

**TEMPORARY CONSTRUCTION EASEMENT  
ACQUISITION AGREEMENT**

This Temporary Construction Easement Acquisition Agreement ("Agreement") is made by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California ("County") and **STEVEN KEITH DUFAY AND CHERYL R. DUFAY, HUSBAND AND WIFE AS JOINT TENANTS** ("Seller"), with reference to the following facts:

**RECITALS**

A. Seller owns that certain real property located in El Dorado County, California, a legal description of which is attached hereto as Exhibit A (the "Property").

B. County is constructing improvements including those to be constructed upon the Property as part of the public works project entitled, Christmas Valley Phase 2C Erosion Control Project #95190 (the "Project").

C. County desires to purchase interests in the Property, as a Temporary Construction Easement described and depicted in Exhibit B and the exhibits thereto, all of which are attached hereto and referred to hereinafter as "the Easement", on the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto agree as follows:

**AGREEMENT**

1. PURCHASE AND SALE.

Seller hereby agrees to sell to County and County, upon approval by Board of Supervisors, hereby agrees to acquire from Seller, the Easement, as described and depicted in the attached Exhibit B and the exhibits thereto, which are attached hereto and hereby incorporated by reference and made a part hereof.

2. PURCHASE PRICE

The total purchase price for the Easement shall be ONE-THOUSAND SIX-HUNDRED DOLLARS EXACTLY (\$1,600.00) (the "Purchase Price"). County

shall pay the Purchase Price in cash or other immediately available funds at Close of Escrow (as such term is hereinafter defined), plus County's share of costs, fees, and expenses to be borne by County pursuant to this Agreement.

3. ESCROW

The purchase and sale of the Easement shall be consummated by means of Escrow No. 203-7175 which has been opened at Placer Title Company, 1959 Lake Tahoe Boulevard, South Lake Tahoe, CA 96150, Attention: Deb Landarkin, ("Escrow Holder"). This Agreement shall, to the extent possible, act as escrow instructions. The parties shall execute all further escrow instructions required by Escrow Holder. All such further escrow instructions, however, shall be consistent with this Agreement, which shall control. The "Close of Escrow" is defined to be the recordation of the Grant of Temporary Construction Easement from Seller to County, which shall occur on or before October 31, 2011, or such other date as the parties hereto shall mutually agree in writing.

4. ESCROW AND OTHER FEES.

County shall pay: (i) the Escrow Holder's fees including the cost of any Notary Acknowledgements; (ii) recording fees, if applicable; (iii) the premium for the policy of title insurance; and (iv) documentary transfer tax, if any.

5. TITLE.

Seller shall, by Grant of Temporary Construction Easement, grant to County the Easement, free and clear of all title defects, liens, encumbrances, taxes, and deeds of trust. Title to the easement shall vest in the County of El Dorado subject only to: (i) covenants, conditions, restrictions and reservations of record if any; (ii) easements or rights of way over the land for public or quasi-public utility or public road purposes, if any; and (iii) exceptions numbered 1 through 4 paid current, and subject to items numbered 5, 6, and 7 contained in Placer Title Company Preliminary Title Report No. 203-7175 dated as of November 23, 2010. The County will obtain a California Land Title Association

standard policy of title insurance in the amount of the Purchase Price showing title vested in the County of El Dorado.

6. WARRANTIES.

Seller warrants that:

A. Seller owns the Property free and clear of all liens, licenses, claims, encumbrances, easements, and encroachments on the Property from adjacent properties, encroachments by improvements on the Property onto adjacent properties, and rights of way of any nature, not disclosed by the public record.

B. Seller has no knowledge of any pending litigation involving the Property.

C. Seller has no knowledge of any violations of, or notices concerning defects or noncompliance with, any applicable code statute, regulation, or judicial order pertaining to the Property.

D. All warranties, covenants, and other obligations described in this Agreement section and elsewhere in this Agreement shall survive delivery of the Easement.

