

Sellers: Amacker
APN 033-090-16
#JN95192
Escrow No. 203-7321

EASEMENT ACQUISITION AGREEMENT

This Easement Acquisition Agreement ("Agreement") is made by and between **THE COUNTY OF EL DORADO**, a political subdivision of the State of California ("County") and **CASS B. AMACKER Sr. AND VIRGINIA H. AMACKER, HIS WIFE AS JOINT TENANTS**, ("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 interests in the Property, as a Roadway Easement described and depicted in Exhibit B and the exhibits thereto, and a Multi-Use Trail Easement described and depicted in Exhibit C and the exhibits thereto, all of which are attached hereto and referred to hereinafter as "the Easements", 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 Easements, as described and depicted in the attached Exhibits B and C, and the exhibits thereto, which are attached hereto and hereby incorporated by reference and made a part hereof.

2. JUST COMPENSATION

The total just compensation for the Easements shall be \$101,490.00 (One-Hundred and One-thousand Four-hundred and Ninety dollars, exactly), which represents the "Fair Market Value" for the Easements of \$90,860.00 and compensation for damages in the amount of \$10,630.00. County shall pay the Fair Market Value and damages 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 Easements shall be consummated by means of Escrow No. 203-7321 which has been opened at Placer Title Company, 1959 Lake Tahoe Boulevard, South Lake Tahoe, CA 96150, Attention: Deb Landerkin, ("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 Road Easement, and Grant of Multi-Use Trail Easement from Sellers to County, which shall occur on or before October 30, 2013, or such other date as the parties hereto shall mutually agree in writing.

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

5. TITLE.

Sellers shall by Grant of Roadway Easement and Grant of Multi-Use Trail Easement, grant to County the Easements, free and clear of all title defects, liens, and encumbrances, that would render the Easements unsuitable for their 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 Easements.

7. WAIVER OF AND RELEASE OF CLAIMS.

This Agreement is full consideration for all claims and damage that Sellers may have relating to the Project for which the Easements are conveyed and purchased and Seller hereby waives any and all claims of Sellers 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 Easements as described in Exhibits B and C, by 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 Sawmill 2 Bike Path and Erosion Control Project #95192, inclusive of the right to remove and dispose of any existing improvements, shall commence upon the last date of execution of this Agreement by the Sellers and County. 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 Sellers's property as generally authorized in the documents entitled Sawmill 2 Bike Path and Erosion Control Project #95192 and generally include the following items of work:

Sellers: Amacker
APN 033-090-16
#JN95192
Escrow No. 203-7321

(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. Any trees that are 6 inches in diameter at breast height or greater will be removed and placed within the property line for Sellers' use.

(ii) County or County contractor or authorized agent will construct a Class I bicycle and pedestrian path and re-vegetation within the multi-use trail easement area.

(iii) County or County contractor or authorized agent will construct approximately 450 linear feet of 6 foot tall galvanized chain link fence with privacy slats adjacent to the new bike path.

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, fencing and facilities, when removed and relocated, constructed or reconstructed by the County, shall be left in as good condition as found. Seller understands and agrees that after completion of the work described, said fencing will be considered Seller's sole property and Seller will be responsible for their maintenance and repair.

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 033-090-16, when necessary, to perform the construction work as described in Section 9 of the Agreement.

11. TAXES

Sellers authorize Escrow Holder to deduct and pay from the Just Compensation, 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 Sellers 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. Sellers agree to indemnify and hold County harmless from any claims arising therefrom.

Sellers authorize Escrow Holder to deduct and pay from the Just Compensation 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 Sellers nor County has employed a broker or sales agent in connection with the purchase and sale of the Easements 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. Sellers shall execute and County shall deliver to Escrow Holder the fully executed Grant of Roadway Easement and Multi-Use Trail 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 Just Compensation 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 Easements.

C. Escrow Holder shall:

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

Sellers: Amacker
APN 033-090-16
#JN95192
Escrow No. 203-7321

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 acquisition contemplated hereby shall be null and void.

17. 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.

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 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:

SELLERS: **Cass and Virginia Amacker**
 1470 Sawmill Road
 South Lake Tahoe, CA 96150

COUNTY: **COUNTY OF EL DORADO**
 Board of Supervisors
 Attention: Clerk of the Board
 360 Fair Lane
 Placerville, CA. 95667

Sellers: Amacker
APN 033-090-16
#JN95192
Escrow No. 203-7321

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

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.

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APN 033-090-16
#JN95192
Escrow No. 203-7321

SELLERS: CASS B. AMACKER Sr. AND VIRGINIA H. AMACKER, HIS WIFE AS JOINT TENANTS

Dated: 4-26-13

Cass B. Amacker Sr.
Cass B. Amacker Sr.

Dated: 4-26-13

Virginia H. Amacker
Virginia H. Amacker

COUNTY OF EL DORADO

Date: _____

Ron Briggs, Chair
Board of Supervisors

ATTEST:

James S. Mitrison

Clerk of the Board of Supervisors

By _____
Deputy Clerk