



Doc # 2021016106
Page 1 of 13
Date: 9/24/2021 10:34A
Filed by: PUBLIC
Filed & Recorded in Official Records
of COUNTY OF LAKE
RICHARD A. FORD
COUNTY RECORDER
Fee: \$91.25

RECORDING REQUESTED BY
AND AFTER RECORDED RETURN
AND MAIL TAX STATEMENTS TO:

Carle, Mackie, Power & Ross LLP
Attn: Phillip H. Kalsched, Esq.
100 B Street, Suite 400
Santa Rosa, CA 95401

APNs: 012-061-03 (dominant tenement); 012-046-01 (servient tenement)

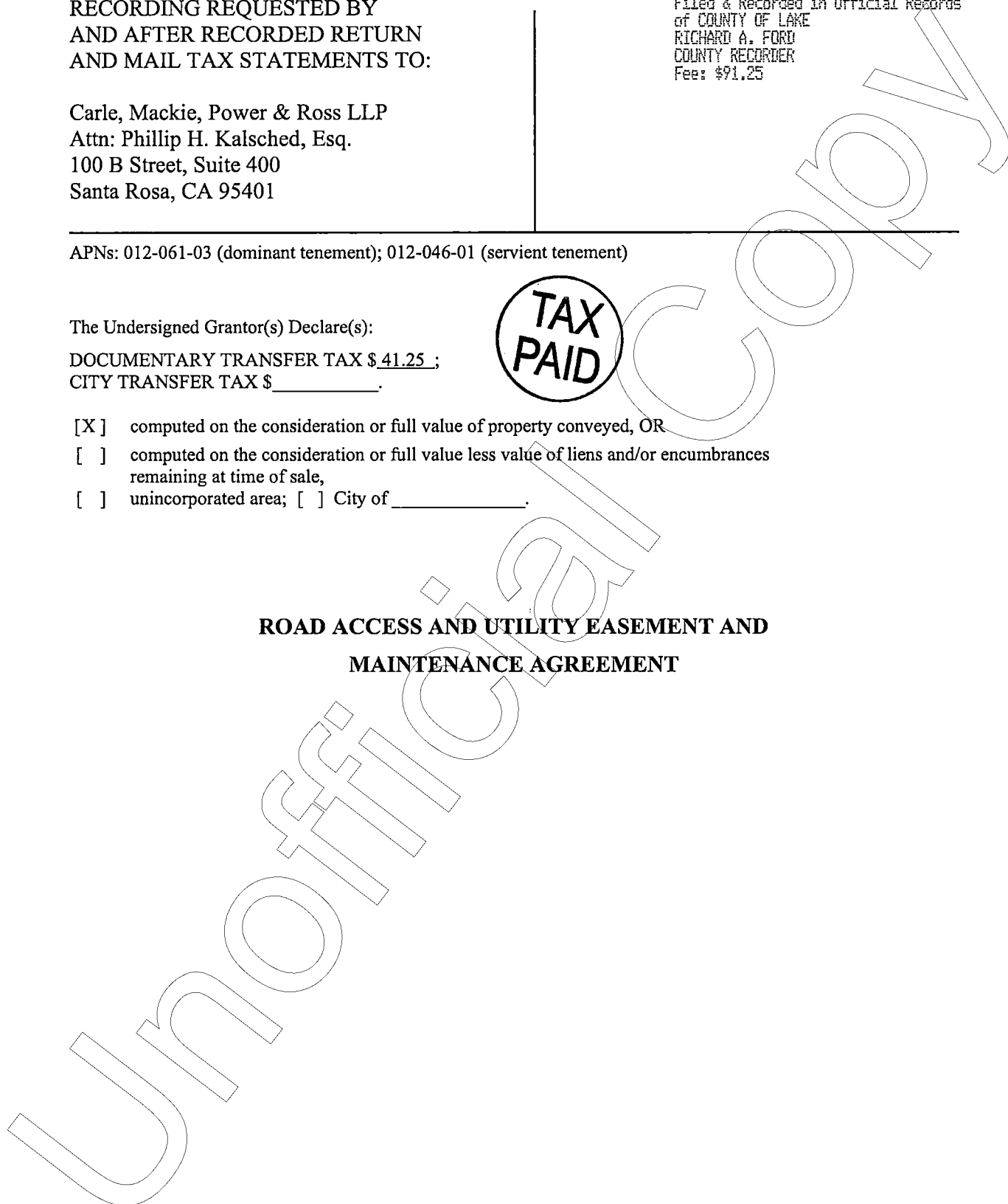
The Undersigned Grantor(s) Declare(s):

DOCUMENTARY TRANSFER TAX \$ 41.25 ;
CITY TRANSFER TAX \$ _____.



