

RESOLUTION NUMBER R- 303343

DATE OF FINAL PASSAGE JAN 29 2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO APPROVING A GRANT OF EASEMENT (PARCEL 5 – GAS AND ELECTRICITY) TO SDG&E TO PROVIDE FOR ELECTRICITY AND GAS SERVICE TO THE CANDY FACTORY FOR THE EAST VILLAGE SQUARE PROJECT WITHIN THE CENTRE CITY REDEVELOPMENT PROJECT AREA

WHEREAS, the Master Plan for East Village Square was approved by the City Council on December 2, 2003; and

WHEREAS, the Redevelopment Agency of the City of San Diego [Agency] and East Village Square LLC [Developer] entered into a Disposition and Development Agreement [DDA] to implement the Master Plan and the Agency has conveyed Parcels 3 and 5 of Parcel Map 19494 to Developer for the adaptive reuse and rehabilitation of the Schieffer and Sons and Candy Factory buildings, respectively, pursuant to the terms of the DDA; and

WHEREAS, it is necessary for completion of the development required by the DDA that easements be provided to SDG&E to provide electrical and gas service to the Schieffer and Sons and Candy Factory buildings; and

WHEREAS, the City of San Diego is the owner of Parcel 1 of Parcel Map 19494 which is the property to be burdened by the easements to be provided to SDG&E; NOW,

THEREFORE,

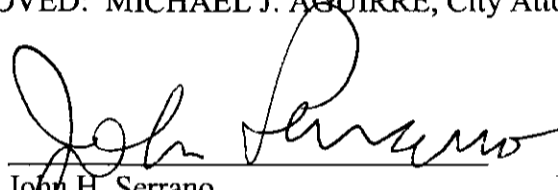
BE IT RESOLVED, that the City Council hereby approves the Grant of Easement (Parcel 5 – Gas and Electricity) attached hereto as Exhibit A.

BE IT FURTHER RESOLVED, this activity is covered under a Final Addendum to the Final Subsequent Environmental Impact Report to the Final Master Environmental Impact

Report for the Centre City Redevelopment Project and Addressing the Centre City Community Plan and Related Documents for the Proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendments, which was certified by City Council Resolution 298679 on December 2, 2003. The activity is adequately addressed in the environmental documents noted above and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved project, the activity is not a separate project for purposes of CEQA review per CEQA Guidelines Section 15060(c)(3) and 15378(c).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


John H. Serrano
Deputy City Attorney

JHS:ar
01/17/08
Or.Dept:READ
R-2008-605

(R-2008-605)

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 22 2008.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 1-29-08
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Recording Requested by
San Diego Gas & Electric Company

When recorded, mail to:

San Diego Gas & Electric Company
8335 Century Park Court Suite 100
San Diego, CA 92123
Attn: Real Estate Transactions CP11D

SPACE ABOVE FOR RECORDER'S USE

Project No.: 635266-010, 030

Transfer Tax: _____

Service: 2864216

SAN DIEGO GAS & ELECTRIC COMPANY

APN No.: 535-563-30

GRANT OF EASEMENT
(Parcel 5 – Gas and Electricity)

This GRANT OF EASEMENT (this "Grant") is made as of _____, 200__ by and between THE CITY OF SAN DIEGO, a municipal corporation ("Grantor"), and SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation ("Grantee"), who agree as follows:

1. **Recitals.**

1.1 East Village Square LLC, a Delaware limited liability company ("EVS LLC") owns certain real property (the "EVS Property") which is described as Parcel 5 of Parcel Map No. 19494, filed in the Office of the County Recorder of San Diego County on May 25, 2004 as File No. 2004-0478045 (the "Parcel Map"). The EVS Property is located adjacent to Parcel 1 of the Parcel Map ("Parcel 1"), which is owned by Grantor and is improved with an open-air baseball park and outfield park.

1.2 There exists on the EVS Property a historic structure (the "Candy Factory"), which EVS LLC intends to renovate as a commercial mixed-use building. In connection with EVS LLC's project on the EVS property, EVS has requested that Grantor grant, and Grantor has agreed to grant, to Grantee an easement over a portion of Parcel 1 for underground facilities, pipelines and appurtenances for the distribution of gas and electricity to the EVS Property, as more particularly described below.

