

# STAFF REPORT



ITEM NO. 14  
CITY OF OCEANSIDE

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DATE: June 28, 2006

TO: Chairman and Members of the Community Development Commission

FROM: Public Works Department

SUBJECT: **GRANT OF ACCESS EASEMENT TO NCTD OVER COMMISSION OWNED PROPERTY BETWEEN TYSON STREET AND WISCONSIN AVENUE**

## **SYNOPSIS**

Staff recommends that the Community Development Commission (Commission) grant an access easement to the North County Transit Development Board (NCTD) for access and maintenance of NCTD railroad right-of-way and facilities lying adjacent to Commission-owned real property from Tyson Street to Wisconsin Avenue, and authorize the Chairman to execute the document. The property under consideration is the existing and future parking lot property acquired from the Atchison Topeka and Santa Fe Railroad lying west of the rail lines.

## **BACKGROUND**

In negotiations to acquire an easement from NCTD for the construction and operation of the second phase of the Coastal Rail Trail, i.e., Oceanside Boulevard to Wisconsin Avenue, NCTD stated the need to access its right-of-way and railroad facilities from the existing and future parking lots located west of the rail lines between Tyson Street and Wisconsin Avenue. The uses proposed by NCTD include security patrol, and the service, maintenance, repair and/or replacement of the railroad right-of-way and rail facilities.

This item was presented to the City Council for consideration and approval on February 1, 2006. Issues were raised at this meeting necessitating the revision of the agreement to address the comments made by Council. The revised agreement is similar to the terms and provisions of the easement being granted to the City by NCTD for the Coastal Rail Trail Phase 2 project.

## **ANALYSIS**

By approving the grant of the access easement, the Commission would be allowing NCTD, its agents and employees to enter upon the property to patrol and maintain its adjacent right-of-way and facility. Under the provisions of the easement, NCTD acknowledges the public's use of the easement area for parking and multi-modal non-motorized transportation facilities.

Prior to entering upon the easement area for the mobilization of heavy equipment and machinery, except in the case of emergency, NCTD shall confer with the Commission/City so reasonable efforts may be taken to ensure adequate access to NCTD's facilities. The Commission reserves the right to impose reasonable conditions and limitations on the use of the property by NCTD for storage of equipment, machinery and materials.

**FISCAL IMPACT**

There is no adverse fiscal impact associated with this item.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

The referenced document has been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the Community Development Commission grant an access easement to the North County Transit Development Board for access and maintenance of NCTD railroad right-of-way and facilities lying adjacent to Commission-owned real property from Tyson Street to Wisconsin Avenue; and authorize the Chairman to execute the document.

PREPARED BY:

  
William F. Marquis  
Senior Property Agent

SUBMITTED BY:

  
Barry E. Martin  
Interim City Manager

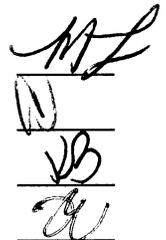
REVIEWED BY:

Michelle Skaggs Lawrence, Assistant to the City Manager

Peter A. Weiss, Public Works Director

Kathy Baker, Redevelopment Manager

Douglas E. Eddow, Real Property Manager

  
MS  
PW  
KB  
DE

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

North County Transit District  
Manager of Real Estate  
810 Mission Avenue  
Oceanside CA 92054

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SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

APN: 150-077-22  
150-077-25  
150-263-22  
150-263-23

No Fees Due – For Benefit of Public Agency  
No Documentary Tax Due R&T Code §11922

ACCESS EASEMENT  
(TYSON STREET TO WISCONSIN AVENUE)

BY AND BETWEEN  
COMMUNITY DEVELOPMENT COMMISSION  
OF THE CITY OF OCEANSIDE  
("Grantor")  
AND  
NORTH COUNTY TRANSIT DISTRICT  
("Grantee")

## ACCESS EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made this 10<sup>th</sup> day of May, 2006 by and between the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE, a public body corporate and politic, hereinafter referred to as "CDC", and the NORTH COUNTY TRANSIT DISTRICT, a public agency, hereinafter referred to as "NCTD".

