

1 RECORDING REQUESTED BY
2 AND WHEN RECORDED RETURN TO:

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder



No Fee

19970126819 11:30am 03/20/97

3 County of Orange
4 Public Facilities & Resources
5 300 N. Flower Street, 8th Floor
6 Santa Ana, California 92701
7 Attn: Real Estate

005 9019279 00 49
A12 13 7.00 36.00 0.00 0.00 0.00 0.00

7 Facility/Project: FCPP/Borrego Canyon Channel
8 Facility/Project No.: F20
9 Parcel No.: 501.1
10 A.P. No.: 591-037-05 (port.)
11 Location: City of Irvine and Incorporated

12 The undersigned declares that this document is recorded at the request of and for the
13 benefit of the County of Orange and is therefore exempt from the payment of the
14 recording fee pursuant to Government Code Section 6103 and from the payment of the
15 documentary transfer tax pursuant to Revenue and Taxation Code Section 11922.

(space above this line for Recorder's use)

16 TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

17 This CONSTRUCTION EASEMENT AGREEMENT ("Agreement") is made as of January 21,
18 1997, by and between The Irvine Company, a Michigan corporation ("Company") and
19 the Orange County Flood Control District, a body corporate and politic in the State of
20 California ("County").

21 R E C I T A L S

22 A. Company is the fee owner of certain real property located in the unincorporated
23 area of the County of Orange, State of California (the "Property"), as more
24 particularly described on Exhibit "A" attached hereto.

25 B. On December 12, 1989, Company and County entered into that certain agreement
26 entitled Right-of-Way Agreement for Foothill Circulation Phasing Plan ("Right-of-Way
27 Agreement"), which provides for Company to dedicate or otherwise convey certain right-
28 of-way and construction easements across Company Property for the purpose of
construction necessary road and drainage improvements under the Foothill Circulation
Phasing Plan in the so-called Foothill area of Orange County. One of the improvements
specified in the Right-of-Way Agreement is Borrego Wash (the "Improvement").

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1 C. Company wishes to convey an easement over Parcel F20-501.1 for construction
2 purposes to the Orange County Flood District to facilitate improvement of the
Borrego Wash;

3 D. County desires to commence construction of the Improvement pursuant to the
4 plans, specifications, terms and conditions of the construction contract to be
5 executed by the County for Alton Parkway and Borrego Canyon Channel which contract
6 will be administered by the County of Orange Environmental Management Agency, Santa
7 Ana, California. This contract together with any future contracts entered into by
County for the construction of the Improvement and any non-material amendments or
modifications to such contract and future contracts are referred to hereinafter as
the "Plans."

8 E. Company desires to fulfill its obligations under the Right-of-Way Agreement
9 and facilitate the commencement of construction of the Improvement by granting to
County a construction easement upon the terms and conditions contained herein.

10 NOW, THEREFORE, in consideration of the mutual promises and covenants contained
11 herein and in the Right-of-Way Agreement, Company and County hereby agree as
follows:

12 1. Grant of Easement.

13 A. Easement. Company hereby grants to County a nonexclusive,
14 nontransferable easement in gross ("Easement") over, under and across that portion
15 of the Property depicted graphically on Exhibit "B" attached hereto ("Easement
16 Area") for the purpose of (i) construction of the Improvement pursuant to the
17 Plans, (ii) entering upon, passing and repassing over and along said Property, and
for depositing tools, implements and other materials thereon by County, its
officers, agents, and employees, and by persons under contract with it and their
employees, whenever and wherever necessary, and (iii) the doing of such other acts
as are authorized or required to be done in, on or over the Easement Area or any
portion thereof by County pursuant to the provisions of this Agreement.

18 B. Character of Easement. The Easement granted to County is:

19 (1) Limited to Use by County. The Easement shall be specifically
20 limited to use by County and its invitees, employees, agents, contractors, and
21 assigns. The Easement Area shall not be open for use by the general public, and
County shall not encourage or permit the general public to use or enter upon the
Easement Area.

22 (2) Nonexclusive. Company retains the right to use and to grant to
23 others the nonexclusive right to use the Easement Area for any and all lawful
24 purposes; provided, however, that before granting to others any rights to use the
Easement Area, Company shall first obtain County's prior approval, which approval
shall not be unreasonably withheld.