- computed on the consideration or full value of property conveyed, OR
- computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
- unincorporated area; City of _____.

**ROAD ACCESS AND UTILITY EASEMENT AND
MAINTENANCE AGREEMENT**



RECORDING REQUESTED BY
AND AFTER RECORDED RETURN
AND MAIL TAX STATEMENTS TO:

Carle, Mackie, Power & Ross LLP
Attn: Phillip H. Kalsched, Esq.
100 B Street, Suite 400
Santa Rosa, CA 95401

APNs: 012-061-03 (dominant tenement); 012-046-01 (servient tenement)

ROAD ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT

This ROAD ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT (“**Agreement**”) is made and entered into as of August 28, 2021, by and between Rebecca L. McMillian, an individual (“**McMillian**”), and 17870 Little High Valley, LLC, a California limited liability company (“**LHV**”). LHV and McMillian are sometimes individually referred to as a “**Party**” or collectively referred to as the “**Parties**.”

RECITALS

A. LHV is the owner of certain real property located in Lake County having Lake County Assessor Parcel Number 012-061-03 and is more particularly described on **Exhibit A-1**, attached hereto and made a part hereof (the “**LHV Parcel**”).

B. McMillian is the owner of certain real property located in Lake County having Lake County Assessor Parcel Number 012-046-01 and is more particularly described on **Exhibit A-2**, attached hereto and made a part hereof (the “**McMillian Parcel**”) (together with the LHV Parcel may be sometimes individually referred to as a “**Parcel**” or collectively as the “**Parcels**”).

C. An existing road is located on the McMillian Parcel (“**Henderson Ranch Road**”), which provides access from the publicly maintained Spruce Grove Road to the LHV Parcel as described in that certain Declaration Creating Roadway Easements dated June 27, 1968 and recorded July 2, 1968 in the Official Records of Lake County at Book 559, Page 301 and incorporated herein by this reference (the “**Declaration of Roadway Easement**”).

D. An existing three phase electrical power line and associated power poles are sited within the boundaries of the easement area of that certain easement recorded February 27, 1986 in the Official Records of Lake County at Book 1302, Page 389 (the “**PGE Easement**”).

E. The Parties now desire to establish road and utility easements on, over and across the McMillian Parcel, upon the terms and conditions set forth in this Agreement.

AGREEMENT

NOW WHEREFORE, incorporating the forgoing and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Easement.

a. Branch Road Easement. McMillian hereby grants to LHV for the benefit of the LHV Parcel a perpetual, non-exclusive road easement, a width not to exceed twenty five (25) feet, on, over, under and across an existing road (the “**Branch Road**”) for the purposes of access, ingress, and egress to and as is reasonably necessary for the enjoyment of the LHV Parcel, installation of Utilities (as defined below) and as is reasonably necessary for the enjoyment of the LHV Parcel, in the location as described in Exhibit B-1 (“**Branch Road Easement**”), and on the terms and conditions set forth in this Agreement. Parking shall be prohibited on the Branch Road except for limited periods of time as is reasonably needed to accommodate movement of vehicles into or out of the Parcels or for loading or unloading of persons or materials.

