

Norman Partners SPTCJPA Easement Agreement

CONTRACT ROUTING SHEET

2010 NOV 24 10:07
ELDON ASSOCIATE COUNTY COUNSEL

PROCESSING DEPARTMENT:

Department: Transportation
Dept. Contact: Pete Feild, R/W Manager
Phone: 530-621-7666
Department Head
Signature: *P. Feild* 11/23/10

CONTRACTOR:

Name: Norman Partners LLC
Address: 8601 Ranchwood Court
Fair Oaks, CA 95628
Phone: _____

CONTRACTING DEPARTMENT: Transportation

Service Requested: N/A
Contract Term: N/A Contract/Amendment Amount: _____
Compliance with Human Resources Requirements? Yes: _____ No: X
Compliance verified by: Contract Notification Sent _____; HR Response Received _____
OK per _____.

COUNTY COUNSEL: (must approve all contracts and MOUs)

Approved: ✓ Disapproved: _____ Date: 11/24/10 By: D. LIVINGSTON
Approved: _____ Disapproved: _____ Date: _____ By: _____

Exhibit lettering revised 11/31/11 P. Feild

2010 NOV 29 11:12
RECEIVED
DOT

Please forward to Risk Management upon approval. N/A

Index Code: <u>306370</u>	User Code: <u>33000</u>
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RISK MANAGEMENT: (All contracts and MOUs except boilerplate grant funding agreements)

Approved: _____ Disapproved: _____ Date: _____ By: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____

OTHER APPROVAL (Specify department(s) participating or directly affected by this contract).

Department(s): _____
Approved: _____ Disapproved: _____ Date: _____ By: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Attachment #3

EASEMENT AGREEMENT

THIS GRANT OF EASEMENT is made and entered into as of _____, 2011, by and between the **County of El Dorado**, a political subdivision of the State of California, (hereinafter the "**County**"), **Sacramento Placerville Transportation Corridor Joint Powers Authority**, a California joint powers agency ("**JPA**"), as the collective "**Grantor**" hereunder, and **Norman Partners LLC**, a California limited liability company ("**Grantee**").

Recitals

WHEREAS, the JPA owns the former railroad right-of-way that extends through the town site of Shingle Springs in El Dorado County, California; and

WHEREAS, the County has been delegated the management of the portion of the right-of-way that extends through the town site of Shingle Springs in El Dorado County, California; and

WHEREAS, Grantee owns certain real property adjacent to the railroad right-of-way and desires to obtain the crossing rights hereinafter set forth.

Agreement

NOW, THEREFORE, the parties agree as follows:

1. General.

A. The Grantee Property. Grantee is the owner of that certain real property located in El Dorado County, California, that is specifically described in **Exhibit "C"** attached hereto and incorporated herein by this reference (the "**Grantee Property**").

B. The Grantor Property. Grantor is the owner and manager of the railroad right-of-way situated to the south the Grantee Property (the "**Grantor Property**").

C. Purpose of Agreement. The purpose of this Agreement is to grant the easement rights that are specified herein, on the terms and subject to the conditions set forth herein.

2. Grant of Easement. Grantor hereby grants to Grantee a nonexclusive easement for the purposes stated below, over and across that portion of the Grantor Property described and depicted in **Exhibit "A" and "B"** attached hereto and incorporated herein by this reference (the "**Easement**"). The Easement shall include the right to cross the railroad tracks over which the Easement passes in accordance with the terms of this Agreement.

