

27-5555-1

CAMERA A

ORANGE

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



No Fee

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**RECORDING REQUESTED AND
WHEN RECORDED MAIL TO:**

City Clerk
City of Dana Point
33282 Golden Lantern
Dana Point, California 92629

EXEMPT FROM RECORDER'S FEES
PURSUANT TO GOVERNMENT CODE
SECTIONS 6103 AND 27383

SPACE ABOVE THIS LINE FOR RECORDER'S LINE

AGREEMENT AFFECTING REAL PROPERTY

This Agreement Affecting Real Property ("Agreement") is made and entered as of APRIL 8, 1997, by and between the COUNTY OF ORANGE, a general law county ("County") and the CITY OF DANA POINT, a general law city ("City"). In consideration of the mutual promises and covenants contained herein, the parties hereto mutually agree as follows:

Section 1. RECITALS. This Agreement is made and entered into with respect to the following facts, which are acknowledged as true and correct by the parties hereto:

A. County is the owner of the property commonly known as the County Capistrano Maintenance yard located at 34102 Del Opisbo, Dana Point, California 92629, which is more particularly described on Exhibit A, attached hereto and incorporated herein as though set forth in full (the "Property").

B. On October 14, 1994, the County filed a complaint against the City in Orange County Superior Court, Case No. 737222. On December 13, 1994, the City filed a cross-complaint against the County and on or about May 31, 1996, the City filed an amended cross-complaint against the County.

C. In order to resolve all of the issues relating to the complaint and cross-complaint and to address other related issues between the City and the County, the County and City entered into that certain Settlement Agreement and Special Mutual Release dated as of June 25, 1996 ("Settlement Agreement").

D. Pursuant to the Settlement Agreement, the City and the County had certain obligations to the other party. Under Section 15 of the Settlement Agreement, these obligations included the County conveying to the City a right of first refusal over the

Property in a recordable form. This Agreement is intended to comply with Section 15 of the Settlement Agreement.

In consideration of the agreements and special mutual releases in the Settlement Agreement, the Agreement and other good and value consideration, the receipt and sufficiency which is hereby acknowledged, County hereby covenants with the City that there be and hereby is created the following restrictions on the use, enjoyment and transfer of said Property:

Section 2. COVENANT, CONDITION AND RESTRICTION. County, for itself and its heirs, assigns and successors in interests covenants and agrees that:

A. If the County or County Harbors, Beaches and Parks Department receives from any third-party a bona fide offer to purchase the Yard at a price and on terms acceptable to the County or County Harbors, Beaches and Parks Department, then County or County Harbors, Beaches and Parks shall give written notice of the offer to the City. Within ninety (90) days after County or County Harbors, Beaches and Parks has given such written notice of the offer to the City, City shall have the right to purchase the Yard for the same terms and conditions set forth in that third-party offer.

B. To exercise this right, the City must, within the ninety (90) day period, deposit into escrow an escrow company selected by the County the purchase price and all instruments required by the terms of the offer to be paid and delivered to the County or County Harbor Beaches and Parks on close of escrow and shall also give County or County Harbor Beaches and Parks written notice of the deposit.

C. In the event the City fails to exercise the right to purchase in accordance with the provisions of this Agreement, then and only then may County or County Harbors, Beaches and Parks Department sell the Yard to the third-party making the offer on the terms and conditions set forth in that original offer from the third-party. If, for any reason, the Yard is not sold to the party making the offer, or County or County Harbors Beaches and Parks Department reacquires title to the Yard for any reason, County or County Harbors, Beaches and Parks Department shall give the City the right to purchase the Yard upon any subsequent offer from any third-party that is acceptable to the County or County Harbor Beaches and Parks Department pursuant to the provisions of this Agreement.

Section 3. DURATION. This Agreement shall remain in full force and effect for a period of eighty-nine years from the effective date of this Agreement.

Section 4. SATISFACTION OF CONDITION OF SETTLEMENT AGREEMENT. The parties agree that as long as the City complies with the terms of the Settlement Agreement, this Agreement satisfies Section 15 of the Settlement Agreement, with the exception of the second paragraph of Section 15 relating to the City securing a replacement site for the County Yard. County, on behalf of itself, its successors and assigns

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agrees that if this Agreement is held by a court of competent jurisdiction not to bind County or its successors and assigns, then County has not complied with Section 15 of the Settlement Agreement.

Section 5. TAXES AND ASSESSMENTS. It is intended that this Agreement is irrevocable and shall constitute an enforceable restriction within the meaning of a) Article XIII, Section 8 of the California Constitution; and b) Section 402.1 of the California Revenue and Taxation Code or successor statute. Furthermore, this Agreement shall be deemed to constitute a servitude upon the burden to the Property within the meaning of Section 3712(d) of the California Revenue and Taxation Code, or successor statute, which survives a sale of tax-deeded property.