### RECITALS

- A. CDC owns the real property (the "Easement Parcel") as more particularly described in Exhibit "A" and depicted on a plat thereof labeled Exhibit "B" attached hereto and incorporated herein by reference, the public purpose and use of which is public parking.
- B. NCTD owns and operates a railroad right-of-way adjacent to the Easement Parcel and seeks to use the Easement Parcel for purposes of ingress and egress, including access to, and the security patrol, service, maintenance, repair, and/or replacement of NCTD's railroad right-of-way and facilities (the "NCTD Facilities") lying adjacent to the Easement Parcel.
- C. CDC and NCTD have agreed that NCTD may access and use the Easement Parcel for said purposes under and pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

- 1. Grant of Easement. CDC hereby agrees to and does grant NCTD an easement ("Easement") over, upon and across the Easement Parcel for the purposes of and pursuant to conditions set forth in this Agreement.
- 2. Location of Easement Parcel. The Easement Parcel is that certain real property located in the City of Oceanside, County of San Diego, State of California, as more particularly described in a legal description thereof labeled Exhibit "A" and depicted on a plat thereof labeled Exhibit "B" attached hereto and incorporated herein by reference.
- 3. Limitation on Easement. The Easement is subject to the following:
  - a. All pre-existing rights, interests and easements affecting the use of the Easement Parcel.
  - b. This grant of easement is made and accepted subject to CDC's (and/or that of the City of Oceanside ("CITY")) existing and future use of the Easement Parcel for public parking, multi-modal non-motorized transportation facility and other public purposes of CDC and/or CITY. NCTD hereby recognizes and agrees that the said uses of the Easement Parcel by CDC or CITY, their successors-in-interest, agents, employees, assigns, transferees, invitees and/or the general public, may limit or interfere with NCTD's use and enjoyment of the Easement Parcel or portions thereof from time-to-time, and that NCTD shall hold, save and defend CDC and CITY harmless from any and all damages or claims, of any nature whatsoever, that may arise out of NCTD's, its agents', contractors' or

employees', inability to access NCTD Facilities from the Easement Area or any portion thereof and further agrees that no legal action or complaint of any kind whatsoever shall be instituted against CDC, CITY or other authorized users of the Easement Parcel by NCTD or on NCTD's behalf as a result of their use of the Easement Parcel.

- c. Notwithstanding the foregoing, CDC and NCTD shall, in a timely manner, except in the case of emergency necessitating immediate access to the NCTD Facilities, confer and communicate, with each other, prior to NCTD's entry upon the Easement Parcel with heavy equipment and machinery so that reasonable efforts may be taken to ensure reasonable and adequate access to the NCTD Facilities from the Easement Parcel.
- d. NCTD shall not place or permit to be placed upon the Easement Parcel any gasoline or any hazardous or explosive material, waste or substance. NCTD may not store or allow to be stored on or upon the Easement Parcel any materials, equipment and/or machinery, except by written permission from CDC, which permission shall not be unreasonably withheld, CDC retains the right to impose reasonable conditions and limitations upon NCTD's use of the Easement Parcel for the storage of materials, equipment and/or machinery.
- e. CDC hereby reserves unto itself, its successors and/or assigns, the right and/or easement, in, over, on, under, across and through the Easement Parcel, including airspace and sub-surface, for uses not inconsistent with NCTD's use of the Easement, including but not limited to third party uses of the Easement Parcel.

3.1 This Agreement shall have a term (the "Term") of fifty (50) years beginning on May 10, 2006 (the "Commencement Date") and ending on May 9, 2056, unless terminated earlier pursuant to Section 4 or 10 of this Agreement or otherwise.

4. Permitted Use. The Easement shall be used for the exclusive purposes of ingress and egress, including access to, and the security patrol, service, maintenance, repair, and/or replacement of the NCTD Facilities. NCTD shall not use or permit the Easement Parcel to be used for any other purpose without the express written consent of CDC. NCTD shall not commit or permit the commission by others of any damage, nuisance or waste of the Easement Parcel. If NCTD, its successors, assigns or agents, shall use the Easement Parcel for any purpose other than as stated in this Section 4, or fail to act in strict accordance with the provisions of this Agreement, then CDC shall provide NCTD with a timely written notice of any claim of default, meet and confer with NCTD regarding said claim of default, and allow NCTD an opportunity to cure said default so long as NCTD proceeds expeditiously to cure the default. It is acknowledged that, given the safety issues involved, some defaults may require very expeditious cures. If NCTD fails to cure said default in a timely manner, CDC may exercise its remedies at law or equity against NCTD including termination of this Agreement.

