

Recording Requested by: Marin
County Flood Control and Water
Conservation District

WHEN RECORDED MAIL TO:

Real Estate Division, County of Marin
Department of Public Works
P.O. Box 4186, Civic Center Branch
San Rafael, CA 94913-4186
Attention: George Harrington

Recording fees exempt per Gov Code § 6103

APN: 141-304-07

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“*Agreement*”) is entered into as of _____, 2005 by and between **SUNNY HILLS CHILDREN’S GARDEN FAMILY AND CHILDREN’S SERVICES**, a California non-profit corporation (“*Grantor*”), and **MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**, a Public District of the State of California (“*Grantee*”).

RECITALS

- A. Grantor is the current owner of that certain real property located in the County of Marin, State of California, as more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (the “*Burdened Property*”).
- B. Grantee has requested a permanent easement in, over, across and through those certain and limited portions of the Burdened Property described and depicted on Exhibit “B” attached hereto and incorporated herein by this reference (the “*Easement Area*”) for the Easement Facilities and Easement Uses (as those terms are defined in Section 1 below).
- C. Grantor is willing to grant such easement upon the terms and conditions set forth below.

- D. Grantor or any subsequent owner of the Burdened Property is hereafter referred to as the “**Burdened Owner**”, and Grantee and its successors and assigns are hereafter referred to as the “**Benefitted Owner**”.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. **Grant of Easement.** Grantor hereby grants to Grantee an easement in, over, across and through the Easement Area for the purposes of laying down, locating, constructing, reconstructing, removing, replacing, repairing, maintaining, operating and using those certain flood control improvements depicted on those certain plans prepared by the Marin County Department of Public Works, dated December 10, 2001, Job No. Z 1-45 for the flood control and transmission of drainage water, channels, ditches, culverts and all necessary fences, protective barriers, fixtures, facilities and for the purpose of access in connection therewith (such improvements being referred to in this Agreement as the “*Easement Facilities*”). The foregoing purposes are collectively referred to herein as the “*Easement Uses*”

2. **Term.** This Agreement shall continue in full force and effect from the date of recordation of this Agreement in perpetuity, unless this Agreement is amended, modified or terminated by an agreement executed, acknowledged and recorded by the Burdened Owner and Benefitted Owner.

3. **Construction, Maintenance and Repairs.**
 - 3.1 **By Benefitted Owner.** All expenses and costs for the construction of the Easement Facilities shall be borne by the Benefitted Owner. The Benefitted Owner shall periodically inspect, maintain, repair, reconstruct, and replace the Easement Facilities to insure the safe, lawful and reasonable operation of such Easement Facilities. All costs and expenses for such inspection, maintenance, repair, reconstruction, and replacement of the Easement Facilities shall be borne solely by the Benefitted Owner. The Benefitted Owner shall give the Burdened Owner at least fourteen (14) days prior written notice of any laying down, location, construction, reconstruction, removal, replacement, inspection, repair, or maintenance of the Easement Facilities or on the Easement Area except in the event of a bona fide emergency, in which event whatever notice is reasonable under the circumstances shall be given. Any laying down, location, construction, reconstruction, removal, replacement, inspection, repair, or maintenance of the Easement Facilities or on the Easement Area by the Benefitted Owner shall be performed in a manner which, to the extent reasonable under the then existing circumstances, minimizes disruption to the Burdened Property and Burdened Owner’s operations on the Burdened Property.