1.3 This Grant is being made in consideration of the desire of the Grantor, the Redevelopment Agency of the City of San Diego (the "Agency"), and EVS LLC for Parcel 1 and the EVS Property to be developed in accordance with that certain East Village Square Master

Plan approved by the City Council of the City of San Diego and the Agency on December 2, 2003, pursuant to the Redevelopment Plan for the Centre City Redevelopment Project (which was approved and adopted on May 11, 1992 by the City Council of the City of San Diego by Ordinance No. 0-17767[NS]), as amended, as further described in that certain Disposition and Development Agreement signed by the Agency on December 9, 2005 (the "DDA"), by and between the Agency and EVS LLC.

2. Grant of Easement. Grantor hereby grants to Grantee an easement (the "Easement") in, upon, over, under and across the lands hereinafter described in attached Exhibit "A" (the "Easement Property"), to erect, construct, inspect, modify, improve, reconstruct, relocate, repair, maintain and use (collectively, "Grantee's Facilities"): (a) underground facilities, including conduit and wiring, for the distribution of electricity to the EVS Property, and (b) underground pipelines and appurtenances for the distribution of gas to the EVS Property and related purposes. Subject to Section 5.1 below, no other facilities may be installed or placed within the Easement Property by Grantee without Grantor's prior, written consent.

3. Grantee's Facilities. All engineering data and/or descriptions(s) for the location(s) of Grantee's Facilities and Grantor's intended improvements in the Easement have been furnished by EVS LLC's Engineer DK NASLAND (PLS 5562). EVS LLC and Grantee agree that such data and descriptions represent the locations of Grantee's Facilities and Grantor's intended improvements within the Easement Property as agreed upon by EVS LLC and Grantee and consented to by Grantor.

4. Negative Covenants.

4.1 Grantor shall not increase or decrease the ground surface elevations within the Easement Property after installation of Grantee's Facilities without the prior written consent of Grantee, which consent shall not unreasonably be withheld.

4.2 CONDUITS CARRY HIGH VOLTAGE ELECTRICAL CONDUCTORS. THEREFORE, GRANTOR SHALL NOT MAKE OR ALLOW ANY EXCAVATION OR FILL TO BE MADE WITHIN THIS EASEMENT WITHOUT FIRST NOTIFYING GRANTEE.

4.3 PIPELINES MAY CARRY VOLATILE MATERIALS. THEREFORE, GRANTOR SHALL NOT MAKE OR ALLOW ANY EXCAVATION OR FILL TO BE MADE WITHIN THIS EASEMENT WITHOUT FIRST NOTIFYING GRANTEE.

4.4 Notwithstanding any of the foregoing, subject to the review and written approval of improvement plans by Grantee for the adequate protection of Grantee's Facilities in accordance with pertinent General Orders of the Public Utilities Commission of the State of California, Grantor retains the right to construct, reconstruct, and maintain aboveground structures, including but not limited to, fences, sidewalks, curbs, gutters, streets, planter areas, benches, or other improvements that require excavation and grading between ground surface and a maximum depth of 18 inches within the Easement Property.

5. Maintenance; Repair.

5.1 In no event will Grantor have any maintenance responsibilities in connection with the Easement, the Easement Property, Grantee's Facilities, or the EVS Property. Grantee shall inspect, maintain, repair, and replace all Grantee's Facilities as necessary or appropriate from time to time to maintain same in good repair and condition and in compliance with this Grant and all applicable laws, rules, ordinances, regulations, and statutes. In furtherance of the foregoing, Grantor grants to Grantee the right, from time to time, to erect and maintain on Grantor's property all temporary emergency equipment traffic barriers and minor earth retaining structures as may be necessary for the purposes of maintenance or repair of Grantee's Facilities then in place. Grantee shall, however, not erect or maintain any non-emergency equipment traffic barriers and/or minor earth retaining structures unless and until Grantor has provided its prior written consent thereto, which consent shall be given by approval of the City Mayor or his designee and which consent shall not be unreasonably withheld. Grantor may also impose reasonable conditions as to the timing and manner of such work and the location of the above-referenced barriers and/or retaining structures.

