

RIGHT OF WAY AGREEMENT

Buckley Road Two-Way Left Turn Lane Project
WBS #300490, Parcel No. 14-04

THIS AGREEMENT entered into this 17TH day of DECEMBER 2014, by and between Apple River & Company, Limited Partnership, a Nevada limited Partnership, hereinafter referred to as GRANTOR and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, hereinafter referred to as COUNTY;

WITNESSETH:

WHEREAS, COUNTY needs to obtain certain property interests from GRANTOR for the Buckley Road Two-Way Left Turn Lane Project ("Project"); and

WHEREAS, a deed in the form of Easement Deed and Restrictive Covenant No. 14-04 ("Deed") covering the property particularly described therein (the "Subject Property"), has been executed and delivered to Phil Acosta, Right of Way Agent for COUNTY.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises and agreements herein set forth, it is mutually agreed by and between GRANTOR and COUNTY as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said document and shall relieve the COUNTY of all further obligation or claims on this account or on account of the location, or construction, of the proposed public improvement, except as set forth herein.

2. The COUNTY shall:

a. Pay the undersigned GRANTOR the sum of \$106,000.00 for the property interests as conveyed herein and by Deed No. 14-04 when title to said property vests in the COUNTY free and clear of all liens, encumbrances, assessments, easements, leases (recorded and/or unrecorded), and all taxes, except:

1. Taxes for the fiscal year in which this Agreement is entered which shall be cleared and paid in the manner specified under Article 5 (commencing with Section 5081) of Chapter 4 of Part 9 of Division 1 of the Revenue and Taxation Code, if unpaid at time Agreement is entered.

2. Easements or rights of way over said land for public, public utility or quasi-public utility purposes, if any.

b. Pay any escrow and recording fees incurred in this transaction, and if title insurance is desired by the COUNTY, the premium charged therefor.

c. Have the authority to deduct and pay from the amount shown in Paragraph 2 (a) above, any amount necessary to satisfy any delinquent taxes due in any fiscal year



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except the fiscal year in which this escrow closes, together with penalties and interest thereon, and/or delinquent or non-delinquent assessments or bonds except those which title is to be taken subject to, in accordance with the terms of this agreement.

3. The parties shall cause the Easement Deed to be recorded and the foregoing sum paid within thirty (30) days after this Agreement is signed by all parties. If COUNTY elects to have this transaction consummated through an escrow, COUNTY shall immediately open escrow at First American Title Insurance Company, and the parties shall execute conforming escrow instructions and take such actions as are reasonable and appropriate to promptly close such escrow. COUNTY agrees that title will be in the required condition if GRANTOR arranges for the existing Deed of Trust and any other unpermitted exceptions to be subordinated to the COUNTY'S Deed via subordination agreements in commercially reasonable form acceptable to the COUNTY. If GRANTOR cannot deliver title in the required condition, the COUNTY may terminate this Agreement, but GRANTOR shall not be in default.

4. Except as noted in the 2014 Phase I Environmental Site Assessment prepared by Haro Environmental and the follow-up Phase II report dated June 18, 2014, prepared by Elliot Haro for Oilfield Environmental and Compliance, Inc. (the "**Environmental Reports**"), GRANTOR hereby warrant and represent that the GRANTOR have no reason to believe that any hazardous waste, extremely hazardous waste, or hazardous substance (as those terms are defined in sections 25117, 25115, and 25316 of the California Health and Safety Code) has come to be located on, beneath or within any of the real property covered by the above referenced Easement Deed or this Agreement. If GRANTOR ever becomes aware of the presence of any hazardous waste, extremely hazardous waste, or hazardous on, beneath or within these areas other than noted in the Environmental Reports, GRANTOR shall immediately so advise COUNTY.

5. GRANTOR hereby warrants and represents that (1) GRANTOR has sufficient title in the Subject Property to fully convey to the COUNTY all of the property rights and interests described in the Deed, and (2) that GRANTOR'S title in the Subject Property shall not be compromised or transferred by any voluntary or involuntary transfer of any property interest, or the voluntary or involuntary creation of any lien, in the Subject Property to someone other than the COUNTY prior to close of escrow, except with the COUNTY'S consent, not to be unreasonably withheld.

