

**SUBMITTAL TO THE FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT  
BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 11.7  
(ID # 20683)

**MEETING DATE:**

Tuesday, December 13, 2022

**FROM :** FLOOD CONTROL DISTRICT:

**SUBJECT:** FLOOD CONTROL DISTRICT: Approval of the Amended and Restated License Agreement Between the Riverside County Flood Control and Water Conservation District, the Riverside County Transportation Commission, and D.R. Horton Los Angeles Holding Company, Inc. for Winchester Hills Line C – Simpson Road Lateral (Tract No. 30989), Project No. 4-00586, Nothing Further is Required Under CEQA, District 3. [\$0]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Find that nothing further is required under the California Environmental Quality Act (CEQA) because all potentially significant effects have been considered by Resolution No. F2019-17 adopted on July 23, 2019 [Board Agenda Item No. 11.2] and the accompanying Notice of Determination;
2. Approve the Amended and Restated License Agreement between the Riverside County Flood Control and Water Conservation District, a body corporate and politic ("District"), the Riverside County Transportation Commission, a public agency existing under the authority of the laws of the State of California (RCTC), and D.R. Horton Los Angeles Holding Company, Inc., a California corporation ("Developer");
3. Authorize the Chair of the District's Board of Supervisors to execute the Amended and Restated License Agreement documents on behalf of the District; and
4. Direct the Clerk of the Board to return three (3) executed originals of the Amended and Restated License Agreements to the District.

**ACTION:Policy**

  
Edwin Quinonez 11/29/2022

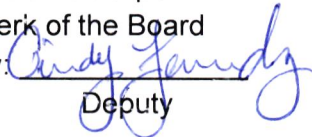
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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Washington, seconded by Supervisor Spiegel and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, and Hewitt  
Nays: None  
Absent: Perez  
Date: December 13, 2022  
xc: Flood, RCTC

Kecia R. Harper  
Clerk of the Board

By:   
Deputy

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<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> The Developer is funding all construction and construction inspection costs (100%)			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> N/A	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

On November 7, 2006 [Board Agenda Item No. 11.3], the District's Board of Supervisors approved the license agreement between the District, RCTC and Winchester Ranch 202, LLC ("Previous Developer") to grant the construction and maintenance of certain flood control and drainage facilities as originally required as a condition of development for Tract No. 30989.

This Amended and Restated License Agreement ("Agreement") supersedes the previous license agreement in its entirety and sets forth the terms and conditions by which D.R. Horton Los Angeles Holding Company, Inc. ("Developer") will assume responsibility for the construction of Winchester Hills Line C – Simpson Road Lateral pursuant to the conditions of approval for Tract No. 30989.

The Agreement is necessary, as a portion of the required facility is located within RCTC rights of way. Under the Agreement, the Developer is granted the necessary right to construct the facility within RCTC rights of way, and the Developer is granted the necessary rights to operate and maintain the same facility until such time that District accepts the Winchester Hills Line C – Simpson Road Lateral. Additionally, under this Agreement and upon acceptance of this same facility, the District is granted the necessary rights to operate and maintain the Winchester Hills Line C – Simpson Road Lateral.

The Amended and Restated Cooperative Agreement approved by the Board of Supervisors on December 14, 2021 [Board Agenda Item No 11.3] provides for the District inspection and subsequent operation and maintenance of Winchester Hills Line C – Simpson Road Lateral facility.

County Counsel has approved the Agreement as to legal form, and Developer has executed the Agreement. RCTC's execution is forthcoming.

**Environmental Findings**

Resolution No. F2019-17, Considering an Environmental Impact Report (SCH#91082004) for the Winchester Hills Specific Plan No. 293, Making Responsible Agency Findings Pursuant to



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the Provisions of the California Environmental Quality Act (CEQA) and Issuing Certain Limited Approvals for Winchester Hills Specific Plan No. 293 Environmental Impact Report (EIR), and an accompanying Notice of Determination (NOD) was prepared by the District and adopted for Winchester Hills Specific Plan No. 293 by the District's Board of Supervisors on July 23, 2019 [Board Agenda Item No. 11.2]. The impacts of processing Specific Plan No. 293, which includes Tract Map No. 30989, have been evaluated through the environmental review process, and there will be no significant environmental impacts by the Winchester Hills Infrastructure. The Agreement is an action in furtherance of the project, and nothing further is required for CEQA compliance because this proposed action was adequately analyzed in the earlier adopted EIR by this Board.

**Impact on Residents and Businesses**

As noted above, construction of these drainage improvements is a requirement for the development of Tract Map No. 30989. The principal beneficiaries are the future residents of the tract. Ancillary benefits will accrue to the public who will utilize the tract's roadways.

**Prev. Agn. Ref.:** 11.3 of 11/07/06  
MT 9873, 11.2 of 07/23/19  
MT 17724, 11.3 of 12/14/21

**Additional Fiscal Information**

The Developer is funding all construction and construction inspection costs. Future operation and maintenance costs of the District maintained storm drain facility will accrue to the District.

**ATTACHMENTS:**

1. Vicinity Map
2. Amended and Restated License Agreement

AMR:ju  
P8/247213

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Jason Farin, Principal Management Analyst 12/5/2022



Aaron Gettis, Deputy County Counsel 12/1/2022



CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010

Post Office Box 1147, Riverside, Ca 92502-1147

P8/247125

Thank you.

Agreement No. 06-51-915-01

AMENDED AND RESTATED LICENSE AGREEMENT

Winchester Hills Line C – Simpson Road Lateral

Project No. 4-0-00586

Tract Map No. 30989

This Amended and Restated License Agreement ("License Agreement") is entered into this 13 day of December, 2022 by and between the Riverside County Flood Control and Water Conservation District, a body corporate and politic ("DISTRICT"), the Riverside County Transportation Commission, a public agency existing under the authority of the laws of the State of California (hereinafter referred to as "LICENSOR"), and D.R. Horton Los Angeles Holding Company, Inc., a California corporation ("DEVELOPER").

RECITALS

A. DISTRICT, LICENSOR, and Winchester Ranch 202, LLC ("PREVIOUS DEVELOPER") entered into that certain License Agreement dated November 7, 2006, hereinafter referred to as "PREVIOUS AGREEMENT", requiring PREVIOUS DEVELOPER to construct approximately 87 linear feet of 48-inch reinforced concrete pipe ("RCP") and any appurtenances thereto ("DRAINAGE FACILITY"), as shown on District Drawing No. 4-0892 and as defined in PREVIOUS AGREEMENT; and

B. PREVIOUS AGREEMENT required PREVIOUS DEVELOPER to construct DRAINAGE FACILITY as defined in the PREVIOUS AGREEMENT; and

C. To date, PREVIOUS DEVELOPER has not constructed the DRAINAGE FACILITY pursuant to the PREVIOUS AGREEMENT; and

D. PREVIOUS DEVELOPER has ceased operation of its business; and

E. One or more conveyances occurred between certain dates and, Watermarke Homes, LLC, a California limited liability company, acquired title to Lots 1 through 202 inclusive, Lot 204 and Common Area Lots "A" through "Q" inclusive of Tract No. 30989, in the unincorporated area of the County of Riverside, hereinafter called "REAL PROPERTY", from OREO Corp on June 20, 2013. Pursuant to a grant deed dated August 31, 2021, DEVELOPER has acquired fee title to the REAL PROPERTY from Watermarke Homes, LLC; and

F. Pursuant to the Conditions of Approval ("COA") and PREVIOUS

DEC 13 2022 11.7

AGREEMENT for Tract No. 30989, DEVELOPER must construct the DRAINAGE FACILITY, all at its sole cost and expense, located on and across LICENSOR's right of way in an unincorporated area of western Riverside County in order to provide flood protection and drainage for DEVELOPER's planned development; and

G. DISTRICT is willing to operate and maintain the DRAINAGE FACILITY within LICENSOR's right of way upon completion of its construction; and

H. LICENSOR is agreeable to the construction, operation and maintenance of the DRAINAGE FACILITY, but solely upon the terms and conditions hereinafter set forth; and

I. LICENSOR is the owner in fee of certain railroad tracks known as the San Jacinto Branchline Subdivision.

J. The tracks are not currently in operation, but in the future could be placed into operation by LICENSOR or Metrolink, operated by the Southern California Regional Rail Authority, a joint powers authority ("SCRRA"), or a successor entity.

K. DISTRICT and DEVELOPER desire to use a portion of LICENSOR's property to install and maintain the DRAINAGE FACILITY on LICENSOR's right of way and adjacent to such tracks; and

L. DISTRICT, LICENSOR and DEVELOPER now desire to enter into this Amended and Restated License Agreement with the intent that this License Agreement shall prevail over the terms of the PREVIOUS AGREEMENT.

M. DISTRICT and DEVELOPER are sometimes collectively referred to in this License Agreement as "LICENSEE" provided, however, that this term shall not be interpreted to apply to DISTRICT until DISTRICT has assumed responsibility for maintenance of the DRAINAGE FACILITY.

N. NOW, THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter contained, the parties hereto agree:

**SECTION 1: TERMS.**

LICENSOR, solely to the extent of its right, title and interest, without any warranty, either express or implied, hereby grants to DEVELOPER, its successors and assigns a non-exclusive license and permission, solely for the purposes and subject to the terms, conditions and reservations hereinafter set forth, to excavate, construct, and maintain the DRAINAGE FACILITY, in accordance with the design plans approved by DISTRICT, beneath,



across and along the right of way north of Simpson Road, east of Leon Road in Winchester, Riverside County, California, as more particularly described or depicted in Exhibit "A" ("LICENSED PROPERTY"). DRAINAGE FACILITY shall conform substantially to the approved design plans, a copy of which shall be furnished to the LICENSOR's Executive Director or duly authorized representative.

## **SECTION 2: SUBORDINATE RIGHTS.**

The permission herein granted to LICENSEE is expressly subject and subordinate to the present and future right of LICENSOR, its successors, assigns, lessees, grantees and licensees to maintain, use, operate and renew on, beneath, above or near the surface of LICENSED PROPERTY, any or all said things, provided the same do not interfere with LICENSEE's use of LICENSED PROPERTY as hereinabove provided; provided however, the foregoing conditions for future construction and installation shall not apply to railroad tracks or other public improvements, which LICENSOR, its successors and assigns shall have the right to install, construct, maintain and operate on, over or under the LICENSED PROPERTY at any and all times. This License Agreement is also subordinate to the Shared Use Agreement executed between the LICENSOR and Santa Fe dated as of October 30, 1992, and any subsequent amendments thereto.

Upon the determination by LICENSOR that future tracks or any other public improvements should be built on the LICENSED PROPERTY, the following shall apply:

(i) If such determination is made prior to construction of the DRAINAGE FACILITY, LICENSOR may terminate this License Agreement by providing written notice of termination to LICENSEE, and

(ii) If such determination is made following construction of the DRAINAGE FACILITY, the DRAINAGE FACILITY shall be encased or modified to the specifications of the LICENSOR and SCRRA, or removed from the LICENSED PROPERTY, and the cost for such encasement, modification or removal shall be borne by DISTRICT. LICENSOR agrees not to order the removal or relocation or changes to the DRAINAGE FACILITY for the purpose of future tracks or any other public improvements for five (5) years from the effective date of this License Agreement. If the DRAINAGE FACILITY has to be removed from the LICENSED PROPERTY in its entirety, LICENSOR shall assist LICENSEE in identifying an alternative location to relocate the DRAINAGE FACILITY. If an alternative location for the

DRAINAGE FACILITY is available on the property of LICENSOR, as determined in LICENSOR's sole discretion, LICENSOR shall offer such location to LICENSEE. This License Agreement shall be amended following such relocation to identify the new location of DRAINAGE FACILITY crossing LICENSOR's property, if applicable.

**SECTION 3: TERMS EXCLUSIVE TO DEVELOPER RESPONSIBILITY.**

**DEVELOPER SHALL:**

In addition to the requirements set forth elsewhere in this License Agreement, this grant of license and permission is further subject to the following terms, provisions and conditions, which DEVELOPER hereby expressly accepts:

a) No work shall be performed in connection with DRAINAGE FACILITY prior to receipt of LICENSOR's written approval. No approval by LICENSOR of DEVELOPER's or its contractor's plans shall relieve DEVELOPER or its contractor of any responsibility or liability hereunder. Subsequent to installation of the DRAINAGE FACILITY, LICENSED PROPERTY shall be restored to a condition satisfactory to LICENSOR's duly authorized representative.

b) All work by or on behalf of DEVELOPER on the LICENSED PROPERTY shall be performed by DEVELOPER at DEVELOPER's own expense and without expense to the LICENSOR. All references herein to work of DEVELOPER shall include such work whether performed by DEVELOPER or DEVELOPER's agents, employees or contractors.

c) DEVELOPER shall require that any contractor(s) that will be performing any work on LICENSED PROPERTY in connection with the construction of the DRAINAGE FACILITY execute a separate Contractor's Right of Entry Agreement with the LICENSOR, in the form attached hereto as Exhibit "B" and made a part hereof. By DEVELOPER's execution of this License Agreement, the DEVELOPER shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The DEVELOPER shall use only such construction methods as are consistent with safety, both as concerns the DEVELOPER, the DEVELOPER's agents and employees, the officers, agents, employees and property of the LICENSOR and the public in general. The DEVELOPER (without limiting the generality of the foregoing) shall comply with all applicable State and Federal Occupational Safety and Health Acts and regulations. All Federal Railroad Administration Regulations shall be followed when work is performed on the LICENSED PROPERTY.



d) DEVELOPER shall not begin nor permit its contractor to begin any work of any nature whatsoever on or about LICENSED PROPERTY until DEVELOPER or its contractor have given LICENSOR's Executive Director or duly authorized representative at least five (5) days prior written notice.

e) DEVELOPER or its contractor shall perform its work hereunder at such time and in such manner as shall be agreed upon between DISTRICT and LICENSOR or the duly authorized representative. During the entire progress of DEVELOPER's work on or about LICENSED PROPERTY, DEVELOPER or its contractor shall maintain contact and liaison with LICENSOR's authorized representatives so as to ascertain the time of passage of trains at the site of DEVELOPER's work and so as to permit free and safe flow of railroad traffic. All work of DEVELOPER shall be performed without interference with LICENSOR's tracks and operations and LICENSOR's and its lessees' or licensees' structures or facilities. DEVELOPER's contractor must be qualified and must have experience in railroad work, including all standards and requirements related thereto. DEVELOPER or its contractor shall use utmost care in protecting LICENSOR's and other's property and in avoiding accidents. DEVELOPER and its contractor shall leave LICENSED PROPERTY in a condition satisfactory to LICENSOR's authorized representatives.

f) DEVELOPER shall, at its sole cost, risk and responsibility, furnish or do, or cause to be furnished or done, any and all things required under this License Agreement when, where and as from time to time required to be accomplished whatsoever authorized representatives attempts or is bound to do at any time hereunder. Said things, including the time and manner of doing any work, shall conform to the requirements and standards of the LICENSOR as well as of any state, federal or municipal authority.

**SECTION 4: TERMS EXCLUSIVE TO DISTRICT RESPONSIBILITY.**

**DISTRICT SHALL:**

This grant of license and permission is further subject to the following terms, provisions and conditions which DISTRICT hereby expressly accepts:

a) DISTRICT shall, at its sole cost, operate and maintain the DRAINAGE FACILITY in accordance with all applicable federal, state and local laws and regulations and in good and safe condition, and keep same free and clear of debris, sediment or obstructive matter which may or could interfere with or impede the proper functioning thereof,

or which could impact the LICENSED PROPERTY or any other property of LICENSOR.

b) DISTRICT shall, at its sole cost, risk and responsibility, furnish, or do, or cause to be furnished or done, any and all things required under this License Agreement, when, where, and as from time to time required to be accomplished whatsoever DISTRICT attempts or is bound to do at any time hereunder. Said things, including the time and manner of doing any work, shall conform to therequirements of the LICENSOR as well as of any state, federal or municipal authority. As an example, and not by way of limitation, the following shall apply to DISTRICT on and after the date DISTRICT assumes responsibility for the operation and maintenance of the DRAINAGE FACILITY:

- i. DISTRICT shall at all times maintain insurance in the form of self-insurance acceptable to LICENSOR.
- ii. For all maintenance and repair other than the routine removal of debris, DISTRICT shall comply with all requirements applicable to DEVELOPER under Section 3 of this License Agreement, unless waived in writing by LICENSOR. The term "work" as used in Section 3 shall be deemed to refer to maintenance and repair work of the DISTRICT.
- iii. Subsequent to any work on the DRAINAGE FACILITY, the DISTRICT shall leave the LICENSED PROPERTY in good and safe condition, satisfactory to LICENSOR.

c) DISTRICT shall provide notification to LICENSOR prior to the date DISTRICT assumes responsibility for the operation and maintenance of the DRAINAGE FACILITY.

#### **SECTION 5: CONSTRUCTION AND INSTALLATION.**

a) DEVELOPER hereby agrees that there shall be no crossing of LICENSOR's track except at existing, open public crossings. The DRAINAGE FACILITY shall be constructed in accordance with the design plans approved by DISTRICT, and within the LICENSED PROPERTY. The DEVELOPER intends to construct the DRAINAGE FACILITY by directional boring and the excavation of the directional boring pits within the railroad right of way but not within the track subgrade. There will be no open trench excavation of the tracks during construction of DRAINAGE FACILITY. DEVLEOPER agrees to restore the



LICENSED PROPERTY and, in the case of any damage occurring during construction, the track and trackbed, to the same condition as it existed prior to LICENSOR's entry onto the LICENSED PROPERTY, or better condition, upon completion of the construction of the DRAINAGE FACILITY.