The Easement granted hereby shall solely be for the design, grading (including, without limitation, related soil and subsurface removal, compacting and filling) construction, installation, placement, maintenance, repair, removal, inspection, operation and use of:

A. A road (together with subsurface, pavement, curb, gutter, sidewalk, directional signs and signals, and other related improvements and items) not to exceed the width of the Easement (the "**Road**") for pedestrian and vehicular ingress, egress and travel across the Easement area and to and from the Grantee Property, and each part thereof, and for other purposes incidental thereto; and

B. Public utility lines, conduits, mains, drains, pipes, wires, cables for electricity, gas, water, sanitary sewer, storm sewer, telephone and other communications, television and other utilities, services, facilities and items of a related nature under, over or across the Easement area ("**Utilities**"). Subject to the prior written approval of the County and, if applicable, the California Public Utilities Commission, Grantee (or its successors or assigns) shall have the right to grant to utility companies, agencies, authorities and suppliers ("Utility Companies") the right to use the Easement to construct, install, place, maintain, repair, remove, inspect, operate and use Utilities, provided that any such grant of right shall require that the Easement area shall be returned to its original condition, and that Utility Companies be subject to the same restrictions on use that are otherwise applicable to the Grantee pursuant to this Agreement.

This grant is subject and subordinate to the prior right of Grantor and its member agencies to use all of the Grantor Property to construct, maintain, use and remove existing and future trail, rail, transportation, communication, power, pipeline and other facilities in, upon, over, under, across or along the Grantor Property. This grant is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word "grant" will not be construed as a covenant against the existence thereof.

3. Easement Appurtenant; Use.

A. Appurtenant. The Easement shall be appurtenant to the Grantee Property, and each portion thereof. Upon any subdivision or other partition or division of all or any portion of the appurtenant real property, this Easement shall automatically (and without the need or requirement for consent of and/or notice to any owners or users of the Easement, the appurtenant real property or the Grantor Property) be apportioned for the benefit and use of all portions of such appurtenant real property after such subdivision, partition or division.

B. Use. The Easement may be used by the owners and users of the Grantee Property (and any portion thereof) to which it is appurtenant, and by all employees, tenants, licensees, agents, contractors, invitees, visitors, customers, guests and others desiring to travel to and/or from such property.

No use of the Easement shall be done or made in such a manner that it would unreasonably interfere with the use of the Easement by another or with any other permitted use(s) of the Easement. No gate or fence shall be erected that blocks or interferes with the free use of the Easement and/or passage over any road thereon, except as may be provided herein, unless the prior written consent of all parties to this Agreement is obtained. Notwithstanding the foregoing, Grantee understands and agrees that Grantor may elect, or the California Public Utilities Commission ("CPUC") may require, that the crossing shall be regulated with lights and crossing barricades which will be deemed to not be interference with the Easement granted herein; Grantee shall be responsible for the cost of designing, constructing and maintaining any such lights or crossing barricades. Grantee shall be responsible to obtain any required approvals from the CPUC prior to construction of the crossing.

4. Construction; Maintenance.

A. No Obligation To Construct. Except as otherwise provided herein, or in the conditions of approval for Boundary Line Adjustment Application No. BLA09-0021, neither of the parties to this Agreement shall be under any obligation to construct or improve the Road or any Utilities described above. Grantee shall have the right to design, construct, improve and use a Road and any Utilities on and across the Easement area, at its sole cost and expense.

B. Maintenance.

(1) Road. Any Road constructed upon the Easement by Grantee shall be maintained by Grantee at its sole cost and expense until such time as an offer to irrevocably dedicate such Road and this Easement to the public is accepted by the County. During the time Grantee is responsible for maintaining the Road, Grantee shall periodically inspect, maintain and repair such Road and all portions thereof as is necessary to maintain such Road in a reasonably clean, safe and useable condition.

(2) Utilities. Any Utilities constructed and/or installed upon, in or over the Easement area shall thereafter be maintained by the party or parties responsible for such construction and/or installation.

(3) Railroad Crossing. Grantee understands and agrees that the Easement at such point at it crosses the existing railroad tracks is subject to the jurisdiction of the CPUC and Grantee shall maintain the crossing area in good repair and shall keep said crossing area and the flangeways thereof free and clear of all rubbish and debris. If Grantor elects, or is required by the CPUC to change the grade of all or any portion of its tracks in the area of the crossing, or to make any such improvements to the crossing, Grantor shall use its reasonable efforts to avoid damage to the Grantee's improvements in the Easement. However, it shall be Grantee's

responsibility to repair any damage to such improvements at such time as Grantor has completed its modification to the crossing area.