5.2 Grantee shall have the right, but is not hereby obligated, to (a) keep the Easement Property free and clear from explosives, buildings, structures, and other materials and (b) trim or remove trees and brush along or adjacent to the Easement Property and remove roots from within this Easement whenever Grantee deems it necessary for the proper and safe operation and condition of Grantee's Facilities. Said right shall not relieve Grantor of any obligation it may have under applicable laws as an owner to trim or remove trees and brush to prevent danger or hazard to property or persons.

5.3 All of Grantee's construction, maintenance, operating, and other activities within the Easement Property shall be performed in a manner which minimizes any impact or damage to the Easement Property and any contiguous or abutting property thereto. Grantee shall pay to Grantor on demand the cost of all repairs to any such property made necessary by the operations of Grantee under the Easement granted hereby; provided, however, that Grantee may make such repairs itself, at its own cost, in accordance with Grantor's specifications if the same can be done without undue inconvenience to or interference with Grantor's use of such property or any rights granted by Grantor as to such property. Any such repairs conducted by Grantee shall be promptly commenced and diligently prosecuted to completion which shall in any event occur within thirty (30) days after the date the damage occurred.

6. Right of Entry. To the extent and only to the extent that Grantee cannot reasonably access Grantee's Facilities from a public right-of-way for the purposes permitted under this Grant, Grantor grants to Grantee the right to access Grantee's Facilities by a practical route over the portions of Parcel 1 surrounding the Easement Property; provided, however, Grantee must (except in the event of any emergency which threatens imminent, material injury to any personal property or persons, in which event Grantee shall notify Grantor of its entry onto Grantor's property as soon as possible thereafter), obtain Grantor's prior consent to such access and the location of the route over Parcel 1 for such access. Grantor's consent shall not be unreasonably withheld, but, in connection therewith, Grantor may regulate the time, place and manner of

Grantee's access. For purposes of this Section 6, Grantee shall request consent or provide notice to:

City of San Diego
Attn: Director, Real Estate Assets
1200 Third Ave., Suite 1700
San Diego, CA 92101
Phone: (619) 236-6020

7. Termination.

7.1 The Easement granted hereby shall commence upon the recordation of this Grant and shall remain in perpetuity, except as set forth below:

7.1.1 The Easement shall terminate upon Grantee's and EVS LLC's mutual agreement that Grantee's service is no longer required for the EVS Property or the Easement is no longer required for Grantee to serve the EVS Property. Upon such agreement, Grantee shall (a) furnish Grantor upon demand a good and sufficient Quitclaim Deed, of all Grantee's right, title, and interest in and to this Easement, and (b) remove, at Grantee's expense, any facilities which were installed by Grantee.

7.1.2 In the event of non-use or abandonment of Grantee's Facilities for a period of one year, Grantor retains the right to terminate the Easement and this Grant, and, within thirty (30) days after written request, Grantee shall comply with Sections 7.1.1(a) and (b) above.

8. Miscellaneous.

8.1 This Grant shall not be amended, revoked or altered without the written consent of Grantor, Grantee, and EVS LLC, or their respective successors and assigns. Furthermore, this Grant shall not be amended, revoked or altered without the written consent of Grantor endorsed thereon by the City Building Official or his/her designee and recorded in the Official Records of San Diego County. The term "City Building Official" as used herein shall mean the individual engaged by the City with such job title, or if the City ceases to employ an individual with the job title "City Building Official," then such individual who takes over the City Building Official's duties for the City.

8.2 The Easement shall be appurtenant to and shall benefit the EVS Property and shall burden Parcel 1. All of the covenants, conditions and obligations contained in this Grant shall be binding upon Grantor, Grantee, and EVS LLC, and their successors and assigns and shall constitute covenants running with the land pursuant to applicable law, including but not limited to Section 1468 of the Civil Code of the State of California. The parties hereby agree that each of such covenants relates to the use, repair, maintenance or improvement of, or payment of taxes and assessments on, the EVS Property and Parcel 1. Nothing in this instrument is intended to confer any rights or remedies on any person or entity other than the parties to this instrument and their respective successors-in-interest and permitted assignees. The foregoing shall not be construed as a grant of any right to the general public.

