

RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors
County of San Luis Obispo
County Government Center
San Luis Obispo, CA 93408

APN 040-280-057

**OPEN-SPACE AGREEMENT GRANTING AN OPEN-SPACE EASEMENT
TO THE COUNTY OF SAN LUIS OBISPO**

THIS AGREEMENT is made and entered into this ____ day of _____,
20____, by and between LAS TABLAS VILLAS, LLC, a California limited liability
company, hereinafter referred to as "Owner," and the COUNTY OF SAN LUIS OBISPO,
a political subdivision of the State of California, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, Owner is the record owner of certain real property (hereinafter
referred to as "Owner's Property") located in the County of San Luis Obispo, State of
California, which is more particularly described in Exhibit A attached hereto and
incorporated by reference herein as though set forth in full; and

WHEREAS, as agreed to by Owner and as a condition of approval of Conditional
Use Permit S020319U and as a condition precedent to the approval of a parcel or final
map for Tract 2549 by County for Owner's Property, Owner is required to enter into

ck. title rpt./Tract 2549
Revised March 4, 2015

an agreement with the County, on behalf of himself and his successors in interest, to maintain portions of the site in open-space use; and

WHEREAS, Owner intends that the restrictions contained in this agreement shall apply to that portion of Owner's Property (hereinafter referred to as the "Subject Property") which is more particularly described in Exhibit B attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, execution of this agreement by Owner and County, and subsequent performance of its obligations by Owner and his successors in interest, will satisfy the requirement for dedication of an open-space easement agreed to by Owner and made a condition of approval of the conditional use permit and tentative subdivision map referred to above; and

WHEREAS, the Subject Property has certain natural scenic beauty and existing openness, and also provides a buffer for adjoining residential uses and adjacent roadways, and both Owner and County desire to preserve and conserve for the public benefit the great natural scenic beauty and existing openness, natural condition and present state of use of said property of the Owner; and

WHEREAS, Owner is willing to grant to County the scenic use, as hereinafter expressed, of the land and thereby protect the present scenic beauty and existing openness of the Subject Property by the restricted use of said property by Owner through the imposition of the conditions hereinafter expressed; and

WHEREAS, both Owner and County intend that the terms, conditions, and restrictions of the open-space easement granted in this agreement are in compliance with Government Code sections 51070 through 51097, inclusive, hereinafter referred to

as the "Open-Space Easement Act of 1974," so as to be an enforceable restriction under the provisions of Revenue and Taxation Code section 422; and

WHEREAS, Owner has supplied County with a current title company preliminary title report or preliminary subdivision guarantee listing all trust deed beneficiaries and mortgagees, if any, under prior recorded deeds of trust and mortgages on the Subject Property.

NOW, THEREFORE, in consideration of the premises and in compliance with the provisions of Government Code sections 51070 through 51097, inclusive, and in further consideration of the mutual promises, covenants, and conditions herein contained and the substantial public benefits to be derived therefrom, the parties hereto agree as follows:

1. Grant of open-space easement. Owner hereby grants to County, for the term specified in paragraph 8 below, an open-space easement in and to the Subject Property described above. The open-space easement granted herein conveys to County an estate and interest in the real property of the nature and character specified in the Open-Space Easement Act of 1974, which is subject to the express conditions and restrictions imposed herein upon the use of the property by Owner. To that end, and for the purpose of accomplishing the intent of the parties hereto, Owner covenants on behalf of himself, his successors and assigns with the County, its successors and assigns to do and refrain from doing, severally and collectively, upon the Subject Property, the various acts hereinafter mentioned.

2. Restrictions on use of the Subject Property. The restrictions imposed upon the use of the Subject Property by Owner and his successors in interest and the acts

which Owner and his successors in interest shall refrain from doing, and permit to be done, upon the Subject Property are as follows:

(a) No buildings, structures, or other improvements shall be placed, constructed, or erected upon the Subject Property except and as otherwise authorized by the approved conditional use permit and subdivision map referred to above.

(b) Except for a location sign for the community recreation area, no advertising of any kind or nature shall be located on or within the Subject Property.

(c) Owner shall not plant or permit to be planted any vegetation upon the Subject Property except for landscaping in accordance with the approved landscaping plan, and as otherwise authorized by the approved conditional use permit and subdivision map referred to above, and as necessary for erosion control.

(d) Except for the construction, alteration, relocation, and maintenance of the public utility, drainage, recreation, and other easements as shown on the approved conditional use permit and subdivision map referred to above, the general topography of the landscape shall be maintained in its present condition and no grading, excavation, or topographic changes shall be made.

(e) No use of the Subject Property which will or does materially alter the landscape or other attractive scenic features of the property, other than those specified herein, shall be done or suffered.

(f) Owner shall not extract natural resources from the Subject Property.

