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Recording requested by:

The City Of San Diego  
Development Services Department  
Permit Intake, Mail Station 501

When recorded deliver to:

San Diego City Clerk  
Mail Station 2a

CDP NO. 125782/HRB NO. 125783

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## **GRANT OF EASEMENT AND AGREEMENT**

THIS GRANT OF EASEMENT AND AGREEMENT ("Grant") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("GRANTOR"), and COUNTRY CLUB DRIVE, LLC, a Nevada limited liability company ("GRANTEE"), to be effective when executed by the parties and approved by the San Diego City Attorney, and as of the date of its recordation in the Office of the San Diego County (California) Recorder (the "Effective Date"), as follows:

### **RECITALS**

- A. GRANTOR owns that certain real property (APN 352-680-05, the "GRANTOR Property") located in the City of San Diego, commonly known as "La Jolla Natural Park" and more particularly described in **Exhibit A: Description of GRANTOR Property**, attached hereto.
- B. GRANTEE owns that certain real property (APN 352-130-15, the "GRANTEE Property") located at 7674 Hillside Drive, La Jolla, California, immediately adjacent to the westernmost boundary of GRANTOR Property's, and more particularly described in **Exhibit B: Description of GRANTEE Property**, attached hereto.
- C. Pursuant to Coastal Development Permit No. 125782 and Hillside Review Permit No. 125783, and approved by San Diego City Council Resolution Number R-299734, adopted on October 5, 2004 (the "Council Resolution"), GRANTEE intends to develop a single-family residence ("Residence") on the GRANTEE Property.
- D. In connection with GRANTEE'S proposed development, and in accordance with the Council Resolution, GRANTEE wishes to excavate and construct a tie-back shoring system under and within the GRANTOR Property (the "Tie-Back," as more fully described in **Exhibit C: Tie-Back System Plan**, attached hereto) with metal tie-back anchors to stabilize both the GRANTEE Property and the GRANTOR Property.
- E. Under the terms and conditions of this Grant, GRANTOR will grant to GRANTEE a nonexclusive subsurface easement (the "Easement") under and within a portion of the GRANTOR Property (the "Easement Area," as described and depicted in **Exhibit D:**

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**Description of Easement Area**, attached hereto) for the sole purpose of installing, maintaining, repairing, replacing, and removing the Tie-Back, and for no other purpose whatsoever.

- F. The fair market value of the Easement has been determined to be Two Thousand Five Hundred Dollars (\$2,500) by appraisal made by the Valuation Division of GRANTOR'S Real Estate Assets Department, dated May 31, 2007.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, GRANTOR and GRANTEE agree as follows:

1. **Grant.** GRANTOR hereby grants to GRANTEE a nonexclusive subsurface easement (the "Easement") in and to the Easement Area, provided the Easement Area is continuously used solely for the purpose of installing, maintaining, repairing, replacing, and removing the Tie-Back and any necessary related facilities, and restoring the GRANTOR Property as required by this Grant, and for no other use whatsoever. GRANTOR expressly reserves for itself, its successors and its assigns, the right to use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights granted herein. The use of the word "grant" shall not imply any warranty on the part of GRANTOR with respect to the Easement or the Easement Area.
2. **Right of Entry.** GRANTOR hereby grants to GRANTEE a right of entry upon the GRANTOR Property solely for the purpose of accessing the Easement Area to effect the installation, maintenance, repair, replacement, and removal of the Tie-Back and any necessary related facilities, and the restoration of the GRANTOR Property as required by this Grant, and only to the extent necessary for such purposes, and for no other purpose whatsoever.
3. **Processing Fee.** GRANTEE shall pay to GRANTOR an easement processing fee of One Thousand Five Hundred Ninety Dollars (\$1,590) on or before the Effective Date.
4. **Easement Fee.** GRANTEE shall pay to GRANTOR an easement fee of Two Thousand Five Hundred Dollars (\$2,500) on or before the Effective Date.
5. **Default.** GRANTEE shall be in default of this Grant if GRANTEE breaches any of its obligations under this Grant and fails to cure the breach within thirty (30) days following written notice thereof from GRANTOR, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion within a period of time set by GRANTOR in its sole discretion in each instance.
6. **Termination.** GRANTOR may terminate the Easement and this Grant at any time: (a) after twelve (12) months of continuous non-use of the Easement or the Easement Area by GRANTEE; or (b) upon GRANTEE'S default of this Grant.
  - 6.1. **Quitclaim.** Upon such termination or the expiration of the Easement, GRANTEE shall deliver to GRANTOR a recordable quitclaim deed in form and content satisfactory to

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GRANTOR granting to GRANTOR any and all interest GRANTEE may have in and to the GRANTOR Property and the Easement.