25 (3) An Easement in Gross. The Easement is an easement in gross and
26 is personal to County.

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28 5-1-92

1 (4) Nontransferable. The Easement is nontransferable.

2 (5) Limited to the Easement Area. Except as specifically set forth
3 in Paragraph 1(a) above, nothing contained herein shall be deemed or construed to
4 grant to County any rights in or to any portion of the Property other than the
5 Easement Area. County hereby acknowledges and agrees that the entering onto any
6 Property outside the Easement Area by County, its employees, agents,
7 representatives and invitees shall be considered a trespass and breach of this
8 Agreement and further agrees to take all appropriate steps to prevent any such
9 trespass and breach.

10 (6) Temporary. The Easement is granted for a temporary period and
11 shall expire with the expiration of this Agreement as set forth in Paragraph 4.

12 (7) Subject to Existing Conditions. The Easement is subject to all
13 easements, covenants, conditions, restrictions, reservations, rights, rights-of-way
14 and other matters of record, apparent or of which County has actual notice, as such
15 matters now or hereafter affect the Easement Area.

16 2. Construction of Improvement.

17 A. Compliance with Plans; Cost; Modification. County shall construct
18 the Improvements in compliance with the Plans. In the event County needs to modify
19 or amend the Plans in any material way ("Modification"), including without
20 limitation changing the alignment or design of the Improvement, County shall submit
21 to Company for review any such proposed Modification and, prior to implementation
22 thereof, give due consideration to any comments submitted by Company.

23 B. Notice of Non-Responsibility. Company shall have the right to post
24 and maintain notices of non-responsibility adjacent to the Easement Area in
25 locations which do not materially interfere with County's construction of the
26 Improvement.

27 3. Maintenance Obligations.

28 A. Maintenance and Repairs. All maintenance and repairs of whatever
kind or nature performed on the Easement Area by County shall be performed by
County at its sole cost and expense. All maintenance and repairs shall be
performed in such manner and at such intervals as set forth in the Plans.

B. Compliance with Law. County and its invitees, employees and agents
shall comply with all applicable governmental laws, regulations and rules with
respect to the use of the Easement Area.

C. Gates and Fences. County agrees that Company shall have the right
from time to time and at any time to require that fences and locked gates be
maintained on or adjacent to the Easement Area at such location or locations that
are identified in the Plans or that are reasonably requested by Company. In such
event, the fences, gates and locks on the gates shall be purchased, installed,
maintained and repaired by County at its sole cost and expense. Both County and
Company shall be given keys, padlock combinations or such other equipment or
information as necessary to unlock the gates, and both parties shall keep the gates
closed and locked when not in use.

1 4. Term. The term of this Agreement shall be from the effective date of
2 this Agreement to and until the first to occur of:

3 A. The date of filing of the notice of completion for the
4 Improvement;

5 B. Termination of the Right-of-Way Agreement;

6 C. Use of the Easement for any purpose not expressly permitted herein
7 or violation by County of any covenant contained herein where such unpermitted use
8 or violation is not cured within ten (10) days of written notice thereof from
9 Company;

10 D. Cessation of the use of the Easement for a period of twelve (12)
11 consecutive months, unless written notice is given to Company prior to the
12 termination of such period of the reason for such suspension of use and of County's
13 intention to resume such use.

14 Upon termination of this Agreement as provided above, County shall promptly execute
15 and deliver to Company, in recordable form, such quitclaims or releases as may be
16 necessary or desirable to confirm or effect such termination and to relinquish any
17 rights or claim of County to the Easement or Easement Area hereunder, except as
18 specifically agreed otherwise by Company and County in writing.

19 5. Insurance.

20 At all times during the term of this Agreement and prior to any entry
21 upon the Property, County shall require that (i) the contractors employed by County
22 obtain and maintain such policies of insurance as may be required by the Plans and
23 (ii) such policies of insurance list Company as an additional insured.

24 6. Indemnification.