(g) Owner shall not cut timber, trees, or other natural growth, except as authorized by the approved conditional use permit and subdivision map referred to

above and as may be required for fire protection, thinning, elimination of diseased growth, and similar protective measures.

(h) Except as required for the approved play area and the drainage and trail easements, Owner shall not use the Subject Property or any portion thereof as a parking lot, storage area, or dump site or otherwise deposit or allow to be deposited on the Subject Property or any portion thereof, temporarily or otherwise, anything whatsoever which is not indigenous or natural to the Subject Property.

(i) Except as required for the approved play area and the drainage and trail easements, Owner shall not cover or cause the Subject Property to be covered in whole or in part with any asphalt, stone, concrete, or other material which does not constitute natural cover for the land nor otherwise disturb the natural cover of the land unless otherwise authorized by the provisions of this agreement.

(j) No land division of a legal lot containing the Subject Property or a portion thereof shall occur except after obtaining all necessary approvals required by Title 21 and Title 22 of the San Luis Obispo County Code. Any such conveyance or transfer of a legal lot containing the Subject Property or a portion thereof by Owner or his successors in interest without first obtaining all required governmental approvals shall be considered null and void.

3. Reservations of use by Owner. Notwithstanding the provisions of paragraph 2 above, the following property rights in the Subject Property are excepted from this grant and are expressly reserved to Owner:

(a) The right to construct, develop, and maintain all trails, utilities, structures, and

other improvements authorized by the approved conditional use permit and subdivision map referred to above.

(b) The right to install and maintain landscaping in accordance with the approved landscaping plan.

(c) The right to construct, develop, and maintain a play area and landscaping on Lot 42.

(d) The right to the use and occupancy of the Subject Property, subject to the conditions and restrictions imposed in this agreement.

4. Compliance with County regulations. Land uses permitted or reserved to Owner in this agreement are subject to and require compliance with all applicable County ordinances and regulations, including those regulating land use.

5. Construction of improvements. Owner shall not construct or permit the construction of any improvements on the Subject Property except as expressly reserved herein or as authorized in the Open-Space Easement Act of 1974. Provided, however, nothing contained in this agreement shall prohibit the construction of either public service facilities installed for the benefit of the Subject Property or public service facilities installed pursuant to an authorization of the Board of Supervisors of the County or the Public Utilities Commission.

6. No authorization for public trespass. The grant of easement contained herein and its acceptance by the County of San Luis Obispo does not authorize and is not to be construed as authorizing the public or any member thereof to trespass upon or use all or any portion of the Subject Property or as granting to the public or any member thereof any tangible rights in or to the Subject Property or the right to go upon or use or

utilize the Subject Property in any manner whatsoever. It is understood that the purpose of this agreement is solely to restrict the uses to which the Subject Property may be put so that the property may be kept as near as possible in its natural condition for the benefit of the public.

7. Effect on prior easements. Nothing contained in this agreement shall limit or affect any easements that are of record and that have been heretofore granted by Owner on, over, under, or across the Subject Property or any portion thereof.

8. Duration of easement. The grant of easement to County contained in this agreement shall be effective when it has been approved and accepted by resolution of the Board of Supervisors in the manner required by law, and it shall remain in effect in perpetuity unless abandoned or otherwise terminated by the Board of Supervisors in accordance with the provisions of the Open-Space Easement Act of 1974. Provided, however, no easement shall be abandoned or otherwise terminated without first obtaining approval of an amendment to the conditional use permit (S020319U) authorizing such abandonment or termination.

9. Enforceable restriction. Upon acceptance of the open-space easement granted herein, the Subject Property shall be deemed to be "enforceably restricted" within the meaning of section 422 of the Revenue and Taxation Code and section 8 of Article XIII of the Constitution of the State of California.

10. Binding on successors in interest. This agreement shall be deemed an equitable servitude and a covenant running with the land described herein and shall be binding on the parties hereto and their heirs, assigns, and successors in interest. Any conveyance, transfer, or sale made by Owner of said property or any portion thereof

shall be deemed to incorporate by reference, and be subject to, each of the provisions of this agreement.

11. Effect of waiver. County's waiver of the breach of any one term, covenant, or provision of this agreement shall not be a waiver of a subsequent breach of the same term, covenant, or provision of this agreement or of the breach of any other term, covenant, or provision of this agreement.

12. Judicial enforcement. Enforcement shall be by proceeding at law or in equity, either to restrain a violation or an attempted violation or by suit to recover damages against any person or persons violating or attempting to violate any covenant or restriction contained herein.

