

**RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:**

Michael A. Waggoner and
Charlotte A. Waggoner, Trustees.
10641 Bent Tree Road
Santa Ana, CA 92705-5908

Mail Tax Statements as shown above

THIS SPACE FOR RECORDER'S USE ONLY

APN: 104-290-19 portion
Location: Incorporated City of Tustin
Facility Name: Peters Canyon
Facility Parcel No.:

DOCUMENTARY TRANSFER TAX \$ _____

- ☐ Computed on the consideration or value of property conveyed
☐ Exempt per Revenue & Taxation Code Section 11922
☐ Exempt from Recording Fees per Govt. Code Section 27383

EASEMENT DEED AND AGREEMENT

This EASEMENT DEED AND AGREEEMNT is made _____, 2020 by and between:

COUNTY OF ORANGE,
a political subdivision of the State of California,
hereinafter referred to as "**COUNTY**,"

and

Michael A. Waggoner and Charlotte A. Waggoner, Trustees of the
Waggoner Revocable Living Trust Dated October 11, 2010
hereinafter referred to as "**GRANTEE**," its, successor and assigns,

COUNTY and GRANTEE may sometimes hereinafter be individually referred to as "**Party**" or jointly as "**Parties**".

RECITALS

- A. WHEREAS, GRANTEE has used an existing roadway over the COUNTY's property located at the intersection of Bent Tree and Shady Canyon Road, identified as a portion of Orange County Assessor's Parcel Number 104-290-19, ("County Roadway") to access their adjacent property, located at 10641 Bent Tree Road, Santa Ana CA, identified as Orange County Assessor's Parcel Number 503-391-19 (the "Waggoner Property") for landscape and maintenance purposes.
- B. WHEREAS, GRANTEE claims a right to utilize the County Roadway for such access as they have done since acquiring the Waggoner Property on June 11, 1999.
- C. WHEREAS, GRANTEE now desires to secure an easement for continued access over the County Roadway to provide for landscaping and maintenance of the Waggoner Property.

GRANT OF EASEMENT

NOW, THEREFORE, in consideration of the above and for good and valuable consideration receipt of which is hereby acknowledged, the COUNTY does hereby grant to GRANTEE a non-exclusive, appurtenant easement to provide access to the Waggoner Property in, on, over, upon and across that certain real property (hereinafter referred to as "**Easement Area**") described in "**Exhibit A**," and illustrated in "**Exhibit B**," which exhibits are attached hereto and made a part hereof. COUNTY and GRANTEE may sometimes hereinafter be individually referred to as "**Party**" or jointly as "**Parties**".

GRANTEE's rights shall include rights to use the Easement Area for residential vehicular, pedestrian and bicycle access and to use surface improvements consisting of roadways, gates and landscaping ("**Facilities**") and shall include reasonable access to the Easement Area for the purpose of exercising the rights herein granted and the responsibility to maintain such Facilities, subject to the requirements of paragraph 2 below.

It is understood and agreed by the Parties hereto and their successors and assigns that the easement and right of way herein granted in this easement deed ("**Easement Deed**") shall be subject to the following terms, conditions, and reservations:

1. INCORPORATION OF THE RECITALS

The above-referenced Recitals are by this reference incorporated herein.

2. CONSTRUCTION AND MAINTENANCE (PMES2.1S)

GRANTEE shall coordinate any necessary construction or maintenance of the Easement Area with the other easement holders and/or Holly Tree Lane Road Association as applicable. All construction and/or maintenance plans shall be approved in writing by the Director of OC Parks, or designee, (hereinafter referred to as "Director") prior to commencement of any work in, on or about the Easement Area; and upon completion of any such work, GRANTEE shall immediately notify Director in writing of such completion.

Director's approval of GRANTEE's construction and/or maintenance plans shall not be deemed approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements. COUNTY is not responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of GRANTEE'S construction and/or maintenance plans. Director will rely on the professional expertise of the Engineer of Record when approving GRANTEE'S construction and/or maintenance plans.