DEVELOPER, without any cost or expense to LICENSOR, shall furnish or cause to be furnished the necessary labor, material, equipment and instrumentalities and shall perform or cause to be performed all the work of constructing, excavating and installing of said DRAINAGE FACILITY.

b) DEVELOPER hereby agrees that it or its contractor, during the performance of excavating and constructing the DRAINAGE FACILITY or any part thereof, will not excavate near the toe of trackfill of the trackbed and will protect trackbed in the design and construction of said DRAINAGE FACILITY.

c) DEVELOPER shall provide LICENSOR with "As-builts" within twenty (20) days of completion of the DRAINAGE FACILITY.

#### **SECTION 6: INSPECTION; HAZARDOUS MATERIALS.**

a) DEVELOPER hereby agrees that during the performance of excavating and constructing and maintaining the DRAINAGE FACILITY, and DISTRICT hereby agrees that during the performance of inspecting and maintaining said DRAINAGE FACILITY or any part thereof, its men, materials and machinery shall be kept at least twenty-five feet (25') from the centerline of LICENSOR's nearest track at all times; for work within twenty-five (25') feet, a LICENSOR flagman must be present at all times. The foregoing shall only apply if the tracks on or near the LICENSED PROPERTY are in active use.

During any periods when work is being performed on or adjacent to LICENSED PROPERTY by DEVELOPER, its contractor(s) or DISTRICT, in connection with any of the work to be performed hereunder, DEVELOPER or DISTRICT, as applicable, shall comply with all SCRRRA requirements applicable to such work, including, but not limited to, the requirement to have flagmen present for any work within twenty (20) feet of the tracks. LICENSOR may require provision of flagmen or other protective services or devices and may take such action as in LICENSOR's opinion may be necessary for LICENSOR's protection in the conduct of LICENSOR operations. The foregoing shall only apply if the tracks on or near the LICENSED PROPERTY are in active use.

DEVELOPER, during the performance of excavating and constructing and maintaining the DRAINAGE FACILITY, or DISTRICT, during the performance of maintaining said DRAINAGE FACILITY, upon receipt of a bill therefor, shall reimburse LICENSOR for any costs so incurred within thirty (30) days; such costs to be computed in accordance with LICENSOR's customary practices. The providing of this service shall not relieve DEVELOPER, its contractor or DISTRICT of any responsibility or liability. DEVELOPER and DISTRICT shall, prior to any construction, inspection, operation or maintenance of DRAINAGE FACILITY, obtain an encroachment permit from SCRRA, and comply with all requirements of SCRRA. The foregoing shall only apply if the tracks on or near the LICENSED PROPERTY are in active use.

In the event of any settlement of LICENSOR's embankment caused by excavation of DRAINAGE FACILITY, as herein provided, DEVELOPER, at its sole cost and expense, agrees to restore or cause to be restored LICENSOR's embankment to its proper grade and dimensions.

b) DISTRICT, on behalf of DISTRICT, and DEVELOPER, on behalf of DEVELOPER, covenants that DISTRICT or DEVELOPER, as applicable, will not handle or transport Hazardous Materials on the LICENSED PROPERTY. As used in this License Agreement, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects. As used in the preceding sentence, "Environmental Law" means any federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions currently existing or as amended or adopted in the future which are or become applicable to the DISTRICT or the DEVELOPER or the LICENSED PROPERTY. In the event any Hazardous Materials are brought upon or released on the LICENSED PROPERTY as a result of the construction, operation or maintenance of the DRAINAGE FACILITY, DISTRICT, on behalf of DISTRICT, and DEVELOPER, on behalf DEVELOPER, agrees fully to comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances (hereinafter referred to as "Hazardous Materials Standards") concerning Hazardous Materials.

c) LICENSOR shall have the right at any time to inspect the LICENSED PROPERTY and the DRAINAGE FACILITY so as to monitor compliance with this License Agreement.

d) DEVELOPER and DISTRICT each agree to assume liability for and to save and hold harmless LICENSOR from and against any and all injuries to any person, including

wrongful death, and damage to property, and all related expenses, including without limitation attorneys' fees, investigators' fees and litigation expenses, resulting in whole or in part from DEVELOPER's or DISTRICT's respective failure to comply with any Hazardous Materials Standards issued by any governmental authority concerning Hazardous Materials resulting from or related to the DRAINAGE FACILITY within LICENSED PROPERTY, or any activities of DEVELOPER or DISTRICT on the LICENSED PROPERTY. DEVELOPER, for claims arising prior to assumption of ownership and maintenance obligations by the DISTRICT, or DISTRICT, for claims arising following its acceptance of ownership and maintenance obligations from DEVELOPER, as applicable, at its cost, shall assume the defense of all claims, in accordance with Section 9 or Section 10 of this License Agreement, as applicable. DEVELOPER and DISTRICT, respectively, agree to reimburse LICENSOR for all costs of any kind incurred as a result of the failure to comply with this Section 6, including, but not limited to, fines, penalties, clean-up and disposal costs, and reasonable legal costs incurred as a result of any handling, transporting, or disposing of Hazardous Materials on the LICENSED PROPERTY, or any other property of LICENSOR.

#### **SECTION 7: INSURANCE.**

As a condition to this License Agreement, without limiting or diminishing DEVELOPER's obligation to indemnify or hold DISTRICT, County of Riverside and LICENSOR harmless, DEVELOPER shall procure, and require any contractor engaged or employed to perform any work hereunder on behalf of DEVELOPER on any part of LICENSED PROPERTY to procure and keep in effect during the period of such work, the following insurance coverages. With respect to this insurance section, DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District, the County of Riverside, its agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds:

a) **Railroad Protective Liability:**

DEVELOPER shall, in connection with any construction activities or any work undertaken with respect to the DRAINAGE FACILITY either directly by DEVELOPER, or by its contractors, acquire and keep in force during the period of such construction or work \$3,000,000 (combined single limit) **\$6,000,000** (aggregate limit) of railroad protective liability insurance,

naming only Riverside County Transportation Commission as the insured. This requirement shall apply only if the tracks on or near the LICENSED PROPERTY are in active use.

b) Workers' Compensation:

If DEVELOPER has employees as defined by the State of California, DEVELOPER shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT and LICENSOR.

c) Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of DEVELOPER's performance of its obligations hereunder. Policy shall name the DISTRICT and LICENSOR, their agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insureds. Policy's limit of liability shall not be less than \$5,000,000 per occurrence combined single and aggregate limit.

d) Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this License Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this License Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT and LICENSOR, their agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed

officials, agents or representatives as additional insureds.

e) Professional Liability:

DEVELOPER shall cause any architect or engineer retained by DEVELOPER in connection with the performance of DEVELOPER's obligations under this License Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this License Agreement, with a limit of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. DEVELOPER shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this License Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this License Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) shall continue for the term specified in the insurance policy as long as the law allows.

f) Pollution and Asbestos Liability:

DEVELOPER or its construction contractor(s) shall obtain, at its sole expense and keep in effect during the term of the contract, Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) covering DEVELOPER's or its construction contractor(s) liability for a third party bodily injury and property damage arising from pollution conditions caused by the DEVELOPER or its construction contractor(s) while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the DISTRICT and LICENSOR. The insurance coverage shall also respond to cleanup cost. This coverage may be written



in combination with the commercial general liability insurance or professional liability insurance.

DEVELOPER or its construction contractor(s) shall maintain Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the DISTRICT and LICENSOR for review and approval. If DEVELOPER or its construction contractor(s) maintains broader coverage and/or higher limits than the minimums shown above, the DISTRICT and LICENSOR requires and shall be entitled to the broader coverage and/or higher limits maintained by DEVELOPER or its construction contractor(s). Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT and LICENSOR.

In the event DEVELOPER or its construction contractor(s) encounters materials on the site that is believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, DEVELOPER or its construction contractor(s) shall immediately stop work in the area affected and report the condition to the DISTRICT, County of Riverside and LICENSOR in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the DISTRICT, LICENSOR and DEVELOPER, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the DISTRICT, LICENSOR and DEVELOPER.

DEVELOPER or its construction contractor(s) shall not be required to perform without consent any work relating to asbestos or polychlorinated biphenyl (PCB). As between LICENSOR and DEVELOPER, DEVELOPER shall, to the fullest extent permitted by law, be responsible for all costs related to remediation of such asbestos or polychlorinated

biphenyl (PCB).

g) General Insurance Provisions – All Lines:

- i. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A+: VIII (A: 8) unless such requirements are waived, in writing, by both the LICENSOR and DISTRICT Risk Managers. If both the LICENSOR and DISTRICT Risk Managers waive a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- ii. The DEVELOPER must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of both LICENSOR and DISTRICT Risk Managers before the commencement of operations under this License Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT and LICENSOR, and at the election of both LICENSOR and DISTRICT Risk Managers, DEVELOPER's carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this License Agreement with DISTRICT and LICENSOR; or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- iii. DEVELOPER shall cause their insurance carrier(s) or its contractor's insurance carrier(s), to furnish DISTRICT and LICENSOR with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by both LICENSOR and DISTRICT Risk Managers, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of

thirty (30) days written notice shall be given to the DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If DEVELOPER insurance carrier(s) policies do not meet the minimum notice requirement found herein, DEVELOPER shall cause DEVELOPER's insurance carrier(s) to furnish a 30-day Notice of Cancellation Endorsement. In the event of a material modification, cancellation, expiration or reduction in coverage, this License Agreement shall terminate forthwith, unless DISTRICT and LICENSOR receive, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

- iv. It is understood and agreed by the parties hereto that DEVELOPER's insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- v. If, during the term of this License Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this License Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT and LICENSOR reserves the right to adjust the types of insurance required under this License Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in both the LICENSOR and DISTRICT Risk Managers' reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.

- vi. DEVELOPER shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this License Agreement.
- vii. The insurance requirements contained in this License Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- viii. DEVELOPER agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this License Agreement.

If any part of the work is subcontracted, similar insurance shall be provided by or on behalf of the subcontractors to cover their operations. Any limitation in the foregoing insurance requirements that excludes work performed within fifty feet (50') of a LICENSOR track shall be exempted out of said policies.

Failure to maintain the insurance required by this paragraph shall be deemed a material breach of this License Agreement and shall authorize and constitute authority for DISTRICT and LICENSOR, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT and LICENSOR are unable to perform its obligations hereunder, nor DISTRICT to accept responsibility for ownership, operation and maintenance of DRAINAGE FACILITY due, either in whole or in part, to said breach of this License Agreement.

**SECTION 8: LIMITATION OF LIABILITY; ASSUMPTION OF RISK AND WAIVER.**

a) DISTRICT and DEVELOPER further hereby agree that LICENSOR shall not, at any time, be required to bear or assume any cost or expense in or incident to the construction, operation and maintenance of the DRAINAGE FACILITY. DISTRICT and DEVELOPER hereby expressly agree to bear and assume all such cost and expense.

b) To the maximum extent allowed by law, DISTRICT, on behalf of DISTRICT, and DEVELOPER, on behalf DEVELOPER, assumes any and all risk of loss, damage or injury of any kind to any person or property, including, without limitation, the DRAINAGE FACILITY except to the extent such loss, damage or injury arises from LICENSOR's gross negligence or willful misconduct. DISTRICT's, on behalf of DISTRICT, and DEVELOPER's, on behalf DEVELOPER, assumption of risk shall include, without

limitation, loss or damage caused by defects in the DRAINAGE FACILITY on the LICENSED PROPERTY, accident or fire or other casualty on the LICENSED PROPERTY resulting from or in any way related to the DRAINAGE FACILITY, except to the extent such loss, damage or injury arises from LICENSOR's gross negligence or willful misconduct. The term "LICENSOR" as used in this Section shall include: (i) any transit or rail-related company legally operating upon or over LICENSOR's tracks or other property; and (ii) any other persons or companies employed, retained or engaged by LICENSOR. DISTRICT, on behalf of itself and its Personnel, and DEVELOPER, on behalf of itself and its Personnel, as a material part of the consideration for this License Agreement, hereby waive all claims and demands against LICENSOR for any such loss, damage or injury of DISTRICT or DEVELOPER and/or their respective Personnel.

In that connection, DISTRICT, on behalf of itself and its Personnel, and DEVELOPER waive, for their respective Personnel, the benefit of California Civil Code Section 1542, which provides as follows:

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

This provision shall survive the termination of this License Agreement. As used in this Section, "Personnel" means DISTRICT's and DEVELOPER's its respective officers, directors, affiliates or anyone directly or indirectly employed by DISTRICT or DEVELOPER or for whose acts DISTRICT or DEVELOPER is liable.

#### **SECTION 9: INDEMNITY BY DEVELOPER.**

a) DEVELOPER shall indemnify and hold harmless DISTRICT, County of Riverside, LICENSOR, their directors, officers, Board of Supervisors, elected and appointed officials, agents, employees, representatives, independent contractors and subcontractors (collectively "INDEMNIFIED PARTIES") from any liability whatsoever, based or asserted upon any act or omission of DEVELOPER, its officers, employees, subcontractors, agents or representatives, arising from or in any manner related to the performance or failure to perform any obligation under this License Agreement, the design, construction, installation or presence of the DRAINAGE FACILITY or the use and maintenance of the LICENSED PROPERTY, including,



but not limited to, any such losses, damages or expenses arising out of (a) loss of or damage to property, (b) injury to or death of persons, or (c) mechanics' or other liens of any character.

DEVELOPER shall defend, at its sole expense, INDEMNIFIED PARTIES in any claim or legal action based upon such alleged acts or omissions and shall be responsible for all costs and fees including, but not limited to, attorneys' fees, cost of investigation, defense and settlements or awards.

b) With respect to any action or claim subject to indemnification herein by DEVELOPER, DEVELOPER shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle or compromise any such action or claim without the prior consent of INDEMNIFIED PARTIES; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes DEVELOPER's indemnification to INDEMNIFIED PARTIES as set forth herein. DEVELOPER's obligation hereunder shall be satisfied when DEVELOPER has provided to INDEMNIFIED PARTIES the appropriate form of dismissal relieving INDEMNIFIED PARTIES from any liability for the action or claim involved.

c) The specified insurance limits required in this License Agreement shall in no way limit or circumscribe DEVELOPER's obligations to indemnify and hold harmless INDEMNIFIED PARTIES herein from third party claims.

d) In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve DEVELOPER from indemnifying the INDEMNIFIED PARTIES to the fullest extent allowed by law.

e) This indemnification provision shall survive termination or expiration of this License Agreement until such a time as the statute of limitations shall run for any claims that may arise out of this License Agreement.

**SECTION 10: INDEMNITY BY DISTRICT.**

DISTRICT shall indemnify, defend, save and hold harmless LICENSOR (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DISTRICT's (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this License

Agreement, performance under this License Agreement, or failure to comply with the requirements of this License Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) payment of reasonable attorney's fees; or (d) any other cost, liability or loss of any kind or nature whatsoever.

**SECTION 11: TERMINATION OF LICENSE; LICENSOR RIGHT TO CURE BREACH.**

a) This License Agreement shall begin with the date first hereinabove written and continue thereafter for so long as LICENSED PROPERTY shall be used for the purposes set forth herein; provided, however, if DISTRICT shall abandon the use of LICENSED PROPERTY, or any part thereof, for such purposes, for a continuous period of six (6) months then LICENSOR may terminate this License Agreement to the extent of the portion so abandoned or discontinued. In addition to any other rights or remedies, LICENSOR shall have the same complete title to LICENSED PROPERTY so abandoned as though this License Agreement had never been executed and the right to enter thereon and exclude therefrom DISTRICT, its successors and assigns. In the event of such notice of termination the DISTRICT shall arrange for removal of the DRAINAGE FACILITY from the LICENSED PROPERTY or, subject to LICENSOR's approval, in its sole discretion, for their proper encasement or modification to LICENSOR and SCRRRA standards at DISTRICT's sole cost and expense as provided for in Section 2.

b) If the DEVELOPER or DISTRICT does not use the right herein granted or the DRAINAGE FACILITY for one (1) year, or if the DEVELOPER or DISTRICT continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the LICENSOR to the DEVELOPER or DISTRICT, as applicable, specifying such default, the LICENSOR may, at its option, forthwith immediately terminate this License Agreement by written notice.

c) If, at any time, DISTRICT or DEVELOPER shall, in the judgment of LICENSOR, fail to perform properly its respective obligations under this License Agreement, LICENSOR may, at its option, perform such work itself as it deems necessary for the safe operation of its railroad, as applicable, and the safety of the LICENSED PROPERTY, any other uses thereon and any adjacent property. Prior to exercising such right, LICENSOR shall provide advance notice to DISTRICT or DEVELOPER, as applicable, of LICENSOR's judgment and intention to perform

such work. Notwithstanding the foregoing, in the case of an imminent risk to property or safety, as determined in LICENSOR's sole discretion, LICENSOR may immediately perform the required work. In all other cases, thirty (30) days advance written notice shall be provided. In either such event, DISTRICT or DEVELOPER, as applicable, agrees to pay, within sixty (60) business days after a bill is rendered therefor, the cost so incurred by LICENSOR. However, failure on the part of LICENSOR to perform the obligations of DISTRICT or DEVELOPER shall not release the obligated party from liability hereunder for any loss or damage occasioned thereby.

