

DOC # 2014-0164989  
 05/06/2014 04:07P Fee:58.00  
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 Recorded in Official Records  
 County of Riverside  
 Larry W. Ward  
 Assessor, County Clerk & Recorder

**Recording Requested By:**

Deep Canyon Tennis Club Owners Association



**When Recorded Mail To:**

Deep Canyon Tennis Club Owners Association

73-120 Frank Feltrop Circle

Palm Desert, CA 92260

7650

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**LEASE, LICENSE, EASEMENT, MAINTENANCE AND INDEMNITY AGREEMENT**

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*THIS AGREEMENT is made and entered into on the date indicated below, by and between DEEP CANYON TENNIS CLUB OWNERS ASSOCIATION ("ASSOCIATION") and all persons who have title to the residential property identified below, who are: JERRY L. PREECE, TRUSTEE OF JERRY L. PREECE TRUST ("OWNERS"), and whose real property, located at 47-200 Desert Lily Drive, Palm Desert, California, APN: 630-180-005, adjoins the common area owned*

By ASSOCIATION, which common area consists of portions of Tract No. 4558, per Map Book 78, Pages 42 to 46 of the Riverside County Recorder, and which common area further included within Exhibit "A" and "B" attached hereto and made a part of hereof. The residential property owned by OWNERS is not a part of ASSOCIATION and OWNERS are not members of ASSOCIATION.

**WHEREAS**, ASSOCIATION is subject to the First Restated Declaration of Covenants, Conditions and Restrictions of Deep Canyon Tennis Club Owners Association ("CC&R's"), duly recorded with the Riverside County Recorder on May 23, 2001 as Instrument 227227; and

**WHEREAS**, ASSOCIATION is a California Nonprofit Mutual Benefit Corporation whose specific and general purposes as recited in the CC&R's are to provide for the enhancement and protection of the value, desirability and attractiveness of the Properties, including the care, upkeep, management and maintenance of the common area within the Properties; and

**WHEREAS**, a portion of that common area is contained between the masonry wall which provides the boundary to the Properties and the masonry wall which provides the boundary to adjoining residential properties which are not part of the Properties, and is the subject of this Agreement (Subject Area) and is contained within the attached Exhibits "A" and "B" consisting of a sketch thereof; and

**WHEREAS**, that Subject Area is of no current or foreseeable use to ASSOCIATION or its members, and constitutes a financial impact on ASSOCIATION and its members for its maintenance and

upkeep and thus consists of a burden rather than a benefit to ASSOCIATION and its members;  
and

**WHEREAS**, that Subject Area Is NOT accessible to ASSOCIATION members, but is restricted to access through the ASSOCIATION passage gate at the top South West corner of property for the sole purposes of maintenance of the solar collectors for the common area pool.

**WHEREAS**, Article III, Section 2(0) of the CC&R's provides ASSOCIATION with the right to grant licenses or easements on, over and under the Common Area to Public Utilities or governmental entities or agencies, provided that such easement shall not unreasonably interfere with the right of any member of ASSOCIATION or Land Lease OWNERS to the use and enjoyment of his or her Unit and the Common Area; and

**WHEREAS**, Article III, Section 2(E) of the CC&R's provides ASSOCIATION with the right to grant licenses or easements to individuals, members of ASSOCIATION with a value of less than five percent (5%) of the Association's gross fiscal budget; and

**WHEREAS**, ASSOCIATION has the right, through the CC&R's, to establish Rules and Regulations that limit access to the Common Area by its members; and

**WHEREAS**, OWNERS have performed and agree to continue to perform the landscaping and irrigation subject to the approval of ASSOCIATION, and to continue to provide insurance therefore as required by ASSOCIATION. OWNERS have provided an amount of \$25,000.00 (Twenty-Five Thousand Dollars), as a one-time payment for a Ninety-Nine (99) year lease to ASSOCIATION for such usage. Such amount to be provided by owners upon renewal of said 99 year lease at an amount not to exceed \$25,000.00 (Twenty-Five Thousand Dollars). In the event the ASSOCIATION amends its bylaws, CC&R's or otherwise is able to convey title to the subject property, OWNERS will have the right to purchase said property from the ASSOCIATION for the price not to exceed One Dollar (\$1.00).

