

Recording requested by:  
**COUNTY OF SANTA BARBARA**

and when recorded mail to:  
COUNTY OF SANTA BARBARA  
General Services Department  
Real Estate Services Division  
1105 Santa Barbara St., 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101

**COUNTY OF SANTA BARBARA  
OFFICIAL BUSINESS**

No Fee Pursuant to Gov. Code § 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 013-060-039; 013-220-003

**LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** (hereinafter "LICENSE AGREEMENT") is entered into this 20<sup>th</sup> day of April, 2021, by and between

COUNTY OF SANTA BARBARA, a political subdivision of the State of California, hereinafter referred to as "COUNTY",

and

JOHN J. MITCHELL III, also known as John J. Mitchell, Jr., and SUSAN DAVIS MITCHELL, as Trustees of The John J. Mitchell III and Susan Davis Mitchell Family Trust u/d/t dated June 3, 2004, hereinafter collectively referred to as "OWNERS",

with reference to the following:

**WHEREAS**, OWNERS are the owners of certain real property known as 980 Cold Springs Road, Santa Barbara, California 93108, and more particularly described as Santa Barbara County Assessor's Parcel Numbers 013-060-039 and 013-220-003 (hereinafter "Property"), shown on Exhibit "A" attached hereto and incorporated herein by reference; and

**WHEREAS**, COUNTY is the owner of an existing 40-foot wide Easement adjacent to the Property and located in the public right of way in the unincorporated area of Santa Barbara County, particularly described as 20 feet on each side of the centerline of Cold Springs Road and further described in the Indenture Deed recorded on or about July 19, 1912 in Book 145, Pages 294 through 297 of the Official Records of the County of Santa Barbara Clerk-Recorder

(hereinafter “County Easement”), attached hereto as Exhibit “B” and incorporated herein by reference; and

**WHEREAS**, there exists on the Property a decorative security wall, initially constructed in the 1920’s of mortared sandstone cobbles and boulders without steel reinforcement, which extends the length of the Property’s frontage along Cold Springs Road (hereinafter “Mitchell Wall”); and

**WHEREAS**, the Mitchell Wall encroaches on the County Easement in multiple locations; and

**WHEREAS**, the Mitchell Wall began to degrade in or around 2015, and by approximately 2018, sections of the wall had collapsed; and

**WHEREAS**, OWNERS have incurred substantial and considerable expenditures including: (1) the removal of debris from the collapsed wall section; (2) payments to engineers and contractors to determine the stability of the Mitchell Wall and the cost of its replacement; and (3) periodic removal and construction, erection, maintenance and replacement of the collapsed portions of the Mitchell Wall; and

**WHEREAS**, on July 20, 2015, OWNERS submitted a Government Tort Claim to COUNTY alleging that COUNTY caused damage to the Mitchell Wall through road construction and maintenance activities; and

**WHEREAS**, COUNTY disputes OWNERS’ claims in their entirety; and

**WHEREAS**, COUNTY and OWNERS are aware that additional sections of the Mitchell Wall may collapse in the future; and

**WHEREAS**, COUNTY and OWNERS desire to settle potential litigation in part through a Conditional Settlement Agreement (attached hereto as Exhibit “C”, hereafter “SETTLEMENT AGREEMENT”) that includes as one term, COUNTY’s grant to OWNERS of a perpetual license allowing OWNERS and subsequent property owners to repair and maintain a wall or fence in the location where the Mitchell Wall originally stood; and

**WHEREAS**, COUNTY will thereby accrue a benefit due to OWNERS’ agreement in perpetuity to maintain the footing of the previously existing wall, which retains a portion of the shoulder on the wall-side of the road; and

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

1. **Grant of License**. COUNTY hereby grants to OWNERS a license in perpetuity, subject to the terms and conditions contained herein, to occupy and use those portions of the County Easement where the Mitchell Wall originally stood, as evidenced by its current location

and described within the Indenture Deed set forth in Exhibit B (hereinafter the “LICENSE AREA”).

2. **Use.** The use of the license shall be for the sole and exclusive purpose of repairing, replacing, and maintaining a wall or fence, and performing landscaping within the LICENSE AREA. The uses permitted by this LICENSE AGREEMENT conform to, and are described by the SETTLEMENT AGREEMENT, including but not limited to the provisions of paragraphs 4.1.1 and 4.1.2 as follows:

“4.1.1 MITCHELLS and their successors in interest, for any portion of the MITCHELL WALL or any replacement wall, fence, or similar structure (“MITCHELL WALL REPLACEMENT”), shall have the permanent right, to repair, maintain and replace the MITCHELL WALL in the location shown on the Survey attached hereto as Exhibit B, and at a height that is at or below its maximum present height, and repair, maintain, and replace the existing MITCHELL WALL REPLACEMENT and any future MITCHELL WALL REPLACEMENT, provided that any MITCHELL WALL REPLACEMENT located in the road right of way shall meet the following specifications: (a) MITCHELLS shall advise COUNTY prior to installing any future MITCHELL WALL REPLACEMENT and shall allow COUNTY to inspect any portion of the MITCHELL WALL REPLACEMENT; and, (b) the MITCHELL WALL REPLACEMENT will not exceed six (6) feet in height as measured on the Cold Springs Road side of the wall from the top of the MITCHELL WALL footing to the top of the MITCHELL WALL REPLACEMENT; (c) the MITCHELL WALL REPLACEMENT will not be located a greater distance inside the road right of way than the MITCHELL WALL (as depicted on the attached Exhibit B) is currently located; and (d) except as specifically provided in the SETTLEMENT AGREEMENT with respect to location, height, and adjacent landscaping, any MITCHELL WALL REPLACEMENT shall conform to all applicable County regulations.

4.1.2 MITCHELLS shall have the right to plant, place, and maintain vegetation not to exceed 36 inches in height and a stacked stone wall not to exceed 6 inches in height, within the COUNTY right of way, provided that neither the vegetation nor the stacked stone wall in the County right of way shall be located closer than 42 inches from the edge of pavement of Cold Springs Road. MITCHELLS shall maintain any vegetation placed in the COUNTY right of way in good and safe condition and shall not allow such vegetation to become a fire hazard.”

3. **Consideration.** As consideration for the LICENSE AGREEMENT, COUNTY acknowledges OWNERS’ substantial and considerable expenditures already incurred, as well as those that will be incurred in the future, including, but not limited to: the removal of debris from any present and future collapsed wall section; payments to engineers and contractors to determine the stability of the Mitchell Wall and the cost of its replacement; and the periodic removal and construction, erection, maintenance and replacement of the collapsed portions of the Mitchell Wall.

