

POSSESSION AND USE AGREEMENT

September 20, 2012
DATE

ED 50 1.07/2.40
CO RTE POST

ED APN 122-720-09 (S.Por.) EA: 03-1E290 0300000258
PARCEL NO. EXP. AUTH. PROJECT ID NO.

This Possession and Use Agreement ("Agreement") is made on 9/28/12, 2012, by and between the County of El Dorado ("County"), and Douglas Grant Line Associates, Ltd., a Limited Partnership as to an undivided 45.6% interest; and Sacramento Realty Investors-El Dorado Ltd., a Limited Partnership as to an undivided 45.6% interest; and Sacramento Realty Investors-Clarksville, Ltd., a Limited Partnership as to an undivided 8.8% interest, ("Owner"), who shall be collectively referred to as the "Parties."

RECITALS

A. County requires immediate possession and use of Owner's real property to construct the Silva Valley Parkway Interchange highway project. Owner's property is located in El Dorado County, California, legally described in the attached Exhibit "A" and identified on the Right of Way Key map in the attached Exhibit "B" as Property 1A.

B. Property is designated by County as a portion of County Assessor's Parcel No. 122-720-09 (the "Parcel"), located south of US Hwy. 50. The Parcel is required for the purpose of constructing the US Hwy. 50 / Silva Valley Parkway Interchange Project on State Highway Route 50 (the "Project"). The purpose of this Agreement is to allow the County to proceed with construction of the Project without delay.

C. The Parties acknowledge and agree that any delay in the start of construction of the Project is contrary to public interest. It is the intent of County to offer fair-market compensation to Owner for permission to enter the Parcel and to construct the Project, and as consideration for the rights set forth in the paragraph entitled "Possession," below. County has made a firm written offer to pay the total sum of \$300,000.00 (Three-hundred thousand Dollars) to Owner and any other persons having an interest in the Parcel. This amount does not include compensation for any loss of business goodwill, pre-condemnation damages, loss of rent or any other claims for just compensation except for the County's appraised fair market value of the Parcel (and, if applicable, severance damages). This amount does not include reimbursement for relocation benefits which will be handled pursuant to state and federal regulations and policies. The Owner has not accepted this offer.

OPERATIVE PROVISIONS

In consideration of the sum to be paid into escrow for Owner and in consideration of the foregoing recitals and the promises, covenants and any other conditions set forth in this Agreement, County and Owner agree as follows:

Possession

1. Owner grants to County and its contractors, agents, representatives, employees and all others deemed necessary by State of California Department of Transportation (Caltrans) and County, the irrevocable right to exclusive possession and use of the Parcel, including but not limited to, the right to remove and dispose of any and all improvements within and/or straddling the right of way. In consideration for this irrevocable grant of possession and use, County will tender into escrow the sum of \$300,000.00, and County shall have the right to possess the Parcel and begin construction of the Project on the date the sum is paid into escrow.

Just Compensation and Appraisal

2. Owner acknowledges that the sum referenced in paragraph 1 represents the full amount of the County-approved appraisal of what County believes is just compensation owed for the acquisition of the Parcel. Should the Parties fail to reach a settlement and it becomes necessary for County to file a condemnation action to acquire the Parcel, the Parties agree the amount deposited into escrow shall not be admissible as evidence of value in such condemnation proceeding. The Parties agree that the deposit and payment under this Agreement shall be equivalent to a deposit and payment under California Code of Civil Procedure section 1255.010 and that the basis for such deposit and payment, including but not limited to any appraisal, shall be governed by Code of Civil Procedure section 1255.060. Accordingly, the Parties agree that the amount deposited or withdrawn under this Agreement may not be given in evidence or referred to in any trial on the issue of compensation and further agree that any appraiser who prepared any report or statement concerning the deposit may not be called to testify at any such trial.

