

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

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RECORDING REQUESTED BY:
COUNTY OF ORANGE

WHEN RECORDED MAIL TO:

County of Orange
RDMD/Harbors, Beaches & Parks
300 North Flower Street
Santa Ana, California 92703-5000
Attn: Director / BARRY PERMENTER

RDMD/Harbors, Beaches and Parks
Del Obispo Maintenance Yard

EASEMENT DEED AND AGREEMENT

THIS EASEMENT DEED AND AGREEMENT (the "Agreement") is made and entered into on OCTOBER 19, 2004, by and between the **COUNTY OF ORANGE**, hereinafter referred to as "COUNTY," and **CITY OF DANA POINT**, hereinafter referred to as "GRANTEE," with reference to the following:

A. The COUNTY is the owner and operator of that certain improved real property known as the Del Obispo Maintenance Yard (the "County Property"). GRANTEE is the owner and operator of that certain improved real property known as the Del Obispo Park (the "City Property"). The County Property and the City Property are adjacent and contiguous with each other and are depicted on Exhibit "1" attached hereto and incorporated herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. DEFINITIONS (AMA 2.1 S)

The following words in this Agreement have the significance attached to them in this clause unless otherwise apparent from context:

"Board of Supervisors" means the Board of Supervisors of the County of Orange, a political subdivision of the State of California.

"County Executive Officer" means the County Executive Officer, County Executive Office, County of Orange, or designee, or upon written notice to COUNTY, such other person or entity as shall be designated by the Board of Supervisors.

1 "Director, RDMD/HBP" means the Director of Harbors, Beaches and Parks of the County's Resources
 2 & Development Management Department, or designee or upon written notice to GRANTEE, such other
 3 person or entity as shall be designated by the County Executive Officer or the Board of Supervisors.
 4 Unless otherwise specifically noted, the Director is authorized by the Board of Supervisors to take all
 5 actions and give all notices to be taken or provided by COUNTY under this Agreement.

6
 7 "Risk Manager" means the Risk Manager, County Executive Office, Risk Management, County of
 8 Orange, or designee, or upon written notice to GRANTEE, such other person or entity as shall be
 9 designated by the County Executive Officer or the Board of Supervisors.

10
 11 "County Counsel" means the County Counsel for the County of Orange.

12 13 2. GRANT OF EASEMENT

14
 15 COUNTY hereby grants to GRANTEE a nonexclusive easement in gross over, across and upon that
 16 certain real property hereinafter referred to as the "Easement Area," legally described and shown on
 17 Exhibit "1", which exhibit is attached hereto and by reference made a part hereof. The use of said
 18 Easement Area by GRANTEE is limited to the purposes provided in Paragraph 3 of this Agreement.

19 20 3. USE

21
 22 A. GRANTEE's use of the Easement Area shall be only for the purposes of: (1) parking of up to
 23 seventeen (17) standard passenger vehicles on a non-exclusive, first come, first served basis in the
 24 location shown on Exhibit "1" attached to this Agreement, except during the hours of 6:00 a.m. to
 25 5:00 p.m., Monday through Friday excluding holidays, when such parking will be exclusively for
 26 COUNTY vehicles, unless mutually agreed upon 72 hours notice by either party; and (2) ingress to
 27 and egress from the adjacent City Property across the Easement Area in, upon and through the
 28 driveway shown on Exhibit 1.

29 B. COUNTY reserves the right to use and to grant others the nonexclusive right to use the
 30 Easement Area for all lawful purposes so long as such use does not materially impair the reasonable
 31 use of the Easement Area by Grantee.

32 C. The Easement is an easement in gross and is personal to GRANTEE for the limited uses and
 33 purposes set forth herein. The Easement shall not attach to the City Property, but shall at all times
 34 remain a personal right of GRANTEE. In no event shall GRANTEE have any right to assign or
 35 transfer any rights granted pursuant to this Agreement.