7. WAIVER OF AND RELEASE OF CLAIMS.

This Agreement is full consideration for all claims and damage that Seller may have relating to the Project for which the Easement is conveyed and purchased and Seller hereby waives any and all claims of Seller relating to Project that may exist on the date of this Agreement.

8. POSSESSION.

It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this Agreement, the right to possession and use of the Easement as described in Exhibit B by the County or County's contractors or authorized agents, for the purpose of performing activities related to and incidental to the construction of improvements to the Christmas Valley Phase 2C Erosion Control Project #95190, inclusive of the right to remove and dispose of any existing

improvements, shall commence upon the date of execution of this Agreement by the Seller. The amount of compensation shown in Section 2 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

9. CONSTRUCTION CONTRACT WORK. County will be performing construction work on Seller's property as generally authorized in the documents entitled, Christmas Valley Phase 2C Erosion Control Project #95190 and generally include the following items of work:

- (i) County or County contractor or authorized agent will remove any trees, stumps, shrubs, or landscape improvements in conflict with the proposed improvements to be constructed.
- (ii) County or County contractor or authorized agent will construct drainage improvements which may include but are not limited to armored and grass-lined channels, sediment traps, culverts, and re-vegetation.

All work done under this Agreement shall conform to said plans and any approved changes thereto, and to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed and relocated, or reconstructed by the County, shall be left in as good condition as found.

10. PERMIT TO ENTER FOR CONSTRUCTION PURPOSES.

Permission is hereby granted to County or its authorized agent to enter Seller's Property, identified as Assessor's Parcel Number 036-612-13, where necessary, to perform the construction work as described in Section 9 of the Agreement.

11. TAXES

Seller authorizes Escrow Holder to deduct and pay from the Purchase Price any amount necessary to satisfy any delinquent taxes due, together with

penalties and interest thereon, which shall be cleared from the Property prior to Close of Escrow.

12. ASSESSMENTS.

It is agreed that Seller shall be responsible for the payment of any assessments, bonds, charges or liens imposed upon the Property by any federal, state or local government agency, including but not limited to the South Tahoe Public Utility District. Seller agrees to indemnify and hold County harmless from any claims arising therefrom.

Seller authorizes Escrow Holder to deduct and pay from the Purchase Price any amount necessary to satisfy any delinquent assessments, bonds, charges or liens, together with penalties and interest thereon, which shall be cleared from the Property prior to Close of Escrow.

13. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

14. REAL ESTATE BROKER.

Neither Seller nor County has employed a broker or sales agent in connection with the purchase and sale of the Easement and each party shall indemnify, defend and hold the other free and harmless from any action or claim arising out of a claimed agreement by either party to pay any commission or other compensation to any third party in connection with this transaction.

15. ITEMS TO BE DELIVERED AT CLOSE OF ESCROW.

A. Seller shall execute and County shall deliver to Escrow Holder the fully executed Grant of Temporary Construction Easement prior to the Close of Escrow.

B. County shall deliver to Escrow Holder not later than one (1) day prior to the Close of Escrow, for delivery or disbursement at the Close of Escrow funds in an amount equal to the Purchase Price plus the amount of County's share of prorations, costs, fees and expenses to be borne by County as herein set forth; together with County's Certificates of Acceptance to be attached to and recorded with the Easement.

C. Escrow Holder shall:

- (i) Record the Easement Deed together with County's Certificates of Acceptance;
- (ii) Deliver the Purchase Price to Seller minus the prorations, costs, fees and expenses to be borne by Seller as herein provided; and
- (iii) Cause the policy of title insurance to be issued.

16. TIME OF THE ESSENCE.

Time is of the essence to this Agreement. If the Close of Escrow does not occur on or before 5:00 p.m. Pacific Time on the date set for the Close of Escrow, as the same may have been extended by written agreement of the parties hereto, escrow shall terminate and the purchase and sale contemplated hereby shall be null and void.

