

## AGREEMENT AND RELEASE

This Agreement and Release (the "Agreement") is made and entered into by and between the Brush Road Corporation ("BRC"), the owners of certain properties, APN 544-34-074, APN 544-34-075, and APN 544-34-076, in the vicinity of the private road known as Ridge Road ("Ridge Road Owners") and Los Gatos Real, LLC, (all known collectively as the "Culvert Owners") and the State of California Department of Transportation ("the State"). Hereinafter, Culvert Owners and the State from time to time collectively shall be referred to as the "Parties."

### RECITALS

This Agreement is based upon the following facts and representations, all of which for the purpose of this agreement and release are agreed by the Parties to be true.

- A. WHEREAS, for many years the State mistakenly maintained and repaired a portion of a private road commonly known as "Brush Road" lying outside the boundaries of the State's property and within property owned by one or more of the Culvert Owners;<sup>1</sup> and
- B. WHEREAS, the Brush Road Segment includes a substantial corrugated metal pipe storm water drainage culvert;<sup>2</sup> and
- C. WHEREAS, the State will not assume responsibility for any additional maintenance of the Brush Road Segment and in particular, the subject drainage culvert; and
- D. WHEREAS, the Brush Road Segment and in particular, the subject drainage culvert are now badly in need of repair; and
- E. WHEREAS, the Parties now desire to reach an agreement with regard to the State's participation in BRC's and Ridge Road Owners' current repair of the Brush Road Segment including the subject drainage culvert,

THEREFORE:

### AGREEMENT

- 1. BRC and the Ridge Road Owners will take full responsibility for the design, removal, repair, and reconstruction of the Brush Road Segment and in particular, the subject drainage culvert, and will pay for all fees, building and/or repair costs above and beyond the amount of any contribution by the State.
- 2. BRC and the Ridge Road Owners will assume, in perpetuity, permanent responsibility for repair and maintenance of the Brush Road Segment including the subject drainage culvert at their own

---

<sup>1</sup> The subject portion of Brush Road lying outside the State's property (also known as "right of way") is hereinafter referred to as "the Brush Road Segment."

<sup>2</sup> The substantial corrugated metal pipe storm water drainage culvert is hereinafter referred to as "the subject drainage culvert."

## AGREEMENT AND RELEASE

expense, up to the State's right of way line.

3. BRC and Los Gatos Real, LLC shall allow the Ridge Road Owners the use of Brush Road from its intersection with Ridge Road to the State's right of way.
4. The State will place permanent property-line markers at the northerly corners of the State's right of way along the N ½ of the SW ¼ of the NE ¼ of Section 8, T9S, R1W, the easterly side of the drainage ravine and the westerly side of Brush Road.
5. The State will place signs with the words "Private Road, No Exit" approximately 50 feet northerly (up Brush Road) of the drains adjoining State Route 17 on both sides of Brush Road.
6. The State will continue to maintain the portion of Brush Road and the drainage facilities within the State's right of way at the same level as used to maintain State Route 17.
7. The State will make a one-time-only contribution of \$42,000 to BRC for BRC's and Ridge Road Owners' current project to repair the Brush Road Segment and in particular, the subject drainage culvert in consideration of this release by the Culvert Owners and all landowners with legal or actual access from State Route 17 to their property by means of Brush Road of all past and future claims regarding the Brush Road Segment and in particular, the subject drainage culvert.
8. The Parties agree to pay their own attorneys' fees and litigation costs, and the parties waive any claim for such costs against each other.

## RELEASE

Brush Road Corporation, Los Gatos Real, LLC, and the Ridge Road Owners will release the State of California Department of Transportation, including its officers, directors, agents, and employees, and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever, arising out of or in connection with the project to repair the Brush Road Segment and in particular, the subject drainage culvert that are the subject of this agreement. This is a full and final release applying to all unknown and unanticipated injuries, death or damages arising out of said project to repair the Brush Road Segment and in particular, the subject drainage culvert as well as to those known or disclosed, and the undersigned waive all rights or benefits which the undersigned now have or in the future may have under the terms of Section 1542 of the Civil Code of the State of California which said section reads as follows:

"A general release does not extend to the claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

This release shall be binding upon and inure to the benefit of the parties, their successors, assigns and personal representatives.