25 County hereby agrees to defend, save and hold Company and each of its
26 directors, officers, employees, and agents harmless from any and all claims,
27 actions, damages, losses or expenses of every type and description to which they
28 may be subjected arising out of any act or omission of County, including any act or
omission of County's supervisors, employees, representatives, agents and
independent contractors, in connection with (i) the construction of the
Improvement, (ii) the use of the Easement Area and/or the Property by County
pursuant hereto, and (iii) the performance or non-performance by County of its
obligations under this Agreement.

1 7. Attachments. This Agreement includes the following Exhibits, which are
2 attached hereto and made a part hereof by this reference:

3 A. Legal Description of Property; and

4 B. Right of Way Map

1 8. Miscellaneous.

2 A. Successors and Assigns. The provisions of this Agreement shall
3 bind and inure to the benefit of all successors, the assigns of Company and the
4 permitted assigns of County (collectively "Assignee"). Any Assignee of an interest
5 hereunder shall automatically, as of the effective date of the assignment (i)
6 succeed to the rights herein granted and (ii) be deemed to have assumed the
7 obligations hereunder. No such assignment shall be deemed to relieve County of its
8 obligations under this Agreement unless such release is in writing executed by both
9 parties hereto. Upon the request of either party hereto, any Assignee shall
10 execute and acknowledge an instrument in recordable form providing for the
11 assumption of the obligations of its assignor pursuant to this Agreement.

12 B. Notices. Any notice, payment or instrument required or permitted
13 under this Agreement to be given or delivered to Company or County shall be deemed
14 to have been received when personally delivered or seventy-two (72) hours following
15 deposit of the same in any United States Post Office in California, registered or
16 certified mail, postage prepaid, addressed as follows:

17 If to Company:

18 The Irvine Company
19 550 Newport Center Drive
20 P.O. Box 1
21 Newport Beach, California 92658-8904
22 Attn: General Counsel, Irvine Industrial Company

23 If to County:

24 County of Orange...
25 Public Facilities & Resources
26 P.O. Box 4048
27 Santa Ana, California 92702
28 Attn: Director

29 C. No Rights in Public. Nothing herein contained shall be deemed to
30 be a gift or dedication of any portion of the Easement Area or the Property to or
31 for the general public, it being the intention of the parties hereto that this
32 Agreement shall be strictly limited to and for the purposes herein expressed.

33 D. Waiver; Remedies. No delay on the part of any party hereto in
34 exercising any right, power or privilege hereunder shall operate as a waiver
35 thereof, nor shall any waiver on the part of any party hereto of any right, power
36 or privilege hereunder operate as a waiver of any other right, power or privilege
37 hereunder, nor shall any single or partial exercise of any right, power or
38 privilege hereunder, preclude any other or further exercise thereof or the exercise
39 of any other right, power or privilege hereunder.

1 E. Governing Law. This Agreement shall be construed and enforced in
2 accordance with the laws of the State of California.

3 F. Entire Agreement. This Agreement and the related agreements
4 referenced herein are intended by the parties as a final expression of their
5 agreement and intended to be a complete and exclusive statement of the agreement
6 and understanding of the parties hereto in respect of the subject matter contained
7 herein. There are no restrictions, promises, warranties or undertakings, other
8 than those set forth or referred to herein.

9 G. Survival of Indemnity. The provisions of Paragraph 6 shall survive
10 the termination of this Agreement.
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1 IN WITNESS WHEREOF, the parties have executed this Agreement the day and
2 year first above written.

3
4 ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic

5 By: [Signature]
6 John W. Sibley, Director
7 Public Facilities & Resources
8 Pursuant to Resolutions 96-637
and F92-15 and Ordinance No. 3972

9 THE IRVINE COMPANY,
a Michigan Corporation

10 By: [Signature]
11 Name: Jeffrey J. Wallace
12 Title: Assistant Secretary

13 APPROVED AS TO FORM:

14 County Counsel

15 By: Kathy Paul *DOT 2/4/92*
16 Name: Kathy Paul
17 Title: Deputy



18 By: Ronald J. Keith
19 Name: Ronald J. Keith
20 Title: Vice President,
Project Management

21 Dated: January 17, 1992

22 APPROVALS

23		
24	Description Compared to EMA-approved Description:	
25	By: <u>[Signature]</u> Date <u>3/22/94</u>	

