

# COUNTY OF SAN MATEO

28

## Inter-Departmental Correspondence

Date: March 20, 2001

Board Meeting Date: April 3, 2001

**TO:** Honorable Board of Supervisors

**FROM:** Neil R. Cullen, Director of Public Works

**SUBJECT:** Agreement to Allow an Existing Structure to Continue to Encroach into the Windsor Drive Right-of-Way - Devonshire Canyon - San Carlos Area

### RECOMMENDATION

1. Adopt a resolution authorizing the President of the Board to execute an Agreement on behalf of the County of San Mateo with Francis J. Prince, Sr. and Zoila A. Prince (Owners) to allow an existing structure to continue to partially encroach into the Windsor Drive right-of-way.
2. Direct the Clerk of the Board to record the Agreement after execution.

### Previous Board Action

Adopted minimum road standards for Devonshire Canyon that provides for the resurfacing of County maintained roads in the area to their existing widths.

### Key Fact

The proposed encroachment does not impair the public's use of the right-of-way at this time and is in an area of the right-of-way that would not be improved based on the currently adopted minimum road standards.

### Discussion

The Owners have requested the issuance of a building permit to construct a new residence on the property and to convert the existing residence into a second unit. The existing structure that is proposed to be the second unit partially encroaches into the Windsor Drive right-of-way (map attached).

The Owners are willing and have executed a form of agreement to guarantee that they or their successors in interest in the property will maintain, relocate, repair and/or remove the encroachment upon notification from County.

Honorable Board of Supervisors

**Subject: Agreement to Allow an Existing Structure to Continue to Encroach into the Windsor Drive Right-of-Way - Devonshire Canyon - San Carlos Area**

March 20, 2001

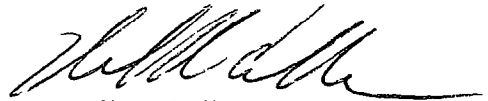
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**Fiscal Impact**

There is no financial impact to the General Fund or any other County fund associated with your Board authorizing the President of the Board to execute the proposed agreement.

A proposed form of resolution and agreement has been approved by County Counsel and as stated previously, the Owners have executed the Agreement.



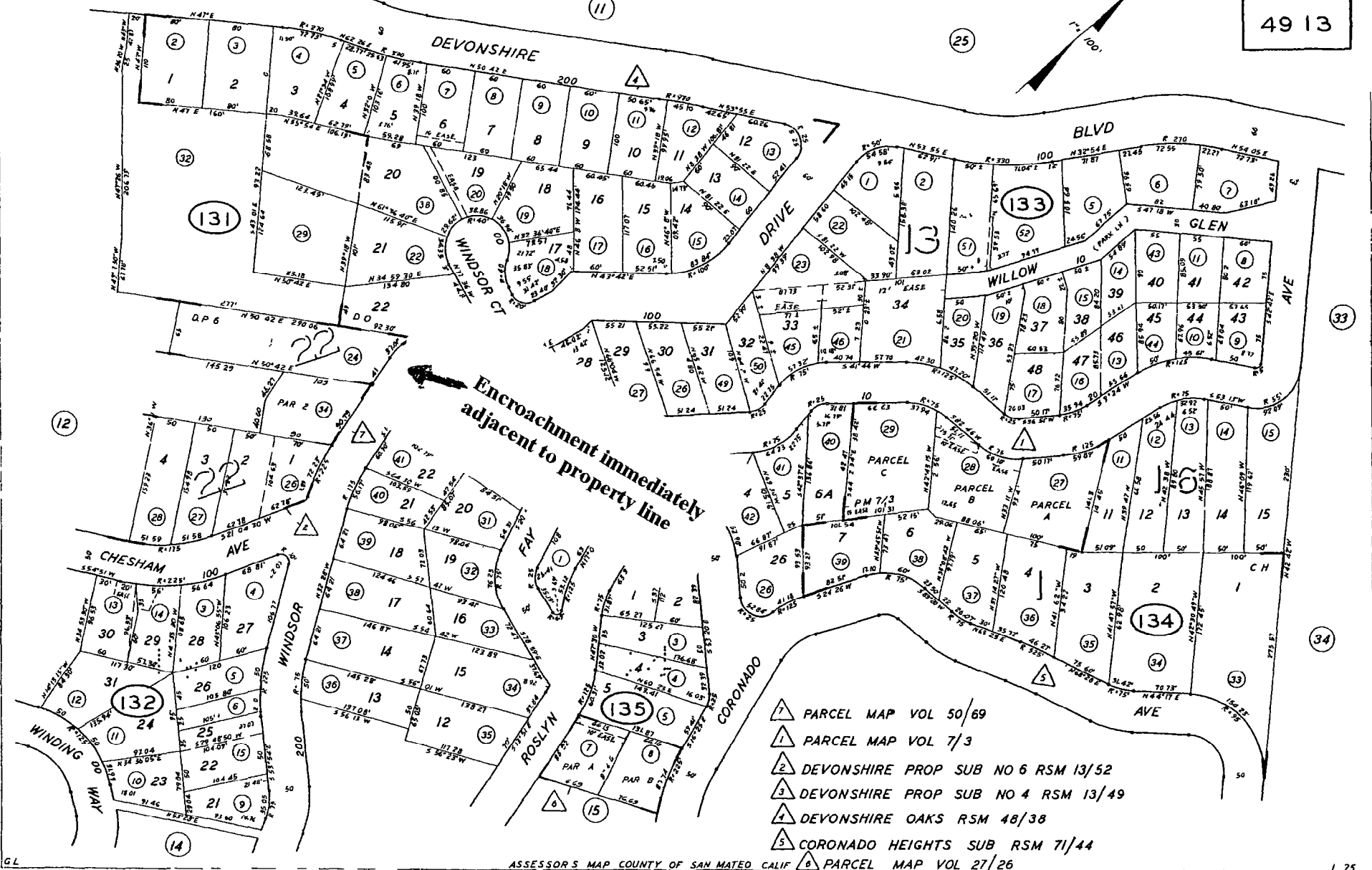
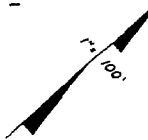
Neil R. Cullen  
Director of Public Works

NRC:KSA:sdd

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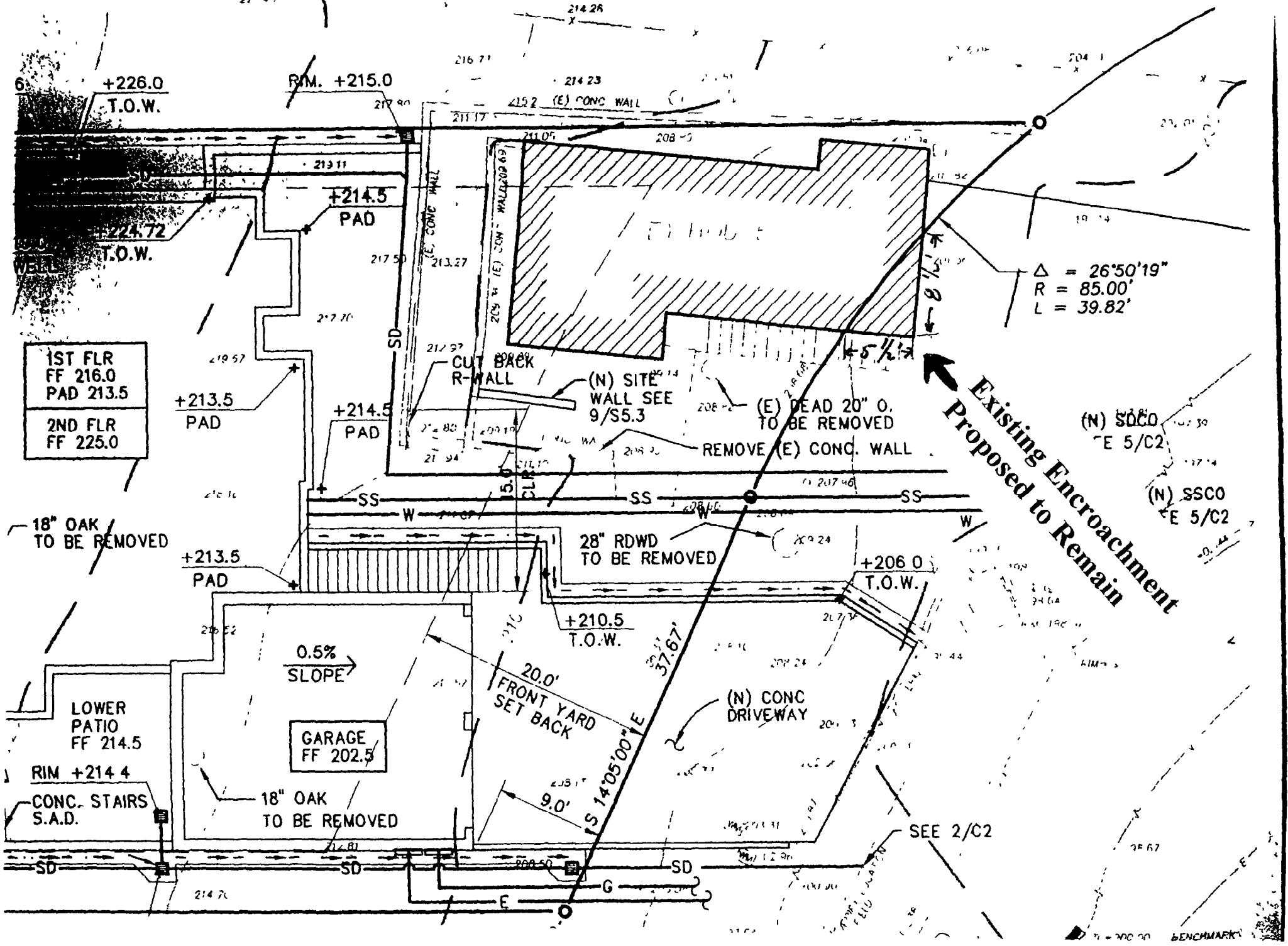
Enclosure: Map

cc: Francis J. Prince, Sr. and Zoila A. Prince  
Milt Mares, County Counsel



Encroachment immediately adjacent to property line

- △ PARCEL MAP VOL 50/69
- ① PARCEL MAP VOL 7/3
- ② DEVONSHIRE PROP SUB NO 6 RSM 13/52
- ③ DEVONSHIRE PROP SUB NO 4 RSM 13/49
- ④ DEVONSHIRE OAKS RSM 48/38
- ⑤ CORONADO HEIGHTS SUB RSM 71/44
- ⑥ PARCEL MAP VOL 27/26



1ST FLR  
FF 216.0  
PAD 213.5

2ND FLR  
FF 225.0

$\Delta = 26^{\circ}50'19"$   
 $R = 85.00'$   
 $L = 39.82'$

Existing Encroachment

Proposed to Remain

18" OAK  
TO BE REMOVED

0.5%  
SLOPE

LOWER  
PATIO  
FF 214.5

RIM +214.4

CONC. STAIRS  
S.A.D.

GARAGE  
FF 202.5

18" OAK  
TO BE REMOVED

SEE 2/C2

BENCHMARK

Resolution No. \_\_\_\_\_

**Board of Supervisors, County of San Mateo, State of California**

\* \* \* \* \*

**Resolution Authorizing Execution  
of an Agreement to Allow an Encroachment to Remain in the  
Windsor Drive Right-of-Way – Devonshire Canyon Area**

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**RESOLVED**, by the Board of Supervisors of the County of San Mateo, State of California, that

**WHEREAS**, Francis J. Prince, Sr. and Zoila A. Prince (Owners) are the owners of real property in the County of San Mateo, State of California, and have requested the issuance of a Building Permit to construct a new residence and to convert the existing residence into a second unit; and

**WHEREAS**, the current structure proposed to be converted into a second unit is partially within the public right-of-way of Windsor Drive; and

**WHEREAS**, Owners have agreed to execute a recorded agreement to maintain, repair, relocate and/or remove said encroachment upon notification from County; and

**WHEREAS**, the Director of Public Works has determined that the encroachment does not impair the public's use of the public right-of-way at this time and has recommended the execution of an agreement to allow said encroachment to remain; and

**WHEREAS**, this Board has considered the recommendation of the Director of Public Works.

**NOW, THEREFORE, BE IT RESOLVED**, that said Agreement by and between the County of San Mateo and Francis J. Prince, Sr. and Zoila A. Prince is hereby approved, and the President of this Board be, and is hereby authorized to sign for and on behalf of the County of San Mateo.

\* \* \* \* \*

**AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, hereinafter called the "County," and FRANCIS J PRINCE SR and ZOILA A PRINCE, husband and wife hereinafter called "Permittee."

**WITNESSETH**

WHEREAS, Permittee is the owner of real property in the County of San Mateo, State of California, and has requested issuance of a Building Permit from the County of San Mateo, for the construction of a new residence The existing residence which will convert into a second unit encroaches a small portion into County rights-of-way on Windsor Drive fronting the property described in Exhibit "A" attached hereto, and

WHEREAS, portion of the structure encroaches into the public right-of-way of Windsor Drive ;

WHEREAS, there is no impediment to the use of the right-of-way at this time, and

WHEREAS, for and in consideration of and as a condition for approval by County of a Building Permit, Permittee is willing to repair, restore, maintain, relocate and/or remove that portion of the encroachment from the right-of-way at Permittee's own expense upon demand of County should they become an impediment to the exercise of County's right within the right-of-way of Windsor Drive ,

NOW, THEREFORE, IT IS HEREBY AGREED TO BY THE PARTIES, as follows

1. The real property subject to this agreement is described in Exhibit "A" attached hereto. Upon annexation of said real property to any city, Permittee agrees to fulfill all of the terms of this agreement upon demand by such city as though the Permittee has contracted with such city originally. Any annexing city shall have the rights of a third party beneficiary
2. Permittee agrees to repair, restore, relocate, maintain, and/or remove that portion of the structure that is encroaching into the Windsor Drive right-of-way at Permittee's own expense upon demand of County. Should Permittee fail to satisfy such demand, County may take such action as is necessary to protect the public interest within the right-of-way of Windsor Drive and Permittee agrees to reimburse County for any and all costs incurred therewith.
3. In the event that Windsor Drive is realigned or adjusted in elevation with the result that said encroachments must be altered, reconstructed or removed, the County may notify Permittee at any time in writing to commence the required alteration, reconstruction or removal. The notice shall be sufficient if mailed to the owner of record of said property at the address shown on the latest adopted County assessment roll. The notice shall describe the work to be done by the Permittee, or successor in ownership, the time within which the work shall commence and the time within which it shall be completed
4. The Permittee shall indemnify and save harmless the County, its officers, agents, employee, and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of injuries to or death of any person, including Permittee, or damage to property of any kind whatsoever and to whomever belonging, including but not limited to, the concurrent active or passive negligence of the County, officers, agent, or employees and servants, resulting



from the installation, maintenance, use and/or existence of said encroachment within the Windsor Drive right-of-way as authorized and required by this agreement of Permittee, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the Permittee to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in section 2778 of the California Civil Code

5. Should legal action be necessary to enforce any provision of this agreement, Permittee agrees to pay all reasonable attorney fees and costs incurred by County in connection therewith.
6. This agreement shall be recorded by County. All covenants herein contained shall pertain to and run with the real property described herein, and this agreement shall apply to, bind and inure to the heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers on the day and year first above written

“County”

COUNTY OF SAN MATEO

BY:

Michael D. Nevin, President  
Board of Supervisors, County of San

“Permittee”

Francis J. Prince, Sr.  
FRANCIS J. PRINCE, SR.

Zoila A. Prince  
ZOILA A. PRINCE

**ALL-PURPOSE ACKNOWLEDGMENT**

State of California

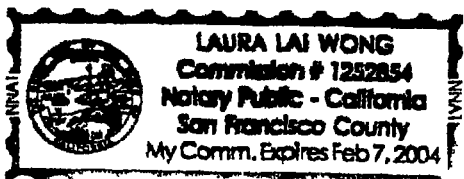
County of San Francisco } SS

On Jan 06, 2001 before me, Laura Lai Wong

personally appeared Francis Joseph Prince and Zita Angelica Prince

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.

Laura Lai Wong  
NOTARY'S SIGNATURE

“EXHIBIT A”

That certain real property as described in Document No. 91007970 filed in the Recorder’s Office of the County of San Mateo, State of California.