

Sellers: MCGILLIVRAY
APN: 054-351-03
Project#: 72375
Escrow#: 205-17472

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 **JOHN MCGILLIVRAY III AND AMY MCGILLIVRAY, HUSBAND AND WIFE AS JOINT TENANTS**, referred to herein as ("Sellers"), with reference to the following facts:

RECITALS

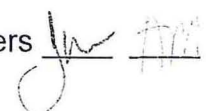
- A. Sellers own that certain real property located in an unincorporated area of El Dorado County, California, a legal description of which is attached hereto, as Exhibit A (the "Property").
- B. County desires to purchase an interest in the Property as a Temporary Construction Easement, as described 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 **\$803.04 for a Temporary Construction Easement, rounded to total of \$850.00 (EIGHT HUNDRED FIFTY DOLLARS, exactly).**

3. ESCROW

The acquisition of the Easement shall be consummated by means of **Escrow No. 205-17472** for APN 054-351-03 which has been opened at **Placer Title Company** ("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 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 **JUNE 30, 2015**, 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 Easement; 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 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. AGREEMENT DECLARING RESTRICTIVE COVENANTS (ADRC)

Sellers acknowledge that County will use federal/state/local funds for the acquisition of the land rights for this Project. County has entered into a Master Agreement, Administering Agency – State Agreement for Federal Aid Projects, Agreement No. 03-5925R, effective February 14, 2007. County has agreed to comply with the terms and conditions of that Agreement, which include compliance with all Fair Employment Practices and with all Nondiscrimination Assurances as are contained in said Master Agreement, including the addition of certain covenants as contained in the Easement being conveyed by Sellers, and as shown in Exhibit B and the exhibits thereto, attached hereto and incorporated by reference herein.

7. 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.

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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.

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 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 **DIAMOND SPRINGS PARKWAY PHASE 1A – SR49 REALIGNMENT, CIP NO. 72375**, inclusive of the right to remove and dispose of any existing improvements, shall commence upon the last date of execution of this Agreement by Sellers and County. 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.

9. 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 waive any and all claims of Sellers relating to said project that may exist on the date of this Agreement.

10. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be an

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original and all of which together shall constitute one and the same instrument.

11. 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 Sellers to pay any commission or other compensation to any broker or sales agent in connection with this transaction.

12. 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.

13. 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.

Sellers 

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14. 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.

15. 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: John McGillivray and
Amy McGillivray
4121 State Highway 49
Diamond Springs, CA 95619

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

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

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16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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22. CONSTRUCTION CONTRACT WORK

County or County's contractors or authorized agents shall, at the time of construction, perform the following construction work on the Sellers' remaining property:

- A. County or County's contractor or authorized agent will utilize the Easement to conform property line and driveway to new roadway improvements.
- B. County or County's contractor or authorized agent will remove existing chain link fencing and any landscape improvements, along the westerly portion of the property line, as necessary to complete roadway improvements. Any existing fencing, landscape, and or landscape improvements removed for purposes of the Project will be replaced in like-kind, where applicable. Temporary fencing will be installed in areas where current fencing is removed and where applicable during construction.

All work done under this Agreement shall conform 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 County, shall be left in as good a condition as found. Sellers understand and agree that after completion of the work described, said facilities, except utility facilities, will be considered Sellers' sole property and Sellers will be responsible for its maintenance and repair.

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23. PERMISSION TO ENTER FOR CONSTRUCTION PURPOSES

Permission is hereby granted to County, the County's contractor or its authorized agent to enter Sellers' Property, (**Assessor's Parcel Number 054-351-03**) where necessary, to perform the work as described in Section 22 of this Agreement.

24. 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.