**SECTION 12: WARRANTY AND DISCLAIMER.**

a) The rights herein granted by LICENSOR are limited to such right, title or interest as LICENSOR may have in LICENSED PROPERTY and are made without any warranty, express or implied. It is understood by the parties hereto that such rights are granted subject to the existing rights therein of any third party, if any. It shall be LICENSEE's sole obligation to obtain such additional permission, license and grants as may be necessary on account of any such existing rights. No damages shall be recovered from LICENSOR because of dispossession of LICENSEE or because of failure of, defect in or extinction of LICENSOR's title.

b) LICENSEE accepts the LICENSED PROPERTY in its "as is" condition, with all faults. LICENSEE acknowledges and agrees that LICENSEE is entering the LICENSED PROPERTY under this License Agreement and based on LICENSEE's own investigations and knowledge of the LICENSED PROPERTY and that, except as otherwise specifically stated in this License Agreement, neither LICENSOR nor any agent of LICENSOR, has made any representation or warranty whatsoever, express or implied, with regard to the physical condition of the LICENSED PROPERTY or the suitability of the LICENSED PROPERTY for any particular purpose or use, including, without limitation, any representations or warranties regarding the applicability or non-applicability of any laws, the soil or subsoil, surface or subsurface conditions, topography, possible Hazardous Materials contamination, fill, drainage, access to public roads, availability of utilities, existence of underground storage tanks, applicability of or compliance with any Environmental Law or any other matter of any nature whatsoever. LICENSOR is not responsible for damage to or loss by theft of LICENSEE's property located in, on or beneath the LICENSED PROPERTY.

**SECTION 13: ASSIGNMENT; NO WAIVER.**

This License Agreement and all of the covenants and conditions hereof shall inure to or bind each party's successors and assigns, provided that no right of DEVELOPER and DISTRICT shall be transferred or assigned, either voluntarily or involuntarily, except by express written agreement acceptable to LICENSOR. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right of interest by reason of such attempted assignment, hypothecation or transfer.

Either party hereto may waive any default at any time of the other without affecting, or impairing any right arising from, any subsequent or other default.

**SECTION 14: NOTICE.**

Any and all notices sent or required to be sent to the parties of this License Agreement will be mailed by first class mail, postage prepaid, to the following addresses. Any notice hereunder to be given by one party to the other party shall be deemed to be properly served on the date it is deposited in the United States mail, postage prepaid, addressed as specified below. Any party may change its address for the receipt of notice by giving written notice thereof to the other party of such change.

RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
1995 Market Street  
Riverside, CA 92501  
Attn: Contract Services Section

RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501  
Attn: Anne Mayer  
Executive Director

D.R. HORTON LOS ANGELES HOLDING COMPANY, INC.  
2280 Wardlow Circle, Suite 100  
Corona, CA 92880  
Attn: Susan Paradiso

**SECTION 15: JURISDICTION/LAW; VENUE.**

This License Agreement is to be construed in accordance with the laws of the State of California. If any provision of this License Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. Venue shall be in Riverside County.

**SECTION 16: REPRESENTATION AND WARRANTIES.**

The individual(s) executing this License Agreement on behalf of DEVELOPER certify that they have the authority within their respective company(ies) to enter into and execute this License Agreement and, have been authorized to do so by all boards of directors, legal counsel and/or any other board, committee or other entity within their respective company(ies) which have the authority to authorize or deny entering into this License Agreement.

**SECTION 17: SEVERABILITY.**

If any term, covenant, condition or provision of this License Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this License Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**SECTION 18: COUNTERPART; SIGNATURES**

This License Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A manually signed copy of this License Agreement which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this License Agreement for all purposes. This License Agreement may be signed using an electronic signature.

**SECTION 19: ATTORNEYS' FEES.**

In the event of a dispute between the parties with respect to the terms or conditions of this License Agreement, the prevailing party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

**SECTION 20: CONDEMNATION.**

In the event all or any portion of the LICENSED PROPERTY shall be acquired or condemned for public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), DISTRICT shall receive compensation (if any) only for the acquisition and damage to the DRAINAGE FACILITY. Any other compensation or damages arising out of such taking or condemnation awarded to LICENSEE are hereby assigned by LICENSEE to LICENSOR.



**SECTION 21: WAIVER OF RELOCATION RIGHTS.**

LICENSEE hereby waives any right to relocation assistance, moving expenses, goodwill or other payments to which LICENSEE might otherwise be entitled, but for this waiver and LICENSOR's express right of termination, under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 United State Code Section 4601 et seq. and/or the California Relocation Assistance Law, as amended, Government Code Section 7260 et seq.

**SECTION 22: NO RECORDING.**

LICENSEE shall not record or permit to be recorded in the official records of the Riverside County any memorandum of this License Agreement or any other document giving notice of the existence of this License Agreement, or the license granted hereby.

**SECTION 23: NONDISCRIMINATION.**

LICENSEE certifies and agrees that all persons employed thereby and any contractors retained thereby with respect to the LICENSED PROPERTY and the DRAINAGE FACILITY are and shall be treated equally without regard to or because of race, religion, ancestry, national origin or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including, but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

**SECTION 24: ENTIRE AGREEMENT; AMENDMENT; RECITALS.**

This License Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This License Agreement may be changed or modified only upon the written amendment executed by the parties hereto. The recitals set forth above are true and correct and are incorporated into this License Agreement as if fully set forth herein.

//  
//

[Signatures on following page]

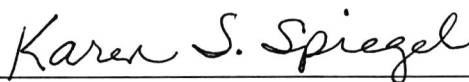
SIGNATURE PAGE TO  
AMENDED AND RESTATED LICENSE AGREEMENT

Winchester Hills Line C – Simpson Road Lateral  
Project No. 4-0-00586  
Tract Map No. 30989

IN WITNESS WHEREOF, the parties here to have duly executed this License Agreement as of the day and year first hereinabove written.

RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By:   
JASON E. UHLEY  
General Manager-Chief Engineer

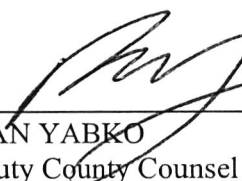
By:   
KAREN SPIEGEL, Chair  
Chair, Riverside County Flood Control and Water Conservation District  
Board of Supervisors

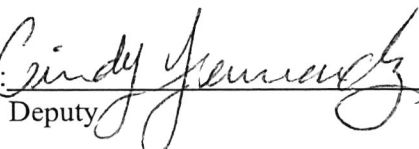
APPROVED AS TO FORM:

MINH TRAN  
County Counsel

ATTEST:

KECIA HARPER  
Clerk of the Board

By:   
RYAN YABKO  
Deputy County Counsel

By:   
Deputy

(SEAL)

[Signatures continued on following page]

Amended and Restated License Agreement:  
Winchester Hills Line C – Simpson Road Lateral  
Project No. 4-0-00586  
Tract Map No. 30989  
11/15/2022  
AMR:rlp

DEC 13 2022 11.7

**RIVERSIDE COUNTY TRANSPORTATION  
COMMISSION**

By: \_\_\_\_\_  
ANNE E. MAYER  
Executive Director

APPROVED AS TO FORM:


By: \_\_\_\_\_  
STEVE DEBAUN  
Best Best & Krieger LLP  
Counsel to the Riverside County Transportation  
Commission

[Signatures continued on following page]

Amended and Restated License Agreement:  
Winchester Hills Line C – Simpson Road Lateral  
Project No. 4-0-00586  
Tract Map No. 30989  
11/15/2022  
AMR:rlp

**D.R. HORTON LOS ANGELES HOLDING  
COMPANY, INC.,**  
a California corporation

By:   
\_\_\_\_\_  
BARBARA M. SCULL  
Vice-President

By:   
\_\_\_\_\_  
JENNIFER L. O'LEARY  
Authorized Signatory

(ATTACH NOTARY WITH CAPACITY  
STATEMENT)

Amended and Restated License Agreement:  
Winchester Hills Line C – Simpson Road Lateral  
Project No. 4-0-00586  
Tract Map No. 30989  
11/15/2022  
AMR:rlp

# CALIFORNIA NOTARY ACKNOWLEDGEMENT (INDIVIDUAL)

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 Riverside

On November 22, 2022 before me, Ginger Lovett, NOTARY PUBLIC (insert name and title of the officer), personally appeared BARBARA M. SCULL and JENNIFER L. O'LEARY, 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/~~ 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)

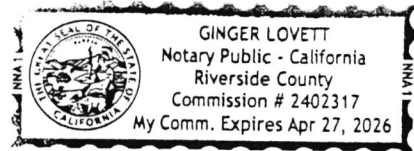




EXHIBIT "A"  
LICENSED PROPERTY  
DESCRIPTION/DEPICTION

[attached behind this page]

"THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCEL MAY NOT COMPLY WITH LOCAL LOT-SPLIT OR BUILDING SITE ORDINANCES.

SEC. 29 T. 5S., R. 2W

T.R.A. 071-290

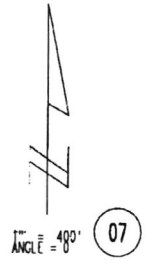
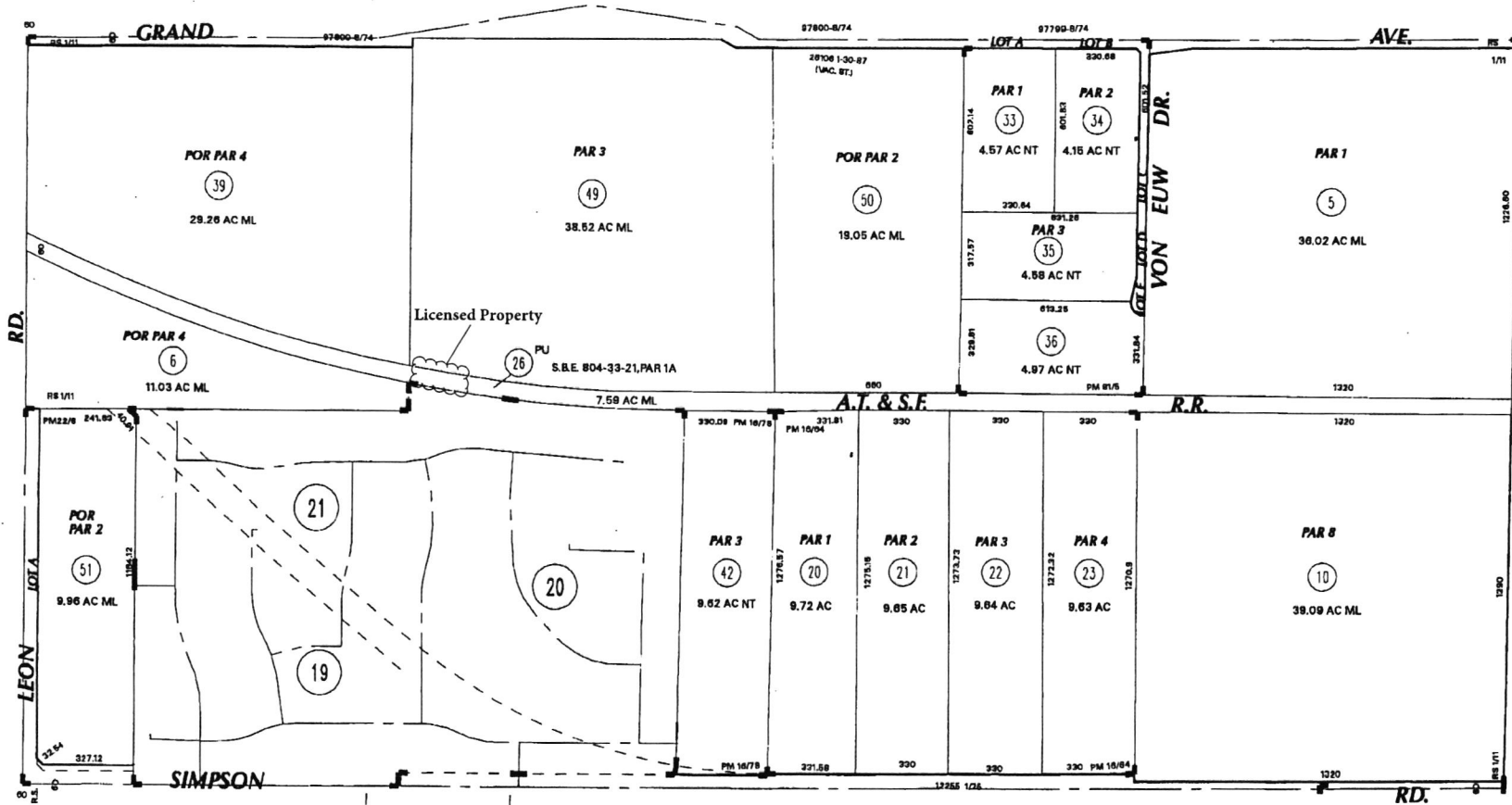
462-02  
22-22

JUN 05 2007

461  
05

EXHIBIT A

461  
14



DATE	OLD NUMBER	NEW NUMBER
11/72	8	10
02/73	7	11, 12, 13
09/74	1	14
09/74	2	15
09/74	4	16
09/74	3	17
09/74	16	18
03/75	12	19-21
03/75	19	20-21
04/75	11	24, 25, 51
06/80	17	27
06/80	18	28-31
02/79	909	26
04/81	27, 28	32
06/81	32	33, 51
06/81	29	34, 51
06/81	30	35, 51
06/81	31	35, 51
12/81	14	32-38
05/85	24	40-42
05/85	13, 25	43
05/85	43	44-47
01/86	15	481-490-513
01/86	37	48
02/87	38	49
03/89	48	50
03/89	481-490-513	50
03/89	45	51, 51
04/87	40, 41, 44, 48	52
04/87	47	52
04/87	52	PG. 18-21

03

DATA: 16846-2/75

04

RS 1/11 (SUB. OF SEC. 29)  
PM 16/84 PARCEL MAP 6265  
PM 81/5 PARCEL MAP 12119  
PM 16/78 PARCEL MAP 5986  
PM 22/6 PARCEL MAP 6517

05

06

Apr 2007

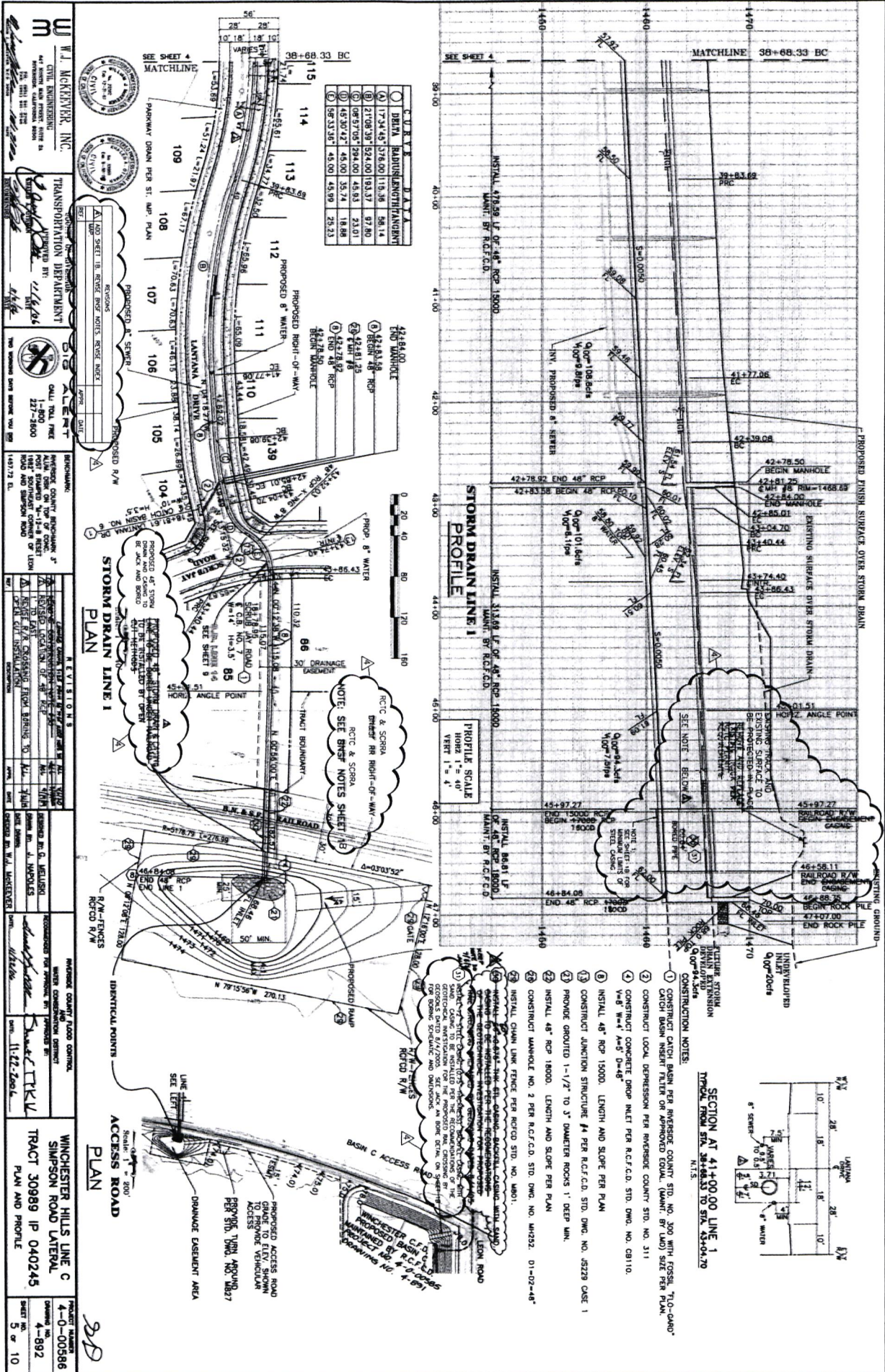
ASSESSOR'S MAP BK462 PG.02  
Riverside County, Calif.