**NOW, THEREFORE**, the parties hereto covenant and agree as follows:

1. The foregoing Recitals are true and correct and are hereby incorporated into this Agreement by this reference.
  
2. In consideration of the respective covenants contained hereinafter, and notwithstanding any language of the CC&R's or any other governing document of ASSOCIATION to the contrary as of the date of execution of this agreement, by ASSOCIATION's permitting usage, and OWNERS entering into this Agreement, OWNERS and ASSOCIATION hereby covenant and agree as follows:
  - (a) That OWNERS shall have an exclusive ninety-nine (99) year lease for the use of the property identified in Exhibits "A" and "B" attached hereto and made a part hereof;



and that: ASSOCIATION has easement for such usage over the area identified in Exhibits "A" and "B" attached hereto and made a part hereof;

- (b) That OWNERS shall be responsible for the maintenance and repair of any improvements made by OWNERS upon the Subject Area.
- (c) That OWNERS shall be responsible for ensuring that no permanent materials such as concrete, trash, debris, etc. are constructed or contained within the Subject Area without prior approval from ASSOCIATION. OWNERS shall be responsible for the removal of such materials, not previously agreed too between OWNERS and ASSOCIATION, at no expense or liability of ASSOCIATION; That ASSOCIATION shall have no maintenance, repair, or replacement responsibility for the Subject Area except the ASSOCIATIONS existing masonry wall;
- (d) That OWNERS shall indemnify for himself/herself/themselves, as well as for his/her/their successors and assigns, and covenants and agrees to hold ASSOCIATION harmless from any and all claims, demands or liability arising out of or encountered in connection with the usage of the Subject Area by third parties: OWNERS, OWNERS guests, OWNERS agents or employees, or contractors or subcontractors, their agents or employees. Such indemnification shall extend to claims, demands or liability for personal injuries occurring during any time after execution of and during the term of this Agreement, including but not limited to demands or liability of personal injuries occurring during any time after execution of and during the term of this Agreement, including but not limited to any activities for landscaping, irrigation, installation of any improvements, by owner and/or owner employees or agents, including, but not limited to, all of OWNERS maintenance access obligations herein. OWNERS further agree to insure against and to provide ASSOCIATION with copies of insurance policies providing coverage for any such liability prior to any such usage and which include ASSOCIATION as an additional insured;
- (e) That this Agreement shall be recorded and shall be provided by OWNERS to any subsequent purchaser, lessor, or tenant of their residential property as described above and shall bind and be a charge on OWNERS property and to his/her/their successors or assigns as long as this Agreement is in existence;
- (f) That OWNERS have provided ASSOCIATION with the proper names of all owners of record or who are otherwise on title to OWNERS residential property as described above and that this Agreement has been executed by all such parties, and that all



signatures have been notarized in accordance with the requirements for recordation of this Agreement.

- (g) That this Agreement is subject to any and all provisions of the license/easement agreement previously entered into between ASSOCIATION and Coachella Valley Water District (CVWD) for access to that easement, and all terms and provision of this Agreement are subject to that license/easement with CVWD, unless otherwise modified between ASSOCIATION, OWNERS and CVWD. That CVWD easement is an easement for maintenance of the existing buried water transmission line and consists of a width of approximately 20 feet, which lays adjacent to the property line between OWNERS and ASSOCIATION and runs more than the full length of the OWNERS property line. A condition of that easement is that travel across is permitted, but no permanent structures are to be constructed, with the exception of fences, gates and/or landscaping by OWNERS.
- (h) That the Agreement incorporates the physical area provided in the sketch attached hereto as Exhibits "A" and "B" and incorporated herein by reference, and which sketch was formerly utilized regarding the agreement between ASSOCIATION and OWNERS regarding fences or gates located at the Subject Property.
3. OWNERS and ASSOCIATION further agree as follows:
- a. This Agreement shall not be modified by any oral representations made before or after execution of the Agreement. All modifications must be in writing and signed by all parties who have title to the residential property described above and to the Subject Area. Should arbitration or other legal action be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of cost of suit and not as damages, reasonable attorney's fees to be fixed by the arbitrator. The prevailing party shall be entitled to recover his/her/its costs of suit, regardless of whether such suit proceeds to final judgment.
- b. Any action brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of cost of suit and not as damages, reasonable attorney's fees to be fixed by the arbitrator. The prevailing party shall be entitled to recover his/her/its costs of suit, regardless of whether such suit proceeds to final judgment.
- c. All of the covenants and conditions of this Agreement shall be binding and shall inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective parties.