b. Utility Easement. McMillian hereby grants to LHV for the benefit of the LHV Parcel perpetual, non-exclusive easements on, over, under and across (i) the easement area of the PGE Easement; and (ii) the McMillian Parcel in such further locations as approved by McMillian, in her discretion, to allow for the above ground or underground installation, maintenance, repair, replacement, connection and use of public and private utilities, together with a reasonable right of access thereto (the “**Utility Easements**” and together with the Branch Road Easement, collectively, the “**Easements**”), including, without limitation, electricity (including three phase electrical power), gas, water, storm sewer, sanitary sewer, telephone, internet, cable television and any other utility services for the benefit of the LHV Property (collectively the “**Utilities**”). Such Utility Easements shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility provider. For the avoidance of doubt, it is the intent of the Parties that the Utility Easements granted herein shall permit LHV to connect to existing utilities in the PGE Easement or otherwise located on the McMillian Parcel and to place the Utilities within the Branch Road Easement. All fees and costs to install, maintain, repair and remove Utilities shall be borne by the utility provider, as the case may be, or the Party benefitting from the Utilities.

2. Nonexclusive Appurtenant Easements. The Easements granted in this Agreement are nonexclusive. McMillian, and her, affiliates, partners, officers, directors, agents, employees, contractors, guests, licensees, tenants, invitees, successors and assigns of such Easements may use the McMillian Parcel on, over, across, and under such Easement(s), so long as such use does not unreasonably interfere with LHV’s use and enjoyment of any such Easement in accordance with the purposes of this Agreement. Without limitation of the foregoing, the Easements are not to be used to access APN 012-061-02, or to benefit that parcel, or any portion of that parcel. LHV shall promptly notify McMillian in the event the Branch Road Easement is used by someone other than LHV or its members, managers, affiliates, partners, officers, directors, agents, employees, contractors, guests, licensees, tenants, invitees, successors or assigns.

3. Maintenance of Improvements. Notwithstanding anything to the contrary in this Agreement, the grant of the Easements is subject to the following conditions:

a. LHV shall have the obligation, to operate, maintain, and keep the Branch Road in good service and repair in LHV's commercially reasonable judgment and the right, but not the obligation, to pave, grade, place Utilities, or otherwise improve Branch Road within the easement area (the "Improvements"), including widening the existing Branch Road up to twenty five (25) feet. All costs and expenses related to the Branch Road from and after the date hereof, including without limitation, the operation, maintenance, repair, and replacement thereof shall be allocated one hundred percent (100%) to LHV. The speed limit on Branch Road shall be limited to fifteen (15) miles per hour.

b. Notwithstanding the forgoing, each Party, at its sole cost and expense, shall be responsible for and shall pay all the costs of repair and correction of any specific damage or excessive wear and tear in or to the Improvements within the Easements (or any part thereof) and/or any Utilities for which it, or its members, managers, affiliates, partners, officers, directors, agents, employees, contractors, guests, licensees, tenants, or invitees, was the sole cause. If such repairs are not initiated by the damaging Party within thirty (30) days of such damage and thereafter diligently pursued to completion, then the non-damaging Party may effect such repairs and the damaging Party shall, within ten (10) days of receipt of written demand, reimburse the non-damaging Party for the cost thereof, plus interest from the date of written demand for such reimbursement at an interest rate equal to the lesser of ten percent (10%) per annum or the maximum rate permitted under applicable law.

c. If a Party does not pay any amounts due and owed under this Agreement within thirty (30) days after receipt of notice for such payment, then in addition to any other remedies provided for in this Agreement, at law or in equity, each Party may place a lien upon the Parcels of the debtor Party for any unpaid amounts due and owed. The provisions of this Section will be in all respects subject and subordinate to the lien of any mortgages or deeds of trust at any time or from time to time on a Parcel of the debtor Party and the rights of the holder or holders of any mortgages or deeds of trust.

d. Each Party hereto shall promptly pay and discharge all claims for work performed, materials furnished, or obligations incurred by it in connection with this Agreement, including, but not limited to, any installation, operation, maintenance, repair, and/or replacement of the Improvements within the Easements (or any part thereof) and/or any Utilities and further agrees to indemnify, defend and hold harmless the other Party from and against any and all claims (including third party claims), causes of action, liabilities, losses or expense, including, without limitation, reasonable attorneys' fees and expert witness fees, arising out of or related to such work or any liens arising therefrom. In the event a lien is recorded against any Parcel and the Party to whom such lien is attributable fails to remove the lien, or to post a bond with a surety reasonably acceptable to the other Party in an amount equal to not less than 150% of the amount of the lien, within twenty (20) days following receipt of notice from the other Party, the Party not responsible for the lien shall have the right to pay the lien in full and the defaulting Party shall, upon written demand of the non-defaulting Party, reimburse the non-defaulting Party for all reasonable costs incurred by the non-defaulting Party in connection therewith, plus interest from the date of written demand for such reimbursement at an interest rate equal to ten percent (10%) per annum.