17. BEST EFFORTS.

County and Seller shall act in good faith and use their best efforts after the effective date hereof to ensure that their respective obligations hereunder are fully and punctually performed. County and Seller shall perform any further acts and execute and deliver any other documents or instruments that may be reasonably necessary to carry out the provisions of this Agreement.

18. NOTICES.

All communications and notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given on the earlier of the date when actually delivered to Seller or County by the other or three (3) days after being deposited in the United States mail, postage prepaid and addressed as follows, unless and until either of such parties notifies the other in accordance with this paragraph of a change of address:

SELLER:                   **STEVEN KEITH & CHERYL R. DUFAY**  
                                  **3383 WOODLAKE RD**  
                                  **LAKE ALMANOR, CA 96137**

COUNTY:                   **COUNTY OF EL DORADO**  
                                  **Department of Transportation**  
                                  **924B Emerald Bay Road**  
                                  **South Lake Tahoe, CA 96150**

19. ATTORNEY'S FEES. In any action at law or in equity brought to enforce any provision of this Agreement, the prevailing party shall be entitled to all reasonable attorneys' fees, costs and expenses incurred.

20. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

21. BINDING EFFECT.

This Agreement shall be binding on and inure to the benefit of the parties to this Agreement, their heirs, personal representatives, successors, and assigns except as otherwise provided in this Agreement.

22. GOVERNING LAW.

This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California.

23. HEADINGS.

The heading of the paragraphs and sections of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

24. WAIVER.

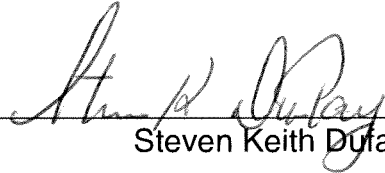
The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

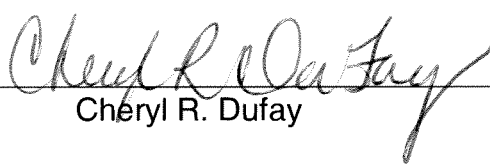
25. EFFECTIVE DATE.

This Agreement shall be effective as of the last date written below.



**SELLER: STEVEN KEITH DUFAY AND CHERYL R. DUFAY, HUSBAND AND WIFE AS JOINT TENANTS**

Dated: 20 July 11 By:   
Steven Keith Dufay

Dated: 7/20/11 By:   
Cheryl R. Dufay

**COUNTY OF EL DORADO**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Raymond J. Nutting, Chair  
Board of Supervisors

ATTEST:  
Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy Clerk

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF EL DORADO, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

**LOT 61, OF TAHOE PARADISE UNIT 58, FILED SEPTEMBER 25, 1968 IN BOOK E OF MAPS AT PAGE 18, EL DORADO COUNTY RECORDS.**

**EXCEPTING THEREFROM ALL OIL, GAS AND HYDROCARBON SUBSTANCES AND ALL MINERALS OF WHATEVER KIND OR NATURE, TOGETHER WITH THE RIGHT TO RECOVER THE SAME, PROVIDED, HOWEVER, THAT SUCH RECOVERY SHALL ONLY BE BY MEANS OF SLANT DRILLING OR BY MINE SHAFT MINING BELOW A DEPTH OF 100 FEET FROM THE SURFACE.**

**A.P.N. 036-612-13-100**

EXHIBIT "B"

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

County of El Dorado  
Department of Transportation  
Board of Supervisors  
330 Fair Lane  
Placerville, CA 95667

**APN: 036-612-13**

Project: Christmas Valley Phase 2C  
Erosion Control Project #95190

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**TEMPORARY CONSTRUCTION EASEMENT**

**STEVEN KEITH DUFAY AND CHERYL R. DUFAY, HUSBAND AND WIFE AS JOINT TENANTS**, hereinafter referred to as "Grantor", grant to the **COUNTY OF EL DORADO**, a political subdivision of the State of California, hereinafter referred to as "Grantee", a temporary construction easement over, upon, and across a portion of that real property in the unincorporated area of the County of El Dorado, State of California, described as:

**See Exhibits "A" and "B" attached hereto and by reference is made a part hereof.**

This temporary construction easement is granted under the express conditions listed below:

1. In consideration of \$1,600.00 (ONE-THOUSAND SIX-HUNDRED DOLLARS EXACTLY) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby Grant to Grantee an easement for temporary construction over and across those identified portions of the Grantor parcel.
2. Grantor represents and warrants that they are the owner of the property described in Exhibit A and depicted on the map in Exhibit B attached hereto and made a part hereof, and that Grantor has the exclusive right to grant the temporary construction easement.
3. This temporary construction easement is necessary for the purpose of constructing the **Christmas Valley Phase 2C Erosion Control Project #95190**. Specifically, this temporary construction easement shall allow Grantee or its agents, employees, and contractors the right of ingress and egress as may be reasonably necessary for construction purposes, inclusive of such repairs, replacements, and removals as may be from time to time required as well as for other purposes incidental to construction of the project, including any staging, stockpiling, and parking of construction vehicles or equipment. This temporary construction easement shall not be revoked and shall not expire until the recordation of the Notice of Completion of the Project. Included within this temporary construction easement is the right of ingress and egress of Grantee, its agents, employees, and contractors for warranty repairs and the correction of defects in the work within the first year following completion of construction. This right during the one-year warranty period survives the expiration of this easement.

4. Compensation under this temporary construction easement covers the construction period estimated to be 18 (Eighteen) months of construction, together with the one-year warranty period. In the event that construction of the Project is not completed within 18 (Eighteen) months of commencement of construction, Grantor shall be entitled to additional compensation as follows: For each month thereafter, the sum of \$96.00 (Ninety-six dollars, only) monthly, will be paid to the Grantor, until construction is completed.
  
5. Grantee agrees to indemnify and hold harmless Grantor from and against any liability arising out of the entry onto the property by Grantee or its agents, employees, and contractors during the term of this temporary construction easement. In the event of property damage, Grantee, at its sole option, may either repair the damage or pay the estimated costs for the repair.

**GRANTOR: STEVEN KEITH DUFAY AND CHERYL R. DUFAY**

Executed on: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
STEVEN KEITH DUFAY

By: \_\_\_\_\_  
CHERYL R. DUFAY

**EXHIBIT "B"**

**(A Notary Public must acknowledge all signatures)**

**Exhibit 'A'**

All that certain property situated in the North One-Half of the Northwest One-Quarter of Section 5, Township 11 North, Range 18 East, M.D.M., El Dorado County, State of California. Being a portion of Lot 61 of that particular Subdivision Map filed in book E of subdivisions at page 18, official records of said county and state, described as follows:

The south 7.50 feet of the north 15.00 feet of said Lot 61.

Containing 749 square feet more or less.

See Exhibit 'B', attached hereto and made a part hereof.

- End of Description -

The purpose of this description is to describe that portion of said Lot 61 as an easement for construction purposes.

Philip R. Mosbacher  
Philip R. Mosbacher, P.L.S. 7189

10/23/09  
Date



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2. Grantor represents and warrants that they are the owner of the property described in Exhibit A and depicted on the map in Exhibit B attached hereto and made a part hereof, and that Grantor has the exclusive right to grant the temporary construction easement.
3. This temporary construction easement is necessary for the purpose of constructing the **Christmas Valley Phase 2C Erosion Control Project #95190**. Specifically, this temporary construction easement shall allow Grantee or its agents, employees, and contractors the right of ingress and egress as may be reasonably necessary for construction purposes, inclusive of such repairs, replacements, and removals as may be from time to time required as well as for other purposes incidental to construction of the project, including any staging, stockpiling, and parking of construction vehicles or equipment. This temporary construction easement shall not be revoked and shall not expire until the recordation of the Notice of Completion of the Project. Included within this temporary construction easement is the right of ingress and egress of Grantee, its agents, employees, and contractors for warranty repairs and the correction of defects in the work within the first year following completion of construction. This right during the one-year warranty period survives the expiration of this easement.