Escrow

3. This transaction will be handled through an escrow with Placer Title Company, Escrow No. 205-15415. County shall pay all escrow fees incurred in this transaction. Owner shall be entitled to interim disbursement of \$300,000.00 from the sum referred to in paragraph 1, less any amounts payable to any other persons having an interest in the Parcel. Any unearned rents will be prorated in escrow and County shall be credited with any outstanding security deposits. Owner shall not be entitled to receive any proceeds until:

- a. All holders of liens and encumbrances on the Parcel have received full payment for all principal and interest due to them and have executed a reconveyance of their interests in the Parcel; and
- b. All other parties having interests in the Parcel have received payment or have consented to a payment to Owner; and
- c. County have acknowledged in writing that it concurs that all other parties having interests in the Parcel have received full payment or have consented to Owner's withdrawal.

4. This escrow shall remain open until either a final settlement, or until termination of this Agreement, or until a Final Order of Condemnation under section 1268.030 of the California Code of Civil Procedure is entered by the court and recorded by State and County. Any sum disbursed to Owner from this escrow shall be deducted from the ultimate amount received by Owner as a result of any settlement, award, or verdict of just compensation for the Parcel.

Effective Date

5. This Agreement is effective as of October 1, 2012 (the "Effective Date"). From and after the Effective Date, Owner shall not assign, sell, encumber or otherwise transfer all or any portion of their interest in the Parcel, or the property, without first obtaining County's prior written consent.

Taxes

6. Owner agrees to submit payment, when due, to the County tax collector for all taxes and special assessments on the Parcel that are due during the period from the date of possession (as set forth in paragraph 1 of this Agreement) to the date title transfers to the County. Title transfers to the County on the date the Grant Deed or Final Order of Condemnation is recorded in the office of the County Recorder. Owner shall not be required to pay taxes or special assessments on the Parcel on or after the date title transfers to the County. After the date title transfers to the County, the County will request that the County tax collector cancel taxes and/or special assessments for the period from the date of possession to the date title transferred to the County. After the tax cancellation request is made by the County, Owner may file a claim with the County tax collector for a refund of any tax overpayment. Notwithstanding any other provision of this Agreement, no cancellation shall be made of all or any portion of any taxes that were due prior to the date of possession but which were unpaid; escrow shall pay in a timely manner all delinquent property taxes due from the sums deposited into escrow. (California Revenue and Taxation Code section 5084.)

Eminent Domain Proceedings

7. This Agreement is made with the understanding that County will continue to negotiate in good faith with Owner to acquire its interest in the Parcel by direct purchase. It is further understood that in the event an agreement for purchase is not reached within 6 (six) months of the Effective Date of this Agreement, such failure will be an acknowledgement that the negotiations to acquire the Parcel have proved futile, and County shall have the right to file a complaint in eminent domain to acquire title to the Parcel. Such complaint shall be filed within a reasonable time after the time period provided in this paragraph has expired.

8. If County begins proceedings in eminent domain, it is understood and agreed that this Agreement shall continue in effect until either a settlement is reached or a Final Order of Condemnation under section 1268.030 of the California Code of Civil Procedure is entered by the court and recorded by the County.

Waiver Notice Pursuant to Code of Civil Procedure Section 1245.235

9. Section 1245.235 of the California Code of Civil Procedure requires the State of California, Department of Transportation, to give each person whose property is to be acquired by eminent domain notice and a reasonable opportunity to appear before the California Transportation Commission and be heard on the matters referred to in section 1240.030 of the Code of Civil Procedure, which provides:

The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- a. The public interest and necessity require the project.
 - b. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
 - c. The property sought to be acquired is necessary for the project.
 - d. The offer required by section 7267.2 of the Government Code has been made to the Owner or others of record.
10. By granting this irrevocable right to possession and use of the Parcel to State and County, Owner agrees to the following:
- a. Owner specifically waives the notice required by Code of Civil Procedure section 1245.235 of the hearing on the matters referred to in Code of Civil Procedure section 1240.030, and Owner shall not object to the adoption of the resolution of necessity by the California Transportation Commission authorizing the taking of the property described in Exhibit "A."
 - b. Owner shall not object to the filing of an eminent domain proceeding to acquire the property described in Exhibit "A."
 - c. In any eminent domain action filed by County to acquire the property described in Exhibit "A," Owner shall not challenge County's right to acquire such property, and the only issue shall be the amount of just compensation for the property.