36 D. It is understood that the COUNTY may renovate the County Property in the future and that this
 37 renovation may necessitate a change in location of the Easement Area. COUNTY reserves the right

1 to permanently relocate all or any portion of the Easement Area to another portion or portions of the
2 County Property upon providing 180 days prior written notice to GRANTEE. The COUNTY will
3 not materially impair the reasonable use of the Easement Area by GRANTEE, even if the Easement
4 Area is relocated. Furthermore, any such renovation of the Easement Area, in the event the
5 Easement Area is permanently relocated, shall allow access to the City Property via the signalized
6 entrance to the County Property. In the event COUNTY elects to relocate all or any portion of the
7 Easement Area, COUNTY shall pay for and make the necessary parking and driveway
8 improvements, and any other improvements required to return the Easement Area to its previous
9 condition or to establish the new Easement Area to accommodate the GRANTEE'S uses allowed by
10 this Agreement. COUNTY also reserves the right to temporarily close or limit access over or
11 parking upon the Easement Area upon the Director, RDMD/HBP providing GRANTEE with thirty
12 (30) days advance written notice. Said temporary closure or limitation of access shall not exceed
13 thirty (30) continuous days without a finding of good cause by the Board of Supervisors, and upon
14 mutual agreement of both parties. Temporary access to the City Property shall be provided or
15 accommodated during the temporary closure or limitation by the COUNTY pursuant to Section
16 3(F), herein.

17 E.GRANTEE agrees not to conduct or permit to be conducted any public or private nuisance in, on,
18 or from the Easement Area, or to commit or permit to be committed any waste within the Easement
19 Area. GRANTEE further agrees to comply with all governmental laws, rules and regulations in
20 connection with its use of the Easement Area. No overnight parking shall be permitted in the
21 Easement Area and COUNTY reserves the right to tow any unauthorized vehicle from the Easement
22 Area.

23 F. COUNTY agrees not to permanently block or obstruct any portion of the access way proposed to
24 be constructed in the Easement Area or materially impair the reasonable use of the Easement Area
25 by GRANTEE. The GRANTEE shall leave the existing driveway ("Driveway") on the south side of
26 Del Obispo Community Park in place to allow access to the City Property if necessary during the
27 renovation of the County Property as discussed in Section 3(D) above. The Driveway is depicted on
28 Exhibit "1," attached hereto. The Driveway shall be closed to permanent access by the GRANTEE,
29 in a temporary manner established by GRANTEE that will allow the County to easily re-open such
30 access when necessary, at such time that the Easement Area is developed. If the COUNTY requests
31 that the access across the Easement Area be temporarily closed or limited, as described in Section
32 3(D) above, the GRANTEE shall open the Driveway during that period to allow access to the City
33 Property. If the COUNTY renovates or modifies their property and in doing so negates the need to
34 keep the driveway in place for access to the City Property, the COUNTY, subject to the approval of
35 the GRANTEE, shall remove the Driveway and make all necessary improvements to the area of the
36 Driveway to make the area consistent in appearance with the surrounding Driveway area. It is
37 understood that the COUNTY intends to renovate the County Property in the future, and that this

renovation may necessitate a change in the Easement Area. After the initial renovation of the County Property, the COUNTY shall renovate the Driveway area to the satisfaction of the GRANTEE, including landscaping, curb and gutter improvements, sidewalk improvements, and the closure of the Driveway area for access to the City Property. If, after the initial renovation, the COUNTY subsequently renovates the County Property that necessitates the closure of the Easement Area pursuant to Section 3(D), COUNTY shall be responsible to develop and implement a temporary access to the City Property at the full expense of the COUNTY. Similar to the COUNTY'S responsibility in this Section 3(F) to renovate the Driveway Area after the initial renovation, COUNTY shall be responsible for all costs associated with the construction, removal and renovation of any subsequent temporary access.

NO ALCOHOLIC BEVERAGES OR TOBACCO PRODUCTS SHALL BE SOLD OR CONSUMED WITHIN THE EASEMENT AREA.

4. TERM

The term of the Easement and this Agreement shall be from the date of recordation of this Agreement to and until the first to occur of:

- A. Recordation of a written instrument executed by COUNTY and GRANTEE terminating and relinquishing the Easement;
- B. The City Property is no longer owned in whole or in part by GRANTEE;
- C. Abandonment of the Easement by GRANTEE for a period of six (6) consecutive months, the term of this Agreement shall end only after thirty (30) days written notice by COUNTY of such abandonment or lack of use [in the event that the GRANTEE responds to the notice, within that thirty (30) days, that the easement has not been abandon and that use by GRANTEE will continue, then this Agreement will not terminate under this Section 4(C)]; or
- D. Use of the Easement or the Easement Area for any purpose not expressly permitted herein, including but not limited to those set out in Section 3, above, without express consent of COUNTY, or the breach by GRANTEE of any term of this Agreement, which unpermitted use, or breach continues following thirty (30) days written notice from COUNTY to GRANTEE.