13. Law governing and venue. This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this agreement.

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

15. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices shall be addressed as follows:

To the County: Director of Planning and Building
County of San Luis Obispo
County Government Center, Room 300
San Luis Obispo, California 93408

To the Owner: Las Tablas Villas, LLC
Attention: John W. Belsher
3480 South Higuera Street, Suite 130
San Luis Obispo, California 93401

Either party may change such address by providing notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

16. Agreement to be recorded. Owner and County intend and consent to the recordation of this agreement in the office of the County Recorder of the County of San Luis Obispo, and such recordation of this agreement shall serve as constructive notice of the obligations contained herein to be performed by the Owner and the successors in interest to all or any portion of Owner=s Property.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

OWNER

LAS TABLAS VILLAS, LLC
a California limited liability company

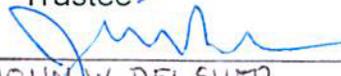
By: PB COMPANIES, LLC,
a California limited liability company
Member

By: 
JOHN W. BELSHER
Managing Member

By: 
RYAN PETETIT
Managing Member

By: RUSSELL M. SHEPPEL 2009
IRREVOCABLE TRUST
Member

By: 
RUSSELL M. SHEPPEL
Trustee

By: 
JOHN W. BELSHER
Member

COUNTY OF SAN LUIS OBISPO

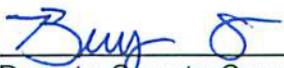
By: _____
Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Dated: 5/6/15

[NOTE: This Open-Space Agreement will be recorded. All signatures to this agreement must be acknowledged by a notary.]
11770ktagr.doc

ACKNOWLEDGMENT

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 San Luis Obispo

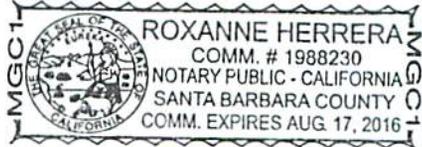
On March 25, 2015 before me, Roxanne Herrera, Notary public
(insert name and title of the officer)

personally appeared Ryan Petetit
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 Roxanne Herrera (Seal)



ACKNOWLEDGMENT

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State of California
County of San Luis Obispo

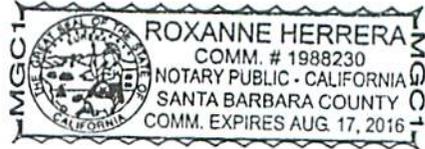
On March 25, 2015 before me, Roxanne Herrera, Notary Public
(insert name and title of the officer)

personally appeared Russell M. Sheppell
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 R Herrera (Seal)



ACKNOWLEDGMENT

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State of California
County of San Luis Obispo

On March 28, 2015 before me, Roxanne Herrera, Notary Public
(insert name and title of the officer)

personally appeared John W. Belsher
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 [Handwritten Signature] (Seal)

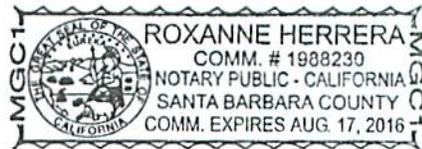


EXHIBIT A

All of Tract 2549 as shown on a map recorded in Book _____, Pages _____ through _____ inclusive of Maps, in the Office of the County Recorder of the County of San Luis Obispo, State of California.

EXHIBIT B

Lots 42, 43, and 44 of Tract 2549 as shown on a map recorded in Book _____, Pages _____ through _____ inclusive of Maps, in the office of the County Recorder of The County of San Luis Obispo, State of California.

REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors
County of San Luis Obispo
County Government Center
San Luis Obispo, CA 93408

APN 040-280-057

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT. (THIS NOTICE REQUIRED BY CALIFORNIA CIVIL CODE SECTION 2953.3.)

The undersigned, beneficiary of the beneficial interest (recorded as Document No. 2014-047457 on November 7, 2014), under that certain Deed of Trust dated November 27, 2013, recorded December 10, 2013, as Document No. 2013-067167, of the Official Records in the Office of the County Recorder of the County of San Luis Obispo, State of California, does hereby join in, and consent to, each and all of the terms and provisions of the Open-Space Agreement Granting An Open-Space Easement To The County Of San Luis Obispo entered into between Las Tablas Villas, LLC, a California limited liability company, and the County of San Luis Obispo, recorded concurrently herewith, and does hereby subordinate the interests of its Deed of Trust to the entire effect of the open-space agreement.

SIGNED AND EXECUTED this 11 day of MARCH, 2015.

BENEFICIARY

PRIVATE CAPITAL GROUP, INC.
As Power of Attorney / Attorney-in-Fact for
DAVID DURHAM, TRUSTEE OF
THE MARTINA DURHAM BYPASS TRUST

By:  Attorney-in-Fact
James Petralia, Attorney-in-Fact

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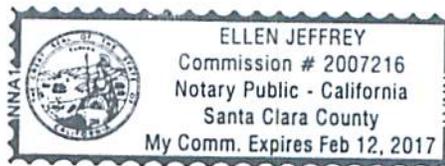
STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

On 3-11-2015 before me, Ellen Jeffrey, a Notary Public, personally appeared JAMES A. PETRALIA 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 



REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors
County of San Luis Obispo
County Government Center
San Luis Obispo, CA 93408

APN 040-280-057

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SIGNED AND EXECUTED this 11th day of March, 2015.

