

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Contra Costa County  
Department of Conservation and Development  
Community Development Division  
651 Pin Street, N. Wing, 2<sup>nd</sup> Floor  
Martinez, CA 94553

APN: 078-090-025

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(Space Above This Line For Recorder's Use Only)

**GRANT DEED OF DEVELOPMENT RIGHTS**

Roger and Kandell Habig (collectively referred to as "Grantor"), grants to the COUNTY OF CONTRA COSTA, a political subdivision of the State of California ("County"), and the East Bay Regional Park District ("EBRPD") (collectively "Grantee"), deed restrictions and provisions set forth in this document relating to Grantor's real property more particularly described in Exhibit A attached hereto.

**RECITALS**

WHEREAS, Grantor is the sole owner in fee simple of that certain property in Contra Costa County, comprising Assessor's Parcel No. 078-090-025, and more particularly described as Parcels B and C and the Remainder, shown and so designated on the Parcel Map for Subdivision MS 05-0030, filed in Book \_\_\_ of Maps at Page \_\_\_ in the Office of the County Recorder of Contra Costa County, California (the "Property");

WHEREAS, the Property is located adjacent to the EBRPD's Clayton Ranch Land Bank;

WHEREAS, the Property is located in the County;

WHEREAS, on July 8, 2008, the County Board of Supervisors approved a vesting tentative map for Minor Subdivision MS 050030 approving the subdivision of the Property into two parcels and a remainder parcel subject to conditions of approval (the "Project"); the decision of the Board of Supervisors requires a reduction in the number of parcels that had been proposed from three parcels and a remainder to two parcels and a remainder by the elimination of Parcel A;

WHEREAS, as required by Condition of Approval Number 14 to MS 050030, Grantor grants to Grantee, and Grantee desires to accept, this Grant Deed of Development Rights ("Agreement") relating to the Property; and

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby grants and conveys to Grantee this Agreement, and Grantor and Grantee agree as follows:

**1. Grant Date.**

a. Notwithstanding anything to the contrary herein, the Agreement shall become effective upon recordation of a Parcel Map for MS 050030.

b. Before recording the Parcel Map, an instrument may be recorded indicating that the Property will be encumbered as set forth in this Agreement. If the Parcel Map is not recorded, the instrument shall have no force and effect.

**2. Prohibited Uses and Restrictions.**

a. Parcels B and C on the Property shall contain a building envelope of one (1) acre for each parcel. A residence (limited to 5,000 square feet plus an 800 square foot garage) and accessory buildings may be constructed within each building envelope. Other buildings and structures such as pools, and tennis and sports courts, may be constructed within the building envelopes and shall not be constructed outside the building envelope. No residential second units may be constructed on Parcels B and C. Sewer/leach systems, well sites, water tanks, fences, gates, utilities, driveways and roads are allowed outside the building envelopes.

b. The Remainder Parcel on the Property shall contain a building envelope of one and a-half (1 ½) acres. A residence and other structures exist on the Remainder Parcel. Any additional buildings including a residential second unit and accessory buildings and other structures including pools, tennis and sports courts must be constructed within the building envelope. A residential second unit on the Remainder Parcel shall not exceed 1,200 sq. ft. plus a 200 square foot garage. The existing out building and trailers shall be allowed to remain outside the building envelope with the provision that Grantor shall demonstrate to the satisfaction of the Zoning Administrator that the storage or use of the trailers are otherwise consistent with the County Code. Building permits to allow repair or maintenance of these buildings outside the envelope are allowed up to 50% of their value. These buildings may not be expanded or replaced if more than 50% is damaged or is lost.

c. The general location of the building envelopes for Parcels B and C and the Remainder Parcel are shown on the attached map (Exhibit B). At least 30 days prior to seeking a building permit for a new structure or expansion of an existing structure on a parcel or Remainder Parcel:

i. The owner of the respective parcel or Remainder Parcel shall propose a final building envelope for the review and approval of the Zoning Administrator. The proposal shall include a plat map and legal description of the proposed final building envelope that have been certified by a licensed land surveyor.

The proposal shall also include a second plat map that identifies existing and proposed structures drawn to scale and labeled as to use, and their respective distances to the proposed building envelope on the property. The shape of the building envelopes may change but the size and general location shall not change from that shown on Exhibit B.

Prior to clearance of a building permit, the property owner shall provide evidence to the Department of Conservation and Development, Community Development Division that the Final Building Envelope which has been approved by the Zoning Administrator has been recorded against the title to the parcel.

ii. The owner of the Remainder parcel shall either provide evidence that existing trailers on the Remainder parcel have been removed, or shall provide evidence for the review and approval of the Zoning Administrator that the trailer use is permitted by the County Code.

d. No further subdivision of the Property and no lot line adjustments are allowed.

e. No indigenous trees shall be removed beyond those necessary (1) to implement the Project, (2) for fire safety or maintenance, or (3) for wastewater or water supply for the Project.

f. Agricultural uses allowed under the A-2 General Agricultural District zoning for the Property shall be allowed to occur on the Property provided that no additional indigenous trees are removed and the uses do not conflict with this Section 2. A one acre vineyard on former grassland on each parcel is specifically allowed provided no indigenous trees are removed.

g. No building permits shall be allowed on the Property outside the designated building envelopes except as provided in Section 2.a. Grading is permissible on the Property in accordance with the requirements of the County Code.

### **3. Rights and Responsibilities of Grantee.**

a. County, in its sole discretion, has the right but is not required to prevent any activity or use that is in violation of this Agreement. County may require the restoration of areas or features of the Property that are damaged by a violation of the Agreement, pursuant to the remedies set forth in Section 6, below. EBRPD only has the ability to bring a court action to enforce this Agreement as permitted by Section 6.b, below.

b. Nothing contained in this Agreement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change on the Property resulting from the following: (i) any natural cause beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury resulting from such causes; or (ii) acts by Grantee or its agents or employees.