8.3 Nothing in this instrument is intended to confer any rights or remedies on any person or entity other than the parties to this instrument and their respective successors-in-interest and permitted assignees.

8.4 This Easement and any covenants, conditions, and restrictions, contained herein shall run with the land and be binding upon and inure to the benefit of the successors, heirs, executors, administrators, permittees, licensees, agents, and assigns of Grantor, Grantee, and EVS LLC.

8.5 This Grant may be executed in counterparts, each of which shall constitute an original, and which, together, shall constitute one whole instrument.

8.6 The parties hereto agree to cooperate with each other to execute any documents reasonably necessary to carry out the intent and purpose of this Grant.

8.7 The invalidity or unenforceability of any provision of this Grant shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by law.

8.8 This Grant contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into and superseded by this Grant.

8.9 This Grant will be governed by and construed in accordance with the laws of the State of California.

8.10 If either party commences an action or proceeding for the interpretation, reformation, enforcement or rescission of this Grant, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees and court and other litigation costs incurred, including, but not limited to, service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees, and the cost of any bonds, whether taxable or not, and that such reimbursement will be included in any judgment or final order issued in that proceeding.

Grantor, Grantee, and EVS LLC have executed this Easement as of this _____
day of _____, 200__.

GRANTOR:

THE CITY OF SAN DIEGO

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND
LEGALITY ON THIS ___ DAY OF _____
_____, 200__

MICHAEL J. AGUIRRE,
City Attorney

By: _____
Name: _____
Title: _____

EVS LLC:

EAST VILLAGE SQUARE LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Checked _____

NOTE: This document prepared by the City of San Diego and forwarded to SDG&E on 9-10-07.

EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION PARCEL 1 OF PARCEL MAP 19494 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA ON FILE IN THE OFFICES OF SAID COUNTY, AS SHOWN ON EXHIBIT 'B' ATTACHED HERETO AND MADE A PART HEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF PARCEL 4 OF SAID PARCEL MAP 19494; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID PARCEL 1 ALSO THE WESTERLY RIGHT OF WAY LINE OF 10TH AVENUE AS DEDICATED PER BOOK 13 PAGE 522 OF DEEDS SOUTH 00°06'49" WEST 23.00 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE SOUTH 00°06'49" WEST, 10.00 FEET; THENCE NORTH 89°46'41" WEST, 131.14 FEET; THENCE NORTH 00°05'39" EAST, 33.00 FEET TO A POINT ON THE SOUTHERLY LINE OF PARCEL 5 OF SAID PARCEL MAP 19494; THENCE EASTERLY ALONG SAID PARCEL 5 SOUTH 89°46'41" EAST, 33.00 FEET; THENCE SOUTH 00°05'39" WEST, 23.00 FEET; THENCE SOUTH 89°46'41" EAST, 98.14 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA: 2,071 SQ.FT. 0.047 ACRES MORE OR LESS.



Prepared by: DK NASLAND PLS 5562
My License renews 09-30-2007

105-030.1
4/17/2007, 2:20 PM

R- 303343

EXHIBIT 'B'

5
PM 19494

4
PM 19494

10TH
AVENUE

SCALE: 1"=40'

K
STREET

1
PM 19494

N89°46'41"W
33.00'

N00°05'39"E
23.00'

POB

N00°05'39"E
33.00'

N89°46'41"W
98.14'

TPOB

40.0
N00°06'49"E
23.00'

N00°06'49"E
10.00'

131.14'
N89°46'41"W 10.0

PREPARED UNDER THE SUPERVISION OF:

RJ 4-18-2007

DK Nasland PLS 5562 DATE:
EXP 9-30-2007



LEGEND

EASEMENT



NASLAND ENGINEERING
NE # 105-030.3
CIVIL ENGINEERING • SURVEYING • LAND PLANNING
4740 Ruffner Street, San Diego, California, 92111 • 858-292-7770

SDG&E
EASEMENT

R-303343