Should it be necessary for GRANTEE to conduct any construction or excavation activities or otherwise disturb the surface of the Easement Area, GRANTEE agrees to notify Director in writing sixty (60) days in advance of such planned activities and obtain Director's written approval of all plans. GRANTEE shall obtain all required permits including a County Property Permit for construction, from COUNTY with payment of normal processing fees therefor (if applicable). Director's approval shall not be withheld unreasonably, nor shall said approval be necessary in any emergency situation or in conducting routine maintenance activities which do not involve disturbance of the surface area. Grantee shall also provide evidence of adequate insurance coverage to the Director prior to commencement of any such activities. GRANTEE further agrees that any excavation shall be made in such a manner as will cause the least injury to the surface of the ground and any improvements and/or landscaping around such excavation, and that the earth so removed shall be replaced and the surface of the ground and any improvements and/or landscaping around such excavation, damaged shall be promptly restored by GRANTEE at its expense to the same condition as existed prior to excavation, to Director's satisfaction.

3. REMOVAL AND/OR ABANDONMENT (PMES3.1S)

GRANTEE agrees that in the event GRANTEE'S use of said Facilities ceases for a continuous period of

more than five (5) years without written notice from GRANTEE to COUNTY of the circumstances affecting such suspension and of GRANTEE'S intention to resume usage of the Facilities, GRANTEE shall, at COUNTY's request and at no cost to COUNTY, remove and/or abandon said Facilities within ninety (90) days after receipt of written notice from COUNTY to remove and/or abandon. Following such removal and/or abandonment, GRANTEE shall, at no cost to COUNTY, restore the Easement Area to the condition that existed prior to the granting of this Easement Deed, to COUNTY's satisfaction.

GRANTEE shall also execute and deliver to COUNTY, within ninety (90) days of such removal and/or abandonment, for recordation in the Official Records of Orange County, California, a Quitclaim Deed sufficient to remove the encumbrance of this Easement Deed from title.

4. ACCESS (N)

GRANTEE shall use a lock on the gates that access the Easement Area which shall be utilized in a fashion (e.g. daisy-chained) that does not preclude access to other easement holders. Grantee shall insure that the gates remain locked at all times except upon GRANTEE's entrance to, or exit from the Easement Area. GRANTEE shall not allow commercial activities or members of the public to access the Easement Area. GRANTEE shall not park any vehicle(s) within the Easement or otherwise obstruct the Easement Area and shall restrict vehicular speed to ten (10) miles per hour within the Easement Area.

5. COMPLIANCE WITH REGULATORY AUTHORITIES (PMES6.1S)

GRANTEE shall, at its own cost and expense, promptly and at all times observe, comply with and carry out all present and future orders, regulations, directions, rules, laws, ordinances, permits, and requirements of all governmental authorities, including but not limited to environmental regulatory authorities, with jurisdiction in, on, over and about the Easement Area, which arise from GRANTEE'S use of or performance of any activities permitted to be conducted in, on, over, or across the Easement Area.

In addition, GRANTEE shall ensure that all construction in the Easement Area is performed in accordance with any NPDES (National Pollutant Discharge Elimination System) permit requirements or other water quality statutes, regulations, ordinances, or permits applicable to the construction, including but not limited to use of appropriate best management practices, so as to ensure that pollutants are not discharged into the waters of the state.

No approvals or consents given hereunder by COUNTY, as a Party to this Easement Deed, shall be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules or regulations.

6. HOLD HARMLESS (PMES7.1S)

GRANTEE hereby releases and waives all claims and recourse against COUNTY, including the right of contribution for loss of or damage to property, or injury to or death of any person, arising from, growing out of or in any way connected with or related to this Easement Deed, except claims arising from the concurrent active or sole negligence of COUNTY, its officers, agents, employees and contractors.