Refund

11. Owner agrees that in the event the ultimate amount of any settlement, award, or verdict is less than the total of the sums paid to and withdrawn by Owner, the Owner shall refund the difference including interest at the apportionment rate of interest as provided in Code of Civil Procedure section 1268.350 to State.

Waiver

12. Owner waives any right to challenge County's right to possess and use the Parcel in any subsequent eminent domain proceedings filed by County. Owner also waives all claims and defenses in its favor in any subsequent eminent domain proceeding, except a claim for greater compensation.

Date of Valuation

13. In the event proceedings in eminent domain are begun, the date of valuation for determining the amount of just compensation for the Parcel shall be the date the County takes possession of the parcel.

Interest

14. Compensation awarded in an eminent domain proceeding shall draw interest as prescribed by section 1268.350 of the California Code of Civil Procedure. Owner shall be entitled to receive interest on any sum received as compensation for its interest in the Parcel, whether pursuant to this Agreement, a subsequent settlement or court judgment, beginning on the date County takes possession of the Parcel pursuant to this Agreement and ending on the earliest of the dates as provided in Code of Civil Procedure section 1268.320.

Hazardous Materials

15. If any hazardous materials or waste (as defined by California Health and Safety Code section 25100, et. seq., and/or 42 U.S.C. §960 I, et. seq.) are present on the Parcel on the date County takes possession of the Parcel, Owner shall be responsible for and bear the entire cost of all removal, disposal, cleanup and decontamination which may be required because of these hazardous materials.

Owner shall further hold County and the State of California, its officers and employees harmless from all responsibility, liability and claims for damages to persons or property resulting from the existence or use of hazardous materials which are present on the Parcel on the date County takes possession under this Agreement.

Abandonment of Proceeding

16. Under section 1268.510 of the California Code of Civil Procedure, at any time after the commencement of proceedings in eminent domain, County reserves the right to abandon the proceeding in whole or in part.

Authority to Execute and Bind

17. Each of the Parties represents and warrants that each of the persons executing this Agreement has full and complete legal authority to do so and thereby binds the party to this Agreement.

Entire Agreement

18. This Agreement reflects the entire agreement between the Parties and shall supersede all prior or contemporaneous oral or written understandings, statements, representations or promises between the Parties concerning the matters contained herein.

Governing Law

19. This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said state. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the Parties.

Successors in Interest

20. This Agreement shall be binding upon and inure to the benefit of the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the Parties.

Understanding of Agreement

21. This Agreement has been negotiated in good faith and each party warrants and represents that in executing this Agreement, they are not relying upon any representation, promise, inducement or statement made in negotiation that has not been included in the terms of this Agreement.

Fees and Costs

22. Except as otherwise provided in this Agreement, each party shall bear all costs (including expert and appraisal fees) (excluding appraisal fees not to exceed \$5,000 pursuant to section 1263.025 of the California Code of Civil Procedure) and attorneys' fees individually incurred in connection with negotiating the matters described in this Agreement.

Severability

23. In case any part, term, portion or provision of this Agreement is determined to be illegal, invalid or unenforceable, the remaining parts, terms, portions and provisions shall remain valid, enforceable, and in full force and effect.

Amendment to Agreement

24. This Agreement may only be amended by written agreement, executed by all Parties.

Counterparts

25. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Memorandum of Agreement

26. County shall record a memorandum of this Agreement.

OWNER:
DOUGLAS GRANT LINE ASSOCIATES LTD., A LIMITED PARTNERSHIP

By: Robert M. Matz & Associates, Inc., General Partner

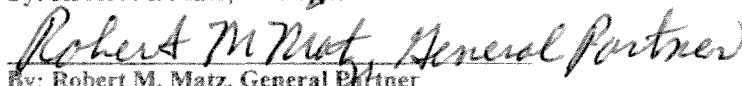

By: Robert M. Matz, President


By: Robert M. Matz, General Partner

OWNER:
SACRAMENTO REALTY INVESTORS - EL DORADO LTD., A LIMITED PARTNERSHIP

By: Robert M. Matz & Associates, Inc., General Partner


By: Robert M. Matz, President


By: Robert M. Matz, General Partner

OWNER:
SACRAMENTO REALTY INVESTORS - CLARKSVILLE LTD., A LIMITED PARTNERSHIP

By: Robert M. Matz & Associates, Inc., General Partner


By: Robert M. Matz, President


By: Robert M. Matz, General Partner

POSSESSION AND USE AGREEMENT (Cont.)
(Form #)