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**GRANTOR: Steven Keith & Cheryl R. Dufay**

Executed on: April 8, 2011

By: *Steven Keith Dufay*  
Steven Keith Dufay

By: *Cheryl R. Dufay*  
Cheryl R. Dufay

(A Notary Public must acknowledge all signatures)

*UK*  
- see attached

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

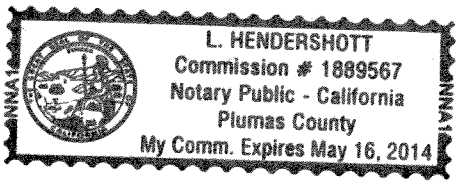
State of California

County of Plumas }

On 4.8.2011 before me, L. Hendershott, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared Steven K. Dufay & Cheryl R. Dufay  
Name(s) of Signer(s)

who 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.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: L. Hendershott  
Signature of Notary Public

Place Notary Seal Above

**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: Temporary Construction Easement

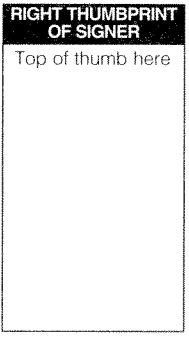
Document Date: April 8, 2011 Number of Pages: 4

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Steven Dufay

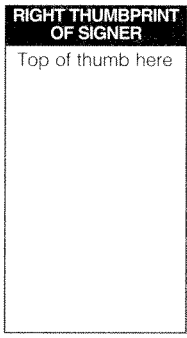
- Corporate Officer — Title(s): \_\_\_\_\_
- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: Cheryl Dufay

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



Signer Is Representing: \_\_\_\_\_

**Exhibit 'A'**

All that certain property situated in the North One-Half of the Northwest One-Quarter of Section 5, Township 11 North, Range 18 East, M.D.M., El Dorado County, State of California. Being a portion of Lot 61 of that particular Subdivision Map filed in book E of subdivisions at page 18, official records of said county and state, described as follows:

The south 7.50 feet of the north 15.00 feet of said Lot 61.

Containing 749 square feet more or less.

See Exhibit 'B', attached hereto and made a part hereof.

- End of Description -

The purpose of this description is to describe that portion of said Lot 61 as an easement for construction purposes.