AGREEMENT AND RELEASE

This agreement and release contains the entire agreement between the parties hereto. The terms of this agreement are contractual and not a mere recital. This agreement and release is executed without reliance upon any representation by any person concerning the nature or extent of injuries or legal liability therefore, and the undersigned have carefully read and understand the contents of this agreement and release and sign the same as their own free act.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement on the date written below:

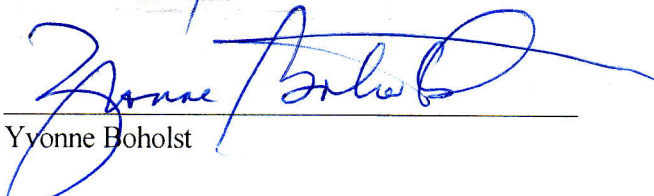
**RIDGE ROAD OWNERS**

Frank Boholst

APN 544-34-074

Date: June 24, 2008

Date: June \_\_\_\_\_, 2008

  
\_\_\_\_\_  
Yvonne Boholst

\_\_\_\_\_  
Stig Nilsson

Date: June \_\_\_\_\_, 2008

\_\_\_\_\_  
Christ'l Nilsson

APN 544-34-075

Date: June \_\_\_\_\_, 2008

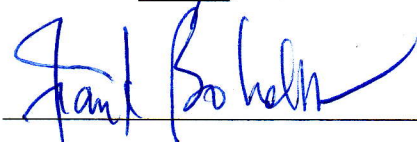
\_\_\_\_\_  
William J. Barhydt

Date: June \_\_\_\_\_, 2008

\_\_\_\_\_  
Regina Barhydt

APN 544-34-076

Date: June 24, 2008

  
\_\_\_\_\_  
Frank Boholst

AGREEMENT AND RELEASE

This agreement and release contains the entire agreement between the parties hereto. The terms of this agreement are contractual and not a mere recital. This agreement and release is executed without reliance upon any representation by any person concerning the nature or extent of injuries or legal liability therefore, and the undersigned have carefully read and understand the contents of this agreement and release and sign the same as their own free act.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement on the date written below:

**RIDGE ROAD OWNERS**

Frank Boholst

APN 544-34-074

Date: June \_\_\_\_\_, 2008

Date: June \_\_\_\_\_, 2008

\_\_\_\_\_  
Yvonne Boholst

\_\_\_\_\_  
Stig Nilsson

Date: June \_\_\_\_\_, 2008

\_\_\_\_\_  
Christ'l Nilsson

APN 544-34-075

Date: June 25, 2008

  
\_\_\_\_\_  
William J. Barhydt

Date: June 25, 2008

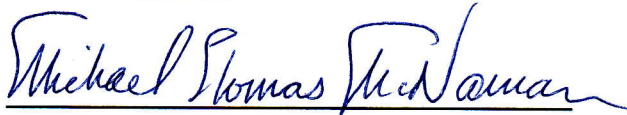
  
\_\_\_\_\_  
Regina Barhydt

APN 544-34-076

Date: June \_\_\_\_\_, 2008

**BRUSH ROAD CORPORATION**

Date: June 25, 2008



Michael Thomas McNamara, President

**LOS GATOS REAL, LLC**

Date: June \_\_\_\_\_, 2008

---

Salvatore Giovannotto, Member

Date: June \_\_\_\_\_, 2008

---

Stella Giovannotto, Member

**STATE OF CALIFORNIA  
Department of Transportation**

Date: June \_\_\_\_\_, 2008

---

R. A. Macpherson  
Deputy District Director  
Right of Way

Approved as to form:

Date: June \_\_\_\_\_, 2008

---

Frank D. Valentini, Attorney  
STATE OF CALIFORNIA  
Department of Transportation  
San Francisco Legal Division