EXHIBIT
8-EX-25 (REV 9/2011)
Page 7 of 7

RECOMMENDED FOR APPROVAL

DATED: 10/10/12

By: 

Right of Way Agent

DATED: _____

By: _____
Kimberly Kerr, Interim Director

El Dorado County Department of Transportation

APPROVED BY: **COUNTY OF EL DORADO**

DATED: _____

By: _____
John R. Knight, Chair
Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

By: _____

Deputy Clerk

EXHIBIT "A"

PORTION OF: APN 122-720-09

LEGAL DESCRIPTION

All that property situate in the County of El Dorado, State of California, Section 1, Township 9 North, Range 8 East, Mount Diablo Meridian, shown on the Record of Survey filed in Book 32, of Record of Surveys at Page 88, El Dorado County Records, being more particularly described as follows:

FEE

Beginning at the southeasterly corner of Parcel #B5, as described in the Corporation Grant Deed to El Dorado Hills Investors, L.T.D., recorded November 12, 1981 in Book 2031, at Page 157, Official Records of El Dorado County, which point bears from the southwest corner of last said Section 1, along the South line thereof, North 89°17'38" East 1078.04 feet; thence leaving last said South line and along the easterly line of last said Parcel, North 29°15'50" West 478.11 feet to the southerly line of State Route 50; thence along last said southerly line, North 67°21'01" East 37.36 feet and North 82°27'12" East 587.33 feet to the westerly line of the property described in the Grant Deed to KFRD Investments, Inc. and Tong Ranch LLC, in Document Number 2005-53716, Official Records of El Dorado County; thence along the westerly line of last said property, South 15°07'19" East 520.23 feet to the South line of last said Section 1; thence along last said South line, South 89°17'38" West 518.77 feet to the **Point of Beginning**.

Containing 272,859 square feet or 6.26 acres, more or less.

See Exhibit "B", attached hereto and made a part hereof.

Bearings used in the above description(s) are based upon CCS83 Zone 2, Epoch 1991.35.
Grid distances shown are in US Survey feet, divide the distances shown above by 0.99991 to
obtain ground level distances.

This real property description has been prepared at Mark Thomas & Company, Inc , by me,
or under my direction, in conformance with the Professional Land Surveyors Act.

Albert DeLeon

Albert DeLeon, LS 7716

License expires 3-31-13

June 22, 2011

Date

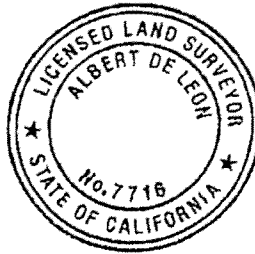
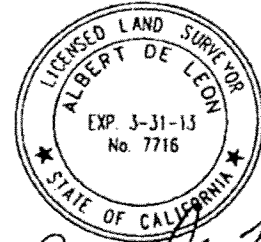


EXHIBIT "B"

