

PLACER COUNTY
REDEVELOPMENT AGENCY
MEMORANDUM

RECEIVED

TO: Honorable Members of the Redevelopment Agency Board
FROM: Richard Colwell, Chief Assistant CEO – Redevelopment Director
Rae James, Deputy Director
DATE: July 25, 2006
SUBJECT: Adopt a Resolution Approving the Use of \$300,000 to Purchase an Exclusive Land Easement In Order to Provide Access to the Tahoe City Marina Public Parking Structure, Make Findings Required by Health and Safety Code Section 33445 and Authorize the Chief Assistant CEO-Redevelopment Director or Designee to Sign All Related Documents, Subject to the Review of Agency Counsel.

ACTION REQUESTED: Adopt a resolution approving the use of \$300,000 to purchase an exclusive land easement in order to provide access to the Tahoe City Marina Public Parking Structure, make findings required by Health and Safety Code Section 33445 and authorize the Chief Assistant CEO-Redevelopment Director or designee to sign all related documents, subject to the review of Agency Counsel.

BACKGROUND: On March 24, 2005 the Placer County Planning Commission approved the Tahoe City Marina Expansion (Marina) Environmental Impact Statement/Environmental Impact Report and Conditional Land Use Permits for the Marina expansion. The approved Marina expansion includes the construction of a three-level, 138 space, public parking structure located on property in Tahoe City (see Attachment – Site Map).

An easement is required to provide vehicle access from Highway 28 to the third level of the parking structure. On May 9, 2006, the Board authorized the Agency to enter into negotiations with Michael and Stephanie Schwartz who own and operate the Back Country, a bicycle and ski rental store. The easement will be constructed at the rear of the Back Country property (see Attachment – Conceptual Drawing). The first and second levels of the planned public garage will be reached through the property dedicated by the Marina to the Agency. The dedication of the property needed for construction of the garage is the subject of another item on this agenda. Because this item and the Marina land dedication item are linked, the easement agreement is contingent on Board approval of the Marina land dedication.

Board approval of this item would also add the easement to the Master Fixed Asset List.

EASEMENT AGREEMENT TERMS: The following are the key terms of the agreement:

1. An exclusive easement purchase price in the amount of \$300,000 was negotiated. The price includes acquisition cost, consideration for construction inconvenience and loss of use.

2. The Placer County Planning Department will credit parking spaces in the structure to the owners or any parking spaces needed for a store expansion, but lost due to the sale of the easement to the Agency.
3. The Agency agrees to work with other County departments to plow snow from the third level in the garage.
4. The Agency agrees to work with the owners to ensure that the Tahoe Regional Planning Agency (TRPA) does not penalize the owners for coverage variations due to the construction of the easement. In recent communications, TRPA has indicated that it does not anticipate a problem in this regard.

The Agency has also agreed in a separate communication to consider a commercial rehabilitation loan application when, and if, the Schwartz's wish to pursue an expansion of the Back Country structure.

In the easement agreement, acknowledgements are made that the exact boundaries of the easement are still under determination and design. Attached to this memo is the easement agreement in substantial form pending final legal description and execution. Construction of the easement and the parking structure will take two Tahoe building seasons. Construction is anticipated to begin in 2008.

FISCAL IMPACT: The construction of the Marina Public Parking Garage and required easements are anticipated to be paid from the Agency's North Lake Tahoe Redevelopment Area Capital Projects Fund. There will be no impact on the County General Fund.

ENVIRONMENTAL STATUS: The National Environmental Policy Act and California Environmental Quality Act process is complete on the Tahoe City Marina Master Plan that includes the construction of a public parking structure. A Finding of No Significant Impact was issued and the Environmental Impact Report/Environmental Impact Statement was certified with appropriate findings. The TRPA Governing Board confirmed the determination on February 23, 2005, and the Planning Commission confirmed the determination on March 24, 2005.

FINDINGS: Under the California Redevelopment Law (Health & Safety Code Section 33000 et seq.), before the Agency can expend funds for acquisition of land for public improvements, such as an access easement for the public parking garage, the Agency and the Board of Supervisors must make specified findings pursuant to Health and Safety Code Section 33445.

