

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: SEPT. 7, 2007



ACCEPTANCE OF EASEMENT AND WATER AND SEWER IMPROVEMENTS  
TRACT 2658 (PACE)

**ITEM**

Acceptance of Tract 2658 Pace Bros easement and water and sewer improvements for Tract 2658 on Grove West of South Oakglen [ADOPT RESOLUTION].

**BACKGROUND**

Upon completion of a developer's project, the District accepts improvements of the project after all requirements have been met. The developer (Pace Bros) for Tract 2658, a nine-lot subdivision located on Grove Street west of South Oakglen has offered for dedication the attached easement; has installed water and sewer improvements to District Standards; and has met the District's conditions:

- Installed the improvements
- Paid associated fees
- Provided the necessary paperwork, including the Offer of Dedication and the Engineer's Certification

The Board should note that it previously waived the looping requirement based on the developer dedicating the attached easement and installing a water line in that easement.

**RECOMMENDATION**

Staff recommends that your Honorable Board approve Resolution 2007-Accept Tr 2658, accepting the offered easement and the water and sewer improvements for Tract 2658.

**ATTACHMENT**

Resolution 2007-Accept Tr 2658

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**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2007-xxx Accept Tract 2658**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ACCEPTING AN EASEMENT AND THE WATER AND SEWER IMPROVEMENTS  
FOR TRACT 2658 (PACE BROS)**

**WHEREAS**, the District approved the construction plans on December 6, 2006, for the water and sewer improvements to be constructed; and

**WHEREAS**, the water and sewer improvements have been constructed and said improvements are complete and certified by the engineer; and

**WHEREAS**, on July 20, 2007, the Owner offered the water and sewer improvements to the Nipomo Community Services District; and

**WHEREAS**, the Owner offered the attached easement for out of right-of-way utilities to the Nipomo Community Services District; and

**WHEREAS**, this District has accepted such offer without obligation except as required by law, and

**WHEREAS**, all water and sewer fees for service, required in conformance with District ordinances, have been paid in full for Tract 2658 (Pace Bros).

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AS FOLLOWS:**

1. That the water and sewer improvements to serve Tract 2658 in Nipomo are accepted by this District.
2. That the attached easement is hereby accepted and staff is ordered to record the attached easement.

On the motion by Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, and on the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

the foregoing resolution is hereby adopted this 12<sup>th</sup> day of September, 2007.

\_\_\_\_\_  
Michael Winn, President  
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Donna K. Johnson  
Secretary to the Board

\_\_\_\_\_  
Jon S. Seitz  
General Counsel



RECORDING REQUESTED BY:  
NIPOMO COMMUNITY SERVICES DISTRICT  
WHEN RECORDED RETURN TO:  
Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444

RECEIVED  
SEP 05 2007  
NIPOMO COMMUNITY  
SERVICES DISTRICT

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A portion of APN #: Lots 8 and 9 of Tract 2658 of 30-MB-69

**GRANT OF EASEMENT  
AND AGREEMENT AFFECTING REAL PROPERTY**

Exhibits Incorporated by Reference:

Exhibit "A" – Real Property Legal Description  
Exhibit "B" – Legal Description of Easement Granted to District  
Exhibit "C" – Depiction of Easement Granted to District

**THIS GRANT OF EASEMENT AND AGREEMENT AFFECTING REAL PROPERTY** (herein "Agreement") is entered into SEPT 4<sup>TH</sup>, 2007, by and between Oakglenn Estates, LLC (herein "Grantors") and the Nipomo Community Services District, a political subdivision of the State of California, (herein "Grantee" or "District") with reference to the following Recitals:

A. Grantors own certain real property (herein "Real Property") located within the Nipomo Community Services District, County of San Luis Obispo, **Lots 8 & 9 of Tract 2658**, Nipomo, California, more particularly described in Exhibit "A".

B. Grantors desire to convey a utility easement to District over a portion of said Real Property for the purposes referenced in this Agreement.

**NOW, THEREFORE**, for valuable consideration, receipt of which is hereby acknowledged the parties hereto agree as follows:

1. **GRANT OF EASEMENT**

Grantors, hereby grant and convey to the Nipomo Community Services District a utility easement (herein "Easement" or "Easement Area"), more particularly described in Exhibit "B" and as depicted in Exhibit "C".

**2. PURPOSE**

The purpose of the Easement is the present and future construction, reconstruction, operation, repair, and maintenance of sewer pipelines, water pipelines and other utilities operated by the District including appurtenant facilities (herein "District Facilities"), in such manner and size and with such accessory parts and structures, as the District or its successors in interests, from time to time, deem necessary to install over, upon and under the Easement.

