

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement"), is made and entered into as of March \_\_\_\_\_, 2012, by and between the Norbertine Fathers of Orange, Inc. (referred to herein as St. Michael's Abbey, or "SMA") and the Silverado-Modjeska Recreation & Park District ("SMRPD").

For and in consideration of the mutual promises and covenants of SMA and SMRPD set forth herein, the sufficiency of which are hereby mutually acknowledged, SMA and SMRPD hereby agree as follows:

**Section 1. Grant of License.** Subject to the terms, covenants and conditions set forth in this Agreement, SMA hereby grants to SMRPD a nonexclusive and revocable right and license for SMRPD to enter upon SMA's real property situated in Orange County, California, and more particularly described and depicted in Exhibit A attached hereto (the "License Area"), for the sole and limited purpose of conducting activities of the SMRPD (the "License Area Activities"), as more particularly described in Section 2.

SMRPD shall conduct the License Area Activities at SMRPD's sole risk, cost and expense and in strict accordance with the terms of this Agreement and all applicable laws. SMRPD shall coordinate the License Area Activities with SMA, and shall provide seventy-two hours (72 hours) prior written notification to SMA of all License Area Activities pursuant to Section 17, below. It is the intent and agreement of both parties that SMA shall suffer or incur no loss, cost, damage or expense by virtue of SMRPD's use of the License Area and conduct of License Area Activities.

**Section 2. License Area Activities.** The License Area Activities include entrance and exit onto the License Area for parking purposes only for the official business of SMRPD.

**Section 3. Consideration.** As consideration for the grant of this license, SMRPD shall pay to SMA upon execution of this Agreement, the amount of Twenty dollars (\$20.00).

**Section 4. Term.** The term of this Agreement shall commence on the following date APRIL 8 at 5 a.m./p.m. and terminate on APRIL 8 at 1 a.m./p.m. unless otherwise terminated.

**Section 5. Compliance with Law.** SMRPD's use of the License Area shall comply with all applicable laws of the United States of America, the State of California, and the County of Orange, and with all codes, rules, regulations, orders and ordinances of, and any applicable permits and/or licenses issued by any political subdivision, decision-making body, bureau or agency thereof.

**Section 6. Governmental Authorizations and Approvals.** SMRPD shall have the right and obligation to obtain and maintain all permits, licenses and approvals of all federal, state and local governmental and regulatory authorities which are necessary for SMRPD to conduct the License Area Activities as permitted under this Agreement. Provided, however, in no event shall SMRPD be allowed to advocate for changes or modifications to the License Area's land use designations or consent to any restrictions with respect to the License Area and/or any other properties owned/managed/controlled by SMA or its related business entities.

**Section 7. Insurance; Liens.**

- a. Throughout the term of this Agreement, SMRPD shall:
  - i. Maintain insurance protection for liability in connection with the License Area Activities, specifically, bodily injury, property damage, personal injury, public officials errors and omissions liability and employment practices liability with limits of not less than one million dollars (\$1,000,000.00) per occurrence, as well as an additional sublimit for the subsidence of land or earth of not less than one million dollars (\$1,000,000.00) per occurrence.
  - ii. Cause SMA to be named as an additional insured with respect to such insurance coverage prior to any usage of the License Area;
  - iii. Furnish to SMA evidence of such insurance coverage with a certificate of insurance, in a form acceptable to SMA, that names SMA as an additional insured under such insurance policies and which requires the insuring company to state that the insuring company will deliver to SMA thirty (30) days prior written notice of any termination, cancellation or other material change in the coverage of such insurance policies; and
  - iv. Keep the License Area free from all mechanics, materialmen and laborers liens arising by virtue of acts of SMRPD, either through payment or bonding thereof.
- b. In the event SMRPD employs one or more employees, SMRPD shall maintain worker's compensation and occupational disease insurance coverage as required under the laws of the State of California for every employee of SMRPD who enters upon the License Area, and maintain employer's liability insurance coverage in an amount of at least one million dollars (\$1,000,000.00) per occurrence;
- c. All insurance required pursuant to this Agreement shall be carried only with responsible insurance companies licensed to do business in California. All such policies shall be non-assessable and shall contain language to the effect that (i) any loss shall be payable notwithstanding any act or negligence of SMA that might otherwise result in a forfeiture of the insurance, (ii) the insurer waives the right of subrogation against SMA, and (iii) the policies are primary and noncontributing with any insurance that may be carried by SMA.

**Section 8. Monitoring of Operations; Mutual Use.** This Agreement does not give SMRPD exclusive use or occupancy of the License Area. SMA may enter the License Area at any time for any purpose, so long as SMA does not unreasonably hinder or interrupt the License Area Activities. SMA and its representatives shall have the right at all reasonable hours to inspect the License Area and the activities of SMRPD with respect thereto for the purpose of monitoring compliance with the provisions of this Agreement. SMRPD shall report all suspected illegal use of the License Area to the SMA immediately upon identification of the same.