4. **Site Suitability:** OWNERS have investigated the LICENSE AREA and have determined that it is suitable for OWNERS' intended occupancy and use and therefore, OWNERS hereby accept, by way of executing this LICENSE AGREEMENT, the LICENSE AREA in its existing and "as is" condition.

**OWNERS ACKNOWLEDGE THAT, EXCEPT AS STATED HEREIN, COUNTY HAS MADE NO REPRESENTATIONS OR WARRANTIES ABOUT THE CONDITION OF THE LICENSE AREA, OR THE SUITABILITY OF SAME FOR THE INTENDED USE BY OWNERS.**

5. **Ownership.** COUNTY and OWNERS agree that OWNERS are the owners of the Mitchell Wall, including any replacement wall or fence structure, within the LICENSE AREA, except as otherwise provided in Section 9, *Assignment and Successors in Interest*.

6. **OWNERS' Warranties.** OWNERS warrant as follows:

a. OWNERS are the sole owners of the Property and have not assigned any right, title or interest therein to any person or entity;

b. Except as provided herein, and in the SETTLEMENT AGREEMENT, no promise, representation or inducement of any sort, oral or written, has been made to OWNERS;

c. This LICENSE AGREEMENT and SETTLEMENT AGREEMENT together contain all of the terms agreed upon, and the terms are contractual and not mere recitals;

d. OWNERS have been given ample opportunity to review and consider this LICENSE AGREEMENT, and have received and relied upon the advice of independent advisors, including an attorney chosen by OWNERS, regarding the advantages and disadvantages of making this Agreement, and the meaning and consequences of its terms; and that OWNERS enter into this LICENSE AGREEMENT based upon that advice, with full knowledge and understanding of the meaning and consequences of its terms, and of OWNERS' legal rights and alternatives.

7. **OWNERS' Rights, Restrictions and Obligations.** OWNERS agree as follows:

a. OWNERS shall be responsible for maintaining in a safe and workable condition, the Mitchell Wall, any replacement structure, and any landscaping the Mitchells install consistent with the Settlement Agreement.

b. OWNERS shall not abandon, vacate or surrender any of their rights, responsibilities or obligations set forth and granted herein.

c. OWNERS shall, at their sole expense, comply with all applicable local, state and federal laws, statutes, rules, ordinances and regulations.

d. Except as expressly stated in the SETTLEMENT AGREEMENT, OWNERS shall obtain all necessary permits for any work within the LICENSE AREA.

e. OWNERS shall notify Underground Services Alert (“USA”), or any successor organization, at least forty-eight (48) hours prior to OWNERS conducting, or having others conduct, any drilling or underground digging activities within the LICENSE AREA and shall leave the LICENSE AREA accessible and in a safe and workable condition. and OWNERS and COUNTY mutually agree to take all necessary precautions prior to commencing work within the LICENSE AREA.

f. OWNERS shall not place signs of any kind whatsoever upon, in or about the LICENSE AREA other than address signage on the Mitchell Wall, consistent with local regulations.

**8. COUNTY’s Rights, Restrictions and Obligations.**

a. COUNTY reserves the right of ownership, use and occupancy of the LICENSE AREA insofar as said ownership, use and occupancy do not violate or unreasonably interfere with the rights granted to OWNERS in this LICENSE AGREEMENT.

b. COUNTY shall not commit, nor suffer to be committed, any waste upon the Licensed Area, nor permit any nuisance to exist thereon.

c. COUNTY shall maintain, repair, replace and, in a manner consistent with the remainder of the County Easement, upgrade at its own expense, the public improvements in the LICENSE AREA.

**9. Assignment and Successors in Interest.**

a. This LICENSE AGREEMENT shall inure to the benefit and be binding upon each party’s assigns and successors, and it is the intent of the parties that this license and its terms, rights, restrictions, and responsibilities shall run with the land and be binding upon all successors in interest to the Property.

b. The license, and each and all of the rights, restrictions and responsibilities granted herein, may not be sold, transferred, assigned or encumbered except as an appurtenance to the Property.

c. In the event of a sale, transfer or assignment by any or all OWNERS of his, her or their interest in the Property by an instrument recorded in the Official Records of the County of Santa Barbara Clerk-Recorder, the transferring OWNERS, without the necessity of any further document signed or actions taken by any party, shall be released from any and all obligations hereunder arising on or after the date of transfer, and each remaining party agrees to look solely to such successor-in-interest for performance of the obligations set forth herein. This LICENSE AGREEMENT and the SETTLEMENT AGREEMENT constitute covenants that run

with the land and are binding on OWNERS and COUNTY and their respective successors in interest.

10. **Indemnification.** Except as provided by paragraph 5.7 of the SETTLEMENT AGREEMENT, OWNERS agree to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of OWNERS' activities, including landscaping, and rock border in the County Easement and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. OWNERS' indemnification does not apply to the COUNTY's sole negligence or willful misconduct.

11. **Notification of Accidents; Survival of Indemnification Provisions.** OWNERS shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this LICENSE AGREEMENT. The indemnification provisions contained herein shall survive any expiration or termination of this Agreement.

12. **Default and Remedies.**

a. **Default by OWNERS:** In the event that OWNERS are in default with respect to any material term, covenant, condition or reservation contained herein, COUNTY shall give notice to OWNERS specifying the particulars of the default and OWNERS shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of sixty (60) calendar days from such notice, COUNTY may, at its option, take corrective action in its discretion, unless the cure of such default shall reasonably take more than sixty (60) calendar days in which case OWNERS shall proceed with due speed to cure the default and shall have a reasonable time to effectuate its cure.

b. **Default by COUNTY:** In the event that COUNTY damages, intentionally or otherwise, the Mitchell Wall or any replacement wall (not including damage caused by "nominal fill" as defined by paragraph 5.3 of the Settlement Agreement, or natural processes) OWNERS shall give notice to COUNTY specifying the particulars of the damage and COUNTY shall promptly commence remedial action to repair the damage. If COUNTY fails to repair damage for a period of sixty (60) calendar days from such notice, OWNERS may, in their discretion, take corrective action, unless the repair of such damage shall reasonably take more than sixty (60) calendar days in which case COUNTY shall proceed with due speed to make all repairs and shall have a reasonable time to do.