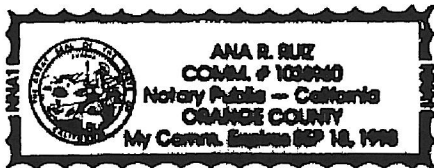
ACKNOWLEDGMENT


STATE OF CALIFORNIA)
) ss:
COUNTY OF ORANGE)

On January 21, 1997, before me ANA R. RUIZ
a Notary Public in and for said State, personally appeared JEFFREY V.
WALLACE AND RONALD J. KEITH

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

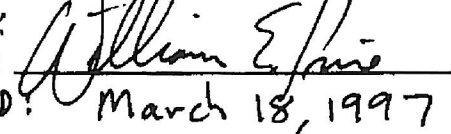
WITNESS my hand and official seal.



Signature 

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, is hereby accepted by the undersigned officer or agent on behalf of the Board of Supervisors of Orange County, California, acting as the governing board of the ORANGE COUNTY FLOOD CONTROL DISTRICT, pursuant to authority conferred by resolution of the said Board of Supervisors adopted on November 4, 1975, and the ORANGE COUNTY FLOOD CONTROL DISTRICT consents to recordation thereof by its duly authorized officer.

BY: 
Dated: March 18, 1997

By _____

ROBERT BEIN, WILLIAM FROST & ASSOCIATES
14725 Alton Parkway
Irvine, California 92718

Revised March 22, 1994
August 5, 1992
JN 24839-8.L10
Page 1 of 3

LEGAL DESCRIPTION

BORREGO CANYON CHANNEL
FACILITY NO. F20

PARCEL 501.1
Parcel A

That portion of Block 174 of Irvine's Subdivision in the County of Orange, State of California per map recorded in Book 1, Page 88 of Miscellaneous Record Maps in the Office of the County Recorder of said County, described as follows:

COMMENCING at the northeasterly terminus of that certain course in the centerline of Alton Parkway shown as " North 67°36'15" East 61.42 feet " on Parcel Map No. 84-629 recorded in Book 205, Pages 1 through 10 of Parcel Maps in the Office of said County Recorder; thence South 67°36'15" West 61.42 feet along said course to the beginning of a tangent curve concave southeasterly and having a radius of 1800.00 feet; thence along said curve southwesterly 39.92 feet through a central angle of 1°16'15" to a point of cusp; thence tangent from said curve North 66°20'00" East 361.49 feet to the beginning of a tangent curve concave northwesterly and having a radius of 2350.00 feet; thence along said curve northeasterly 392.86 feet through a central angle of 9°34'42"; thence tangent from said curve North 56°45'18" East 1376.21 feet to the beginning of a tangent curve concave southeasterly and having a radius of 2350.00 feet; thence along said curve northeasterly 364.88 feet through a central angle of 8°53'46" to a point on the southwesterly line of Parcel 5 as described in a Decree of Declaration of Taking recorded in Book 2567, Page 100 of Official Records in the Office of said County Recorder; thence non-tangent from said curve, along said southwesterly line North 49°16'38" West 65.99 feet to a point on a non-tangent curve concave southeasterly and having a radius of 2410.00 feet, said curve being concentric with and 60.00 feet northwesterly from said last described curve, a radial line of said curve to said point bears North 25°00'36" West, said curve also being tangent at its southwesterly terminus to a line parallel with and 60.00 feet northwesterly from that certain course hereinbefore described as having a bearing of North 56°45'18" East and a length of 1376.21 feet; thence along said curve southwesterly 346.39 feet through a central angle of 8°14'06" to said parallel line; thence along said parallel line South 56°45'18" West 291.03 feet to the northeasterly line of the land described in the deed to the Irvine Ranch Water District recorded February 3, 1977 in Book 12057, Page 1904 of said Official Records; thence along said northeasterly line North 49°17'33" West 54.83 feet to a point on a non-tangent curve concave northwesterly and having a radius of 781.50 feet, a radial line of said curve to said point bears South 38°00'14" East, said point also being the TRUE POINT OF BEGINNING; thence along said curve northeasterly 114.69 feet through a central angle of 8°24'31"; thence tangent from said curve North 37°02'20" East 24.77 feet; thence North 14°40'23" East 68.59 feet; thence North 33°55'30" East 257.04

EXHIBIT 

Robert Bein, William Frost & Associates
Borrego Canyon Channel
Facility No.: F20

Revised March 22, 1994
August 5, 1992
JN 24839-8.L10
Page 2 of 3

feet to the southeasterly line of Parcel 5A as described in said Decree; thence along said southeasterly line South 70°30'15" West 80.00 feet; thence South 37°48'06" West 319.01 feet; thence South 56°45'18" West 70.00 feet to said northeasterly line of the land of Irvine Ranch Water District; thence along said northeasterly line South 49°17'33" East 90.85 feet to the TRUE POINT OF BEGINNING.