### **4. Restrictions on Grantee and the Public.**

a. Notwithstanding anything to the contrary herein, Grantee shall have no right to enter upon the Property without obtaining prior written consent of Grantor.

b. No right of general public access is created by this Agreement. The grant of this Agreement and its acceptance by Grantee does not authorize, and shall not be construed to authorize, the public or any member thereof to enter upon or use all or any portion of the Property or as granting to the public or any member thereof any rights in or to the Property or the right to go upon or use the Property in any manner.

## **5. Reservation of Rights of Grantor.**

a. Subject to the restrictions set forth in Section 2 above, nothing in this Agreement shall prevent, limit, or interfere with the maintenance, occupancy of, or means of egress onto or from the Property or the use and enjoyment of the Property by Grantor or their invitees.

b. Grantor may consult with the East Contra Costa Fire Protection District to develop an appropriate fuel management plan for the Property, and may utilize grazing or other means to mitigate fire danger. Consistent with Section 2.e above, trees on the Property may be trimmed or removed as part of the fuel management plan or to mitigate fire danger.

c. Grantor reserves the right to repair landslides as needed and to undertake such actions as necessary to protect the Property and other surrounding properties from landslides and other movement of earth.

d. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are not inconsistent with this Agreement.

## **6. Enforcement.**

a. County in its sole discretion shall determine if a breach of this Agreement has occurred by Grantor and if a breach has occurred, whether to pursue enforcement. If EBRPD alleges a breach, it must comply with Section 6.b. below. In the event County believes an alleged breach occurs or Grantor believes an alleged breach occurs by either Grantee, the non-breaching party shall give the breaching party written notice to correct the violation no less than thirty (30) days after the alleged violation was known to occur and at least thirty (30) days prior to taking any other action.

b. If EBRPD reasonably believes a breach has occurred under this Agreement, EBRPD shall notify the Contra Costa County Department of Conservation and Development (the "Department") within thirty (30) days of the known violation. The Department will then determine whether a breach has occurred and whether to pursue enforcement. County is solely responsible for enforcing the terms of this Agreement. Concurrence from the County Board of Supervisors is required before EBRPD can initiate court action relating to enforcement of this Agreement.

c. The breaching party shall be solely responsible for reasonable costs resulting from such breach and their subsequent remediation or restoration. Further, the breaching party shall be solely responsible for all reasonable costs incurred by the non-breaching

party in pursuing an investigation, enforcement or legal action regarding the alleged violation. Reasonable costs can only be recovered if it is determined that a breach occurred and such recovered costs shall apply to only those aspects of the Agreement the breaching party was found to have violated.

**7. Compliance with Laws.** Nothing in this Agreement shall be construed to exempt Grantor from complying with all applicable laws, ordinances, regulations, and permit requirements.

**8. Amendment.** This Agreement may be amended or modified only by an instrument in writing signed by each of the parties.

**9. Perpetuity.** This Agreement shall run with the Property. The term “Grantor” shall include their respective successors.

**10. Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and sent by certified mail, postage prepaid, to the following addresses, or to such other address as either party from time to time shall designate by written notice to the other:

To Grantor: Roger and Kandell Habig  
3000 Bragdon Way  
Clayton, CA 94517

To County: Contra Costa County  
651 Pine Street  
Martinez, CA 94553  
Attn: Deputy Director Community  
Development Division, Department of  
Conservation & Development

To EBRPD: East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, CA 94605-0381  
Attn: Land Division

**13. Recordation.** The County shall record this Agreement concurrently with the recordation of the Parcel Map in the official records of the County.

**14. General Provisions.**

a. **Controlling Law.** The interpretation and performance of this Agreement shall be governed by the laws of the State of California.

b. **No Third Party Beneficiaries.** This Agreement is intended solely for the benefit of the parties hereto and shall not be construed to create any rights in any person or entity other than the parties.

c. **Severability.** If any provision of this Agreement is found to be invalid, the remaining provisions of this Agreement shall not be affected thereby.

d. **Entire Agreement.** This Agreement sets forth the entire agreement of the parties with respect to the Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Agreement, all of which are merged herein.

e. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. **Termination of Rights and Obligations.** Grantor's obligations hereunder run with the land. Grantor's rights and obligations under this Agreement terminate upon transfer of Grantor's interest in the portion(s) of Property affected.

g. **Counterparts.** The parties may execute this Agreement in counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original as against any party who has signed it.

IN WITNESS WHEREOF, Grantor has duly executed and County has approved this Agreement as of \_\_\_\_\_, 2009.

**ROGER HABIG**

\_\_\_\_\_

**KANDELL HABIG**

\_\_\_\_\_

**COUNTY OF CONTRA COSTA**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

In witness WHEREOF, East Bay Regional Park District has accepted this Agreement.

**EAST BAY REGIONAL PARK DISTRICT**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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RD\

STATE OF CALIFORNIA )  
 )ss  
COUNTY OF CONTRA COSTA )

On \_\_\_\_\_, 2009, before me, \_\_\_\_\_,  
a notary public in and for said state, personally appeared \_\_\_\_\_,  
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.

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(Signature of Notary Public)

STATE OF CALIFORNIA )  
 )ss  
COUNTY OF CONTRA COSTA )

On \_\_\_\_\_, 2009, before me, \_\_\_\_\_,  
a notary public in and for said state, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
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(Signature of Notary Public)





EXHIBIT A

Legal Description

EXHIBIT B

Building Envelopes for Parcels B, C and the Remainder