13. **Termination.** This Agreement may be terminated at COUNTY's sole option in the event that OWNERS are using the LICENSE AREA for purposes other than those set forth herein and the remedial actions contained in Section 12(b), *Default by OWNERS*, are insufficient or unduly burdensome as determined by COUNTY in its reasonable discretion.

14. **Waiver.** It is understood that any waiver, express or implied, of any term of this Agreement or any default or breach of this Agreement shall not be deemed to be a waiver of any continuing or subsequent default or breach of any other provision of this Agreement. Waivers of provisions of this Agreement must be in writing and signed by that party's respective designee.

15. **Taxes and Assessments.** OWNERS shall pay and discharge any and all property taxes and/or assessments, including special assessments and possessory interest taxes, which, due to OWNERS' use of the Licensed Area, may be levied upon said Premises during the term of this Agreement.

16. **Notices.** Any notice to be given to the parties shall be in writing and shall be served, either personally or by mail, to the following:

COUNTY: County of Santa Barbara  
Real Estate Services Division/General Services Department  
1105 Santa Barbara Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
(805) 568-2625

OWNERS: Susan Davis Mitchell and John J. Mitchell III  
(Address #1)  
980 Cold Springs Road  
Santa Barbara, CA 93108  
(Address #2)  
881 Canyon Creek Lane  
Gardnerville, NV 89469-6422  
Phone: 805-886-2857  
Email: swoosem@gmail.com

With Copy to: Susan F. Petrovich  
Brownstein Hyatt Farber Schreck  
P.O. Box 720  
Santa Barbara, CA 93102

Or to the parties at such other place as may be designated in writing. Such notices shall be served by depositing them addressed as set out above, postage prepaid, in the U.S. mail, reliable overnight courier, or by personal delivery. The date of mailing, or in the event of personal delivery, the date of delivery shall constitute the date of service.

17. **Environmental Impairment.** OWNERS and COUNTY, at their sole respective expense, shall comply with all applicable laws, regulations, rules, and orders applicable to its operations in the License Area, regardless of when they become or became effective, including without limitation those relating to construction, grading, signage, health, safety, noise, underground tanks, toxic and hazardous materials, environmental protection, waste disposal, clean-

up and water and air quality, and OWNERS and COUNTY each shall furnish to the other satisfactory evidence of such compliance upon the request of the other party. OWNERS shall obtain all necessary permits at their sole expense.

Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the License Area due to OWNERS' use and occupancy, OWNERS shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction therefor. OWNERS shall indemnify, hold harmless, and defend COUNTY from and against all liability, claims, costs, and expense (including without limitation any fines, penalties, judgments, litigation costs, attorney's fees, consulting, engineering and construction costs) incurred by COUNTY as a result of OWNERS' breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution due to OWNERS' use or occupancy, regardless of whether such liability, cost or expense arises during or after the term of this Agreement.

Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the LICENSE AREA due to COUNTY's use and occupancy, COUNTY shall clean all property affected to the satisfaction of OWNERS and any governmental body having jurisdiction therefor. COUNTY shall indemnify, hold harmless, and defend OWNERS from and against all liability, claims, costs, and expense (including without limitation any fines, penalties, judgments, litigation costs, attorney's fees, consulting, engineering and construction costs) incurred by OWNERS as a result of COUNTY's breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution due to COUNTY's or the public's use or occupancy, regardless of whether such liability, cost or expense arises during or after the term of this Agreement.

18. **Toxics.** Neither COUNTY nor OWNERS shall manufacture or generate hazardous wastes in the LICENSE AREA in violation of applicable laws. OWNERS shall be fully responsible for any hazardous wastes, substances or materials defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored or transported by OWNERS, its agents, employees, or designees in the LICENSE AREA during the term of this Agreement and shall comply with and be bound by all applicable provisions of such federal, state, or local law, regulation or ordinance dealing with such wastes, substances or materials. OWNERS shall notify COUNTY and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials. COUNTY shall be fully responsible for any hazardous wastes, substances or materials defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored or transported by COUNTY, its agents, employees, or designees, in the LICENSE AREA during the term of this Agreement and shall comply with and be bound by all applicable provisions of such federal, state, or local law, regulation or ordinance dealing with such wastes, substances or materials. COUNTY shall notify OWNERS and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.



19. **Nondiscrimination.** The parties shall comply with laws, rules and regulations regarding nondiscrimination as such are found in the Santa Barbara County Code and as such may from time to time be amended. These provisions are incorporated herein as if fully set forth.

20. **Severability.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

21. **Certification of Signatories:** The signatories of this Agreement represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind the respective parties to its terms or to carry out the duties contemplated herein.

22. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

23. **Amendments.** This Agreement may only be amended by written consent of the parties and such changes shall be binding upon the heirs or successors of the parties. Amendments to the Agreement shall be approved and executed on behalf of COUNTY by the Board of Supervisors of the County of Santa Barbara.

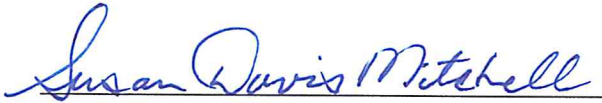
24. **Entire Agreement.** The parties to this Agreement intend that their negotiations, conversations and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective as of the date executed by COUNTY.

OWNERS SIGNATURE PAGE

“OWNERS”

JOHN J. MITCHELL III, also known as John J. Mitchell, Jr., and SUSAN DAVIS MITCHELL, as Trustees of The John J. Mitchell III and Susan Davis Mitchell Family Trust u/d/t dated June 3, 2004



Susan Davis Mitchell

Date: April 2, 2021



John J. Mitchell III

Date: Apr. 2, 2021

(COUNTY SIGNATURES TO FOLLOW)

ACKNOWLEDGEMENT

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 SANTA BARBARA )

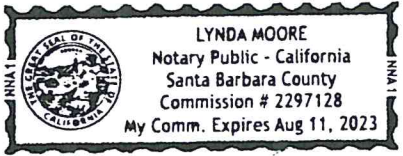
On April 2, 2021, before me, LYNDA MOORE, a Notary Public  
*(insert name and title of officer)*

personally appeared Susan Davis Mitchell and John J. Mitchell III, who proved to me on the basis of satisfactory evidence to be the persons whose name are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the persons, or the entity upon behalf of which the persons 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)  
Name and Title: Notary



COUNTY SIGNATURE PAGE

COUNTY:

COUNTY OF SANTA BARBARA


ATTEST:  
MONA MIYASATO  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Bob Nelson, Chair  
Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

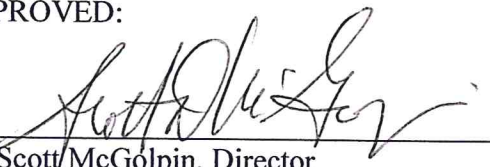
APPROVED AS TO FORM:  
MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By:  \_\_\_\_\_  
Lisa Rothstein  
Deputy County Counsel

APPROVED:

By:  \_\_\_\_\_  
Ray Aromatorio, ARM, AIC  
Risk Manager

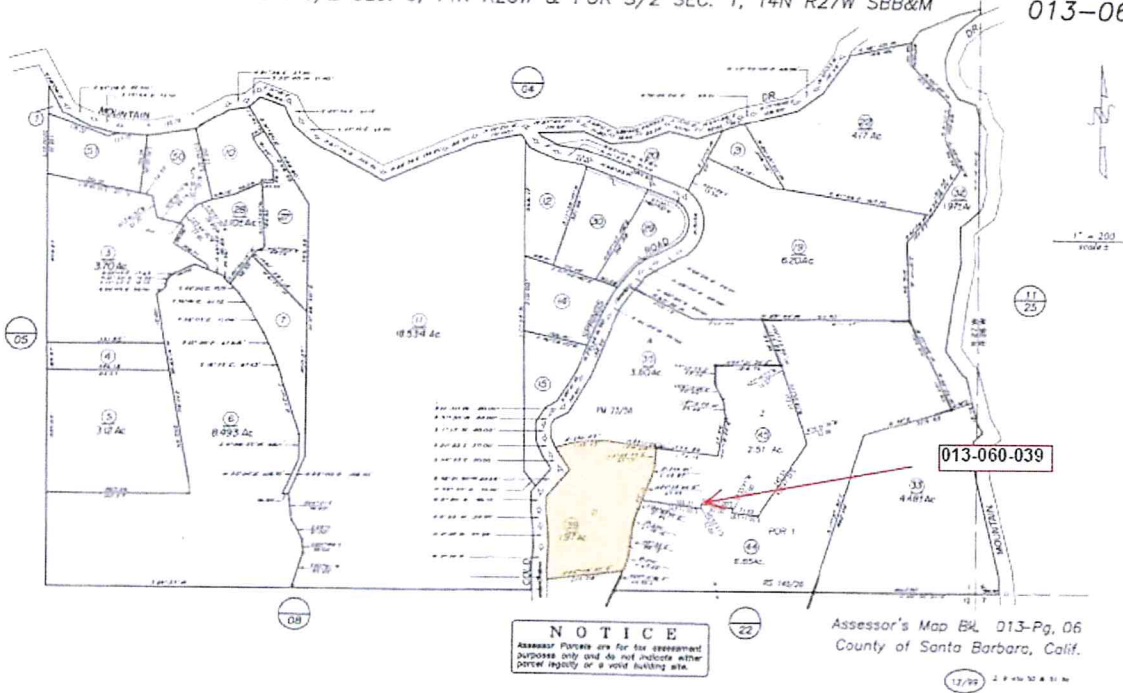
APPROVED:

By:  \_\_\_\_\_  
Scott McGolpin, Director  
Department of Public Works

# EXHIBIT "A" MAPS

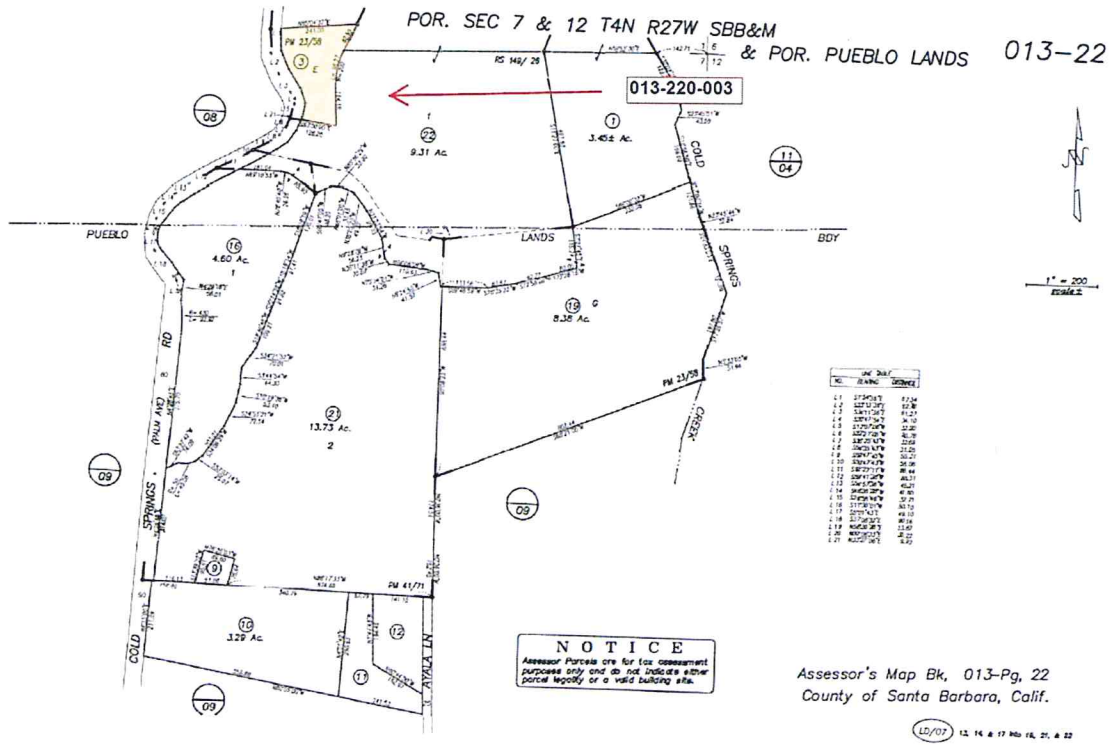
POR. S/2 SEC. 6, T4N R26W & POR S/2 SEC. 1, T4N R27W SBB&M

013-06



POR. SEC 7 & 12 T4N R27W SBB&M

& POR. PUEBLO LANDS 013-22



**EXHIBIT "B"**  
**COUNTY EASEMENT - INDENTURE DEED**

~~XXXXXXXXXX~~ 145/294  
DEEDS

described as follows, to wit:

Being a part of block No. two of Neals addition to the city of Santa Barbara according to a map of said block made by A.W.Dozier, for Geo. W.Bates, July 13, 1905, and recorded in the office of the County Recorder of Santa Barbara county July 14th, 1905 in book 3 of maps and surveys, at page 74, and bounded and particularly described as follows:

Beginning at a point on the southeast side of fourth street distant two hundred feet southwesterly from the north corner of said block No. 2, and running thence from said point of beginning, southwesterly along said line of fourth street fifty feet; thence at a right angle southeasterly into said block two hundred and twenty five feet; thence at right angles northeasterly fifty feet; thence at right angles northwesterly two hundred and twenty five feet to the line of fourth street and place of beginning.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To Have and to Hold all and singular the said premises, hereby conveyed or intended so to be, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF the said party of the first part to these presents has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of

Nat Stewart, (Seal)  
Sheriff of the county of Santa Barbara,  
state of California.

State of California )  
County of Santa Barbara ) ss

On this 7th day of August, nineteen hundred and fourteen, personally appeared before me J.W.Smith, a Notary Public in and for said county and state, residing therein, duly commissioned and qualified, the within named Nat Stewart, Sheriff of the county of Santa Barbara, state of California, known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he, as such Sheriff, of said county, executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal, at my office in the county of Santa Barbara, state of California, the day and year in this certificate first above written.

(Notarial Seal)

J.W.Smith, Notary Public in and for the county of Santa Barbara, state of California

FILED FOR RECORD AT THE REQUEST of Geo. W.Bates, Aug. 13th, A.D., 1914 at 55 min. past 10 o'clock A.M.

*Mark Bradley*  
Recorder

Henry Stoddard et al. )  
to )  
COUNTY OF SANTA BARBARA )

THIS INDENTURE made this 29th day of June, A.D., 1912, between Charles Frederick Eaton, Florence Baxter Eaton (his wife) Erma L. Hambleton (widow), Lucy C.

*W.W.H.*  
*N.P.*

DEEDS  
145

W.W.X.  
N.P.

Stevens, (widow) Marguerite Doe, ..... Ralph W. Miller and Mary B. W. Miller (his wife,) all of Montecito, in Santa Barbara county, California, Henry E. Bothin and Ellen Chabot Bothin (his wife) of San Francisco, in said State and Henry Stoddard, Jr., and Margaret P. Stoddard (his wife) of Dayton, Ohio, parties of the first part and the County of Santa Barbara, a body politic and corporate created and existing under the laws of the State of California, party of the second part,

W.W.X.  
N.P.

Witnesseth: That Whereas, the parties of the first part are the owners of land in Montecito, in Santa Barbara county, California, along and over which there is a private road called Palm Avenue extending from Sycamore Road to Mountain Drive in Road District No. 2 in the First Township in said county, which is largely used by the public, and such use makes it burdensome to said parties of the first part to maintain and keep up the same, and said parties of the first part are willing that the same shall become a public highway provided they are allowed to maintain the palms and trees now standing and growing in said road and to replace them, or any of them, and plant and maintain additional ones in order to keep up and maintain the rows of palms and trees along both sides of said road; and

Whereas the public necessity and convenience demands that said road shall become a public highway, and the palms and trees thereon and the planting of additional palms and trees within ten feet of the outer lines of said highway will not interfere with the use of the road for highway purposes, and the party of the second part is willing that the parties of the first part shall have the right and privilege aforesaid in reference to the maintenance and planting of palms and trees along the sides and within ten feet of the outer lines of said highway, it being the desire of the parties of the first part to encourage the planting and maintenance of shade and ornamental trees on the public highways;

NOW THEREFORE said parties of the first part in consideration of the benefits to accrue to them and each of them by the establishment and maintenance of said strip of land as a public highway, do hereby grant and dedicate to said County of Santa Barbara, party of the second part for all the uses and purposes of a public road, all that certain strip, piece or parcel of land, situate, lying and being in Road District No. 2 in the First Township, in the county of Santa Barbara, state of California, and bounded and particularly described as follows, to wit:

20 feet on each side of the following described line:

Commencing at a point where the Mountain Drive or the road petitioned for by C. A. Edwards and others enters the western line of land of C. F. Eaton (described in Viewers' Report at the 178th course N. 75° 02' E., at 76 feet cross fence on line between Eaton and Vail's land); thence along the present traveled road, through said Eaton's land, 1st, S. 78° 05' E. 64½ feet to stake; thence 2nd, N. 69° 41' E., 53.6 feet to station; thence 3rd, S. 24° 02' E., 119.6 feet to station; thence 4th, S. 73° 07' E., 228.7 feet to station; thence 5th, S. 30° 16' E., 143.3 feet to station; thence 6th, S. 54° 42' W., 182.6 feet to station; thence 7th, S. 30° 28' W. 453 feet to station; thence 8th, S. 60½° W., 34 feet to station; thence 9th, S. 31° 30' W. 40 feet to station; thence 10th, S. 1° 15' W., 40 feet to station and iron pin set in center of present travelled road; thence 11th, S. 21° 55' E. 50 feet to an iron pin; thence 12th, S. 34° 25' E., 50 feet to an iron pin set at the most

145



northerly corner of land conveyed to Mrs. James E. McBride by C.F. Eaton and others; thence 13th, S. 38° 20' W. 87.85 feet to center of road and on the easterly line of land owned by Henry E. Bothin or the Richardson Tract; thence 14th, along the easterly line of said land owned by said Bothin or the Richardson tract, S. 5° 30' W., 46.1 feet; thence 15th, S. 6° 23' E., 50.1 feet; thence 16th, S. 4° 42' E., 57.3 feet; thence 17th, S. 3° 01' W., 68 feet; thence 18th, S. 1° 54' E., 67.6 feet; thence 19th, S. 23° 19' E., 62.7 feet; thence 20th, S. 34° 17' E., 62 feet; thence 21st, S. 21° 23' E. 34.1 feet; thence 22nd, S. 11° 32' W. 32 feet; thence 23rd, S. 22° 52' W. 30.7 feet; thence 24th, S. 36° 05' W., 32.7 feet; thence 25th, S. 54° 58' W. 31.2 feet; thence 26th, S. 60° 10' W. 83.3 feet; thence 27th, S. 62° 50' W. 86.5 feet; thence 28th, S. 59° 30' W. 89.6 feet; 29th, S. 54° 17' W., 45.2 feet; thence 30th, S. 45° 53' W. 41.6 feet; thence 31st, S. 26° 18' W., 37.7 feet; thence 32nd, S. 10° 55' W., 50.1 feet; thence 33rd, S. 5° 33' E. 49.1 feet to center of Palm Avenue; thence 34th, along center of Palm Avenue, S. 37° 33' E. 106.8 feet to center of a stone monument from which a letter F on a live oak tree bears S. 31 <sup>3</sup>/<sub>4</sub> W. 4.9 feet, a letter F on another live oak tree bears S. 87 <sup>1</sup>/<sub>2</sub> W. 4.7 feet and a letter F on another live oak tree bears N. 19 <sup>3</sup>/<sub>4</sub> W. 6.0 feet; thence 35th, down center of said Palm Avenue S. 4° 24' W., 1332.5 feet; thence 36th, down center of said Palm Avenue S. 10° W., 1500.0 feet to the center of Sycamore Cañon Road.