**3. MAINTENANCE AND REPAIR**

It is anticipated by the parties that construction, repair, replacement and inspection of District facilities will be performed by District within said Easement Area. Therefore, Grantor(s) covenants, promises and agree as follows:

A. District shall have the right of ingress and egress for personnel, vehicles, and construction equipment to, from, and along the Easement Area at any time, without prior notice, including the right to use lanes, drives, rights-of-way, and roadways within the Real Property which now exist or which hereinafter may be constructed, as shall be convenient and necessary for the purpose of exercising the rights herein, and herein above, set forth.

B. The Grantor(s) shall not construct or permit others to construct improvements on, over, or under the Easement Area, such as retaining walls, fences, patios, trees and/or shrubs (herein "Improvements") which could obstruct District's access to the Easement Area, or cause damage to District Facilities contained within the Easement Area, without first receiving the written approval of District.

C. Subject to subparagraphs D and E, below, the Grantor(s) may construct, or permit others to construct, wooden property line fences, wood decks and shrubs (but not trees) within the Easement Area.



D. Upon written demand by District, Grantor(s) shall remove Improvements referenced in subparagraph C, above, and those Improvements constructed in violation of subparagraph B, above, immediately at Grantor's expense. If Grantor(s) do not remove the Improvements, District is authorized to enter the Easement Area and remove them. The District shall charge all costs, including administrative costs, for the removal of said Improvements to Grantors.

E. Grantor (s) shall be jointly and severally liable for payment of District costs referenced in subparagraph D, above.

F. Grantor(s), jointly and severally, agree to indemnify, defend, and hold harmless District and its contractors, agents and employees from all claims, suits, or losses of any kind (including attorney's fees and court costs) or any damages occurring to or within the Easement Area and/or any adjacent real or personal property due to District's exercise of its rights to remove Improvements, pursuant to subparagraph D.G. Grantor(s), jointly and severally, further agree to indemnify, defend, and hold harmless District and its contractors, agents, and employees from all claims, or losses of any kind, including attorneys fees and court costs, or any damage occurring to or within the Easement Area and/or any adjacent real or personal property resulting from District's exercise of its rights to construct, operate, repair and/or maintain District Facilities within the Easement Area. The Grantor(s) obligation to indemnify District for damages to adjacent real or personal property shall only apply to Grantor(s) real and personal property that is located so close to the Easement Area that it is "reasonably foreseeable" that damages could occur during the District's construction, operation, repair and/or maintenance of said District Facilities that are located within the Easement Area.

(H) District has the right to enforce all reimbursement remedies described in Paragraphs E and/or F, above, by all means available to the District.

#### 4. **MISCELLANEOUS**

A. This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

B. In the event of any controversy, claim, or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

C. The obligations of Grantor(s) shall be considered for all purposes to be both covenants and conditions that shall run with the land and shall be binding on the successors and assigns of the Grantor(s) and shall inure to the benefit of District and its successors and assigns.

D. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

E. Any waiver or delay in enforcing, at any time, by District of its rights and remedies with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver of its rights to enforce said breach or default at a later time.

F. This Easement and Agreement Affecting Real Property shall be recorded in the Official Records in the County Recorder's Office, San Luis Obispo County.

F. Recitals A and B are incorporated herein by reference as though set forth at length.

G. The Agreement shall be governed by the laws of the State of California. Any litigation regarding the Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

**5. AUTHORITY TO EXECUTE.**

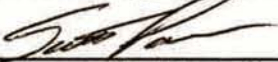


All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Grantor(s) hereby warrants that Grantor(s) shall not have breached the terms or conditions of any other contract or Agreement to which Grantor(s) is obligated, which breach would have a material effect hereon.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement to be effective the date the District executes the Certificate of Acceptance.

GRANTOR(S): Oakglenn Estates, LLC

*OAKGLENN ESTATES LLC*

  
\_\_\_\_\_  
[Signature must be Notarized]

*Scott Pace*  
\_\_\_\_\_  
[Type or print name]

Date: 9/4/07

State of California  
County of San Luis Obispo

On 9/4/07 before me, Jennifer L. Bassi a notary public  
(DATE) (NAME/TITLE OF OFFICER-I.e. \*JANE DÓE, NOTARY PUBLIC\*)

personally appeared Scott Pace  
(NAME(S) OF SIGNER(S))

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.