Upon termination of the Easement and this Agreement as provided above, within ten (10) business days after COUNTY's request GRANTEE shall execute and deliver to COUNTY in recordable form such quitclaims or releases as COUNTY deems necessary or desirable to confirm or effect such termination.

5. UTILITIES, MAINTENANCE AND REPAIR

1 GRANTEE shall provide the following services to the Easement Area:

2 A. Trash pick-up services;

3 B. Electrical and water (for landscaping, if any) utilities if any are installed or used by GRANTEE
4 on or for the Easement Area;

5 C. Maintenance, repair and replacements, including, but not limited to regular restriping and
6 resurfacing of the Easement Area.

7
8 6. IMPROVEMENTS OR MODIFICATIONS TO EASEMENT AREA
9

10 GRANTEE agrees not to perform or cause to be performed any improvements or modifications to the
11 Easement Area, unless such improvements or modifications are first approved in writing by the Director,
12 RDMD/HBP and, if required, GRANTEE applies for and is issued an appropriate County public
13 property permit.

14
15 7. MAINTENANCE OBLIGATIONS OF GRANTEE
16

17 GRANTEE agrees to maintain the Easement Area at all times in good order, condition and repair,
18 making such replacements as are necessary or appropriate. This includes, but is not limited to, the
19 prevention of accumulation of any refuse or waste materials. Failure of GRANTEE to properly maintain
20 and repair the Easement Area after forty-five (45) days notice from the COUNTY identifying said failure
21 shall constitute a breach of the terms of this Agreement and permit COUNTY the right to immediately
22 make such repairs or conduct such maintenance as necessary to cure said failure and charge the costs
23 incurred by COUNTY to GRANTEE together with the COUNTY's then standard construction
24 supervision overhead charge, which amounts GRANTEE shall pay upon receipt of an invoice from
25 COUNTY.

26
27 8. INSURANCE (AME 5.1.1 S)
28

29 GRANTEE agrees to purchase all required insurance at GRANTEE's expense and to deposit with the
30 COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the
31 COUNTY that the insurance provisions of this Agreement have been complied with and to keep such
32 insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during the
33 entire term of this Agreement. If GRANTEE's insurance expires or otherwise is terminated, COUNTY shall
34 provide GRANTEE ninety (90) days to cure the failure to have proof of insurance on file. If GRANTEE
35 fails to provide COUNTY with insurance within the ninety (90) day cure period, COUNTY may prohibit
36 GRANTEE use of the Easement Area until such time as GRANTEE provides COUNTY with proof of
37 insurance. Prior to any prohibition of GRANTEE's use of the Easement Area under this Section, County

1 shall provide written notice of such prohibition and allow at least thirty (30) days prior to any disruption of
2 use.

3
4 Subject to the notice and cure period outlined above, GRANTEE agrees that GRANTEE shall not operate on
5 the Easement Area at any time the required insurance is not in full force and effect as evidenced by a
6 certificate of insurance and necessary endorsements or, in the interim, an official binder being in the
7 possession of Director. In no cases shall assurances by GRANTEE, its employees, agents, including any
8 insurance agent, be construed as adequate evidence of insurance. Director will only accept valid certificates
9 of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance.
10 GRANTEE also agrees that upon cancellation, termination, or expiration of GRANTEE's insurance,
11 COUNTY may take whatever steps are necessary to interrupt any operation from or on the Easement Area
12 until such time as the Director reinstates the Agreement.

13
14 Subject to the notice and cure provisions outlined above, if GRANTEE fails to provide Director with a valid
15 certificate of insurance and endorsements, or binder at any time during the term of the Agreement,
16 COUNTY may take whatever steps necessary to interrupt any operation from or on the Easement Area, and
17 to prevent any persons, including, but not limited to, members of the general public, and GRANTEE's
18 employees and agents, from entering the Easement Area until such time as Director is provided with
19 adequate evidence of insurance required herein. GRANTEE further agrees to hold COUNTY harmless for
20 any damages resulting from such interruption of business and possession, including, but not limited to,
21 damages resulting from any loss of income or business resulting from the COUNTY's action. Once
22 GRANTEE provides the Director with the required proof of insurance, GRANTEE shall regain all rights to
23 the Easement Area under this Agreement.