25. ENTIRE AGREEMENT

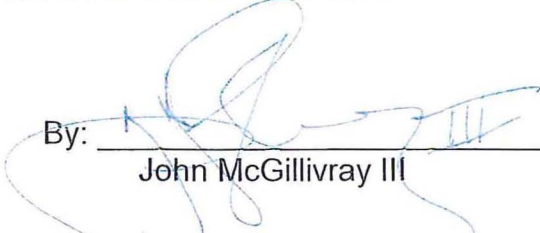
This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. No amendment, supplement, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

26. AUTHORIZED SIGNATURES

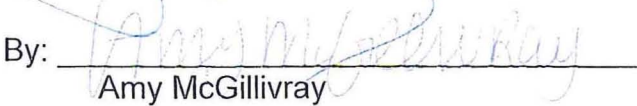
The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

**SELLERS: JOHN MCGILLIVRAY III AND AMY MCGILLIVRAY,
HUSBAND AND WIFE AS JOINT TENANTS**

Date: _____

By: 
John McGillivray III

Date: _____

By: 
Amy McGillivray

Sellers 

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COUNTY OF EL DORADO:

Date: _____

By: _____, Chair
Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

By: _____
Deputy Clerk

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

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

APN 054-351-03
John & Amy McGillivray
#72375 – DSP Phase 1A

Mail Tax Statements to above.
Exempt from Documentary Tax Transfer
Per Revenue and Taxation Code 11922

Above section for Recorder's use

GRANT OF TEMPORARY CONSTRUCTION EASEMENT

JOHN MCGILLIVRAY III AND AMY MCGILLIVRAY, HUSBAND AND WIFE AS JOINT TENANTS, hereinafter referred to as "Grantors", 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 **\$850.00 (EIGHT HUNDRED FIFTY DOLLARS AND NO/100)** and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantors do hereby Grant to Grantee an easement for temporary construction over and across those identified portions of the Grantors' parcel.
2. Grantors represent and warrant 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 Grantors have the exclusive right to grant the temporary construction easement.
3. This temporary construction easement is necessary for the purpose of constructing the **DIAMOND SPRINGS PARKWAY PHASE 1A – SR49 ROAD REALIGNMENT, CIP NO #72375 (Project)**. 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. No stockpiling or parking of vehicles or equipment are allowed to take place in this area. This temporary construction easement shall not be revoked and shall not expire until the recordation of the Notice of Completion of

EXHIBIT B

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 **24 (Twenty-four) months of construction**, together with the five-year warranty period. In the event that construction of the Project is not completed within **24 (Twenty-four) months** of commencement of construction, Grantors shall be entitled to additional compensation as follows: For each month thereafter, **the sum of \$35.42 (THIRTY FIVE DOLLARS AND 42/100) monthly** will be paid to the Grantors, until construction is completed.
5. Grantee agrees to indemnify and hold harmless Grantors 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.

County will use federal/state/local funds for the acquisition of the land rights for this Project. County has entered into a Master Agreement, Administering Agency – State Agreement for Federal Aid Projects, Agreement No. 03-5925R, effective February 14, 2007. County has agreed to comply with the terms and conditions of that Agreement, which include compliance with all Fair Employment Practices and with all Nondiscrimination Assurances as are contained in said Master Agreement.

TO HAVE AND TO HOLD said lands and interests therein unto COUNTY OF EL DORADO and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on COUNTY OF EL DORADO, its successors and assigns.

COUNTY OF EL DORADO, does hereby covenant and agree as a covenant running with the land for itself, successors and assigns, that:

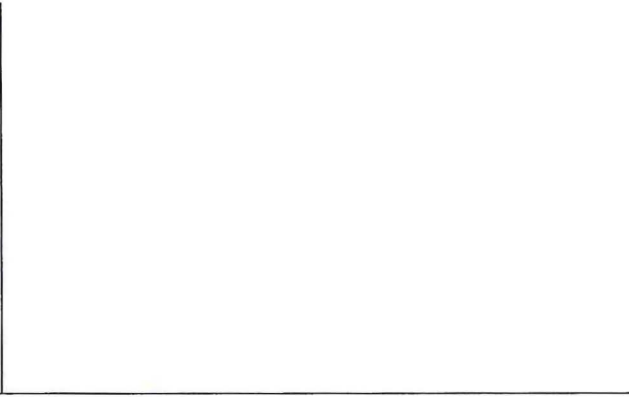
- (a) no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed; and
- (b) COUNTY OF EL DORADO shall use the lands and interests in land so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as Regulations may be amended; and

in the event of breach of any of the above-mentioned nondiscrimination conditions, and only after determination that it is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964, the U.S. Department of Transportation shall have a right to re-

