

# ORIGINAL

## SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR

### LEASE AGREEMENT #251-L0911

**THIS LEASE** is made by and between **COUNTY OF EL DORADO**, a political subdivision of the State of California (herein "Lessor"), and **DIAMOND SPRINGS HOLDING COMPANY, LLC**, a Company lawfully doing business in the State of California and Lessor's jurisdiction (herein "Lessee").

### RECITALS

**WHEREAS**, Lessee (and its predecessor corporate entities) has had prior lease agreements with the former owner of the railroad right-of-way, Southern Pacific Transportation Corporation (now merged into the Union Pacific railroad company) for the use of the right-of-way since at least 1973; and

**WHEREAS**, the Sacramento-Placerville Transportation Corridor Joint Powers Authority (herein "SPTCJPA") acquired title to the railroad right-of-way corridor in 1996 and has, by written agreement, delegated the management of the portion of the right-of-way located within Lessor's jurisdiction to Lessor on behalf of the SPTCJPA; and

**WHEREAS**, both Lessor and Lessee desire to enter into a new lease which will supersede all other lease agreements between Lessee and Lessor and update the leasehold arrangements in order to reflect the ownership of the right-of-way and all real property to be used by Lessee;

Therefore, the parties agree to the terms and conditions set forth below.

### AGREEMENT TERMS

**1. Term of Agreement.** This agreement shall commence on the full execution of this agreement by both parties and terminate five (5) years from final date of execution of this agreement. The term of this agreement may be extended by mutual agreement of Lessor and Lessee, subject to the other provisions of this agreement and the approval or disapproval of the SPTCJPA as it deems necessary.

**2. Extension Provisions.** This agreement may be extended for two (2) additional period(s) of five (5) years per extension provided that Lessee indicates its intent to seek an extension in writing to Lessor at least sixty (60) days prior to the expiration of the agreement. Lessor will be deemed to have accepted the extension request unless it provides written notice to Lessee at least thirty (30) days prior to the requested extension taking effect, stating its reasons for not agreeing to the extension request. The SPTCJPA may take up to sixty (60) days from the presentation of the request for extension to present its determination on whether or not to approve the extension of the lease but its failure to present its reasons for declining to approve an extension in writing shall be deemed to be an approval by that body.

3. **Lessee Payments.** Lessee agrees to pay Lessor **One Thousand Three Hundred Twenty-Six Dollars, (\$1,326.00)** per annum during the initial life of this lease, payable upon full execution of this agreement and every year thereafter with payments delivered to Lessor's office. The lease payment for the extension periods shall be adjusted at the commencement of the first extension (and any other extensions) at a rate of five (5%) percent.

4. **Designation of and Use of Leased Property.** Exhibit(s) "A" and "B" are incorporated into this agreement by reference and designate the real property to be leased to Lessee under this agreement. The land is leased to Lessee for the purpose of conducting business and activities connected to that business permitted by law. This lease shall be binding on and shall inure to the benefit of the successors and assignees of both parties. Lessee acknowledges that the leased property is the property of Lessor and SPTCJPA and that Lessee has only the right of possession and use thereof upon the terms, covenants and conditions set forth in this lease.

5. **Prohibited Use.** Lessee shall not commit or permit the commission of any acts on the leased property nor permit the use of the lease property in any way that will:

- (a) violate or conflict with any law, statute, ordinance, governmental rule or regulation whether or not currently in force or hereinafter enacted, governing the leased land;
- (b) constitute commission of a waste on the leased land;
- (c) adversely affect the current or projected future uses of the adjacent right-of-way property not under lease to Lessee.
- (d) violate other provisions of the agreement such as, but not limited to, Paragraph 6 of this agreement.

6. **Compliance With SPTCJPA Requirements.** Lessee acknowledges and agrees that it or its successors and assigns' use of the leased property shall not adversely affect or otherwise prevent other uses of the adjacent SPTCJPA right-of-way property not under lease to Lessee that are allowed or required by federal, state or local laws or regulations or any governing land use planning documents/policies promulgated by Lessor and/or SPTCJPA relating to right-of-way corridor uses. Lessee further acknowledges and agrees that the SPTCJPA right-of-way corridor must be available for actual rail use pursuant to federal law and the terms under which SPTCJPA acquired title to the entire rail corridor.

