

EASEMENT MAINTENANCE/REPAIRS AND INDEMNIFICATION AGREEMENT

This Agreement is made by and between Craig F. Stephens (hereinafter referred to as (“Owner”)), and the Santa Barbara County Flood Control & Water Conservation District (hereinafter referred to as “District”).

Recitals

WHEREAS, Owner is the owner of a parcel of real property in Santa Maria, Santa Barbara County, California, APN 128-003-010 (“Property”) and more particularly described as:

Lot 10 of the Roemer/Williams Industrial Park, Tract No. 5386, in the City of Santa Maria, County of Santa Barbara, State of California, as per Map recorded November 21, 1985 in Book 129 Pages 10 and 11 of Maps, in the Office of the County Recorder of Santa Barbara County.

Excepting Therefrom all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights, and other hydrocarbons by whatsoever name known that may be within or under the Parcel of Land hereinabove described, together with the perpetual right of drilling, mining, exploring and operating therefor and removing the same from said Land or any other Land, including the right to Whipstock or directionally drill and mine from Lands other than those hereinabove described, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Land hereinabove described and to bottom such Whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines, without, however, the right to drill, mine, explore and operate through the surface or the upper 100 Feet of the subsurface of the Land hereinabove described or otherwise in such manner as to endanger the safety of any highway that may be constructed on said Lands, as excepted in final order of condemnation recorded February 7, 1962 as Instrument No. 5030, in Book 1902, Page 101 of Official Records.

Also excepting therefrom all oil, gas, oil rights, gas rights, and other hydrocarbon substances and minerals, lying below a depth of 500 Feet below the surface of said Land, but without the right of surface entry upon said Land, as excepted in a Deed from Vivian Roemer, et al. to Williams Bros. Markets, Inc., recorded August 8, 1984 as Instrument No. 84-042906 of Official Records.

WHEREAS, District owns the adjacent property (APN 128-003-041), as depicted on Exhibit A attached hereto and incorporated herein by reference, that serves as a flood control channel for drainage.

WHEREAS, District has a 24 foot easement (“Easement”) on the northerly section of the Property to access the flood control channel north of the Property. Easement was granted per Roemer/Williams Industrial Park Tract 5386 as per Map recorded in Book 129, Pages 10-11 of

Recorded Maps in the office of the Santa Barbara County Recorder.

WHEREAS, Owner is working on planning and potentially constructing a commercial enterprise on the Property and Owner and Owner's customers will require access on the Easement in order to access any commercial enterprise on the Property.

WHEREAS, Owner and District agree that District's use of the Easement is not exclusive of Owner's right to use the Easement to benefit its Property.

WHEREAS, Owner and District agree that Owner, Owner's lessees, and Owner's lessee's employees, agents, invitees, licensees, and customers shall have access to drive over and on the Easement for ingress and egress in order to access the Property for business purposes and all matters related and incidental thereto, provided that said use shall not be inconsistent with the District's rights in the Easement and shall not interfere with District's use of the Easement.

WHEREAS, the parties hereto wish to enter into this Agreement for Owner to hold District harmless from its use of the Easement.

NOW, THEREFORE, for good and valuable consideration, the parties agree to the following terms and conditions:

1) Owner shall hold harmless, indemnify, and defend District and its officers, officials, employees agents and volunteers from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement, caused by Owner or its lessees, employees, agents, invitees, licensees, or customers of Owner, or resulting from Owner's occupation and/or use of the Easement.

2) Owner will pay for the necessary maintenance and repairs required to maintain the Easement in good condition and repair. Owner further agrees to hold harmless, indemnify, and defend District and its officers, officials, employees, agents and volunteers from and against any and all liabilities, claims, actions, losses, or damages arising from or in connection with District's use of, damage, and/or the failure to maintain or repair the Easement. District is not responsible for any damages caused by its use of the Easement and the cost of maintenance and repair for any damages caused by District are assumed by the Owner. Repair and maintenance for any damages of the Easement will be done by a California State Contractors License Board licensed contractor chosen by Owner in a reasonable time.

3) Notwithstanding the provisions of Paragraph 1 or 2 of this Agreement, Owner shall be under no duty to hold harmless, indemnify and defend District from any liability, claims, action, losses, or damages arising because of District's sole negligence or willful acts of misconduct by District or by any person who is an agent or employee of District acting in the course and scope of its agency or employment.

4) For the duration of this agreement, the Owner will procure and maintain a General Liability Insurance policy with a minimum \$1,000,000 policy limit related to use of the Easement as provided for herein and annually provide the District with a certificate of coverage and insurance endorsement naming the District as an additional insured on said Owner's policy. However, the Owner's tenant may procure and maintain said policy if the tenant is owned or substantially controlled by the Owner through majority ownership and Owner provides the District with a certificate of coverage and insurance endorsement naming the District as an additional insured on said Tenant's policy.

5) Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to enter this Agreement and bind each respective party.

6) Any notice given by any party under this Agreement shall be sent by United States mail, postage prepaid, and addressed to Owner or District at their respective addresses indicated below:

Owner:
Craig F. Stephens
P.O. Box 3062
Shell Beach, CA 93448

District:
Santa Barbara County Flood Control & Water Conservation District
Naomi Schwartz Building
130 E Victoria Street
Suite 200
Santa Barbara, CA 93101

Owner or District may change the place to which notices, requests, and other communications are to be sent to them by giving written notice of that change to the other.

7) All representations, covenants and warranties set forth in this Agreement, by or on behalf of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

8) This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California. Any litigation regarding this Agreement shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.


9) 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.

10) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by the District.

APPROVED BY OWNER:

Date: 4-24-18



CRAIG F. STEPHENS

APPROVED BY DISTRICT:

**SANTA BARBARA COUNTY FLOOD
CONTROL & WATER CONSERVATION
DISTRICT:**

ATTEST:

Mona Miyasato
County Executive Officer
Ex Officio Clerk of the Board of
Directors of the Santa Barbara
County Flood Control and Water
Conservation District


By: _____
Deputy Clerk

By: _____
Das Williams, Chair
Board of Directors

Date: _____

**RECOMMENDED FOR
APPROVAL:**

Santa Barbara County Flood
Control & Water Conservation
District

By: 

Scott D. McGolpin
Public Works Director

APPROVED AS TO FORM


Ray Aromatorio, ARM, AIC
Risk Manager

By: 

Risk Management

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: 

Deputy County Counsel

