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APN 003-101-13

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MEMORANDUM OF UNDERSTANDING

**Title of Document**

**Affirmation Statement**

X I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording **does not contain** the social security number of any person or persons. (Per NRS 239B.030)

\_\_\_\_\_ I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording **does contain** the social security number of a person or persons as required by law:

(State specific law)

Signature

PROJECT MANAGER

Title

Cody Howick

Print

10/20/10

Date

**Grantees address and mail tax statement:**

CITY OF CALIENTE % CITY CLERK

P.O. Box 1006

CALIENTE, NV 89008-1006



Memorandum of Understanding between  
City of Caliente & Mike Davis

This Agreement is entered into as of the 7<sup>th</sup> day of October, 2010, by and between the City of Caliente, a political subdivision of the State of Nevada ( hereinafter referred to as the "City"), and Mike Davis, an individual; collectively, the City and Mike Davis are referred to in this agreement as "the Parties."

**Recitals**

**WHEREAS**, the City, claims the existence of a public street right-of-way, hereinafter referred to as the "Disputed Area", and shown hatched as the "Area in Ownership Dispute" in the attached Exhibit A, from the intersection of Alice Street and Minnie Street, west of Block 28, known as Alice Street, and extending to the intersection of Locust Street and Lincoln Street; and

**WHEREAS**, the City desires the ability to install, own, access, maintain, repair, replace, and otherwise manage utilities, parks, trails, accesses and other amenities within and across the Disputed Area; and

**WHEREAS**, Mike Davis claims ownership of the Disputed Area by virtue of his purchase of real property from Kurt E. Shirley and Maria Volborth as evidenced by the Grant Bargain and Sale Deed recorded as Doc # 0129722 in the office of the Lincoln County Recorder; and

**WHEREAS**, Mike Davis desires to occupy the limits of the property purchased by him and to otherwise install, own, access, maintain, repair, replace, and otherwise manage his improvements on the Disputed Area; and

**WHEREAS**, various plats, records of survey, parcel maps, and other survey documents prepared by various licensed land surveyors have conflicts in substance, reference, and appearance such that it is unclear which, if any, of the maps, or parts thereof, are correct, and who is the rightful owner of the Disputed Area; and

**WHEREAS**, only two interested parties exist, namely the City and Mike Davis; and

**WHEREAS**, the ownership of the Disputed Area has previously been a matter of litigation; and

**WHEREAS**, continued litigation over ownership of the Disputed Area has the potential for extreme monetary and non-monetary costs for the Parties; and

**WHEREAS**, the Parties seek a mutual and permanent solution that would facilitate accomplishment of the individual and collective desires of the Parties, would settle the current conflict over ownership of the Disputed Area, and would prevent future conflict over the Disputed Area.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the Parties agree as follows

1. **Recitals Incorporated.** The foregoing recitals are incorporated by reference.
2. **Term and Termination.**
  - A. The parties agree that this Memorandum of Understanding shall be binding upon the Parties and their successors and assigns, *in perpetuity*, and the Parties further expressly waive any right to litigation over ownership of the Disputed Area; and
  - B. The Parties further agree that this Memorandum of Understanding shall be tied to the Disputed Area in perpetuity regardless of name, identification, or otherwise.



3. **Transfer or Sale.** The Parties agree that no portion or piece of the Disputed Area shall be sold without the express, written consent of the other party.
4. **Rights, Obligations and Understanding of the Parties.**
  - A. The Parties agree that the City has the right to install, own, access, maintain, repair, replace, and otherwise manage utilities, parks, trails, accesses and other amenities on, in, and through the Disputed Area but east of the steel and wire fence illustrated on the attached Exhibit B; and
  - B. The Parties agree that Mike Davis has the right to install, own, access, maintain, repair, replace, and otherwise manage improvements on, in, and through the Disputed Area but west of the steel and wire fence illustrated on the attached Exhibit B; and
  - C. In its operations affecting utilities or amenities, the City shall not materially disturb the existing well or its appurtenances and shall preserve Mike Davis' existing improvements in place, but Mike Davis shall cooperate and work with the City to make minor modifications to facilitate the City's operations affecting utilities or amenities from time to time as need arises. Such cooperation shall not be reasonably withheld; and
  - D. The City shall maintain a 15 foot wide ingress and egress way east of the steel and wire fence such that access to properties west of Mike Davis' parcel is maintained, and
  - E. Neither party shall locate new improvements on or in the other's area within the Disputed Area without the express written consent of the other party, but either party may make improvements on or in its own area of the Disputed Area without the verbal or written consent of the other party.
  - F. The City shall replace the existing fence to the boundary shown on the attached Exhibit A after the execution of this Memorandum of Understanding.
5. **General Provisions.**
  - A. **Legal Authority and Supporting Resolutions.** Each party represents that it has legal authority to enter into this Agreement and to perform its obligations hereunder.
  - B. **Integration.** This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract concerning the subject matter of this Agreement, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement.
  - C. **Construction and Interpretation.** The Parties acknowledge that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement.
  - D. **Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement will not render the other provisions unenforceable, invalid or illegal.
  - E. **Amendment.** The terms of this Agreement may be modified or amended only by a subsequent written agreement approved and executed by the Parties.



F. **Relationship of Parties.** Nothing in this Agreement will be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability.

G. **No Third- Party Beneficiaries.** This Agreement will not be construed to create any third-party beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted transferees and assigns, and no other person or entity will be entitled to rely on or receive any benefit from this Agreement or any of its terms.

H. **Successors and Assigns.** This Agreement will bind and be for the benefit of the respective successors and assigns of the Parties, except that, no assignment or transfer of any rights or duties of a party under this Agreement will be effective unless approved in writing by the other party.

I. **Reasonable Cooperation.** The Parties will reasonably cooperate with each other, including the execution of all necessary documents, to carry out the purposes and intent of this Agreement.

J. **Waiver.** The waiver at any time by a party of its rights with respect to any matter arising in connection with this Agreement will not be deemed to be a waiver with respect to any subsequent matter.

K. **Opinions and Determinations.** Where the terms of this Agreement provide for an action to be based on the opinion, determination, approval or review of either party, such terms are not intended to be, and will not be construed as permitting, such action to be arbitrary, capricious or unreasonable. Any opinion, determination, approval or review required of a party under this Agreement will be provided in a timely manner.

IN WITNESS WHEREOF, MIKE DAVIS and the CITY have caused this Memorandum of Understanding to be executed as delivered effective as of the most recent date set forth below.

**MIKE DAVIS**

By: Mike Davis Date: 10-15-2010  
MIKE DAVIS

**CITY OF CALIENTE**

By: Keith Larson Date: 10/07/2010  
MAYOR KEITH LARSON