6. At no expense to the GRANTOR, and at the time of roadway construction, the COUNTY or its independent contractor will construct or reconstruct hot-mix asphalt drive approach-ways, in accordance with County Standards, right of Engineer's Stations 152+00, 152+75, 153+65, and 154+85 as shown on the DRIVEWAY RECONSTRUCTION EXHIBIT (Parcel 14-04) attached hereto and made a part hereof.

7. At no expense to the GRANTOR, and at the time of roadway construction, the COUNTY or its independent contractor will:

Within the area described in Deed No. 14-04 as Parcel B Restrictive Covenant (hereinafter Parcel B) and as further depicted on the Restrictive Covenant Area Exhibit attached



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hereto and made a part hereof: a) Trim or remove vegetation and above-ground or overhanging improvements including, but not limited to, shrubs, trees, and 'Landscaping Boulders (hereinafter, "Boulders") at or below a height not to exceed twenty-four inches (24") from the height of the Buckley Road southerly edge of pavement adjacent to said Restricted Area; and b) Cut and cap irrigation lines as may be located during the hereinabove described work within Parcel B and notwithstanding GRANTOR'S acknowledgement that irrigation system is non-functional at this time; and

Within or upon GRANTOR'S Remainder Property identified as Assessor's Parcel Number 076-062-012 and lying southerly of and adjacent to said Parcel B: a) remove or trim trees that overhang Parcel B; and c) Relocate said Boulders southerly of the existing location(s) and outside of said Parcel B, at the County's discretion unless an alternate location upon said GRANTOR'S Remainder Property is specified in writing by GRANTOR within thirty (30) days of the date of this Agreement.

8. GRANTOR hereby grant permission to the COUNTY, and its independent contractor, to enter upon GRANTOR'S land, as depicted on the 'Permit To Enter And Construct Exhibit', attached hereto and incorporated herein, or where otherwise necessary, for purposes of reconstructing and conforming GRANTOR'S driveways, landscaping, and improvements as described in Paragraphs 5 and 6 of this Agreement.

9. It is understood and agreed that upon completion of the work indicated in Paragraph 5 of this Agreement, the portion(s) of said hot-mix asphalt drive approach ways lying within the COUNTY right of way shall be considered an encroachment under permit upon the County road, and shall be maintained, repaired, and operated as such by GRANTOR, in accordance with, and subject to pertinent County and State law, and San Luis Obispo County Department of Public Works Standard Encroachment Permit Provisions. The portion(s) of said drive approach ways located upon GRANTOR'S land shall be considered as the sole property of the GRANTOR; the maintenance and repair of said property to be that of the GRANTOR.

10. It is understood and agreed that upon completion of the work indicated in Paragraph 6 of this Agreement that: a) The relocated Boulders lying within or upon said GRANTOR'S Remainder Property; and b) Said cut and capped irrigation and landscaping within GRANTOR'S Remainder Property and described as Parcel B, shall be considered as the sole property of the GRANTOR.

11. All work done on GRANTOR'S property under this Agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good workmanlike manner. All structures, improvements or other facilities, when removed, relocated, reconstructed, or protected in place by the COUNTY in connection with the Project, shall be left in as good condition as found at the commencement of the Project, with all damage repaired to the extent reasonably practical, and COUNTY shall reasonably compensate GRANTOR for any damage that is impractical to repair. Except for claims that are not discoverable upon a reasonable inspection of the GRANTOR'S property, any claims by GRANTOR that the COUNTY has not complied with the provisions of this paragraph



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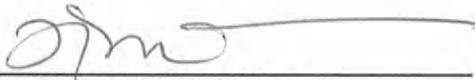
must be submitted in writing to the COUNTY within 30 days of the completion of the work done on GRANTOR'S property under this Agreement.

IN WITNESS WHEREOF, GRANTOR and COUNTY have executed this Agreement the day and year first above written. (As used above the term GRANTOR shall include the plural as well as the singular number as the case may be.)