24
25 All contractors performing work on behalf of GRANTEE in the Easement Area pursuant to this Agreement
26 shall obtain insurance subject to the same terms and conditions as set forth herein for GRANTEE.
27 GRANTEE shall not allow contractors or subcontractors to work if contractors have less than the level of
28 coverage required by the COUNTY from the GRANTEE under this Agreement. It is the obligation of the
29 GRANTEE to provide written notice of the insurance requirements to every contractor and to receive proof
30 of insurance prior to allowing any contractor to begin work within the Easement Area. Such proof of
31 insurance must be maintained by GRANTEE through the entirety of this Agreement and be available for
32 inspection by a COUNTY representative at any reasonable time.

33
34 All insurance policies required by this Agreement shall declare any deductible or self-insured retention
35 (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be
36 approved by the COUNTY's County Executive Office (CEO)/Office of Risk Management. GRANTEE
37 shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs)

or deductibles shall be clearly stated on the certificate of insurance.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the GRANTEE shall provide the minimum limits and coverage as set forth below:

<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability with broad form property damage, contractual liability and products liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

All liability insurance required by this Agreement shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability, if required, may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this Agreement with respect to work done by the GRANTEE under the terms of this Agreement (except Workers' Compensation/Employers' Liability, Professional Liability (if required) and Employee Dishonesty Coverage (if required)). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the certificate of insurance. It is understood that the GRANTEE is self insured through its Joint Powers Insurance Agency, and that required certificates may differ in form from

1 those used by traditional insurance carriers.

2
3 The County of Orange shall be a Loss Payee on the Fire Policy and a Loss Payee/Obligee on the Employee
4 Dishonesty Coverage (if required).

5
6 All insurance policies required by this Agreement shall be primary insurance, and any insurance maintained
7 by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An
8 endorsement evidencing that the GRANTEE's insurance is primary and non-contributing shall specifically
9 accompany the certificate of insurance for the Commercial General Liability and Sexual Misconduct
10 Liability (if required).

11
12 All insurance policies required by this Agreement shall waive all rights of subrogation against the County of
13 Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and
14 employees when acting within the scope of their appointment or employment.

15
16 If GRANTEE's Professional Liability policy (if required) is a "claims made" policy, GRANTEE shall agree
17 to maintain professional liability coverage for two (2) years following completion of Agreement.

18
19 The Commercial General Liability policy shall contain a severability of interests clause.

20
21 The GRANTEE is aware of the provisions of Section 3700 of the California Labor Code, which requires
22 every employer to be insured against liability for Workers' Compensation or be self-insured in accordance
23 with provisions of that code. The GRANTEE will comply with such provisions and shall furnish the
24 COUNTY satisfactory evidence that the GRANTEE has secured, for the period of this Agreement, statutory
25 Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000
26 per occurrence.

27
28 Insurance certificates should be forwarded to the COUNTY address provided in the Clause (NOTICES)
29 below or to an address provided by Director.

30
31 COUNTY expressly retains the right to require GRANTEE to reasonably increase or decrease insurance of
32 any of the above insurance types throughout the term of this Agreement. Any increase or decrease in
33 insurance will be as reasonably deemed by County of Orange Risk Manager as appropriate to adequately
34 protect COUNTY.

35
36 COUNTY shall notify GRANTEE in writing of changes in the insurance requirements. If GRANTEE does
37 not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating

such changes within ninety (90) days of receipt of such notice, COUNTY may limit GRANTEE's use of the Easement Area until such time as GRANTEE complies with the insurance requirements. All insurance requirements shall be objectively reasonable and in a form and amount reasonably attainable by GRANTEE.