e. LHV, at its sole expense, shall be permitted to survey the Branch Road Easement in substantially the same location, dimensions and configuration set forth in Exhibit B-1 in order to develop a legal metes and bounds description. Upon completion of a survey, the Parties shall cooperate to amend the Agreement to replace Exhibit B-1 with the legal metes and bounds description developed by the survey.

4. Transferability/Covenants Run With the Land. All of the provisions, agreements, rights, powers, covenants, conditions, and obligations contained in this Agreement shall constitute covenants running with the land pursuant to Section 1468 of the California Civil Code and be binding upon and inure to the benefit of the Parties, their respective heirs, successors and assigns, representatives, and all other persons acquiring all or any portion of any Party's interest in the Parcels whether by operation of law or in any manner whatsoever, unless and until terminated.

5. Regulations. If the Improvements and/or any Utilities within the Easements are now or later become subject to the regulations of any state, county, or local governmental agencies or authorities, the Parties shall take any and all actions reasonably necessary to comply with all regulations of the state, county, and other local governmental agencies, ordinances, statutes, and regulations now existing or hereafter amended, re-codified, or otherwise adopted which regulate the maintenance, operation, and use of the Easements. Any costs of such compliance shall be paid by the Parties in proportion to their use, except where such regulations arise out of a Party's particular use of its Parcels, in which case such Party shall be fully responsible for the costs of such compliance. Subject to Section 3.b, above, McMillian shall have no obligation whatsoever to widen or change the location of the Branch Road resulting from any regulation relating to the LHV's use of the Branch Road.

6. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Parcels to or for the general public, it being the intention and understanding of the Parties that the Easements and any other rights granted herein shall be limited to the purposes herein specified.

7. Release. If any Party obligated to comply with any provision of this Agreement, sells, transfers, or otherwise conveys its interest in any portion of the property described herein, such Party shall be released from all liabilities and obligations arising hereunder from and after the date of transfer, and the obligations of this Agreement from and after the date of transfer shall be binding upon such transferee. The transferring Party shall remain liable for any obligation arising hereunder prior to the date of transfer.

8. Injunction for Violation. In the event of any violation or threatened violation by any Party, owner, lessee or occupant of property described herein of any of the terms, covenants, restrictions and conditions contained herein, in addition to the other remedies provided herein and by law, any Party hereto shall have the right to petition the Superior Court in Lake County to enjoin such violation or threatened violation.

9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the rights granted herein. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any

amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Parties.

10. Indemnity. LHV shall indemnify, defend, protect, and hold harmless McMillian, and her, affiliates, partners, officers, directors, agents, employees, contractors, guests, licensees, tenants, invitees, successors and assigns from and against any and all claims (including third party claims) loss, cost, liability, actual damage and out of pocket expense, including without limitation, reasonable attorneys' fees and costs, including expert witness fees, arising from LHV's use of the Easements, to the fullest extent allowed by law.

11. Insurance. LHV shall secure a policy or policies of commercial general liability insurance, with limits of liability not less than One Million Dollars (\$1,000,000), insuring against any and all personal injury and property damage liability resulting from or arising out of damage to or the use of the Easements provided herein. Each such policy or policies maintained by LHV shall name McMillian as an additional insured.

12. Subordination. This Agreement shall be binding upon and effective against any lender who acquires title to such property by foreclosure, trustee's sale, or otherwise solely during the period of such lender's ownership. Any lender who acquires title to any property encumbered and/or benefitted by this Agreement shall be fully bound by and shall receive all benefits of this Agreement.

13. Construction. The provisions of this Agreement were negotiated by all the Parties and this Agreement shall be deemed to have been drafted by the Parties. If any provision of this Agreement or the application thereof to any person or in any circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or in other circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

14. Waiver. A waiver or breach of covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act.

15. Applicable Law. This Agreement shall be governed and construed in accordance with California law.

16. Notice. All notices, requests and demands which any Party is required or may desire to give to the other Party under any provision of this Agreement shall be in writing and shall be given by personal delivery, overnight receipted courier (such as Federal Express), or by registered or certified United States mail, postage prepaid return receipt requested, sent to the Party at its address appearing below. Notices shall be effective upon receipt or when proper delivery is refused. Addresses for notice may be changed by either Party by notice to the other Party in accordance with this provision.

17. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts together shall constitute one and the same Agreement.

18. Headings. The titles and headings of the various sections of this Agreement have been inserted only for convenience of reference. They are not part of this Agreement and may not be used to construe or interpret any of the terms hereof.

19. Expense of Enforcement. If any action, proceeding, or litigation is commenced in connection with or arising out of this Agreement, then the prevailing Party shall be entitled to be reimbursed by the unsuccessful Party for all costs incurred in connection with such action, proceeding or litigation, including a reasonable allowance for attorneys' fees and costs, including expert witness fees, which amount shall be added to and become part of the final decision in such matter.

20. Further Assurance. The Parties acknowledge and agree that they shall use their commercially reasonable efforts to undertake or to cause to be taken, all actions, and to do, or to cause to be done, and to assist and cooperate with the other Party in doing all things necessary, proper or advisable to assure compliance with the terms, provisions, purposes and intents of this Agreement.

[Signatures appear on next page]

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

MCMILLIAN:

LHV:

REBECCA L. MCMILLIAN

17870 LITTLE HIGH VALLEY, LLC, a
California limited liability company

By: Rebecca McMillian

By: _____

Name: _____

Title: _____

Address for Notice:

Address for Notice:

Rebecca L. McMillian
18335 River Road
Leavenworth, WA 98826-8003
Facsimile: _____
Email: Becky_McMillian@edwards.com

17870 Little High Valley, LLC
3350 Fulton Road
Fulton, CA 95439
Attention: Mark McDonald
Facsimile: (707) 545-3222
Email: mdm@sonic.net

State of Washington
County of Chelan
Signed and affirmed before me on the 28 of August 2021
by Rebecca McMillian

[Signature]
Notary Public
my appointment
expires 2-16-23



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

MCMILLIAN:

REBECCA L. MCMILLIAN

By: _____

Address for Notice:

Rebecca L. McMillian
18335 River Road
Leavenworth, WA 98826-8003
Facsimile:
Email: Becky_McMillian@edwards.com

LHV:

17870 LITTLE HIGH VALLEY, LLC, a
California limited liability company

By: Mark McDonald

Name: [Signature]

Title: Owner

Address for Notice:

17870 Little High Valley, LLC
3350 Fulton Road
Fulton, CA 95439
Attention: Mark McDonald
Facsimile: (707) 545-3222
Email: mdm@sonic.net

Unofficial Copy

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

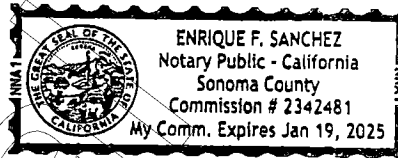
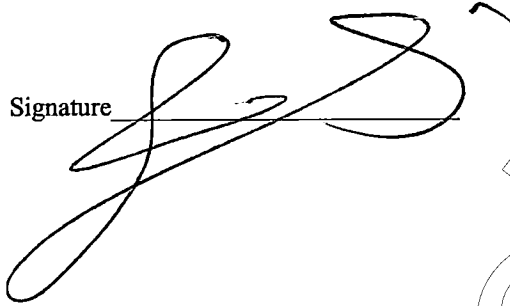
STATE OF CALIFORNIA)
) ss:
COUNTY OF Sonoma)

On 08/17/2021 before me, Enrique F. Sanchez, a Notary Public, personally appeared Mark Douglas Medonad, 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.

Signature



Unofficial

Copy

EXHIBIT A-1

Description of LHV Parcels

Real property in the unincorporated area of the County of Lake, State of California, described as follows:

THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 12 NORTH, RANGE 7 WEST, M.D.M.

APN: 012-061-030-000

Unofficial Copy

EXHIBIT A-2

Description of McMillian Parcels

Real property in the unincorporated area of the County of Lake, State of California, described as follows:

LOT 1 OF SECTION 30, TOWNSHIP 12 NORTH, RANGE 6 WEST, M.D.M.

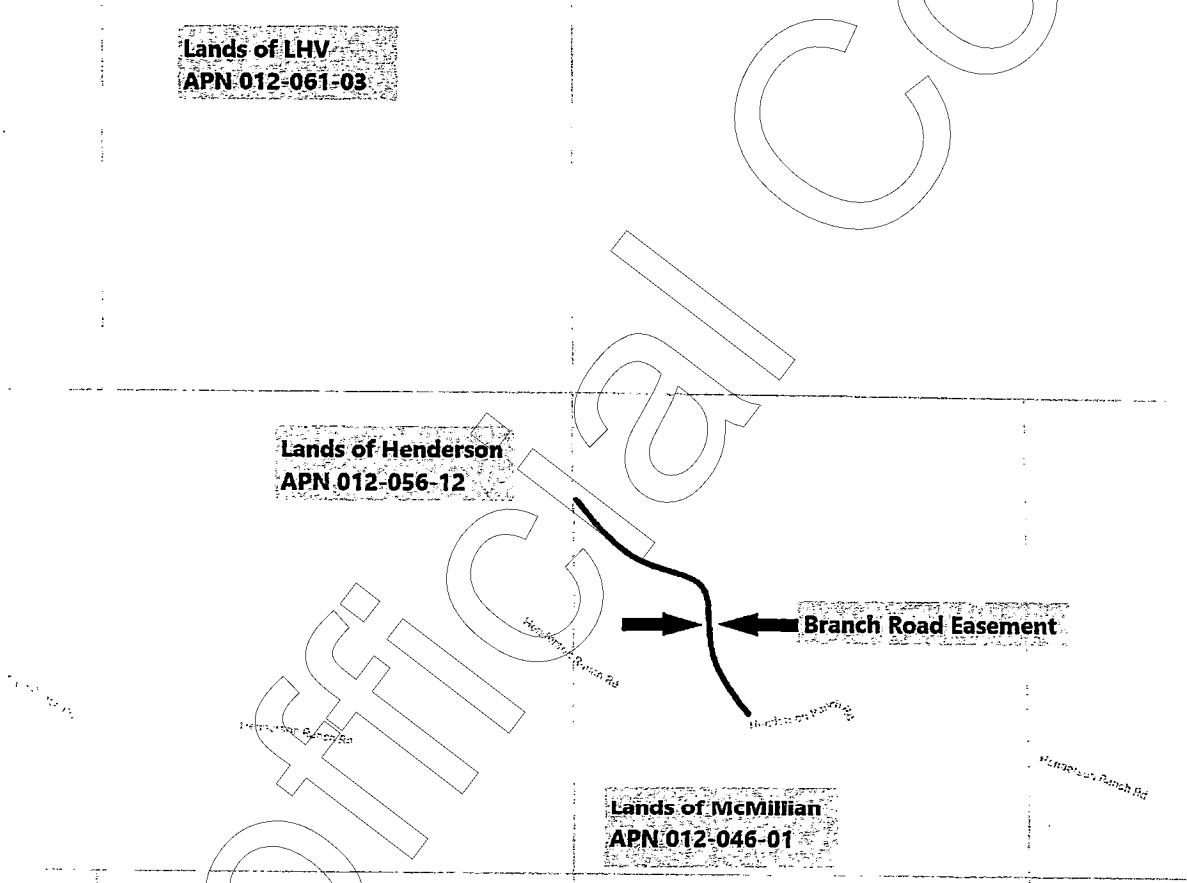
APN: 012-046-010-000

Unofficial Copy

EXHIBIT B-1

Depiction of Branch Road Easement

An easement over an existing road, a width not to exceed twenty five (25) feet, commencing from Henderson Ranch Road on the McMillian Parcel and terminating on the boundary of the McMillian Parcel and Henderson Parcel, in the approximate location as identified below.



Unofficial Copy