BENEFICIARY

PRIVATE CAPITAL GROUP, INC.
As Power of Attorney / Attorney-in-Fact for
ERICH REINHARDT, TRUSTEE ERICH REINHARDT
ADVISORY SERVICES, 401K P/S PLAN

By:  Attorney in fact
James Petralia, Attorney-in-Fact

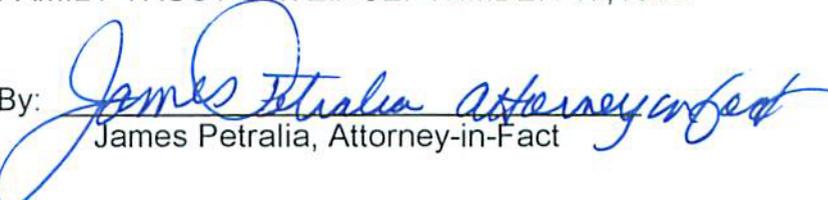
PRIVATE CAPITAL GROUP, INC.
As Power of Attorney / Attorney-in-Fact for
EUGENE BRYAN COCHETTI, TRUSTEE
OF THE COCHETTI LIVING TRUST, THE
SURVIVORS TRUST A

By: 
James Petralia, Attorney-in-Fact

PRIVATE CAPITAL GROUP, INC.
As Power of Attorney / Attorney-in-Fact for
RAY SPEAR, TRUSTEE OF THE VAL'S PLUMBING
& HEATING INC. PROFIT SHARING PLAN & TRUST

By: 
James Petralia, Attorney-in-Fact

PRIVATE CAPITAL GROUP, INC.
As Power of Attorney / Attorney-in-Fact for
CAROL A. LINK, TRUSTEE OF THE WILSON
FAMILY TRUST DATED SEPTEMBER 17, 1990

By: 
James Petralia, Attorney-in-Fact

PRIVATE CAPITAL GROUP, INC.
As Power of Attorney / Attorney-in-Fact for
SUSAN L. ROGERS, TRUSTEE OF IRA SERVICES
TRUST COMPANY FBO SUSAN L. ROGERS IRA
231083

By: 
James Petralia, Attorney-in-Fact

PRIVATE CAPITAL GROUP, INC.
As Power of Attorney / Attorney-in-Fact for
GARY L. NEWSOME, TRUSTEE OF
THE NEWSOME TRUST DTD
SEPTEMBER 3, 1999

By: 
James Petralia, Attorney-in-Fact

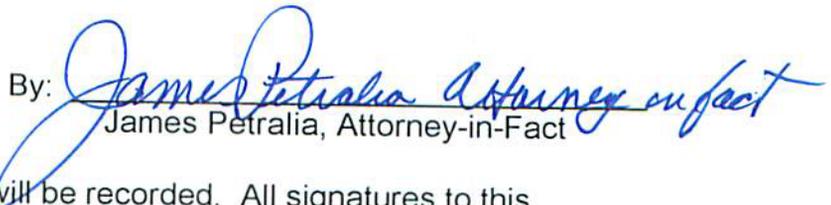
PRIVATE CAPITAL GROUP, INC.
As Power of Attorney / Attorney-in-Fact for
BARRATT H. ROWLEY, TRUSTEE OF
THE ROWLEY 1998 FAMILY TRUST

By: 
James Petralia, Attorney-in-Fact

PRIVATE CAPITAL GROUP, INC.
As Power of Attorney / Attorney-in-Fact for
MARILYNN R. WHITCOMB, TRUSTEE OF
THE WHITCOMB REVOCABLE
LIVING TRUST DTD OCTOBER 28, 2009

By: 
James Petralia, Attorney-in-Fact

PRIVATE CAPITAL GROUP, INC.
As Power of Attorney / Attorney-in-Fact for
MICHAEL O'DONOVAN WHITCOMB,
TRUSTEE OF THE WHITCOMB
REVOCABLE LIVING TRUST DTD
OCTOBER 28, 2009

By: 
James Petralia, Attorney-in-Fact

NOTE: This Subordination Agreement will be recorded. All signatures to this agreement must be acknowledged by a notary.]

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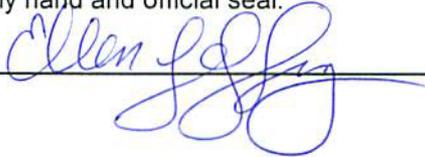
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STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

On 3-11-2015 before me, Ellen Jeffrey, a Notary Public, personally appeared JAMES A. PETRALIA 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 



SLO CNTY
PLANNING/BUILDING
DEPT

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