Exhibit A





EXHIBIT A



**W.J. MCKEEVER, INC.**  
 CIVIL ENGINEERING  
 445 CENTRAL AVENUE, SUITE 200  
 WINCHESTER, MASSACHUSETTS 01890  
 TEL: (978) 232-1111 FAX: (978) 232-1112

TRANSPORTATION DEPARTMENT  
 PROJECT NO. 30989  
 DRAWING NO. 4-892  
 SHEET NO. 3 OF 10

PROPOSED 8" WATER  
 PROPOSED RIGHT-OF-WAY  
 PROPOSED 48" RCP  
 PROPOSED 15000' RCP

STORM DRAIN LINE 1  
 PLAN

STORM DRAIN LINE 1  
 PROFILE

SECTION AT 41+00.00 LINE 1  
 TYPICAL FROM STA. 38+68.33 TO STA. 43+04.70  
 N.T.S.

CONSTRUCTION NOTES:  
 1. CONSTRUCT CATCH BASIN PER REVERSE COUNTY STD. NO. 309 WITH FOSSEL "TIO-CARD" CATCH BASIN INSERT FILTER OR APPROVED EQUAL. (UNMT. BY LUD) SIZE PER PLAN.  
 2. CONSTRUCT LOCAL DEPRESSION PER REVERSE COUNTY STD. NO. 311.  
 3. CONSTRUCT CONCRETE DROP INLET PER R.C.F.C.D. STD. DWG. NO. C03110.  
 4. INSTALL 48" RCP 15000' LENGTH AND SLOPE PER PLAN.  
 5. CONSTRUCT JUNCTION STRUCTURE #4 PER R.C.F.C.D. STD. DWG. NO. S523 CASE 1.  
 6. PROVIDE GROUNDED 1-1/2" TO 3" DIAMETER ROCKS 1' DEEP MIN.  
 7. INSTALL 48" RCP 18000' LENGTH AND SLOPE PER PLAN.  
 8. CONSTRUCT MANHOLE NO. 2 PER R.C.F.C.D. STD. DWG. NO. H1232. D1-02-48"

WINCHESTER HILLS LINE C  
 SIMPSON ROAD LATERAL  
 TRACT 30989 IP 040245  
 PLAN AND PROFILE

PROJECT NUMBER: 4-0-00566  
 DRAWING NO: 4-892  
 SHEET NO: 3 OF 10

EXHIBIT "B"  
FORM OF RIGHT OF ENTRY

[attached behind this page]

Agreement No. \_\_\_\_\_

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
RIGHT OF ENTRY AGREEMENT  
WITH (INSERT NAME OF PARTY)**

**(Project)**

This Right of Entry Agreement ("Right of Entry") is entered in this \_\_\_ day of \_\_\_\_\_, 202\_\_ by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION (the "COMMISSION") and \_\_\_\_\_ ("PERMITTEE"). The COMMISSION and PERMITTEE are sometimes individually referred to as "Party" and collectively as "Parties".

RECITALS

A. WHEREAS, the COMMISSION is the owner in fee of that certain real property \_\_\_\_\_ in the City of Winchester, Riverside County, California, described as the "LICENSED PROPERTY" in that certain \_\_\_\_\_ Agreement, dated \_\_\_\_\_ ("Drainage Facility License Agreement").

B. WHEREAS, the LICENSED PROPERTY, as defined above, is referred to in this Right of Entry as the "Property".

C. WHEREAS, PERMITTEE has requested to enter onto the Property, on a temporary basis, for the purpose of performing construction of the "DRAINAGE FACILITY," as that term is defined in the Drainage Facility License Agreement, substantially in accordance with the plans attached as Exhibit "X" to the Drainage Facility License Agreement (the "Project").

NOW, THEREFORE, the COMMISSION and PERMITTEE do hereby agree as follows:

AGREEMENT

1. Incorporation of Recitals. The recitals set forth above are incorporated into this Right of Entry as though fully set forth herein.

2. Incorporation of Drainage Facility License Agreement. This Right of Entry is made in reference to that certain Drainage Facility License



Agreement, a copy of which has been provided to PERMITEE, the applicable terms of which are incorporated into this Right of Entry by reference.

3. Right of Entry. The COMMISSION hereby grants to PERMITEE and its agents, employees and contractors the temporary right to enter onto the Property for the purpose of performing the Project, and for no other purpose.

4. Term. The term of this Right of Entry shall commence on the date first set forth above, and shall automatically terminate **[INSERT NUMBER OF DAYS]** (\_\_) days from the date first herein written above unless earlier terminated as provided herein. The term may be extended by written notice to PERMITEE in the sole and absolute discretion of the COMMISSION. This Right of Entry is subordinate to all prior or future rights and obligations of the COMMISSION in the Property, except that the COMMISSION shall grant no future rights inconsistent with the reasonable exercise by PERMITEE of its rights under this Right of Entry.

5. Liens. PERMITEE shall not permit to be placed against the Property, or any part thereof, any design professionals', mechanics', materialmen's contractors' or subcontractors' liens with regard to any actions upon the Property pursuant to this Right of Entry. PERMITEE agrees to hold the COMMISSION harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which may be filed against the Property.

6. Condition of Premises. PERMITEE ACCEPTS THE PROPERTY IN ITS "AS IS" CONDITION, WITH ALL FAULTS. PERMITEE ACKNOWLEDGES AND AGREES THAT PERMITEE IS ENTERING THE PROPERTY UNDER THIS RIGHT OF ENTRY BASED ON PERMITEE'S OWN INVESTIGATIONS AND KNOWLEDGE OF THE PROPERTY AND THAT, EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THIS AGREEMENT, NEITHER COMMISSION NOR ANY AGENT OF COMMISSION, HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE PHYSICAL CONDITION OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE OR USE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES REGARDING THE APPLICABILITY OR NON-APPLICABILITY OF ANY LAWS, THE SOIL OR SUBSOIL, SURFACE OR SUBSURFACE CONDITIONS, TOPOGRAPHY, POSSIBLE HAZARDOUS SUBSTANCES CONTAMINATION, FILL, DRAINAGE, ACCESS TO PUBLIC ROADS, AVAILABILITY OF UTILITIES, EXISTENCE OF UNDERGROUND STORAGE TANKS, APPLICABILITY OF OR COMPLIANCE WITH ANY ENVIRONMENTAL LAWS OR ANY OTHER MATTER OF ANY NATURE WHATSOEVER. THE



COMMISSION IS NOT RESPONSIBLE FOR DAMAGE TO OR LOSS BY THEFT OF PERMITTEE'S PROPERTY LOCATED IN OR ON THE PROPERTY.

7. Indemnification and Defense.

A. PERMITTEE hereby agrees to indemnify, defend, assume all liability for and hold harmless the COMMISSION and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including, without limitation, any fines, penalties, judgments, settlements, actual litigation expenses and experts' and actual attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons, arising out of or in any way connected to the acts or omissions of PERMITTEE in connection with or arising from any entry onto the Property or the performance of the Project or arising out of or in connection with such activities, whether such entry, activities or performance thereof is by PERMITTEE or anyone directly or indirectly employed or under contract with PERMITTEE or acting on behalf of PERMITTEE, and whether such damage or claim shall accrue or be discovered before or after the termination of this Right of Entry.

B. Upon written notice from the COMMISSION, PERMITTEE agrees to assume the defense of any lawsuit, administrative action or other proceeding for which PERMITTEE has an obligation to defend pursuant to paragraph A above.

C. The obligations under this Section 7 shall apply except to the extent of the sole negligence or willful misconduct of the COMMISSION, and are in addition to any other rights or remedies under the law or under this Right of Entry. This Section 7 this shall survive the revocation or termination of this Right of Entry.

8. Assumption of Risk and Waiver. To the maximum extent allowed by law, PERMITTEE releases the COMMISSION from and assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Property, COMMISSION's property and any other property of, or under the control or custody of PERMITTEE, which is on or near the Property. PERMITTEE's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the Property, accident or fire or other casualty on the Property. PERMITTEE, on behalf of itself and its Personnel, as a material part of the consideration for this Right of Entry, hereby waives all claims and demands against the COMMISSION for any such loss, damage or injury of PERMITTEE and/or its Personnel. In that connection, PERMITTEE

waives, for itself and its Personnel, the benefit of California Civil Code Section 1542, which provides as follows:

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

The provisions of this section shall survive the termination of this Right of Entry. As used in this section, "Personnel" means PERMITTEE, or its officers, directors, affiliates, or anyone directly or indirectly employed by PERMITTEE or for whose acts PERMITTEE is liable.

9. Compliance with Laws/Permits. PERMITTEE shall, in all activities undertaken pursuant to this Right of Entry, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, PERMITTEE, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities PERMITTEE desires to conduct or have conducted pursuant to this Right of Entry.

10. Inspection. The COMMISSION and its representatives, employees, agents or independent contractors may, but shall not be required to, enter and inspect the Property or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify PERMITTEE's compliance with the terms and conditions of this Right of Entry.

11. Not Real Property Interest. It is expressly understood that this Right of Entry does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to PERMITTEE. This Right of Entry is not exclusive and the COMMISSION specifically reserves the right to grant other rights of entry within the vicinity of the Property.

12. Notice. Any notice hereunder to be given by the COMMISSION to PERMITTEE shall be deemed to be properly served on the date it is deposited in the United States Mail, postage prepaid, addressed to **[ENTER ADDRESS AND CONTACT NAME]**. Any notice to be given hereunder by PERMITTEE to the COMMISSION shall be deemed to be properly served on the date it is deposited in the United States Mail, postage prepaid, addressed

to Executive Director, Riverside County Transportation Commission, 4080 Lemon Street, Third Floor, Riverside, CA 92502-2208. Either PERMITTEE or the COMMISSION may change its address for the receipt of notice by giving written notice thereof to the other party of such change.

13. Attorneys' Fees. In the event of a dispute between the Parties with respect to the terms or conditions of this Right of Entry, the prevailing Party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

14. Revocable Right; Termination. Notwithstanding any other provision of this Right of Entry, this Right of Entry is revocable and may be terminated at any time by either party upon one (1) business day's prior notice in writing to be served upon the other party. In cases of an emergency or a breach of this Right of Entry by PERMITTEE, this Right of Entry may be terminated by the COMMISSION immediately.

15. Restoration of the Property. PERMITTEE shall be responsible for the cleanup of any Project activity. Upon the termination or revocation of this Right of Entry, PERMITTEE shall, at its own cost and expense, restore the Property to the same condition in which it was prior to PERMITTEE's entry. In case PERMITTEE shall fail to restore the Property to its prior condition within ten (10) business days after the effective date of the termination, the COMMISSION may proceed with such work at the expense of PERMITTEE. This section shall survive the revocation or termination of this Right of Entry.

16. Insurance. PERMITTEE shall comply with the insurance provisions contained in Exhibit "A", attached hereto and incorporated herein by reference.

17. Continuing Liability. No termination of this Right of Entry shall release PERMITTEE from any liability or obligation hereunder resulting from any acts, omissions or events happening prior the termination of this Right of Entry and restoration of the property to its prior condition.

18. Survival of Obligations. All obligations of PERMITTEE hereunder not fully performed as of the termination or cessation of this Right of Entry in any manner shall survive the termination of this Right of Entry, including without limitation, all obligations concerning the condition of the Property.

19. Counterparts. This Right of Entry 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.

20. Severability. Should any term of this Right of Entry be deemed unlawful or unenforceable by a court of competent jurisdiction, that provision shall be severed and the remaining terms may continue to be fully enforced.

21. Authority. The persons signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

22. Assignment. PERMITTEE shall not assign or transfer this Right of Entry. Any attempted act in violation of this Section shall be void and without effect.

23. Governing Law. This Right of Entry shall be governed by the laws of the State of California. Venue shall be in Riverside County.

24. Entire Agreement. This Right of Entry and the exhibit attached hereto constitute the entire agreement between the COMMISSION and PERMITTEE with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the parties with respect to the items set forth herein.

25. Electronically Transmitted Signatures. A manually signed copy of this Agreement which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

**[Signatures on following page]**

**SIGNATURE PAGE TO  
RIGHT OF ENTRY AGREEMENT**

**(Property)**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Right of Entry on the date first written above.

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**PERMITTEE**

By: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT "A"**  
**TO RIGHT OF ENTRY AGREEMENT**

**INSURANCE PROVISIONS**

PERMITTEE shall obtain, and shall require any consultant, contractor or agent entering the Property on its behalf to obtain insurance of the types and in the amounts described in Section X of the Drainage Facility License Agreement.



CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010  
Post Office Box 1147, Riverside, Ca 92502-1147  
Thank you.

P8/247125

Agreement No. 06-51-915-01

AMENDED AND RESTATED LICENSE AGREEMENT

Winchester Hills Line C – Simpson Road Lateral  
Project No. 4-0-00586  
Tract Map No. 30989

This Amended and Restated License Agreement ("License Agreement") is entered into this 13 day of December, 2021 by and between the Riverside County Flood Control and Water Conservation District, a body corporate and politic ("DISTRICT"), the Riverside County Transportation Commission, a public agency existing under the authority of the laws of the State of California (hereinafter referred to as "LICENSOR"), and D.R. Horton Los Angeles Holding Company, Inc., a California corporation ("DEVELOPER").

RECITALS

A. DISTRICT, LICENSOR, and Winchester Ranch 202, LLC ("PREVIOUS DEVELOPER") entered into that certain License Agreement dated November 7, 2006, hereinafter referred to as "PREVIOUS AGREEMENT", requiring PREVIOUS DEVELOPER to construct approximately 87 linear feet of 48-inch reinforced concrete pipe ("RCP") and any appurtenances thereto ("DRAINAGE FACILITY"), as shown on District Drawing No. 4-0892 and as defined in PREVIOUS AGREEMENT; and

B. PREVIOUS AGREEMENT required PREVIOUS DEVELOPER to construct DRAINAGE FACILITY as defined in the PREVIOUS AGREEMENT; and

C. To date, PREVIOUS DEVELOPER has not constructed the DRAINAGE FACILITY pursuant to the PREVIOUS AGREEMENT; and

D. PREVIOUS DEVELOPER has ceased operation of its business; and

E. One or more conveyances occurred between certain dates and, Watermarke Homes, LLC, a California limited liability company, acquired title to Lots 1 through 202 inclusive, Lot 204 and Common Area Lots "A" through "Q" inclusive of Tract No. 30989, in the unincorporated area of the County of Riverside, hereinafter called "REAL PROPERTY", from OREO Corp on June 20, 2013. Pursuant to a grant deed dated August 31, 2021, DEVELOPER has acquired fee title to the REAL PROPERTY from Watermarke Homes, LLC; and

F. Pursuant to the Conditions of Approval ("COA") and PREVIOUS

DEC 13 2022 11.7



Agreement No. 06-51-915-01AMENDED AND RESTATED LICENSE AGREEMENT

Winchester Hills Line C – Simpson Road Lateral  
 Project No. 4-0-00586  
 Tract Map No. 30989

This Amended and Restated License Agreement ("License Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Riverside County Flood Control and Water Conservation District, a body corporate and politic ("DISTRICT"), the Riverside County Transportation Commission, a public agency existing under the authority of the laws of the State of California (hereinafter referred to as "LICENSOR"), and D.R. Horton Los Angeles Holding Company, Inc., a California corporation ("DEVELOPER").

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- A. DISTRICT, LICENSOR, and Winchester Ranch 202, LLC ("PREVIOUS DEVELOPER") entered into that certain License Agreement dated November 7, 2006, hereinafter referred to as "PREVIOUS AGREEMENT", requiring PREVIOUS DEVELOPER to construct approximately 87 linear feet of 48-inch reinforced concrete pipe ("RCP") and any appurtenances thereto ("DRAINAGE FACILITY"), as shown on District Drawing No. 4-0892 and as defined in PREVIOUS AGREEMENT; and
- B. PREVIOUS AGREEMENT required PREVIOUS DEVELOPER to construct DRAINAGE FACILITY as defined in the PREVIOUS AGREEMENT; and
- C. To date, PREVIOUS DEVELOPER has not constructed the DRAINAGE FACILITY pursuant to the PREVIOUS AGREEMENT; and
- D. PREVIOUS DEVELOPER has ceased operation of its business; and
- E. One or more conveyances occurred between certain dates and, Watermarke Homes, LLC, a California limited liability company, acquired title to Lots 1 through 202 inclusive, Lot 204 and Common Area Lots "A" through "Q" inclusive of Tract No. 30989, in the unincorporated area of the County of Riverside, hereinafter called "REAL PROPERTY", from OREO Corp on June 20, 2013. Pursuant to a grant deed dated August 31, 2021, DEVELOPER has acquired fee title to the REAL PROPERTY from Watermarke Homes, LLC; and
- F. Pursuant to the Conditions of Approval ("COA") and PREVIOUS

AGREEMENT for Tract No. 30989, DEVELOPER must construct the DRAINAGE FACILITY, all at its sole cost and expense, located on and across LICENSOR's right of way in an unincorporated area of western Riverside County in order to provide flood protection and drainage for DEVELOPER's planned development; and

G. DISTRICT is willing to operate and maintain the DRAINAGE FACILITY within LICENSOR's right of way upon completion of its construction; and

H. LICENSOR is agreeable to the construction, operation and maintenance of the DRAINAGE FACILITY, but solely upon the terms and conditions hereinafter set forth; and

I. LICENSOR is the owner in fee of certain railroad tracks known as the San Jacinto Branchline Subdivision.

J. The tracks are not currently in operation, but in the future could be placed into operation by LICENSOR or Metrolink, operated by the Southern California Regional Rail Authority, a joint powers authority ("SCRRA"), or a successor entity.