Section 6. REMEDIES. Any act, conveyance, contract, or authorization by County or its agents whether written or oral which transfer the Property contrary to the terms of this Agreement will be deemed a violation and a breach hereof. The City and County may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Agreement. In the event of a breach, any forbearance on the part of any party to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

Section 7. ENTIRE AGREEMENT. As long as the City complies with the terms of the Settlement Agreement, this Agreement contains the entire understanding between the City and County with respect to the agreement required by Section 15 of the Settlement Agreement, with the exception of the second paragraph of Section 15 relating to the City securing a replacement site for the County Yard. Any prior agreements, promises, negotiations or representations not expressly set forth herein or in the Settlement Agreement are of no force or effect. Subsequent modifications to the Agreement shall be effective only if in writing and signed by all parties, unless a court of competent jurisdiction rules that the City has breached the Settlement Agreement. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding.

Section 8. BINDING EFFECT.

A. Of the covenants which have been established pursuant to this Agreement, the same shall be deemed to be covenants running with the land for the benefit of the City. The covenants contained in this Agreement shall be binding for the benefit of the City and its successors, and such covenants shall run in favor of the City for the entire period during which such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate.

B. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Section 9. **ATTORNEY'S FEES.** If litigation is reasonably required to enforce or interpret the provisions of this Agreement, the prevailing party in such litigation shall be entitled to an award of reasonable attorney's fees, in addition to any other relief to which it may be entitled.

Section 10. **NOTICES.** Any notices or other correspondence between the parties shall be sent to the following unless either party gives the other notice of a change of address:

City Clerk
City of Dana Point
33282 Golden Lantern
Dana Point, California 92629

cc: Jerry Patterson
City Attorney
City of Dana Point
Burke, Williams & Sorensen
3200 Park Center Drive, Suite 750
Costa Mesa, California 92626

cc: County Executive Officer
County of Orange
10 Civic Center Drive
P.O. Box 1379
Santa Ana, California 92702

cc: Public Facilities and Resources Dept.
County of Orange
300 North Flower Street
P.O. Box 4048
Santa Ana, California 92702

Notice shall be effective upon personal delivery, delivery by courier service or three business days following deposit in the United States mail, postage prepaid, certified.

Section 11. **SECTION HEADINGS.** The section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents of the sections to which they relate.

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- COUNTY OF ORANGE, a general law county

By: William G. Steina
Chairman of the Board of Supervisors
Orange County, California

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD OF
SUPERVISORS OF OKANGE COUNTY
ATTEST

By: [Signature]
3/7/92
Deputy County Counsel

By: Darlene J. Bloom
Darlene J. Bloom
Clerk of the Board of Supervisors
of Orange County, California

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11-11-97

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CITY OF DANA POINT, a general law city

DATED: January 15, 1997

By: 
William L. Ossenmacher
Mayor

Approved as to form:

By: 
Jeffery M. Patterson
City Attorney

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LEGAL DESCRIPTION OF COUNTY YARD


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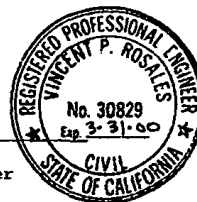
Beginning at the intersection of the center line of Del Obispo Street (formerly McKinley Avenue), 80.00 feet wide, as described in the deed to the County of Orange, recorded April 13, 1926, in book 636, page 363 of Deeds, in the office of the County Recorder of said County, with a line parallel with and 500.00 feet Southerly of the center line of Victoria Street, 60.00 feet wide, as described in the deed to the County of Orange, recorded May 15, 1918 in book 324, page 42 of Deeds, in the office of said County Recorder; thence along said parallel line S.68°45'35"E., 361.61 feet; thence, N.21°05'25"E., 160.00 feet; thence, along a line parallel with and 160.00 feet Northerly from last said parallel line, N.68°54'35"W., 340.35 feet to said center line of Del Obispo Street; thence, along said center line S.28°39'28"W., 161.41 feet to the point of beginning.