The procuring of such required policy or policies of insurance shall not be construed to limit GRANTEE's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

9. HAZARDOUS MATERIALS (AMF 9.1 S)

- A. Definition of Hazardous Materials. For purposes of this Agreement, the term "Hazardous Material" or "Hazardous Materials" shall mean any hazardous or toxic substance, material, product, byproduct, or waste which is or shall become regulated by any governmental entity, including, without limitation, the COUNTY acting in its governmental capacity, the State of California or the United States government.
- B. Use of Hazardous Materials. GRANTEE or GRANTEE's employees, agents, independent contractors or invitees (collectively "GRANTEE Parties") shall not cause or permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Easement Area (which for purposes of this clause shall include the subsurface soil and ground water).
- C. GRANTEE Obligations. If the presence of any Hazardous Materials on, under or about the Easement Area caused or permitted by GRANTEE or GRANTEE Parties results in (i) injury to any person, (ii) injury to or contamination of the Easement Area (or a portion thereof), or (iii) injury to or contamination or any real or personal property wherever situated, GRANTEE, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Easement Area to the condition existing prior to the introduction of such Hazardous Materials to the Easement Area and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of COUNTY under this Agreement, GRANTEE shall pay the cost of any cleanup or remedial work performed on, under or about the Easement Area as required by this Agreement or by applicable laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by GRANTEE or GRANTEE Parties. Notwithstanding the foregoing, GRANTEE shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Easement Area caused or permitted by GRANTEE or GRANTEE Parties, or enter

1 into any settlement agreement, consent decree or other compromise with any governmental or
 2 quasigovernmental entity without first obtaining the prior written consent of the COUNTY. All
 3 work performed or caused to be performed by GRANTEE as provided for above shall be done
 4 in good and workmanlike manner and in compliance with plans, specifications, permits and
 5 other requirements for such work approved by COUNTY.

6
 7 D. Indemnification for Hazardous Materials. To the fullest extent permitted by law, GRANTEE
 8 hereby agrees to indemnify, hold harmless, protect and defend (with attorneys acceptable to
 9 COUNTY) COUNTY, its elected officials, officers, employees, agents and independent
 10 contractors and the Easement Area, from and against any and all liabilities, losses, damages
 11 (including, but not limited, damages for the loss or restriction on use of rentable or usable space
 12 or any amenity of the Easement Area or damages arising from any adverse impact on marketing
 13 of the Easement Area), diminution in the value of the Easement Area, judgments, fines,
 14 demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to,
 15 reasonable attorneys' fees, disbursements and court costs and all other professional or
 16 consultant's expenses), whether foreseeable or unforeseeable, arising directly or indirectly out of
 17 the presence, use, generation, storage, treatment, on or off-site disposal or transportation of
 18 Hazardous Materials on, into, from, under or about the Easement Area caused or permitted by
 19 GRANTEE or GRANTEE's Parties. The foregoing indemnity shall also specifically include the
 20 cost of any required or necessary repair, restoration, clean-up or detoxification of the Easement
 21 Area and the preparation of any closure or other required plans.

22 23 10. NOTICES (AMF 10.1 S)

24
 25 All notices pursuant to this Agreement shall be addressed as set forth below or as either party may
 26 hereafter designate by written notice and shall be sent through the United States mail in the State of
 27 California, duly registered or certified, return receipt requested, with postage prepaid. If any notice is
 28 sent by registered or certified mail, as aforesaid, the same shall be deemed to have been served or
 29 delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above,
 30 COUNTY may also provide notices to GRANTEE by personal delivery or by regular mail and any such
 31 notice so given shall be deemed to have been given upon receipt.

1 TO: COUNTY

2 County of Orange

3 Harbors, Beaches and Parks

4 300 N. Flower Street

5 Santa Ana, CA 92703

6 Attn: Director

TO: GRANTEE

 City of Dana Point

 33282 Golden Lantern

 Dana Point, CA 92629

 Attn: City Manager

11. LIMITATION OF THE EASEMENT (AMLC-13.1 S)

15 This Agreement and the rights and privileges granted GRANTEE in and to the Easement Area are
16 subject to all covenants, conditions, restrictions, and exceptions of record or apparent from a physical
17 inspection of the Easement Area. Nothing contained in this Agreement or in any document related hereto
18 shall be construed to imply the conveyance to GRANTEE of rights in the Easement Area, which exceed
19 those owned by COUNTY. GRANTEE accepts the Easement Area in its "as-is" condition without
20 representation or warranty by the COUNTY as to its condition.