- d. This Agreement shall not be construed against the party preparing it and shall be construed as if all parties prepared this Agreement in accordance with the laws of the State of California.
- e. This Agreement shall be binding on all parties and all persons claiming under it after this Agreement is executed. If any term or provision of the Agreement or application thereof is held invalid or unenforceable as to any party, the balance of the Agreement shall not be affected, and each remaining term and provision of this Agreement shall be valid and shall be enforced to the fullest extent provided by law.
- f. All controversy arising out of the performance of this Agreement or regarding the interpretation of this Agreement shall be resolved and is subject to binding arbitration. "Binding Arbitration", as that term is used in this Agreement shall mean that designated representatives of the disputing parties shall meet and confer within seven (7) days to resolve any disputes under this Agreement. If the parties cannot resolve their dispute (s), then the arbitration shall be conducted under the administration, and rules of the Judicial Arbitration and Mediation Services (JAMS) Rules of Practice and Procedure then in effect, except that the parties shall be entitled to only such discovery as is permitted by *Code of Civil Procedure Section 1283.05* and any amendment thereto or successor statutes. Once the Arbitrator is designated, he/she shall remain the designated arbitrator for the purposes of this provision unless he/she cannot otherwise serve in that capacity. The cost of the Arbitrator shall be borne equally by the parties. The matter shall be submitted to the Arbitrator as soon as possible but in any event, no later than forty-five (45) days from the selection of the Arbitrator. If any party refuses or neglects to appear at, or participate in, such arbitration proceedings, the Arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented by the party who does participate. The Arbitrator is authorized to award any party or parties such sums as he/she considers proper for attorneys fees incurred with the arbitration. This arbitration process shall be binding on the parties and judgment may be entered on the award in any Court of competent jurisdiction.
- g. For purposes of providing notice, the address of the ASSOCIATION shall be Deep Canyon Tennis Club Owners Association, 73-120 Frank Feltrop Circle, Palm Desert, CA 92260 and the address of the OWNERS shall be Jerry L. Preece, 47200 Desert Lily Drive, Palm Desert, CA 92260.

**IN WITNESS WHEREOF**, the parties have executed this Agreement at Palm Desert, California on the dates stated below. Each party has signed this Agreement before a Notary Public, and the



**EXHIBIT "A"**

**A Condominium Comprised Of:**

**Parcel No. 1:**

An undivided 1/56<sup>th</sup> interest in and to Lot(s) 3 of Tract No. 4558, in the City of Palm Desert, County of Riverside, State of California, as per Map recorded in Book 78, Page(s) 42 to 46 inclusive of Maps, in the office of the County Recorder of said County.

Excepting therefrom each and all of the Units shown and defined on the Condominium Plan recorded December 19, 1973 as Instrument No. 163639 of Official Records of Riverside County, California.

Also excepting therefrom, easements for storage and vehicular parking over portions of the Common Area designated on said Condominium Plan as "carport", easements for patio purposes over those portions of the Common Area designated on said Condominium Plan as "patio" and "patio balcony", and easement for ingress and egress over those portions of the Common Area designated on said Condominium Plan as "stairway".

**Parcel No. 2:**

Unit 11-3 as shown and defined on the Condominium Plan recorded December 19, 1973 as Instrument No. 163639 of Official Records of Riverside County, California.

**Parcel No. 3:**

An exclusive easement of exclusive easements appurtenant to said Units for storage and vehicular parking, patio purposes, and if applicable, ingress and egress over those portions of the Common Area, designated as Condominium Plan as "Restricted Common Area" for said Unit; said Condominium Plan being recorded December 19, 1973 as Instrument No. 163639 of Official Records of Riverside County, California.

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# EXHIBIT "B"