GRANTEE hereby agrees to indemnify, defend (with counsel approved by COUNTY), and hold harmless, COUNTY, its elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the maintenance, use of, operations or activities conducted in, on or over the Easement Area, and/or the exercise of the rights under this Easement Deed by GRANTEE, its agents, officers, employees, invitees or licensees, except for liability arising out of the concurrent active or sole negligence of COUNTY, its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If COUNTY is named as co-defendant in a lawsuit, GRANTEE shall notify COUNTY of such fact and shall represent COUNTY in such legal action unless COUNTY undertakes to represent itself as co-defendant in such legal action, in which event, GRANTEE shall pay to COUNTY its

litigation costs, expenses, and attorneys' fees. If judgment is entered against COUNTY and GRANTEE by a court of competent jurisdiction because of the concurrent active negligence of COUNTY and GRANTEE, COUNTY and GRANTEE agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

GRANTEE acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her must have materially affected his or her settlement with the debtor.

GRANTEE, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this Section.

7. GRANTEE'S LIABILITY FOR HAZARDOUS OR TOXIC MATERIALS (PMES8.1S)

GRANTEE shall not cause or permit any "Hazardous Material," as hereinafter defined, to be brought upon, kept, or used in or about the Easement Area. If GRANTEE breaches the obligations stated herein, or if contamination of the Easement Area by Hazardous Material otherwise occurs for which GRANTEE is legally liable to COUNTY for damage resulting therefrom, then GRANTEE shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, COUNTY, and its elected or appointed officials, officers, agents, and employees from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Easement Area, sums paid in settlement of claims, attorney fees, consultant fees, and expert witness fees) which arise during or after GRANTEE'S use of the Easement Area as a result of such contamination. This indemnification includes, without limitation, costs incurred by COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental entity or agency because of Hazardous Material being present in the soil or ground water under the Easement Area. GRANTEE shall promptly take all action, at its sole cost and expense, as is necessary to clean, remove, and restore the Easement Area to its condition prior to the introduction of such Hazardous Material by GRANTEE, provided GRANTEE shall first have obtained COUNTY's written approval and the approval of any necessary governmental entities or agencies for any such remedial action.

As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material, or waste which is or shall become regulated by any governmental entity or agency, including, without limitation, COUNTY acting in its governmental capacity, the State of California, or the United States government.

8. RESERVATIONS (PMES9.1S)

COUNTY hereby reserves for itself and its successors and assigns, such surface, subsurface and aerial rights in the Easement Area as will not unreasonably interfere with or prohibit the use by GRANTEE of the rights and easement herein granted.

9. CONVEYANCE SUBJECT TO EXISTING INTERESTS (PMES10.1S)

This Easement Deed is subject to existing contracts, leases, licenses, easements, encumbrances, and claims which may affect the Easement Area, and the use of the word "grant" herein shall not be construed as a covenant against the existence of any thereof.

Nothing contained herein, or in any document related hereto, shall be construed to imply the conveyance to GRANTEE of rights in the Easement Area which exceed those owned by COUNTY, or any representation or warranty, either express or implied, relating to the nature or condition of the Easement Area or COUNTY'S

interest therein.

10. TAXES AND ASSESSMENTS (PMES11.2S)

This Easement Deed may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Easement Area or upon fixtures, equipment, or other property installed, constructed or used by GRANTEE thereon in connection with this Easement Deed, shall be the full responsibility of GRANTEE, and GRANTEE shall cause said taxes and assessments to be paid promptly when due.

11. NOTICES (PMES12.1S)

All notices, documents, correspondence and communications concerning this Easement Deed shall be addressed as set forth in this Section, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail with postage prepaid. Any such mailing shall be deemed served or delivered twenty-four (24) hours after mailing. Each Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

Notwithstanding the above, either Party may also provide notices, documents, correspondence, or such other communications to the other by personal delivery or by facsimile and so given shall be deemed to have been given upon receipt if provided by personal delivery; or if by facsimile on the day transmitted provided transmitted by 4:30 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day.