7. **Termination.** This agreement may be terminated under the following circumstances, upon written notice being provided to Lessee by Lessor at least thirty (30) days before the termination takes effect.

- (a) By mutual written agreement of both parties or their successors and assigns.

- (b) If Lessee is guilty of a material default and breach of this lease, including any rent being unpaid when due and remaining unpaid for thirty (30) days after written notice to pay such rent has been given to Lessee by Lessor.
- (c) If Lessee defaults in the performance of or breaches any provision, covenant or condition other than the payment of rent and such default or breach is not cured within thirty (3) days after written notice thereof given by Lessor to Lessee.
- (d) If Lessee abandons the leased real property prior to the expiration of the term of this lease.
- (e) If Lessor and/or SPTCJPA determine that the leased property is needed for right-of-way corridor projects incompatible with the existing leased uses, Lessor and/or SPTCJPA reserve the right to terminate the lease on grounds of necessary public use as determined solely by the governing boards of Lessor and/or SPTCJPA. Lessor and Lessee agree that Lessee will not be owed any damages or compensation at time of termination because of the existing public ownership of the property.

Upon the expiration or sooner termination of the lease, ownership of all improvements upon the land, including any buildings, owned by Lessee shall remain thereon and thereupon become the property of and owned by SPTCJPA under the management of Lessor unless removed by Lessee within three (3) months of the expiration or sooner termination of the lease at Lessee's sole expense.

The waiver of any breach of any of the provisions of this lease by Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or of another provision of this lease.

#### **8. Taxation of Lessee.**

- (a) Lessee is hereby placed on notice, pursuant to Revenue and Taxation Code section 107.6, that this agreement may create a property interest that may be subject to property taxation, if created, and that the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on the interest.
- (b) Lessee also understands and agrees that it is solely and fully liable to pay all federal, state and local taxes as well as assessment, fees and charges relating to the utilities, government licenses and permits and any other financial obligations which Lessee may be required to pay as an operating business which may apply to its operations and ownership of buildings on the leased property.

**9. Assignment Or Subleasing Property.** Lessee shall not sublease, encumber, assign, or otherwise transfer its rights or interests under this lease, without

the express written consent of Lessor first had and received, provided said consent shall not be unreasonably withheld.

**10. INSURANCE REQUIREMENTS:**

LESSEE shall maintain, at LESSEE's own expense during the term hereof, insurance with respect to its business, and all activities, on or about or in connection with its business, in the types and in the minimum amounts described generally as follows:

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of the undersigned as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. LESSEE shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- D. The insurance shall be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to LESSOR's Risk Management Division.
- E. The certificate of insurance must include the following provisions stating that the LESSOR, its officers, officials, and employees and volunteers are included as additional insured, but only insofar as operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance.
- F. LESSEE's insurance coverage shall be primary as respects LESSOR, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the LESSOR, its officers, officials, employees or volunteers shall be excess of LESSEE's insurance and shall not contribute with it.
- G. LESSEE's insurance coverage shall not be cancelled without thirty (30) days prior written notice to LESSOR.
- H. Any deductibles or self-insured retention must be declared to and approved by LESSOR. At the option of LESSOR, either: insurer shall reduce or eliminate such deductibles or self-insured retention as respects LESSOR, its officers, officials, employees and volunteers; or LESSEE shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- I. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to LESSOR, its officers, officials, employees or volunteers.

- J. The insurance companies shall have no recourse against LESSOR, its officers, officials and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- K. LESSEE's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- L. In the event LESSEE cannot provide an occurrence policy, LESSEE shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of this Agreement.
- M. The Certificate of insurance shall meet additional standards as may be determined by LESSOR's Risk Management Division as essential for protection of LESSOR.