- 6.2. No Liability. GRANTOR shall not be obligated for any loss, financial or otherwise, which GRANTEE may incur as a result of the termination of the Easement. GRANTEE expressly waives any claim against GRANTOR for expense or loss which GRANTEE might incur as a result of the termination of the Easement.
7. Restoration. Upon the termination of the Easement after twelve (12) months of continuous non-use of the Easement or the Easement Area by GRANTEE, and upon GRANTOR'S demand, GRANTEE shall promptly remove any and all improvements it installed in, on, under, or above the Easement Area and restore the Easement Area to its original condition, all at GRANTEE'S sole cost and expense.
8. Superior Interests. The Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the GRANTOR Property, whether or not of record. GRANTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Easement Area, relative to any such superior interest.
- 8.1. Accommodation. If GRANTEE'S use of the Easement Area is or becomes inconsistent or incompatible with a preexisting, superior interest, GRANTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- 8.2. Conflicting Repairs; Notice. Except in the case of an emergency, if any facilities on, in, or under the GRANTOR Property is to be repaired, replaced, or relocated, and such work may adversely affect the integrity or operation of GRANTEE'S use of the Easement, GRANTOR shall notify GRANTEE in writing at least thirty (30) days prior to commencement of the work. Such notice shall state the scope and expected duration of such work.
9. Governmental Approvals. By entering into this Grant, neither GRANTOR nor GRANTOR'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Easement or GRANTEE'S use of the Easement Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the GRANTEE'S use of the Easement Area.
10. Hazardous Substances. GRANTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Easement Area or the GRANTOR Property. GRANTEE and GRANTEE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Easement Area or the GRANTOR Property without GRANTOR'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying,

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discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Grant.

- 10.1. Remediation. If GRANTEE'S occupancy, use, development, maintenance, or restoration of the Easement Area results in a release of a hazardous substance, GRANTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 10.2. Indemnity. GRANTEE shall protect, defend, indemnify, and hold GRANTOR harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from GRANTEE'S occupancy, use, development, maintenance, or restoration of the Easement Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 10.3. Notice of Release. If GRANTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Easement Area or the GRANTOR Property, GRANTEE shall immediately notify GRANTOR and deliver a written report thereof to GRANTOR within three (3) days of receipt of the knowledge or cause for belief. If GRANTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, GRANTEE shall take all actions necessary to alleviate the danger. GRANTEE shall notify GRANTOR immediately of any notice of violation received or initiation of environmental actions or private suits related to the Easement Area or the GRANTOR Property.
- 10.4. Environmental Assessment. Upon reasonable cause to believe that GRANTEE'S occupancy, use, development, maintenance, or restoration of the Easement Area or the GRANTOR Property ("GRANTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Easement Area or the GRANTOR Property, GRANTOR may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at GRANTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by GRANTEE'S Operations on, in, or under the Easement Area or the GRANTOR Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal

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necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. GRANTEE shall cause, or if GRANTEE fails to do so within a reasonable period of time, GRANTOR may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and GRANTEE shall pay all costs and expenses therefor.

11. Noninterference. GRANTEE shall not materially interfere with GRANTOR'S use, operations, and activities on the GRANTOR Property, and GRANTEE shall use such routes and follow such procedures on the GRANTOR Property as shall result in the least damage and inconvenience to GRANTOR.
12. Property Damage. GRANTEE shall pay for all damage to the GRANTOR Property, GRANTOR'S personal property on the GRANTOR Property, and the personal property of third parties on the GRANTOR Property resulting from GRANTEE'S exercise of the rights granted by this Grant, including without limitation soil erosion, subsidence, or damage resulting thereby. GRANTEE shall promptly repair and restore to its original condition all such property.
13. Indemnification. GRANTEE shall protect, defend, indemnify, and hold GRANTOR, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to GRANTEE'S officers, employees, agents, contractor's, students, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Grant or GRANTEE'S occupancy, use, development, maintenance, or restoration of the Easement Area or the GRANTOR Property, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that GRANTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of GRANTOR, its elected officials, officers, representatives, agents and employees. GRANTOR may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If GRANTOR chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, GRANTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
14. Taxes. GRANTEE, alone, shall pay any and all taxes, charges, and use fees levied by any governmental agency against GRANTEE'S interest in the Easement Area, or against any of the GRANTOR Property as a result of the Easement granted hereby.
15. Encumbrances. GRANTEE shall keep the GRANTOR Property free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Grant or GRANTEE'S use of the Easement Area. GRANTEE shall protect, defend, indemnify, and hold GRANTOR harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense,

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including without limitation all attorney fees and costs, relating to or charged against the GRANTOR Property, including without limitation GRANTEE'S failure or the failure of any contractor or subcontractor hired by GRANTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