To Have and to Hold the same unto said party of the second part and its successors for road purposes as aforesaid, provided and said parties of the first part hereby expressly reserve the right and privilege of maintaining the rows of palms and trees now growing along the sides of said highway within ten feet of the side lines thereof, together with the right to plant and maintain additional palms and trees on or along the sides of said road within ten feet of the side lines.

It is further covenanted and agreed that the stone wall in front of property of Bothin and the fence with stone posts in front of the Eaton property, the same being both within ten feet of the side lines of said highway shall remain the property of the land-owners on which the same stand respectively and that they shall not be torn down or removed or required to be removed by the party of the second part;

And it is further covenanted and agreed that all palms and ornamental trees growing in said highway shall not be destroyed, mutilated cut or damaged without the consent of the Board of Supervisors of said county, and that the same shall be subject to such regulations as said Board of Supervisors may make to protect and preserve shade and ornamental trees on public highways in said county. The right reserved by the parties of the first part to maintain said palms and trees and to plant additional ones, shall not be construed to prevent the Board of Supervisors of said county from planting or causing to be planted and maintaining shade and ornamental trees and palms on said highway where the same are not maintained or planted by any of the parties of the first part; The trees referred to herein include only shade and ornamental trees.

IN WITNESS WHEREOF said parties of the first part have hereunto set their hands and seals the day and year first above written.

DEEDS  
145

Henry Stoddard,  
By Carleton Stoddard, his attorney in fact  
Lucy C. Stevens  
Marguerite Doe  
Emma L. Hambleton  
Charles Frederick Eaton  
Florence Baxter Eaton  
(Ralph) R. W. Miller  
Mary B. W. Miller  
Henry E. Bothin  
Ellen Chabot Bothin  
Margaret Stoddard,  
By Carleton Stoddard

State of Texas )  
Wichita County )

Before me L.T. Brewer, a Notary Public in and for Wichita county, Texas, on this day personally appeared Ralph W. Miller and Mary B. W. Miller, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purpose and consideration therein expressed and the said Mary B. W. Miller wife of the said Ralph W. Miller having been examined by me privily and apart from her said husband and having the said instrument by me fully explained to her she acknowledged the same to be her act and deed, and declared that she had willingly executed the same for the purpose and consideration therein expressed and that she did not wish to retract it.

Given under my hand and seal of office this 2d day of July, A.D., 1912.

(Notarial Seal) L. T. Brewer, Notary Public Wichita County,  
T e x a s.

State of California )  
City and county of San Francisco ) ss

On this 17th day of July, in the year one thousand nine hundred and twelve, before me, W.W. Healey, a Notary Public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Henry E. Bothin and Ellen Chabot Bothin, (his wife) known to me to be the persons described in, whose names are subscribed to and who executed the within instrument, and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal, at my office in said city and county, of San Francisco, the day and year in this certificate first above written.

(Notarial Seal) W.W. Healey, Notary Public in and for the said  
My commission expires August 28th, 1913. city and county of San Francisco, state of  
California.

State of California )  
County of Santa Barbara ) ss

On this 19th day of July, in the year nineteen hundred and twelve, before me Harry W. T. Ross, a Notary Public in and for the county of Santa Barbara, personally appeared Lucy C. Stevens, Marguerite Doe and Charles Frederick Eaton, known to me to be the persons whose names are subscribed to the within instrument, and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

**EXHIBIT "C"**  
**CONDITIONAL SETTLEMENT AGREEMENT**

# CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS (“SETTLEMENT AGREEMENT”) is made effective April 6, 2021 (“EFFECTIVE DATE”).

## **1.0 PARTIES**

**1.1** The principal parties to this SETTLEMENT AGREEMENT are JOHN J. MITCHELL III and SUSAN DAVIS MITCHELL (collectively, the “MITCHELLS”) and the COUNTY OF SANTA BARBARA (“COUNTY”), a political subdivision of the State of California. The parties collectively are “PARTIES.”

**1.2** The MITCHELLS enter into this SETTLEMENT AGREEMENT on their own behalf, on behalf of their heirs, beneficiaries, executors, administrators, agents, representatives, attorneys, successors, and assigns, and on behalf of all other persons and entities to whom any CLAIM (defined below in paragraph 5.1) has accrued or may accrue. The MITCHELLS and those others are referred to below as “RELEASORS,” and each such reference is intended to refer to them collectively, jointly, separately, and severally.

**1.3** COUNTY enters this SETTLEMENT AGREEMENT on its own behalf and on behalf of COUNTY’s past and present agents, servants, employees, officers, directors, contractors, administrators, representatives, elected officials, attorneys, departments, divisions, insurers, risk managers, predecessors or successors, assigns, adjusters and agencies, whether acting independently, individually, on behalf of COUNTY or otherwise. COUNTY and those others are referred to below as “RELEASEES” and each such reference is intended to refer to them jointly, separately, and severally.

**1.4** COUNTY is a political subdivision of the State of California. Since COUNTY may not properly contract away either its police power or its legislative authority, COUNTY will retain full discretion to approve or deny any license, as discussed below. COUNTY will also retain all enforcement and regulatory authority.

## **2.0 BACKGROUND**

**2.1** The MITCHELLS are the owners of real property commonly known as 980 Cold Springs Road, Santa Barbara, CA 93108 on which there is a decorative security wall extending the length of the property’s frontage along Cold Springs Road (the “MITCHELL WALL”).