11. **Notices.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to either party hereto by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party, Lessor or Lessee, to whom it is directed or any managing employee of such party or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to:

Lessor: County of El Dorado  
General Services Department  
360 Fair Lane  
Placerville, CA 95667

Attention: Thomas S. Heck, Director  
Telephone: (530) 621-5846

Lessee: Diamond Springs Holding Company, LLC  
P. O. Box 1006  
Shingle Springs, CA 95672

Attention: Michael or Johanna Kay  
Telephone: (530) 676-0440

Either party, Lessor or Lessee, may change its address for purposes of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

12. **California Forum and Law.** Any dispute resolution action arising out of this agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

13. **Attorney's Fees.** Should any litigation be commenced between Lessor and Lessee concerning the leased property, this lease, or the rights and duties of either Lessor or Lessee in relation thereto, the party, Lessor or Lessee, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees in the litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

14. **Sole and Only Agreement.** This instrument constitutes the sole and only agreement between Lessor and Lessee respecting the leased real property and correctly sets forth the obligations of Lessor and Lessee to each other as of its date. Any agreements or representations respecting the real property leasing by Lessor to Lessee not expressly set forth in this instrument are null and void.

15. **Severability.** If any provision, clause or part of the agreement, or the application thereof under certain circumstances, is held invalid, the remainder of this agreement or the application of such provisions, clauses, or parts under other circumstances shall not be affected thereby.

16. **Lease Administration.** The County officer or employee with responsibility for administering this lease is Thomas S. Heck, Director of General Services, or successor.

17. **Time of Essence.** Time is expressly declared to be of the essence of this lease.

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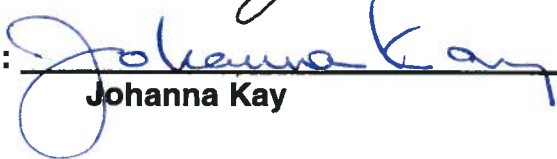
IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first below written.

**LESSEE: DIAMOND SPRINGS HOLDING COMPANY, LLC**

Dated: 4/30/09

Signed:   
Michael Kay

Dated: 4-30-09

Signed:   
Johanna Kay

**LESSOR: COUNTY OF EL DORADO**

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
, Chairman

**Board of Supervisors**

**ATTEST:**

**Suzanne Allen de Sanchez, Clerk of the  
Board of Supervisors**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

SEP 09 1999

GENERAL SERVICES  
R.P.A. DIVISION

**Description for Encroachment Area  
Pacific Southeast Forest Products  
Railroad Right-of-Way**

The purpose of this description is to describe the area of encroachment of an existing building on the railroad right-of-way.

All that portion of the Southeast one-quarter of Section 24, Township 10 North, Range 10 East, MDM and also being all that portion of the railroad right-of-way right of and between stations 2925 & 2928 described as follows:

Beginning at the intersection of the Northwesternly line of Tract 1 of that certain Record of Survey filed for record in Book 17 of Record of Surveys at Page 129 in the Office of the Recorder of the County of El Dorado, State of California with the Northerly line of an existing building; from which said point of beginning the South one-quarter corner of said Section 24 bears the following five (5) courses: (1) North 46° 38' 24" East 85.68 feet, (2) South 07° 38' 46" East 484.60 feet, (3) South 88° 29' 46" East 170.46 feet, (4) South 48° 20' 46" East 512.59 feet, and (5) South 21° 09' 32" East 396.85 feet; thence from said point of beginning, along said Northwesternly line, South 46° 38' 24" West 108.98 feet; thence leaving said Northwesternly line, along the westerly side of the existing building, North 09° 23' East 86.81 feet to the Northwest corner of said building; thence along the Northerly line of said building, South 80° 33' East 65.98 feet to the point of beginning.

The above description contains 2,860 square feet (0.066 acre) and was prepared by James R. Sweeney, LS 3864 on September 2, 1999.



A handwritten signature in cursive script that reads "James R. Sweeney".