3.2 By Burdened Owner. If, at any time, the Benefitted Owner should fail to perform any of its obligations under Section 3.1 above, then the Burdened Owner shall provide the Benefitted Owner with written notice thereof. The Benefitted Owner shall thereafter use reasonable efforts to cure any such failure within fourteen (14) days of the Benefitted Owner's receipt of such notice. If the Benefitted Owner fails to cure any such failure within such fourteen (14) day time period, then the Burdened Owner shall have the right, but not the obligation, to immediately inspect, maintain, repair, reconstruct and replace the Easement Facilities pursuant to this Section 3.2 to insure the safe, lawful and reasonable operation of such Easement Facilities; *provided, however,* if such cure is one that will reasonably require more than fourteen (14) days to cure, the Burdened Owner shall not have the right to inspect, maintain, repair, reconstruct and replace the Easement Facilities if the Benefitted Owner commences cure within such fourteen (14) day period and diligently prosecutes the cure to completion within a reasonable period. Within thirty (30) days of written request, the Benefitted Owner shall reimburse the Burdened Owner for any costs and expenses incurred by the Burdened Owner in inspecting, maintaining, repairing, reconstructing and replacing any portion of the Easement Facilities and Easement Area pursuant to this Section 3.2. In the event the Benefitted Owner fails to reimburse any such costs and expenses within such thirty (30) day period, from and after such period the Benefitted Owner shall additionally be obligated to pay the Burdened Owner interest on any unreimbursed costs and expenses in the amount of ten percent (10%) per annum.

4. Damage to easement Area or Burdened Property. If the Benefitted Owner should damage or destroy any portion of the Easement Area or Burdened Property, the Benefitted Owner shall, at the election of the Burdened Owner, either (a) repair, reconstruct or replace such damaged or destroyed portion of the Easement Area or Burdened Property (at the Benefitted Owner's sole cost and expense) or (b) reimburse such party upon demand for all reasonable costs and expenses actually incurred by such party in repairing, reconstructing or replacing such damaged portion of the Easement Area or Burdened Property, as applicable.

5. Covenants

5.1 Mechanic's Liens and Removal of Liens. The Benefitted Owner shall keep the Easement Area and Burdened Property free and clear of all design professional's mechanic's or materialmen's liens which may arise out of any laying down, location, construction, reconstruction, removal, replacement, inspection, repair or maintenance on the Easement Area or of the Easement Facilities or out of the Easement Uses or any other activities or work on the Easement Area or Easement Facilities. To the extent any such liens are recorded against the Burdened Property or any part thereof, the Benefitted Owner shall cause such lien to be released and removed within fifteen (15) days of knowledge or being served notice of such filing and/or recording,

either by satisfaction or by the posting of a release bond in the amount required by statute

5.2 Insurance. At all times during the term of this Agreement the Benefitted Owner shall maintain excess municipal liability insurance in excess of a self-insured retention of \$250,000 through CSAC/EIA (California State Association of Counties/Excess Insurance Authority). Within its self-insured retention, the Benefitted Owner will be responsible for all loss, cost and expense. The Benefitted Owner retains the option to change its self-insured retention at any time. The Benefitted Owner agrees to name the Burdened Owner as additional insured under its excess municipal liability program up to a limit of \$1,000,000 per occurrence. The Benefitted Owner shall provide that the Burdened Owner will receive thirty (30) days written notice from the insurer prior to cancellation of coverage.

5.3 Indemnification. The Benefitted Owner agrees to indemnify, defend and hold the Burdened Owner and its respective officers, directors, shareholders, partners, members, managers, affiliates, employees, representatives, agents, invitees, mortgagees, successors and assigns harmless from and against any and all claims, actions, causes of action, demands, damages, costs, liabilities, losses, judgments, expenses or costs of any kind or nature whatsoever (including, without limitation, attorney's fees) by reason of property damage, death or injury to persons arising from or relating to the indemnifying party's laying down, location, construction, reconstruction, removal, replacement, inspection, repair, or maintenance of the Easement Facilities or on the Easement Area.

6. Notices. Any notice, consent, approval or request for consent required or permitted to be given under this Agreement shall be given in writing and shall be effective (a) if personally delivered, upon delivery or refusal to accept such delivery; or (b) if mailed, three (3) days after mailing, by United States registered or certified mail, postage pre-paid, return receipt requested, to the applicable address set forth below:

If to Grantor: Sunny Hills Children's Garden Family and Children's Services
300 Sunny Hills Drive
San Anselmo, CA 94960
Attention: Joe Costa

If to Grantee: Real Estate Division, County of Marin
Department of Public Works
P.O. Box 4186, Civic Center Branch
San Rafael, California 94913-4186
Attention: George Harrington

The foregoing address and addressees may be changed by giving notice of such change in the manner provided for in this Section 6.