**2.2.** On July 20, 2015, the Mitchells submitted a GOVERNMENT TORT CLAIM (“GTC”) to the COUNTY alleging that COUNTY caused damage to the MITCHELL WALL through road construction and maintenance activities. A true and correct copy of the GTC is attached hereto as Exhibit A.

**2.3.** COUNTY alleges that the MITCHELL WALL was built as a retaining wall to extend the property's usable space, and that the wall failed due to the loads from soil for which the wall was constructed to retain, the age of the wall and the fact that it was non-engineered and constructed without any reinforcement.

**2.4** From March 20, 2017 until the date of this SETTLEMENT AGREEMENT, the PARTIES entered into a series of tolling agreements in order to allow the PARTIES the opportunity to explore settlement options. The Twenty-third version of such tolling agreement is in effect at the time of the execution of this SETTLEMENT AGREEMENT.

**2.5** The MITCHELL WALL has partially collapsed in the northerly section and, in place of the collapsed wall section, MITCHELLS have constructed a wooden fence that is six (6) feet high, measured from the top of the MITCHELL WALL footing to the top of the wooden fence that has replaced the collapsed wall. The PARTIES are aware of the potential for additional sections of the MITCHELL WALL to collapse in the future.

### ***3.0 SCOPE AND INTENT***

**3.1** This SETTLEMENT AGREEMENT pertains to the GTC the MITCHELLS filed with the COUNTY regarding the MITCHELL WALL.

**3.2** The PARTIES desire and intend this SETTLEMENT AGREEMENT to fully resolve, finally settle, and forever extinguish the GTC and all of the other CLAIMS defined below in paragraph 5.1, and to hold COUNTY entirely harmless with respect to those CLAIMS.

**3.3** The PARTIES desire and intend this SETTLEMENT AGREEMENT to fully supersede any and all prior agreements, understandings, discussions, and negotiations between them, written or oral, with respect to the subjects of this SETTLEMENT AGREEMENT.

### ***4.0 TERMS OF CONDITIONAL SETTLEMENT***

**4.1** COUNTY will, at a properly noticed public hearing, consider granting to the MITCHELLS, the attached proposed Irrevocable License Agreement ("LICENSE AGREEMENT") which would provide for the MITCHELLS entry into COUNTY's right of way as follows:

**4.1.1** MITCHELLS and their successors in interest, for any portion of the MITCHELL WALL or any replacement wall, fence, or similar structure ("MITCHELL WALL REPLACEMENT"), shall have the permanent right, to repair, maintain and replace the MITCHELL WALL in the location shown on the Survey attached hereto as Exhibit B, and at a height that is at or below its maximum present height, and repair, maintain, and replace the existing MITCHELL WALL REPLACEMENT and any future MITCHELL WALL REPLACEMENT, provided that any MITCHELL WALL REPLACEMENT located in the road right of way, shall meet the following specifications: (a) MITCHELLS shall advise COUNTY prior to installing any future MITCHELL WALL REPLACEMENT and shall allow COUNTY to inspect any portion

of the MITCHELL WALL REPLACEMENT; and, (b) the MITCHELL WALL REPLACEMENT will not exceed six (6) feet in height as measured on the Cold Springs Road side of the wall from the top of the MITCHELL WALL footing to the top of the MITCHELL WALL REPLACEMENT; (c) the MITCHELL WALL REPLACEMENT will not be located a greater distance inside the road right of way than the MITCHELL WALL (as depicted on the attached Exhibit B) is currently located; and (d) except as specifically provided in this SETTLEMENT AGREEMENT with respect to location, height, and adjacent landscaping, any MITCHELL WALL REPLACEMENT shall conform to all applicable County regulations

**4.1.2** MITCHELLS shall have the right to plant, place, and maintain vegetation not to exceed 36 inches in height and a stacked stone wall not to exceed 6 inches in height, within the COUNTY right of way, provided that neither the vegetation nor the stacked stone wall in the County right of way shall be located closer than 42 inches from the edge of pavement of Cold Springs Road. MITCHELLS shall maintain any vegetation placed in the COUNTY right of way in good and safe condition and shall not allow such vegetation to become a fire hazard.

**4.2** COUNTY will, consistent with applicable laws and regulations, review and act on the LICENSE AGREEMENT, including, if necessary, any administrative appeal.

**4.3** If COUNTY denies issuance of the LICENSE AGREEMENT, the statute of limitation shall be tolled for sixty (60) days after final denial of the LICENSE AGREEMENT and this SETTLEMENT AGREEMENT shall be deemed voided without further action by the parties..

**4.4** If COUNTY grants the LICENSE AGREEMENT as attached,

**4.4.1** COUNTY shall:

**4.4.1.1** Pay to the MITCHELLS the sum of \$65,000 within three (3) weeks of the date the COUNTY grants the LICENSE AGREEMENT; and

**4.4.1.2** Record the LICENSE AGREEMENT; and

**4.4.2** OWNERS shall release all CLAIMS against the COUNTY pursuant to Section 5.0 below.

### ***5.0 WAIVERS AND RELEASES***

**5.1** For purposes of this SETTLEMENT AGREEMENT, the term CLAIMS include all past, present, and future claims, demands, complaints, grievances, charges, suits, liens, appeals, actions, causes of action, assertions of right, and proceedings of any nature, whether known or unknown, foreseen or unforeseen, actual or potential, that are a subject of the GTC.

**5.2** MITCHELLS, on their own behalf, and on behalf of all other RELEASORS, upon final issuance by COUNTY, and acceptance of the conditions of approval by MITCHELLS, of the LICENSE AGREEMENT, will fully and finally waive, release, discharge, and extinguish all CLAIMS.

**5.3** The waiver and release in paragraph 5.2 does not apply to damage to the MITCHELL WALL caused by COUNTY actions taken subsequent to the execution of this SETTLEMENT AGREEMENT, including, but not limited to, adding fill (not including nominal fill for routine maintenance) that is not present at the time this SETTLEMENT AGREEMENT is executed. "Nominal fill" for purposes of this SETTLEMENT AGREEMENT is defined as any fill that does not exceed a level four inches from the bottom of the lower plank of the MITCHELL WALL REPLACEMENT as it exists on the Effective Date and as future MITCHELL WALL REPLACEMENT occurs when additional segments of the MITCHELL WALL collapse.