(4) Notification of Maintenance and Repair Activities. Grantee shall provide County 48 hours notice prior to engaging in any maintenance or repair of its improvements and shall obtain an encroachment permit from County prior to beginning said maintenance or repair activities. Any repairs of an emergency nature are exempt from this requirement; however, Grantee shall notify County within 24 hours of commencement of emergency repair activity. If Grantee's use of the Easement causes any damage to County's, the JPA's, or any third party's property or improvements, Grantee shall expeditiously repair said property or improvements at Grantee's sole cost and expense. If Grantee does not promptly make emergency repairs, or initiate repair of non-emergency damage within ten (10) calendar days, or when all necessary materials become available to make such repairs, the Grantor has the right to undertake or authorize such repairs and to invoice Grantees for the reasonable costs of same.

(5) Assumption of Maintenance Obligations By Association or Public Entity. Subject to the prior written approval of the County, Grantee may transfer any or all of the obligations (including, without limitation, responsibility for related costs and expenses) to maintain, inspect, repair and replace the Road, the crossing area and/or any Utilities, to the County, or to an owners association or other special purpose association or district, or to any private, public or governmental utility company, association, agency or entity, whether now existing or hereafter created (collectively, "**Entity**", whether public or private in nature). The County may, in its discretion, withhold its approval of the transfer of obligations to another Entity, or condition its approval on the Entity obtaining a bond or other form of security to ensure performance of the obligations assumed hereunder. Upon transfer of such obligations to such an Entity, the transferor shall be relieved of further responsibility for such obligations to the extent provided in Section 11 below.

5. Future Development and Subdivision. The parties to this Agreement specifically acknowledge and agree that the future development and/or subdivision of the properties to which this Easement is appurtenant is anticipated to occur from time-to-time, and the increase in use resulting therefrom shall not overburden or act to terminate the Easement created hereby.

6. Future Dedication to Public Use. Each party to this Agreement hereby acknowledges and agrees that the Easement granted and reserved hereby is not intended to be offered or accepted as a permanent public road at this time and that this instrument does not constitute an irrevocable offer to dedicate. However, the parties contemplate and agree that in the future the Easement and the Road thereon may be offered for dedication as a public road, at the discretion of Grantee (or its successors or assigns), and each party to this Agreement (and their respective successors and assigns) shall be obligated to cooperate in and execute all instruments required to make such dedication effective. Any such dedication may be made in fee or by easement, as may be required by the appropriate governmental entity.

7. **Indemnification.** To the extent permitted by law, Grantee hereby assumes liability for, and agrees to defend, with counsel acceptable to Grantor, indemnify, protect, save and keep harmless the County, the JPA, the JPA's member agencies, and its/their directors, officers, employees, and successors and assigns (collectively, "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses and disbursements including reasonable attorneys' fees and expenses (including allocated costs of the Indemnitees' in-house counsel) of any kind and nature imposed in, asserted against, incurred or suffered by an Indemnitee by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property in any way relating to or arising out of:

- (i) any negligent act or action, or any negligent omission or failure to act when under a duty to act on the part of an Indemnitee or any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier in its or their performance hereunder whether or not caused in part by the Indemnitee's negligence, but not to the extent of the Indemnitee's sole negligence or willful misconduct; and/or
- (ii) any act or action, or any omission or failure to act on the part of Grantee or any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier; and/or
- (iii) a release by Grantee or any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier in its or their performance hereunder of any substance or material defined or designated as a hazardous or toxic substance, material or waste by any federal, state or local law or environmental statute, regulation or ordinance presently in effect, or as amended or promulgated in the future, but only to the extent based upon principles of comparative fault that such release is not proximately contributed to or caused by an Indemnitee; and/or
- (iv) efforts to enforce this indemnity provision.

The parties shall establish procedures to notify the other party where appropriate of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification provision. The parties shall cooperate in the defense of such actions brought by others with respect to the matters covered in this indemnity.