The Agency is in constant pursuit of implementing and accomplishing the stated goals of the Redevelopment Plan for the North Lake Tahoe Project Area (the "Redevelopment Plan"). Health and Safety Code Section 33031(a)(2) identifies as a blighting condition factors that inhibit the economic viability of buildings or lots, such as lack of parking. Section 323 of the Redevelopment Plan specifically authorizes the Agency to install public parking facilities. The Report on the Redevelopment Plan, prepared at the time the Redevelopment Plan was adopted, called out as a blighting factor, commercial buildings that suffer from lack of convenient public parking. The Agency's 2001-2006 North Lake Tahoe Implementation Plan identifies the installation of public parking in Tahoe City as a goal and a program of the Implementation Plan. The installation of additional public parking should assist local properties in attracting additional customers and clients,

which will result in a positive effect on blighting influences in the Project Area. The acquisition of the access easement to allow installation of additional public parking in the Project Area will support the goals of the Redevelopment Plan and the Implementation Plan.

The County has no other reasonable means of financing the estimated cost of the acquisition of the access easement as the County General Fund has balanced revenues and expenditures. The County budget has allocated resources to other funding priorities and has no unused funding to allocate for the acquisition of the access easement, and therefore, it is appropriate for the Agency to fund the acquisition of the access easement for eventual construction of the public parking garage.

RECOMMENDATION: Adopt a resolution approving the use of \$300,000 to purchase an exclusive land easement in order to provide access to the Tahoe City Marina Public Parking Structure, make findings required by Health and Safety Code Section 33445 and authorize the Chief Assistant CEO-Redevelopment Director or designee to sign all related documents, subject to the review of Agency Counsel.

Attachments

cc: Sabrina Thompson, Agency Counsel

Please use a blank page behind memo to insert any other cc's besides Sabrina Thompson

This will let the Administrative Assistant know who else gets a copy of board package

bcc: Ron Baker, Senior Administrative Services Officer
Cindy Kelly, Senior Administrative Services Officer

**Before the Redevelopment Agency of
Placer County Board of Directors
County of Placer, State of California**

In the matter of:

Adopt a Resolution Approving the Use of \$300,000 to Purchase an Exclusive Land Easement In Order to Provide Access to the Tahoe City Marina Public Parking Structure, Make Findings Required by Health and Safety Code Section 33445 and Authorize the Chief Assistant CEO-Redevelopment Director or Designee to Sign All Related Documents, Subject to the Review of Agency Counsel.

Resol. No:.....

Ord. No:.....

First Reading:

The following Resolution was duly passed by the Board of the Redevelopment Agency of Placer County at a regular meeting held July 25, 2006,

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

**Attest:
Clerk of said Board**

Chair, Agency Board

BE IT RESOLVED by the Board of the Redevelopment Agency of Placer County as follows:

WHEREAS, the Redevelopment Plan for the North Lake Tahoe Redevelopment Project Area (Redevelopment Plan) was adopted by the Placer County Board of Supervisors on July 16, 1996 by Ordinance No. 4753-B and as subsequently amended from time to time; and

WHEREAS, the Redevelopment Agency of Placer County ("Agency") is vested with responsibility pursuant to the Community Redevelopment Law (Part I of Division 24 of the Health and Safety Code of the State of California) to implement the Redevelopment Plan in the Project Area; and

WHEREAS, the Agency intends to purchase an exclusive land easement from Michael and Stephanie Schwartz for use within the Project Area in order to develop a public parking garage; and