# SURVEY PLAT

## Encroachment on Railroad Right-of-Way

Portion SE 1/4 Section 24, T10N, R10E, MDM

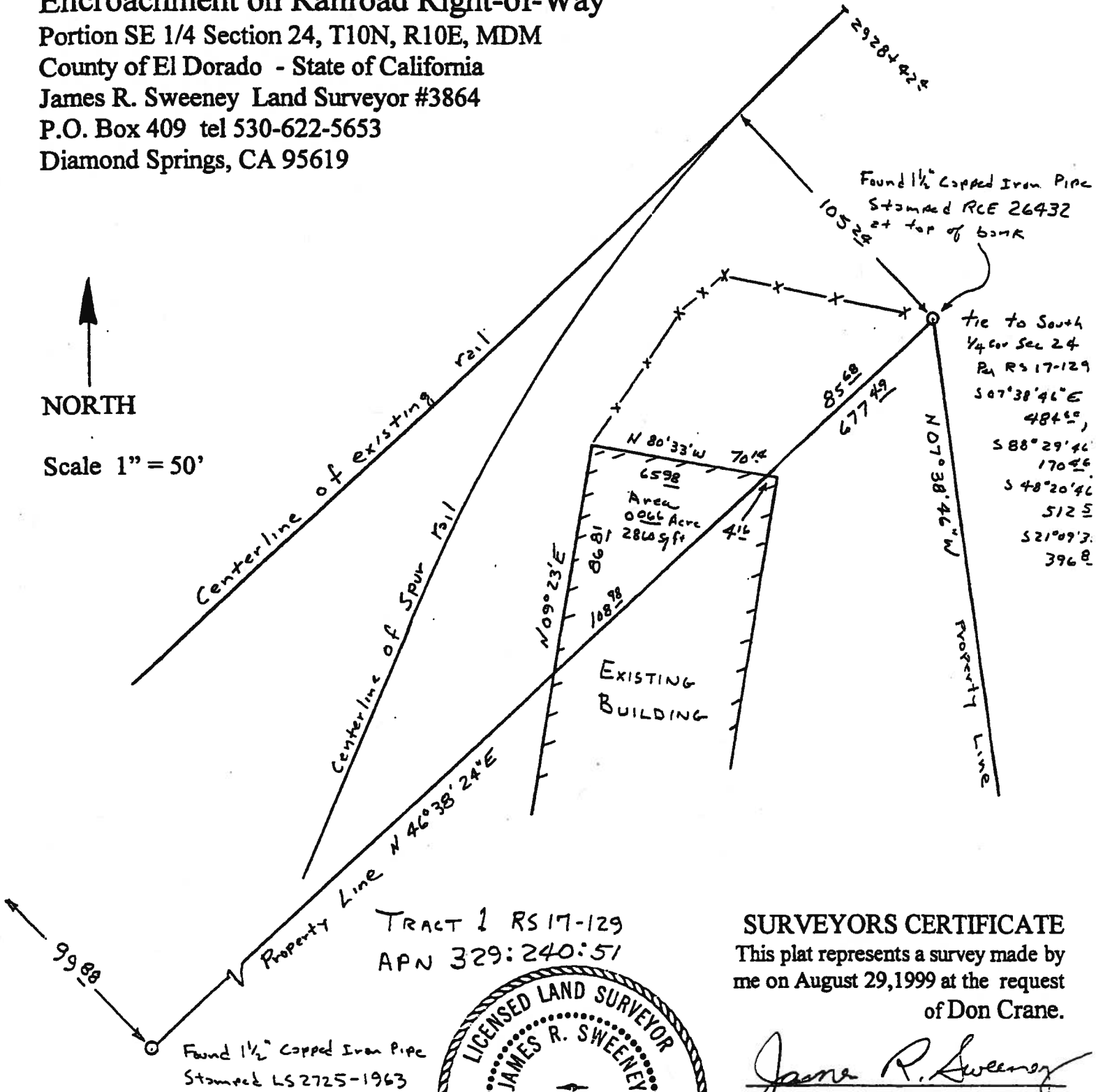
County of El Dorado - State of California

James R. Sweeney Land Surveyor #3864

P.O. Box 409 tel 530-622-5653

Diamond Springs, CA 95619

NORTH  
Scale 1" = 50'



TRACT 1 RS 17-129  
APN 329:240:51



### SURVEYORS CERTIFICATE

This plat represents a survey made by me on August 29, 1999 at the request of Don Crane.

*James R. Sweeney*  
James R. Sweeney L S 3864