LEGEND

- EXISTING ACCESS--CONTROL
- RIGHT OF WAY
- DIMENSION POINT
TYPICAL
- ✱ SECTION CORNER



STATE ROUTE 50

Albert de Leon
June 28, 2011

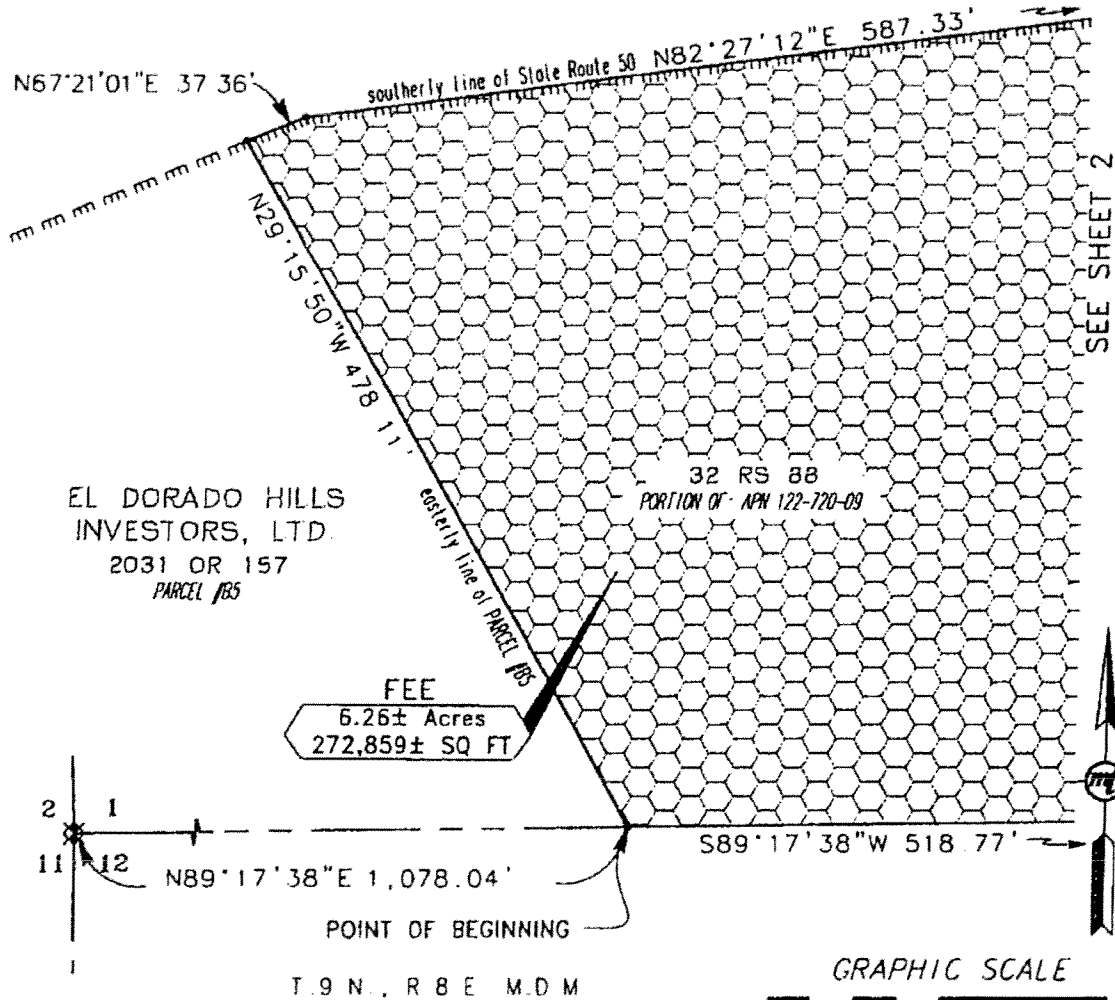


EXHIBIT "B"
PORTION OF APN 122-720-09
IN THE COUNTY OF EL DORADO
STATE OF CALIFORNIA

Mark Thomas & Co., Inc.
7300 Folsom Blvd, Ste. 203
Sacramento, CA 95826
(916) 381-9100