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

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

**APN 054-351-03
John & Amy McGillivray
#72375 – DSP Phase 1A**



Mail Tax Statements to above.
Exempt from Documentary Tax Transfer
Per Revenue and Taxation Code 11922

Above section for Recorder's use

GRANT OF TEMPORARY CONSTRUCTION EASEMENT

JOHN MCGILLIVRAY III AND AMY MCGILLIVRAY, HUSBAND AND WIFE AS JOINT TENANTS, hereinafter referred to as "Grantors", 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 **\$850.00 (EIGHT HUNDRED FIFTY DOLLARS AND NO/100)** and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantors do hereby Grant to Grantee an easement for temporary construction over and across those identified portions of the Grantors' parcel.
2. Grantors represent and warrant 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 Grantors have the exclusive right to grant the temporary construction easement.
3. This temporary construction easement is necessary for the purpose of constructing the **DIAMOND SPRINGS PARKWAY PHASE 1A – SR49 ROAD REALIGNMENT, CIP NO #72375 (Project)**. 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. No stockpiling or parking of vehicles or equipment are allowed to take place in this area. 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 **24 (Twenty-four) months of construction**, together with the five-year warranty period. In the event that construction of the Project is not completed within **24 (Twenty-four) months** of commencement of construction, Grantors shall be entitled to additional compensation as follows: For each month thereafter, **the sum of \$35.42 (THIRTY FIVE DOLLARS AND 42/100) monthly** will be paid to the Grantors, until construction is completed.
5. Grantee agrees to indemnify and hold harmless Grantors 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.

County will use federal/state/local funds for the acquisition of the land rights for this Project. County has entered into a Master Agreement, Administering Agency – State Agreement for Federal Aid Projects, Agreement No. 03-5925R, effective February 14, 2007. County has agreed to comply with the terms and conditions of that Agreement, which include compliance with all Fair Employment Practices and with all Nondiscrimination Assurances as are contained in said Master Agreement.

TO HAVE AND TO HOLD said lands and interests therein unto COUNTY OF EL DORADO and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on COUNTY OF EL DORADO, its successors and assigns.

COUNTY OF EL DORADO, does hereby covenant and agree as a covenant running with the land for itself, successors and assigns, that:

- (a) no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed; and
- (b) COUNTY OF EL DORADO shall use the lands and interests in land so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as Regulations may be amended; and

in the event of breach of any of the above-mentioned nondiscrimination conditions, and only after determination that it is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964, the U.S. Department of Transportation shall have a right to re-

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }

COUNTY OF El Dorado }

On 4/9/2015 before me, Jeannette Lyon Notary Public,

Date (here insert name and title of the officer)

personally appeared Amy McGillivray

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: [Handwritten Signature] (Seal) _____ OPTIONAL _____

Description of Attached Document Grant of Temporary Construction Easement
Title or Type of Document: Easement Number of Pages: 5
Document Date: 4/9/2015 Other: _____

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF El Dorado)

On 4/10/2015 before me, Jeannette Lyon Notary Public,
Date (here insert name and title of the officer)

personally appeared John Edward Joseph McGilivray

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: [Handwritten Signature] (Seal)
_____ OPTIONAL _____

Description of Attached Document

Title or Type of Document: Grant of Temporary Construction Easement Number of Pages: 5

Document Date: 4/10/2015 Other: _____

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

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

JOHN & AMY MCGILLIVRAY
APN #: 054-351-03
#72375 – DSP1A Phase 1A

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Temporary Construction Easement dated _____, 201__, from **JOHN MCGILLIVRAY III AND AMY MCGILLIVRAY, HUSBAND AND WIFE AS JOINT TENANTS**, 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: 054-351-03

Dated this _____ day of _____, 20__.

COUNTY OF EL DORADO

By: _____

Brian K. Veerkamp, Chair
Board of Supervisors

ATTEST:

James S. Mitrisin
Clerk of the Board of Supervisors

By: _____
Deputy Clerk