**5.4** COUNTY, on its own behalf, and on behalf of all other RELEASEES, as of the final issuance by COUNTY, and acceptance of the conditions of approval by MITCHELLS, of the LICENSE AGREEMENT, will finally waive, release, discharge and extinguish any existing and potential claims, demands, complaints, grievances, charges, suits, liens, appeals, actions, causes of action, assertions of right, and proceedings of any nature, whether known or unknown, foreseen or unforeseen, actual or potential (COUNTY CLAIMS), arising from the MITCHELL WALL or any MITCHELL WALL REPLACEMENT being maintained in the location and at the height allowed by this SETTLEMENT AGREEMENT.

**5.5 Civil Code Section 1542 Waiver.** The PARTIES understand, and for valuable consideration, hereby expressly waive all of the rights and benefits of Section 1542 of the California Civil Code, which section reads 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."

**5.6** MITCHELLS and COUNTY shall bear their own costs and attorneys' fees arising from the actions of their own counsel, if any, in connection with resolving the GTC and all related matters.

**5.7** MITCHELLS and COUNTY agree to mutually indemnify and hold each other harmless for any third party claims against either PARTY alleging damages or injuries arising from the location of the MITCHELL WALL or MITCHELL WALL REPLACEMENT constructed consistent with this Agreement. This indemnification provision pertains only to damages or injuries resulting from the location of the wall and does not pertain to damages caused by construction defects or any other circumstances resulting from this SETTLEMENT AGREEMENT.

## **6.0 WARRANTIES**

**6.1** MITCHELLS warrant that they are in all ways, legally competent to make this SETTLEMENT AGREEMENT and to perform the acts it requires them to perform.

**6.2** MITCHELLS warrant that they are the sole owners of all CLAIMS, and that there has been no assignment or transfer of any interest in any CLAIM. If any person or entity asserts any such assignment or transfer, MITCHELLS shall indemnify, defend and hold RELEASEES entirely harmless with respect to any damage, liability or attorney's fees any RELEASEE may incur as a result of such assertion.

**6.3** MITCHELLS warrant that, except for the GTC, they have not made or filed any complaint, claim, or action against any RELEASEE, and have no intention of doing so.

**6.4** MITCHELLS understand that hereafter they may discover facts different from, or in addition to, those that they presently know or believe to be true regarding the matters to which this SETTLEMENT AGREEMENT pertains, or regarding the consequences of this SETTLEMENT AGREEMENT. MITCHELLS understand that, notwithstanding any such discovery, this SETTLEMENT AGREEMENT shall remain binding, in full force, and unaffected in any way.

**6.5** MITCHELLS warrant that no promise, representation, or inducement of any sort, has been made to them regarding the subject matter, basis, or effect of this SETTLEMENT AGREEMENT, or otherwise regarding this SETTLEMENT AGREEMENT, except as expressly set forth in this SETTLEMENT AGREEMENT.

**6.6** MITCHELLS warrant that they have been given ample opportunity to review and consider this SETTLEMENT AGREEMENT, have placed their initials on each page of this SETTLEMENT AGREEMENT, and have received and relied upon the advice of an attorney of their choosing; and that they enter into this SETTLEMENT AGREEMENT based upon that advice, with full knowledge and understanding of the meaning and consequences of its terms, and of their legal rights and options.

**6.7** MITCHELLS warrant that they willingly and voluntarily consent to all of the terms of this SETTLEMENT AGREEMENT, free from any pressure, menace, or duress.

## **7.0 MISCELLANEOUS**

**7.1** This SETTLEMENT AGREEMENT shall be construed and enforced in accordance with the laws of the State of California and any dispute concerning said SETTLEMENT AGREEMENT shall be resolved in the Santa Barbara Superior Court. The language of this SETTLEMENT AGREEMENT is the result of negotiations between the PARTIES and shall be construed as though all PARTIES have participated equally in drafting it; hence the language of all of the parts of this SETTLEMENT AGREEMENT shall be construed as a whole, according to its plain meaning, and not for or against any particular party.



7.2 This SETTLEMENT AGREEMENT is the compromise of disputed claims, and neither this SETTLEMENT AGREEMENT nor any act taken pursuant to this SETTLEMENT AGREEMENT shall constitute or be construed as an admission of any fault, misconduct, wrongdoing, or liability on the part of COUNTY, or MITCHELLS, all of whom deny any fault, misconduct, wrongdoing, or liability.

7.3 This SETTLEMENT AGREEMENT, along with the attached LICENSE AGREEMENT, constitutes a single, integrated written contract, and expresses the entire agreement of the PARTIES with respect to the subject matter of this SETTLEMENT AGREEMENT. No supplement, modification, or amendment to this SETTLEMENT AGREEMENT shall be effective unless contained in a writing that (a) expressly states the intent of the PARTIES to supplement, modify, or amend this SETTLEMENT AGREEMENT, and (b) is signed by duly authorized representatives of MITCHELLS and COUNTY.

7.4 The terms of this SETTLEMENT AGREEMENT are severable, and the illegality or invalidity of any term or provision shall not affect the validity of any other term or provision, all of which shall remain in full force and effect.

7.5 This SETTLEMENT AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, which, taken together, shall constitute one and the same instrument.

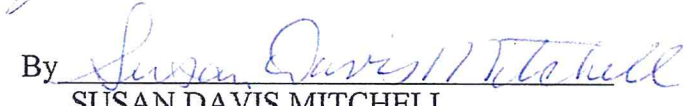
7.6 The effective date of this SETTLEMENT AGREEMENT shall be on the last day that the PARTIES fully execute it.

7.7 The signatories to this agreement on behalf of the COUNTY on the one hand and MITCHELLS, on the other, have been authorized to execute this Agreement on behalf of the principals; COUNTY represents that the County Board of Supervisors gave such authorization following the required vote approving the settlement.

7.8 The parties shall work cooperatively to complete grant of the LICENSE AGREEMENT, in a timely fashion.

MITCHELLS:

DATED: 03/26/2021 By  \_\_\_\_\_  
JOHN J. MITCHELL III

DATED: 03/26/2021 By  \_\_\_\_\_  
SUSAN DAVIS MITCHELL

  
(Initialed by MITCHELLS)

Approved as to form:

DATED: 3/29/2021

By



SUSAN F. PETROVICH  
Attorney for MITCHELLS

COUNTY OF SANTA BARBARA:

DATED: 4/6/2021

By



LISA A. ROTHSTEIN  
Sr. Deputy County Counsel  
Attorney for COUNTY OF SANTA BARBARA



(Initialed by MITCHELLS)