GRANTOR:

APPLE RIVER & COMPANY, LIMITED
PARTNERSHIP, a Nevada limited Partnership

By: COAKLEY VINEYARDS, LLC, a
California limited liability company,
General Partner

By: 

H. John Coakley, Manager

County's signatures follow on next page



COUNTY OF SAN LUIS OBISPO – DEPARTMENT OF PUBLIC WORKS
RIGHT OF WAY AGREEMENT

COUNTY OF SAN LUIS OBISPO

Chairperson of the Board of Supervisors
County of San Luis Obispo

Dated: _____, 20__

ATTEST:
Julie L. Rodewald County Clerk-Recorder
and Ex-Officio Clerk of the Board of Supervisors
County of San Luis Obispo

Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT: RECOMMENDED FOR APPROVAL:

RITA L. NEAL
County Counsel

Department of Public Works:
WADE HORTON
Public Works Director

By: 

Deputy County Counsel

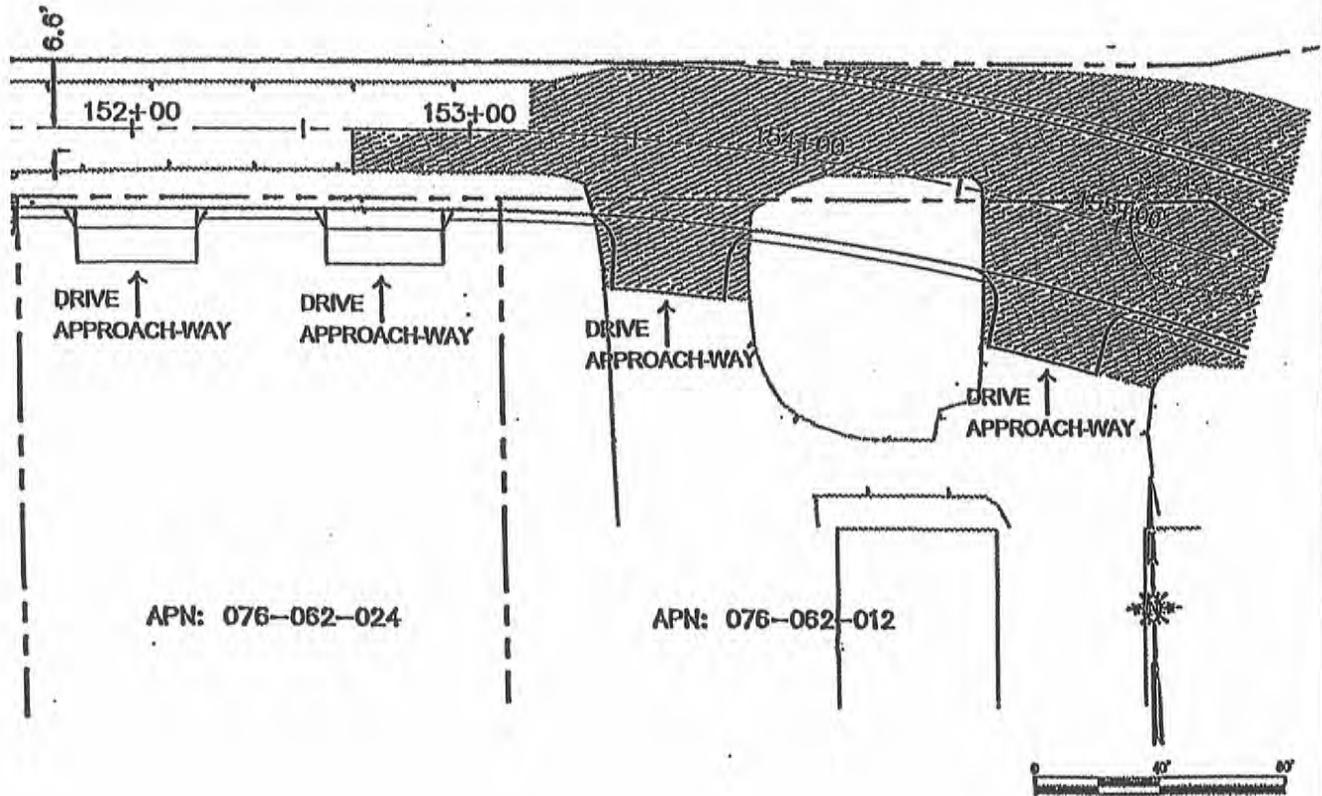
By: 