K. DISTRICT and DEVELOPER desire to use a portion of LICENSOR's property to install and maintain the DRAINAGE FACILITY on LICENSOR's right of way and adjacent to such tracks; and

L. DISTRICT, LICENSOR and DEVELOPER now desire to enter into this Amended and Restated License Agreement with the intent that this License Agreement shall prevail over the terms of the PREVIOUS AGREEMENT.

M. DISTRICT and DEVELOPER are sometimes collectively referred to in this License Agreement as "LICENSEE" provided, however, that this term shall not be interpreted to apply to DISTRICT until DISTRICT has assumed responsibility for maintenance of the DRAINAGE FACILITY.

N. NOW, THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter contained, the parties hereto agree:

**SECTION 1: TERMS.**

LICENSOR, solely to the extent of its right, title and interest, without any warranty, either express or implied, hereby grants to DEVELOPER, its successors and assigns a non-exclusive license and permission, solely for the purposes and subject to the terms, conditions and reservations hereinafter set forth, to excavate, construct, and maintain the DRAINAGE FACILITY, in accordance with the design plans approved by DISTRICT, beneath,



across and along the right of way north of Simpson Road, east of Leon Road in Winchester, Riverside County, California, as more particularly described or depicted in Exhibit "A" ("LICENSED PROPERTY"). DRAINAGE FACILITY shall conform substantially to the approved design plans, a copy of which shall be furnished to the LICENSOR's Executive Director or duly authorized representative.

## **SECTION 2: SUBORDINATE RIGHTS.**

The permission herein granted to LICENSEE is expressly subject and subordinate to the present and future right of LICENSOR, its successors, assigns, lessees, grantees and licensees to maintain, use, operate and renew on, beneath, above or near the surface of LICENSED PROPERTY, any or all said things, provided the same do not interfere with LICENSEE's use of LICENSED PROPERTY as hereinabove provided; provided however, the foregoing conditions for future construction and installation shall not apply to railroad tracks or other public improvements, which LICENSOR, its successors and assigns shall have the right to install, construct, maintain and operate on, over or under the LICENSED PROPERTY at any and all times. This License Agreement is also subordinate to the Shared Use Agreement executed between the LICENSOR and Santa Fe dated as of October 30, 1992, and any subsequent amendments thereto.

Upon the determination by LICENSOR that future tracks or any other public improvements should be built on the LICENSED PROPERTY, the following shall apply:

(i) If such determination is made prior to construction of the DRAINAGE FACILITY, LICENSOR may terminate this License Agreement by providing written notice of termination to LICENSEE, and

(ii) If such determination is made following construction of the DRAINAGE FACILITY, the DRAINAGE FACILITY shall be encased or modified to the specifications of the LICENSOR and SCRRA, or removed from the LICENSED PROPERTY, and the cost for such encasement, modification or removal shall be borne by DISTRICT. LICENSOR agrees not to order the removal or relocation or changes to the DRAINAGE FACILITY for the purpose of future tracks or any other public improvements for five (5) years from the effective date of this License Agreement. If the DRAINAGE FACILITY has to be removed from the LICENSED PROPERTY in its entirety, LICENSOR shall assist LICENSEE in identifying an alternative location to relocate the DRAINAGE FACILITY. If an alternative location for the

DRAINAGE FACILITY is available on the property of LICENSOR, as determined in LICENSOR's sole discretion, LICENSOR shall offer such location to LICENSEE. This License Agreement shall be amended following such relocation to identify the new location of DRAINAGE FACILITY crossing LICENSOR's property, if applicable.

**SECTION 3: TERMS EXCLUSIVE TO DEVELOPER RESPONSIBILITY.**

**DEVELOPER SHALL:**

In addition to the requirements set forth elsewhere in this License Agreement, this grant of license and permission is further subject to the following terms, provisions and conditions, which DEVELOPER hereby expressly accepts:

a) No work shall be performed in connection with DRAINAGE FACILITY prior to receipt of LICENSOR's written approval. No approval by LICENSOR of DEVELOPER's or its contractor's plans shall relieve DEVELOPER or its contractor of any responsibility or liability hereunder. Subsequent to installation of the DRAINAGE FACILITY, LICENSED PROPERTY shall be restored to a condition satisfactory to LICENSOR's duly authorized representative.

b) All work by or on behalf of DEVELOPER on the LICENSED PROPERTY shall be performed by DEVELOPER at DEVELOPER's own expense and without expense to the LICENSOR. All references herein to work of DEVELOPER shall include such work whether performed by DEVELOPER or DEVELOPER's agents, employees or contractors.

c) DEVELOPER shall require that any contractor(s) that will be performing any work on LICENSED PROPERTY in connection with the construction of the DRAINAGE FACILITY execute a separate Contractor's Right of Entry Agreement with the LICENSOR, in the form attached hereto as Exhibit "B" and made a part hereof. By DEVELOPER's execution of this License Agreement, the DEVELOPER shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The DEVELOPER shall use only such construction methods as are consistent with safety, both as concerns the DEVELOPER, the DEVELOPER's agents and employees, the officers, agents, employees and property of the LICENSOR and the public in general. The DEVELOPER (without limiting the generality of the foregoing) shall comply with all applicable State and Federal Occupational Safety and Health Acts and regulations. All Federal Railroad Administration Regulations shall be followed when work is performed on the LICENSED PROPERTY.



d) DEVELOPER shall not begin nor permit its contractor to begin any work of any nature whatsoever on or about LICENSED PROPERTY until DEVELOPER or its contractor have given LICENSOR's Executive Director or duly authorized representative at least five (5) days prior written notice.

e) DEVELOPER or its contractor shall perform its work hereunder at such time and in such manner as shall be agreed upon between DISTRICT and LICENSOR or the duly authorized representative. During the entire progress of DEVELOPER's work on or about LICENSED PROPERTY, DEVELOPER or its contractor shall maintain contact and liaison with LICENSOR's authorized representatives so as to ascertain the time of passage of trains at the site of DEVELOPER's work and so as to permit free and safe flow of railroad traffic. All work of DEVELOPER shall be performed without interference with LICENSOR's tracks and operations and LICENSOR's and its lessees' or licensees' structures or facilities. DEVELOPER's contractor must be qualified and must have experience in railroad work, including all standards and requirements related thereto. DEVELOPER or its contractor shall use utmost care in protecting LICENSOR's and other's property and in avoiding accidents. DEVELOPER and its contractor shall leave LICENSED PROPERTY in a condition satisfactory to LICENSOR's authorized representatives.

f) DEVELOPER shall, at its sole cost, risk and responsibility, furnish or do, or cause to be furnished or done, any and all things required under this License Agreement when, where and as from time to time required to be accomplished whatsoever authorized representatives attempts or is bound to do at any time hereunder. Said things, including the time and manner of doing any work, shall conform to the requirements and standards of the LICENSOR as well as of any state, federal or municipal authority.

**SECTION 4: TERMS EXCLUSIVE TO DISTRICT RESPONSIBILITY.**

**DISTRICT SHALL:**

This grant of license and permission is further subject to the following terms, provisions and conditions which DISTRICT hereby expressly accepts:

a) DISTRICT shall, at its sole cost, operate and maintain the DRAINAGE FACILITY in accordance with all applicable federal, state and local laws and regulations and in good and safe condition, and keep same free and clear of debris, sediment or obstructive matter which may or could interfere with or impede the proper functioning thereof,

or which could impact the LICENSED PROPERTY or any other property of LICENSOR.

b) DISTRICT shall, at its sole cost, risk and responsibility, furnish, or do, or cause to be furnished or done, any and all things required under this License Agreement, when, where, and as from time to time required to be accomplished whatsoever DISTRICT attempts or is bound to do at any time hereunder. Said things, including the time and manner of doing any work, shall conform to the requirements of the LICENSOR as well as of any state, federal or municipal authority. As an example, and not by way of limitation, the following shall apply to DISTRICT on and after the date DISTRICT assumes responsibility for the operation and maintenance of the DRAINAGE FACILITY:

- i. DISTRICT shall at all times maintain insurance in the form of self-insurance acceptable to LICENSOR.
- ii. For all maintenance and repair other than the routine removal of debris, DISTRICT shall comply with all requirements applicable to DEVELOPER under Section 3 of this License Agreement, unless waived in writing by LICENSOR. The term "work" as used in Section 3 shall be deemed to refer to maintenance and repair work of the DISTRICT.
- iii. Subsequent to any work on the DRAINAGE FACILITY, the DISTRICT shall leave the LICENSED PROPERTY in good and safe condition, satisfactory to LICENSOR.

c) DISTRICT shall provide notification to LICENSOR prior to the date DISTRICT assumes responsibility for the operation and maintenance of the DRAINAGE FACILITY.

#### **SECTION 5: CONSTRUCTION AND INSTALLATION.**

a) DEVELOPER hereby agrees that there shall be no crossing of LICENSOR's track except at existing, open public crossings. The DRAINAGE FACILITY shall be constructed in accordance with the design plans approved by DISTRICT, and within the LICENSED PROPERTY. The DEVELOPER intends to construct the DRAINAGE FACILITY by directional boring and the excavation of the directional boring pits within the railroad right of way but not within the track subgrade. There will be no open trench excavation of the tracks during construction of DRAINAGE FACILITY. DEVELOPER agrees to restore the



LICENSED PROPERTY and, in the case of any damage occurring during construction, the track and trackbed, to the same condition as it existed prior to LICENSOR's entry onto the LICENSED PROPERTY, or better condition, upon completion of the construction of the DRAINAGE FACILITY.

DEVELOPER, without any cost or expense to LICENSOR, shall furnish or cause to be furnished the necessary labor, material, equipment and instrumentalities and shall perform or cause to be performed all the work of constructing, excavating and installing of said DRAINAGE FACILITY.

b) DEVELOPER hereby agrees that it or its contractor, during the performance of excavating and constructing the DRAINAGE FACILITY or any part thereof, will not excavate near the toe of trackfill of the trackbed and will protect trackbed in the design and construction of said DRAINAGE FACILITY.

c) DEVELOPER shall provide LICENSOR with "As-builts" within twenty (20) days of completion of the DRAINAGE FACILITY.

#### **SECTION 6: INSPECTION; HAZARDOUS MATERIALS.**

a) DEVELOPER hereby agrees that during the performance of excavating and constructing and maintaining the DRAINAGE FACILITY, and DISTRICT hereby agrees that during the performance of inspecting and maintaining said DRAINAGE FACILITY or any part thereof, its men, materials and machinery shall be kept at least twenty-five feet (25') from the centerline of LICENSOR's nearest track at all times; for work within twenty-five (25') feet, a LICENSOR flagman must be present at all times. The foregoing shall only apply if the tracks on or near the LICENSED PROPERTY are in active use.

During any periods when work is being performed on or adjacent to LICENSED PROPERTY by DEVELOPER, its contractor(s) or DISTRICT, in connection with any of the work to be performed hereunder, DEVELOPER or DISTRICT, as applicable, shall comply with all SCRRRA requirements applicable to such work, including, but not limited to, the requirement to have flagmen present for any work within twenty (20) feet of the tracks. LICENSOR may require provision of flagmen or other protective services or devices and may take such action as in LICENSOR's opinion may be necessary for LICENSOR's protection in the conduct of LICENSOR operations. The foregoing shall only apply if the tracks on or near the LICENSED PROPERTY are in active use.



DEVELOPER, during the performance of excavating and constructing and maintaining the DRAINAGE FACILITY, or DISTRICT, during the performance of maintaining said DRAINAGE FACILITY, upon receipt of a bill therefor, shall reimburse LICENSOR for any costs so incurred within thirty (30) days; such costs to be computed in accordance with LICENSOR's customary practices. The providing of this service shall not relieve DEVELOPER, its contractor or DISTRICT of any responsibility or liability. DEVELOPER and DISTRICT shall, prior to any construction, inspection, operation or maintenance of DRAINAGE FACILITY, obtain an encroachment permit from SCRRA, and comply with all requirements of SCRRA. The foregoing shall only apply if the tracks on or near the LICENSED PROPERTY are in active use.

In the event of any settlement of LICENSOR's embankment caused by excavation of DRAINAGE FACILITY, as herein provided, DEVELOPER, at its sole cost and expense, agrees to restore or cause to be restored LICENSOR's embankment to its proper grade and dimensions.

b) DISTRICT, on behalf of DISTRICT, and DEVELOPER, on behalf of DEVELOPER, covenants that DISTRICT or DEVELOPER, as applicable, will not handle or transport Hazardous Materials on the LICENSED PROPERTY. As used in this License Agreement, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects. As used in the preceding sentence, "Environmental Law" means any federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions currently existing or as amended or adopted in the future which are or become applicable to the DISTRICT or the DEVELOPER or the LICENSED PROPERTY. In the event any Hazardous Materials are brought upon or released on the LICENSED PROPERTY as a result of the construction, operation or maintenance of the DRAINAGE FACILITY, DISTRICT, on behalf of DISTRICT, and DEVELOPER, on behalf DEVELOPER, agrees fully to comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances (hereinafter referred to as "Hazardous Materials Standards") concerning Hazardous Materials.

c) LICENSOR shall have the right at any time to inspect the LICENSED PROPERTY and the DRAINAGE FACILITY so as to monitor compliance with this License Agreement.

d) DEVELOPER and DISTRICT each agree to assume liability for and to save and hold harmless LICENSOR from and against any and all injuries to any person, including

wrongful death, and damage to property, and all related expenses, including without limitation attorneys' fees, investigators' fees and litigation expenses, resulting in whole or in part from DEVELOPER's or DISTRICT's respective failure to comply with any Hazardous Materials Standards issued by any governmental authority concerning Hazardous Materials resulting from or related to the DRAINAGE FACILITY within LICENSED PROPERTY, or any activities of DEVELOPER or DISTRICT on the LICENSED PROPERTY. DEVELOPER, for claims arising prior to assumption of ownership and maintenance obligations by the DISTRICT, or DISTRICT, for claims arising following its acceptance of ownership and maintenance obligations from DEVELOPER, as applicable, at its cost, shall assume the defense of all claims, in accordance with Section 9 or Section 10 of this License Agreement, as applicable. DEVELOPER and DISTRICT, respectively, agree to reimburse LICENSOR for all costs of any kind incurred as a result of the failure to comply with this Section 6, including, but not limited to, fines, penalties, clean-up and disposal costs, and reasonable legal costs incurred as a result of any handling, transporting, or disposing of Hazardous Materials on the LICENSED PROPERTY, or any other property of LICENSOR.

#### **SECTION 7: INSURANCE.**

As a condition to this License Agreement, without limiting or diminishing DEVELOPER's obligation to indemnify or hold DISTRICT, County of Riverside and LICENSOR harmless, DEVELOPER shall procure, and require any contractor engaged or employed to perform any work hereunder on behalf of DEVELOPER on any part of LICENSED PROPERTY to procure and keep in effect during the period of such work, the following insurance coverages. With respect to this insurance section, DISTRICT herein refers to the Riverside County Flood Control and Water Conservation District, the County of Riverside, its agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds:

a) Railroad Protective Liability:

DEVELOPER shall, in connection with any construction activities or any work undertaken with respect to the DRAINAGE FACILITY either directly by DEVELOPER, or by its contractors, acquire and keep in force during the period of such construction or work \$3,000,000 (combined single limit) **\$6,000,000** (aggregate limit) of railroad protective liability insurance,



naming only Riverside County Transportation Commission as the insured. This requirement shall apply only if the tracks on or near the LICENSED PROPERTY are in active use.

b) Workers' Compensation:

If DEVELOPER has employees as defined by the State of California, DEVELOPER shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of DISTRICT and LICENSOR.

c) Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of DEVELOPER's performance of its obligations hereunder. Policy shall name the DISTRICT and LICENSOR, their agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insureds. Policy's limit of liability shall not be less than \$5,000,000 per occurrence combined single and aggregate limit.

d) Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this License Agreement, then DEVELOPER shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this License Agreement or be no less than two (2) times the occurrence limit. Policy shall name the DISTRICT and LICENSOR, their agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed

officials, agents or representatives as additional insureds.

e) Professional Liability:

DEVELOPER shall cause any architect or engineer retained by DEVELOPER in connection with the performance of DEVELOPER's obligations under this License Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this License Agreement, with a limit of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. DEVELOPER shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this License Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this License Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) shall continue for the term specified in the insurance policy as long as the law allows.

f) Pollution and Asbestos Liability:

DEVELOPER or its construction contractor(s) shall obtain, at its sole expense and keep in effect during the term of the contract, Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) covering DEVELOPER's or its construction contractor(s) liability for a third party bodily injury and property damage arising from pollution conditions caused by the DEVELOPER or its construction contractor(s) while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the DISTRICT and LICENSOR. The insurance coverage shall also respond to cleanup cost. This coverage may be written



in combination with the commercial general liability insurance or professional liability insurance.

DEVELOPER or its construction contractor(s) shall maintain Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the DISTRICT and LICENSOR for review and approval. If DEVELOPER or its construction contractor(s) maintains broader coverage and/or higher limits than the minimums shown above, the DISTRICT and LICENSOR requires and shall be entitled to the broader coverage and/or higher limits maintained by DEVELOPER or its construction contractor(s). Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT and LICENSOR.