Parcel B

A strip of land 60.00 feet wide in Block 174 in Irvine's Subdivision in the City of Irvine, County of Orange, State of California, per map recorded in Book 1, Page 88 of Miscellaneous Maps in the Office of the County Recorder of said County, the southeasterly line of which is parallel and concentric with and 25.00 feet northwesterly from the following described line:

COMMENCING at the northeasterly terminus of that certain course in the centerline of Alton Parkway shown as " North 67°36'15" East 61.42 feet " on Parcel Map No. 84-629 recorded in Book 205, Pages 1 through 10 of Parcel Maps in the Office of said County Recorder; thence South 67°36'15" West 61.42 feet along said course to the beginning of a tangent curve concave southeasterly and having a radius of 1800.00 feet; thence along said curve southwesterly 39.92 feet through a central angle of 1°16'15" to a point of cusp; thence tangent from said curve North 66°20'00" East 361.49 feet to the beginning of a tangent curve concave northwesterly and having a radius of 2350.00 feet; thence northeasterly 392.86 feet along said curve through a central angle of 9°34'42"; thence tangent from said curve North 56°45'18" East 51.91 feet; thence North 33°14'42" West 60.00 feet to a line parallel with and 60.00 feet northwesterly from that certain course hereinbefore described as having a bearing of North 56°45'18" East and a length of 51.91 feet; thence along said parallel line North 56°45'18" East 290.39 feet to the southwesterly line of the land described in the deed to Irvine Ranch Water District recorded February 3, 1977 in Book 12057, Page 1904 of Official Records in the Office of said County Recorder; thence along said southwesterly line North 49°19'54" West 26.02 feet to a line parallel with and 85.00 feet northwesterly from said certain course, said point being the TRUE POINT OF BEGINNING; thence along said parallel line South 56°45'18" West 283.18 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1806.50 feet; thence along said curve southwesterly 53.19 feet through a central angle of 1°41'13" to the beginning of a compound curve concave northwesterly and having a radius of 906.50 feet; thence along said curve southwesterly 236.10 feet through a central angle of 14°55'21" to the beginning of a compound curve concave northwesterly and having a radius of 1806.50 feet; thence along said curve southwesterly 53.19 feet through a central angle of 1°41'13"; thence tangent from said curve South 75°03'05" West 201.40 feet to the southeasterly line of Irvine Boulevard as shown on said Parcel Map.

The side lines of said strip shall be prolonged or shortened to terminate northeasterly at the southwesterly line of said land described in the deed to

EXHIBIT A

Robert Bein, William Frost & Associates
Borrego Canyon Channel
Facility No.: F20

Revised March 22, 1994
August 5, 1992
JN 24839-8.L10
Page 3 of 3

Irvine Ranch Water District and southwesterly at the southeasterly right-of-way line of said Irvine Boulevard.

EXCEPTING THEREFROM that certain parcel of land described in an Easement Deed to Orange County Flood Control District recorded July 28, 1989 as Instrument No. 89-399227 of Official Records in said Office of the Orange County Recorder.





James R. Crawford, L.S. 4965

EXHIBIT A

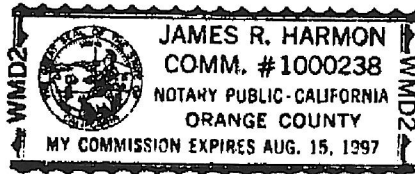
ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss:
COUNTY OF ORANGE)

On March 17, 1997, before me James R. Harmon
a Notary Public in and for said State, personally appeared
John W. Sibley, Director
Public Facilities & Resources

personally known to me (or ~~proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature *James R. Harmon*