DWG. BY RPM
CK. BY MJS

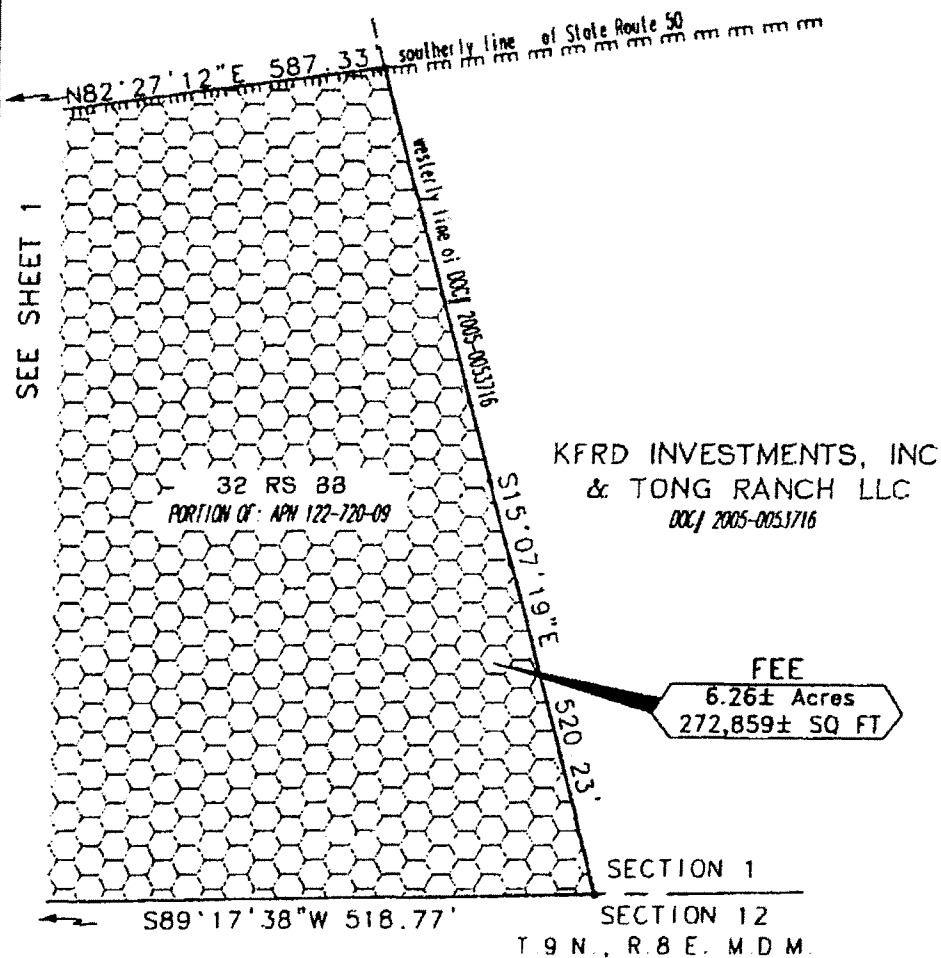
SCALE
1"=100'

EXHIBIT "B"

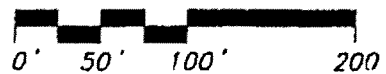
LEGEND

- EXISTING ACCESS-CONTROL
- RIGHT OF WAY
- DIMENSION POINT
- TYPICAL

STATE ROUTE 50



GRAPHIC SCALE



SHEET 2 OF 2



EXHIBIT "B"
PORTION OF APN 122-720-09
IN THE COUNTY OF EL DORADO
STATE OF CALIFORNIA

Mark Thomas & Co., Inc.
7300 Folsom Blvd, Ste. 203
Sacramento, CA 95826
(916) 381-9100

DWG. BY RPM
CK. BY MJS

SCALE
1"=100'

#	APN / OWNER
1	122-720-04 EDH 52
1A	122-720-06
3	122-720-04 COUNTY OF EL DORADO
4	122-720-06 PRESBYTERY OF SACRAMENTO
5	122-720-06 RAMONSON GRADO VENTURES LLC
6	122-720-07 HARDY TRUST/BRICCOLLA
7	122-720-03 EL DORADO HILLS INVESTORS
9	121-280-01 EL DORADO HILLS INVESTORS
10	118-170-01 EL DORADO HILLS INVESTORS
11	118-170-04 HUDDINGE PARTNERS
12	121-280-12 HUDDINGE PARTNERS
15	121-160-03 SERRANO ASSOCIATES, LLC
16	121-120-22 SERRANO ASSOCIATES, LLC
19	116-170-02 HARDY TRUST/BRICCOLLA
20	122-590-01 SERRANO ASSOCIATES, LLC