APPROVED:



ROBERT LIVINGSTON, Chief
Right-of-Way Engineering Section

V.P. Rosales
V. P. ROSALES
Registered Civil Engineer
Certificate No. 30829
Expiration Date: March 31, 2000



-1-

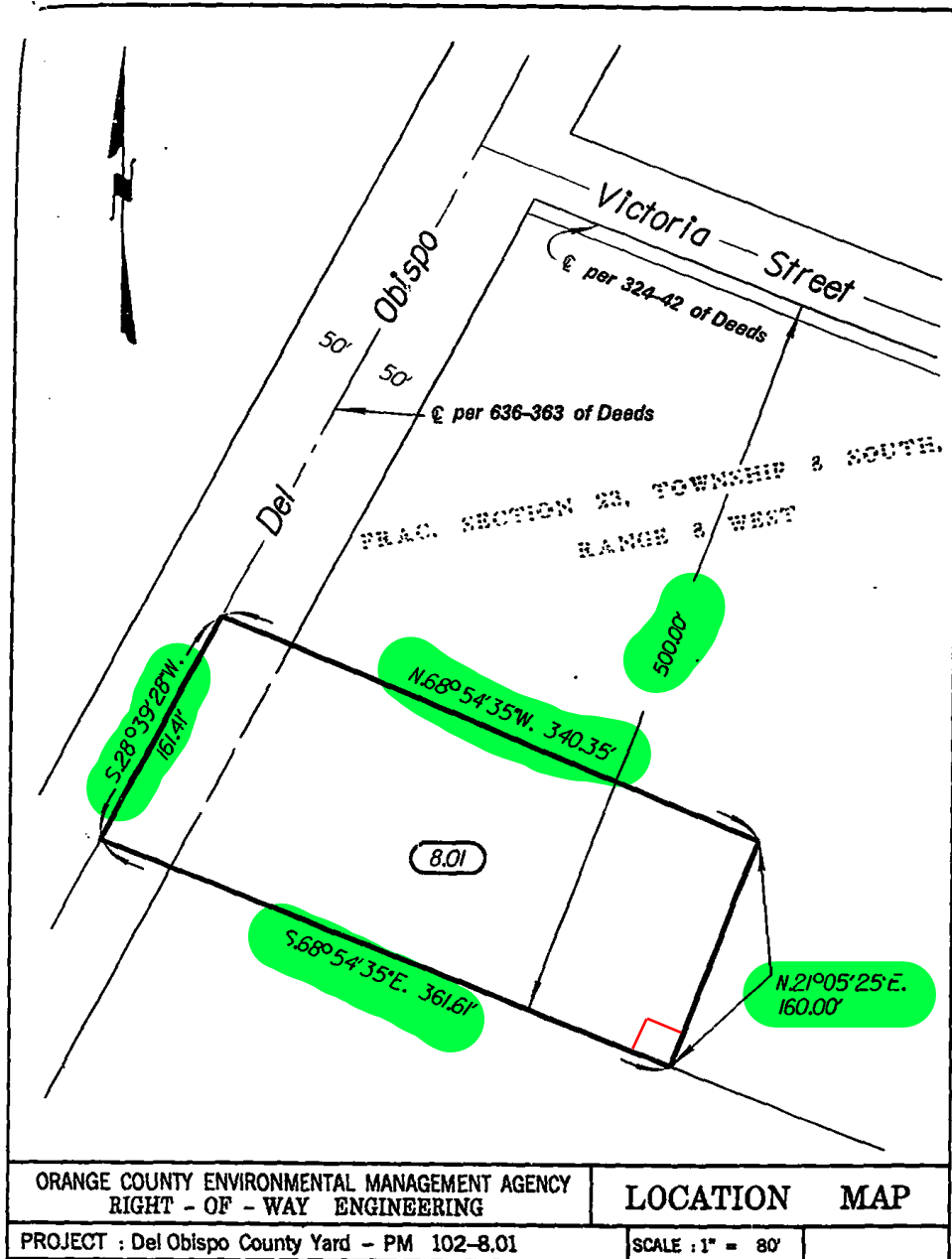
Form CE4

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delobis.m(848.gis7) temp1@gis7. Fri Nov 22 08:33:02 PST 1996

CITY OF DANA POINT



CITY CLERK'S DEPARTMENT

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

On January 15, 1997, before me, CATHY J. CATLETT, Assistant City Clerk of the City of Dana Point, California, personally appeared William L. Ossenmacher, mayor of the City of Dana Point, California, personally known to me 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.

(SEAL)


CATHY J. CATLETT, Assistant City Clerk
Dana Point, California

DATED: This 15th day of January, 1997.

Document: Agreement with County for County Capistrano Maintenance Yard

(H:\Users\sharon\Legal\ack.sig)

33282 Golden Lantern, Dana Point, CA 92629 • (714) 248-3506 • FAX (714) 248-9920

2000-01-15

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California
County of Orange

On 4-21-97 before me, Dale C. Maafi, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Darlene J. Bloom
NAME(S) OF SIGNER(S)

☒ 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.

Dale C. Maafi
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)
TITLE OR TYPE OF DOCUMENT

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(ES)

SIGNER(S) OTHER THAN NAMED ABOVE

NOTARY

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