4.1 Payment of Use Fee. NCTD shall pay a use fee to CDC in the sum of One Dollar (\$1.00) as partial consideration for the Easement, payable in advance, on the first day of the Term.

5. Construction Matters.

- 5.1 NCTD agrees that all work to be done from or on the Easement Parcel by NCTD and/or its contractors in the maintenance, repair or replacement of the NCTD Facilities shall be performed in a good and workmanlike manner and done to the satisfaction of CDC.
- 5.2 CDC shall have the right to enter the Easement Parcel to post notices of non-responsibility. NCTD shall not permit any mechanics' or other liens to be filed against the Easement Parcel nor against NCTD's interest therein by reason of labor and materials furnished to the NCTD Facilities at NCTD's insistence or request. If any such lien is filed against the Easement Parcel, NCTD shall cause the same to be discharged of record, either by payment of the claim or by posting and recording the bond contemplated by California Civil Code Section 3143, within twenty (20) days after demand from CDC.
- 5.3 Any contractor or subcontractor performing work on, or in connection with NCTD's use and entry onto the Easement Parcel pursuant to this Agreement, shall be conclusively deemed to be the servant and agent of NCTD, acting on behalf and in the scope of such contractor's or subcontractor's employment for NCTD and subject to the provisions of this Agreement.
- 5.4 Any and all construction work performed or caused to be performed by NCTD, or on its behalf, from or upon the Easement Parcel shall be performed in accordance with any and all applicable Federal, State and local agency laws, rules and regulations, including, but not limited to, such rules and regulations as are established by CDC and/or CITY.
- 5.5 In the exercise of the uses permitted hereunder, NCTD shall ensure that adequate precautions are provided for the protection of the public.

6. Repairs and Maintenance.

- 6.1 NCTD shall repair or replace, or cause the repair or replacement of, at CDC's sole discretion, any and all damage to the Easement Parcel and/or any improvements situated thereon resulting from NCTD's, its contractors', subcontractors', agents' or employees' use of the Easement Parcel, to the full and complete satisfaction of CDC. In its use of the Easement Parcel with respect to the maintenance and repair of the NCTD Facilities from the Easement Parcel, NCTD shall perform all maintenance and clean-up of the portion(s) of the Easement Parcel, so utilized, and the improvements thereon as necessary to keep both in good order and safe condition and in accordance with all applicable Federal, State and local laws and regulations, including, but not limited to, rules and regulations established by CDC and/or CITY.
- 6.2 The exercise of CDC's and/or CITY's use of the Easement Parcel as stated in Sections 3.b and 3.e above, or other entities having rights and obligations in the Easement Parcel, may require the temporary closure of the Easement Parcel, or portions thereof, for such activities, including but not limited to, the construction, installation, maintenance and/or repair of improvements thereon, and for the repair, resurfacing and resealing of paved surfaces. Accordingly, CDC, and its

agents, invitees, licensees and employees, shall have the right at any time to barricade any portion of the Easement Parcel and prevent NCTD's use thereof on a temporary basis as CDC deems necessary for the duration of the work. In the event such barricading is installed, CDC shall provide prompt notice to NCTD by phone or telefax and in accordance with Section 12, below.

7. Indemnification.

7.1 In addition to and without limitation on any other provision of this Agreement, NCTD hereby agrees to defend, indemnify and hold CDC and CITY, their boards, officers, agents, employees, easement holders, licenses, franchisees, invitees and authorized volunteers, harmless from any and all loss, damage, liability, claims, demands, costs, charges and expenses (including reasonable attorneys' fees) and causes of action of whatever character which may be incurred, sustained or be subject to by any indemnified party on account of loss of or injury to or destruction of property and loss of the use thereof, or for bodily injury or death of any persons (including, but not limited to, employees, contractors, subcontractors, easement holders, agents, servants, licensees, franchisees, invitees and authorized volunteers of CDC and/or CITY or NCTD), arising out of or in any way related, in whole or in part, to the use of the Easement Parcel by NCTD, except to the extent that such claims or expenses arise from CDC's or CITY's sole and active negligence or willful misconduct. NCTD shall have the right to select outside counsel (subject to approval of CDC, which may not be unreasonably withheld) to defend CDC and all indemnified parties pursuant to this Paragraph.