**Section 9. Taxes; Utilities.** SMA shall retain responsibility for payment of all real property taxes and assessments which may be levied or assessed upon the License Area during the term of this

Agreement. SMRPD shall pay all (i) property taxes and assessments which may be levied or assessed upon the equipment and other on-site assets of SMRPD located on the License Area, and (ii) all other taxes, business license fees, permit fees and other charges related to SMRPD's activities on the License Area.

Section 10. Maintenance and Safety. SMRPD shall, at SMRPD's sole cost and expense, keep and maintain the License Area in a safe, clean and orderly condition suitable for the License Area Activities, free of weeds, trash, rubbish and unsafe or hazardous conditions, throughout the term of this Agreement. SMRPD shall post and maintain temporary signs on the License Area warning users that use of the License Area is at their sole risk and by permission of SMA. ~~Additionally, SMRPD shall implement a policy of having its authorized users of the License Area sign and deliver to SMRPD appropriate releases and waivers, the form of which shall be approved by SMA, assuming all risks in connection with use of the License Area and releasing both SMRPD and SMA from all liability associated with the use of the License Area. SMRPD shall maintain permanent records of such signed releases and waivers.~~ SMRPD shall use its best efforts to prohibit the unauthorized use of the License Area, and to monitor and enforce appropriate safety rules and regulations in connection with use of the License Area.

Section 11. Access; Condition of the License Area. SMRPD acknowledges that the License Area has been examined by SMRPD to SMRPD's satisfaction and that SMRPD has determined that the License Area is suitable for the License Area Activities. This License is accepted by SMRPD on the basis of the License Area being AS IS and WITH ALL FAULTS. This Agreement is subject to all prior exceptions, reservations, grants, easements, leases, licenses, liens, restrictions and encumbrances with respect to the License Area, whether or not of record. SMA has been informed that the License Area and that portion of Silverado Canyon Road abutting the License Area is or may be subject to flooding, subsidence and/or erosion due to natural factors. Accordingly, SMA makes no warranties, implied or express, that License Area will be useable for any activity, including License Area Activities.

Section 13. Termination. This License is valid for only the date specified under Section 4; and shall be terminated pursuant to the timing identified of Section 4. On the date specified in such notice as the date of such termination, this Agreement shall be deemed terminated and SMRPD shall vacate the License Area on or before the date of such termination.

Section 14. Assignment. No assignment, transfer or mortgage of SMRPD's rights or obligations hereunder shall be permitted without the prior written consent of SMA, which consent SMA shall have the right to withhold as determined in SMA's sole discretion.

Section 15. Indemnification. SMRPD hereby agrees to defend, hold harmless and indemnify SMA and their respective affiliates, directors, manager, officers, agents and employees (hereinafter collectively "SMA Indemnified Parties") of, from and against any and all claims, demands, liabilities, actions and causes of action, losses, damages, expenses (including legal fees) penalties, fines, costs and judgments that may be claimed, brought or had against said SMA Indemnified Parties, or any of them, by any governmental agency, person or business entity, whether relating to personal injury, death, property damage or otherwise, resulting from or arising out of (i) SMRPD's use or occupancy of the License Area, or the conduct of the License Area Activities, or from any activity or thing done, permitted or suffered by SMRPD or any member or invitee of SMRPD on or about the License Area, (ii) any negligent act or omission or

any intentional or willful misconduct of SMRPD or its agents, servants, employees, independent contractors, members or invitees on or about the License Area, or (iii) any default or breach by SMRPD of any obligation of SMRPD under this Agreement. The rights of SMA and the obligations of SMRPD pursuant to this Section 15 shall survive notwithstanding termination of this Agreement.

Section 16. No Third Party Benefits. The parties acknowledge, agree and intend that this Agreement is entered into solely for the benefit of the parties, and, to the extent permitted herein, assigns, and nothing in this Agreement shall be construed as giving any person, firm, corporation or other entity, other than the parties and permitted assigns, any right, remedy or claim under or in respect to this Agreement or any provision hereof.

Section 17. Notices. All notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed sufficiently given if delivered by certified mail, return receipt requested or by courier, as follows:

If to SMA: St. Michael's Abbey of the Norbertine Fathers  
19292 El Toro Road  
Silverado, CA 92676-9710  
Attn: Fr. Gregory Dick

With a copy to: Manatt, Phelps & Phillips, LLP  
695 Town Center Drive, 14th Floor  
Costa Mesa, CA 92626  
Attn: Susan K. Hori, Esq.