8. **Successors and Assigns.** Each party to this Agreement hereby agrees and acknowledges that the Grantor Property and Grantee Property shall be held, sold, conveyed, owned and used subject to the terms, conditions and obligations imposed by this Agreement, which are agreed to provide for acts done and/or to not be done on such real properties and to relate to the use, repair, maintenance and/or improvement of the Easement, and matters incidental thereto, and are for the benefit of each of the other such real properties.

The provisions of this Agreement shall (subject to the limitations contained in this Agreement and without modifying the provisions of this Agreement) be enforceable as easements, equitable servitudes and conditions, restrictions and covenants running with the land,

and shall be binding on the parties to this Agreement, and upon each and all of their respective heirs, devisees, successors and assigns, officers, directors, employees, agents, representatives, executors, trustees, successor trustees, beneficiaries and administrators, and upon future owners of the Grantor Property and Grantee Property .

9. **No Abandonment, Adverse Rights, Prescription or Waiver.** The parties to this Agreement hereby agree that, except as provided herein, the Easement and the rights of any party created and/or reserved hereby shall not be deemed to be abandoned (and shall not terminate or be restricted in any way) by the failure of any or all of the parties to use the Easement or any portion thereof for any length of time. In addition, no rights shall be acquired by adverse possession or prescription as a result of or arising out of the occupancy, possession, destruction or blockage of the Easement or any portion thereof (or any Road or improvements now or hereafter thereon), or by reason of any other act of any person or entity following the recordation of this Agreement (and any and all such actions shall be deemed to have been done with permission pursuant to a revocable license hereby granted by this provision). Failure to enforce any covenant, restriction or other provision of this Agreement or to seek redress for the breach of or default in performance under any such covenant, restriction or other provision shall in no way constitute a waiver of the right to enforce such covenant, restriction or provision or seek redress for the breach thereof, or constitute a waiver of the right to enforce any other covenant, restriction or provision of this Agreement or seek redress for the breach thereof.

10. **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, relating to the subject matter, which are not fully expressed herein. No addition to or modification of any term or provision shall be effective unless set forth in writing, signed by all parties to this Agreement (or their respective successors or assigns, as appropriate).

11. **Additional Documents.** From time to time prior to and after the recordation of this Agreement, each party shall execute and deliver such additional instruments as may be necessary to carry out the purpose and intent of this Agreement.

12. **Warranty of Authority.** Each party represents and warrants to the other that it is authorized to enter into and execute this Agreement, and that the person or persons executing this Agreement on its behalf are authorized to do so without the need to obtain the further consent of any person or entity, and that upon such execution this Agreement shall be valid, binding and enforceable according to its terms against such party.

13. **Attorneys' Fees.** In the event either Grantor or Grantee brings any legal or equitable proceeding (including any court action or arbitration proceeding) for enforcement of any of the terms or conditions of this Agreement, or any alleged disputes, breaches, defaults or misrepresentations in connection with any provision of this Agreement, the prevailing party in such proceeding, or the nondismissing party where the dismissal occurs other than by reason of a settlement, shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and costs of defense paid or incurred in good faith. The

"prevailing party," for purposes of this Agreement, shall be deemed to be that party who obtains substantially the result sought, whether by settlement, dismissal or judgment.

14. Counterparts. This Agreement may be executed in one or more duplicate counterparts, each of which shall be deemed to be an original for all purposes, but all of which taken together shall constitute one and the same original.

IN WITNESS WHEREOF, the parties hereto have executed this instrument effective as of the day and year first above written.