7.2 Notwithstanding the foregoing, nothing in this Agreement is intended to abrogate or limit any statutory or common law immunities that would otherwise attach to the actions or undertakings of NCTD or to those of CDC.

8. Condition of Easement Parcel. NCTD warrants that it has inspected and accepts the Easement in an "AS-IS, WHERE-IS CONDITION, WITHOUT WARRANTY AS TO QUALITY, CHARACTER, PERFORMANCE OR CONDITION" with all faults and with full knowledge of (i) the physical condition of the Easement Parcel, (ii) all zoning and other land use laws and regulations affecting the Easement Parcel, (iii) all matters of record relating to the Easement and the Easement Parcel, and (iv) all other conditions, restrictions, encumbrances relating to the Easement.

9. Insurance. NCTD shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

a. NCTD shall maintain the following minimum limits:

General Liability

Combined Single Limit (Per Occurrence)	\$1,000,000
General Aggregate	\$2,000,000

b. All insurance companies affording coverage to the NCTD shall be required to add the Community Development Commission of the City of Oceanside and the City

of Oceanside, their directors, officers, employees, contractors, agents and authorized volunteers, as "additional insured" under the designated insurance policy. Insurance coverage provided to CDC and City as additional insured shall be primary insurance to CDC and City, their directors, officers, employees, contractors, agents and authorized volunteers. The coverage shall contain no special limitations on the scope of protection afforded to Authority and City, their directors, officers, employees, contractors, agents and authorized volunteers. Any insurance, self-insurance or other coverage maintained by CDC and/or CITY, their directors, officers, employees, contractors, agents and authorized volunteers, shall not contribute to the insurance provided pursuant to this Section 9.

- c. All insurance companies affording coverage to the NCTD shall be insurance organizations acceptable to the CDC and CITY, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California and rated A-X or better by A.M. Best.
- d. All insurance companies affording coverage shall provide thirty (30) days written notice to CDC should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- e. NCTD shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- f. NCTD shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the NCTD to provide such a substitution and extend the policy expiration date shall be considered a default by NCTD and may subject the NCTD to a termination of this Agreement.
- g. Maintenance of insurance by the NCTD as specified in this Agreement shall in no way be interpreted as relieving the NCTD of any responsibility whatever and the NCTD may carry, at its own expense, such additional insurance as it deems necessary.
- h. If NCTD fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CDC and CITY have the right to obtain the insurance. NCTD shall reimburse CDC or CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CDC or CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by NCTD on the first (1st) day of the month following the notice of payment by CDC or CITY.

Notwithstanding the preceding provisions of this Section 9, any failure or refusal by NCTD to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

- i. CDC, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving NCTD sixty (60) days prior written notice. CDC's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Easement Parcel.
- j. NCTD shall upon knowledge notify CDC and CITY within twenty-four (24) hours after the occurrence of any accident or incident on the Easement Parcel or adjacent property which could give rise to a claim under any of the insurance policies required hereunder.
- k. Notwithstanding any other provision of this Agreement, NCTD may self-insure for a risk set forth in this Section 9 in the manner and to the extent that the NCTD self-insures for similar risks with respect to its operations, equipment and property. To the extent the Certificates of Insurance provided pursuant to Section 9.e, above, do not describe the self-insurance, the manner in which such self-insurance is provided and the extent of such self-insurance shall be set forth in a Certificate of Self-Insurance, delivered to CDC and signed by an authorized representative of the self-insured party, which fully describes the self-insurance program and how the program covers the risks set forth in this Section 9. Insurance provided by a joint powers agency insurance pool shall be self-insurance for the purposes of this paragraph. If at any time during the term of this Agreement NCTD elects to not self-insure, NCTD shall comply with all applicable provisions of this Section 9 to the extent it does not so self-insure.