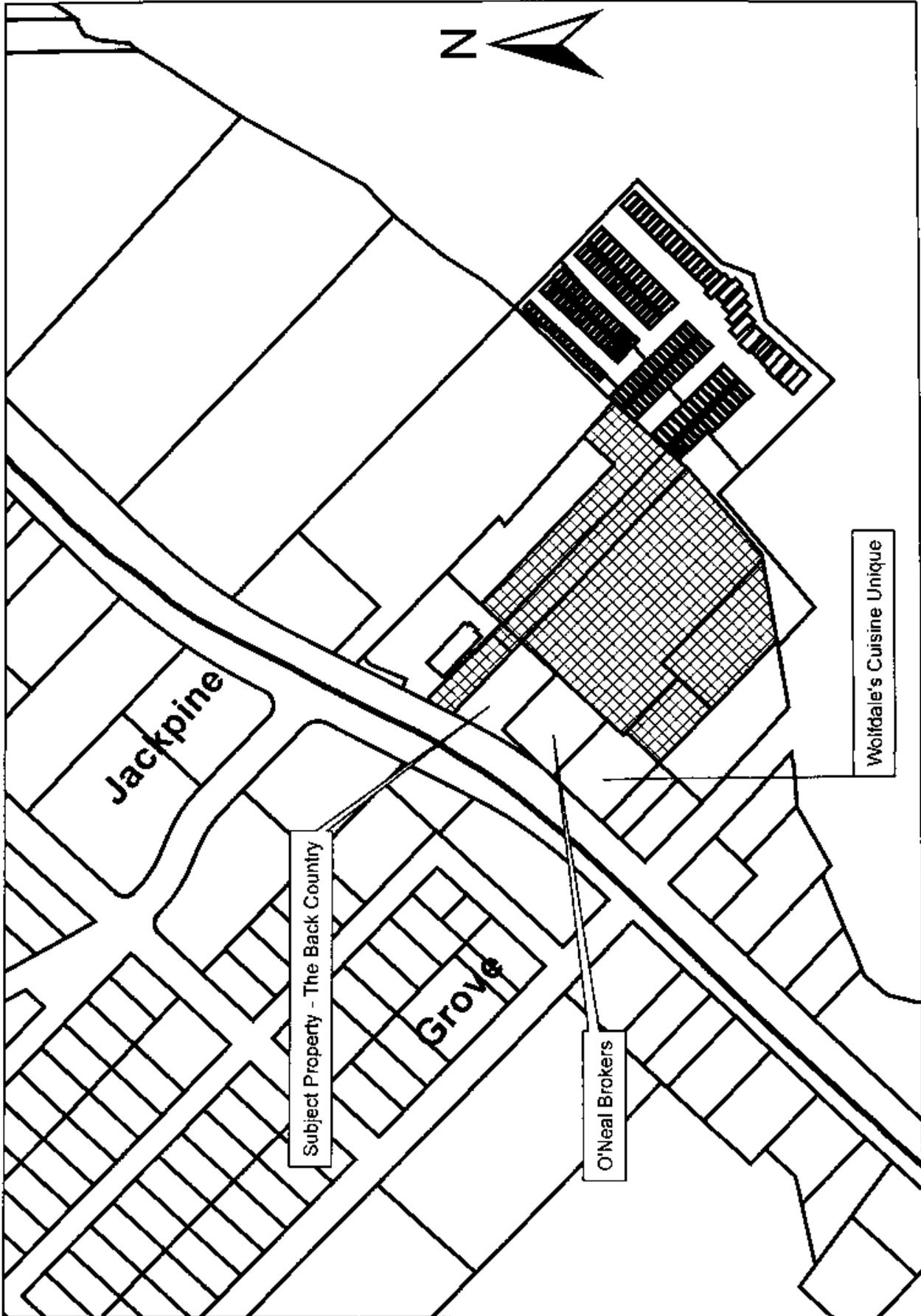
WHEREAS, the National Environmental Policy Act and California Environmental Quality Act process is complete on the Tahoe City Marina Expansion, and a Finding of No Significant Impact was issued and the Environmental Impact Report/Environmental Impact Statement was certified with appropriate findings; and

WHEREAS, Agency assistance in acquisition of the Property and in funding parking improvements is contemplated and provided for in Section 323 of the Redevelopment Plan and in the Agency's Implementation Plan for the Project Area adopted pursuant to Section 33490 of the Law; and

WHEREAS, by the staff report accompanying this Resolution and incorporated herein by this reference, the Agency Board is provided additional information upon which the findings and actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED that based on information presented, the Agency Board determines as follows:

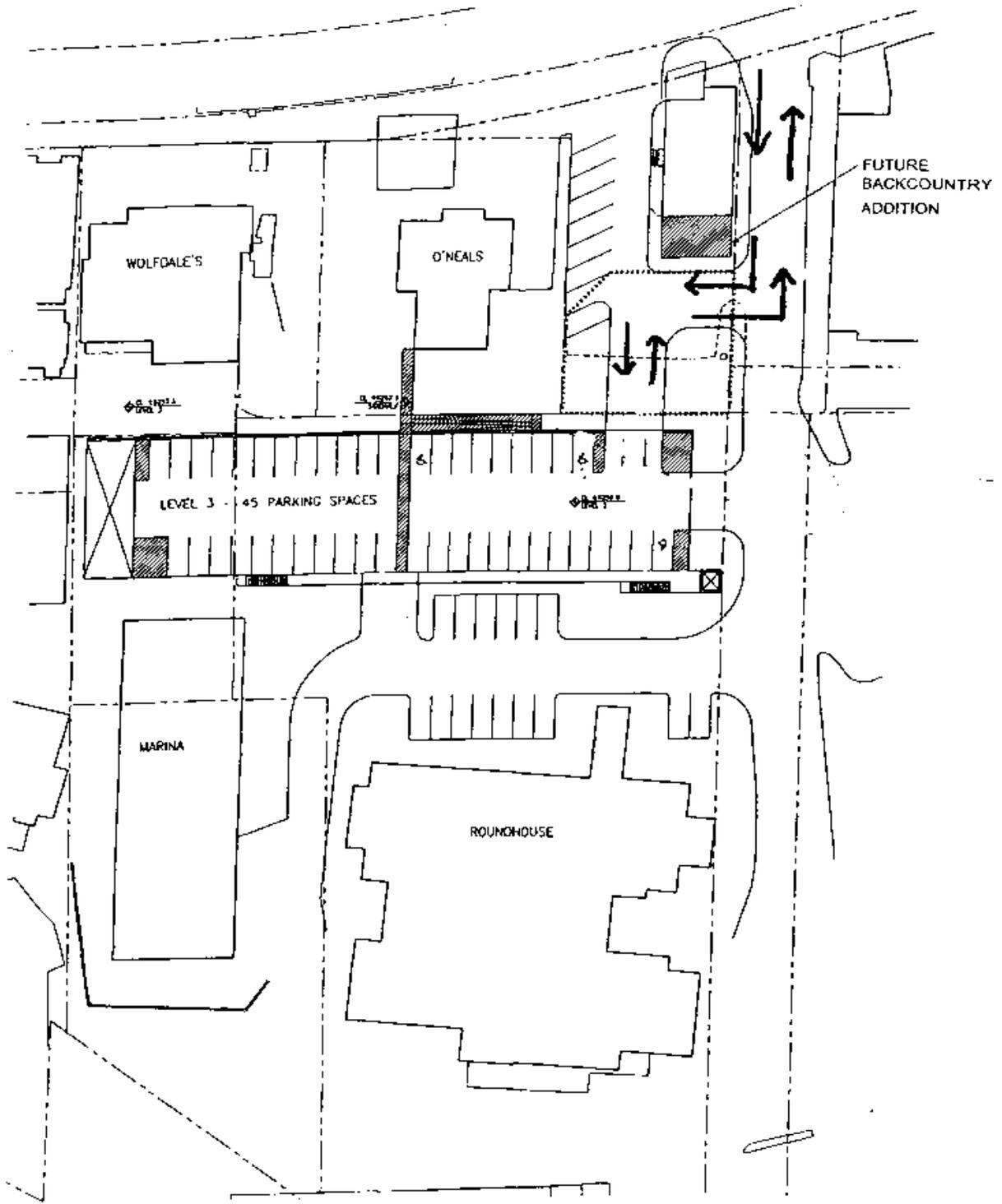
1. All of the above recitals are true and correct, and the Agency Board has based the findings and actions set forth in this Resolution, in part, on such recitals.
2. The Agency hereby finds and determines that (a) Agency assistance for acquisition an access easement for a public parking garage will be of benefit to the Project Area; (b) there are no other reasonable means of financing the acquisition an access easement for the public parking garage; and (c) the payment of Agency funds for acquisition an access easement for the public parking garage (i) will assist in the elimination of one or more blighting conditions in the Project Area and (ii) is consistent with the Implementation Plan adopted by the Agency pursuant to Section 33490 of the Law. A summary of the factual and analytical basis used by the Agency in making these findings and determinations is set forth in the staff report.
3. The Agency Board consents to the payment by the Agency for the acquisition of a land easement for APN 094-090-018 for \$300,000 anticipated to be paid from North Lake Tahoe Redevelopment Area Tax Increment Bond Proceeds.
4. The Agency Board authorizes the Chief Assistant CEO–Redevelopment Director, or designee to execute all necessary documents to carry out this acquisition. This easement is approved to be added to the Master Asset List.
5. This Resolution shall take immediate effect from and after its passage and approval.