J Bassi  
(SIGNATURE OF NOTARY)

(SEAL)

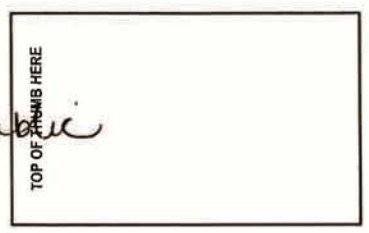
ATTENTION NOTARY

The information requested below and in the column to the right is OPTIONAL. Recording of this document is not required by law and is also optional. It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document Grant of Easement  
Number of Pages \_\_\_\_\_ Date of Document 9/4/07  
Signer(s) Other Than Named Above None

RIGHT THUMBPRINT (Optional)



CAPACITY CLAIMED BY SIGNER(S)  
 INDIVIDUAL(S)  
 CORPORATE \_\_\_\_\_

OFFICER(S) \_\_\_\_\_ (TITLES)  
 PARTNER(S)  LIMITED  GENEREAL  
 ATTORNEY IN FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
(Name of Person(s) or Entity(ies))

RIGHT THUMBPRINT (Optional)



CAPACITY CLAIMED BY SIGNER(S)  
 INDIVIDUAL(S)  
 CORPORATE \_\_\_\_\_

OFFICER(S) \_\_\_\_\_ (TITLES)  
 PARTNER(S)  LIMITED  GENEREAL  
 ATTORNEY IN FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
(Name of Person(s) or Entity(ies))



**CERTIFICATE OF ACCEPTANCE  
GOVERNMENT CODE §2781**

This is to certify that the Nipomo Community Services District, Grantee, herein, by Board action on \_\_\_\_\_, 2007, accepts for public purposes the real property, or interest described in the foregoing Easement and Agreement, dated \_\_\_\_\_, 2007, from Grantors, and consents to the recordation thereof.

Nipomo Community Services District

By: \_\_\_\_\_  
Name: Michael Winn  
Title: President,  
Nipomo Community Services District  
Board of Directors

ATTEST:

\_\_\_\_\_  
Donna K. Johnson, Secretary  
Nipomo Community Services District  
Board of Directors

**EXHIBIT A**

**Lot 8 and Lot 9 of Tract 2658 in the County of San Luis Obispo, State of California as shown on the map thereof recorded July 3, 2007 as Document Number 2007-044940 in Map Book 30, Pages 69 through 72, inclusive, in the office of the Recorder of said County.**

**End of Description**



EXHIBIT B

A 20.00 foot wide Waterline Easement across Lot 8 and Lot 9 of Tract 2658 in the County of San Luis Obispo, State of California according to the map thereof recorded July 3, 2007 as Document Number 2007-044940 in Map Book 30, Pages 69 through 72, inclusive, in the office of the Recorder of said County, said 20.00 foot wide Easement lying 10.00 feet on each side of the following described centerline:

Commencing at a 5/8 inch rebar and cap inscribed "LS 4283" at the West corner of said Lot 9 and on the North right of way line of U.S. Highway 101; thence along said North right of way line,

South 41° 46' 35" East, 10.08 feet to a line which is 10.00 feet (measured at right angles) Southeasterly of and parallel to the Northwest line of said Lot 9 and the True Point of Beginning; thence along said parallel line,

North 55° 21' 18" East, 73.39 feet to a line which is 5.00 feet (measured at right angles) Southwesterly of and parallel to the Southwest line of said Lot 8; thence along said parallel line,

South 52° 12' 22" East, 123.14 feet to the East line of said Lot 9 on the cul-de-sac right of way of Grove Street and the Point of Terminus of this centerline.

The side lines of this 20.00 foot wide Waterline easement shall be lengthened and/or shortened to meet the beginning and ending Lot lines and at intermediate angle points.

End of Description

August 8, 2007

*Richard H Cassera*

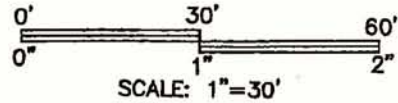
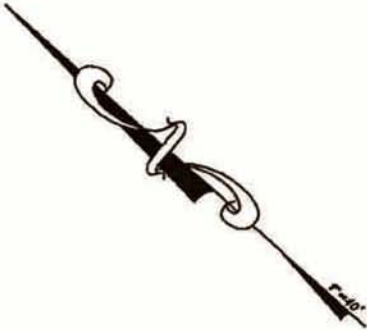
LS 4283 exp 6-30-2008