12. ATTACHMENTS TO AGREEMENT (AMF 11.1 S)

24 This Agreement includes the following, which are attached hereto and made a part hereof:

26 I. General Conditions

27 II. Exhibit "1" – Depiction of County Property and City Property.

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

3
4
5 ATTEST:

6 Sharon Street
7 Sharon Street, City Clerk

8
9 APPROVED AS TO FORM:

10 Patrick Munoz
11 Patrick Munoz, City Attorney

GRANTEE

CITY OF DANA POINT

BY:

Douglas Chokevys

TITLE: City Manager

12
13 SIGNED AND CERTIFIED THAT A COPY OF
14 THIS DOCUMENT HAS BEEN DELIVERED TO
15 THE CHAIRMAN OF THE BOARD

COUNTY

COUNTY OF ORANGE

16
17 Darlene J. Bloom
18
19 DARLENE J. BLOOM
20 Clerk of the Board of Supervisors,
21 Orange County, California



BY:

Thomas A. Miller
Chairman, Board of Supervisors

22
23
24 APPROVED AS TO FORM:
25 OFFICE OF THE COUNTY COUNSEL
26 ORANGE COUNTY, CALIFORNIA

27
28 BY:

Thomas A. Miller
Deputy

29
30 DATE:

7-20-04

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange } ss.

On 12-14-2004 before me, Charlene M. McNair, Notary Public

personally appeared SUSAN NOVAK

Name(s) of Signer(s)

☒ personally known to me
☐ 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.

Charlene M. McNair
 Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: EASEMENT DEED AND AGREEMENT

Document Date: NO DATE Number of Pages: 18

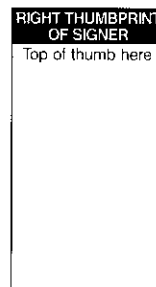
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____



OFFICIAL CALIFORNIA NOTARIAL CERTIFICATE

ACKNOWLEDGMENT

State of California

County of **Orange**

Title of Document _____ **EASEMENT DEED AND AGREEMENT** _____

On **December 2, 2004** _____, before me, **Angela Duzich, Notary Public** _____

personally appeared **Douglas Chotkevys** _____

☒ 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 persons(s) acted, executed the instrument.



WITNESS by my hand and official seal.

Angela Duzich

NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S) _____

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

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

DESCRIPTION OF ATTACHMENT DOCUMENT

Easement Deed & Agreement
 TITLE OR TYPE OF DOCUMENT

Eighteen (18)
 NUMBER OF PAGES

no date
 DATE OF DOCUMENT

OTHER _____

I. GENERAL CONDITIONS (S)

1. TIME (AMG 1.1 S)

Time is of the essence of this Agreement. Failure to comply with any time requirement of this Agreement shall constitute a material breach of this Agreement.

2. SIGNS (AMG 2.1 S)

GRANTEE agrees not to construct, maintain, or allow any signs, banners, flags, etc., upon the Easement Area except as approved by Director. Unapproved signs, banners, flags, etc., may be removed by Director without prior notice to GRANTEE.

3. AGREEMENT ORGANIZATION (AMG 5.1 S)

The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

4. AMENDMENTS (AMG 6.1 S)

This Agreement is the sole and only agreement between the parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this Agreement shall be in writing and shall be properly executed by both parties.

5. NONDISCRIMINATION (AMG 8.1 S)

GRANTEE agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical disability, or national origin in employment practices and in the activities conducted pursuant to this Agreement. GRANTEE shall make its accommodations and services available to the public on fair and reasonable terms.

6. HOLD HARMLESS (AMG 10.1 S)

GRANTEE hereby waives all claims and recourse against COUNTY including the right of contribution for loss or damage of persons or property arising from, growing out of or in any way connected with or related to this Agreement except claims arising from the concurrent active or sole negligence of COUNTY, its officers, agents, and employees. GRANTEE hereby agrees to indemnify, hold harmless,

1 and defend COUNTY, its officers, agents, and employees against any and all claims, loss, demands,
 2 damages, cost, expenses or liability costs arising out of GRANTEE's use or maintenance of the
 3 Easement Area, and/or GRANTEE's exercise of the rights under this Agreement, except for liability
 4 arising out of the concurrent active or sole negligence of COUNTY, its officers, agents, or employees,
 5 including the cost of defense of any lawsuit arising therefrom. In the event COUNTY is named as co-
 6 defendant, GRANTEE shall notify COUNTY of such fact and shall represent COUNTY in such legal
 7 action unless COUNTY undertakes to represent itself as co-defendant in such legal action, in which
 8 event GRANTEE shall pay to COUNTY its litigation costs, expenses and attorney's fees. In the event
 9 judgment is entered against COUNTY and GRANTEE because of the concurrent active negligence of
 10 COUNTY and GRANTEE, their officers, agents, or employees, an apportionment of liability to pay
 11 such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury
 12 apportionment.