Map Drawn by Joyce Pope
6-29-06

Tahoe City Marina and Related Properties

Attachment – Conceptual Design



THIRD LEVEL PLAN

TAHOE MARINA PUBLIC PARKING FACILITY

June 29, 2006

WRNS STUDIO
AN ARCHITECTURAL FIRM
3101 CALIFORNIA STREET, SUITE 100
SAN FRANCISCO, CALIFORNIA 94118
415.774.8100 FAX 415.774.8101
WWW.WRNSSTUDIO.COM

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EASEMENT AGREEMENT
(Access)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Placer County Redevelopment Agency
3091 County Center Drive, Suite 260
Auburn, CA 95603
Attn: Deputy Director, Redevelopment

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is entered into as of _____, 200_, by and between, Placer County Redevelopment Agency, a public body, corporate and politic ("Agency" or "Party"), and Michael A. and Stephanie Schwartz, husband and wife ("Owner" or "Party") (collectively, Agency and Owner are referred to as "Parties").

RECITALS

- A. Owner is the owner of a parcel of real property in the unincorporated area of Placer County, California, more particularly described in Exhibit A ("Owner Property").
- B. Agency owns that parcel of property in the unincorporated area of Placer County, California, adjacent to the Owner Property more particularly described in Exhibit B attached and incorporated into this Agreement ("Agency Property").
- C. Agency intends to construct a public parking structure on the Agency Property ("Agency Project") with an entrance on the third floor of the structure.
- D. Owner has agreed to provide Agency with an exclusive easement over Owner Property to be used as a public driveway providing vehicular and pedestrian access to the Agency Project.

NOW, THEREFORE, in consideration of the sum of Three Hundred Thousand (\$300,000) Dollars, which the Agency shall pay to Owner as provided in Section 2 of this Agreement, Agency and the Owner agree as follows:

Section 1. Grant of Easement. Owner grants to Agency for the use and benefit of the public, an exclusive, irrevocable easement with a right of entry for pedestrian and vehicular ingress and egress (the "Access Easement"). The Access Easement is more particularly described on the attached Exhibit C and depicted on the map attached as Exhibit D. The Parties agree that the exact location of the easement may change as the Easement Improvements (defined in Section 4 below) are designed and constructed, and the Parties agree to amend this

easement and revise the attached Exhibits C and D as necessary to reflect the exact location of the Access Easement after such construction is completed. The Parties further agree that in order to construct the driveway on the Access Easement so that it provides access to the third floor of the Agency Project, certain portions of the Access Easement may need to be filled.

Section 2. Condition for and Consideration for Easement. The Parties agree that this Agreement will not be recorded until and if the Agency has acquired the Agency Property. The Agency will pay the Owner a nonrefundable deposit of Fifteen Thousand Dollars (\$15,000) within ten business days of the Agency board approval of this Agreement, which shall be credited toward the consideration of Three Hundred Thousand Dollars (\$300,000) the Agency shall pay to Owner for the Access Easement, any inconvenience and loss of business to Owner during construction of the Easement Improvements (as defined below) and any loss of use of the Owner Property due to the Easement Improvements. The Agency shall pay the remaining Two Hundred Ninety Thousand Dollars (\$290,000) to Owner only if the Agency has acquired the Agency Property and only upon recordation of this Agreement.

Section 3. Owner's Right to Sell. In the event the Owner has a prospective buyer and the Agency has not executed this Agreement, the owner may with 60 days notice to the Agency sell Owner Property. All rights attributed to this Agreement shall terminate upon sale by Owner to a new purchaser.