GRANTOR: Sacramento-Placerville Transportation Corridor Joint Powers Authority

Signed: _____

John C. Segerdell, CEO

APPROVED AS TO LEGAL FORM:

By: _____

Paul J. Chrisman, JPA Counsel

GRANTOR: County of El Dorado

Signed: _____

Chair, Board of Supervisors

ATTEST:

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

By: _____

GRANTEE: Norman Partners LLC,

By: N.C. Brown Development, Inc., its managing member

Signed: _____

Name:

Title: President

List of Exhibits:

A & B -- Legal description of the Easement

C -- Legal description of the Grantee Property

NCBrown-SPTCJPA Easement 11/16/10

Exhibit 'A'

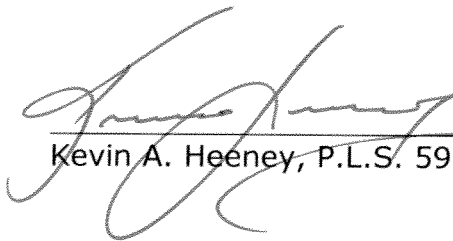
All that real property situate in the County of El Dorado, State of California, being a portion of Parcel 2 and the remaining land as shown on that certain Parcel Map filed in the office of the County Recorder of said County, in Book 40 of Parcel Maps, at Page 94, also being a portion of the Northwest One-Quarter of Section 6, Township 9 North, Range 10 East, M.D.M. and being more particularly described as follows:

Commencing at the Southwest Corner of said Parcel 2; thence along the Southerly line of said Parcel 2 and the Northerly line of Mother Lode Drive North $64^{\circ}45'12''$ East, (North $65^{\circ}31'49''$ East per 40 PM 94) 638.56 feet to the Point of Beginning; thence leaving the South line of said Parcel 2 along the arc of a curve to the left, having a radius of 20.00 feet and being subtended by a chord bearing North $19^{\circ}45'12''$ East, 28.28 feet; thence North $25^{\circ}14'48''$ West, 209.09 feet, to a point on the North line of said remaining land; thence along the North line of said remaining land, North $64^{\circ}51'39''$ East, 60.00 feet; thence, leaving said North line, South $25^{\circ}14'48''$ East, 208.98 feet; thence along the arc of a curve to the left, having a radius of 20.00 feet and being subtended by a chord bearing South $70^{\circ}14'48''$ East, 28.28 feet to a point of cusp, being on the South line of said Parcel 2; thence along said South line, South $64^{\circ}45'12''$ West 100.00 feet to the Point of Beginning, containing an area of 13,912 square feet, more or less.

See Exhibit 'B' attached hereto and made a part of this description.

End of Description

This description was prepared by me or under my direct supervision.