14 7. TAXES AND ASSESSMENTS (AMG 11.1 S)

16 This Agreement may create a possessory interest that is subject to the payment of taxes levied on such
 17 interest. It is understood and agreed that all taxes and assessments (including but not limited to said
 18 possessory interest tax) which become due and payable upon the Easement Area or upon fixtures,
 19 equipment, or other property installed or constructed thereon, shall be the full responsibility of
 20 GRANTEE, and GRANTEE shall cause said taxes and assessments to be paid promptly.

22 8. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (AMG 13.1 S)

24 If COUNTY or GRANTEE shall be delayed or prevented from the performance of any act required
 25 hereunder by reason of Acts of God, restrictive governmental laws or regulations, or other cause without
 26 fault and beyond the control of the party obligated (financial inability excepted), performance of such act
 27 shall be excused for the period of the delay and the period for the performance of any such act shall be
 28 extended for a period equivalent to the period of such delay.

30 9. PARTIAL INVALIDITY (AMG 14.1 S)

32 If any term, covenant, condition, or provision of this Agreement is held by a court of competent
 33 jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in
 34 full force and effect and shall in no way be affected, impaired, or invalidated thereby.

1 10. WAIVER OF RIGHTS (AMG 15.1 S)

2
3 The failure of COUNTY or GRANTEE to insist upon strict performance of any of the terms, covenants,
4 or conditions of this Agreement shall not be deemed a waiver of any right or remedy that COUNTY or
5 GRANTEE may have, and shall not be deemed a waiver of the right to require strict performance of all
6 the terms, covenants, and conditions of the Agreement thereafter, nor a waiver of any remedy for the
7 subsequent breach or default of any term, covenant, or condition of the Agreement. Any waiver, in
8 order to be effective, must be signed by the party whose right or remedy is being waived.
9

10 11. CONDITION OF EASEMENT AREA UPON TERMINATION (AMG 19.1 S)

11
12 Except as otherwise agreed to herein, upon termination of this Agreement, GRANTEE shall remove
13 improvements placed by the GRANTEE in the Easement Area and replace the exterior fencing around
14 the Easement Area. References to the "Termination of the Agreement" in this Agreement shall include
15 termination by reason of the expiration of the Agreement term or earlier revocation by COUNTY.
16

17 12. PUBLIC RECORDS (AMG 24.1 S)

18 Any and all written information submitted to and/or obtained by COUNTY from GRANTEE or any
19 other person or entity having to do with or related to this Agreement and/or the Easement Area, either
20 pursuant to this Agreement or otherwise, at the option of COUNTY, may be treated as a public record
21 open to inspection by the public pursuant to the California Records Act (Government Code Section
22 6250, et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise
23 made available to the public and GRANTEE hereby waives, for itself, its agents, employees, and any
24 person claiming by, through or under GRANTEE, any right or claim that any such information is not a
25 public record or that the same is a trade secret or confidential information and hereby agrees to
26 indemnify and hold COUNTY harmless from any and all claims, demands, liabilities, and/or obligations
27 arising out of or resulting from a claim by GRANTEE or any third party that such information is a trade
28 secret, or confidential, or not subject to inspection by the public, including without limitation reasonable
29 attorneys' fees and costs.
30

31 13. WAIVER OF JURY TRIAL (AMG 26.2 S)

32
33 Each party acknowledges that it is aware of and has had the advice of Counsel of its choice with respect
34 to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby
35 expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or
36 counterclaim brought by any party hereto against the other (and/or against its officers, directors,
37 employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever

1 arising out of or in any way connected with this Agreement and/or any claim of injury or damage.