# EXHIBIT C

## 20 FOOT WIDE WATER LINE EASEMENT

### SAN LUIS OBISPO COUNTY STATE OF CALIFORNIA

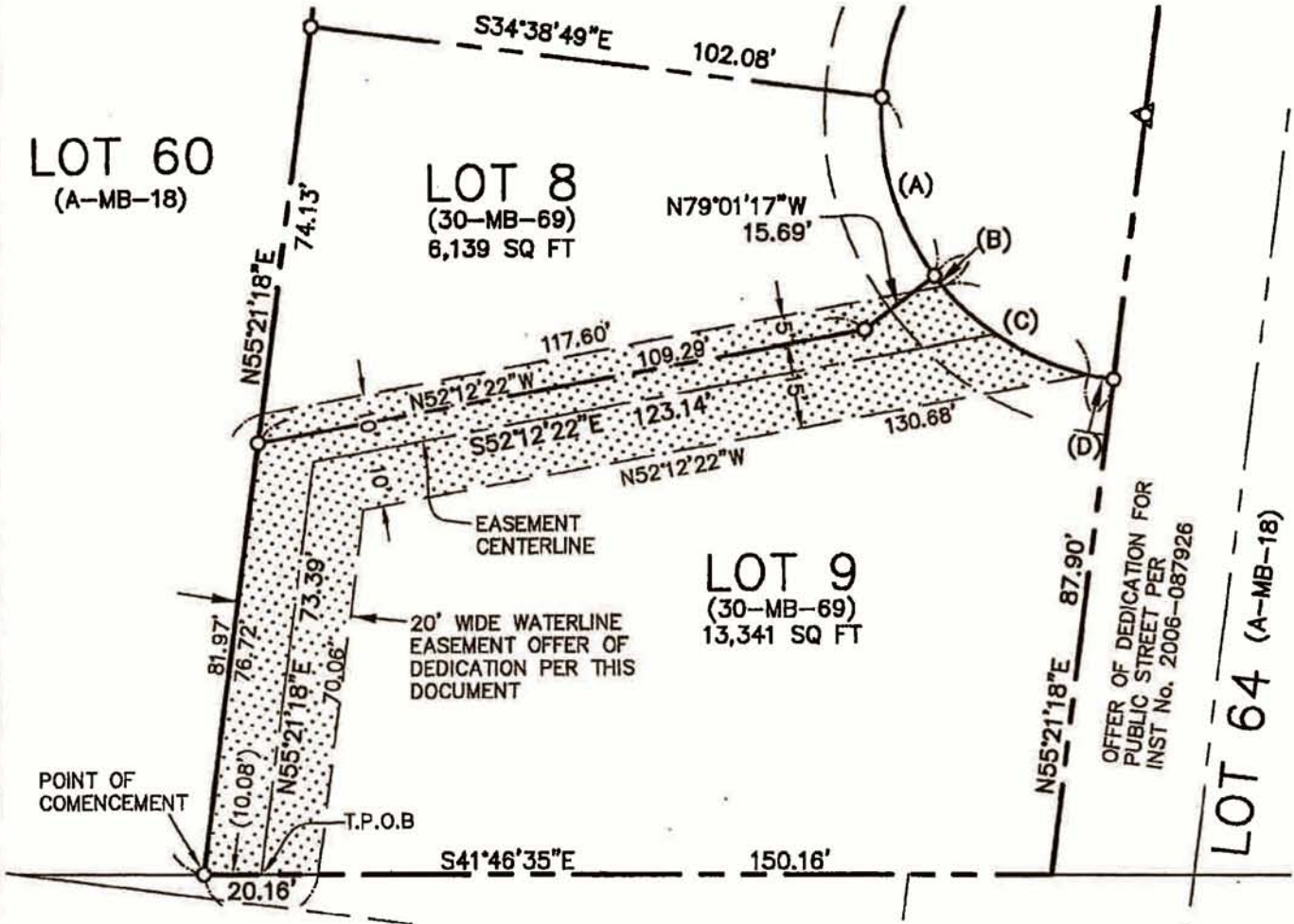


**LOT 60**  
(A-MB-18)

**LOT 8**  
(30-MB-69)  
6,139 SQ FT

**LOT 9**  
(30-MB-69)  
13,341 SQ FT

**LOT 64** (A-MB-18)



R=47.00  
(A)  $\Delta=41^{\circ}06'37''$   
L=33.72'

R=47.00  
(B)  $\Delta=2^{\circ}52'27''$   
L=2.36'

R=47.00  
(C)  $\Delta=37^{\circ}21'47''$   
L=30.65'

R=47.00  
(D)  $\Delta=5^{\circ}22'57''$   
L=4.42'