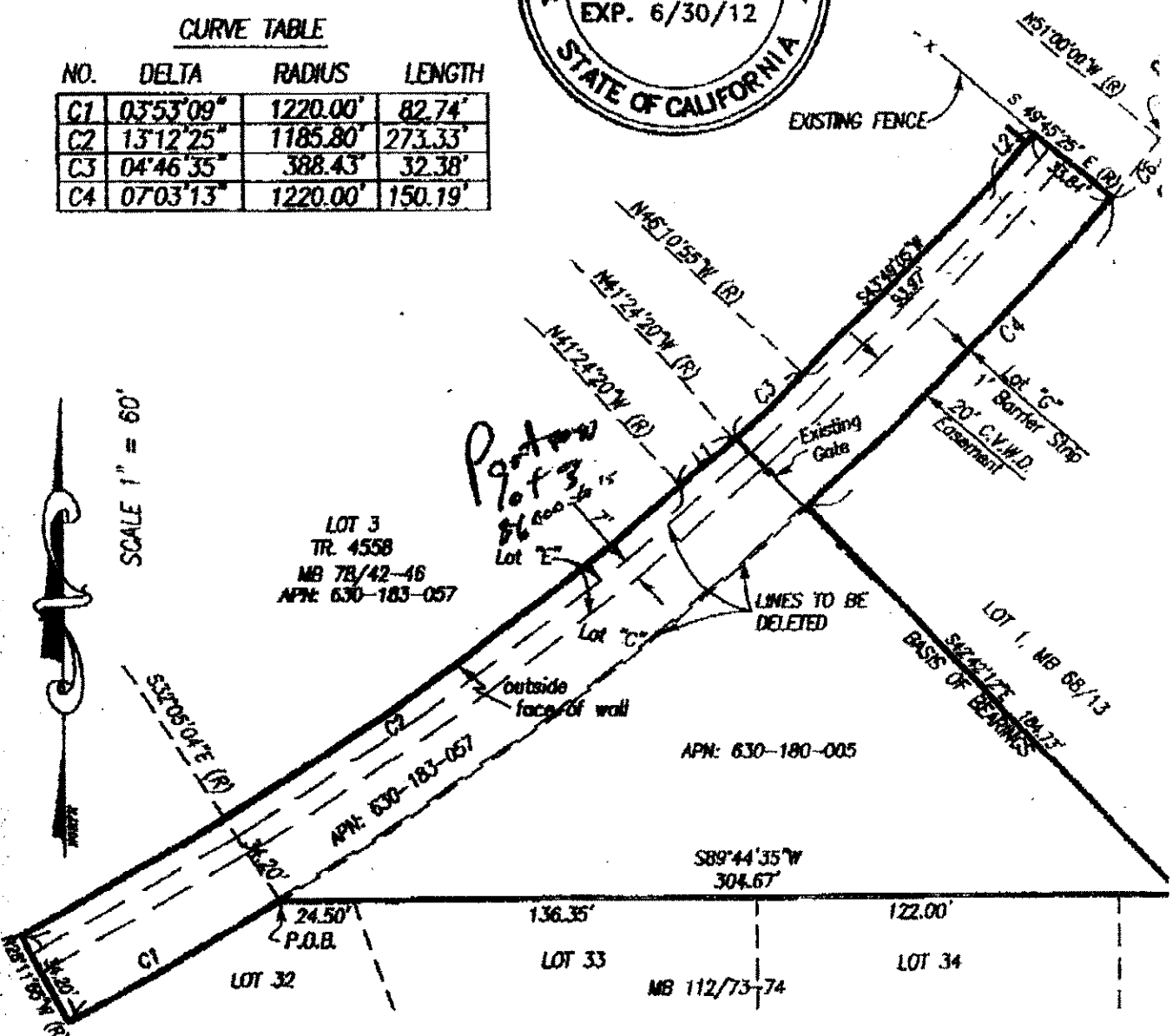
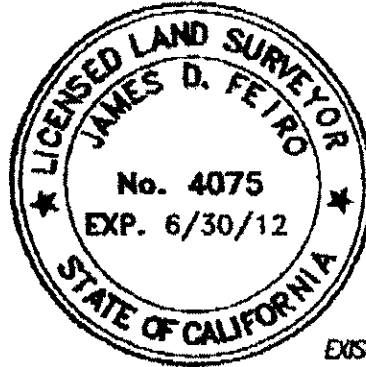
P.M.W. # 10

**LINE TABLE**

NO.	BEARING	DISTANCE
L1	N48°35'40"W	25.01'
L2	S40°28'11"W	21.50'
L3	S39°00'00"W	2.88'

**CURVE TABLE**

NO.	DELTA	RADIUS	LENGTH
C1	03°53'09"	1220.00'	82.74'
C2	13°12'25"	1185.80'	273.33'
C3	04°46'35"	388.43'	32.38'
C4	07°03'13"	1220.00'	150.19'



## ADJUSTMENT PLAT - CITY OF PALM DESERT

**Prepared By:**  
**FERRO ENGINEERING, INC.**  
 P. O. Box 12980  
 Palm Desert, CA 92255

**Applicant:**

**Approved By:**

**R. PAGE GARNER**



document evidencing such notarization is attached hereto and incorporated herein by this reference.

ASSOCIATION J E Murphy 4/29/14  
Joe Murphy, President

Joe Schoettmer 4/25/14  
Joe Schoettmer, Secretary

\* California All Purpose Acknowledgment attached 4-25-14 ZJB

OWNER J L Preece Trustee 5-1-14  
Jerry L. Preece, Trustee of Jerry L. Preece Trust



document evidencing such notarization is attached hereto and incorporated herein by this reference.