In the event DEVELOPER or its construction contractor(s) encounters materials on the site that is believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, DEVELOPER or its construction contractor(s) shall immediately stop work in the area affected and report the condition to the DISTRICT, County of Riverside and LICENSOR in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the DISTRICT, LICENSOR and DEVELOPER, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the DISTRICT, LICENSOR and DEVELOPER.

DEVELOPER or its construction contractor(s) shall not be required to perform without consent any work relating to asbestos or polychlorinated biphenyl (PCB). As between LICENSOR and DEVELOPER, DEVELOPER shall, to the fullest extent permitted by law, be responsible for all costs related to remediation of such asbestos or polychlorinated

biphenyl (PCB).

g) General Insurance Provisions – All Lines:

- i. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A+: VIII (A: 8) unless such requirements are waived, in writing, by both the LICENSOR and DISTRICT Risk Managers. If both the LICENSOR and DISTRICT Risk Managers waive a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- ii. The DEVELOPER must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of both LICENSOR and DISTRICT Risk Managers before the commencement of operations under this License Agreement. Upon notification of self-insured retention deemed unacceptable to the DISTRICT and LICENSOR, and at the election of both LICENSOR and DISTRICT Risk Managers, DEVELOPER's carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this License Agreement with DISTRICT and LICENSOR; or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- iii. DEVELOPER shall cause their insurance carrier(s) or its contractor's insurance carrier(s), to furnish DISTRICT and LICENSOR with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by both LICENSOR and DISTRICT Risk Managers, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of



thirty (30) days written notice shall be given to the DISTRICT prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If DEVELOPER insurance carrier(s) policies do not meet the minimum notice requirement found herein, DEVELOPER shall cause DEVELOPER's insurance carrier(s) to furnish a 30-day Notice of Cancellation Endorsement. In the event of a material modification, cancellation, expiration or reduction in coverage, this License Agreement shall terminate forthwith, unless DISTRICT and LICENSOR receive, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

- iv. It is understood and agreed by the parties hereto that DEVELOPER's insurance shall be construed as primary insurance, and DISTRICT's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- v. If, during the term of this License Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this License Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT and LICENSOR reserves the right to adjust the types of insurance required under this License Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in both the LICENSOR and DISTRICT Risk Managers' reasonable judgment, the amount or type of insurance carried by DEVELOPER has become inadequate.



- vi. DEVELOPER shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this License Agreement.
- vii. The insurance requirements contained in this License Agreement may be met with a program(s) of self-insurance acceptable to DISTRICT.
- viii. DEVELOPER agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this License Agreement.

If any part of the work is subcontracted, similar insurance shall be provided by or on behalf of the subcontractors to cover their operations. Any limitation in the foregoing insurance requirements that excludes work performed within fifty feet (50') of a LICENSOR track shall be exempted out of said policies.

Failure to maintain the insurance required by this paragraph shall be deemed a material breach of this License Agreement and shall authorize and constitute authority for DISTRICT and LICENSOR, at its sole discretion, to provide written notice to DEVELOPER that DISTRICT and LICENSOR are unable to perform its obligations hereunder, nor DISTRICT to accept responsibility for ownership, operation and maintenance of DRAINAGE FACILITY due, either in whole or in part, to said breach of this License Agreement.

**SECTION 8: LIMITATION OF LIABILITY; ASSUMPTION OF RISK AND WAIVER.**

a) DISTRICT and DEVELOPER further hereby agree that LICENSOR shall not, at any time, be required to bear or assume any cost or expense in or incident to the construction, operation and maintenance of the DRAINAGE FACILITY. DISTRICT and DEVELOPER hereby expressly agree to bear and assume all such cost and expense.

b) To the maximum extent allowed by law, DISTRICT, on behalf of DISTRICT, and DEVELOPER, on behalf DEVELOPER, assumes any and all risk of loss, damage or injury of any kind to any person or property, including, without limitation, the DRAINAGE FACILITY except to the extent such loss, damage or injury arises from LICENSOR's gross negligence or willful misconduct. DISTRICT's, on behalf of DISTRICT, and DEVELOPER's, on behalf DEVELOPER, assumption of risk shall include, without

limitation, loss or damage caused by defects in the DRAINAGE FACILITY on the LICENSED PROPERTY, accident or fire or other casualty on the LICENSED PROPERTY resulting from or in any way related to the DRAINAGE FACILITY, except to the extent such loss, damage or injury arises from LICENSOR's gross negligence or willful misconduct. The term "LICENSOR" as used in this Section shall include: (i) any transit or rail-related company legally operating upon or over LICENSOR's tracks or other property; and (ii) any other persons or companies employed, retained or engaged by LICENSOR. DISTRICT, on behalf of itself and its Personnel, and DEVELOPER, on behalf of itself and its Personnel, as a material part of the consideration for this License Agreement, hereby waive all claims and demands against LICENSOR for any such loss, damage or injury of DISTRICT or DEVELOPER and/or their respective Personnel.

In that connection, DISTRICT, on behalf of itself and its Personnel, and DEVELOPER waive, for their respective Personnel, the benefit of California Civil Code Section 1542, which provides as follows:

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

This provision shall survive the termination of this License Agreement. As used in this Section, "Personnel" means DISTRICT's and DEVELOPER's its respective officers, directors, affiliates or anyone directly or indirectly employed by DISTRICT or DEVELOPER or for whose acts DISTRICT or DEVELOPER is liable.

**SECTION 9: INDEMNITY BY DEVELOPER.**

a) DEVELOPER shall indemnify and hold harmless DISTRICT, County of Riverside, LICENSOR, their directors, officers, Board of Supervisors, elected and appointed officials, agents, employees, representatives, independent contractors and subcontractors (collectively "INDEMNIFIED PARTIES") from any liability whatsoever, based or asserted upon any act or omission of DEVELOPER, its officers, employees, subcontractors, agents or representatives, arising from or in any manner related to the performance or failure to perform any obligation under this License Agreement, the design, construction, installation or presence of the DRAINAGE FACILITY or the use and maintenance of the LICENSED PROPERTY, including,



but not limited to, any such losses, damages or expenses arising out of (a) loss of or damage to property, (b) injury to or death of persons, or (c) mechanics' or other liens of any character.

DEVELOPER shall defend, at its sole expense, INDEMNIFIED PARTIES in any claim or legal action based upon such alleged acts or omissions and shall be responsible for all costs and fees including, but not limited to, attorneys' fees, cost of investigation, defense and settlements or awards.

b) With respect to any action or claim subject to indemnification herein by DEVELOPER, DEVELOPER shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle or compromise any such action or claim without the prior consent of INDEMNIFIED PARTIES; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes DEVELOPER's indemnification to INDEMNIFIED PARTIES as set forth herein. DEVELOPER's obligation hereunder shall be satisfied when DEVELOPER has provided to INDEMNIFIED PARTIES the appropriate form of dismissal relieving INDEMNIFIED PARTIES from any liability for the action or claim involved.

c) The specified insurance limits required in this License Agreement shall in no way limit or circumscribe DEVELOPER's obligations to indemnify and hold harmless INDEMNIFIED PARTIES herein from third party claims.

d) In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve DEVELOPER from indemnifying the INDEMNIFIED PARTIES to the fullest extent allowed by law.

e) This indemnification provision shall survive termination or expiration of this License Agreement until such a time as the statute of limitations shall run for any claims that may arise out of this License Agreement.

#### **SECTION 10: INDEMNITY BY DISTRICT.**

DISTRICT shall indemnify, defend, save and hold harmless LICENSOR (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DISTRICT's (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this License

Agreement, performance under this License Agreement, or failure to comply with the requirements of this License Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) payment of reasonable attorney's fees; or (d) any other cost, liability or loss of any kind or nature whatsoever.

**SECTION 11: TERMINATION OF LICENSE; LICENSOR RIGHT TO CURE BREACH.**

a) This License Agreement shall begin with the date first hereinabove written and continue thereafter for so long as LICENSED PROPERTY shall be used for the purposes set forth herein; provided, however, if DISTRICT shall abandon the use of LICENSED PROPERTY, or any part thereof, for such purposes, for a continuous period of six (6) months then LICENSOR may terminate this License Agreement to the extent of the portion so abandoned or discontinued. In addition to any other rights or remedies, LICENSOR shall have the same complete title to LICENSED PROPERTY so abandoned as though this License Agreement had never been executed and the right to enter thereon and exclude therefrom DISTRICT, its successors and assigns. In the event of such notice of termination the DISTRICT shall arrange for removal of the DRAINAGE FACILITY from the LICENSED PROPERTY or, subject to LICENSOR's approval, in its sole discretion, for their proper encasement or modification to LICENSOR and SCRRA standards at DISTRICT's sole cost and expense as provided for in Section 2.

b) If the DEVELOPER or DISTRICT does not use the right herein granted or the DRAINAGE FACILITY for one (1) year, or if the DEVELOPER or DISTRICT continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the LICENSOR to the DEVELOPER or DISTRICT, as applicable, specifying such default, the LICENSOR may, at its option, forthwith immediately terminate this License Agreement by written notice.

c) If, at any time, DISTRICT or DEVELOPER shall, in the judgment of LICENSOR, fail to perform properly its respective obligations under this License Agreement, LICENSOR may, at its option, perform such work itself as it deems necessary for the safe operation of its railroad, as applicable, and the safety of the LICENSED PROPERTY, any other uses thereon and any adjacent property. Prior to exercising such right, LICENSOR shall provide advance notice to DISTRICT or DEVELOPER, as applicable, of LICENSOR's judgment and intention to perform



such work. Notwithstanding the foregoing, in the case of an imminent risk to property or safety, as determined in LICENSOR's sole discretion, LICENSOR may immediately perform the required work. In all other cases, thirty (30) days advance written notice shall be provided. In either such event, DISTRICT or DEVELOPER, as applicable, agrees to pay, within sixty (60) business days after a bill is rendered therefor, the cost so incurred by LICENSOR. However, failure on the part of LICENSOR to perform the obligations of DISTRICT or DEVELOPER shall not release the obligated party from liability hereunder for any loss or damage occasioned thereby.

**SECTION 12: WARRANTY AND DISCLAIMER.**

a) The rights herein granted by LICENSOR are limited to such right, title or interest as LICENSOR may have in LICENSED PROPERTY and are made without any warranty, express or implied. It is understood by the parties hereto that such rights are granted subject to the existing rights therein of any third party, if any. It shall be LICENSEE's sole obligation to obtain such additional permission, license and grants as may be necessary on account of any such existing rights. No damages shall be recovered from LICENSOR because of dispossession of LICENSEE or because of failure of, defect in or extinction of LICENSOR's title.

b) LICENSEE accepts the LICENSED PROPERTY in its "as is" condition, with all faults. LICENSEE acknowledges and agrees that LICENSEE is entering the LICENSED PROPERTY under this License Agreement and based on LICENSEE's own investigations and knowledge of the LICENSED PROPERTY and that, except as otherwise specifically stated in this License Agreement, neither LICENSOR nor any agent of LICENSOR, has made any representation or warranty whatsoever, express or implied, with regard to the physical condition of the LICENSED PROPERTY or the suitability of the LICENSED PROPERTY for any particular purpose or use, including, without limitation, any representations or warranties regarding the applicability or non-applicability of any laws, the soil or subsoil, surface or subsurface conditions, topography, possible Hazardous Materials contamination, fill, drainage, access to public roads, availability of utilities, existence of underground storage tanks, applicability of or compliance with any Environmental Law or any other matter of any nature whatsoever. LICENSOR is not responsible for damage to or loss by theft of LICENSEE's property located in, on or beneath the LICENSED PROPERTY.

**SECTION 13: ASSIGNMENT; NO WAIVER.**

This License Agreement and all of the covenants and conditions hereof shall inure to or bind each party's successors and assigns, provided that no right of DEVELOPER and DISTRICT shall be transferred or assigned, either voluntarily or involuntarily, except by express written agreement acceptable to LICENSOR. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right of interest by reason of such attempted assignment, hypothecation or transfer.

Either party hereto may waive any default at any time of the other without affecting, or impairing any right arising from, any subsequent or other default.

**SECTION 14: NOTICE.**

Any and all notices sent or required to be sent to the parties of this License Agreement will be mailed by first class mail, postage prepaid, to the following addresses. Any notice hereunder to be given by one party to the other party shall be deemed to be properly served on the date it is deposited in the United States mail, postage prepaid, addressed as specified below. Any party may change its address for the receipt of notice by giving written notice thereof to the other party of such change.

RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT  
1995 Market Street  
Riverside, CA 92501  
Attn: Contract Services Section

RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION  
4080 Lemon Street, 3<sup>rd</sup> Floor Riverside,  
CA 92501  
Attn: Anne Mayer, Executive Director

D.R. HORTON LOS ANGELES HOLDING COMPANY, INC.  
2280 Wardlow Circle, Suite 100  
Corona, CA 92880  
Attn: Susan Paradiso

**SECTION 15: JURISDICTION/LAW; VENUE.**

This License Agreement is to be construed in accordance with the laws of the State of California. If any provision of this License Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. Venue shall be in Riverside County.

**SECTION 16: REPRESENTATION AND WARRANTIES.**



The individual(s) executing this License Agreement on behalf of DEVELOPER certify that they have the authority within their respective company(ies) to enter into and execute this License Agreement and, have been authorized to do so by all boards of directors, legal counsel and/or any other board, committee or other entity within their respective company(ies) which have the authority to authorize or deny entering into this License Agreement.

**SECTION 17: SEVERABILITY.**

If any term, covenant, condition or provision of this License Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this License Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**SECTION 18: COUNTERPART; SIGNATURES**

This License Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A manually signed copy of this License Agreement which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this License Agreement for all purposes. This License Agreement may be signed using an electronic signature.

**SECTION 19: ATTORNEYS' FEES.**

In the event of a dispute between the parties with respect to the terms or conditions of this License Agreement, the prevailing party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

**SECTION 20: CONDEMNATION.**

In the event all or any portion of the LICENSED PROPERTY shall be acquired or condemned for public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), DISTRICT shall receive compensation (if any) only for the acquisition and damage to the DRAINAGE FACILITY. Any other compensation or damages arising out of such taking or condemnation awarded to LICENSEE are hereby assigned by LICENSEE to LICENSOR.

**SECTION 21: WAIVER OF RELOCATION RIGHTS.**

LICENSEE hereby waives any right to relocation assistance, moving expenses, goodwill or other payments to which LICENSEE might otherwise be entitled, but for this waiver and LICENSOR's express right of termination, under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 United State Code Section 4601 et seq. and/or the California Relocation Assistance Law, as amended, Government Code Section 7260 et seq.

**SECTION 22: NO RECORDING.**

LICENSEE shall not record or permit to be recorded in the official records of the Riverside County any memorandum of this License Agreement or any other document giving notice of the existence of this License Agreement, or the license granted hereby.

**SECTION 23: NONDISCRIMINATION.**

LICENSEE certifies and agrees that all persons employed thereby and any contractors retained thereby with respect to the LICENSED PROPERTY and the DRAINAGE FACILITY are and shall be treated equally without regard to or because of race, religion, ancestry, national origin or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including, but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

**SECTION 24: ENTIRE AGREEMENT; AMENDMENT; RECITALS.**

This License Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This License Agreement may be changed or modified only upon the written amendment executed by the parties hereto. The recitals set forth above are true and correct and are incorporated into this License Agreement as if fully set forth herein.

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//

[Signatures on following page]

SIGNATURE PAGE TO  
AMENDED AND RESTATED LICENSE AGREEMENT

Winchester Hills Line C – Simpson Road Lateral

Project No. 4-0-00586

Tract Map No. 30989

IN WITNESS WHEREOF, the parties here to have duly executed this License Agreement as of the day and year first hereinabove written.

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT**

By:   
JASON E. UHLEY  
General Manager-Chief Engineer


By:   
KAREN SPIEGEL, Chair  
Chair, Riverside County Flood Control  
and Water Conservation District  
Board of Supervisors

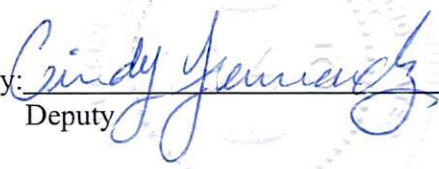
APPROVED AS TO FORM:

ATTEST:

MINH TRAN  
County Counsel

KECIA HARPER  
Clerk of the Board

By:   
RYAN YABKO  
Deputy County Counsel

By:   
Deputy  
(SEAL)


[Signatures continued on following page]

Amended and Restated License Agreement:  
Winchester Hills Line C – Simpson Road Lateral  
Project No. 4-0-00586  
Tract Map No. 30989  
11/15/2022  
AMR:rlp


DEC 13 2022 11.7



**RIVERSIDE COUNTY TRANSPORTATION  
COMMISSION**

By:   
ANNE E. MAYER, Executive Director

APPROVED AS TO FORM:

By:   
STEVE DEBAUN  
Best Best & Krieger LLP  
Counsel to the Riverside County Transportation  
Commission

[Signatures continued on following page]

Amended and Restated License Agreement:  
Winchester Hills Line C – Simpson Road Lateral  
Project No. 4-C-00586  
Tract Map No. 30989  
11/15/2022  
AMR:rlp



**D.R. HORTON LOS ANGELES HOLDING  
COMPANY, INC.,**  
a California corporation

By:   
BARBARA M. SCULL  
Vice-President

By:   
JENNIFER L. O'LEARY  
Authorized Signatory

(ATTACH NOTARY WITH CAPACITY  
STATEMENT)

Amended and Restated License Agreement:  
Winchester Hills Line C – Simpson Road Lateral  
Project No. 4-0-00586  
Tract Map No. 30989  
11/15/2022  
AMR:rlp

# CALIFORNIA NOTARY ACKNOWLEDGEMENT (INDIVIDUAL)

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 Riverside

On November 22, 2022 before me, Ginger Lovett, NOTARY PUBLIC (insert name and title of the officer), personally appeared BARBARA M. SCULL and JENNIFER L. O'LEARY, 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"  
LICENSED PROPERTY  
DESCRIPTION/DEPICTION

Plans attached only for purposes of identifying the location of  
Licensed Property

[attached behind this page]

Exhibit A

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S OFFICE MAY NOT CORRECT WITH LOCAL LOT-SPLIT OR BUILDING SITE ORDINANCES.