9.1 Workers' Compensation and Employer Liability. NCTD and its contractors shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the Easement Parcel, and NCTD shall defend, protect and save CDC and CITY, their directors, officers, boards, employees, agents and authorized volunteers, from and against all claims, suits, and actions arising from any failure of NCTD or any of NCTD's contractors or assigns to maintain such insurance. Evidence of such insurance satisfactory to CDC and/or CITY will be delivered to CDC concurrent with execution of this Agreement or within ten (10) days thereafter or on such other date agreed to by CDC in writing.

10. Termination. This Agreement may be terminated: (1) at any time upon the mutual agreement of CDC and NCTD; or (2) as provided in Section 4, above. Upon termination of this Agreement, NCTD shall leave the Easement Parcel in a neat and safe condition and all improvements made by NCTD thereon, if any, shall be the property of CDC and remain on the Easement Parcel. However, CDC may, at CDC's option, by ninety (90) days written notice of its intent to terminate, require NCTD to remove any improvements made by NCTD from the Easement Parcel and to restore the Easement Parcel to its original condition (normal wear and tear excepted) prior to termination of this Agreement at NCTD's sole cost and expense. If NCTD fails to do so, CDC or City may perform such removal and restoration in which case NCTD shall pay CDC or City within ninety (90) days after demand therefor the cost of removal of such improvements. CDC or CITY will use reasonable diligence in the removal of such improvements if it elects to do so. Termination of this Agreement shall not release either party from any liability or obligation hereunder resulting from an event that occurred before termination.

11. Nonwaiver. The failure of either party to this Agreement to enforce or exercise its rights with respect to any term, covenant or condition of this Agreement shall not be construed as a waiver of that term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition contained in this Agreement.
12. Notices. All notices shall be in writing and shall be deemed to have been given when delivered personally or deposited in the United States Mail, registered or certified, postage prepaid, and addressed to the party to whom the notice is directed at the address set forth below:

To CDC or CITY at: City of Oceanside  
Attn: Public Works Department  
300 North Coast Highway  
Oceanside, CA 92054

To NCTD at: North County Transit District  
Attn: Real Estate Department  
810 Mission Avenue  
Oceanside, CA 92054

or to such other address as CDC or NCTD may designate by written notice to the other parties to this Agreement.

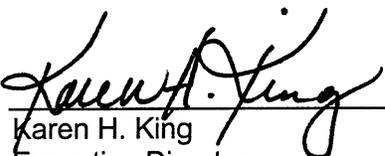
13. Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to the Easement and supersedes all prior agreements, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated agreement. This Agreement shall not be modified except by written agreement of the parties.
14. Invalidity of Particular Provisions. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
15. Assignment. NCTD shall have no right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of CDC, which consent shall not be unreasonably withheld. CDC shall have the right, power, or authority to assign this Agreement or any portion of this Agreement or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law to CITY or any of its various boards or agencies without NCTD's prior written approval.
16. Successors. This Agreement shall bind and inure to the benefit of both CDC and NCTD and their respective successors, assigns, heirs and legal representatives.
17. Time of the Essence. Time is of the essence in this Agreement and every provision contained in this Agreement.

18. Headings. Any headings preceding the text of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
19. Parties of Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than CDC, CITY and NCTD any rights, remedies or claims under or by reason of this Agreement or any terms, covenants, condition or stipulation hereof; and all terms, covenants, stipulations, promises and agreements in this Agreement made by or on behalf of CDC, CITY and NCTD shall be for the sole and exclusive benefit of CDC, CITY and NCTD.
20. No Recourse under Agreement. All covenants, stipulations, promises, agreements and obligations of the parties hereto contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the parties hereto, respectively, and not of any member, officer, employee or agent of the parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this Agreement against any member, officer, employee or agent of the parties hereto.
21. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of CDC and NCTD.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

“NCTD”  
 NORTH SAN DIEGO COUNTY TRANSIT  
 DEVELOPMENT BOARD

“CDC”  
 COMMUNITY DEVELOPMENT  
 COMMISSION OF THE CITY OF  
 OCEANSIDE

By:   
 Karen H. King  
 Executive Director

By: \_\_\_\_\_  
 Steven R. Jepsen  
 Executive Director

APPROVED AS TO FORM:  
  
 By: \_\_\_\_\_  
 C. Michael Cowett  
 General Counsel  
 North San Diego County Transit  
 Development Board

