE OF NEVADA)
)
) :ss
COUNTY OF WASHOE)

On December 17, 2001 before me, the undersigned a Notary Public in and for said County and State, personally appeared Gregg W. Koechlein personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Marvel Pettes

My Commission Expires: Jan 9, 2002



FILED FOR RECORD
AT THE REQUEST OF
FIRST AMERICAN TITLE CO.
'01 DEC 28 P2:34

FILE NO. 271522
ALAN GLOVER
CARSON CITY REC'D
FEE: 24 DEP. PA