2
3 14. GOVERNING LAW AND VENUE (AMG 27.2 S)
4

5 This Agreement has been negotiated and executed in the State of California and shall be governed by
6 and construed under the laws of the State of California. In the event of any legal action to enforce or
7 interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located
8 in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of
9 such court, notwithstanding Code of Civil Procedure section 394.
10

11 15. RIGHT TO WORK AND MINIMUM WAGE LAWS (AMG 28.1 S)
12

13 In accordance with the United States Immigration Reform and Control Act of 1986, GRANTEE shall
14 require its employees that directly or indirectly service the Easement Area, pursuant to the terms and
15 conditions of this Agreement, in any manner whatsoever, to verify their identity and eligibility for
16 employment in the United States. GRANTEE shall also require and verify that its contractors or any
17 other persons servicing the Easement Area, pursuant to the terms and conditions of this Agreement, in
18 any manner whatsoever, verify the identity of their employees and their eligibility for employment in the
19 United States.
20

21 Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of
22 California Labor Code, Section 1178.5, GRANTEE shall pay no less than the greater of the Federal or
23 California Minimum Wage to all its employees that directly or indirectly service the Easement Area, in
24 any manner whatsoever. GRANTEE shall require and verify that all its contractors or other persons
25 servicing the Easement Area on behalf of the GRANTEE also pay their employees no less than the
26 greater of the Federal or California Minimum Wage.
27

28 GRANTEE shall comply and verify that its contractors comply with all other Federal and State of
29 California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to
30 the servicing of the Easement Area or terms and conditions of this Agreement.
31

32 Notwithstanding the minimum wage requirements provided for in this clause, GRANTEE, where
33 applicable, shall comply with the prevailing wage and related requirements.
34

35 //

36 //

37 //

EXHIBIT "A"

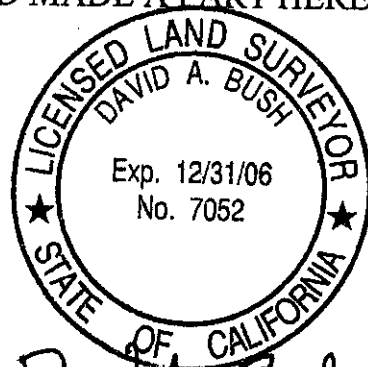
LEGAL DESCRIPTION

THAT PORTION OF FRACTIONAL SECTION 23, TOWNSHIP 8 SOUTH, RANGE 8 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF DANA POINT, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING ALSO A PORTION OF PARCEL NO. 8.01 AS DESCRIBED IN THE AGREEMENT RECORDED JUNE 16, 1997 AS INSTRUMENT NO. 19970275551, OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID PARCEL, SAID POINT BEING ON THE CENTERLINE OF DEL OBISPO STREET AS SHOWN ON SAID AGREEMENT; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL SOUTH $68^{\circ}02'51''$ EAST 40.35 FEET TO A POINT, SAID POINT BEING ON A LINE PARALLEL WITH AND DISTANT 40.00 FEET SOUTHEASTERLY, MEASURED AT RIGHT ANGLES FROM THE NORTHWESTERLY LINE OF SAID PARCEL, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL SOUTH $68^{\circ}02'51''$ EAST 58.04 FEET; THENCE NORTH $22^{\circ}00'15''$ EAST 38.05 FEET; THENCE SOUTH $68^{\circ}06'34''$ EAST 48.11 FEET; THENCE NORTH $21^{\circ}53'26''$ EAST 47.62 FEET; THENCE NORTH $46^{\circ}55'24''$ EAST 21.95 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 10.00 FEET; THENCE NORTHERLY 9.52 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $54^{\circ}32'41''$; THENCE NORTH $7^{\circ}37'16''$ WEST 15.63 FEET; THENCE SOUTH $67^{\circ}37'16''$ EAST 4.84 FEET; THENCE NORTH $22^{\circ}22'44''$ EAST 31.66 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL; THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL NORTH $68^{\circ}02'51''$ WEST 91.14 FEET TO A POINT ON SAID PARALLEL LINE; THENCE ALONG SAID PARALLEL LINE SOUTH $29^{\circ}31'13''$ WEST 161.41 FEET TO THE TRUE POINT OF BEGINNING.

THE AREA OF THE ABOVE DESCRIBED PARCEL IS 13,897 SQUARE FEET, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT 'B' ATTACHED HERETO AND MADE A PART HEREOF.



David A. Bush

10-29-04

EXHIBIT 'B'