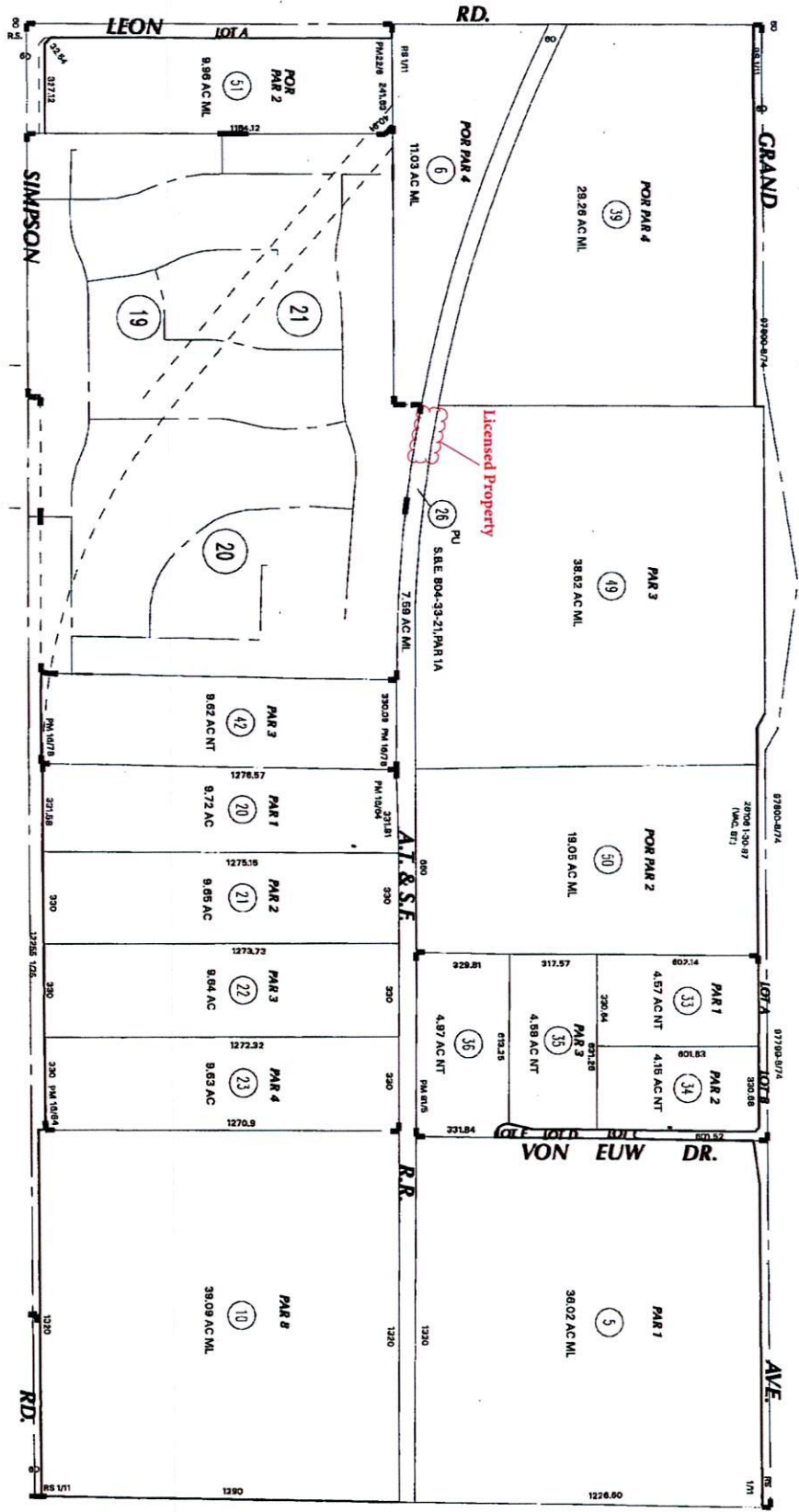
JUN 05 2007

SEC. 29 T. 5S., R. 2W

T. 3. A. 071-290

462-02  
22-22

**EXHIBIT A**



ASSESSOR'S MAP BK462 PG. 02  
Riverside County, Calif. A17281

- RS 1/11 (SUB. OF SEC. 29)
- PM 18/54 PARCEL MAP 6285
- PM 81/5 PARCEL MAP 12119
- PM 16/78 PARCEL MAP 5986
- PM 22/6 PARCEL MAP 6517

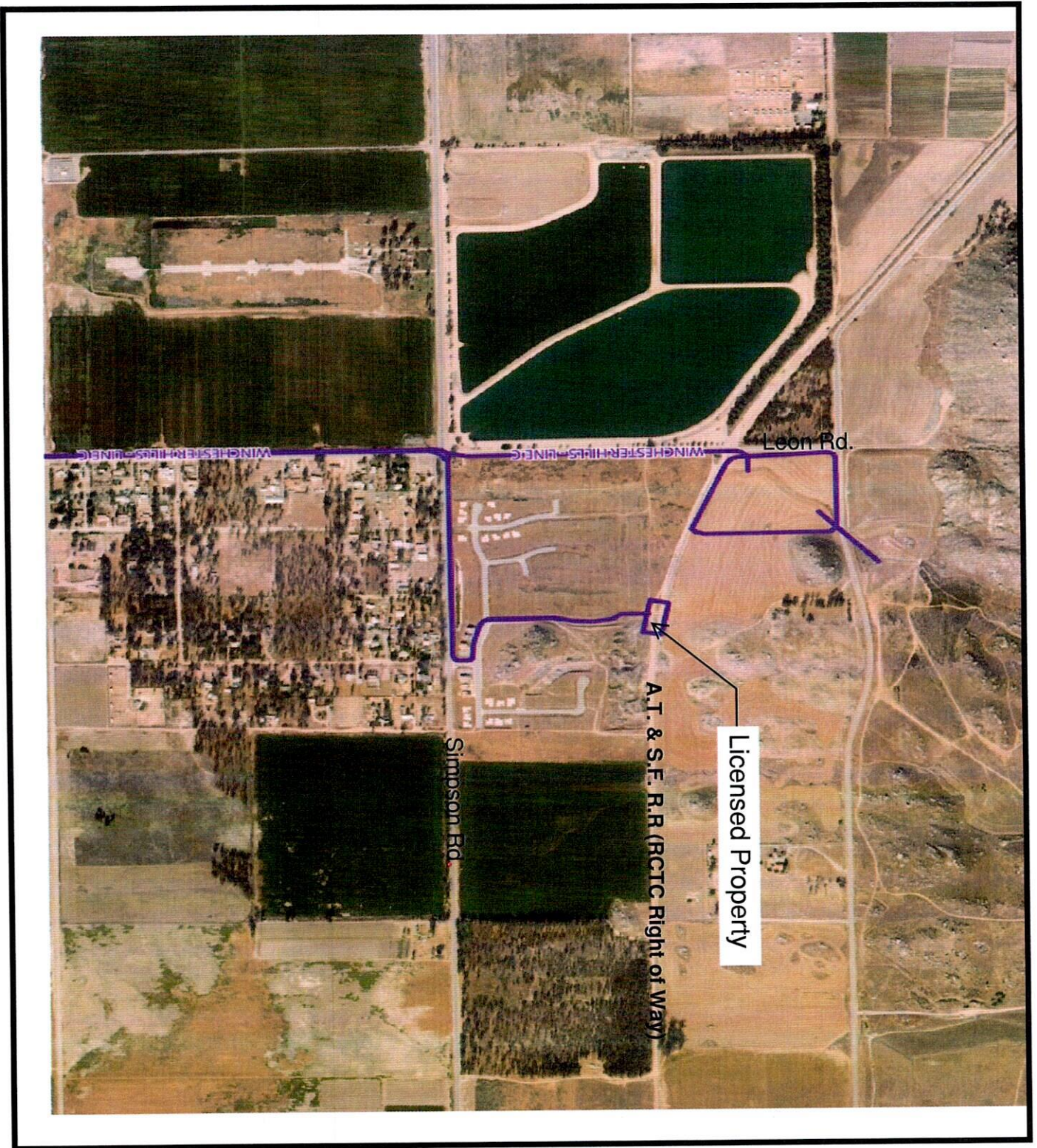
Apr 2007

DATE	OLD NUMBER	NEW NUMBER
1/7/72	4	18
1/7/72	5	19
1/7/72	7	11, 11.15
9/9/74	1	14
9/9/74	2	15
9/9/74	3	16
9/9/74	4	17
9/9/74	18	18
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9/9/74	26	26
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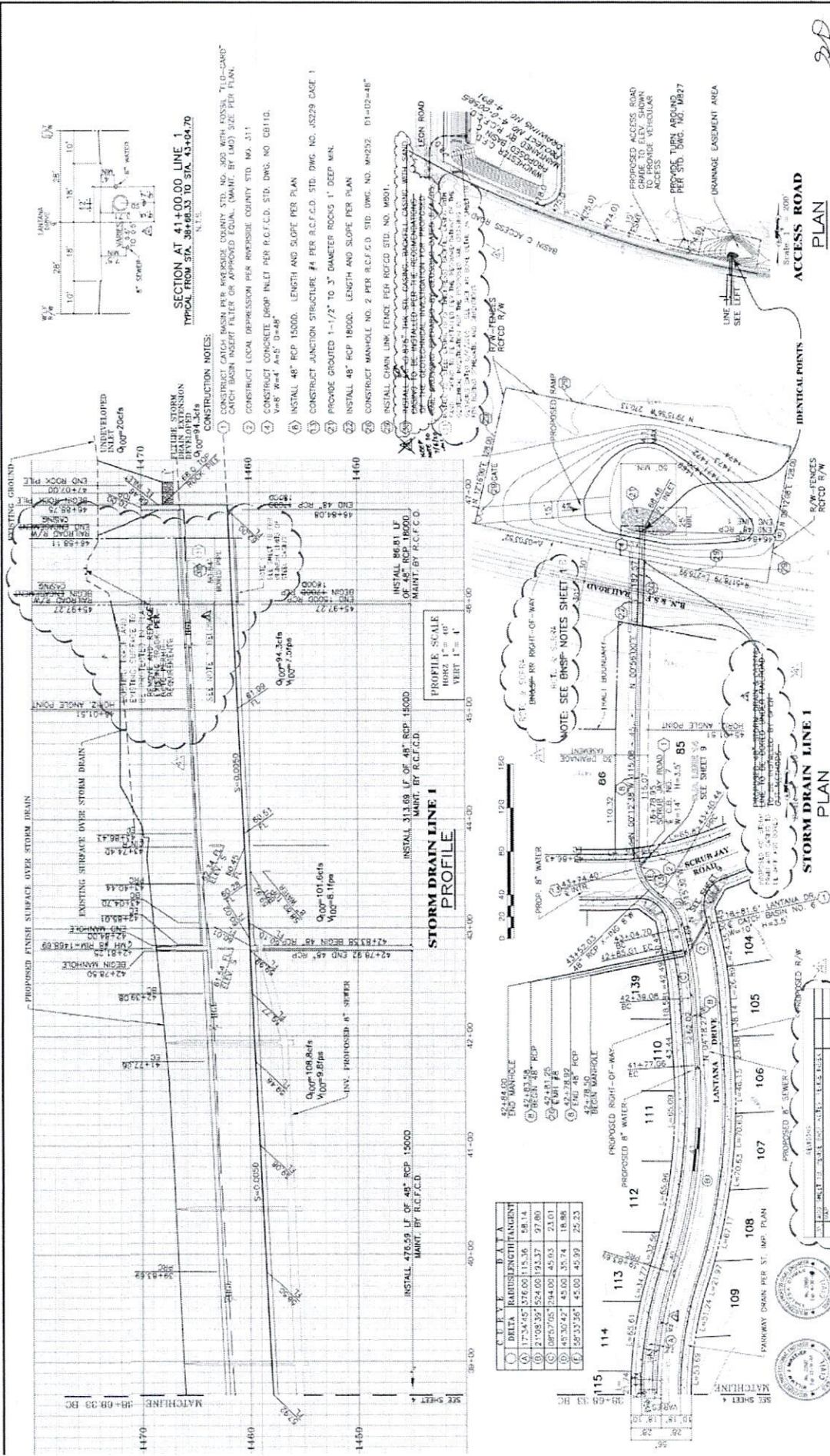
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07



Exhibit A







**SECTION NOTES:**

- CONSTRUCT LOCAL DEPRESSION PER WATERSIDE COUNTY STD. W-311
- CONSTRUCT CONCRETE DROP INLET PER R.C.F.C.D. STD. DWS. NO. CB110.
- INSTALL 48" RCP 15000. LENGTH AND SLOPE PER PLAN
- CONSTRUCT JUNCTION STRUCTURE #4 PER R.C.F.C.D. STD. DWS. NO. JS229 PAGE 1
- PROVIDE GROUDED 1-1/2" TO 3" DIAMETER RODS 1' DEEP MIN.
- INSTALL 48" RCP 18000. LENGTH AND SLOPE PER PLAN
- CONSTRUCT MANHOLE NO. 2 PER R.C.F.C.D. STD. DWS. NO. M4252. D1-02-48"
- INSTALL CHAIN LINK FENCE PER RCPD STD. NO. M501.
- PROVIDE 2" DIA. 1/8" THICK SOLID CASUAL BELL SAND

**REVISIONS**

NO.	DESCRIPTION	DATE
1	ADD STORM DRAIN LINE 1 PLAN	11/22/2004
2	ADD STORM DRAIN LINE 1 PROFILE	11/22/2004
3	ADD ACCESS ROAD PLAN	11/22/2004

**WINCHESTER HILLS LINE C**  
**SIMPSON ROAD LATERAL**  
**TRACT 30989 IP 040245**  
**PLAN AND PROFILE**

PROJECT NUMBER: 4-0-00586  
DRAWING NO.: 4-892  
SHEET NO.: 5 OF 10

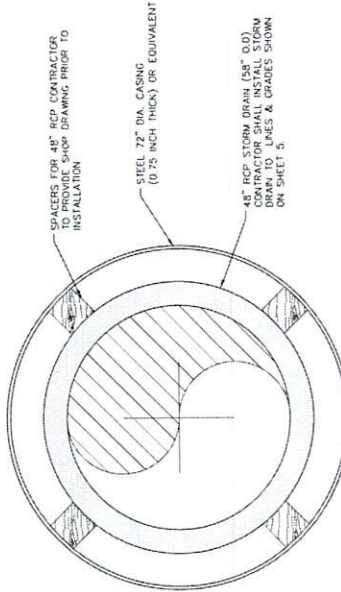
DESIGNED BY: J. NAPLES  
CHECKED BY: J. NAPLES  
DATE: 11/22/2004

APPROVED BY: G. MULLINS  
DATE: 11/22/2004

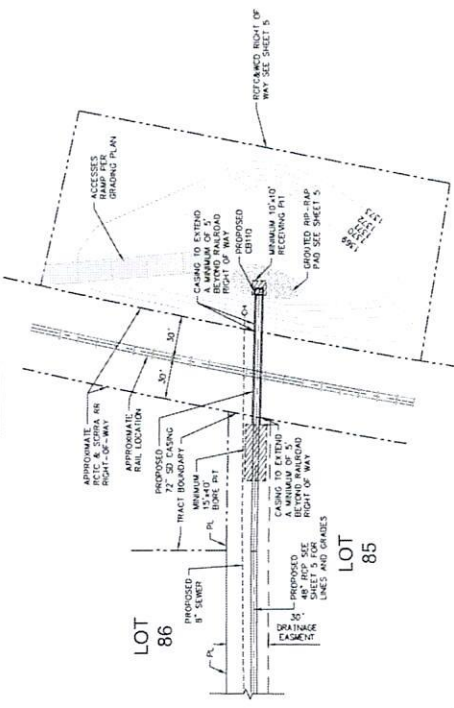
APPROVED FOR: WATERSIDE COUNTY DISTRICT

**W. J. McCREWER, INC.**  
CIVIL ENGINEERING  
510 NORTH MAIN STREET, SUITE 10  
MARIETTA, GA 30067  
TEL: 770.429.2200  
FAX: 770.429.2201  
WWW.WJMCCREWER.COM