If to SMRPD: Silverado-Modjeska Recreation & Park District  
PO Box 8  
Silverado, CA 92676  
Attn: Ron Shepston

Section 18. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees and costs of suit, in addition to any other remedy to which such party may be entitled under the terms of this Agreement.

Section 19. Time of Essence. Time is of the essence of each provision of this Agreement.

Section 20. Choice of Law. This Agreement and all matters arising out of or relating hereto shall be governed and construed according to the Laws of the State of California.

Section 21. Relationship of the Parties. SMRPD is a licensee. Neither party, nor any agent, employee, servant or independent contractor thereof, shall be deemed or considered to be the employee, partner, agent, joint venturer or contractor of the other party.

Section 22. Recording. SMA and SMRPD agree that neither this Agreement nor any memorandum thereof shall be recorded in any public office or records.

**Section 23. Waiver.** Waiver by a party of any default by the other shall not be deemed a waiver by such party of any prior or subsequent default. No waiver of any provision hereof nor consent to any departure by either party therefrom shall in any event be effective unless the same shall be in writing and signed by a representative of the party granting the waiver, and then such waiver of consent shall be effective only in the specific instances, for the purpose for which given, and to the extent therein specified.

**Section 24. Amendment.** This Agreement may not be amended, altered or modified except by an instrument in writing signed by duly authorized representatives of both SMA and SMRPD.

**Section 25. Invalidity.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect or nullify the remainder of this Agreement.

**Section 26. Captions.** The captions to Sections hereof are for convenience only and shall not be considered in construing the intent of the parties.

**Section 27. Exhibits.** All exhibits attached hereto constitute a part of the Agreement as if fully set forth herein.

**Section 28. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 29. Complete Agreement.** This Agreement is the complete and total expression of all agreements, contracts, covenants and other promises between SMA and SMRPD relating to the license granted herein. All negotiations, understandings and agreements heretofore had between SMA and SMRPD are merged in this Agreement, which solely and completely expresses all agreements and understandings. This Agreement shall be construed without reference to any such negotiations, understandings, letters of intent or agreements. In consideration of the express provisions of this Agreement, SMA and SMRPD intend and agree that no implied covenant of any kind whatsoever shall affect any of their rights and obligations hereunder, or be used in any way to construe or interpret this Agreement, and that the only covenants which shall affect such rights and obligations, or be used to construe or interpret this Agreement, shall be those expressly provided in this Agreement.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, SMA and SMRPD have executed this Agreement as of the day and the year first written above.

St. Michael's Abbey of the Norbertine  
Fathers

By: \_\_\_\_\_

Title: \_\_\_\_\_

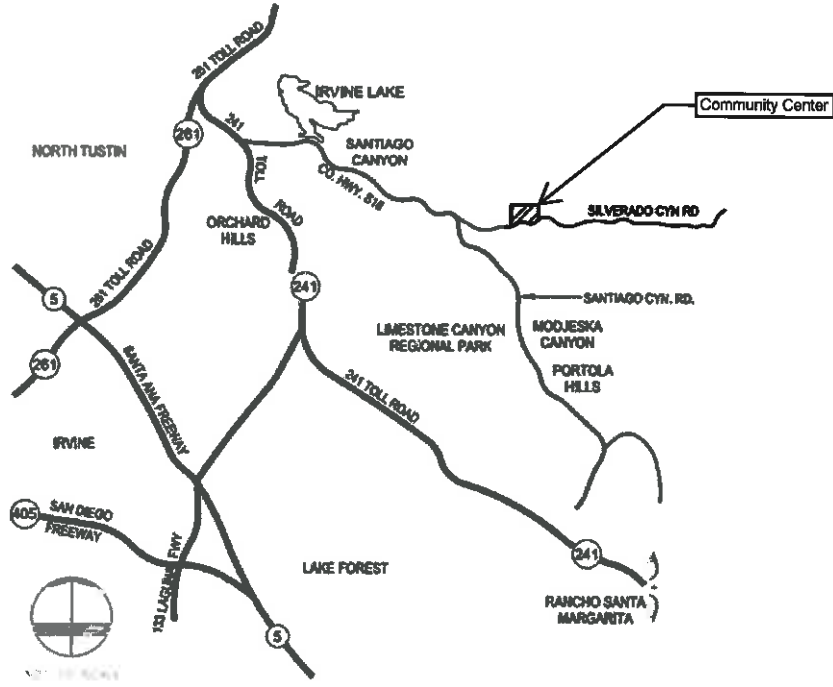
Silverado-Modjeska Recreation & Park  
District

By: *Don Shepato*

Title: *President*

# EXHIBIT A

## Vicinity Map



## License Area