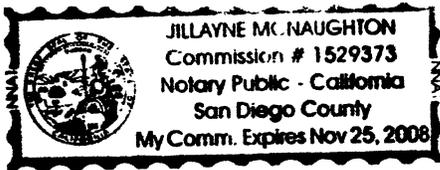
APPROVED AS TO FORM:  
 By:   
 Barbara L. Hamilton  
 Assistant General Counsel  
 Community Development Commission  
 of the City of Oceanside

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

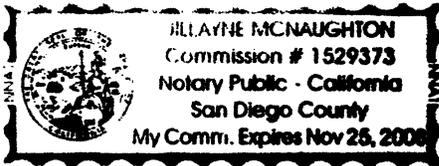
County of San Diego } ss.

On May 10, 2006, before me, Jillayne McNaughton, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
 personally appeared Karen H. King  
Name(s) of Signer(s)



personally known to me

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.



Place Notary Seal Above

WITNESS my hand and official seal.

Jillayne McNaughton  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Access Easement Easement Recording

Document Date: May 10, 2006 Number of Pages: one page

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Karen H. King

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
 Top of thumb here



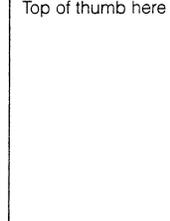
Signer Is Representing: \_\_\_\_\_

\_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
 Top of thumb here



Signer Is Representing: \_\_\_\_\_

\_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

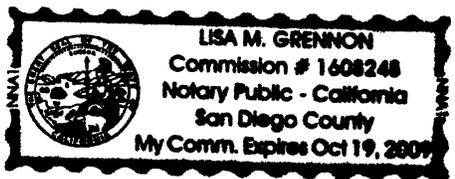
State of California )  
County of San Diego )ss.

On May 17, 2006 before me, Lisa M. Grennon, Notary Public  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared C. Michael Couett  
Name(s) of Signer(s)

personally known to me  
 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.



WITNESS my hand and official seal.

Lisa M. Grennon  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable for persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Access Easement

Document Date: 5/10/06 Number of Pages: 8

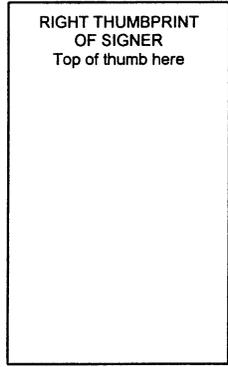
Signer(s) Other Than Named Above: N/A

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer – Title(s): \_\_\_\_\_
- Partner –  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California )  
County of San Diego )<sup>SS.</sup>

On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

- personally known to me
- 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.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable for persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer – Title(s): \_\_\_\_\_
- Partner –  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

**EXHIBIT "A"**

**LEGAL DESCRIPTION  
[NCTD Access Easement]**

THAT CERTAIN REAL PROPERTY IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING A PORTION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S 200-FOOT WIDE STRIP OF LAND AS ACQUIRED BY CALIFORNIA SOUTHERN RAILROAD COMPANY (PREDECESSOR IN INTEREST TO SAID RAILWAY COMPANY), UNDER THE PROVISIONS OF THE ACT OF CONGRESS OF MARCH 3, 1875, (18 STAT. 482), AND SHOWN ON A MAP FILED IN THE OFFICE OF THE SECRETARY OF THE INTERIOR, MARCH 14, 1881, AND APPROVED MAY 12, 1881, AS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING THAT PORTION OF PARCEL 1 DESCRIBED IN QUITCLAIM DEED FROM SAID RAILWAY COMPANY TO THE OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION DATED SEPTEMBER 19, 1989, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ON DECEMBER 18, 1989, AS DOCUMENT NO. 89-683345, LYING SOUTHEASTERLY OF A LINE PARALLEL WITH AND DISTANT NORTHWESTERLY, 20 FEET, MEASURED AT RIGHT ANGLES, FROM THE NORTHEASTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF TYSON STREET (80-FOOT WIDE) (ALSO BEING THE NORTHWESTERLY LINE OF LOT 1 IN BLOCK 2) AS SHOWN ON TYSON'S ADDITION TO OCEANSIDE, ACCORDING TO MAP THEREOF NO. 218, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ON OCTOBER 26, 1885.

CONTAINING AN AREA OF 2.99 ACRES, MORE OR LESS.