**48" DI. RCP STORM DRAIN CASING AND SKIDS**  
SCALE: 1"=1'



**JACK AND BORE DETAIL**

**RCTC & SCRRRA RAILROAD NOTES**

1. CONTRACTOR SHALL CONTACT THE (SCRRRA) SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY ROADMASTER, ERIC REESE (909)-667-8108 AT LEAST (5) WORKING DAYS (MONDAY THROUGH FRIDAY) BEFORE STARTING WORK.
2. CONTRACTOR SHALL CONTACT THE (SCRRRA) SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY ROADMASTER, ERIC REESE (909)-667-8108 AT LEAST (10) WORKING DAYS (MONDAY THROUGH FRIDAY) IN ADVANCE OF ANY TRACK MOVEMENT. THE REPORT SHALL BE SUBMITTED TO THE RAILROAD OFFICE CALLED THE MINIMUM PERIOD OF BILLING SHALL BE EIGHT (8) HOUR BASE PER DAY. THE COST OF FLAGGING SERVICES PROVIDED BY THE RAILWAY WHEN DEMAND NECESSARY BY THE RAILWAYS REPRESENTATIVE, WILL BE BORNE BY THE CONTRACTOR.
3. CONTRACTOR SHALL CONTACT THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION ERICK GUERRERZ (951)-206-3818 AT LEAST 5 WORKING DAYS WORKING DAYS IN ADVANCE OF ANY TRACK MOVEMENT. THE PRELIM SHALL BE MONITORED TO DETECT ANY TRACK MOVEMENT. ANY MOVEMENT OVER ONE-QUARTER (1/4) INCH SHALL BE IMMEDIATELY REPORTED TO THE (SCRRRA) ROADMASTER AND RCTC. THE REPORT SHALL BE SUBMITTED TO THE RAILROAD OFFICE AND RCTC STATING METHODOLOGY AND MONITORING RESULTS WITHIN SEVEN (7) DAYS OF THE COMPLETION OF THE PIPE JACKING. THE REPORT SHALL BE SENT TO THE RCTC AND SCRRRA. CONTACT SCRRRA AT 2550 WASHINGTON ST, RIVERSIDE, CA 92504.
4. CONTACT SCRRRA'S CONSULTANT/CONTRACTOR AT (714) 808-8824 TO OBTAIN THE ROADWAY WORKER-IN-CHARGE (RWIC) AVAILABILITY AND WAY REQUIRE. A MINIMUM OF FIFTEEN WORKING DAYS PRIOR TO BEGINNING WORK. PRIOR NOTIFICATION OF FLAGGING SERVICES DURING THE GUARANTEE PERIOD SHALL BE SUBMITTED TO THE RCTC AND SCRRRA'S CONSULTANT/CONTRACTOR AT (714) 859-1141 TO ARRANGE FOR THIRD PARTY SAFETY TRAINING. ALLOW 72 HOURS FROM THE DATE OF TRAINING TO COMPLETE SCRRRA'S TEMPORARY RIGHT OF ENTRY AGREEMENT. FORM 6. THIS FORM IS AVAILABLE ON SCRRRA'S WEBSITE: WWW.METROLINKTRAINING.COM (ABOUT US, ENGINEERING AND CONSTRUCTION, MANUALS). CONTACT SCRRRA'S ROW ENFORCEMENT COORDINATOR: 2558 SORNHEISEL/CALIFORNIA, CA 91767. OFFICE: (909) 992-8663 EMAIL: SORNHEISEL@SCRRRA.COM
5. CONTRACTOR WILL NEED TO COMPLETE RCTC'S GENERAL APPLICATION FORM. THE FORM IS AVAILABLE ON RCTC'S WEBSITE: WWW.RCTC.COM. CONTRACTOR WILL THEN NEED TO COMPLETE RCTC'S SUPPLEMENTAL APPLICATION FOR RIGHT OF ENTRY. THE FORM IS AVAILABLE ON RCTC'S WEBSITE: <http://www.rctc.org/App-content/uploads/2018/05/Supplication-for-right-of-entry.pdf>. CONTACT RCTC AT (909) 992-7148. CONTRACTOR IS NOT TO STORE ANY MATERIALS, EQUIPMENT, OR CHEMICALS WITHIN RCTC RAILROAD RIGHT-OF-WAY.

	PREPARED BY: JOSEPH L. CASTANEDA    P.C.E. NO. 23222    DATE:		4800 W. HUNTERS RIVER BLVD. SUITE 100 HUNTERS RIVER, CA 94620 (916) 281-1111	BENCH MARK: 1" BENCH MARK 1" MARK SET ON TOP OF CONCRETE POST STAMPED 48" RCP RECEIVED DATE AND SIMPSON ROAD AND SIMPSON ROAD	RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT RECOMMENDED BY: [Signature] DATE:	PROJECT NO. 4-0-00586 DRAWING NO. 4-892 SHEET NO. 1B OF 10	
APPROVED AS TO CONFORMANCE WITH APPLICABLE COUNTY STANDARDS AND PRACTICES:		COUNTY OVERSIGHT ENGINEER: [Signature]    DATE SIGNED:		RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT RECOMMENDED BY: [Signature] DATE:		WINCHESTER HILLS LINE C SIMPSON ROAD LATERAL TRACT 30989 IP 040245 NOTES AND BORE PIT	

EXHIBIT "B"  
FORM OF RIGHT OF ENTRY

[attached behind this page]



**RIVERSIDE COUNTY TRANSPORTATION COMMISSION  
RIGHT OF ENTRY AGREEMENT  
WITH (INSERT NAME OF PARTY)**

**(Winchester Hills Line C – Simpson Road Lateral)**

This Right of Entry Agreement ("Right of Entry") is entered in this \_\_\_ day of \_\_\_\_\_, 202\_\_ by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION (the "COMMISSION") and \_\_\_\_\_ ("PERMITTEE"). The COMMISSION and PERMITTEE are sometimes individually referred to as "Party" and collectively as "Parties".

RECITALS

A. WHEREAS, the COMMISSION is the owner in fee of that certain real property north of Simpson Road, east of Leon Road in the City of Winchester, Riverside County, California, described as the "LICENSED PROPERTY" in that certain Amended and Restated License Agreement, Winchester Hills Line C – Simpson Road Lateral, Project No. 4-0-00586, Tract Map No. 30989, amongst D.R. Horton Los Angeles Holding Company, Inc., a California corporation ("DEVELOPER"), Commission and the Riverside County Flood Control and Water Conservation District, dated \_\_\_\_\_ ("Drainage Facility License Agreement").

B. WHEREAS, the LICENSED PROPERTY, as defined above, is referred to in this Right of Entry as the "Property".

C. WHEREAS, One or more conveyances occurred between certain dates and, DEVELOPER acquired title to the Real Property or Tract Map No. 30989 pursuant to a certain Grant Deed dated August 31, 2021.

D. WHEREAS, DEVELOPER must construct approximately 87 linear feet of 48-inch reinforced concrete pipe ("RCP") and any appurtenances thereto ("DRAINAGE FACILITY"), as shown on the Riverside County Flood Control and Water Conservation District ("DISTRICT") Drawing No. 4-0892. DRAINAGE FACILITY is subject to the inspection by the DISTRICT in accordance with the Drainage Facility License Agreement.

E. WHEREAS, Construction of the DRAINAGE FACILITY is needed in order to provide flood protection and drainage for DEVELOPER's planned development; and

F. WHEREAS, PERMITTEE has requested to enter onto the Property, on a temporary basis, for the purpose of performing construction of the "DRAINAGE FACILITY," as that term is defined in the Drainage Facility License Agreement, substantially in accordance with the plans attached as Exhibit "B" to the Drainage Facility License Agreement (the "Project").

NOW, THEREFORE, the COMMISSION and PERMITTEE do hereby agree as follows:

### AGREEMENT

1. Incorporation of Recitals. The recitals set forth above are incorporated into this Right of Entry as though fully set forth herein.

2. Incorporation of Drainage Facility License Agreement. This Right of Entry is made in reference to that certain Drainage Facility License Agreement, a copy of which has been provided to PERMITTEE, the applicable terms of which are incorporated into this Right of Entry by reference.

3. Right of Entry. The COMMISSION hereby grants to PERMITTEE and its agents, employees and contractors the temporary right to enter onto the Property for the purpose of performing the Project, and for no other purpose.

4. Term. The term of this Right of Entry shall commence on the date first set forth above, and shall automatically terminate **[INSERT NUMBER OF DAYS]** (\_\_) days from the date first herein written above unless earlier terminated as provided herein. The term may be extended by written notice to PERMITTEE in the sole and absolute discretion of the COMMISSION. This Right of Entry is subordinate to all prior or future rights and obligations of the COMMISSION in the Property, except that the COMMISSION shall grant no future rights inconsistent with the reasonable exercise by PERMITTEE of its rights under this Right of Entry.

5. Liens. PERMITTEE shall not permit to be placed against the Property, or any part thereof, any design professionals', mechanics', materialmen's contractors' or subcontractors' liens with regard to any actions upon the Property pursuant to this Right of Entry. PERMITTEE agrees to hold the COMMISSION harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which may be filed against the Property.

6. Condition of Premises. PERMITTEE ACCEPTS THE PROPERTY IN ITS "AS IS" CONDITION, WITH ALL FAULTS. PERMITTEE ACKNOWLEDGES AND AGREES THAT PERMITTEE IS ENTERING THE PROPERTY UNDER THIS RIGHT OF ENTRY BASED ON PERMITTEE'S OWN INVESTIGATIONS AND KNOWLEDGE OF THE PROPERTY AND THAT, EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THIS AGREEMENT, NEITHER COMMISSION NOR ANY AGENT OF COMMISSION, HAS MADE



ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE PHYSICAL CONDITION OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE OR USE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES REGARDING THE APPLICABILITY OR NON-APPLICABILITY OF ANY LAWS, THE SOIL OR SUBSOIL, SURFACE OR SUBSURFACE CONDITIONS, TOPOGRAPHY, POSSIBLE HAZARDOUS SUBSTANCES CONTAMINATION, FILL, DRAINAGE, ACCESS TO PUBLIC ROADS, AVAILABILITY OF UTILITIES, EXISTENCE OF UNDERGROUND STORAGE TANKS, APPLICABILITY OF OR COMPLIANCE WITH ANY ENVIRONMENTAL LAWS OR ANY OTHER MATTER OF ANY NATURE WHATSOEVER. THE COMMISSION IS NOT RESPONSIBLE FOR DAMAGE TO OR LOSS BY THEFT OF PERMITTEE'S PROPERTY LOCATED IN OR ON THE PROPERTY.

7. Indemnification and Defense.

A. PERMITTEE hereby agrees to indemnify, defend, assume all liability for and hold harmless the COMMISSION and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including, without limitation, any fines, penalties, judgments, settlements, actual litigation expenses and experts' and actual attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons, arising out of or in any way connected to the acts or omissions of PERMITTEE in connection with or arising from any entry onto the Property or the performance of the Project or arising out of or in connection with such activities, whether such entry, activities or performance thereof is by PERMITTEE or anyone directly or indirectly employed or under contract with PERMITTEE or acting on behalf of PERMITTEE, and whether such damage or claim shall accrue or be discovered before or after the termination of this Right of Entry.

B. Upon written notice from the COMMISSION, PERMITTEE agrees to assume the defense of any lawsuit, administrative action or other proceeding for which PERMITTEE has an obligation to defend pursuant to paragraph A above.

C. The obligations under this Section 7 shall apply except to the extent of the sole negligence or willful misconduct of the COMMISSION, and are in addition to any other rights or remedies under the law or under this Right of Entry. This Section 7 shall survive the revocation or termination of this Right of Entry.

8. Assumption of Risk and Waiver. To the maximum extent allowed by law, PERMITTEE releases the COMMISSION from and assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Property, COMMISSION's property and any other property of, or under the control or custody of PERMITTEE, which is on or near the



Property. PERMITTEE's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the Property, accident or fire or other casualty on the Property. PERMITTEE, on behalf of itself and its Personnel, as a material part of the consideration for this Right of Entry, hereby waives all claims and demands against the COMMISSION for any such loss, damage or injury of PERMITTEE and/or its Personnel. In that connection, PERMITTEE waives, for itself and its Personnel, the benefit of California Civil Code Section 1542, which provides as follows:

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

The provisions of this section shall survive the termination of this Right of Entry. As used in this section, "Personnel" means PERMITTEE, or its officers, directors, affiliates, or anyone directly or indirectly employed by PERMITTEE or for whose acts PERMITTEE is liable.

9. Compliance with Laws/Permits. PERMITTEE shall, in all activities undertaken pursuant to this Right of Entry, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, PERMITTEE, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities PERMITTEE desires to conduct or have conducted pursuant to this Right of Entry.

10. Inspection. The COMMISSION and its representatives, employees, agents or independent contractors may, but shall not be required to, enter and inspect the Property or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify PERMITTEE's compliance with the terms and conditions of this Right of Entry.

11. Not Real Property Interest. It is expressly understood that this Right of Entry does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to PERMITTEE. This Right of Entry is not exclusive and the COMMISSION specifically reserves the right to grant other rights of entry within the vicinity of the Property.

12. Notice. Any notice hereunder to be given by the COMMISSION to PERMITTEE shall be deemed to be properly served on the date it is deposited in the United States Mail, postage prepaid, addressed to **[ENTER ADDRESS AND CONTACT NAME]**. Any notice to be given hereunder by PERMITTEE to the COMMISSION shall be deemed to be properly served on the date it is deposited



in the United States Mail, postage prepaid, addressed to Executive Director, Riverside County Transportation Commission, 4080 Lemon Street, Third Floor, Riverside, CA 92502-2208. Either PERMITTEE or the COMMISSION may change its address for the receipt of notice by giving written notice thereof to the other party of such change.

13. Attorneys' Fees. In the event of a dispute between the Parties with respect to the terms or conditions of this Right of Entry, the prevailing Party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

14. Revocable Right; Termination. Notwithstanding any other provision of this Right of Entry, this Right of Entry is revocable and may be terminated at any time by either party upon one (1) business day's prior notice in writing to be served upon the other party. In cases of an emergency or a breach of this Right of Entry by PERMITTEE, this Right of Entry may be terminated by the COMMISSION immediately.

15. Restoration of the Property. PERMITTEE shall be responsible for the cleanup of any Project activity. Upon the termination or revocation of this Right of Entry, PERMITTEE shall, at its own cost and expense, restore the Property to the same condition in which it was prior to PERMITTEE's entry. In case PERMITTEE shall fail to restore the Property to its prior condition within ten (10) business days after the effective date of the termination, the COMMISSION may proceed with such work at the expense of PERMITTEE. This section shall survive the revocation or termination of this Right of Entry.

16. Insurance. PERMITTEE shall comply with the insurance provisions contained in Exhibit "A", attached hereto and incorporated herein by reference.

17. Continuing Liability. No termination of this Right of Entry shall release PERMITTEE from any liability or obligation hereunder resulting from any acts, omissions or events happening prior the termination of this Right of Entry and restoration of the property to its prior condition.

18. Survival of Obligations. All obligations of PERMITTEE hereunder not fully performed as of the termination or cessation of this Right of Entry in any manner shall survive the termination of this Right of Entry, including without limitation, all obligations concerning the condition of the Property.

19. Counterparts. This Right of Entry 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.

20. Severability. Should any term of this Right of Entry be deemed unlawful or unenforceable by a court of competent jurisdiction, that provision shall be severed and the remaining terms may continue to be fully enforced.

21. Authority. The persons signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

22. Assignment. PERMITTEE shall not assign or transfer this Right of Entry. Any attempted act in violation of this Section shall be void and without effect.

23. Governing Law. This Right of Entry shall be governed by the laws of the State of California. Venue shall be in Riverside County.

24. Entire Agreement. This Right of Entry and the exhibit attached hereto constitute the entire agreement between the COMMISSION and PERMITTEE with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the parties with respect to the items set forth herein.

25. Electronically Transmitted Signatures. A manually signed copy of this Agreement which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

**[Signatures on following page]**

**SIGNATURE PAGE TO  
RIGHT OF ENTRY AGREEMENT**

**(Winchester Hills Line C – Simpson Road Lateral)**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Right of Entry on the date first written above.

**RIVERSIDE COUNTY  
TRANSPORTATION COMMISSION**

**PERMITTEE  
[INSERT NAME]**

By: \_\_\_\_\_  
Anne Mayer, Executive Director

By: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Best Best & Krieger LLP  
Counsel to the Riverside County  
Transportation Commission

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\* A corporation requires the signatures of two corporate officers.

One signature shall be that of the chairman of board, the president or any vice president and the second signature (on the attest line) shall be that of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to the Commission.



**EXHIBIT "A"**  
**TO RIGHT OF ENTRY AGREEMENT**

**INSURANCE PROVISIONS**

PERMITTEE shall obtain, and shall require any consultant, contractor or agent entering the Property on its behalf to obtain insurance of the types and in the amounts described in Section 7 of the Drainage Facility License Agreement.






# Agreement No. 06-51-915-01 Amended and Restated License Agreement - Winchester Hills Simpson Road Lateral (TR30989) w signatures

Final Audit Report

2023-01-12

Created:	2023-01-12
By:	Shirley Gooding (sgooding@rctc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA1Kri5gr8IIBK7II197A2jHD1iD_FezkU

## "Agreement No. 06-51-915-01 Amended and Restated License Agreement - Winchester Hills Simpson Road Lateral (TR30989) w signatures" History

-  Document created by Shirley Gooding (sgooding@rctc.org)  
2023-01-12 - 5:54:46 PM GMT- IP address: 47.44.7.2
-  Document emailed to Anne Mayer (amayer@rctc.org) for signature  
2023-01-12 - 5:55:35 PM GMT
-  Email viewed by Anne Mayer (amayer@rctc.org)  
2023-01-12 - 6:08:16 PM GMT- IP address: 172.250.142.88
-  Document e-signed by Anne Mayer (amayer@rctc.org)  
Signature Date: 2023-01-12 - 6:09:00 PM GMT - Time Source: server- IP address: 172.250.142.88
-  Agreement completed.  
2023-01-12 - 6:09:00 PM GMT