Kevin A. Heeney, P.L.S. 5914

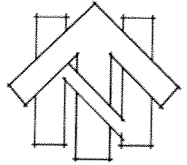
01/24/2011
Date



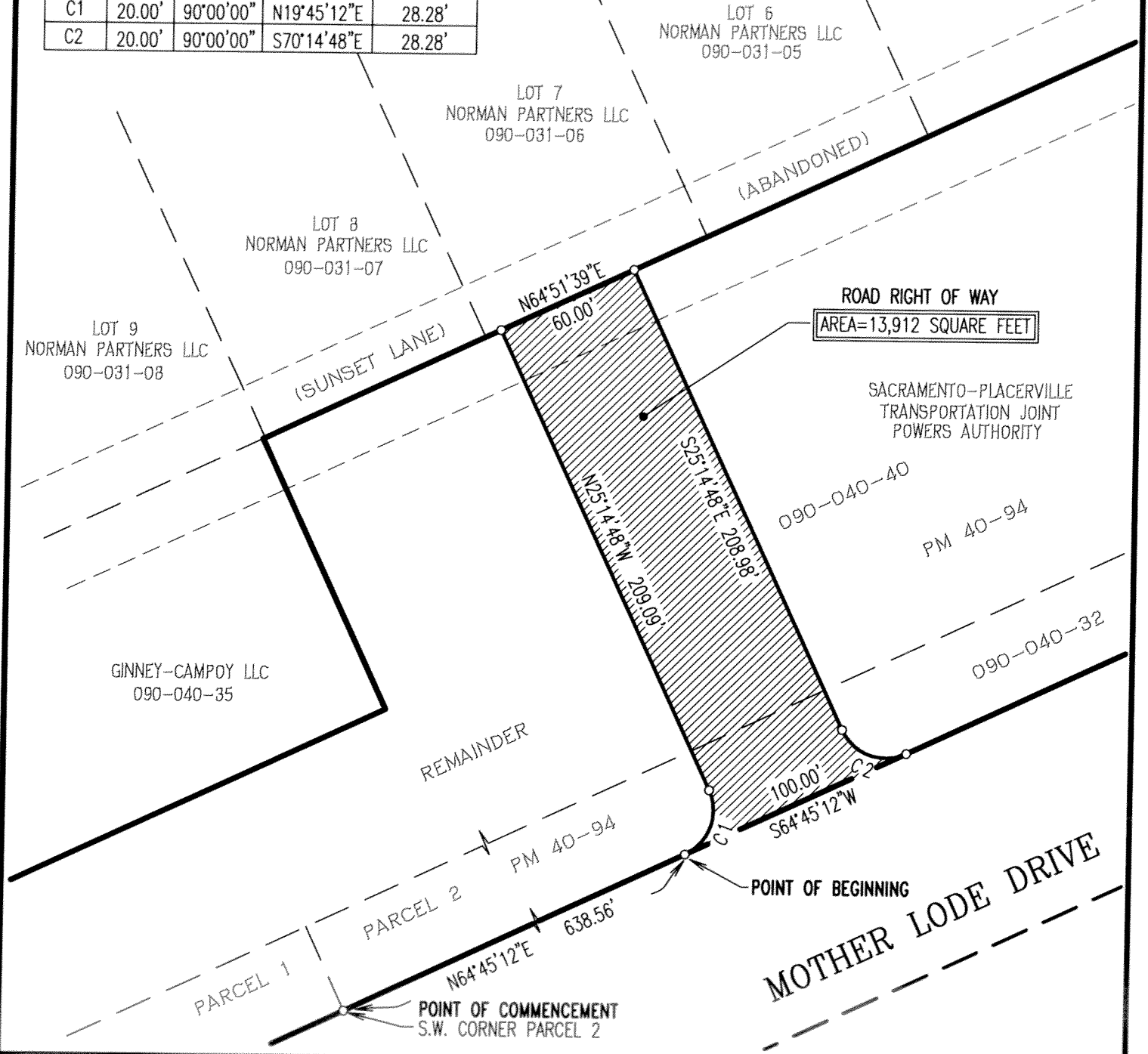
Portion of APN 090-040-40 & 090-040-32

Exhibit 'B'

Plat to Accompany Legal Description



CURVE DATA TABLE				
CURVE	RADIUS	DELTA	CH. BEARING	CH. DISTANCE
C1	20.00'	90°00'00"	N19°45'12"E	28.28'
C2	20.00'	90°00'00"	S70°14'48"E	28.28'



LICENSED LAND SURVEYOR

KEVIN A. HEENEY

NO. 5914

Exp. 12-31-2012

STATE OF CALIFORNIA

DATE: 01/24/2011

OWNER:
SACRAMENTO-PLACERVILLE TRANSPORTATION
CORRIDOR-JOINT POWERS AUTHORITY

DATE: 11/24/2010	DRAWN BY: KAH	SHEET 1 OF 1
SCALE: 1"=60'	JOB NO. 00-173-001	

A.P.N. 090-040-32 & 40

cta

Engineering & Surveying

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3233 Monitor Circle, Rancho Cordova, CA 95742
T (916) 638-0918 • F (916) 638-2479 • www.ctaee.net

ROAD & UTILITY EASEMENT

A PORTION OF PARCEL 2, P.M. 40-94
AND A PORTION OF THE NW1/4 OF
SECTION 6, T. 9 N., R. 10 E., M.D.M.

COUNTY OF EL DORADO 10-1269 OF 11 CALIFORNIA

EXHIBIT "C"

The Grantee owns the following Assessor's Parcel Numbers, which will be served by the Road and Utility Easement as described in Exhibit "A" and "B".

APN 090-031-06

APN 090-031-07

APN 090-031-08

APN 090-031-20

APN 090-060-16

APN 090-060-17