- 7. Binding Effect and Governing Law.** This Agreement and all covenants and restrictions contained herein shall, to the fullest extent permitted by law and equity and without regard to technical classifications or designations, be deemed to be covenants running with the land of the Burdened Property, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is made with the intent of satisfying Section 1468 of the California Civil Code. This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 8. Entire Agreement.** This Agreement, including the recitals and Exhibits “A” and “B” attached hereto, all of which are incorporated herein by this reference, constitutes the entire agreement between the parties with respect to the grant of easement hereunder.
- 9. Amendments.** Subject to Section 7 above, this Agreement may be amended, modified or supplemented only by a written document executed by all of the parties hereto (or their successors and assigns).
- 10. Mortgagee Protection.** No violation or breach of the terms and conditions of this Agreement shall affect or impair the liens or security rights of the holder of a Mortgage (as hereafter defined) given in good faith and for value which is now or in the future recorded against the Burdened Property; *provided, however*, that any such mortgagee shall be obligated to comply with any nondisturbance, recognition, attornment or similar agreement that it executes. With respect to any Mortgage recorded against the Burdened Property subsequent to the recording of this Agreement such mortgagee or any purchaser at a foreclosure sale resulting from such mortgage or other party taking title to the Burdened Property shall take subject to this Agreement and the terms and conditions set forth herein. The term “**Mortgage**” shall mean any recorded mortgage or deed of trust encumbering the Burdened Property.
- 11. No Third Party Beneficiaries.** This Agreement is only for the benefit of the parties hereto and their successors and assigns as set forth in Section 7 above. Except as set forth in Section 5.3, no other person or entity or property shall be entitled to rely hereon, receive any benefit herefrom or enforce any provision hereof against any party hereto (or their respective successors assigns).
- 12. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

In Witness Whereof, the parties have executed this Easement Agreement as of the date first above written.

“GRANTOR”

**SUNNY HILLS CHILDREN’S GARDEN FAMILY
And CHILDREN’S SERVICES,**
a California non-profit corporation

By: _____

By: _____

“GRANTEE”

**MARIN COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT,**
A Public District of the State of California

President, Board of Supervisors

ATTEST:

Deputy Clerk

Approved as to Form

County Counsel

EXHIBIT "A"
To
Easement Agreement

LEGAL DESCRIPTION OF THE BURDENED PROPERTY

All that certain real property located in the City of Novato, County of Marin, State of California, described as:

Lot 409, as shown and designated upon the map of Meyers Subdivision Unit Four, filed May 15, 1953 in Book 7 of Maps, at Page 86, Marin County Records.