PHIL ACOSTA
Right of Way Agent

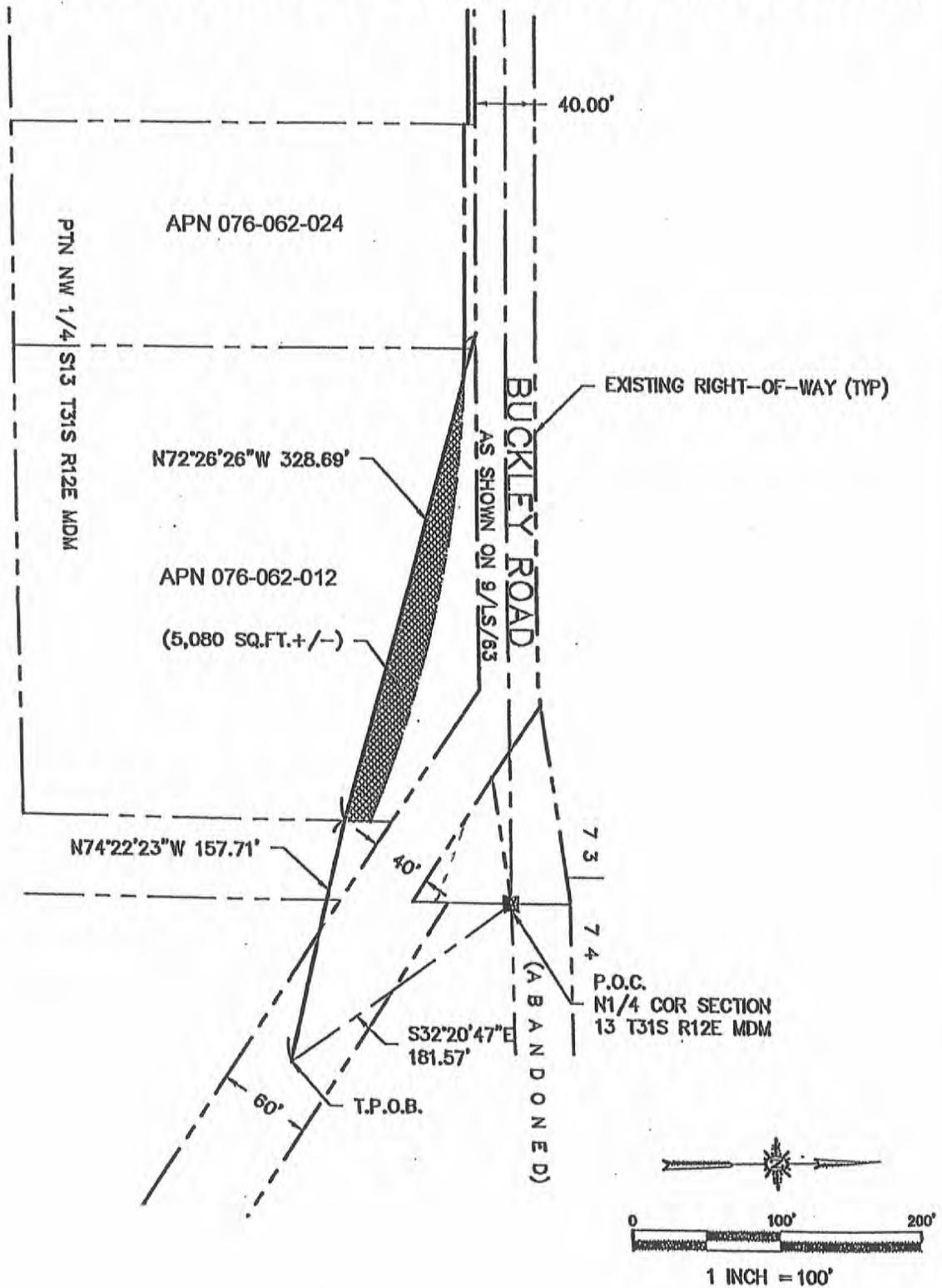


ROAD NO.	JOB NO.	SHEET NO.	SHEETS TOTAL
2089	300490	1	1

DRIVEWAY RECONSTRUCTION EXHIBIT (Parcel 14-04)



RESTRICTIVE COVENANT AREA EXHIBIT (Parcel 14-04)



ROAD NO.	JOB NO.	SHEET NO.	SHEETS TOTAL
2089	300490	1	1

PERMIT TO ENTER AND CONSTRUCT EXHIBIT (Parcel 14-04)