Section 4. Nature of Easement; Benefit and Burden; Run with the Land. The Agency Property constitutes the dominant estate, and the Owner Property constitutes the servient estate. The Access Easement may not be transferred, assigned, or encumbered except as an appurtenance to the Agency Property. It is the intent of this Agreement that the Access Easement shall burden the Owner Property, for the benefit of the Agency Property. It is further intended that the benefits of the Access Easement, and other rights granted by this Agreement to Agency, shall run with the Agency Property and that the burdens of the Access Easement, and other obligations under this Agreement, shall run with the Owner Property.

Section 5. Construction of Access Easement Improvements. Agency shall bear the cost of, and have the responsibility for, the subsurface investigation, constructing the driveway, including any fill, and any other improvements needed for the Access Easement ("Easement Improvements"). Agency shall construct the Easement Improvements in accordance with applicable local, county and state requirements. The Agency shall manage the construction process for the Easement Improvements and shall require all contractors and subcontractors to name the Owner as an additional insured on all liability policies required by the Agency from the contractors and subcontractors for construction of the Easement Improvements. The Agency shall bear responsibility for all maintenance, repair and operation of the Easement Improvements at its sole cost. The Agency shall, to the greatest extent feasible, design the access easement to integrate with the Owner's property.

Section 6. Maintenance and Repair. The Agency shall have the responsibility for the regular, ordinary maintenance and repair of the Easement Improvements, as necessary to keep the same in good condition, appearance and repair.

Section 7. License. Owner hereby grants to Agency a license to enter onto the Owner Property for purposes of construction, repair and maintenance of the Easement Improvements; during such construction, operation and maintenance work. This license will remain in effect as long as this Agreement.

Section 8. Damage or Destruction.

a. In the event there is any damage or destruction to any portion of the Easement Improvement as a result of fire, earthquake or other casualty, Agency shall repair the Easement Improvements at its cost.

b. Notwithstanding the other maintenance and repair obligations herein, if Owner, its successors or assigns (or any tenant, licensee, invitee, employee, or guest of such Party) causes or is responsible for any damage to the Easement Improvements, Owner, its successors or assigns, shall promptly repair and restore the Easement Improvements, to their condition immediately prior to the damage at no cost to the Agency, its successors and assigns.

Section 9. Maintenance of Owner Property. The Owner shall keep the Owner Property in a good, safe and usable condition, in good repair, and in compliance with all applicable state, county and local ordinances.

Section 10. Maintenance of Agency Property. Agency and its successors shall keep the Agency Property in a good, safe and usable condition, in good repair, and in compliance with all applicable state, county and local ordinances.

Section 11. Performance of Work on Properties. In the event Owner or Agency desires to perform any construction or related work on their respective property, then all such work performed in the maintenance, repair, replacement, alteration or expansion of improvements on a particular property shall be done as expeditiously as is reasonably possible and in such a manner as not to unreasonably interfere, obstruct or delay access to or from the Access Easement. All staging for the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or other improvements located on a particular property including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to the property upon which the construction is to occur and shall not be permitted within or on the Access Easement or the property owned by the other Party without the prior written consent of the other Party except as otherwise provided in Section 6 of this Agreement. The Party contracting for the performance of such work shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition the Access Easement, and any improvements thereon, damaged or destroyed in the performance of such work.

Section 12. Taxes. Each Party shall be responsible for payment of all taxes, assessments, fees and other governmental charges with respect to its respective Property.

Section 13. Insurance. Agency and Owner shall maintain the following insurance:

a. Liability and Property Insurance. Liability policies in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate covering bodily injury, property damages and personal injury arising out of the ownership, use or maintenance of their applicable property and, for Agency only, the public's use of the Access Easement. Each Party shall insure that its policy names the other Party as an additional insured. The policy shall be endorsed to state that it (i) is primary and that any insurance available to the additional insureds shall be excess and not contributory and (ii) shall not be canceled without thirty (30)-days' written notice to the other Party. Each Party shall provide the other with evidence of insurance from the insurer certifying that all of the insurance required herein is in place and includes the required limits, terms and conditions.

b. Workers' Compensation. Workers' compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over either Party.