**Exhibit "B" Page 1 of 2
To
Easement Agreement**

LEGAL DESCRIPTION AND DEPICTION OF THE EASEMENT AREA

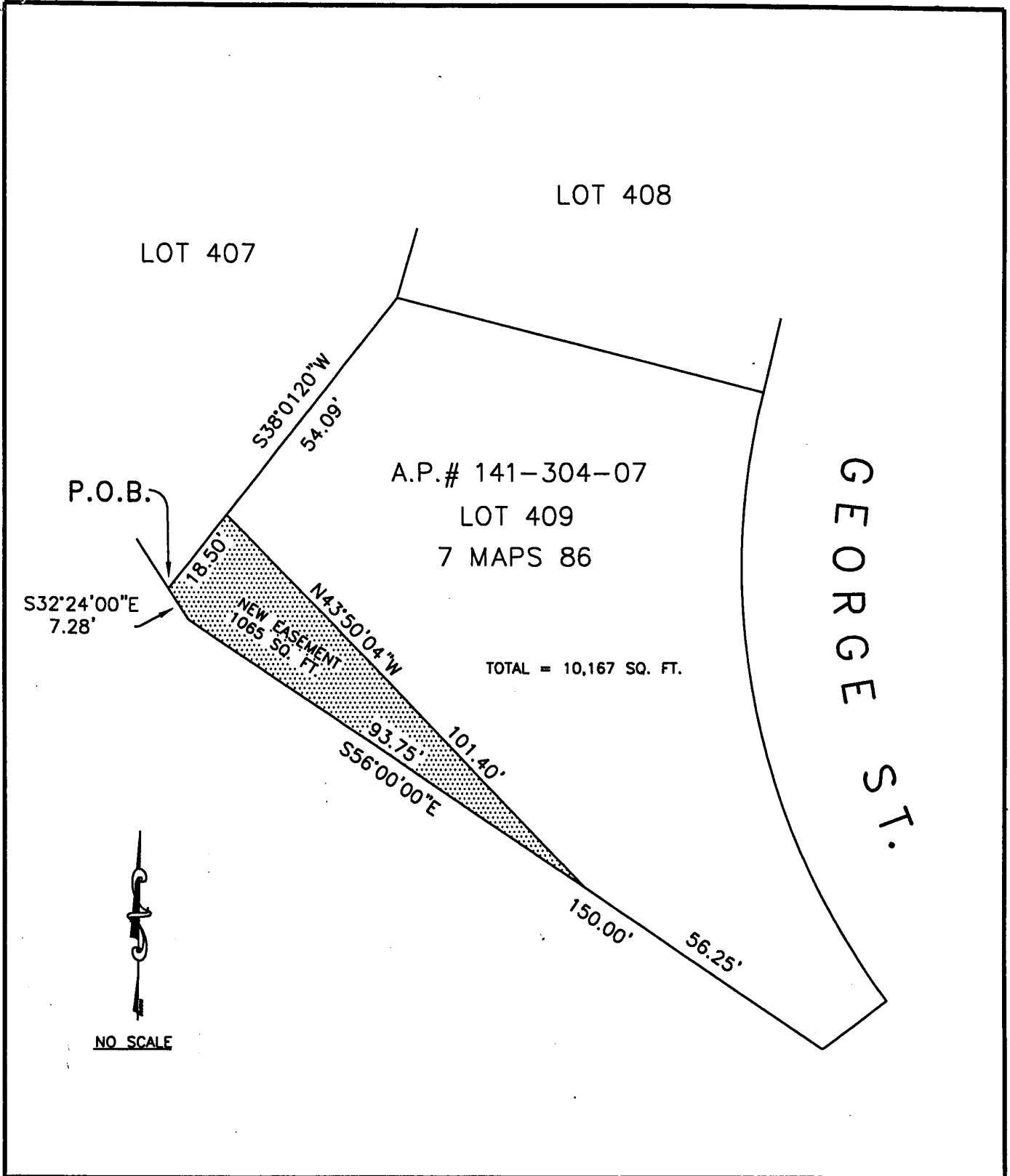
A portion of Lot 409 as said Lot is shown on the MAP OF MEYERS SUBDIVISION UNIT FOUR, filed for record May 15, 1953 in Book 7 of Maps at Page 86, Marin County Records. Said portion is described as follows:

Beginning at the most westerly comer of Lot 409; thence along the southwesterly boundary line South 32°24'00" East 7.28 feet; thence South 56°00'00" East 93.75 feet; thence leaving said Lot line North 43°50'04" West 101.40 feet to the northwesterly boundary line; thence along said Lot line South 38°01'20" West 18.50 feet to the Point of Beginning.

Portion of said Lot 409 contains 1,065 square feet more or less.

Prepared by:

Donald Hobbs P.L.S. 4807



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| COUNTY OF MARIN | | NOVATO CREEK IMPROVEMENTS | | | |
| DEPARTMENT OF PUBLIC WORKS | | A.P. # 141-304-07 | | | |
| Exhibit "B" Page 2 of 2 To Easement Agreement | | LANDS OF SUNNY HILLS CHILDREN'S SERVICES | | | |
| 08-03 DATE | R.D. DRAWN | D.H. CHECKED | SHEET 1 1 | 141-304-07.DWG DRAWING FILE | |