Philip R. Mosbacher  
Philip R. Mosbacher, P.L.S. 7189

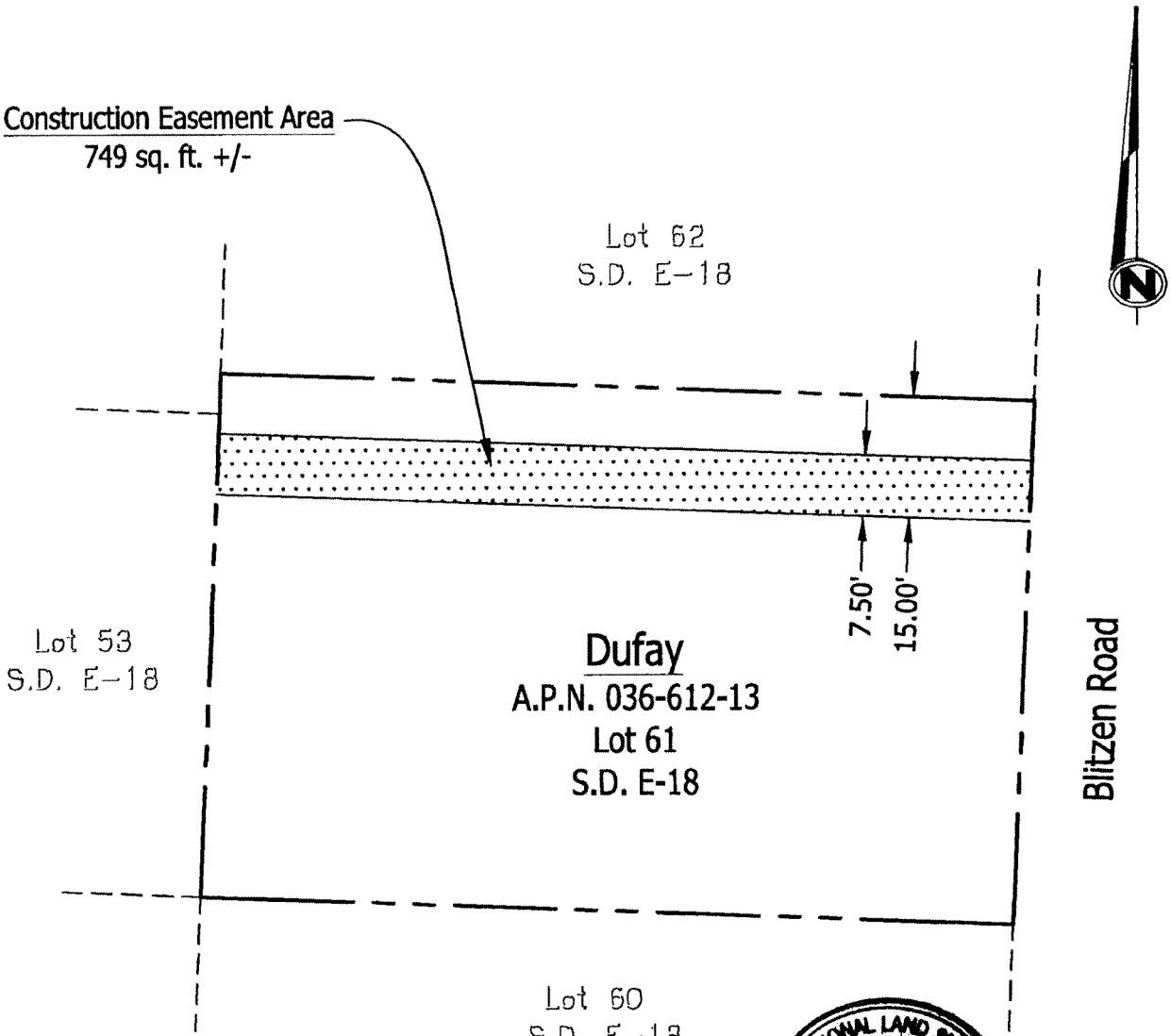
10/23/09  
Date



# Exhibit 'B'

A portion of Lot 61, Subdivision E-18  
Situating in the North One-Half of the Northwest One-Quarter of Section 5,  
T. 11 N., R. 18 E., M.D.M.  
County of El Dorado, State of California  
Scale 1" = 20'

Construction Easement Area  
749 sq. ft. +/-



Dufay  
A.P.N. 036-612-13  
Lot 61  
S.D. E-18



*Philip R. Mosbacher*

RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:

County of El Dorado  
Board of Supervisors  
330 Fair Lane  
Placerville, CA 95667

### CERTIFICATE OF ACCEPTANCE

**This is to certify** that the interest in real property conveyed by the Temporary Construction Easement dated \_\_\_\_\_, 2011, from **STEVEN KEITH & CHERYL R. DUFAY**, to the **COUNTY OF EL DORADO, a political subdivision of the State of California**, is hereby accepted by order of the County of El Dorado Board of Supervisors and the grantee consents to the recordation thereof by its duly authorized officer.

APN: 036-612-13

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

#### COUNTY OF EL DORADO

By: \_\_\_\_\_  
Raymond J. Nutting, Chair  
Board of Supervisors

ATTEST:

Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk