

Seller: Heinzerling
APN: 033-332-18
Project#: JN95169
Escrow#: 203-7498

EASEMENT ACQUISITION AGREEMENT FOR PUBLIC PURPOSES

This Agreement ("Agreement") is made by and between THE COUNTY OF EL DORADO, a political subdivision of the State of California ("County"), and **HENRY W. HEINZERLING AND MAUREEN E. HEINZERLING, TRUSTEES OF THE HEINZERLING FAMILY TRUST U/D/T MARCH 15, 2007**, referred to herein as ("Sellers"), with reference to the following facts:

RECITALS

- A. Sellers own 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 desires to purchase an interest in the Property as a Temporary Construction Easement, as described and depicted in Exhibit B, and the exhibits thereto, 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. ACQUISITION

Sellers hereby agree to sell to County, and County, upon approval by Board of Supervisors, hereby agrees to acquire from Sellers, 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.

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2. JUST COMPENSATION

The just compensation for the Easement is in the amount of **\$2,300.00 for a Temporary Construction Easement for a total of \$2,300.00 (Two-Thousand Three-Hundred Dollars, exactly)**. Sellers and County hereby acknowledge that the fair market value of the Easement is \$2,300.00.

3. ESCROW

The acquisition of the Easement shall be consummated by means of Escrow No. 203-7498 for APN 032-332-18, which has been opened at Placer Title Company ("Escrow Holder"), 1959 Lake Tahoe Boulevard, South lake Tahoe, CA 95150; Attention: Deb Landerkin. 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 Easement. Sellers and County agree to deposit in escrow all instruments, documents, and writings identified or reasonably required to close escrow. The escrow must be closed no later than September 30, 2012, unless the closing date is extended by mutual agreement of the parties pursuant to the terms of this Agreement.

4. ESCROW AND OTHER FEES

County shall pay:

- A. The Escrow Holder's fees; and
- B. Recording fees, if applicable; and
- C. The premium for the policy of title insurance, if applicable; and
- D. Documentary transfer tax, if any; and
- E. All costs of executing and delivering the Easements; and

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F. All costs of any partial reconveyances of deeds of trust, if any.

5. TITLE

Sellers shall, by Grant of Temporary Construction Easement, grant to County the Easement, free and clear of title defects, liens, and encumbrances that would render the Easement unsuitable for its intended purpose, as outlined herein.

6. WARRANTIES

Sellers warrant that:

- A. Sellers own 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. Sellers have no knowledge of any pending litigation involving the Property.
- C. Sellers have 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. 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 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 Echo View Estates Erosion Control Project #95169, inclusive of the right to

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remove and dispose of any existing improvements, shall commence upon the date of execution of this Agreement by Sellers. The amount of the just 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.

8. WAIVER OF AND RELEASE OF CLAIMS

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

9. CONSTRUCTION CONTRACT WORK

County will be performing construction work on Sellers's property as generally authorized in the documents entitled, Echo View Estates Erosion Control Project #95169 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.

10. PERMISSION TO ENTER FOR CONSTRUCTION PURPOSES

Permission is hereby granted to County, the County's contractor or its authorized agent to enter Sellers's Property, (Assessor's Parcel Number 033-332-18) where necessary to perform the replacement and/or reconstruction as described in Section 9 of this Agreement.

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11. 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.

12. REAL ESTATE BROKER

Sellers have not employed a broker or sales agent in connection with the sale of the Easement, and Sellers shall indemnify, defend and hold the County free and harmless from any action or claim arising out of a claimed agreement by Seller to pay any commission or other compensation to any broker or sales agent in connection with this transaction.

13. ITEMS TO BE DELIVERED AT CLOSE OF ESCROW

- A. Sellers shall execute and deliver to Escrow Holder the Easement prior to the Close of Escrow, for delivery to the County at Close of Escrow.
- B. County shall deliver to Escrow Holder prior to the Close of Escrow, for delivery or disbursement at Close of Escrow, funds in an amount equal to those shown in Section 2, together with County's Certificate of Acceptance to be attached to and recorded with the Easement.
- C. Escrow Holder shall:
 - (i) Record the Easement described and depicted in Exhibit B, and the exhibits thereto, together with County's Certificate of Acceptance.
 - (ii) Deliver the just compensation to Sellers.

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14. TIME IS OF THE ESSENCE

Time is of the essence to this Agreement. This Agreement may not be extended, modified, altered, or changed except in writing, signed by County and Sellers.

15. BEST EFFORTS

County and Sellers 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 Sellers 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.

16. 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 Sellers 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: Henry W. Heinzerling and Maureen E. Heinzerling, Trustees of the
Heinzerling Family Trust U/D/T March 15, 2007
1257 Echo View Drive
South Lake Tahoe, CA 96150**

**COUNTY: County of El Dorado
Board of Supervisors
Attention: Clerk of the Board
330 Fair Lane
Placerville, CA 95667**

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**COPY TO: County of El Dorado
Department of Transportation
Attn: R/W Unit
2850 Fairlane Court
Placerville, CA 95667**

17. 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.

18. 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.

19. HEADINGS

The headings of the articles 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.

20. 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.

21. ATTORNEY'S FEES

In any action or proceeding at law or in equity brought to enforce any provision of this Agreement, the prevailing party shall be entitled to all reasonable attorney's fees, costs, and expenses incurred in said action or proceeding.

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22. LEASE WARRANTY PROVISION

Sellers warrant that there are no oral or written leases on all or any portion of the Property exceeding a period of one month.

23. EFFECTIVE DATE

This Agreement shall be subject to the approval of the County's Board of Supervisors after due notice and in accordance with the provisions of applicable law.

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24. 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.

**SELLERS: HENRY W. HEINZERLING AND MAUREEN E. HEINZERLING, TRUSTEES OF
THE HEINZERLING FAMILY TRUST U/D/T MARCH 15, 2007**

Date: 3/06/12

By: *Henry W. Heinzerling*
HENRY W. HEINZERLING

Date: 3/6/2012

By: *Maureen E. Heinzerling*
MAUREEN E. HEINZERLING

COUNTY OF EL DORADO:

Date: _____

By: _____
Chairman
Board of Supervisors

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

By: _____

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: 033-332-18
Project: Echo View Estates
Erosion Control Project #95169

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

TEMPORARY CONSTRUCTION EASEMENT

HENRY W. HEINZERLING AND MAUREEN E. HEINZERLING, TRUSTEES OF THE HEINZERLING FAMILY TRUST U/D/T MARCH 15, 2007, 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 \$2,300.00 (TWO-THOUSAND THREE-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 **Echo View Erosion Control Project #95169**. 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

EXHIBIT "B"

be revoked and shall expire and be of no further force or effect on September 1, 2014. 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. As soon as Grantee files its Notice of Acceptance of the Project and the one year warranty period expires, Grantee shall record a release and reconveyance of this easement with the County of El Dorado Recorder's Office

4. Compensation under this temporary construction easement covers the construction period estimated to be 24 (Twenty-four) months of construction, together with the one-year warranty period. In the event that construction of the Project is not completed by September 1, 2014 should Grantor agree to extend the term of this temporary construction easement, Grantor shall be entitled to additional compensation as follows: For each month thereafter, the sum of \$139.00 (One-Hundred Thirty-nine dollars and 00/100ths) 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: HENRY W. HEINZERLING AND MAUREEN E. HEINZERLING,
TRUSTEES OF THE HEINZERLING FAMILY TRUST U/D/T MARCH 15, 2007**

Executed on: _____, 2012

By: _____
HENRY W. HEINZERLING

By: _____
MAUREEN E. HEINZERLING

Exhibit 'A'

All that certain property situate in the Northwest One-Quarter of Section 18, Township 12 North, Range 18 East, M.D.M., El Dorado County, State of California. Being a portion of Lot 19 of that particular Subdivision Map filed in Book C of Subdivisions at Page 44, Official Records, said County and State, more particularly described as follows:

All that portion of Lot 19 lying westerly of the following described line.

Beginning at a point on the northerly line of said Lot 19 from which the Northwest corner of said lot bears North 62°36'50" West, 12.12 feet. Thence from said POINT OF BEGINNING South 14°47'30" West, 39.16 feet; thence South 28°30'40" West, 15.82 feet; thence South 34°20'00" West, 31.83 feet to the southerly boundary of said Lot 19 and the terminus of the herein described line.

Containing 1,870 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 19 as a temporary easement for construction purposes.

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

3/30/11
Date



Existing APN 033-332-18

Exhibit 'B'

A portion of Lot 19, Subdivision C-44
Situate in Northwest One-Quarter of
Section 18, T. 12 N., R. 18 E., M.D.M.
County of El Dorado, State of California
Scale 1" = 20'