Section 14. Indemnity. The Agency shall hold harmless, indemnify and defend the Owner (and its successors and assigns) from and against any and all actual liabilities and claims, arising from or related to the Agency's use of the Access Easement including, but not limited to, any damage to property (to the extent the damage is not covered by any casualty insurance) or injury to or death of any person, that is not caused by Owner's negligence or willful act. The indemnity shall cover the costs and expenses of the Owner, including reasonable attorneys fees and costs related to any actions, suits or judgments incident to any of the matters covered by such indemnity. The Owner shall notify the Agency of any claim against the Owner within ten (10) days after it has notice of such claim.

Section 15. Default and Remedies. In the event of any breach of this Agreement by a Party, the nonbreaching Party may give the breaching Party written notice describing the breach and thirty (30) days in which to cure. Should the breaching Party fail to cure such breach within the thirty (30) day cure period, the nonbreaching Party may initiate mediation of the controversy, claim, or dispute in accordance with the rules and procedures of the American Arbitration Association, and the other Party shall participate in good faith. The Parties shall bear the cost of the mediation equally and each shall pay its own attorneys fees in such mediation. If the Parties are unable to mediate successfully, the nonbreaching Party may take any action available to it in law or in equity.

Section 16. Attorneys Fees. In the event of any controversy, claim, or dispute relating to their Agreement or the breach thereof, the prevailing Party shall be entitled to recover from the non-prevailing Party reasonable expenses, attorneys fees and costs, except as otherwise provided in Section 14 with respect to mediation efforts.

Section 17. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

Section 18. Amendment. Any future amendments to the Agreement must be in writing and approved in writing by both Parties.

Section 19. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

Section 20. Third Party Beneficiary Rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

Section 21. Construction. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

Section 22. Joint and Several Obligations. In the event any Party hereto is composed of more than one person or entity, the obligations of such Party shall be joint and several.

Section 23. Severability. If any clauses of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion shall remain in full force and effect.

Section 24. Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors, and assigns, as applicable, of each of the Parties. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 25. Counterparts; Multiple Originals. This Agreement may be signed in one or more counterparts.

Section 26. Notices. Formal notices, demands and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, return receipt requested, or express delivery service with a delivery receipt, to the principal offices of the Parties as follows:

AGENCY:

Placer County Redevelopment Agency
Attn: Deputy Director
3091 County Center Drive, Suite 260
Auburn, CA 95603

OWNER:

Michael & Stephanie Schwartz
3100 Polaris Road
Tahoe City, CA 96145

Section 27. Recordation. This Agreement shall be recorded in the office of the recorder of the County of Placer.

Section 28. Cooperation.

a. The Agency will cooperate with the Owner in working with the County, the Tahoe Regional Planning Agency ("TRPA"), and other government agencies to credit the public parking to be provided on the Agency Property for any parking requirements for the Owner Property. The Agency and Owner each acknowledge that the County, TRPA or other governmental agencies are not parties to this Agreement, and nothing in this Agreement limits such agencies' discretion in considering land use and other approvals.

b. The Agency will cooperate with the Owner to insure to the extent feasible, that the Owner Property's coverage considerations are not negatively impacted due to the Agency's construction of the Agency Project on the Access Easement.

c. The Agency will cooperate with the Owner to seek approval from TRPA and other County departments to plow the third level of the Agency Project of snow during winter months.

IN WITNESS WHEREOF, the Parties hereto have executed this Easement Agreement as of the date first above written.

OWNER:

By: _____
Michael A. Schwartz

By: _____
Stephanie Schwartz

AGENCY:

PLACER COUNTY REDEVELOPMENT AGENCY,
a public body, corporate and politic

By: _____

Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF)

On _____, 20__ before me, _____,
Notary Public, personally appeared _____,
personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF)

On _____, 20__ before me, _____,
Notary Public, personally appeared _____,
personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of Owner Property

EXHIBIT B

Legal Description of Agency Property

EXHIBIT C

Legal Description of Access Easement

EXHIBIT D

Map of Access Easement