To COUNTY:

County of Orange
c/o CEO/Real Estate
RE: Peter's Canyon 104-290-19
P.O. Box 4048
Santa Ana, CA 92702-4048

To GRANTEE:

Michael A. Waggoner and
Charlotte A. Waggoner, Trustees
of the Waggoner Revocable Living Trust
Dated October 11, 2010
10641 Bent Tree Road
Santa Ana, CA 92705-5908

12. VENUE (PMES13.1S)

The Parties hereto agree that this Easement Deed has been negotiated and executed in the state of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Easement Deed, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Orange, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

13. WAIVER OF RIGHTS (PMES14.1S)

The failure of COUNTY to insist upon strict performance of any of the terms, covenants, or conditions of this Easement Deed shall not be deemed a waiver of any right or remedy that COUNTY may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Easement Deed thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Easement Deed.

14. SEVERABILITY (PMES15.1S)

If any term, covenant, condition, or provision of this Easement Deed is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

15. ATTORNEY FEES (PMES16.1S)

In any action or proceeding brought to enforce or interpret any provision of this Easement Deed, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney fees and costs.

16. SUCCESSORS AND ASSIGNS (PMES18.1S)

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.

17. BENT TREE ROAD MAINTENANCE AGREEMENT

A portion of the Easement Area is improved with the private street known as Bent Tree Road. In order to provide for the on-going management and maintenance of Bent Tree Road all users of Bent Tree Road must enter into an agreement with Holly Tree Lane Road Association to provide for the shared expense of the management and maintenance of Bent Tree Road. GRANTEE has been informed of this requirement and has previously entered into a Memorandum of Understanding to provide for the management and maintenance of Bent Tree Road.

COUNTY

COUNTY OF ORANGE

Approved as to Form
Office of the County Counsel
Orange County, California

By: 
Deputy

Date: 12-30-2020

By: _____

Name: _____

Title: _____

Pursuant to Section 1-4-225 of the Codified
Ordinances of the County of Orange

GRANTEE

Michael A. Waggoner and Charlotte A. Waggoner,
Trustees of the Waggoner Revocable Living Trust
Dated October 11, 2010

By: 

By: 

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.

ACKNOWLEDGMENT

State of California
County of Orange

On _____, 20____ before me, _____, personally
(insert name/title of the officer)
appeared _____,
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 _____

(Seal)

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.

ACKNOWLEDGMENT

State of California
County of Orange

On _____, 20____ before me, _____, personally
(insert name/title of the officer)
appeared _____,
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 _____

(Seal)

EXHIBIT A

LEGAL DESCRIPTION

PETERS CANYON REGIONAL PARK

Facility No.: PR30K

Parcel No.: 878

A strip of land, 30.00 feet wide, in the City of Tustin, County of Orange, State of California, over Parcel 1 described in Irrevocable Offer of Dedication recorded September 1, 1992 as Instrument No. 92-586198 of Official Records in the Office of the County Recorder of said County, the northwesterly line of said strip being described as follows:

Commencing at the westerly corner of Block 41 of Irvine's Subdivision per map recorded in Book 1, Page 88 of Miscellaneous Maps in said Office of the County Recorder, as said corner is shown on Record of Survey No. 86-1030 filed in Book 114, Pages 29 through 42 of Records of Survey in said Office of the County Recorder; thence along the northwesterly boundary of said Block 41 North 40°39'03" East 408.25 feet to an angle point in the generally northwesterly boundary of said Parcel 1 and the **True Point of Beginning**; thence continuing along said boundary North 40°39'03" East 1535.06 feet to an angle point in said generally northwesterly boundary of Parcel 1.

The southwesterly line of said strip to be extended northeasterly to terminate at said generally northwesterly boundary described as "(7)S.24°25'57"E. 84.91' " in said Irrevocable Offer of Dedication.

Containing 1.052 Acres, more or less.

See EXHIBIT B attached hereto and by this reference made a part hereof.

APPROVED

Kevin Hills, County Surveyor, L.S. 6617


By: Raymond J. Rivera, L.S. 8324

Date: Oct. 27, 2020