ASSOCIATION Joe Murphy 4/29/14  
Joe Murphy, President  
AKA Joseph Murphy

Joe Schoettmer 4/25/14  
Joe Schoettmer, Secretary  
AKA Joseph H. Schoettmer

\* California All Purpose Acknowledgment attached 4-25-14 JLP

OWNER \_\_\_\_\_  
Jerry L. Preece, Trustee of Jerry L. Preece Trust

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

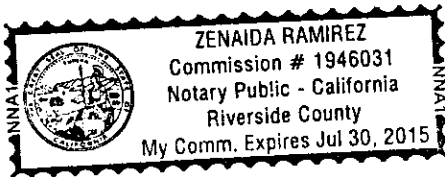
CIVIL CODE § 1189

State of California

County of Riverside

On 4-25-14 before me, Zenaida Ramirez - Notary Public  
Date Here Insert Name and Title of the Office

personally appeared Joseph H Schoettner  
Name(s) of Signer(s)



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: [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Lease, License, Easement, Maintenance and Indemnity Agreement

Document Date: April 25, 2014 Number of Pages: 26

Signer(s) Other Than Named Above: Joe Murphy and Jerry Preece

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Individual

Partner —  Limited  General

Attorney in Fact

Trustee

Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Individual

Partner —  Limited  General

Attorney in Fact

Trustee

Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

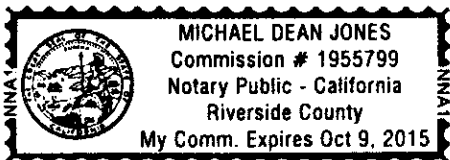
State of California

County of Riverside

On April 29 2014 before me, Michael Dean Jones, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Joseph Murphy  
Name(s) of Signer(s)

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: [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_

Individual  Individual

Partner —  Limited  General  Partner —  Limited  General

Attorney in Fact  Attorney in Fact

Trustee  Trustee

Guardian or Conservator  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_



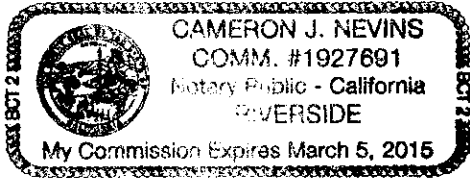
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California

County of Riverside

On May 15<sup>th</sup>, 2014 before me, Cameron J. Nevins, Notary Public,  
 Date Name and Title of the Officer

personally appeared Jerry L. Preece  
 Name(s) of Signer(s)



Place Notary Seal Above

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: [Signature]  
 Signature of Notary Public

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Lease, License, Easement, ... Document Date: May 15<sup>th</sup>, 2014

Number of Pages: 6 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

- |  |  |
|--|--|
| Signer's Name: _____   | Signer's Name: _____   |
| <input type="checkbox"/> Corporate Officer — Title(s): _____   | <input type="checkbox"/> Corporate Officer — Title(s): _____   |
| <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General |
| <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact                        | <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact                        |
| <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator                    | <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator                    |
| <input type="checkbox"/> Other: _____  | <input type="checkbox"/> Other: _____  |

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_



4610. (a) Except as provided in this section, the common area in a condominium project shall remain undivided, and there shall be no judicial partition thereof. Nothing in this section shall be deemed to prohibit partition of a cotenancy in a condominium.

(b) The owner of a separate interest in a condominium project may maintain a partition action as to the entire project as if the owners of all of the separate interests in the project were tenants in common in the entire project in the same proportion as their interests in the common area. The court shall order partition under this subdivision only by sale of the entire condominium project and only upon a showing of one of the following:

(1) More than three years before the filing of the action, the condominium project was damaged or destroyed, so that a material part was rendered unfit for its prior use, and the condominium project has not been rebuilt or repaired substantially to its state prior to the damage or destruction.

(2) Three-fourths or more of the project is destroyed or substantially damaged and owners of separate interests holding in the aggregate more than a 50-percent interest in the common area oppose repair or restoration of the project.

(3) The project has been in existence more than 50 years, is obsolete and uneconomic, and owners of separate interests holding in the aggregate more than a 50-percent interest in the common area oppose repair or restoration of the project.

(4) Any conditions in the declaration for sale under the circumstances described in this subdivision have been met.

there it  
is... reason  
No possible  
Sale of  
the Deep  
Canyon T.C.  
to 47-200  
Desert Lily  
OWNER

Section: [Previous](#) [4600](#) [4605](#) [4610](#) [4615](#) [Next](#)

**Speak with a Lawyer in California**