16. No Discrimination. GRANTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in GRANTEE'S use of the Easement Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
17. GRANTEE'S Risk. GRANTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with GRANTEE'S use of the Easement Area and any damages to the improvements on, under, or in the vicinity of the Easement Area resulting directly or indirectly thereby.
18. Insurance. On or before the Effective Date, GRANTEE shall deliver to GRANTOR a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000).
  - 18.1. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
  - 18.2. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by GRANTOR. The policies shall be kept in force for the duration of the Easement and any extended use. The certificate(s) of insurance shall be filed with GRANTOR'S Park and Recreation Department and/or Real Estate Assets Department upon execution of this Grant.
  - 18.3. Qualified Insurer(s). All insurance required by the terms of this Grant must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to GRANTOR. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet GRANTOR'S requirements.
  - 18.4. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of GRANTEE and must be disclosed and acceptable to GRANTOR at the time evidence of insurance is provided.
  - 18.5. Continuity of Coverage. All policies shall be in effect on or before the Effective Date, except "course of construction fire insurance" shall be in force on

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- commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, GRANTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Grant.
- 18.6. Modification. To assure protection from and against the kind and extent of risk existing on the Easement Area, GRANTOR, at its discretion, may require the revision of amounts and coverage at any time by giving GRANTEE thirty (30) days prior written notice. GRANTEE shall also obtain any additional insurance required by GRANTOR for new improvements, in order to meet the requirements of this Grant.
- 18.7. Accident Reports. GRANTEE shall report to GRANTOR any accident causing property damage or injury to persons on the Easement Area or the GRANTOR Property and related to GRANTEE'S use of the Easement Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 18.8. Failure to Comply. Notwithstanding any other provision of this Grant, if GRANTEE fails or refuses to obtain or maintain insurance as required by this Grant, or fails to provide proof of insurance, GRANTOR may terminate this Grant and the Easement immediately upon such breach.
19. Compliance with Law. GRANTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Easement Area and GRANTEE'S Operations on the Easement Area.
20. No Assignment. GRANTEE shall not assign any rights granted by this Grant or any interest herein without GRANTOR'S prior written consent, which consent may not be unreasonably withheld.
21. Maintenance of the Tie-Back and Easement Area. GRANTEE shall maintain the Tie-Back and the Easement Area, at GRANTEE'S sole cost and expense and to GRANTOR'S satisfaction, in a safe and stable condition.
22. Inspection. GRANTOR may, at any and all times, enter and inspect the Easement Area.
23. Waiver. GRANTOR'S failure to insist upon the strict performance of any of GRANTEE'S obligations under this Grant, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Easement Area is publicly-owned and held in trust for the benefit of GRANTOR'S citizens. GRANTOR'S failure to discover a breach of any obligation of this Grant or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but GRANTOR may at any and all times require the cure of any such

breach.

24. Survival. Any obligation which accrues under this Grant prior to its expiration or termination shall survive such expiration or termination.
25. Entire Agreement. This Grant contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Grant shall be valid unless in writing and signed by the party to be charged.
26. Successors and Assigns. This Grant shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.
27. Legal Proceedings. In the event of any controversy, claim, or dispute relating to the Easement or this Grant, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs.
28. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Grant shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

GRANTOR: THE CITY OF SAN DIEGO  
Attention: Park and Recreation Department Director  
1200 Third Avenue, Suite 1300 MS56C  
San Diego, California 92101  
Re: Hillside Tie-Back

With a copy by First Class mail to: SAN DIEGO CITY ATTORNEY  
Attention: Real Property Section  
1200 Third Avenue, Suite 1100  
San Diego, California 92101-4106

GRANTEE: COUNTRY CLUB DRIVE, LLC  
Attention: \_\_\_\_\_  
PO Box 279  
San Marcos, CA 92079  
Re: Hillside Tie-Back

29. Authority. Each individual executing this Grant on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Grant on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Grant is binding upon such person or entity in accordance with its terms. Each person executing this Grant on

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behalf of another person or legal entity shall provide GRANTOR with evidence, satisfactory to GRANTOR, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Grant is executed to be effective as of the Effective Date.

GRANTEE: COUNTRY CLUB DRIVE, LLC, a Nevada limited liability company

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTOR: THE CITY OF SAN DIEGO, a California municipal corporation

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:*

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*APPROVED AS TO FORM AND LEGALITY:*

Date: \_\_\_\_\_ MICHAEL J. AGUIRRE, City Attorney

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,            )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public in  
and for said County and State, 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 of Notary Public)

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,            )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public in  
and for said County and State, 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 of Notary Public)

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**Exhibit A: Description of GRANTOR Property**

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**Exhibit B: Description of GRANTEE Property**

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**Exhibit C: Tie-Back System Plan**

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**Exhibit D: Description of Easement Area**

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